



**IN THIS ISSUE: PAGE**

**ERC Findings and  
Recommendations**

<i>Under Former RCMP Act</i>	
Disciplinary Appeals	1
Grievances	3

**Commissioner of the RCMP  
Final Decisions**

<i>Under Current RCMP Act</i>	
Conduct Appeals	6
Other Appeals	8

<i>Under Former RCMP Act</i>	
Grievances	8

<b>Quick Reference Index</b>	<b>10</b>
------------------------------	-----------

The RCMP External Review Committee (ERC) provides independent impartial reviews of appeals of certain internal RCMP decisions regarding labour and employment matters, pursuant to the *RCMP Act* and the *RCMP Regulations*. Following each case review, the ERC issues findings and recommendations for a final decision to the Commissioner of the RCMP or to the delegated decision-maker within the Force.

The kinds of cases reviewed by the ERC include:

- under the current *RCMP Act* - appeals of harassment investigation decisions, decisions to discharge an RCMP member (e.g. due to disability or unsatisfactory performance), decisions to dismiss an RCMP member or to impose a financial penalty for misconduct, and decisions to suspend a member's pay and allowances when the member has been suspended from duty; and,
- under the former *RCMP Act* (i.e. for cases commenced prior to changes made to the legislation in late 2014) – disciplinary appeals and appeals of initial decisions for a range of grievance matters (e.g. harassment, medical discharge, travel, relocation or isolated post expense claims).

This Communiqué provides summaries of the latest findings and recommendations issued by the ERC, as well as summaries of the final decisions taken within the RCMP for the cases that the ERC has recently reviewed. More information on the ERC and its case reviews can be found on-line at <http://www.erc-cee.gc.ca>

## Findings and Recommendations

Between October and December 2017, the RCMP External Review Committee (ERC) issued the following findings and recommendations:

### Former Legislation Cases:

## D-134 Adjudication Board Decision

The subject member (Respondent) brought home two RCMP service pistols and permitted his eight year-old daughter and seven year-old nephew to handle the unloaded pistols. He also used his RCMP Blackberry to take photographs of 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](mailto:org@erc-cee.gc.ca)  
[www.erc-cee.gc.ca](http://www.erc-cee.gc.ca)

## 2 RCMP External Review Committee

children handling the firearms in various poses. The RCMP discovered the photographs. These events resulted in an allegation that the Respondent had engaged in disgraceful conduct (Allegation), contrary to what was ss. 39(1) of the *Code of Conduct*. An Adjudication Board (Board) held a hearing at which the Appropriate Officer (Appellant) relied exclusively on a brief set of particulars and a short Agreed Statement of Facts. The Appellant made submissions on the broad issues of permitting children to handle firearms and mistreating Force property, while emphasizing that the Board had to look at all the circumstances in making a decision. The Board held that the Allegation was not established. It found that the Respondent's evidence was persuasive, that no authority or rule was violated and that an objective standard of conduct derived from prior relevant decisions was not breached.

**ERC Findings:** The ERC addressed the two arguments made by the Appellant on appeal. First, the Appellant asserted that the only question before the Board should have been whether or not the Respondent's use of RCMP equipment was for employment-related purposes or was otherwise authorized. The ERC disagreed. There was no suggestion in the particulars or in the Agreed Statement of Facts that the focus of the Allegation was whether the Respondent's conduct was work-related or otherwise authorized. The Appellant presented no evidence or authority at the hearing that the Board's assessment of the Allegation should have been limited to this narrow question. In fact, the Appellant did not speak to this question at all during the hearing, focusing instead on much broader issues. The case relied on by the Appellant in support of this argument was not helpful.

Second, the Appellant argued that the Board improperly assessed the information and evidence when applying the test for discreditable conduct. The ERC disagreed. The Appropriate Officer Representative (AOR) did not identify for the Board the disgraceful element(s) of the Respondent's conduct. Absent any evidence to this effect or consistent theory of the case from the AOR and, in light of the Board's decision as a whole, the fact that the Board did not set out the reasonable person test during its analysis of the impugned conduct was neither determinative to its decision nor an error of law. The Board gave

substantive reasons for its decision against an objective standard and clearly relied upon prior cases and the evidence offered by witnesses as establishing an objective norm within and among RCMP members. The Board's analysis accorded with the reference in the reasonable person test to knowledge of policing in general and of the RCMP in particular. A finding that a reasonable person, having reviewed the evidence presented, would not conclude that the Respondent's conduct was disgraceful can reasonably be implied from the Board's decision.

**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*.

## D-135 Adjudication Board Decision

While responding to a complaint about a house party, the subject member (Respondent) and other RCMP members encountered Ms. A, who was intoxicated and belligerent and whose leg was injured. Ms. A was brought to a hospital where she continued to yell and display aggressive behavior for which she was arrested. She then spat at members and continued her aggressive behaviour. As a result, hospital staff asked that Ms. A be removed. The Respondent assisted in transporting and lodging Ms. A in a cell at the detachment. During this time, the Respondent used an expletive to compel Ms. A to exit a police car, dragged Ms. A into a cell when she refused to walk and, once in the cell, placed his knee on Ms. A's back on the floor as she was searched by another member. The Respondent, concerned about Ms. A's spitting at members, held her head down while she was searched. Soon after dealing with Ms. A, the Respondent was briefly involved with a second belligerent prisoner, Ms. B., due to Ms. B's refusal to cooperate with a junior member. The Respondent removed Ms. B's chair and compelled her to sit on the floor. The Respondent's interactions with Ms. A and Ms. B resulted in three allegations (Allegations) of disgraceful conduct pursuant to subsection 39(1) of the *Code of Conduct*, and included the use of offensive language, repeated use of excessive force, failure to perform his duties promptly and diligently, and abuse of authority. An Adjudication Board (Board) held a hearing and found that the Allegations were not

established. The Board took into account the Respondent's criminal acquittals on charges of having assaulted Ms. A and Ms. B, which were based on conclusions that the Respondent's use of force had been reasonable. The Board also undertook its own assessment of the evidence to conclude that the Respondent's actions were reasonable and that the conduct was not disgraceful. The Board recognized the Respondent's subjective assessment of the circumstances at the time which included Ms. A's level of intoxication, her recent spitting on members, her refusal to walk and belligerent attitude. The circumstance also included the Respondent's concern for safety given Ms. B's conduct earlier that night in driving an off-duty member off the road while intoxicated, kicking the arresting member and displaying a belligerent attitude at the detachment.

**ERC Findings:** The ERC addressed the arguments made by the Appropriate Officer (Appellant) on appeal. First, the Appellant asserted that the Board had placed undue emphasis on the Respondent's criminal acquittals. The ERC disagreed. The Board noted the principle, recognized in jurisprudence, which cautions that relitigation of issues can potentially undermine the credibility of the judicial process through inconsistent findings. In addition, the Board reached its own findings of fact regarding the Respondent's use of force and whether it was justified.

The Appellant also argued that the Board had failed to consider evidence and erred in assessing the Respondent's credibility. The ERC disagreed, finding that the Board's decision reflected a detailed and balanced assessment of the evidence provided at the hearing. While the Board did not recite every piece of evidence put before it, its decision contained no material or determinative omissions when reviewed against the evidence presented to the Board. The Board's reasons also showed that it was cognizant of inconsistencies in the Respondent's testimony and of the perceptions of other members who had witnessed the events when it concluded that he was a credible witness. There was no palpable or overriding error in the Board's assessment in this regard.

Finally, the ERC disagreed that the Board had failed to apply the proper test in relation to allegations of disgraceful conduct. The Board had, after setting out facts relevant to each Allegation, applied the correct test of whether

a reasonable person with knowledge of all the relevant circumstances, including the realities of policing in general and those of the RCMP in particular, would be of the opinion that the Respondent's conduct was disgraceful.

**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-647** Legal Assistance at Public Expense

During the period relevant to the grievance, the Grievor worked at a sub-detachment that served one of Canada's major international airports. In 2006, Canada Customs searched a male passenger arriving at this airport and detained the passenger for possession of child pornography contained on CD disks. Canada Customs called the RCMP. The Grievor responded to the call, arrested the passenger and seized 24 CDs as evidence. Child pornography charges were brought against the passenger. After a meeting with a Crown Counsel, the Grievor completed copying and labelling the CDs and sent the copies to the Crown for disclosure to the passenger's defence counsel.

In mid-2006, a co-worker of the Grievor expressed concerns to a supervisor that, in early 2006, he had observed the Grievor downloading to his personal laptop CDs that had been seized in a child pornography case. A criminal investigation into the Grievor's actions was initiated. In early 2007, while the Grievor was on a family vacation, investigators obtained a General Warrant authorizing a covert search of the Grievor's workstation and duty locker at the detachment. The CDs pertaining to the Grievor's investigation of the airport passenger were located in a file folder in his workstation. The search of the Grievor's locker yielded no images of, nor any media that could contain child pornography. However, investigators found some of the Grievor's personal firearms in his locker. Another search warrant was obtained for the Grievor's residence where other firearms were found, as well as RCMP issued items such as gas masks, portable radio, flares and a wire surveillance kit.

The Grievor made a first request for Legal Assistance at Public Expense (LAPE) in

## 4 RCMP External Review Committee

February 2007. He made reference to the statutory investigation into three allegations against him (Possession of Prohibited Device, Possession of Child Pornography, Possession of Property Obtained by Crime). This request was denied. In June 2007, the Crown finally laid six criminal charges against the Grievor: Possession of Stolen Property Under \$5,000, Possession of a Firearm not registered to the Grievor, Possession of a Prohibited Device (30 and 20 cartridge mags), Illegal Storage of a Firearm, Unlawful Transfer of a Firearm and Breach of Trust. The Crown refused to pursue the child pornography charges. The Grievor presented a second LAPE request, the denial of this second request was the subject of this grievance. The Level I Adjudicator denied the grievance. In the interim, after a five day trial, the judge acquitted the Grievor of the charge that proceeded to trial. While the Reasons for Judgment do not expressly state the charge(s) on which the trial proceeded, the judge's reasons as a whole indicate that the firearms and breach of trust charges were withdrawn and that the trial proceeded solely on one count of possession of stolen property.

**ERC Findings:** The ERC found that the Grievor's actions in relation to his handling of the images of child pornography seized from the airport passenger were within the scope of his duties. The same actions underlaid the breach of trust charge. As a result, the ERC found that the Respondent's decision to deny LAPE to the Grievor was, in part, inconsistent with the *TB LAPE Policy* and *RCMP LAPE Policy*. Regarding the charges related to the firearms, the ERC found that the circumstances surrounding these charges were not within the scope of the Grievor's duties or employment with the RCMP. Thus, the ERC found that the Grievor was not entitled to LAPE in relation to these charges. Lastly, regarding the charge of stolen RCMP property, the ERC found that, at the time of making his decision, the Respondent did not have sufficient information to conclude that the Grievor failed to meet the eligibility criteria for LAPE in respect of this charge. Subsequently, the decision in the criminal trial suggested a work-related justification for the Grievor's possession of the RCMP equipment. The ERC found that the Grievor should be given the benefit of the doubt with respect to the facts underlying his possession of RCMP property and whether he acted within the scope of his duties and met the reasonable expectations of the Force. Therefore, the Respondent's denial of

LAPE in respect of legal fees incurred in relation to this charge was inconsistent with the *TB LAPE Policy* and the *RCMP LAPE Policy*.

**ERC Recommendation:** The ERC recommends that the Commissioner allow the grievance in part.

## G-648 Legal Assistance at Public Expense

While he was performing cell block checks, the Grievor observed two female prisoners having a non-violent sexual encounter in a cell. As the cell block was at capacity, there were no other cells available to which the prisoners could be moved. It was alleged that the Grievor viewed the live recording of the sexual activity and failed to stop the encounter. Investigations were held and the Grievor was charged with breach of trust, contrary to section 122 of the *Criminal Code*. The Grievor submitted a request for Legal Assistance at Public Expense (LAPE) for his court appearance and initial consultation with a lawyer. His requests were eventually approved.

The Grievor later sought further LAPE to cover the preliminary inquiry phase. The Respondent refused the Grievor's request and terminated his previously approved LAPE, concluding that he had not acted in good faith or in the interests of the Crown, two of the three eligibility criteria for LAPE set forth in *Treasury Board LAPE Policy (TB LAPE Policy)*. The Respondent explained that the Grievor ought to have known that the sexual encounter required his intervention, especially in light of the serious risks that were inherent in the encounter and of the dangers of not intervening. The Grievor filed a grievance in which he grieved the Respondent's decision to deny his request for LAPE for the preliminary inquiry phase and terminate his previously approved LAPE. After the grievance was denied on its merits at Level I, the Grievor submitted the case at Level II.

**ERC Findings:** The ERC found that the Respondent's decision to refuse the Grievor's request for LAPE for the preliminary inquiry phase was inconsistent with the *TB LAPE Policy*. There was no evidence in the record that the Respondent considered the presumption of eligibility for LAPE required by the *TB LAPE Policy* when analyzing the Grievor's request. Moreover, neither the documentation before

the Respondent when he made his decision nor the evidence in the record as a whole provided a substantive basis for a conclusion that the Grievor failed to meet the eligibility criteria for LAPE set forth in the TB LAPE Policy which would have rebutted the presumption.

The ERC further found that the Respondent's termination of the Grievor's previously approved LAPE was inconsistent with the TB LAPE Policy. The onus was on the Respondent to identify information that would permit the termination of LAPE in accordance the TB LAPE Policy. Yet neither the Respondent's decision nor the record contained information which became available after the approval of the Grievor's LAPE that would make it clear that the Grievor did not satisfy the basic eligibility criteria. The Respondent did not assert that the initial approval of LAPE was improper nor did he explain why it became clear the Grievor no longer met the eligibility criteria.

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

## G-649 Legal Assistance at Public Expense

Following a physical struggle, the Grievor and a second RCMP member arrested a complainant, in part for resisting arrest and assaulting a police officer. During the ride to the detachment, the complainant purposely banged his head against the Plexiglas divider. The complainant suffered facial injuries which he alleged were attributable to the officers assaulting him. The Grievor was investigated, charged with assault and brought to trial. He asked for "Legal Assistance at Public Expense" (LAPE) on three occasions and the Force approved each request. At trial, he testified that he did not assault the complainant, whose wounds he asserted were self-inflicted. The trial judge believed the complainant was more credible than the Grievor and found the Grievor guilty.

The Grievor appealed the conviction, contending that the findings of fact and credibility made by the trial judge were wrong in law and that the trial judge had also erred in his assessment of the evidence. The Grievor requested further LAPE for the appeal stage. His request was denied by the Respondent, who stated that the Grievor had not acted in

good faith or in the interests of the Crown, two of the three eligibility criteria for LAPE set forth in the Treasury Board's LAPE Policy (TB LAPE Policy). The Respondent provided no further explanation for his decision. The Court of Appeal later ordered a new hearing, finding in part that the trial judge had based his credibility findings on unreliable evidence and had possibly erred in his application of the burden of proof.

The Grievor filed a grievance contesting the denial of his request for LAPE for the appeal phase. After the grievance was denied on its merits at Level I, the Grievor filed the grievance at Level II.

**ERC Findings:** The ERC found that the Respondent's denial of the Grievor's request for appeal phase LAPE violated the Grievor's right to procedural fairness and was inconsistent with the TB LAPE Policy. The Respondent's decision provided no reasons and simply consisted of a refusal of the Grievor's request and a brief reference to the TB LAPE Policy. There was no assessment of the presumption of eligibility mandated by the Policy and no explanation of the basis on which LAPE eligibility criteria was not met. In his submission, the Respondent stated that he based his decision on the trial judge's findings. Although the judgment of a trial judge or the findings made as part of such a judgment could be relevant and appropriate to the assessment of a request for appeal LAPE in some instances, this was not one of them as the findings of the trial judge relied upon by the Respondent in this matter were the precise findings being contested by the Grievor.

In addition, given the above-noted deficiencies with the Respondent's decision and, in light of the concerns raised by the Court of Appeal in its decision, the ERC found that the Grievor's request for LAPE for the appeal phase should be reconsidered and approved pursuant to the TB LAPE Policy.

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

## G-650 Legal Assistance at Public Expense

Following a physical struggle, the Grievor and a second RCMP member arrested a complainant, in part for resisting arrest and assaulting a police officer. During the ride to the detachment, the complainant purposely banged his head against the Plexiglas divider. The complainant suffered facial injuries which he alleged were attributable to the officers assaulting him. The Grievor was investigated, charged with assault and brought to trial. He asked for “Legal Assistance at Public Expense” (LAPE) on three occasions and the Force approved each request. At trial, he testified that he did not assault the complainant, whose wounds he asserted were self-inflicted. The trial judge believed the complainant was more credible than the Grievor and found the Grievor guilty.

The Grievor appealed the conviction, contending that the findings of fact and credibility made by the trial judge were wrong in law and that the trial judge had also erred in his assessment of the evidence. The Grievor requested further LAPE for the appeal stage. His request was denied by the Respondent, who stated that the Grievor had not acted in good faith or in the interests of the Crown, two of the three eligibility criteria for LAPE set forth in the Treasury Board’s LAPE Policy (TB LAPE Policy). The Respondent provided no further explanation for his decision. The Court of Appeal later ordered a new hearing, finding in part that the trial judge had based his credibility findings on unreliable evidence and had possibly erred in his application of the burden of proof.

The Grievor filed a grievance contesting the denial of his request for LAPE for the appeal phase. After the grievance was denied on its merits at Level I, the Grievor filed the grievance at Level II.

**ERC Findings:** The ERC found that the Respondent’s denial of the Grievor’s request for appeal phase LAPE violated the Grievor’s right to procedural fairness and was inconsistent with the TB LAPE Policy. The Respondent’s decision provided no reasons and simply consisted of a refusal of the Grievor’s request and a brief reference to the TB LAPE Policy. There was no assessment of the presumption of eligibility mandated by the Policy and no explanation of

the basis on which LAPE eligibility criteria was not met. In his submission, the Respondent stated that he based his decision on the trial judge’s findings. Although the judgment of a trial judge or the findings made as part of such a judgment could be relevant and appropriate to the assessment of a request for appeal LAPE in some instances, this was not one of them as the findings of the trial judge relied upon by the Respondent in this matter were the precise findings being contested by the Grievor. In other words, in this case, the reason for the request for LAPE and the basis for its denial are indistinguishable.

In addition, given the above-noted deficiencies with the Respondent’s decision and, in light of the concerns raised by the Court of Appeal in its decision, the ERC found that the Grievor’s request for LAPE for the appeal phase should be reconsidered and approved pursuant to the TB LAPE Policy.

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

## Commissioner of the RCMP’s 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-016 Conduct Authority Decision

(summarized in the April – September 2017 Communiqué) The Conduct Authority found that the Appellant had assaulted his ex-spouse, had tried to influence the testimony of his older daughter and had used an RCMP cellular telephone for inappropriate personal purposes. The Appellant appealed the Conduct Authority’s decision. The ERC found that the Respondent had not made a manifest and determinative error in assessing the evidence regarding the allegation of assault. The ERC also declared that the Respondent’s finding that there had been excessive use of the

cellular telephone provided by the RCMP was reasonable and that this ground of appeal was unfounded. As for the allegation concerning the inappropriate communications between the Appellant and his daughter, the ERC found that the Respondent had not made a manifest and determinative error. The Respondent explained his reasoning and the evidence that had allowed him to make his finding. The ERC recommended that the appeal be dismissed.

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

*The Appellant appealed the decision of the Respondent finding that three allegations made against him had been established. These three allegations stemmed from an assault complaint filed by the Appellant's ex-spouse following an incident at their family home, and concerned one contravention of section 4.6 and two contraventions of section 7.1 of the RCMP Code of Conduct, namely, having acted or behaved in a manner that brought discredit to the RCMP and having used government-issued equipment and property for unauthorized purposes.*

*The Appellant raised two grounds of appeal regarding certain findings of fact and findings of mixed fact and law. The Appellant argued that the Respondent had erred in assessing the evidence and in interpreting and applying the standards of conduct set out in the Code of Conduct.*

*The Commissioner agreed with the findings and recommendations of the ERC. The Appellant did not satisfy the Appeal Adjudicator that the Respondent made a manifest and determinative error. The appeal is dismissed.*

## C-017 Conduct Board Decision

*(summarized in the April – September 2017 Communiqué) The Respondent was criminally charged with forgery and uttering a forged document. He pled guilty to the charge of forgery and received a conditional discharge, four months' probation, an order to make a \$1,000 charitable contribution (which was made) and a direction to continue psychological counselling. The Appellant sought the Respondent's dismissal from the RCMP. A Conduct Board was convened under the new RCMP Act. The Board was of the view that,*

*under the circumstances, dismissal was unduly harsh. It imposed an aggregate forfeiture of 60 days of the Respondent's pay and other conduct measures. The Appellant appealed the conduct measures and requests that the Respondent be dismissed. The ERC recommended that the Commissioner dismiss the appeal and confirm the conduct measures imposed by the Board.*

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

*The Commanding Officer, "J" Division, Conduct Authority (Appellant) presented an appeal challenging the conduct measures imposed by an RCMP conduct board following its finding that four allegations of discreditable conduct and inaccurate accounts were established against (The Respondent). These allegations stem from the Respondent's forging of an email exchange between himself and a local Crown prosecutor in relation to a file involving an impaired driving charge. The conduct board imposed four reprimands, a direction for the Respondent to undergo medical treatment in the form of psychological services, and a total pay forfeiture of 60 days. The Appellant presented 10 grounds of appeal raising findings made by the conduct board that were clearly unreasonable as well as a breach of procedural fairness.*

*Finding no manifest or determinative error in the conduct board's decision, the ERC recommended the dismissal of the appeal.*

*The Adjudicator accepted the ERC recommendation but disagreed with the assertion by the ERC that the nature of the role of conduct boards in the current conduct process does not differ materially from the former discipline regime. The Adjudicator held that the Appellant did not establish that the conduct board made any reviewable errors. The Adjudicator denied the appeal and confirmed the conduct measures imposed by the conduct board.*

## **NC-007** Medical Discharge

*(summarized in the April–September 2017 Communiqué)* The Appellant was served with a Notice of Intent to Discharge (NOI) on the basis of having a disability. The Appellant sent the Respondent an email (Appellant's Email) requesting a meeting with the Respondent, to which were attached various documents which, the Appellant believed, included his response to the NOI (NOI submissions). However, owing to a technological issue, the NOI submissions were not delivered via the Appellant's Email. Neither the Appellant nor the Respondent realized, at that time, that the NOI submissions were missing. The Respondent denied the Appellant's request for a meeting. Subsequently, on the basis of the material before him and the attachments to the Appellant's Email which had been transmitted, the Respondent issued an Order to Discharge the Appellant, with reasons attached to that order. The Appellant appealed the Respondent's decision. The ERC recommended to the Commissioner of the RCMP that he allow the appeal and remit the matter, with directions for rendering a new decision, to the Respondent or to another decision maker.

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

*The Appellant is appealing the Respondent's decision to discharge him from the RCMP by reason of having a disability as defined in the Canadian Human Rights Act. The ERC determined that the Appellant's written submissions in response to the Notice of Intent to Discharge were not attached to the email received by the Respondent due to a technical error and inadvertence. The ERC found that the Appellant's sole participatory right in the discharge proceedings was denied and, as a result, recommended that the appeal be allowed and the matter returned, with directions for rendering a new decision, to the Respondent or to another decision maker.*

*The Level II Adjudicator agreed with the ERC that a breach of procedural fairness occurred. The appeal was allowed.*

## Former Legislation Cases:

### **G-644** Isolated Posts

*(summarized in the April – September 2017 Communiqué)* In mid-2009, the Grievor was transferred from a non-isolated post to an isolated post. The Grievor was informed that he was not entitled to a Vacation Travel Assistance (VTA) payment for fiscal year 2009-10 as he had not been at the isolated post for one year. In the spring of 2010, the Grievor learned through a colleague that eligibility for a VTA payment did not require that he be at the isolated post for one year, only three months. The Grievor claimed two VTA payments in May 2010: a VTA payment for fiscal year 2009-10 and a VTA payment for fiscal year 2010-11. His VTA claim for fiscal year 2009-10 was denied by the Respondent. The Grievor grieved this decision. The ERC found that it was the Grievor's responsibility to be familiar with policies applicable to his situation. The ERC recommended that the grievance be denied.

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

*The Grievor challenged the Force's denial of a Vacation Travel Allowance (VTA). The Grievor was transferred from a non-isolated post to an isolated post in July 2009. He was informed that his new posting entitled him to a VTA once per fiscal year. A senior NCO mistakenly informed him that he had to serve at the isolated post for a year before claiming the VTA. Consequently, he did not claim a VTA for fiscal year 2009-2010. The Grievor later learned he was eligible for the VTA after only three months of service in his posting. In May 2010, the Grievor submitted a claim for VTA for fiscal year 2010-2011 as well as 2009-2010. The claim for 2009-2010 was denied. He filed a grievance.*

*The Level I decision denied the grievance on the merits.*

*The Commissioner accepted the ERC's recommendations and denied the grievance on the basis that policy requires a claim for VTA to be filed within the corresponding fiscal year.*



## G-645 Relocation / Time Limits

*(summarized in the April – September 2017 Communiqué)* The Grievor retired from the Force and relocated to a different province. On August 16, 2012, the Grievor received an email from the Relocation Reviewer indicating that the Grievor must pay storage costs incurred during the move. The Grievor made informal attempts to have that decision overturned through October 2012. On October 10, 2012, the Grievor grieved the decision that he was to pay a relocation storage expense. The Respondent questioned whether the grievance was timely, following which the parties made submissions. The ERC recommended to the Commissioner of the RCMP that he deny the grievance on the basis that it was not presented at Level I within the 30 day time limit set forth in paragraph 31(2)(a) of the *RCMP Act*.

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

*The Grievor challenged the Force's decision that he was to pay a relocation storage charge. The Grievor retired from the Force and relocated to a different province. He arrived at his new home on June 8, 2012, and his effects were delivered on June 11, 2012. He was later advised that the moving truck had arrived in the Grievor's new locale on June 8, 2012 and stored his effects in the moving van until June 11, 2012 at a cost to be paid by the Grievor. The Relocation Policy Centre advised the Grievor on August 16, 2012 that he was responsible for the storage costs. He attempted informal resolution discussions before filing a grievance on October 10, 2012.*

*The Respondent raised the issue of time limits. A preliminary Level I decision denied the grievance on timeliness.*

*The Commissioner accepted the ERC's recommendations and denied the grievance on the basis that it was presented outside the statutory limitation period.*

## QUICK REFERENCE INDEX

### Under Current RCMP Act

<b>Conduct (Discipline) Appeals</b>	
Appeal procedure	
- admissibility of new evidence	C-013
Conduct measure appeal	
- dismissal sought	C-017
- mitigating factors – failure to consider	C-010
- parity - appropriateness of the measure(s) imposed on the member	C-006, C-013
Discreditable conduct	
- domestic violence	C-014, C-016
- impaired driving	C-010
- making false statements	C-008
- other	C-006
Duties and responsibilities – failure to perform	
- failure to remain on duty	C-015
- 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, C-018
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
<b>Other Appeals (including harassment, stoppage of pay, administrative discharge)</b>	
Discharge	
- disability	NC-007
- procedural fairness	
o right to be heard – consideration of member’s submission	NC-007
Harassment complaint decision	
- time limit to file a complaint	NC-002, NC-003
Referability of the file to the ERC	NC-004, NC-006, NC-008
Stoppage of pay and allowances	
- contravention (found or suspected)	
o federal statute	NC-001
- elements to prove	
o clear involvement	NC-001
- procedural fairness	
o duty to disclose and consider evidence	NC-005
<b>Under former RCMP Act</b>	
<b>Disciplinary Matters</b>	
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, D-135
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 - Battered Woman Syndrome (BWS)	D-051, D-067, D-072, D-101, D-108 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, D-135
Expert witness evidence	D-107, D-128
Fairness of hearing	D-074, D-085, D-086, D-126, D-127, D-130
False statements to a supervisor	D-132
Forgery	D-102
Fraud	D-054, D-107
Harassment - sexual harassment	D-091, D-111 D-053, D-071, D-074
Hindering an investigation	D-077, D-088, D-118
Improper use of AMEX card	D-120, D-133
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 - use	D-056, D-067 D-063, D-072, D-073, D-080, D-117, D-134
Sexual misconduct - assault - inappropriate touching - on duty - other	D-068, D-121, D-125 D-055, D-056 D-113, D-118, D-126 D-057, D-058
Statutory limitation period for initialing proceedings	D-052, D-054, D-075, D-082, D-098, D-100, D-105

## 12 RCMP External Review Committee

Stay of proceedings	D-074, D-079, D-091, D-105, D-109
Theft	D-094, D-106, D-128, D-133
Uttering a threat	D-067, D-091, D-116
<b>Discharge and Demotion</b>	
Lack of "assistance, guidance and supervision" to remedy performance concerns	R-004
Repeated failure to perform duties	R-003, R-005, R-006
<b>Grievance Matters</b>	
Administrative discharge	G-272
- improper appointment	G-223, G-233, G-261, G-266, G-267, G-284-285,
- medical discharge	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, G-641, G-646
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 G-640, G-644
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, G-647, G-648, G-649, G-650
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, G-637, G-638, G-639, G-642
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, G-643
- 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, G-643
- 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, G-645
- 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

## 14 RCMP External Review Committee

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, G-645
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



