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Royal Canadian Mounted Police External Review Committee

Between October and December 2013, the RCMP External Review Committee (ERC) issued the following recommendations:

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G-558 The Grievor began an acting appointment in a supervisory position. Shortly thereafter, she took a 12-day leave to deal with some difficult personal issues. One day during that leave period, her superior held an unplanned meeting with the three other supervisors in the office. The objective of that meeting was to re-assign staff, per an Inspector's order. The Respondent phoned the Grievor later on that day to advise her of the proposals made at the meeting. When the Grievor raised concerns, the Respondent arranged a meeting the next day so the Grievor could come into the office, offer input, and help make a final decision. The Grievor agreed to attend the meeting, despite still being on leave. At the meeting, the Grievor said and did a number of questionable things, and later apologized for some of them. Although the Grievor did not like the proposals, she apprehensively supported them. The group agreed to implement the proposals.

The Respondent and other supervisors were upset about the Grievor's purported actions at the meeting. They worried that she would not convey the group's decisions in a positive way. After the Grievor returned from her leave, the Respondent met with her to discuss performance issues. She asked the Grievor if her life was too difficult for her to be an acting supervisor. The Grievor said it was not. She also asked the Grievor how she would message the group's decisions. The Grievor described the decisions as in pejorative terms, and refused to say anything good about them. In time, the Respondent lost faith in the Grievor, lifted her from the acting position, and tried to place her in a position where she could receive mentoring. The Respondent later told the Grievor about a competition for a supervisor job. The Grievor entered the competition and was interviewed, but did not win. She characterized that process as "fair".

The Grievor grieved her removal from the acting supervisor position, plus certain events leading up to it. She asserted that the Respondent harassed her and committed an abuse of authority.

ERC Findings: The ERC addressed several preliminary issues. It then reviewed the relevant harassment test and authorities. It ultimately held that the Grievor did not show on a balance of probabilities that

the Respondent engaged in harassment in general, or an abuse of authority in particular. The ERC found that the Respondent's decision to hold the impugned meetings was neither contrary to harassment policy nor inappropriate. It added that the decision to hold those meetings could be equally interpreted as a proper good faith management decision made in the office's best interest. The ERC also reasoned that nothing about the Respondent's discussions with the Grievor were clearly demeaning, belittling, humiliating, intimidating, discriminatory, or of an otherwise harassing nature. It further found that the Respondent lifted the Grievor from the acting position in a way that was professional, and that did not violate harassment authorities. It found no evidence that the Grievor's career was hurt. Rather, it noted that she was screened into a promotional competition and interviewed, and that she later described the process as fair.

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

G-559 The Grievor asked for and received a transfer to an isolated post. Some of his effects could not be shipped to that post. The Force therefore arranged to store them near the post he would be leaving, at its expense, allegedly in accordance with a relocation policy. The Grievor asked the RCMP to instead ship those effects to a home he owned in another province. He supported his request with a financial analysis showing that his approach could benefit his family and save the Force money. A superior refused the Grievor's request. On July 10, 2008, the Grievor received the decision. Months later, he prepared a "*business case ... in another format*". It declared that it was "*developed to aid in the decision making process for R.C.M.P. Relocation Services*". He mailed the

business case to two contacts, and to the Office for the Coordination of Grievances (OCG). His contacts suggested he raise a grievance. The OCG simply returned the document.

On December 17, 2008, the Grievor formally grieved the Force's decision not to transport some of his belongings to a home he owned in another province. The Respondent asserted that the grievance had been presented outside the 30-day statutory Level I time limit, and was therefore statute-barred. The Grievor conceded that "*the timing of when I filed my official grievance may become an issue*". However, he argued that he was unaware of the time limit, that he could not have been expected to know about the time limit, that no one told him he could grieve until after the time limit expired, and that his reformatted business case was really an "*appeal*". A Level I Adjudicator denied the grievance on the ground that it was untimely. The Grievor disputed that decision at Level II. He reinforced his position. He added that a review of the merits could lead to positive changes in the way members at isolated posts were dealt with by relocation services.

ERC Findings: The ERC determined that the Level I grievance was untimely. It clarified that under subsection 31(2)(a) of the *RCMP Act*, a Level I grievance must be initiated within 30 days after the day upon which the aggrieved member knew, or reasonably should have known, of the impugned decision. The ERC found that the Grievor knew about the impugned decision on July 10, 2008, and that he grieved it on December 17, 2008. That was over 30 days later. The ERC also found that an extension of the Level I time limit was unjustified. It reached that conclusion, in part, by applying the adaptable and contextual test for extending time limits, as set out by the Federal Court of Canada. The ERC found that none of the

factors making up that test favoured an extension. The Grievor did not possess a continuing intention to grieve. His reasons for the delay were unreasonable, given that members had to be familiar with grievance authorities, and that the reformatted business case plainly described itself as something other than a grievance. It was also unclear if the record raised an arguable case, or if an extension would be prejudicial. Finally, the ERC found that the Grievor's concerns were too narrow and situational for a positive decision on the merits to have more than a remote possibility of broadly affecting the RCMP.

ERC Recommendation: The ERC recommends that the Commissioner of the RCMP deny the grievance on the ground that it was out of time at Level I.

G-560 The Grievance Respondent was responsible for the investigation of an harassment complaint presented by the Grievor. At some point during that investigation, the Grievor asked the Grievance Respondent for a copy of the rebuttals made by the Harassment Complaint Respondents, but the Grievance Respondent refused to provide them to her.

Soon after, the Grievor sent a document entitled 'Harassment Complaint - Second Formal Grievance' to a Staff Sergeant in the Professional Standards Unit (PSU). She believed that this document would be treated as a grievance and forwarded to the Office for the Coordination of Grievances (OCG). However, there was confusion and the OCG did not receive the document until after the thirty day statutory time limit for presenting grievances had expired.

The Level I Adjudicator found that the Grievor had not met the time limit requirement. He stated that the Grievor had not followed proper procedure, and there

was nothing to justify a retroactive extension of the time period. He also rejected her claim that she didn't know the grievance process, as she had filed a previous grievance and could have sought advice from the OCG. The Level I Adjudicator also determined that the Grievor did not have standing because the harassment investigation was ongoing.

ERC Findings: The ERC determined that the Level I grievance was untimely. The Grievor argued that the time limit was extended by a PSU Inspector telling her he was getting further advice. The ERC found that this was not proven, but even if it was, it would not have extended the time limit. The ERC then found that an extension was warranted. It applied the legal test established by the Federal Court of Canada in *Canada (Attorney General) v. Pentney*, 2008 FC 96, and concluded that the Grievor clearly had the intention to grieve within the thirty days, she had an arguable case, and she believed that the PSU officer would forward her grievance to the OCG in time. Also, the Grievance Respondent made no claim to have been prejudiced by the delay.

The ERC further found that Grievor had standing. She was a member, and the grievance was about a decision made in the administration of the Force's affairs for which there is no other redress. Also, she was aggrieved as the decision had a personal effect on the Grievor. Decisions about the process of dealing with an harassment complaint are grievable.

The ERC recommends that the Commissioner of the RCMP return the file to Level I to allow the process to continue because the parties did not have a full chance to be heard on the merits; the Grievance Respondent did not participate at all at Level I; and the Level I submission dealt exclusively with the issues of standing and the limitation period, as directed by the OCG.

ERC Recommendation: The ERC recommends that the Commissioner of the RCMP allow the grievance and return the file to Level I for a hearing on the merits.

Update

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

G-492 *(summarized in the January-March 2010 Communiqué)*

The Grievor's superior told her that he genuinely believed that the Force could reimburse the travel costs that she incurred while driving her son to and from his out-of-town medical appointments. The Grievor filed expense claims, which her supervisor approved. The Grievor soon learned that an audit showed that she was not entitled to the payment and that the Respondent felt he had no choice but to recover it as a debt owing to the Crown. The Grievor filed a grievance which was denied. The ERC confirmed that no authority entitled the Grievor to the funds she received. However, it disagreed that the Respondent had no option but to recover that sum as a debt owing to the Crown. The ERC recommended that the Commissioner of the RCMP allow this grievance, in part. In so doing, it recommended that he direct an appropriate official at National Compensation Services to inquire into whether the Grievor's debt may be forgiven under a statutory debt forgiveness authority. If the Commissioner opts to deny the grievance, then the ERC recommended that he direct the Respondent to recover the Grievor's debt in an authorized manner which does not impose financial hardship.

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

As recommended by the ERC, the Commissioner allowed the grievance in part.

The Commissioner found that the Grievor was erroneously reimbursed for expenses incurred when driving her child to and from the closest city for medical care that was locally unavailable. The Commissioner agreed with both the Level I Adjudicator and the ERC that no authority entitled the Grievor to the \$3,132 payment that she received for those expenses.

Like the ERC, the Commissioner questioned the application of the policy provision under which the overpayment recovery was ordered, since the Grievor did not meet the policy's definition of "traveller". Nonetheless, the overpayment to the Grievor had to be recovered unless the debt could be remitted or forgiven by the appropriate approval authority. Pursuant to the RCMP's Pay Procedures Manual (PPM), an overpayment of pay and allowances is deemed a "debt owing to the Crown" and cannot be "written off without Treasury Board of Canada approval" (PPM V.1, D.1 and D.1.a).

The Commissioner noted that the Grievor had submitted her travel expense claims in good faith. Unfortunately, she was misguided by her supervisor who, also in good faith, erred in informing her that she could be reimbursed for these expenses, and later in approving her two travel expense claims. The Commissioner understood that this took place at a very difficult time in the Grievor's life. He regretted that the overpayment recovery order had added financial stress to the stress that the Grievor and her husband were already experiencing due to their child's medical condition. The Commissioner also took note that the Grievor had been modest in her claims, limiting them to mileage and private accommodations. In these very specific circumstances, the

Commissioner agreed with the ERC that it was appropriate to inquire into whether it was possible to remit the Grievor's debt under a debt forgiveness authority such as subsection 23(2.1) of the Financial Administration Act. The Commissioner assigned the handling of this inquiry to the Force's Chief Financial and Administrative Officer.

In the event that it would not be possible to remit the Grievor's debt of \$3,132, the Commissioner directed that this debt be recovered in an authorized manner that would not impose financial hardship on the Grievor.

Finally, the Commissioner noted that the Grievor had asked for direction with respect to similar expenses in the future. He indicated that he could not answer this question. The answer would depend on the specific expense claimed and the relevant policy provisions, as policies change over time.

G-495 (summarized in the July-September 2010 Communiqué)
The Grievor joined an isolated post. At that time, members there could receive Vacation Travel Assistance (VTA) twice per fiscal year. The Treasury Board Secretariat (TBS) later revised its *Isolated Posts Directive (Directive)*. As a result, the VTA benefit at the Grievor's post was reduced to one payment per fiscal year. The Force then circulated three written messages detailing these changes, which the Grievor received. The Grievor submitted an expense claim seeking a second VTA during the same fiscal year. The Respondent rejected the Grievor's claim and observed that the Grievor had already been given VTA for a prior holiday taken that fiscal year. The Grievor filed a grievance. The ERC found that the Force provided the Grievor with sufficient notice of the revisions to the *Directive* which affected him. The ERC

recommended to the Commissioner of the RCMP that he deny the grievance.

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

As recommended by the ERC, the Commissioner denied the grievance.

The Commissioner agreed with the ERC in finding that the grievance was timely and that the Grievor had standing, in part. The grievance was made up of two issues. The Grievor had standing on his question of whether the Force adequately informed him of a material change to the Treasury Board Isolated Posts and Government Housing Directive ("Directive") at issue, in particular, the reduction of the vacation travel assistance entitlements which were available at his isolated post. He did not have standing with respect to his concerns with the changes to the Directive themselves. The decision to amend the provisions of the Directive is made by the Treasury Board Secretariat alone. The RCMP plays no role in making such changes and, as such, the Grievor's concerns in that regard are not a proper subject-matter for the grievance process.

On the collateral issue of the identity of a respondent, while it was unclear, in this matter, whether the named responding party was actually the one to make the decision at issue, there was no objection to her involvement, the Grievor and the Office for the Coordination of Grievances were properly notified of the Respondent's identity, and the record showed complete submissions. The Commissioner found that a suitable respondent was named.

On the merits, the Commissioner followed the Level I Adjudicator and ERC's recommendation in concluding that the

Force complied with the notification requirements set out in the Directive, providing the Grievor with sufficient notice of the amendments to the Directive. The record showed that, in accordance with notice requirements under the Directive, the email communications regarding the revisions at issue were provided within a timely manner and contained sufficiently detailed information. It was not necessary for the Force to pin down every member's particular circumstances and provide individual notices on how the amendments would affect that member.

Citing prior grievance decisions emphasizing the importance of members familiarizing themselves with applicable policies, the Commissioner added that it was the Grievor's responsibility to seek out clarification if he was uncertain about terminology or other changes being communicated to him.

G-500 (summarized in the October 2010 - March 2011 Communiqué) The Grievors worked 12-hour shifts on a two days, two nights, and four days off rotation. When their headquarters area underwent a major renovation, the Force bussed them to and from a different city every working day so that they could continue serving. The Force informed the Grievors that they would be entitled to claim two meals per day shift, and one meal per night shift, throughout the period. The Grievors filed a grievance. They believed that they were entitled to two paid meals during each night shift in accordance with section 3.2.9 of the *Treasury Board Travel Directive (TBTD)*. A Level I Adjudicator disagreed. The ERC recommended to the Commissioner of the RCMP that he allow the grievance. It also recommended that he authorize any applicable meal expense claims, assuming those claims comply with all other relevant authorities. It further recommended that the Commissioner ensure

that Force travel policy is applied in a manner consistent with section 3.2.9 of the TBTD.

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

The Commissioner agreed with the ERC and allowed the grievance.

The Commissioner found that the Grievors, who were working 12-hour shifts while on travel status of less than a day outside of their headquarters area, were entitled to claim meal expenses in accordance with their sequence of meals, and therefore both a lunch and dinner, instead of only a "mid-shift meal." While a day shift (07:00-19:00) would follow the normal sequence of breakfast, lunch and dinner, when the Grievors worked a night shift (19:00-07:00) they ate their breakfast before the beginning of their shift, and lunch and dinner followed. The Force was bound by the Treasury Board Travel Directive, which provided that "[r]eimbursement of meals for shift workers shall be based on the meal sequence of breakfast, lunch and dinner, in relation to the commencement of the employee's shift."

In reviewing the grievance, the Commissioner looked at decisions made by the Executive Committee of the National Joint Council, which supported his interpretation. The Grievors should have been reimbursed for two meals when working their 12-hour night shift, as they were for their day shift, and the meal sequence would commence at the start of their shift.

G-502 (summarized in the October 2010 - March 2011 Communiqué) The Grievor is a female member of the RCMP. The Grievor submitted a requisition for a pair of congress boots. The Detachment Commander informed the Grievor that her requisition for male congress

boots was denied as the items were not part of the female walking out order. The Grievor grieved this decision. The Grievor argued that the policy requiring female members to wear the female Walking Out Order was discriminatory, because it created a distinction between male and female members. However, the mere fact of having different Walking Out Orders for male and female members is not prohibited by the *Canadian Human Rights Act*. The ERC recommended that the Commissioner of the RCMP deny the grievance.

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

The Commissioner agreed with the ERC's findings and recommendations and denied the grievance.

The Commissioner agreed with the ERC that the grievance presentation at Level I was timely.

The Commissioner noted that the Office for the Coordination of Grievances (OCG) had failed to provide the Respondent with an opportunity to make submissions at Level II. The Commissioner agreed with the ERC that the Respondent was not prejudiced as a result. Given the passage of time in this matter and the fact that the Respondent's position was well articulated in submissions prior to Level II, the Commissioner found it preferable to render a decision on the merits of the grievance rather than return the file to the OCG so that submissions from the Respondent could be solicited.

With respect to the merits of the grievance, the Commissioner concluded that the Respondent's determination that the Grievor, a female regular member, was not entitled to order and wear overalls (i.e. "trousers") and congress boots as part of the Walking Out Order was not discriminatory. The Commissioner concluded

that the Grievor had failed to establish a prima facie case of discrimination on the basis of sex or sexual orientation contrary to the Canadian Human Rights Act or the Canadian Charter of Rights and Freedoms.

Nevertheless, the Commissioner put forth a direction to have the Uniform and Dress Manual amended to allow female regular members to wear overalls and congress boots as part of the Walking Out Order. The Commissioner concluded that female members whose personal preference is to wear overalls and congress boots when putting on the Walking Out Order, rather than a skirt and pumps, should have the option of choosing the former.

G-503 (summarized in the October 2010 - March 2011

Communiqué) The Grievor was relocated and purchased a home in his new community. He requested that his house purchase legal fees be paid by the Force, even though such fees could only be reimbursed under "exceptional circumstances." The Respondent denied his request, finding that his situation was not exceptional. The Grievor grieved this decision. The ERC recommended that the Commissioner of the RCMP allow the grievance, reconsider the Grievor's request, find that his situation was exceptional, and order that he be reimbursed for the house purchase legal fees he incurred.

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

The Commissioner allowed the grievance in part.

Subject of the grievance

The Commissioner accepted that the Grievor's use of the expression "legal fees" in his request for reimbursement encompassed

claims for the property transfer tax and home inspection fees, and therefore that the grievance included those claims as well. The Commissioner concluded that the Grievor was not given a proper chance to present his request for reimbursement. As a result, the Grievor was not given the opportunity to clarify what he meant by “legal fees” in his request, which may very well have included the fees paid for the home inspection and the property transfer tax. The Commissioner found that a broad and generous interpretation of the scope of the grievance was warranted and that, in addition to the claim for legal fees, the grievance also included claims for the property transfer tax and home inspection fees.

Erroneous findings at Level I

One of the Level I Adjudicator’s reasons for denying the grievance was that the Grievor had requested the reimbursement of the legal fees three months after arriving at his posting, and shortly before his house purchase was concluded. The Commissioner agreed with the ERC that the timing of the Grievor’s request was not relevant in terms of the merits of the grievance.

Furthermore, like the ERC, the Commissioner disagreed with the Level I Adjudicator’s conclusion that the Grievor was not aggrieved financially because there was no evidence that the costs incurred to buy his home exceeded the cost of renting in the area. The Commissioner noted that the house purchase involved costs that the Grievor would not have had to pay if he had rented, such as the legal fees, the property transfer tax and the home inspection fees.

Merits of the grievance

The Commissioner agreed with the ERC’s conclusion that the Respondent’s response to the Grievor’s request for reimbursement was

insufficient. The Commissioner found the Respondent’s decision to be poorly explained and justified. The Commissioner noted that if the applicable policy had been followed properly, the Grievor would have been directed to the Commanding Officer (CO) of “Depot” Division (or the CO’s delegate) when he first inquired about where to send his request for reimbursement, and perhaps he would have been better able to present his request. Like the ERC, the Commissioner was troubled that despite the clear wording in the applicable policy giving the CO of “Depot” Division/delegate the authority to approve the payment requested by the Grievor, the Respondent (seemingly the CO’s delegate) disputed this authority in her decision.

Given the Respondent’s improper handling of the Grievor’s request for reimbursement, the Commissioner directed that the matter be returned to the CO of “Depot” Division/delegate for reconsideration. The Grievor was to be provided with the opportunity to present his request with full documentation and explanation, as contemplated by the applicable policy.

G-505 (summarized in the October 2010 - March 2011

Communiqué) The Grievor was transferred to a different city. He sold his home, with a possession date of February 12, 2009. He advised the Force that he would be on a vacation from February 9-28, 2009. He took possession of his new home on March 2, 2009. He allegedly could not have done so sooner, since the builder “had workers inside the home that day finishing the house [and] had to send the painters back the following day”. The Grievor’s household effects were stored from February 9 to March 3, 2009 resulting in a Storage-in-Transit (SIT) expense. The Grievor and a local relocation adviser disagreed about how SIT costs ought to be paid. The Grievor submitted a grievance. A

Level I Adjudicator denied the grievance, despite the Grievor's claim that it was virtually impossible for him to move into his new home before he did. The ERC found that the impugned decision was made on the basis of an inconsequential factor. Specifically, whether the Grievor vacationed between the time he moved out of his old home and into his new home was not determinative. The ERC recommended to the Commissioner of the RCMP that he allow the grievance and order that the matter be returned to the proper authority for a review of how the Grievor's SIT expenses should be handled, once certain key information is obtained.

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

The Commissioner found that the Grievor was entitled to be reimbursed for his storage-in-transit (SIT) costs from the Core relocation funding envelope and allowed the grievance.

The Commissioner disagreed with the Respondent's position that the Grievor's storage expenses were the result of a personal decision to delay taking possession of his new home in order to go on a pre-booked vacation. The Commissioner agreed with the ERC's conclusion that whether or not the Grievor took a vacation between the time he moved out of his old residence and into his new residence was an inconsequential factor. The Commissioner found that the record showed that the Grievor had made every reasonable attempt to achieve a door-to-door move.

The Commissioner concluded that SIT was necessary and incidental to the shipment of the Grievor's household effects to the new place of duty. Furthermore, he found that the Grievor would have been entitled to the reimbursement of Interim Accommodation, Meals and the Miscellaneous Relocation

Allowance (IAM & MRA) for the entire three-week period that he was necessarily separated from his household effects, if he had not taken personal annual leave during that period. (The Grievor did receive IAM & MRA for three of those days, following his return from vacation.) Since IAM & MRA would have been authorized for the entire SIT period, his SIT costs should be funded from the Core envelope pursuant to sections 10.02.1 and 10.07.1.a)i) of the 2008 Integrated Relocation Program.

G-507 (summarized in the October 2010 - March 2011

Communiqué) The Grievor participated in a workplace consultation. During the session, some employees disclosed that they were afraid of the Grievor, who was seen as an instigator of conflicts. The Respondent shared these concerns with the Grievor's chain of command. The Grievor submitted a grievance against the Respondent alleging that he failed to respect his obligations as a facilitator and did not respect the principle of natural justice. The ERC found that the Respondent acted within his mandate as a facilitator and did not aggrieve the Grievor. The ERC recommended that the Commissioner of the RCMP deny the grievance.

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

[TRANSLATION]

The Commissioner accepted the findings and recommendations of the ERC and denied the grievance.

G-509 (summarized in the April-June 2011 Communiqué)

The Grievor was the successful candidate in a promotion process for a corporal position in another detachment and had to relocate. He requested to be provided with government-

owned housing in the detachment area for himself and his family, which at the time was not available. The Grievor ultimately withdrew from the promotion process, allegedly because he was not able to relocate due to the lack of government-owned housing. The Grievor filed a grievance after his withdrawal from the promotion process took effect. The ERC recommended to the Commissioner of the RCMP that he deny the grievance on time limits. It further recommended that the Commissioner undertake a review of the RCMP policy provision that restricts the Grievor's right to be heard in rulings to the Level I Adjudicator about preliminary issues.

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

The Commissioner agreed with the ERC and dismissed the grievance.

The Respondent argued that the Grievor was required to present his grievance within thirty days of learning that he would not be provided with government housing, but failed to do so. However, circumstances in this case arose wherein the matter was placed in a "whole new light." The Grievor had been told that the government housing which he desired was being held for the OIC of the detachment, but later discovered that a corporal was given this residence. That event triggered the time period. Unfortunately, the Grievor presented his grievance more than four months after learning this additional information, yet provided no explanation whatsoever for this significant delay. The Grievor argued that his presentation was timely, as it was made within thirty days of confirmation of his withdrawal from the promotion process (he withdrew because of lack of government housing). The Commissioner found that this did not trigger the limitation period, as the confirmation of the withdrawal was confirmation of the

prejudice he may have suffered, but was not what caused the Grievor's aggrievement.

The Commissioner also addressed other issues raised by the ERC. First, he agreed that fairness dictated a submission process wherein both parties were provided with the opportunity to make representations to the Level I Adjudicator and the Grievor had an opportunity to reply to the Respondent's submission. He wrote that due to the Enhancing Royal Canadian Mounted Police Accountability Act, S.C. 2013, c. 18, the grievance process would be undergoing an extensive review. He directed that a vetted copy of this decision be provided to the policy centre so that the ERC's comments could be used in the review.

Second, the Commissioner agreed that the Grievor could not expand the subject matter of his grievance at Level II, and that the Respondent was prohibited by s. 12(3) of the Commissioner's Standing Orders (Grievances) from providing new information at Level II when that material was clearly available to the Respondent at Level I. He wrote:

Taking the time to carefully provide all relevant information and arguments at Level I would ensure that the Adjudicator had a fulsome picture, could perform a thorough review, and could provide a complete and comprehensive decision to the parties. When all of the information is available and considered, the parties may be satisfied with the decision and the matter may not need to proceed to Level II. If it does proceed, then the Level II Adjudicator can consider the information.

Finally, inaccurate information on the certificate of service in this matter and the lack of personal service caused a mistaken concern that the Grievor's presentation at

Level II was untimely. The Commissioner agreed with the ERC that it is "essential" that certificates of service be accurate and that service must be personal to be properly effected under the Act.

G-516 (summarized in the July-September 2011 Communiqué)

The Respondent gave effect to two of the four operational restrictions the Health Services Officer had imposed on the Grievor. The Grievor filed a grievance against the decision to give effect to the two restrictions. He asked that the Respondent answer a number of questions before providing his written submission. The Respondent answered an initial set of questions. Although the Respondent did not answer a second set of questions posed by the Grievor, the Respondent did fulfil his duty to communicate information. The ERC found that the Respondent's application of the two operational restrictions was warranted. The ERC recommended that the Commissioner deny the grievance.

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

[TRANSLATION]

The Commissioner denied the grievance on the sole ground that it had become moot upon the death of the Grievor.

The grievance dealt with the application by the Grievor's Line Officer of two operational restrictions imposed by the Health Services Officer: not to drive an RCMP vehicle and not to work with his service weapon. The redress sought by the Grievor in his grievance was to be able to drive an RCMP vehicle and carry his service weapon again.

First of all, the Commissioner concluded that he had jurisdiction over the grievance

because it had been duly presented by the Grievor at Level II while he was alive and still a "member" of the RCMP within the meaning of section 2 of the Royal Canadian Mounted Police Act, R.S.C., 1985, c. R-10.

The Commissioner then applied the doctrine of mootness, as defined by the Supreme Court of Canada in Borowski v. Canada (Attorney General), [1989] 1 S.C.R. 342 [Borowski]. The Commissioner concluded that a tangible and concrete dispute in this case no longer existed because of the Grievor's death. Moreover, the redress requested in the grievance was no longer possible. Consequently, the grievance had become moot.

The Commissioner noted that in Borowski the Court indicated that, even if a dispute has become moot, there are cases where the Court may exercise its discretion to hear the case nonetheless. For example, "there may be collateral consequences of the outcome that will provide the necessary adversarial context" (Borowski, p. 359.) The dispute may also pose a question of public importance for which a decision would be in the public interest.

The Commissioner noted as well that in the decision in R. v. Smith, [2004] 1 S.C.R. 385, the Supreme Court of Canada applied the principles stated in Borowski to the case of a deceased appellant. The Court stated that its discretion to hear an appeal made by a person who dies during the proceeding should be exercised only in the exceptional case where a question remains in dispute and must be decided in the interests of justice despite the death of the person most directly affected by the appeal.

Applying these principles to this case, the Commissioner concluded that this was not one of the rare cases where he would have to decide on a moot grievance. The issue

raised by the grievance was of a very personal nature affecting only the Grievor. The appropriateness of the operational restrictions imposed on the Grievor was not a matter of general interest for members of the RCMP. The answer to this question depended on facts specific to the dispute and was inextricably linked to the Grievor himself. Moreover, there were no collateral consequences of the outcome, such as corrective action of a financial nature that would benefit his estate. The redress sought by the Grievor was not of a monetary nature.

G-517 (summarized in the October-December 2011 Communiqué)
The Grievor was deployed to the 2010 Winter Olympic Games (Games). Prior to his deployment, the Force and the National Joint Council (NJC) indicated that, in view of limited housing options at the Games, most deployed personnel would have to stay in “double occupancy” accommodations. The Grievor began his 28-day deployment on February 2, 2010. He lived in a double occupancy lodging the whole time, and disliked it. He filed a grievance around April 19, 2010. An issue arose as to whether it was initiated within the 30-day statutory limitation period. The ERC concluded that the Grievor essentially failed to familiarize himself with NJC policy in time to submit a timely grievance. The ERC recommended to the Commissioner of the RCMP that he deny the grievance.

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

The Commissioner agreed with the ERC and dismissed the grievance.

The Commissioner found that the time limit for the Grievor to grieve about his living conditions at the Games commenced when he began experiencing his unsatisfactory

accommodations. The grievance was presented over two months later, and was therefore outside the time limit set in the Act. A retroactive extension was not reasonable or appropriate in the Grievor’s case.

In addition, the Commissioner pointed out that his consideration of a grievance at Level II is a consideration de novo. Subsection 31(1) of the Act stipulates that a member is entitled to present a grievance at each level.

G-522 (summarized in the January-March 2012 Communiqué)
The Grievor learned he was being transferred to a new region. He received a relocation “handout sheet”. It provided that he could not receive permission to take a House Hunting Trip (HHT) until he obtained a firm offer to buy his home. He later reviewed RCMP relocation policy, realized that HHT funding may have been allowable in his situation, and sought a reimbursement of related costs. The Force denied his request. The Level I Adjudicator declared the grievance untimely, and found that a retroactive extension of the statutory limitation period was not justified. The ERC found that the Level I decision was reasonable, particularly in view of the Grievor’s vague and conflicting submissions concerning the date upon which he learned of the Force’s decision. The ERC then found that a retroactive extension was not justified. The ERC recommended that the Commissioner of the RCMP deny the grievance.

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

The Commissioner agreed with the ERC that the Grievor presented his grievance beyond the statutory time period set out in the Act. The Grievor provided various differing

explanations respecting the date he became aware of the Respondent's decision, but no evidence to support his claim that he learned of the decision within the thirty days before grieving. Further, there were no circumstances which would justify a retroactive extension.

The Commissioner dismissed the grievance.

G-523 (summarized in the January-March 2012 Communiqué)
The Grievor was transferred from an isolated post to a new post. An RCMP Relocation Reviewer gave the Grievor pre-approval to rent a vehicle at his new post, until such time as his first car was delivered. The Grievor did so. The Force's third party relocation contractor mistakenly paid this expense with money from the wrong funding envelope. The relocation contractor advised the Grievor of the error. It also informed him that he was out of relocation funds, and that he had to repay the car rental fee. The Grievor filed a grievance. The ERC recommended to the Commissioner of the RCMP that he allow this grievance, overturn the Level I decision, and send the matter back to Level I. It also recommended that he instruct the Level I Adjudicator request key documents, and to invite the parties to file submissions on the issue of standing. Lastly, it recommended that he confirm that the responding party at Level II is the Respondent, or appoint another person to that role.

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

The Commissioner allowed this grievance, agreeing with the ERC, in part. The ERC recommended that the Commissioner return the file to Level I to seek further submissions and render a new decision. Given the passage of time, however, the Commissioner found that it was in the best interest of the

Grievor for him to render a decision on the issue of standing as well as the merits himself.

The Commissioner concluded that the Grievor had standing, as there was clearly a decision rendered by the Respondent which aggrieved the Grievor.

On the merits, the Commissioner found that the Grievor was entitled to have his car rental payment covered under the RCMP's Integrated Relocation Program, 2007, and that, in the unique circumstances of this case, the Grievor was not required to repay the funds even though they had been paid from the Core envelope.

G-524 (summarized in the January-March 2012 Communiqué)
The Grievor pursued and accepted a promotional transfer to a job in another city, even though he knew his family did not wish to go there. He moved by himself, believing his family would soon follow. They did not, and his marriage became strained. As a result, he cancelled the transfer and returned to his old job in accordance with the *Integrated Relocation Program (IRP)*. He incurred costs during his trips to and from the other city, and sought compensation despite accepting that the *IRP* did not entitle him to certain expenses. A Departmental National Coordinator denied his request. The Grievor grieved the original decision to deny his request roughly 33-38 days after becoming aware of it. The ERC found that the matter was out of time. The ERC recommended to the Commissioner of the RCMP that he deny the grievance.

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

As recommended by the ERC, the Commissioner denied the grievance.

The Commissioner found that the grievance was presented outside the 30-day statutory time limit within which to file a grievance. The Grievor's supervisor signed the grievance 33 days after the latest date that the Grievor would have been aware of the decision being grieved. Thus, the matter was out of time.

The Commissioner further deemed that clarification of the term "exceptional circumstances" in the decision being grieved did not restart the limitation period. He relied on prior grievance decisions (G-091 and G-095) in stating that requests to review a decision do not have the effect of restarting the time limit and a restatement of the decision by the Respondent does not consist of a new grievable decision.

Following the criteria set out by the Federal Court of Canada in Canada (Attorney General) v. Pentney, 2008 FC 96, the Commissioner found that a retroactive extension of the time limit was not warranted. The Grievor provided no reasonable explanation for waiting to file his grievance until after the 30-day period had expired. Further, the Commissioner agreed with both the Level I Adjudicator and the ERC in that it was not clear the Grievor had an arguable case or that he had met the burden of establishing that his was one of the rare instances in which the Force should pay the expenses of a member who cancelled a transfer for personal reasons.

On the collateral issue of the identity of a respondent, as pointed out by the ERC, the Commissioner echoed the significance of ascertaining the correct parties in each matter. While it was unclear, in this matter, whether the named responding party was actually the one to make the decision at issue, there was no objection to her involvement and the record showed

complete submissions. The Commissioner found that a suitable respondent was named.

G-527 (summarized in the April-June 2012 Communiqué) The Grievor received a transfer notice. He then informed his Career Counsellor (CC) that he listed his house for sale. The Grievor paid a 7% realtor commission fee. 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. The Treasury Board Secretariat (TBS) refused his claim. The Grievor filed a grievance. 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. The ERC recommended that the Commissioner of the RCMP deny the grievance and offer apologies to the Grievor.

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

[TRANSLATION]

In keeping with the ERC's recommendation, the Commissioner denied the grievance, as the Grievor, who was contesting a decision by the Treasury Board Secretariat, did not have standing. The Commissioner, however, apologized to the Grievor on behalf of the RCMP for the manner in which his relocation was managed.

In addition, the Commissioner refused to consider an additional argument that the Grievor attempted to submit to the Commissioner after the ERC had released its report.

G-533 (summarized in the July-September 2012 Communiqué)

The Grievor's claims for private non-commercial accommodation allowance (PAA) were denied. The Grievor grieved the denial of his PAA claims. A Level I Adjudicator denied the grievance on the ground that the Grievor had not established its merits. She also determined that the grievance was filed outside the statutory limitation period and was therefore statute-barred. The ERC recommended 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.

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

As recommended by the ERC, the Commissioner denied the grievance.

The Commissioner found that the grievance was presented outside the 30-day statutory time limit within which to file a grievance. The Grievor's supervisor signed the grievance 39 days after the date of the decision being grieved. Thus, the matter was out of time.

The Commissioner further deemed that procedural fairness had been breached. He commented that the Office for the Coordination of Grievances or the Level I Adjudicator should have provided the parties with the opportunity to present submissions on the timeliness issue prior to a ruling being made on that issue. However, the Commissioner decided not to send the matter back to obtain submissions in that regard. He agreed with the ERC that this was a case where the Grievor had no chance of success because he clearly did not meet his burden of persuasion to establish the grievance on a balance of probabilities.

Following the criteria set out by the Federal Court of Canada in Canada (Attorney General) v. Pentney, 2008 FC 96, the Commissioner also found that a retroactive extension of the time limit was not warranted. The Grievor provided no reasonable explanation for waiting to file his grievance until after the 30-day period had expired. Further, the Commissioner agreed with both the Level I Adjudicator and the ERC in that the Grievor did not have an arguable case. His submissions appeared to be insufficient to meet the onus of showing he was aggrieved on a balance of probabilities.

G-534 (summarized in the July-September 2012 Communiqué)

The Grievor's claims for private non-commercial accommodation allowance were denied. The Grievor grieved the denial of his claims. A Level I Adjudicator found the Grievor had standing. 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. A second Level I Adjudicator denied the grievance on the ground that the Grievor had not established its merits. She also determined that the grievance was filed outside the statutory limitation period and was therefore statute-barred. The ERC recommended 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.

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

As recommended by the ERC, the Commissioner denied the grievance.

The Commissioner found that the grievance was presented outside the 30-day statutory time limit within which to file a grievance.

The Grievor's supervisor signed the grievance 39 days after the date of the decision being grieved. Thus, the matter was out of time. The Commissioner further noted that, despite being given adequate opportunities to make submissions with respect to the issue of timeliness, the Grievor elected not to address this issue.

Following the criteria set out by the Federal Court of Canada in Canada (Attorney General) v. Pentney, 2008 FC 96, the Commissioner also found that a retroactive extension of the time limit was not warranted. The Grievor provided no reasonable explanation for waiting to file his grievance until after the 30-day period had expired. Further, the Commissioner agreed with both the Level I Adjudicator and the ERC in that the Grievor did not have an arguable case. His submissions appeared to be insufficient to meet the onus of showing he was aggrieved on a balance of probabilities.

The Commissioner briefly commented on the collateral issue of the identity of the respondent. The issue of the appropriate respondent was referred to a Level I Adjudicator for a decision. The Level I Adjudicator named an appropriate respondent after determining that the respondent identified by the Grievor was not the individual who made the decision that was being grieved. The decision regarding the proper respondent played a particular role in this matter, as the Grievor had filed another grievance on the same subject-matter (G-533), naming the responding party now also identified by the Level I Adjudicator in this file. Even though the two grievances then dealt with the same respondent and the same subject matter, the Commissioner chose to render separate decisions.

G-537 (summarized in the July-September 2012 Communiqué)
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, and a potential buyer showed interest. The Respondent told the Grievor that he could not receive relocation benefits if he sold his house before receiving his transfer notice. 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. The Level I Adjudicator allowed the grievance but stated that it was premature to assess the remedy. 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. The ERC recommended 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 recommended 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.

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

[TRANSLATION]

The Commissioner concurred with the ERC's conclusions and recommendations and denied the grievance.

As recommended by the ERC, the Commissioner denied the grievance on the grounds that it had been submitted at Level II outside the 14-day time limit prescribed in paragraph 31(2)(b) of the Royal Canadian Mounted Police Act, R.S.C., 1985, c. R-10. The

Commissioner refused to grant a retroactive extension of time since the Grievor had not been sufficiently diligent in pursuing his grievance. The Grievor had been clearly advised by the Office for the Coordination of Grievances that he needed to submit his grievance within fourteen days after being served with the decision at Level I and that failure to respect this time limit would result in the grievance being denied without a review of its merits. Despite this clear warning, the time limit was exceeded by about two months.

Since the ERC had made findings on the merits of the grievance, the Commissioner saw fit to do likewise. The Commissioner indicated that he agreed with the Level I Adjudicator that the Respondent's action, which was being grieved, had been clearly established. The Respondent acknowledged having misinformed the Grievor and admitted she was unaware of the provisions of the Integrated Relocation Program (IRP) which allow the sale of a house before a Transfer Notice has been issued. The Commissioner apologized to the Grievor on behalf of the RCMP for the Respondent's mistake.

The Commissioner added, however, that the Respondent's mistake did not relieve the Grievor of all responsibility, since he also had not consulted the Relocation Policy and the IRP in the Financial Management Manual. The Commissioner pointed out that it has been clearly established in a number of adjudication decisions concerning RCMP grievances that members have a duty to familiarize themselves with the policies governing them and to ask for a written interpretation or clarification when there is doubt about their meaning.

For the reasons outlined by the ERC, the Commissioner concluded that the Grievor was not entitled to the redress sought in his grievance.

Finally, the Commissioner commented on perceived failures in the matter of the Grievor's right to receive communications concerning the handling of his grievance in the language of his choice, in this case French. The Commissioner emphasized that grievors are entitled to the same quality and speed of service in the handling of their grievances, whether they choose to proceed in French or in English.

G-538 (summarized in the July-September 2012 Communiqué)

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 each against a different member. 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. 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. The ERC recommended 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.

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

The Commissioner agreed with the ERC's findings and recommendations and allowed the grievance.

The Commissioner found that the Level I Adjudicator erred in denying the grievance

for lack of standing. Contrary to the Level I Adjudicator's findings, there was no other process for redress.

The Commissioner also commented on a number of errors that were made during the processing of the grievance. The OCG made certain factual errors in their correspondence to the Respondent; however, these did not raise an apprehension of bias. In addition, while the parties were not asked for submissions on the issue of standing prior to a decision being rendered on that issue by Level I, this procedural error was rectified by the parties' ability to make submissions at Level II.

On the merits, the Commissioner found that the Force did not handle the Grievor's harassment complaint in accordance with Treasury Board and RCMP policies. Due to the passage of time, the Commissioner found that it would be unreasonable to return the matter for a renewed review. He issued an apology.

Lastly, the Commissioner addressed the Grievor's concerns with respect to delays in the grievance process. While it would have been more desirable to resolve the matter as quickly as possible, the Grievor failed to show any prejudice caused by the delay or how the delay tainted the proceedings.

G-539 (summarized in the July-September 2012 Communiqué)

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 each against a different member. 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. 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. The ERC recommended 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.

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

The Commissioner agreed with the ERC's findings and recommendations and allowed the grievance.

The Commissioner found that the Level I Adjudicator erred in denying the grievance for lack of standing. Contrary to the Level I Adjudicator's findings, there was no other process for redress.

The Commissioner also commented on a number of errors that were made during the processing of the grievance. The OCG made certain factual errors in their correspondence to the Respondent; however, these did not raise an apprehension of bias. In addition, while the parties were not asked for submissions on the issue of standing prior to a decision being rendered on that issue by Level I, this procedural error was rectified by the parties' ability to make submissions at Level II.

On the merits, the Commissioner found that the Force did not handle the Grievor's harassment complaint in accordance with Treasury Board and RCMP policies. Due to the passage of time, the Commissioner found that it would be unreasonable to return the matter for a renewed review. He issued an apology.

Lastly, the Commissioner addressed the Grievor's concerns with respect to delays in the grievance process. While it would have been more desirable to resolve the matter as quickly as possible, the Grievor failed to show any prejudice caused by the delay or how the delay tainted the proceedings.

G-540 (summarized in the July-September 2012

Communiqué) 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 each against a different member. 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. 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. The ERC recommended 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.

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

The Commissioner agreed with the ERC's findings and recommendations and allowed the grievance.

The Commissioner found that the Level I Adjudicator erred in denying the grievance for lack of standing. Contrary to the Level I Adjudicator's findings, there was no other process for redress.

The Commissioner also commented on a number of errors that were made during the processing of the grievance. There was some confusion with respect to the identity of the respondent, which resulted in delayed disclosure on his part. That discrepancy was remedied when the Respondent was provided with the complete grievance package prior to a review at level II. Further, the OCG made certain factual errors in their correspondence to the Respondent; however, these did not raise an apprehension of bias. Lastly, while the parties were not asked for submissions on the issue of standing prior to a decision being rendered on that issue by Level I, this procedural error was rectified by the parties' ability to make submissions at Level II.

On the merits, the Commissioner found that the Force did not handle the Grievor's harassment complaint in accordance with Treasury Board and RCMP policies. Due to the passage of time, the Commissioner found that it would be unreasonable to return the matter for a renewed review. He issued an apology.

The Commissioner also addressed the Grievor's concerns with respect to delays in the grievance process. While it would have been more desirable to resolve the matter as quickly as possible, the Grievor failed to show any prejudice caused by the delay or how the delay tainted the proceedings.

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