Royal Canadian Mounted Police
External Review Committee

communiqué
OCTOBER 2015 TO FEBRUARY 2016

IN THIS ISSUE

Between October 2015 and February 2016, the RCMP External Review Committee (ERC) issued the following recommendations:

Current Legislation Cases:

C-006

The Appellant was off-duty and had consumed alcohol when he sought entry into a nightclub by showing his RCMP badge and falsely stating that he was conducting surveillance. He also falsely claimed that he was carrying a firearm. The Appellant was allowed into the nightclub by a manager who subsequently became uncomfortable with the situation and contacted 911. As the Appellant was leaving the nightclub shortly thereafter, the manager asked him to speak to a police dispatcher on the manager's cell phone. The Appellant told the dispatcher that he was conducting surveillance and leaving the club. As the Appellant walked back to his hotel, he was approached by two local police officers responding to the situation. The Appellant was defiant and uncooperative towards the local officers. Eventually, the two local officers and their supervisor accompanied the Appellant to his hotel room where they verified that his firearm was safely stored.

Two allegations were brought against the Appellant as a result of these events. At a conduct meeting with the Respondent, the Appellant admitted Allegation #1 which alleged that he had contravened section 3.2 of the *Code of Conduct* by using his police officer status to gain access to the nightclub. The Appellant contested Allegation #2 which alleged that he had been confrontational and belligerent with the local officers, thereby conducting himself in a discreditable manner contrary to section 7.1 of the *Code of Conduct*. The Appellant provided a written submission to the Respondent in which he contended that his actions had been neither belligerent nor confrontational as set out in Allegation #2. Following the conduct meeting, the Respondent issued a record of decision in which he imposed a financial penalty of three days of pay with respect to Allegation #1. The Respondent found that the Appellant's behaviour with the local officers had been inappropriate and he concluded that Allegation #2 had been established. He imposed a financial penalty of seven days of pay in addition to certain other measures. The Appellant appealed both the finding and the financial penalty imposed with respect to Allegation #2.

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ERC Findings: The Respondent failed to address whether the evidence supported a finding of belligerent and confrontational behaviour as specified in Allegation #2. Further, the Respondent made no specific finding in his reasons of discreditable conduct under section 7.1 of the *Code of Conduct*. While the Respondent's reasons were not required to be lengthy, they had to provide a roadmap from the evidence to the particular allegation of belligerent and confrontational conduct contrary to section 7.1. The Appellant's submission raised several arguments as to why the Appellant's actions could not be characterized as belligerent and confrontational. The Respondent's failure in the reasons for decision to make a finding regarding these specific elements and his failure to provide any analysis of the Appellants conduct against section 7.1 of the *Code of Conduct* or a test for discreditable conduct were determinative omissions that rendered his decision clearly unreasonable.

The ERC examined whether the record supported a finding that the Appellant's conduct had been either belligerent or confrontational, as it was not necessary to establish each of the particulars in order to establish the allegation. While the evidence did not support a finding of belligerent conduct, it supported a finding of confrontational behaviour. Definitions of the verb "*confront*" refer to defiant and argumentative behaviour, and the record contained evidence of defiance towards the local officers. The Appellant initially refused to provide personal information, complied only after several requests, refused to speak to local officers of lower rank, demanded the attendance of a supervisor, and demonstrated argumentative behaviour. The ERC also found that the confrontational behaviour amounted to discreditable conduct pursuant to section 7.1 of the *Code of Conduct*. In the ERC's view, a reasonable member of the public, apprised of the Appellant's lack of cooperation and tone of behaviour, would likely conclude that the Appellant did not conduct himself in a manner expected of a member of the RCMP during his interaction with the local officers.

The conduct measure of seven days' pay imposed for Allegation #2 reflected appropriate aggravating factors, which included a lack of integrity and respect for officers of another police force and prior informal disciplinary action for similar conduct. The conduct measure imposed on the Appellant, while at the high end of the range applicable in similar instances of misconduct, was not clearly disproportionate to the pattern of discipline established by prior cases.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that, pursuant to paragraph 45.16(2)(b) of the *RCMP Act*, he allow the appeal of the Respondent's finding that Allegation #2 was established due to material and determinative omissions from the Record of Decision and make the finding that the Respondent should have made. The ERC further recommends that the Commissioner make a finding that the Appellant's conduct during his interaction with the local officers was confrontational and likely to discredit the Force, contrary to section 7.1 of the *Code of Conduct*.

The ERC also recommends to the Commissioner that, pursuant to paragraph 45.16(3)(a) of the *RCMP Act*, he dismiss the appeal in respect of the conduct measure imposed on the Appellant and confirm the conduct measure of a financial penalty of seven days of the Appellant's pay.

C-007

The Appellant initiated two discussions with a Superintendent. During the first discussion, the Appellant raised concerns about the allegedly disrespectful way in which an Inspector treated him at an earlier meeting. The Superintendent spoke to the Inspector and a Staff Sergeant who also attended the earlier meeting. Both members denied the Appellant's account of what occurred at the meeting. During the second discussion later that day, the Superintendent understood the Appellant to say that he and the Inspector had resolved matters. When the Superintendent asked the Inspector to confirm this information, the Inspector stated that it was not true.

Two allegations were made against the Appellant for "*lying to a supervisor*", contrary to section 8.1 of the RCMP *Code of Conduct*. Following a Conduct Meeting, the Respondent issued a decision. It recited the allegations and their particulars, referenced the receipt of an investigation report and stated:

> *Based on my review of the completed investigation including your statement I find the above noted allegations ESTABLISHED.*

The decision also contained a list of aggravating and mitigating factors and set out five conduct measures, including a forfeiture of 10 days' pay and a forfeiture of annual leave. Subsequently, the forfeiture of annual leave was retracted and the decision revised.

The Appellant appealed both the finding on the allegations and the conduct measures imposed. He submitted the allegations were unfounded and disputed the aggravating factors cited. In support of his appeal, he filed a page of his notes which pre-dated the Respondent's decision.

ERC Findings: The ERC dealt with a number of preliminary issues, including the removal of a conduct measure and the admissibility of the Appellant's notes on appeal. The ERC noted that the process through which a conduct measure is rescinded or revised mid-appeal should be clearly documented in the record to ensure the amendment process complies with applicable requirements and is transparent. The ERC determined the Appellant's notes were inadmissible. They were not supplied to the Respondent even though the notes predated his decision and the Appellant provided no rationale as to why they were filed for the first time on appeal.

With respect to the merits of the appeal, the ERC found that the Respondent provided no reasons for his decision, contrary to the *Commissioner's Standing Orders (Conduct)*, the Force's *Conduct Policy* and the common law. The Respondent made no factual findings. He did not refer to any evidence in making his finding. He failed to address any of the Appellant's submissions. This gave the Appellant no indication that he was heard. Moreover, the Respondent provided no roadmap as to his evaluation of the evidence against the alleged *Code of Conduct* violations or as to why or how he arrived at his decision. Therefore, the Commissioner of the RCMP is unable to assess whether or not the Respondent's decision falls within the range of reasonable outcomes.

In exercising his authority to render the finding that, in his opinion, the Respondent should have made, the ERC concluded that the Commissioner may find that the clear and consistent evidence of the Superintendent, Inspector and Staff Sergeant supports a finding that, on a balance of probabilities, the Appellant breached section 8.1 the *Code of Conduct* by giving a superior inaccurate accounts of another member's actions.

The ERC reviewed the conduct measures imposed. The Respondent neither explained the aggravating factors he relied upon, some of which were clearly irrelevant, nor related them to the case at hand. Moreover, his decision provided no basis as to why he ordered a forfeiture of 10 days of the Appellant's pay. As the Respondent gave no reasons in support of his imposition of a forfeiture of 10 days of pay and committed material errors in his consideration of relevant aggravating circumstances, his decision regarding conduct measures is unreasonable and warrants the Commissioner's intervention. The ERC provided a framework for the consideration of conduct measures regarding forfeiture of pay. Relying on the RCMP *Conduct Measures Guide* and prior RCMP cases, the ERC found that a forfeiture of 10 days of pay was a disproportionate conduct measure in this case.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he allow the appeal of the Respondents finding that the allegations were established due to the Respondent's failure to provide reasons for his decision. The ERC further recommends that the Commissioner make a finding, with reasons, that the allegations are established on a balance of probabilities and that the Appellant provided inaccurate accounts of the actions of another employee contrary to section 8.1 of the *Code of Conduct*.

The ERC recommends to the Commissioner that he allow the appeal in respect of the conduct measure imposed of a forfeiture of ten days of the Appellant's pay and that he impose a global conduct measure in respect of Allegations #1 and #2 of forfeiture of pay of 3 to 7 days, within the high end of the Mitigated range and the low end of the Normal range set forth in the RCMP *Conduct Measures Guide*. The ERC also recommends that the Commissioner confirm the remaining conduct measures imposed by the Respondent in the revised Record of Decision.

C-008

One evening after his shift, the Appellant sent an email to his watch stating that a $100 was taken from his wallet in his locker in the detachment and asking the person who may have taken the money to talk to him. An internal investigation ensued to discover the culprit. During the investigation, the Appellant had discussions with his superior officers and gave three formal statements which contained discrepancies. The discussions and statements led his superiors to doubt the sincerity of the theft complaint and a *Code of Conduct* investigation was initiated against the Appellant for having made a false statement or report under subsection 45(c) of the RCMP Code of Conduct in force prior to November 28, 2014. Subsection 45(c) was the predecessor to section 8.1 of the current RCMP *Code of Conduct*.

The Notice of conduct meeting and the Record of Decision referenced the same two allegations against the Appellant for misleading superiors. However the allegations were brought under section 7 of the RCMP *Code of Conduct* (discreditable conduct). Following a Conduct Meeting, the Respondent issued a decision. It recited the allegations and their particulars, referenced the receipt of an investigation report and stated:

> *Based on my review of the completed investigation including your statement I find the above noted allegations ESTABLISHED.*

The decision also contained a list of aggravating and mitigating factors and set out conduct measures, including ineligibility

for promotion for a year, a forfeiture of five days pay and a forfeiture of five days of annual leave.

The Appellant appealed both the finding on the allegations and the conduct measures imposed. He submitted the allegations were unfounded and disputed the aggravating factors cited.

ERC Findings: The ERC found that the Respondent provided no reasons for his decision, contrary to the *Commissioner's Standing Orders (Conduct)*, the Force's *Conduct Policy* and the common law. The Respondent made no factual findings. He did not refer to any evidence in making his finding. He failed to address any of the Appellant's submissions. Moreover, the Respondent provided no analysis of whether the Appellant's conduct was discreditable. He provided no roadmap as to his evaluation of the evidence against the alleged *Code of Conduct* violations or as to whether the test for discreditable conduct was considered and applied. Therefore, the Commissioner of the RCMP is unable to assess whether or not the Respondent's decision falls within the range of reasonable outcomes.

In exercising his authority to render the finding that, in his opinion, the Respondent should have made, the ERC recommended that the Commissioner find that there is insufficient clear and consistent evidence that allegation #1 was established. However, there is sufficient evidence to find that the Appellant made a false and misleading statement to Sgt. B, the subject matter of allegation #2.

As the Force brought the allegations under section 7 of the *Code of Conduct*, the ERC found that the Force was required to establish, on a balance of probabilities, that the Appellant not only made a false and misleading statement but also that the Appellant thereby engaged in discreditable conduct. The ERC found that the Respondent failed to turn his mind to the test for discreditable conduct. Further, there was no evidence of discreditable conduct on the record. The ERC found that allegation 2 was not, therefore, established on the balance of probabilities under section 7 of the RCMP *Code of Conduct*.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he allow the appeal of the Respondent's finding that the allegations were established due to the Respondent's failure to provide reasons for his decision. The ERC further recommends that the Commissioner make a finding, with reasons, that the allegations are not established on a balance of probabilities under section 7 of the *Code of Conduct*.

The ERC recommends further to the Commissioner that he allow the appeal in respect of the conduct measures imposed.

Former Legislation Cases:

R-006

After her training at "Depot" and her six-month field training program, the Appellant held the position of patrolling and investigating officer in Detachment A. She was having difficulties with her performance, particularly with respect to case management and taking charge of situations. Her supervisors took certain steps to try to improve her performance, including holding several meetings to provide feedback and having her shadow another member. Once they had determined that her performance was still not satisfactory, an initial Notice of Intent to Discharge was served on the Appellant. However, this first discharge process was set aside, and the Appellant was assigned to Detachment B as a patrolling and investigating officer for four months in an

attempt to improve her performance. The Appellant's supervisors in Detachment B provided her with assistance, including having her shadow another member for 11 shifts and sending her on patrols with other members. Ultimately the Appellant's supervisors decided that her performance remained unsatisfactory with respect to taking charge of situations and taking initiative.

Under sections 45.18 and 45.19 of the *Royal Canadian Mounted Police Act* (the *Act*), the Appropriate Officer served on the Appellant a Notice of Intent to Discharge on the grounds that she had repeatedly failed to perform her duties in a fitting manner despite reasonable assistance, guidance and supervision. The Appellant requested a review of her case by a Discharge and Demotion Board (Board). The Board held a hearing, during which several documents were admitted into evidence and several witnesses appeared. The Board found that the Appellant had failed to perform her duties in a fitting manner, pointing to the evidence indicating that the Appellant still had difficulty taking charge of situations and taking initiative. It also found that reasonable assistance, guidance and supervision and been provided to the Appellant. The Board rejected the Appellant's claim that she had not been impartially evaluated in Detachment B given that her supervisors and the member she had been assigned to shadow had been aware of the initial Notice of Intent to Discharge that had been served on her in Detachment A. The Board ordered the Appellant's discharge. The Appellant appealed the decision.

ERC Findings: The ERC reviewed the Board's finding that the Appellant had been provided with reasonable assistance, guidance and supervision within the meaning of subsection 45.18(1) of the *Act*. The Board's decision on this very fact-specific issue may be set aside only if the Board has committed one or more palpable and overriding errors. The ERC concluded that there was ample evidence supporting the Board's finding that the Appellant's managers had provided her with reasonable assistance, guidance and supervision. This evidence included the comments entered in the Appellant's electronic records, multiple meetings with the Appellant to discuss her performance and provide her with feedback, formal job shadowing opportunities with various members and a transfer to a new detachment. The job shadowing opportunities provided to the Appellant constituted practical and concrete assistance. The Board's decision indicated that it had heard and considered the evidence presented to it and that it had reviewed the discretionary power exercised by the Appellant's supervisors in light of the obligations set out in subsection 45.18(1) of the *Act* rather than simply relying on their judgment. The Board did not commit any palpable or overriding errors in its reasons, its assessment of the relevant evidence or the conclusions it reached in light of the evidence.

The ERC reviewed the Appellant's claim to the effect that the disclosure of the initial Notice of Intent to Discharge to certain members had tainted her assignment to Detachment B. It was appropriate that the information contained in that notice, describing her performance difficulties in Detachment A, be provided to the Appellant's managers responsible for providing her with assistance in Detachment B. However, the disclosure of that notice to the member the Appellant was shadowing in Detachment B was problematic, given that it contained personal information regarding a disciplinary investigation involving the Appellant's integrity and specific details regarding her performance difficulties. This disclosure to a colleague designated to assist

the Appellant, rather than supervise her, was not fully compatible with the provisions of the *Privacy Act* or the RCMP's internal policies authorizing the communication and use of personal information in certain defined circumstances. However, this disclosure had no determinative impact on the final decision to recommend the Appellant's discharge. Furthermore, the Board did not commit a palpable error in rejecting this claim.

ERC Recommendations: The ERC recommends that the appeal be dismissed. It also recommends that the Commissioner of the RCMP remind supervisors of the need to protect sensitive personal information and ensure that documents containing such information be communicated only with other supervisors responsible for managing the member concerned.

G-611

In early 2005, the Grievor was told that the section in which she worked would be physically moving to a new location within the same metropolitan area. The Grievor was informed that she could qualify for relocation benefits if she wished to move closer to the new work location. The Grievor advised her supervisor that she wished to attempt commuting to the new location first, after which she might apply for a relocation move. No Transfer Notice was issued to the Grievor, although she was notified in writing of the change of office location. The office moved in April, 2006. In January of 2007, the Grievor purchased an apartment in the same metropolitan area but did not seek a paid relocation.

The Grievor commuted to the new work location from April to August of 2006 and from October 2006 to February 2009. In March, 2009, approximately three years after the Grievor's office moved, the Grievor submitted two expense claims (Claims) for commuting with her own vehicle to work at the new location. The Claims covered a period beginning in April 2007, one year after her office had moved, and ending in February 2009. The Respondent denied the Claims.

The Grievor submitted a Level I grievance, taking the position that because no Transfer Notice had been issued, her commute to and from the new office was operational travel to a temporary workplace for which she was entitled to benefits under the *RCMP Travel Directive* (*RCMP TD*). The Grievor also relied on section 1.04 of the *RCMP Integrated Relocation Policy* (*RCMP IRP*) which states that a member ordered to report for duty within 90 days of being notified of a transfer is considered to be on travel status. A Level I Adjudicator denied the grievance on the merits.

ERC Findings: The ERC disagreed with the argument that the Grievor's commute fell within the provisions of the *RCMP TD*. The Grievor had not been required to travel on government business and the commuting during the period covered by the claims was a result of the Grievor's decision not to accept a paid relocation. Neither the *RCMP TD* nor the *National Joint Council Travel Directive* (*NJC TD*) applied to authorise reimbursement of the Claims. As well, the Grievor had failed to obtain pre-authorization for the commuting expenses as recommended or required by applicable policies and there were no exceptional circumstances which would have justified post-authorization of the expenses. Although a provision in the *NJC TD* allowed employees to claim travel status when they were assigned to a temporary workplace, the record did not show that the new office location was temporary within the meaning of that provision. Finally, while the *RCMP IRP* contemplated a three-month commuting allowance for relocated members in certain circumstances, the applicable provision did

not apply to the Grievor because its intent was to assist members who were seriously considering relocating. The Grievor had not established that the purpose of the commuting, in the time period covered by the Claims, was to determine if she wished to move.

The ERC also considered whether section 1.04 of the *RCMP IRP* was applicable. The provision gave travel status to members who were ordered to report to a new location within a 90-day period after being notified of a move. The Grievor suggested that her travel status had extended on indefinitely as the Force failed to issue a Transfer Notice. In the ERC's view, section 1.04 did not apply to the Grievor as the first of her Claims pertained to a period beginning in April 2007, a date well beyond the initial 90-day period referred to in the provision.

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

G-612

In 2008, the Grievor was transferred to an isolated post with an environmental allowance of 3, which entitled him to one vacation travel allowance (VTA) in each fiscal year. On March 2, 2009, a divisional broadcast was sent to all personnel in the Grievor's division reminding them that VTA claims for the fiscal year 2008-09 had to be received by the responsible office by March 31, 2009. The broadcast also indicated that late submissions would not be processed.

In May 2009, the Grievor became aware that he was eligible to file for a VTA for fiscal year 2008-09, even though he had not been at that isolated post for the entire fiscal year. The Grievor immediately submitted a VTA claim. The Respondent denied the claim because it had not been submitted prior to March 31, 2009. On June 1, 2009, the Grievor filed a grievance. He argued that he was not aware, prior to March 31, that he was eligible for a VTA for that fiscal year. Although the *Isolated Post and Government Housing Directive* (*IPGHD*) required that members receive information packages and orientation sessions, the Grievor stated that he had never been informed about his entitlements.

The Level I Adjudicator dismissed the grievance. She found that the Grievor was responsible for familiarizing himself with policies and procedures that applied to his situation. Given the Grievor's experience in prior postings and his supervisory position, it was reasonable to expect that the Grievor would be familiar with applicable policies.

ERC Findings: The ERC found that it was the Grievor's responsibility to be familiar with policies applicable to his situation. The fact that he had not received the comprehensive information package required by the *IPGHD* did not in itself negate his obligation to educate himself regarding the application of the *IPGHD*.

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

G-613

On November 28, 2003, the Grievor was transferred from Division [XX] to Division [XXX]. Before his transfer, the Grievor received a bilingual bonus, an amount paid to eligible employees occupying bilingual positions. In May 2004, the Grievor's position number changed; however, he remained the police officer assigned to the position. Neither of the positions in Division [XXX] was a bilingual position.

Because the Grievor no longer held a bilingual position, he stopped receiving the bilingual bonus as of May 8, 2004. The

Grievor did not file a grievance against this decision. He states that he continued offering services in French because [TRANSLATION] "*it was the right thing to do*".

On March 12, 2008, the Grievor noticed a sign at the main entrance of his detachment indicating that services to the public were offered in both official languages. At the time, the Grievor was the only Francophone member present in the detachment during opening hours. The Grievor filed a grievance challenging the withdrawal of his bilingual bonus. The Grievor indicated that the date on which he became aware of the decision, act or omission was March 12, 2008, the date on which he noticed the sign. On May 5, 2009, the Level I Adjudicator denied the grievance on the basis that the Grievor had not presented it within the 30-day limitation period set out at paragraph 31(2)(a) of the *Royal Canadian Mounted Police Act*.

ERC Findings: Under paragraph 31(2)(a) of the *Act*, the limitation period begins to run from the date on which the Grievor knew or reasonably ought to have known of the decision giving rise to the grievance. The fact that the Grievor noticed a sign in 2008 informing the public that it could receive services in both official languages does not warrant an extension of the limitation period. The sign cannot be considered a new fact justifying an extension of the limitation period.

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

Update

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

Current Legislation Cases:

NC-001 (*summarized in the March – September 2015* Communiqué) A Police Service (PS) flagged and downloaded an image of child pornography from an IP address which was subscribed to the Appellant. The Appellant was later arrested for accessing and possessing child pornography and subsequently served with a Notice of Intent to order the stoppage of pay and allowances (SPAO). The PS investigation report was provided to the Appellant the following day, although there were pages missing. The Respondent subsequently disclosed the missing pages. The Appellant argues that there is no clear involvement as required by the Conduct Policy. The Appellant argues that the Respondent used the wrong standard of proof to determine whether the SPAO was warranted (*prima facie* vs balance of probabilities). The ERC found that the Respondent did not apply the correct standard of proof to the requirement of clear involvement. The ERC found that any issue arising from the missing documentation from the Notice of Intent were cured when the Respondent disclosed the remaining documentation. The Appellant's right to procedural fairness was not breached. The ERC recommended that the adjudicator allow the appeal due to an error of law issuing the SPAO. It further recommended that the adjudicator remit the matter to the Respondent for a new decision with direction to apply the correct standard of proof to the determination of whether the evidence demonstrates that the Appellant was clearly involved in the alleged conduct.

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

In a decision dated December 2, 2015, Commissioner Robert W. Paulson found that the Appellant has failed to establish a breach of procedural fairness or an error of law. The Commissioner agreed that the circumstances in this case justify the stoppage of the Appellant's pay and allowances. The appeal is dismissed.

The Commissioner agreed with the ERC that the Appellant has not established a breach of procedural fairness. The Commissioner found that there was a preponderance of evidence before the Respondent to establish the clear involvement of the Appellant in the alleged activities and that the Respondent sufficiently described the grounds in the Notice of Intent which left no doubt as to the Allegations the Appellant was facing. The Commissioner also found that any delays or errors in the disclosure did not substantively prejudice the Appellant. Like the ERC, the Commissioner found it was not necessary for the Respondent to consider all the available and relevant evidence before issuing the Notice of Intent. In fact, the details included in the Notice of Intent demonstrate that the Respondent was acting on considerably more than a mere suspicion or surmise given the amount of evidence that had been generated by the investigation by the time the stoppage of pay and allowances process was initiated. The Commissioner agreed that the Appellant has not established a reasonable apprehension of bias. The fact that the Respondent inaccurately described certain evidence did not render the decision unreasonable or the process unfair in any way.

The Appellant submitted that the Respondent committed an error of law in applying the wrong standard of proof to establish the Appellant's clear involvement in the alleged conduct. The ERC found that the Respondent erred in law in finding that the Appellant was clearly involved in the alleged conduct on a prima facie basis and that the Appellant's involvement must be established on a balance of probabilities based on clear and cogent evidence. The Commissioner disagreed with the ERC. He could not accept the assertion that the use of the term "prima facie basis", on its own, is proof enough that the Respondent did not adequately weigh the evidence or assess the Appellant's submissions.

Former Legislation Cases:

D-127 (*summarized in the March – September 2015* Communiqué) The member was disciplined for her interactions with members of the public and RCMP dispatchers while off-duty. She was also charged for driving under the influence of alcohol. At the adjudication board hearing, the Member Representative indicated that she would be calling no evidence and brought a motion for non-suit, alleging that the Appropriate Officer's Representative had failed to present evidence on some of the particulars of the allegation and arguing that the particulars themselves did not disclose disgraceful conduct. The Board found that the allegation had been established and denied the non-suit motion. The ERC found that the Board had not provided to the Appellant an opportunity to make comprehensive submissions regarding the merits of the allegation and the quality, reliability and probative value of the evidence adduced. In failing to explain and follow a clear process for the receipt of submissions, the Board breached the Appellant's right to procedural fairness and, in particular, her right to be heard as part of a fair hearing and to provide representations. The ERC recommended to the Commissioner of the RCMP that he allow

the appeal, request submissions from the parties regarding the merits of the allegation and make the finding that, in his opinion, the Board should have made as to whether the allegation is established.

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

The Appellant presented an appeal of an adjudication board decision rendered on April 29, 2011. The Commissioner agreed with the Appellant and the ERC that the Board breached the Appellant's right to procedural fairness by failing to provide her an opportunity to make comprehensive submissions on the allegation. As a result, the Commissioner declares the Board's decision invalid.

G-600

(*summarized in the March – September 2015* Communiqué) The Grievor filed a claim for Vacation Travel Assistance (VTA). The Grievor grieved the Respondent's decision on which VTA rate to apply. The grievance centered on the interpretation of a *Note* found in the *Isolated Posts and Government Housing Directive*. The Grievor argued that the Note should be read strictly, whereas the Respondent replied that the *Note* should be read jointly with various guidance documents. The ERC found that it would be unreasonable to apply the *Note* strictly and that the Respondent's approach was consistent with relevant authorities and past RCMP practices. 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:

The Griever presented a grievance against the decision by the Respondent, a Senior Financial Analyst at the Corporate Management Branch, "K" Division, whereby the Respondent accepted the Griever's claim for VTA, but disagreed on the rate at which the VTA benefits were payable. The Commissioner accepted the recommendations of the ERC and found that the Respondent's decision is consistent with policy. The Force does not have the authority to grant the Griever's claim at a rate other than the VTA rate published by the TBS. The grievance is denied.

G-603

(*summarized in the March – September 2015* Communiqué) The Respondent signed a Notice of Intention to Discharge the Grievor (Notice of Intention) on the basis of disability. The Grievor submitted a grievance form containing two grievances. First, the Grievor contested the issuance of the Notice of Intention and second, disputed the way the Force served her with the Notice of Intention. The Respondent argued that the Grievor lacked standing to grieve the first matter. The Level I Adjudicator denied the grievance, finding that the Grievor lacked standing to grieve the issuance of the Notice of Intention. The ERC agreed. Longstanding ERC and RCMP jurisprudence indicate that interim steps in the medical discharge process are not grievable. The ERC recommended that the grievance be denied on standing.

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's decision to issue a Notice of Intention of Discharge and the manner in which the Respondent executed service of the Notice. The Respondent raised the preliminary issue of standing with regard to the issuance of the Notice. The Commissioner agreed with the ERC that the Grievor does not have standing because there is another process of redress under s. 20 of the

Regulations and the Notice is not a decision, act or omission, and therefore is not subject to a grievance. The Commissioner also found that the Grievor does not have standing with regard to the service of the Notice for those same reasons. The grievance is denied.

G-606

(*summarized in the March – September 2015* Communiqué) The Grievor filed a claim for Vacation Travel Assistance (VTA). The Grievor grieved the Respondent's decision on which VTA rate to apply. The grievance centered on the interpretation of a *Note* found in the *Isolated Posts and Government Housing Directive*. The Grievor argued that the *Note* should be read strictly, whereas the Respondent replied that the *Note* should be read jointly with various guidance documents. The ERC found that it would be unreasonable to apply the *Note* strictly and that the Respondent's approach was consistent with relevant authorities and past RCMP practices. 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:

The Griever grieved the decision made by the Respondent, a Senior Financial Analyst with the North West Accounting Operations, "K" Division, whereby the Respondent processed the Griever's VTA claim, but disagreed on the rate at which the VTA benefits were payable. The Commissioner accepted the ERC's recommendations and determined that the Respondent did not render the decision in a manner inconsistent with the relevant authorities. The Force does not have the authority to grant the Griever's claim at a rate other than' the rate published by the TBS. The grievance is denied.

G-608

(*summarized in the March – September 2015* Communiqué) The Grievor retired from the RCMP in 2007 and wished to make a retirement relocation from the [A] area to [B]. The RCMP agreed. Shortly after the Grievor's retirement, his spouse developed medical issues necessitating a multi-year period of cancer testing, which she preferred to undergo in the [A] area. The Grievor received a one-year extension of the retirement relocation period. In 2009, the tests had not revealed cancer and the Grievor began looking for a property in the [B] area. In 2010, the Grievor was diagnosed with cancer and asked for another extension period, beyond 3 years of his date of retirement, to be treated in the [A] area. The Respondent refused explaining that section 14.01.04 of the *2007 Integrated Relocation Program* prohibited such an extension. The Level I Adjudicator denied the grievance on the merits. The ERC agreed and recommended 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's decision to deny an extension of the retirement relocation period beyond three years following the Grievor's retirement date. The Commissioner accepted the ERC's findings that the Grievor's circumstances are tragic and compelling. Nevertheless, the Respondent's decision is consistent with the applicable policy as he did not have the authority to grant the extension request. The grievance is denied.

The Commissioner suggested the Grievor apply for a possible grant under the Benefit Trust Fund provisions in order to recover what would have been otherwise standard eligible retirement relocation expenses.

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