



Royal Canadian Mounted Police External Review Committee

Between January and March 2006, the Committee issued the following recommendations:

D-097 An RCMP member had arrested the Complainant, a minor female, on a criminal matter. The member spent considerable time trying to mediate the Complainant's disputes with her mother and had also tried to involve the Complainant in a Force approved sports program. Later, as a result of her complaint, the member faced two allegations related to abusing his position and authority and his attempt to negotiate sexual favours with the Complainant for money. The Complainant, her two girlfriends, her mother and brother testified and in part, they corroborated segments of her testimony. The Respondent denied all the allegations and the particulars except that he had given the Complainant one cigarette.

The RCMP Adjudication Board (the "Board") that heard the matter concluded that neither allegation had been established. While the Board described the provision of one cigarette to a minor as inappropriate, it found that it was not disgraceful. The Board had created a time line for the month in which the Complainant and Respondent had communicated that was based on the witnesses' testimony and documentation submitted. Based on that time line and other evidence, the Board noted that there were significant discrepancies and factual errors in the Complainant's testimony and that of the other Appellant witnesses. The Board noted that the Respondent gave credible evidence which provided a reasonable explanation.

Committee's Findings

As this is an Appropriate Officer's appeal, the Commissioner may only choose to confirm the decision under appeal or order a new hearing before a different adjudication board. The Appropriate Officer's request that the Commissioner "*correct what is submitted to be flawed reasoning by the board*" is not an available remedy under the Act.

The Board's comments about the standard of proof were somewhat confusing. However, when the Board's reasons were examined in their entirety, it was clear that they had assessed the evidence using the balance of probabilities standard with a high evidentiary threshold. While the Board was wrong when it suggested that the standard of proof was dependent on the sanction sought, the Committee believed that in light of the cases cited in their decision, the Board was trying to express that the standard of proof rises to the higher end of the balance of probabilities because of the seriousness of the allegations faced by the Respondent.

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It would have been inappropriate for the Board to have assessed the Complainant's credibility based only on her history which included lying to persons in authority, ignoring court orders and committing criminal offences. In this case, the Board carefully analyzed all the evidence, including the Complainant's testimony, and checked it against the time line that they had developed. As a result, they found a significant number of inconsistencies and factual errors in the Complainant's testimony which was the basis for their conclusion that the Complainant's evidence was not as credible as the Respondent's. That conclusion was strengthened by their consideration of the Complainant's history of deceitful behaviour. This was an appropriate and effective assessment of the evidence. Furthermore, the Board's reasons clearly described their analysis of all the testimony, and their conclusions on credibility.

Committee's Recommendation

The appeal should be dismissed.

G-363 The Grievor, a civilian member, was seconded to an organization overseas for two years with the possibility of an extension. The Grievor assumed his overseas position about four months after the signing of the secondment agreement. Prior to leaving Canada, he placed his family home on the real estate market and it sold shortly thereafter.

The Grievor was eligible for certain benefits from the Treasury Board (TB) *Foreign Service Directives* (FSD), as a "foreign assignment employee". Pursuant to that policy, the Commissioner or his delegate was empowered to determine which benefits would be available to those employees. Here, the delegate advised the Grievor that he would not be eligible for FSD 16, which

provides for reimbursement of real estate and legal fees, as well as any mortgage penalty arising from the sale of the family home in Canada. This reflected the apparently unwritten and undated RCMP policy applicable to all members with overseas secondments of less than three years, except for regular members in Liaison Officer positions. The delegate referred to the consistency between this RCMP policy and the TB policy (*Relocation Directive*) that governs the eligibility of public servants in Canada to a similar benefit when a secondment term is for three years or more. The delegate also explained that he would seek a final decision from Treasury Board regarding the Grievor's request. TB confirmed the decision to deny the FSD 16 benefit to the Grievor.

The Grievor did not file his grievance within the statutory limit of 30 days of the final decision of the delegate. He requested an extension of time for the grievance filing which was granted under section 47.4 of the *RCMP Act* and then he filed it within that time. Both the GAB and Level I Adjudicator determined that the Grievor had not filed his grievance within the statutory limit of 30 days but they relied upon different decision dates from which to count the 30 day period. In particular, the Level I Adjudicator set aside the decision to extend the time for the grievance filing, as he was of the opinion that there were insufficient grounds to support that decision.

Committee's Findings

The Level I Adjudicator erred in determining that the Grievor had not respected the time limits. The Level I Adjudicator is not empowered to reverse decisions made by the Commissioner's delegate to extend the time for the filing of a grievance under section 47.4 of the *RCMP Act*.

The Committee decided to address the merits of the case because both parties had been heard on the merits and it would be the more efficient way to proceed given the considerable passage of time.

The Commissioner, through his delegate, had the authority to deny certain benefits to the Grievor. The RCMP internal policy on the matter appeared reasonable and there was no information to suggest that it was applied inconsistently or unfairly.

The RCMP distinguished between Liaison Officers and civilian members and other regular members on postings in positions other than Liaison Officer. FSD 16 applied to Liaison Officers with shorter postings because they often have extensions, they are often cross-posted and they do not always return to the city from which they were posted.

The Grievor chose to sell his own family home even though he had not received the final decision about whether he was eligible for reimbursement of his real estate commission and legal fees as well as the mortgage penalty.

Committee's Recommendation

The grievance should be denied on its merits.

G-364 The Grievor was transferred but was unable to find suitable housing during his house hunting trip. He reported back to the Respondent, a relocation specialist, that he anticipated moving into rental housing on a Canadian Forces base in December. The Respondent gave approval for the Grievor to proceed to Ottawa and to be reimbursed for interim lodging, meals and incidental (ILM&I) for 21 days. The Grievor arrived in early November and stayed in a hotel.

In mid-November, the Grievor requested an extension to the interim accommodation approval, indicating "*I won't be in the rental house on base until the new year*". The Respondent requested more information on when he would be taking possession of the rental unit. When the Grievor could not give her an exact date, the Respondent contacted the base housing office directly. She was told that the Grievor had not submitted an application form and there was no housing lined up for him. She was also told that base housing had been available since the summer.

After various exchanges, the Grievor told the Respondent that housing was available, but that the person who was to be his roommate was not arriving until December. The Respondent advised that because a house was available, the ILM&I would be discontinued in three days, which time represented the notice the movers required to deliver the Grievor's household goods and effects. Subsequently, the Respondent advised the Grievor that because a door-to-door move had been possible from the beginning, he would only be entitled to the standard five days of ILM&I for packing loading and cleaning and unloading and unpacking. The Grievor grieved, requesting reinstatement of the approval for 21-days of ILM&I.

Committee's Findings

The Committee found that the Grievor did not meet his obligations under the *Integrated Relocation Program - Pilot* to seek out and occupy self-contained accommodation as soon as possible. However, the only reason for revoking an approval for reimbursement after expenses had been incurred would be where the approval was obtained through intentional misrepresentation or fraud. The record did not permit the Committee to conclude that

the Grievor was guilty of either. The Committee found that, while the Grievor was vague and inconsistent in his dealings with the Respondent and he was less than diligent in ensuring that he minimized the costs of the move, the evidence was not conclusive of an intention to mislead or defraud. The Committee added that the record did not confirm exactly what approval had been given or how that approval had been explained to the Grievor prior to his move.

The Committee concluded that the full 21 days of ILM&I should not have been revoked. Rather, the Grievor should have been reimbursed for the ILM&I expenses that he had incurred prior to the date on which it was established that a base house was available, plus an additional three days, the notice period that was required for the movers to deliver his household goods and effects.

Committee's Recommendation

The grievance should be allowed in part.

G-365 The Grievor requested an advance for a vacation trip for his dependants pursuant to the *Isolated Post Directive* (IPD) based on a maximum entitlement that would have included the full economy airfare for his three dependent children. He made that request after the distribution of an IP Bulletin on December 17, 2003, which stated that when calculating maximum entitlements for reimbursement for travel from isolated posts, the fares for any children would be the discounted airfares instead of the full economy fares. The Grievor made it clear that he was not asking for a personal gain and that he would be accountable for the moneys spent, including any overpayment.

The Level I Adjudicator decided that the grievance was not presented within the required 30 days which was calculated from the date of the receipt of the IP Bulletin. He also stated that, had it been presented within 30 days, he would have denied it on the merits, as the "*maximum entitlements had to take into account the existing discounts*", because "*the entitlement cannot exceed the expense incurred*".

Committee's Findings

The Committee found that the statutory time limit of 30 days was respected. It began to run as of the date that the Grievor received his answer to his request for an advance for vacation travel under the *Isolated Post Directive*, 1991, and not as of the date that he received a general bulletin sent to his Division on how the reimbursement would be calculated.

The Committee recommended that the Commissioner rule on the merits and deny the grievance. However, if the Commissioner was inclined to allow the grievance, the Committee stated that it should be sent back to Level I, because the Respondent had not yet had a chance to be heard on the merits.

The Committee found that there is no guidance in the IPD on how an advance is to be calculated, and there is nothing to suggest that the Force acted unfairly or inappropriately. The Committee also found that the calculation of the maximum amount to be reimbursed for vacation travel from an isolated post should be based on actual costs and the evidence was that children's fares were discounted by the airline.

Committee's Recommendation

The grievance should be denied on its merits.

G-366 The Grievor was required to travel for a mandatory periodic health assessment and audiogram. He submitted an expense claim for mileage and meals. The claim was partially denied on the basis that he had not attended at the closest available facility. The Grievor argued that the documentation he had received from Health Services regarding the periodic health assessment only identified the farther location, however, the partial denial was confirmed. The parties agreed that the standing and time limits requirements had been met, but could not reach an informal resolution on the merits.

The Level I Adjudicator found that the Grievor did not present the grievance within the time limit set out in Section 31(2) of the Act. He concluded that the Grievor knew of the denial after the original decision and that the second denial was merely a restatement of the first decision.

Committee's Findings

The Committee found that, as the Grievor submitted new information and new arguments, after the original decision, the time limit should run from the second denial and therefore the Grievor had met the statutory time limit.

On the merits, the Committee found that, while the Grievor had made a mistake in choosing the location of the health assessment and audiogram, this was because the information he received from Health Services was confusing and unclear. The Committee recommended that the Grievor's claim be paid in full.

The Committee also commented on several fairness issues related to the new grievance process. The Committee noted that a form letter advising the Grievor of his right to make submissions under the *Commissioner's Standing Orders (Grievances), 2003* acted to

limit his right to be heard. It recommended that the Early Resolution phase of the grievance process be kept separate and apart from the Submission phase. Finally, the Committee found that while the Level I Adjudicator was not bound by the parties' agreement that the time limit had been respected, before ruling that the grievance was out of time, the Level I Adjudicator should have given the parties the right to be heard on the issue.

Committee's Recommendation

The grievance should be allowed.

G-367 The Grievor complained of various incidents of harassment and filed a grievance when four of these were not resolved to her satisfaction. She alleged that a member had made harassing comments over the radio. She believed that a dog barking complaint against her was investigated in a humiliating manner. She complained about two incidents at the workplace - a blank job application was put in her mailbox and shortly after a Missing Women's Poster was altered by placing her name on it.

The first two complaints were not reviewed, no investigation was ordered, and no decision was given to the Grievor. In the other two complaints, the Respondent acted appropriately in making sure that all staff were warned that he and the other Officers would not tolerate workplace harassment. However, he did not deal with all the aspects of the incidents.

Committee's Findings

The Committee referenced the Treasury Board policy and guidelines to determine the steps that managers are required to take in dealing with harassment complaints and concluded that the complaints were not dealt with appropriately.

The Committee also noted that when the Respondent declared that the Grievor should face consequences for presenting the grievance, he was expressing a sentiment that was contrary to the employee's right to not be disciplined or penalized for presenting a grievance, and to have allegations of harassment dealt with without fear of retaliation. Also, many of the observations made by the Respondent appeared to be more focussed on the Grievor's personality and reputation than on the subject of the grievance.

The Committee also found that since the Respondent had recently been the subject of a harassment complaint by the same Grievor, he should have declined to act as delegated manager for the subsequent harassment complaints.

Committee's Recommendation

The grievance should be allowed. However, given the passage of time, the Committee does not recommend that the Commissioner order that the matter be sent back for the allegations to be dealt with according to policies, but rather recommends that the Commissioner apologize to the Grievor for the fact that her harassment complaints were not properly dealt with.

G-368 In January 2003, the Grievor requested an advance under the *Vacation Travel Assistance* (VTA) policy pursuant to the *Isolated Post Directive* (IPD) for a vacation for himself and his dependants from headquarters to a point of departure. The Grievor's request for an airfare advance was based on the "*return economy class airfare*" without any restrictions. The Respondent reduced the Grievor's requested advance by utilizing a lower rate for the "*return economy class airfare*".

The Level I Adjudicator decided that the grievance was not presented within the required 30 days which was counted from the date when the Division personnel was advised that the lower return economy class airfare was to be used for the calculation of the VTA.

Committee's Findings

The Committee found that the statutory time limit of 30 days was respected. It began to run from the date that the Grievor was informed that his particular claim was denied, and not from the date that personnel in the Division were advised about the new rules for the calculation of the VTA.

The Committee found that the fact that the Level I Adjudicator had ruled in a previous grievance presented by the same Grievor did not in itself raise an appearance of bias. Furthermore, there was no other evidence presented that would point to any reason for the Level I Adjudicator to not act in this case.

The Committee found that the Respondent had correctly calculated the maximum entitlement for the VTA under the IPD. It was appropriate to use the lower rate for "*return economy class airfare*" as it met the requirement of being effectively a ticket without restrictions.

Committee's Recommendation

The Committee recommends that given that the parties have already made representations on the merits, the Commissioner rule on the merits and deny the grievance.

G-369 The Grievor, who had been serving at an isolated post, was about to retire from the Force. He enquired as to his entitlement to two benefits upon retirement: (i) a reimbursable move to his last normal place of residence occupied before his isolated posting pursuant to the *Isolated Posts Directive* (IPD), and; (ii) a subsequent reimbursable move within two years to a location of his choice within Canada pursuant to the *RCMP Relocation Directive* (RD). The Grievor was of the view that he should be entitled to both these benefits upon retiring from the Force at an isolated post.

The Grievor was advised that he was only entitled to one reimbursable move upon retiring. The member grieved this decision on August 16, 2000, and moved to Eastern Canada in September, 2000 at Force expense.

Both the Grievance Advisory Board and the Level I Adjudicator concluded that the Grievor should be entitled to both an initial move out of isolation under the IPD, and a subsequent move within two years under the RD. However, the Force refused to implement the Level I decision.

Committee's Findings

The Committee found that the Grievor should have been entitled to both benefits. After reviewing the principles set out in the IPD and the RD, the Committee concluded that the purpose of each policy was distinct. The IPD intended to provide an additional benefit to a member at an isolated post who is leaving the Force by allowing for limited reimbursement of the costs of moving back to the normal place of residence. On the other hand, the RD entitlement provided members eligible for a pension with a two year opportunity to move to a retirement location after discharge. As a result, the Grievor was entitled to a relocation from his isolated post to his normal place of residence under the IRP, and then to a subsequent RD relocation to a retirement destination within two years.

Committee's Recommendation

The grievance should be allowed. However, the Committee does not recommend that the Grievor be entitled to monetary compensation or to a further move, as he had not shown that the Force's error had caused him to incur any additional expenses. However, the Committee recommends that the Commissioner apologize for the error, and that current policy be reviewed to be specific in regards to entitlements when members retire at isolated posts.

G-370 The Grievor was a member of a municipal police force which was absorbed into the RCMP. At that time, members were given the option of electing to have all or part of their municipal service transferred to the RCMP for the purpose of pension entitlement, known as pension buy-back. The Grievor did not elect to buy-back any pension at that time. Several years later, the Grievor requested that the Force calculate the cost for the buy-back of pensionable service. The amount was not communicated to him until seven months later, by which time the amount of the buy-back had increased.

The Grievor objected to the increased cost resulting from the seven-month delay in providing the buy-back amount. He also complained that he was not made aware that he was required to file an election to stop the accumulation of interest.

The Level I Adjudicator found that the matter was out of time and, therefore, did not address the merits of the grievance.

Committee's Findings

The Committee found that the law governing the buy-back of pensions was the *Royal Canadian Mounted Police Superannuation Act* and the associated regulations. Further, the Committee found that this *Act* was applicable to the RCMP alone.

Committee's Recommendation

The Committee concluded that it could not provide findings and recommendations on this grievance because it was not one that was referable to the Committee according to section 36 of the *Royal Canadian Mounted Police Regulations*.

G-371 In 2002, the Grievor claimed reimbursement for meals for days while on a secondment to a provincial court. His supervisor had certified that he was on authorized travel while performing services and that the meal prices were reasonable and just. The supervisor advised that the Grievor did not control his own timetable or transportation. On February 20, 2002, the Respondent replied that the Grievor was responsible for his own meals while at the courthouse. As requested, the Grievor delayed filing a grievance while the supervisor tried to resolve the dispute. While no new information was presented, the Respondent responded again on March 4, 2002 advising that the Grievor was responsible for his meals, as he was not on travel status. The grievance was received April 25, 2002.

The Level I Adjudicator decided that the grievance was not presented within the required 30 days as calculated from February 20, 2002 when the Respondent first denied the claim. He also found that the Grievor had failed to establish an entitlement to a mid-shift meal within the tenets of the relevant policy.

Committee's Findings

The Committee found that the Grievor did not submit his grievance within the statutory time limit. The Committee also agreed that an attempt to informally resolve the dispute did not act to extend the 30-day time limit. However, the Committee recommended that the Commissioner use his authority under section 47.4 of the *RCMP Act* to extend the 30-day time limit. The circumstances indicated that the Grievor withheld the filing of his grievance at his supervisor's request. As a result, the Committee believed that these circumstances justified the extension of the time limit to allow the Commissioner to rule on the merits of the grievance.

The Committee found that, under the Treasury Board *Travel Directive*, the Treasury Board Minutes no. 704761 and no. 710531 and chapter VI.I of the RCMP Administration Manual, the Grievor was responsible for his midshift meals. The Force would reimburse the cost of a meal only where some exceptional event made it impossible for the member to have the meal as planned, and required the member to purchase a meal. The Committee found that the Grievor did not provide any information that would show that reimbursement of his meal expense claim was justified.

Committee's Recommendation

The grievance should be denied.

G-372 The Grievor was transferred in 2002. In the course of the transfer, he was separated from his household goods and effects for 24 days. During this time, the Grievor and his family resided in interim accommodation.

The Grievor sought to be reimbursed for Interim Lodgings, Meals and Incidentals (ILM&I) for the full 24 days, 3 days beyond the normal 21 day period provided for under the *Integrated Relocation Program-Pilot-RCMP and GOC-April 1, 2002* (IRPP-April 1, 2002). His entitlement to be reimbursed for accommodation was not in issue, however a dispute arose over his entitlement to the meal allowance.

Section 4.24 of the IRPP-April 1, 2002 provided that there was a discretion to authorize meal entitlement past 21 days, subject to one of two conditions: Either (i) there was no suitable accommodation with adequate cooking facilities located within 16 km (one-way) of the transferee's place of work; or (ii) the transferee was unable to secure adequate accommodation with cooking facilities on or before the 22nd day of interim accommodation although such

accommodation exists within 16 km of the place of work. On the basis that the Grievor's accommodation included full cooking facilities, the meal claim for the extra three days was denied.

As the grievance was filed 31 days after the Grievor became aware of the denial, the Level I Adjudicator found that the Grievor did not present the grievance within the time limit of thirty days as set out in Section 31(2) of the *RCMP Act*.

The Grievor filed a grievance form 15 days after he was served with the Level I decision, however the form was not properly completed. The Grievor objected to the Respondent's rationale for the denial on the basis that the hotel room he resided in did not have a full kitchen. He provided no other details.

Committee's Findings

The Committee found that the technical flaw in the Level II presentation should not be held against the Grievor, but found that the Grievor missed the time limits imposed by the *RCMP Act* for the presentation of grievance at both Levels I and II. Although the delay in both cases was minimal, the Grievor had not provided any explanation as to why he was late in presenting his grievance, and there was no indication on the record that he otherwise intended to meet the statutory requirements. Moreover, the Grievor failed to respect the time limit at Level II, even though the Level I adjudicator had drawn to his attention the importance of timeliness by denying his grievance on that very basis. For these reasons, the Committee did not recommend that the Commissioner provide an extension pursuant to s.47.4 of the *RCMP Act*.

The Committee found that the grievance also failed on the merits. The Grievor was in the best position to explain how his kitchen, if less than full, failed to meet the criteria of accommodation with "*adequate*

cooking facilities". In addition, the Grievor would have had to establish that no other suitable accommodation within 16 km of his place of work contained adequate cooking facilities, or alternatively, that such accommodations existed but could not be obtainable in the first twenty-one days of his stay.

Committee's Recommendation

The grievance should be denied.

G-373 In 2004, the Grievor began experiencing significant health problems and was diagnosed with a rare and serious lung disease. Sometime around March of 2005, the Grievor requested a Force paid retirement relocation to a new place of residence that was within 40 km of his current residence. While ordinarily a retirement move must be a minimum distance of 40 km, his request was based on the "*exceptional circumstances*" exception found in the Force policy on retirement moves. The Grievor argued his health made it impossible for him to maintain his home, that it was necessary that he have access to public transportation and that he needed to be closer to medical care. His need to move was supported by his doctors and an RCMP Health Services Officer (HSO), who also referred to the fact that a lower pollution environment was being sought.

The request was denied on March 18, 2005. The Respondent acknowledged the Grievor's medical condition and his need to move from his current residence. He rejected the argument that the Grievor could only move to a specific part of a certain city to avoid pollutants. He found that there was no evidence of financial hardship and also found that the medical condition did not arise from the Grievor's employment with the RCMP. As a result, the Respondent concluded that the case did not meet the threshold for finding that exceptional circumstances existed. The Level I Adjudicator agreed.

The Committee dealt with this grievance on an expedited basis in consideration of the Grievor's medical condition and the link between the medical condition and the subject of the grievance.

Committee's Findings

The Committee concluded that the exceptional circumstances that would justify the Force paying for a retirement move of less than 40 km would be factors that showed that for exceptional reasons outside of his or her control, the member could not stay in the residence of his last posting, even though his desired retirement location was within 40 km.

The Committee concluded that the Grievor had demonstrated exceptional reasons. Because of a serious respiratory medical condition for which the cause was unknown, the Grievor was required to move to another part of the same community in order to have access to public transportation and to be closer to his medical specialist and the hospital. At the same time, this move would allow him to relocate to a residence that would be easier to maintain, given his physical limitations. Further, the Committee concluded that the Level I Adjudicator erred in rejecting the HSO's statement that the proposed move would help as it would be to a location with less pollution. Finally, the move as requested would not result in personal gain, and did not appear to be an extravagance.

Committee's Recommendation

The grievance should be allowed. If the Grievor has already moved, the Committee recommends that the Commissioner order that he be reimbursed for the retirement move. If the Grievor has not yet moved, the Committee recommends that the Commissioner order that the retirement relocation provisions of the RCMP IRP and the TB-IRP 2003 be available to the Grievor for two years from the date of the Commissioner's decision.

UPDATE

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

D-092 *(summarized in the January-March 2005 Communiqué)*

The member provided information to a private investigation firm for vehicle information by accessing police databanks. He believed that the information being sought was in relation to executing seizure orders. The member admitted his misconduct and expressed remorse. At the sanction hearing, evidence was introduced that the member had been reprimanded six years prior to the latest incidents for another unauthorized disclosure of personal information obtained by accessing police databanks. The Adjudication Board concluded that the member be ordered to resign from the Force. The Committee found that the Board's assessment that a risk of recurrence was high was not supported by the evidence. The Committee recommended to allow the appeal and the sanction to be imposed should consist in the forfeiture of 10 days' pay and a reprimand.

Commissioner's Decision

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

As this was an appeal on sanction, the key issue to be addressed was whether the Board's decision ordering the Appellant to resign was appropriate. The Commissioner concluded that the evidence supported the Board's reasoning on a rational basis sufficient to justify the sanction imposed. He therefore denied the appeal.

Unlike the ERC, the Commissioner was unable to conclude that the Board's primary justification for the order to resign was the Appellant's previous discipline. The existence of previous discipline was one of

many aggravating factors that were considered. The Appellant's actions represented serious Code of Conduct offences and demonstrated both poor judgment and a lack of professionalism. The Appellant's conduct was simply incompatible with the performance and duties of an RCMP officer. Accordingly, the Commissioner confirmed the Board's decision and directed the Appellant to resign from the RCMP within fourteen (14) days or, in default, be dismissed.

D-094 (summarized in the July-September 2005

Communiqué) In the course of two integrity tests the member was observed to have removed money and property from two staged crime scenes. The member was subsequently charged with and pled guilty to two counts of theft under \$5,000. He received a sentence of three months of imprisonment to be served in the community. The Adjudication Board concluded that the breach of good character was severe and that the evidence of personal stress was not sufficient to mitigate the misconduct or explain the basic character defects. The Board ordered the member to resign within fourteen days, in default of which he would be dismissed. The Committee agreed with the Board and recommended that the appeal be dismissed.

Commissioner's Decision

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

On the issue of sanction, the Commissioner ruled that the evidence supported the Board's reasoning. The Appellant's conduct was incompatible with the performance and duties of an RCMP peace officer. The Commissioner considered the seriousness of the conduct and recognized that while the amounts involved in the thefts appeared relatively small, there was a clear nexus between the misconduct and the Appellant's duties as a police officer.

As for the Board's conclusion that the death of the Appellant's mother was not a factor in his behaviour at the time of the thefts, the Commissioner ruled that there was insufficient evidence to support it. That conclusion was not, however, a key factor in the Board's final decision. Regarding the issue of the Appellant's depression at the time of the thefts, the Commissioner found that the Appellant bore the burden of proving a nexus between his depression and the misconduct but failed to do so.

Accordingly, the Commissioner found no basis on which to overturn the Board's decision on sanction. The Appellant was ordered to resign from the RCMP, and in default of resigning within 14 days, be dismissed.

G-340 (summarized in the October-December 2004

Communiqué) The Grievor (a Divisional Staff Relations Representative) was first denied legal representation paid by the RCMP to initiate legal action to have a provision of the *Royal Canadian Mounted Police Regulations* declared invalid. The Commanding Officer's subsequent refusal to pay two bills of costs from the member's lawyer resulted in two more grievances. The grievances were denied at Level I on the grounds that his request for legal representation did not meet the criteria set out in the *Policy on the Provision of Legal Assistance to Crown Servants*. The Committee found that the three grievances were inadmissible since the member was not adversely affected based on the interpretation of the *RCMP Act*. The Committee recommended that the grievances be denied.

Commissioner's Decision

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

[TRANSLATION] *The Commissioner agreed with the findings of the Committee and denied the grievances.*

G-341 (summarized in the January-March 2005 Communiqué)

After being transferred to a new workplace, the Grievor was authorized to stay in a hotel for 21 days until being able to move into his new home. Meals and incidentals were also approved. The Grievor then asked for a 14-day extension, which was approved but no meal allowance was included. When the Grievor submitted his claim for compensation for the first 21 days, the Respondent denied the meal expenses. The Grievor consulted a SRR who tried unsuccessfully to have the decision reversed. The Level I Adjudicator found that the grievance was not presented within 30 days required under the *RCMP Act*. The Committee found that the Commissioner should consider extending the time limit. As for the merits, the Respondent should have met the commitment it made to the Grievor to reimburse his meal expenses. The Committee recommended that the time limit for presenting a grievance at Level I be extended, and the grievance be allowed.

Commissioner's Decision

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

[TRANSLATION] *The Commissioner agreed with the Committee's finding about the time limit requirement and with the recommendation to retroactively extend the time limit for presenting the grievance at Level I. He noted, however, that attempts to resolve the matter informally do not extend the time limits for presenting a grievance. It is up to the members themselves and the staff relations representatives who try to resolve a matter informally to protect the grievance right and meet the requirements of section 31(2) of the Act, regardless of any informal procedure.*

As for the merits of the grievance, the Commissioner agreed with the Committee's findings and recommendations and allowed the grievance.

G-344 (summarized in the April-June 2004 Communiqué)

The Grievor challenged the decision of the Appropriate Officer to suspend him without pay after refusing to obey a senior member's order to undergo a health assessment. The Committee found that it did not have jurisdiction to rule on the merits of this grievance as it did not raise any issue set out in section 36 of the *Regulations*. The Grievor was reinstated in his position, therefore the point at issue was moot.

Commissioner's Decision

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

[TRANSLATION] *The Commissioner agreed with the Committee's finding regarding the Committee's jurisdiction to rule on the merits of the grievance. However, given the serious delay in this case, he ruled on the merits of the grievance. In this matter, the Commissioner, like the Committee, found that the point at issue was now moot.*

G-345 (summarized in the April-June 2005 Communiqué)

The Grievor was transferred and signed an agreement to enter into the *Integrated Relocation Program*. The Grievor stated that the relocation representative failed to inform him that capital improvements losses were to be paid from the customized envelope. As this envelope was mostly funded from his transfer allowance, he objected to what he characterized as paying a relocation expense from his own money. The Committee found

that the Grievor had not proven that he received bad advice and therefore recommended that the grievance be denied.

Commissioner's Decision

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

The Commissioner agreed with the ERC that the Grievor had not been misled or prejudiced by the representations made by Royal LePage Relocation Service with respect to the source of funding for payment of the capital improvements to his residence. The Commissioner held that, given the written and verbal information supplied by Royal LePage Relocation Services and the Respondent, the Grievor should have known that the capital improvements would be funded by the Enhanced Core and Customized envelopes. The Commissioner denied the grievance.

G-359 (summarized in the October-December 2005 Communiqué) A Code of Conduct investigation was initiated against the Grievor after a complainant alleged that he had stolen a one hundred dollar bill from him during an arrest. The Commanding Officer found that the Grievor had the money in his possession, and had initially lied about it to his superior. The Respondent ordered the stoppage of pay and allowances. The Level I Adjudicator denied the grievance concluding that clear involvement was shown. The Committee found that Treasury Board engaged in an unlawful sub-delegation of regulation-making authority

by leaving it up to the RCMP to establish the criteria under which stoppage of pay and allowances may be ordered. It also found that there was no clear involvement by the Grievor. The Committee recommended that the grievance be allowed.

Commissioner's Decision

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

As he did in recent decisions, the Commissioner presumed that the RCMP Stoppage of Pay and Allowances Regulations were valid and decided the grievance on the merits. As for the issue of clear involvement, the Commissioner was unable to conclude, based on all the evidence on record, the ERC's report and considering the different definitions of the word "clear", that the criterion of clear involvement had been met in this case. Since this requirement must be met in order to invoke the stoppage of pay and allowances, the Commissioner allowed the grievance on this issue. In light of that decision, there was no need to address the remaining issues raised in the grievance. Furthermore, the Commissioner was informed that on January 6, 2006, the Chief Human Resources Officer had rescinded the order for the stoppage of the Grievor's pay and allowances. Accordingly, there was no need to consider a remedy.

UPDATE

Decision of the Federal Court in the *Thériault* case

by Martin Griffin, Legal Counsel
March 16, 2006

On February 10, 2006, the Federal Court of Appeal issued its decision in *Thériault v. Canada* ([2006] FCA 61). This case was summarized in the *Communiqué* of July - September 2003 (Committee's recommendations) and October - December 2003 (Commissioner's decision), as well as in the *Communiqué* of October - December 2004 (Federal Court's decision).

Background

In March 1999, the criminal operations officer (CROP) at the RCMP was informed of an alleged contravention of the *Code of Conduct* by a member. Between May and September 1999, the CROP served as acting Commanding Officer (CO) of the division for a few days or a few weeks at a time while the CO was absent. In November 1999, the CO was informed of the allegations, and disciplinary proceedings were instituted against the member in October 2000.

Under section 43(8) of the *RCMP Act*, disciplinary proceedings must be initiated within twelve months from the time the Appropriate Officer, which is the CO, has learned of the alleged contravention and the identity of the member.

At the Adjudication Board hearing, the member noted that the limitation period in section 43(8) should have commenced in May 1999, since the CROP, who had known of the allegations of disgraceful conduct,

became the CO on an acting basis at that time. The Adjudication Board rejected this claim because the CROP was not acting as CO of the division when he learned of the allegations. The Board ordered that the member resign within fourteen days, failing which he would be dismissed.

The member appealed the Adjudication Board's decision, and the External Review Committee recommended that the appeal be dismissed. It found that, since the CROP had only served as CO of the division on an acting basis, his knowledge of the allegations could not be ascribed to the actual CO. The Commissioner dismissed the appeal. He adopted the Board's analysis as to the statutory time requirement and the position of an acting CO.

Following this decision, the member made an application for judicial review to the Federal Court. In its decision (*Thériault v. Canada* [2004] FC 1506), the Court stated that whether an officer holds the position of CO of the division on an acting or permanent basis is irrelevant in determining if the time limit was respected. According to the Court, the limitation period in section 43(8) commences when the CO of the division acquires the level of knowledge about the results of an internal investigation. The Court stated that the CROP did not have this level of knowledge when he assumed the duties of CO of the division, and it was the actual CO of the division who acquired sufficient knowledge at a later date, ensuring that the limitation period was respected.

The Federal Court of Appeal allowed the appeal. First, the Court of Appeal stated that the Appropriate Officer acquires the knowledge referred to in section 43(8) of

the *Act* when he is in possession of reliable and persuasive information about the alleged contravention and the identity of the member. The degree of knowledge required for the time period to begin to run does not need to be confirmed through an investigation, and it is not necessary to have all the evidence required to exercise the right of action.

The Court of Appeal also concluded that an Officer's knowledge of the points set out in section 43(8) of the *Act* follows him when he assumes the position of Appropriate Officer, even if it is only on an acting basis. In this case, the Court of Appeal found that the CROP had the level of knowledge required under section 43(8) of the *Act* when he assumed the duties of CO of the division in May 1999, and that he should have either initiated proceedings himself or informed the actual CO of the allegations and the identity of the member so that the CO could comply with the *Act*. The proceedings initiated against the member in October 2000 were therefore statute barred, and the Court of Appeal overturned the Commissioner's decision ordering his dismissal.

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