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Royal Canadian Mounted Police External Review Committee

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

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RCMP External Review
Committee
P. O. Box 1159,
Postal Station "B"
Ottawa, Ontario K1P 5R2
Tel.: (613) 998-2134
Fax: (613) 990-8969
org@erc-cee.gc.ca
www.erc-cee.gc.ca

G-545 The Grievor was a member of a municipal police force that was absorbed into the RCMP in 1998. At that time, the Grievor was given the option of buying back all or any portion of his municipal police service pension, and transferring it to the RCMP pension. The RCMP advised the Grievor in writing that the cost of buying back his pension would be a substantial amount. The Grievor did not elect to buy back pension at that time.

In 2008, the Grievor received pension-related information from the RCMP. According to the Grievor, the information revealed that the 1998 cost of buying back his pension was actually significantly less than the cost originally quoted. The Grievor objected to the Force providing him with the incorrect cost in 1998.

In 2010, the Respondent requested a ruling from the Level I Adjudicator solely on the preliminary issue of whether the Grievor presented the grievance at Level I within the statutory time limit. In 2011, the Level I Adjudicator ruled that the grievance was not presented in time, and was thus statute-barred. The Grievor presented the grievance at Level II. The file was referred to the ERC, and was received in 2012.

ERC Findings - Referability: The grievance is not referable to the ERC.

The types of grievances that may be referred to the ERC are limited to those set out in section 36 of the *RCMP Regulations*. Subsections 36(b) to (e) refer to specific issues which do not arise in this grievance. Accordingly, pursuant to subsection 36(a), the grievance is only referable to the ERC if it 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".

Buy-back of the Grievor's municipal police pension is governed by the *Royal Canadian Mounted Police Superannuation Act (RCMPSA)* and the associated regulations. As such, the grievance involves the interpretation and application of the *RCMPSA*. The *RCMPSA* is not a government policy that applies to government departments in general; it only applies to members of the RCMP. Thus, the grievance is 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 grievance or to make any findings or recommendations.

G-546 The Grievor served in the same detachment as her same-sex spouse, who was also a member of the Force. In the fall of 2008, the Respondent became the Grievor's line officer. The Grievor regularly asked him for opportunities to advance her career. He granted some of her requests. He rejected others. The Grievor believed he was refusing a disproportionately large number of her requests. However, she viewed his denials as a "*managerial prerogative*", and tried to take comfort in his good feedback and assurances of progression. On June 1, 2010, she happened upon some correspondence that upset her. Specifically, she realized that on May 18, 2009, a local Staff Sergeant had sent the Respondent a number of text messages. One of them appeared to make an offensive comment related to her sexual orientation. The Respondent had sent the Staff Sergeant many same-day replies, one of which read "*LOL*".

On June 30, 2010, the Grievor filed a grievance, submitting that she was denied developmental opportunities on the basis of her gender, sexual orientation, and marital status. The Level I Adjudicator denied most of the grievance on the ground that it was filed outside the 30-day time limit in subsection 31(2)(a) of the *RCMP Act*. She reasoned that opportunities had been denied over a 21-month period, that each denial was separately grievable, and that only one denial predated the grievance by less than 30 days. She allowed the Grievor to grieve that single denial. She believed an extension of the limitation period was unwarranted. The Grievor later learned that the Adjudicator had considered unrelated material the Grievor never received.

ERC Findings: The ERC concluded that the aggravement arose from a linkage between the Respondent's purported bias and his refusals of the Grievor's requested opportunities, not from the refusals alone. The Grievor learned of the linkage on

June 1, 2010, when she read the text messages, inferred a bias against her, and connected that inferred bias to her denied requests. As a result, and per subsection 31(2)(a) of the *Act*, the time limit began to run on that date, as it was when she reasonably should have known she was aggrieved. She grieved within 30 days, thereby rendering the grievance timely. The ERC alternatively found that the Level I limitation period ought to be statutorily extended. It explained that questions of possible harassment and discrimination are of broad importance to the Force as a whole. Lastly, the ERC stressed that relevant material must be shared in accordance with RCMP authorities and procedural fairness.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he allow the grievance on the basis that it was presented on time in all respects. Alternatively, it recommends that he allow the grievance and extend the limitation period at Level I. It further recommends that he return the file to Level I so it can proceed on the merits, where the nature of the text messages and their alleged impact on the Respondent's decisions can be assessed.

G-547 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 Officer in Charge of the Grievor's unit (Respondent) denied the request "*due to critical human resource levels*". It was also raised that the Grievor had not completed a three-year commitment he had made to his current supervisors. The Grievor resigned from the Force before the Level I decision was rendered.

The Grievor grieved the denial of his LWOP request. A Level I Adjudicator denied the grievance as he found the Grievor did not establish that the Respondent had failed to comply with policy. The Adjudicator also

found there were delays in advancing the LWOP request but no indication that these were wilful or malicious. He stated that the Adjudicator, and not the Office for the Coordination of Grievances (OCG), should have made the decision to end the Early Resolution phase. Finally, the Adjudicator found if he had upheld the grievance, redress would have been moot because of the Grievor's voluntary resignation.

ERC Findings: The grievance is referable to the ERC and the Grievor meets the statutory requirements for standing and time limits at level I. The OCG mistakenly granted an extension of the statutory time limit at Level II, and the Commissioner should allow the Level II grievance to be heard. 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 Respondent did not respect his obligation to participate in the Early Resolution phase of the grievance proceedings, however, there is no evidence of bad faith. Although the Grievor resigned from the Force, a Level II decision should still be made. Certain new facts/evidence should be considered. The review of this grievance was hampered by the fact that a key document was not part of the record.

ERC Recommendations: 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.

G-548 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. The record indicates that he did so, in part, because he believed Indo-Canadians had big social circles. At the meeting, the Respondent 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 Respondent viewed it as a courtesy, though he conceded that no one had checked to see if there was a link between the Grievor and a target. It was also clear that nobody else was singled out for a similar meeting.

The Grievor filed a Level I grievance. He argued that he suffered discrimination on the bases of his race and ethnicity. He sought an apology and an explanation. The Respondent said that he held the meeting out of concern for the Grievor, and that he apologized for how the Grievor felt. Yet he insisted the Grievor suffered no prejudice, as the Grievor remained a valued member of the team who was not excluded from anything. A Level I Adjudicator denied the grievance. He found that although the Respondent breached subsection 7(b) of the *Canadian Human Rights Act (CHRA)*, which bars an employer from "*differentiating adversely in relation to*" an employee on prohibited grounds, the Grievor was not prejudiced. The Grievor raised a Level II grievance.

After the ERC received the file, the Grievor's lawyer furnished additional arguments. He further requested \$12,000 in damages for humiliation, loss of self-esteem, and infringement of dignity.

ERC Findings: The ERC first addressed several procedural issues. It also opted to consider the Grievor's lawyer's belated arguments, as various authorities permitted it to do so. However, it ultimately found that it had no authority to consider a belated request for monetary damages. The ERC went on to find that the Grievor had made a *prima facie* case

that the Respondent's conduct amounted to a discriminatory practice, contrary to subsection 7(b) of the *CHRA*. The Grievor alleged, and the Respondent did not disagree, that the Grievor was treated differently in the course of his work solely because of his race and ethnicity, which are prohibited grounds of discrimination. Moreover, the Grievor established that the Respondent's discriminatory activity was harmful and hurtful, or otherwise adverse, and that he suffered resulting prejudice. It did not matter that the Respondent believed he was acting appropriately, or providing a courtesy.

ERC Recommendations: 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.

G-549 In 2009, while off-duty, the Grievor drove a vehicle while impaired, and was involved in a collision. Two occupants who had been present in the vehicle were slightly injured. The Grievor was served with a Notice of Driving Prohibition. One month later, the Grievor was again arrested while driving with his blood alcohol level exceeding the legal limit. Shortly thereafter, the Grievor entered a treatment program for an alcohol addiction, which he completed. In June 2010, the Respondent issued a Stoppage of Pay and Allowances Order (SPAO).

The Grievor grieved the SPAO. He took the view that the Respondent's rank and position prevented him from issuing the SPAO impartially, and that the Respondent had failed to provide all relevant documentation to the Grievor. He argued that given his alcohol addiction, his conduct could not be seen as extreme and outrageous, which was the standard required by policy for a SPAO to be issued. The Level I Adjudicator found that the Grievor's misconduct was outrageous, and dismissed the Grievor's argument that his alcohol addiction was a disability that needed to be taken in account. The Grievor resigned from the Force prior to the Level I decision being issued.

ERC Findings: The ERC dealt with procedural issues. It found that there was no reasonable apprehension of bias in this case. The SPAO process set up by Parliament allowed any officer of the Respondent's rank at National Headquarters to issue a SPAO, and therefore contemplated that SPAO decision-makers would be officers with other responsibilities. As for the Respondent's disclosure obligations, the ERC found that documents pertaining to presentations about the SPAO process generally were not relevant to the grievance, since the Grievor's case had to be looked at individually in terms of whether policy requirements had been met. The ERC also found that the Respondent would not have been required to provide to the Grievor a copy of a document summarizing SPAO precedents, which he had relied upon to render his decision. However, the ERC found that full access to such precedents would ensure fairness for members involved in the SPAO process. Finally, the ERC noted that the Level I Adjudicator's reasons had not addressed several significant grounds raised by the Grievor, rendering them inadequate.

With respect to the issuance of the SPAO itself, the ERC emphasized that the outrageous threshold required by policy could be described in terms such as '*shocking*', '*atrocious*' and '*grossly immoral or offensive*'. It further indicated that in

determining whether the circumstances of an offence are outrageous, it is necessary to take into account all the factors affecting the conduct in question. In this case, all of the allegations were manifestations of the Grievor's alcohol addiction problem. Although the conduct was serious, it did not meet the outrageous threshold when the disability was considered.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he allow the grievance and order that the Grievor's pay and allowances be reinstated up to the date of his resignation. As well, if the Stoppage of Pay and Allowances Order affected the Grievor's pension, it further recommends that the Commissioner order a review of the Grievor's file so that appropriate adjustments could be made.

G-550 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. After early resolution discussions, the Respondent approved the Grievor's claim for private vehicle mileage. A Level I Adjudicator partially upheld the grievance on its merits. He found that, since the Grievor was more than 16 km from his workplace on government business overnight, he was on "travel status" per the Treasury Board *Travel Directive* (TBTD). He was

therefore entitled to all meal allowances and incidental allowances, less the allowances he had already received. The Level I Adjudicator further found that the Grievor was not entitled to the private non-commercial accommodation allowance (PAA). He noted that the TBTD defined "*private non-commercial accommodation*" as a "*private dwelling or non-commercial facilities where the traveller does not normally reside*". He concluded that the Grievor normally resided in both X and Y, hence he was not entitled to the PAA for a training session held at X.

ERC Findings: The grievance is referable to the ERC and the Grievor meets the statutory requirements for standing and time limits at Level I.

The ERC found that the Grievor was entitled to the PAA. The parties agreed that on working days, the Grievor normally resided in Y. The course was held on two of the Grievor's working days, and the course was part of his work assignment. Therefore, his family's residence in X was a "*private dwelling ... where the traveller does not normally reside*". RCMP employees are not obliged to disclose where they reside when claiming the PAA. Also, whether the Grievor incurred accommodation expenses when he stayed in his family's residence is an irrelevant consideration as no travellers claiming the PAA are required to prove that they incurred actual expenses.

ERC Recommendations: 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.

G-551 A Complainant alleged that the Grievor harassed her by making *“inappropriate and unwanted comments to me with sexual overtones”*. The Respondent initiated a thorough investigation of the allegations. He concluded that although the majority of the complaint was unfounded, one allegation of harassment was established. The Grievor lodged a Level I grievance in which he disputed the Respondent’s decision. The Respondent did not advance an argument. Rather, he attached *“all materials by which [he] made his decision”*, in lieu of an argument. The Level I Adjudicator saw this as a silent acceptance of the Grievor’s position. She allowed the grievance on that basis 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 began an email string the day he received the Level I decision. First, he claimed his grievance was upheld on *“administrative/technical”* bases instead of on the merits. Second, he asserted that he was *“not wholly satisfied with [that] outcome”*. Third, he inquired about his right to grieve at Level II. Fourth, he confirmed that he wished to proceed at Level II. Fifth, he said he would *“not be submitting a written submission”* despite his right to do so, as he would instead be relying upon *“[a]ll data submitted for Level I”*. The Grievor subsequently emailed the I/C Level I Adjudications to voice his dissatisfaction with the Level I decision, as well as to ask that the paragraph reproduced above be removed from it.

ERC Findings: Despite the unusual way in which the Grievor conveyed his concerns at Level II, the ERC found that he met the legal and policy requirements for initiating a timely grievance.

However, the ERC went on to find that because the subject of the grievance was not clear, the Grievor failed to satisfy his burden of persuasion. The ERC observed that little information was provided at Level II. There was no Form 3081, formal presentation, or other properly tendered document containing an ascertainable position. There were only the aforementioned emails, which according to the Grievor, were not submissions. Even if those emails were submissions, they would still be of minimal value. This is so for two reasons. First, they suggested a desire for potentially conflicting actions. Second, the Respondent did not have a chance to review one of them, or speak to either, perhaps because the Case Manager took the Grievor at his word that he would not be filing submissions. The ERC found that the Level I record shed no light on what the Grievor wished to grieve at Level II, as the Level I issues were resolved in his favour.

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

Update

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

D-108 *(summarized in the January-March 2009 Communiqué)*

The Appellant was alleged to have committed five separate acts of disgraceful conduct, and a separate act of disobeying a lawful order. The Board found that all six allegations were established and directed the Appellant to resign within fourteen days or, in default, be dismissed. The Appellant appealed the findings and the sanction. The ERC recommended that the Commissioner allow the appeal on the merits, find that the allegation of disobeying a lawful order was not established, and order a new hearing before a differently constituted Board for the

other appealed allegations. The ERC also recommended that the appeal on sanction be allowed and impose a reprimand and forfeiture of 3 days' pay for each of the two allegations that weren't appealed on the merits. The ERC further recommended that the Force follows the recommendations from the Appellant's 2001 special medical evaluation.

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

This is a second decision respecting the Appellant's appeal against the sanction imposed in formal disciplinary proceedings.

On January 25, 2013, the Federal Court granted the Application for Judicial Review file by the Appellant, and set aside Acting Commissioner Rod Knecht's decision dated April 29, 2011, which directed the Appellant to resign within 14 days, in default of which he would be dismissed from the Force. The Court provided two options: 1) remit Allegations 4, 5 and 6 to a newly constituted Board; and/or 2) reconsider and vary Acting Commissioner Knecht's decision in respect of sanction on the basis of Allegations 1 and 2.

In his decision dated March 18, 2013, the Commissioner varied the sanction on the basis of Allegations 1 and 2 alone.

He noted that Acting Commissioner Knecht had concluded in his decision dated April 29, 2011, that Allegation 3 was not established because the Commissioner's Standing Orders (Health Assessment) do not apply to the order that was given to the Appellant as there was no authority permitting the RCMP as an employer to order a member to undergo anger management counselling.

As for Allegations 4, 5 and 6, the Commissioner decided not to remit these allegations to a newly constituted Board due to the passage of time.

The Commissioner disagreed with the ERC's recommendation with respect to sanctions for Allegations 1 and 2 as he did not believe that sufficient consideration was given to the Appellant's prior misconduct. He noted that the Appellant's unacceptable conduct had severely undermined his ability to lead or act as a role model, and continuing in the Force at his present rank would not be appropriate.

The Commissioner imposed a demotion in rank from Corporal to Constable, a recommendation for a transfer, a direction to undergo a health assessment and a recommendation to undergo anger management counselling.

D-119 (summarized in the October 2010-March 2011 Communiqué) A Code of Conduct investigation revealed that the Appellant requested Lieu Time Off for hours he had already received as Overtime. The Board found that the behaviour was disgraceful and imposed a sanction of a reprimand and a forfeiture of ten days' pay. After the hearing, the Appellant was approached by a witness who demanded, in a hostile demeanor, an apology, otherwise he would hear from her lawyer. The Appellant appealed, and sought authority to file fresh evidence of this conversation in relation to witness credibility. The ERC allowed the fresh evidence. The ERC then found that the Board made manifest and determinative errors in its credibility assessments and findings of fact. The ERC ultimately found that the Appellant's actions did not support a finding of disgraceful conduct. It recommended that the Appellant's preliminary motions be dismissed, consider the fresh evidence, and allow the appeal on the merits. It also recommended that an apology be given to the Appellant for several instances of unfairness and prejudice that occurred through the disciplinary process. On a related note, the ERC further recommended that a review of the

disciplinary process be ordered in this case, including whether or not the Appellant's promotion should be retroactively reinstated. Lastly, it recommended that training be provided for new leave management systems.

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

In a decision dated January 17, 2013, Commissioner Robert W. Paulson agreed with the ERC and allowed the Appellant Member's appeal.

The Commissioner found that the Board made palpable and overriding errors in assessing the credibility of some of the Respondent Appropriate Officer's witnesses, and in reaching a number of findings of fact. The Commissioner found that the Appropriate Officer did not prove that the Appellant's conduct was planned and deliberate or that he knowingly received or attempted to receive a double payment. Instead, the evidence showed that the conduct was non-culpable and that a number of factors contributed to the error, including the Appellant's lack of concentration and psychological turmoil at the time, administrative errors, and a lack of familiarity with the online leave system.

The Commissioner denied the Appellant's appeal of the Board's decision to deny his preliminary motions requesting a stay of proceedings, and agreed with the ERC that the Appropriate Officer met the requirement of serving Appellant "forthwith" and that the delay from the initiation of the disciplinary hearing to the setting of hearing dates did not constitute an abuse of process.

The Commissioner shared the ERC's concerns that the Appellant had been treated unfairly at points during the disciplinary process. He found that this matter may have been resolved had management initiated a discussion with the Appellant, or had they

been willing to listen to his explanations. The Commissioner found that a further review of the disciplinary process, as recommended by the ERC, would not be necessary however, as he had fully reviewed the matter during the disciplinary appeal and reached the appropriate and necessary conclusions on all issues involved.

G-482 (summarized in the January-March 2010 Communiqué)

The Grievor filed a complaint alleging that a number of actions by certain members of management over a two-year period constituted harassment. The A/Commr. determined that the conduct complained of did not meet any of the "quite specific" definitions of harassment and decided that he would not investigate the complaint. The Grievor grieved the A/Commr.'s determination and decision.

The ERC recommended that the Commissioner of the RCMP allow the grievance both on the basis of procedural fairness and on the merits. The ERC further recommended that the Commissioner order that a different Delegated Manager/Commander/Supervisor be named to be responsible for processing this harassment complaint, and that the complaint be dealt with according to the Treasury Board's Policy and the RCMP's policy, AM.XII.1.

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 both on the basis of procedural fairness and on the merits. The Commissioner found that in managing this grievance, procedural errors were committed and agreed with the ERC that the procedural errors created unfairness for the Grievor and seriously restricted his right to be heard. Although the Commissioner allowed the grievance, he did not make any finding as to

whether or not the conduct constituted harassment. Rather, he concluded that the Respondent's decision was defective because he did not seek additional information, namely a more specific complaint, from the Grievor to clarify certain issues in order to determine if the allegations were related to harassment.

Due to the passage of time, the Commissioner found that it would not be appropriate to order an investigation. However, he apologized to the Grievor for the fact that his harassment complaint was not dealt with in the manner required by the applicable policies.

G-483 (summarized in the January-March 2010 Communiqué) The Grievor made a harassment complaint against her supervisor. The Respondent decided that the complaint was not harassment but rather a workplace conflict situation. The Level I Adjudicator decided that the Grievor lacked standing, as the Respondent did not have the authority to respond to the harassment complaint. The ERC found that the authority of the Respondent as the decision-maker in a grievance is not an issue of standing under s. 31(1) of the RCMP Act but rather is a question with respect to the merits of the grievance. The ERC recommended that the grievance be allowed and that the harassment complaint be dealt with in accordance with Treasury Board and RCMP policies. The ERC also recommended that the Commissioner order that the harassment complaint be deemed to be filed within the one year as required by the policy.

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

In a decision dated November 6, 2012, Acting Commissioner Steve Graham made a decision on preliminary and collateral issues involved

in this grievance. He agreed with the ERC that all the elements of the standing requirement had been fulfilled. He also agreed with the ERC and found that the record showed that the Respondent was not the correct decision-maker on the Grievor's harassment complaint. Since it appeared from the record that the harassment complaint had been re-submitted to the HRO, the Commissioner requested additional information with respect to the status of this complaint, pursuant to section 15 of the Commissioner's Standing Orders (Grievances), SOR/2003-181.

The Professional Standards and External Review Directorate received the additional documentation requested. Based on this new information, the Commissioner, in a decision dated January 15, 2013, reached the conclusion that the grievance had become moot and denied the grievance.

The additional documentation revealed that following the decision of the Level I Adjudicator –which found that the Respondent had no authority to make the decision grieved and that the Grievor should have filed her complaint with the HRO as required by RCMP AM.XII.17.1.2.a.1– the Grievor re-submitted her harassment complaint to the HRO. The complaint was processed according to policy and the Responsible Officer ("RO") later issued his decision on the harassment complaint. The RO found that the incidents alleged to constitute harassment in the Grievor's complaint fell within the definition of workplace conflict rather than harassment.

Since a second decision about the Grievor's harassment complaint was made by the person authorized to make the decision under the applicable policies, the Commissioner agreed with the ERC Chair that "there is nothing further to be done in relation to this grievance" (ERC report, para. 29). Once the Grievor's complaint of harassment was processed according to

policy and fully heard by the appropriate decision-maker, she was no longer aggrieved by the Respondent's decision.

Since the Grievor's harassment complaint was re-submitted, handled correctly pursuant to policy, and decided anew by the RO, the adjudication of her grievance against the Respondent's decision could not have any practical effect on an existing controversy. Hence, the matter had become moot.

G-486 (summarized in the January-March 2010 Communiqué)

The Grievor was off duty sick when he was ordered to visit with a Health Services Officer in another city. He informed his supervisor of his impending trip. He later filed a travel expense claim, including mileage. The Respondent denied the mileage claim on the basis he should have driven a police vehicle instead of his personal vehicle and he did not have pre-authorization to travel. Yet he offered to allow a payment of the Grievor's gas and meal costs. The Level I Adjudicator denied the matter on timeliness. The ERC agreed but also opined that it would be appropriate to retroactively extend the time limit. The ERC recommended that the grievance be denied as the Grievor did not have permission to use his own vehicle. It also recommended that the Grievor be reimbursed for his gas and meal expenses. It further recommended that a review be ordered to ensure that methods are in place to inform members on ODS status of the policy requirements for travel to medical appointments.

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

In a decision dated January 15, 2013, Acting Commissioner Steve Graham denied the grievance.

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

found that the Grievor's late submission was partly attributable to his genuine confusion over who could allow his claim and recommended that a retroactive extension be granted. Furthermore, the ERC noted that the Respondent was not prejudiced by the delay caused by the Grievor not meeting the 30-day limit. The Commissioner agreed with the ERC that an extension of the time limit was justified in this case, albeit for slightly different considerations. The Commissioner noted that the delay in filing the grievance was not significant, nor did it prejudice the Respondent. Furthermore, he was of the opinion that the issue involved in this case was a question of general importance which transcends the interests of the parties. In this case, the Grievor was entitled to the reimbursement of at least some expenses. But more broadly, members who are compelled by the Force to attend medical appointments are entitled to the benefits provided by the RCMP's Travel Directive (AM VI.1).

With respect to the merits of the grievance, the Commissioner agreed with the ERC that the Grievor did not have permission to use his own vehicle. The Commissioner found that as the person seeking to receive benefits under the travel policies, the Grievor had a responsibility to ensure that he adhered to the relevant policy provisions. He had to obtain pre-authorization to use his private vehicle if he wanted to be reimbursed for his mileage. The RCMP's Travel Directive (at AM.VI.1.D.2) is clear that the manager shall authorize travel and determine the means of travel. Authorization is a prerequisite to reimbursement of expenses.

The Commissioner also opined that in the circumstances of this case, the Grievor and his supervisor shared the responsibility to ensure that policy was being followed. Once the Grievor informed his supervisor that he had a mandatory medical appointment to attend the next day, there was an onus on the supervisor to inquire about his mode of transportation.

Finally, the Commissioner found that it was reasonable for the Respondent to offer to reimburse the meals and the cost of gasoline, as opposed to a complete mileage amount, as the cost of gasoline was necessarily incurred on the Grievor's travel, and meal expenses would have been reimbursed had a police vehicle been used. Therefore, he agreed with the ERC's recommendation and directed that the Grievor be reimbursed for his gasoline and meal expenses, as per the Respondent's offer.

G-493 (summarized in the April-June 2010 Communiqué)

The Grievor had a life insurance policy with company X which was alleged to be involved in fraudulent activities. In addition, one of the persons identified in the allegations was one of the main subjects in case "C," to which the Grievor was already assigned. A district policing officer (DPO) informed the Respondent and subsequently the Grievor was taken off case "C". The member filed a harassment complaint against the DPO. The Respondent found that none of the allegations had been established. The member grieved the decision and alleged that the Respondent had a conflict of interest. The Level I Adjudicator found that the decision was reasonable despite the fact that there may have been a conflict of interest. The ERC found that a reasonable person would be concerned about the Respondent's ability to be impartial in its role as the decision-maker in the harassment complaint. The ERC recommended that the grievance be allowed and that an apology be given to the Grievor for the breaches in the handling of his complaint.

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

[TRANSLATION]

The Commissioner allowed the grievance.

Like the ERC, the Commissioner found that the time limit for presenting the grievance was respected. Specifically, the Commissioner agreed with the ERC that the scope of the mandate of the harassment investigation is one of the elements of the complaints process and that it would be unreasonable to require an individual to present a separate grievance for each element within the same process.

The Commissioner agreed with the ERC that the Grievor should have had access to a copy of the complete investigation report.

Concerning the merits of the grievance, the Commissioner agreed with the ERC that the Respondent was much more than simply a passive observer of the DPO's actions and that a reasonable and informed person would justifiably be concerned about the Respondent's bias in his role as the decision maker in the harassment complaint. As a result, the Commissioner found that the Respondent's decision was flawed and was therefore null and void.

The Commissioner apologized to the Grievor for the way his harassment complaint was handled. The Commissioner agreed with the ERC that because of the considerable amount of time that has elapsed since the events in the complaint occurred, it would be very difficult to conduct a new investigation.

G-499 (summarized in the July-September 2010 Communiqué)

The Grievor filed a harassment complaint against the acting Commanding Officer for waiting 4 weeks before taking action regarding another harassment complaint that the Grievor had filed. The Respondent denied the harassment complaint. The Level I Adjudicator denied on standing. The ERC found that the Grievor had standing as she had a personal interest in how the Respondent would deal with her harassment complaint. On the merits, the ERC found that the A/CO's delay in

addressing her complaint did not meet the definition of harassment set out in policy. The ERC recommended that the grievance be denied.

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 Grievor had standing to grieve the Respondent's decision on her harassment complaint. However, the grievance failed on the merits. The conduct about which the Grievor complained (the AICO's alleged delay in addressing the Grievor's harassment complaint) did not meet the definition of harassment, and therefore the Respondent's decision to dismiss the complaint was consistent with the applicable policies.

G-504 (summarized in the October 2010-March 2011

Communiqué) The Grievor filed a harassment complaint; the Respondent met with the subject of the complaint and obtained his version of the facts. The Respondent concluded that the Grievor's complaint was unfounded and thought it was not necessary to interview the Grievor. The Grievor presented a grievance. The Level I Adjudicator determined that the Grievor had no standing since the fact that the Respondent did not meet with her did not aggrieve her. The ERC found that the Level I Adjudicator was wrong. The ERC found that the Respondent did not respect the principle of procedural fairness. The ERC recommended that the grievance be allowed and that an apology be given to the Grievor for the way her harassment complaint was handled.

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

[TRANSLATION]

The Commissioner allowed the grievance.

Like the ERC, the Commissioner found that the Grievor had standing and that the additional information she presented at Level II should not be considered.

Concerning the merits of the grievance, the Commissioner agreed with the ERC that by not allowing the Grievor to present her point of view, the Respondent did not respect the Treasury Board's Policy on the Prevention and Resolution of Harassment in the Workplace, according to which he must make sure that he "has all the facts" and that the parties have been heard before making a decision on the harassment complaint. In doing so, the Respondent failed to comply with a similar obligation in paragraph 1.3.b of the internal RCMP policy on Interpersonal Conflict and Harassment in the Workplace set out in Chapter XI1.1 of the RCMP Administration Manual, which states that he must "ensure all facts have been carefully examined" before making such a decision. Lastly, by depriving the Grievor of her right to be heard, the Respondent did not respect the principle of procedural fairness.

The Commissioner apologized to the Grievor for the way her harassment complaint was handled. The Commissioner also ordered that a new review of the harassment complaint be conducted as soon as possible by the appropriate authority.

G-506 (summarized in the October 2010 - March 2011

Communiqué) The Grievor applied for a position which represented a potential promotion for him. The Grievor filed a harassment complaint accusing the Alleged Harasser of committing abuses of authority during the selection process. The Level I Adjudicator denied the grievance on its merits. He concluded that the Grievor did not submit sufficient evidence. The ERC

found that the record was incomplete. The ERC recommended that the grievance be allowed by quashing the Level I decision. It also recommended that the grievance be referred back to the Level I Adjudicator for a reconsideration and redetermination once the record is made complete. It further recommended that a review be ordered of relevant Force policy for the purpose of clarifying who has the responsibility to ensure that a Level I Adjudicator receives a complete record.

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

In a decision dated February 1, 2013, Commissioner Robert W. Paulson agreed with the ERC's findings and recommendations.

G-508 (summarized in the April-June 2011 Communiqué) The Grievor was a target in several workplace incidents and he filed a harassment complaint. Following an investigation in which the Force admittedly neglected requirements of RCMP and Treasury Board harassment policies, the Respondent decided that the incidents did not amount to harassment. The Level I Adjudicator denied the grievance on multiple grounds. The ERC found that the incidents occurred and a reasonable observer would conclude that the incidents met the policy definitions of "harassment". The ERC recommended that the grievance be allowed, acknowledge that the Grievor was subjected to workplace harassment, and apologize to the Grievor for the fact that the harassment investigation and decision in his case were inconsistent with applicable harassment policies.

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

G-514 (summarized in the July-September 2011

Communiqué) The Grievor filed a harassment complaint against an alleged harasser for having, in her presence, told two male Force members to "stop behaving like a couple of old women". The Respondent denied the harassment complaint. The Level I Adjudicator found that the Grievor did not have standing. The ERC found that the Grievor had standing. On the merits, the ERC found that the alleged harasser's comment, although objectionable, did not meet the definition of harassment set out in policy. The ERC recommended that the grievance be denied.

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 Grievor had standing to grieve the Respondent's decision on her harassment complaint. However, the Grievance failed on the merits. The statement made by the Alleged Harasser that two men "stop behaving like a couple of old women," although tactless and inappropriate, did not meet the definition of harassment. The Respondent's decision to deny the harassment complaint was proper and in accordance with the applicable policies.

G-515 (summarized in the July-September 2011

Communiqué) Being off-duty sick and shortly returning to work part-time, the Grievor filed a harassment complaint against an alleged harasser for having, during a social event and in her presence, voiced his concerns regarding the Off-Duty Sick and Return to Work programs. The Respondent denied the harassment complaint. The Level I

Adjudicator found that the Grievor did not have standing. The ERC found that the Grievor had standing. On the merits, the ERC found that the alleged harasser comments, although improperly uttered in a public forum, did not meet the definition of harassment set out in policy. The ERC recommended that the grievance be denied.

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 Grievor had standing to grieve the Respondent's decision on her harassment complaint; however, the Grievance failed on the merits. The Alleged Harasser's initial comments were made by a manager seeking assistance in dealing with a workplace issue. The comments were general in nature and did not identify any individual. While it may have been inappropriate for the Alleged Harasser to discuss internal RCMP personnel issues on a public golf course, the conduct did not meet the definition of harassment set out in the governing policies. The Respondent's decision to deny the harassment complaint was proper and in accordance with the RCMP and Treasury Board policies.

G-529 (summarized in the April-June 2012 Communiqué) The Force took steps to test the Grievor's integrity by placing a bag containing money in a vehicle the Grievor had to search. The Grievor failed to immediately turn over the bag from which he took \$100. He was suspended with pay and served with a Notice of Intent to Recommend Stoppage of Pay and Allowances. The Grievor grieved the SPAO. The Level I Adjudicator denied the grievance. The Grievor resigned in 2008. The ERC found that the Level I Adjudicator's

reasons were inadequate. The ERC recommended that the grievance be allowed and a reinstatement of the Grievor's pay and allowances up to the date of his resignation be ordered. It also recommended that a review of the Grievor's file be ordered so that appropriate pension adjustments could be made, if applicable. It further recommended that a review of the rules surrounding the imposition of SPAO be ordered so that consideration could be given to adding two elements, creation of a monitoring system and the prioritization of cases involving a SPAO.

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

In a decision dated January 15, 2013, Acting Commissioner Steve Graham denied the grievance.

With respect to the issue of whether the Respondent complied with his disclosure obligation in the grievance process, a matter that the ERC discussed in its report, the Commissioner noted that the Grievor did not seek a Level I decision on the issue of disclosure, nor did he raise the failure to disclose as an issue in his submissions. Therefore, the Commissioner found that the disclosure issue was not before him for decision.

The Commissioner agreed with the ERC that the Level I Adjudicator's reasons on some issues could have been more fulsome. He noted, however, that there was no requirement for the Adjudicator to summarize or refer to every submission made by a party. He referred to the Supreme Court of Canada's recent judgment in the matter of Construction Labour Relations v. Driver Iron Inc., 2012 SCC 65, where the Court found that administrative tribunals do not have to consider and comment upon every issue raised by the parties in their reasons. The Commissioner did not agree with the ERC's

recommendation that the grievance should be allowed on the basis that the Level I Adjudicator's reasons were insufficient. He stated that his decision to allow or deny the grievance would be based on whether the Respondent's decision to issue the SPA Order was "consistent with applicable legislation and Royal Canadian Mounted Police and Treasury Board policies" (Commissioner's Standing Orders (Grievances), SOR/2003-181, s. 17), not whether the Level I Adjudicator erred by providing insufficient reasons.

The Commissioner agreed with the ERC that the Level I Adjudicator erred in finding that Code of Conduct violations constitute "summary convictions". However, contrary to the ERC's finding on that issue, the Commissioner was not convinced that the Adjudicator in fact considered the conduct described in Allegation #1 in support of his conclusion that the SPA Order was appropriate. The Commissioner also found that even if the Adjudicator did consider Allegation #1 and therefore erred in this respect (given that the Respondent's Order was only based on Allegation #2), he did not believe that the Adjudicator's final decision would necessarily have been different, given his own findings that the SPA Order was warranted based on the Grievor's clear involvement in the outrageous conduct described in Allegation #2. The Commissioner also disagreed with the ERC's finding that the grievance should be allowed due to the Level I Adjudicator's "overriding" errors. The Commissioner again stated that his decision to allow or deny the grievance would be based on whether the Respondent's decision to issue the SPA Order was "consistent with applicable legislation and Royal Canadian Mounted Police and Treasury Board policies." The Commissioner explained that, as the final level (i.e. Level II) in the RCMP's grievance process pursuant to subsection 32(1) of the Act, he performs a *de novo* review of the grievance, meaning that the whole matter is determined afresh.

The Commissioner disagreed with the ERC that the Grievor had not engaged in "extreme" and "outrageous" conduct and that the SPAO was not justified. The Commissioner found that the Grievor stole, for all he knew, an exhibit during a search authorized by the court in the course of a criminal investigation. The Grievor could not have just replaced the money the next day. The money was an exhibit and therefore, it could not have been replaced once spent or taken. The misconduct placed in doubt the integrity, honesty, and moral character of the Grievor, and compromised the member's effectiveness and the integrity of both the RCMP and the criminal justice system. The Grievor was well experienced (over 18 years of experience) and ought to have known the importance of preserving the integrity of the chain of evidence.

The Commissioner concluded that the present case involved extreme circumstances where it would have been inappropriate to continue paying the Grievor and therefore the Respondent's decision to stop the Grievor's pay and allowances was appropriate.

G-531 (summarized in the July-September 2012

Communiqué) The Grievor went on medical leave and had not returned to work prior to submitting his grievance. A Health Services Officer advised a Return to Work Coordinator (Respondent) that the Grievor's medical profile had been changed from a temporary to a permanent rating, meaning that the Grievor was no longer employable by the Force in any capacity. The Respondent informed the Grievor of the change to his medical profile. The Grievor grieved the change. He requested the accommodation process be put into abeyance pending resolution of this grievance but this was denied. The Grievor grieved the Respondent's refusal to put the accommodation process in abeyance. The Level I Adjudicator found that the Grievor

did not have standing and denied the grievance. The ERC's decision focused on standing and does not address any matters which concern the merits of the grievance. The ERC found that the Grievor had standing. The ERC recommended that the grievance be allowed and be sent back to Level I for the process to continue. It further recommended that this include a review of the file as the subject of this grievance may have become moot because of subsequent events.

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

G-545 (summarized in the January-March 2013 Communiqué)

Please see the ERC's summary of its findings and recommendations found earlier in this Communiqué.

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 subject matter of this particular grievance was not one which met the criteria set out in section 36 of the Royal Canadian Mounted Police Regulations, 1988, and therefore was not a matter which should be referred to the ERC, nor one which must be adjudicated by the Commissioner at Level II, as stipulated in subsections 5(2) and 33(4) of the Royal Canadian Mounted Police Act. As such, the Commissioner referred the grievance to a designated Level II Adjudicator so that a decision could be made forthwith.

G-546 (summarized in the January-March 2013 Communiqué)

Please see the ERC's summary of its findings and recommendations found earlier in this Communiqué.

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 grievance presentation was timely. As such, the Commissioner returned the grievance to Level I so that the grievance process could resume at that level.

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