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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/index-en.aspx>.

## Message from the Interim Chairperson.

On February 26, 2018, Elizabeth M. Walker was appointed to the bench of the Federal Court of Canada directly from her position as the Chair of the ERC. She joined the ERC in October 2014, completed her three-year term and remained in the role pending a process to select the subsequent Chair.

On June 18, 2018, I was appointed in the interim for a one-year term. In the past, I served as Interim Chair of the ERC from August 2013 until August 2014, following my employment as Executive Director and Senior Counsel to the ERC since September 2008. I presently serve during a leave of absence from my position as Deputy Ombudsperson for British Columbia.

I extend congratulations to Madam Justice Walker on behalf of myself and the staff of the ERC, who are honoured to have worked with her to contribute new precedent which clearly demonstrates her commitment to excellence in administrative law.

David Paradiso  
Interim Chairperson



## Findings and Recommendations

**Between January and March 2018, the RCMP External Review Committee (ERC) issued the following findings and recommendations:**

### Current Legislation Cases:

## **C-019** Conduct Authority Decision / Time Limits

The Appellant was scheduled to attend four traffic court trials in June 2015. He received court notices for the four files but failed to attend court. A performance log (Form 1004) was issued to the Appellant in July 2015. The performance log stated that the Appellant indicated he had forgotten to attend court. The serious nature of missing trials, including traffic court trials, was brought to the Appellant's attention. In September 2015, the Appellant again failed to appear in court for three scheduled traffic court trials. The Appellant had been advised of his obligation by email by his line officer and by the Watch Clerk. In a narrative text filed a month later, the Appellant indicated that he had missed traffic court in September as he had worked the night shift until 6:00 a.m. and did not recall the traffic court scheduled for 9:30 a.m.

One allegation was brought against the Appellant under section 4.2 of the *Code of Conduct* (diligence in the performance of member's duties). A conduct meeting was held at which the Appellant made submissions. The Respondent found that the allegation was established and imposed a forfeiture of two days' pay. The Appellant received the decision on January 18, 2016 and appealed the finding that the allegation was established. He did not appeal the conduct measure.

**ERC Findings:** Upon review of the case file, the ERC noted that the Appellant filed his appeal one day outside the statutory time limit of fourteen (14) days. On two separate occasions, the ERC requested the Appellant's submissions explaining the delay. The Appellant did not provide submissions. The ERC found that the Appellant had filed his appeal outside the statutory time limit. It further found that, absent an explanation from the Appellant, there were no exceptional circumstances in this case which would warrant an extension of time pursuant to subsection 29(e) of the CSOs (*Grievances and Appeals*).

**ERC Recommendations:** The ERC recommends that the Commissioner deny the appeal.

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

*The Appellant was scheduled to attend four traffic court trials in June 2015, and – despite receiving court notices – forgot to attend court. A performance log – form 1004 – was issued to the Appellant in July 2015. The serious nature of missing trials, including traffic court trials, was brought to the Appellant's attention.*

*In September 2015, the Appellant was scheduled to appear in court for three traffic court trials. Again he failed to appear despite reminders of his scheduled court appearances from both his Watch Commander and the Watch Clerk. On October 21, 2015, the Appellant completed a narrative text explaining he had missed traffic court in September 2015 as he had worked the night shift until 6:00 a.m. and forgot to attend traffic court scheduled for 9:30 a.m.*

*On October 30, 2015, the Appellant's Watch Commander informed the Respondent of the Appellant's missed court dates and provided*

him with the supporting materials and documentation. The Respondent reviewed the information provided to him and determined that – on a prima facie basis – there was enough evidence to justify a Conduct Meeting to examine whether the Appellant had:

*Allegation 1: failed to attend a scheduled traffic court date despite being properly notified, contrary to section 4.2 of the Code of Conduct.*

After hearing the Appellant's submissions during a Conduct Meeting on January 14, 2016, the Respondent found that the allegation was established. The Respondent imposed a conduct measure of a forfeiture of two days pay. Only the Respondent's finding was appealed.

The Royal Canadian Mounted Police External Review Committee (ERC) reviewed this appeal pursuant to s 45.15 of the RCMP Act. The ERC recommended that the appeal be dismissed as it was not filed within the 14-day limitation period pursuant to s 22 of the CSO (Grievances and Appeals).

The Conduct Appeal Adjudicator followed the ERC's recommendation. The Conduct Appeal Adjudicator considered granting an extension to the limitation period pursuant to his delegated authority under s 29(e) of the CSO (Grievances and Appeals). While given the opportunity by the ERC – on two separate occasions – to provide a submission on timeliness, the Appellant failed to provide any rationale or explanation for why his appeal was filed outside of the limitation period. The Conduct Appeal Adjudicator found that there were no exceptional circumstances warranting an extension. The appeal was dismissed.

## **C-020** Conduct Authority Decision / Referability

A Code of Conduct investigation was requested by way of a Mandate Letter into one allegation (Allegation) that the

Appellant conducted herself in a manner that was likely to bring discredit to the RCMP, contrary to section 7.1 of the Code of Conduct. A Conduct Meeting was convened. The Respondent subsequently decided that the Allegation was established and imposed on the Appellant one conduct measure consisting of a forfeiture of 80 hours of annual leave (Decision).

The Appellant appealed the Decision.

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

The ERC considered whether the imposition of a forfeiture of annual leave for a period of 80 hours made the appeal referable pursuant to paragraph 45.15(1)(a) of the *Act*, which refers to "a financial penalty of more than one day of the member's pay". The ERC determined that paragraph 45.15(1)(a) does not include a forfeiture of annual leave. There are multiple conduct measures the imposition of which would have a financial impact on a member but which are not a financial penalty of, or deducted from, a member's pay. Sections 4 to 5 of the *Commissioner's Standing Orders (Conduct)* set forth the various conduct measures certain conduct authorities may impose. In both sections, a clear distinction is drawn between a financial penalty deducted from a member's pay and other conduct measures that have or may have financial impacts on the member. Such other conduct measures include ineligibility for promotion,

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

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

## **NC-009** Harassment

The Appellant lodged a Harassment Complaint alleging that a colleague (Alleged Harasser) had belittled, threatened and otherwise victimized him at a meeting with a representative of a partner agency and during conversations in the presence of other members. Following an investigation, the Respondent concluded that the Harassment Complaint was not established (Decision). The Appellant furnished a timely appeal of the Decision. He argues that the Respondent erred in his evaluation of the harassment allegations individually, in finding that one alleged incident was not sufficiently severe to amount to harassment by itself and in relying upon the intention of the Alleged Harasser during one impugned meeting. Additionally, the Appellant raises an issue of procedural fairness, urging that notes taken by his superior were disclosed after the Decision was issued but ought to have been before the Respondent during the decision-making process.

**ERC Findings:** The ERC found that the absence of the Appellant's supervisor's notes from the materials before the Respondent did not result in procedural unfairness to the Appellant, as the issues raised in the notes had been raised in other evidence before the Respondent. The ERC nevertheless concluded that the notes should be admitted and considered by the Adjudicator in addressing this appeal.

The ERC found that the Respondent did not err in his evaluation of the allegations of harassment. Rather, the Respondent considered each allegation separately (a necessary step in assessing a harassment complaint). He also understood and met the requirement that he consider all of the incidents of alleged harassment as a whole. The Respondent also did not err in his evaluation of certain evidence, given that his assessment of that evidence gave rise to no manifest and determinative error. Additionally, the Respondent did not err by finding that one alleged incident was insufficiently severe to constitute harassment by itself. A single incident will be viewed as harassment only in rare circumstances where it is serious and has a long-lasting effect. Such an incident cannot be a mere instance of workplace animosity or conflict, without more. Otherwise, any unpleasant event or dispute may be found to be harassment, a conclusion that would trivialize the harassment complaint process.

However, the ERC found that the Respondent erred by focussing on the intention of the Alleged Harasser when concluding that the Alleged Harasser's actions at a meeting did not amount to harassment. The test to be applied when deciding if harassment occurred requires a review of an alleged harasser's actions from the perspective of a reasonable person who places himself/herself in the complainant's situation, not from the perspective of the alleged harasser. The ERC emphasized that

it was not making a finding of harassment. Rather, it found that the Respondent erred in applying the correct legal test and analysis to the evidence before him.

**ERC Recommendations:** The ERC recommended to the Adjudicator that he or she allow the appeal and remit the matter to the Respondent or to a new decision-maker with specified directions for a new decision.

## NC-010 Harassment

The Appellant filed a Harassment Complaint alleging that his supervisor (Alleged Harasser) had failed to adequately shield him from a peer with whom he had experienced conflict, insensitively questioned why he was not over the conflict, tried to undermine his position in another complaint process and generally fostered a disrespectful working environment. Following an investigation, the Respondent concluded that the Harassment Complaint was not established (Decision). The Appellant furnished a timely appeal of the Decision. He argued that the Respondent erred in his evaluation of harassment allegations and certain evidence, erred in considering the supervisory responsibilities of the Alleged Harasser to justify the Alleged Harasser's actions and violated the Appellant's right to procedural fairness by referencing in the Decision a report that had not been disclosed to the Appellant.

**ERC Findings:** The ERC disagreed with the Appellant's positions on appeal. The Respondent did not err in his assessment of the harassment allegations. Although the Respondent failed to consider the allegations on a holistic or cumulative basis, this is not an error in cases, like the present one, where it is reasonably determined that the conduct set forth in each allegation was neither inappropriate nor offensive. The Respondent also did not err in his evaluation of certain evidence. A number

of the findings the Appellant challenged in this regard were ancillary to the conclusions on the Allegations or misapprehended by the Appellant and none of them gave rise to a manifest and determinative error. Furthermore, the Respondent did not err by considering the supervisory obligations of the Alleged Harasser as part of an assessment of the allegations. The interactions which underpinned the Allegations derived directly from the Alleged Harasser's position as the detachment commander and the Respondent was within his rights, pursuant to the RCMP Harassment Policy, to assess those interactions in the context of the Alleged Harasser's managerial responsibilities. Moreover, while the Respondent should not have referenced in the Decision a report that was never disclosed to the Appellant, the report was discussed only in an ancillary segment of the Decision and clearly was not relied on by the Respondent in making his findings and conclusions about the Allegations. A reconsideration of the Harassment Complaint that ignored the existence of the report would not have resulted in a different set of conclusions.

**ERC Recommendations:** The ERC recommended to the Adjudicator that he or she dismiss the appeal and confirm the decision of the Respondent.

## NC-011 Harassment / Time Limits

The Appellant filed a harassment complaint (Complaint) against a superior. Following a harassment investigation, the Respondent found that the Complaint was not established (Decision). The Appellant was served with the Decision on February 19, 2016. On March 18, 2016, the Appellant forwarded a Grievance Form to the Office for the Coordination of Grievances and Appeals (OCGA) on which he alleged that the Decision was inconsistent with Force policy governing the investigation

and resolution of harassment complaints and requested that a new investigation be conducted. The OCGA acknowledged receipt of the Grievance Form and, some months later on June 15, 2016, informed the Appellant that the correct recourse for contesting the Decision was through the presentation of an appeal. On July 4, 2016, the Appellant filed his Statement of Appeal with the OCGA, relying principally on the same grounds that had been set out on his Grievance Form.

The OCGA then informed the Appellant it was raising a “*preliminary issue of statutory time limits*”, and drew the Appellant’s attention to section 38 of the CSOs (*Grievances and Appeals*) which requires that an appeal of a decision in a harassment complaint be filed within 14 days after the date upon which the decision is received by the member in question. The OCGA twice invited the Appellant to provide a submission on whether that time limit had been met. No response was received.

The OCGA invited the Respondent to provide a submission regarding whether the Appellant had met the 14 day time limit to present his appeal. The Respondent took the position that the Appellant had failed to meet the prescribed time limit. The Respondent acknowledged that the CSOs (*Grievances and Appeals*) contemplate a power to extend the 14 day time limit in exceptional circumstances. However, no request had been received from the Appellant in that regard. The OCGA provided the Appellant with an opportunity to address the Respondent’s submission, but no reply was received. The Appellant also failed to provide a submission on the merits of his Appeal.

**ERC Findings:** The ERC noted that, had the Appellant presented his Grievance Form within the required 14 day time limit, the appeal would have been filed within the

statutory time limit notwithstanding a defect in form. However, as the Appellant failed to submit the appeal in any form within the 14 day time limit, the appeal had been presented outside the statutory time limit set forth in section 38 of the CSOs (*Grievances and Appeals*). Although the Appellant had not requested an extension of time, the ERC considered whether there were, pursuant to subsection 43(d) of the CSOs (*Grievances and Appeals*), exceptional circumstances warranting a recommendation to the Adjudicator that he or she retroactively extend the 14 day time limit. The ERC found that the absence of any explanation regarding the failure to meet the 14 day time limit was a significant factor in this case. The OCGA had provided the Appellant with two opportunities to address the missed time limit and had invited a reply to the Respondent’s argument that no extension was warranted. Absent any explanation from the Appellant, there were no exceptional circumstances in this case which would warrant an extension of time pursuant to subsection 43(d) of the CSOs (*Grievances and Appeals*).

**ERC Recommendation:** The ERC recommends that the Commissioner deny the appeal.

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

*The Appellant challenged the completeness of the investigation leading to the Respondent’s decision that the complaint of harassment was not established. The Appellant was served the Record of Decision on February 19, 2016, and presented his appeal March 18, 2016. The Office for the Coordination of Grievances and Appeals (OCGA) raised the issue of time limitation and sought submissions from the Parties.*

*The Appeal Adjudicator accepted the RCMP External Review Committee’s recommendation and dismissed the appeal*

on the basis that it was presented outside the statutory limitation period prescribed by section 38 of the Commissioner's Standing Orders (Grievances and Appeals). In addition, the Appeal Adjudicator supported the ancillary recommendation and directed the OCGA to amend its form letter regarding requests for submissions on the preliminary issue of time limitation.

## NC-012 Harassment / Referability

The Appellant was the subject of a harassment complaint (Original Complaint) by a Public Service Employee in August of 2015. Superintendent A (Supt. A) was a witness in the Original Complaint. In his rebuttal to the preliminary Investigation Report in respect of the Original Complaint, the Appellant questioned the actions and perceptions of Supt. A.

On August 8, 2016, the Appellant wrote a letter to the Respondent (August 2016 Letter) in which he raised general concerns regarding Supt. A. He also detailed a specific concern that the complainant in the Original Complaint may have been misled by Supt. A. The Appellant was vague as to how he wished the Respondent to proceed in light of this information. It appears that he did not want the substance of the August 2016 Letter to be added to a separate harassment complaint the Appellant had lodged against Supt. A. Rather, the Appellant was bringing Supt. A's conduct to the Respondent's attention in the latter's capacity as Commanding Officer of the Division "with the intent and spirit of doing the right thing". On December 28, 2016, the Respondent rendered a decision in relation to the Original Complaint, and in separate proceedings the Appellant appealed that decision.

On January 5, 2017, the Respondent responded to the August 2016 Letter (Respondent's Letter). The Respondent indicated that he had considered the Appellant's concerns regarding

Supt. A in his deliberations regarding the Original Complaint. The Respondent further stated that the Appellant's appeal of the Respondent's December 28, 2016 Decision regarding the Original Complaint was the most suitable process to address the Appellant's concerns. On January 12, 2017, the Appellant filed a Statement of Appeal with the Office for the Coordination of Grievances and Appeals (OCGA). He identified the Respondent's Letter as the subject-matter of this appeal. The appeal was referred to the ERC.

**ERC Findings:** At issue was whether the ERC possessed the legal authority to review the appeal. The ERC examined whether subsection 17(a) of the *RCMP Regulations*, pursuant to which appeals of two types of harassment-related decisions are referable to the ERC, was applicable in this case. The first type of appeal referable pursuant to subsection 17(a) is the appeal of a decision regarding the timeliness of a harassment complaint. No such decision had been made in this case.

The second type of referable appeal identified in subsection 17(a) is the appeal of a written decision referred to in paragraph 6(2)(b) of the *CSOs (Harassment)* regarding whether the respondent to a harassment complaint has contravened the *Code of Conduct*. The ERC observed that such a decision relates to a "complaint" as that term is used in the context of the *CSOs (Harassment)* and that both the complaint and decision referred to in paragraph 6(2)(b) are part of the Force's harassment complaint investigation and resolution process. The ERC found that the Appellant's August 2016 Letter could not be characterized as a harassment complaint which triggered the process leading to a decision identified in paragraph 6(2)(b) of the *CSOs (Harassment)*. The Appellant, who was clearly familiar with the Force's harassment complaint process, had made no request in the August 2016 Letter for a harassment investigation to be commenced and had, in fact, distinguished the issues he was raising from the harassment

process. Further, the Appellant's expectation that the Respondent as a Commanding Officer would discuss the matter directly with Supt. A differed markedly from the process which would take place within the Force's harassment complaint investigation and resolution process.

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

### NC-013 Harassment / Time Limits

Soon after beginning a new posting in a small rural community, the Appellant underwent surgery for a shoulder injury she sustained while on-duty. Despite efforts at rehabilitation, she continued to suffer significant pain that required different accommodations. One accommodation involved her driving a police vehicle to and from an urban centre to see a pain management specialist, as there was no such specialist at her post. She found those drives to be excruciating. Her mental health declined as she dealt with the challenges of her physical pain and uncertain work status.

The Appellant was working towards a 40 hour per week schedule at which point she understood from her medical profile that she would be accommodated via a transfer to an urban centre. On the advice of an official, the Appellant contacted a Career Development and Resourcing Advisor (Alleged Harasser) regarding a transfer to an urban locale. She did not like the way the Alleged Harasser treated her during their initial phone call or at a later, face-to-face meeting. Ultimately, the Appellant was relocated to a city in another province by way of a separate RCMP process.

The Appellant filed a harassment complaint against the Alleged Harasser, which was

denied by the Respondent following an investigation (Decision). The Appellant appealed the Decision 26 days after receiving it. She conceded that the appeal was late but asked that it be looked at, in any event. She asserted that she should have been better versed in policy, that she had asked questions about the Decision but was told it concluded a process, that her health made it hard for her to deal with the harassment complaint / appeals process and that she wanted the same courtesy the RCMP received when it gave her late updates during the harassment investigation.

**ERC Findings:** The ERC agreed that the appeal was late. Pursuant to section 38 of the *Commissioner's Standing Orders (Grievance and Appeals) (CSOs (Grievances and Appeals))*, the Appellant was required to file her appeal within 14 days after the date upon which she was served with the Decision. She filed her appeal 26 days after she was served with the Decision. Furthermore, there were no exceptional circumstances warranting an extension of the time limit pursuant to subsection 43(d) of the *CSOs (Grievances and Appeals)*. The record did not indicate that the Appellant had a continuing intention to lodge an appeal of the Decision during the 14 day appeal period. Her lack of familiarity with applicable authorities was not an adequate reason for failing to respect the statutory limitation period. She did not specify any health issue(s) that prohibited her from submitting a timely Statement of Appeal and provided no medical evidence of any such health issues or their impact on her ability to file an appeal during the required 14 days. Finally, the fact the RCMP might have breached a policy requirement during the harassment complaint process is irrelevant to the Appellant's breach of the statutory time limit set forth in section 38 of the *CSOs (Grievances and Appeals)*. To find otherwise would inject serious uncertainty into the appeal process, which is prejudicial not only to the RCMP but to all stakeholders in the process.

**ERC Recommendation:** The ERC recommended to the Adjudicator that he or she dismiss the appeal on the basis that it was not presented within the 14 day time limit set forth in section 38 of the CSOs (*Grievances and Appeals*).

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

*The Appellant challenged the Respondent's decision that her complaint of harassment was not established. The Appellant was served the Record of Decision on August 4, 2017, and presented her Statement of Appeal on August 30, 2017. The Office for the Coordination of Grievances and Appeals (OCGA) raised the issue of time limitation and sought submissions from the Parties.*

*The Appeal Adjudicator accepted the RCMP External Review Committee's recommendation and dismissed the appeal on the basis that it was presented outside the statutory limitation period prescribed under section 38 of the Commissioner's Standing Orders (Grievances and Appeals).*

## 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:

## **D-133** Adjudication Board Decision

(summarized in the April – September 2017 Communiqué) While off-duty, the Appellant used an RCMP credit card to purchase \$30.00 of gasoline for a personal vehicle. The Appellant's conduct resulted in one allegation of disgraceful conduct

against the Appellant. The proceedings took place pursuant to the Force's *Early Resolution Discipline Process*. The parties presented an agreed statement of facts to the Board in which the Appellant admitted the Allegation. The parties also made a joint submission on sanction proposing a reprimand and a forfeiture of 10 days of the Appellant's pay. The Board rejected the joint submission and ordered the Appellant to resign from the Force within 14 days or be dismissed. The Appellant appealed the Board's decision on sanction. The ERC recommended that the appeal be allowed and that the Commissioner of the RCMP impose the sanction placed before the Board in the joint submission of the parties regarding sanction, namely a reprimand and a forfeiture of ten (10) days of the Appellant's pay.

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

*In a decision dated January 24, 2018, the Commissioner accepted the ERC's recommendation and found that the adjudication board made manifest and determinative errors by unreasonably discounting the expert medical opinion as well as by giving little weight to the joint submission on sanction and deviating from the proposed sanction without providing clear and cogent reasons. The Commissioner allowed the appeal and varied the sanction imposed by the adjudication board to the sanction placed before it in the joint submission, namely a reprimand and a forfeiture of 10 days of the Appellant's pay.*

*The Appellant presented an appeal challenging the sanction imposed by an RCMP adjudication board following its finding that the Appellant conducted himself in a disgraceful manner bringing discredit on the RCMP. The allegation stems from*

*the Appellant's personal and unauthorized use of an RCMP ARI Canada credit card to purchase \$30.00 of gasoline for a personal vehicle. The adjudication board rejected the joint submission on sanction presented by the parties consisting of a reprimand and the forfeiture of 10 days' pay, and directed the Appellant to resign from the Force within 14 days or be dismissed.*

*The Appellant raised the following three grounds of appeal: the consideration of the expert medical opinion by the adjudication board, the adjudication board's adherence to the principles applicable to joint submissions on sanction, and impartiality and reasonable apprehension of bias.*

## **D-134** Adjudication Board Decision

*(summarized in the October – December 2017 Communiqué) 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 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. The Board held that the Allegation was not established. The Appropriate Officer appealed this decision. The ERC recommended 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.*

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

*The Appellant appealed a decision of the Adjudication Board that an allegation of disgraceful conduct against the Respondent was not established. The Respondent, while*

*off-duty and at his residence, permitted two children to handle RCMP-issued pistols. The Respondent took photographs of the children posing with the pistols with his RCMP-issued Blackberry. An agreed statement of facts was submitted to the Board but the Respondent denied that his conduct was disgraceful.*

*The Board found that the allegation was not established based on the evidence made available to them. The Board determined that the Appellant had not identified how the particulars of the allegation or the agreed statement of facts constituted disgraceful conduct. Absent a breach of statute, regulation, policy or established professional courtesy, the Board reviewed previous RCMP discipline cases involving the mishandling of firearms and the misuse of RCMP property to objectively measure the Respondent's conduct. The Board found that there was no basis upon which to find the Respondent's conduct disgraceful.*

*The Appellant argued that the Board erred in its interpretation and application of the test for disgraceful conduct. The Appellant maintained that the only question that should have been before the Board was whether or not the Respondent's use of the RCMP-issued equipment was for employment-related purposes or otherwise authorized. The Appellant also contended that the Board improperly assessed the information and evidence before it in applying the test for disgraceful conduct.*

*The Commissioner accepted the ERC's recommendation and found that the Board made no manifest or determinative error in its decision. The Board conducted an objective assessment of the facts within the legal requirements of section 39 of the Code of Conduct. The appeal is dismissed.*

**D-135** Adjudication Board Decision

(summarized in the October – December 2017 Communiqué) The subject member's (Respondent) 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 Appellant asserted that the Board had placed undue emphasis on the Respondent's criminal acquittals. The Appellant also argued that the Board had failed to consider evidence and erred in assessing the Respondent's credibility. The ERC disagreed. The ERC recommended 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*.

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

*The Appropriate Officer appealed the decision of the Adjudication Board that the allegations were not established. The Commissioner agreed with the Chair of the RCMP External Review Committee that the Adjudication Board made no error in its treatment of the Respondent's criminal acquittals, correctly assessed the evidence before it and reached its own findings of fact and determinations of credibility, and applied the correct test in relation to allegations of disgraceful conduct. The Commissioner dismissed the appeal and confirmed the Adjudication Board's decision.*

**G-646** Harassment

(summarized in the April – September 2017 Communiqué) The Grievor filed a harassment complaint which contained nine allegations. The Respondent rendered his decision 18 months after the Grievor had filed his complaint. He found the allegations were not established. The Grievor filed a grievance against the decision, arguing that the harassment complaint process was untimely and the investigation was inadequate as only one third of the detachment had been interviewed and the questions put to the witnesses by the investigators were of a general nature. The Level I Adjudicator denied the grievance on the merits. 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 filed a grievance after his harassment complaint had been deemed unfounded, arguing that the Respondent relied on a report based on an inadequate and incomplete investigation and that the harassment complaint process was untimely. The Level I Adjudicator denied the grievance on the merits. The Commissioner agreed with the Chair of the RCMP External Review Committee that although the delay was inconsistent with the Treasury Board Harassment Policy and AM XII.17, it did not further aggrieve the Grievor nor did it compromise the integrity of the investigative process. The Grievor did not provide sufficient evidence or arguments to establish that the investigators omitted crucial evidence from the investigation or that the investigation was inadequate and incomplete. The Commissioner denied the grievance.*

## **G-647** Legal Assistance at Public Expense

(summarized in the October – December 2017 Communiqué) The Grievor presented a grievance against the Respondent's decision to deny his request for legal assistance at public expense (LAPE). 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. The ERC found that the circumstances surrounding some of the charges against the Grievor were within the scope of the Grievor's duties or employment with the RCMP. The ERC recommended that the Commissioner allow the grievance in part.

**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 his request for legal assistance at public expense (LAPE) in relation to allegations, criminal charges and trial. The Commissioner agreed with the ERC's findings that the Respondent's decision was, in part, inconsistent with applicable policy. The Commissioner suggested that the Grievor presents a detailed statement of account of the legal expenses issued by his private counsel, together with submissions and any relevant and necessary supporting documentation for presentation to the appropriate approval authority in relation to the specific allegations and charges in respect of which the Respondent erred in denying the LAPE request.*

## **G-648** Legal Assistance at Public Expense

(summarized in the October – December 2017 Communiqué) While he was performing cell block checks, the Grievor observed two female prisoners having a non-violent sexual encounter in a cell and failed to stop the encounter. 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. 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. The ERC further found that the Respondent's termination of the Grievor's previously approved LAPE was inconsistent with the TB LAPE Policy.

**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 terminate his legal assistance at public expense (LAPE) and to deny his LAPE request for the preliminary inquiry phase of his criminal proceedings. The Commissioner agreed with the ERC's findings that the Respondent's decision is inconsistent with applicable policy. The grievance is allowed. However, the Commissioner determined that the corrective action is moot. During the course of the grievance proceedings, the Grievor was acquitted at trial and, following an application for reconsideration, the Minister approved the Grievor's LAPE request.*

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