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Royal Canadian Mounted Police External Review Committee

Between April and June 2012, the RCMP External Review Committee (ERC) issued the following recommendations:

IN THIS ISSUE

Recommendations

- 1 G-525
- 2 G-526
- 3 G-527
- 4 G-528
- 5 G-529

Decisions

- 6 G-455
- 6 G-457
- 7 G-458
- 7 G-464
- 8 G-475
- 8 G-476
- 1 G-525
- 2 G-526

9 Quick Reference Index

G-525 The Grievor resided and served aboard multiple Canadian Naval ships during his deployment at the 2010 Vancouver Olympics. He said that while he was aboard the vessels, he needed *"to be ready to immediately respond to situations as required following my regular shift"*. He specified that he continuously had to be *"available to the ship's Captain"* in order to give law enforcement advice and guidance. He also remarked that the quality of his accommodations at sea were not what he had expected. He nevertheless *"accepted [those accommodations] without complaint"*.

The Grievor felt his status aboard the Naval ships placed him within the definition of *"Immediate Operational Readiness"*, as found in section 16.12 of the RCMP Operational Manual (OM). He therefore believed he was entitled to Immediate Operational Readiness compensation under the Force's Pay and Allowances Policy, RCMP Administration Manual, Chapter II, Part 4 (AM II.4). He submitted an expense claim to that effect.

The Respondent rejected the claim. In so doing, he relied upon an Appendix of AM II.4. It stipulated, regarding overtime at sea: *"[i]f accommodation is available [on-board] ship, i.e. sleeping quarters, do not claim overtime/standby for non-duty hours"*. He contended that the Grievor was not entitled to the funds sought, as the Naval vessels contained sleeping quarters.

The Grievor filed a grievance. The Level I Adjudicator denied it on the ground that the Grievor failed to establish that he was in Immediate Operational Readiness status. He explained that the Grievor was never made a *"designated responder"* in accordance with section 16.12 of the OM, which was a condition to obtaining such status. No new authorities were raised at Level II.

ERC's Findings: The ERC pointed out that under section 36 of the *Royal Canadian Mounted Police Regulations, 1988*, five types of grievances are referable to the ERC. Four of them deal with very particular issues that clearly do not arise in this case. The remaining type of referable grievance involves matters *"relating to the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members"*.

The ERC noted that the grievance concerns the Force's interpretation and application of two policies. One is section 16.12 of the OM. The other is AM II.4. Those policies applied only to RCMP members. As they were not government-wide policies, the matter was not referable.



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The ERC speculated that the grievance might well have been referred to the ERC because the Grievor commented on his accommodations while at sea, and accommodation issues can be referable. Although the Grievor mentioned this issue, it was not the subject of the grievance.

ERC's Recommendation: This grievance is not referable to the ERC. As a result, the ERC does not have the legal authority to review the matter or make a recommendation.

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

In a decision dated May 16, 2012, the Commissioner agreed with the ERC that the subject-matter of the grievance did not meet the criteria set out at section 36 of the Royal Canadian Mounted Police Regulations, 1988, and therefore the grievance was not referable to the ERC. This also meant that the grievance could be adjudicated at Level II by a designated Level II Adjudicator rather than the Commissioner himself. Accordingly, the Commissioner referred the grievance to a designated Level II Adjudicator for a decision to be reached on the grievance.

G-526 The Grievor resided and served aboard multiple Canadian Naval ships during his deployment at the 2010 Vancouver Olympics. He said that while he was aboard the vessels, he needed "to be ready to immediately respond to situations as required following my regular shift". He specified that he continuously had to be "available to the ship's Captain" in order to give law enforcement advice and guidance. He also remarked that the quality of his accommodations at sea were not what he had expected. He nevertheless "accepted [those accommodations] without complaint".

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The ERC noted that the grievance concerns the Force's interpretation and application of two policies. One is section 16.12 of the OM. The other is AM II.4. Those policies applied only to RCMP members. As they were not government-wide policies, the matter was not referable.

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In a decision dated May 16, 2012, the Commissioner agreed with the ERC that the subject-matter of the grievance did not meet the criteria set out at section 36 of the Royal Canadian Mounted Police Regulations, 1988, and therefore the grievance was not referable to the ERC. This also meant that the grievance could be adjudicated at Level II by a designated Level II Adjudicator rather than the Commissioner himself. Accordingly, the Commissioner referred the grievance to a designated Level II Adjudicator for a decision to be reached on the grievance.

G-527 The Grievor received a transfer notice informing him that he was being transferred to a position in another city. He then informed his Career Counsellor (CC) that he listed his house for sale. Rather than recommending that the Grievor contact Relocation Services, the CC simply acknowledged receipt of the e-mail. The Grievor later contacted his CC a number of times to provide additional information about the sale of his residence. In the end, the Grievor paid a 7% realtor commission fee. Afterwards, the CC advised the Grievor to contact the Division's Relocation Services, which he did. He finally received an information package from the third-party service provider. However, he learned only a number of months after informing his CC about the sale of his house that the maximum rate of reimbursement for realtor commission fees was 5%. The Grievor then made a claim for reimbursement of the

2% difference between the commission he had paid and the rate provided in the applicable policy. His claim was sent to the Respondent so that he could request special authorization from the Treasury Board Secretariat (TBS). The TBS refused his claim.

The Grievor filed a grievance concerning reimbursement of the difference between the commission he had paid and the rate allowed under the policy. He stated that he entered into a contract to pay a 7% commission fee as the result of a lack of information at the time he had to sell his house. The Respondent stated that, had the Grievor complied with the applicable policy, he would have had a formal consultation, and this situation would not have occurred. The Respondent also noted that he did not have the authority to approve exceptions to the policy, because that type of decision was the responsibility of TBS. The Level I Adjudicator denied the grievance. She determined that the final decision had not been made by the Force, but rather by the TBS. Consequently, she found that the Grievor did not have standing.

ERC's Findings: The applicable policy clearly states that a member cannot be reimbursed for realtor commission fees exceeding the rate negotiated, and that any unauthorized expenses had to be approved by the TBS. Because the Grievor incurred an expense that was not authorized, the Force sent a request to the TBS and it was refused. The decision at issue is one made by the TBS, not the Force. Therefore, the Grievor did not have standing. The ERC noted that by denying the grievance, the Level I Adjudicator made a determination on standing without giving the parties an opportunity to present their arguments. However, although the parties could have raised this issue at Level II, they did not. In addition, the decision at issue in the grievance was clearly not a decision made by the Force, and referring it back to Level I so the parties can be heard would only generate additional delays. For these reasons, the ERC did not recommend to the RCMP Commissioner that he refer the file back to Level I.

However, given the deficiencies in the Force's treatment of the Grievor's file, the ERC did recommend to the RCMP Commissioner that an apology be made to the Grievor for the handling of his relocation.

ERC's Recommendation: The ERC recommends that the Commissioner of the RCMP deny the grievance and offer apologies to the Grievor.

G-528 The Grievor was issued a transfer from one isolated post to another isolated post. The Force's third party relocation service purportedly advised him that the shipment of his effects was within the weight limit prescribed by policy. Yet months after his move, on April 19, 2011, the Force told him he owed \$523.73 because his shipped effects were overweight. He refused to pay.

The parties discussed the matter over the ensuing weeks. During that time, the Force allegedly told the Grievor "*not to forward any payment at this time as there were other members having similar difficulties*". The Force also apparently informed him that his "*file would be reviewed*", and that he would "*be made aware of [the Force's] findings*" shortly. The Respondent did not contest this version of events. On June 17, 2011, the Grievor received a final payment notice.

The Grievor filed a grievance on June 23, 2011. A Level I Adjudicator denied it on the ground that it was presented after the 30-day statutory limitation period had expired. She found that the Grievor learned about the disputed decision on April 19, 2011, that he should have known he was aggrieved that day, and that the Force's final payment notice in June 2011 was merely a re-statement of the decision. She also highlighted the principle that once a grievable decision is made, a Grievor cannot renew a limitation period simply by seeking a review of that decision.

ERC's Findings: The ERC noted that "*a decision made after a review of an initial decision can be grievable in its own right ... [t]his occurs when for the review, new information [is] presented so that the matter is ... considered in a whole new light*". The ERC found that new information placed the Force's April 19, 2011 decision in a whole new light. Put simply, the Force indicated that it was rethinking the decision, that the decision might not stand, and that the decision ought not to be followed, at least without further notice. Moreover, the fact that the Force appears to have concurrently re-examined similar decisions involving others suggested that its review may not have been attributable to the Grievor. It could have arisen from the Force's own choice to scrutinize a wider course of action affecting many individuals. As a result, the Force's June 17, 2011 affirmation of its decision was a new grievable decision. It reset the time limit for grieving. The Grievor's June 23, 2011 grievance accordingly fell well within the statutory limitation period.

The ERC also found that if the Commissioner of the RCMP disagreed with this conclusion, then an extension of the limitation period would be justified. Upon applying the relevant test, the ERC determined that this was so for various reasons. The Grievor disputed the Force's position from the outset. He offered a reasonable and unchallenged explanation for his delay in grieving. He grieved the decision once it was affirmed. Moreover, the delay would not have prejudiced the Respondent.

ERC's Recommendation: The ERC recommends that the Commissioner of the RCMP allow the grievance, and order that the case be returned to Level I for submissions, and a decision, on the merits.

G-529 In 2005, the Force took steps to test the Grievor's integrity. One step involved placing a bag containing \$575 in a vehicle the Grievor had to search. Following the search, the Grievor failed to immediately turn over the bag from which he took \$100. He was suspended with pay and served with a Notice of Intent to Recommend Stoppage of Pay and Allowances. He challenged this recommendation, and positions were then taken for and against it. This included the Grievor's claim that he meant to quickly return the \$100. The Respondent went on to issue a Stoppage of Pay and Allowances Order (SPAO).

The Grievor grieved the SPAO. He felt that it was inconsistent with principles of natural justice, and that it caused him undue financial hardship in light of his difficult personal situation. He also believed criteria for imposing the SPAO were unmet, and that the SPAO was in force for such an exceedingly long time that he had been constructively dismissed. A Level I Adjudicator denied the matter finding the decision to institute a SWOP was appropriate in the circumstances. He reasoned, in part, that the Grievor's conduct was outrageous; that other members with medical conditions did not steal; that SPAO could be imposed for summary convictions, including *Code of Conduct* violations; that the Grievor's request for compassion had very little relevance since he had to determine how to protect the integrity of the Force; and, that the SPAO was properly effected. The Grievor resigned in 2008.

ERC's Findings: After dealing with multiple preliminary issues, including finding the Respondent did not appear to satisfy his disclosure obligations under s. 33(3) of the Act, the ERC found that the Level I Adjudicator's reasons were inadequate. First, the reasons did not directly address

the grievance submissions. Instead, the decision responded to submissions made before the SPAO was instituted. The parties thus could not be assured that their submissions were considered. Second, the reasons contained overriding errors. These included finding clear involvement in an allegation even though the Respondent had been unable to make such a finding, and that *Code of Conduct* violations constitute summary convictions. Even if the Grievor was summarily convicted, a SPAO could not have been imposed according to applicable policy. Third, the reasons failed to support key conclusions. They were vague, incomplete, and revealed a refusal to consider some of the Grievor's claims. It appears the Level I Adjudicator neglected to consider the Grievor's position regarding undue hardship, compassion and his medical condition.

Upon reviewing the relevant policy provisions and case law, the ERC found that the Grievor had not engaged in "extreme" and "outrageous" conduct and that the SPAO was not justified. However, it also found that he failed to establish that the Force had acted in bad faith, that the Force unfairly executed the SPAO, and that the SPAO amounted to a constructive dismissal.

ERC's Recommendations: The ERC recommends that the Commissioner of the RCMP allow the grievance and order a reinstatement of the Grievor's pay and allowances up to the date of his resignation. It also recommends that the Commissioner order a review of the Grievor's file so that appropriate pension adjustments could be made, if applicable. It further recommends, because the SPAO is such an extreme measure, that the Commissioner order a review of the rules surrounding the imposition of SPAO so that consideration could be given to adding two elements, if they are not already in place. The first element would be the creation of a monitoring system of regular reviews. The second element would be the prioritization of cases involving a SPAO at every step of the disciplinary process.

Update

The RCMP Commissioner has provided his decision in the following matters, summarized in previous issues of the *Communiqué*:

G-455 (summarized in the January-March 2009 *Communiqué*) The Grievor received a positive evaluation followed by a performance payment, and two further pay increases. Shortly thereafter, the Respondent informed him that he had been overpaid by mistake, and that the Force would be recovering the amount from him. The Grievor objected but the Force eventually took back the funds as per the *Financial Administration Act* and Treasury Board policy. The Grievor filed a Level II grievance and indicated that the Force recently paid him back all of the money that it had taken. The ERC found that the Commissioner of the RCMP did not have to reconsider the decision because the matter was moot as a result of the repayment by the Force. The ERC recommended that the grievance be denied.

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

In a decision dated May 23, 2012, Commissioner Robert W. Paulson denied the grievance, as recommended by the ERC.

The Commissioner agreed with the ERC that he did not have to reconsider the decision concerning the recovery of the overpayment, since that issue was now moot.

Since the documents sought by the Grievor pertained to issues that had become moot, it was no longer required to rule on the Grievor's disclosure request.

The Commissioner concluded that the only remaining issue to be determined was whether the Grievor was entitled to interest. The Commissioner agreed with the ERC that the Grievor had not explained why he was entitled to interest, nor provided any authorities supporting a determination that interest could be ordered. The Commissioner also concluded that he could not award interest to the Grievor. The Royal Canadian Mounted Police Act does not explicitly authorize the awarding of interest, nor is such authority provided in the regulations under the Act or in the Commissioner's Standing Orders.

*In reaching his decision on the interest issue, the Commissioner referred to the Level II decision on grievance case G-421 (ERC file 3300-05-010), where (then) Commissioner Elliott concluded that, in the absence of a legislative authority to do so, he could not award interest in a grievance adjudication. Judicial review was sought regarding the Commissioner's decision in G-421; however, the application was not made within the requisite time period. In dismissing the motion for an extension of time to file the application, the Federal Court found that the applicant had "no reasonable chance of success" in the proposed judicial review, as he made no argument which would "oust the constitutional provision that an award of interest cannot be made against the Crown, absent a contractual or statutory exception" (*Busch v. Attorney General of Canada* (March 22, 2012), 12-T-15 (F.C.)).*

G-457 (summarized in the January-March 2009 *Communiqué*) The Grievor filed a complaint concerning an advertised transfer and later was ordered to report to her new workplace. An RCMP vehicle was loaned to her and her travel expenses were reimbursed. However, after approximately four months, the Grievor was ordered to assume the travel expenses herself. The Grievor filed a grievance explaining that

she had filed a first grievance concerning her transfer, and that she was entitled to travel expenses, as provided in the travel directives, until her grievance was settled. The ERC determined that the three factual criteria needed for the reimbursement of travel expenses were present. It recommended that the grievance be allowed and that the file be returned to determine the amount the Force will need to pay to the Grievor.

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

[TRANSLATION]

In a decision dated May 16, 2012, Commissioner Robert W. Paulson concurred with the ERC's findings and recommendations. He allowed the grievance and returned the file to the Force's appropriate authorities to have them calculate the refundable expenses to which the Grievor is entitled under the Travel Directive and to reimburse her as soon as possible.

G-458 (summarized in the January-March 2009 Communiqué)

The RCMP closed a detachment. The Grievor chose to be transferred to another detachment. He later asked the RCMP to offer him early retirement under the Workforce Adjustment Policy rather than a transfer. The RCMP refused the request. The Grievor requested permission to use an RCMP vehicle to travel to his new workplace. The request was refused. The ERC has determined that the grievance is, in fact, related to a lateral transfer because the Grievor had asked that the RCMP give him permission to take an early retirement rather than a transfer. The ERC recommended that the grievance be allowed and that the file be returned to determine the amount the Force will need to pay to the Grievor.

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

[TRANSLATION]

In a decision dated May 16, 2012, Commissioner Robert W. Paulson concurred with the ERC's findings and recommendations. He allowed the grievance and returned the file to the Force's appropriate authorities to have them calculate the refundable expenses to which the Grievor is entitled under the Travel Directive and to reimburse her as soon as possible.

G-464 (summarized in the April-June 2009 Communiqué)

The RCMP decided to close a detachment. The Grievor elected to be transferred to another detachment. He later asked that the RCMP offer him an early retirement under the workforce adjustment policy. The RCMP denied the request. After being ordered to report to his new workplace, the Grievor requested permission to use an RCMP vehicle to travel to his new workplace. This request was denied. The Level I Adjudicator denied the grievance, finding that the Grievor failed to comply with the thirty-day time limit. The ERC agreed and recommended that the grievance be denied.

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

[TRANSLATION]

In a decision dated May 16, 2012, Commissioner Robert W. Paulson concurred with the ERC's findings and recommendations.

G-475 (summarized in the July-September 2009

Communiqué) The Grievor is a civilian member. Her husband was a regular member until he retired. Later, he took a paid retirement move to a retirement location, where the Grievor joined him. She worked at a RCMP office there until it closed. She then accepted a transfer to a new area, and her husband went with her. A few years later, she wanted to retire to another location. The Grievor asked the Force if it would reimburse expenses for her planned retirement move. In the Force's view, the policy provided for only one retirement move per family. The ERC observed that this was an unusual situation involving a narrow set of circumstances. It found that the Grievor's position had merit. The ERC recommended that the grievance be allowed. It also recommended that the reimbursement of any requested retirement relocation expenses which the Grievor is otherwise eligible to receive under the 2005 *Integrated Relocation Program Appendix* be permitted.

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

In a decision dated April 13, 2012, the Commissioner agreed with the findings and recommendations of the ERC.

G-476 (summarized in the July-September 2009

Communiqué) The Grievor learned that he was being transferred from an overseas city to a Canadian city. He requested a non-accountable advance to pay for his return to Canada, in accordance with the *Foreign Service Directives*. He informed the Respondent that he preferred to travel from the overseas city to the Canadian city where he formerly served, and then on to the Canadian city to which he was moving. The Respondent instructed him to communicate directly with another branch about the possibility of shaping his NAA to include a stop in his prior Canadian location. After the transfer, the Grievor asked the Force to pay him his travel costs for a separate three-day trip to the Canadian city where he formerly served, in addition to the NAA that he already received. The Respondent refused. The Level I Adjudicator denied the grievance, endorsing the Respondent's reading of the *FSD*. The ERC found that the Grievor accepted the NAA, as the Respondent had drafted it, and that he chose to fly the way that he did after being informed of his travel options. The ERC recommended that the grievance be denied.

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

In a decision dated May 16, 2012, the Commissioner agreed with the findings and recommendations of the ERC.

QUICK REFERENCE INDEX (1998 to date)

Disciplinary Matters

Abuse of sick leave	D-060
Adverse drug reaction	D-070
Agreed Statement of Fact (ASF)	D-117
Alcoholism	D-104, D-112
Amending an RCMP document	D-061
Appropriation of goods seized during searches	D-065, D-066
Battered Wife Syndrome (BWS)	D-110
Breach of trust and accountability	D-106, D-107, D-122, D-123
CPIC – unauthorized enquiries	D-078, D-100
Criminal acquittal	D-101
Data transmission across Internet	D-093
Disclosure of protected information	D-076, D-081, D-092, D-100, D-109
Discrepancy in Board decision	D-111
Disobeying a lawful order	D-087, D-108
Domestic violence	D-051, D-067, D-072, D-101, D-108, D-110
Driving while impaired	D-062, D-063, D-115
Drugs	D-106
Duty of loyalty	D-076, D-081
Errors of fact and law by Adjudication Board	D-078, D-084, D-085, D-086, D-088, D-089, D-090, D-097, D-103, D-117, D-119
Excessive force	
– arrest	D-064, D-083
– person in custody	D-069, D-084
Fairness of hearing	D-074, D-085, D-086
Forgery	D-102
Fraud	D-054, D-107
Harassment	D-091, D-111
Hindering investigation	D-077, D-088, D-118
Inproper use of AMEX card	D-120
Inappropriate conduct towards persons under 18	D-056, D-097
Inappropriate use of Mobile Work Stations (MWS)	D-095/D-096
Informal discipline	D-059
Insubordination	D-114
Joint representation on sanction	D-061
Medical exam	D-087
Neglecting a duty	D-099, D-114
Off-duty conduct	D-073, D-112
Relationship with a complainant	D-098
Reprimand	D-059
Service revolver	
– storage	D-056, D-067
– use	D-063, D-072, D-073, D-080, D-117
Sexual misconduct	
– assault	D-068, D-121
– harassment	D-053, D-071, D-074
– inappropriate touching	D-055, D-056
– on duty	D-113, D-118
– other	D-057, D-058
Statutory limitation period	D-052, D-054, D-075, D-082, D-098, D-100, D-105
Stay of proceedings	D-074, D-079, D-091, D-105, D-109
Theft	D-094, D-106
Uttering a threat	D-067, D-091, D-116

Discharge and Demotion

Lack of "assistance, guidance and supervision"	R-004
Repeated failure to perform duties	R-003, R-005

Grievance Matters

Administrative discharge	G-272, G-312, G-415
Bilingualism bonus	G-204, G-207, G-220, G-228, G-231
Charter of Rights and Freedoms	G-426, G-512
Classification	G-206, G-219, G-279, G-321, G-336, G-343
Complaints on internal investigations	G-491
Disclosure of personal information	G-208, G-209, G-210, G-447, G-448, G-459
Discrimination	
- gender	G-379, G-380, G-412, G-413, G-502
- pay equity	G-441
- physical disability	G-427, G-477, G-478
Duty to accommodate	G-423, G-513
Government housing	G-314, G-346, G-361, G-384
Harassment	G-216, G-235, G-237, G-251, G-253, G-268, G-270, G-287 to G-292, G-293, G-294, G-298, G-302, G-322 and G-323, G-324, G-326, G-347, G-350, G-351, G-352, G-354, G-355, G-356, G-362, G-367, G-377, G-378, G-382, G-397, G-402, G-403, G-405, G-407 G-410.1, G-410.2, G-410.3, G-414, G-416, G-417, G-420, G-424, G-429, G-430, G-431, G-433, G-437, G-438, G-439, G-440 G-453, G-474, G-479, G-482, G-483, G-489, G-493, G-499, G-504 G-506, G-507, G-508, G-510, G-511, G-514, G-515, G-518, G-519, G-520, G-521
Incomplete file	G-429, G-430
Isolated posts	G-255, G-269, G-365, G-368, G-369, G-384, G-449, G-450, G-451, G-460, G-461, G-462, G-463, G-469, G-470, G-473, G-480, G-484, G-495, G-496, G-497, G-498
Job sharing - buy-back pension	G-412, G-413
Jurisdiction	G-213, G-224, G-236, G-241, G-243, G-245, G-264, G-344, G-370, G-399, G-400, G-435, G-456, G-490, G-525, G-526, G-527
Language requirements	G-229, G-252, G-271, G-428, G-443, G-452, G-485
Leave without Pay	G-414
Legal counsel at public expense	G-234, G-247, G-277, G-282, G-283, G-313, G-316, G-327, G-339, G-340, G-358, G-466, G-467
Living Accommodation Charges Directive (LACD)	G-214, G-249, G-273, G-361
Mandatory retirement age	G-325, G-445
Meal allowance	
- mid shift meals	G-375
- other	G-238, G-265, G-303 to G-310, G-334, G-341, G-371, G-387, G-388, G-389, G-390, G-391, G-393, G-395, G-396, G-421
- short term relocation	G-250
- travel of less than one day	G-256, G-257, G-258, G-259, G-376, G-408, G-500
- travel status - medical purposes	G-274
Medical discharge	G-223, G-233, G-261, G-266, G-267, G-284-285, G-434, G-436, G-444, G-501
Occupational health & safety	G-264
- medical profile	G-516
Orders of Dress	G-502
Overpayment Recovery	G-455
Overtime	G-393, G-395, G-396, G-398, G-401, G-432, G-487
Premature grievance	G-275, G-276, G-315, G-317, G-424
Procedural errors	G-431, G-433, G-434, G-436, G-444, G-448

Relocation	
- car rental	G-311, G-523
- depressed housing market	G-281, G-335, G-349
- distance within 40 km of worksite	G-215, G-383
- financial compensation	G-338, G-527
- Foreign Service Directive (FSD)	G-363, G-386, G-476
- Guaranteed Home Sales Plan (GHSP)	G-218, G-232, G-239, G-240.1, G-240.2, G-242, G-254
- Home Equity Assistance Plan (HEAP)	G-205, G-232, G-242, G-244, G-300, G-415
- House Hunting Trip (HHT)	G-212, G-357, G-522
- Housing	G-509
- insurance coverage	G-211
- interim accommodation (ILMI)	G-240.1, G-240.2, G-341, G-360, G-364, G-372, G-422
- Integrated Relocation Program (IRP)	G-278, G-281, G-297, G-299, G-341, G-345, G-349, G-357, G-360, G-383, G-406, G-409, G-505, G-524
- lateral transfer	G-457, G-458
- legal fees	G-218, G-503
- pre-retirement relocation benefits	G-230
- retirement	G-329, G-330, G-331, G-332, G-369, G-373, G-446, G-475
- storage costs	G-222, G-246, G-505
- Temporary Dual Residence Assistance (TDRA)	G-263, G-494
- transfer allowance	G-383, G-411, G-442, G-465
- waiver	G-278, G-394, G-454
Self-funded Leave	G-404, G-414
Special Leave	G-466
Stand-by duty	G-224, G-393, G-395, G-396
Standing	G-374, G-376, G-378, G-419, G-426, G-444, G-445, G-447, G-459, G-499, G-520
SWOP	G-286, G-318, G-319, G-320, G-328, G-342, G-353, G-359, G-418, G-481, G-529
Time limits	G-214, G-218, G-221, G-222, G-223, G-228, G-247, G-248, G-250, G-277, G-333, G-337, G-341, G-347, G-348, G-357, G-365, G-366, G-370, G-371, G-372, G-375, G-376, G-392, G-397, G-419, G-420, G-432, G-464, G-465, G-471, G-477, G-488, G-494, G-517, G-518, G-519, G-520, G-528
Transfers	G-478
Travel directive	
- accommodations	G-301
- family reunion	G-348
- medical	G-486, G-492
- other	G-366, G-386, G-387, G-388, G-389, G-390, G-391, G-393, G-395, G-396, G-425
- private accommodation allowance	G-496, G-497, G-498
- separate accommodations	G-280
- spousal expenses for medical travel	G-269
- travel by a SRR	G-217, G-385, G-467, G-468
- TB vs RCMP policies	G-375, G-376
- use of private vehicle	G-225, G-226, G-227, G-260, G-262, G-295, G-296, G-457, G-458, G-468, G-472
- vacation	G-449, G-450, G-451, G-460, G-461, G-462, G-463, G-469, G-470, G-473, G-480, G-484
- workplace	G-215, G-225, G-226, G-227, G-432, G-464, G-471

