Royal Canadian Mounted Police
External Review Committee

communiqué
NOVEMBER 2014 TO FEBRUARY 2015

Between November 2014 to February 2015, the RCMP External Review Committee (ERC) issued the following recommendations:

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D-125

The Appellant became intoxicated during an off-duty party and assaulted a female member, C, including touching her breast. The Appellant entered a guilty plea to a criminal charge of assault arising from the incident and received a conditional discharge at a criminal sentencing hearing. At a subsequent hearing before an adjudication board (Board), the Appellant admitted to allegations of Disgraceful Conduct and Reporting for Duty Under the Influence and acknowledged that his actions towards C amounted to a sexual assault. The Board then held a sanction hearing, where witnesses, including the Appellant and one of his alcohol addiction counsellors, qualified by the Board as an expert, testified. The Board also considered a Victim Impact Statement (VIS) prepared by C, as well as evidence of two prior non-disciplinary incidents in which the Appellant had acted inappropriately with female members. After considering the evidence and the parties' submissions, the Board directed the Appellant to resign. The Board accepted the Appellant's apology and acknowledged that he had shown remorse. The Board observed that the Appellant, a good performer, had nevertheless been involved in two other incidents involving inappropriate behaviour with female members. The Board recognized the Appellant's efforts to address his alcoholism but concluded that the evidence overall showed a lack of dedication to rehabilitation. The Board viewed the Appellant's potential for recurrence as high and found that the significant breach of trust caused by the Appellant's actions outweighed any rehabilitative potential.

On appeal, the Appellant argued that the Board had: (i) provided insufficient reasons to explain its findings that the Appellant's potential for recurrence was high and that some of the Appellant's efforts were for purposes other than rehabilitation; (ii) improperly re-litigated a finding made by the criminal sentencing judge that there had been no breach of trust and erred in characterizing the Appellant's conduct as such; (iii) erred in finding that the incident caused C to experience ongoing psychological trauma and misapprehended the sequence of events involved in the incident; (iv) improperly minimized the Appellant's rehabilitation efforts and made errors regarding certain aspects of it; (v) erred in the manner in which it considered the two prior incidents, and; (vi) erred in assessing parity of sanction.

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ERC Findings: The ERC addressed each of the grounds raised by the Appellant as follows: (i) The Board's findings, both with respect to the Appellant's potential for recurrence and the purpose of certain of his efforts, were supported by adequate reasons. Read as a whole, the decision showed a discernable logic which allowed the findings to be understood and both of the findings were supported by the evidence; (ii) the Board did not err in finding that the Appellant's conduct amounted to a breach of trust, even though a contrary finding had been made at the Appellant's criminal sentencing hearing. In the present case, the Board's finding was made in respect of an admission of sexual assault rather than assault. Also, the Board was tasked with assessing the impact of the misconduct on the employment relationship, a context different than that in which the sentencing judge had made his finding. Finally, some of the facts on which the Board relied in finding a breach of trust had not been before the sentencing judge. The Board's finding was reasonable given the impact of the Appellant's conduct on C and on the Force; (iii) C's VIS was admitted as an exhibit with the Appellant's consent and it supported the Board's finding that ongoing psychological trauma was affecting C. The Board's reasons also showed that it did not misapprehend the incident's sequence of events and the level of violence exerted against C; (iv) the Board's reasons demonstrated that it did not improperly ignore or reject expert evidence regarding the Appellant's rehabilitation efforts. The Board weighed the totality of the Appellant's rehabilitation efforts. There was no contradiction between the expert's qualified prognosis and the Board's findings of a limited commitment to rehabilitation and a high potential for recurrence. Although the Board erred in finding that the Appellant should have recognized his alcoholism due to training received from the Force and that he had promised to abstain from alcohol, these errors related to the Appellant's circumstances prior to the incident and did not materially impact on the reasonableness of the Board's broader conclusions regarding the Appellant's rehabilitative potential; (v) the Board's reference to inappropriate behaviour by the Appellant in two prior instances was supported by the evidence. The Board's reliance on those incidents in assessing the Appellant's overall employment history was acceptable given the Appellant's assertion that he had been a credit to the Force. Although the Board erred in describing one of those incidents as a breach of trust of the female member involved, this error was not determinative in the Board's conclusion regarding sanction given the Board's emphasis on the severity of the incident itself and the Appellant's rehabilitation record; and (vi) the Board properly assessed prior cases for the purpose of determining an appropriate sanction. Its reasons revealed no error in the manner in which levels of violence and efforts at rehabilitation in those prior cases were compared to the Appellant's circumstances.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he dismiss the appeal and confirm the Board's decision.

D-126

The Appellant member was alleged to have committed discreditable conduct by engaging in sexual activity while on duty and in uniform. He was also alleged to have knowingly and wilfully made a false and misleading statement to a superior officer regarding the sexual encounter. However, the particulars of the allegations were drafted such that paragraphs 5 and 6 of Allegation #1 were the same as the particulars for Allegation #2.

At the hearing, the Appellant made a qualified admission to Allegation #1 and the Appropriate Officer Representative (AOR)

withdrew Allegation #2. The Board did not clarify whether the AOR was also withdrawing paragraphs 5 and 6 of Allegation #1. The parties then advised the Board that they disagreed as to whether Allegation #1 was alleging non-consensual sexual activity and, therefore sexual assault. The AOR sought to present evidence on the issue of consent and the Member Representative (MR) did not object. The hearing proceeded solely on the question of whether the sexual activity was consensual. During the Appellant's testimony, the MR elicited testimony pertaining to the withdrawn Allegation #2.

In its oral decision on the merits, the Board noted that the allegations were not wisely drafted and that paragraphs 5 and 6 of Allegation #1 were "*the essence*" of Allegation #2. It determined that the scope of Allegation #1 was limited solely to the sexual activity and did not extend to the subject matter of the withdrawn Allegation #2. In addition, the Board determined that Allegation #1 only alleged consensual sexual activity. The Board found that the testimony along with the Appellant's admission established Allegation #1. Despite finding that consent was not in issue, the Board made numerous findings on the issue of consent, leading to findings of fact and of witness credibility.

At the sanction hearing, the parties presented a joint submission on sanction for a reprimand, a recommendation for counselling, and a forfeiture of 10 days' pay. At the end of the sanction hearing, the Board permitted the Appellant to make an unsworn statement of apology. The Board directed that the Appellant resign within 14 days, in default of which he would be dismissed.

The Appellant appealed the Board's decision on the merits primarily on the basis of breaches of procedural fairness. He appealed the sanction decision primarily on the basis that the Board erred in rejecting the parties' joint submission on sanction. The Appellant also argued that the Board denied his *Charter* right to silence.

ERC Findings:

Breaches of Procedural Fairness

The ERC found that the drafting of Allegation #1 did not comply with the drafting requirements of paragraphs 43(5)(a) and (b) of the *RCMP Act* and contributed to the breaches of procedural fairness in the hearing and the errors in the Board's decision on sanction.

The ERC found that the Board breached procedural fairness at the commencement of the hearing by failing to clarify whether paragraphs 5 and 6 of Allegation #1 had been withdrawn and by failing to determine whether Allegation #1 was alleging consensual or non-consensual sexual activity and thus whether consent was a relevant issue.

The ERC further found that, once the Board determined that the scope of Allegation #1 was limited only to an allegation of consensual sexual activity, the Board breached procedural fairness by admitting and relying on inadmissible, irrelevant evidence elicited during the consent hearing.

Finally, the ERC found that the breaches of procedural fairness and the unfair hearing rendered the Board's decision invalid and a nullity and recommended a new hearing before a differently-constituted board.

Errors in Imposing Sanction

The ERC found that the Board made errors in imposing sanction. First, it erred in rejecting the parties' joint recommendation on sanction by failing to abide by the applicable legal principles. The Board failed to give the joint recommendation the required serious consideration and respect, and failed to explain why the proposed sanction would be so lenient, unfit or unreasonable as to be unjust or contrary to the public interest or bring the administration of justice into disrepute. Second, the Board erred in its assessment of aggravating factors by considering irrelevant and inadmissible evidence. Third, the Board's reasons for imposing sanction relied heavily on the subject matter of the withdrawn Allegation #2. Fourth, the Board erred in applying the principle of parity by mischaracterizing the cases presented by the parties and erring in the way it distinguishing them from the present case. The sanction jointly proposed by the parties fell within the range of sanctions identified by the parity cases and was reasonable in the circumstances.

Charter *Right to Silence*

The ERC found that, although it was not necessary to address this ground in order to dispose of the appeal, the Appellant did not provide the necessary factual foundation to establish that he had a right to silence or that it was infringed or denied.

ERC Recommendations: The ERC recommends that the Commissioner of the RCMP allow the appeal on the merits and order a new hearing due to a serious breach of the Appellant's rights to procedural fairness and a fair hearing.

In the event that the Commissioner disagrees with the recommendation for a new hearing, the ERC recommends that the Commissioner find that the Adjudication Board erred in its decision on sanction, allow the appeal on sanction and impose the sanction jointly submitted by the parties, namely a reprimand, a recommendation for professional counselling (if still pertinent) and a forfeiture of ten (10) days' pay.

The ERC also recommends that the Commissioner remind members of the Force responsible for the drafting of allegations and particulars contained in notices of hearing of the importance of specifying clearly a separate statement of each allegation and including particulars relevant only to that allegation.

Finally the ERC recommends that the Commissioner remind members of adjudication boards that all testimony before a board must be made under oath or on affirmation.

G-569

The Grievor filed an expense claim for a meal eaten in April 2006 pursuant to the *Treasury Board Travel Directive*. The Respondent denied the claim because the Grievor could not explain why she was 60 km away from her workplace. The Respondent asked her to provide supporting documentation, which she refused to do.

The Grievor filed the same claim for the second time in July 2007, more than a year after the initial denial. The Respondent maintained his denial. In a memo dated February 29, 2008, the Respondent indicated that, as in their previous conversation, he could not approve the expense. The Grievor grieved the decision.

The Respondent raised the preliminary issue of time limitation, arguing that he had denied the claim in April 2006. The Grievor was of the opinion that the memo dated February 29, 2008 constituted a new decision.

The Level I Adjudicator deemed that filing a [*TRANSLATION*] "*final claim*" did not entitle the Grievor to Part III (grievances) of the *RCMP Act*.

ERC Findings: The ERC found that the denial of February 29, 2008 did not constitute a new decision, as the Grievor had not submitted any new information to the Respondent that would have enabled him to review his decision.

The ERC also concluded that no recommendation should be made to the Commissioner to extend the time limit pursuant to his authority under section 47.4(1) of the *Act*, as the Grievor had not met the criteria established for justifying such an extension.

ERC Recommendation: The ERC recommends that the Commissioner of the RCMP deny the grievance.

G-570

The Grievor provided statements during workplace reviews, managerial reviews and resulting mediations to address a conflict between her and the Respondent. The Grievor was informed that the information she provided would be treated as confidential. The Respondent later filed a harassment complaint against her. In the Grievor's view, that complaint was made in bad faith, partly because it contained information she had provided during the reviews and mediations. The Grievor commenced a grievance. On her grievance form, she stated that she was grieving the "*decision to initiate a harassment investigation*". The Office for the Coordination of Grievances advised the parties that the file would be forwarded to a Level I Adjudicator for a decision on the preliminary issue of standing. The Grievor submitted that the harassment complaint was unfounded. The Respondent replied that the Grievor did not have standing as the harassment complaint had not yet been decided.

The Level I Adjudicator denied the grievance. She concluded that the Grievor did not establish that she had standing. She found that, despite what the Grievor had written on the grievance form, the grievance clearly pertained to the Respondent's act of filing a harassment complaint. The Level I Adjudicator observed that, in order for the standing requirement to be satisfied, a grievance must pertain to a decision, act or omission that was made in the administration of the Force's affairs. In her opinion, the Respondent had presented the harassment complaint on his own behalf, not in the administration of the Force's affairs. The Grievor later resubmitted her grievance at Level II. She insisted that she had standing as well as "*public interest standing*".

ERC Findings: The ERC agreed with the Level I Adjudicator that the subject of the grievance was the Respondent's act of presenting a harassment complaint, not the Force's initiation of a harassment investigation. The ERC relied upon jurisprudence indicating that it was sometimes necessary to construe a grievance so that the "*real complaint*" could be dealt with and concerns giving rise to that complaint could be resolved. The ERC stressed that the Grievor's arguments centred on the Respondent's filing of a harassment complaint. In addition, the Grievor's citing of the Respondent as the responding party (rather than someone who could start a harassment investigation) indicated she was grieving the Respondent's act of filing a harassment complaint.

The ERC also accepted the Level I Adjudicator's finding that the Grievor lacked standing. That finding was consistent with jurisprudence on standing. The test for standing in subsection 31(1) of the *RCMP Act* contains five prongs, one of which is that a disputed decision, act or omission must occur

in the administration of the Force's affairs. The ERC found that this prong was not met. It explained that the Respondent filed a harassment complaint in his private capacity, per his right under Treasury Board and RCMP harassment policies. There was no evidence that this act occurred in the Force's management of its affairs or in the context of the employer-employee relationship for which the Force was responsible. Moreover, the *RCMP Act* does not provide for public interest standing.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that the grievance be denied.

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

The Grievor presented a grievance against the Respondent, the Acting Non-commissioned Officer in Charge of the Lower Mainland Integrated Police Dog Services, after learning that she was the subject of a harassment complaint filed by the Respondent. The Respondent claimed that the Grievor did not have standing and the Level I agreed. The Commissioner found that the Grievor had not satisfied the test for standing, accepted the ERC recommendation and denied the grievance.

G-571

The Grievor made a harassment complaint. The Respondent reviewed the matter and made a decision that resulted in the Force taking no further action. After the filing of the grievance, the Respondent advised the Grievor that there had been an error made in the handling of his harassment complaint. The Human Resources Officer (HRO) was required to advise the Responsible Officer (RO) on the complaint and to direct the complaint to him or her for a final decision. In the Grievor's case, the HRO had failed to direct the complaint to the RO for final decision. The Respondent advised the Grievor that, to correct the error, he had directed the complaint to the RO for decision.

There was a new decision by the RO and the Grievor filed a grievance against that decision. However, the Grievor did not withdraw his previous grievance. The file was sent to the Level I Adjudicator on the issue on standing. The Level I Adjudicator ruled that the grievance did not have standing as it was filed prematurely as no final decision had been made by a person in authority.

ERC Findings: The ERC found that the Grievor met the criteria for standing. The grievance was not premature because the Respondent's decision ended the review of the Grievor's harassment complaint. The question of whether or not the Respondent was authorized to make the final decision regarding the Grievor's harassment complaint is a question of merits and not standing.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he find that the Grievor had standing to bring the grievance. The ERC also recommends to the Commissioner that, as the Grievor has passed away and no practical and effective remedy can be provided to the Grievor, he find that the present grievance is moot.

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

The Grievor presented a grievance against the decision by the Respondent, the Human Resources Officer, concerning the outcome of his harassment complaint. The Commanding Officer, as the Responsible Officer, had the authority to render a decision and not the

Respondent. During the course of Early Resolution the mistake was acknowledged and the matter was put to the Commanding Officer for a decision. The Grievor presented a new grievance against the decision of the Commanding Officer and refused to withdraw the original grievance. The Respondent claimed that the Grievor did not have standing and the Level I Adjudicator agreed. Like the ERC, the Commissioner found that the Grievor had standing but deemed the grievance to be moot given that the Grievor had since died.

G-572 to G-592

The Grievor regularly worked evening shifts outside of his headquarters area. Based on the *Treasury Board Travel Directive* (TBTD), he asked that his mid-shift meals while on travel status be reimbursed at the dinner rate. The Respondents denied his claim on the grounds that the Grievor was entitled to be reimbursed for his meals at the lunch rate under section 3.2.9 of the TBTD. The Respondents indicated that, if the Grievor paid more for his meals, he had to provide supporting documentation. The Grievor filed 21 grievances requesting that he be reimbursed for his meals at the dinner rate and not at the lunch rate. He claimed that the TBTD stipulates that he did not have to submit supporting documentation to be reimbursed for his meals. In total, the Grievor requested to be reimbursed for 51 meals at the dinner rate. He also requested that the amounts awarded to him be subject to punitive damages.

The Level I Adjudicator denied all the grievances because, under section 3.2.9 of the TBTD, the Grievor could be reimbursed for mid-shift meals, but based on the sequence of breakfast, lunch and dinner. According to the Level I Adjudicator, the Grievor's mid-shift meals eaten during his evening shifts were therefore equivalent to a lunch.

ERC Findings: The ERC found that the TBTD clearly indicated that shift workers should be reimbursed based on the meal sequence of breakfast, lunch and dinner, regardless of the shift's commencement. The ERC concluded that section 3.2.9 of the TBTD provided that the meal sequence comprising, respectively, breakfast, lunch and dinner should apply to shift workers' shifts, regardless of the shift in question.

Regarding punitive damages, the ERC concluded that, unless expressly authorized by legislation, a contract or a court order, the RCMP could not award damages.

ERC Recommendation: The ERC recommends that the Commissioner of the RCMP deny the grievances.

G-593

Between December 12, 2005, and June 5, 2008, the Grievor regularly worked evening shifts outside of his headquarters area. While on travel status, the Grievor requested and obtained a reimbursement for his mid-shift meals at the lunch rate. However, in light of new information, he asked that the meals for which he was already reimbursed at the lunch rate be reimbursed at the dinner rate. Therefore, he claimed the difference between the amount received and the amount he should have received for 187 meals. The Respondent denied the claim on the grounds that the Grievor was entitled to be reimbursed for his meals at the lunch rate under section 3.2.9 of the *Treasury Board Travel Directive* (TBTD). The Respondent indicated that, if the Grievor paid more for his meals, he had to submit supporting documentation. The Grievor replied that the TBTD stipulated that he did not have to submit supporting documents to be reimbursed for his meals. He also asked that the amounts awarded to him be subject to punitive damages.

The Level I Adjudicator denied the grievance because, under section 3.2.9 of the TBTD, the Grievor could be reimbursed for mid-shift meals, but based on the sequence of breakfast, lunch and dinner. According to the Level I Adjudicator, the Grievor's mid-shift meals eaten during his evening shifts were therefore equivalent to a lunch. Since the Grievor had already received the amount to which he was entitled, the Adjudicator denied the grievance.

ERC Findings: The ERC found that the TBTD clearly indicated that shift workers must be reimbursed based on the meal sequence of breakfast, lunch and dinner, regardless of the shift's commencement. The ERC concluded that section 3.2.9 of the TBTD provided that the meal sequence comprising, respectively, breakfast, lunch and dinner should apply to shift workers' shifts, regardless of the shift in question. Therefore, the Grievor was entitled to be reimbursed for his meals at the lunch rate.

However, the ERC concluded that, when the Grievor claimed two meals eaten during the same shift exceeding 10 hours, he was entitled to be reimbursed for the second meal at the dinner rate based on the meal sequence established by the TBTD.

Regarding punitive damages, the ERC concluded that, unless expressly authorized by legislation, a contract or a court order, the RCMP could not award damages.

ERC Recommendation: The ERC recommends that the Commissioner of the RCMP partially uphold the grievance.

G-594

The Grievor's superior initiated multiple internal investigations into the Grievor. Soon thereafter, the Grievor went off duty sick. The Grievor brought a harassment complaint against the superior. It contained eight allegations. Two RCMP harassment investigators were assigned to investigate the complaint. They spoke to the parties and witnesses, circulated draft reports for the parties' review and input, attempted to allay related concerns and drafted a final report. The Respondent issued a decision in which he reviewed and analysed the harassment complaint. He determined that all of the allegations were unfounded. Yet he stressed that two separate allegations involved significant and unwelcome conduct which had to be addressed.

The Grievor filed a grievance. He asserted that the Respondent's decision should be reversed because it was "[un]*informed*" and "[un]*ethical*". He submitted that the Respondent improperly characterized the harassment investigation process, utilised a "*disturbing*" objective test, made irreconcilable findings with regard to various allegations, and failed to review disputed conduct in its entirety. The Level I Adjudicator denied the grievance. In his view, the impugned decision was "*supported by a rationale which is reasonable, defensible and holds up under scrutiny*".

The Grievor submitted his grievance at Level II. He attempted to rely upon a magazine article that raised very broad concerns with how the Force managed certain funds and services.

ERC Findings: The ERC found at the outset that standing and timeliness requirements for the proper submission of the grievance were met. It also found that the magazine article on which the Grievor relied at Level II bore no appreciable link to the Respondent's decision to deny the Grievor's harassment complaint. As a result, the article was irrelevant and inadmissible.

Turning to the merits, the ERC verified that the Respondent properly described the

harassment investigation process as an administrative review in which a decision is based on a balance of probabilities. The ERC found that the objective test the Respondent used was consistent with applicable case law and ensured a broad and informed analysis. The ERC also found that the Respondent did not make any irreconcilable findings. However, the ERC determined that the Respondent's decision was not consistent with relevant harassment authorities to the extent that the Respondent failed to apply a principle set out in policy that a series of unwelcome events over time might be indicative of harassment. Although the Respondent found that the Alleged Harasser engaged in two significant and unwelcome actions over time, the Respondent did not turn his mind to the possibility that those actions could have together amounted to harassment.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he allow the grievance. It further recommends that the Commissioner find that the Respondent's decision was not consistent with relevant harassment authorities, quash the Respondent's decision, and apologize to the Grievor for the fact that the Respondent's decision was not consistent with relevant harassment authorities.

G-595

The Grievor's superior helped a member of the public formulate a public complaint against the Grievor. The superior also allegedly made questionable statements to and about the Grievor. The Grievor subsequently presented a harassment complaint against the superior. Two RCMP harassment investigators were assigned to investigate that harassment complaint. They spoke with the parties and witnesses, circulated multiple draft reports for the parties' review and input, attempted to allay the parties' related concerns, and prepared a final report for the Respondent. Ultimately, the Respondent determined that all of the Grievor's allegations were unfounded. In his decision, he reviewed the harassment investigation process, noted that he was relying upon the Force's Grievance Policy, reproduced the definition of "harassment" contained in that policy, summarized the most salient points of the final investigative report, and provided an analysis.

The Grievor filed a grievance. He urged that the Respondent's decision was "[un]*informed*" and "[un]*ethical*" and that it ought to be reversed. The Grievor did not present any submissions or arguments in support of that position, despite being prompted to do so. The Level I Adjudicator denied the grievance on its merits. He found that the Respondent's decision was "*supported by a rationale which is reasonable, defensible and holds up under scrutiny*". The Adjudicator also concluded that the "*basis for this grievance is simply that the* [Grievor] *continues to feel justified in his belief that he was harassed and he disagrees with the* [Respondent's] *conclusions*". The Grievor resubmitted his grievance at Level II. Again, he did not file any supporting submissions or arguments, despite being invited to do so. He attempted to rely upon a magazine article that raised some very broad concerns with how the Force managed certain funds and services.

ERC Findings: The ERC found at the outset that standing and timeliness requirements for the proper submission of the grievance were met. It also found that the magazine article on which the Grievor relied at Level II bore no appreciable link to the Respondent's decision to deny the Grievor's harassment complaint. As a result, the article was irrelevant and inadmissible.

Turning to the merits, the ERC found that the grievance could not succeed because the Grievor failed to meet his burden of persuasion. The Grievor provided no

submissions or arguments in support of his claim that the Respondent's decision was uninformed and unethical. The Grievor also failed to explain why he disagreed with the Level I decision. Although the record contained several documents from the harassment investigation file, the documents did not indicate that the Respondent's decision was obviously uninformed or unethical. It would be inappropriate to infer examples of such impropriety from the record, as such an approach would be speculative and without evidentiary foundation. This would be procedurally unfair to the Respondent.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he deny the grievance.

G-596

The Grievor alleged that his superior dealt with certain concerns of the Grievor inappropriately, asked RCMP Health Services to probe the Grievor's medical status for a dubious reason, and made troubling remarks about the Grievor. The Grievor initiated a harassment complaint against the superior. It contained three allegations. Two RCMP harassment investigators investigated the complaint. They spoke to the parties and witnesses, provided draft reports for the parties' review and input, attempted to allay related concerns and wrote a final report. The Respondent issued a decision in which he reviewed and analysed the complaint. He decided the allegations were unfounded.

The Grievor lodged a grievance. He alleged that the Respondent's decision should be reversed on the bases that it was "[un]*informed*" and "[un]*ethical*" and affected the Grievor's health. The Grievor urged that the Respondent improperly described the harassment investigation process, used a "*disturbing*" objective test, made irreconcilable findings with regard to an allegation, and did not consider if all the allegations as a whole could support a finding of harassment. A Level I Adjudicator denied the grievance. The Adjudicator indicated that he had reviewed the record and authored his decision in one day. He found that the Respondent's decision was consistent with relevant authorities and that the Grievor had not shown otherwise on a balance of probabilities.

The Grievor submitted his grievance at Level II. He repeated many of his positions. He also questioned how the Level I Adjudicator could complete a thorough and fair decision in one day.

ERC Findings: The ERC found at the outset that standing and timeliness requirements for the proper submission of the grievance were met.

Turning to the merits, the ERC verified that the Respondent properly described the harassment investigation process as an administrative review in which a decision will be based on a balance of probabilities. The ERC found that the objective test the Respondent adopted was consistent with applicable case law and ensured a broad and informed analysis. The ERC also found that the Respondent did not make irreconcilable findings with regard to an allegation, as the relevant findings at issue were in accordance with harassment policies. Moreover, the ERC found that the Respondent's failure to consider if all the allegations might cumulatively amount to harassment was not contrary to harassment authorities in this case. There was no identified series of offensive incidents that could properly be reviewed as a whole to consider if they evinced a course of repeated conduct which could constitute harassment. The ERC went on to find that nothing about the Respondent's decision was obviously uninformed or unethical. There was also no

evidence to support the assertion that the Respondent's decision affected the Grievor's health. Lastly, the ERC concluded that several factors suggested that the Level I Adjudicator's review of the facts and completion of a decision in one day was not problematic.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he deny the grievance.

G-597

While on travel leave from his isolated post, the Grievor fell ill and his status was changed to "*off-duty sick*". At that time, the Grievor's dependants were accompanying him. Instead of returning to his isolated post after his vacation leave, the Grievor and his dependants stayed in an urban centre in order for him to receive medical treatment. As the Grievor was being transferred from his isolated post, he and his dependants returned to their RCMP-owned residence at his original post to vacate his household goods and effects (HHE). His HHE were stored pending a new posting for the Grievor. The Grievor and his dependants returned to the same urban centre to continue with the Grievor's medical treatment.

A few weeks after his arrival at the urban centre, the Grievor was sent on a course in Depot in order to secure a posting to that division. However, the Grievor did not obtain a posting to Depot after the completion of his course. The Grievor then drove his family to another division to reside with a family member as, he explained, he was financially strained because his travel claims had not been fully reimbursed. After being on travel status for five months, the Force was able to secure a posting for the Grievor.

The Grievor sent travel claims to the Respondent to have his travel expenditures reimbursed. The Respondent audited the travel claims and removed the Grievor's dependants' travel expenditures on the basis that the Grievor did not require a medical escort during his treatment as per the *Isolated Post and Government Housing Directive*. The Respondent also removed expenses related to the purchase of clothing for the Grievor and his dependants, damage to a hotel bathroom door and interest on the Grievor's credit card.

The Grievor challenged the Respondent's decision to remove these expenses from his travel claims. The Grievor argued that he was entitled to his dependants' travel expenditures as suitable arrangements could not be made for them at the isolated post. A Level I Adjudicator partially upheld the grievance.

ERC Findings: The ERC found that the Grievor was not entitled to reimbursement for travelling expenses incurred by or on behalf of his dependants while they had the option of returning to their residence at the isolated post. However, the Grievor was entitled to their travel expenses after the family had vacated their residence as no suitable arrangements could be made for them.

The ERC agreed with the Grievor that his situation was an exceptional one as described in the Force's travel policy. It found that the Grievor was entitled to reimbursement for clothing purchases made by him for his family, however, only those purchases supported by receipt could be reimbursed. The damage to the hotel bathroom door could not be reimbursed as the Grievor did not demonstrate that it was a necessary action. Lastly, the ERC found that the Grievor was not entitled to reimbursement or payment of any amount in respect of interest.

ERC Recommendation: The ERC recommends that the Commissioner of the RCMP partially uphold the grievance.

G-598

The RCMP civilianized all of its Air Services positions in Canada in 2000. Regular members who served in Air Services, including the Grievor, were permitted to retain their positions at their existing ranks, on certain conditions. Specifically, the members would "*be frozen in* [their] *rank and location*" and would receive no additional pay unless their newly-civilianized positions had higher pay scales than their existing ranks. Nevertheless, the Grievor and various other regular members holding civilianized Air Services positions across Canada soon began receiving acting pay above their respective civilian pay scales. The Force later directed all Air Services sections to stop this practice. As a result, the Grievor ceased receiving acting pay in excess of his rank.

A number of years later, the Grievor learned that an Air Services section in a different region of Canada continued to pay unauthorized acting pay to similarly-situated members. He asked for retroactive compensation. The Respondent refused the request. The Grievor filed a grievance. It was denied at Level I and resubmitted at Level II. The Grievor asserts that he was treated unfairly. He cites RCMP policy directions, the ERC's findings in ERC 2100-07-002 (G-441), the *Canadian Charter of Rights and Freedoms* (*Charter*), the *Canadian Human Rights Act* (*CHRA*) and the *Public Sector Equitable Compensation Act* (*PSECA*). He also seeks "*equal pay for equal work*" under the *CHRA*. In his view, other members were unjustly enriched, to his detriment, "*solely due to geographic region*".

ERC Findings: The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988* (*1988 Regulations*). The ERC found that the present grievance fell outside the scope of subsections 36(b) to (e), as those subsections deal with issues which did not arise in this case.

Subsection 36(a) of the *1988 Regulations* concerns cases relating to "*the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members*". The ERC found that the present grievance did not fall within subsection 36(a), as the Grievor did not rely on a government policy applicable to government departments and to members. He instead relied on internal Force authorities and a statute (the *PSECA*) that had not been proclaimed in force at the date of this report. The ERC noted that subsection 36(a) captures grievances in which the principles and requirements of the *Charter* and/or *CHRA* are invoked. Although the Grievor cited the *Charter* and the *CHRA*, he did not cite specific provisions of those laws or related jurisprudence, nor did he raise an issue based on a prohibited ground of discrimination in either authority. The ERC observed that section 11 of the CHRA concerns discriminatory wage gaps between males and females. Yet the Grievor did not make a gender distinction argument and the CHRA does not address discrimination "*due to geographic region*". The ERC thus found that the grievance could not reasonably be said to be about the *Charter* or the *CHRA*. The ERC distinguished G-441 from the present case, as the facts of G-441 raised an issue of discrimination based on gender, contrary to the *CHRA*, which is an issue within subsection 36(a) of the *1988 Regulations*.

ERC Recommendation: This grievance is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the matter or to make a recommendation.

Update

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

G-556 (*summarized in the April-June 2013* Communiqué) In the months following his attendance at a grisly suicide scene, the Grievor started pilfering change from a peer's work area within a police office. He was caught, and admitted to stealing from his peer numerous times. The Grievor began seeing various health professionals, including Dr. R.H., who was a psychologist. Dr. R.H.diagnosed the Grievor with Post Traumatic Stress Disorder. Dr. T.M., a Force psychologist, later wrote a report in which she questioned Dr. R.H.'s findings, though she admittedly never examined the Grievor. The Respondent issued a Stoppage of Pay and Allowances Order (SPAO) against the Grievor. The Grievor filed a grievance which was denied at Level 1. The ERC recommended to the Commissioner of the RCMP that he allow the grievance and overturn the Grievor's SPAO. It also recommended that he reinstate the Grievor's pay and allowances, retroactive to the date the SPAO was issued.

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

The Commissioner denied this grievance, pertaining to the stoppage of the Grievor's pay and allowances based on allegations that the Grievor stole money from a colleague's desk and jacket. The Commissioner found that the behaviour was so outrageous as to justify the suspension without pay order.

G-558 (*summarized in the October-December 2013* Communiqué) During an acting appointment in a supervisory position, the Grievor took leave to deal with some difficult personal issues. During that leave period, her superior held an unplanned meeting with the three other supervisors in the office. The Grievor raised concerns with the proposals made at the meeting, so the Respondent arranged a meeting the next day so the Grievor could come into the office, offer input, and help make a final decision. Although the Grievor did not like the proposals, she apprehensively supported them. After the Grievor returned from her leave, the Respondent met with her to discuss performance issues and to ask the Grievor how she would message the group's decisions. The Grievor described the decisions as in pejorative terms, and refused to say anything good about them. In time, the Respondent lost faith in the Grievor, and lifted her from the acting. She claimed that the Respondent harassed her and committed an abuse of authority. The ERC found that the Grievor was not harassed. The ERC recommended that the Commissioner of the RCMP deny the grievance.

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

The Commissioner denied the grievance, as recommended by the ERC. The Grievor was removed from an acting supervisor position by the Respondent. The Grievor presented a grievance alleging that the Respondent's actions constituted harassment and an abuse of authority. The Commissioner denied the grievance after finding that the Grievor had not established that the actions constituted either harassment or an abuse of authority.

G-563

(*summarized in the January-October 2014* Communiqué)

The Grievor was temporarily assigned to duties in Vancouver during the 2010 Winter Olympics and was required to share a room with another individual. The Grievor found this arrangement uncomfortable and challenging. The Grievor chose not to grieve this situation. Rather, nearly one month after returning, he claimed a Private Accommodation Allowance (PAA) for each night spent in Vancouver. The Grievor's claim was denied and the Grievor submitted a grievance. A Level I Adjudicator ruled that the Grievor had failed to meet the 30-day time limit to present a grievance. She concluded that the Grievor ought to have presented his grievance within 30 days of experiencing the challenging conditions. The ERC agreed and recommended that the Commissioner of the RCMP deny the grievance.

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

The Commissioner denied the grievance, as recommended by the ERC. The Commissioner found that this grievance, pertaining to living accommodations while temporarily deployed to duties during the 2010 Winter Olympics, was untimely as it should have been presented within thirty days from the date the Grievor became aware of alleged unsatisfactory accommodations.

G-568

(*summarized in the January-October 2014* Communiqué)

The Force's Relocation Contractor allegedly mishandled the Grievor's relocation funds in a way that left one of the Grievor's moving bills partially unpaid. The Force later advised the Grievor that if he failed to pay the balance, the sum would be deducted from his remuneration. The Grievor filed a grievance. The Grievor presented written comments on the merits of the grievance but did not file any documentary evidence. He also asked the Force to disclose certain documents related to the grievance. There is no record of this request being addressed. The Level I Adjudicator found that the Grievor "*provided no submissions on the merits ...* [or] *evidence in support of his position*" and denied the grievance. The ERC recommended to the Commissioner of the RCMP that he allow the grievance on the basis that the Grievor was denied procedural fairness. It further recommended that the Level I decision be declared invalid and that the grievance be sent back to Level I so the Grievor's disclosure requests can be properly dealt with, the parties are each provided the opportunity to present and reply to informed submissions, and a new decision can be rendered on the basis of a complete record.

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

The Commissioner allowed the grievance, as recommended by the ERC. The Grievor presented a grievance against the decision by the Respondent, the Departmental National Coordinator for the RCMP Integrated Relocation Program, that would require him to pay the outstanding balance for shipping the overweight portion of his household goods and effects during a relocation. The Commissioner accepted the recommendations of the ERC and found that the Grievor was denied procedural fairness, declared the Level I decision to be invalid and directed the grievance back to Level I to deal with outstanding disclosure requests, provide the parties an opportunity to fully present their submissions, and render a new decision based on a complete record.

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