



Royal Canadian Mounted Police External Review Committee

Message from the Interim Chair

On July 31, 2013, after successive terms Ms. Catherine Ebbs completed an unprecedented eight years as Chair of the RCMP External Review Committee (ERC). Ms. Ebbs first joined the ERC in 2003 as Legal Counsel. She then served as the Executive Director and Senior Counsel before being appointed Chair by the Cabinet in 2005. During her tenure as Chair, Ms. Ebbs issued over 240 findings and recommendations to three different Commissioners of the RCMP. The calibre of her impartial reviews has contributed immeasurably to the promotion of fair and equitable labour relations within the RCMP.

Until a new Chair of the ERC is appointed, I have been appointed as Interim Chair. While I am serving as Interim Chair, I welcome ERC Counsel, Ms. Jill Gunn who has agreed to serve as Acting Executive Director and Senior Counsel. Before joining the ERC as Legal Counsel in 2007, Ms. Gunn was the Acting Manager of Legal Services for York Regional Police where she provided legal advice on a broad range of policing issues, and prosecuted police disciplinary offences. From 2010 to 2012, Ms. Gunn served as a Legal Advisor at the Immigration and Refugee Board. She returned to the ERC in 2012, and is currently a candidate for a Master of Laws degree with a focus on police law.

I wish to congratulate Ms. Ebbs on the outstanding body of precedent that she created for the ERC and to thank her for her numerous years of exemplary service and dedicated leadership to the ERC. I count it a distinct honour and a privilege to have served under her. This is a sentiment that I know is shared by the staff of the ERC.

David Paradiso
Interim Chair

Between July and September 2013, the RCMP External Review Committee (ERC) issued the following recommendations:

G-557 The Force published a Transfer Notice indicating that the Grievor had been given a promotional transfer requiring a move. The Grievor later informed the Force that he owned one vehicle, and that he intended to buy a second vehicle before moving. A Force relocation official advised the Grievor that

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he could recover the mileage cost of moving one vehicle only. She explained that relocation entitlements crystallized the day a Transfer Notice was published, and that he owned only one vehicle on that date. Months later, he bought a second vehicle, relocated it to his new post and claimed the mileage cost incurred. A Force relocation reviewer denied the expense.

The Grievor asked if there was a policy which supported her decision. No policy was cited. He then pointed to a related online frequently asked question that seemingly contradicted what he had been told. He felt it indicated that the mileage cost for a second vehicle was payable. The relocation reviewer disagreed. Yet she conceded that she had not seen the information before. She surmised that the information related to the purchase or replacement of a first vehicle. She also said the information would be clarified online. She further explained that, in accordance with relocation policy, the Force did not have to cover expenses arising from misinterpretations.

The next day, the Grievor grieved the refusal of his mileage claim. A Level I Adjudicator denied the grievance. She held that it was filed outside the 30-day statutory time limit. She found that the time limit started running when the Grievor learned that he could not receive a mileage cost for moving a second vehicle, and not months later when his claim for that expense was refused. She added that when the Grievor filed his expense claim, he provided no new information which would have placed the original decision in a whole new light. She reasoned that he accordingly could not have had a legitimate expectation that the original decision would be reconsidered.

ERC Findings: The ERC found that when the Grievor claimed a second vehicle mileage cost months after being informed that such a cost

would not be paid, he did provide new information, namely: the reply to a related online frequently asked question. The apparent inconsistencies between that information and the initial decision placed the matter in a whole new light, created a legitimate expectation that the relocation reviewer would reopen the decision, and indeed led her to reopen the decision. She reconsidered the circumstances, taking into account the new information the Grievor had provided her, and ultimately determined that the original decision would stand. As a result, a new time limit started running. The Grievor presented his Level I grievance the following day, which was well within the statutory limitation period for so doing.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he find that the grievance was timely, and that he return the matter to Level I so that it may proceed on the merits.

Update

The RCMP Commissioner has provided his decision in the following matters, summarized in previous issues of the *Communiqué*:

D-121 *(summarized in the April-June 2011 Communiqué)*

The Appellant, while off duty, met the Complainant at a party and was alleged to have “engaged in sexual relations with her without her consent”. The Appellant acknowledged having sexual relations with her, but insisted that it was consensual. The Adjudication Board (Board) determined that the allegation was established and that it was proven that the sexual assault was facilitated by the surreptitious administration of a drug. The Board ordered the Appellant to resign or be dismissed within 14 days. The ERC found that the Board made a manifest and determinative error when it concluded

that the Complainant was given a hallucinogenic-type drug. The ERC recommended that the appeal be allowed. The Commissioner disagreed with the ERC. The case was sent for judicial review to the Federal Court of Canada.

Commissioner of the RCMP New Decision:

The Commissioner's new decision, as summarized by his office, is as follows:

The Commissioner rendered a new decision on the Appellant member's disciplinary appeal after the Federal Court of Canada allowed an application for judicial review of the Commissioner's decision dated July 27, 2012, and returned the matter to the Commissioner to be re-determined in accordance with the Court's reasons (MacLeod v. Canada (Attorney General), 2013 FC 770, 2013-07-10).

The Commissioner first noted that disciplinary proceedings, while administrative in nature, and this one in particular, can be challenging and complex in trying to arrive at a fair outcome. This case arose from a single allegation of disgraceful conduct against a senior member of the Royal Canadian Mounted Police who in essence, was alleged to have engaged in drunken group sex next to an unconscious man at a party while the member was off duty. But for the question of whether the complainant was a willing participant or not, the behaviour was admitted by the Appellant.

The Commissioner then referred to the particulars of the allegation, which alleged that the Appellant engaged in non-consensual sexual relations with the complainant: "thereby committing a sexual assault upon her". At the disciplinary hearing, the Board had established the offence after finding on a balance of probabilities that the complainant had been drugged, and that the Appellant did not

have an honest but mistaken belief that the complainant had consented.

With respect to the Board's finding that the complainant and the party host had been drugged, the Commissioner stated that he was guided by the Federal Court's analysis at paras. 51 to 63 of its judgment, and the conclusion that his (earlier) decision to uphold the Board's finding with respect to the drugging issue was unreasonable. The Commissioner then stated: "The Court concluded that this error was crucial, since, I suspect, the Court felt that this was a central factor in the analysis of consent. Although in my decision I discounted R v. Ewanchuk, [1999] 1 SCR 330 as the test for this analysis in these administrative proceedings – the Court has provided me further direction for consideration."

Turning to the issue of whether the Appellant had an honest but mistaken belief in the complainant's consent, the Commissioner noted that since the issue of credibility remained unexamined, beyond the findings of the Board, the subjective element of the analysis as to whether the complainant had consented was unchanged. He further noted that the Court, however, was satisfied that the "soft nod" and smile communication by the complainant to the Appellant, as described by the Appellant, combined with her exhibited consent by being on top during intercourse was sufficient evidence that the Appellant had an honest but mistaken belief as to her agreement to have sex with him.

The Commissioner then reached the following conclusions:

It seems clear then on this analysis that if the only issue before the Board was to determine whether the complainant consented to having sex with the Appellant, and with flawed

analysis of what evidence there was, then the Court feels as though there is insufficient evidence to establish the allegation on a balance of probabilities. Accordingly, it also seems clear that the Board's decision and consequently my decision should be overturned.

I am left however with the solemn belief and conviction that the behaviour that has been described, if only the behaviour that the Appellant himself acknowledged and admitted before the Board, falls so far short of organizational expectations that it is disgraceful. A member of the Royal Canadian Mounted Police must maintain a standard of behaviour that accords with the unique and special place Peace Officers have in our community. That a member of this Force can engage in such drunken depravity in a manner that gives rise to a very public examination of the conduct is a threat to the integrity of this organization. That he can escape sanction for such actions because of a too narrowly defined notice of allegation is downright disappointing.

I reluctantly then, overturn the Board's finding that the allegation was established and reinstate [the Appellant].

D-124 (summarized in the October-December 2012 Communiqué)

The Appellant admittedly acted in a disgraceful manner by deploying his taser too hastily while trying to place a drunk and resistant suspect into a police truck. The parties, through the Early Resolution Discipline Process, sought penalties which respectively fell at the very low end of that

range. However, the Board imposed a reprimand, a four-day pay forfeiture, and a counselling recommendation. The Appellant appealed the decision on sanction. The ERC found that the Board's sanction decision contained overriding and determinative errors. The ERC recommended that the appeal be allowed and that the sanction be varied to a reprimand and a forfeiture of two-days' pay.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

Commissioner Robert W. Paulson agreed with the ERC in part and allowed the appeal, having found that the Board made palpable and overriding errors.

The Board erred in improperly interpreting and applying RCMP use of force policy and the Incident Management Intervention Manual (IMIM). The applicable policy classified the conducted energy weapon (Taser) as an "intermediate device," to be used when individuals were displaying resistant or higher risk behaviour. The Commissioner found that the use of the Taser was not, as the Board put it, "one stop short of discharging your firearm."

The Board engaged in improper speculation, when it found that the Appellant acted in anger and that other members were available to help him handle the suspect. There was no evidence supporting these findings. The Board then committed a palpable and overriding error when it distinguished the case submitted by the parties and based its decision to increase the requested sanction (at least partly) on these unsupported findings. Further, the Board acted in a procedurally unfair way when it imposed this higher sanction without first giving the parties an opportunity to make submissions on the greater sanction it was

considering. However, the Commissioner agreed with the ERC that the unfairness was rectified when the parties had a chance to address the sanction on appeal.

The Commissioner found the requested sanction on appeal to be similar to a joint submission on sanction, as the Member was requesting the same sanction that had been sought by the Appropriate Officer at the hearing. He agreed with caselaw and RCMP jurisprudence that joint submissions on sanction should not be rejected without providing clear and cogent reasons that the requested sanction was inappropriate, unfit, unreasonable, contrary to the public interest, or the interest of the Force or members, or why accepting the joint submission would bring the administration of the disciplinary system within the Force into disrepute (see also D-115).

The Commissioner found that the proposed sanction was within the range endorsed by the Board. Having regard to the facts of the case, the mitigating and aggravating factors and the referenced precedent, the Commissioner found that a reprimand and a forfeiture of one day of pay was appropriate and reasonable. He disagreed with the ERC's recommended sanction, as it appeared to be based on the Board's rationale for distinguishing the submitted precedent, yet there was no evidence that the Appellant was acting out of anger.

The Commissioner imposed a reprimand and a one-day pay forfeiture.

G-485 (summarized in the January-March 2010 Communiqué)

The Force assigned a bilingual 'C' oral linguistic profile to a position. The Force stopped the member from applying because he did not meet the language requirement. The Level I Adjudicator partly allowed the grievance. He supported the position's oral

linguistic rating, yet he also found that part of the language profile had not been adequately justified. The ERC found that the evidence and the applicable authorities supported the Level I conclusion. The ERC recommended that the grievance be denied. It also recommended that the Level I Adjudicator's decision be endorsed and that the remedy ordered at Level I be fully instituted.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

The Commissioner agreed with the ERC that the Grievor had standing to grieve the linguistic profile for the specific position, as he had been denied the opportunity to compete for the job and was therefore personally affected. However, the Grievor was not personally affected by staffing qualifications assigned to other positions, and therefore could not address those concerns through the grievance process.

The Commissioner relied on the Official Languages Act, and found that he had to consider the objective requirements of the particular position based on the work-related need to provide services to the public and to employees. He pointed to the Federal Court decision in Rogers v. Canada (Department of National Defence), 2001 FCT 90, in which it was held that one should not intervene to modify a linguistic requirement of a position unless one made a finding that "there is no evidentiary basis to the designation, that the designation is unreasonable, or that the language requirements are imposed frivolously or arbitrarily" (Rogers, para. 27).

With respect to the bilingual BBC/BBC linguistic profile, the Commissioner pointed out that New Brunswick is a bilingual province, and that the position had been investigated by the Office of the

Commissioner of Official Languages which found the profile to be correctly identified from the perspective of service to the public and for language of work purposes. The Commissioner found that the "C" level for oral communication was objectively required due to the nature of operations in which the position was involved, the specific functions and responsibilities associated with the position, and the consequent service and safety considerations that would arise. He agreed with the ERC and denied this part of the grievance.

The Commissioner also found that the Priority I (imperative) staffing basis was appropriate and rationally connected to the job duties. The position was a bilingual law enforcement position in a prescribed bilingual region which entailed supervisory responsibilities of employees from both official language groups, and was responsible for controlling the operations of a team to ensure that all investigations, activities and special functions were properly conducted and concluded. He disagreed with the Level I Adjudicator that an error may have occurred with respect to the priority assignment, and disagreed with the ERC recommendation to institute the remedy ordered by the Level I Adjudicator (i.e. that an Official Languages Coordinator review and justify the Priority I rating or that the Force designate the position Priority IS and re-open the staffing action to the Grievor).

G-487 *(summarized in the January-March 2010 Communiqué)*

The Grievor filed a grievance against a decision not to recognize overtime hours incurred during his participation in meetings of the Mounted Police Members' Legal Fund. The Respondent informed the Grievor that he would not authorize his request, because it was not consistent with established policy. The Level I Adjudicator found that the Grievor lacked standing. The ERC found that

the Level I Adjudicator erred by rendering that decision without giving advance notice to the parties. The ERC then found that the Grievor did not establish that he was entitled to overtime hours, given that the applicable policy required that he seek prior approval from his supervisor. The ERC recommended that the grievance be denied.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

[TRANSLATION]

The Commissioner accepted the findings and recommendations of the ERC and denied the grievance.

G-494 *(summarized in the April-June 2010 Communiqué)*

The Grievor was a member. His wife later joined the RCMP and was posted in a new province. The Grievor planned on joining her once he sold their house. Meanwhile, he sought a Temporary Dual Residence Allowance and the Respondent denied the request. The Grievor reapplied for a TDRA when certain eligibility barriers abated. The Respondent again denied the request and explained, in part, that he could have posted the Grievor's wife to the Grievor's home province. The Grievor was confused, given what he had been told. The Respondent was made aware of the full situation and decided that the TDRA request could not be granted. The Grievor received this decision and grieved it. The Respondent objected on the basis that his first decision was not grieved within the 30-day time limit. A Level I Adjudicator agreed. The ERC found that the matter was placed into a whole new light when certain eligibility obstacles abated and then placed into a whole new light yet again when it became widely evident that the Respondent's new reason for the decision conflicted with what the Force had told the

Grievor. The ERC recommended that the grievance be allowed by finding that the matter was timely at Level I. It also recommended that the record be returned to Level I so the parties can engage in Early Resolution and/or make submissions on the merits.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

The Commissioner agreed with the ERC that the Grievor presented his grievance within the statutory time period set out in the Act. The Commissioner pointed out that requests for reconsideration do not have the effect of extending the time period, and that a decision on a second request for the same benefit is not a new grievable decision. However, in this case, subsequent events placed the matter in a whole new light. First, one of the reasons the original request for TDRA was denied was that the Grievor's Probable Implementation Date (PID) had not expired. When the Grievor's PID expired and the Respondent's stated reason for denial was no longer an issue, the Grievor was therefore entitled to resubmit his TDRA request. Second, when he denied the first request the Respondent provided a contradictory suggestion that the Grievor's transfer could be cancelled and the Grievor's wife could be posted in the home province for her field training. When he denied the second request the Respondent apparently criticized the failure to follow his suggestion. The Commissioner could see why the Grievor sought assistance from his SRR to obtain a fulsome answer from the Respondent so he could determine his course of action (either continue with the situation in the new province and pursue TDRA through a grievance, or return to the home province and await his wife's transfer, which would make a TDRA unnecessary). It was not until the Grievor received the memo from the

Respondent that he was provided a clear decision which started the time period for presenting a grievance.

Even if the Commissioner had found the grievance to be untimely, the Commissioner would have granted a retroactive extension, as the delay in grieving was attributable to the Force providing conflicting information to the Grievor.

The Commissioner allowed the grievance in part on the basis that it was erroneously denied at Level I, and ordered the matter to return to the early resolution stage of Level I.

G-510 (summarized in the July-September 2011 Communiqué)

The Grievor complained that the Alleged Harasser harassed him. The Respondent did not find that the AH's actions constituted harassment. The ERC recommended that the grievance be allowed, because the Respondent made the aggrieved decision without authority to do so, and also, the harassment complaint should not have been rejected at the screening stage. As redress, the ERC recommended that the complaint be dealt with according to applicable policies. If it is determined that this is not possible because of the significant passage of time, the ERC then recommended that the Force apologize to the Grievor for the fact that the Grievor's harassment complaint was not dealt with appropriately.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

The Commissioner allowed the grievance on the basis that the Respondent Human Resources Officer did not have the authority to reject the Grievor's harassment complaint. Pursuant to applicable policy, this authority rested with the Commanding Officer.

The Commissioner noted that his decision to allow the grievance did not mean that he found the conduct to constitute harassment.

The Commissioner stated that while he would normally refer the matter back to the Commanding Officer so that it could be handled according to policy, in this case a significant period of time had elapsed. The Commissioner did not find that anything would be gained from referring the matter back. He noted that an investigation was completed, albeit pursuant to the disciplinary process, during which witnesses were interviewed and documentary evidence was reviewed. A further investigation could not be justified. However, the Commissioner apologized to the Grievor for the fact that his harassment complaint was not dealt with appropriately in accordance with policy.

G-511 (summarized in the July-September 2011 Communiqué)

The Grievor's lawyer requested details about an imminent Code of Conduct investigation into the Grievor. A Commanding Officer drafted a letter containing facts about the investigation, and the matter on which it was based. The Alleged Harasser read the letter and signed it for the CO. The Grievor alleged that the AH harassed him by signing the letter. The Respondent decided that the letter, or the AH's signing of it, would not constitute harassment. The Level I Adjudicator denied the grievance. The ERC recommended that the grievance be allowed, because the Respondent made the aggrieved decision without authority to do so, and also, the harassment complaint should not have been rejected at the screening stage. As redress, the ERC recommended that the complaint be dealt with according to applicable policies. If it is determined that this is not possible because of the significant passage of time, the ERC then recommended that the Force apologize to the Grievor for the fact that the Grievor's

harassment complaint was not dealt with appropriately.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

The Commissioner allowed the grievance on the basis that the Respondent Human Resources Officer did not have the authority to reject the Grievor's harassment complaint. Pursuant to applicable policy, this authority rested with the Commanding Officer.

The Commissioner noted that his decision to allow the grievance did not mean that he found the conduct to constitute harassment. He agreed with the ERC that this may be one of those rare cases where an investigation was not required.

The Commissioner stated that while he would normally refer the matter back to the Commanding Officer so that it could be handled according to policy, in this case a significant period of time had elapsed. The Commissioner did not find that anything would be gained from referring the matter back. He noted that an investigation was completed, albeit pursuant to the disciplinary process, during which witnesses were interviewed and documentary evidence was reviewed. A further investigation could not be justified. However, the Commissioner apologized to the Grievor for the fact that his harassment complaint was not dealt with appropriately in accordance with policy.

G-528 (summarized in the April-June 2012 Communiqué)

The Grievor was issued a transfer from one isolated post to another isolated post. He was advised that the shipment of his effects was within the weight limit prescribed by policy. Yet months after, the Force told him he owed money because his shipped effects were overweight. The Force allegedly told

the Grievor “not to forward any payment at this time as there were other members having similar difficulties” and that his “file would be reviewed”. When the Grievor received a final payment notice, he filed a grievance. A Level I Adjudicator denied it on the ground that it was presented after the statutory limitation period. The ERC found that new information placed the decision in a whole new light. The ERC recommended that the grievance be allowed, and that the case be returned to Level I for submissions, and a decision, on the merits.

Commissioner of the RCMP Decision: The Commissioner’s decision, as summarized by his office, is as follows:

The Commissioner agreed with the ERC that the grievance was presented at Level I within the limitation period. The Commissioner allowed the grievance in part on that basis and ordered that the grievance be returned to Level I so that the grievance process could resume at that level.

G-530 (summarized in the July-September 2012 Communiqué)

The Grievor was transferred to a new locale. When he and his family arrived there, they moved into their own home and waited days before their household effects were delivered. He filed a “private accommodations and incidentals” claim covering that time. A Relocation Adviser concluded that she could not allow the claim. The Grievor later raised new information, supporting his claim. The RA then sent the matter to the Departmental National Coordinator for review, who ultimately denied the claim. The Grievor grieved the RA’s actions. A Level I Adjudicator denied the grievance because of standing. The ERC recommended that the grievance be allowed and find that the Grievor had standing. As the parties have not been heard on the merits, it also recommended that the Level I

decision be quashed, and the case returned to Level I.

Commissioner of the RCMP Decision: The Commissioner’s decision, as summarized by his office, is as follows:

The Commissioner agreed with the ERC’s findings and recommendations. The Commissioner allowed the grievance on the preliminary issue of standing and ordered that the grievance be returned to Level I so that the grievance process could resume at that level.

G-532 (summarized in the July-September 2012 Communiqué)

The Grievor was transferred and lost money upon the sale of her home. She was denied a claim for financial help under the Home Equity Assistance Program. A Relocation Official told her to send her grievance directly to the Respondent. The Grievor emailed her completed grievance form to the Respondent, but nobody replied to it or took any related action. She sent the Respondent a follow-up email but no related action was taken. The Grievor was informed by the OCG that she had erred by giving her grievance directly to the Respondent, and that the Respondent had not passed along her emails. She offered her grievance to the OCG that day. The Level I Adjudicator denied the grievance on the ground that it was untimely. The ERC recommended to the grievance be allowed. It further recommended that the Level I limitation period be extended, and then return the grievance to Level I for the process to continue.

Commissioner of the RCMP Decision: The Commissioner’s decision, as summarized by his office, is as follows:

The Commissioner agreed that the Grievor did not present the grievance to the proper

authority within the time limit provided in subsection 31(2) of the Act. However, he was satisfied that the circumstances of the case justified an extension of the limitation period, pursuant to subsection 47.4(1) of the Act. He agreed with the ERC that the Grievor showed a continuing intention to grieve, there was a reasonable explanation for the delay and there was no prejudice to the Respondent in granting an extension.

The Commissioner ordered the file to be returned to the Level I Adjudicator so that the grievance could be continued on the merits.

G-549 (summarized in the January-March 2013 Communiqué)

While off-duty, the Grievor drove a vehicle while impaired, and was involved in a collision. The Grievor was served with a Notice of Driving Prohibition. One month later, the Grievor was again arrested while impaired. Shortly thereafter, the Grievor entered a treatment program for an alcohol addiction, which he completed. The Respondent issued a Stoppage of Pay and Allowances Order. The Grievor grieved the SPAO. The Level I Adjudicator found that the Grievor's misconduct was outrageous, and dismissed the Grievor's argument that his alcohol addiction was a disability that needed to be taken in account. The Grievor resigned from the Force prior to the Level I decision being issued. The ERC recommended that the grievance be allowed and that the Grievor's pay and allowances be reinstated up to the date of his resignation. As well, if the SPAO affected the Grievor's pension, it further recommended that a review of the Grievor's file be ordered so that appropriate adjustments could be made.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

The Acting Commissioner agreed with the ERC regarding the procedural issues. He found that there was no reasonable apprehension that the Respondent was biased. He also did not order disclosure of presentation materials given to the RCMP Senior Executive Committee regarding the stoppage of pay and allowances process in general, as the question in this grievance concerned whether or not the Respondent followed the existing policy (which had not changed). The Acting Commissioner also agreed with the ERC that the Respondent would not have been required to provide to the Grievor a copy of a document summarizing SPAO precedents, which he had relied upon to render his decision.

The Acting Commissioner also agreed that the Level I Adjudicator did not address a number of grounds raised by the Grievor. However, as he performed a de novo review of the matter, the Acting Commissioner found that he could decide the matter afresh and fully, including addressing issues which were overlooked at Level I.

On the merits, the Acting Commissioner found that the Suspension policy ensured that a suspension without pay (SWOP), described in the Act and the policy as a stoppage of pay and allowances, was a measure designed to protect the integrity of the RCMP and its processes. The Suspension policy sets out elements which provide procedural fairness to a member for whom the Force is considering a stoppage of pay and allowances. The measure is temporary in that it is only in place pending the outcome of the matter (criminal or disciplinary) which gave rise to the stoppage of pay. In addition, the policy specifically sets out that the stoppage of pay and allowances shall only be ordered in "extreme circumstances when it would be inappropriate to pay a member," such as when a member is "clearly involved in the commission of an offence that

contravenes an act of Parliament or the Code of Conduct, and is so outrageous as to significantly affect the proper performance of [his] duties.”

The Commissioner agreed with the Respondent and found that the circumstances in this case were indeed extreme and outrageous. While he agreed that driving while one’s licence is suspended is a provincial offence that, in isolation, is unlikely to be a cause for a SWOP, the Acting Commissioner found that impaired driving was not a minor criminal offence. He noted that considering the extreme dangers involved, driving while impaired is inexcusable and is not tolerated for any member of society, and even less so for a member of the Force. The repetition of this conduct is even more appalling. In this case, the member’s alleged conduct was particularly egregious since the first incident of impaired driving involved a collision which caused injuries to passengers in the Grievor’s vehicle, and the second incident occurred only a short time later and while the Grievor was prohibited from driving. The Grievor also allegedly swore at a member of the

police force involved and called her a “bitch.” The Acting Commissioner noted that the Grievor had time to reflect on his actions and realize the seriousness of his situation over the course of a month, yet he did it again.

The Acting Commissioner found that while the Grievor may have established that he had a disability (alcoholism), he had failed to meet the initial legal burden of proving on a balance of probabilities a prima facie case of discrimination. Furthermore, the Acting Commissioner did not agree with the ERC that the Grievor’s alcoholism made his conduct less extreme or outrageous. He found that the Grievor did not provide any evidence to support his assertion that his alcoholism was a precipitating factor in his decisions to drive while impaired. He therefore disagreed with the ERC that the level of “shocking,” “atrocious” or “grossly immoral” (as set out in G-353, a decision of former Commissioner Zaccardelli) was not met because of the Grievor’s alcoholism.

The Acting Commissioner therefore denied the grievance.

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