

Federal Court



Cour fédérale

Date: 20170704

Docket: T-1979-16

Citation: 2017 FC 645

Ottawa, Ontario, July 4, 2017

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

TIELUN SU

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the November 2, 2016 decision of Commissioner Robert W. Paulson (“Commissioner”) of the Royal Canadian Mounted Police (“RCMP”), denying the Applicant’s appeal in respect of an order made pursuant to s 22(2)(a)(ii) of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 (“RCMP Act”) stopping his pay and allowances on the basis that he was absent from duty without authorization (the “Appeal Decision”).

Background

[2] The Applicant has been a civilian member of the RCMP since October 13, 2009, posted to the “E” Division Protective Technical Services as an Electronic/Electro-Mechanic Technician. The Applicant was diagnosed with liver cancer and, between April 27, 2012 and October 28, 2015, was off-duty and receiving full salary and benefits under the RCMP sick leave policy. The Applicant’s salary and benefits were stopped, effective October 28, 2015, following the issuance of an Order Directing the Stoppage of Pay and Allowances.

[3] There were various communications prior to the stoppage. These included a letter dated April 14, 2015 from Inspector Kevin O’Blenis (“Inspector”), as the Applicant’s Commander, to the Applicant asking that he contact the Inspector to discuss accommodation options as well as other employee support systems available to the Applicant to aid his return to work. The letter also noted that the Applicant had been off duty since April 27, 2012; that his most recent medical certificate submitted on January 29, 2015 indicated a leave recommendation of three months and that his last disclosure of medical information in respect of his medical disability was received on January 30, 2015 but did not present applicable limitations and restrictions. Further, that the Applicant had left the country without obtaining prior permission and the RCMP had since been unable to communicate directly with him. The letter reiterated the RCMP’s commitment to assisting employees such as the Applicant to return to work through accommodation options and asked that the Applicant contact the Inspector within seven days. The Applicant did not respond to the April 14, 2015 letter.

[4] On April 21, 2015, at the request of the Inspector, Staff Sergeant Stephen Whitworth (“Staff Sergeant”) attended at the Applicant’s residence to confirm that the April 14, 2015 letter had been received and understood. By email of April 22, 2015 the Staff Sergeant reported to the Inspector that the Applicant had confirmed receipt of the letter but was reluctant to contact the Inspector until he had seen his family doctor during the week of April 26, 2015 and his specialist, to have an MRI, in mid-May. The Staff Sergeant stated that he had explained to the Applicant that, once the medical information was received, decisions had to be made about the Applicant returning to work or medical retirement.

[5] On May 1, 2015 the Inspector again wrote to the Applicant. The Inspector set out the current status of the situation, including that as the Applicant had not submitted an updated medical certificate, Form 2135 (“Medical Certificate”), he was on unsupported leave and absent from duty without authorization. The letter set out the obligations and requirements of the Applicant, attached the relevant policy for the Applicant’s review and drew his attention to a non-exhaustive list of requirements moving forward being that: the Applicant was required to provide a valid Medical Certificate for all absences exceeding 40 consecutive hours; Medical Certificates must include applicable limitations and restrictions and an anticipated date of return to full or modified duties and any Medical Certificate with an anticipated return to work date of “indeterminate” or similar wording has a maximum validity of 30 days; written approval of the Inspector to travel beyond the boundaries of his duty area or area of primary residence for more than 24 hours, excluding periods of regular time off, must be obtained; the Applicant must actively participate in any prescribed treatment plan and be available for all testing and consultations recommended by his medical practitioner; and, the Applicant must maintain

communication with the Inspector and the Applicant's assigned disability case manager and comply with additional information requirements upon request.

[6] The letter went on to address what was required of the Applicant moving forward and listed directions in that regard. Specifically, that a valid Medical Certificate, including applicable limitations and restrictions and an anticipated date of return to work to full or modified duties be provided to the Inspector by May 8, 2015. That, pursuant to the policy, the HSO would require an Evaluation of Disability Questionnaire (or "Form 4056") and a Functional Abilities Form and that these forms were to be completed by a medical practitioner and indicate the Applicant's limitations and restrictions. Those forms would be used to determine what functions and duties the Applicant was able to perform and were essential to getting him back to work. The forms were required to be completed within fourteen days of the Applicant's meeting with his doctor and to be provided directly to the HSO. Further, that by May 8, 2015 the Applicant was to provide the Inspector with a reliable means of communication with him as the Applicant had indicated that he did not have a phone. The May 1, 2015 letter also noted the serious potential consequences of noncompliance, including that the Applicant's pay could be stopped and that he could be subject to discharge from the RCMP as he was on unsupported leave, meaning that he was absent from duty without authorization.

[7] On May 12, 2015 the Staff Sergeant and a translator attended at the Applicant's residence to personally provide him with the Inspector's letter of May 1, 2015. By email of the same date, the Staff Sergeant reported to the Inspector that he and the translator were satisfied, and the Applicant confirmed, that he understood the content of the documents, being the letter, a Medical

Certificate (Form 2135), an Evaluation of Disability Questionnaire (Form 4056) and copies of the applicable policies from the RCMP Administration Manual. The Staff Sergeant reported that the Applicant had stated that he had submitted the Medical Certificate but that his doctor would not complete the Form 4056. Further, that it was explained to the Applicant that he needed to go back to his doctor as it was his responsibility to ensure that he complied with the Inspector's direction and that noncompliance could result in his pay being stopped. The possibility of pursuing medical retirement was also discussed and the Applicant also provided a contact phone number.

[8] The Applicant responded to the Inspector's May 1, 2015 letter by email of May 8, 2015. In response to the Inspector's directions he stated "... my new PG [family doctor] does not like to fill form 4056. And he think it is not his responsibility...[S]o I cannot follow your requirement". Further, that "I definitely agree to disclose my medical information to HSO at any time if HSO raise the requirement to my doctors! This is the best I can do for form 4056". The Applicant also asked that the HSO send Form 4056 and Form 3414 (Hazardous Occurrence Report) to his doctors. By way of explanation, I pause here to note that a "HSO" is a Health Services Officer. This is a licensed physician responsible for supervising and coordinating the delivery of professional opinions and recommendations by the Health Services Programs, and overseeing the appropriate application of professional health standards in one or more RCMP divisions. In this matter, Dr. Tania Fitzpatrick ("Dr. Fitzpatrick") was the Applicant's assigned Health Services Officer ("HSO") until late June 2015 at which time Dr. Karen Hossack ("Dr. Hossack") assumed conduct of overseeing the Applicant's fitness for duty.

[9] The Applicant also sent an email to the Inspector and Ms. Alice Hsing on July 6, 2015 stating that he had already explained why Form 4056 had not been provided but that “I think I could have an Evaluation after visiting my specialist”. He stated that he had not seen his specialist since his return from Beijing but was urging his family doctor to schedule an appointment. He also took issue with a prior determination that his illness was not work related. By email of July 20, 2015 the Applicant again stated that he had addressed Form 4056 and that he was awaiting replies on questions he had raised about Form 3414 (Hazardous Occurrence Report).

[10] At the request of the Inspector, by memorandum of July 28, 2015, Dr. Hossack provided her opinion as to the current medical status of the Applicant to assist the Inspector in deciding whether to approve, rescind or deny the Applicant’s continuous sick leave. Dr. Hossack stated that having reviewed all pertinent documentation made available to the RCMP and performing required consultations in forming her recommendation, absent any new information, she was unable to recommend the Applicant’s continuous sick leave with respect to a complete absence from work. She recommended the Applicant’s sick leave in terms of reduced hours as part of a Return to Work Agreement. She also stated that she requested disclosure of relevant medical information and had sought further clarification from the Applicant’s care provider and that she was able to meet with the Applicant in person should he wish to discuss his medical condition or limitations and restrictions in support of his return to work.

[11] On July 29, 2015 the Inspector again wrote to the Applicant. The Inspector stated that, under his direction, the Staff Sergeant and a translator had attended at the Applicant’s residence

to ensure, and had confirmed, that the Applicant understood the Inspector's letter of May 1, 2015. The Inspector acknowledged that the Applicant had provided a Medical Certificate (Form 2135) dated June 25, 2015 but stated that it was incomplete as it was silent as to his occupational limitations and restrictions as well as an anticipated date of return to full or modified duties. The Inspector stated that it was unfortunate that the Applicant's physician refused to assist him in completing Form 4056 (Evaluation of Disability Questionnaire), but that this did not absolve the Applicant of his obligations. Further, that the Inspector had consulted with Dr. Hossack, the Applicant's HSO, who had advised that based on the medical information available to her, the Applicant's complete absence from work under sick leave policy was not medically supported and that the Applicant was capable of returning to work in some capacity. The Inspector stated that the HSO had requested additional medical information from the Applicant's care providers but that it remained his responsibility to provide the required medical information in support of his absence from work. The letter advised the Applicant that, given his continued failure to submit a properly completed Medical Certificate and that he continued to remain absent from duty, the Inspector was rescinding his sick leave. In the result, he was on unsupported leave. The letter gave the Applicant one final opportunity to submit, by August 7, 2015, a properly completed Medical Certificate as well as any other necessary medical information, to be validated by Dr. Hossack. It stated that if he failed to do so then the Inspector would be making a recommendation for the stoppage of the Applicant's pay and allowances pursuant to s 22(2)(i) of the RCMP Act. This would mean that the Applicant's pay, as well as his medical and extended health benefits, would stop. The letter urged the Applicant to take the matter seriously and stated that the RCMP remained committed to his return to work, however, if he chose the option of a consensual medical discharge, this also remained open to him.

[12] The Applicant responded by email of August 3, 2015 stating that he was attaching an updated Medical Certificate (Form 2135) and that he was sorry that because of his negligence it was incomplete and that “The complete one will be sent to you later”. As to Form 4056, he had previously addressed this in his prior communications and agreed to disclose his medical information if the RCMP raised the requirements with his specialists and that this was the best he could do. He stated that he had almost lost his life due to the unhealthy working environment at the RCMP and “[T]he facts mentioned in my form 3414 are clear that my illness status is one of the direct results from the actions that I have experienced from work...”. He went on to suggest matters that should be considered as regards to his safe return to work including that the problem of the Form 3414 had to be resolved before details of a return to work could be discussed; he was awaiting an enhanced MRI after which he needed to consult his specialist who could have some more safety suggestions about his return to work; and, that recent blood tests and ultrasound were attached for consideration.

[13] By email of August 20, 2015, Dr. Hossack advised the Inspector that she had no further contact with the Applicant’s caregivers beyond seeing another Medical Certificate (Form 2135) forwarded to her and signed by Dr. Al-Jawadi. She stated that she had previously had conversations with the Applicant’s primary and specialist health care providers and had received further medical information from the Applicant (testing in May and June), however, this did not change the conclusions in her prior memorandum.

[14] On August 25, 2015 the Applicant sent an email to the Inspector, Ms. Hsing and Dr. Hossack attaching a document he had generated entitled “Sick Leave Process Review” to give

these “newcomers” a clearer outline of his sick leave. On August 27, 2015 the Applicant sent a further email attaching a Medical Certificate and stated that his family doctor had told him that “it is over his scope for filling the field of “Occupational Restrictions” on my update Medical Certificate. Specialist may provide some advise for that”. He stated he would see his specialist on September 2, 2016 and have an MRI on January 24, 2016.

[15] The Inspector then prepared a “Recommendation for the Stoppage of Pay and Allowances”, dated August 28, 2015 wherein, pursuant to s 22(2)(a)(ii) of the RCMP Act, he recommended that the Applicant’s pay and allowance be stopped (“Recommendation”). The Recommendation set out in detail the background facts and communications. It concluded, as of the date of the Recommendation, that the Applicant had failed to provide a properly completed Evaluation of Disability Questionnaire (Form 4056) as requested on May 1, 2015. That questionnaire particularizes operational restrictions that would sufficiently describe the Applicant’s limitations and restrictions upon which the RCMP would be able to develop a Return to Work Plan, which would include the appropriate accommodation of the Applicant’s disability. Further, that the Applicant had evaded taking responsibility to ensure that the relevant medical information was forwarded to the HSO that would allow her to assess his fitness for duty and identify any limitations and restrictions in support of a Return to Work Plan. The Inspector was satisfied that the Applicant had been given ample opportunities to present sufficient medical information outlining his limitations and restrictions so that the RCMP could accommodate his need in support of his return to work but that the Applicant had ignored the Inspector’s direction to provide the information and requests made by his immediate supervisor and others. The Applicant continued to deliberately disregard what was required of him by RCMP policy and the

Inspector's direction, and, the HSO had opined that his conditions did not preclude him from returning to work in some capacity on a Return to Work Plan.

[16] The Inspector concluded that the Applicant remained absent without authorization notwithstanding steps having been taken to establish the reasons for the absence and anticipated return to duty. Accordingly, the Inspector was of the opinion that the Applicant's pay and allowances should be stopped, to be restored when the Applicant had engaged the HSO in a return to work plan or the HSO, after a review of new relevant medical information, changed her opinion and supported the sick leave of the Applicant in terms of a complete absence from the workplace.

[17] A Notice of Intention to Stoppage of Pay and Allowances dated September 2, 2015 ("Notice of Intent") was issued by Ms. Sharon Woodburn, Assistant Commissioner, Human Resources Officer ("HRO"). The Notice of Intent advised that it was the HRO's intent to stop the Applicant's pay and allowances for being absent from duty without authorization. The Notice of Intent referenced the Recommendation and attached the material presented to the HRO as a part of the Recommendation which she used to inform her opinion. The HRO listed the four grounds of her opinion being that: during the time the Applicant had been off duty sick since April 27, 2012, he had submitted numerous improperly completed Medical Certificates despite repeated requests for him to comply with policies and the direction of the Inspector; the April 14, 2015, May 1, 2015 and July 29, 2015 letters from the Inspector; the July 28, 2015 Memorandum of Dr. Hossack; and, the July 29, 2015 decision of the Inspector rescinding the Applicant's sick leave with the result that the Applicant was on unsupported leave. The HRO concluded that

during the time the Applicant had been off duty sick since April 27, 2012 he had continued to submit incomplete Medical Certificates and sufficient medical information that would enable the HSO to make a determination on his fitness for duty. Despite repeated requests and written direction from his Commander, the Inspector, the Applicant had continued to ignore his obligations and responsibilities as required under policy. As such, the HRO was of the opinion that the Applicant's current status was absent from duty without authorization as provided for under s 22(2)(ii) of the RCMP Act. The Applicant was afforded fourteen days to submit a written reply. The HRO stated that she expected that the stoppage of pay and allowances would remain in effect until the Applicant had complied with what was required of a member absent from duty on sick leave as set out in Administration Manual Chapter 19.3 and engage in a Graduated Return to Work as set out in Administration Manual II.36.

[18] The Applicant made submissions dated September 7, 2015. As to the Medical Certificate (Form 2135), a copy of a certificate of August 24, 2015 was attached. The Applicant requested that if Part A had been incorrectly completed by him that he be so advised so that he could correct the form. As to Part B, completed by his doctor, if the RCMP was of the view that it was incorrectly completed then the HSOs, Drs. Fitzpatrick and Hossack, both of which had contacted his physicians many times, should be consulted. As to Form 4056, he had explained the issue many times. He also pointed out that prior to July 29, 2015 no one had advised him that his Medical Certificates were incomplete. As to Dr. Hossack, she was a new HSO and he had received only one email from her, on July 28, 2015, in which she asked him to start work right away and "It is neither risk assessment with my recent medical data and diagnosis, nor my specialists' recent advice". The following day he had received a work schedule from Ms. Alice

Hsing and had replied by email on the following day reminding her that “the safe and timely manner is RCMP’s policy of RTW”. The Applicant stated, based on the email and letters from Brian Jarvis, the Inspector and Dr. Hossack, he thought they were “new comers to my case”. Accordingly, he felt an obligation to outline his case and his recent medical situation to them and had sent them a document he generated in this regard entitled “Sick Leave Process Review”, a copy of which was included in his submission.

[19] The Applicant also stated that he had not received responses to his email to the Inspector, Dr. Hossack and Ms. Hsing but had then received the Recommendation and Notice of Intent. He concluded that:

“Based on above facts, it is clear that they violate RCMP’s policy of sick-leave and RTW with the power in their hands to arbitrarily bully and harass me. And this is not the first time that HSO violate RCMP’s policy of sick-leave to harass me. Now, you followed Mr. Brian Jarvis, Mr. Kevin O’Blenis and Dr. Karen Hossack with these pseudo-propositions as your grounds to exert more pressure to a serious illness member.

And you sent Mr. Whitworth with your letter to my home without prior notice on 2015-09-03. He knocked on the door loudly and clung to the window looking in. This is the third time of harassment of my daily life in this way from Mr. Whitworth since May of 2015.

Stop these harassments, please.”

[20] The Applicant attached the documentation referenced in his submission.

[21] On September 22, 2015 the HRO requested that Dr. Hossack advise if the results of the Applicant’s MRI could reasonably have an impact on her July 28, 2015 opinion and sick leave recommendation.

[22] On October 6, 2015 Dr. Hossack advised the HRO that the results of the MRI would not alter her current opinion and recommendation, that she was aware of the nature of his condition and remained unable to medically support his complete absence from work. In her opinion, with adequate treatment the Applicant should be able to undergo a gradual return to work in some capacity.

[23] On October 29, 2015, the HRO signed an Order Directing the Stoppage of Pay and Allowances, effective that date (“Order”). The Order stated that after a comprehensive review of the material, which included the Applicant’s written representation dated September 7, 2015, the HRO had decided to order the stoppage of the Applicant’s pay and allowances in accordance with s 22(2) of the RCMP Act. The HRO had determined that he was absent from duty without authorization and was not performing his duties as a civilian member of the RCMP. The HRO stated that the rationale for her decision was outlined in the attached Record of Decision. Further, that the Order would remain in effect until the Applicant remedied any issues that resulted in the Order, or as otherwise directed by the HRO or an adjudicator. The Applicant’s pay and allowances may be reinstated when the HRO was satisfied that the reasons for the stoppage of pay and allowances as outlined under s 22(2)(a)(ii) of the RCMP Act were no longer in effect in that the Applicant was engaged in a return to work plan or, on the advice of the HSO, his sick leave is supported.

[24] On November 8, 2015, the Applicant submitted an appeal of the Order pursuant to s 20(1)(e) of the Commissioner’s Standing Orders (Employment Requirements), SOR/2014-292 (“CSO Employment Requirements”). His file was assigned to Mr. Douglas Dewar, a recourse

case manager. Various correspondence followed including clarification of the scope of the Applicant's appeal. The Applicant was informed that allegations of harassment contained in his appeal were to be made to the Office for the Coordination of Harassment Complaints. On December 16, 2015, the Applicant submitted an updated Statement of Appeal. In this he alleged that the decision to stop pay and allowances was procedurally unfair and unreasonable. He submitted that the facts were clear that his absence for duty was authorized according to RCMP Administrative Manual, Chapter 19.3, Sick Leave and that he had already explained his case in his letter of September 7, 2015 in response to the Notice of Intent. This should have made it clear that he had done nothing to violate "RCMP's policy and discipline". He was shocked to receive the decision and alleged that the HRO had disregarded the RCMP's policy and core values, "repeatedly took those pseudo-propositions in the "RECORD OF DECISION" to falsely accuse an honest, disciplined civilian member and to arbitrarily harass an employee with a serious illness". He cited the Canadian Human Rights Act and RCMP Administrative Manual, Chapter 19.3, Sick Leave, as applicable to his appeal and sought to be compensated for mental/physical damage and financial loss due to wrong doings.

[25] The Applicant was provided with disclosure and made written submissions in support of his appeal. In his submissions he alleged that the stoppage of pay was linked to the perpetual harassment he had suffered during his employment in the RCMP. He also provided a "Background Note" with his version of events. He repeated that he had responded to the Notice of Intent, that the HRO took pseudo-propositions in the Record of Decision "to intentionally hurt a serious illness civilian member by using the authority in her hand". He concluded that the Order was a premeditated incident against an honest and disciplined civilian member through

violation of RCMP's Sick Leave, return to work policies and Canadian law and was an incident of intentional injury to a seriously ill employee. He repeated his request for compensation adding that he was also seeking compensation for all financial losses for an honest and disciplined civilian member due to the wrong doings.

[26] By a decision dated November 2, 2016, the Commissioner denied the appeal. This is the judicial review of that decision.

Decision Under Review

[27] The Commissioner's decision is detailed and lengthy. It sets out background information, communications preceding the stoppage of pay and allowances, the procedural history of the matter, references the applicable legislation and policies, and, describes the Applicant's position in the appeal before the Commissioner. In his analysis the Commissioner addresses each of the Applicant's three arguments on appeal, being that the Order was reached in a procedurally unfair manner; the Order was clearly unreasonable; and, there was an error in law.

[28] On the first issue, the Commissioner noted that the RCMP National Guidebook – Appeal Procedures explains that on appeal the principles of procedural fairness provide the parties with certain rights, being the right to be heard, the right to a decision from an unbiased adjudicator, the right to a decision from the person who hears the appeal and the right to reasons for the decision. The Commissioner then referenced the procedure to be followed for the stoppage of pay and allowances of a member who is absent from duty without authorization as set out in s 4 of the CSO Employment Requirements. The Commissioner concluded that in this case the facts

established that the required policy procedure was followed and the Applicant had not put forth any evidence to show that the HRO was biased or failed to consider his position and his evidence prior to issuing the Order. The Commissioner found that the decision to issue the Order was reached in a fair, open and unbiased manner and that the HRO had followed the proper procedure and provided adequate reasons for her decision. The Order was, therefore, rendered in a procedurally fair manner.

[29] On the second issue, the Commissioner concluded that the Order was reasonable. The Commissioner noted the requirements of s 2.9 of the Administration Manual, Chapter 19.3, Sick Leave which states that a Medical Certificate will be considered complete when it includes applicable limitations and restrictions and an anticipated date of return to full or modified duties. The Commissioner acknowledged that the Applicant had put forth several explanations why his general practitioner was unwilling to properly complete Form 2135 and his position that he has no control over the completeness of the medical information provided by his doctor and that he should not be held accountable if his Medical Certificates are considered to be incomplete. However, the Commissioner afforded little weight to these arguments. This was because even though the Applicant had gone to great lengths to explain his situation and medical condition, all of his evidence was based on his own personal opinion which was irrelevant in the circumstances. The Commissioner stated that if a member is off duty sick, his or her absence from work must be supported by a medical practitioner. As per policy, the practitioner must convey his or her support by completing a Form 2135, Medical Certificate, every 30 days. Those forms are used by the HSO to make a determination on the member's fitness for duty. The Commissioner stated that while he appreciated that the Applicant had made certain efforts to

obtain his general practitioner's support, the fact that his doctor refused to fill out the requested forms did not absolve the Applicant of the requirements under policy.

[30] The Commissioner also found that the Applicant had failed to provide a complete Evaluation of Disability Questionnaire, Form 4056, as required by s 2.12 of Administration Manual, Chapter 19.3, Sick Leave, which clearly states that the member will ensure that his medical practitioner completes and returns the form at the request of the HSO. Further, that the Applicant disregarded his responsibilities under the policy and his position with respect to the completion of Form 4056 lacked credibility as his explanations for not doing so remained the same as when the HSO initially requested that an Evaluation of Disability Questionnaire be filled out in March 2014. The Commissioner found it questionable that, over a period of almost a year and a half, the Applicant's physician had not familiarized himself with the Applicant's medical condition given that he allegedly had been suffering from a serious illness.

[31] The Commissioner noted the HSO's mandate, her role, communications and the opinion that she rendered prior to the issuance of the Order. He also described the Applicant's submission that the HSO failed to perform a risk assessment, consult with his care providers and develop a Return to Work agreement prior to recommending that he engage in a gradual return to work. Further, that she was only recently assigned to his case and therefore could not have been properly aware of his medical condition. The Commissioner identified the ten sections of Administration Manual, Chapter 19.3, Sick Leave, and Administration Manual Chapter II.37, which the Applicant alleged the HSO had breached and his position that, as a result, the HSO's recommendation should not be followed.

[32] The Commissioner found that there was nothing in the evidence to indicate that the HSO did not have sufficient time to familiarize herself with the Applicant's medical condition or that she did not possess the necessary qualifications to put forth well founded opinions to the Inspector and the HRO. Further, that the HSO acted in accordance with applicable policies. For example, although the Applicant contended that the HSO did not develop a Return to Work agreement prior to recommending that he return to work, this was not a mandatory requirement of s 7.5.7 of the Administration Manual, Chapter 19.3, Sick Leave. As to the Applicant's references to Form 3414 in his communication with the HSO and her response, the Commissioner found that the Hazardous Occurrence Report, Form 3414, that was filed by the Applicant was not relevant to the appeal. And, as noted by the HSO, the Occupational Health and Safety Branch had advised the Applicant in November 2014 that he had not provided sufficient evidence to prove that his illness was work related.

[33] Further, although the Applicant had gone to great lengths to present his medical history and his personal opinion regarding his limitations and restrictions, he had not provided any compelling evidence to refute the information contained in the HSO's letters of July 28, 2015 and October 6, 2015. Based on the information in the record, the Applicant had only put forward his personal opinion regarding his capacity to return to work. This was of little value as he was required to provide the opinions of his healthcare providers. As well, the Applicant's allegation that the HSO's opinion was not supported by his specialist and that his general practitioner is of the opinion that his illness belongs to the category of serious illnesses was not supported by any evidence, despite the fact that this contradicts the HSO's opinion which the Applicant knew would be relied upon by the HRO. The Commissioner concluded, based on the information

before him, that the HSO followed protocol and the HRO acted reasonably in relying upon the HSO's opinion.

[34] In the circumstances the HRO fulfilled the requirements of s 4 of the CSO Employment Requirements and acted reasonably in concluding that the Applicant was absent from duty without authorization.

[35] As to the final issue, while the Applicant had alleged that the decision to issue the Order was based on an error of law, he had not identified the error nor provided any evidence in support of that position. The Commissioner found there was no evidence to show that the HRO committed an error of law. The HRO was in possession of all the information contained in the record at the time the Order was issued and there was nothing to suggest that the HRO forgot, ignored or misconceived any of the evidence prior to reaching her decision.

[36] The Commissioner found that the Applicant had not established that the decision to issue the Order contravened the principles of procedural fairness, was clearly unreasonable or was based on an error of law. Accordingly, the appeal was dismissed.

Issue and Standard of Review

[37] The Applicant is self-represented and has not explicitly identified the issues on judicial review but submits that the Order was based on an error of law, that the rationale for the Order was clearly unreasonable, and, that the process of the Order contravened the principles of

procedural fairness. The Respondent submits that there are two issues, whether the appeal process was fair and whether the Appeal Decision was reasonable.

[38] In my view, the issues are:

- (a) Was the Applicant denied procedural fairness?
- (b) Was the Appeal Decision reasonable?

[39] The Applicant makes no submission on standard of review. The Respondent submits that it is well established that deference is owed to decisions of RCMP adjudicators and the Commissioner of the RCMP, and that such decisions are accordingly reviewed on the reasonableness standard (*Mousseau v Canada (Attorney General)*, 2012 FC 1285 at para 15 (“*Mousseau*”); *Canada (Attorney General) v Boogaard*, 2015 FCA 150 at para 33 (“*Boogaard*”). This Court has emphasized that given RCMP adjudicators’ specialized expertise and broad powers, great deference should be given to their decisions, including on matters pertaining to the internal policies of the RCMP (*Mousseau* at para 15). Further, in *Boogaard*, the Federal Court of Appeal noted that the Commissioner of the RCMP had a very wide margin in determining an appropriate promotion in light of the legislative framework for doing so and the fact that the Commissioner must draw on his “expertise, experience and knowledge” in determining the needs of the force (at paras 33-46). The Respondent submits that the same reasoning applies to decisions regarding members’ ongoing entitlement to receipt of pay and allowances.

[40] The Respondent also submits that, to the extent that the interpretation of the Commissioner's Standing Orders or Administration Manual may be in issue, deference is owed. The Standing Orders are regulations, and the Administration Manual is internal RCMP policy. Review on a standard other than reasonableness would not be consistent with the jurisprudence, which emphasizes deference in this regard (*Celgene Corp v Canada (Attorney General)*, 2011 SCC 1 at paras 11-13 and 33-34; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 30-34, 37-39 and 48 ("*Alberta Teachers*"); *Irvine v Canada (Attorney General)*, 2012 FC 1370 at paras 26-28, aff'd in 2013 FCA 286 ("*Irvine*"); *Beaulieu v Canada (Attorney General)*, 2015 FC 57 at para 44, leave to appeal to the Supreme Court of Canada denied in 2016 CarswellNat 3848 (WL) ("*Beaulieu*").

[41] It is clear that issues of procedural fairness are reviewable on the correctness standard (*Mission Institute v Khela*, 2014 SCC 24 at para 79; *Canada v Khosa (Citizenship and Immigration)*, 2009 SCC 12 at para 43 ("*Khosa*"); *Storozuk v Canada (Attorney General)*, 2017 FC 4 at para 28 ("*Storozuk*").

[42] And, I agree with the Respondent that the Commissioner's decision is reviewable on the reasonableness standard. While the parties identify no jurisprudence concerning the standard of review that should be applied to a Commissioner's decision concerning an appeal of an order made pursuant s 22(2)(a)(ii) of the RCMP Act, this Court has previously held that when reviewing the decision of an RCMP adjudicator or the Commissioner, given specialized expertise and broad powers with regards to the questions before him or her, a great amount of deference is owed, especially when an internal grievance process or internal RCMP policies are

involved (*Mousseau* at para 15; *Boogaard* at paras 32-33; also see *Storozuk* at paras 24-27; *Schamborzki v Canada (Attorney General)*, 2015 FC 1262 at para 30; and *Camara v Canada*, 2015 FCA 43 at paras 6 and 19). I also agree with the Respondent that the interpretation of the Commissioner's Standing Orders or the Administration Manual are to be reviewed on the reasonableness standard as this concerns the interpretation by the RCMP of its own internal policies in which it has relative expertise (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51 ("Dunsmuir"); *Alberta Teachers'* at paras 30, 39 and 48; *Beaulieu* at paras 41-44; *Irvine* at para 27).

[43] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with the existence of justification, transparency and intelligibility within the decision-making process and also with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at paragraph 47; *Khosa* at para 59).

[44] The applicable legislation and RCMP policies are included in Appendix A of these reasons.

Issue 1: Was the Applicant denied procedural fairness?

Applicant's Position

[45] This matter was set down to be heard in Vancouver on June 21, 2017 for two hours and, on the following day, June 22, 2017, for a further two hours. At the end of two hours on June 21,

2017 the Applicant stated, through a translator, that he was unwell and unable to proceed any longer on that day, and that he was only about one third of the way through his submissions. Later that day the Applicant advised the Registry that he was not well enough to proceed on the following day and sought an adjournment. An adjournment was granted to June 23, 2017. The Applicant then provided a certificate from his family doctor stating that he suffers from cirrhosis of the liver and was unable to appear on June 22 or 23, 2017. The matter was adjourned by my direction, dated June 22, 2017, in which the parties were also given the option of proceeding on the basis of their written submissions and without the need for further appearances. On June 23, 2017, the Applicant elected to proceed in that manner and the Respondent agreed. Accordingly, this matter has been determined based on the parties' submissions in writing.

[46] The Applicant's written submission as to a breach of procedural fairness is brief. His view is that the Order contravened the principles of procedural fairness because the Recommendation relied on distorted facts, was one-sided and failed to consider the truth of the matter while the evidence was clear that the Applicant had not done anything in violation of the RCMP's policy and discipline.

Respondent's Position

[47] The Respondent submits that the Applicant's arguments under this issue, being that the decision-maker "distorted the facts" and "insisted on a one-side argument" are not arguments that go to procedural fairness. Rather, they go the substantive merits of the Appeal Decision. And, in any event, the appeal process in this case bears the hallmarks of procedural fairness. Specifically, the Applicant had notice of the decisions to be made in his regard; he was provided

with disclosure of the case to meet and documents to be considered by the decision-maker; he was given the opportunity on more than one occasion to make representations and be heard; the Appeal Decision makes it clear that the Commissioner heard the Applicant's representations and considered them; and, the Appeal Decision sets out comprehensive reasons that display no apparent bias. Accordingly, the process leading to the Appeal Decision was fair.

Analysis

[48] As a preliminary point, I note that the Applicant takes the general position that the Commissioner, as an adjudicator for the appeal, applied the same approach as did the HRO in making the Order, being that the Commissioner disregarded the truth of the matter and ignored RCMP policies in making the Appeal Decision. Thus, while in his submissions he challenges the Order, I understand him to mean that his challenge is, in fact, to the Appeal Decision which upheld the Order.

[49] That said, I agree with the Respondent that the Applicant's submissions on this issue appear to be misplaced. The Applicant has not objected to the process that was followed by the Inspector and HRO leading up to the Order or to the appeal procedure leading up to the Commissioner rendering the Appeal Decision. Rather, he alleges that the Appeal Decision was unfair because it relied on distorted facts. Therefore, the Applicant's argument essentially attacks the merits of the decision and does not pertain to procedural fairness.

[50] In any event, in my view, the decision-making process was procedurally fair.

[51] The concept of procedural fairness is variable and its content is to be determined in the specific context of each case and considering all of the circumstances (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21-22).

[52] In this matter, the procedure to be followed for the stoppage of pay and allowances of a member who is absent from duty without authorization is set out in s 4 of the CSO Employment Requirements which was specifically referenced by the Commissioner in the Appeal Decision. The Applicant was also afforded the procedural rights available to him under the appeal process as set out in Part 3 of the Commissioners Standing Orders (Grievances and Appeals), SOR/2014-289. The “Summary of Appeal File Number 2015335501- Tielun Su” outlines the communications and procedural steps that were undertaken in the appeal leading up to the Appeal Decision. Upon review of the record before me, it is clear that the RCMP in its dealings with the Applicant prior to the issuance of the Order and during the appeal process endeavored to assist the Applicant and to ensure that he understood and was engaged in the process. It is also clear from the record that communications with the Applicant were difficult. He limited his responses to email communications, declining to accept telephone calls or meetings in person. His responses were, at best, frequently unclear and, while repetitive, often failed to address the issues raised, despite efforts by RCMP personnel to clarify what was required of the Applicant.

[53] It is not apparent from the record before me that there were any procedural irregularities at any stage of the process that would warrant the Court’s intervention. The prescribed procedures were defined by policy, were fair and were adhered to.

[54] And, although the Applicant asserts that the decision making was one sided, he has not explicitly alleged, nor has he established, bias on the part of the HRO or Commissioner.

Issue 2: Was the Appeal Decision reasonable?

Applicant's Position

[55] In his written representations the Applicant alleges harassment and discrimination prior to and while he was on sick leave. He asserts that his cancer treatments were obstructed by the HSO and his immediate supervisor in violation of the RCMP sick leave policy by way of a delay in advising that there was no formal objection to him leaving his duty area to seek treatment in China. He asserts that there was no requirement for approval to leave his duty area to travel abroad for medical treatment.

[56] The Applicant also submits that he has been actively cooperating and participating in the accommodation and return to work process in accordance with the sick leave and return to work policies. In order to return to work in a safe and timely manner in accordance with RCMP policy he raised issues in his communication with his immediate superior and has been waiting for answers. Further, that the Notice of Intent was based on a distortion of the truth provided by the Applicant's immediate supervisor. The Applicant's response made it clear that he had not done anything in violation of RCMP policies and discipline. Nor is there evidence to support the finding of the HRO that the Applicant ignored policies or the statement in the Record of Decision that from April 27, 2012 to April 14, 2015 he repeatedly submitted incomplete Medical

Certificates and failed to provide sufficient medical information. The Applicant also questions the existence and content of a Return to Work agreement.

Respondent's Position

[57] The Respondent submits that the Appeal Decision is substantively sound. Further, that the Applicant's arguments invite the Court to re-weigh the evidence, which is not its role, and, in any event, the Applicant's arguments are not supported by the record. Rather, they appear to center upon his disagreement with the Commissioner's conclusion that he was absent from duty without authorization. Specifically, he is of the view that his absence was authorized because, on his understanding of the facts, his sick leave ought to have been authorized pursuant to Chapter 19.3 of the Administration Manual.

[58] The Respondent submits that the Commissioner reasonably concluded that the Applicant had failed to submit proper or complete medical information to support his ongoing absence. The Administrative Manual, Chapter 19.3, Sick Leave (s 2.9., 3.3.1., 3.3.4.1., 3.3.5. and 3.3.6.) is clear that members must submit the required medical documentation in order for sick leave to be authorized. There is no dispute that the Applicant did not submit a Form 4056, whereas the Administration Manual makes clear that members must ensure that such forms are completed and submitted when required (s 2.12. and 3.3.6.). While the Applicant explained that he could not submit Form 4056 because his doctor was not familiar enough with his case to complete it, that explanation had initially been provided more than a year before the Order. Despite this, the Applicant repeatedly relied on this explanation, and continued to do so, even two years later, when pursuing the appeal. The Commissioner's refusal to accept this explanation is deeply

rooted in his assessment of the evidence, is factual in nature, and is therefore entitled to significant deference. The Commissioner explained that he did not accept this explanation and no fresh explanation was provided. Accordingly, there was no apparent justification for the Applicant's non-compliance with the sick leave policy.

[59] The Commissioner was also acting reasonably when he concluded that the Applicant's Medical Certificates (Form 2135) were not complete. The terms of the Administration Manual are clear in that Medical Certificates must include applicable limitations and restrictions and any anticipated date of return to full or modified duties (Chapter 19.3, s 2.9).

[60] Although it is somewhat unclear, the Applicant does not appear to dispute that his Medical Certificates did not contain this mandatory information. He has variously apologized for his Certificates' incompleteness and indicated that a completed Certificate would be provided later; indicated that his doctor was of the view that it was "beyond his scope" to address these issues; advised that his specialist might be able to provide this information, but then indicated that it would be months before he saw his specialist; and, encouraged the HSO to contact his care providers to obtain any missing information.

[61] As the Commissioner properly noted "based on the contents of the Record and Material, [Mr. Su] has not provided any evidence to refute the allegation that he failed to provide complete medical certificates." That remains the case on this application for judicial review.

[62] The Respondent also submits that the Commissioner, and the HRO, reasonably relied on the HSO's opinion that the Applicant was capable of returning to work gradually, with a view to reduced hours. The HSO is a medical doctor responsible for supervising and coordinating the delivery of professional opinions and recommendations by the Health Services Programs, and overseeing the appropriate application of professional health standards in accordance with policy. And, while it would have been open to the RCMP to rely on the deficiencies in the Applicant's documentation alone, it did not do so. Instead, with the permission of the Applicant, attempts were made to obtain the missing information by contacting his care providers directly. The HSO's determination was based on discussions with the Applicant's care providers and her review of his medical file.

[63] It is unclear why, when faced with the HSO's opinion, the Applicant would not, at some point in the process, have submitted additional documentation or evidence from his care providers in support of his claim to ongoing full time sick leave and to contradict the HSO's opinion, if in fact they did not agree with her recommendation. Nor did the Applicant obtain and rely on a copy of his RCMP health care file in support of his position.

[64] While the Applicant suggested that his specialists did not agree and that his general practitioner had said his illness was serious, that information was merely stated by him. The Commissioner specifically noted the absence of any supporting evidence in this regard. Accordingly, the HSO's opinion was uncontradicted and the Commissioner reasonably relied on it in ordering the stoppage of pay.

[65] The Respondent submits that the Applicant's ongoing sick leave had been denied and rescinded. RCMP policy specifically provides that a member may be deemed to be absent from duty without authorization where the member remains absent from work despite their request for sick leave being denied. Indeed, this interpretation of policy and the statutory provision to which it refers is eminently reasonable. A contrary result, where sick leave need not be approved, and stoppage of pay is not available despite a member being absent from work without authorization, would be absurd in light of the applicable scheme.

[66] Further, that it is important to note that the order stopping the Applicant's pay and allowances was not, on its face, immutable. The Order made it clear that the Applicant's pay and allowances could be reinstated if he engaged in a gradual return to work plan, or if he was able to adduce medical information in support of his ongoing absence from work such that his sick leave could be supported. That is not an outcome the Applicant can achieve on this application for judicial review, but it is one that he could have achieved had he been able to and had chosen to fulfill one of these conditions. And, while the Applicant's situation may be unfortunate, he simply has not advanced any compelling basis upon which to impugn the Commissioner's decision on this application for judicial review.

Analysis

[67] As a preliminary point, the Applicant's allegations of harassment are not the subject of this judicial review as they are not relevant to the reasonableness of the Order or the Appeal Decision. The Applicant was informed that allegations of harassment contained in his appeal

were to be made to the Office for the Coordination of Harassment Complaints and, accordingly, updated his Statement of Appeal.

[68] I would next briefly address the Applicant's assertion that the Notice of Intent was based on the distortion of the truth provided by his immediate superior (the Inspector). The Applicant does not offer any explanation of this allegation other than making reference to pages 16-22 of Exhibit D-7 of his affidavit sworn on December 9, 2016 and filed in support of his application for judicial review. That Exhibit contains the communications as between the Inspector, and others at the RCMP, with the Applicant starting with the Inspector's letter of April 14, 2015, described above, and concluding a letter from the Inspector dated December 31, 2015 and the Applicant's response of January 10, 2016. In my view, the Applicant's reference to that correspondence does not support an allegation of a distortion of the truth. In essence, the communications record the efforts made by the RCMP to have the Applicant address the requests for information as to his medical condition and, in response, the repetition by the Applicant, in various forms, of his description of his illness and his description of what he states are his family doctor and specialists' views about his illness and ability to return to work. Similarly, based on the content of the same Exhibit, the Applicant asserts that he has been actively cooperating and participating in the return to work and accommodation process in accordance with RCMP policies. In my view, the subject communications also do not support that assertion nor that he did not receive responses to his communications leading up to the issuance of the Order or with respect to the appeal process.

[69] The Applicant also takes issue with the statements in the Record of Decision, underlying the Order, that from April 27, 2012 to April 14, 2015 the Applicant repeatedly submitted incomplete Medical Certificates and failed to provide sufficient medical information that would enable the HSO to make a determination on his fitness for duty. And, despite repeated requests and written direction from the Inspector, that he continued to ignore his obligations and requirements under the Administration Manual, Chapter 19.3, Sick Leave, s 3.3.

[70] In the Appeal Decision the Commissioner acknowledged that between June 2012 and the date of the Order there were twelve dates on which Medical Certificates were provided and that there were numerous months that were unaccounted for by way of Medical Certificates. However, that prior to April, 2015, there was nothing in the record before him or in the material to establish that the Applicant was ever notified that his Medical Certificates were incomplete or that he had failed to obey the 30-day timeline set out in the RCMP Administrative Manual, Chapter 19.3, Sick Leave. Despite this, the Order specifically states that from April 27, 2012 to April 14, 2015 the Applicant repeatedly submitted incomplete Medical Certificates and failed to provide sufficient medical information that would enable the HSO to make a determination on his fitness for duty. The Commissioner found that, despite the inconsistency in the Order and the listed dates, the evidence before him showed that between April 2015 and November 2015 the Applicant did not provide a properly completed Medical Certificate, despite numerous requests and efforts made by the Inspector and the HSO.

[71] I agree with and find no error in this finding. However, later in the reasons the Commissioner notes that the Order and the record showed that the Applicant failed to provide

complete Medical Certificates over a period of three years and that the Applicant had not provided any evidence to refute this allegation. Therefore, the Commissioner had no reason to question the HRO's finding in that regard. This may be so, however, as the Commissioner had previously found, the Applicant was not alerted to this until April 15, 2015. The Commissioner went on to agree with the HRO that the Applicant's repeated failures to provide a complete Medical Certificate continued despite numerous written requests from his superiors. Based on the record before him, he also agreed that the failures did not represent a single omission but a "pattern of disregard with respect to his obligations and responsibilities under policy". Given that, as acknowledged by the Commissioner, the Applicant was not alerted to the incompleteness of his Medical Certificates until April 15, 2015, and viewed in the context of the Commissioner's reasons in whole, I cannot conclude that the Commissioner erred in this conclusion as it reflects the circumstances subsequent to the communications starting on April 15, 2015. Put otherwise, I do not find that the Commissioner relied on a failure to provide complete Medical Certificates prior to April 15, 2015 in reaching his decision. No error arises in this regard.

[72] And, although the Applicant references a delay in approving his leaving his duty area to seek medical treatment in China, which he alleges was in breach of RCMP policy which does not require authorization in such circumstances, this was not a factor upon which the Order was based.

[73] In my view, the substance of this matter is the reasonableness of the rescinding of the Applicant's sick leave based on a lack of supporting medical information and, as a result, the

finding that the Applicant was absent from duty without authorization and the issuance of the Order, as upheld by the Appeal Decision.

[74] I note that the certified appeal record (“CAR”) before me does not include the Applicant’s RCMP medical or health care file. The Order and the Appeal Decision are concerned with incomplete or absence of required medical certificates and forms subsequent to April 14, 2015 and the HSO’s opinion. This is confirmed by the CAR as, in response to questions posed by the Applicant in the appeal process, it was explained that medical information, including the majority of emails or records of phone calls between the HSO and the Applicant, fall within the realm of doctor-patient confidentiality. Therefore, it was not available to the Inspector or the HRO. The Applicant had the option of waiving his privacy rights, in part or in whole, with respect to his medical information and to introduce it for consideration. As the Applicant did not do so, the HRO did not rely on the details of his medical file in making her decision, rather the relevant period concerned the return to work efforts post April 14, 2015 and the HRO relied on the communications in that regard in making her decision to issue the Order.

[75] Correspondence in the CAR indicates that prior to the Inspector’s letter of April 14, 2015, the most recent Medical Certificate, Form 2135, provided by the Applicant was submitted on January 29, 2015 and indicated a leave recommendation of three months further, that his last disclosure of medical information in respect of his medical disability was received on January 30, 2015 did not present applicable limitations and restrictions. Thus, as of April 14, 2015 there was no Medical Certificate in place. The July 29, 2015 letter of the Inspector indicates that the Applicant provided a Medical Certificate dated June 25, 2015, but that it was incomplete, being

silent on his occupational limitations and restrictions as well as anticipated date of return to full or modified duties. That Medical Certificate appears to have been sent by email of June 30, 2015 from the Applicant, however a copy is not attached to the email contained in the CAR nor as an attachment to the email as found in the Applicant's Record. By email of August 3, 2015 the Applicant stated that he was providing an updated Medical Certificate, again, however, a copy is not attached to that email in the CAR or in the Applicant's Record. On September 7, 2015, in his submissions in response to the Recommendation, the Applicant provided a Medical Certificate dated August 24, 2015.

[76] By email of August 3, 2015, the Applicant stated that he attached an updated Medical Certificate and apologised for its incompleteness, noting that an updated one would be sent later. By email of August 27, 2015, the Applicant provided a Medical Certificate dated August 24, 2015 which checked off the box indicating that he was "Unfit for duty" and inserted the dates from September 1 to September 30, 2015. It did not tick off the boxes "Fit for duty with restrictions" or "Progressive return to work". Nor was the section entitled "Occupational Restrictions" filled out. In his email the Applicant stated that his family doctor told him that "it is over his scope for filling the field of "Occupational Restrictions"" on his updated Medical Certificate and stated "Specialist may provide some advice for that".

[77] In that regard, I note that the CAR contains only the August 24, 2015 Medical Certificate. The Applicant, by way of Exhibit G of his affidavit filed in support of his application for judicial review, provided copies of prior Medical Certificates as well as Certificates for the year 2015 dated April 27, May 19, June 25, July 24, August 24 and September 17. Neither the CAR nor

the Applicant's Record indicate that the Certificates dated April 27, May 19 or September 17, 2015 were provided to the RCMP. It is also not apparent to me why the Certificates that were provided are not included in the CAR.

[78] It is correct that the August 24, 2015 Medical Certificate does not contain any applicable limitations and restrictions as required by s 2.9.1. of Chapter 19.3 of the Administration Manual. Nor does it indicate an anticipated date of return to full or modified duties. While I might have questioned the Commissioner's interpretation of s 2.9.1., given that the Applicant was deemed unfit for duty for a specified period of time by his family doctor therefore leading to the question of whether there were, in fact, "applicable" limitations and restrictions in the circumstance, the Applicant has not done so. Nor has he questioned that the Medical Certificates that postdate April 15, 2015 were incomplete. Further, and the requirement for the further information was relayed to him, and by him to his family doctor. The information was not provided by his family doctor or by a specialist.

[79] In any event, nothing in the CAR suggests that the Applicant provided Form 4056, Evaluation of Disability Questionnaire, completed by his medical practitioner as requested on May 1, 2015 by the Inspector. The Applicant merely repeated, on many occasions, that his family doctor did not like to fill out that form and did not think it was his responsibility.

[80] In the Appeal Decision the Commissioner acknowledged the Applicant's claim that he was unable to provide the completed forms because his medical practitioners were unwilling to properly complete them. In my view, the Commissioner reasonably concluded that this did not

absolve the Applicant of the policy requirements and that his explanation was not credible. The Applicant claimed to have a serious illness and it was unreasonable that, over a period of a year and a half, his new family doctor would not have sufficiently familiarized himself with his patients' condition so as to enable him to complete Form 4056.

[81] And, as submitted by the Respondent, and most significantly in my view, the HRO did not simply rely on the deficient Medical Certificate and absent Evaluation of Disability Questionnaire. Rather, the HRO also relied on the opinion of the HSO who is a medical doctor responsible for supervising and coordinating the delivery of professional opinions and recommendations by the Health Services Programs, and overseeing the appropriate application of professional health standards in accordance with policy. As described above, by memorandum of July 28, 2015, Dr. Hossack provided her opinion as to the current medical status of the Applicant to assist the Inspector in deciding whether to approve, rescind or deny the Applicant's continuous sick leave. Dr. Hossack stated that having reviewed all pertinent documentation made available to the RCMP and performing required consultations in forming her recommendation, absent any new information, she was unable to recommend the Applicant's continuous sick leave with respect to a complete absence from work. She recommended the Applicant's sick leave in terms of reduced hours as part of a Return to Work Agreement. She also stated that she requested disclosure of relevant medical information and had sought further clarification from the Applicant's care provider and that she was able to meet with the Applicant in person should he wish to discuss his medical condition or limitations and restrictions in support of his return to work.

[82] By email of August 20, 2015, Dr. Hossack advised the Inspector that she had no further contact with the Applicant's caregivers beyond seeing another Medical Certificate (Form 2135) forwarded to her and signed by Dr. Al-Jawadi. She stated that she had previously had conversations with the Applicant's primary and specialist health care providers and had received further medical information from the Applicant (testing in May and June), however, this did not change the conclusions in her prior memorandum.

[83] On September 22, 2015 the HRO, requested that Dr. Hossack advise if the results of the Applicant's MRI could reasonably have an impact on her July 28, 2015 opinion and sick leave recommendation. Dr. Hossack advised the HRO on October 6, 2015 that the results of the MRI would not alter her current opinion and recommendation, that she was aware of the nature of his condition and remained unable to medically support his complete absence from work. In her opinion, with adequate treatment the Applicant should be able to undergo a gradual return to work in some capacity.

[84] The CAR contains no evidence provided by the Applicant to support his view that the HSO was not sufficiently familiar with his file to address his condition or to rebut her medical opinion. As found by the Commissioner, while the Applicant made many lengthy submissions on many occasions, he merely provided his own interpretation of what he claimed the opinions of his family doctor and specialist to be. He presented no medical evidence to support this or to challenge the opinion of the HSO which opinion is, therefore, uncontradicted by other medical evidence. Accordingly, in my view, the Commissioner did not err in finding that the Inspector and the HRO reasonably relied on the opinion of the HSO.

[85] In sum, I cannot conclude on the record before me that the Commissioner's decision to uphold the Order issued by the HRO, being that the Applicant was absent from duty without authorization, was unreasonable. If anything, based on the record before me, the RCMP went to considerable lengths, demonstrated great patience and was fair and reasonable in all of its dealings with the Applicant.

[86] On a final point, although the Applicant asserts an error of law as a basis for his application for judicial review, he does not specify an error in this regard. He submits that the Administrative Manual, Chapter 19.3, Sick Leave, policy was ignored, that he was in compliance with the policy, and, that the record establishes that his sick leave should have been authorized. It is questionable if the latter point raises an argument that the policies were unreasonably interpreted but, to the extent that it does, I find that the Commissioner's policy interpretation was reasonable and, in any event, the medical opinion of the HSO was uncontradicted.

[87] This is a very unfortunate situation. The Applicant seems unable to appreciate that his own analysis of his medical condition is insufficient. The CAR suggests that it remains open to the Applicant to provide medical evidence supporting that he is permanently unable to return to work or, alternatively, indicating when and on what basis he is able to re-integrate with the workforce. He is encouraged to do so or to actively engage with the return to work process initiated by the RCMP or to explore the possibility of medical retirement.

[88] As to costs, the Respondent advises that it is abandoning its request for costs. I agree that this is appropriate in the circumstances.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed
and there shall be no order as to costs.

“Cecily Y. Strickland”

Judge

APPENDIX A

Legislation and Policies

i) Royal Canadian Mounted Police Act, RSC, 1985, c R-10

Appointment

5 (1) The Governor in Council may appoint an officer, to be known as the Commissioner of the Royal Canadian Mounted Police, to hold office during pleasure, who, under the direction of the Minister, has the control and management of the Force and all matters connected with the Force.

Delegation

(2) The Commissioner may delegate to any member, subject to any terms and conditions that the Commissioner directs, any of the Commissioner's powers, duties or functions under this Act, except the power to delegate under this subsection, the power to make rules under this Act and the powers, duties or functions under subsections 45.4(5) and 45.41(10).

Stoppage of pay and allowances

22(2) The Commissioner may direct that a member's pay and allowances be stopped if

(a) the Commissioner is of the opinion that the member

(i) is unable to perform their duties as the result of the loss of a basic requirement, as set out in the rules, for the carrying out of a member's duties,

(ii) is absent from duty without authorization, or

Législation et politiques

i) Loi sur la Gendarmerie royale du Canada (LRC (1985), ch R-10)

Nomination

5 (1) Le gouverneur en conseil peut nommer, à titre amovible, un officier appelé commissaire de la Gendarmerie royale du Canada, qui, sous la direction du ministre, a pleine autorité sur la Gendarmerie et tout ce qui s'y rapporte.

Délégation

(2) Le commissaire peut déléguer à tout membre, aux conditions qu'il fixe, les pouvoirs ou fonctions que lui attribue la présente loi, à l'exception du pouvoir de délégation que lui accorde le présent paragraphe, du pouvoir que lui accorde la présente loi d'établir des règles et des pouvoirs et fonctions visés aux paragraphes 45.4(5) et 45.41(10).

Cessation de la solde et des indemnités

22(2) Le commissaire peut exiger la cessation du versement de la solde et des indemnités d'un membre dans l'un ou l'autre des cas suivants :

a) selon le commissaire :

(i) le membre ne peut s'acquitter de ses fonctions parce qu'il ne possède plus l'une des compétences de base établies dans les règles relativement à l'exercice des fonctions d'un membre,

(ii) il s'absente sans autorisation,

(iii) has left any assigned duty without authorization;

(iii) il abandonne sans autorisation l'une quelconque des fonctions qui lui ont été assignées;

**ii) Commissioner's Standing Orders
(Employment Requirements), SOR/2014-292**

**ii) Consignes du commissaire (exigences
d'emploi) DORS/2014-292**

Stoppage of Pay and Allowances

Cessation du versement de la solde et des indemnités

Definition of decision maker

Définition de décideur

3 For the purpose of this Part, "decision maker" means a member to whom the Commissioner has delegated the power to direct that a member's pay and allowances be stopped under paragraph 22(2)(a) or (c) of the Act.

3 Pour l'application de la présente partie, décideur s'entend du membre à qui le commissaire a délégué le pouvoir d'exiger la cessation du versement de la solde et des indemnités d'un membre en application des alinéas 22(2)a) ou c) de la Loi.

Notice of decision maker

Avis au décideur responsable

4 (1) If a member loses a basic requirement, is absent from duty without authorization or has left any assigned duty without authorization, the person in command of the member's detachment must notify the decision maker for the member in writing as soon as feasible.

4 (1) Si un membre ne possède plus l'une des compétences de base, s'absente sans autorisation ou abandonne sans autorisation l'une des fonctions qui lui ont été assignées, la personne qui a le commandement du détachement de ce membre en avise par écrit le décideur responsable dès que possible.

Member recommended for discharge

Recommandation de licenciement d'un membre

(2) If a member is recommended for discharge under paragraph 20.2(1)(d), (f) or (j) of the Act, the person making the recommendation must immediately notify the decision maker for the member in writing.

(2) La personne qui recommande le licenciement d'un membre en vertu des alinéas 20.2(1)d), f) ou j) de la Loi en avise immédiatement par écrit le décideur responsable.

Service of notice of intent

Signification d'un avis d'intention

(3) If, on receiving a notification under subsection (1) or (2), the decision maker intends to direct that the member's pay and allowances be stopped, they must cause to be served on the member a notice to that effect.

(3) Sur réception d'un avis au titre des paragraphes (1) ou (2), si le décideur a l'intention d'exiger la cessation du versement de la solde et des indemnités du membre, il lui fait signifier un avis à cet effet.

Contents of notice of intent

- (4) The notice of intent must
- (a) set out the grounds on which the decision maker intends to make the decision; and
 - (b) state that the member may, within 14 days after the day on which the notice is served,
 - (i) provide a written response, or
 - (ii) request, in writing, an extension of time to provide a written response.

Consideration of response

- (5) The decision maker must consider any written response before deciding whether to direct that the member's pay and allowances be stopped.

Service of direction

- (6) If the decision maker directs that a member's pay and allowances be stopped, the decision maker must make the direction in writing and cause the member to be served with a copy of the direction and the reasons for it.

Duration

- (7) The direction takes effect immediately and remains in effect until the member
- (a) possesses the basic requirements for the carrying out of their duties, is no longer absent from duty without authorization or has returned to the assigned duty; or
 - (b) is no longer the subject of the recommendation for

Contenu de l'avis

- (4) L'avis d'intention précise :
- a) les motifs sur lesquels le décideur a l'intention de fonder sa décision;
 - b) la possibilité pour le membre, dans les quatorze jours suivant la date de la signification de l'avis :
 - (i) de soumettre une réponse écrite,
 - (ii) de demander par écrit la prorogation du délai pour soumettre une réponse écrite.

Réponse écrite — prise de décision

- (5) Le décideur tient compte de toute réponse écrite avant de décider d'exiger la cessation du versement de la solde et des indemnités d'un membre.

Signification d'une ordonnance

- (6) Le décideur qui exige par ordonnance la cessation du versement de la solde et des indemnités d'un membre le fait par écrit en lui faisant signifier copie de l'ordonnance motivée.

Durée de l'ordonnance

- (7) L'ordonnance entre en vigueur immédiatement et le demeure jusqu'à la date où le membre, selon le cas :
- a) possède à nouveau les compétences de base pour exercer ses fonctions, ne s'absente pas sans autorisation ou reprend les fonctions qui lui ont été assignées;
 - b) n'est plus visé par une recommandation de

discharge referred to in subsection (2).

Date of reinstatement of pay and allowances

(8) The Commissioner may reinstate the pay and allowances of a member to the date of the stoppage of pay and allowances if the grounds for the stoppage no longer apply and if the circumstances leading to the stoppage were exceptional and beyond the member's control.

Redress for certain written decisions

20 (1) A member who is aggrieved by one of the following written decisions may seek redress by means of an appeal of the decision in accordance with the Commissioner's Standing Orders (Grievances and Appeals):

(e) a written decision under paragraph 22(2)(a) or (c) of the Act to direct that a member's pay and allowances be stopped.

iii) Commissioner's Standing Orders (Grievances and Appeals), SOR/2014-289

Appeals (Other than Part IV of the Act)

Application

37 This Part provides the process for appeals

(c) of the written decisions referred to in subsection 20(1) of the *Commissioner's Standing Orders (Employment Requirements)*;

Statement of appeal

38 For the purpose of the provisions referred to in section 37, an appeal must be made by filing a statement of appeal with the OCGA within 14 days after the day on

licenciement visée au paragraphe (2).

Rétablissement du versement de la solde et des indemnités

(8) Le commissaire peut rétablir le versement de la solde et des indemnités d'un membre rétroactivement, au jour de la cessation du versement, si les motifs de la cessation n'existent plus et que les circonstances qui y ont donné lieu étaient exceptionnelles et indépendantes de la volonté du membre.

Recours : certaines décisions écrites

20 (1) Le membre à qui cause préjudice l'une des décisions écrites ci-après peut, à titre de recours, interjeter appel de la décision écrite conformément aux Consignes du commissaire (griefs et appels) :

e) la décision d'exiger la cessation du versement de sa solde et de ses indemnités en vertu des alinéas 22(2)a) ou c) de la Loi.

iii) Consignes du commissaire (griefs et appels) (DORS/2014-289)

Appels (partie IV de la Loi)

Application

37 La présente partie prévoit le processus pour l'appel :

c) des décisions écrites visées au paragraphe 20(1) des *Consignes du commissaire (exigences d'emploi)*;

Déclaration d'appel

38 Pour l'application des dispositions visées à l'article 37, l'appel est fait dans les quatorze jours suivant la date de la signification au membre en cause d'une copie de la décision

which a copy of the decision giving rise to the appeal is served on the member who is the subject of that decision. The statement must be accompanied by a copy of the decision that is being appealed and include the following information:

(a) the appellant's name and employee number;

(b) a concise statement of the reasons why the appellant is of the opinion that the decision that is the subject of the appeal contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable; and

(c) particulars concerning the redress requested.

Obligation to file material

39 The respondent must, as soon as feasible after being served with the statement of appeal, file with the OCGA the material that was before the person who rendered the written decision that is the subject of the appeal when that decision was rendered.

Supporting documents

40 (1) The OCGA must provide the appellant with an opportunity to file written submissions and other documents in support of their appeal.

Restriction

(2) The appellant is not entitled to

(a) file any document that was not provided to the person who rendered the decision that is the subject of the appeal if it was available to the appellant when the decision was rendered; or

(b) include in their written submissions any new information that was known or could

visée par l'appel par le dépôt auprès du BCGA d'une déclaration d'appel accompagnée d'une copie de la décision et des renseignements suivants :

a) le nom de l'appelant et son numéro d'employé;

b) un bref énoncé des motifs pour lesquels il estime que la décision contrevient aux principes d'équité procédurale, est entachée d'une erreur de droit ou est manifestement déraisonnable;

c) le détail de la réparation demandée.

Dépôt obligatoire des éléments

39 L'intimé dépose au BCGA, dès que possible après avoir reçu signification de la déclaration d'appel, les éléments qui étaient en possession de l'auteur de la décision écrite qui fait l'objet de l'appel au moment où la décision a été rendue.

Documents à l'appui de l'appel

40 (1) Le BCGA accorde à l'appelant la possibilité de déposer des observations écrites et d'autres documents à l'appui de son appel.

Restriction

(2) L'appelant ne peut :

a) déposer un document qui n'a pas été fourni à l'auteur de la décision qui fait l'objet de l'appel si le document était à la disposition de l'appelant au moment où la décision a été rendue;

b) inclure dans ses observations écrites tout nouveau renseignement qui était connu ou

reasonably have been known by the appellant when the decision was rendered.

Service of documents

41 After receiving the statement of appeal and any written submission or other document filed by a party, the OCGA must cause a copy of each one to be served on the other party.

Adjudicator's decision

47 (1) An adjudicator may dispose of an appeal by rendering a decision

(a) dismissing the appeal and confirming the decision being appealed; or

(b) allowing the appeal and

(i) remitting the matter, with directions for rendering a new decision to the decision maker who rendered the decision being appealed or to another decision maker, or

(ii) directing any appropriate redress.

Decision in writing

(2) An adjudicator considering an appeal must, as soon as feasible, render a decision in writing that disposes of the appeal and includes reasons for the decision. The decision is final and binding.

Considerations

(3) An adjudicator, when rendering the decision, must consider whether the decision that is the subject of the appeal contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable.

(7) The adjudicator must cause a copy of the decision to be served on the parties.

aurait pu raisonnablement être connu de l'appelant au moment où la décision a été rendue.

Signification à l'autre partie

41 Le BCGA fait signifier à l'autre partie, dès réception, copie de la déclaration d'appel, des observations écrites ou de tous autres documents.

Décision de l'arbitre

47 (1) L'arbitre qui dispose d'un appel peut rendre une décision :

a) le rejetant et confirmant la décision portée en appel;

b) l'accueillant et :

(i) renvoyant l'affaire au décideur qui a rendu la décision ou à un autre décideur, avec des directives en vue d'une nouvelle décision,

(ii) ordonnant la réparation qui s'impose.

Décision écrite

(2) L'arbitre qui étudie l'appel rend, dès que possible, une décision écrite et motivée qui en dispose; sa décision est définitive et exécutoire.

Considérations

(3) Lorsqu'il rend la décision, l'arbitre évalue si la décision qui fait l'objet de l'appel contrevient aux principes d'équité procédurale, est entachée d'une erreur de droit ou est manifestement déraisonnable.

(7) L'arbitre fait signifier copie de la décision aux parties.

iv) *Royal Canadian Mounted Police Administration Manual*

Chapter 19.3 Sick Leave:

1.1.5. Health Services Officer (HSO) is a licensed physician responsible for supervising and coordinating the delivery of professional opinions and recommendations by the Health Services Programs, and overseeing the appropriate application of professional health standards in one or more RCMP divisions. The HSO reports to the Regional OIC of OH and SS.

1.1.14. A medical certificate is an RCMP form 2135 with the member and the medical practitioner sections completed or a clearly identifiable written equivalent signed by the medical practitioner attached to form 2135 with the member's section completed and the name and address of the medical practitioner clearly identified on form 2135.

2. General

2.4. All absences due to illness or injury will be approved, rescinded or denied by the Commander/delegate.

2.7. A member must provide a medical certificate:

2.7.3. for any period of absence due to illness or injury which exceeds 40 consecutive work hours; or

2.7.4. when requested by a Commander or the HSO.

2.8 A medical certificate is only acceptable from a medical practitioner.

2.8.1. Recommendations supported by a note from a regulated health professional other than a medical practitioner will be given consideration by the HSO, but does not preclude that a member must submit a medical certificate from a medical practitioner when required under these directives.

2.9. Complete medical certificates must include:

2.9.1. applicable limitations and restrictions, and

2.9.2. an anticipated date of return to full or modified duties.

NOTE: A medical certificate with a reported anticipated return to work date of "indeterminate" or similar wording will be considered by the OHS as having a maximum validity of 30 calendar days.

2.12. When an HSO or DCM informs a member that RCMP form 4056 (Evaluation of Disability Questionnaire) is required, the member will ensure the medical practitioner completes and returns the form to the divisional OHS office as soon as possible.

3.3. Medical Certificate

3.3.1. Ensure medical certificates are provided to your Commander/delegate as soon as possible.

3.3.4.1. maintain communication with your assigned Disability Case Manager and comply with additional information requests;

3.3.5. Medical certificates will be completed by your medical practitioner in accordance with the instructions on the medical certificate.

3.3.6. When your HSO or DCM informs you that form 4056 is required, have your medical practitioner complete and return the form to your divisional OHS office as soon as possible.

7. Occupational Health Services Personnel

7.5. The HSO/delegate may, at any time in the process:

7.5.1. initiate a request for a medical certificate and/or form 4056;

7.5.2. request a copy of a member's treatment plan, medical records and/or additional clarification from the member's medical practitioner;

7.5.3. propose modifications to the treatment plan, applicable restrictions and limitations, and/or return to work recommendations, and discuss them with the member's medical practitioner;

7.5.7. establish an RTW agreement, which may be formal or informal, depending on the circumstances (developed through a multi-disciplinary approach, which may include the input of the treating medical practitioner, OHS personnel, RTW Facilitator, member, Supervisor/Commander, and/or Career Development and Resource Advisor).

7.6. Upon having reviewed all pertinent documentation, and performed required consultations, advise the Commander of your recommendations relative to sick leave status, applicable limitations and restrictions, and return to work possibilities.

Chapter 27.2 Stoppage of Pay and Allowances

1. Policy

1.1 This Policy establishes the procedures to be followed for the stoppage of pay and allowances for reasons other than a suspension for a contravention of the Code of Conduct, as provided for under subparagraphs 22(2)(a)(i), (ii), (iii), or s 22(c) of the RCMP Act.

3. Stoppage of pay and Allowances

3.1 Pursuant to s 22(2)(a) of the RCMP Act, a decision-maker may direct that a member's pay and allowances be stopped if, in the opinion of the decision maker, a member has lost a basic requirement, is absent from duty without authorization, or has left any assigned duty without authorization.

3.1.2. A member may be deemed to be absent from duty without authorization or to have left an assigned duty without authorization when:

3.1.2.1. the member has not been authorized to take leave for the period of the absence as provided for under ch. II.5; or

3.1.2.2. a request for sick leave has been denied as provided for under ch. 19.3.

4. Roles and Responsibilities

4.1. Commander

4.1.1. Monitor Personnel under your responsibility to ensure ongoing compliance with their employment requirements.

4.1.2. If a member no longer possesses a basic requirement, is absent from duty without authorization or has left an assigned duty without authorization, assess the situation to determine how long the situation may last, and take such steps as are necessary to determine the reasons for the member having lost a basic requirement, being absent from duty without authorization or for having left an assigned duty without authorization, and his/her anticipated return to duty.

4.1.3. If it appears that the member will not be able to recover the basic requirement in a reasonable amount of time, or if the reason for the member being absent from duty or having left an assigned duty without authorization cannot be determined, or the member remains absent without authorization notwithstanding steps having

been taken to establish the reasons for the absence and the anticipated return to duty, advise the decision-maker of the situation in writing. Prepare a written Recommendation for Stoppage of Pay and Allowances for presentation to the decision-maker. See App. 27-2-1.

4.1.3.1. When advising the decision-maker, include any recommendations regarding the loss of the basic requirement or the absence from duty that may be applicable under the circumstances, including any reasons why the member's pay and allowances should be stopped.

4.1.4. Where possible, maintain contact with the member until the member's pay and allowances are reinstated or any employment requirement process that was initiated in respect of the member completed.

4.1.4.1. If contact with the member is not possible, continue to take such steps as may be necessary to determine the reasons for the member having lost a basic requirement, being absent from duty without authorization or having left an assigned duty without authorization, and an anticipated date of return to duty.

4.3. Decision-maker

4.3.1. If the decision-maker is of the opinion that any of the conditions outlined under paragraphs 22(2)(a) or (c) of the RCMP Act are present, the decision maker may direct the stoppage of the member's pay and allowances.

4.3.2. If, in the opinion of the decision maker, the stoppage of a member's pay and allowances may be premature, advise the commander in writing, return the materials and information received from the commander to the commander and include any recommendations regarding additional steps as they may be appropriate.

4.3.3. If the decision maker intends to direct the stoppage of a member's pay and allowances, the decision maker must serve the member with a Notice of Intent to Stop Pay and Allowances. See App. 27-2-2.

4.3.4. The notice of intent must include at minimum those elements outlined under subsec. 4 (4) of the Commissioner's Standing Orders (Employment Requirements).

4.3.5. The decision maker may extend the time limit for a subject member to present written submissions if the decision maker is satisfied that an extension is appropriate under the circumstances.

4.3.6. The decision maker must consider the member's written response to the Notice of Intent to Stop Pay and Allowances before rendering a decision to direct the stoppage of the member's pay and allowances.

4.3.6.1. If the member does not provide a written response to the notice of intent despite the decision-maker having served the Notice of Intent on the member in a manner provided for in the RCMP Regulations, the decision-maker may render a decision in the absence of a written response.

4.3.7. If satisfied that a member's pay and allowances should be stopped, prepare an Order Directing the Stoppage of Pay and Allowances and serve the Order on the member. See App. 27-2-3.

4.3.7.1. The Order Directing the Stoppage of Pay and Allowances must:

4.3.7.1.1. be made in writing;

4.3.7.1.1. include the reasons on which the decision-maker relied to prepare the Order; and

4.3.7.1.3. include a notice to the member that the member is relieved from duty.

4.3.7.2. The decision-maker will prepare a written Record of Decision – Stoppage of Pay and Allowances, which is to be kept on file and entered onto the Administrative Case Management Tool (ACMT). See App. 27-2-5.

4.3.8. Send a copy of the Order Directing the Stoppage of Pay and Allowances to National Pay Operations immediately.

4.3.8.1. Pay and allowances, including extra pay entitlements, will cease on the day following the day the order directing the stoppage of a member's pay and allowances takes effect. See ch. II.4.

4.3.9. The Order Directing the Stoppage and Allowances:

4.3.9.1. takes effect on the day the decision is made by the decision maker, whether or not the member has been served; and

4.3.9.2. will remain in effect until the member has remedied any issues that resulted in the Order, or as otherwise directed by the decision maker or an adjudicator.

4.3.10. The decision maker will direct that the member's pay and allowances be reinstated when the decision maker is satisfied that the reasons for the stoppage of pay and allowances as outlined under subparagraphs 22(2)(a)(i), (ii), or (iii) of the RCMP Act are no longer in effect, or as the decision maker may otherwise direct.

4.3.11. Immediately upon determining that the member's pay and allowances are to be reinstated, serve a written Notice of Reinstatement of Pay and Allowances (see App. 27-2-4) to the member whose pay and allowances are reinstated, as well as to the National Pay Operations.

4.3.12. An adjudicator may direct that a member's pay and allowances be reinstated as provided under the Commissioner's Standing Orders (Grievances and Appeals).

4.3.13. A reinstatement of pay and allowances will take effect immediately on the date that the decision maker has determined that the reasons for the stoppage of the pay and allowances are no longer in effect, or on the date an adjudicator has directed that the member's pay and allowances be reinstated.

4.4. Member

4.4.1. A request for an extension of the time limit to present submissions in response to the Notice of Intent to Stop Pay and Allowances must:

4.4.1.1. be presented in writing as soon as feasible within 14 days after the day on which the member was served with the Notice; and

4.4.1.2. include reasons.

4.4.2. A decision by a decision maker to order the stoppage of pay and allowances may be appealed in accordance with the Commissioner's Standing Orders (Employment Requirements) and the Commissioner's Standing Orders (Grievances and Appeals).

4.4.3. The Order Directing the Stoppage of Pay and Allowances is not stayed if a member appeals the Order.

4.4.4. A member whose pay and allowances have been stopped for the loss of a basic requirement may engage in any legitimate

secondary employment outside the RCMP, subject to the relevant policy and approval on outside activity. See ch. XVII. 1. Sec 12.

EXCEPTION: A member whose pay and allowances have been stopped for one of the reasons outlines under subparagraphs 22(2)(ii) (absent from duty without authorization) or (iii) (left any assigned duty without authorization) of the RCMP Act is not permitted to engage in secondary employment outside the RCMP until the member has returned to duty or is authorized by the RCMP to be absent from duty.

4.4.6. For information regarding the impact of the Order on the member pay and allowances, see ch. II.4. For information specific to pension, visit the RCMP Pension website. For information specific to insurance coverage, visit Morneau Shepell website.

4.4.7. A member may be eligible for an emergency pay advance following the reinstatement of pay and allowances. See ch. II.4, sec. P.

FEDERAL COURT
SOLICITORS OF RECORD

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