



RCMP External Review Committee

IN THIS ISSUE	PAGE
ERC Findings and Recommendations	
<i>Under Former RCMP Act</i>	
Disciplinary Appeals	1
Grievances	2
Commissioner of the RCMP Final Decisions	
<i>Under Former RCMP Act</i>	
Discharge and Demotion Appeals	11
Grievances	13
Quick Reference Index	14

Findings and Recommendations

Between September and December 2016, the RCMP External Review Committee (ERC) issued the following findings and recommendations:

Former Legislation Cases:

D-131 Adjudication Board Decision

The Respondent responded to a 10-33 call, a call made when an officer's safety is in jeopardy. Upon arriving at the scene, the Respondent found two officers struggling to arrest an adult male suspect who was passively resisting the arrest. One officer was administering thumb strikes to the torso and the other officer was punching the suspect in the head. The Respondent promptly intervened by delivering knee strikes to the suspect, one of which connected with the suspect's head and subdued him, enabling the officers to make the arrest. The Appellant initiated disciplinary proceedings alleging that all three of the officers acted disgracefully, contrary to s. 39(1) of the *Code of Conduct*. The parties agreed to proceed via the "Early Resolution Discipline Process". The Agreed Statement of Facts (ASF) contained only one sentence regarding the Respondent's actions during the arrest of the suspect. The Adjudication Board (Board) held a brief video hearing during which each of the three officers admitted the allegation against him. The Appellant made one very short, general oral submission in relation to the Respondent's conduct.

The Board concluded that the allegation against the Respondent was not established. The Board stated that the Respondent's admission of the allegation was not determinative, as the test was whether a reasonable person with knowledge of RCMP policing would consider the conduct disgraceful. In the Board's view, the Respondent conducted himself in a manner that a reasonable person would have expected, given the Respondent was responding to a 10-33 call and arrived on the scene to find a physical struggle or fight ongoing. As part of its reply to an unrelated question posed by the Appellant following the delivery of its oral decision, the Board remarked that, during its brief deliberations, it discussed a recognized interventions policy. The Board also distinguished the Respondent's conduct from the culpable conduct of another of the officers. Finally, the Board said it may have reached a different decision had the evidence contained some indication that the



RCMP External Review Committee
P. O. Box 1159,
Postal Station "B"
Ottawa, Ontario K1P 5R2
Tel.: (613) 998-2134
Fax: (613) 990-8969
org@erc-cee.gc.ca
www.erc-cee.gc.ca

2 RCMP External Review Committee

Respondent's knee strike to the suspect's head was deliberate and disproportionate in the circumstances.

The Appellant appealed the Board's decision. The Appellant asserted that the Board misunderstood or did not give effect to the plain meaning of certain agreed facts within the ASF, considered a policy without inviting the parties to speak to that document, and failed to place adequate weight on the Respondent's admission of the allegation. The Appellant also filed a rebuttal which he felt should be admitted based on procedural fairness principles.

ERC Findings: The ERC found that nothing in the *RCMP Act* or the rules of procedural fairness afforded the Appellant the right to file a rebuttal on appeal. Accordingly, the ERC recommended that the Appellant's rebuttal not form part of the appeal record.

The ERC found that the Appellant failed to establish the grounds of appeal. The Board made no manifest and determinative error in its apprehension of the agreed facts set out in the ASF or in its consideration and weighing of the Respondent's admission of the allegation. The Board's oral and written decisions reveal that the Board understood the agreed facts in the ASF and that it properly evaluated those facts against the objective test for ascertaining disgraceful conduct.

The Board carefully explained its reasoning in support of its determination. Although the Appellant took issue with a statement made by the Board regarding the nature of the struggle confronting the Respondent upon his arrival at the scene of the arrest, the Board's description of the scene in its decision as a whole was consistent with the ASF.

The Board did not act in a procedurally unfair manner by discussing a policy during

its deliberations without first inviting the parties to make submissions regarding the application of the policy to the facts of the case. It is not clear that the Board relied on the policy when reaching its conclusions regarding the Respondent's conduct or that the policy constituted new evidence for the purposes of the hearing. The Board did not identify a specific provision of the policy on which it relied nor did it refer to the policy again in its oral or written decisions. Moreover, the fact that the policy may have generally informed the Board's deliberations is not in and of itself procedurally unfair. As senior officers, the members of the Board would have had experience with and knowledge of the policy. A police discipline board may use its own experience and specialized knowledge when making assessments as long as it does not do so to fill in a gap in the record or to make an essential factual finding. There is no evidence that the Board used the policy in this way.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he dismiss the appeal and confirm the Board's decision pursuant to paragraph 45.16(2)(a) of the *RCMP Act*.

G-628 Harassment

The Grievor had previously filed a grievance against the Respondent's decision not to approve the Grievor's claim for overtime for attending a meeting of the RCMP's Legal Fund in his role as Staff Relations Sub-Representative; the meeting had been held on a Sunday. According to the Respondent, the Fund was a separate entity from the RCMP; consequently, the Grievor could not be paid. In November 2005, upon receipt of the grievance, the Respondent removed the Grievor from his acting position as Operations Officer in the Commercial Crime Section. The acting pay for this position was also interrupted, and

the Respondent launched an investigation under Part IV of the *RCMP Act* regarding the Grievor's application for overtime. The Grievor filed the present grievance against the Respondent alleging that these acts were reprisals against the Grievor, prohibited under s. 31(5) of the *Act*. In his Level I submissions, the Grievor also suggested that he considered the Respondent's actions against him to be harassment.

The Level I Adjudicator denied the grievance, concluding that the Respondent had reasonable grounds for requesting a *Code of Conduct* investigation and that the Grievor had not established that this investigation was a reprisal. The Adjudicator also concluded that assigning the Grievor to different duties and removing him from his acting position was not inappropriate.

ERC Findings: The ERC concluded that it had jurisdiction to review the grievance, that the Grievor had standing and that the grievance was filed within the applicable limitation periods. However, it also found that the additional evidence submitted by the Grievor to the ERC was neither relevant nor admissible.

Regarding the merits of the grievance, the ERC found that the Grievor had established, on a balance of probabilities, that the Respondent had acted in reprisal against him in late November 2005, in violation of s. 31(5) of the *Act*, but that this behaviour was not harassment within the meaning of the applicable policies.

ERC Recommendation: The ERC recommends that the Commissioner allow the grievance.

G-629 Harassment

The Grievor, a Staff Relations Sub-Representative, had previously filed a grievance against a decision from his

supervisor not to approve a claim for overtime for his attendance of a meeting of the RCMP's Legal Fund, which had been held on a Sunday. The Grievor was investigated under Part IV of the *RCMP Act* because he claimed lieu time off for this trip, which, according to his supervisor, was not eligible for such compensation.

A year later, following the investigation, the Respondent met with the Grievor. The purpose of the meeting was to allow the Grievor to provide the Respondent with any further information before the Respondent made a decision on the nature of the disciplinary action to be taken against the Grievor. During the meeting, the Respondent allegedly indicated that it was intending to take formal disciplinary action against the Grievor.

In this grievance, the Grievor alleges that, during this meeting, the Respondent intimidated him and added to the harassment and abuse of authority he had suffered as a result of the decision to initiate an investigation by threatening to take formal disciplinary action against him for filing his claim. The Grievor also suggested that the Respondent should have put an end to the harassment and intimidation the Grievor had been subjected to by his supervisor since November 22, 2005.

ERC Findings: The ERC concluded that it had jurisdiction to review the grievance, that the Grievor had standing and that the grievance was filed within the applicable limitation periods. However, the ERC also found that the additional evidence submitted by the Grievor to the ERC was neither relevant nor admissible.

Regarding the merits of the grievance, the ERC found that the Grievor had not established that he had been the victim of harassment, abuse of authority or reprisals

from the Respondent when the Respondent informed him that he was intending to take formal disciplinary action following a disciplinary investigation. The ERC also found that the Grievor had not met his burden of establishing that the Respondent had failed to comply with harassment policies.

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

G-630 Harassment

The Grievor filed a harassment complaint against her supervisor (Alleged Harasser) which contained multiple allegations relating to events that occurred between December 2004 and January 2006.

As part of the complaint screening process, certain witnesses were interviewed but, despite her requests, the Grievor was not. The Human Resources Officer (HRO) provided a report (HRO Report) to the Responsible Officer (Respondent #1). It briefly summarized only certain of the Grievor's allegations, the Alleged Harasser's responses to those allegations and relevant witness statements. The HRO concluded that the Grievor's allegations did not meet the definition of harassment. There is no indication in the record that any witness statements or evidentiary documents were referenced in or attached to the HRO Report. Respondent #1 then issued a brief decision stating that, based on the information provided, he agreed with the HRO's conclusion.

The Grievor challenged Respondent #1's decision to screen out her harassment complaint, arguing that it was based on incomplete information and was therefore uninformed and unfounded.

The Early Resolution (ER) Phase lasted more than two years. Although Respondent #1

took certain steps to address some of the Grievor's concerns, no facts or issues were agreed upon. Respondent #1 retired at the end of the ER Phase and the new Commanding Officer became Respondent #2.

The Level I Adjudicator allowed the grievance on the merits. She agreed with the Grievor that Respondent #1's decision was uninformed and that there had been procedural irregularities in the initial review of the harassment complaint. The Level I Adjudicator did not order any corrective action because, in her view, the procedural errors had been rectified by Respondent #1 and Respondent #2. She found that Respondent #1 had become "*personally fully engaged*" in ER, "*had several meetings with the Grievor and her SRR*", had taken extensive steps to reassign the Grievor and had given her a full opportunity to present and argue her case.

At Level II the Grievor contested the Level I Adjudicator's finding that corrective actions had already been taken and requested that her Complaint be examined in its entirety by a new reviewer.

ERC Findings: The ERC noted that the test to be applied in determining whether a harassment complaint should be screened out of the process is whether the allegations, if true, appear to be related to harassment. Thus, the decision to screen out a harassment complaint prior to a full investigation should be exercised very carefully. In the ERC's opinion, certain of the Grievor's allegations, if true, appeared to relate to harassment and, therefore, further investigation was necessary before making a definitive decision.

The ERC found that the HRO Report was deficient because it only reviewed certain of the Grievor's allegations and it conflated the initial screening of the Complaint with

the next steps of the harassment complaint process: a full investigation followed by a final decision by the Responsible Officer. As a result, the ERC found that the HRO did not properly screen the Complaint or provide a full report and recommendation to the Respondent.

The ERC also found that Respondent #1 failed to review all relevant material, made an uninformed determination and that both Respondent #1 and Respondent #2 failed to apply the correct screening test. As a result, they improperly screened the Grievor's Complaint out of the RCMP's harassment complaint process.

Moreover, the ERC found that the steps taken by Respondents #1 and #2 during the complaint process did not constitute adequate corrective actions. Although Respondent #1 took a number of steps intended to cease the harassment of the Grievor, neither Respondent #1 nor Respondent #2 properly screened the Complaint and a full investigation was not undertaken.

However, given the extreme passage of time since the events giving rise to the Complaint, the ERC found that it was no longer possible to screen the Complaint in, conduct an investigation, determine whether any of the Grievor's allegations constituted harassment and if so, decide on appropriate corrective actions.

ERC Recommendations: The ERC recommends that the Commissioner of the RCMP allow the grievance on the merits. The ERC also recommends that the Commissioner apologize to the Grievor for the Force's failure to properly deal with her harassment Complaint and for the delays in the grievance process.

G-631 Harassment

The Grievor presented a harassment complaint (Complaint) containing a number of allegations against his superior officer (Alleged Harasser). The Grievor asserted that the Alleged Harasser persistently humiliated him in front of his peers and attempted to build a case for his discharge by singling out, micro-managing and overdocumenting his performance. The Respondent reviewed the harassment complaint to determine if a full investigation was required. In so doing, the Respondent disregarded certain allegations, concentrated on eight allegations he felt were "*related to harassment*" and evaluated those allegations against criteria set forth in the Treasury Board "Screening Tool for the Delegated Manager and the Harassment Prevention Coordinator". The Respondent screened the harassment complaint out of the RCMP harassment complaint process, finding that the Alleged Harasser's conduct was either managerial in nature or not otherwise improper.

The Grievor filed a Level I grievance. The Level I Adjudicator denied the grievance on its merits, finding that the Respondent followed the correct process in screening out the harassment complaint. The Grievor submitted his grievance at Level II. He argues that the allegations in his harassment complaint fell within the definition of "*harassment*" in the RCMP's *Harassment Policy* and that they should have been investigated.

ERC Findings: The ERC confirmed that the preliminary requirements of referability, standing and timeliness had each been met. It then found that the Grievor's original harassment complaint, which the Grievor first included in evidence at Level II, was inadmissible, as that complaint had been reasonably available to the Grievor at Level I. However, despite the inadmissibility of the

original complaint, there was sufficient information in the record to permit the Commissioner of the RCMP to make a full and informed decision on the merits of the grievance.

The ERC stated that the test to be applied in deciding whether a harassment complaint ought to be screened out is: assuming that the allegations in a complaint are true, do one or more of the allegations fall within the definition of "harassment", as set forth in the RCMP's *Harassment Policy*. In this matter, the Respondent assessed the Grievor's allegations without presuming that each allegation was true. Once the Respondent found that eight of the allegations were "related to harassment", he should have screened in the complaint and initiated appropriate action, including exploring mediation and determining if an investigation was required. Instead, he screened the Grievor's harassment complaint out on the bases of substantive determinations which should not have been made without an investigation.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he allow the grievance. The ERC further recommends that the Commissioner apologize to the Grievor for the Force's failure to properly deal with his harassment complaint.

G-632 Harassment

The Alleged Harasser informed the Grievor's superior, in writing, of his concerns with the way in which the Grievor had managed subordinates and with the quality of a piece of work the Grievor had submitted. Upon learning about these communications, the Grievor tendered a harassment complaint (Complaint). The Grievor argued that the Alleged Harasser had offended, demeaned and humiliated her. The Human Resources

Officer (HRO) reviewed the Complaint and sought input from the Alleged Harasser and the Grievor's superior. The HRO concluded that a full investigation was not required and recommended to the Respondent that the allegations did not meet the definition of harassment set forth in the *RCMP Harassment Policy*. The Respondent accepted the HRO's determination and screened the Complaint out of the RCMP harassment complaint process.

The Grievor presented a Level I grievance which was denied on its merits. The Level I Adjudicator found that the Grievor had failed to link her concerns to a harassment complaint process established by a Treasury Board (TB) or RCMP harassment authority and that the HRO and Respondent discharged their functions in accordance with applicable harassment policies. The Grievor submitted her grievance at Level II. She argues that the decision to screen out the Complaint was inconsistent with the *RCMP Harassment Policy*, as the substance of the Complaint satisfied the definition of harassment.

ERC Findings: The ERC confirmed that the preliminary requirements of referability, standing and timeliness had each been met. It went on to find that, although the appointment of a representative by the Respondent was improperly authorized, that appointment was acceptable as the Grievor did not object to or suffer prejudice as a result of the irregular appointment.

The ERC stated that the test to be applied when assessing whether a harassment complaint should be screened out is clear: assuming the allegation(s) contained in a complaint are true, do one or more of them fall within the definition of harassment set forth in the *RCMP Harassment Policy*? Underlying this determination is the principle that the discretion to screen out

a complaint prior to a full investigation of the allegation(s) should be exercised very carefully and sparingly. The Respondent did not review the Grievor's allegations assuming they were true. Rather, the allegations were screened out on the bases of substantive determinations which should not have been made at the screening stage. If the HRO and Respondent intended to render a final decision and not a screening decision, they first should have clearly stated their intention to do so and second, at the very least, were required, as a matter of fairness, to interview the Grievor.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he allow the grievance. The ERC further recommends that the Commissioner apologize to the Grievor for the Force's failure to properly screen her harassment complaint.

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

The Grievor filed a grievance after her harassment complaint had been screened out of the RCMP harassment complaint process. The Commissioner found that the Human Resources Officer did not have the authority to reject the complaint at the screening stage as the authority rested with the Commanding Officer, pursuant to the applicable policy. The Commissioner also found that the Commanding Officer did not apply the appropriate test when rendering a decision on the screening of the harassment complaint. The Commissioner agreed with the ERC, allowed the grievance, and apologized to the Grievor for the fact that the harassment complaint was not handled in accordance with policy.

G-633 Harassment

The Alleged Harasser sent the Grievor's superior officer an email in which criticisms were made regarding the Grievor's perceived inflexibility and failure to help address a health and safety risk. The Alleged Harasser copied the Grievor on the email. The Grievor presented a harassment complaint (Complaint). She urged that the content of the email was derogatory and demeaning and that the fact she was copied on it was intimidating. The Human Resources Officer (HRO) reviewed the Complaint, collected input from the Alleged Harasser and the Grievor's superior officer, concluded that a full investigation was not required and advised the Respondent that the allegation did not meet the definition of harassment set forth in the *RCMP Harassment Policy*. The Respondent accepted the HRO's conclusion and screened the Complaint out of the RCMP harassment complaint process.

The Grievor presented a Level I grievance which was denied on its merits. The Level I Adjudicator found that the Grievor had failed to link her concerns to a harassment complaint process established by a Treasury Board (TB) or RCMP harassment authority and that the HRO and Respondent discharged their functions in accordance with applicable harassment policies.

The Grievor submitted her grievance at Level II. She argues that the decision to screen out the Complaint was inconsistent with the *RCMP Harassment Policy*, as the substance of the Complaint satisfied the definition of harassment.

ERC Findings: The ERC confirmed that the preliminary requirements of referability, standing and timeliness had each been met. It went on to find that, although the appointment of a representative by the Respondent was improperly authorized, that

appointment was acceptable as the Grievor did not object to or suffer prejudice as a result of the irregular appointment.

The ERC stated that the test to be applied when assessing whether a harassment complaint should be screened out is clear: assuming the allegation(s) contained in a complaint are true, do one or more of them fall within the definition of harassment set forth in the *RCMP Harassment Policy*? Underlying this determination is the principle that the discretion to screen out a complaint prior to a full investigation of the allegation(s) should be exercised very carefully and sparingly. The Respondent did not review the Grievor's allegation assuming it was true. Rather the allegation was screened out on the basis of a substantive determination which should not have been made at the screening stage. If the HRO and Respondent intended to render a final decision and not a screening decision they first should have clearly stated their intention to do so and second, at the very least, were required, as a matter of fairness, to interview the Grievor.

The ERC observed that, had the Respondent applied the appropriate test to his screening of the Grievor's allegation, the allegation, if true, did not appear to relate to harassment. The conduct in question involved one email which was sent from the Alleged Harasser to the Grievor's superior officer, copied to the Grievor. In applying the screening test, it is assumed that the circumstances, contents and sending of the email were true. However, there is no requirement to assume that the email was related to harassment as that is the very question to be addressed. The email contained no derogatory or demeaning language and the fact that it was copied to the Grievor cannot be assumed, in and of itself without evidence, to be an act of intimidation. Other than stating that the email caused her embarrassment and that she

viewed its contents as derogatory, the Grievor referred to no other conduct or circumstances which, if true, could relate to harassment as defined in the *RCMP Harassment Policy*.

The ERC stressed that this observation did not alter the fact that the screening of the Complaint was not carried out in accordance with the *RCMP Harassment Policy*. Whether the Respondent made a screening decision or a final decision, the decision was flawed in that the Grievor was not properly heard.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he allow the grievance. The ERC further recommends that the Commissioner apologize to the Grievor for the Force's failure to properly screen her harassment complaint.

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

The Grievor filed a grievance after her harassment complaint had been screened out of the RCMP harassment complaint process. The Commissioner found that the Human Resources Officer did not have the authority to reject the complaint at the screening stage as the authority rested with the Commanding Officer, pursuant to the applicable policy. The Commissioner also found that the Commanding Officer did not apply the appropriate test when rendering a decision on the screening of the harassment complaint. The Commissioner agreed with the ERC, allowed the grievance, and apologized to the Grievor for the fact that the harassment complaint was not handled in accordance with policy.

G-634 Medical Profile / Referability

The Grievor was assigned to a special project. The Grievor's Medical Profile (MP)

at the time indicated that the Grievor's occupational factor was O3, reflecting that she was fit for operational duty with certain restrictions. When the Grievor's MP expired, the Respondent, a Health Services Officer, met with the Grievor to assess her situation. He subsequently amended the Grievor's MP by assigning an O4 occupational factor, as a result of which the Grievor could only perform administrative duties. This amended MP was approved by a Human Resources Officer.

The Grievor filed a grievance identifying the amendment of her MP by the Respondent as the decision being grieved. Submissions by the Grievor's legal counsel (GC) confirmed that the substance of the grievance related to the Respondent's decision to amend the Grievor's occupational factor to O4. The GC relied on the Force's Administration Manual, chapter II.19 as well as internal *Directives and clinical guidelines*. The GC submitted that the Grievor's circumstances did not warrant the amendment of her occupational factor and that the Respondent had erred in rendering his decision by relying on irrelevant considerations and failing to consult the Grievor's own health care providers. The GC also asserted that the Respondent had improperly ordered the Grievor to obtain an assessment shortly after amending the Grievor's MP.

The GC also raised issues regarding the Respondent's use of the Grievor's personal information. The GC suggested that the Respondent had, in rendering his decision, improperly relied on the Grievor's medical history relating to a separate process, and that this had resulted in a breach of confidentiality. The GC further argued that the Respondent had inappropriately disclosed the Grievor's personal information to various parties after amending the Grievor's MP. A Level I Adjudicator denied the grievance, finding that the Respondent's

decision was consistent with applicable policy. The Grievor resubmitted her grievance at Level II.

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 were not at issue.

The other type of referable grievance, described in subsection 36(a) of the *1988 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 fell outside the ambit of subsection 36(a), as its subject-matter related to a decision to amend an MP pursuant to a process governed by internal RCMP policies. While the GC presented arguments which bring into consideration the *Privacy Act* and would involve the interpretation of government wide policy that has been made to apply to members, these privacy concerns are derivative to the central issue to be addressed in the grievance and which involves compliance with internal RCMP policies.

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

G-635 Legal Assistance at Public Expense

The Grievor was the team leader for a murder investigation. The presiding Court imposed a ban on the disclosure of information related to the investigation. In late 2009, the Force received information

that the Grievor had engaged in an inappropriate relationship with a protected witness. Soon after, the Force formally requested an external police service to conduct a *Code of Conduct* and a criminal investigation into the Grievor's actions.

In April 2010, the Grievor requested and received authorization for Legal Assistance at Public Expense (LAPE) for an initial consultation with a lawyer pursuant to the *Treasury Board (TB) LAPE Policy*. In October 2010, LAPE of up to \$50,000 was approved for the criminal investigation phase. The criminal investigation concluded in the fall of 2010. The Grievor's LAPE was terminated in December 2010. In October 2011, the Grievor's LAPE was reinstated by another approval authority retroactive to April 2010 for up to \$10,000, which was that approval authority's limit.

In June 2011, the Grievor was charged with several criminal offences. In April 2012, the Grievor requested LAPE for the court appearance and trial phases of his criminal proceedings.

The Grievor's Commanding Officer (CO) and Human Resources Officer (HRO) recommended that the Respondent deny both the payment of LAPE in excess of the previously-approved \$10,000 as well as the request for trial phase LAPE. On November 22, 2012, the Respondent denied the Grievor's request for trial phase LAPE and terminated the Grievor's existing LAPE.

The Grievor grieved the Respondent's decisions. The Grievor's submissions centered on the lack of information before the Respondent and the fact that the Respondent provided no rationale for his decision. The Respondent argued that, given that the external criminal investigation resulted in criminal and *Code of Conduct* allegations, once the investigation was

underway the initial presumption of eligibility for LAPE contained in the *TB LAPE Policy* evaporated. Therefore, the onus was on the Grievor to establish he met the eligibility criteria in the policy but the Grievor chose not to do so. The Grievor countered that the Court's disclosure ban prevented him from providing the information that would establish his eligibility and that the existence of criminal charges was not grounds for denying LAPE.

The Level I Adjudicator denied the grievance on its merits. She found that the Respondent's decision lacked reasons but that the error was remedied by disclosure during the Early Resolution (ER) Phase and the Respondent's written submissions. The Adjudicator found that once the initial presumption of eligibility was gone, the onus was on the Grievor to establish that he met the eligibility criteria. The Adjudicator was not convinced that the information the Grievor was prevented from sharing would likely alter his LAPE eligibility. Therefore, she found that his inability to use that information was not an exceptional circumstance for purposes of the *TB LAPE Policy*.

ERC Findings

Sufficiency of Reasons

The ERC found that, while the *TB LAPE Policy* does not expressly require written reasons for LAPE denials, the Supreme Court of Canada's decision in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 requires that administrative decision-makers provide written reasons where the decision has important significance for the individual. The ERC noted that LAPE decisions are of particular significance to RCMP members and found that the Respondent had provided no reasons for his decision. Further, neither

the disclosure of materials during ER nor the Respondent's written submissions could rectify the Respondent's lack of reasons.

Denial of Trial Phase LAPE

The ERC found that the Respondent's decision was contrary to section 6.1.4 of the *TB LAPE Policy* which requires an approval authority to presume that the requesting member has met the basic eligibility criteria in section 6.1.5 "*unless or until there is information to the contrary*". The presumption of eligibility does not disappear upon the laying of serious criminal charges as such a result would be counter to the very purpose of the *TB LAPE Policy*.

In this case, there was little information on the record regarding the Grievor's conduct. The Grievor explained why he was prevented from providing information. The Respondent did not contest the existence or scope of the Court's disclosure ban, nor did he rely on other evidence to support his decision. The Respondent made repeated attempts to obtain an evidentiary basis for the criminal charges against the Grievor. However, it is not clear from the record whether such information was provided to the Respondent prior to his decision. If an evidentiary basis was provided to the Respondent, his decision should have reflected that information. Rather, the record indicates that the information before the Respondent did not contain sufficient, reliable evidence to rebut the presumption of eligibility.

Termination of Previously Approved LAPE

The ERC found that the Respondent's decision to terminate the Grievor's previously approved LAPE was inconsistent with section 6.1.12 of the *TB LAPE Policy* which permits termination of LAPE only if, subsequent to the initial approval, it became clear that

the Grievor did not act in good faith, in the interests of the Crown or within the scope of his duties or course of employment. The ERC found that the onus was on the Respondent to identify information that would permit the termination of LAPE in accordance with section 6.1.12. However, neither the Respondent's decision nor the record contains such information.

ERC Recommendations: The ERC recommends that the Level II Adjudicator allow the grievance. As corrective action, the ERC recommends reinstating the Grievor's previously approved LAPE retroactive to December 10, 2010 and authorizing LAPE for the trial phase of the Grievor's criminal proceedings.

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*:

Former Legislation Cases:

R-006 Discharge

(summarized in the October 2015 – February 2016 Communiqué) 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, but 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. 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 ordered the Appellant's discharge. The Appellant appealed the decision. 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. The ERC recommended that the appeal be dismissed. It also recommended 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.

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

[TRANSLATION]

In a decision rendered on August 23, 2016, Commissioner Robert W. Paulson accepted the findings and recommendations of the ERC and dismissed the Appellant's appeal against the decision of a Discharge and Demotion Board (Board) upholding her discharge on the ground of unsuitability. First, the Commissioner rejected the Appellant's arguments to the effect that the Board had erred in finding that the

Appellant had been given reasonable assistance, guidance and supervision in an attempt to improve the performance of her duties. The Commissioner reiterated that subsection 45.18(1) of the Royal Canadian Mounted Police Act, R.S.C., 1985, c. R-10 (Act), merely requires managers to give a member reasonable assistance to improve the performance of his or her duties. In this respect, the Board reasonably weighed the evidence and did not err in finding that the assistance offered to the Appellant was sufficient within the meaning of the duty set out in subsection 45.18(1) of the Act. Next, the Commissioner found that the inversion of the letter of expectations and the performance agreement in the process of handling the performance issues did not vitiate the process or render it unfair. The Commissioner also held that the Board did not make a palpable or overriding error in its assessment of the quality of the job shadowing opportunities provided to the Appellant or in its conclusion that the Appellant's managers had reasonably exercised their discretion in their choice of methods for helping the Appellant improve her performance. Similarly, given the Appellant's deficiencies, it was reasonable to require that she patrol on her own that and that she simulate a busier environment so that her performance could be measured in a regular work context.

Next, the Commissioner agreed to consider the Appellant's argument, raised for the first time on appeal, that the personal information regarding her disciplinary and service records was disclosed to her mentor in a manner inconsistent with the applicable policy. The Commissioner found that the Appellant's managers required access to her information to be able to meet their obligation under subsection 45.18(1) of the Act. However, this information should not have been disclosed to her mentor. Nevertheless, the Commissioner held

that the Board had not erred in finding that the Appellant's evaluation had been unbiased and conducted in good faith. In summary, the Commissioner dismissed the appeal and upheld the Board's decision to discharge the Appellant on the ground of unsuitability. The Commissioner also emphasized the importance of protecting the personal information of RCMP members and employees and ensuring that it be disclosed only to those managers responsible for managing the member or employee in question.

G-616 Harassment

(summarized in the March – May 2016 Communiqué) A Complainant alleged harassment by the Grievor, her former supervisor. The six allegations contained in the complaint were investigated and nineteen witnesses were interviewed. The Respondent reviewed the Investigation Report and found that three allegations were established. The Grievor questioned why only two of the witnesses he proposed had been interviewed. The ERC found that the Grievor had not demonstrated that the investigation was incomplete because of a failure to interview witnesses. 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:

Three allegations of harassment were founded against the Grievor. The Grievor presented a grievance claiming that the investigators had only interviewed two of his six witnesses and failed to interview his key witness. The Respondent maintained that there was sufficient evidence in the investigation report to establish three of the six allegations, and that information provided by the key witness would not

have materially changed the findings. Level I denied the grievance. The Commissioner accepted the ERC recommendation to deny the grievance.

G-624 Leave Without Pay

(summarized in the June – August 2016 Communiqué) Throughout a period of part-time service, the Grievor's pension contributions were pro-rated to 50% of full-time contributions. Subsequently, he asked that the hours he did not work during his part-time service be treated as Leave Without Pay (LWOP). He made this request because the *Royal Canadian Mounted Police Superannuation Act (RCMPSA)* permitted the buyback LWOP as pensionable service. The Grievor's request was refused on the basis that, pursuant to the *RCMPSA*, time not worked during a part-time schedule was not elective pensionable service. The Grievor filed a grievance. The ERC found that the RCMP's refusal to treat the hours the Grievor did not work during his part-time service as LWOP was consistent with the terms and conditions of the Grievor's employment and applicable authorities. 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 the Respondent's decision to deny the request to treat the hours he did not work during part-time service as though it were a period of LWOP for pension purposes. The Commissioner agreed with the ERC that the applicable authorities do not recognize unworked part-time hours as LWOP hours. Therefore, the Commissioner found that the Respondent's decision is consistent with applicable authorities.

QUICK REFERENCE INDEX

Under Current RCMP Act

Conduct (Discipline) Appeals

Appeal procedure	
– admissibility of new evidence	C-013
Conduct measure appeal	
– mitigating factors – failure to consider	C-010
– parity - appropriateness of the measure(s) imposed on the member	C-006, C-013
Discreditable conduct	
– impaired driving	C-010
– making false statements	C-008
– other	C-006
Duties and responsibilities – failure to perform	
– mishandling of evidence	C-012
– unfit for duty	
– impaired (alcohol)	C-010
– unauthorized outside activities	C-013
Referability of the file to the ERC	C-001, C-002, C-003, C-004, C-005, C-009
Reporting	
– making false statements	C-007, C-008, C-011, C-013
Respect for Law and the Administration of Justice	
– failure to carry out a lawful order	C-013
Sufficiency of reasons	C-010, C-013

Other Appeals (including harassment, stoppage of pay, administrative discharge)

Harassment complaint decision	
– time limit to file a complaint	NC-002, NC-003
Referability of the file to the ERC	NC-004
Stoppage of pay and allowances	
– contravention (found or suspected)	
o federal statute	NC-001
– elements to prove	
o clear involvement	NC-001

Under former RCMP Act (1998 to date)

Disciplinary Matters

Abuse of sick leave	D-060
Adverse drug reaction – causing misconduct	D-070
Agreed Statement of Fact (ASF)	D-098, D-103, D-117
Alcoholism	D-104, D-112, D-125
Amending an RCMP document	D-061
Appeal Procedure – opportunity to make submissions	D-127
Appropriation of goods seized during searches	D-065, D-066
Bar to formal discipline	D-059
Breach of trust and accountability	D-106, D-107, D-122, D-123, D-125
Charter of Rights and Freedoms	
– exclusion of evidence	D-129
CPIC – unauthorized enquiries	D-078, D-100
Criminal acquittal – impact on discipline process	D-101
Data transmission across Internet	D-093
Disclosure of protected information	D-076, D-081, D-092, D-100, D-109
Discrepancy in Board decision – written vs. oral	D-111
Disobeying a lawful order	D-087, D-108

Domestic violence	D-051, D-067, D-072, D-101, D-108
– Battered Woman Syndrome (BWS)	D-110
Driving while impaired	D-062, D-063, D-115, D-129
Drugs	D-106
Duty of loyalty	D-076, D-081
Early Resolution Discipline Process (ERDP)	D-115, D-117, D-120, D-124
Errors of fact and law by Adjudication Board	D-078, D-084, D-085, D-086, D-088, D-089, D-090, D-097, D-103, D-117, D-119, D-125 D-126, D-128, D-130
Excessive force	D-064, D-069, D-083, D-084, D-124, D-131
Expert witness evidence	D-107, D-128
Fairness of hearing	D-074, D-085, D-086, D-126, D-127, D-130
Forgery	D-102
Fraud	D-054, D-107
Harassment	D-091, D-111
– sexual harassment	D-053, D-071, D-074
Hindering an investigation	D-077, D-088, D-118
Improper use of AMEX card	D-120
Inappropriate conduct towards persons under 18	D-056, D-097
Inappropriate use of Mobile Work Stations (MWS)	D-095/D-096
Insubordination	D-114
Joint submission on sanction	D-061, D-126
Medical exam – refusal to undergo	D-087
Neglecting a duty	D-099, D-114
Off-duty conduct	D-073, D-112, D-125
Relationship with a complainant	D-098
Service revolver	
– storage	D-056, D-067
– use	D-063, D-072, D-073, D-080, D-117
Sexual misconduct	
– assault	D-068, D-121, D-125
– inappropriate touching	D-055, D-056
– on duty	D-113, D-118, D-126
– other	D-057, D-058
Statutory limitation period for initialing proceedings	D-052, D-054, D-075, D-082, D-098, D-100, D-105
Stay of proceedings	D-074, D-079, D-091, D-105, D-109
Theft	D-094, D-106, D-128
Uttering a threat	D-067, D-091, D-116
Discharge and Demotion	
Lack of “assistance, guidance and supervision” to remedy performance concerns	R-004
Repeated failure to perform duties	R-003, R-005, R-006
Grievance Matters	
Administrative discharge	
– improper appointment	G-272
– medical discharge	G-223, G-233, G-261, G-266, G-267, G-284-285, G-312, G-434, G-436, G-444, G-501, G-531, G-535, G-603
– Workforce Adjustment Directive (WFAD)	G-415
Bilingualism bonus	G-204, G-207, G-220, G-228, G-231, G-613
Charter of Rights and Freedoms	G-426, G-512
Classification	G-206, G-219, G-279, G-321, G-336, G-343
Complaints on internal investigations	G-491

Disclosure of personal information	G-208, G-209, G-210, G-447, G-448, G-459
Discrimination	
– gender	G-379, G-380, G-412, G-413, G-502, G-546
– mandatory retirement age	G-325, G-445
– marital status	G-546
– pay equity	G-441
– physical disability	G-427, G-477, G-478, G-512, G-614
– race	G-548
– sexual orientation	G-546
Duty to accommodate	G-423, G-513, G-542, G-614
Government housing	G-314, G-346, G-361, G-384
Harassment	G-216, G-235, G-237, G-251, G-253, G-268, G-270, G-287 to G-292, G-293, G-294, G-298, G-302, G-322 and G-323, G-324, G-326, G-347, G-350, G-351, G-352, G-354, G-355, G-356, G-362, G-367, G-377, G-378, G-382, G-397, G-402, G-403, G-405, G-407, G-410.1, G-410.2, G-410.3, G-414, G-416, G-417, G-420, G-424, G-429, G-430, G-431, G-433, G-437, G-438, G-439, G-440, G-453, G-474, G-479, G-482, G-483, G-489, G-493, G-499, G-504, G-506, G-507, G-508, G-510, G-511, G-514, G-515, G-518, G-519, G-520, G-521, G-538, G-539, G-540, G-543, G-551, G-552, G-553, G-554, G-558, G-560, G-570, G-571, G-594, G-595, G-596, G-616, G-628, G-629, G-630, G-631, G-632, G-633
Incomplete file	G-429, G-430
Isolated posts	G-255, G-269, G-365, G-368, G-369, G-384, G-449, G-450, G-451 G-460, G-461, G-462, G-463, G-469, G-470, G-473, G-480, G-484 G-495, G-496, G-497, G-498, G-559, G-561, G-597, G-600, G-606
Job sharing - buy-back pension	G-412, G-413
Language requirements	G-229, G-252, G-271, G-428, G-443, G-452, G-485
Leave without pay	G-414, G-547, G-555, G-624
Legal counsel at public expense	G-234, G-247, G-277, G-282, G-283, G-313, G-316, G-327, G-339, G-340, G-358, G-466, G-467, G-635
Living Accommodation Charges Directive (LACD)	G-214, G-249, G-273, G-361
Meal allowance	
– mid shift meals	G-375, G-572 to G-592, G-593, G-622
– other	G-238, G-265, G-303 to G-310, G-334, G-341, G-371, G-387, G-388, G-389, G-390, G-391, G-393, G-395, G-396, G-421
– short-term relocation	G-250
– travel of less than one day	G-256, G-257, G-258, G-259, G-376, G-408, G-500
– travel status – medical purposes	G-274
Occupational health & safety	G-264
– medical profile	G-516, G-531
Orders of dress	G-502
Overpayment recovery	G-455
Overtime	G-393, G-395, G-396, G-398, G-401, G-432, G-487
Premature grievance	G-275, G-276, G-315, G-317, G-424
Procedural errors	G-431, G-433, G-434, G-436, G-444, G-448, G-568, G-635
Referability of the matter to the ERC	G-213, G-224, G-236, G-241, G-243, G-245, G-264, G-344, G-370, G-399, G-400, G-435, G-456, G-490, G-525, G-526, G-536, G-545, G-564, G-565, G-566, G-567, G-598, G-601, G-602, G-617, G-618, G-619, G-620, G-623, G-625, G-626, G-634

Relocation	
– car rental	G-311, G-523
– depressed housing market	G-281, G-335, G-349
– distance within 40 km of worksite	G-215, G-383
– exceptional circumstances	G-604, G-605
– financial compensation	G-338, G-527, G-537, G-541, G-544, G-611
– Foreign Service Directive (FSD)	G-363, G-386, G-476
– Guaranteed Home Sales Plan (GHSP)	G-218, G-232, G-239, G-240.1, G-240.2, G-242, G-254
– Home Equity Assistance Plan (HEAP)	G-205, G-232, G-242, G-244, G-300, G-415 G-521, G-532
– House Hunting Trip (HHT)	G-212, G-357, G-522
– housing	G-509
– insurance coverage	G-211
– interim accommodation (ILMI)	G-240.1, G-240.2, G-341, G-360, G-364, G-372, G-422
– Integrated Relocation Program (IRP)	G-278, G-281, G-297, G-299, G-337, G-341, G-345 G-349, G-357, G-360, G-383, G-406, G-409, G-505, G-524 G-530, G-544, G-611
– lateral transfer	G-457, G-458
– legal fees	G-218, G-503
– mileage cost of moving vehicle	G-557
– pre-retirement relocation benefits	G-230
– promotional transfer	G-562
– retirement	G-329, G-330, G-331, G-332, G-369, G-373, G-446, G-475, G-608
– storage costs	G-222, G-246, G-505, G-559
– Temporary Dual Residence Assistance (TDRA)	G-263, G-494
– transfer allowance	G-383, G-411, G-442, G-465
– waiver	G-278, G-394, G-454
Self-funded Leave	G-404, G-414
Special Leave	G-466
Standing	G-009, G-032, G-037, G-053, G-059, G-077, G-081, G-098, G-119, G-125, G-149, G-194, G-203, G-211, G-322/323, G-350, G-374, G-376, G-378, G-398, G-405, G-419, G-426, G-436, G-437, G-438, G-439, G-440, G-443, G-444, G-445, G-447, G-459, G-469, G-471, G-483, G-484, G-499, G-520, G-523, G-530, G-531, G-535, G-538, G-539, G-540, G-543, G-560, G-570, G-571, G-603, G-621, G-627
Stoppage of pay and allowances	G-286, G-318, G-319, G-320, G-328, G-342, G-353, G-359 G-418, G-481, G-529, G-549, G-556
Time limits	G-214, G-218, G-221, G-222, G-223, G-228, G-247, G-248, G-250, G-277, G-333, G-337, G-341, G-347, G-348, G-357, G-365, G-366, G-370, G-371, G-372, G-375, G-376, G-392, G-397, G-419, G-420, G-432, G-464, G-465, G-471, G-477, G-486, G-488, G-494, G-517, G-518, G-519, G-520, G-528, G-532, G-533, G-534, G-537, G-546, G-559, G-560, G-562, G-563, G-569, G-607, G-609, G-610, G-613, G-615
Transfers	G-478, G-562
Travel directive	
– accommodations	G-301
– medical	G-486, G-492
– other	G-348, G-366, G-386, G-387, G-388, G-389, G-390 G-391, G-425
– private accommodation allowance	G-393, G-395, G-396, G-496, G-497, G-498, G-533, G-534, G-550, G-563, G-599, G-610
– separate accommodations	G-280
– spousal expenses for medical travel	G-269, G-597
– travel by a SRR	G-217, G-385, G-467, G-468
– TB vs RCMP policies	G-375, G-376
– use of private vehicle	G-225, G-226, G-227, G-260, G-262, G-295, G-296 G-457, G-458, G-468, G-472, G-486, G-611
– vacation	G-449, G-450, G-451, G-460, G-461, G-462, G-463, G-469, G-470, G-473, G-480, G-484, G-561, G-612
– workplace	G-215, G-225, G-226, G-227, G-432, G-464, G-471, G-611