



## RCMP External Review Committee

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## Findings and Recommendations

**Between March and May 2016, the RCMP External Review Committee (ERC) issued the following findings and recommendations:**

### Current Legislation Cases:

## C-009 Conduct Authority Decision

The Appellant was served with a Notice of Conduct Meeting prepared by the Respondent. The Notice identified four *Code of Conduct* allegations against the Appellant. Following a Conduct Meeting, the Respondent issued a decision in which she found that three of the four allegations were established. The Respondent imposed two conduct measures, each consisting of a forfeiture of annual leave for a period of five (5) days (10 days in total). The Appellant appealed both the findings of the Respondent and the conduct measures imposed.

**ERC Findings:** The ERC observed that if an appeal relates to the conduct measures identified in paragraphs 45.15(1)(a) to (e) of the *Royal Canadian Mounted Police Act (Act)*, or to any finding that resulted in the imposition of such measures, the appeal is referable to the ERC. It found that the present conduct appeal did not fall within the scope of paragraphs 45.15(1)(b), (c), (d), or (e) as those paragraphs identify conduct measures which were not at issue.

The ERC considered whether the imposition of two forfeitures of annual leave for a period of 10 days in total made the appeal referable pursuant to paragraph 45.15(1)(a) of the *Act*, which refers to "a financial penalty of more than one day of the member's pay". The ERC determined that paragraph 45.15(1)(a) does not include a forfeiture of annual leave.

The ERC noted that there are multiple conduct measures the imposition of which would have a financial impact on a member but which are not a financial penalty of, or deducted from, a member's pay. Sections 4 and 5 of the *Commissioner's Standing Orders (Conduct)* (SOR/2014-291) set forth the various conduct measures certain conduct authorities may impose. In both sections, a clear distinction is made between a financial penalty deducted from a member's pay and other conduct measures which have or may have financial impacts on the member. Such other conduct



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measures include ineligibility for promotion, deferment of pay increment, reduction to the next lower rate of pay and forfeiture of annual leave. This distinction is instructive. It clarifies that a financial penalty deducted from a member's pay is a conduct measure separate from a forfeiture of annual leave and from those other conduct measures which, in addition to their immediate effect, also have indirect financial consequences to the member. Only an appeal involving a financial penalty of more than one day deducted from the member's pay is referable to the ERC pursuant to paragraph 45.15(1)(a) of the *Act*.

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

## **C-010** Conduct Authority Decision

The Appellant was a Police Service Dog (PSD) handler and a Corporal. He faced two allegations stemming from events that occurred in the early hours of October 2, 2014 while the Appellant was on call.

At approximately 12:15 a.m., employees at a McDonald's drive-through window noticed that a male driver had fallen asleep behind the wheel of his pick-up truck. They roused the driver and concluded he was impaired. One employee called the local police. While she was on the phone providing the pick-up truck's licence plate number, the driver pulled away, ran a stop sign and a red light. The local police determined that the licence plate was registered to the Appellant. They responded to the call at 3:00 a.m. by attending the Appellant's residence. They found the suspect vehicle with snow on it. There was no indication that it had recently moved. There was no answer at the residence. As they had lost continuity of the

pick-up truck and the driver, the local police concluded their investigation and left the residence.

Meanwhile, at 12:43 a.m., another police service contacted the RCMP Operational Call Centre (OCC) to request PSD assistance. As the OCC could not reach the Appellant on his cell phone numbers, the OCC asked another RCMP member to attend the Appellant's residence to try to locate him. At 2:04 a.m., the member advised the OCC that there was no answer at the residence. The other police service cancelled their PSD request. However, the RCMP duty sergeant was concerned for the Appellant's well-being and asked the member to return to the Appellant's house. At approximately 4:30 a.m., there was no answer. The duty sergeant advised the member to enter the residence and the member notified the local police that he would be doing so. At approximately 4:50 a.m., the RCMP member and three local police officers rang the door bell and banged on the door. When the Appellant answered the door, the officers observed that he was clearly intoxicated and unfit for duty.

The Appellant was alleged to have engaged in discreditable conduct contrary to section 7.1 of the *Code of Conduct* by operating his private motor vehicle while his ability to do so was impaired by alcohol or other substances. He was also alleged to have contravened section 4.3 of the *Code of Conduct* by consuming alcohol while on call and in such a quantity as to render himself unfit for duty.

The Respondent Conduct Authority found that both allegations were established. She imposed a forfeiture of 10 days' pay for Allegation #1, a forfeiture of 4 days' pay for Allegation #2, and for both contraventions, a reprimand, a direction to undergo medical treatment, a one-year demotion to the rank of Constable, and

a transfer to another city. The Appellant challenged the Respondent's findings and the conduct measures imposed.

### **ERC Findings:**

#### Appeal of Findings on the Allegations

The ERC found that two of the Appellant's grounds of appeal had merit. First, the ERC agreed that one of the particulars in Allegation #1 - that the pick-up truck's hood was warm when the police attended the Appellant's residence - was contrary to the evidence in the record. The ERC found that the Respondent's tacit reliance on this material fact or particular, which was not supported by the evidence, was clearly unreasonable and contributed to making the Respondent's decision unreasonable.

Second, the ERC found that the Respondent failed to provide reasons for her decision. The Record of Decision contained declarations that the allegations were established but the declarations were devoid of any supporting rationale or explanation and were based on circumstances that were in dispute or unsupported by the evidence. The Respondent made no findings of fact, made no reference to any of the evidence in the Investigation Report and provided no basis upon which to understand why or how she arrived at her decision. The failure to provide reasons contravened section 8 of the *Commissioner Standings Orders (Conduct)* and section 9.2.1.14 of the *Conduct Policy*, constituted a breach of procedural fairness and rendered the Respondent's decision clearly unreasonable.

#### Appeal of Conduct Measures Imposed

The ERC agreed that the Respondent made three errors in imposing the conduct measures. First, the Respondent failed to consider the Appellant's long and positive work history as a mitigating factor.

Second, in her discussion of mitigating factors, the Respondent failed to explain how a transfer to another city would facilitate the Appellant's return to work and any treatment that may be ordered by the Health Services Officer. Finally, the Respondent failed generally to justify the one-year demotion and the transfer. Both are serious conduct measures.

**ERC Recommendations:** Due to the Respondent's failure to provide reasons for her findings and the conduct measures imposed, the ERC recommends that the Commissioner of the RCMP allow the appeal. The ERC further recommends that the Commissioner find that Allegation #1 is not established but that Allegation #2 is established. With respect to conduct measures, the ERC recommends that the Commissioner:

- a) rescind the forfeiture of 10 days' pay imposed for Allegation #1 and reimburse the Appellant for the amount forfeited;
- b) confirm the forfeiture of 4 days' pay imposed for Allegation #2;
- c) confirm the written reprimand and the direction that the Appellant undergo medical treatment; and
- d) rescind both the transfer to another city and the one-year demotion and reimburse the Appellant for all salary forfeited due to the demotion.

## **C-011** Conduct Authority Decision

Following the arrest of a suspect, the Appellant drafted a Report to Crown Counsel (RTCC). He wrote that the information leading to the arrest was obtained from four human sources. He also wrote that each source was reliable and had given him

information on over 100 occasions. The suspect was prosecuted and later pled guilty to a lesser charge. During a subsequent internal investigation, the Appellant admitted that he erred by stating in the RTCC that each of the four human sources had given him information over 100 times. He explained that he should have written that each human source had given him and other members information over 100 times. He apologized for his error, said it was typographical and attributed it to the pace of the office.

Two allegations were raised but one was later declared unfounded. The allegation in question (Allegation #1) stated that the Appellant violated section 8.1 of the *Code of Conduct* by placing inaccurate information in the RTCC. After an investigation, the Respondent received an Investigation Report based on roughly 800 pages of evidence. A conduct meeting was held at which the Respondent took the Appellant's written submission and said he would seek guidance. The Respondent implied the Appellant would be able to offer oral submissions involving the allegations and possible conduct measures at a further conduct meeting. Yet no such opportunity was provided. The Respondent released a decision hours before the time limit for so doing expired and allegedly described the situation as his error.

The Respondent determined that the Appellant contravened section 8.1 of the *Code of Conduct* by placing inaccurate information in the RTCC. The Respondent explained that the Appellant's conduct was both negligent and dangerous. The Respondent imposed two conduct measures: a forfeiture of five days' pay and a direction not to handle human sources for six months. The next day, the Respondent indicated that he was replacing the forfeiture of pay with a forfeiture of annual leave, to harmonize the Appellant's conduct measures with those ordered in another case. Shortly thereafter,

the Respondent stated that he had not reviewed any of the hundreds of pages of evidence which had been marshalled for him, other than the Investigation Report.

**ERC Findings:** The ERC found that the Respondent imposed a forfeiture of five days' pay on the Appellant and that, as a result, the appeal is referable to the ERC pursuant to paragraph 45.15(1)(a) of the *RCMP Act*. The ERC stated that the forfeiture of pay was imposed in a manner consistent with relevant authorities, that the forfeiture of annual leave was not and that other authorities prohibited the Respondent from modifying the Record of Decision in this case.

After addressing some other less critical preliminary matters, the ERC turned to the merits.

The ERC found that the Appellant's right to procedural fairness was irreparably breached when he was denied an appropriate opportunity to discuss his views on the allegations and potential conduct measures at a conduct meeting. The conduct meeting contemplated under the *Conduct Policy* is central to the conduct process. It is the one opportunity for a member to address in person an allegation and to discuss with a conduct authority any potential conduct measures. In order for a conduct meeting to fulfill its role in the conduct process, a member must receive a full opportunity to make submissions. The meeting cannot, without a member's consent, be limited to written submissions only. The Appellant had a legitimate expectation that he would receive an opportunity to make oral submissions at a conduct meeting.

The ERC also found that the Respondent did not properly hear the matter before him, contrary to *Conduct Policy* provisions and the principles of procedural fairness

on which they are based. The Respondent admittedly failed to ensure his decision was fully informed by all the evidence. The ERC further found that the record neither revealed an apprehension of bias on the part of the Respondent nor a failure by the Respondent to consider the Appellant's written submission.

The ERC concluded that, on the date he issued his decision, the Respondent should have made no finding or found that both allegations were not established, as the Appellant did not have the opportunity to comprehensively provide oral submissions on the allegations and the conduct measures, contrary to the conduct process established by the Force. This breach of procedural fairness cannot be rectified at this stage of the proceeding.

**ERC Recommendations:** The ERC recommends to the Commissioner of the RCMP that he allow the appeal and make the finding that Allegation #1 is not established. The ERC also recommends to the Commissioner that he allow the appeal in respect of the conduct measures imposed on the Appellant by the Respondent and rescind the conduct measures.

## NC-002 Harassment Decision

Starting in September 2011, the Appellant was off work three times further to a medical condition. In January 2012, the Appellant spoke and met with the Alleged Harasser, who was his return to work coordinator, and allegedly reported that he had been the victim of harassment at his detachment and this allegedly caused his medical condition. The Alleged Harasser allegedly contacted the Appellant's supervisor to confirm a few things. The Alleged Harasser allegedly noted in the Appellant's file [TRANSLATION] "*Still very difficult to say whether his career path with*

*the RCMP is in keeping with what happened at [municipal police service]."* The Appellant allegedly became aware of these notes in November 2012.

On or around November 21, 2012, the Appellant filed an [TRANSLATION] "*internal investigation request*" reporting the alleged harassment by several members of the RCMP that he suffered. In February 2014, the Respondent advised the Appellant that he could not conduct such an investigation and invited him to file harassment complaints. The Appellant filed four harassment complaints against certain other alleged harassers in February and March 2014.

The Appellant filed a harassment complaint on or around February 3, 2015, against the Alleged Harasser, more than two years after he learned of his notes. On April 27, 2015, the Respondent dismissed the complaint because more than one year had passed since the last event of harassment alleged in the complaint. The Appellant appealed this decision.

**ERC Findings:** The ERC found that the Respondent, by dismissing the Appellant's harassment complaint, did not commit any palpable or overriding error that would allow for an appellate intervention. The Respondent did consider the impact of the Appellant's medical condition on his ability to file a harassment complaint within the time limit.

The ERC concluded that the Appellant did not meet his burden of proving, on a balance of probabilities, that exceptional circumstances prevented him from filing his harassment complaint within the time limit.

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

## NC-003 Harassment Decision

Starting in September 2011, the Appellant was off work three times further to a medical condition. Between January 25 and February 27, 2012, the Appellant spoke and met with the Alleged Harasser, who was his return to work coordinator, and allegedly reported that he had been the victim of harassment at his detachment and this allegedly caused his medical condition. According to the Appellant, the Alleged Harasser did not conduct any verifications with the Appellant's Staff Relations Representative. Moreover, the Alleged Harasser allegedly added notes to the Appellant's file regarding the combined return to work efforts of the Appellant and the Alleged Harasser, and conversations the Alleged Harasser had with the Appellant and the two supervisors at the Appellant's detachment. The Appellant allegedly became aware of these notes in November 2012.

On or around November 21, 2012, the Appellant filed an [TRANSLATION] "*internal investigation request*" reporting the alleged harassment by several members of the RCMP that he suffered. In February 2014, the Respondent informed the Appellant he could not conduct such an investigation and invited him to file harassment complaints. The Appellant filed four harassment complaints against certain other alleged harassers in February and March 2014.

The Appellant filed a harassment complaint on or around February 3, 2015, against the Alleged Harasser with regard to the Alleged Harasser's notes, more than two years after becoming aware of these notes. On April 27, 2015, the Respondent dismissed the complaint because more than one year had passed since the last event of harassment alleged in the complaint. The Appellant appealed this decision.

**ERC Findings:** The ERC found that the Respondent, by dismissing the Appellant's harassment complaint, did not commit any palpable or overriding error that would allow for an appellate intervention. The Respondent did consider the impact of the Appellant's medical condition on his ability to file a harassment complaint within the time limit.

The CEE concluded that the Appellant did not meet his burden of proving, on a balance of probabilities, that exceptional circumstances prevented him from filing his harassment complaint within the time limit.

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

### Former Legislation Cases:

## D-129 Adjudication Board Decision

This was an appeal by the Appropriate Officer of an Adjudication Board's decision that the allegation was not established. The member, while off duty, was arrested for driving while impaired by the local police force. The arresting officer was attending an unrelated incident when she witnessed the member driving his vehicle towards her. He slowed down and stopped. The officer signaled to him 3 times to keep moving. The officer found the member's behaviour suspicious and decided to follow him. She stopped him for a document check. The officer testified that the member had trouble finding his documents even though there were in plain sight. She arrested him for driving while impaired. The member was brought to the local police station, detained, ordered to undergo a breathalyzer test and was released two hours later.

The judge at the member's criminal trial ruled that all evidence from the point of

arrest was to be excluded from the trial as it was obtained in breach of the member's rights under section 7 (right to liberty) and section 8 (protection against unlawful search and seizure) of the *Charter*. The member was acquitted.

At the Board hearing, both counsel agreed that the member's *Charter*-protected rights had been breached. The member presented a motion to exclude all post-arrest evidence. The questions for the Board were: 1) is the Board a court of competent jurisdiction for purposes of subsection 24(1) of the *Charter*? 2) If so, should the Board exclude the post-arrest evidence pursuant to subsection 24(2) of the *Charter*? The Board ruled that it was a court of competent jurisdiction to rule on *Charter* issues and that it had jurisdictions to impose remedies such as the exclusion of evidence. It excluded the post-arrest evidence. The Board also found that the remaining evidence did not establish the allegation.

**ERC Findings:** The ERC found that the determination by the Board of the applicability of the *Charter* to its proceedings is not owed deference as it involves a question of law. Further, it found that the Board's application of subsection 24(2) of the *Charter* and its determination of whether the exclusion of the post-arrest evidence would bring the administration of justice into disrepute is a mixed question of fact and law and owed deference on appellate review.

The ERC found that the Board made no error in its analysis of the applicable tests regarding the *Charter* and the remedy sought. The Board correctly applied the two-part test set forth in *Conway* in making its determination both that it was a court of competent jurisdiction for purposes of subsection 24(1) of the *Charter* and that it had authority to exclude evidence from its

hearing pursuant to subsection 24(2) of the *Charter*. The ERC further found that the Board correctly assessed whether or not the exclusion of the post-arrest evidence would bring the administration of justice into disrepute.

Lastly, the ERC found that the Board did not make a manifest and determinative error in its determination of whether the remaining evidence established the allegation. It thoroughly reviewed the testimony of the arresting officer and found that there was not sufficient evidence to conclude, on a balance of probabilities, that the member was operating his vehicle while impaired.

**ERC Recommendation:** The ERC recommends that the Commissioner of the RCMP dismiss the appeal.

## **G-614** Discrimination / Duty to Accommodate

In 2006, the Grievor's renal functions failed and he was required to begin dialysis treatment. His medical profile changed from Occupational Factor 02 to 04. Efforts to locate a suitable position with duties and responsibilities in keeping with his medical profile were ongoing when the Grievor began to work in a detachment on a Graduated Return to Work (GRTW) basis in August 2008. In August 2009, the Grievor altered his treatment schedule and his medical profile Occupational Factor improved to 03, which permitted some requirement for investigative duties. The only restriction of relevance contained in the Grievor's medical profile was that he should not be exposed to duties with a "high risk of physical confrontation".

In September 2009, the Grievor indicated his interest in competing for a Professional Standards (PS) position in his detachment that was being advertised internally. On September 30, 2009, the Respondent denied

the Grievor the opportunity to compete for the position as the position was fully operational and the Grievor could not fulfil this requirement due to his Limitations & Restrictions. She also cited a 40-hour/week work commitment, his GRTW status, and mandated dialysis treatments as reasons he would not be able to fulfil the position's requirements. On October 14, 2009, the Grievor again met with the Respondent, who confirmed she would not consider the Grievor for the PS position. In November 2009, the Grievor was transferred to a PS position in another detachment. The Grievor grieved the Respondent's decision to refuse to consider him for the PS position.

A Level I Adjudicator dismissed the grievance on its merits, finding there was nothing improper about the process used by the Respondent to make her decision or that she made the decision with any malicious intent.

**ERC Findings:** The ERC found that the Grievor established a *prima facie* case of discrimination pursuant to section 7 and/or 10 of the *Canadian Human Rights Act (CHRA)*.

The ERC also found that the Respondent did not satisfy her obligation to actively consider the accommodation of the Grievor in the detachment pursuant to subsection 15(2) of the *CHRA* and section D.2. of the *RCMP Accommodation Policy*. The Respondent failed to establish, on a balance of probabilities, that the designation of the PS investigator position as fully operational was a *bona fide* occupational requirement contemplated by paragraph 15(1)(a) of the *CHRA* and section D.3. of the *RCMP Accommodation Policy*. However, as the Grievor was placed in a PS permanent position in another detachment, the ERC found that the Force as a whole fulfilled its duty to accommodate the Grievor pursuant to the *CHRA* and the *RCMP Accommodation Policy*.

**ERC Recommendations:** The ERC recommends that the Commissioner of the RCMP deny the grievance on the basis that the Force satisfied its duty to accommodate the Grievor pursuant to the *CHRA* and the *RCMP Accommodation Policy*.

The ERC also recommends to the Commissioner that he order the Respondent to apologize to the Grievor for her failure to satisfy her role in the process of accommodation as she did not establish that the fully operational requirement for the PS position was a *bona fide* operational requirement pursuant to paragraph 15(1)(a) and subsection 15(2) of the *CHRA* and section D.3. of the *RCMP Accommodation Policy*.

## G-615 Relocation / Time Limits

In 2003, the Grievor registered with the Force's relocation services provider, Royal LePage. During his relocation process, he incurred and was reimbursed for Canada Mortgage and Housing Corporation (CMHC) fees. In April 2004, Royal LePage advised the Grievor that they had erroneously reimbursed the CMHC fees and sent a recovery letter to the Grievor. Between 2004 and 2007, Royal LePage made unsuccessful attempts to recover the monies. In December 2007, Royal LePage transferred the recovery efforts to the RCMP. The RCMP continued recovery efforts, eventually advising the Grievor that collection procedures would be initiated if payment was not received by September 25, 2009.

On October 29, 2010 the RCMP Corporate Management Branch advised the Grievor that they would be recouping the CMHC fees by garnishing the Grievor's future expense claims and/or income. On November 16, 2010, the Grievor presented a grievance stating that he was grieving the October 29, 2010 decision of the Officer in Charge, Travel

and Relocation Programs (Respondent), to “retrieve monies allegedly owed, as a result of a decision made by Royal LePage”.

The Respondent challenged the timeliness of the grievance presentation, arguing that the Grievor ought to have known in April 2004 of the decision to recoup the monies. The Grievor argued that, although he knew in 2004 of Royal LePage’s decision to recover the CMHC fees, at that time the dispute was solely between himself and Royal LePage. In addition, he could not have presented his grievance until he was actually aggrieved, which was not until he was advised by the Corporate Management Branch on October 29, 2010 of the garnishment proceedings.

The Level I Adjudicator denied the grievance on the basis that it had not been presented in time. The Adjudicator found that the Grievor knew or ought to have known of the RCMP’s decision to recoup the monies when he was put on notice that collection procedures would be initiated if payment was not received. Therefore, the Grievor knew he was aggrieved before September 25, 2009, however, he did not present his grievance until November 2010.

In his Level II timeliness submissions, the Grievor argued that he was not aggrieved by the decision to recover the CMHC fees but by the October 29, 2010 act advising him that his income would be subject to garnishment.

**ERC Findings:** The ERC stated that the Grievor’s Level I and II timeliness submissions sought to alter the subject matter of the grievance in order to support the argument that the grievance was timely. The ERC found that the subject matter of the grievance was that identified by the contents of the Grievor’s Form 3081 and Appendix, namely, Royal LePage’s 2004 decision to recover the CMHC fees.

The ERC confirmed that a grievor is aggrieved when they know or ought to know that their rights or interests are at stake. The ERC found that, based on the Grievor’s own submissions, he knew or ought to have known that he was aggrieved in 2004 when the decision to recover the monies was first communicated to him. The fact that the Grievor chose to ignore the increasing efforts of the Force to recoup the fees did not alter the decision being grieved or the date on which he knew or ought to have known he was aggrieved. Advising the Grievor of garnishment proceedings did not give rise to a new right to grieve, but simply confirmed or implemented the previous decision. The Grievor knew as early as April 2004, and certainly no later than September 25, 2009, that he was aggrieved. He did not present his grievance until November 2010. Therefore, the grievance was not presented in time at Level I.

The ERC further found that there was no justification to recommend that the Commissioner retroactively extend the Level I time limit and consider the merits of the grievance. The Grievor had no intention of presenting the grievance within 30 days of being aggrieved, he did not provide a reasonable explanation for the significant delay, and the delay was not caused by the Force.

**ERC Recommendation:** The ERC recommends that the Commissioner of the RCMP deny the grievance on the basis that it was not presented in time at Level I.

## G-616 Harassment

A Complainant alleged harassment by the Grievor, her former supervisor. One allegation involved a refusal by the Grievor to allow the Complainant’s boyfriend, Constable (Cst.) JW, to accompany her on a House Hunting Trip (HHT). There

were five other allegations, one of which related to a travel claim for a court appearance refused by the Grievor on the basis that the Complainant had not been subpoenaed. The Complainant insisted that Cst. JW had served her a subpoena. The six allegations contained in the complaint were investigated and nineteen witnesses were interviewed. Cst. JW was not interviewed. The Respondent reviewed the Investigation Report and found that three allegations, including the HHT refusal and the refusal of the travel claim for court, were established.

In his Level I grievance, the Grievor questioned why only two of the witnesses he proposed had been interviewed. He submitted that Cst. JW should have been interviewed with respect to the HHT refusal allegation and that Staff Sergeant C (S/Sgt. C) should have been interviewed to confirm whether a staff shortage precluded Cst. JW's participation in the HHT. The Grievor also submitted that Cst. JW should have been interviewed regarding whether he had served the Complainant a subpoena. A Level I Adjudicator denied the grievance.

**ERC Findings:** The ERC found that the Grievor had not demonstrated that the investigation was incomplete because of a failure to interview witnesses. Other than Cst. JW and S/Sgt. C, the Grievor had not identified any such witnesses nor had he indicated how their evidence was crucial or might have materially affected the Respondent's conclusions. In addition, the Grievor had not justified how S/Sgt. C was better placed to describe staff shortages at the time of the HHT than another witness who provided evidence on that issue.

The ERC also found that the Grievor had not established that the omission to interview Cst. JW rendered the investigation inadequate. The Grievor had provided no indication of the way in which evidence of

Cst. JW regarding the HHT refusal could have materially affected the Respondent's decision. Further, the Grievor had failed to demonstrate that Cst. JW's evidence was crucial to the issue of whether he served a subpoena to the Complainant. The Respondent's decision identified elements in the Record, including discrepancies between various copies of the subpoena, which indicated the Complainant had been subpoenaed. The Grievor had failed to explain or address this aspect of the Respondent's decision in his grievance submissions.

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

## G-617 Prior Service Buy-Back / Referability

In July 2012, the Grievor received information from the Force's National Compensation Services (NCS) regarding her severance pay package. The Grievor informed the NCS that there were errors in the calculation of her severance pay as some of her periods of prior service had not been included in the calculation. The Grievor had purchased 4.8548 years of prior service as a public servant when working with the RCMP and with another government department. The NCS stated that there was no error. It explained that the Grievor's purchased prior service could not be included in her severance pay because there was a break of more than three months between her last employment and her engagement with the Force. The Grievor grieved this decision.

**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*. It found that the present grievance did not fall within the scope of subsections 36(b), (c), (d), or (e), as those

subsections all deal with subjects which are not at issue.

The other type of referable grievance, described in subsection 36(a) of the *Regulations*, involves matters 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 also fell outside the ambit of subsection 36(a), as it was not based on the Force’s interpretation and application of a government policy made to apply to members. Rather, it was based on the Force’s interpretation and application of its Administrative Manual on pay and allowances, which is strictly an internal RCMP policy. As neither party referenced a comparable, or otherwise relevant authority which fell within subsection 36(a), the grievance was not referable.

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

## G-618 Relocation / Referability

In October 2003, the Grievor was transferred from [A] to [B]. This was a cost transfer. Upon his arrival in [B], he was informed that a grievance had been lodged regarding his promotion. The next day, the Force contacted the Grievor and advised that someone else would be promoted to [B]. The Grievor was offered the same position in another detachment in [C] and he accepted this change. His transfer notice (A-22A) was amended to describe a transfer from [A] to [C] and his household goods and effects, which were en route, were diverted to [C]. The Grievor moved to [C] twenty (20) days later. The Grievor received one transfer allowance.

In 2008, the Force initiated the Retroactive

Corrective Payment of Relocation Benefits Project. The objective of the Project was to correct discrepancies in the treatment of members caused by inconsistent interpretations of the “cost” transfer criteria of the Treasury Board *Integrated Relocation Program* (IRP) between 2001 and 2008. The Grievor applied to have his transfer from [B] to [C] reviewed under the Project. The Grievor was of the view that, as he had reported for duty in [B], his transfer to [C] was a separate transfer that entitled him to a second transfer allowance. The review team determined that the Grievor was ineligible to participate in the Project as he had not received an A-22A indicating a transfer from [B] to [C]. Rather, there was one transfer which indicated that his destination location was amended. The Grievor grieved this decision.

**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*. It found that the present grievance did not fall within the scope of subsections 36(d) (*Relocation Directive*). The grievance does not involve the Force’s interpretation of the IRP itself but rather the interpretation and application of a separate, internal initiative undertaken by the Force.

**ERC Recommendation:** The grievance is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the matter or make any findings or recommendations.

## G-619 Relocation / Referability

In October 2006, the Grievor was transferred from detachment [A] to detachment [B], a newly established detachment. His transfer notice (A-22A)

indicated that it was a permanent no-cost lateral transfer. The Grievor did not relocate his place of residence closer to the new detachment. The Grievor explained that he would pick up a police vehicle at detachment [A] and report for duty at detachment [B].

In 2008, the Force initiated the Retroactive Corrective Payment of Relocation Benefits Project. The objective of the Project was to correct discrepancies in the treatment of members caused by inconsistent interpretations of the “cost” transfer criteria of the Treasury Board *Integrated Relocation Program* (IRP) between 2001 and 2008. The Grievor applied to have his transfer from detachment [A] to detachment [B] reviewed under the Project. The review team determined that the Grievor was ineligible to participate in the Project as his transfer was temporary. Members transferred to detachment [B] were not expected to relocate there. The Grievor grieved this decision. The Level I Adjudicator found that although the Grievor’s A-22A indicated that it was a permanent transfer, the evidence on the record indicated that it was in fact a temporary transfer.

**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*. It found that the present grievance did not fall within the scope of subsections 36(d) (*Relocation Directive*). The grievance does not involve the Force’s interpretation of the IRP itself but rather the interpretation and application of a separate, internal initiative undertaken by the Force.

**ERC Recommendation:** The grievance is not referable to the ERC. As a result, the ERC does not have the legal authority

to further review the matter or make a recommendation.

## G-620 Relocation / Referability

From 1998 to 2000, the Grievor was transferred three times within the same province. All transfers were permanent no cost transfers. Throughout the period of the transfers, the Grievor retained his residence in the same location.

In 2008, the Force initiated the Retroactive Corrective Payment of Relocation Benefits Project. The objective of the Project was to correct discrepancies in the treatment of members caused by inconsistent interpretations of the “cost” transfer criteria of the Treasury Board *Integrated Relocation Program* (IRP) between 2001 and 2008. The Grievor applied to have his three transfers reviewed under the Project. The review team determined that the Grievor was ineligible to participate in the Project as his transfers occurred prior to April 1st, 2001, the cut off date of the Project. Thus, the Grievor’s transfers were not within the scope of the Project. The Grievor grieved this decision.

**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*. It found that the present grievance did not fall within the scope of subsections 36(d) (*Relocation Directive*). The grievance does not involve the Force’s interpretation of the IRP itself but rather the interpretation and application of a separate, internal initiative undertaken by the Force.

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

## G-621 Foreign Service / Standing

The Grievor worked at an overseas post where his service was governed in part by the National Joint Council Foreign Service Directives (FSD). The Grievor's accommodation was provided by the Department of Foreign Affairs and International Trade (DFA). The Grievor identified certain deficiencies with his accommodation. Consequently, he asked that the Head of Mission, a DFA official, give him an Accommodation Deficiency Adjustment (ADA) pursuant to FSD-25 - Shelter (FSD 25). An ADA reduces the cost of an overseas accommodation, in recognition of the impact of deficiencies on the accommodation's livability. The Head of Mission granted an ADA, which reduced the Grievor's costs by a sum the Grievor deemed insufficient. The Grievor challenged that decision at Level I of the RCMP's grievance process (Previous Grievance).

An RCMP official allegedly suggested to the Grievor that he exercise his rights under paragraph 9 of Appendix E of FSD 25 before proceeding with the Previous Grievance. Pursuant to that provision, members like the Grievor could refer ADA-related disputes to the DFA Committee on Accommodation Deficiencies (COAD), for a review and decision. The Grievor took the official's suggestion. He wrote a submission for the COAD wherein he sought a review of the Head of Mission's decision. He gave his submission to the Respondent, the Force's representative on the COAD, who forwarded the submission to the COAD. The COAD decided to award the Grievor a somewhat different ADA, with which the Grievor was still unsatisfied. The Grievor withdrew the Previous Grievance and grieved the COAD decision.

A Level I Adjudicator denied the grievance on the ground that the Grievor did not have

standing to present it. She specified that the Grievor failed to show that the COAD decision was made in the administration of the Force's affairs, as required by subsection 31(1) of the *RCMP Act*.

**ERC Findings:** The ERC agreed with the Level I Adjudicator, finding that the disputed decision was not made in the administration of the affairs of the RCMP and, as a result, that the Grievor did not have standing. The decision was made by the COAD pursuant to FSD 25. The COAD is headed by the DFA and primarily consists of people who are not RCMP members and whose duties are neither governed by an RCMP authority nor overseen by RCMP personnel. Although the Respondent sat on the COAD and the Grievor liaised with members of the Force during the COAD process, these facts did not mean the COAD decision was made in the administration of the Force's affairs. The Force had no authority to change or overrule the COAD decision. In addition, the Grievor did not cite any authority under which the Force could compel the COAD to revisit its decision. He also did not address the claim that the RCMP had no authority to provide redress. The "Grievance Procedure" provision of the FSD does not entitle the Grievor to grieve the COAD decision through the RCMP grievance process.

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

## G-622 Meal Allowance

The Grievor worked two shifts starting at 1:30 p.m. outside his headquarters area. Relying on the *Treasury Board Travel Directive* (TBTD), he asked for the meal he ate at mid shift of each of his shifts to be reimbursed at the dinner rate. The Respondent refused on the ground that the

Grievor was entitled to a reimbursement of his meals at the lunch rate pursuant to section 3.2.9 of the TBTD. The Respondent indicated that if the Grievor had paid an amount greater than this rate for his meals, he had to present supporting documents. The Grievor filed a grievance in which he asked for the reimbursement of his two meals at the dinner rate. He stated that he had these meals during the evening period when dinner is normally eaten, and he was therefore entitled to the full dinner amount, without a receipt.

The Level I Adjudicator dismissed the Grievor's grievance because, according to section 3.2.9 of the TBTD, the Grievor, as a shift worker, could have his meals reimbursed based on the meal sequence of breakfast, lunch and dinner. According to the Level I Adjudicator, the Grievor was entitled to the lunch amount, without a receipt, for the meal eaten at mid shift.

**ERC Findings:** The ERC found that the TBTD clearly indicates that shift workers are to be reimbursed based on the meal sequence of breakfast, lunch and dinner, regardless of the time their shift begins. By applying this principle to the Grievor's situation, he was to have breakfast at his expense before beginning his shift at 1:30 p.m. He could then claim the allowance, at the lunch rate, for the meal consumed at mid shift. If the Grievor spent more than the allowed rate for lunch, he had to provide supporting documents in order to receive the actual amount spent, as provided under section 3.2.9 of the TBTD.

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

## Commissioner of the RCMP Final Decisions

The Commissioner of the RCMP has provided his decision in the following matters, for which the ERC's Findings and Recommendations were summarized in previous issues of the *Communiqué*:

### Current Legislation Cases:

## C-006 Conduct Authority Decision

(summarized in the October 2015 – February 2016 Communiqué) The Appellant was offduty and sought entry into a nightclub by showing his RCMP badge and falsely stating that he was conducting surveillance. Later, the Appellant was approached by two local police officers responding to the situation. The Appellant was defiant and uncooperative towards the local officers. The Appellant admitted to using his police officer status to gain access to the nightclub, but contested that he had been confrontational and belligerent with the local officers. The Respondent issued a record of decision in which he imposed financial penalties of three days of pay and seven days of pay for the respective allegations. The ERC recommended to the Commissioner of the RCMP that 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 recommended 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. The ERC also recommended to the Commissioner that 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.

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

*The Appellant appeals the Respondent's finding that an allegation of discreditable conduct, contrary to section 7.1 of the RCMP Code of Conduct, was established. He also appeals the financial penalty of seven days' pay administered on that allegation under section 3(1). The appeal is allowed on both counts due to material and determinable errors. The Conduct Appeal Adjudicator nonetheless found the allegation of discreditable conduct established on the basis of confrontational behaviour, as particularized in the allegation. It was not necessary to establish all particulars of the allegation but it was necessary to make findings with respect to those particulars and whether it amounted to discreditable conduct. The Conduct Appeal Adjudicator varied the financial penalty to three days' pay.*

## **C-007** Conduct Authority Decision

(summarized in the October 2015 – February 2016 Communiqué) 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 which set out five conduct measures, including a forfeiture of 10 days' pay. 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 ERC recommended to the Commissioner of the RCMP that he allow the appeal due to the Respondent's failure to provide reasons for his decision. The ERC further recommended 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 recommended to the Commissioner that he allow the appeal in respect of the conduct measure imposed and that he impose a global conduct measure of a forfeiture of pay of 3 to 7 days.

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

*The Appellant appeals the Respondent's finding that two allegations of false, misleading or inaccurate statements to a superior contrary to section 8.1 of the RCMP Code of Conduct, were established. He also appeals the financial penalties administered on those contraventions. The appeal on the Allegations and the conduct measures are allowed due to material and determinable errors. The Conduct Appeal Adjudicator agreed with the ERC that the Allegations were nonetheless established. She substituted the financial penalty of ten (10) days' pay with a global conduct measure of six (6) days' pay for both Allegations.*

## **C-008** Conduct Authority Decision

(summarized in the October 2015 – February 2016 Communiqué) 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 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 which 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 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 ERC recommended 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 recommended 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 recommended further to the Commissioner that he allow the appeal in respect of the conduct measures imposed.

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

*The Appellant appeals the Respondent's finding that two allegations of discreditable conduct, contrary to section 7.1 of the RCMP Code of Conduct, were established. He also appeals the financial penalties administered on those contraventions under section 4(1). The appeal is allowed on the Allegations due to material and determinable errors. The Conduct Appeal Adjudicator was critical of the drafting of one set of particulars for both Allegations and of their lack of precision. On Allegation #1 the Conduct Appeal Adjudicator agreed with the ERC that the evidence failed to support a finding of a false or misleading statement made to Sgt. C. That Allegation falls on the basis that the evidence was insufficient to prove the alleged acts on a balance of probabilities. On Allegation #2, the Conduct Appeal Adjudicator agreed with the ERC that the evidence proved that the Appellant had made a misleading statement to Sgt. B*

*however; in disagreement with the ERC, she found that a reasonable person would find the behaviour would likely bring discredit on the Force. As a result, Allegation #2 was established. The Conduct Appeal Adjudicator also allowed the appeal of the conduct measures on the basis that it was excessive and replaced it with a forfeiture of three days' pay and a direction to complete an online ethics course and a direction to review Code of Conduct policy.*

### Former Legislation Cases:

## **G-594** Harassment

*(summarized in the November 2014 – February 2015 Communiqué)* The Grievor brought a harassment complaint against his superior. The Respondent issued a decision in which he determined that the harassment allegations were unfounded. The Grievor filed a grievance. The ERC recommended to the Commissioner of the RCMP that he allow the grievance. It further recommended 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.

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

*The Grievor presented a grievance against a decision made by the Respondent who dismissed his harassment complaint. The Commissioner found that the Respondent's failure to consider the Grievor's allegations of harassment all together was not consistent with relevant harassment authorities. The Commissioner accepted the ERC findings and recommendations. The Respondent's decision is quashed and the grievance is allowed.*

## G-595 Harassment

(summarized in the November 2014 – February 2015 Communiqué) The Grievor presented a harassment complaint against his superior. The Respondent issued a decision in which he determined that the harassment allegations were unfounded. The Grievor filed a grievance. The ERC found that the grievance could not succeed because the Grievor failed to meet his burden of persuasion. The ERC recommended to the Commissioner of the RCMP that he deny the grievance.

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

*The Grievor presented a grievance against a decision made by the Respondent who dismissed his harassment complaint against a superior. The Commissioner found that the Grievor failed to demonstrate that the Respondent's decision was uninformed and unethical. The Commissioner also accepted the ERC findings that standing and timeliness requirements were met and that the magazine article was irrelevant and inadmissible as it bore no appreciable link to the Respondent's decision. The Commissioner agreed with the ERC recommendation and denied the grievance.*

## G-596 Harassment

(summarized in the November 2014 – February 2015 Communiqué) The Grievor presented a harassment complaint against his superior. The Respondent issued a decision in which he determined that the harassment allegations were unfounded. The Grievor filed a grievance. A Level I Adjudicator denied the grievance and 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 ERC recommended to the Commissioner of the RCMP that he deny the grievance.

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

*The Grievor presented a grievance against a decision made by the Respondent, the Commanding Officer "[X]" Division, dismissing his harassment complaint against the Non-Commissioned Officer in Charge, Internal Services "[X]" Division. The Commissioner found that the Grievor failed to demonstrate that the Respondent's decision was uninformed and unethical or that it was not rendered in accordance with the requirements of the applicable policy. The Commissioner agreed with the ERC recommendation and denied the grievance.*

## G-597 Travel Expenses

(summarized in the November 2014 – February 2015 Communiqué) While he was on travel leave with his dependants, the Grievor fell ill and his status was changed to "off-duty sick". 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. During this time, Grievor was being transferred from his isolated post. 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 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 Grievor argued that he was entitled to his dependants' travel expenditures as suitable arrangements

could not be made for them at the isolated post. 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 recommended that the Commissioner of the RCMP partially uphold the grievance.

**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 after learning that he was not going to receive payment for the expenses he claimed for his dependants. The Respondent claimed that the Grievor did not require a medical escort in connection with treatment the Grievor received while away from his isolated post. Level I partially upheld the grievance. The Commissioner found that although the Grievor did not require a medical escort, his dependants did not have suitable arrangements that would allow them not to accompany the Grievor. The Commissioner accepted the ERC recommendation and partially upheld the grievance.*

## **G-604** Relocation Expenses

(summarized in the March – September 2015 Communiqué) The Grievor was issued a Notice of Transfer authorizing a cost transfer and advising that he would be relocated to another province. The Grievor's spouse and two dependents were relocating with him. The Grievor booked a return flight for his spouse to travel for the purpose of finding interim accommodations for their children and registering them for school. The Grievor also booked one-way flights for

his children. The Grievor did not book these flights through the government contracted travel service (GCTS) as, at the time, this was not a House Hunting Trip (HHT) or any other specified relocation situation. Later, the Grievor's home sold and he received authorization for an HHT. The Grievor's spouse was at the airport for her flight back when the Grievor advised her of the HHT approval and that he would be joining her. She changed her flight, incurring a flight change charge, and began house-hunting. The Grievor made a business case claiming exceptional circumstances and requesting payment from the *Core Envelope* of the air travel for his spouse and dependants. The Respondent denied the request on the basis that there were no exceptional circumstances to justify why the Grievor could not make the travel arrangements with the GCTS. The Grievor filed a grievance against this decision. The ERC found that the Grievor's circumstances were exceptional. The ERC recommended to the Commissioner of the RCMP that he allow the grievance.

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

*The Grievor presented a grievance against a decision to refuse the payment of expense claims that he filed for his dependants in relation to a relocation. The Respondent argued that the Grievor did not book airline tickets for his spouse and children through the Government's Contracted Travel Services and therefore was not entitled to reimbursement. The Grievor contended that the Respondent did not consider the exceptional circumstances that the Grievor faced. Level I denied the grievance. The Commissioner considered the exceptional circumstances that were present in this grievance and accepted the ERC recommendation to allow the grievance.*

## G-605 Relocation Expenses

(summarized in the March – September 2015 Communiqué) The Grievor's son booked a high school graduation trip to the Caribbean through a tour company. Each month the tour company automatically charged the Grievor's credit card with pre-authorized payments. However, the Grievor was issued a Notice of Transfer authorizing a cost transfer and advising that he would be relocated to another province with his family. As a result, the Grievor cancelled his son's trip. The Grievor submitted a claim for reimbursement of the trip cancellation expense pursuant to section 11.02 of the *Integrated Relocation Program 2008 (2008 IRP), Sundry Accountable Incidental Relocation Expenses*. The Respondent rendered a decision stating that she could not approve reimbursement from the *Core Envelope*. The ERC found that the Grievor had not met his burden of persuasion that the expense of the cancellation of the trip was incurred in exceptional circumstances. The ERC recommended to the Commissioner of the RCMP that he deny the grievance.

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

*The Grievor presented a grievance after learning that he was not going to be reimbursed for the trip cancellation expense that he wished to be assessed as an exceptional expense. The Respondent argued that the list of sundry expenses, which did not include trip cancellation fees, is all-inclusive. The Grievor contended that the Respondent did not consider the expense as exceptional. Level I denied the grievance. The Commissioner considered the circumstances in which the expense was incurred and accepted the ERC recommendation to deny the grievance because the Grievor did not establish that*

*the expense was incurred under exceptional circumstances or that the claim should be referred to TBS for approval as an exceptional expense.*

## G-607 Medical Discharge / Time Limits

(summarized in the March – September 2015 Communiqué) In late 2010, the Grievor and her superiors finalized interrelated documents that established the basis for her medical discharge from the RCMP. The Respondent sent the Grievor a Notice of Discharge, which the Grievor received in September 2012. In October 2012, the Grievor grieved the decision to discharge her. The Respondent argued that the grievance was filed outside the 30-day statutory limitation period. The Level I Adjudicator denied the grievance on the basis that it was untimely. At Level II, the Grievor argued that the Level I Adjudicator lacked jurisdiction to make a decision and that the grievance was timely. The Grievor also submitted that the grievance process was procedurally unfair and that the Adjudicator should have disclosed various materials relating to the drafting of his decision. The ERC found that the grievance was not initiated within the statutory 30-day Level I time limit. The ERC also found that the grievance process was procedurally fair. 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 Grievor presented a grievance challenging the Respondent's decision to issue her a Notice of Discharge. The Respondent raised the preliminary issue of the limitation period, arguing that the Grievor was aware of the decision as early as 2010, but presented her grievance in 2012. The Level I Adjudicator denied the*

*grievance on that basis. At Level II, the Grievor challenged the Level I Adjudicator's jurisdiction, maintained that the grievance was presented within the statutory time limit, and submitted that the treatment of her grievance at Level I and the decision-making process were procedurally unfair.*

*The Commissioner accepted the ERC's findings that the grievance was out of time, that a retroactive extension of time was not warranted, and that there is no evidence of procedural unfairness in the Record. However, the Commissioner disagreed with the ERC on the issue of jurisdiction, and found that the Level I Adjudicator was never designated as adjudicator, and therefore lacked jurisdiction. Given that the Grievor provided full submissions on the substantive issue concerning the limitation period, the Commissioner rendered a decision, rather than returning the grievance to Level I. Ultimately, the grievance was denied.*

### **G-609** Relocation Expenses / Time Limits

*(summarized in the March – September 2015 Communiqué) The Grievor received no-cost transfers in 2005 and 2006. In 2010, the Force initiated the Retroactive Corrective Payment of Relocation Benefits project (Project) to correct previous inconsistent interpretations and applications of the 40 kilometre rule contained in the Force's Integrated Relocation Program (IRP) policies. The Grievor's transfers were re-assessed. In separate decisions issued in April 2012 and August 2012, the Project team notified the Grievor of the benefits he would receive for his transfers. The Grievor made multiple informal attempts to have these decisions changed before finally presenting a grievance in January 2013. The Respondent challenged the timeliness of the Grievor's presentation. The ERC found that the Grievor knew or ought to have known he was aggrieved well over 30 days*

*prior to the date he filed his grievance. The fact that the Grievor was contesting the decisions informally did not impact the limitation period for the presentation of his grievance. The ERC recommended that the Commissioner of the RCMP deny the grievance on the basis that it was not presented at Level I in time.*

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

*The Grievor presented a grievance after being denied the Transfer Allowance for his two relocations. The Respondent challenged the time limitation period in which the Grievor presented the grievance. The Grievor contended he was trying to resolve the matter informally and was not fully aggrieved until he was unsuccessful at convincing the Respondent to reconsider the decision. Level I denied the grievance. The Commissioner considered the preliminary issue of time limitation and accepted the ERC recommendation to deny the grievance based on the Grievor's failure to meet the 30 day statutory time limit and to establish extenuating circumstances to support a time limit extension.*

### **G-610** Travel Expenses / Time Limits

*(summarized in the March – September 2015 Communiqué) The Grievor performed relief work prior to December 2011. He did not ask for a Private Accommodation Allowance (PAA) at that time because he was "told that it didn't apply back then". In 2014, the Commissioner released a Communication stating that retroactive to December 2011, certain members would receive a PAA if they satisfied various criteria. The Grievor requested a retroactive PAA for the period during which he performed relief work in 2011. The Respondent raised an objection on the basis that the grievance was filed*

after the statutory thirty-day limitation period had expired. The ERC recommended to the Commissioner of the RCMP that he allow the grievance on the basis that the Grievor met the preliminary requirement of timeliness. It further recommended that the grievance be returned to Level I to proceed on the merits.

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

*The Grievor performed relief work in the North prior to December 2011. He did not request Private Accommodation Allowance (PAA) at the time as he had been told that it did not apply. In 2014, the Commissioner released a Communique that was ultimately incorporated in the RCMP Travel Directive which provided that, retroactive to December 2011, members who met specific eligibility criteria, would receive PAA. The Grievor requested retroactive PAA for the period during which he performed relief work in 2011. On June 17, 2014, the Grievor learned his request was denied because his relief work predated the eligibility period. The Grievor presented a grievance on July 11, 2014. The Respondent submitted that the grievance was filed after the expiration of the statutory time limit. The Level I Adjudicator denied the grievance on that ground.*

*The Commissioner agreed with the ERC that the Grievor's eligibility to receive a PAA is not at issue at this juncture. The decision of June 17, 2014 denying the Grievor's retroactive request for PAA is the decision relevant to this grievance and the Grievor met the preliminary requirement of timeliness. The grievance is returned to Level I to proceed on the merits.*

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