

Communiqué – July to September 2020

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>.

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Findings and Recommendations

Between July and September 2020, the RCMP External Review Committee (ERC) issued the following 11 findings and recommendations:

Current Legislation Cases:

Conduct Appeals

C-038 – Conduct Authority Decision

A third-party complaint was made in regards to the Appellant's behaviour towards an employee under his supervision. The Appellant was given a Temporary Reassignment Order to work at a different office for the time being. Shortly thereafter, upon learning of the Order, an employee at the other office indicated that she, too, had experienced comparable treatment by the Appellant three years ago when the Appellant was stationed at that office, and supervising her. The Appellant was Suspended with Pay. This second employee was asked to submit a formal harassment complaint against the Appellant, but she chose not to do so. Two allegations of discreditable conduct were brought against the Appellant pursuant to section 7.1 of the *Code of Conduct*.

Following a *Code of Conduct* investigation and a conduct meeting, the Conduct Authority issued a written decision where he found that the Appellant abused his position of authority to pressure and coerce two subordinates into engaging in an intimate relationship with him, contrary to section 7.1 of the *Code of Conduct*. The Conduct Authority imposed conduct measures of a temporary demotion, a physical transfer, a direction to work under close supervision for the period of his demotion, a direction to complete an online course and a reprimand.

The Appellant alleges that the Conduct Authority's decision contravened the principles of procedural fairness and was clearly unreasonable. One of his grounds of appeal is that the use of the *Code of Conduct* process in his case was arbitrary, an attempt to evade the harassment process and an abuse of process. The Appellant also appeals the conduct measures imposed by the Conduct Authority. The Appellant alleges that the Conduct Authority's decision was clearly unreasonable as the conduct measures imposed by the Conduct Authority were too severe and the Conduct Authority inappropriately considered various aggravating factors.

ERC Findings: The ERC found that the RCMP followed its own policies and procedures when it processed the allegations using the *Code of Conduct* process. The ERC also found that the Conduct Authority did not commit a palpable and overriding error that rendered the decision unreasonable.

The ERC applied the three-part process set out in the *Conduct Policy* and *Conduct Measures Guide* to analyze the appropriateness of the conduct measures, and found that the conduct measures imposed on the Appellant by the Conduct Authority were not clearly unreasonable and do not require intervention on appeal. The Conduct Authority identified a broad range of conduct

measures he would consider imposing in the Notice of Conduct Meeting and decision. The Conduct Authority's identification of both mitigating and aggravating factors in his decision was supported by the record and not influenced by irrelevant considerations. The conduct measures selected by the Conduct Authority reflected the severity of the misconduct and were not a departure from the pattern of discipline identified in either the *Conduct Measures Guide* or in prior similar cases.

ERC Recommendation: The ERC recommended that, pursuant to subsection 45.16(2)(a) of the *RCMP Act*, the appeal be dismissed and that the findings of the Conduct Authority in respect of the two allegations be confirmed.

The ERC recommended that, pursuant to subsection 45.16(3)(a) of the *RCMP Act*, the appeal relating to sanctions be dismissed and that the conduct measures imposed by the Conduct Authority be confirmed.

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

The Appellant challenges the findings and conduct measures imposed by the Commanding Officer, "X" Division (Respondent), who concluded that two allegations of discreditable conduct contrary to section 7.1 of the *Code of Conduct* were established. The allegations stem from the Appellant's inappropriate behaviour and comments towards two employees working at two different detachments. The Respondent imposed a range of conduct measures comprising: a demotion and an order to work under close supervision for a period of one year, a transfer from his current position and location, an order to complete a harassment course, and a reprimand. The Appellant appeals the Respondent's decision on the grounds that the findings and conduct measures are clearly unreasonable. The ERC recommended the appeal be dismissed. The Adjudicator accepted the ERC recommendation after finding no manifest or determinative errors in the Respondent's decision and dismissed the appeal.

C-039 – Conduct Authority Decision

The Appellant allegedly said an inappropriate comment. The Appellant then reportedly re-stated the comment in front of other instructors. The Appellant said that his comment was misunderstood, and the last part of his sentence was likely misunderstood by the other instructors. None of the other candidates heard the comment and the member to whom he said the comment, couldn't recall the comment and said it was "hazy".

A *Code of Conduct* investigation was initiated alleging one contravention of section 2.1 of the *Code of Conduct*, namely, the Appellant was alleged to have made a discourteous comment of a sexual nature.

Following two conduct meetings, the Respondent issued a written decision where she concluded that the Appellant had made the discourteous comment as alleged, contrary to section 2.1 of the *Code of Conduct*. The Respondent determined that the Appellant made the comment after considering the evidence of the Appellant and his character references in conjunction with that of the instructors who had reported hearing the comment.

The Respondent imposed conduct measures which consisted of a demotion in rank for a period of one year, as well as a written reprimand. The severity of the conduct measures imposed was

largely based on the “Doctrine of Cumulative Incident” (Doctrine) which permits an employer to rely on previous misconduct to show a pattern of behaviour and that the employee has not learned from his mistakes. The Doctrine permits a penalty that is more severe than the incident might otherwise justify when considered in isolation. The Respondent reasoned that the Appellant had a history of being disciplined for inappropriate comments. The most recent sanction was a 10-day pay forfeiture, which was the maximum penalty available short of dismissal at the time. In her view, the Appellant had not learned from his mistakes. The Appellant, through legal counsel, tendered an appeal, followed by a submission in which he claimed breaches of procedural fairness, errors of law and that the decision was unreasonable. He further argued that if the allegation was found to be established that the conduct measures-in-particular the demotion-were disproportionate to the *Code of Conduct* violation.

ERC Findings: The ERC made findings in relation to multiple arguments advanced by the Appellant in relation to the allegation and the conduct measures imposed for varying reasons reflective of applicable jurisprudence, but the following arguments were the most noteworthy. First, prior to the *Code of Conduct* investigation, a “Preliminary Investigation” was done in order to speak to the course candidates and instructors to try and determine the contents of the statement made by the Appellant. The Appellant was not invited to participate in this process and argued that this was procedurally unfair. The ERC found that the “Preliminary Investigation” was merely a fact-finding exercise to determine whether an infraction of the *Code of Conduct* may have occurred and including the Appellant at this stage was unnecessary, as he was provided the requisite procedural protections during the *Code of Conduct* process. Second, the Appellant argued that the member to whom he made the comment had the alleged comment told to her during the Preliminary Investigation and did not remember it independently. The ERC found that it was unclear from the record whether the alleged comment was told to her but, even if it was, this was not a determinative factor in the decision as the allegation was found established primarily because the Respondent preferred the evidence of the instructors who recalled hearing the alleged comment over that of the Appellant. Third, the Appellant argued that the Respondent’s decision was procedurally unfair because it did not address positions taken by the Appellant in his submissions prior to the two conduct meetings and during the conduct meetings themselves. The ERC found that, while it would have been ideal for the Respondent to have addressed those positions in her decision, they were not central to the decision, the reasons provided by the Respondent in her decision were sufficient and the record itself contradicted the positions. Finally, the Appellant questioned the reliability of the evidence of some of the witnesses. The ERC found that while some of the evidence contained minor errors, the errors were tangential and, when considered as a whole, the evidence was not unreliable.

With respect to the conduct measures, the Appellant argued that the demotion was disproportionate in relation to the *Conduct Measures Guide* and the Doctrine was not applicable as the prior misconduct was not recent. The ERC disagreed and found that the Doctrine was applicable, as each case is examined on its own particular circumstances, and while the conduct measures imposed were outside what is normally imposed for a discourteous comment, as this was the Appellant’s third violation of a similar nature and the Respondent properly applied the Doctrine, the measures imposed were not clearly unreasonable.

ERC Recommendation: The ERC recommends that the appeal be dismissed.

C-040 – Conduct Board Decision

Following a conduct hearing, a Conduct Board (Board) concluded that two allegations against

the Appellant had been established, which contravened section 7.1 of the RCMP *Code of Conduct*. The first allegation (Allegation #1) was related to the Appellant's consumption of drugs for personal purposes while the second allegation (Allegation #2) was related to the Appellant's inappropriate use of his work cellphone. As a conduct measure, the Board ordered the Appellant's dismissal from the RCMP.

The Appellant appealed the Board's decision to dismiss him. Apart from a few arguments put forward in his Statement of Appeal (Form 6437), he did not present any written submissions in his appeal. Based on information on his Form 6437, the Appellant claims that there was a reasonable apprehension of bias on the part of the Board and that the latter made errors in its assessment of the evidence, particularly with respect to the assessment of the credibility of certain witnesses. He also alleged that the Board erred in its assessment of aggravating and mitigating factors, leading the Board to impose an inappropriate conduct measure given the circumstances.

ERC Findings: The ERC believes that the allegation of bias raised by the Appellant is without merit given that he did not submit any convincing evidence to support his case. With respect to the Board's weighing of the evidence, the ERC considers the Board's analysis of the credibility of the witnesses to be reasoned, detailed and well supported by evidence. Finally, with respect to the Board's assessment of aggravating and mitigating factors, the ERC concluded that the Board erred with respect to Allegation #2 by considering the Appellant's personal use of his cellphone as an aggravating factor. Although this type of error could in certain circumstances justify the Commissioner's intervention, the ERC finds that the Board's conclusions regarding Allegation #1 are sufficient to support the conduct measure imposed and that an intervention would therefore not be necessary.

ERC Recommendation: The ERC recommends that the appeal be dismissed.

Other Appeals

NC-054 – Medical Discharge

The Appellant joined the RCMP as a regular member in 2001. Between 2008 and 2014, his career was interrupted by medical issues that resulted in three periods of Off Duty Sick leave. However, each time he returned to work and was placed in a new position or office, he received a positive performance review. In one instance, he was promoted.

In early 2015, an independent doctor contracted by the RCMP surprised the Appellant and his medical practitioners by diagnosing the Appellant with an illness and recommending a specific treatment. A Force Health Services Officer (HSO) placed a related restriction on the Appellant's medical profile. This prevented him from "making unsupervised decisions in cases, files or situations which would have consequences if the file is mismanaged". The Appellant's overall health worsened. In late 2015, he went Off Duty Sick for the fourth and final time.

The Appellant developed a serious condition and was hospitalized in 2016. While he was recovering, the Force tried to contact him several times. He explained that, for several reasons, he could not reply. In 2017, his medical practitioners reported that he could return to work at a desk job. The HSO disagreed. In mid-2017, she changed his medical profile to O6. This meant he could not return to work in any role for the reasonably foreseeable future.

The Force initiated a medical discharge proceeding. The Respondent collected evidence twice from the HSO without letting the Appellant know. She went on to discharge the Appellant, partly on the basis of the evidence she privately obtained from the HSO. The Appellant appealed this decision. He argued that it was procedurally unfair and undermined by errors of fact and law.

ERC Findings: The ERC agreed with the Appellant's arguments. The Respondent clearly and irreparably breached the Appellant's right to be heard by relying on privately-obtained evidence without giving the Appellant a chance to address it. This was particularly troubling because the Appellant's employment was at risk and a high standard of justice was therefore required. The Respondent also made a reviewable error by omitting to explain why she preferred the HSO's medical evidence over the conflicting medical evidence of the Appellant's medical professionals. Finally, the Respondent made a reviewable error by describing the law surrounding the duty to accommodate in incomplete terms and then misapplying that improperly stated law to the facts.

ERC Recommendation: The ERC recommended that the appeal be allowed, the Decision be voided and the Appellant be reinstated and remunerated retroactive to the date of the Discharge Order. It also recommended that, should the Force initiate another discharge process against the Appellant, the case be remitted to a new decision-maker, with the following directions: (1) permit the Appellant to address the privately-obtained evidence, (2) invite the Appellant to offer any up-to-date medical evidence available to him; and (3) ensure that any conflicting evidence is properly addressed and that a key part of the law involving the duty to accommodate is properly applied.

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

After joining the Force in 2001, the Appellant faced several medical issues which resulted in four separate periods of sick leave beginning in April 2008. On July 25, 2017, the RCMP Health Services Officer changed the Appellant's medical profile to O6. Discharge proceedings were initiated on September 4, 2017, ultimately leading to the Respondent's decision to issue an Order to Discharge effective April 16, 2018.

The Appellant appealed and argued that the Respondent's decision was procedurally unfair and clearly unreasonable, and that the Force had failed to establish that it accommodated him to the point of undue hardship.

The appeal was referred to the ERC for review pursuant to paragraph 17(d)(i) of the *Royal Canadian Mounted Police Regulations, 2014*. The Chairperson of the ERC recommended that the appeal be allowed.

The Adjudicator was not persuaded that the RCMP had accommodated the Appellant to the point of undue hardship and found that the Respondent's decision was both procedurally unfair and clearly unreasonable. The appeal was allowed.

NC-055 – Medical Discharge

The Appellant appealed a decision of the Force that medically discharged her for reason of disability. She argued that the Force did not meet its duty to accommodate by not adequately communicating with her, not offering her accommodation options for work, and by finding her unfit for work when the latest medical certificates from her physicians indicated that she could do

non-front line work.

ERC Findings: The ERC found that, while there was not an optimal level of communication, it did not rise to the level of inadequate communication.

The ERC found that it was not open to the Force to provide accommodation options for work to the Appellant once the HSO assigned a permanent G4-O6 medical profile to her. Prior to that, the Force could not offer her accommodation options because her health care providers had indicated that she was unfit for duty.

The ERC found that the Force did not meet its duty to accommodate the Appellant to the point of undue hardship. There were indications in the record that the Appellant's health care providers deemed her fit to do non-front line work. Moreover, it was unclear that the HSO had reviewed this information prior to indicating that his opinion on the Appellant's medical profile had not changed. At a minimum, the HSO should have explained, without going into medical details which are not normally part of the record in a discharge proceeding, why the evidence provided was insufficient to change his opinion.

The ERC lastly found that it was not clear from the record whether the Force had provided sufficient time following the HSO's approval of treatment to determine whether the treatment would impact the Appellant's occupational prognosis. The ERC concluded that despite the considerable deference owed to the decision-maker, the discharge decision was clearly unreasonable.

ERC Recommendation: The ERC recommends that the appeal be allowed.

NC-056 – Harassment

The Appellant presented a harassment complaint (Complaint) against his supervisor, the Alleged Harasser. The Complaint contained numerous allegations, including incidents where the Alleged Harasser had made comments which the Appellant perceived as offensive. Other allegations involved incidents where the Appellant believed the Alleged Harasser had failed to properly support him in a major investigation. This lack of support was, according to the Appellant, exemplified by the Alleged Harasser's denial of human resources and overtime to assist in the investigation. The Complaint further alleged that the Alleged Harasser had failed to support the Appellant with respect to certain work opportunities. The Respondent directed that a limited investigation into the Complaint take place, and only the Appellant and Alleged Harasser were interviewed. An investigation report was completed.

The Respondent rendered a Decision finding that the Complaint was not established. In his view, the Alleged Harasser's actions did not amount to harassment. The Respondent found that the Alleged Harasser had not intended to offend the Appellant in several of the incidents where he had made comments which the Appellant objected to. The Respondent also considered that many of the other events raised by the Appellant reflected disagreements between he and the Alleged Harasser regarding the manner in which the Alleged Harasser had legitimately exercised his supervisory responsibilities. The Respondent also provided reasons which appeared to be a basis for his finding that the allegations, when assessed collectively, revealed no pattern of harassment.

The Appellant appealed the Respondent's Decision.

ERC Findings: The ERC found that the Decision was clearly unreasonable. The definition of harassment requires a consideration of whether the Alleged Harasser knew or ought to have known that his behaviour would cause harm. The Respondent was required to apply a test which reviews the Alleged Harasser's conduct from the perspective of a reasonable person who places himself/herself in the Appellant's situation. However, the Respondent's findings regarding certain incidents, which involved allegedly offensive comments towards the Appellant, indicated that he had focused his assessment on the Alleged Harasser's intention, rather than the perspective of a reasonable person. Additionally, the information obtained from the Appellant and Alleged Harasser strongly suggested that other witnesses might have relevant evidence to provide in relation to some of those incidents, yet there was no explanation as to why they had not been interviewed. Further, the Respondent had not fully addressed the cumulative effect or pattern of all the incidents raised in the Complaint. The Respondent's reasons appeared to provide some explanation of why the Respondent did not view certain incidents as cumulatively amounting to harassment. But they did not indicate that he had turned his mind to the combined and repetitive effect of comments made by the Alleged Harasser towards the Appellant. The Respondent's cumulative assessment of those incidents, as well as others, would have benefitted from a more complete investigation.

ERC Recommendation: The ERC recommends that the Final Adjudicator allow the appeal and remit the matter to another decision-maker. The ERC further recommends that the decision-maker be directed to: (i) assess whether it is possible to conduct a further investigation, and; (ii) render a new decision which considers any additional information obtained.

Former Legislation Cases:

Disciplinary Appeals

D-137 – Adjudication Board Decision

The Appellant met X. They started dating in early 2009, but had a volatile on-again, off-again relationship. They moved into an apartment together in March 2009. The record shows that X was unpredictable.

At the end of 2010/beginning of 2011, the Appellant stated that he had had enough of the relationship and ended the relationship with X. However, X stated that she feared the Appellant and ended the relationship. They nevertheless kept seeing each other. In the meantime, the Appellant went on supported sick leave (ODS) and was still ODS when the following incidents occurred.

In late July 2012, both the Appellant and X, who was now in another country vacationing, made plans that the Appellant would join her in that country. During the evening of August 3, 2012, the Appellant was arrested and detained by the authorities. The Appellant was charged with theft and mischief. The Appellant was convicted of the charges by the Court in the country.

Upon his return to Canada, the Appellant did not inform his superior of the conviction. When asked whether he enjoyed his holiday, the Appellant stated that he had a nice time in a different country than the one he had vacationed in. The Appellant's superiors became aware of the conviction and proceeded to order an investigation. An investigation was mandated and seven

allegations of breaching the *Code of Conduct* were filed against the Appellant.

There were two other *Code of Conduct* matters involving the Appellant, however, upon agreement between the representatives, it was agreed that only this matter would be dealt with at this moment.

After a hearing, the Board rendered its oral decision on January 13 and 14, 2017. It found destruction of electronics and theft (Allegation 1), assaulting X (Allegation 2), failure to disclose criminal charges (Allegation 3) and misleading statement to an Investigator (Allegation 6) established. The Board had first found that the country's proceedings were procedurally unfair and therefore did not take the convictions as *prima facie* evidence of the incidents. The Board therefore reviewed the evidence that was presented before it to make its findings.

After the hearing on sanction, the Board applied the legal test to determine the appropriate sanction and ordered the Appellant to resign or be dismissed. As the Appellant did not resign, he was dismissed from the RCMP.

The Appellant filed his appeal after the statutory time limit to do so. He requested a retroactive time extension to file his appeal, which was granted. Although the time limit was extended, the Appellant's discharge order was not rescinded. The Appellant challenged the Board's findings regarding Allegations 1 and 2 and his dismissal. He argued that the Board speculated, made incorrect factual findings and ignored mitigating factors. He further alleged that the Board was prejudiced against him because it had received the Notice of Hearing for the other two matters involving him.

ERC Findings: As findings on preliminary issues, the ERC found that, although the time limit to file his appeal was extended, the Appellant's discharge order could not be rescinded. The ERC further found that most of the documents filed by the Appellant on appeal were inadmissible because they were previously available, but were not filed at the time of the hearing before the Board.

The ERC found that the Board did not err in its assessment of the principal witnesses' credibility and applied the correct legal test. The ERC found that the Board did not err in its assessment of the evidence and its findings were supported by the evidence that there was an altercation between the Appellant and X, initiated by X. The ERC found that the mitigating factors raised by the Appellant on appeal were not raised before the Board and/or no evidence was filed to support them; therefore the Board could not be faulted for not assessing them. Lastly, the ERC found that the Appellant was precluded from raising the issue of the Board's alleged prejudice against him for two reasons: 1) the decision to proceed with only this matter was reached in agreement between the parties' representative before the proceedings began and 2) even if there was no agreement, the Appellant should have raised this issue before the Board.

ERC Recommendation: The ERC recommends that the appeal be dismissed.

Grievances

G-698 – Harassment

The Grievor presented a harassment complaint (Complaint) against his supervisor (Alleged Harasser) which contained two allegations. Following a review of the Complaint by a Human

Resources Officer, the Respondent determined that the Complaint was unfounded.

The Grievor presented a grievance against the Respondent's Decision regarding the Complaint. The Grievor's Grievance Form and its appendix also mentioned an earlier harassment complaint against the Alleged Harasser (Earlier Complaint), which had resulted in a separate decision by the Respondent. The Respondent expressed some confusion as to which decision was the subject of this grievance, as a result of which the Office for the Coordination of Grievances (OCG) obtained submissions from the Grievor and Respondent on that issue. The Grievor's submissions indicated that he had brought a separate grievance against the Respondent's decision in relation to the Earlier Complaint, and that the present grievance related to a written decision by the Respondent regarding the Complaint. The Respondent's submissions asserted that it remained unclear which decision was being grieved. The Respondent noted that the Grievance Form could be read as indicating that the corrective action sought was in relation to the Earlier Complaint, rather than the Complaint.

A Level I Adjudicator (Adjudicator) concluded that the Grievor did not have standing because he had failed to establish that the Respondent had rendered a decision regarding the Complaint. In explaining his conclusion, the Adjudicator referred to the existence of two other grievances presented by the Grievor with respect to the handling of his Earlier Complaint, as well as a related grievance against the Human Resources Officer's actions in relation to the Complaint.

The Grievor submitted his grievance at Level II. He confirmed that the grievance was in relation to the Respondent's decision regarding the Complaint. The Grievor also expressed a concern with the Adjudicator's reference to his other grievance files, as in his view this offended federal privacy legislation.

ERC Findings: The ERC found that the Grievor had standing. Subsection 31(1) of the *RCMP Act* sets out the various standing criteria to present a grievance, one of which is the existence of an actual decision, act or omission that is the subject of the grievance. Despite a lack of clarity in certain grievance documents, the information provided by the Grievor in its entirety identified, as the subject matter of his grievance, the Respondent's decision regarding the Complaint.

The ERC disagreed with the Grievor's suggestion that the Adjudicator's reference to the existence of other related grievance files was an improper use of his personal information. This reference appeared to have been made for the sole purpose of clarifying the question of which decision was the subject of the grievance. In the context in which the standing issue had to be addressed, the reference did not raise any discernable concern of improper use.

ERC Recommendation: The ERC recommended that the grievance be allowed and that submissions be obtained from the Parties so that the Commissioner may rule on the merits.

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

The Grievor challenged a decision by the then Commanding Officer of "X" Division, concluding that his harassment complaint was unfounded. The Level I Adjudicator denied the grievance, finding that the Grievor did not have standing to grieve. The Grievor sought a review at Level II. The ERC noted that the Grievor had not provided a copy of the impugned decision to the OCG. Despite this, the ERC held that he had at least identified the decision forming the subject of his

grievance. The ERC found that the Grievor had standing and recommended that the grievance be allowed. As redress, the ERC recommended that the Commissioner obtain submissions from the Parties and rule on the merits. The Commissioner agrees with the ERC analysis and findings with respect to standing. However, the Commissioner does not adopt the recommended redress. While it is truly unfortunate that this process has been ongoing for nearly ten years, obtaining submissions on the merits is now impractical. Moreover, the Grievor had declined to provide the impugned decision and other relevant documents related to his harassment complaint several times early in the process when asked to do so. The Commissioner allowed the grievance on the issue of standing and apologized to the Grievor for the challenges he had faced in the workplace.

G-699 – Harassment

The Grievor presented a harassment complaint (Complaint) against his supervisor (Alleged Harasser). The Respondent then provided a recommendation to the Responsible Officer that sufficient information existed to make a decision regarding the Complaint without the need for an investigation. The Responsible Officer concluded that the Complaint was unfounded.

The Grievor filed a grievance against the Respondent's handling of his Complaint. He also lodged a separate grievance against the Responsible Officer's final decision regarding the Complaint (Related Grievance). An Adjudicator denied the grievance on the ground that the Grievor did not have standing. In the Adjudicator's view, the grievance raised the same issues which were present in the Related Grievance against the Responsible Officer's final and determinative decision. The Grievor submitted his grievance at Level II.

ERC Findings: The key issue to be addressed in this matter was that of the Grievor's standing. Subsection 31(1) of the *RCMP Act* sets out the various standing criteria to present a grievance, one of which is that a member be aggrieved by a decision, act or omission "in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders". The ERC found that the Grievor did not have standing because the issues identified in the grievance were concurrently raised, and could be addressed, in the Related Grievance of the Responsible Officer's decision. The Related Grievance thus engaged another process for redress to address the subject-matter of this grievance. The ERC observed that a review of the Responsible Officer's final decision regarding the Complaint, through the Related Grievance, would allow for a comprehensive assessment of the entire process which led to the Responsible Officer's decision, including the manner in which the Respondent had carried out his role.

ERC Recommendation: The ERC recommended that the grievance be denied.

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

The Grievor challenged the manner in which his harassment complaint was handled by the then Human Resources Officer (HRO), as well as the recommendation the HRO provided to the Responsible Officer as to its disposition. The Respondent raised the preliminary issue of standing. The Level I Adjudicator rendered a decision, finding that the Grievor lacked standing. The Grievor sought a review at Level II. The ERC recommended that the grievance be denied given that his grievance in the case of G-698 constituted another process for redress, as the substantive issues were raised by the Grievor in both grievances. Further, the ERC found that a single decision would enhance the efficiency of the grievance process. The Commissioner

agrees with the ERC analysis and findings. The grievance is denied on the basis that the Grievor does not have standing.

G-700 – Standing

The Force offered the Grievor a position. The Grievor, who was then a civilian, asked the Force if it would help him move to another province, where the position was based. After he received non-committal replies, he accepted the Force's offer and moved to the other province at his own expense. He later learned there were two types of relocation benefits for which he might be eligible: basic benefits for newly engaged members (NEM Benefits); and a broader range of benefits under the Integrated Relocation Program (IRP Benefits). He asked for \$35,373.08 in IRP Benefits. The Respondent denied his request but helped him obtain \$6,560.38 in NEM Benefits. The Grievor still wanted IRP Benefits. He grieved the Respondent's decision to refuse his request for them.

The Level I Adjudicator denied the grievance on the basis that the Grievor did not have standing to raise it. She held that he met all the conditions of standing except one: he was not a member of the Force at the time of aggravement. She reasoned that he knew before he was hired that his entitlement to relocation benefits was unsettled, yet accepted the job, anyway. The Grievor grieved at Level II, after the time limit for so doing had expired. He asked for an extension of the time limit on the basis that he: took a holiday; had a medical condition; underwent a medical procedure; had a conflict; had concentration and memory issues; and forgot about the matter.

Years later, the Respondent's successor alleged that the Grievor met the test for standing. She also argued that he should receive IRP Benefits based on a different calculation set out in a new claim (Claim) that had recently been denied by a senior financial authority.

ERC Findings: The ERC did not consider the Claim because it was irrelevant. The grievance involved a decision to deny the Grievor's request for relocation expenses, not a decision made years later to deny the Claim. However, because the Claim was very relevant to a companion grievance filed by the Grievor, the ERC addressed it in detail during a review of that grievance.

The ERC found that the Grievor met the test for standing, including the requirement of being a member. The Grievor had been employed for 21 months when he presented his grievance. He was therefore clearly a member. Whether or not his inability to secure relocation benefits before he was a member disqualified him from receiving IRP Benefits once he was a member was a merits issue. It should have had no impact on the Level I Adjudicator's standing analysis.

The ERC found that the grievance was untimely at Level II, and that the time limit should not be extended. The record did not establish that the Grievor had a continuing intention to grieve at Level II. His reasons for the delay were unsupported by evidence. Granting an extension in these circumstances would prejudice the Force to an extent by bringing some uncertainty into the grievance process. Moreover, the efficiency and coherence of the grievance process would be strengthened by a thorough review of related issues in the Grievor's companion grievance.

ERC Recommendation: The ERC recommended that the grievance be dismissed because the Grievor did not grieve on time at Level II, and the Level II time limit should not be extended.

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

The Grievor challenged a decision to deny his Integrated Relocation Program (IRP) benefits. The Level I Adjudicator found the Grievor had no standing since he had not been a member when the letter of offer was made, and at that time knew the issue of his relocation benefits remained unsettled, but accepted the offer anyway. The Grievor sought a review to Level II but only after the expiration of the prescribed 14 days to file his grievance. The Grievor sought an extension, blaming his medical condition and procedure, forgetfulness, lack of concentration and schedule for the delay. The ERC recommended that the grievance be denied on the grounds that no extension was justified in the circumstances. The Commissioner agreed and dismissed the grievance due to the Grievor's failure to file the grievance at Level II within the statutory prescription period.

G-701 – Standing

The Force offered the Grievor a position. The Grievor, who was then a civilian, asked the Force if it would help him move to another province, where the position was based. After he received non-committal replies, he accepted the Force's offer and moved to the other province at his own expense. He later learned there were two types of relocation benefits for which he might be eligible: basic benefits for newly engaged members (NEM Benefits); and a broader range of benefits under the Integrated Relocation Program (IRP Benefits). He asked for a payment of IRP Benefits to cover his move. A superior denied his request, but helped him obtain a smaller sum of NEM Benefits.

In a related grievance, the Grievor grieved the superior's refusal of his request for IRP Benefits. The Level I Adjudicator in that matter denied the grievance on the basis that the Grievor did not have standing to present it. She reasoned that he was not a member of the Force at the time of aggrievement. The Grievor resubmitted his grievance at Level II after the time limit for so doing had expired. The ERC found that the Grievor had standing to grieve because he was clearly a member when he filed his grievance. However, it ultimately recommended that the grievance be denied because it was raised late and an extension of the Level II time limit was unjustified.

Years after the superior denied the Grievor's request for IRP Benefits, the Grievor made a new claim for IRP Benefits based on a different calculation (Claim). His new superior supported the claim, but the Respondent denied it for various reasons, some of which had not been provided before. The Grievor grieved this decision. The same Level I Adjudicator denied the grievance on two bases. First, the Grievor lacked standing to file it because he had not met the "member" requirement in his previous grievance, which was "identical in substance" to the present matter. Second, the Grievor was trying to reargue his prior grievance and this was an abuse of process.

ERC Findings: The ERC disagreed with both of the Level I Adjudicator's rationales for denying the grievance. First, the Grievor clearly had standing to raise the grievance. He was a member of the Force when he presented it. He suffered financial prejudice. The denial of the Claim was communicated by way of a decision. The decision was made in the administration of the affairs of the Force. There were no other available redress processes under specified legislation. The Level I Adjudicator's standing analysis in the prior grievance was irrelevant because the present grievance raised different facts and had to be considered independently.

Second, there was no abuse of process. The Grievor was not rearguing his prior grievance. He was grieving a new decision made by a different authority at a different time and under different circumstances. To the extent that similar merits issues were raised in the previous grievance,

they were not dealt with there because the Adjudicator incorrectly deemed that grievance to be statute-barred. Allowing the present grievance to proceed on its merits would neither be unfair to the Respondent nor bring the administration of the Force's grievance process into disrepute.

ERC Recommendation: The ERC recommended that the grievance be allowed. In light of the extraordinary passage of time in this grievance, the ERC further recommended that the matter proceed on its merits directly before the Commissioner.

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

The Grievor challenged a decision by the Respondent to deny his Integrated Relocation Program (IRP) benefits. The Level I Adjudicator regarded the grievance to be identical to a companion grievance also related to the denial of the Grievor's IRP benefits and made the same determination that the Grievor had no standing in addition to also finding that the grievance, due to the similarities, was an abuse of process. The Grievor sought a review at Level II. The ERC found the Grievor had standing, the grievance was not an abuse of process and recommended the Commissioner direct the Parties to make submissions on the merits directly to her in order to avoid further delay. The Commissioner agreed.

Commissioner of the RCMP's Final Decisions

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

Current Legislation Cases:

Conduct Appeals

C-036 Conduct Authority Decision (summarized in the April – June 2020 Communiqué)
Upon completing his activity, the Appellant called the District Operations Communication Centre (OCC) to inquire as to whether there was a traffic operation in the area and was provided with the location of some units. Later that evening a 911 call was placed by a private citizen, concerned that the driver of the Appellant's vehicle was intoxicated as he felt that the vehicle was being driven erratically. As the following day was a holiday, the Appellant returned to the office on the next business day. Shortly after his arrival, the Appellant's supervisor asked to speak to the Appellant about the incidents following his activity. During their meeting the Appellant told his supervisor that he had nothing to drink at the activity. The Respondent determined that the Appellant made inappropriate inquiries of the OCC largely for self-serving reasons pertaining to whether he could have a drink before driving. The Respondent also determined that the Appellant provided inaccurate information to his supervisor by telling her during their meeting that he had nothing to drink at the activity, which the Appellant later admitted was untrue. The Respondent further found that the Appellant should have contacted his supervisor before she requested to meet with him to inform her that he was under investigation after members attended at his residence. The ERC recommended that the appeal be dismissed.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by her

office, is as follows:

On September 6, 2016, the Appellant participated in an activity while off-duty. Prior to leaving the activity's social function, the Appellant contacted RCMP telecoms (OCC), identified himself by his rank, and asked if there was a traffic check stop in his area. The RCMP subsequently received a complaint that the Appellant's vehicle was driving in an erratic manner. RCMP officers attended the Appellant's residence, but took no further action – citing a loss of continuity (between when driving was observed and when they saw the Appellant) to explain why no charges were pursued.

After the investigators left his residence, the Appellant contacted the OCC. The Appellant again identified himself by his rank and asked a telecom operator questions about the erratic driving complaint.

When the Appellant returned to work he discussed this incident with a co-worker who then checked the file for the investigation and advised the Appellant that it had been concluded.

Despite making inquiries with the OCC, the Appellant made no effort to contact his supervisor to advise her of the incident until she called him into her office (36 hours after the incident) and asked him about it. During his conversation with his supervisor he claimed that he had not consumed alcohol at the activity, but the Appellant has subsequently acknowledged that he had a beer during a meal prior to leaving the activity.

After an investigation and a conduct meeting the Respondent found that the Appellant had: inappropriately used his position to make inquiries with the OCC contrary to section 3.2 of the *Code of Conduct*, provided false, misleading or inaccurate information to his supervisor contrary to section 8.1 of the *Code of Conduct*, and failed to report the investigation to his supervisor as required by section 8.2 of the *Code of Conduct*. As conduct measures the Appellant received a reprimand and was required to: write letters of apology to three OCC personnel, forfeit 20 hours of pay, forfeit 20 hours of annual leave, and be reassigned to another position without being relocated or demoted. The Appellant appealed both the findings and the conduct measures.

The ERC recommended that the appeal be dismissed. The Adjudicator agreed with most of the ERC findings (in some cases for different reasons) and accepted most of the ERC recommendations. The appeal on the findings was dismissed, however, the Adjudicator allowed the appeal in relation to the conduct measures due to a procedural fairness issue. After reviewing the record, the Adjudicator imposed the same conduct measures as the Respondent based on his own review of the record.

C-037 Conduct Board Decision (summarized in the April – June 2020 Communiqué)

In June 2012, [Y], a civilian, met [X] at his financial institution where [Y] wanted to withdraw funds to pay his legal fees regarding a criminal charge. As a former RCMP officer, [X] told [Y] that he might be able to help and asked [Y] to bring him all his paperwork regarding his criminal charge from the RCMP. Accordingly, the next day, [X] reviewed the paperwork provided by [Y] and told him that it would cost him \$5,000 to “make it go away”. [Y] negotiated the price to \$3,500 which would be paid in three instalments. In March 2013, [X] met with [Y] and told him that the police would be arresting him any day now as they had evidence that he was not respecting his court-imposed conditions. [X] demanded \$7,000 from [Y] so that he wouldn't be arrested. [Y] informed the RCMP of the situation, which prompted a criminal investigation against [X] by the RCMP's

anti-corruption unit (ACU). The Respondent faced three allegations in relation to his accessing police databases and misusing a patrol car for reasons that were unrelated to his duties. A *Code of Conduct* process was initiated and the Appellant sought the Respondent's dismissal. The ERC first found that the Conduct Board clearly considered the egregious nature of the misconduct and indicated that it was indeed serious misconduct. The ERC found that it is not sufficient for a party to simply disagree with the weight afforded to evidence. The party must demonstrate that the Conduct Board made a manifest and determinative error in its assessment of the evidence. The ERC found that the Conduct Board applied the correct legal test and assessed the appropriate conduct measure. The ERC recommended that the Commissioner dismiss the appeal and confirm the conduct measures imposed by the Conduct Board.

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

The Commanding Officer, "Z" Division, Conduct Authority (Appellant), presented an appeal challenging the conduct measures imposed by an RCMP conduct board following its finding that three allegations of discreditable conduct were established against the subject member (Respondent). These allegations stem from the Respondent's unauthorized use of equipment and information and the unauthorized sharing of this information. The conduct board imposed a reprimand as well as a forfeiture of five days' pay and five days' annual leave for each allegation. The Appellant appeals the Board's decision on the grounds that it is based on an error of law and is clearly unreasonable.

Finding no manifest or determinative error in the conduct board's decision, the ERC recommended the appeal be dismissed.

The Commissioner accepted the ERC recommendation. The Appellant did not establish that the conduct board made any reviewable errors. The Commissioner dismissed the appeal and confirmed the conduct measures imposed by the conduct board.

Former Legislation Cases:

Grievances

G-690 Harassment (summarized in the April – June 2020 Communiqué)

In October 2005, a subordinate filed a harassment complaint against the Grievor. Several allegations were made, including one allegation of sexual harassment and several allegations of alleged harassment in the workplace. Within the disciplinary process, the Grievor received disclosure of the harassment investigation report and noticed new allegations, inconsistencies between the Respondent's rationale and the evidence gathered, and that the Respondent's finding of harassment was unsupported by the evidence. The Grievor grieved the Respondent's decision. He stated that the decision was reached in a procedurally unfair manner on the basis that he had not been apprised of all the allegations and was not afforded the opportunity to be heard. He further alleged that the Respondent had no authority to initiate a disciplinary hearing since the one year time limit had expired (the Adjudication Board did in fact dismiss the *Code of Conduct* contravention as the time limit had in fact expired). The Grievor also argued that the decision was unsupported by the evidence. Taking into consideration these admissions, the Level I Adjudicator found that the Grievor's right to procedural fairness was breached at the

investigation stage and that the evidence did not support the Respondent's decision. The ERC found that, as the Grievor was not given the opportunity to be heard on all allegations of harassment, his right to procedural fairness was breached. The ERC lastly found that the Grievor was prejudiced as one's right to a fair hearing is an unqualified, independent right and a breach of such a right will cause prejudice.

The ERC recommended that the Commissioner allow the grievance. The ERC recommended that the Commissioner apologize to the Grievor.

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

The Grievor challenged the Respondent's decision finding that he committed workplace and sexual harassment. The Grievor claimed that the process was procedurally unfair, the limitation period for a conduct hearing had expired, and he missed promotional opportunities, as a result. The Grievor sought as redress: an apology, a new investigation, and promotion to the posting of his choice. The Adjudication Board presiding over the disciplinary proceedings agreed that the limitation period had expired and ended the disciplinary proceedings. The Respondent conceded that the investigation had been flawed, the decision made in error and had directed a review at Early Resolution which was never completed, but contended the Grievance should be denied, as the issue was now moot due to the decision of the Adjudication Board. The Grievor argued that the Respondent's decision remained in effect and continued to prejudice him. Several collateral issues were referred for adjudication. The Level I Adjudicator on the merits found the Grievance was not moot, the investigation was flawed, and it would be appropriate for the Respondent to apologize, given a new investigation would be unreasonable due to the passage of time. However, the Grievance was denied, as the Level I Adjudicator found the Grievor failed to demonstrate prejudice. The matter was referred to the ERC. The Chairperson recommended the grievance be allowed and found that the procedural unfairness was sufficient to demonstrate prejudice. The ERC also recommended the Commissioner issue an apology to the Grievor with no other redress. The Commissioner agreed with the ERC, apologized to the Grievor for the breach of his procedural rights, and rescinded the Respondent's decision.

G-691 Relocation (summarized in the April – June 2020 Communiqué)

In February 2010, while posted in province A, the Grievor accepted a six-month leave without pay (LWOP) while his partner received an internship in province B. His partner moved half of their household goods and effects (HG&E) to province B. On July 7, 2010, the Grievor was advised that he had been posted to a surplus position at "X" Division Headquarters in province A with a start date in early September 2010. Sometime before August 23, 2010, the Grievor arranged a rental vehicle to move the couple's HG&E from province B to province A. On August 3, 2010, the Grievor learned that the surplus position in province A had been cancelled. On August 16, 2010, a Director in province C contacted the Grievor to inquire if he was interested in interviewing for a position in province C. The Grievor obtained the position and spent August 29, 2010 packing, and departed for province C on August 30, 2010 in a rental vehicle, towing his personal vehicle.

The Grievor questioned his new Director regarding the reimbursement of his relocation costs upon starting in his new position; he received only general advice to keep his receipts. The Respondent denied the Grievor's request for reimbursement of relocation expenses prior to the issuance of the A-22A. He also denied the Grievor's request to be reimbursed for relocation expenses related to the shipment of his HG&E from province A and his airfare because the

arrangements were not made through the Government contracted travel services. The Level I Adjudicator denied the grievance. He found that reimbursement for the Grievor's relocation expenses incurred before the issuance of the A-22A; therefore, the Respondent's denial was consistent with the IRP and supported by TBS. The ERC found that the IRP did not allow for the reimbursement of the Grievor's rental vehicle expenses. It did not allow for the Grievor to make his own arrangements with another service. However, the ERC found that the Grievor's circumstances were exceptional because he had just returned from a deployment when he learned that his posting was cancelled and a new posting was offered just a few days before he had to vacate his apartment. The ERC recommended that the Commissioner allow the grievance.

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

The Grievor challenged a decision by the Officer in Charge, Travel and Relocation Programs, to deny him reimbursement for relocation expenses totalling \$4,646.25, incurred with respect to a rental vehicle reservation. At Level I, an Adjudicator directed that the Parties provide submissions on the preliminary issue of standing. The Level I Adjudicator was satisfied that the grievance was timely and the Grievor had standing. However, he found that the Grievor had failed to establish, on a balance of probabilities, that the Respondent's decision was inconsistent with applicable legislation and policy. The Grievor sought a review at Level II. The grievance was referred to the ERC. The ERC recommended that the grievance be allowed on the basis that the Grievor's circumstances were exceptional under section 1.12 of the IRP, the rental vehicle expenses fell within the general intent of the IRP, and the Respondent had the authority to approve and post-authorize the Grievor's expenses under sections 1.12.2 and 1.12.4. The Commissioner accepts the recommendation to allow the grievance.

G-692 Harassment (summarized in the April – June 2020 Communiqué)

In December 2005, the Grievor submitted a harassment complaint against six of his supervisors (Alleged Harassers) based on events that occurred in 2005. The harassment complaint included allegations that the dates on the Grievor's Performance Evaluation and Review Report (PERR) were changed by one of the Alleged Harassers so that a positive assessment would not need to be included, leaving the PERR in a common area, denial of a promotional opportunity, and denial of overtime pay. The Grievor grieved the investigation of the harassment complaint, arguing that his request for materials was not met. He identified the Harassment Advisor as the Respondent and he alleged that none of the witnesses, the names of which were submitted by the Grievor, were interviewed. At Level II, the Grievor disagreed with the Adjudicator's reasons for denying the following requested remedies: apologies from the Alleged Harassers, a *Code of Conduct* investigation of the Alleged Harassers, joining together of the current grievance with seven other matters initiated by the Grievor, and a promotion for the Grievor. The ERC found that the harassment complaint had been screened in but the HRO and Responsible Officer decided not to investigate. The ERC recommended that the Commissioner allow the grievance on the ground that the Respondent did not process the complaint in a way that was consistent with the relevant harassment authorities. The ERC recommended that the Commissioner apologize to the Grievor for the RCMP's failures to comply with relevant harassment authorities and properly deal with the harassment complaint.

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

The Grievor filed a harassment complaint against six superiors, based on an abuse of authority, which included the following acts: revision of the date of his Performance Evaluation and Review Report (PERR) to exclude a positive assessment rendering him non-promotable and recommending a transfer; leaving his PERR in a common area allowing its disclosure; and, the denial of the following: a promotion, plain clothes allowances and overtime pay. The Responsible Officer found the complaint unfounded and that the matter consisted of workplace conflict not harassment, based on information provided by the original Harassment Prevention Coordinator. The Grievor claimed that the Harassment Prevention Coordinator, whom he named as Respondent, failed to obtain information from witnesses identified by the Grievor and the omission resulted in the failure of the HRO to complete an investigation and the erroneous decision by the Responsible Officer. Although the Level I Adjudicator allowed the grievance, finding that the Respondent acted in a manner inconsistent with harassment policy in failing to provide the witness names to the HRO and directed the matter be returned for further consideration, the Grievor sought a decision at Level II. The ERC recommended the grievance be allowed, but that due to the passage of time, investigation of the complaint is not feasible. The ERC recommended the Commissioner apologize to the Grievor on behalf of the Force with no other redress. The Commissioner accepted the ERC findings and recommendations, allowed the grievance and issued an apology to the Grievor.

G-694 Harassment (summarized in the April – June 2020 Communiqué)

The Grievor presented a harassment complaint (Complaint) against his supervisor (Alleged Harasser) which contained various allegations. The ERC found that the Respondent had decided the Complaint in a manner inconsistent with Treasury Board and RCMP harassment authorities. The Grievor was not interviewed or given the chance to explain in more detail the allegations in his Complaint, and the Alleged Harasser's detailed response was considered by the Respondent without the Grievor having an opportunity to address it. These omissions resulted in an unfair process, and the decision to proceed directly to a final decision without investigation was based upon incomplete information. The ERC also disagreed with the assessment that an investigation was not necessary in the matter. The ERC recommended that the Commissioner: allow the grievance; apologize to the Grievor for the fact that the Complaint was not decided in accordance with the applicable harassment authorities and jurisprudence; acknowledge that the Respondent did not possess sufficient information to make a final decision; and quash the Respondent's decision that the Complaint was unfounded.

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

The Grievor challenged a decision by the then Commanding Officer of "X" Division, finding that his harassment complaint was unfounded. The Level I Adjudicator denied the grievance, noting that she had not found any evidence that the Respondent's decision was inconsistent with RCMP policy. The Grievor sought a review at Level II. The ERC recommended that the grievance be allowed on the basis that the handling of the complaint, and the decision itself, were inconsistent with applicable harassment authorities and jurisprudence. The ERC found that the Respondent's decision was based on incomplete information, and further inquiries could have enhanced the Respondent's ability to determine whether harassment took place. Further, the ERC found that the principle of basic fairness was not adhered to in the Grievor's situation, and the Respondent erred by rendering his decision in the absence of affording the Grievor an opportunity to fully explain his complaint or respond to the alleged harasser's reply. The

Commissioner agrees with the ERC analysis and findings. The grievance is allowed.

G-695 Standing (summarized in the April – June 2020 Communiqué)

The Grievor presented a harassment complaint (Complaint) against his supervisor (Alleged Harasser) which contained various allegations. Following receipt of the Complaint, the Respondent, in his capacity as Human Resources Officer, obtained a response to the Complaint from the Alleged Harasser. The Respondent also spoke briefly to a potential witness. The Respondent determined that there was sufficient information in relation to the Complaint, that no investigation was required, and that the matter could be forwarded to the Responsible Officer for a decision in relation to the Complaint. The Responsible Officer concluded that each of the allegations were unfounded. The Grievor filed a grievance against the Respondent's handling of his Complaint. He also lodged a separate grievance against the Responsible Officer's final decision regarding the Complaint (Related Grievance). The ERC found that the Grievor did not have standing as the issues identified in the grievance were concurrently raised in the Related Grievance and addressed in ERC Findings and Recommendations 2400-16-006 (G-694), which examines the actions of both the Responsible Officer and the Respondent in relation to the Complaint. The Related Grievance thus engaged another process for redress to address the subject-matter of this grievance. The ERC recommended that the grievance be denied.

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

The Grievor challenged the manner in which his harassment complaint was handled by the then Human Resources Officer (HRO), as well as the recommendation the HRO provided to the Responsible Officer as to its disposition. The Respondent raised the preliminary issue of standing. The Level I Adjudicator rendered a decision, finding that the Grievor lacked standing. The Grievor sought a review at Level II. The ERC recommended that the grievance be denied given that his grievance in the case of G-694 constituted another process for redress, as the substantive issues were raised by the Grievor in both grievances. Further, the ERC found that a single decision would enhance the efficiency of the grievance process. The Commissioner agrees with the ERC analysis and findings. The grievance is denied on the basis that the Grievor does not have standing.

G-696 Stoppage of Pay and Allowances (summarized in the April – June 2020 Communiqué)

The Grievor grieved a decision by the Force ordering the stoppage of his pay and allowances (SPA). The Respondent ordered the SPA as a result of *Code of Conduct* allegations pertaining to the misuse of credit cards that the Grievor was authorized to use to perform his duties. The Respondent found that the criteria to impose a SPA were met. The Grievor argued that, contrary to policy, the Recommendation to SPA contained additional information that was not contained in the Notice of Intent to Recommend a SPA. He further contended that, although his Member Representative (MR) had addressed the issue, he was not given an opportunity to personally address the new information. The ERC indicated that the Grievor was owed a high degree of procedural fairness in the SPA process, including the right to know the case against him and to have a meaningful opportunity to respond. The ERC found that the Grievor had had a meaningful opportunity to respond to the new information through his MR. The ERC found that the Respondent had applied the correct test, reviewed the appropriate policy and had not erred in applying the required criteria for a SPA. The ERC recommended that the Commissioner deny the grievance and confirm the Respondent's SPA decision.

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

The Grievor challenged a decision by the Respondent to issue a Stoppage of Pay and Allowances (SPA) Order which resulted from *Code of Conduct* allegations involving the Grievor's misuse of duty-related credit cards. Although statutory charges were approved against the Grievor for two counts of fraud under \$5,000, the record indicates that the charges, which proceeded by indictment, were not considered in rendering the SPA. At Level I, the Adjudicator denied the grievance on its merits. The Grievor sought a review at Level II. The grievance was referred to the ERC. The ERC recommended that the grievance be denied on the basis that there was no breach of procedural fairness, the Grievor had not established that the Respondent's decision was inconsistent with policy, the Grievor had not provided sufficient evidence that the SPA was punitive, and the 21 disciplinary decisions he referred to at Level I were irrelevant. The ERC was satisfied that the Respondent had applied the correct test, reviewed the appropriate policy, and did not err in applying the criteria of clear involvement and outrageous alleged misconduct. The Commissioner agrees with the ERC Findings and Recommendations. The grievance is denied.

G-697 Medical Discharge (summarized in the April – June 2020 Communiqué)

The Grievor, who suffered from a disability, has been off-duty sick since July 2004. Between July and November 2007, the Force made significant efforts to meet with the Grievor in order to discuss the options available to him. As a result of his unwillingness to cooperate, the Grievor was served with a Notice of Intent to Discharge on November 27, 2007. Between April and November 2008, a Medical Board was assigned to determine the degree of the Grievor's disability. The Grievor remained on sick leave for an additional 3.5 years. In March 2011, the Medical Board issued its findings which ultimately led the RCMP to assign a permanent medical profile of G6 O6 to the Grievor. On September 9, 2011, the Grievor submitted a medical certificate attesting that he was fit for police work as of July 5 of that year. He also conveyed an interest to return to work. However, the following week or so, the RCMP received another medical certificate this time indicating that the Grievor was unfit for duty as of September 16 and for an indeterminate period of time. The ERC found that the Grievor's medical discharge from the RCMP was justified. The ERC held that Force properly relied on the Grievor's lack of participation in the accommodation process, as well as on the medical evidence attesting that the latter was unfit to perform any type of work within the RCMP for the foreseeable future. The ERC recommended that the Commissioner deny the grievance.

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

The Grievor challenged a decision by the RCMP to medically discharge him, claiming that the Medical Board report upon which the discharge was based was flawed and that the Force failed in its duty to accommodate. At Level I, the Adjudicator denied the grievance, finding that there was no evidence that the Medical Board report, endorsed by Grievor's treating specialist, was inaccurate and that the RCMP met its duty to accommodate to the point of undue hardship. The Grievor sought a review at Level II. The Commissioner accepted the ERC recommendation to uphold the Discharge Order, finding that the Respondent appropriately relied upon the Medical Board report and there was no other verifiable medical information to confirm the Grievor's fitness for duty. The Commissioner found the Force met its duty to accommodate which was

made impossible to the point of undue hardship due to the Grievor's noncooperation and avoidance. The grievance was denied.