



Royal Canadian Mounted Police External Review Committee

Between April and June 2006, the Committee issued the following recommendations:

IN THIS ISSUE

Recommendations

- 1 D-098
- 2 G-374
- 4 G-375
- 5 G-376
- 7 G-377
- 8 G-378
- 9 G-379
- 9 G-380
- 10 G-381
- 11 G-382

Decisions

- 12 D-091
- 13 D-095/D-096
- 14 G-347
- 15 G-370

16 Quick Reference Index

D-098 The member was alleged to have violated the *Code of Conduct* by entering into an intimate relationship with a citizen who was also a complainant in a criminal matter assigned to him. In the course of this relationship, the Appellant was alleged to have attended at the citizen's home and engaged in sexual relations, both while on and off duty and to have used his Force vehicle in the furtherance of this relationship. In addition, he was alleged to have behaved inappropriately, specifically by holding hands with the citizen while driving her to a Court appearance.

The Member Representative (MR) brought a motion at the commencement of the proceedings to strike the allegation as falling outside the time limits imposed by s. 43(8) of the *RCMP Act*. The Board determined that the Appellant had the onus of establishing that the time limits were not met and he had failed to discharge that onus.

The Appropriate Officer Representative (AOR) introduced an Agreed Statement of Fact (ASF), which included summaries of evidence given by witnesses. The MR submitted that the witness evidence was submitted on the basis that the Appellant admitted that the witnesses provided the evidence as reproduced, but that the truth of the evidence was not admitted. The Board considered the content of the evidence in reaching their decision on the allegation and on sanction. The Board found that the allegation of disgraceful conduct was made out. They order the Appellant to resign or be dismissed.

The Appellant appealed with respect to the time limits determination and the sanction, but not the finding of disgraceful conduct. The Appellant also argued that the Board misused the ASF, given that the truth of the witness evidence was not admitted.

Committee's Findings

The Committee found that, as no certificate as per section 43(9) of the *RCMP Act* was given to the Board, the onus was on the Respondent to establish that the time limits had been complied with. The Respondent's evidence was weak and inconclusive as to when exactly he first became aware of the contraventions and the identity of the Appellant. Therefore, the Respondent did not satisfy the burden of proving that the statutory time limit was respected.

In the event that the Commissioner disagreed with the Committee's recommendation, comments were made on other issues raised in the appeal.



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

APRIL-JUNE 2006

communiqué

The Committee observed that the witness evidence in the ASF could be considered unsworn evidence tendered on consent. If the parties both agreed to the Board receiving evidence for which they waived their right to cross-examine, then the Board should be entitled to receive it, consider it, assess its weight, and draw inferences from it where warranted.

However, as there was considerable confusion surrounding the ASF, it was open to the Board to question whether there was actually agreement on what was included in the ASF. If there was no actual agreement, the Board could have rejected the ASF and required that the facts be proved. The Committee found that this may have been the more prudent way to proceed, especially since the law requires that, absent consent of the parties, the Board is to consider only oral testimony under oath or written evidence on affidavit.

On the issue of sanction, the Board found there were a significant number of questions that could be raised regarding the Board's assessment of the mitigating and aggravating factors, the use of the ASF, and the issue of parity. As a result, there is sufficient reason for the Commissioner to consider whether a less onerous sanction should have been ordered in this case.

Committee's Recommendation

The Committee recommends that the Commissioner find that the time limits were not adhered to, allow the appeal and dismiss the allegation.

G-374 In 1996, the Grievor, then a Public Service Employee, changed her status to that of a civilian member (CM) of the RCMP. At that time she was advised that to change status, she was deemed to have quit the public service position and consequently, she received severance pay in 1996 half the normal rate. This meant that years later, her retirement severance pay, although calculated at the full rate based on her higher present salary, would be based only on her 9 years as a CM, instead of 31 years of combined PSE and CM service. On May 4, 2005, the Grievor sent a memo to the Director of the RCMP National Compensation Policy Centre asking for a review of the way that her change in status had been handled. She stated that she had recently found out that other PSEs who changed status to CMs around the same time she had, were not been deemed to have quit, did not receive severance pay at the time of the change in status, and were eligible to receive retirement severance pay at the full rate based on their present salary calculated on the basis of all of their years of service including their years as PSEs. The Respondent refused the request for a review. The member presented a grievance. The Level I Adjudicator found the grievance to be timely but noted that the policy at the source of the grievance was clearly not an RCMP policy but a Treasury Board policy. The grievance was dismissed on the basis that the decision was not made *"within the administration of the affairs of the Force"*, and therefore, the Grievor did not have standing. The Grievor presented her grievance to Level II, arguing that it was the Force that administered the direction from Treasury Board, and therefore it was a decision made in *"the administration of the affairs of the Force"*.

Committee's Findings

Because the Grievor's request for a review came out of a later discovery that other people who had moved to CM positions had not been deemed to have quit, the matter was put in a whole new light. Therefore, the Committee found that the grievance was presented within statutory time limits. The Committee found that the Level I Adjudicator erred in finding that the Grievor did not have standing. If the RCMP is given authority to interpret and apply a Treasury Board policy, then such a decision is very much a decision, act or omission "in the administration of the affairs of the Force". However, the Committee found that the case was impossible to review because the record is incomplete. It does not identify the specific policy and law that was interpreted and applied; or who had the authority to make the decision in 1996. The Committee stated that the minimum requirements under section 33(3) of the Act have not been met.

The Committee also identified several procedural errors in this grievance:

- 1) Contrary to the relevant *Commissioners Standing Orders* (CSO), the Respondent was never advised that a grievance had been presented against him;
- 2) The case was sent to Level I on the issue of timeliness without input from the parties, which violates the CSO and the duty to act fairly;
- 3) The file did not proceed to the early resolution phase, contrary to the relevant CSO, and
- 4) There were no steps taken to provide disclosure to the Grievor. Section 31(4) of the Act gives the Force the obligation to disclose to the Grievor whether or not the Grievor asks for it. At the minimum, the Force should have identified to the Grievor the policy and law used in 1996 to decide how to process her change in status, and should have provided any written information documenting the 1996

decision; who had authority to make the determination about how her change in status would be processed; and any other relevant written or documentary information under its control that it believed the member would reasonably require to properly present the grievance.

Committee's Recommendation

The Committee recommends to the Commissioner of the RCMP that he allow the grievance and order that the case be referred back to Level I for reconsideration and redetermination once the record is made complete and the procedural errors are addressed.

G-375 The Grievor was advised by memo in late 2003 that members would be responsible for their mid-shift meals when scheduled for routine patrol. In February 2004, within thirty days of having been denied an expense claim for mid shift meals, the Grievor filed a grievance for reimbursement of \$99.00 as well as reimbursement on future claims. He argued that the Force should reimburse him because it was impossible for him to return home and the vehicles were not equipped to carry prepared meals. On the request of the Level I Adjudicator, the Grievor provided a list of all traffic violations prepared on the days that he was requesting reimbursement for a mid-shift meal. The Level I Adjudicator denied the grievance because the request for future claims was outside his authority, and because the Treasury Board *Travel Directive* (TBTD) (October 1, 2002) and the RCMP Administrative Manual (AM) VI.I did not authorize payment of the Grievor's claim. In addition, the traffic ticket information showed that it would have been possible for the Grievor to organize his patrol duties in a way that would have allowed him to have the mid-shift meals at home. The Grievor brought a Level II grievance that was dated within the fourteen day time limit, but was not received until after the time had expired.

Committee's Findings

The Committee found that the Level I grievance was timely because it was within thirty days of the time that the expense claim was denied. The Level II grievance was out of time, but section 47.4 of the *RCMP Act* should be applied to extend the time limit, given that there was some doubt as to whether the delay was entirely the fault of the Grievor. On the merits, based on past recommendations, the Committee found that the TBTD must be read in light of section 4(2)(d) and 4(3) of the Treasury Board Minutes no.704761 and no. 710531 ("TBMs"). Where there is a discrepancy between the TBTD and the TBMs, it is the TBMs that govern. Where there is a discrepancy with the RCMP AM VI.I and the TB documents, the TB documents prevail. Furthermore, the TBTD, effective October 1, 2002 must be read in light of the TBMs. The TBTD could not of itself have rescinded the TBMs, and there is no evidence that Treasury Board has rescinded the TBMs.

Following the Committee and Commissioner recommendation in ERC 2200-00-003/4/5/6 (G-256-7-8-9), to incorporate the spirit fo the new TBTD into the interpretation of the TBMs would require the Force to recognize that in certain cases of travel of less than one day, members may be entitled to a meal allowance rather than being reimbursed only for actual costs incurred. In this case however, the record does not contain adequate information for the Commissioner to decide the grievance on the merits. There were other factors, apart from those highlighted by the Level I Adjudicator, that may be relevant to sections 4(2)(d) and 4(3) of the TBMS that were not addressed.

Given the uncertainty and confusion surrounding the question of what TB and RCMP policies apply to RCMP travel, and how the applicable policies are to be interpreted, the Committee recommends that the Commissioner order a review of all TB and RCMP policies related to RCMP travel. Such a review would confirm the status of the TBMs, establish a clearer framework for assessing claims related to RCMP travel, and recommend changes to the applicable policies to address contradictions and inconsistencies. A more coherent and transparent travel policy would be of benefit to the RCMP, both for those making claims and for those assessing claims.

Committee's Recommendation

The Committee recommends that the Commissioner allow the grievance and order that the Grievor's request for reimbursement of meal expenses be returned to the centre responsible for the original decision so that a new decision can be made in accordance with the applicable law and policies. The Grievor should be given the chance to make submissions, as it appears that he was not fully informed about what policies applied to his claims.

G-376 The Grievor was reimbursed for meal expenses for travel of less than one day at the allowance rates suggested by his supervisor. He then learned that members in another Division who performed the same job were reimbursed for meals at a higher rate. In his Level I grievance he asked that the Force pay him the balance between what he had already been paid for his meals, and what he would have been given if his original claim had been assessed at the higher allowance rate. He also made requests for disclosure. The Respondent argued that the Grievor was out of time because the Grievor was informed of the policy at an orientation more than thirty

days before he presented his grievance. In addition, a claim for additional reimbursement could not be considered without receipts. The Level I Adjudicator found that the Grievor did not have standing and denied the grievance. The Grievor was reimbursed for the actual costs that he incurred. It was irrelevant that other members have been reimbursed for meals at different rates. The Grievor presented the grievance to Level II.

Committee's Findings

Time Limits: The grievance was timely because it had been presented within thirty days of the denial of his request for additional reimbursement in the name of financial parity. *Standing:* The Grievor has standing. He was aggrieved by the Respondent's decision to deny the claim for additional reimbursement. This affected him personally, regardless of arguments on the merits. *Disclosure:* The manner in which the requests for disclosure were handled was acceptable. The Respondent directed the Grievor to the copy of the Treasury Board *Travel Directive* ("TBDT") on the Treasury Board website to address his request for the rationale for travel. He also advised the Grievor that the basis of both Divisions' travel decisions was the TBDT. The budget documents requested by the Grievor were not relevant to the grievance and the request for "any further information that will support my case..." was too vague. *Merits:* Based on past recommendations, the Committee found that the TBDT must be read in light of the Treasury Board Minutes no.704761 and no. 710531 ("TBMs"). Where there is a discrepancy between the TBDT and the TBMs, it is the TBMs that govern. Where there is a discrepancy with the RCMP AM VI.I and the TB documents, the TB documents prevail. The TBDT, effective October 1, 2002 must be read in light of the TBMs. The TBDT could not of itself have rescinded the TBMs, and there is no evidence that Treasury Board

has rescinded the TBMs. On the days for which he is claiming reimbursement for meal expenses, the Grievor was on the travel status defined in section 4(2)(d) of the TBMs. He was on a "round trip journey" that took place on the same day, and could not be said to have remained "in the vicinity of the Worksite". Following the Committee and Commissioner recommendation in ERC 2200-00-003/4/5/6 (G-256-7-8-9), to incorporate the spirit of the new TBDT into the interpretation of the TBMs would require the Force to recognize that for travel outside headquarters areas-no overnight stay, members may be entitled to a meal allowance rather than being reimbursed only for actual costs incurred and no receipt was necessary. The Grievor's district also erred by using a dinner rate lower than the TB allowance rate, but it was reasonable to use allowance rates set in Canadian dollars, because the travel was both in Canada and the U.S.

Given the uncertainty and confusion surrounding the question of what TB and RCMP policies apply to RCMP travel, and how the applicable policies are to be interpreted, the Committee recommends that the Commissioner order a review of all TB and RCMP policies related to RCMP travel. Such a review would confirm the status of the TBMs, establish a clearer framework for assessing claims related to RCMP travel, and recommend changes to the applicable policies to address contradictions and inconsistencies. A more coherent and transparent travel policy would be of benefit to the RCMP, both for those making claims and for those assessing claims.

Committee's Recommendation

The Committee recommends to the Commissioner of the RCMP that he allow the grievance and order that the Grievor's claims be reassessed using the Treasury Board allowance rates as per the applicable Appendix C of the *Treasury Board Travel Directive, effective October 1, 2002*.

G-377 The Grievor received an anonymous email from an unattended computer terminal which he found offensive. The Grievor filed a harassment complaint with his Commanding Officer (the Respondent), who ordered the noncommissioned officer (NCO) in charge of the section where the email appeared to have originated to investigate. This NCO had a previous history of discord with the Grievor. The NCO sent an email and interviewed the members of his unit, but did not determine the author of the email. Members were advised the email was considered inappropriate and unprofessional and were instructed to utilize password protection on their computer terminals. The Respondent reported back to the Grievor that he had determined that the email did not constitute harassment and that appropriate action had been taken.

The Grievor filed a grievance complaining about the email and the subsequent investigation.

The Level I Adjudicator found that the Respondent should have appointed an investigator who had no link to the suspect unit, and he should not have appointed someone who had a history of discord with the Grievor. The Level I Adjudicator also found that the email was likely harassment and ordered a new investigation. The Grievor objected to the redress offered, instead seeking financial compensation.

Committee's Findings

The Committee found that the email in question constituted harassment. The Committee also found that the Respondent did not make an appropriate choice of investigator as the individual chosen was in charge of the unit where the objectionable email was alleged to have originated and there was a history of discord between him and the Grievor. The Committee found that due to the passage of time, a new investigation is not possible and that this is not an appropriate case for compensation.

Committee's Recommendation

The Committee recommends to the Commissioner of the RCMP that the grievance be allowed and that he include in his decision a declaration confirming that the Grievor was the recipient of an objectionable email that constituted harassment. The Committee also recommends that the Commissioner confirm that the Respondent erred in his choice of investigator and that he apologize to the Grievor for this procedural error.

G-378 The member complained that she had been harassed by two supervisors. The Officer in Charge ("OIC"), after having discussed her complaint with the District Commander ("DC") and one of the alleged harassers, advised the member that he had decided not to proceed further with her complaint given that her allegation involved a workplace conflict matter and that there were performance issues on her part. In her grievance, the member argued that her harassment complaint should have been investigated. She listed the OIC and the two alleged harassers as Respondents. The file was sent to the Level I Adjudicator for a ruling on who should be named as Respondent in the file. The Level I Adjudicator dismissed the grievance because he found that the member did not have standing. The member presented the grievance to Level II.

Committee's Findings

The Committee found that the Level I Adjudicator should not have made the decision on standing without giving the parties the chance to be heard on the issue. However, given that the parties had now had a chance to make representations at Level II, their right to be heard on the issue had been respected. The Committee found that the Level I Adjudicator erred when he decided that the member did not have standing, because the refusal to investigate the complaint had an effect on the member personally. On the merits, the Committee found that both the Treasury Board harassment policy ("TB policy") and the internal Force policy needed to be followed in dealing with the harassment complaint. If there was a contradiction, the TB policy would prevail. In the Committee's view, one section in the Force policy was inconsistent with the TB policy. The fact that a commander/supervisor could decline to initiate an investigation where it was determined that the harassment was not severe was contrary to the TB policy. Any future determination that the member's allegation was related to harassment, and subsequent decision as to whether an investigation should be ordered, ought to be made without consideration of that section in the Force policy.

Further, the Committee found that the OIC and the DC followed none of the preliminary steps as set out in TB and Force policies. As well, they erred in deciding not to initiate an investigation into the member's complaint because the member's allegations, if founded, would constitute harassment and not merely workplace conflict. It appears as though the extent of the OIC or the DC's review of the complaint was to have a discussion with one of the alleged harassers, and on that basis, to decide to not initiate an investigation. This way of proceeding was a violation of the duty to act fairly, in that one of the parties was heard, and the member

was not given a chance to present her case. Finally, even if the issue was one of workplace conflict, nothing was done to resolve this issue as required by both policies.

Committee's Recommendation

The Committee recommends that the file be returned so that the harassment complaint can be dealt with by a different decision-maker according to the applicable TB and Force policies, and that the Commissioner order that the OIC and DC receive training on proper procedures for dealing with harassment complaints. The Committee also recommends that a decision be made regarding who the appropriate Respondent is on the file before any further action is taken.

G-379 The Grievor was hired as a civilian member at the minimum rate of engagement for her classification. Later she learned that two male colleagues who were hired after her were receiving salaries that were considerably higher than the minimum rate of engagement, and also higher than her own. The Grievor complained that the salary differential was discriminatory and she requested that her salary be adjusted to the same level as the highest paid of the two males, retroactive to her start date. This request was denied on the basis that the Grievor had agreed to the salary level at the time that she was hired.

Committee's Findings

The Committee found that the OIC erred when he assessed the discrimination complaint without following the steps and considering the factors set out in the *Canadian Human Rights Act* and the related *Equal Wages Guidelines, 1986*. Due to lack of information on the file, the Committee found that it is not possible for the wage discrimination complaint to be decided at Level II.

Committee's Recommendation

The Committee recommends to the Commissioner of the RCMP that he allow the grievance and order a full review of the Grievor's complaint of gender discrimination in the setting of wages.

G-380 The Grievor was hired as a Civilian Member in June 2003 with a classification of Computer Personnel, Level 2 (CP-02). In July 2004, the Grievor became aware that her male co-worker, also a CP-02, was receiving a higher salary. According to the Grievor, in terms of work experience, education and training and work performance, her qualifications were as good or they exceeded that of the male co-worker. In addition, she stated that they were performing the same job and she had more seniority with the Force.

The Grievor filed a grievance, stating that the salary differential amounted to discrimination under the *Canadian Human Rights Act*. She requested that she be given a back-dated pay increase effective from her date of engagement as a Civilian Member, and all scheduled pay increments from that time. The Grievor requested disclosure of all documentation related to the engagement of the male co-worker. The Respondent denied the disclosure request. The Level I Adjudicator supported the denial, stating the requested material was personal information and as such, it was protected under the *Privacy Act*.

Committee's Findings

The Committee found that the Level I Adjudicator and the Respondent erred when they assessed the discrimination complaint without following the steps and considering the factors set out in the *Canadian Human Rights Act* and the related *Equal Wages Guidelines, 1986*. The Committee also found that it is not possible for the wage discrimination complaint to be decided at Level II as important information was lacking.

The Committee also found that the Level I Adjudicator decision on disclosure was incorrect. Disclosure is governed by section 31(4) of the *RCMP Act*: information, even personal information, should be disclosed if it is under the control of the Force, it is relevant to the grievance and the member reasonably requires it to properly present the case. However, in disclosing third party personal information to Grievors, only that information that is necessary to respect section 31(4) of the *RCMP Act* should be disclosed.

Committee's Recommendation

The Committee recommends to the Commissioner of the RCMP that he allow the grievance and order a full review of the Grievor's complaint of gender discrimination in the setting of wages, including the appropriate disclosure.

G-381 The Grievor, a staff sergeant, had served as inspector in an acting capacity for six to eight months. The Respondent refused the Grievor's request that the acting pay be included in the calculation of his pensionable earnings. The Respondent then cited section 8(1) of the *RCMP Superannuation Regulations*, which lists the allowances to be included as pay. Since the allowance of acting pay is not mentioned, the Respondent concluded that it is not pensionable.

In his grievance, the Grievor stated that the acting pay is the same as remuneration or a salary, and noted that the Respondent's refusal is contrary to the mission, values and professional ethics of the RCMP. He also said that the Respondent's restricted interpretation discriminated against him with relation to other government employees. The grievance was dismissed at Level I.

Committee's Findings

The Committee found that it did not have jurisdiction to hear this grievance. The only grievances that can be referred to the External Review Committee are those listed in Section 36 of the *Royal Canadian Mounted Police Regulations*. This grievance clearly is not included in the categories set out in subsections (b) through (e). Under subsection 36(a) of the *Regulations*, the grievance must relate to a government policy that applies to the departments of the Government of Canada. The Respondent's decision must comply with the conditions of an act or regulation that only apply to members of the RCMP. As a result, a grievance relating to their interpretation and application is not included in the category described in subsection 36(a) of the *Regulations*. This finding reflects the approach taken by the Committee and the Commissioner in ERC 3300-05-015 (G-370).

Although the Grievor says that he was a victim of discrimination and the Committee has already determined that it has jurisdiction to hear grievances in which the Grievor raises an issue relating to the *Canadian Charter of Rights and Freedoms* or the *Canadian Human Rights Act*, the ground of discrimination cited by the Grievor is not recognized in these two pieces of legislation. The Committee therefore concluded that it did not have jurisdiction to rule on the merits of this grievance and did not make a recommendation to the Commissioner.

Committee's Recommendation

The Committee made no recommendation to the Commissioner because it found that it did not have jurisdiction to hear the grievance.

G-382 The Grievor filed a harassment complaint against three superior officers. He alleged a conspiracy to harass him and also complained of a series of specific acts which he alleged amounted to harassment. The Respondent declined to investigate the complaint on the basis that there was no evidence of a conspiracy and the specific acts complained of amounted to administrative decisions or workplace conflict. The Grievor filed a grievance against the decision not to investigate his complaint.

Committee's Findings

The Committee found that the Respondent failed to follow the process required by the Treasury Board policy "*Harassment in the Work Place Policy*", chapter 3-2 of the Treasury Board Manual.

Further the Committee found that the Respondent's conclusion that no investigation was required because the allegations were mostly workplace conflict issues was in error. A number of the allegations were related to administrative decisions, however, this in itself does not rule out the possibility of harassment, because abuse of authority, a type of harassment, can be made up of a series of administrative decisions. Therefore, a full investigation should have been ordered.

Committee's Recommendation

The Committee recommends to the Commissioner of the RCMP that the grievance be allowed.

The Committee also recommends that the Force apologize to the Grievor for the fact that his harassment complaint was not dealt with in the manner required by the applicable Treasury Board policy.

Due to the passage of time, the Committee declines to recommend that an investigation be ordered.

UPDATE

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

D-091 (summarized in the January-March 2005 Communiqué) A civilian member was found to have violated the *Code of Conduct* by an adjudication board following four allegations of threatening to inflict injuries, harassing her former lover, disobeying an order, and absenting herself from her district area without her manager's approval. The member's appeal pertained primarily to the Board's rejection of her motion for dismissal and its findings concerning the credibility of witnesses. The Committee found that the Board did not disregard any important element of the evidence when it addressed the assessment of the witnesses' credibility. It also found that the Board's finding that the second allegation was established is problematic. The Committee recommended that the appeal of the Board's finding on the first allegation be dismissed and that the appeal of the finding on the second allegation be allowed.

Commissioner's Decision

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

[TRANSLATION] *With respect to the issue of whether the new representations filed following the report of the External [Review] Committee [ERC] are admissible, the Commissioner decided not to take into account the written comments by the Appellant or the objections made by the Respondent's representative. The Commissioner also rejected the application to order a stay of proceedings, because the evidence did not show that the proceedings*

had prejudiced the administration of justice. Furthermore, the Appellant's rights and freedoms were not violated.

The Commissioner then rejected the argument to the effect that the Appellant had been deprived of the opportunity to present a full and complete defence because a number of details had not been included in the notice of disciplinary hearing. As for the evaluation of the witnesses' credibility, the Commissioner accepted the Adjudication Board's credibility analysis and dismissed this as a ground of appeal. As the Adjudication Board was in a better position to assess the credibility of the witnesses, the Commissioner assigned considerable deference to the panel.

Lastly, with respect to the findings of the Adjudication Board with respect to the allegations, the Commissioner agreed with the findings and recommendations of the External Review Committee for the first allegation and saw no reason to overturn the findings of the Adjudication Board. For the second allegation, the Commissioner found that the Adjudication Board had an incorrect perception of the conduct deemed disgraceful and therefore allowed the appeal of this allegation as recommended by the External Review Committee. The Commissioner upheld the Adjudication Board's sanction of a warning and a forfeiture of two days' pay. He also upheld the recommendation that the Appellant continue to receive professional treatment in accordance with the recommendations of the RCMP Health Services to ensure that the Appellant's health status does not prevent her from performing her duties within the organization.

D-095/D-096 *(summarized in the*

October-December 2005 Communiqué) Two members faced allegations of disgraceful conduct involving the inappropriate use of the RCMP's Mobile Work Stations (MWS). At the hearing, both Appellants admitted that while on duty, they had sent numerous communications over the MWS that were derogatory towards colleagues and members of the public. The Board concluded that an order to resign was the appropriate sanction since the Appellants had been disciplined previously for similar conduct and that the messages contained vulgar, racist, sexist and demeaning comments that disregarded the RCMP Core Values. The Committee found that there was no evidence that would suggest an appearance that the members were not impartial. It also found that the Board made no errors in its findings of fact, and properly assessed the relevant factors. The Committee recommended that the appeals be dismissed.

Commissioner's Decision:

The Commissioner's decision is as follows:

On the collateral issue of submissions made subsequent to the ERC report, the Commissioner refused, as in past decisions, to consider the post-ERC comments. While he agreed that each case must be viewed on its own, he clearly indicated that cases in which he would consider arguments submitted subsequent to the ERC report would be rare as it is not the role of the parties to comment on those findings and recommendations. That statutory responsibility falls to him.

On the issue of submitting additional materials on appeal, the Commissioner ruled that the materials did not constitute fresh evidence and, accordingly, he did not consider them on appeal.

Regarding the claim that the Board was biased because the Appropriate Officer outranked the Board members, the Commissioner ruled that the RCMP discipline process was sufficiently independent to meet the requirements of natural justice. Furthermore, by not raising this issue before the Board, the Appellants had waived their right to do so on appeal. Consequently, this ground of appeal was dismissed.

As for the issue of procedural unfairness due to the fact that the Appropriate Officer was not called to testify, the Commissioner agreed with the ERC that the appeals should not be upheld on this ground of appeal. Indeed, the Board did not have to rely on the impugned comments of the Appropriate Officer Representative to determine that the chain of command had lost confidence in the Appellants. The sanction of dismissal sought by the Appropriate Officer implicitly acknowledges that loss of confidence since discharge is reserved for cases where the employer no longer has confidence in an employee. However, the Commissioner indicated that the comments of the Appropriate Officer Representative must not amount to a belabouring of the point or to the expression of the personal views of the Appropriate Officer. Also, the Commissioner disagreed with the ERC that it would be appropriate to use the Agreed Statement of Facts to establish the evidentiary foundation that ties the reasons for seeking the members' discharge to evidence presented during the hearing.

The Commissioner also ruled that the Board had not erred in its appreciation and weighing of the facts. He disagreed with the

Appellants' contention that the Board erred by failing to take into account the fact that they spent little of the Force's time in creating the impugned e-mails. This ground of appeal was therefore dismissed.

On the issue of biased witnesses, the Commissioner confirmed that considerable deference should be given to an adjudication board's findings on the credibility of witnesses. Accordingly, the Commissioner agreed with the Committee's analysis and conclusions and ruled that there was no reason to interfere with the Board's finding that a specific witness was credible. This ground of appeal was dismissed.

On the issue of the Board misinterpreting the expert evidence, the Commissioner was satisfied that the Board had correctly interpreted the evidence and agreed with the ERC that the Board made no error in this regard. This ground of appeal was also dismissed.

As for the issue of the weight attributed to previous discipline, the Commissioner again agreed with the ERC that the Board was correct in weighing, as an aggravating factor, the informal discipline that the Appellants had received in the past. The Commissioner ruled that the Board did not place undue emphasis on this factor. This ground of appeal was dismissed.

Finally, on the issue of parity of sanction, the Commissioner addressed the Appellants' argument that since the Force had not dismissed members whom they felt had committed more serious contraventions of the Code of Conduct, they should not be dismissed. As the highest appellate authority in the discipline system, the Commissioner is not bound by previous adjudication board decisions. However, in deciding whether the Appellants' conduct warranted dismissal, the Commissioner was mindful of the standard

that must be met before an employer is justified in dismissing an employee for misconduct. Furthermore, the Commissioner clearly indicated that the Appellants were not being discharged simply because they had used RCMP IT equipment for private communications, but also because of the vulgar, racist, sexist and demeaning content of the messages. The Commissioner believed that the imposed sanction was justified.

Accordingly, the appeal was dismissed and the Commissioner affirmed the decision of the Board. The Appellants were directed to resign from the RCMP within fourteen days of being served with the decision, in default of which they was to be dismissed.

G-347 (summarized in the April-June 2005 Communiqué) The Grievor filed a complaint of harassment against his supervisor. The Respondent indicated to the Grievor that, in his opinion, there was no need to initiate a harassment investigation. Over one year after the alleged harassment and over nine months after receiving the Respondent's decision, the Grievor filed a grievance. The Level I Adjudicator determined that the grievance was inadmissible since it had been filed after the 30-day time limit imposed under the Act. The Committee agreed with the Board and concluded that the grievance was inadmissible.

Commissioner's Decision

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

[TRANSLATION] *Contrary to s. 31(2)(a) of the RCMP Act, the Grievor did not present his grievance within the required 30 days. Whereas he was aware of the decision, act or omission giving rise to the grievance on November 1, 2000, the grievance was not presented until August 30, 2001.*

The Commissioner agrees with the ERC that the circumstances at issue do not justify an extension under s. 47.4 of the Act. The Grievor did not demonstrate that there was confusion about his right to present a grievance or about the 30-day time limit to present the grievance. Even the Grievor's state of health in 2000 cannot explain a delay of over nine months.

The Commissioner therefore determined that the grievance was not admissible. Consequently, the Commissioner did not have to rule on the merits of the grievance.

G-370 (summarized in the January-March 2006 Communiqué)

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. He did not. Several years later, the Grievor requested that the Force calculate the cost for the buy-back of pensionable service. The Grievor objected to the increased cost resulting from the seven-month delay in providing the buy-back amount. The Level I Adjudicator found that the matter was out of time and, therefore, did not address the merits of the grievance. The Committee found that the *Royal Canadian Mounted Police Superannuation Act* was applicable to the RCMP alone and concluded that it was not one that was referable to it according to section 36 of the *Royal Canadian Mounted Police Regulations*.

Commissioner's Decision

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

The Commissioner agreed with the Committee that the grievance is not one that is referable under section 36 of the RCMP Regulations, 1988. He directed that the matter be forwarded to the designated Level II adjudicator for a decision.

QUICK REFERENCE INDEX (1998 to date)

Disciplinary Matters

Abuse of sick leave	D-060
Adverse drug reaction	D-070
Amending an RCMP document	D-061
Appropriation of goods seized during searches	D-065, D-066
CPIC - unauthorized enquiries	D-078
Data transmission across Internet	D-093
Disclosure of protected information	D-076, D-081, D-092
Disobeying a lawful order	D-087
Domestic violence	D-051, D-067, D-072
Driving while impaired	D-062, D-063
Duty of loyalty	D-076, D-081
Errors of fact and law by Adjudication Board	D-078, D-084, D-085, D-086, D-088, D-089, D-090, D-097
Excessive force	
- arrest	D-064, D-083
- person in custody	D-069, D-084
Fairness of hearing	D-074, D-085, D-086
Fraud	D-054
Harassment	D-091
Hindering investigation	D-077, D-088
Inappropriate conduct towards persons under 18	D-056, D-097
Inappropriate use of Mobile Work Stations (MWS)	D-095/D-096
Informal discipline	D-059
Joint representation on sanction	D-061
Medical exam	D-087
Off-duty conduct	D-073
Relationship with a complainant	D-098
Reprimand	D-059
Service revolver	
- storage	D-056, D-067
- use	D-063, D-072, D-073, D-080
Sexual misconduct	
- assault	D-068
- harassment	D-053, D-071, D-074
- inappropriate touching	D-055, D-056
- other	D-057, D-058
Statutory limitation period	D-052, D-054, D-075, D-082, D-098
Stay of proceedings	D-074, D-079, D-091
Theft	D-094
Uttering a threat	D-067, D-091

Discharge and Demotion

Lack of "assistance, guidance and supervision"	R-004
Repeated failure to perform duties	R-003

Grievance Matters

Administrative discharge	G-272, G-312
Bilingualism bonus	G-204, G-207, G-220, G-228, G-231
Classification	G-206, G-219, G-279, G-321, G-336, G-343
Disclosure of personal information	G-208, G-209, G-210
Discrimination	
- Gender	G-379, G-380
Government housing	G-314, G-346, G-361
Harassment	G-216, G-235, G-237, G-251, G-253, G-268, G-270, G-287 to G-292, G-293, G-294, G-298, G-302, G-322 and G-323, G-324, G-326, G-347, G-350, G-351, G-352, G-354, G-355, G-356, G-362, G-367, G-377, G-378, G-382

Isolated posts	G-255, G-269, G-365, G-368, G-369
Jurisdiction	G-213, G-224, G-236, G-241, G-243, G-245, G-264, G-370
Language requirements	G-229, G-252, G-271
Legal counsel at public expense	G-234, G-247, G-277, G-282, G-283, G-313, G-316, G-327, G-339, G-340, G-358
Living Accommodation Charges Directive (LACD)	G-214, G-249, G-273, G-361
Mandatory retirement age	G-325
Meal allowance	
- mid shift meals	G-375
- other	G-238, G-265, G-303 to G-310, G-334, G-341, G-371
- short term relocation	G-250
- travel of less than one day	G-256, G-257, G-258, G-259, G-376
- travel status - medical purposes	G-274
Medical discharge	G-223, G-233, G-261, G-266, G-267, G-284-285
Occupational health & safety	G-264
Premature grievance	G-275, G-276, G-315, G-317
Relocation	
- car rental	G-311
- depressed housing market	G-281, G-335, G-349
- distance within 40 km of worksite	G-215
- financial compensation	G-338
- Foreign Service Directive (FSD)	G-363
- Guaranteed Home Sales Plan (GHSP)	G-218, G-232, G-239, G-240.1, G-240.2, G-242, G-254
- Home Equity Assistance Plan (HEAP)	G-205, G-232, G-242, G-244, G-300
- House Hunting Trip (HHT)	G-212, G-357
- insurance coverage	G-211
- interim accommodation	G-240.1, G-240.2, G-341, G-360, G-364, G-372
- Integrated Relocation Program (IRP)	G-278, G-281, G-297, G-299, G-341, G-345, G-349, G-357, G-360
- legal fees	G-218
- pre-retirement relocation benefits	G-230
- retirement	G-329, G-330, G-331, G-332, G-369, G-373
- storage costs	G-222, G-246
- Temporary Dual Residence Assistance (TDRA)	G-263
Stand-by duty	G-224
Standing	G-374, G-376, G-378
SWOP	G-286, G-318, G-319, G-320, G-328, G-342, G-344, G-353, G-359
Time limits	G-214, G-218, G-221, G-222, G-223, G-228, G-247, G-248, G-250, G-277, G-333, G-337, G-341, G-347, G-348, G-357, G-365, G-366, G-370, G-371, G-372, G-375, G-376
Travel directive	
- accommodations	G-301
- family reunion	G-348
- other	G-366
- separate accommodations	G-280
- spousal expenses for medical travel	G-269
- travel by a DSRR	G-217
- TB vs RCMP policies	G-375, G-376
- use of private vehicle	G-225, G-226, G-227, G-260, G-262, G-295, G-296
- workplace	G-215, G-225, G-226, G-227