Communiqué – January to March 2021

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.

In this issue:

Grievances

Quick Reference Index

ERC Service Standards – from the Chairperson

Background

Section 28.1 of the *RCMP Act* requires the RCMP External Review Committee (ERC) to establish and publish service standards with respect to the time required for the ERC to review appeals and grievances.

Section 28.1 of the *RCMP Act* states that:

> *The Committee shall establish, and make public, service standards respecting the time limits within which it is to deal with grievances and appeal cases that are referred to it and specifying the circumstances under which those time limits do not apply or the circumstances under which they may be extended.*

It is of the highest importance to the ERC to prepare meaningful and objective findings and recommendations in cases under its charge. Equally important is that the cases be dealt with in a timely manner. Due to a historic lack of resources to deal with the caseload, certain cases have not been answered in a timely manner. At times, this has generated issues of mootness, or at the very least, affected the manner in which cases are adjudicated by an RCMP Final Adjudicator. For example, some of the harassment cases forwarded to the RCMP recommending that an investigation be done resulted in an apology being given due to the passage of time as the issues could no longer be properly investigated.

Service Standards

The ERC service standards will be phased in over a period of time. They are:

Fiscal Years 2020-2022
85% target for all files coming into the ERC will be prescreened within 30 days of receipt.

Fiscal Year 2022-2023 and beyond
75% of files coming into the ERC will be completed within 12 months.
85% of files will be prescreened within 30 days of receipt.

Circumstances Under Which Time Limits do not Apply or may be Extended

The ERC will always strive to meet its service standards, but there are situations that are beyond its control that cause delay. Section 28.1 of the *RCMP Act* requires the ERC to identify those circumstances. They typically include:

- The ERC has received incomplete documentation for the case to proceed.
- The parties are required to send further clarifications or submissions for the case to be properly assessed.
- The ERC has approved a party's request for an abeyance.

The ERC will make every effort to shorten these delays.

Findings and Recommendations

Between January and March 2021, the RCMP External Review Committee (ERC) issued the following 18 findings and recommendations:

Current Legislation Cases:

Conduct Appeals

C-045 – Conduct Board Decision

This is an appeal of a Conduct Board (Board) decision ordering the Appellant to resign within 14 days or face dismissal from the Force.

The Appellant was charged with two allegations under section 4.6 and two allegations under section 7.1 of the *RCMP Code of Conduct* relating to his unauthorized accessing of RCMP electronic file information to obtain the phone numbers of two female members of the public for non-duty related reasons and his use of this information to initiate contact with the two women.

The Appellant accessed RCMP electronic file information to obtain the cell phone number of a minor. In a separate series of events, the Appellant accessed RCMP electronic file information to obtain a second individual's personal phone number. He sent her a text message to invite her for coffee. In an Agreed Statement of Facts, the Appellant admitted to three of the four allegations. The Board found that all four allegations were established and imposed the conduct measure of dismissal.

The Appellant appealed the conduct measure. He argued that both the Conduct Authority and the Board did not follow the Administrative Manual, Chapter XII.1 entitled, "Conduct" (Conduct Policy) during the conduct proceedings and this resulted in procedural unfairness to the Appellant. The Appellant also argued that an earlier decision by the Board to deny the Appellant's motion for a stay of proceedings for an alleged excessive delay in serving the Appellant the Notice of Hearing was unreasonable. The Appellant argued that the Board's findings on all the allegations were clearly unreasonable because the Board failed to consider relevant facts and mischaracterized the Appellant's conduct.

The Appellant argued that the Board erred by rejecting the Appellant's expert's testimony about how the Appellant's medical condition and personal circumstances contributed to his impaired moral judgment at the time of the misconduct. The Appellant also argued that the Board erred by improperly attributing too much weight to certain aggravating factors and discounting certain mitigating factors. The Appellant was of the view that the Board's order of dismissal was not a

proportionate conduct measure and that the Board did not give proper consideration to non-dismissal measures proposed by the Appellant at the hearing.

ERC Findings: The ERC found that the Conduct Authority and the Board adhered to the Conduct Policy during the conduct proceedings. The ERC found that the Board's decision to deny the Appellant's motion for a stay of proceedings was not clearly unreasonable and that the Board applied the correct test in determining whether a stay of proceedings should be granted and gave proper consideration to the arguments raised by the Appellant in the motion. The ERC further found that the Board's findings on all the allegations were supported by the record and were not clearly unreasonable.

The ERC found that the Board did not make a reviewable error when considering the testimony from both the Appellant's and the Conduct Authority's experts and rejecting the Appellant's argument that his medical condition and personal circumstances contributed to his impaired moral judgment at the time of the misconduct. The Board's weighing of the other mitigating and aggravating factors in the decision was supported by the record and was not influenced by irrelevant considerations. The ERC found that the Board gave proper consideration to the non-dismissal measures that were proposed by the Appellant at the hearing and the Board's order of dismissal was a proportionate conduct measure. A key consideration in the Board's reasons for dismissal was that the Appellant's actions fell short of the "bedrock expectation that members shall only act to protect the health and safety of Canada's youth and shall never deliberately and repeatedly exploit any vulnerable young person".

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

C-046 – Conduct Board Decision

Between mid-June or July 2016 to late November 2016, the member had an affair with a member of the public (Ms. X). Members of the detachment had seen the member's police vehicle out of his patrolling area while he was on duty and reported the issue to the detachment Commander. It was learned that Ms. X resided in the area where the Appellant's police vehicle was seen. The detachment Commander met with the member and ordered him not to attend the residence of Ms. X while on duty. The member was charged with four allegations of breaching the *Code of Conduct*. During the investigation, another allegation was added for lying to the investigator.

After having received the investigation report, the Conduct Authority ordered that a Conduct Board be instituted as she was seeking the member's dismissal. After the Board was established, pre-hearing conferences were held between the parties and the Board, evidence was filed, as well as the parties written submissions. After reviewing the material filed, the Board indicated that no further information or testimonies were necessary. The Board found the allegations established. It requested that the parties file their material on conduct measures. Ultimately, the Board indicated that a conduct measures hearing would not be necessary as it had all the information, including the parties' submission. After canvassing the evidence on the conduct measures and the parties' submissions, the Board imposed a forfeiture of 20 days' pay for Allegation 1, but also ordered the member to resign within 14 days or be dismissed. On October 23, 2018, the Board issued a corrected version of the decision in which some clerical errors had been corrected (date and typographical errors).

The decision was sent by email to the parties' representatives on August 27, 2018. The Appellant had waived his right to be personally served with the decision. His Member Representative (MR) acknowledged receipt of the decision on August 27, 2018. The Appellant appealed that decision on September 11, 2018. The Office of Coordination of Grievances and Appeals (OCGA) raised the issue of timeliness as it appeared that the appeal was filed one day outside the 14 day time limit to do so. The Respondent argued that the appeal was filed late, but that the Commissioner should grant an extension. The Appellant argued that the time limit starts when the Appellant personally receives the decision; the August 27 decision was not the final written decision and he had the right to receive the decision in person. He requested that the Commissioner forego late service of the decision pursuant to paragraph 15(8) of the *2014 Regulations*.

ERC Findings: The ERC found that the issue of the Appellant's waiving of his right to be personally served with the decision was a procedural issue that should have been raised before the Board. It found that evidence in the record showed that the Board confirmed with the parties that they waived their right to receive the decision in person, that the Board gave advance notice that it would be serving the decision by email and that both representatives waived the right of their clients to receive the decision personally. The ERC found that the decision served on August 27, 2018 was the final written decision and correcting clerical errors in a decision did not change the finality of the initial decision. Therefore, the Appellant was served, through his representative, on August 27. The ERC found that the Appellant filed his appeal outside the statutory time limit to do so. The ERC further found that there were no exceptional circumstances to recommend a retroactive extension of the time limit.

ERC Recommendation: The ERC recommends that the appeal be denied for being untimely.

Other Appeals

NC-058 – Harassment

The Appellant filed a harassment complaint against his immediate supervisor, the Alleged Harasser. The Appellant's five allegations alleged that the Alleged Harasser embarrassed and humiliated him in front of his colleagues in respect to a third-party complaint. The Appellant submitted that the Alleged Harasser made him hand over his working files to others, transferred him to another work area, and threatened to have him relocated to a Detachment that would involve three hours of daily driving.

The Appellant's Harassment Form was reviewed by the Office for the Coordination of Harassment Complaints (OCHC) who advised that the Alleged Harasser was simply performing his managerial duties and that no investigation into the Appellant's complaint was warranted.

The Respondent agreed with the OCHC. Further, he focused on the third-party complaint against the Appellant and inferred that the Appellant's claims of harassment were, in effect, retaliation.

The Respondent found that the Appellant's allegations did not meet the definition of harassment.

The Appellant claimed that the Respondent was biased and that the process was procedurally unfair because no investigation into his complaint was done.

ERC Findings: The ERC found that the Appellant was precluded, on appeal, from raising the issue of bias. The ERC agreed with the Appellant that the decision was speculative in nature in respect to the findings, but most importantly, it was clearly unreasonable in the circumstances because of the absence of a *Code of Conduct* investigation. The Appellant made allegations, if proven, would clearly fall within the definition of harassment.

ERC Recommendations: The ERC recommended that the appeal be allowed; that an investigation into the Appellant's complaints be undertaken; that the matter be decided by a different decision-maker; and that a copy of the Final Adjudicator's decision be forwarded to the OCHC.

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

The Appellant filed a harassment complaint against his Supervisor, his Line Officer and a colleague, who all work in the same unit. This appeal relates to the complaint against his Supervisor (the Alleged Harasser). The complaints against his Line Officer and colleague are the subject of two other appeals.

A Harassment Reviewer from the Office for the Coordination of Harassment Complaints (OCHC) reviewed the matter and provided the opinion that the Alleged Harasser's behaviours may be consistent with his delivery of the conduct process and the complaint may be frivolous. The Officer in Charge of the Professional Responsibility Unit from a neighbouring Division, also reviewed the harassment allegations and recommended that a harassment investigation not be mandated. The Respondent subsequently issued a Record of Decision (ROD), concluding that an investigation was not required for him to determine that the Alleged Harasser acted within the scope of his duties and that his actions did not meet the definition of harassment.

The Appellant presented this appeal disputing the Respondent's decision. He argued that the Respondent was biased, and that his decision was procedurally unfair and clearly unreasonable. The ERC found that the Appellant was precluded from raising the issue of bias on appeal, but concluded that the Respondent's decision was clearly unreasonable. The ERC held that the harassment policy requires a decision-maker to mandate an investigation when informal resolution is not possible, and that there was insufficient information to support the Respondent's decision. Consequently, the ERC recommended a harassment investigation be mandated for the Appellant's complaint.

In accordance with paragraph 47(1)(a) of the *Commissioner's Standing Orders (Grievances and Appeals)*, the Adjudicator dismissed the appeal, finding that the ERC misinterpreted the Respondent's obligation to mandate an investigation. The Adjudicator found that the Respondent's decision was not reached in a manner that contravened the principles of procedural fairness, based on an error of law or clearly unreasonable.

NC-059 – Harassment

The Appellant filed a harassment complaint against his Line Officer, the Alleged Harasser. The Appellant's four allegations alleged that the Alleged Harasser embarrassed and humiliated him in front of his colleagues in respect to a third-party complaint. The Appellant submitted that the

Alleged Harasser ambushed him by not giving him notice of a confrontational meeting for which he had no time to prepare. The Appellant submitted that the Alleged Harasser made him hand over his working files to others, transferred him to another work area, and threatened to have him relocated to a Detachment that would involve three hours of daily driving from his residence.

The Appellant's Harassment Form was reviewed by the Office for the Coordination of Harassment Complaints (OCHC) and by the Officer in Charge (OIC) of the divisional Professional Responsibility Unit (PRU) who both advised that the Alleged Harasser was simply performing his managerial duties and that no investigation into the Appellant's complaint was warranted.

The Respondent agreed with the OCHC and the divisional PRU that an investigation not be mandated. Further, he focused on the third-party complaint against the Appellant and inferred that the Appellant's claims of harassment were, in effect, retaliation.

The Respondent found that the Appellant's allegations did not meet the definition of harassment.

The Appellant claimed that the Respondent was biased and that the process was procedurally unfair because no investigation into his complaint was done.

ERC Findings: The ERC found that the Appellant was precluded, on appeal, from raising the issue of bias. The ERC agreed with the Appellant that the decision was speculative in nature in respect to the findings, but most importantly, it was clearly unreasonable in the circumstances because of the absence of a *Code of Conduct* investigation. The Appellant made allegations which, if proven, would clearly fall within the definition of harassment.

ERC Recommendations: The ERC recommended that the appeal be allowed; that an investigation into the Appellant's complaints be undertaken; that the matter be decided by a different decision-maker; and that a copy of the Final Adjudicator's decision be forwarded to the OCHC and to the divisional PRU.

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

The Appellant filed a harassment complaint against his Supervisor, his Line Officer and a colleague, who all work in the same unit. This appeal relates to the complaint against his Line Officer (the Alleged Harasser). The complaints against his Supervisor and colleague are the subject of two other appeals.

A Harassment Reviewer from the Office for the Coordination of Harassment Complaints (OCHC) reviewed the matter and provided the opinion that the Alleged Harasser's behaviours may be consistent with his delivery of the conduct process and that the complaint may be frivolous. The Officer in Charge of the Professional Responsibility Unit from a neighbouring Division, also reviewed the harassment allegations and recommended that a harassment investigation not be mandated. The Respondent subsequently issued a Record of Decision (ROD), concluding that an investigation was not required for him to determine that the Alleged Harasser acted within the scope of his duties and that his actions did not meet the definition of harassment.

The Appellant presented this appeal disputing the Respondent's decision. He argued that the

Respondent was biased, and that his decision was procedurally unfair. The ERC found that the Appellant was precluded from raising the issue of bias on appeal, but that the Respondent's decision was clearly unreasonable. The ERC held that the harassment policy requires a decision-maker to mandate an investigation when informal resolution is not possible, and that there was insufficient information to support the Respondent's decision. Consequently, the ERC recommended a harassment investigation be mandated for the Appellant's complaint.

In accordance with paragraph 47(1)(a) of the *Commissioner's Standing Orders (Grievances and Appeals)*, the final level Adjudicator dismissed the appeal, finding that the ERC misinterpreted the Respondent's obligation to mandate an investigation. The final level found that the Respondent's decision was not reached in a manner that contravened the principles of procedural fairness, based on an error of law or clearly unreasonable.

NC-060 – Harassment

The Appellant filed a harassment complaint against a Public Service Employee (PSE) co-worker. The Appellant made three allegations. One allegation alleged that the Alleged Harasser embarrassed and humiliated him by making disparaging remarks in front of another person. The second allegation related to a number of comments made over a six month period, was repeated derogatory comments about him when he was in an Acting capacity.

The Appellant's harassment allegations were synthesized into one allegation by the Officer in Charge (OIC) of the divisional Professional Responsibility Unit (PRU). The Respondent found that the allegation did not meet the definition of harassment. Therefore, the Respondent determined that an investigation was not warranted.

The Appellant claimed that the Respondent was biased and that the process was procedurally unfair because no investigation into his complaint was done. The Appellant also complained about the altered allegation.

ERC Findings: The ERC found that the Appellant had not met his burden of showing a reasonable apprehension of bias. The ERC agreed with the Appellant that the decision was speculative in nature in respect to the findings, but most importantly, it was clearly unreasonable in the circumstances because of the absence of an investigation. The Appellant made allegations which, if proven, would clearly fall within the definition of harassment.

ERC Recommendations: The ERC recommended that the appeal be allowed; that an investigation into the Appellant's complaints be undertaken; that the matter be decided by a different decision-maker; and that a copy of the Final Adjudicator's decision be forwarded to the divisional PRU.

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

The Appellant filed a harassment complaint against his Supervisor, his Line Officer and his colleague, who all work in the same unit. This appeal relates to the complaint against his colleague (the Alleged Harasser). The complaints against his Supervisor and the Line Officer are the subject of two other appeals.

A Harassment Reviewer from the Office for the Coordination of Harassment Complaints (OCHC) reviewed the matter. Since the Appellant indicated his interest in resolving the matter informally, the Reviewer recommended the Informal Conflict Management Process (ICMP), if the Alleged Harasser was willing to participate. The Officer in Charge of the Professional Responsibility Unit from a neighbouring Division, also reviewed the harassment allegations. She did not recommend informal resolution as the Alleged Harasser was not interested in participating. She did recommend that an investigation not be mandated into the allegations. The Respondent subsequently issued a Record of Decision (ROD), stating he did not believe the complaint was made in good faith, that it was retaliatory in nature, and that the allegations do not meet the definition of harassment.

The Appellant presented this appeal disputing the Respondent's decision. He argued that the decision was reached in a manner that contravened the applicable principles of procedural fairness. He stated the ICMP was not done and the Respondent rendered his decision without sufficient or accurate information. The ERC found that the Respondent's decision was clearly unreasonable. The ERC finding arose from their interpretation that the harassment policy requires a decision-maker to mandate an investigation when informal resolution is not possible and that there was insufficient information to support the Respondent's finding. Consequently, the ERC recommended a harassment investigation be mandated for the Appellant's complaint.

In accordance with paragraph 47(1)(b) of the *Commissioner's Standing Orders (Grievances and Appeals)*, the final level Adjudicator allowed the appeal, finding that the Respondent's decision was clearly unreasonable and issued an apology to the Appellant.

NC-061 – Harassment

The Appellant lodged a harassment complaint dated April 21, 2016, in which he asserted that his supervisor (Alleged Harasser) harassed him. The Appellant specified that the Alleged Harasser compelled him to retire from the RCMP through a number of inappropriate and potentially discriminatory actions which she attempted to disguise as legitimate performance management initiatives.

This matter was the subject of a joint harassment and *Code of Conduct* investigation wherein a number of witnesses, including the parties, gave evidence. On November 8, 2016, the Respondent concluded that none of the conduct that was revealed by the investigation amounted to harassment. At the time of appealing this decision, the Appellant had retired.

ERC Findings: The ERC found that the Appellant, although he had retired when he filed his appeal, retained his standing to appeal the decision. The ERC found that, based on jurisprudence, a former employee still has standing to appeal a decision if the issue relates to his employment with the Force. Notwithstanding, the ERC found that the Respondent did not err in his decision. There was evidence that the Appellant had performance issues which the Alleged Harasser tried to address with various means. The investigation did not provide any evidence that the Alleged Harasser treated the Appellant disrespectfully.

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

NC-062 – Harassment

The Appellant filed a harassment complaint against a supervisor (Alleged Harasser). The Appellant made an allegation of harassment due to a document he received as a result of a disclosure process in a grievance he had filed. In the document, the Alleged Harasser wrote that the Appellant lacked morals and ethics.

The Office of the Coordination of Harassment Complaints (OCHC) recommended either a limited investigation or no investigation.

The Respondent decided not to conduct a *Code of Conduct* investigation into the harassment complaint on the basis that he/she determined that the definition of harassment had not been met because the document was not "directed" at the Appellant. Further, the Respondent was of the view that it was a single event which did not have a long-lasting detrimental effect on the Appellant.

ERC Findings: The ERC found that the Respondent's Decision was clearly unreasonable. The Respondent erred in her interpretation of the harassment definition. The ERC found that "directed at" does not mean that a comment must be received by the complainant. As mentioned by the National Guidebook on the Investigation and Resolution of Harassment, spreading rumours or making rude or offensive comments to another about the Appellant can still be harassment.

ERC Recommendations: The ERC recommends that the appeal be allowed; that an investigation into the Appellant's complaints be undertaken; that the matter be decided by a different decision-maker; and that a copy of the Final Adjudicator's decision be forwarded to the OCHC.

NC-063 – Harassment

The Appellant filed a harassment complaint relating to a conversation his wife heard between the Alleged Harasser and a retired member in a public place. The Appellant's wife informed him that the conversation related to a *Code of Conduct* process he was facing. The Appellant filed a harassment complaint indicating that he felt humiliated and belittled about this, and that a *Code of Conduct* proceeding should be initiated against the Alleged Harasser. The Respondent found that his complaint did not meet the definition of harassment because the remarks were not directed at the Appellant and it did not occur in the workplace. Consequently, the Respondent chose not to mandate an investigation into the harassment complaint. The Respondent did, however, comment on the nature and the place where the remarks were made and forwarded the matter to a Conduct Authority for review. The Appellant appealed the decision, but focused on the action that was taken against the Alleged Harasser and said it was insufficient. The Appellant made no further submissions on the merits. His Statement of Appeal did not address the finding of no harassment made by the Respondent. In a brief email to the OCGA, the Appellant reiterated that the Alleged Harasser's action had caused him further hardship, which met the definition of harassment.

ERC Findings: The ERC found that the Appellant did not have standing to appeal the conduct measure imposed on the Alleged Harasser in a separate process. As the Appellant had not provided further arguments relating to the Respondent's decision, there was no basis for the

ERC to review the Respondent's Decision in terms of statutory appellate grounds of review.

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

NC-064 – Harassment

The Appellant filed a harassment complaint against her superior (Alleged Harasser). The Appellant claimed that the Alleged Harasser was not providing the Appellant with sufficient support and training and it was reported to her by her immediate supervisor that the Alleged Harasser was keeping an eye on her. Further, the Alleged Harasser contacted the Appellant, who was Off Duty Sick (ODS), at the time and directed her to continue completing her files.

The Appellant filed a harassment complaint. The Office of the Coordination of Harassment Complaints (OCHC) recommended a limited investigation.

The Respondent decided not to conduct a *Code of Conduct* investigation into the harassment complaint on the basis that the allegations did not meet the definition of harassment. The Respondent found that the Alleged Harasser was simply performing his managerial duties. The Appellant listed witnesses and had stated that she had supplemental documentary evidence that were ultimately not addressed.

ERC Findings: The ERC found that the Respondent's Decision was clearly unreasonable. The Respondent erred in not mandating an investigation. Contrary to the Administration Manual XII.8 (Investigation and Resolution of Harassment Complaints), the Appellant was not provided with the opportunity to provide her supplemental information, although she had indicated to the OCHC that such information existed.

ERC Recommendations: The ERC recommends that the appeal be allowed; that an investigation into the Appellant's complaints be undertaken; and that a copy of the Final Adjudicator's decision be forwarded to the OCHC.

NC-065 – Harassment

The Appellant filed a harassment complaint against a superior (Alleged Harasser). The Appellant challenged the decision to remove him from his position temporarily as a result of a *Code of Conduct* matter. He argued that he was not provided with the opportunity to discuss the reassignment. The Appellant further alleged that he had his access to the email systems removed without any satisfactory explanation.

The Office of the Coordination of Harassment Complaints (OCHC) recommended a limited investigation.

The Respondent decided not to conduct a *Code of Conduct* investigation into the harassment complaint on the basis that the Alleged Harasser was simply performing his managerial responsibilities and the process required in respect to ongoing *Code of Conduct* investigations.

The Respondent found that the Appellant was not a victim of harassment.

ERC Findings: The ERC found that the Respondent's Decision was not clearly unreasonable.

The ERC agreed with the Respondent that there is a mechanism in place that the Appellant should have used to appeal his temporary reassignment. Further, the ERC agreed with the Respondent that the listed allegations, on their face, did not make out a prima facie case of harassment.

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

NC-066 – Harassment

The Appellant filed a harassment complaint (Complaint) against the Alleged Harasser, who was his direct supervisor. The Appellant claimed that the latter's change in operational policy and the requirement to be on call while off-duty was adversely affecting his personal and family life. The Respondent directed a limited investigation of the Complaint, as a result of which only the Appellant and Alleged Harasser were interviewed. During the investigation, the Appellant requested that the Respondent recuse himself from deciding the Complaint, particularly in light of indications from the Alleged Harasser that he had previously communicated with the Respondent on issues that had given rise to the Complaint. Before deciding on the Appellant's recusal request, the Respondent obtained clarification from the Alleged Harasser as to the nature of those prior communications. The Appellant was not notified of this clarification. The Respondent, in a written ruling, then decided not to recuse himself. He later rendered a Decision finding that the Complaint was not established.

The Appellant appealed the Respondent's Decision. He argued that the Respondent should have recused himself, and took issue with the manner in which the Respondent had consulted the Alleged Harasser prior to ruling on the recusal issue. As for the Respondent's Decision regarding the Complaint, the Appellant questioned why certain documents identified as potentially relevant by the Respondent had not been obtained in the investigation. He also questioned why an independent witness to one of the incidents alleged in the Complaint had not been interviewed.

ERC Findings: The ERC found that, in keeping with principles of procedural fairness, the Respondent was required to provide the Appellant with an opportunity to address any information obtained from the Alleged Harasser which was relevant to the issue of recusal. Because the Appellant had not been given such an opportunity before the Respondent rendered his recusal ruling, his right to be heard had been breached. The ERC also found that in assessing the Complaint, the Respondent had improperly considered that certain documents would hypothetically support the Alleged Harasser's version of events, even though those documents were not before the Respondent. Finally, the limited investigation mandated by the Respondent resulted in a limited ability to assess the Complaint. An independent witness could clearly have provided relevant evidence regarding one of the incidents alleged by the Appellant, and the Respondent's assessment of that incident would likely have benefitted from the witnesses perspective.

ERC Recommendations: Due to a breach of the Appellant's right to be heard, the ERC recommends that the Final Adjudicator allow the appeal and remit the matter to another decision-maker. The ERC also recommends that the decision-maker be directed to assess whether it is possible to obtain, through a supplementary investigation, the version of events of Witness A and any additional evidence to ensure a thorough assessment of the Complaint. The ERC further recommends that the new decision-maker render a new decision which considers any additional information obtained.

NC-067 – Medical Discharge

After a 3-year medical leave, the Appellant attempted a Graduated Return to Work (GRTW) in July 2012 until July 2013, but he began a second period of medical leave in July 2013, from which he did not return to work. The Health Services Officer (HSO) issued the Appellant an O6 medical profile, meaning that the Appellant was unable to return to work for the foreseeable future. The Appellant grieved this change to his medical profile, which was partially upheld by a Level I Adjudicator. In the spring of 2014, the Force requested that the Appellant undergo an Independent Medical Exam (IME), which the Appellant did, but without using one of the assessors recommended by the Force. The HSO took issue with the validity of the IME due to the assessor used and requested that the Appellant's counsel obtain further information from the assessor, which was ultimately not done. The Appellant's counsel contacted the Force in October 2016 indicating that the Appellant was interested in returning to work as long as he was properly accommodated. This led to the HSO advising the Force that she had issues with the original IME and that her request for follow-up had not been responded to; thus she maintained her opinion that Appellant was unlikely to do a GRTW in the foreseeable future. However, the HSO expressed openness to a further IME by an assessor with expertise in the Appellant's condition to reassess his fitness to work. This led to the Appellant's counsel taking the position that a further IME was too intrusive a measure.

Despite this, the Appellant's counsel advised the Force that the Appellant remained interested in a GRTW, and the Force reiterated that updated medical information would be required for a GRTW. An HSO panel was assembled and it recommended that the Appellant undergo a second IME. The Appellant failed to answer this request. Therefore, the Force initiated discharge proceedings. However, the Employee Management Relations Officer (EMRO) opined that the Appellant be ordered to undergo an IME. One was scheduled for the Appellant; however, the Appellant failed to provide his consent to the assessor, who terminated the assessment.

The Force continued with the discharge process. In his response to the Notice of Intent to Discharge (NOI), the Appellant namely argued that his GRTW agreement was not respected by the Force, which at first failed to provide him with the tools to work and then failed to provide him with RCMP projects to work on. Then the Force, against his care provider's advice, caused him to return to an operational setting too quickly, triggering a worsening of his condition. The Force subsequently did little to accommodate the Appellant's condition, for instance, they rejected his doctor's advice that he try working from home again at first, and later refused to accept the results of an IME conducted by a qualified practitioner of the Appellant's choice who said Appellant could do a GRTW. Further, the HSO ultimately insisted on an assessment by a doctor of the Force's choosing, and the Force refused to fund seven hours of further assessment required by the Appellant's clinician to provide an opinion about his GRTW readiness. Lastly, the Appellant argued that the discharge proceedings under subsection 6(a) of the *Commissioner's Standing Orders* (*Employment Requirements*) (*CSO (Employment Requirements)*) were a breach of his section 15 *Canadian Charter of Human Rights* (*Charter*) right and that it could not be justified under section 1 of the *Charter*.

The Respondent found that the Appellant failed to cooperate with the accommodation process, caused the process to flounder and therefore, he could not be accommodated to the point of undue hardship. The Respondent ordered the Appellant's discharge.

The Appellant appealed his discharge. He argued that the Respondent failed to address

contradicting evidence, failed to address his *Charter* argument and reiterated that the Force did not accommodate him to the point of undue hardship.

ERC Findings: The ERC found that the Respondent erred by failing to address contradicting evidence and differing versions regarding the Appellant's participation in the accommodation process. The ERC further found that the Respondent erred in not address one of the Appellant's main arguments; namely, that subsection 6(a) of the *CSO (Employment Requirements)* breached his *Charter* right.

ERC Recommendations: The ERC recommends that the appeal be allowed and the matter remitted for a new decision.

NC-068 – Harassment

In October 2015, the Alleged Harasser joined the detachment where the Appellant worked. They began exchanging text messages and seeing each other outside work. Their professional relationship reportedly began to deteriorate in February 2016. According to the Appellant, the Alleged Harasser was disrespectful to her. Many incidents occurred during which the Appellant felt that she was demeaned and ridiculed in front of her co-workers.

On June 7, 2017, the Appellant filed a harassment complaint against the Alleged Harasser that included eight allegations. The allegations related to facts that had occurred from November 2015 to May 2017. The Respondent mandated two investigators to investigate these allegations. The investigators met with several witnesses, including the Appellant and the Alleged Harasser. In his decision, the Respondent considered the allegations by addressing them one by one. For each of the eight allegations, he concluded that it had not been proven that the Alleged Harasser demonstrated harassing behaviour.

The Appellant appealed this decision, arguing that the Respondent had not considered all of the evidence, particularly the photos and text messages sent by the Alleged Harasser, and that he had failed to assess the credibility of some witnesses who allegedly lied in their statements. She also submitted that the investigation was subjective, since the investigators had failed to question some key witnesses, whereas they met with others who were not present during the incidents about which they were questioned.

ERC Findings: The ERC found that the Respondent had not breached his duty to make a reasonable decision. He took all of the evidence into account and indicated this several times in his decision. With respect to the photos and text messages sent by the Alleged Harasser, the ERC noted that these elements should have been included in the file, as they were the basis of Allegation 1. It was determined, however, that their absence had not influenced the Respondent in his decision-making process and that he had not, therefore, made any determinative errors by not acquiring them. The ERC also found that the Respondent was not required to assess the credibility of witnesses before assigning weight to their evidence. It was also determined that the Appellant had not succeeded in demonstrating that some witnesses had lied in their statements. Lastly, the ERC concluded that the Appellant had not provided any compelling evidence to demonstrate that the investigation had not been objective and rigorous.

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

Former Legislation Cases:

Grievances

G-730 – Private Accommodation Allowance

The Grievor travelled to a remote post to do relief work. He stayed there for 31 nights, in what was described as "[C]rown owned accommodations". He asked for a Private Accommodation Allowance (PAA) of $1,550 (31 nights at $50 per night). The RCMP refused his request. The Grievor grieved this decision. He filed the submission of another grievor who had been denied a PAA for his stay in a different province at a different time. The other grievor argued, among other things, that because he stayed in a Crown-owned home rented by a member, that home was a "private non-commercial accommodation", and a PAA was payable. The Grievor cited case law.

The Level I Adjudicator denied the grievance. She found that the other grievor's submission did not show that the Grievor was owed a PAA, and that the Grievor had not established any links between the other grievor's case and his own case. She added that the Grievor neither filed the case law he relied on nor specified how it was relevant. The Grievor presented his grievance at Level II. He stresses that he stayed in a home that was rented by a member at the remote post. He provides some emails in support of that point. He questions why this information needed to be established at Level I. He adds that a "new development" suggests he should receive PAA.

ERC Findings: The ERC found that there were no preliminary issues that prohibited a review of the grievance. However, the new information and evidence the Grievor filed at Level II were not admissible. They had been available or accessible years earlier during Level I of the grievance, yet the Grievor omitted to reasonably explain why he could not have tendered them at that time.

The ERC concluded that the Grievor may have been eligible to receive a PAA only if the lodging where he stayed could be found to be a "private non-commercial accommodation" (i.e. "private dwelling or non-commercial facilities where the traveller does not normally reside"). The Grievor did not provide the facts necessary to support such a finding. The record shows that he stayed in a Crown property. This by itself was not necessarily fatal to his case. Members who perform relief duty at other posts stay in various types of Crown lodgings, including institutional facilities, units inside of detachment buildings, vacant homes, and homes being rented by other members on an ongoing basis. The latter type of property can be considered private and non-commercial to the extent that it retains a "private character" as a result of someone living in it. However, the Grievor did not supply any details about where he stayed. He instead referred to case law, and filed another grievor's unrelated submission, without stating how either applied to his situation. He then hoped the Level I Adjudicator would make sense of those documents and award him a PAA. Such an outcome would be unjustifiable in the absence of a factual foundation that supported it. Lastly, the issue of whether the Grievor could receive a PAA further to a new development that post-dated his grievance was beyond the scope of the matter before the ERC.

The ERC thanked the Grievor for spending 31 nights away from his home in order to provide relief services in a remote community that needed his help.

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 Respondent's decision to deny his expense claim for the private non-commercial accommodation allowance (PAA). The Level I Adjudicator dismissed the grievance. The ERC recommended the grievance be denied on the basis that the Grievor stayed in government and institutional accommodation. The Commissioner accepts that the Grievor stayed in a Crown-owned residence that was being rented by another member, thereby creating an entitlement to the PAA. The grievance is allowed.

G-731 – Private Accommodation Allowance

Between 2011 and 2013, the Grievor travelled to isolated posts to do relief work. He stayed in Crown-owned lodgings, including the homes of members. He sought a Private Accommodation Allowance (PAA) of $50 per night. In 2013, the Force denied his request. The Grievor tendered a grievance. Despite receiving invitations and extensions, he did not supply any submissions or evidence.

The Level I Adjudicator deemed the grievance to be "partially upheld". He found that, although the Grievor met criteria for being paid a PAA under an amended version of the RCMP Travel Directive, the record lacked information needed to establish the total "prejudice suffered". The Adjudicator directed that the amended Travel Directive be applied to the situation, and that the Grievor receive any PAA benefits he was owed. It turns out the Force had already done this in 2014. Further to a recent Commissioner's clarification, the RCMP Travel Directive had been amended to enable the Force to give PAAs to members in certain situations involving travel retroactive to a particular cut-off date. Consequently, the Force paid the Grievor a PAA of $6,950 for his stays at isolated posts after that date, but no PAA for his stays before it.

At Level II, the Grievor questioned the Force's decision in 2014 to pay him a PAA for his stays in isolated posts after, but not before, the cut-off date. He sought $1,100 in redress. He submitted copies of his unpaid PAA expense claims in support of that request.

ERC Findings: The ERC found that there were no preliminary issues that prohibited a review of the grievance. The ERC further found that the scope of the grievance was limited to the Force's decision in 2013 not to give the Grievor a PAA. The Force's decision in 2014 to give the Grievor a portion of what he had requested, was a different decision made pursuant to a Commissioner's clarification and a change in policy. If the Grievor disagreed with it, he could have lodged a new grievance. Moreover, the ERC found that the fresh information and evidence the Grievor filed at Level II were inadmissible. The Grievor could have presented them at Level I, but did not do so.

The ERC determined that the Grievor did not establish that he was entitled to any unpaid claims for a PAA. He did not offer any submissions, evidence or authorities in support of his grievance, nor did he deal with the Respondent's arguments and evidence that he was not entitled to a PAA. The ERC observed that another member's Crown-owned residence may be viewed as a private non-commercial accommodation, and that travelling members who stayed in such homes might be entitled to PAAs. However, there were not enough details about where the Grievor stayed to properly assess if a PAA was payable to him. He did not state when, or for how long, he stayed in other members' Crown-owned homes. He did not quantify the PAA he wanted for those stays or provide any documentation in support of that amount. He also omitted to point to

any policies or jurisprudence which supported the payment of a PAA in his situation. Although he urged that he was prejudiced by the inconvenience of staying in other members' homes, the unsuitability of a Crown-owned lodging does not create an entitlement to a PAA. The ERC thanked the Grievor for his relief service at isolated posts, and apologized for its role in the delay of his grievance.

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 Griever challenged the Respondent's decision to deny his request for the private non-commercial accommodation allowance (PAA). During the early resolution process, the Griever, who had provided relief services at isolated posts between 2011 and 2013, was paid a PAA totalling $6950.00. His grievance relates to an outstanding PAA amount of $1100.00 for two stays at an isolated post in early 2011 to provide relief duties. At Level I, the Adjudicator found that the grievance was "partially upheld", but did not order any redress, citing a lack of information in the record in relation to the prejudice suffered by the Griever. The ERC recommended that the grievance be denied, finding that the Grievor had presented evidence at Level II which was inadmissible, and that he had not established his entitlement to the unpaid amount. The Commissioner disagreed with the ERC, pointing out that the Griever had attempted to file the relevant rejected expense claims after resolution discussions broke down a full 18 months prior to the Level I decision, but was deterred by the Office for the Coordination of Grievances. The grievance is allowed.

G-732 – Harassment

Between September 2011 and March 2014, the Grievor was off work several times for medical reasons. To facilitate his return to work, he received counselling from the Alleged Harasser. In November 2012, the Grievor obtained access to his medical record and was therefore able to read what the Alleged Harasser had written about him. Since he was dissatisfied by the latter's findings, the Grievor filed a harassment complaint in which he claimed he was mistakenly diagnosed as having medical issues, which prevented him from returning to operational duties. The Grievor's complaint was not investigated. On July 25, 2014, the Respondent rendered a decision dismissing the complaint on the ground that the allegations did not meet the definition of harassment.

On August 8, 2014, the Grievor filed a grievance indicating that he was challenging the decision to dismiss his harassment complaint. In his submissions, the Grievor: (1) disputed the fact that his complaint was not investigated; (2) accused the Respondent of basing its decision on the wrong document; (3) claimed that the Respondent did not have the skills required to assess the allegations in his complaint, and, as a result, a healthcare professional should have been appointed as a decision maker; and (4) argued that he was not given all the information in his medical record, which prevented him from filing a comprehensive complaint against the Alleged Harasser.

ERC Findings: The ERC concluded that the Grievor failed to meet his burden of establishing that the Respondent's decision contravened applicable policies. On that issue, it was found that the Respondent's decision not to conduct an investigation was reasonable under the

circumstances. It was also found that the Respondent had been properly appointed as decision-maker and that he had thoroughly considered all the evidence submitted by the Grievor before rendering his decision. The ERC also noted that the Respondent did not have the knowledge, expertise or even the authority to interfere in the Grievor's medical record, and it was therefore impossible to fault him for refusing to address the disclosure issue. Finally, the ERC pointed out that although the Grievor's dispute with the RCMP was set out in the form of a harassment complaint, it seemed to relate more to the assessment of the OHSS and the medical profile it attributed to him over the years. In that regard, the ERC found that neither it nor the Commissioner had the authority to examine the content of the Grievor's medical record, and the latter should have therefore used another mechanism to challenge his medical profile along with the findings and diagnoses made by the healthcare professionals with respect to him.

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

G-733 – Standing

In October 2008, the Grievor received a salary overpayment. In September 2011, the Respondent contacted her to inform her of the overpayment and discuss the terms and conditions for recovery. As she was of the opinion that the limitation period had expired, the Grievor filed a grievance disputing the recovery.

The grievance was denied on its merits at Level I. During the Level I proceedings, the Grievor was considered a civilian member of the RCMP. Consequently, the issue of standing was never raised. At Level II, it was noted that the Grievor had been hired by the RCMP as a Temporary Civilian Employee (TCE) and therefore had never held civilian member status. The Grievor's standing was thus called into question.

ERC Findings: The evidence on file shows that the Grievor was never employed as a regular or civilian member of the RCMP. The ERC is therefore of the opinion that she did not have standing as a grievor in her grievance.

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:

[*Translation*]

While she was a temporary civilian employee (TCE), the Grievor received a salary overpayment. When the Respondent attempted to recover this amount, the Grievor objected on the basis that the limitation period for doing so had expired. The Level I Adjudicator determined that the grievance was to be denied for lack of merit. Before the grievance could be heard at Level II, it was learned for the first time that the Grievor was a TCE, rather than a civilian member, which raised the issue of standing. The External Review Committee (ERC) was of the view that, because she was a TCE, the Grievor did not have standing and recommended that the Commissioner deny the grievance. The Commissioner agrees with the ERC's recommendation and denies the grievance.

G-734 – Discrimination

In February 2000, the Grievor had surgery to address symptoms he had experienced following two injuries he had sustained while on duty in previous years. Upon returning to work, the Grievor resumed the same duties he had held prior to the surgery. In 2005, the Health Services Officer (HSO) reviewed the Grievor's periodic health assessment and advised the Grievor that his medical profile was being updated and that his occupational factor was being changed from an "O2" to an "O3" designation. The change to an "O3" designation resulted in the Grievor being restricted from working in a fully operational capacity.

In September 2009, the Grievor requested that his medical profile be changed to an "O2". The Grievor indicated that he was aware of other members who had undergone the same surgery and they were not subject to the same restrictions as he was. The Respondent denied the Grievor's request. The Grievor filed a grievance contesting the Respondent's decision to refuse the Grievor's request that the occupational factor of his medical profile be changed to an "O2".

The Grievor argued that the RCMP acted in breach of its own policies when it accepted the HSO's recommendation to designate him as an "O3". The Grievor argued that the RCMP breached the *Canadian Human Rights Act* (*CHRA*) by discriminating against the Grievor on the basis of "perceived disability".

The Level I Adjudicator denied the grievance was denied on its merits. She found that the Grievor had not established that the Respondent's decision to accept the HSO's recommendation to designate the Grievor as an "O3" was inconsistent with the relevant policy provisions in the Health Services Manual, Chapter II.1 (HSM II.1) and the Administrative Manual, Chapter II.19 (AM II.19). She also found that the Grievor had not demonstrated that the Respondent's decision was inconsistent with the "interpretation of the *CHRA*".

ERC Findings: The scope of the ERC's review in this grievance is limited to the decision that was made in 2009, even though another decision was made by the Respondent in 2012 that confirmed the 2009 decision. However, the ERC indicated that it would consider the Grievor's arguments regarding evidence that post-dated the 2009 decision because it was of assistance in understanding the 2009 decision.

The ERC found that RCMP Health Services did not breach the relevant RCMP policies, the HSM II.1 and the AM II.19, when it made the decision in 2009 to designate the Grievor an "O3" medical profile because there was medical evidence in the record to support the decision.

The ERC found that RCMP Health Services did not breach the *CHRA* in making the 2009 decision. While the ERC accepted the Grievor's argument that there was a *prima facie* case of discrimination, the ERC found that there was scientific evidence in the record that showed how the decision by the Respondent was based on a bona fide occupational requirement.

The ERC found that the scientific guidelines used by the HSO in making a decision on the medical profile of the Grievor were rationally connected to the performance of the job because their purpose was to ensure that members can safely and effectively perform the functions of a fully operational police officer, where physical altercations are an ever-present risk. The ERC found that there was medical evidence in the record to show how accommodating the Grievor and designating him at the "O2" level would impose undue hardship on the RCMP.

The ERC expressed sympathy for the Grievor's circumstances, but observed the important role of HSOs in providing the RCMP with medical opinions, based on scientific evidence, regarding the fitness for duty of individual members and to identify and mitigate safety risks that could jeopardize the health of the individual member, their colleagues and the public.

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

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-041 Conduct Authority Decision (summarized in the October – December 2020 Communiqué)

In 2010, the Appellant reported a weapon that the Force had seized and stored as an exhibit as "destroyed". However, instead of destroying the weapon at work, he took it home to destroy it. He never got around to doing so. Soon thereafter, the weapon was seized from his home. Statutory and *Code of Conduct* investigations were held. Following the investigations and a Conduct Meeting, the Respondent found that two allegations against the Appellant were established. The Appellant presented an appeal. He made several arguments concerning the fairness and reasonableness of the Respondent's decision. The ERC recommended that this appeal be allowed in part. Specifically, it recommended that the Appellant's indefinite demotion be reduced to a two-year demotion.

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

On November 23, 2008, a weapon was seized by a member of the [X] Detachment where the Appellant was posted. On September 6, 2010, the Appellant recorded in PROS that this exhibit had been destroyed, notwithstanding that no authority existed to do so, and that the destruction had allegedly been witnessed by Cst. X. This proved to be untrue on both counts as the weapon remained stored at the Appellant's residence, in his garage. The Appellant subsequently faced a *Code of Conduct* investigation and, in addition, the Appellant faced a statutory investigation.

It was alleged that the Appellant had contravened sections 7.1, 4.4 and 8.1 of the *Code of Conduct*, which resulted in three allegations.

The Respondent dismissed Allegation 1, but found Allegations 2 and 3 established. As a result, he imposed the following measures:

- Forfeiture of 160 hours (20 days) Leave;

- An indefinite demotion (at the highest pay increment of that level) beginning at the date of service of this document; and
- Ineligibility for promotion for a period of two years from the date of service of this document.

The Appellant presented this appeal, contending the Respondent's decision was reached in a manner that contravened the applicable principles of procedural fairness and was clearly unreasonable.

The appeal was referred to ERC who believed the appeal should be allowed, in part. The ERC found that "the Respondent's decision on the allegations was reached fairly" and that "the Respondent's decision on the allegations is reasonable". However, the ERC Chairperson agreed that the Respondent "omitted to properly consider all the mitigating factors", particularly the "medical and personal challenges that placed [the Appellant's] actions in context", and recommended "the Appellant's conduct measures should be reduced because they are too severe".

The Conduct Appeal Adjudicator did not adopt the recommendations put forward by the ERC Chairperson, having found the record lacked documentary evidence to support the Appellant's contention that the Respondent's conduct measures were clearly unreasonable. Although the Appellant listed personal and professional events and occurrences that he wanted considered as mitigating circumstances, he provided no supporting documentary evidence. The record contained his Employee Profile as well as several Performance Assessments, including evidence of his 2014 promotion, that contradicted his position. The Appeal Adjudicator was given no reason to interfere. This appeal is dismissed on all counts.

C-042 Conduct Board Decision (summarized in the October – December 2020 Communiqué)

This is an appeal by a Conduct Authority requesting the member be directed to resign within 14 days or face dismissal from the Force. The member was charged with four allegations relating to his conduct at an off-duty party held for a family member's section. Both the member and the family member belong to an RCMP unit. The member appeared before a Conduct Board where the four allegations under the *Code of Conduct* were deemed established. In addition to ordering continued treatment and other sanctions, the Board sanctioned the member to a total loss of 45 days of pay. The Appellant, in addition to the sanction referred to above, submitted that the Board made an error in law in finding that sexual harassment in the workplace did not occur. Further, the Appellant argued that the Board should have considered all of the events globally and had it done so, would have determined that resignation/dismissal was the appropriate sanction in this case.

The ERC found that the Appellant was correct in respect to the Board's finding that discourteous conduct and not sexual harassment in the workplace took place. The ERC recommended that the sanction of five days' loss of pay in respect of this allegation be set aside and 20 days' loss of pay be directed by the Commissioner. The ERC recommended that the sanction of five days' loss of pay in respect of this allegation be set aside and 20 days' loss of pay be directed by the Commissioner. The ERC agreed with the Appellant that under normal conditions, dismissal in these circumstances would have been the appropriate sanction. However, the Board was obliged to consider both aggravating and mitigating evidence when making its determination as to

appropriate sanctions. With respect to the other three allegations, the ERC recommended that the imposed sanctions stand.

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

The Appellant, the Commanding Officer, "X" Division, as a conduct authority, appeals the decision of a Conduct Board (Board). The Respondent, an RCMP member, was charged with four allegations of contravening the RCMP *Code of Conduct* at an off-duty event. Three allegations concerned discreditable conduct (section 7.1) and one, harassment (section 2.1).

All four of the allegations were established. The Appellant sought dismissal. With regard to the section 2.1 allegation, the Board was not convinced that the Respondent's actions amounted to harassment. Rather, the Board found the conduct to be disrespectful and discourteous. For the four allegations, the Respondent was sanctioned a total of 45 days' pay, ordered a transfer/reassignment, and directed to continue psychotherapy and undergo any treatment specified by the Health Services Officer.

On appeal, the Appellant argued that the Board made an error of law by failing to find that the Respondent's conduct amounted to sexual harassment. The Appellant also took issue with the conduct measures insisting that the Board should have considered all the allegations globally, and in doing so, it would have determined that dismissal was the appropriate sanction.

The appeal was referred to the ERC for a review. The ERC found that Respondent's conduct constituted sexual harassment. The ERC determined that the Board's imposed conduct measure for the section 2.1 allegation was clearly unreasonable and recommended that instead of five days, a forfeiture of 20 days' pay was more appropriate.

The Commissioner accepted the ERC findings and recommendation and allowed the appeal in part.

Other Appeals

NC-056 Harassment (summarized in the July – September 2020 Communiqué)

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. 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 also provided reasons which appeared to be a basis for his finding that the allegations, when assessed collectively, revealed no pattern of harassment.

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. The Respondent's cumulative assessment of those incidents, as well as others, would have benefitted from a more complete investigation. The ERC recommended that the Final Adjudicator allow the appeal and remit the matter to another decision-maker. The ERC further recommended 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.

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

The Appellant appealed the Respondent's finding that his complaint of harassment was not established. He argued that the Respondent committed an error of law and that the decision is clearly unreasonable.

Pursuant to paragraph 17(a) of the *RCMP Regulations*, 2014, the matter was referred to the ERC. The ERC recommended the appeal be allowed on the ground that the decision was clearly unreasonable. The ERC found the Respondent did not correctly apply the definition of harassment and the reasonable person test. Further, that the Respondent failed to properly consider the incidents as a whole when determining if there was a pattern of harassment. The ERC held the limited investigation may have restricted the Respondent's ability to properly carry out these assessments.

The Adjudicator accepted ERC's recommendation and allowed the appeal pursuant to paragraph 47(1)(b) of the *Commissioner's Standing Orders (Grievances and Appeals)*, remitting the matter, with directions for review by a new decision maker. The Adjudicator did not accept that further investigation, at this juncture, would necessarily assist the decision-maker in their review.

Former Legislation Cases:

Grievances

G-705 Relocation (summarized in the October – December 2020 Communiqué)

On April 5, 2007, the Grievor was transferred from the old detachment to the new detachment. His transfer form (A22-A) qualified the transfer as being a "no cost" transfer which meant that relocation benefits were not provided because the Grievor's residence was situated less than 40 kilometres from the new detachment. On September 20, 2007, the Grievor learned that a Public Service Employee (PSE) from his detachment and who resided near him was being considered for a transfer allowance (the PSE ultimately received the benefit). On September 27, 2007, the Grievor filed a grievance arguing that he was entitled to a transfer allowance under the National Joint Council Integrated Relocation Program Directive (IRPD). The ERC ultimately held the Grievor did not show on a balance of probabilities that he was entitled to a transfer allowance. 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 the Respondent's denial of his request for a transfer allowance under the National Joint Council Integrated Relocation Program Directive (IRP Directive). He argued that another RCMP employee, who lives in close proximity to his residence, was granted the allowance. At Level I, the Adjudicator raised the preliminary issue of timeliness, and rendered a decision on the merits, finding that although the grievance was timely, the Grievor had failed to establish on a balance of probabilities that the Respondent's decision was inconsistent with policy. The matter was referred to the ERC for review. The ERC found that the Grievor has not demonstrated that the Respondent's denial of his request was inconsistent with the IRP Directive or RCMP Relocation policy. The Commissioner accepts the ERC finding. The grievance is dismissed.

G-706 Relocation (summarized in the October – December 2020 Communiqué)

The Grievor owned a house at her posting location. Her partner moved in with her in November 2010. In April 2011, the Grievor was notified of her transfer to another location. In June 2011, as part of the Grievor's relocation, she purchased a home at the new location with her partner, her share of the property amounting to 50%. Although the full expenses for the purchase of the new home were initially approved and reimbursed, the Grievor was later asked to repay her partner's share of those expenses. This is because under section 5.09 of the *RCMP Integrated Relocation Program* (IRP), only a portion of purchase expenses directly proportional to the member's legal share of the residence can be claimed if it is co-owned by a person who is not the member's common law spouse. The term "common law spouse" is defined in the IRP as someone who has continuously resided with the member in a conjugal relationship for at least one year prior to the transfer. The Grievor's partner did not meet this requirement.

As a result of discussions with relocation personnel, she had purchased the home believing all expenses would be paid even though her partner had not lived with her for a full year prior to the relocation. The Grievor also argued that a Form she was required to fill out to report changes in cohabitation rendered the situation more confusing, and that she might have been entitled to the full expenses had it been filled out differently. The ERC found that the Grievor was not entitled to the full reimbursement of expenses related to the purchase of the residence since it was co-owned by a person who was not the Grievor's common law spouse within the meaning of the IRP. The ERC also addressed the Grievor's argument that she would have had common-law status with her partner had she confirmed it on a standard RCMP personnel information Form prior to her transfer. The ERC disagreed. 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 the decision requiring her to reimburse the RCMP for one half of the expenses related to the purchase of her residence on relocation to her new post, co-owned with her partner, who at the time was not her "spouse", as defined by the Integrated Relocation Program (IRP) policy, because their cohabitation was not yet one year. The Grievor argued that prior to the purchase, she notified the relocation advisor that she had not been residing with her partner for one year and they were not "common-law" and inquired if the full amount of the expenses would still be covered if they purchased the new property together. It is undisputed that

the relocation advisor mistakenly reassured the Griever that the full amount of the expense of the joint purchase would be covered by the RCMP. The Level I Adjudicator denied the grievance on the merits. At Level II, the grievance was referred to the RCMP ERC, and the Chairperson recommended that even though the Grievor had likely been misinformed and was owed an apology, the grievance be dismissed since the Griever did not demonstrate that exceptional circumstances warranted the reimbursement. The Commissioner accepted that the Grievor relied on the relocation advisor's erroneous reassurance and did so to her detriment. The Commissioner found that in the circumstances the Respondent is estopped from enforcing the IRP policy and demanding recovery of the overpayment. The Commissioner apologized to the Grievor, and allowed the grievance.

G-707 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor volunteered to travel to an isolated post to help conduct an investigation. He stayed at the isolated post for five nights in a vacant, Crown-owned house trailer that he felt was substandard. He filed a claim for a Private Accommodation Allowance (PAA) totalling $250 (five nights at $50 per night) and other costs. The Force refused to pay the PAA portion of the claim. She found that he was ineligible to receive a PAA because the house trailer he stayed in was not a private accommodation, and PAAs were not meant to be compensation for lodgings that are considered subpar. In regards to the merits, the ERC found that the Grievor could have been eligible to receive a PAA only if the house trailer at which he stayed was a "private non-commercial accommodation" (i.e. "private dwelling or non-commercial facilities where the traveller does not normally reside"). The Grievor was ineligible to receive the PAA because the house trailer did not fall into this category. It fell within the category of "government and institutional accommodation", as described in both the National Joint Council Travel Directive and the RCMP Travel Directive. 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 Respondent's decision to deny his expense claim for private non-commercial accommodation allowance (PAA). The Level I Adjudicator denied the grievance. The Commissioner accepts the ERC finding that Grievor is not entitled to PAA as the vacant trailer in which he stayed constituted government and institutional accommodation. The Commissioner also accepts that unsuitability of an accommodation does not create an entitlement to a PAA claim. The grievance is dismissed.

G-708 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor agreed to travel to a short-staffed detachment to perform relief work. Before she travelled, her superior told her she could receive a Private Accommodation Allowance (PAA) upon her return. She spent 14 nights at the detachment and stayed in a vacant, Crown-owned residence that she considered subpar. She later made a claim for a PAA totalling $700 (14 nights at $50 per night) and other travel expenses. The Adjudicator found that the Grievor was ineligible to receive a PAA because the residence she stayed in was not a private accommodation, and PAAs were not meant to be compensation for properties that were deemed subpar. The ERC further found that the Grievor could have been eligible to receive a PAA only if the residence at

which she stayed was a “private non-commercial accommodation” (i.e. “private dwelling or non-commercial facilities where the traveller does not normally reside”). The Grievor was ineligible to receive the PAA because the residence did not fall into this category. It fell into the category of “government and institutional accommodation” as described in both the National Joint Council Travel Directive (NJCTD) and RCMP Travel Directive. 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 Respondent’s decision to deny a private non-commercial accommodation allowance (PAA) expense claim with respect to fourteen overnight stays at a Crown-owned vacant residence. At Level I, the Adjudicator found that the Grievor was not eligible for the PAA, as the accommodation in which she had stayed constituted government and institutional accommodation (GIA), rather than private non-commercial accommodation. The Commissioner accepts the ERC finding that the Grievor is not entitled to the PAA. The grievance is dismissed.

G-709 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During her time there, she stayed in a double-occupancy room. After her deployment, she claimed the private non-commercial accommodation allowance (PAA) as compensation for her stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of her shared accommodation. Since the Grievor was aware of the prejudice from the moment she arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted her grievance within 30 days after the day on which she learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC’s finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-710 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC's finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-711 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC's finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-712 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC's finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-713 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC

found that since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC's finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-714 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During her time there, she stayed in a double-occupancy room. After her deployment, she claimed the private non-commercial accommodation allowance (PAA) as compensation for her stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of her shared accommodation. Since the Grievor was aware of the prejudice from the moment she arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted her grievance within 30 days after the day on which she learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC's finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-715 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC's finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-716 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC's finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-717 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner accepts the ERC's finding that the Grievors did meet the limitation period, but that the grievances are unfounded.

G-718 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator

found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC's finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-719 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During her time there, she stayed in a double-occupancy room. After her deployment, she claimed the private non-commercial accommodation allowance (PAA) as compensation for her stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of her shared accommodation. Since the Grievor was aware of the prejudice from the moment she arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted her grievance within 30 days after the day on which she learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC's

finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-720 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC's finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-721 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner rejects the ERC's finding regarding the limitation period, but accepts the suggestion that the cases are unfounded in any event.

G-722 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit. The ERC found that since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met. The ERC recommended that the grievance be allowed. It also recommended that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

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

[*Translation*]

The Grievors were deployed to an event, and they found that the accommodations provided did not meet the requirements in effect. Their consequent claims for private non-commercial accommodation allowance (PAA) were denied by the Respondent. With respect to the preliminary matter of the limitation period, the ERC found that the Grievors filed their grievances in time and therefore recommended that the Commissioner allow the grievances, but emphasizes that the substantive issue is unfounded. The Commissioner accepts the ERC's finding that the Grievors did meet the limitation period, but that the grievances are unfounded.

G-723 Private Accommodation Allowance (summarized in the October – December 2020 Communiqué)

The Grievor agreed to travel to an isolated post to perform relief work. He spent 28 nights at the isolated post. He stayed in an apartment inside the RCMP detachment there. In his view, that apartment was unsuitable because it was noisy and lacked privacy. He presented a claim for a

Private Accommodation Allowance (PAA) totalling $1,400 (28 nights at $50 per night). The Respondent would not approve his claim. A Level I Adjudicator denied it on the merits. She found that a PAA was not meant to be compensation for "less than ideal" lodgings provided at no cost, and that the Respondent lacked authority to approve a PAA. The ERC further found that the Grievor could have been eligible to receive a PAA only if the apartment at which he stayed was a "private non-commercial accommodation" (i.e. "private dwelling or non-commercial facilities where the traveller does not normally reside"). The Grievor was ineligible to receive the PAA because the apartment did not fall into this category. Rather, it fell into the category of "government and institutional accommodation" as described in both the National Joint Council Travel Directive (NJCTD) and the RCMP Travel Directive. 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 Respondent's decision to deny his expense claim for the private non-commercial accommodation allowance (PAA). The Level I Adjudicator denied the grievance. The Commissioner accepts the ERC finding that Grievor is not entitled to the PAA as the apartment he resided in while on travel status was government and institutional accommodation. The apartment was unrented and lacked private character to be considered private non-commercial accommodation. The grievance is dismissed.

G-724 Discrimination (summarized in the October – December 2020 Communiqué)

The Grievor was a regular member. He submitted a claim for pre-approval of significant medical expenses, which would be performed on his spouse, and for a less costly procedure, which would be performed on him. He was reimbursed by the Force for the treatments performed on him. RCMP Health Services later informed the Grievor that the RCMP would not cover his spouse's expenses because she was not a member. The Grievor argued that he should be entitled to reimbursement for that which would be paid to a female member. The ERC found that the RCMP's decision was consistent with AM XIV.1, which authorized reimbursement of members for their own treatments, but not for their spouses' treatments. 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 the Respondent's denial of his claim for pre-approval of medical expenses which would be performed on his spouse who is not a member of the RCMP. At Level I, the Adjudicator rendered a decision on the merits, finding that although the grievance was timely and the Grievor had standing, he had failed to establish on a balance of probabilities that the Respondent's decision was inconsistent with applicable legislation or RCMP policy. The matter was referred to the ERC for review. The ERC found that the Respondent's decision was consistent with the relevant policy. The Commissioner accepts the ERC finding. The grievance is dismissed.

G-725 Meal Claim (summarized in the October – December 2020 Communiqué)

On the relevant dates, the Grievor was working evening shifts outside his headquarters area. He claimed a reimbursement for three meals at the dinner rate. In each case, it was the first meal of his shift. The Grievor's claim was denied by the Respondent on the ground that the Grievor had not provided receipts to justify the reimbursement requested. According to the Adjudicator, the Grievor was subject to section 3.2.9 of the *Treasury Board Travel Directive* (TBTD), which states that reimbursement of meals shall be based on the meal sequence of breakfast, lunch and dinner, in relation to the commencement of the employee's shift. The ERC found that the Grievor, as a shift worker, had to have breakfast at his own expense before beginning his shifts. He was then eligible to claim the reimbursement of the meals consumed while he was travelling, in accordance with the meal sequence set out in section 3.2.9 of the TBTD. 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:

[*Translation*]

The Grievor worked shifts for which he then claimed meal expenses. These claims were denied by the Respondent, which led the Grievor to file five grievances. The ERC found that the five grievances should be allowed, but only with respect to the claims involving shifts longer than 10 hours for which the Grievor claimed a second meal. In all the other cases, namely the claims submitted for shifts where the Grievor only claimed one meal, the ERC found that the Grievor was only entitled to the dinner rate, which he seems to have already received. The Commissioner shares the ERC's opinion and accepts the ERC's recommendation that the grievances should be allowed in part.

G-726 Meal Claim (summarized in the October – December 2020 Communiqué)

Between October 2003 and November 2005, the Grievor regularly worked evening shifts outside his headquarters area. While travelling, the Grievor claimed and obtained the reimbursement of meals consumed at mid-shift at the lunch rate. However, further to new information, he requested that the meals already reimbursed at the lunch rate be paid at the dinner rate. He therefore claimed the difference between the amount received and the amount he should have received for 125 meals. The Respondent refused on the ground that the Grievor was entitled to a reimbursement of his meals at the lunch rate pursuant to section 3.2.9 of the *Treasury Board Travel Directive* (TBTD). According to the Level I Adjudicator, the Grievor's mid-shift meal during his evening shifts was therefore the equivalent of lunch. Since the Grievor had already collected the amount to which he was eligible, the Adjudicator denied the grievance. The ERC found that the TBTD clearly indicated that shift workers should be reimbursed based on the meal sequence of breakfast, lunch and dinner, regardless of the shift's commencement. The Grievor was therefore eligible for the reimbursement of his meals at the lunch rate. However, the ERC found that when the Grievor had worked a shift longer than 10 hours, he was eligible for the reimbursement of a second meal at the dinner rate according to the sequence established in the TBTD. The ERC recommended that the grievance be allowed in part.

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

[*Translation*]

The Grievor worked shifts for which he then claimed meal expenses. These claims were denied by the Respondent, which led the Grievor to file five grievances. The ERC found that the five grievances should be allowed, but only with respect to the claims involving shifts longer than 10 hours for which the Grievor claimed a second meal. In all the other cases, namely the claims submitted for shifts where the Grievor only claimed one meal, the ERC found that the Grievor was only entitled to the dinner rate, which he seems to have already received. The Commissioner shares the ERC's opinion and accepts the ERC's recommendation that the grievances should be allowed in part.

G-727 Meal Claim (summarized in the October – December 2020 Communiqué)

On November 6, 7, and 17, 2008, the Grievor was conducting active surveillance outside his headquarters area. On November 6 and 17, he worked evening shifts (1:30 p.m. to 11:30 p.m.) while on November 7, he worked a day shift that lasted more than 16 hours (7:00 a.m. to 11:30 p.m.). He claimed the reimbursement of three meals at the dinner rate. The Respondent dismissed the Grievor's claim on the ground that the Grievor did not provide receipts to justify the reimbursement claimed. According to the Adjudicator, the Grievor was subject to section 3.2.9 of the *Treasury Board Travel Directive* (TBTD) which states that reimbursement of meals shall be based on the meal sequence of breakfast, lunch and dinner, in relation to the commencement of the employee's shift. The ERC found that the Grievor, as a shift worker, had to have his breakfast at his own expense before beginning his shifts. He was then eligible to claim the reimbursement of meals consumed during his travels, in accordance with the meal sequence set out in section 3.2.9 of the TBTD. If an amount greater than the allowed rate were paid, the Grievor had to present supporting documents in order to receive the actual expenditure. The ERC recommended that the grievance be allowed in part.

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

[*Translation*]

The Grievor worked shifts for which he then claimed meal expenses. These claims were denied by the Respondent, which led the Grievor to file five grievances. The ERC found that the five grievances should be allowed, but only with respect to the claims involving shifts longer than 10 hours for which the Grievor claimed a second meal. In all the other cases, namely the claims submitted for shifts where the Grievor only claimed one meal, the ERC found that the Grievor was only entitled to the dinner rate, which he seems to have already received. The Commissioner shares the ERC's opinion and accepts the ERC's recommendation that the grievances should be allowed in part.

G-728 Meal Claim (summarized in the October – December 2020 Communiqué)

On February 10, 2010, the Grievor submitted a form for duty travel fees containing claims for meals during several shifts. One of these claims was for the reimbursement of fees incurred by the Grievor on February 6, 2010, including breakfast. The Grievor was working an overtime shift from 7:30 a.m. to 8:30 p.m. On February 16, 2010, the Respondent refused to authorize the

reimbursement of the breakfast for February 6. The Level I Adjudicator denied the grievance because the Grievor was a shift worker and had to be reimbursed according to the meal sequence set out in section 3.2.9 of the *Treasury Board Travel Directive*. Since the Grievor had already collected the amount to which he was eligible, the Adjudicator denied the grievance. The ERC found that the Grievor, as a shift worker, was eligible to be reimbursed for his meals during travel outside his headquarters area or when he worked overtime hours. However, the RCMP *Travel Policy* indicates that members must have breakfast before beginning their shift. The ERC found that, even though the Grievor worked overtime hours, he had to have breakfast at his own expense and be reimbursed for the following meals, depending on the length of his shift. 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:

[*Translation*]

The Grievor worked shifts for which he then claimed meal expenses. These claims were denied by the Respondent, which led the Grievor to file five grievances. The ERC found that the five grievances should be allowed, but only with respect to the claims involving shifts longer than 10 hours for which the Grievor claimed a second meal. In all the other cases, namely the claims submitted for shifts where the Grievor only claimed one meal, the ERC found that the Grievor was only entitled to the dinner rate, which he seems to have already received. The Commissioner shares the ERC's opinion and accepts the ERC's recommendation that the grievances should be allowed in part.

G-729 Meal Claim (summarized in the October – December 2020 Communiqué)

On the relevant dates, the Grievor was working evening shifts outside his headquarters area. He claimed a reimbursement for three meals at the dinner rate. In each case, it was the first meal of his shift. According to the Adjudicator, the Grievor was subject to section 3.2.9 of the *Treasury Board Travel Directive* (TBTD), which states that reimbursement of meals shall be based on the meal sequence of breakfast, lunch and dinner, in relation to the commencement of the employee's shift. On that issue, the Adjudicator noted that for shift workers outside their headquarters area, the meal they are authorized to claim at mid-shift is lunch. The ERC found that the Grievor, as a shift worker, had to have breakfast at his own expense before beginning his shifts. He was then eligible to claim the reimbursement of the meals consumed while he was travelling, in accordance with the meal sequence set out in section 3.2.9 of the TBTD. 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:

[*Translation*]

The Grievor worked shifts for which he then claimed meal expenses. These claims were denied by the Respondent, which led the Grievor to file five grievances. The ERC found that the five grievances should be allowed, but only with respect to the claims involving shifts longer than 10 hours for which the Grievor claimed a second meal. In all the other cases, namely the claims submitted for shifts where the Grievor only claimed one meal, the ERC found that the Grievor

was only entitled to the dinner rate, which he seems to have already received. The Commissioner shares the ERC's opinion and accepts the ERC's recommendation that the grievances should be allowed in part.