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## Royal Canadian Mounted Police External Review Committee

### IN THIS ISSUE

#### Recommendations

- 1 G-561
- 2 G-562
- 3 G-563
- 4 G-564
- 5 G-565
- 6 G-566
- 6 G-567
- 7 G-568

#### Decisions

- 8 G-512
- 8 G-513
- 9 G-541
- 10 G-542
- 10 G-543
- 11 G-544
- 11 G-547
- 12 G-548
- 13 G-550
- 13 G-551
- 14 G-552
- 14 G-553
- 14 G-554
- 14 G-557
- 15 G-559
- 15 G-560
- 1 G-561
- 2 G-562

#### 16 Quick Reference Index



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The ERC is pleased to announce the arrival of its new Chair, Ms. Elizabeth M. Walker, who was appointed by the Governor in Council effective October 14, 2014. Before taking on the leadership of the ERC, Ms. Walker worked in private practice as Managing Partner of the Ottawa office of a national law firm. She is a member of the Ontario Bar.

### Between January and October 2014, the RCMP External Review Committee (ERC) issued the following recommendations:

**G-561** When the 2009-10 fiscal year began, the Grievor was stationed at an isolated post. He took a vacation early that fiscal year, then asked for and received a Vacation Travel Assistance (VTA) payment for the vacation. A few months later, he relocated to a different isolated post. He took a second vacation within the 2009-10 fiscal year, and sought a VTA payment for that vacation.

The Respondent refused the Grievor's request for a second VTA payment. She reasoned that the *2007 National Joint Council's Isolated Posts and Government Housing Directive* precluded the Grievor from being paid VTA twice during the 2009-10 fiscal year.

The Grievor presented a Level I grievance in which he challenged the denial of his second VTA claim. The grievance turned on the interpretation of a specific *2007 IPGHD* provision that dealt with VTA payment limitations. The Respondent construed the provision narrowly, arguing that it entitled the Grievor to only one VTA payment in fiscal year 2009-10. The Grievor construed the provision broadly by making an argument based on the expressed purposes of the *Directive*.

A Level I Adjudicator preferred the Respondent's interpretation, and denied the grievance. The Grievor submitted a Level II grievance. He expanded on his Level I arguments, partly by urging that members who relocate from one isolated post to another isolated post deserve more VTA benefits than others, since they must continuously withstand significant geographic challenges.

**ERC Findings:** The ERC based its analysis upon its findings and recommendations, and the decision of the Commissioner of the RCMP, in ERC 2900-08-001 (G-480). That case raised facts, arguments,

and issues that were principally similar to those in the present matter. As in G-480, the ERC found that the disputed *IPGHD* provision was vague, and that the parties read it in different yet equally plausible ways. Moreover, as in G-480, the ERC found that *IPGHD* objectives, jurisprudence, and public policy militated toward accepting the interpretation that favoured the member at the isolated post. The ERC accordingly interpreted the disputed subsection in the Grievor's favour.

The ERC noted that multiple considerations supported its findings. For example, the *Directive's* stated purposes were to facilitate "the recruitment and retention of staff delivering government programs in isolated locations", and to recognize "the inherent disadvantages and abnormally higher costs of [serving] in isolated posts". A prominent Task Force had recommended that members who served in isolated posts be treated fairly and appropriately. Furthermore, the Commissioner of the RCMP endorsed the ERC's reasoning. He nevertheless made it clear that isolated post policy does not contemplate more than two VTA payments in a given fiscal year.

**ERC Recommendation:** The ERC recommends that the Commissioner of the RCMP allow the grievance on its merits, reversing the Respondent's decision and allowing payment of the Grievor's second VTA claim in the 2009-10 fiscal year.

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

*The Commissioner allowed the grievance, as recommended by the ERC. The Grievor transferred from a two Vacation Travel Assistance (VTA) isolated location to a one VTA isolated location in the same fiscal year. He grieved when his claim for a second VTA*

*payment was denied. The Commissioner allowed the grievance and ordered payment of the second VTA in the amount to which the Grievor was entitled.*

**G-562** On January 26, 2010, the Grievor learned that the Force had decided not to reimburse assorted relocation expenses he incurred during a promotional transfer. On March 5, 2010, he submitted a grievance form in which he challenged that decision. He acknowledged that he had initiated his grievance after the 30-day statutory Level I limitation period expired. Yet he insisted that he had neither the time nor the ability to grieve within 30 days of the disputed decision. He explained that after January 26, 2010, he worked one further day, then had six days off to prepare for a 26-day deployment at the Olympics in Whistler, British Columbia. His deployment began on February 2, 2010. He added that while he was in Whistler, he was very busy and had no access to a fax machine, scanner, or supporting documents. He said that he returned to his regular shift on March 5, 2010, at which time he completed and submitted his grievance form.

The Grievor sought a retroactive extension of the Level I time limit, under subsection 47.4(1) of the *RCMP Act*. That provision permits the Commissioner of the RCMP (and the Commissioner's delegate) to extend certain time limits if s/he deems an extension to be warranted. The Level I Adjudicator denied the grievance on the basis that it was untimely, refusing to grant a retroactive extension.

The Grievor disagreed with that decision, and presented a Level II grievance. He reiterates that his Level I grievance was late because he was busy preparing for, and working at the Olympics, where he was unable to use a photocopier or a scanner. He adds that it takes time to marshal materials in support of

a grievance. He feels he should have been given more preparation time.

**ERC Findings:** In the ERC's view, a retroactive extension of the Level I limitation period was not warranted. It reached that conclusion, in part, by applying the adaptable and contextual test for extending time limits, as described by the Federal Court of Canada. The ERC deduced that a number of factors making up that test militated against an extension. Specifically, it was not clear if the Grievor had a continuing intention to grieve, or if the record raised an arguable case. Moreover, the Grievor's explanations for the delay were not reasonable, in light of his duty to be familiar with grievance authorities. The ERC noted that he could have grieved while on leave, either prior to or during his deployment, through a number of alternative means. He also could have asked someone to help him grieve on time. He further could have contacted the Office for the Coordination of Grievances for guidance. Additionally, the ERC observed that the Grievor confused the time necessary for preparing grievance submissions, with the time within which a grievance had to be filed. The Grievor did not have to offer supporting arguments or evidence during the Level I limitation period. He had only to file a form containing summary information during that period. Such a requirement was neither onerous nor overly time consuming.

**ERC Recommendation:** The ERC recommends 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 findings and recommendations of the ERC and denied the grievance. The Commissioner concluded that the grievance was presented outside the*

*thirty-day statutory time limit and that a retroactive extension of the time limit was not warranted.*

**G-563** The Grievor was temporarily assigned to duties in Vancouver during the 2010 Winter Olympics. During his 45-day stay, he was required to share a cabin with another individual on board a cruise ship used as accommodation for deployed members. The Grievor found this arrangement uncomfortable and challenging, resulting in loss of privacy and significant fatigue due to lack of sleep. His duty in Vancouver ended on March 2, 2010. The Grievor chose not to grieve this situation. Rather, nearly one month after returning from Vancouver, he claimed a Private Accommodation Allowance (PAA) for each night spent in the ship cabin. The Grievor's claim was denied on April 2, 2010 on the basis that his cabin was a commercial accommodation for which a PAA was not allowable.

On April 28, 2010, the Grievor submitted a grievance. Although he identified the PAA denial as the subject of his grievance, he also wrote that he was prejudiced by the Force's failure to provide him with single occupancy accommodation during his deployment and noted various discomforts incurred as a result of his shared cabin. Following an exchange of submissions, a Level I Adjudicator ruled that the Grievor had failed to meet the 30-day time limit to present a grievance. She concluded that the Grievor ought to have presented his grievance within 30 days of experiencing the challenging conditions encountered in the cabin, rather than waiting to grieve the subsequent denial of the PAA claim. The Grievor disagreed with that decision and presented a Level II grievance. He asserted that the basis of his grievance was the denial of the PAA claim.

**ERC Findings:** In the ERC's view, the Level I grievance was untimely. The cause of the Grievor's dissatisfaction was clearly the purportedly sub-standard accommodation provided to him in Vancouver until March 2, 2010. When the Grievor requested a PAA on March 29, 2010, he referred to the difficult conditions encountered on board the ship and the Force's failure to provide him with accommodation that met required standards. The ERC found that the Grievor ought to have grieved the Force's alleged failure to provide suitable accommodation no later than 30 days after returning from Vancouver, rather than wait for a subsequent denial of his PAA claim.

The ERC concluded that a retroactive extension of the Level I limitation period was not warranted. It applied the adaptable and contextual test for extending time limits as described by the Federal Court of Canada. Specifically, the ERC found that the record did not disclose an ongoing intention to grieve, as the Grievor had merely sought compensation for substandard accommodation by filing a PAA claim 27 days after returning from Vancouver. Further, the ERC found that the Grievor had not provided a reasonable explanation for presenting his grievance 56 days after returning from Vancouver. Finally, the ERC was not convinced that the case as portrayed by the Grievor was arguable, given that his arguments could not have resulted in the remedy sought.

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

**G-564** The Grievor performed operational police duties. He suffered two sudden blackouts, and was placed on anti-seizure medication. One physician characterized one of the Grievor's blackouts as "a possible seizure". A different

physician ascertained "clinical evidence supportive of the diagnosis of probable epilepsy". After a period of time, RCMP Health Services decided to amend the Occupation Fitness designation on the Grievor's medical profile from O2 (which permitted a member to carry out operational duties) to O4 (which did not). The Grievor was consequently prohibited from performing operational police functions for at least five years.

The Grievor disagreed with RCMP Health Services' decision. He filed a grievance in which both he and the Respondent took positions that were based on the Force's *Health Services Manual Appendix II-1-5, Part 6 - Central Nervous System, Profiles 45 and 46 (HSM App. II-1-5 Part 6)*. Profiles in *HSM App. II-1-5 Part 6* stated that O4 designations should be given to members who were diagnosed with epilepsy, had multiple seizures, or required medication to control seizures.

The Grievor argued that *HSM App. II-1-5 Part 6* should not be enforced in his situation because he was well enough to be operational, and because it was applied in a way that barred him from working in the capacity he desired within the Force. The Respondent primarily argued that the RCMP needed to enforce the applicable policy profiles for safety reasons. The Level I Adjudicator denied the grievance on the merits. She found that the impugned decision was consistent with principles set out in *HSM App. II-1-5 Part 6*. The Grievor resubmitted his grievance at Level II.

**ERC Findings:** The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that the present grievance did not fall within the scope of subsections 36(b), (c), (d), or (e), as those

subsections all deal with subjects which were not at issue.

The other type of referable grievance, described in subsection 36(a) of the *1988 Regulations*, involves matters relating to “the Force’s interpretation and application of government policies that apply to government departments and that have been made to apply to members”. The ERC found that the present grievance also fell outside the ambit of subsection 36(a), as it was not based on the Force’s interpretation and application of a government policy made to apply to members. Rather, it was based on the Force’s interpretation and application of *HSM App. II-1-5 Part 6*, which is strictly an internal RCMP policy. As neither party referenced a comparable, or otherwise relevant authority which fell within subsection 36(a), the grievance was not referable.

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

**G-565** The Grievor served at a two-member isolated post. As a national backup policy, members providing backup were to be compensated depending on the level of standby: Standby Level I means a member is ordered to remain available and able to respond immediately to duty; whereas Standby Level II means a member is requested or volunteers to be available for duty. As a matter of practice at the Grievor’s isolated post, when one of the members was off duty or left the detachment area, the other member could rely on peers from nearby detachments for backup.

In April 2008, a memo put an end to this practice. It stated: “Effective immediately there must be at least two members

*physically located within each Detachment boundary.”* At that time, the Grievor was receiving backup pay at the Standby Level II rate. In January 2009, the Grievor learned that members at another detachment declined to volunteer to provide backup duties. These members started receiving Standby Level 1 compensation. The Grievor followed suit and declined to provide backup. He was thus ordered to do so and began receiving Standby Level 1 compensation.

The Grievor requested to be retroactively compensated at the Standby Level 1 rate between April 2008 and December 31, 2008. As a result of the memo stating that two members must be physically located within the detachment area, the Grievor felt that he was ordered to provide backup and no longer had the opportunity to decline standby duties. The Respondent denied his request as the Grievor had not, at that time, been ordered to provide backup.

**ERC Findings:** The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that the present grievance did not fall within the scope of subsections 36(b), (c), (d), or (e), as those subsections all deal with subjects which were not at issue.

The other type of referable grievance, described in subsection 36(a) of the *Regulations*, involves matters relating to “the Force’s interpretation and application of government policies that apply to government departments and that have been made to apply to members”. The ERC found that the present grievance also fell outside the ambit of subsection 36(a), as it was not based on the Force’s interpretation and application of a government policy made to apply to members. Rather, it was based on

the Force's interpretation and application of its internal backup policy as well as its Administrative Manual on pay and allowances, which are strictly internal RCMP policies. As neither party referenced a comparable, or otherwise relevant authority which fell within subsection 36(a), the grievance was not referable.

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

**G-566** The Grievor's supervisor temporarily assigned the Grievor to a differently classified position, promising that he would receive acting pay. The Grievor believed that the new position paid considerably more than his substantive position, and expected to receive acting pay. Compensation Services advised him that this was not the case. Later, his supervisor temporarily and retroactively transferred the Grievor to the differently classified position. The Grievor believed that this was done so that he would receive back pay and allowances associated with the new position. However, Compensation Services again advised that this was not the case. The Grievor presented a grievance because he felt that the decisions made and the explanations provided by Compensation Services were contrary to policy.

**ERC 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 parties and the Level I Adjudicator are internal RCMP authorities that apply only to Force members. Therefore, they are not government-wide policies, and the grievance is not referable to the ERC. As a result, the ERC found that it did not have the legal authority to review this grievance or to make any findings or recommendations.

**ERC 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-567** While planning his retirement from the RCMP after roughly 20 years of service, the Grievor learned that his years of prior service in the Canadian military would not count in the calculation of his severance pay. This was so as he had already received a severance pay upon leaving the military. The Grievor grieved this decision.

**ERC Findings:** The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that the present grievance did not fall within the scope of subsections 36(b), (c), (d), or (e), as those subsections all deal with subjects which are not at issue.

The other type of referable grievance, described in subsection 36(a) of the *Regulations*, involves matters relating to "the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members". The ERC

found that the present grievance also fell outside the ambit of subsection 36(a), as it was not based on the Force's interpretation and application of a government policy made to apply to members. Rather, it was based on the Force's interpretation and application of its Administrative Manual on pay and allowances, which is strictly an internal RCMP policy. As neither party referenced a comparable, or otherwise relevant authority which fell within subsection 36(a), the grievance was not referable.

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

**G-568** The Force's Relocation Contractor allegedly mishandled the Grievor's relocation funds in a way that left one of the Grievor's moving bills partially unpaid. The Contractor asked the Grievor to cover the balance owing on that bill. The Force later advised the Grievor that if he failed to pay the balance, the sum would be deducted from his remuneration. The Grievor filed a grievance.

During the Early Resolution Phase at Level I, the Grievor presented written comments on the merits of the grievance but did not file any documentary evidence. He also asked the Force to disclose certain documents related to the grievance. There is no record of this request being addressed. The Office for the Coordination of Grievances later prepared a grievance package, which included the Grievor's comments on the merits, and forwarded that package to the Level I Adjudicator. In her decision, the Level I Adjudicator acknowledged that she had reviewed the grievance package. She nevertheless found that the Grievor "*provided no submissions on the merits ... [or] evidence in support of his position*". Ultimately, the Level I Adjudicator denied the

grievance. She reasoned that the Grievor did not meet his burden of persuasion on the merits.

The Grievor re-submitted his grievance at Level II. He made a follow-up request for documents he had sought at Level I. There is no record of this request being addressed. A seemingly new responding party stated that he had no submissions to add.

**ERC Findings:** The ERC stressed that the appointment of a new responding party should be clearly conveyed and noted for administrative, privacy, and fairness reasons. It went on to find that the Grievor was denied procedural fairness, as he was not properly heard. Specifically, the Level I Adjudicator found that the Grievor provided no submissions on the merits (even though the record revealed otherwise) and denied the grievance partly on the basis of that finding. Her failure to give a rationale for the finding was a substantive oversight that resulted in an omission to consider the Grievor's arguments. The ERC noted that, where procedural fairness is denied, a decision may still stand if a claim "*would otherwise be hopeless*". It observed that the Grievor failed to submit any supporting evidence and that, in such instances, a matter can be denied on the ground that a grievor's burden of persuasion was not met. However, given that the Force did not respond to the Grievor's requests for the disclosure of potentially relevant documents or disclose any materials, despite a statutory obligation to provide disclosure, it is possible that key evidence exists in support of the grievance and that the Grievor was prevented from submitting it. The ERC therefore found that the Grievor's case cannot be considered hopeless at this time.

**ERC Recommendation:** The ERC recommends to the Commissioner of the RCMP that he allow the grievance on the basis that the



Grievor was denied procedural fairness. It further recommends that the Level I decision be declared invalid and that the grievance be sent back to Level I so the Grievor's disclosure requests can be properly dealt with, the parties are each provided the opportunity to present and reply to informed submissions, and a new decision can be rendered on the basis of a complete record.

### Update

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

### **G-512** (summarized in the July-September 2011 Communiqué)

The Grievor was diagnosed with medical conditions which prevented him from performing front line operational police work. The Force moved him to a town where he did temporary administrative duties. A few years later, the Force decided that the Grievor had finished those duties and offered him another job that was consistent with his medical profile, but located in a different part of the province. The relocation, isolation, and new surroundings affected him. His conditions quickly worsened. He went Off-Duty Sick (ODS). Health Services later spoke to the Grievor's doctor. After that, it ceased supporting the Grievor's ODS status. The Force then withdrew its authorization of said status. The Grievor grieved Health Services' refusal to support his ODS leave. The Grievor also contended that the Force had a duty to accommodate his medical circumstances. The ERC found that nothing in the record demonstrated that the Force violated its sick leave policy. The ERC recommends 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 and denied the grievance.*

*The Commissioner found the grievance moot as the Grievor had passed away during the Level II process. There would be no practical effect for the Grievor's estate from a decision in this grievance as the Grievor had, through a settlement agreement, received the remedy he sought in the grievance.*

### **G-513** (summarized in the July-September 2011 Communiqué)

The Grievor was diagnosed with medical conditions which prevented him from performing front line operational police work. The Force moved him to a town where he did temporary administrative duties. A few years later, the Force decided that the Grievor had finished those duties and offered him another job that was consistent with his medical profile, but located in a different part of the province. The relocation, isolation, and new surroundings affected him. His conditions quickly worsened. He went Off-Duty Sick (ODS). The Grievor sought a compassionate transfer back to the town. The Force denied his request and presented him with the option return to his job in the new location, or agree to a medical discharge package. The Grievor grieved the Force's decision to deny his compassionate transfer request. He viewed it as a contravention of the *Canadian Charter of Rights and Freedoms*, and as a failure to satisfy the duty to accommodate. The ERC recommends to the Commissioner of the RCMP that he allow the grievance in part. The ERC recommends that the Commissioner of the RCMP apologize to the Grievor for the fact that the Force did not satisfy its duty to accommodate his circumstances.

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

*The Commissioner found the grievance moot, as the Grievor had passed away during the Level II process. However, the Commissioner exercised his discretion to rule on the merits and allowed the grievance in part, as recommended by the ERC.*

*The Commissioner agreed with the ERC that the RCMP failed in its duty to accommodate the Grievor by not reopening the search for accommodation after it became clear that the Grievor was medically or psychologically unable to continue in a position which was originally thought to accommodate his disability.*

*The Commissioner offered an apology.*

## **G-541** (summarized in the October-December 2012 Communiqué)

The Grievor requested a move to workplace B which was about seventy kilometers away from his HQ. A business case was being prepared to create a permanent position for the Grievor at workplace B, and the Grievor started work at workplace B in late 2005. In 2006, the Grievor sold his home at the HQ location and purchased a home close to workplace B. In 2007, the Force formally transferred the Grievor to workplace B. The Respondent refused to reimburse the Grievor his relocation expenses for the 2006 move since this had taken place before the issuance of a formal transfer notice authorizing the move. The Grievor grieved the decision not to reimburse his relocation expenses. The ERC recommends that the Commissioner of the RCMP allow the grievance and find that the Grievor is entitled to be considered for reimbursement of his allowable relocation expenses. It further recommends that the Commissioner order a review to determine the amount of

the reimbursement, and that the required approval be sought from TBS. In the alternative, the ERC recommends that the Commissioner allow the grievance and order that a review be conducted of the Grievor's file to determine if he is entitled to be reimbursed for allowable travel expenses incurred during the time he worked at workplaces A and B before his physical transfer was issued.

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

*The Commissioner allowed this grievance, pertaining to the reimbursement of relocation expenses under the RCMP's Integrated Relocation Program, 2007 ("IRP"), where such costs were incurred prior to an official transfer.*

*While the IRP outlines that express authorization is generally necessary prior to the incurring of relocation expenses, there are circumstances under which pre-authorization is not required. The Commissioner found that, in the special circumstances of this case, subsequent authorization of expenses was possible under the IRP, subject to the approval by Treasury Board Secretariat ("TBS").*

*Specifically, in this case, the Respondent accepted responsibility for not fully informing the Grievor of the requirements under the IRP. In addition, it was unusual for the Grievor to have to endure a "temporary" worksite change for two and a half years. Further, the Grievor made efforts to consult with Relocation Services as well as Staffing and Personnel but did not receive replies and was not able to set up a meeting as requested.*

*As there was insufficient information in the file to indicate the amount of exact expenses*

*incurred by the Grievor, the Commissioner directed that a review be conducted to determine the amount of the reimbursement, and that the required approval be sought from TBS.*

*In the alternative, should TBS not grant approval, the Commissioner directed that a review be conducted of the Grievor's file to determine if he is entitled to be reimbursed for allowable travel expenses incurred during the time he worked in Nanaimo and Chemainus before his official transfer was issued.*

### **G-542** (summarized in the October-December 2012 Communiqué)

The Force removed the Grievor from operational duty in light of his hearing condition. It placed him in a graduated return-to-work program in which he did administrative work. Later, he was diagnosed with stress and depression, and went on sick leave. Two years later, the Force ordered the Grievor to resume administrative functions by partaking in another graduated return-to-work program. The Grievor presented a grievance in which he challenged the Force's overall administration of his accommodation process. He later retired. The ERC recommends to the Commissioner of the RCMP that he allow the grievance and apologize to the Grievor on behalf of the Force for shortcomings in the Grievor's accommodation process. The ERC also recommends that the Commissioner order a review of the Grievor's case to help determine how the Force's accommodation process might be improved for the benefit of all stakeholders.

**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 Force failed to satisfy its duty to accommodate the Grievor's disability. While the Respondent made some effort to accommodate the Grievor, and while the Grievor did not completely fulfill all of his obligations, nevertheless the Force's accommodation efforts were lacking, as there was a failure to search for meaningful and productive employment, consult the Grievor, and document steps taken. As the Grievor had retired from the Force, the Commissioner could only provide an apology. However, he ordered a review of the Grievor's case to help determine how the Force's accommodation process might be improved.*

### **G-543** (summarized in the October-December 2012 Communiqué)

In 2005, the Force removed the Grievor from operational duty in light of his hearing condition. It placed him in a graduated return-to-work program in which he did administrative work. Later, he was diagnosed with stress and depression, and went on sick leave. The details surrounding his absence led to confusion. While the Grievor's superior had no issue with the absence, he never formally approved it as he did not realize that this was his job. The Respondent encouraged the Grievor's superior to return the Grievor to work, and gave instructions to that end. The Grievor thought he could stay home. The Respondent agreed to delay the return, pending an informal meeting. Yet he warned that this was a policy violation, and that the Force had power to dock leave and pursue a discharge for abandonment of post. The Grievor initiated a grievance in which he purported that the Respondent had harassed him. He later retired. The ERC found that none of the Grievor's allegations amounted to harassment. The ERC recommends to the Commissioner of the RCMP that he deny the grievance on its merits.

**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 found that the Respondent's conduct was not harassing, but rather the proper exercise of his duties.*

**G-544** (summarized in the October-December 2012 Communiqué)  
The Grievor and his family had decided to sell their home and move into a larger one (new home). After the Grievor had purchased his new home, but before he had moved, a Transfer Notice Form (A-22A) was issued advising the Grievor that he had been selected for a new position. The Grievor asked that his new home, situated 48.1 kms from his new place of work, be considered his principal residence, since he had purchased it before the A-22A was issued. This request was denied. The Grievor grieved the decision to deny him a cost move from the new home upon its eventual sale. The ERC recommends that the Commissioner of the RCMP order a review of the Grievor's case to determine whether the Grievor still wished to pursue a submission requesting TBS approval for a Crown-paid relocation from the new home. If that is the case, the ERC recommends that the review also include the preparation of a submission requesting TBS approval for a Crown-paid relocation. If the Grievor has been re-posted and no move from the new home had ever taken place, the ERC recommends that an apology be issued to the Grievor for the Force's decision not to request reimbursement on an exceptional basis.

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

*The Commissioner agreed with the findings and recommendations of the RCMP External Review Committee and allowed the grievance.*

*The Commissioner found that, in this case, benefits could arise under the Integrated Relocation Program with respect to the sale of a residence which had been purchased, but was not yet occupied, due to exceptional circumstances beyond the member's control. The Grievor was therefore entitled to a consideration of the reimbursement of his relocation expenses. The Commissioner directed that a review of the Grievor's case be conducted to determine whether, at this point, the Grievor wished to pursue a submission requesting TBS approval for a Crown-paid relocation from the new home. Should a submission to TBS no longer be feasible (if, for example, the Grievor was re-posted and no move from the new home ever took place), the Commissioner stated that he would like to issue an apology to the Grievor for the Force's decision not to request reimbursement on an exceptional basis at the relevant time.*

**G-547** (summarized in the January-March 2013 Communiqué)  
The Grievor submitted a leave without pay (LWOP) request to the Force because he had been offered a scholarship to study law at an American school. The Respondent denied the request. The Grievor grieved the denial of his LWOP request and later resigned from the Force before the Level I decision was rendered. The Grievor has not established that the Respondent based his decision on irrelevant factors, or that the decision to refuse his educational LWOP request was otherwise unjustified. The ERC recommends that the Commissioner of the RCMP deny the grievance. It further recommends that the Commissioner of the RCMP apologize to the Grievor for the fact that the Respondent did not participate in the Early Resolution phase;

and, that he order a review for the purpose of clarifying who has the responsibility to ensure that the Level I Adjudicator receives a complete record.

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

*The Commissioner agreed with all of the ERC's findings and recommendations, except for the recommendation that the Commissioner order a review for the purpose of clarifying who has the responsibility to ensure that the Level I Adjudicator receives a complete record. The Commissioner noted that the RCMP's policy titled Grievances, AM.II.38, had been amended recently to clarify this issue after the ERC's recommendation and the Commissioner's direction in G-506, where it was also pointed out that the policy was unclear with respect to who was responsible for providing missing material. Section 2.7.4 was added to AM.II.38 to place the onus on a grievor to provide all relevant material to establish his or her case. As such, there was no need for the Commissioner to order a further review.*

### **G-548** (summarized in the January-March 2013 Communiqué)

The Grievor, an Indo-Canadian member, was placed on an anti-corruption team tasked with investigating Indo-Canadian targets. The Respondent held a private meeting with the Grievor and asked the Grievor if he knew any targets, and queried if the Grievor was comfortable working on the investigation. The Grievor viewed the meeting as a discriminatory act, and a very painful attack on his integrity. The Grievor filed a grievance and argued that he suffered discrimination on the bases of his race and ethnicity. The ERC recommends to the Commissioner of the RCMP that he allow the grievance. It also recommends that he order three remedies, namely, that :

- the Respondent apologize to the Grievor, in writing, for the discriminatory act of singling out the Grievor for special questioning solely because the Grievor was Indo-Canadian;
- the Respondent undergo appropriate human rights training; and,
- the Force review its human rights practices to ensure that the Respondent's discriminatory practice is not a standard or common RCMP practice, and to ensure that members are properly trained in handling situations involving human rights issues.

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

*The Commissioner allowed the grievance.*

*The Commissioner agreed with the ERC's findings and recommendations on the procedural issues.*

*The Commissioner also agreed with the ERC that the Respondent discriminated against the Grievor on the basis of his race, national or ethnic origin, in contravention of subsection 7(b) of the CHRA. The Commissioner further agreed with the ERC that the Grievor showed that he was prejudiced by the Respondent's discriminatory conduct.*

*On the RCMP's behalf, the Commissioner apologized to the Grievor for the Respondent's discriminatory conduct and its impact on the Grievor. As recommended by the ERC, the Commissioner ordered that the Respondent undergo appropriate human rights training, and that the RCMP review its human rights practices to ensure that the Respondent's discriminatory practice is not a standard or common RCMP practice.*

*The ERC had also recommended that, as part of the RCMP's review of its human rights practices discussed above, the RCMP should ensure that members are properly trained in*

handling situations that involve human rights issues. The Commissioner agreed that members should receive such training and found it was already the case. The Commissioner noted that a web-based *Respectful Workplace* course addressing such issues was launched in early 2014. An important part of the RCMP's Gender and Respect Action Plan, this course identifies behaviors that are conducive to fostering a respectful workplace, including the importance of diversity and inclusion. The course covers topics such as discrimination, abuse of authority, and interpersonal deportment. Course participants learn about behaviors that can lead to workplace conflict and/or harassment and the importance of addressing them at the earliest stage possible, in order to minimize the opportunities for such behaviors to go unchecked. The successful completion of the course is mandatory for all employees, cadets and auxiliary constables. Thus, the Commissioner concluded that the training component of the ERC's recommendation was not only satisfied but exceeded by the objectives and curriculum of the *Respectful Workplace* course.

**G-550** (summarized in the January-March 2013 Communiqué)  
The Grievor was transferred from X to Y. He elected not to sell his principal residence. The Grievor's family continued to reside in the family home, and the Grievor lived and worked in Y. The Grievor was required to attend a supervisor's training course in X on days he would normally have been working day shifts in Y. The Grievor was required to stay overnight and he opted to stay at his family's residence. The Grievor submitted a travel expense claim. The Respondent denied the claim, except for two lunches, on the basis that the Grievor "maintains" a residence in X where the course was held. The Grievor grieved the denial of his travel expense claim. The ERC recommends that the Commissioner of the RCMP allow the grievance and order that the Grievor's PAA

claim be approved and paid. The ERC further recommends that the Commissioner order a review of the PAA provisions in both the TBTD and chapter VI.I of the RCMP Administration Manual, so that a clarification may be prepared for distribution to all those who may find themselves either making a PAA claim, or ruling on one.

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

*The Commissioner allowed the grievance, as recommended by the ERC. The Grievor presented a grievance against the Force's refusal to reimburse certain travel expenses and in particular a one night private non-commercial accommodation allowance while on travel status for mandatory training. The Commissioner concluded that the Grievor was eligible and ordered payment.*

**G-551** (summarized in the January-March 2013 Communiqué)  
A Complainant alleged that the Grievor harassed her by making "inappropriate and unwanted comments to me with sexual overtones". The Respondent concluded that although the majority of the complaint was unfounded, one allegation of harassment was established. The Grievor lodged a grievance in which he disputed the Respondent's decision. The Level I Adjudicator allowed the grievance and overturned the Respondent's decision. She added, rather ambiguously, that "I would like the Grievor to note that my decision is not meant to disregard or condone his behaviour, as documented on file ...". The Grievor filed a Level II grievance but made no formal submissions. The ERC found that because the subject of the grievance was not clear, the Grievor failed to satisfy his burden of persuasion. The ERC recommends that the Commissioner of the RCMP deny the Level II grievance.

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

*The Commissioner agreed with all of the ERC's findings and recommendations. He agreed that the Grievor had not met the burden of persuasion to justify his position that the wording of one of the paragraphs in the Level I decision was inappropriate.*

## **G-552, G-553, and G-554** (summarized in the April-June 2013 Communiqué)

A Complainant alleged that the Grievor harassed her. Shortly thereafter, three superior officers met to address the complaint. The Grievor was later informed that, at the meeting, one of the officers decided to reassign the Complainant, and the other officers supported that decision. The Grievor submitted harassment complaints against all three superior officers. He contended that they prematurely decided in favour of the Complainant, and that such a decision amounted to an abuse of authority and a breach of policy. The Respondent screened out each complaint. The Grievor filed three grievances in which he challenged the fairness and thoroughness of the screening processes. The ERC recommends to the Commissioner of the RCMP that he allow the three grievances, and that he apologize to the Grievor for the Force's failure to properly deal with his harassment complaints.

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

*The Commissioner allowed the grievance, as recommended by the ERC. The Commissioner concluded that the Force failed to properly deal with the Grievor's harassment complaint and issued an apology to the Grievor in that regard.*

## **G-557** (summarized in the July-September 2013 Communiqué)

The Grievor was given a promotional transfer requiring a move. The Grievor later informed the Force that he owned one vehicle, and that he intended to buy a second vehicle before moving. A Force relocation official advised the Grievor that he could recover the mileage cost of moving one vehicle only. The Grievor bought a second vehicle, relocated it to his new post and claimed the mileage cost incurred. A Force relocation reviewer denied the expense. The Grievor pointed to a related online frequently asked question (FAQ) that he felt indicated that the mileage cost for a second vehicle was payable. The relocation reviewer disagreed. The next day, the Grievor grieved the refusal of his mileage claim. A Level I Adjudicator found the time limit had been exceeded and denied the grievance. The ERC found that the apparent inconsistencies between online FAQ and the initial decision placed the matter in a whole new light. The ERC recommends to the Commissioner of the RCMP that he find that the grievance was timely, and that he return the matter to Level I so that it may proceed on the merits.

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

*In a preliminary decision on the timeliness of the grievance presentation, the Commissioner agreed with the ERC that the grievance was presented at Level I within the thirty-day statutory time limit. In the interest of time, the Commissioner decided to rule on the merits of the grievance, rather than return the case to Level I. He directed the parties to present their written submissions on the substantive issues involved in the grievance.*

*The grievance was subsequently withdrawn.*

**G-559** (summarized in the October-December 2013 Communiqué)

The Grievor asked for and received a transfer to an isolated post. Some of his effects could not be shipped to that post. The Grievor asked the RCMP to ship those effects to a home he owned in another province instead of storing them. 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. Months later, the Grievor prepared a "business case ... in another format". He mailed the business case to two contacts, who suggested he raise a grievance. The Grievor then formally grieved the Force's decision to deny his request. The ERC recommends that the Commissioner of the RCMP deny the grievance on the ground that it was out of time at Level I.

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

*The Commissioner agreed with the findings and recommendations of the RCMP External Review Committee and denied the grievance. The Commissioner concluded that the grievance was presented outside the thirty-day statutory time limit and that a retroactive extension of the time limit was not warranted.*

**G-560** (summarized in the October-December 2013 Communiqué)

The Grievance Respondent was responsible for the investigation of an harassment complaint presented by the Grievor. During this process, 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), but it was not received by the OCG. The Level I Adjudicator found that the Grievor had not met the time limit requirement. The ERC determined that the Level I grievance was untimely but that an extension was warranted. 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.

**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. The Commissioner found that the Grievor had presented her grievance outside the 30-day statutory time limit, but extended this time limit retroactively based on the circumstances of the case. He also found that the Grievor had standing to grieve. The Commissioner returned the matter to Level I so that the parties could now be heard on the merits.*



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**QUICK REFERENCE INDEX (1998 to date)**


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**Disciplinary Matters**

Abuse of sick leave	D-060
Adverse drug reaction	D-070
Agreed Statement of Fact (ASF)	D-117
Alcoholism	D-104, D-112
Amending an RCMP document	D-061
Appropriation of goods seized during searches	D-065, D-066
Battered Wife Syndrome (BWS)	D-110
Breach of trust and accountability	D-106, D-107, D-122, D-123
CPIC - unauthorized enquiries	D-078, D-100
Criminal acquittal	D-101
Data transmission across Internet	D-093
Disclosure of protected information	D-076, D-081, D-092, D-100, D-109
Discrepancy in Board decision	D-111
Disobeying a lawful order	D-087, D-108
Domestic violence	D-051, D-067, D-072, D-101, D-108, D-110
Driving while impaired	D-062, D-063, D-115
Drugs	D-106
Duty of loyalty	D-076, D-081
Early Resolution Discipline Process (ERDP)	D-115, D-117, D-120, D-124
Errors of fact and law by Adjudication Board	D-078, D-084, D-085, D-086, D-088, D-089, D-090, D-097, D-103, D-117, D-119
Excessive force	
- arrest	D-064, D-083
- person in custody	D-069, D-084
- taser	D-124
Fairness of hearing	D-074, D-085, D-086
Forgery	D-102
Fraud	D-054, D-107
Harassment	D-091, D-111
Hindering investigation	D-077, D-088, D-118
Improper use of AMEX card	D-120
Inappropriate conduct towards persons under 18	D-056, D-097
Inappropriate use of Mobile Work Stations (MWS)	D-095/D-096
Informal discipline	D-059
Insubordination	D-114
Joint representation on sanction	D-061
Medical exam	D-087
Neglecting a duty	D-099, D-114
Off-duty conduct	D-073, D-112
Relationship with a complainant	D-098
Reprimand	D-059
Service revolver	
- storage	D-056, D-067
- use	D-063, D-072, D-073, D-080, D-117

Sexual misconduct	
- assault	D-068, D-121
- harassment	D-053, D-071, D-074
- inappropriate touching	D-055, D-056
- on duty	D-113, D-118
- other	D-057, D-058
Statutory limitation period	D-052, D-054, D-075, D-082, D-098, D-100, D-105
Stay of proceedings	D-074, D-079, D-091, D-105, D-109
Theft	D-094, D-106
Uttering a threat	D-067, D-091, D-116
<b>Discharge and Demotion</b>	
Lack of "assistance, guidance and supervision"	R-004
Repeated failure to perform duties	R-003, R-005
<b>Grievance Matters</b>	
Administrative discharge	G-272, G-415
Bilingualism bonus	G-204, G-207, G-220, G-228, G-231
Charter of Rights and Freedoms	G-426, G-512
Classification	G-206, G-219, G-279, G-321, G-336, G-343
Complaints on internal investigations	G-491
Disclosure of personal information	G-208, G-209, G-210, G-447, G-448, G-459
Discrimination	
- gender	G-379, G-380, G-412, G-413, G-502, G-546
- marital status	G-546
- pay equity	G-441
- physical disability	G-427, G-477, G-478
- race	G-548
- sexual orientation	G-546
Duty to accommodate	G-423, G-513, G-542
Government housing	G-314, G-346, G-361, G-384
Harassment	G-216, G-235, G-237, G-251, G-253, G-268, G-270, G-287 to G-292, G-293, G-294, G-298, G-302, G-322 and G-323, G-324, G-326, G-347, G-350, G-351, G-352, G-354, G-355, G-356, G-362, G-367, G-377, G-378, G-382, G-397, G-402, G-403, G-405, G-407, G-410.1, G-410.2, G-410.3, G-414, G-416, G-417, G-420, G-424, G-429, G-430, G-431, G-433, G-437, G-438, G-439, G-440, G-453, G-474, G-479, G-482, G-483, G-489, G-493, G-499, G-504, G-506, G-507, G-508, G-510, G-511, G-514, G-515, G-518, G-519, G-520, G-521, G-538, G-539, G-540, G-543, G-551, G-552, G-553, G-554, G-558, G-560
Incomplete file	G-429, G-430
Isolated posts	G-255, G-269, G-365, G-368, G-369, G-384, G-449, G-450, G-451, G-460, G-461, G-462, G-463, G-469, G-470, G-473, G-480, G-484, G-495, G-496, G-497, G-498, G-559, G-561
Job sharing - buy-back pension	G-412, G-413
Jurisdiction	G-213, G-224, G-236, G-241, G-243, G-245, G-264, G-344, G-370, G-399, G-400, G-435, G-456, G-490, G-525, G-526, G-536, G-545, G-564, G-565, G-566, G-567
Language requirements	G-229, G-252, G-271, G-428, G-443, G-452, G-485
Leave without Pay	G-414, G-547, G-555
Legal counsel at public expense	G-234, G-247, G-277, G-282, G-283, G-313, G-316, G-327, G-339, G-340, G-358, G-466, G-467

Living Accommodation Charges Directive (LACD)	G-214, G-249, G-273, G-361
Mandatory retirement age	G-325, G-445
Meal allowance	
- mid shift meals	G-375
- other	G-238, G-265, G-303 to G-310, G-334, G-341, G-371, G-387, G-388, G-389, G-390, G-391, G-393, G-395, G-396, G-421
- short term relocation	G-250
- travel of less than one day	G-256, G-257, G-258, G-259, G-376, G-408, G-500
- travel status - medical purposes	G-274
Medical discharge	G-223, G-233, G-261, G-266, G-267, G-284-285 G-312, G-434, G-436, G-444, G-501, G-531, G-535
Occupational health & safety	G-264
- medical profile	G-516, G-531
Orders of Dress	G-502
Overpayment Recovery	G-455
Overtime	G-393, G-395, G-396, G-398, G-401, G-432, G-487
Premature grievance	G-275, G-276, G-315, G-317, G-424
Procedural errors	G-431, G-433, G-434, G-436, G-444, G-448, G-568
Relocation	
- car rental	G-311, G-523
- depressed housing market	G-281, G-335, G-349
- distance within 40 km of worksite	G-215, G-383
- financial compensation	G-338, G-527, G-537, G-541, G-544
- Foreign Service Directive (FSD)	G-363, G-386, G-476
- Guaranteed Home Sales Plan (GHSP)	G-218, G-232, G-239, G-240.1, G-240.2, G-242, G-254
- Home Equity Assistance Plan (HEAP)	G-205, G-232, G-242, G-244, G-300, G-415 G-521, G-532
- House Hunting Trip (HHT)	G-212, G-357, G-522
- Housing	G-509
- insurance coverage	G-211
- interim accommodation (ILMI)	G-240.1, G-240.2, G-341, G-360, G-364, G-372, G-422
- Integrated Relocation Program (IRP)	G-278, G-281, G-297, G-299, G-337, G-341, G-345 G-349, G-357, G-360, G-383, G-406, G-409, G-505, G-524 G-530, G-544
- lateral transfer	G-457, G-458
- legal fees	G-218, G-503
- mileage cost of moving vehicle	G-557
- pre-retirement relocation benefits	G-230
- promotional transfer	G-562
- retirement	G-329, G-330, G-331, G-332, G-369, G-373, G-446, G-475
- storage costs	G-222, G-246, G-505, G-559
- Temporary Dual Residence Assistance (TDRA)	G-263, G-494
- transfer allowance	G-383, G-411, G-442, G-465
- waiver	G-278, G-394, G-454
Self-funded Leave	G-404, G-414
Special Leave	G-466
Stand-by duty	G-224, G-393, G-395, G-396
Standing	G-009, G-032, G-037, G-053, G-059, G-077, G-081, G-098, G-119, G-125, G-149, G-194, G-203, G-211, G-322/323, G-350, G-374, G-376, G-378, G-398, G-405, G-419, G-426, G-436, G-437, G-438, G-439, G-440, G-443, G-444, G-445, G-447, G-459, G-469, G-471, G-483, G, 484, G-499, G-520, G-530, G-531, G-535, G-538, G-539, G-540, G-543, G-560

SWOP	G-286, G-318, G-319, G-320, G-328, G-342, G-353, G-359, G-418, G-481 G-529, G-549, G-556
Time limits	G-214, G-218, G-221, G-222, G-223, G-228, G-247, G-248, G-250, G-277, G-333, G-337, G-341, G-347, G-348, G-357, G-365, G-366, G-370, G-371, G-372, G-375, G-376, G-392, G-397, G-419, G-420, G-432, G-464, G-465, G-471, G-477, G-488, G-494, G-517, G-518, G-519, G-520, G-528, G-532, G-533, G-534, G-537, G-546, G-559, G-560, G-562, G-563
Transfers	G-478, G-562
Travel directive	
- accommodations	G-301
- family reunion	G-348
- medical	G-486, G-492
- other	G-366, G-386, G-387, G-388, G-389, G-390 G-391, G-393, G-395, G-396, G-425
- private accommodation allowance	G-496, G-497, G-498, G-533, G-534, G-550, G-563
- separate accommodations	G-280
- spousal expenses for medical travel	G-269
- travel by a SRR	G-217, G-385, G-467, G-468
- TB vs RCMP policies	G-375, G-376
- use of private vehicle	G-225, G-226, G-227, G-260, G-262, G-295, G-296 G-457, G-458, G-468, G-472
- vacation	G-449, G-450, G-451, G-460, G-461, G-462, G-463, G-469 G-470, G-473, G-480, G-484, G-561
- workplace	G-215, G-225, G-226, G-227, G-432, G-464, G-471