



Royal Canadian Mounted Police
External Review Committee

2008-2009



Annual Report

Canada



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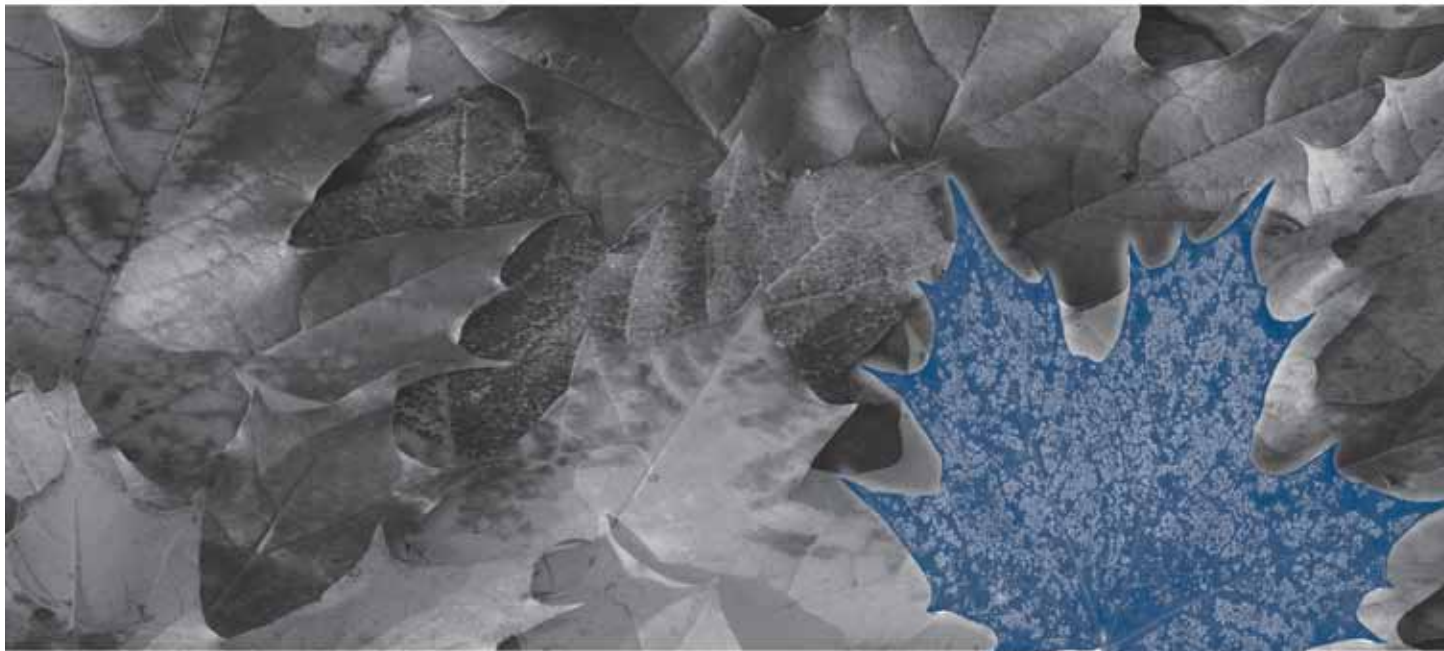
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June 19, 2009

The Honourable Peter Van Loan, P.C., M.P.
Minister of Public Safety
269 Laurier Avenue West
Ottawa, Ontario
K1A 0P8

Dear Minister:

In accordance with Section 30 of the *Royal Canadian Mounted Police Act*, I am pleased to submit to you the annual report of the RCMP External Review Committee for fiscal year 2008-2009, so that it may be tabled in the House of Commons and in the Senate.

Yours very truly,

A handwritten signature in black ink that reads "Catherine Ebbs".

Catherine Ebbs
Chair

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Catherine Ebbs
Chair

The RCMP External Review Committee (ERC) has one strategic outcome: “To positively influence the manner in which labour relations are addressed within the RCMP.” Since its inception in 1988, the ERC has worked hard to contribute to better, more informed decisions at all levels in the RCMP labour relations process.

The ERC has also taken great care, throughout its existence, to act as the proud steward of the principles of fairness, impartiality, independence, and transparency. For example, the ERC has always championed procedural fairness in labour relations processes. It has consistently ensured that members have the right to be heard, the right to reasonable disclosure, the right to an unbiased

decision-maker, and the right to explanations of the decisions that affect them.

The benefits of this approach have been many and varied for both the Force and its members. For instance, the ERC’s findings and recommendations have provided clarity and guidance in a number of areas with regard to how the *RCMP Act*, *RCMP Regulations*, and RCMP policies should be interpreted. The ERC’s findings and recommendations have also helped guide the RCMP’s internal grievance system to recalibrate what constitutes acceptable limits in a number of areas. The ERC has also informed the RCMP’s policy-development process by ensuring that issues such as the interpretation of the duty to accommodate are in alignment with rulings of the Supreme Court of Canada.

While labour relations in a large organization are always a challenge, recent events have exposed the RCMP and its labour relations to considerable scrutiny. Various investigations and task forces have been examining a range of events in the Force. Key among these is the Brown Task Force on Governance and Cultural Change in the RCMP, to which the ERC made a submission on RCMP labour relations issues. A reform and

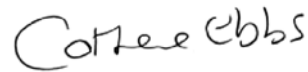
renewal process to improve governance and effect cultural change within the Force is now unfolding, and the government-appointed RCMP Reform Implementation Council is monitoring and reporting on progress on the reform process.

In this environment of change and uncertainty, consistency in staff relations is paramount. The Force and its members must know that their staff relations issues will be handled openly, impartially, and fairly. They must feel confident that issues which are complex either legally or factually or both and which to date remain unresolved are in good hands.

The principles that form the foundation of ERC findings and recommendations have therefore probably never been more important. The ERC has always conducted its reviews openly, impartially, and fairly. The ERC's long tradition of quality reviews and its expertise in complex labour relations issues ensure that such issues are in the right hands.

In short, the ERC is extremely proud of the contribution it has made to RCMP labour relations over the past 20 years and is confident and optimistic that it will continue to do so.

This year's annual report provides an overview of our activities throughout the 2008 – 2009 year and is available on our website, along with our quarterly *Communiqué*, case summaries, and other government reports (www.erc-cee.gc.ca).



Catherine Ebbs
Chair

PART I | Who We Are and What We Do

The RCMP External Review Committee (ERC) is an independent federal tribunal that helps to ensure fair and equitable labour relations within the RCMP. The ERC does this by conducting thorough impartial reviews of certain types of grievances, as well as disciplinary appeals, and discharge and demotion appeals.

The ERC reviews these cases to ensure transparency, fairness, and impartiality in RCMP labour relations processes for regular and civilian members. The ERC's jurisdiction is restricted to regular members and civilian members only. Public servants employed by the RCMP have a separate labour relations process.

Once a review is completed, the ERC provides its findings and recommendations on the case to the RCMP Commissioner. The ERC provides findings and recommendations only. The RCMP Commissioner takes the final decision.

Given that RCMP members are non-unionized, the role of the ERC in the Force's labour/management resolution process is a crucial one. Over the years, the RCMP has made changes in a variety of areas as a result of

recommendations made by the ERC. These include policy changes with regard to the internal labour relations system, medical discharge, suspension without pay, and harassment prevention.

As one of two oversight/review bodies over the RCMP (the other being the Commission for Public Complaints Against the RCMP (CPC)), the ERC plays an important role in maintaining public confidence in the RCMP, and ensures that the RCMP respects the law and human rights.

In 2008-2009, the ERC's budget was approximately \$1.5 million, and the organization had a staff of 9, including the Chair. The ERC spent approximately 80% of its time and resources on case review, and 20% on outreach and communication.¹

Organizational Structure

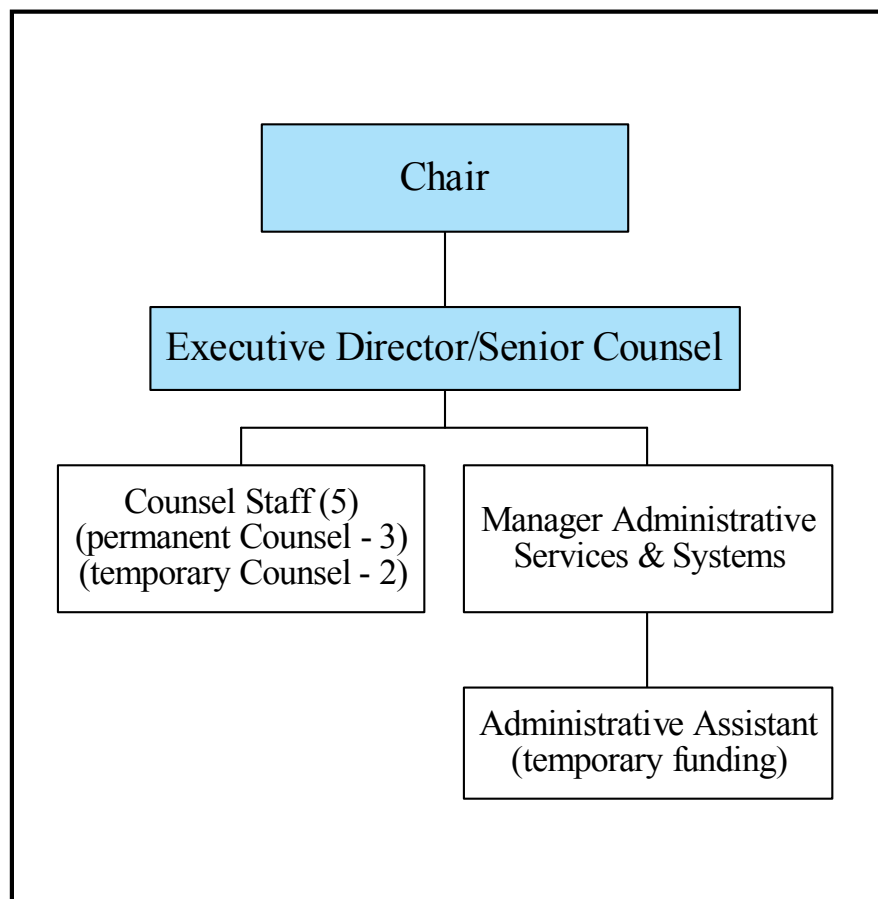
The ERC reports to Parliament through the Minister of Public Safety, and is headed by a Chair who is appointed by order of the Governor in Council. The ERC has one member who is both the Chair and the Chief

¹ Corporate services such as financial management, human resources and information technology services are included in these two sets of activities.

Executive Officer. Under the *Royal Canadian Mounted Police Act (RCMP Act)*, no one who sits on the ERC can be a member of the RCMP.

In addition to the Chair, the ERC is managed by an Executive Director/Senior Counsel who oversees a small staff of seven, comprised of lawyers who are experts in labour, employment and administrative law, and administrative personnel.

The ERC receives some administrative services from the Department of Public Safety through a Memorandum of Understanding for assistance in such areas as Human Resources, Information Technology, and Finance. As for all federal public service departments, the Department of Public Works and Government Services Canada provides the ERC with all accommodation services.



Case Review

The ERC does not have the authority to initiate reviews. The case review process starts when the RCMP Commissioner refers a case to the ERC. The cases that must be referred to the ERC are described in the *RCMP Act* and include certain categories of grievances which are outlined in the *Regulations*, as well as all disciplinary appeals, and all discharge and demotion appeals.

When the ERC conducts a review of a case, it examines the entire record, including all supporting documentation, the decision made, and the submissions of the parties. Where the review involves the appeal of a disciplinary or discharge and demotion decision, the transcript of the RCMP Adjudication Board hearing is also before the ERC, as well as any exhibits entered at that hearing. The ERC Chair may request that one or both parties provide additional information or submissions, and if information is received from a party, the other party is given the chance to respond. The Chair also has the authority to hold a hearing if deemed necessary, although this option is rarely used. The Chair reviews all the evidence, legal issues, relevant legislation and case law before making a recommendation.

The ERC Chair provides findings and recommendations to the RCMP Commissioner and the parties involved. The Commissioner is the final decision-maker, and must consider the ERC's recommendations. If the Commissioner does not follow the ERC's recommendations, the *RCMP Act* requires that the Commissioner's decision include the reasons for not doing so.

The ERC's work touches on components of labour relations and employment law. The ERC reviews

“The addition of civilian review added a new level of accountability and transparency to the labour relations processes.”

Catherine Ebbs, Chair

matters stemming from three distinct labour relations processes within the RCMP: the grievance review process, the discipline appeal process, and the discharge and demotion appeal process. Below is an outline for each of these processes and their relation to the ERC.

Grievance Process

The highest volume of cases referred to the ERC is in the area of grievances. Under the *RCMP Act*, disputes involving personal rights and interests are to be resolved through the RCMP grievance process. Grievances can cover a broad range of rights and interests, from entitlements to claim reimbursement for certain expenses, to the right to work in an environment free from harassment and discrimination.

Grievances are initially considered and decided through a paper review. At this first level, they are reviewed by an RCMP officer designated as a Level I Adjudicator. If the grieving member is dissatisfied with the Adjudicator's decision, then the member may file a Level II grievance which is decided at the level of the RCMP Commissioner or designate. Under section 36 of the *RCMP Regulations*, the Commissioner must first refer five specific categories of Level II grievances to the ERC for its review as an impartial, independent review body.

Five types of grievances which must be referred to the ERC for review:

- (a) the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to RCMP members;
- (b) the stoppage of the pay and allowances of members made pursuant to subsection 22(3) of the *Act*;
- (c) the Force's interpretation and application of the *Isolated Posts Directive*;
- (d) the Force's interpretation and application of the *RCMP Relocation Directive*; and
- (e) administrative discharge for various grounds.

Disciplinary Appeals

When an RCMP member is alleged to have committed a serious violation of the RCMP *Code of Conduct* and formal discipline is initiated, a hearing is held to determine whether or not the allegations are established, and if so, what the appropriate sanction will be. The matter is heard by an Adjudication Board consisting of three senior RCMP officers. If, after the Board renders its decision, either the Force or the member wishes to appeal that decision to the RCMP Commissioner, then the Appellant and the Respondent provide written submissions to the Commissioner. Unless the Commissioner grants a member's rare request to not do so, the RCMP Commissioner refers the file to the ERC for its review. Once the ERC has conducted a thorough review of the file, it issues its findings and recommendations to the RCMP Commissioner and the parties involved.

Discharge and Demotion Appeals

When a discharge or a demotion proceeding is initiated against a member for failing to perform his/her duties in a satisfactory manner, the member may request that a Discharge and Demotion Board, consisting of three senior officers of

the RCMP, be convened to review the matter. The decision of the Board may be appealed by either the member or the Appropriate Officer who initiated the proceeding. Appeal submissions are made in writing to the RCMP Commissioner. Unless the Commissioner grants a member's rare request to not do so, the RCMP Commissioner refers all discharge and demotion appeals to the ERC for its review. Once the ERC has conducted a thorough review of the file, it issues its findings and recommendations to the RCMP Commissioner and the parties involved.

Outreach and Communication

In addition to case reviews, the ERC engages in other activities that support and enhance its core mandate. Outreach and communication, in a variety of forms, is an important component of its work.

As part of its communication initiatives, the ERC publishes the quarterly *Communiqué*, responds to both formal and informal requests for information, and provides information and training to various labour relations sections within the RCMP. The ERC also maintains a website (www.erc-cee.gc.ca) which contains past Annual Reports, previous

editions of *Communiqué*, an extensive searchable database of all summaries of ERC findings and recommendations, summaries of RCMP Commissioners' subsequent decisions, as well as copies of the ERC's most requested articles, discussion papers and specialized reports². The ERC receives positive feedback from its website users about its accessibility and its utility. In this past year, the ERC recorded 424,637 page views on its website.

Outreach initiatives have also included regular visits with RCMP members in detachments, National Headquarters and in Divisional Headquarters. The ERC combines these visits with other travel whenever possible.

Grievances commonly come before the ERC with procedural difficulties or questions. As part of its outreach and educational work, the ERC routinely addresses these procedural issues to help encourage a better understanding of their interpretation. This year, the ERC conducted seven meetings in divisions from British Columbia to Quebec specifically on these topics. One such example was a presentation to the annual Staff Relations Representatives (SRR) Training event at National Headquarters in

September, where topics included standing, time limits, disclosure obligations, tips for preparing grievor and respondent submissions, as well as topical discussions of harassment prevention, suspension without pay, and relocation.

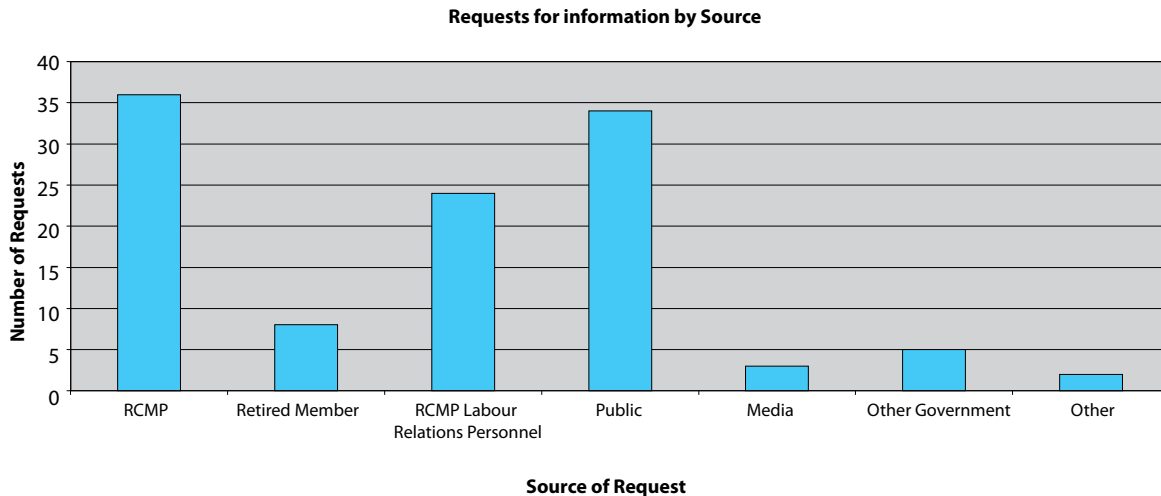
Additionally, the Chair met separately with the RCMP Commissioner and the Executive of the SRR Program to discuss developments in the respective processes of the ERC and the RCMP.

Notably in this past year, the ERC hosted a gathering to coincide with the release of its 20th Annual Report. Well over one hundred guests attended the afternoon presentation, where addresses were made by the RCMP Commissioner, the Executive of the SRR Program and the Associate Deputy Minister of Public Safety as well as the Chair of the ERC. The event commemorated the work of the ERC under the leadership of a succession of distinguished Chairs, who collectively have developed a respected body of case analyses that is recognized by labour relations practitioners.

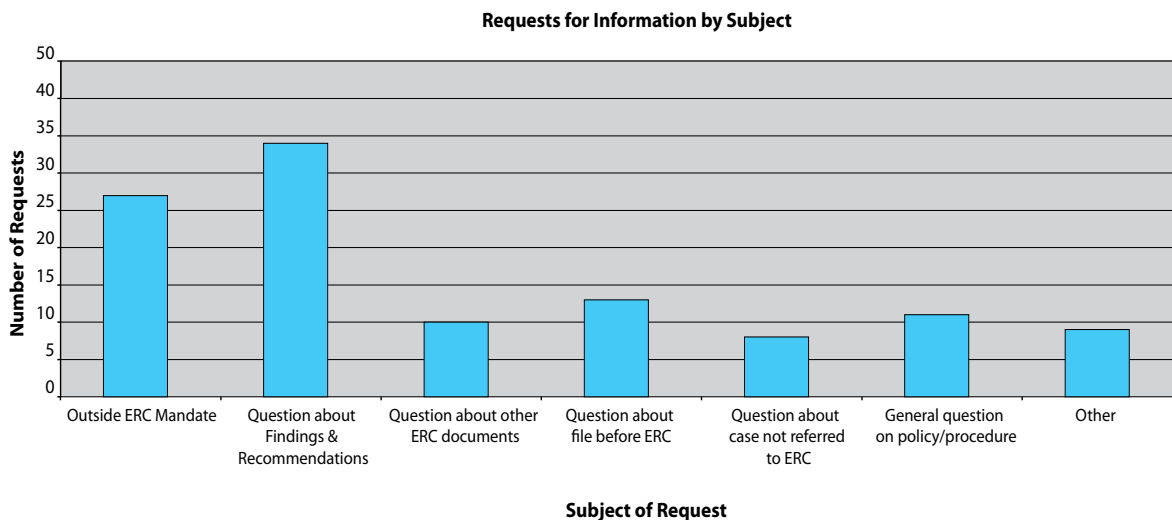
² For instance, see RCMP External Review Committee Annual Reports: 2005-2006, "Review of Standing and Time Limits"; 2006-2007, "Procedural Issues" and 2007-2008, "Protecting Access, Time Limits". See also Articles of Interest, which include "Referability: A discussion concerning the Committee's jurisdiction to review matters"; "Standing: Recent Developments - the 'Standing' Requirement"; "Subsection 31(1) of the RCMP Act: The 'Standing' Requirement"; and "Time Limits Subsection 31(2) of the RCMP Act: Time limits".

Requests for Information

In 2008-09, the ERC received a total of 113 requests for information. On average, the ERC provided an answer to each such request within 4 days. Over one-third of the requests came from the RCMP itself. Members of the public were the second largest group of requesters.



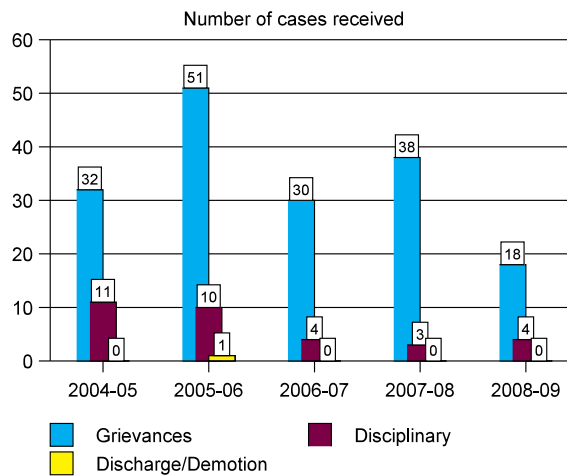
The graph below illustrates the range of the general categories of requests received. Several requests were straightforward and the requesters were directed to the appropriate office. However other requests were complicated and required more time and effort for a complete and accurate response. By far, the median response time was one day, indicating that a smaller number of complex inquiries was significantly time-consuming.



Case Review

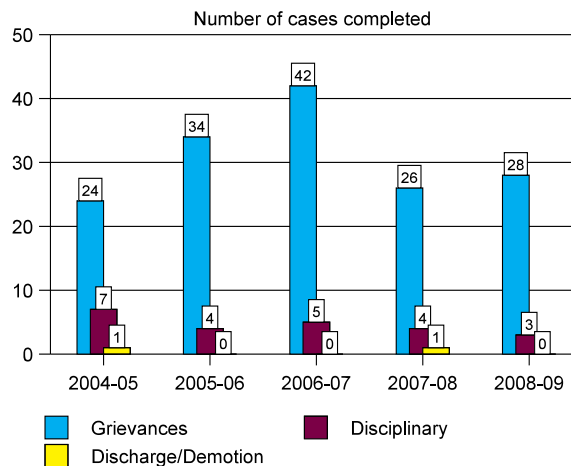
Referrals

Twenty-two cases were referred to ERC in 2008-2009: 18 grievances and 4 disciplinary appeals. The ERC received no referrals of discharge and demotion appeals this year.



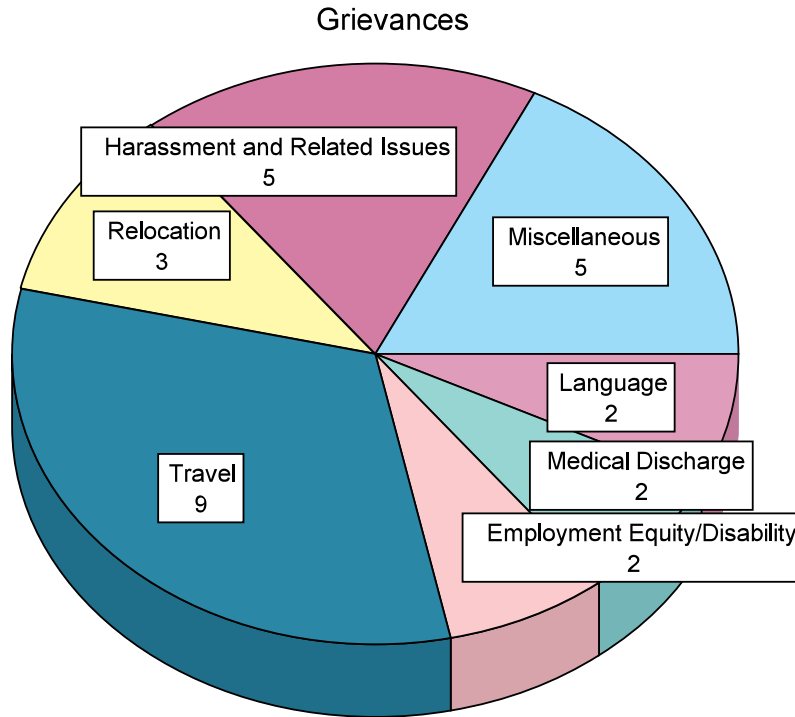
Cases Completed and Recommendations Issued

The ERC completed 31 cases in 2008-2009: 28 regarding grievances and 3 regarding disciplinary appeals.



Grievances

The chart below shows the distribution of this year's grievance recommendations by subject matter.



Each year travel, harassment, and relocation issues typically account for a significant portion of grievance reviews. In 2008-2009, issues related to travel expense claims accounted for almost one-third of all the grievance recommendations issued. Relocation and harassment issues combined to represent almost one-third of all grievance recommendations in 2008-2009.

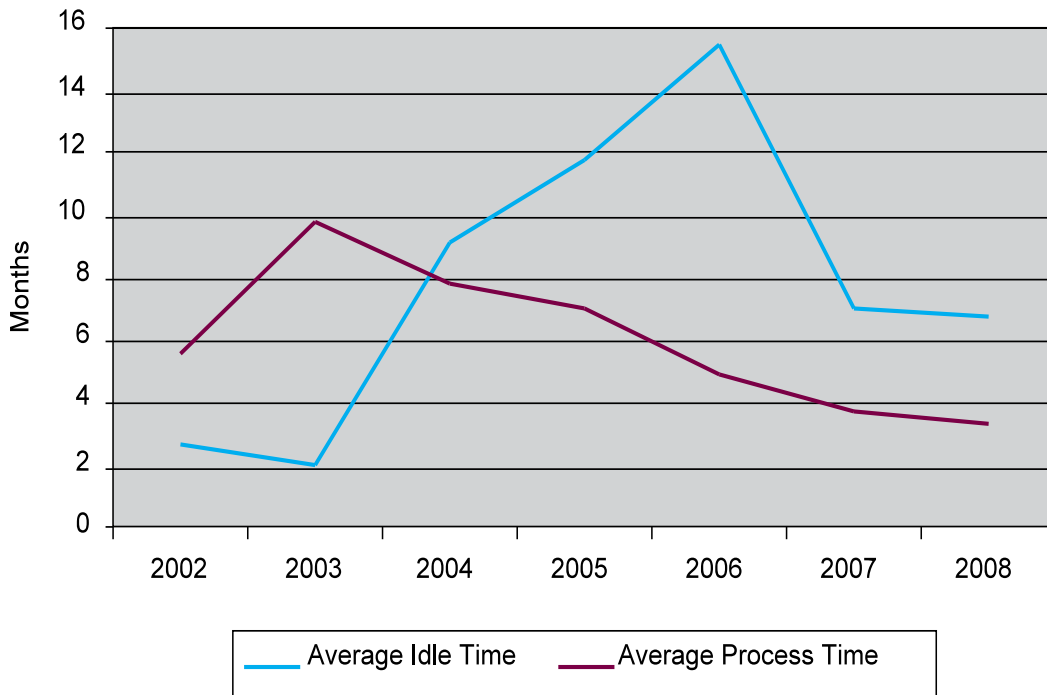
Disciplinary Appeals

This year, the ERC reviewed and made recommendations in three disciplinary appeals. All three were initiated by a member, and all three involved a sanction consisting of an order to resign within 14 days or be dismissed from the Force. Of the three disciplinary appeal reviews that the ERC conducted in 2008-2009, two recommended upholding the Adjudication Board's decision on sanction (D-106 and D-107), and one (D-108) recommended allowing the appeal.

Performance Improvement

As the membership of the RCMP has grown, the complexity of the Force's employment policy suite has grown. Similarly, the files referred to the ERC have increased in volume and complexity. The ERC has taken steps to reduce the time to analyse each file, the sole factor within its control. Since 2003, the average analysis time has decreased. Nonetheless, despite the ERC's efforts, the idle time - from receipt of the file to the start of the analysis - continued to increase.

As a result of additional short term funding that the ERC received, there were immediate and measurably positive results. The average idle time for files referred to the ERC decreased in the year that resources were deployed. This decrease represents a 54% performance improvement. While the trend in the idle time has leveled out, the ERC is continuing to improve its processing time. The graph below illustrates this trend as well as the positive results of the ERC's continued efforts to reduce both the processing time as well as the idle time.



For grievances, the ERC's ideal objective is to issue its findings and recommendations within three months of the case being referred to it. For discipline and discharge and demotion cases, the ERC strives for a standard of six months. These service standards are not currently being met. The ERC is pursuing avenues for a permanent resource allocation that will allow it to reach an acceptable review rate and to sustain it at that level.

At the start of 2008-2009, 69 grievances and appeals were pending before the ERC. At the fiscal year end of 2008-2009, there were 60 cases before the ERC for review. Two-thirds of these cases were referred to the ERC more than one year before, and one-quarter were referred more than two years before. They were distributed as follows:

- 48 pending grievances;
- 12 pending disciplinary appeals; and
- 0 pending discharge and demotion appeals.

Other Activities

In addition to its case review, the ERC must meet every common statutory obligation required of all departments in the Public Service. The ERC is fully committed to delivering on its mandate, while ensuring it is compliant with federal government policies and legislation.

“The ERC recommendations in grievance cases have led to policy changes...which resulted in improvements in the work place and a better quality of life for RCMP members.”

Catherine Ebbs, Chair

The ERC's workload includes significant reporting and corporate requirements. Unlike most departments and agencies, the ERC has no specialists in areas such as procurement, finance, human resources and knowledge management. As a result, staff members assume many roles to address corporate management demands in order to meet the same reporting requirements of a large department or agency. Given the ERC's small size and budget, these reporting pressures contribute to delays in the case review process.

PART IV Highlights of This Year's Cases

As a quasi-judicial tribunal, when reviewing grievances and appeals, the ERC applies the rule of law and is guided by the principles of fairness, impartiality, independence, and transparency, not unlike a court of law. The ERC is a recommending body that issues findings and recommendations in the same way as an adjudication body issues a decision.

The following sections present highlights from the grievances and disciplinary appeals reviewed this year, and where available, the RCMP Commissioner's decision.

Grievances

A. Procedural Issues

Every grievance the ERC reviews has both a procedural and a subject-matter component. Although there are few technical requirements for filing a grievance in the RCMP, they are extremely important for ensuring fairness, impartiality, independence, and transparency throughout the process, and the ERC often discusses these issues in its detailed findings and recommendations. Not adhering to these requirements can lead to a breach of procedural fairness and may even

cause a prior decision to be deemed invalid.

The ERC typically addresses procedural issues at a review's outset, where it focuses on how the case came before it. In doing so, the ERC asks questions such:

- Does the ERC have jurisdiction to review a grievance (is it referable)?
- Does the grievor have a right to bring a particular grievance (does he or she have standing)?
- Was the grievance filed within the required time limit?
- If not, is it appropriate to grant an extension of the time limit?
- Has the grievor received proper disclosure of relevant information from the Force?

In the grievances reviewed this year, themes relating to procedure recurred, and some new issues emerged in the areas of isolated posts and the relative value of work performed. The ERC also revisited an issue pertaining to transfers and travel expenses that had not been raised in many years, and it clarified the legal test that must be met in assessing entitlement to these expense claims.

Referability

Referability relates to whether a case is properly before the ERC. If a case is not referable, the ERC cannot review it; if a case is referable, the ERC must review it. In discipline, discharge and demotion cases, referability is not an issue because all such appeals are referred except those rare cases where a member requests otherwise.

Of the five types of grievances that must be referred to the ERC for review, the Force's interpretation and application of government-wide policies generates most of the controversy about what is referable. In the cases reviewed this year, confusion arose where the nature of the grievance was unclear, where there were intersecting human rights issues, and where there was some connection to a clearly referable policy.

The nature of the grievance was unclear. In G-441, the Member filed a grievance that she described as "*equal pay for equal work*." She argued that people performing the same functions should be paid at the same rate. The Level I Adjudicator denied the grievance, which he described as a classification matter. Classification is a process managed entirely through internal RCMP processes, and it is not a referable type of grievance. The ERC however found the matter

to be referable, as compensation reflecting the relative value of the work performed relates to pay and allowances, which is a Treasury Board responsibility administered, in part, through government-wide policies that apply to the Force.

There was an intersecting human rights issue. In G-445, the Grievor contested the Force's refusal to extend his RCMP service beyond 60 years of age. The ERC found that the grievance was referable since it raised the issue of discrimination on the basis of age. Such issues are covered by overarching federal policies that apply to the RCMP.

For further details of individual cases, refer to the ERC's website at www.erc-cee.gc.ca.

There was connection to a clearly referable policy. G-457 and G-458 dealt with the reimbursement of travel expenses when grieving a transfer. A grievance about the transfer itself is not referable to the ERC. However, travel grievances are, and because the issue in question concerned travel entitlements, the ERC found the grievances referable.

Standing

The term *standing* comes from the Latin phrase *locus standi* and refers to the right to bring an action. Section 31(1) of the *RCMP Act* sets out a five-part test for determining whether a member of the Force has standing:

- 1) The grievor must be a member;
- 2) The grievor must be aggrieved;
- 3) The grievance must involve a decision, act or omission;
- 4) The decision, act, or omission must have been taken in the administration of the affairs of the Force; and
- 5) There must not be any other process for redress provided by the *RCMP Act*, the *RCMP Regulations*, or the Commissioner's Standing Orders (CSO).

The ERC has published a number of articles on the question of standing, including "Subsection 31(1) of the *RCMP Act*: The "Standing" Requirement", by Lisa Thiele, Legal Counsel, April 1999, available at <http://www.erc-cee.gc.ca/publications/articles/a-027-eng.aspx>, and "Recent Developments - the "Standing" Requirement", by Monica Phillips, Legal Counsel, July 2005, available at

<http://www.erc-cee.gc.ca/publications/articles/a-028-eng.aspx>. Several recent annual reports have also addressed this issue.

Examples of this year's cases involving standing touched on two key issues: the need to distinguish between standing and the merits, and other redress available.

The need to distinguish between standing and the merits. In G-437 to G-440, a workplace deeply marked by discontent was subject to a Critical Incident Review, which resulted in a determination that the Grievors may have been harassed by two supervisors. A *Code of Conduct* investigation led to a decision to not take any disciplinary action against the supervisors. The Grievors filed grievances. The Level I Adjudicator found that the Grievors did not have standing because the decision was not made by the correct person under policy. The ERC disagreed, finding that the subject matter of the grievances was the process the Force used to deal with allegations of harassment. The ERC noted that questions about who made the contentious decision and what policy was followed must be examined in the context of responding to the merits of the case, and that these questions had no bearing on whether the Grievors had standing. The ERC recommended that the RCMP

Commissioner allow the grievances and order the Force to consider the Grievors' allegations under the applicable harassment policies. The RCMP Commissioner agreed with the ERC.

Other redress available. In G-444, the Grievor filed two grievance forms objecting to a decision regarding a medical profile of “*unable to perform, ... , any operational or administrative duties at the RCMP*”, and to a recommendation that the administrative medical discharge process be initiated. The Office for the Coordination of Grievances (OCG) opened a single grievance file and invited the Grievor and the Respondent to make submissions on the question of standing. No submissions were received. The grievances were forwarded to the Level I Adjudicator, who determined that the grievance was a duplication of a previous grievance and denied it on the basis of a lack of standing.

The grievances were referred to the ERC, which was subsequently advised that the OCG had refused to place on the record certain materials provided by the Grievor. The ERC confirmed this fact and secured copies of the materials in question. The ERC found that one of the grievances addressed the same decision grieved in another case. The ERC also found that the

Grievor lacked standing to bring the other grievance, as another process for redress — the medical discharge process — was available under the *RCMP Regulations*.

The ERC recommended that an apology be made to the Grievor, as there were a number of procedural irregularities in the file, including a decision to incorporate one grievance into another grievance; a decision to return documents submitted by the Grievor; and a failure to acknowledge the Level II grievance form or to prompt the Grievor to make a submission.

B. Issues on the Merits

Isolated Posts

The Force provides policing services in many remote locations which are known as isolated posts. Working at these posts can be challenging. The climate is often harsh. Ordinary goods and services can be hard to find. Personal and professional support may be minimal.

The importance of looking after members at isolated posts is gaining wider recognition. For example, the Brown Task Force recently

recommended that the RCMP and Treasury Board ensure that members at isolated posts are treated fairly. In addition, the Force has expressed its commitment to attracting members to isolated posts and to taking care of them and their families while they are there.

In addition to the related findings and recommendations, this year, the ERC published “*Promoting Mental Health in the RCMP*” in the July-September 2008 *Communiqué* (available at <http://www.erc-cee.gc.ca/publications/communiqué/200809-eng.aspx>). This article addresses different workplace pressures in the RCMP, mental health issues, and the issues faced by members at isolated posts.

This year, the ERC issued several findings and recommendations of interest to members at isolated posts. In G-449, G-450, and G-451, it considered circumstances where the RCMP calculated a series of vacation travel claims for members at isolated posts by applying a Treasury Board policy in a new way that deviated from a related *Compensation Bulletin*. As a result, the RCMP took the position that after returning from their vacations, the Grievors owed the Force vacation travel monies that the RCMP had advanced to them before their

vacations. The ERC recommended that the grievances be allowed. The ERC found that the *Compensation Bulletin*, which applied squarely to the Grievors’ situations, strongly suggested that the Grievors should be paid the disputed expenses.

In G-460, G-461, G-462 and G-463, the ERC reviewed the Force’s refusal to process previously-approved vacation travel claims for members at isolated posts. The Force alleged that the Grievors failed to comply with a new Treasury Board Policy. The Grievors argued that, contrary to a requirement, the Force did not orient them to that policy. The ERC recommended that the grievances be allowed in part. It further suggested that structures be put in place to properly inform members — especially those at isolated posts — about policy requirements, entitlements, and any significant changes to them.

Official Languages

The *Official Languages Act* and various Treasury Board authorities set out the powers, duties, and functions of federal institutions, including the RCMP, with respect to the official languages of Canada. In so doing, they establish a framework for identifying the language requirements of positions. Generally speaking, such requirements are

designed to reflect operational needs and relate objectively to the work required of employees or their work units. The Force has committed to meeting official languages obligations and has established its own policy in this regard.

“The ERC has contributed to better, more informed decisions at all levels in the RCMP labour relations process.”

Catherine Ebbs, Chair

This year, the ERC made a key finding in a grievance involving a language requirement assigned to a position. This finding may help future parties shape their arguments in similar cases. In G-452, a Grievor wanted to apply for a position for which his manager had approved a language classification the Grievor did not meet. The Grievor argued that by doing so, his manager tried to block his desired career path.

In assessing when to interfere with an RCMP staffing decision regarding official languages, the ERC relied on the Federal Court of Canada’s reasoning in *Rogers v. Canada*, [2001] FCJ No. 222. The Court held that the only relevant issue was whether a position objectively required the

linguistic conditions assigned to it. The Court also noted that it did not matter if an applicant believed he or she was disliked or otherwise treated harshly. In light of this decision, the ERC found that because the designation had been independently reviewed and was consistent with official languages policy, the record ultimately supported it. The ERC therefore recommended that the grievance be denied.

Harassment

The prevention of workplace harassment is an essential aspect of creating and maintaining a healthy, dynamic work environment. The Treasury Board Policy on *Prevention and Resolution of Harassment in the Workplace* describes workplace harassment as “*any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm.*”

The ERC is committed to helping the RCMP achieve its goal of providing a harassment-free workplace. The ERC has written extensively on harassment issues in its annual reports, discussion papers, and articles of interest. In 2008-2009, the article “*Promoting*

Mental Health in the RCMP” observed that when allegations of harassment arise, victims and alleged harassers can suffer tremendous stress, isolation, anxiety, depression, and an inability to work. Those conditions can reduce workforce morale, productivity, and dedication. The ERC has also noted that harassment grievances can be deeply hostile, emotionally charged, and protracted matters that raise issues of extraordinary complexity.

This year, the ERC reiterated in several grievances that the Force must comply with Treasury Board and RCMP harassment policies. The ERC further observed that, although purported harassment may not meet the threshold for an allegation of disgraceful conduct under the *Code of Conduct*, it may still meet the definition of harassment under the applicable policies. The ERC also stressed that a harassment investigation must not only be fair and neutral but must also be perceived as such by a reasonably well-informed person (G-437, G-438, G-439, G-440, G-453). The RCMP Commissioner issued a number of decisions this year (G-377, G-397, G-405, G-410, G-420, G-437 to G-440) that affirmed these principles.

Relative Value of Work Performed

The Treasury Board’s *Policy Framework for the Management of Compensation* emphasizes the importance of internal relativity by providing that compensation “*should reflect the relative value to the employer of the work performed*”.

The ERC considered this issue in 2008-2009 in G-441, where a Surplus to Establishment (STE) employee who performed Violent Crime Linkage Analysis System (ViCLAS) work as a Constable learned that ViCLAS members in other regions were ranked as Corporals even though they seemed to be doing the same work she was doing. She contended that individuals performing the same functions should be paid at the same rate, in accordance with the Force’s values of fairness and equity. She sought compensation and benefits to reflect the rank, pay, and opportunities of a Corporal for a specific period of time.

The ERC found that the Force had not ensured equality of pay in a broad sense. The evidence established that the entry-level positions of members in ViCLAS units in regions other than the Grievor’s were at the corporal rank. The evidence also showed that the Grievor performed the same duties as other corporals, including one in her own section.

In view of this and other evidence, the ERC found that the Force treated the Grievor unfairly and contrary to policy by requiring a constable as an STE to perform duties at a corporal level without additional pay. The ERC therefore recommended that the RCMP Commissioner allow the grievance and order that the matter be reviewed to determine how the Grievor could be compensated for the additional pay she should have received.

Entitlement to Travel Expenses or Relocation Benefits

This year, the ERC issued a number of findings and recommendations concerning the extent to which members are entitled to be reimbursed for relocation or travel expenses. Although the circumstances of the cases vary, the key message is that both the Force and its members are responsible for knowing and following the applicable relocation benefit policies.

This message was reinforced this year by the RCMP Commissioner's decision in G-409, which affirmed that where there is no policy entitling a member to claim a certain expense, the claim will be denied. It is also worth noting that, in response to an

ERC recommendation concerning the lack of clarity in travel expense policies, the RCMP Commissioner issued a decision in 2008-2009 that directed that a review be performed of all Treasury Board and RCMP travel policies. This review is intended to address any contradictions or inconsistencies in the policies and to establish a clear framework for assessing travel expense claims (G-376).

Travel Expenses for Grievor

Transfers. In both G-457 and G-458, Members grieved transfers after an announcement that their detachments would be closed. In G-457, the Force ordered the Grievor to report to her new post pending the resolution of her grievance. Initially, the Force lent her a police car and paid her travel expenses. However, although her transfer grievance was still pending, she was later ordered to absorb those expenses, and she grieved this decision. In G-458, the Member was ordered to report to a new workplace. The Force refused his request to use a police car to travel to the new post. He grieved this decision. The ERC cited prior grievances on transfers and travel to highlight the criteria for determining a member's entitlement to travel expenses:

- The Force makes a decision to transfer a member;
- The member grieves the decision to transfer him or her; and
- Before the decision is made in the transfer grievance, the Force orders the member to report to the new location.

The ERC found that the criteria applied in both cases and recommended that the RCMP Commissioner allow the grievances.

However, in G-442, the Grievor accepted a lateral transfer to a new detachment. A year later, he made a substantial claim for various expenses incurred at his new detachment. The claim was denied, and he grieved this decision. The ERC held that because he had not grieved his transfer, the policy that provided for such expenses when a transfer is grieved did not apply and he was therefore not entitled to the expenses.

Relocation Expenses on Retirement. In G-446, the Grievor sought expenses for a retirement relocation of less than 40 km. The ERC recommended that the RCMP Commissioner refuse the request because the Grievor did not meet the conditions for approval under the RCMP *Integrated*

Relocation Program 2003. Specifically, he was not living in Crown-owned accommodation, and there were no “*exceptional circumstances*” justifying a Force-paid move.

Extension of Two-Year Time Limit for Relocation Benefits. G-454 involved a Grievor who was transferred in 1998. He initially chose to retain his residence at the former work location but reversed his decision months later. His home did not sell, and in 2001, after the expiry of the two-year time limit to seek relocation benefits, he sought a waiver of the two-year time limit. Relocation Services mishandled the request, and the Grievor never received a decision. In September 2003, he sold the home and asked for relocation benefits. That request was denied because the two-year limit had passed.

The ERC found that although the waiver request was mishandled, the Grievor had not shown that there were exceptional circumstances to justify waiving the time limit. The ERC noted that members are responsible for reading and knowing relocation policies and for seeking advice where there is confusion. The ERC further observed that requests for time-limit extensions must be justified and should be submitted before the expiration of the time limit. The ERC

recommended that the portion of the grievance pertaining to relocation benefits be denied.

Further Comments and Recommendations

As part of its strategic outcome to positively influence labour relations in the RCMP, the ERC has issued findings and recommendations on issues of procedural fairness and the proper exercise of authority.

In G-442, the ERC commented on the impropriety of the Level I Adjudicator's actions, finding that he had exceeded his authority by concluding, without reasonable evidence, that the Grievor submitted his expense claim under false pretences and that he also attempted to mislead the Force into paying him a considerable amount of money to which he was not entitled. The ERC also found that the Level I Adjudicator exceeded his authority by improperly listing in his reasons for decision the details of every grievance ever presented by the Grievor. The ERC recommended that the RCMP Commissioner amend the Level I decision by removing that list.

Disciplinary Appeals

A disciplinary appeal typically requires the ERC to review many issues of law and procedural fairness. Disciplinary hearings before Adjudication Boards commonly involve several days of testimony and numerous exhibits. In addition to deciding the merits of allegations and the sanction to be imposed (if any), Adjudication Boards must often decide pre-hearing motions. For this reason, hearing transcripts can run to thousands of pages, Board decisions can be complex, grounds for appeal can be numerous, and parties' appellate submissions can be lengthy.

This year, the key issues emerging from the ERC's reviews included the standard of proof required in RCMP discipline hearings, the admissibility of additional evidence on appeal, the lawfulness of orders to attend treatment or counseling, and parity of sanction.

Standard of Proof Required in RCMP Discipline Hearings

In D-108, the ERC highlighted a recent Supreme Court of Canada decision, *F.H. v. McDougall*, 2008 SCC 53, which clarified that there is only one standard of proof in civil cases - the balance of probabilities -

and that this standard does not vary with the seriousness of the allegations or the potential consequences to the member. The ERC noted this principle and recommended that the RCMP Commissioner review the Level I decision with this standard in mind.

Admissibility of Additional Evidence on Appeal

Parties sometimes wish to provide information or evidence on appeal that was not presented at the original hearing. Section 8 of the *Royal Canadian Mounted Police External Review Committee Rules of Practice and Procedure* permits the ERC to consider written submissions presented after an original appeal is filed. The ERC and the RCMP Commissioner have followed case law holding that parties must present all of their evidence and arguments to the Adjudication Board before the Board makes its final decision. However, the Commissioner may consider additional evidence on appeal if all of the following criteria are met:

- It would be in the interests of justice to do so;
- The evidence could not reasonably have been submitted at the hearing;

- The evidence is relevant to an issue;
- The evidence is credible; and
- If believed, the evidence could reasonably be expected to have affected the Adjudication Board's decision.

In D-108, the Member ensured that the ERC received information and evidence that was not presented at the hearing. The ERC recommended that the RCMP Commissioner not consider most of this information and evidence, since it did not meet all of the above criteria. However, the ERC recommended that the Commissioner consider the new information and evidence that indicated two witnesses had lied under oath, as that evidence met all of the above criteria.

Lawfulness of Orders to Attend Treatment or Counseling

In D-108, the Member appealed an Adjudication Board's finding that he had disobeyed a lawful order to attend anger management counseling, contrary to section 40 of the *Code of Conduct*. The question was whether the order was lawful. The Board reasoned that it was lawful because the first component of treatment was assessment and the applicable

regulations authorized the Force to order assessments. However, the ERC found that, as alleged in the Notice of Hearing, the Member had been ordered to attend *counseling*, not an assessment. The ERC found that the Force did not have authority to order a member to attend counseling, that the order was therefore unlawful, and that the allegation of disobeying a lawful order was not proven.

Parity of Sanction

In previous publications, the ERC has discussed the principle of parity of sanction, which means that when an allegation is established and a sanction is imposed, the sanction should be similar to the pattern of sanctions imposed in similar cases.

In both D-106 and D-107, the Appellants argued that the Adjudication Board failed to impose a sanction that was similar to those in other cases, and thereby failed to respect the principle of parity of sanction. The ERC disagreed, finding that the cases presented for comparison were either not similar enough to the case under appeal, or were too few in number to have established a pattern of discipline to follow. In D-106, the Appellant withdrew his appeal and resigned before the RCMP Commissioner

could issue a decision. In D-107, the RCMP Commissioner agreed with the ERC that none of the cases submitted were sufficiently similar to establish a pattern of discipline for the Member's situation.

Further Comments and Recommendations

Occasionally an issue arises that may not relate directly to the merits of the appeal but is nevertheless important to the ERC's strategic outcome of positively influencing labour relations within the RCMP. When this happens, the ERC may choose to comment on the issue and may recommend that the RCMP Commissioner take certain steps to address it.

In D-108, Health Services recommended that the Force take measures to avoid a member having to work in close proximity with his ex-spouse and to facilitate the Member's ability to perform his duties. The ERC found that the Force not only failed to follow those recommendations, but it also took steps that were contrary to them. The ERC recognized the importance of looking after members' physical, emotional, and mental well-being and recommended that the RCMP Commissioner ensure that the Force follow Health Services' suggestions.

Related Federal Court Decisions

In August 2008, the Federal Court of Canada released a decision confirming that the limitation period for initiating a disciplinary hearing does not begin to run until the Appropriate Officer (AO) personally has knowledge of the alleged misconduct and the member's identity. This decision is summarized below.

Smart v. Canada (The Attorney General), 2008 FC 936

Before his disciplinary hearing, Constable Smart brought a motion for a stay of proceedings, which the Adjudication Board granted. The Board found that there had been an eleven-month delay in notifying the AO of the alleged misconduct and the Member's identity. Since the Board felt that the AO "*ought to have known*" about the alleged misconduct and the Member's identity more than one year before the AO initiated the hearing, the Board found that the AO had not respected the statutory time limit for initiating a hearing and that there had been an abuse of process. The Board stayed the proceedings, and the AO appealed.

Relying on the Federal Court of Appeal's decision in *Therriault v. Canada (Attorney General)*, 2006 FCA 61, the ERC held that section 43(8) of the *RCMP Act* requires that the AO have actual knowledge of the alleged misconduct and the member's identity. The ERC recommended that the RCMP Commissioner allow the appeal and order that the matter be returned for adjudication. The Commissioner agreed.

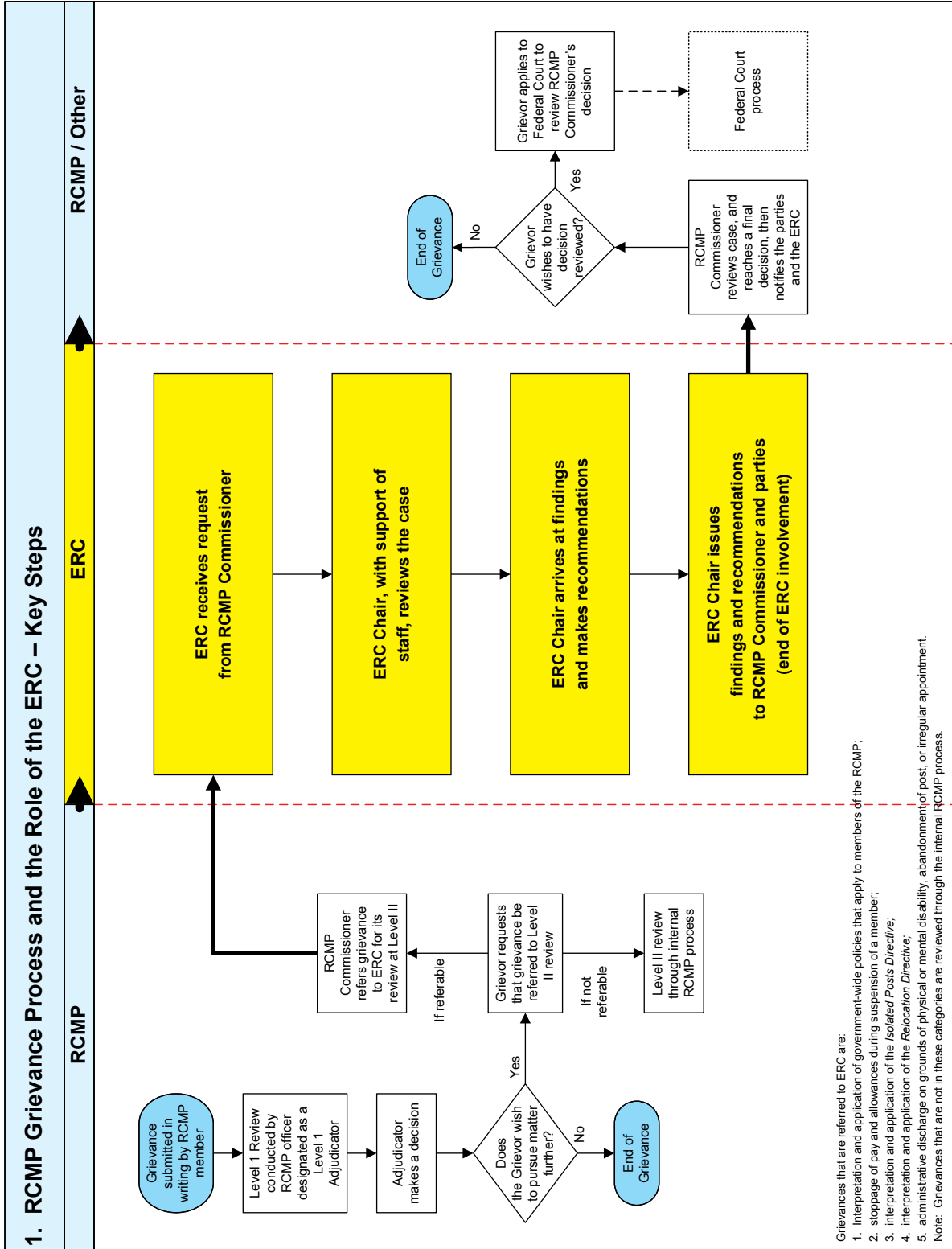
Constable Smart applied to the Federal Court of Canada for judicial review of the RCMP Commissioner's decision. He argued that for the purposes of commencing the limitation period, knowledge on the part of the AO's Representative in disciplinary proceedings constitutes knowledge on the part of the AO. The Federal Court disagreed. The Court stated that the limitation period does not begin to run until the AO personally has actual knowledge, and that constructive knowledge, even on the part of the AO's Representative, will not suffice. The Court also found no abuse of process and held that the RCMP Commissioner's decision to set aside the stay of proceedings was reasonable. Accordingly, the Court dismissed the Member's application for judicial review.

Overview of ERC Recommendations, 2008-2009

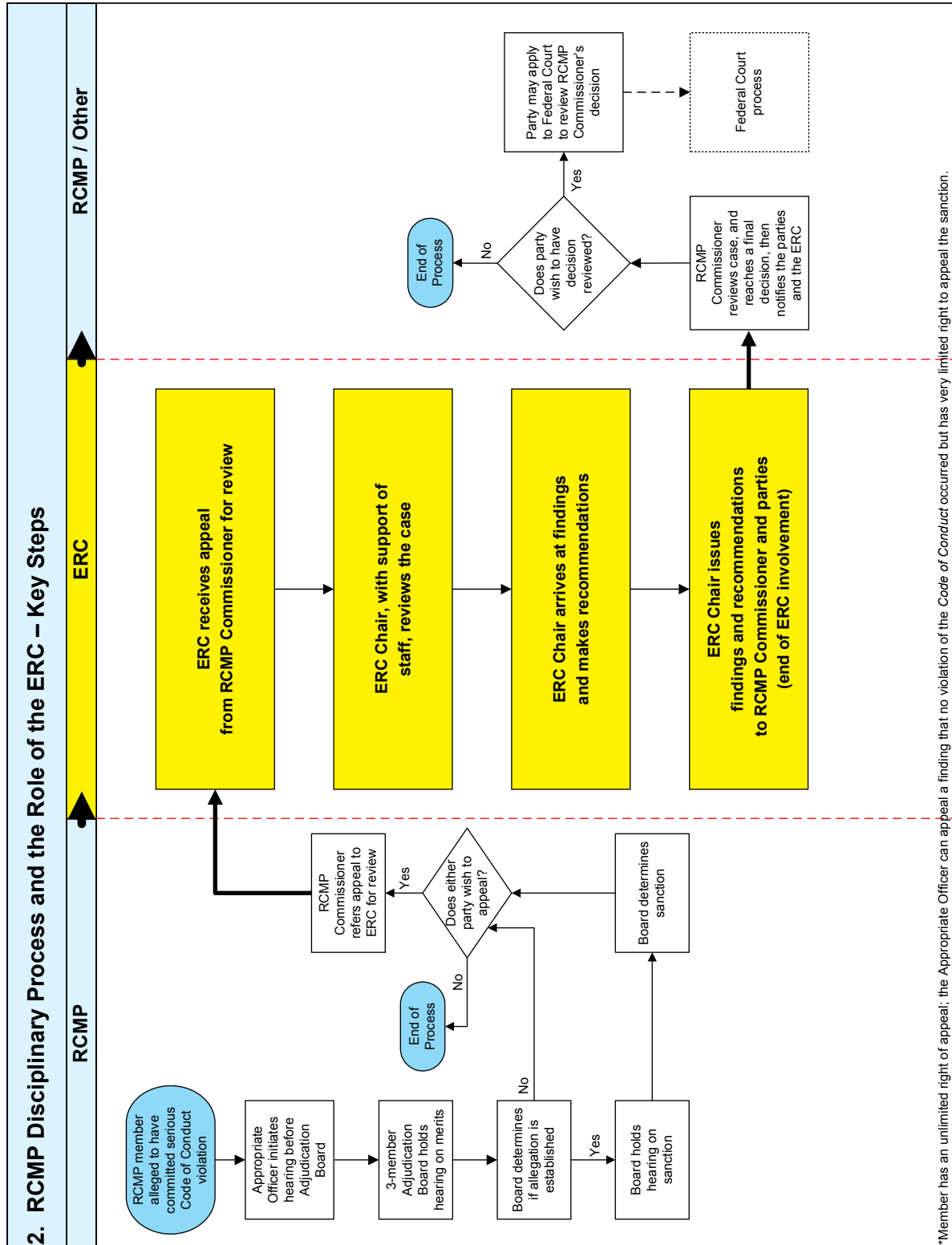
ERC Case Number	ERC Quick Reference Index Entry	ERC Recommendation
Grievances		
G-436	Medical discharge, Procedural errors	Allow the grievance and return the matter to Level I.
G-437, G-438, G-439, G-440	Harassment	Allow the grievance and order the Force to consider the Grievor's allegation pursuant to the applicable harassment policy framework.
G-441	Pay equity	Allow the grievance and order that the matter be reviewed to determine how the Grievor can be compensated for the additional pay she should have received.
G-442	Transfer allowance	Deny the grievance but 1) find that the Level I Adjudicator erred when he concluded that the Grievor was guilty of wrongdoing in relation to his travel expense claim, 2) attach that finding as an addendum to the Level I decision, and 3) transmit his decision and addendum to those conducting any investigation that resulted from the Level I decision, if such an investigation is still ongoing.
G-443	Language requirements	Disregard the details that the Grievor submitted for the first time at Level II; and deny the grievance.
G-444	Medical discharge, Procedural errors, Standing	Decline to consider the issues in the grievance as the ERC addressed them in G-436.
G-445	Mandatory retirement age, Standing	Allow the grievance and refer the file to Level I for processing.
G-446	Relocation (retirement)	Consider the grievance and make a new decision on the merits to deny the Grievor's request.
G-447	Disclosure of personal information, Standing	Allow the grievance and apologize on behalf of the RCMP for the breach in communicating the disciplinary record.
G-448	Disclosure of personal information, Procedural errors	Allow the grievance and apologize to the Grievor on behalf of the RCMP for the harm caused by not complying with the time limits of the <i>Privacy Act</i> .
G-449, G-450, G-451	Isolated posts, Travel Directive (vacation)	Allow the grievance and order that the disputed expenses be reimbursed.
G-452	Language requirements	Deny the grievance.

ERC Case Number	ERC Quick Reference Index Entry	ERC Recommendation
G-453	Harassment	Allow the grievance and apologize to the Grievor for the Force's failure to properly deal with his harassment complaint.
G-454	Relocation (waiver)	Deny the grievance, except to the extent that a review take place to ensure that the Grievor received the full amount of his transfer allowance.
G-455	Overpayment recovery	Deny the grievance.
G-456	Jurisdiction	None, as ERC does not have jurisdiction to review the grievance.
G-457, G-458	Relocation (Temporary Dual Residence Assistance), Travel Directive (use of private vehicle)	Allow the grievance and order the file returned to the persons authorized to determine the amount the Force will need to pay to the Grievor.
G-459	Disclosure of personal information, Standing	Deny the grievance.
G-460, G-461, G-462, G-463	Isolated posts, Travel directive (vacation)	Allow the grievance in part; ensure that mechanisms are in place within the Force to properly and fully inform all members, especially members at isolated posts, about policy requirements, entitlements and significant changes to same; and have a specialist help the Grievor properly resubmit his claim.
Disciplinary Appeals		
D-106	Breach of trust and accountability, Drugs, Theft	Dismiss the appeal
D-107	Breach of trust and accountability, Fraud	Dismiss the appeal
D-108	Disobeying a lawful order, Domestic violence	Take into account the additional information submitted by the parties at the appeal stage pertaining only to the allegations that the Appellant's estranged wife and her fiancé lied under oath; allow the appeal on the merits, find that the allegation of disobeying a lawful order was not established, and order a new hearing before a differently-constituted Board for three of the case's six incidents; allow the appeal on sanction and impose a reprimand and forfeiture of 3 days' pay for each of two incidents; and ensure that the Force follows the recommendations from the Appellant's 2001 special medical evaluation.

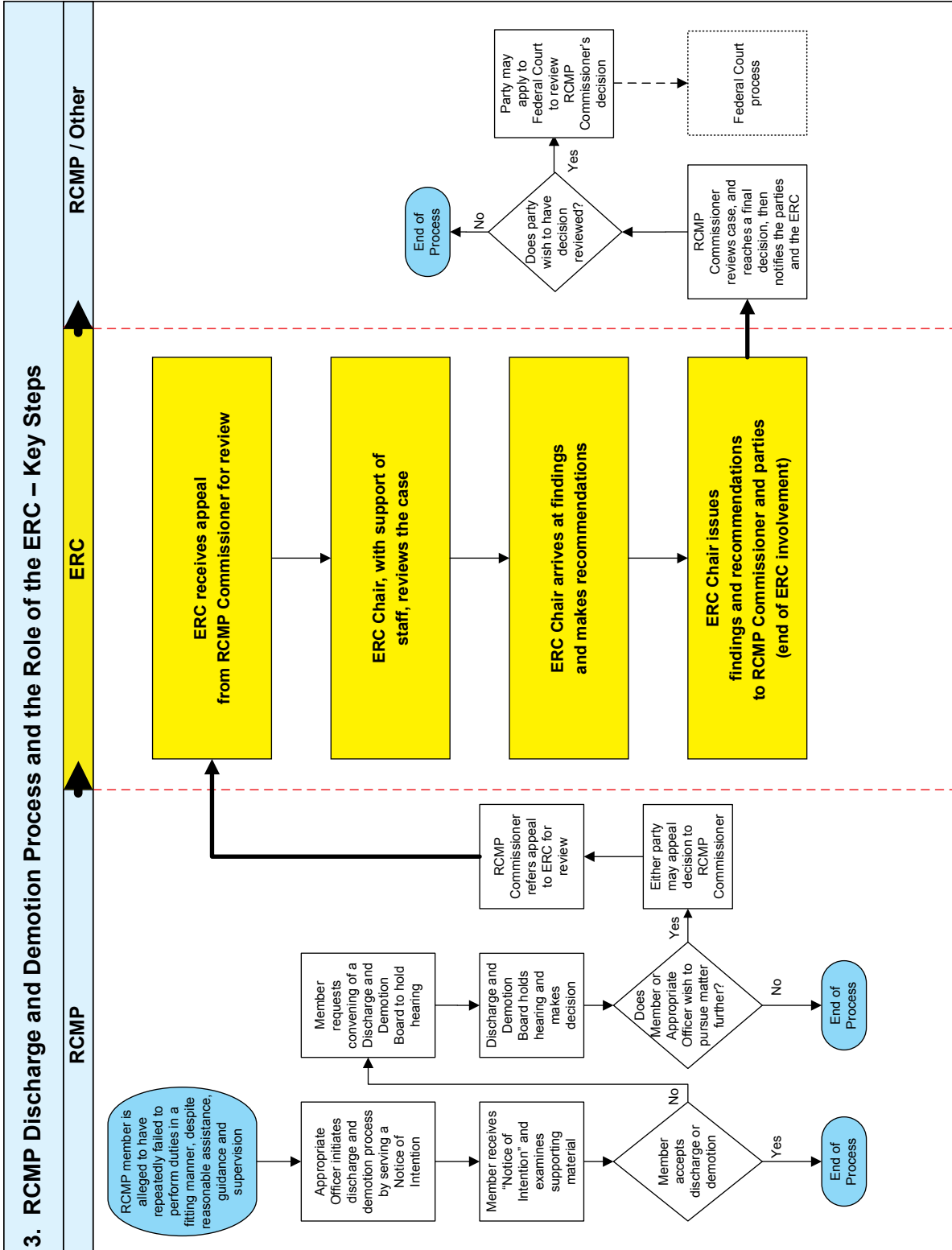
RCMP Process and the Role of the ERC • Grievances



RCMP Process and the Role of ERC • Discipline



RCMP Process and the Role of ERC • Discharge and Demotion



About the ERC

The RCMP External Review Committee (ERC) was created in response to recommendations in the 1976 *Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police*. In 1986, as part of the Commission's call for an independent review mechanism in the area of labour relations within the RCMP, the ERC was formally established through Part II of the *Royal Canadian Mounted Police Act*. It became fully operational by 1988.

The first Chair of the ERC was the Honourable Mr. Justice René Marin, who from 1974 to 1976 had chaired the *Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police*. In 1993, the Vice Chair, F. Jennifer Lynch, Q.C., became Acting Chair, a position she held until 1998. Philippe Rabot then assumed the position on an acting basis and, on July 16, 2001, was appointed Chair of the ERC.

Upon Mr. Rabot's departure in April 2005, Catherine Ebbs assumed the role of Acting Chair of the ERC. A member of the Bar of Saskatchewan, Ms. Ebbs was a member of the Board of the National Parole Board for sixteen years, the last ten as Vice-Chair in charge of the Appeal Division of the Board. Ms. Ebbs joined the ERC in 2003, serving as Legal Counsel and Executive Director/Senior Counsel before becoming Chair.

Ms. Ebbs was appointed full-time Chair on November 1, 2005, for a three-year term and reappointed on November 1, 2008, for a second three-year term.

The ERC produces a wide variety of research publications and reference materials, all of which are available to the RCMP and the general public at www.erc-cee.gc.ca.

The Difference between the ERC and the CPC

The ERC and the Commission for Public Complaints Against the RCMP (CPC) were established at the same time to be independent bodies to oversee and review the work of the RCMP. The two organizations are independent from the RCMP and they are distinct from each other. The ERC reviews certain types of grievances and other labour-related appeals from members of the RCMP, whereas the CPC reviews complaints from the public against members of the RCMP. Both organizations play very important roles, as Justice O'Connor confirmed in the 2006 Arar Commission Policy Review Report, in maintaining public confidence in the RCMP and in ensuring that it respects the law and human rights.

ERC and its Staff as of March 31, 2009

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