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Royal Canadian Mounted Police External Review Committee

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

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G-530 The Grievor was transferred to a new locale. When he and his family arrived there, they moved into their own home and waited days before their household effects (HHE) were delivered. He filed a \$1,200 "*private accommodations and incidentals*" claim covering that time. A Relocation Adviser (RA) reviewed the Force's *Integrated Relocation Program (IRP)*, and ascertained that it precluded such a payment in the situation. As a result, she concluded that she could not allow the claim. The Grievor later raised new information. He thought it supported his claim. The RA then sent the matter to the Departmental National Coordinator (DNC) for review. She explained that she was "*not authorized to approve outside the IRP*". The DNC ultimately denied the claim.

The Grievor grieved the RA's actions even though a case manager suggested that he may wish to grieve the DNC's decision, and advised him how to do so. The Grievor asked the Force to pay his claim and to review the RA's actions. Several months later, a Level I Adjudicator denied the grievance. She held that he did not have standing, reasoning that the RA never rendered a decision. Rather, the RA determined that "*the general application of policy did not allow*" for a payment, reviewed the Grievor's new information, and sent the file to the DNC for a final ruling.

The Adjudicator also deemed the grievance premature. She explained that the DNC denied the Grievor's claim after the grievance was filed. She felt this was the real grievable decision, that it was unattributable to the RA, and that the Grievor did not merit an extension of time to grieve it.

ERC's Findings: The ERC concluded that the key question was whether or not the Grievor had been prejudiced by a "*decision, act or omission*" made by the RA. It found that the answer was yes, and that the Grievor thus had standing. The RA engaged in two acts that went to the heart of the case. First, she construed the *IRP* in a way that precluded her approval of the Grievor's claim. Second, she sent the Grievor's file to the DNC for consideration. These actions affected the Grievor personally. The ERC also found that the matter was not premature. It acknowledged that if the Grievor had intended to grieve the DNC's decision, then the grievance may have been premature, as it predated that decision. Yet the Grievor rigidly maintained that he was contesting the RA's actions. These crystallized weeks before he initiated his grievance.

The ERC further found that if the grievance against the RA were to succeed on the merits, then the only requested redress the Grievor could receive is a review of the RA's actions. This was so because the DNC, not the RA, formally denied the Grievor's claim. The Grievor chose not to grieve the DNC's decision, which is now more than three years old. He also did not dispute the Level I Adjudicator's refusal to award him an extension so he could grieve the DNC's decision.

ERC's Recommendations: The ERC recommends that the Commissioner of the RCMP allow the grievance and find that the Grievor has standing. As the parties have not been heard on the merits, it also recommends that the Commissioner quash the Level I decision, and return the case to Level I.

G-531 The Grievor went on medical leave on February 7, 2005 and had not returned to work prior to submitting his grievance. In October 2009, a Health Services Officer (HSO) advised a Return to Work Coordinator (Respondent) that the Grievor's medical profile had been changed from a temporary to a permanent "06" rating, meaning that the Grievor was no longer employable by the Force in any capacity. The Respondent informed the Grievor of the change to his medical profile and stated that if the Grievor did not wish to be accommodated, his options would be voluntary discharge or medical discharge. The Grievor grieved the change to his medical profile and advised the Respondent of this. He requested the accommodation process be put into abeyance pending resolution of this grievance but this was denied.

The Grievor grieved the Respondent's refusal to put the accommodation process in abeyance. He submitted that it was unfair for him to not be able to fully present his case without the decision on the medical profile grievance; and, it was prejudicial to order

him to report for an interview that would lead to a medical discharge process and his ultimately losing his employment with the Force.

A Level I Adjudicator found that the Grievor did not have standing and denied the grievance. She found that the Grievor was not yet aggrieved because, in effect, he was grieving the initiation of a medical discharge process. She also concluded the present grievance was related to the same issue as his medical profile grievance and that the Grievor could not file multiple grievances "*relating to the same matter*".

The Grievor claimed the Respondent's Level II submissions were provided 2 days outside of the 7 day time limit under chapter II.38 of the RCMP Administration Manual (AM II.38.L.5) and should not be allowed.

ERC's Findings: The ERC's decision focusses on standing and does not address any matters which concern the merits of the grievance.

The ERC found it had not been established that the Respondent missed the administrative time limit to present Level II submissions. Even if he had, it would recommend that the time be extended so that the submission could be considered, because such a short delay would have caused no prejudice.

The ERC found that the Grievor has standing. The Respondent's refusal to hold the accommodation process in abeyance pending resolution of the medical profile grievance pertains to the Grievor and affects him directly. The Level I Adjudicator erred by linking the subject of this grievance to the medical discharge process. It is important to note that no Notice of Intention to Discharge had been issued, which in itself would have engaged a separate process for redress.

The Level I Adjudicator should not have addressed whether or not the grievance should be denied because the issues were resolved in an earlier grievance and neither should she have ruled that the Grievor had presented claims without supporting them. These are questions related to the merits.

ERC's Recommendations: The ERC recommends that the Commissioner of the RCMP allow the grievance, find that the Grievor has met the requirements for standing, and send the grievance back to Level I for the process to continue. It further recommends that this include a review of the file as the subject of this grievance may have become moot because of subsequent events.

G-532 In 2010, the Grievor was transferred to a post hundreds of kilometers away, and lost roughly \$13,000 upon the sale of her home. She explained that "*the market depressed significantly*" after she and her husband bought the property. She later filed a claim for financial help under the Home Equity Assistance Program (HEAP), a benefit that is set out in the RCMP's *Integrated Relocation Program (IRP)*. On March 15, 2011, the Grievor learned that the Respondent had denied her claim on the basis that a qualifying condition was not met. She wished to grieve the decision. A Relocation Official (RO) told her to send her grievance directly to the Respondent.

On April 5, 2011, the Grievor emailed her completed grievance form to the Respondent. She politely indicated that she was grieving his decision, that she was new to the process, and that she was looking forward to his response. The email was opened that day, but nobody replied to it or took any related action. The Grievor waited a month. She then contacted the RO, who advised her to try again. On May 5, 2011, she sent the Respondent a follow-up email. It was opened that day. No related action was taken.

On May 18, 2011, the Grievor phoned the Office for the Coordination of Grievances (OCG). It informed her that she had erred by giving her grievance directly to the Respondent, and that the Respondent had not passed along her emails. She offered her grievance to the OCG that day. The Level I Adjudicator denied the grievance on the ground that it was untimely. She held that the Grievor knew of the impugned decision on March 15, 2011, failed to familiarize herself with relevant policy, and grieved in excess of the statutory 30-day time limit. The Grievor contested this decision. She argued that the Adjudicator never considered the possibility of an extension.

ERC's Findings: The ERC agreed that the Grievor grieved outside the Level I limitation period. It then turned its mind to whether the Commissioner of the RCMP ought to exercise his statutory discretion to retroactively extend that deadline. Upon applying the appropriate legal test established by the Federal Court of Canada in *Canada (Attorney General) v. Pentney*, 2008 FC 96, it found that an extension was warranted. The record revealed that the Grievor had a continuing intention to grieve an arguable case which involved a considerable sum of money. It also revealed that the Grievor followed the instructions which various subject experts gave her, that she acted in good faith at all times, and that the Force was at least partly responsible for the delay as neither the Respondent nor anyone on his staff replied to her emails. Lastly, the Respondent did not allege that an extension would prejudice him, and nothing in the record demonstrated that it would.

ERC's Recommendations: The ERC recommends to the Commissioner of the RCMP that he allow the grievance. It further recommends that he make an order to first extend retroactively the Level I limitation period, and then return the grievance to Level I for the process to continue.

G-533 In 2009, the Grievor apparently made claims for private non-commercial accommodation allowance (PAA) for days that he was on relief duty. The PAA claims were denied. The Grievor grieved the denial of his PAA claims. The Grievor learned of the decision on October 5, 2009 and signed the grievance form on October 22, 2009. However, the Grievor's supervisor only signed the grievance form on November 13, 2009, which was outside the 30-day time limit. Although the Grievor provided the applicable policy documents, he did not provide a copy of the completed expense form or forms and did not provide details of his claims. He described the prejudice suffered as being the denial of funds to which he was entitled under the Treasury Board *Travel Directive* (TBTD).

A Level I Adjudicator denied the grievance on the ground that the Grievor had not established its merits. Although provided with the opportunity to make a submission, she found that the Grievor failed to provide sufficient information to enable a reasonable person to determine whether the contested decision was made contrary to applicable legislation or policy. She also determined that the grievance was filed outside the statutory limitation period and was therefore statute-barred. The Level I Adjudicator recognized that since the timeliness matter had not been raised before the file had been sent to her for decision, fairness would normally require that she give the parties an opportunity to be heard on the question prior to making a ruling on it. She decided not to seek submissions from the parties on the timeliness issue because it would not alter the outcome, given her findings on the merits.

ERC's Findings: The grievance is referable to the ERC and the Grievor meets the statutory requirements for standing. It was reasonable for the Level I Adjudicator to conclude the grievance was untimely. She correctly decided not to provide an opportunity to be heard on the time limits issue because the Grievor did not meet his burden of

persuasion to establish the grievance on a balance of probabilities. Retroactive extension of the limitation period is not justified in this particular case because the grievance does not present an arguable case. It is impossible to assess the merits of the grievance because the Grievor failed to provide the essential facts of the decision, act or omission under review.

ERC's Recommendation: The ERC recommends that the Commissioner of the RCMP deny the grievance. The record does not establish that the time limit was met, and the Grievor has failed to discharge his burden of persuasion on the merits.

G-534 In 2009, the Grievor apparently made claims for private non-commercial accommodation allowance (PAA) for days that he was on relief duty. The PAA claims were denied. The Grievor grieved the denial of his claims. He described the prejudice suffered as being the denial of funds to which he was entitled under the Treasury Board *Travel Directive* (TBTD). The Grievor identified the Corporate Management Officer (CMO) as the Respondent even though the Acting Officer in Charge stated that he had made the decision to deny the Grievor's PAA claims. The Grievor learned of the decision on October 5, 2009 and signed the grievance form on October 22, 2009. However, the Grievor's supervisor only signed the grievance form on November 13, 2009, which was outside the 30-day time limit. Although the Grievor provided the applicable policy documents, he did not provide a copy of the completed expense form or forms and did not provide details of his claims.

A Level I Adjudicator found the Grievor had standing and that the Respondent was not the CMO, but rather the individual who had made the decision which was being grieved. He also flagged for the Grievor that although he was making no firm finding on timeliness, the grievance may well have been out of time. Subsequent to the first Level I decision, the Grievor was given a chance to make

further submissions to support his decision. He made no representations about the timeliness question. A second Level I Adjudicator denied the grievance on the ground that the Grievor had not established its merits. She found that the Grievor failed to provide sufficient information to enable a reasonable person to determine whether the contested decision was made contrary to applicable legislation or policy. She also determined that the grievance was filed outside the statutory limitation period and was therefore statute-barred. She noted the Grievor did not address the time limits issue despite the first Level I Adjudicator "*making the Grievor aware it was his burden to establish the limitation period was respected*". The second Level I Adjudicator decided not to seek submissions from the parties on the timeliness issue because it would not alter the outcome, given her findings on the merits.

ERC's Findings: The grievance is referable to the ERC and the Grievor meets the statutory requirements for standing. A respondent serves as the Force's representative during the grievance process. He or she is supposed to be "*the person who made the decision, act or omission that is the subject of a grievance*" (see *Commissioner's Standing Orders (CSO) (Grievances)*, SOR/2003-181, section 1). The Level I Adjudicator correctly decided that the proper respondent was the Acting Officer in Charge. It was reasonable for the second Level I Adjudicator to conclude the grievance was untimely. She correctly decided not to provide an opportunity to be heard on the time limits issue because the Grievor did not meet his burden of persuasion to establish the grievance on a balance of probabilities. Retroactive extension of the limitation period is not justified in this particular case primarily because the Grievor has offered no explanation for the apparent delay, and because the grievance does not present an arguable case. It is impossible to assess the merits of the grievance because the Grievor failed to provide the essential facts of the decision, act or omission under review.

ERC's Recommendations: The ERC recommends that the Commissioner of the RCMP deny the grievance. The record does not establish that the time limit was met, and the Grievor has failed to discharge his burden of persuasion on the merits.

G-535 The Grievor was served with a Notice of Intention to Discharge for reason of a physical and/or mental disability as per s. 19 of the *RCMP Regulations*. A medical board (MB) hearing was scheduled and the Respondents were appointed as MB members. Grievor's counsel requested the MB be postponed: he set out a number of reasons, including his contention that documents had not been provided to his office. He was advised that the MB would proceed as scheduled.

The Grievor grieved the fact that the MB decided to convene without first dealing with issues he was raising about lack of disclosure and appearance of bias. The Level I Adjudicator concluded the Grievor did not have standing on the basis that he was not aggrieved. She found that the procedural and substantive issues arising during the medical discharge process were not grievable until the process was concluded and a grievable decision made. At Level II, the Grievor attempted to add an additional respondent to his grievance. The Grievor also argued that he should not have to wait until he is medically discharged to seek redress.

ERC's Findings: The ERC's decision focusses on standing and does not address any matters which concern the merits of the grievance. The ERC found the matter was referable to the ERC and all the statutory time limits had been respected. The ERC recommends that the Commissioner of the RCMP not agree to adding the additional respondent at Level II as it would change the nature of the grievance and the Grievor already had the opportunity to make such a request at Level I.

The ERC found that the Grievor does not have standing to pursue this grievance. The ERC determined that the Grievor was a member, that the alleged omission occurred in the course of the administration of the Force's affairs, and that the Grievor was aggrieved. However, the ERC concluded that there was another process for redress specified in the *Regulations*, namely the medical discharge process.

ERC's Recommendation: The ERC concludes that the Grievor lacks standing to bring this grievance on the basis that there was another process for redress specified in the *RCMP Regulations*. The ERC therefore recommends that the Commissioner of the RCMP deny the grievance.

G-536 The Grievor presented a grievance against the Director General, Occupational Health and Safety, for a denial of her request for reimbursement of dental expenses.

The Level I Adjudicator denied the grievance on the merits. The Grievor presented the grievance at Level II, and the grievance was referred to the ERC.

According to the record, the grievance involves the interpretation and application of two authorities. One is the RCMP's *Schedule of Dental Services for the Royal Canadian Mounted Police*, and the other is the RCMP policy entitled *Health Care Entitlements and Benefits Program* (chapter XIV.1 - formerly chapter II.18 - of the RCMP Administration Manual).

ERC's Findings: The types of grievances that may be referred to the ERC are strictly limited to those set out in subsections 36(a) to (e) of the *RCMP Regulations, 1988* (SOR/88-361). Subsections 36(b) to (e) refer to specific issues which do not arise in this grievance. Accordingly, the grievance would only be referable to the ERC if it is captured by subsection 36(a), that is, if the grievance relates to "*the Force's interpretation and*

application of government policies that apply to government departments and that have been made to apply to members."

In this case, the policies interpreted and applied by the Force are internal RCMP authorities that apply only to Force members. Accordingly, they are not government-wide policies, and therefore the grievance is not referable to the ERC. As a result, the ERC finds that it does not have the legal authority to review this grievance or to make any findings or recommendations.

ERC's Recommendation: The grievance is not referable to the ERC, and therefore the ERC does not have the legal authority to review the grievance or to make any findings or recommendations.

G-537 The community in which the Grievor served had a fragile economy. After learning that he had been accepted into a training course which could potentially lead to his transfer, the Grievor put his residence up for sale to "*test the real estate market*", and a potential buyer showed interest. The Grievor then completed his training course, and asked the Respondent if he could sell his house given the uncertain economic status of his community. The Respondent told the Grievor that he could not receive relocation benefits if he sold his house before receiving his transfer notice. The Grievor then entered into an informal promise to buy with the potential buyer, and continued to enquire about whether he could get authorization to sell his property before receiving his transfer notice. The answer was always no. Shortly thereafter, the potential buyer withdrew his promise to buy. The Grievor subsequently received his transfer notice. Upon reviewing the *RCMP Relocation Directive*, he learned that policy allowed a member to sell their property prior to receiving a transfer notice in certain situations. The Grievor presented a grievance against the Respondent for providing him with erroneous information and, in the Grievor's view, making him lose the sale of his house. At the time that the Level I

Adjudicator made his decision, the Grievor had not yet sold his house, and he had not yet been transferred. The Level I Adjudicator allowed the grievance but stated that it was premature to assess the remedy. After being served with the Level I decision, the Grievor's lawyer wrote to the Level I Adjudicator in an effort to resolve the matter, and the Grievor had various discussions with the OCG. Ultimately, the Grievor did not send his note requesting a Level II review until close to two months after the expiry of the 14-day time limit to do so.

ERC's Findings: The ERC's decision focuses on whether the Grievor's request for a retroactive extension of the Level II deadline should be granted. The ERC found that a retroactive extension was not warranted in this case, as the Grievor had missed the deadline by almost two months, and he had not been sufficiently diligent in pursuing his grievance. The ERC also made findings and recommendations on the merits of the grievance. The ERC acknowledged that the Grievor had received incorrect advice, but also highlighted that it was the Grievor's decision to wait to sell his house, even though he knew that such a decision could adversely impact the sale price. Even if the Grievor had sold his house to the prospective buyer for the original amount, reimbursement of the relocation expenses would still not have been guaranteed, as entitlement was dependent on the subsequent transfer notice being issued within certain time frames set out in policy. At the time the Grievor received bad advice, there was not even confirmation that a transfer would take place at all. The ERC noted that the Grievor had recently sold his house for \$25,000 less than the amount originally offered by the potential buyer. However, the ERC found that the payment of \$25,000 to the Grievor was not an appropriate remedy, because it would put the Grievor in a better position than he would have been in had the Respondent properly advised him at the outset.

ERC's Recommendation: The ERC recommends to the Commissioner of the RCMP that he deny the grievance given the Grievor's failure to meet the Level II time limit. It further recommends that if the merits were to be examined, the Grievor would not be entitled to the remedy he is seeking, although he may have been entitled to an apology by the Commissioner.

G-538 In 2003, the Grievor filed a harassment complaint (HC#1), which was subsequently dismissed. During the HC#1 grievance process, the Grievor learned about certain statements made by other members that he believed were detrimental to his reputation and to his career progression. The Grievor filed three additional harassment complaints in 2005, each against a different member.

One of these harassment complaints was against his supervisor (AH#2A). The Grievor felt AH#2A had harassed him by transferring him "*under false pretences, based on rumour and innuendo*". The record indicates that this harassment complaint (HC#2A) was not investigated, and that AH#2A did not provide his version of events. Nonetheless, the Respondent dismissed HC#2A on the basis that the allegation did not meet the definition of harassment.

The Grievor grieved this decision. The Grievor alleged that the Respondent did not objectively look at all the information and relied on a distortion or absence of fact that was prejudicial. The Office for Coordination of Grievances (OCG) referred the grievance to a Level I Adjudicator for a determination on standing, as it believed the member was trying to re-open HC#1 which was being grieved at the time. The parties were not invited to make submissions on the issue of standing.

The Level I Adjudicator denied the grievance on the basis that the Grievor did not have standing. He found that the present grievance and the HC#1 grievance referred to the same set of circumstances. At Level II, the

Grievor alleged the OCG was biased against him, and insisted the Respondent's decision was wrong. In 2007, the OCG put the present grievance on hold pending a Level I decision on standing regarding a fourth grievance submitted by the Grievor. The fourth grievance also arose pursuant to disclosure of documents related to HC#1.

ERC's Findings: The ERC found the grievance referable with no time limit issues. The ERC found that the Level I Adjudicator erred in finding the Grievor did not have standing. While both harassment complaints arose out of the same circumstances, they were completely different complaints about two different people. Allegations of harassment against AH#2A were dealt with for the first time in this grievance. The ERC further found it was unfair for the OCG to refer the matter, and for the Level I Adjudicator to rule on the issue, without giving the parties a chance to be heard. The ERC found the OCG conduct did not give rise to an apprehension of bias. The ERC found that the Force failed to meet the harassment policy requirement to seek clarification from the Grievor before deciding whether a complaint falls within the definition of harassment. The ERC concluded the Commissioner of the RCMP is not in a position to make a decision on whether the allegations are founded because the proper inquiries were not conducted. Due to the passage of time, the ERC found it is unreasonable to recommend that a new investigation take place. The ERC found the delays in processing the Grievor's file were not unacceptably long to the point of being an abuse of process.

ERC's Recommendation: The ERC recommends that the Commissioner of the RCMP allow the grievance and apologize to the Grievor for the Force's failure to properly deal with his harassment complaint.

G-539 In 2003, the Grievor filed a harassment complaint (HC#1), which was subsequently dismissed. During the HC#1 grievance process, the Grievor learned about certain statements made by other members that he believed were detrimental to his reputation and to his career progression. The Grievor filed three additional harassment complaints in 2005, each against a different member.

One of these harassment complaints was against a subordinate of the Grievor (AH#2B). After reading AH#2B's witness statement to the HC#1 investigator, the Grievor felt AH#2B had harassed him by making false misleading statements about him, and that these had a direct impact on the outcome of HC#1 and the decision of the Grievor's supervisor to transfer him. The record indicates that this harassment complaint (HC#2B) was not investigated, and that the AH#2B did not provide his version of events. Nonetheless, the Respondent dismissed HC#2B on the basis that the allegation did not meet the definition of harassment.

The Grievor grieved this decision. The Grievor alleged that the Respondent did not objectively look at all the information and relied on a distortion or absence of fact that was prejudicial. The Office for Coordination of Grievances (OCG) referred the grievance to a Level I Adjudicator for a determination on standing, as it believed the member was trying to re-open HC#1 which was being grieved at the time. The parties were not invited to make submissions on the issue of standing.

The Level I Adjudicator denied the grievance on the basis that the Grievor did not have standing. He found that the present grievance and the HC#1 grievance referred to the same set of circumstances. At Level II, the Grievor alleged the OCG was biased against him, and insisted the Respondent's decision was wrong. In 2007, the OCG put the present grievance on hold pending a Level I decision on standing regarding a fourth grievance

submitted by the Grievor. The fourth grievance also arose pursuant to disclosure of documents related to HC#1.

ERC's Findings: The ERC found the grievance referable with no time limit issues. The ERC found that the Level I Adjudicator erred in finding the Grievor did not have standing. While both harassment complaints arose out of the same circumstances, they were completely different complaints about two different people. Allegations of harassment against AH#2B were dealt with for the first time in this grievance. The ERC further found it was unfair for the OCG to refer the matter, and for the Level I Adjudicator to rule on the issue, without giving the parties a chance to be heard. The ERC found the OCG conduct did not give rise to an apprehension of bias. The ERC found that the Force failed to meet the harassment policy requirement to seek clarification from the Grievor before deciding whether a complaint falls within the definition of harassment. The ERC found that the Grievor's allegations of the AH#2B's actions, when viewed as a whole and assuming them to be true, would fall within the definition of harassment and warrant investigation. The ERC also noted that the Respondent had addressed only one of two allegations. The ERC concluded the Commissioner of the RCMP is not in a position to make a decision on whether the allegations are founded because the proper inquiries were not conducted. Due to the passage of time, the ERC found it is unreasonable to recommend that a new investigation take place. The ERC found the delays in processing the Grievor's file were not unacceptably long to the point of being an abuse of process.

ERC's Recommendation: The ERC recommends that the Commissioner of the RCMP allow the grievance and apologize to the Grievor for the Force's failure to properly deal with his harassment complaint.

G-540 In 2003, the Grievor filed a harassment complaint (HC#1), which was subsequently dismissed. During the HC#1 grievance process, the Grievor learned about certain statements made by other members that he believed were detrimental to his reputation and to his career progression. The Grievor filed three additional harassment complaints in 2005, each against a different member.

The Grievor alleged that one of the people who had conducted the program review (AH#2C) had harassed him by: telling the person investigating HC#1 that the Grievor was paranoid; playing a prominent role in initiating an investigation against the Grievor based on exaggeration of unsubstantiated facts; and, alleging the Grievor had lied, thereby negatively influencing the Grievor's line officer. The record indicates that this harassment complaint (HC#2C) was not investigated, and that the AH#2C did not provide his version of events. Nonetheless, the Respondent dismissed the HC#2C on the basis that the allegation did not meet the definition of harassment.

The Grievor grieved this decision. The Grievor alleged that the Respondent did not objectively look at all the information and relied on a distortion or absence of fact that was prejudicial. The Office for Coordination of Grievances (OCG) referred the grievance to a Level I Adjudicator for a determination on standing, as it believed the member was trying to re-open HC#1 which was being grieved at the time. The parties were not invited to make submissions on the issue of standing.

The Level I Adjudicator denied the grievance on the basis that the Grievor did not have standing. He found that the present grievance and the HC#1 grievance referred to the same set of circumstances. At Level II, the Grievor alleged the OCG was biased against him, insisted the Respondent's decision was wrong, and that the Respondent had erred because he made his decision without having all the facts and that he only addressed one

of his allegations. In 2007, the OCG put the present grievance on hold pending a Level I decision on standing regarding a fourth grievance submitted by the Grievor. The fourth grievance also arose pursuant to disclosure of documents related to HC#1.

ERC's Findings: The ERC found the grievance referable with no time limit issues. The ERC found that the Level I Adjudicator erred in finding the Grievor did not have standing. While both harassment complaints arose out of the same circumstances, they were completely different complaints about two different people. Allegations of harassment against AH#2C were dealt with for the first time in this grievance. The ERC further found it was unfair for the OCG to refer the matter, and for the Level I Adjudicator to rule on the issue, without giving the parties a chance to be heard. The ERC found the OCG conduct did not give rise to an apprehension of bias. The ERC found that the Force failed to meet the harassment policy requirement to seek clarification from the Grievor before deciding whether a complaint falls within the definition of harassment. The ERC found that the Grievor's allegations of the AH#2C's actions, when viewed as a whole and assuming them to be true, would fall within the definition of harassment and warrant investigation. The ERC also noted that the Respondent had addressed only one of three allegations. The ERC concluded the Commissioner of the RCMP is not in a position to make a decision on whether the allegations are founded because the proper inquiries were not conducted. Due to the passage of time, the ERC found it is unreasonable to recommend that a new investigation take place. The ERC found the delays in processing the Grievor's file were not unacceptably long to the point of being an abuse of process.

ERC's Recommendation: The ERC recommends that the Commissioner of the RCMP allow the grievance and apologize to the Grievor for the Force's failure to properly deal with his harassment complaint.

Update

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

D-114 (*summarized in the April-June 2010 Communiqué*) The Appellant was the subject of two allegations of disgraceful conduct. An Adjudication Board found that both allegations were founded and issued sanctions of a warning and the forfeiture of five days' pay for the first allegation, and a warning and the forfeiture of seven days' pay for the second. The Appellant contested the Board's findings and sanction. The ERC recommended that the appeal on the merits of the allegations be dismissed. As for the appeal pertaining to the sanction, the ERC recommended the withdrawal of the warnings imposed on both allegations, as well as a reduction in the number of days of the forfeiture of pay to three days for each allegation.

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

[TRANSLATION]

The Appellant retired from the RCMP voluntarily in August 2011 and is no longer a member according to the definition set out in section 2(b) of the Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10. Consequently, the Commissioner found that he no longer has jurisdiction concerning the Appellant and that he cannot make a determination on merit, given that the Appellant is no longer a member of the RCMP.

D-117 (summarized in the October 2010 - March 2011

Communiqué) The Respondent admittedly violated Force policy by failing to immediately disclose the fact that he had inadvertently discharged a firearm striking a vehicle with the round. The Adjudication Board found that the Respondent did not know at the time of the firearm discharge, that a round had struck a vehicle and concluded that his delay in reporting the discharge was not disgraceful.

The Appropriate Officer presented an appeal. The ERC found that the Board neither erred in applying the test for disgraceful conduct, nor in reaching any of its conclusions in that respect. The ERC recommended that the appeal be dismissed.

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

In a decision dated July 13, 2012, Commissioner Robert W. Paulson allowed the Appropriate Officer's appeal and ordered a new hearing.

The Commissioner agreed with the Appellant that the Board erred in its application of the test for disgraceful conduct by focussing on whether or not the Respondent actually knew that his bullet had struck the vehicle at the time of discharge. The Commissioner found that this knowledge was not required to establish disgraceful conduct in this case. Therefore, the Commissioner found that it was unreasonable for the Board to pursue this line of inquiry.

The Commissioner held that the failure to report was disgraceful, whether or not the Respondent knew that the round struck the vehicle at the time. The Respondent's shotgun went off in the vicinity of a vehicle which contained at least one occupant. The situation included a significant risk of injury to a person or of damage to property. As such, it was important to secure the scene and locate the discharged round, if possible. The Respondent should have told the officers

who attended at the scene to assist and should have immediately reported the firearm discharge to his commander. The substantial risk involved in any situation where a firearm is discharged is enough to justify a requirement to immediately report.

The Commissioner did not agree with the ERC, and allowed this ground of appeal.

The Commissioner wrote: "As members of the RCMP, we are given the power to bear and use firearms, and there are significant rules and requirements which accompany this grave responsibility. This is the important task of operational members. Neither the Force, nor the public which we are sworn to protect, would expect that a member take his or her duties or responsibilities surrounding his or her firearm use lightly. The policy regarding the reporting of a firearm discharge is extremely important and the breach of such a policy is not a minor error."

In rejecting the other ground of appeal, the Commissioner did agree with the ERC. He found that after the Respondent reported the matter to his commander he had complied with policy and there was no longer a failure to report. The Commissioner did not see any failure on the part of the Board to look at all of the circumstances outlined in the Agreed Statement of Facts, including the Member's failure at first to include the weapon discharge in the PROS report. As the Respondent had already reported the discharge of his weapon to his commander, his failure to include it in his PROS report was not a failure to report, and was not disgraceful. However, to the Commissioner, the issue of not including the matter in the PROS report would have been more appropriately considered as an issue of failing to obey an order, which was conduct not alleged in the Notice, and therefore not conduct for which the Appellant was seeking to discipline the member.

As he was bound by s. 45.16 of the Act, the Commissioner ordered a new hearing, but directed that it take place as soon as possible.

D-118 *(summarized in the October 2010 - March 2011*

Communiqué) The Appellant admitted to having on-duty sexual activity with an intoxicated citizen, falsifying his notes about what occurred, and intentionally providing inaccurate warned statements about the event to a superior. The Adjudication Board (Board) held that the allegations against him were proven and ordered him to resign within 14 days, or to be dismissed. The Appellant appealed the Board's finding. The ERC found that the Board properly applied the law in deciding that giving false warned statements on purpose during a criminal investigation represents a violation of the *Code of Conduct*. The ERC recommended that the appeal be dismissed.

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

In a decision dated July 11, 2012, Commissioner Robert W. Paulson agreed with the findings and recommendations of the ERC and denied the appeal. The Commissioner upheld the sanction imposed by the Adjudication Board and directed Constable [XX] to resign within 14 days, in default of which he would be dismissed from the Force.

D-120 *(summarized in the October 2010 - March 2011*

Communiqué) It was alleged that the Member acted disgracefully by using a Force travel card without permission for gambling and personal purchases. The Board held that the Member's conduct was not sufficiently serious for a reasonable person to find it disgraceful. The Appropriate Officer appealed and believed the Board erred in applying the disgraceful conduct test. The ERC found that the Board properly applied the objective test for determining if disgraceful conduct occurred. The ERC recommended that the appeal be dismissed.

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

In a decision dated September 24, 2012, Commissioner Robert W. Paulson allowed the Appropriate Officer's appeal.

The Commissioner disagreed with both the Board and the ERC, and found that the Respondent's use of the Force-approved credit card for purposes other than work-related expenses (and use contrary to the terms and conditions to which he agreed), and then his failure to pay his account such that it became delinquent and the credit card company had to seek payment from the Force, was disgraceful.

The Commissioner agreed with the Appellant that the Board erred in its application of the test for disgraceful conduct by requiring immoral conduct, excessive charges or a failure to obey a direction or warning to abide by the policy.

The Commissioner cited with approval two earlier adjudication board decisions: (2000) 8 A.D. (3d) 36 and (2004) 21 A.D. (3d) 132. He found that "serious trust" is placed in members who are authorized to use government-approved credit cards and they "must not take this privilege and the trust bestowed on them lightly." He wrote: "[w]ith this right comes a corresponding responsibility to ensure that charges are proper, and related to the purpose for which the credit card was issued, particularly considering the Force is ultimately responsible for the charges," pointing out that in this particular case the credit card company sought payment from the RCMP for the delinquent account.

As he was bound by s. 45.16 of the Act, the Commissioner ordered a new hearing, but encouraged the parties to expedite the resolution of the matter.

D-121 (summarized in the April-June 2011 Communiqué) The Appellant, while off duty, met the Complainant at a party at a private residence and was alleged to have “engaged in sexual relations with her without her consent”. The Appellant acknowledged having sexual relations with the Complainant, but insisted that it was consensual. The Adjudication Board (Board) determined that the allegation was established and that it was proven that the sexual assault was facilitated by the surreptitious administration of a drug. The Board ordered the Appellant to resign or be dismissed within 14 days. The ERC found that the Board made a manifest and determinative error when it concluded that the Complainant was given a hallucinogenic-type drug. The ERC recommended that the appeal be allowed.

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

In a decision dated July 27, 2012, Commissioner Paulson denied the Appellant's appeal of the Board's decision on both the merits and sanction.

On the merits, the Commissioner noted that the Respondent did not have to prove that the Appellant sexually assaulted the Complainant pursuant to the criteria for a sexual assault under the Criminal Code; what the Respondent had to establish was that by engaging in sexual relations with the Complainant without her consent, the Appellant acted in a disgraceful or disorderly manner that could bring discredit on the Force, contrary to s. 39(1) of the Code of Conduct.

The Commissioner found no reviewable error in the Board's finding that, despite the inconsistencies in her evidence, the Complainant was a credible witness. He also did not see any palpable or overriding error in the Board's conclusion that the Complainant did not consent to sexual relations with the Appellant. The evidence

adduced at the hearing, including the Complainant's clear testimony to that effect, supported the Board's finding that she did not consent.

It was open to the Board to find based on the totality of the evidence, including the mild to moderate levels and effects of intoxication described in the expert witness's opinion letters, the symptoms reported by the party host and the Complainant, and the expert's description of the effects of hallucinogenic-type drugs, that nothing else than the administration of a drug could satisfactorily account for what happened to the Complainant and the party host.

The Commissioner found it was reasonable for the Board to conclude that the Appellant knew the party host and the Complainant had been drugged. This conclusion was supported by the Appellant's testimony that he was unconcerned about the party host's presence in the bed during the sexual activity and the possibility of him waking up. The Commissioner also did not believe the explanation offered by the Appellant for why he went into the party host's bedroom. Further, he noted that the Complainant and the party host both experienced symptoms that were extreme after having mixed drinks from the same source, which corroborated the Complainant's evidence.

The Commissioner stated that even if he were to accept that the Appellant was unaware that the Complainant had been drugged, he would find his behaviour when he approached the Complainant in the bedroom insufficient in terms of obtaining or ascertaining her consent.

The Commissioner found the evidence showed, on a balance of probabilities, that the Appellant had sexual relations with the Complainant without her consent, thereby sexually assaulting her, as alleged in the particulars of the allegation of contravention of the Code of Conduct. He agreed with the Board's decision that the allegation of misconduct was established.

On the sanction, the Commissioner found no palpable or overriding error in the Board's consideration of the aggravating factors and he also accepted the mitigating factors considered by the Board.

The Commissioner agreed with the ERC that the Board did not err in placing little weight on the Appellant's alcohol dependence and the treatment he underwent for that condition, given the absence of conclusive evidence linking the Appellant's alcoholism to the sexual misconduct. He also agreed with the ERC that since the Appellant did not ask the Board to consider a more lenient sanction based on the Force's core value of "compassion", the Board did not err by not addressing this in its reasons for the sanction decision.

The Commissioner confirmed the sanction imposed by the Board and ordered the Appellant to resign from the RCMP within 14 days of service of his decision, in default of which he would be dismissed.

D-122 (summarized in the January-March 2012 Communiqué)
The Appellant was alleged to have misused personal medical and other confidential information through deceit and was also alleged to have misused a special police-use passport. The Adjudication Board found that both of the allegations were made out and ordered the Appellant to resign as sanction to the first allegation and ordered a reprimand and the forfeiture of four days' pay for the second. The ERC found that a number of significant errors had led to a disproportionate sanction. The ERC recommended that the appeal of the sanction be allowed and that a reprimand and the forfeiture of 10 days' pay be imposed.

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

In a decision dated July 31, 2012, Commissioner Paulson denied the appeal and upheld the sanction imposed by the Adjudication Board.

Commissioner Paulson agreed with the ERC that the Appellant's right to procedural fairness was not breached by the Board's decisions regarding official languages during the hearing. The Commissioner further agreed with the ERC that the Appellant suffered no prejudice when he was directed by the Board to leave the room while counsel argued the relevance of particular lines of questioning. The lack of an objection from the Appellant amounted to his waiver of any entitlement to that point.

Commissioner Paulson disagreed with the ERC that the Board made significant errors that resulted in a sanction that is clearly disproportionate. The Commissioner did not find that the Adjudication Board made any palpable and overriding errors. The Commissioner found that the Adjudication Board considered the relevant factors in assessing penalty and weighed them appropriately and in a fair and impartial manner. Considering the mitigating and aggravating factors, the direction to resign was reasonable.

The Commissioner agreed with the ERC and dismissed the appeal with respect to Allegation #2.

The Appellant was ordered to resign from the Force, in default of which his dismissal would be recommended.

G-459 (summarized in the January-March 2009 Communiqué) A member filed a grievance against the RCMP's decision to post on its internal Web site (intranet) a disciplinary decision concerning him. The Level I Adjudicator denied the grievance at the preliminary stage, because in his view, the Grievor did not have standing. The ERC found that the Grievor had standing. In terms of the merits of the case, the ERC found that adjudication boards are bound by the principle of open justice. The ERC 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 August 7, 2012, Commissioner Robert W. Paulson denied the grievance.

The Commissioner concurred with the ERC that the Grievor had standing.

In terms of the merits of the grievance, the Commissioner again concurred with the ERC, finding that the posting of the Adjudication Board's decision on the intranet struck a reasonable balance between the principle of transparency in justice and the protection of the Grievor's personal information.

G-477 (summarized in the October-December 2009 Communiqué) The Grievor moved to a satellite detachment. Over the next few years he could not reside near his office with his eventual common-law spouse and he suffered debilitating back pain which he believed the Force minimized with comments made by the Respondent in a Personnel Interview Form (Form). The Grievor filed a grievance asserting that the Force discriminated against him on the grounds of marital status and disability. The ERC found that it could only address arguments about the comments on the Form. It found merit in

the Grievor's position in that regard. The ERC recommended that the grievance be allowed in part.

RCMP Commissioner's Decision: The Grievor withdrew the grievance before the Commissioner had an opportunity to render his decision.

G-478 (summarized in the October-December 2009 Communiqué) The Grievor, who suffered from back pain, could not reside at his home post with his common law spouse. The Force temporarily transferred him to a unit closer to his house and later ordered him back to his home post. He asked for a permanent transfer, which the Respondent refused to support due to the Grievor's medically restricted duties. The Grievor grieved his return to the home post. The Level I Adjudicator allowed the grievance in part. The ERC could not reasonably find that the situation gave rise to marital status discrimination, but concluded that the Force discriminated against the Grievor regarding his medical limits and recommended that the grievance be allowed in part.

RCMP Commissioner's Decision: The Grievor withdrew the grievance before the Commissioner had an opportunity to render his decision. his decision.

G-479 (summarized in the October-December 2009 Communiqué) The Grievor made a harassment complaint. The Respondent found that the Grievor's allegation was unfounded. The Grievor asked for a full explanation and was provided with a written explanation. The Grievor contended that the investigation was not conducted properly. The Level I Adjudicator denied the grievance. The ERC found that the investigation was conducted properly and 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 July 11, 2012, the Commissioner agreed with the findings and recommendations of the ERC and denied the grievance.

G-480 (summarized in the October-December 2009 Communiqué)

The Grievor grieved the Respondent's refusal to allow a second claim for Vacation Travel Assistance (VTA) made in a fiscal year. The Grievor was of the opinion that he was entitled to two claims in one fiscal year, as he had been at two separate posts with different "environment classifications". The Respondent took the position that the Grievor was entitled to one VTA each fiscal year even though the posts had different "environment classifications". The ERC took the position that each interpretation is equally plausible. The ERC recommended that the grievance be allowed and that a specialist's review be ordered of the Grievor's claim to determine if all other policy requirements were met. It also recommended that a clarification be sent to all members, if current policies applicable to vacation travel benefits at isolated posts contain similar provisions to that of Section 2.4.1 of the *TB Directive*.

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

In a decision dated July 9, 2012, Commissioner Robert W. Paulson allowed the grievance.

The Commissioner agreed with the ERC that the relevant authority in this matter was the Treasury Board Isolated Posts and Government Housing Directive, 2003. The Level I Adjudicator erred in basing his decision on the TB Directive that came into force in 2007. The Commissioner also agreed with the ERC that the crux of the matter lied in the interpretation of section 2.4.1 of the 2003 TB Directive.

The Grievor started the fiscal year at a location with an environment classification of "2", but was transferred a few months later to a location with a classification of "3." According to section 2.4.1 of the 2003 TB Directive, a member could make two VTA claims per fiscal year when posted to a location with an environment classification of "1" or "2". However, a member could only claim one VTA per fiscal year when posted to a location with an environment classification of "3", "4" or "5".

The Commissioner decided to allow the grievance based on the unique circumstances of this case, where the Grievor remained at an isolated post for the entire year, but was transferred to another isolated post with a different environment classification part way through the year, and where the TB Directive did not clearly forbid a second VTA.

However, the Commissioner did not agree entirely with the Grievor's reasoning, since the latter's policy interpretation would open up the possibility of a member making three VTA claims in a year, should a member commence the year in a location with an environment classification of "1" or "2" and enjoy two vacations with corresponding VTA, and then transfer to a location where he could receive VTA for one trip. The Commissioner found that the 2003 TB Directive clearly contemplated a maximum of two occasions per year where a member could claim VTA.

Since information was missing from the grievance record, the Commissioner agreed with the ERC's recommendation to order that a specialist review the Grievor's claim to determine if all policy requirements were met, and the amount of the payment to which the Grievor was entitled, if any.

The Commissioner noted that section 3.4.1 of the TB Directive in effect since 2007 appeared substantially similar to section 2.4.1 of the 2003 TB Directive, and that it could present the same issues of interpretation.

However, the Commissioner did not have enough information before him to draw conclusions on the interpretation of the new policy, which could vary in other respects from the previous policy. For instance, the Commissioner noted that the numbering system for environment classifications had changed and that some of the locations had been reclassified. Therefore, the Commissioner directed that the policy centre responsible for the Isolated Posts and Government Housing Directive examine the Directive in light of his decision in this grievance case to determine if a clarification of the policy should be published, as recommended by the ERC.

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