



Royal Canadian Mounted Police External Review Committee

Between January and March 2010, the RCMP External Review Committee (ERC) issued the following recommendations:

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G-482 The Grievor filed an harassment complaint alleging that a number of actions by certain members of management over a two-year period constituted harassment. The alleged actions included improper performance reports, punitive transfers, unnecessary fitness for duty assessments, unwarranted off-duty sick time, and retaliatory discipline proceedings.

Persons who reviewed the complaint advised the then-Assistant Commissioner (A/Commr.) to request further particulars in order to make a determination. However, the A/Commr. did not follow this advice. Instead, the A/Commr. determined that the conduct complained of did not meet any of the "quite specific" definitions of harassment contained in the RCMP's *Policy on Internal Conflict and Harassment in the Workplace*, chapter XII.1 of the RCMP Administrative Manual (AM.XII.1), and decided that he would not investigate the complaint. The Grievor grieved the A/Commr.'s determination and decision.

Procedural errors occurred in the Level I proceedings, including:

- when the Grievor requested a ruling on a preliminary issue, the Office for the Coordination of Grievances (OCG) wrongly identified the issue, and instead asked the Level I Adjudicator to rule on another issue, which he did;
- when the Grievor made a reasonable and timely request for a brief extension of time to file his submissions on the merits, the OCG denied his request by stating, erroneously, that it did not have authority to grant extensions;
- although the Grievor filed his submissions shortly thereafter, the OCG advised the Respondent that he need not review them, and wrongly advised the Level I Adjudicator that the Grievor's submissions did not address the merits; and
- despite the OCG's rationale for denying the Grievor's request for extension, it subsequently granted the Respondent's late and/or unjustified requests for extensions.

ERC Findings

Procedural Fairness: In managing the grievance process, the OCG committed procedural errors which created unfairness for the Grievor and seriously restricted the Grievor's right to be heard.

The Merits of the Grievance: The ERC reviewed the steps to be followed upon receiving an harassment complaint, as set out in the Treasury Board's *Policy on Prevention and Resolution of Harassment in the Workplace*, and the RCMP's policy, AM.XII.1. The ERC found that the A/Commr. failed to treat the complaint in accordance with the policies. First, the A/Commr. should not have reached a decision without first meeting with the Grievor and seeking additional information. Second, if found to be true, the allegations could possibly fall within the broad definition of harassment, and in particular, within the definition of abuse of authority. Therefore, this was not one of the rare cases in which it was justified to refuse to initiate an investigation.

ERC Recommendations: The ERC recommends that the Commissioner of the RCMP allow the grievance both on the basis of procedural fairness and on the merits. The ERC further recommends 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.

G-483 The Grievor made a harassment complaint against her supervisor. The Respondent in this grievance, who was the District Officer, ordered a critical incident review of the complaint. He then decided that the Grievor's complaint was not harassment but rather amounted to a workplace conflict situation. The Grievor objected to the decision and argued that the Respondent referred to her as being over-sensitive and

cited work performance issues, rather than discussing all the incidents of the alleged harassment complaint

The Level I Adjudicator decided that the Grievor lacked standing, as the Respondent did not have the authority to respond to the Grievor's harassment complaint. However the Level I Adjudicator also stated that the Grievor would then be able to send her complaint to the authorized decision-maker.

ERC Findings: 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 proper course of action for the Level I Adjudicator was to allow the grievance on the basis that the Respondent was the wrong person to make a determination about the harassment complaint and then order the complaint to be dealt with according to the applicable Treasury Board and RCMP policies.

The ERC noted that the process set out in the RCMP policy for the investigation and determination of a harassment complaint was not followed in this case. According to the then RCMP Policy, AM XII.17, the Human Resources Officer (HRO) was responsible for the screening and investigation of the harassment complaint as well as advising the Commanding Officer (CO) of the Division who was the final decision-maker. The Respondent was neither the HRO, nor the CO. The ERC noted that had the Respondent followed the policy, the significant delay would have been reduced, thus minimizing the adverse consequences for the Grievor and the integrity of the process.

ERC Recommendations: The ERC recommends that the grievance be allowed and that the Commissioner of the RCMP ensure that the harassment complaint be dealt with in accordance with Treasury Board and RCMP policies, if it has not already been done. The ERC also recommends that the Commissioner order that the harassment complaint be deemed to be filed within the one year as required by the policy.

G-484 The Grievor served at an isolated post. He believed that the Treasury Board Secretariat (TBS) undervalued the Vacation Travel Assistance (VTA) rate for his isolated post. In his opinion, the rate was both too low and contrary to a provision of the TBS Directive under which it was established. Other members felt similarly. The Respondent learned of this issue. He allegedly raised it with the TBS as the TBS Liaison on behalf of the Force. He later stated that the VTA rate for the Grievor's isolated post was correct. However, he did not reply to requests for a rundown of what he had told the TBS, or for an account of the TBS's rationale for the rate at issue. The TBS released a series of new VTA rates. The disputed one remained the same.

The Grievor filed a Level I grievance. He argued that the VTA rate for his isolated post was too low. He also urged that the Respondent did not engage the TBS about his problem with it. The Level I Adjudicator denied the matter on the ground that the Grievor did not have standing. He held that the TBS properly fixed the disputed rate under statute and policy, and that it therefore did not represent a decision, act or omission made in the administration of the affairs of the Force. The Grievor submitted

a Level II grievance after the deadline for so doing had expired.

ERC Findings: The ERC found that the Grievor should be given a statutory extension so that his grievance could be heard at Level II. It reasoned that the concerns he raised were of broad importance to the Force, given that they were prevalent at multiple isolated posts, and had led to several related grievances. It then found that although the Grievor had a compelling case for showing that the disputed VTA rate was too low, the Level I Adjudicator was right in that the Act barred the Grievor from contesting it via the Force's grievance process. This was so because, by law, only the TBS could create or amend the rate. However, the ERC noted that the Grievor could grieve the Respondent's alleged failure to address concerns about the VTA rate with the TBS. The record revealed that this was part of the Respondent's duties.

The ERC assessed the merits, given both the passage of time and the fact that the parties had been heard on all the issues. It found that the Grievor had not established that the Respondent omitted to address the purportedly faulty VTA rate with the TBS. It pointed to correspondence in the record which indicated that the Respondent did engage the TBS about that issue. It also observed that the TBS's failure to change the disputed VTA rate did not, in and of itself, show that the Respondent had neglected to bring the Grievor's concerns to the TBS. Lastly, the ERC commented that the Respondent should have handled this matter more openly and accessibly, as per the stated aims of the TB Directive, and the

recommendations of a federally-appointed task force.

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

G-485 The Force assigned a bilingual 'C' oral linguistic profile to a position in a province. It later advertised the job. The Grievor wanted to compete for the position, as it represented a promotion for him. The Force stopped him from doing so because he did not have a 'C' oral rating in French. The Grievor filed a grievance. He contended that the Force inappropriately prioritized language qualifications for jobs in general, assigned inconsistent linguistic requirements to positions in that province, and unfairly prevented him from competing for the position because he did not meet its oral profile. He also urged that his area was mostly English-speaking, that his French was good, and that the job's bilingual designation was too strict, given those and other factors. The Respondent was late in furnishing his submission. It was not considered for that reason.

The Level I Adjudicator partly allowed the grievance. He supported the position's oral linguistic rating, reasoning that the incumbent had to be able to appraise bilingual subordinates with high proficiency in their chosen official language. Yet he also found that part of the language profile had not been adequately justified. He therefore directed that an Official Languages Coordinator review the matter and provide an acceptable justification, or alternatively, that the Force amend one of the position's linguistic stipulations and reopen parts of the

staffing action to the Grievor. The Grievor contested this decision at Level II. He stressed that the Force assigned conflicting language classifications to positions in that province. He provided job postings to validate his point. The Respondent also presented a submission, as well as documentation in support of it.

ERC Findings: The ERC began its analysis by addressing some preliminary issues. It found that the *RCMP Act* prohibited the Grievor from grieving broad policy matters regarding how the Force dealt with language profiles in staffing actions throughout Canada and that province. However, it observed that the Grievor could grieve the linguistic rating given to the Position, as it represented a specific decision which directly affected him. The ERC also found that neither the Grievor's Level II job posting exhibits, nor the Respondent's entire Level II presentation, were admissible. It reasoned, in part, that those materials could have been provided at Level I.

The ERC then reviewed the merits. It found that the evidence and the applicable authorities supported the Level I conclusion that the position's oral language profile was suitable. It added that when the Position was viewed globally, the record showed that the 'C' oral rating was most appropriate, in light of the language skills required to handle the sensitivities of managing and appraising bilingual members. It also relied on Federal Court and Supreme Court decisions in dismissing as irrelevant the Grievor's arguments that his posting was mostly English-speaking, that his French was good, and that similar, nearby positions had more relaxed language ratings.

ERC Recommendations: The ERC recommends to the Commissioner of the

RCMP that he deny the grievance. It also recommends that he endorse the Level I Adjudicator's decision and that he ensure that the remedy ordered at Level I is fully instituted.

G-486 The Grievor was off duty sick (ODS) when he was ordered to visit with a Health Services Officer (HSO) in another city. The day before his trip, he told his supervisor of his impending journey. However, neither authorization for travel expenditure nor transportation methods were discussed. He later filed a travel expense claim which included a mileage claim for the use of his personal vehicle. The Respondent denied the mileage claim in early February 2007 on the basis that the Grievor did not have pre-authorization to travel, and that he should have driven a police vehicle instead of his personal vehicle. Yet he offered to allow a payment of the Grievor's gas and meal costs. The Grievor later presented his claim to the HSO, who told him it needed to be sent to the Respondent. The Respondent rejected it again on February 22, 2007.

In his grievance, the Grievor argued that his travel was mandatory, that nobody told him to use a police vehicle, and that others had received mileage costs in similar cases. The Level I Adjudicator denied the matter on the ground that it was untimely. She said the Grievor knew that his claim had been rejected in early February 2007, and that the second denial of his claim on February 22 was not a new decision which could restart the time limit clock. She added that she would have denied the case on the merits. She partly reasoned that members on ODS status were not exempted from obtaining pre-approval to travel.

ERC Findings: The ERC found that the Level I Adjudicator should have afforded the parties a chance to address the time limit issue before ruling on that subject. Yet given the passage of time, and the fact that the parties made submissions on the matter at Level II, the ERC chose to deal with the issue. It agreed that the grievance was untimely. However, it also opined that it would be appropriate to retroactively extend the time limit in this case. It felt that the Grievor's late submission was partly attributable to his genuine confusion over who could allow his claim.

The ERC then addressed the merits. It observed that the Grievor's ODS status did not exempt him from requirements of Treasury Board and RCMP policy. Although policy required advanced permission for business travel, the ERC found that post-authorization was warranted here. It explained that the Grievor had told his supervisor about the trip, and the supervisor knew the trip was mandatory. Yet the ERC found that the Respondent was justified in denying the Grievor's mileage claim, as the Grievor did not have permission to use his own vehicle. It also found that it was reasonable for the Respondent to agree to authorize a payment of the Grievor's gas and meal costs. This was so because the Grievor was ordered to take the trip, and those costs would have been paid had he taken a police vehicle.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he deny the grievance. It also recommends that he order that the Grievor be reimbursed for his gas and meal expenses. It further recommends that the Commissioner order a review to ensure that

methods are in place to inform members on ODS status of the policy requirements for travel to medical appointments. This review should also ensure that methods are in place to advise RCMP personnel about the proper way to process these travel expense claims.

G-487 The Grievor filed a grievance against the Respondent's decision not to recognize his overtime hours. These hours were incurred during his participation in meetings of the Mounted Police Members' Legal Fund (Legal Fund). The meetings were held outside of his area of work; upon his return, he submitted a request for compensatory leave for 12 hours of overtime. The Respondent informed the Grievor that it would not authorize his request, because it was not consistent with established policy.

Shortly thereafter, the Respondent requested that the Grievor's request for overtime be subject to an investigation under Part IV of the *RCMP Act*. The Grievor filed a second grievance with the Office for the Coordination of Grievances (OCG) alleging that he had been the victim of discrimination by his supervisor.

The OCG asked the Level I Adjudicator to determine whether the two grievances should be combined. The Level I Adjudicator determined that the two grievances should be handled separately. The Adjudicator also found that, given the internal investigation, other recourse was available to address the issue, and therefore the Grievor lacked standing. The Grievor later submitted a third grievance concerning the OCG's decision to refer his grievance to the Adjudicator before hearing his representations on the issues of combining the grievances and standing.

ERC Findings: The ERC found that the OCG should have met with the parties to hear their observations on the issue of combining the grievances. before referring the matter to the Level I Adjudicator for decision. The ERC also found that the Level I Adjudicator erred in finding that the Grievor lacked standing by rendering that decision without giving advance notice to the parties. The ERC finds that the investigation of the Grievor is not equivalent to a process through which he may obtain the redress sought in his grievance.

With regard to the merits of the grievance, the ERC noted the Legal Fund's status as an independent entity, separate from the RCMP. Although employees may be invited during their work hours to attend meetings for entities that are independent of their employer, the onus was on the Grievor to show that he was entitled to compensation for attending those meetings. The Grievor, who understood that he was attending Legal Fund meetings outside of his work hours, did not establish that any authority granted him entitlement to compensation. Moreover, the Grievor did not establish that he was entitled to overtime hours as a result of his participation in the meetings, given that the applicable policy required that he seek prior approval from his supervisor to work overtime hours.

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

G-488 The Grievor was subject to *Criminal Code* and *Code of Conduct* investigations, and was suspended with pay. In November 2004, he requested that he be provided with legal counsel at

public expense. His request was denied on November 17, 2004. He was aware of this denial no later than November 24, 2004. Although the Grievor repeated his request, he did not present any new information to merit a reconsideration of the original decision. The Grievor did not grieve the original decision until February 28, 2005.

The Level I Adjudicator rendered a preliminary decision that the grievance was not filed within the 30-day time limit required by the *RCMP Act*, and denied the grievance on that basis. The Grievor requested a Level II review.

The only issue before the ERC was the timeliness of the grievance.

ERC Findings: The record clearly supported the Level I Adjudicator's finding that the grievance was not filed in time. Although attempts at informal resolution were desirable, such attempts did not have the effect of suspending or extending time limits. In addition, simple requests to reconsider the original decision did not have the effect of recommencing the time limit in which to grieve that decision.

In determining that there were no circumstances to justify granting an extension of the time to file the grievance, the ERC considered a number of relevant factors, including:

- despite numerous requests to do so, the Grievor did not directly address the time limit issue;
- the Grievor did not provide any explanation for the delay in presenting his grievance;

- there is nothing on the record to indicate that the Force contributed to or caused any of the delay;
- the Grievor's intention to present a grievance did not arise until the end of February 2005;
- the delay in presenting his grievance was significant, particularly because it was unexplained; and
- the Grievor did not request an extension of time.

ERC Recommendation: The ERC recommends that the Commissioner of the RCMP deny the grievance because it was not presented at Level I within the 30-day time limit, as required by subsection 31(2)(a) of the *RCMP Act*.

G-489 The Grievor missed more than 32 consecutive hours of work. He claimed that his absence was due to an illness. A superior directed a Health Services Officer (HSO) to provide an opinion concerning the medical basis of the Grievor's sick leave claim, in accordance with Force policy. The Grievor refused to consent to a release of his related medical information to the HSO. The HSO stated that the Grievor could not be made to agree to the release of such information. Yet he also explained that he could not verify the legitimacy of the Grievor's sick leave claim without that data. He recommended that the Grievor's absence not be viewed as sick leave. He further noted that the RCMP recently discharged a member for abandonment of post, in a similar case.

The Grievor alleged that the HSO harassed him by saying conflicting things about the necessity of consenting to a release of health

data, and by implying that an administrative discharge was justified. The Respondent, who happened to be the HSO's line officer, deemed the complaint unfounded without launching an investigation. She felt that the HSO had actively pursued the proper enforcement of RCMP standards. The Grievor filed a grievance. The Respondent later made a remark that the Grievor found troubling. The Level I Adjudicator denied the grievance. He found that Force Harassment Policy stated that the proper enforcement of RCMP standards did not amount to harassment. He held that the HSO had properly enforced RCMP standards by refusing to validate the Grievor's sick leave status in the absence of substantiating data.

ERC Findings: The ERC stated that the only reason for opting not to have a full harassment investigation would be if it was clear that the allegations could not be found to fall within the definition of harassment. It cited Treasury Board Policy, and prior findings, in support of that principle. It found that this was not one of those rare cases where it was simply inconceivable that a full investigation would have led to a conclusion that harassment occurred. It observed that the Respondent never spoke to the Grievor about the substance of his allegations, or his affiliated concerns. It accordingly found that it would have been important to know more about the context in which the alleged harassment occurred before deciding that there was none.

The ERC further opined that when the Respondent's relationship with the HSO was combined with her unequivocal dismissal of the complaint, and her troubling comments about the Grievor, a reasonable person

might find that there was an appearance that she was not fully objective.

ERC Recommendation: The ERC recommends that the Commissioner of the RCMP allow the grievance and he apologize to the Grievor for the way in which his harassment complaint was handled.

G-490 The Grievor, a regular member posted at CPIC was refused a daily Plain Clothes Allowance (PCA), when he worked two days in a month at a non-RCMP agency. As a CPIC auditor, he had to wear civilian clothes while performing CPIC functions at non-RCMP agencies. The Grievor was refused a daily PCA, as he had not worked five consecutive days or more in a month. That criteria had been established in a Treasury Board Minute and was reflected in the relevant RCMP *Policy on Pay and Allowances* (AM.II.4) and AM Bulletin 2242 but not in the CPIC Manual.

The Level I Adjudicator denied the grievance on the merits. She took the position that another Treasury Board Minute was the authority for granting a PCA on a daily basis, and included the requirement of five consecutive days or longer. She found that the RCMP could not overrule the provisions of the Treasury Board Minute.

ERC Findings: Grievances that may be referred to the ERC are those set out in section 36 of the *RCMP Regulations*. Subsections (b) to (e) of that section refer to specific subjects that do not arise in this case. To be referable to the ERC, this grievance must fall within subsection (a) and be related to "the Force's interpretation

and application of government policies that apply to government departments and that have been made to apply to members". The policies regarding the payment of a daily PCA are only applicable to the RCMP and not other government departments. While the Grievor also suggested that the refusal to pay a daily PCA criteria may be discriminatory against members performing their duties pursuant to the CPIC Manual, the ERC did not view this as a reference to the *Canadian Charter of Rights and Freedoms* and therefore, referable. Therefore, it was not referable to the ERC.

ERC Recommendation: The ERC is not making a recommendation as it finds that the grievance is not referable and therefore it does not have the authority to review it.

G-491 In 1996, the Grievor was charged with a number of crimes. The Force suspended him and initiated disciplinary proceedings, but chose to reject the Commanding Officer's recommendation to stop his pay and allowances (SWOP). It fully reinstated the Grievor in 1997 after the court acquitted him, and a disciplinary board held that the allegations against him were unfounded.

The Grievor later complained about the way the Force treated him. He sought related remedies including investigations, apologies and compensation. Over the following five years, his concerns became the subject of different Level I and Level II grievances, as well as mediation attempts. Some of the issues were settled. Some were not.

In 2002, the Respondent rejected the Grievor's remaining allegations and requests

for redress. She said that the Force acted in good faith, that policy did not allow for such remedies, and that they fell outside of the RCMP's purview. The Grievor filed a grievance, which led to preliminary decisions at Levels I and II. During this period, more issues were settled. A Level I Adjudicator later dismissed what remained of the grievance. She essentially reasoned that the RCMP had acted in good faith, and that she did not have the authority to order certain requested remedies.

The Grievor filed a Level II grievance against the Respondent's refusal to provide apologies for the SWOP recommendation, for the decision to initiate disciplinary proceedings and for the conduct of the internal investigation. He also grieved the decision to deny damages for defamation.

ERC Findings: The ERC found that it had legal authority to review the grievance because the case concerned an issue relating to the stoppage of pay and allowances as well as arguments involving applicable provisions of the *Canadian Charter of Rights and Freedoms*. It also found that the Grievor had standing. It observed that the Respondent did not appear to investigate the Grievor's allegations before dismissing them. It also noted that the Respondent failed to state the information she considered, to explain the bases of her findings, or to answer the Grievor's specific claims. It therefore found that the Respondent did not properly address the Grievor's concerns. It further noted that the record was unclear on other avenues of recourse.

ERC Recommendations: The ERC recommends to the Commissioner of

the RCMP that he allow the grievance and order a review into the Grievor's allegations, if such a review has not yet been conducted. It further recommends to the Commissioner that he identify whether there presently exists a mechanism within the RCMP whereby members can make complaints about treatment during internal investigations, whether conducted by the RCMP or by a separate police force as an agent of the Force, and have these complaints thoroughly dealt with. If there is such a mechanism, then this information should be made readily available to all members. If there is no mechanism, it recommends that the Commissioner order that one be developed.

G-492 The Grievor learned that her son would be born with a medical condition. He would require an immediate and ongoing type of care which was offered 230 kilometres from her posting. Her superior told her that he genuinely believed that the Force could reimburse the travel costs that she incurred while driving her son to and from his out-of-town medical appointments. After the Grievor gave birth, she drove her son to and from 12 appointments, over five months. She filed expense claims totalling \$3,132. Her superior appreciated the fact that she limited her claims to certain costs. He approved her claims. The Force later paid them. The Grievor soon learned that an audit showed that she was not entitled to the \$3,132, that the Respondent felt he had no choice but to recover it as a debt owing to the Crown, and that it would be recovered shortly.

The Grievor filed a grievance. A Level I Adjudicator denied it. He held that the

Grievor was not entitled to the \$3,132 payment under the Force policies upon which she relied. He stated that those policies applied only to members at recognized isolated posts, or to members who were escorted by dependents on medical-related travel, and that the Grievor was neither. He noted that a government directive and a Force policy indicated that travel costs were not necessarily unpayable just because they arose from mistakes. However, he opined that the Force had to recover the Grievor's expenses in view of a provision of a government travel directive which required the retrieval of overpayments from "travellers". The Grievor filed a Level II grievance.

ERC Findings: The ERC confirmed that no authority entitled the Grievor to the \$3,132 she received. However, it disagreed that the Respondent had no option but to recover that sum as a debt owing to the Crown. It observed that the policy provision under which the overpayment recovery was ordered did not actually apply to the Grievor. This was so because she did not meet the policy's definition of "traveller". It also noted that although other Force authorities said that overpayments were to be recouped, a debt forgiveness provision of a federal Act permitted the government to waive overpayment-related debt in certain situations. It found that the record suggested that the Respondent would have looked into the possibility of debt forgiveness in the Grievor's circumstances, if he knew the option existed. It also found that there were compelling reasons for permitting the Grievor to keep her payment. It further opined that there was no authority at the time for the Grievor to successfully claim similar expenses in the future.

ERC Recommendations: The ERC recommends that the Commissioner of the RCMP allow this grievance, in part. In so doing, it recommends that he direct an appropriate official at National Compensation Services to inquire into whether the Grievor's debt may be forgiven under a statutory debt forgiveness authority. If the Commissioner opts to deny the grievance, then the ERC recommends that he direct the Respondent to recover the Grievor's debt in an authorized manner which does not impose financial hardship. Either way, it recommends that he affirm there was no authority for the Grievor to successfully claim ongoing similar expenses.

The ERC commented that the Grievor may wish to discuss costs with her insurer. It also remarked that she might inquire into whether she may receive a grant from the RCMP Benefit Trust Fund.

Update

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

G-383 (summarized in the July-September 2006 *Communiqué*) The Grievor was transferred to a post that was less than 40 km from his residence and was required to relocate. He believed that all the *Integrated Relocation Policy* (IRP) provisions and the transfer allowance (TA) entitlement would be applicable. The Grievor was enrolled in the IRP during informal discussions but his entitlement to a TA remained the issue of the grievance. While the Grievor relied on

the exact wording of a TBM to support his entitlement, the Respondent denied it. The ERC originally found that the Grievor was entitled to a TA and recommended that the grievance be allowed. In an addendum, the ERC modified its original recommendation and denied the grievance.

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

The Commissioner denied the grievance, as recommended by the Committee.

The Commissioner found the IRP to be categorical and without exception: a transfer allowance will not be paid for a relocation under 40 km, even if the relocation is authorized on the basis of documented operational need . The Commissioner agreed in this respect with the findings reached by then Acting Commissioner W. Sweeney in a Level II grievance decision on case G-411 (ERC 3300-05-006), a matter involving a similar issue. The Commissioner also agreed with the concerns expressed by the Acting Commissioner in G-411 over the use of Treasury Board Minutes in the consideration of a grievance. These concerns pertain to the privileged nature of Treasury Board Minutes as Cabinet Confidences pursuant to the Canada Evidence Act.

G-390 (summarized in the July-September 2006 *Communiqué*) The Grievor was provided meals and accommodation at the G8 summit. Travel claims were submitted claiming that the entitlements were substandard. The Respondent rejected the claims and argued that the entitlements

were justifiable under portions of the TB and RCMP travel policies. The Grievor asked for disclosure of health and safety related reports. The Respondent asked for a Level I ruling on disclosure. The Level I Adjudicator denied the grievance and relied on prior ERC recommendations. The ERC found that the Level I Adjudicator erred in making rulings on timeliness, disclosure, jurisdiction and mootness. The ERC recommended that the grievance be allowed and that the Commissioner order that the case be referred back to Level I.

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

The Commissioner concluded that the Level I Adjudicator erred when he failed to grant the Grievor's request for the disclosure of additional information. As a result, the Commissioner directed that the case be returned to Level I so that the grievance process could resume. The Commissioner determined that there should be a reconsideration and redetermination of the matter by a Level I Adjudicator once the record was made complete, since relevant information that was not disclosed could have changed the outcome of the grievance process.

The Commissioner agreed with the Committee that the Level I Adjudicator breached the duty to act fairly, as well as the RCMP's Grievance Policy, by making rulings on standing, time limits, mootness, and the merits of the grievance, without first advising the parties of his intention to consider these issues and giving them the chance to make representations.

This also warranted returning the file to Level I, so that the parties could be given the opportunity to make submissions on these issues. The matter would then be reconsidered by a Level I Adjudicator with the benefit of this information.

G-391 (summarized in the July-September 2006

Communiqué) The Grievor was provided meals and accommodation at the G8 summit. Travel claims were submitted claiming that the entitlements were substandard and did not accommodate members working night shifts. The Respondent rejected the claims and argued that the entitlements were justifiable under portions of the TB and RCMP travel policies. The Level I Adjudicator denied the grievances. He relied on prior ERC recommendations. The ERC found that the Level I Adjudicator erred in making rulings on timeliness. It also found that the complaint about work shifts and schedules is not referable to the ERC. The ERC recommended that the grievance be allowed, and that it be acknowledged that the Force did not provide the Grievor with appropriate accommodation and meals.

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

The Commissioner denied the grievance.

Timeliness of Grievance Presentation

The Commissioner agreed with the Committee that the Level I Adjudicator did not act fairly by reaching a decision on

the matter of timeliness of the grievance without first allowing the parties to make submissions on this issue. The Commissioner also agreed with the Committee that the grievance was presented within the time limit.

Accommodation and Meals

The Commissioner noted that the accommodation and meals supplied during the G8 Summit were designed to meet a specific operational need, while respecting the limited available land and the environment. Although it is possible that when performing their tasks some members, including the Grievor, were inconvenienced, the Grievor failed to establish that the accommodation and meal services he was provided failed to meet the applicable principles.

The Commissioner noted that grievors have the onus of establishing on a balance of probabilities that their grievance is well-founded. The Grievor did not provide basis to support his claim and therefore failed to meet his burden of persuasion. Accordingly, this part of his grievance was denied.

Overtime

The Commissioner noted that it was unclear from the record whether the Grievor was claiming overtime because he did not have enough rest, or because he worked in excess of scheduled hours.

The Commissioner found that, in accordance with RCMP policy and the G8 Joining

Instructions, the Grievor could have been compensated if his overtime claim reflected work performed in excess of scheduled hours. However, without copies of his overtime claim and home unit shift schedule in the grievance record, it was not possible to assess the Grievor's claim. The record showed that the Office for the Coordination of Grievances (OCG) sent two emails to the Grievor, requesting that he fax his overtime and expense claims. The absence of these documents in the record, notwithstanding the OCG's emails, suggested that the Grievor did not provide them to the OCG as requested. Considering the lack of information, the Commissioner found that the Grievor had failed to establish his claim for overtime. This part of his grievance was therefore denied as well.

G-395 (summarized in the October-December 2006

Communiqué) The Grievor was working at the G8 Summit. The Force rejected his overtime and travel claim. He also requested reimbursement for equipment that he had purchased and requested compensation related to substandard services. The Respondent rejected the claims and argued that the entitlements were justifiable under portions of the TB and RCMP travel policies. The Level I Adjudicator denied the grievances on timeliness. He relied on prior ERC recommendations. The ERC found that the Level I Adjudicator erred in making rulings on timeliness. The ERC recommended that the grievance be allowed as it related to time worked while on Standby Level I and that the matter be referred to the authority to determine the amount owing. The ERC also recommended that it be acknowledged that the Force did not provide the Grievor with appropriate

meal services in accordance with applicable policies and that he be reimbursed for actual and reasonable expenses.

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

The Commissioner allowed the grievance in part.

Timeliness of Grievance Presentation

The Commissioner agreed with the Committee that the Level I Adjudicator did not act fairly by reaching a decision on the matter of timeliness of the grievance without first allowing the parties to make submissions on this issue. The Commissioner also agreed with the Committee that the grievance was presented within the time limit.

Accommodation and Meals

The Commissioner noted that the accommodation and meals supplied during the G8 Summit were designed to meet a specific operational need, while respecting the limited available land and the environment. Although it is possible that when performing their security tasks some members, including the Grievor, were inconvenienced, the Grievor failed to establish that the accommodation and meal services he was provided failed to meet the principles of the TBTD. Accordingly, this part of the grievance was denied.

Overtime

The Grievor's overtime claim had two components, only one of which was allowed.

The Commissioner agreed with the Committee that the Grievor should have been paid for the hours he worked performing policing duties in excess of his scheduled 12-hours shifts. Accordingly, he allowed the grievance in part with respect to this claim, and directed that the matter be referred to the appropriate authority in order to determine the amount owed to the Grievor.

However, with respect to the Grievor's claim that he should be paid as if on continuous duty, because his free time was not unfettered and he could not leave the worksite, the Commissioner concurred with the Committee's conclusions and denied this claim.

Equipment and Clothing

The Commissioner agreed with the Committee's findings and denied this claim.

G-398 (summarized in the Communiqué) October-December 2006
The Grievor volunteered to work at the G8 Summit. He believed that he was entitled to overtime, because he had been given insufficient notice of a shift rescheduling. The Respondent argued that notice provisions did not apply to changes in the starting time of a shift following redeployment. A GAB report stated that the member should be compensated. The

Level I Adjudicator found that the Grievor lacked standing. The ERC found that the Grievor had standing and recommended that the grievance be allowed and that the file be returned to the proper authority for consideration of the overtime claim.

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

The Commissioner allowed the grievance.

The Commissioner agreed with the Committee that the Level I Adjudicator failed to act fairly when he did not provide the parties with the opportunity to present submissions, prior to reaching a decision on the issue of standing. The Commissioner also agreed that the Level I Adjudicator erred when he ruled that the Grievor did not have standing.

As for the merits of the grievance, the Commissioner agreed with the Committee that the Grievor was entitled to a 72-hour notice of the rescheduling of his shift, pursuant to a G8 Divisional Document that set out specific overtime rules for those deployed to the G8 Summit. As recommended by the Committee, the Commissioner directed the Respondent to consider the Grievor's overtime claim, once provided with the necessary information.

G-415 (summarized in the April-June 2007 Communiqué)
The Grievor was discharged under the WFAD, which also allowed members in the Grievor's circumstances some relocation expenses, but no reimbursement of home

equity loss. The Grievor claimed that, as she qualified for relocation under the terms of the WFAD, all of the provisions of the RD should apply to her also. The ERC found that the Grievor was not entitled to benefits under the RD and recommended that the grievance be denied.

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

Acting Commissioner William Sweeney agreed with the Committee's findings and recommendations and denied the grievance. Acting Commissioner Sweeney also directed that a policy review of the WFAD be performed. The review should consider how the language of the WFAD may be revised and clarified, with an aim of making the policy less complicated.

G-423 (summarized in the July-September 2007 Communiqué) The Grievor was on modified, largely administrative duties for a work related disability. The HSO assigned a Medical Profile, with lower ratings. The CM then had to identify employment opportunities. The CM noted that the Grievor's first preference was to remain in his actual position and location. The supervisor rejected the notion that the Grievor could keep his current position with modified duties. The ERC found that the Grievor had standing. It also found that the Level I Adjudicator erred when he accepted the Respondent's argument that the Grievor's position could not be rebundled into one without operational duties. The ERC recommended that the grievance be allowed.

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

The Commissioner denied the grievance. He noted that the physical standards of the Grievor's position were adopted to ensure that members can work safely and efficiently. The RCMP adopted these standards in an honest and good faith belief that the ability to perform these tasks is necessary. To continue accommodating the Grievor in this position, as per the Grievor's last medical profile, would require further modification of the key duty requirements of the position. In the Commissioner's view, the Force would experience undue hardship as a result. Accordingly, the Commissioner could not support the Grievor's request to be accommodated in that position.

G-425 (summarized in the October-December 2007 Communiqué) The Grievor drove his own car to attend a private course on his day off. He later submitted a mileage expense claim, but the Respondent refused to approve it. The Level I Adjudicator denied the grievance and also ordered the recovery of all course-related funds spent on the Grievor's course. The ERC found that the applicable TB and RCMP travel policies require members to obtain written pre-authorization before they traveled, and there was no evidence that the Grievor had done this. The ERC recommended that the grievance be denied and that the order for recovery of funds be rescinded.

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

The Commissioner denied the grievance. The Commissioner agreed with the ERC that the Grievor was not entitled to reimbursement for private motor vehicle mileage expenses incurred while voluntarily attending a non-RCMP training course, as he did not obtain the Respondent's authorization for these expenses. The Commissioner also agreed with the ERC that the Level I Adjudicator overstepped his authority and was in error when he ordered the recovery of funds.

G-456 (summarized in the January-March 2009 Communiqué) The Grievor filed a grievance challenging the RCMP's failure to inform her that her counsel had left one year earlier, during her appeal of a discharge and demotion board decision. The ERC found that it does not have jurisdiction over the grievance and therefore did not make any recommendations.

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

[TRANSLATION]

The Commissioner agrees with the External Review Committee that this grievance does not qualify as a type of grievance that can be referred to the Committee for review.

The Commissioner personally acts as a Level II Adjudicator only for grievances that must first be reviewed by the Committee. As a result, the Commissioner is referring this file to the Level II Adjudicator appointed to rule on the grievance.

G-481 *(summarized in the
October-December 2009*

Communiqué) The Grievor grieved the Respondent's decision to order the stoppage of his pay and allowances (SPA). The ERC found that all of the criteria for an SPA order had been met. The Respondent's decision respected the principle that, in extreme circumstances, an SPA order is a preventive measure designed to protect the integrity of the Force. The ERC recommended that the grievance be denied.

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

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

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