



Royal Canadian Mounted Police
External Review Committee



2010-11 **Annual Report**

Canada 





Royal Canadian Mounted Police
External Review Committee



2010-11 **Annual Report**

Canada 



May 25, 2011

The Honourable Vic Toews, P.C., Q.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 2010-11, 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

Table of Contents

PART I - Message from the Chair	1
PART II - Who We Are and What We Do	3
Organizational Structure	4
Case Review Process	5
Grievance Process	5
Disciplinary Appeals Process	6
Discharge and Demotion Appeals Process	7
Outreach and Communication	7
Requests for Information	8
PART III - What We Did This Year	11
Case Review	11
Referrals	11
Cases Completed and Recommendations Issued	12
Grievance Reviews	12
Disciplinary Appeals	13
Processing	13
Other Activities	14
PART IV - Highlights of This Year's Cases	15
Disciplinary Appeals	15
Grievances	20
PART V - Appendices	27
Overview of ERC Recommendations, 2010-11	27
RCMP Process and the Role of the ERC	32
History of the ERC	35
ERC and its Staff in 2010-11	36
ERC Address	36

PART I

Message from the Chair



Catherine Ebbs
Chair

I have been involved with the RCMP External Review Committee (ERC) since 2003, even before I was appointed Chair. Each year the ERC has faced a new set of circumstances which have called upon the concerted effort of its team of dedicated, professional staff. Together, those staff members have reviewed the challenge, re-aligned their priorities and taken up the task at hand.

In 2010-11 the ERC saw the introduction in the House of Commons of a bill (Bill C-43) proposing to allow the members of

the RCMP to choose to form a union and to collectively bargain with the Treasury Board. In addition, the Bill proposed to abolish the ERC and to give final decision-making authority in RCMP labour relations cases to another independent agency.

With its characteristic commitment to duty, the ERC has approached the new challenge with ardour in determining how best to implement Parliament's intentions, regardless of the indication that the ERC would cease to exist. I had the pleasure of meeting with several of the architects of the Bill and I believe that our comments were sincerely welcomed by them.

The ERC operations were affected to the extent that some staff left to pursue other career opportunities and additional resources were required to meet the necessary revisions to individuals' training plans. Needless to say, the ERC curtailed the hirings it had planned for this year.

Shortly before the close of the year, Parliament dissolved. As a result, debate on the Bill terminated before it was referred to committee.

Despite the tumultuous time for staff, I am pleased to report that the ERC has remained committed to its mandate. It continued its undertaking to give priority to discipline cases where the Force had issued an order to resign or be dismissed. Any reduction in the number of reports issued this year is attributed to the volume of documentation in these types of files and the complexity of the issues raised in them, as well as to the reduction in staff complement. Proudly, all of this was accomplished without any reduction in the quality of the reports issued.

In these times of uncertainty, I wish to recognize the ERC staff, all of whom have shown remarkable composure and dedication. Also, on their behalf I extend our appreciation to the partners and stakeholders who are working with us in this transition period.



Catherine Ebbs
Chair

PART II

Who We Are and What We Do

In 1976, *The Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure Within the Royal Canadian Mounted Police* recommended that there be independent review of RCMP labour relations matters. This would ensure that RCMP labour relations systems were as fair and equitable as possible, and perceived to be so by members of the Force. It also concluded that independent reviews were vital to a system “*which would have the respect of those members most likely to have an occasion to resort to it*”.

The RCMP External Review Committee (ERC) is the independent federal tribunal established by Parliament over twenty years ago to carry out the independent reviews recommended by the 1976 Commission of Inquiry.

The ERC reviews certain types of grievances, as well as disciplinary appeals, and discharge and demotion appeals. Its jurisdiction is restricted to regular and civilian members only. Public servants employed by the RCMP have separate labour relations processes.

As a quasi-judicial tribunal, the ERC applies the rule of law, and its role is crucial to ensuring transparency, fairness, and impartiality in RCMP labour relations processes. Once the ERC reviews a case, it issues findings and recommendations to the RCMP Commissioner, who then makes the final decision.

The ERC helps to maintain fair and equitable labour relations within the RCMP. Over the years, its findings and recommendations have prompted the RCMP to make policy changes in many areas of its internal labour relations, including medical discharges, suspensions without pay (SWOP), harassment prevention, relocation and transfer allowances, and workforce adjustment. The ERC continues to provide sound guidance in RCMP employment and labour relations matters.

As one of two bodies which oversee the RCMP (the other being the Commission for Public Complaints Against the RCMP (CPC)), the ERC has an important function in maintaining public confidence in the RCMP by helping to ensure that the RCMP respects the law and human rights in labour relations.

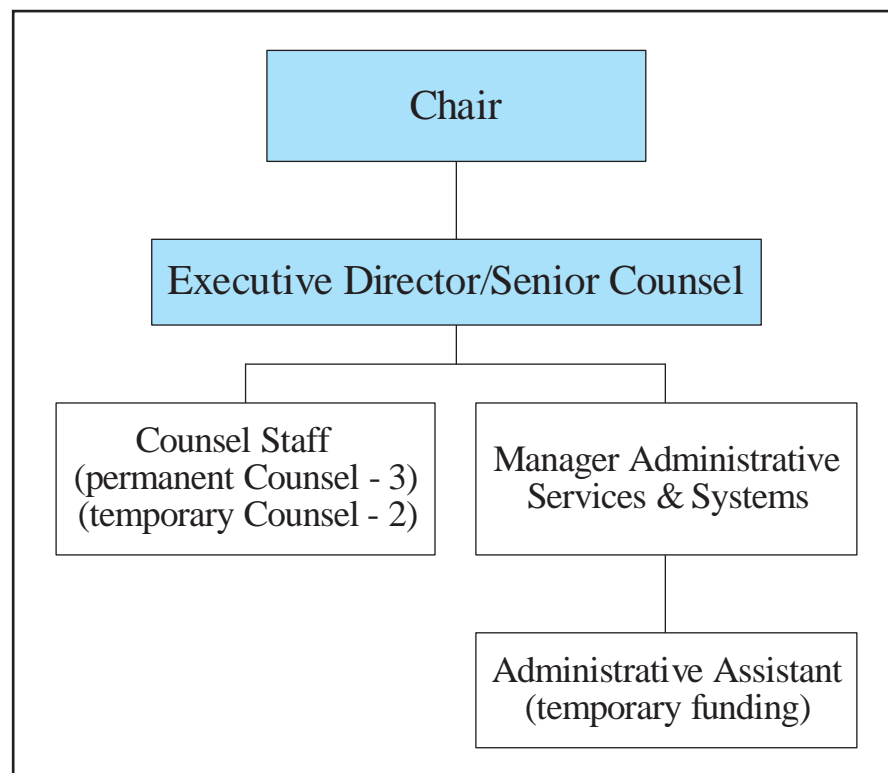
In 2010-2011, the ERC's budget was approximately \$2.1 million, and it began the year with a staff of nine, including the Chair. The ERC spent approximately 80% of its time and resources on case review, and 20% on outreach and communication. Corporate services such as financial management, human resources and information technology services are included in these two sets of activities.

Organizational Structure

The ERC reports to Parliament through the Minister of Public

Safety. It is headed by a Chair who is appointed by order of the Governor in Council. The Chair is also the Chief Executive Officer. Under the *Royal Canadian Mounted Police Act (RCMP Act)*, no one who is appointed to 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 staff of seven. The staff is comprised of lawyers who are experts in labour, employment and administrative law. It also includes a small number of administrative personnel who ensure the day-to-day operations of a modern public institution.



The ERC receives some support 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 Process

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

When the ERC reviews 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 decision, or a discharge and demotion decision, the transcript of the hearing, as well as any exhibits entered at the hearing, are also before the ERC. The ERC Chair may request that one or both

parties provide additional information or submissions. 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 exercised. The Chair considers all of the evidence, legal issues, relevant legislation, and case law before making findings and recommendations.

The ERC Chair provides the 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 grievance, discipline, and discharge and demotion processes, and the ERC's role in each, are examined more closely below.

Grievance Process

The *RCMP Act* provides that 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

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 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 reasons of physical or mental disability, abandonment of post, or irregular appointment.

claim reimbursement for certain expenses, to the right to work in an environment free from harassment and discrimination. Grievances represent the greatest number of cases referred to the ERC.

An RCMP officer designated as a Level I Adjudicator initially considers and decides a grievance. If the grieving member is dissatisfied with the Level I Adjudicator's decision, the member may file a Level II grievance which is decided by the RCMP Commissioner or designate. Under section 36 of the *RCMP Regulations*, before making a decision, the Commissioner must first refer to the ERC for its review, grievances which fall under five specified categories, unless the Commissioner grants a member's rare request to not do so.

Disciplinary Appeals Process

When an RCMP member is alleged to have committed a serious violation of the *RCMP Code of Conduct*, and formal discipline is initiated, an internal 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 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 Commissioner and the parties involved.

Discharge and Demotion Appeals Process

A discharge or a demotion proceeding may be initiated against a member for failing to perform his/her duties in a satisfactory manner. When this happens, 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 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 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.

The ERC publishes the quarterly *Communiqué*, which includes case summaries and articles on issues that commonly arise in cases.

The ERC also maintains a website (www.erc-cee.gc.ca) which contains, among other things, Annual Reports, *Communiqué* editions, an extensive searchable database of summaries of the ERC's findings and recommendations, summaries of RCMP Commissioners' subsequent decisions, and the ERC's most requested articles, discussion papers and specialized reports. The ERC has received positive feedback from its website users about its accessibility and utility. In this past year, the ERC recorded 294,390 page views on its website.

The ERC provides information and training to various labour relations personnel within the RCMP. Outreach initiatives have included visits with RCMP members in detachments,

Topics of ERC's most requested articles:

- **Referability:** A discussion concerning the Committee's jurisdiction to review matters
- **Standing:** Recent Developments - the "Standing" Requirement
- **Standing:** Subsection 31(1) of the *RCMP Act*: the "Standing" Requirement
- **Time Limits:** Subsection 31(2) of the *RCMP Act*: Time Limits
- **What Makes a Good Grievance?**

Other papers are listed on the ERC's website at www.erc-cee.gc.ca

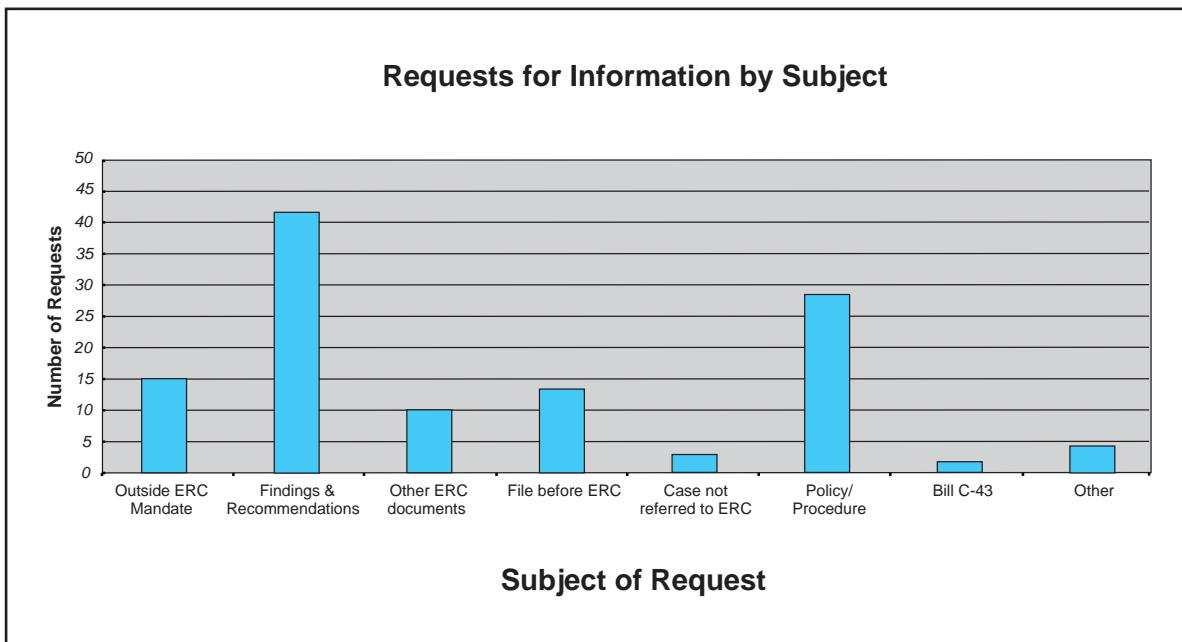
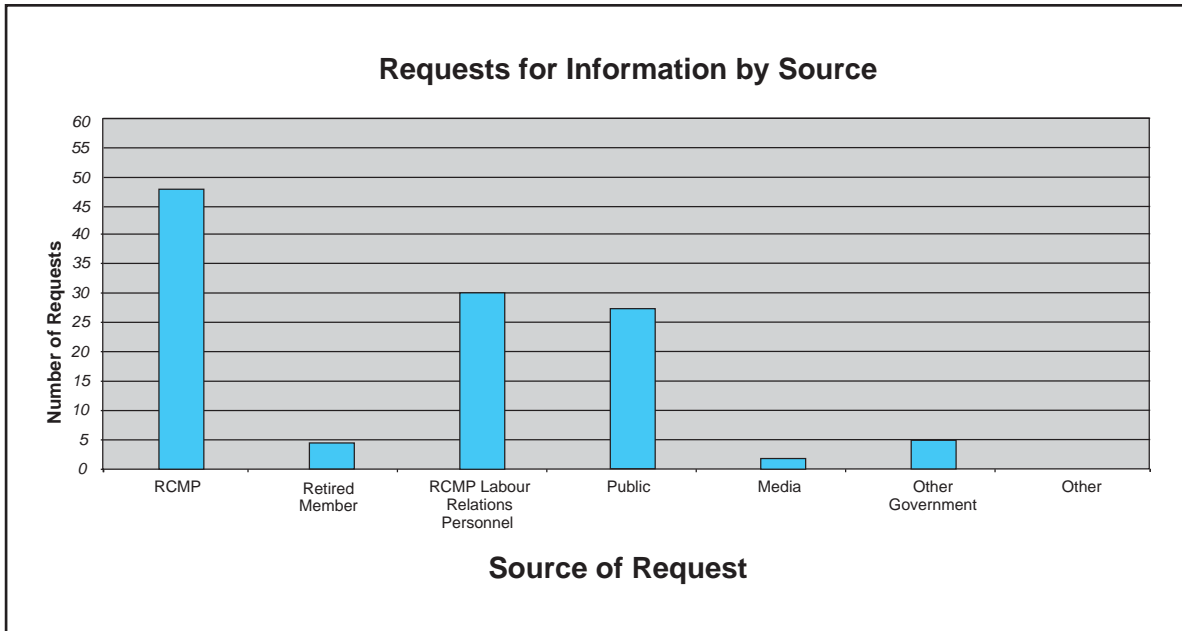
National Headquarters, and Divisional Headquarters. The ERC tries to combine these visits with other travel whenever possible. During these information and training sessions, the ERC routinely addresses procedural difficulties or questions which commonly arise in grievance

and appeal matters. This helps to encourage a better understanding of the importance and practical function of adhering to proper procedures.

Requests for Information

The ERC also responds to formal and informal requests for information. In 2010-11, the ERC received a total of 116 requests. On average, the ERC provided an answer to each request within three days. Over two-thirds of the requests came from the RCMP itself. Members of the public were the second largest group of requesters.

The graphs below illustrate the general categories of requests received and their sources. Several requests were straightforward and requesters were provided with a timely response or were re-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 were significantly time-consuming.



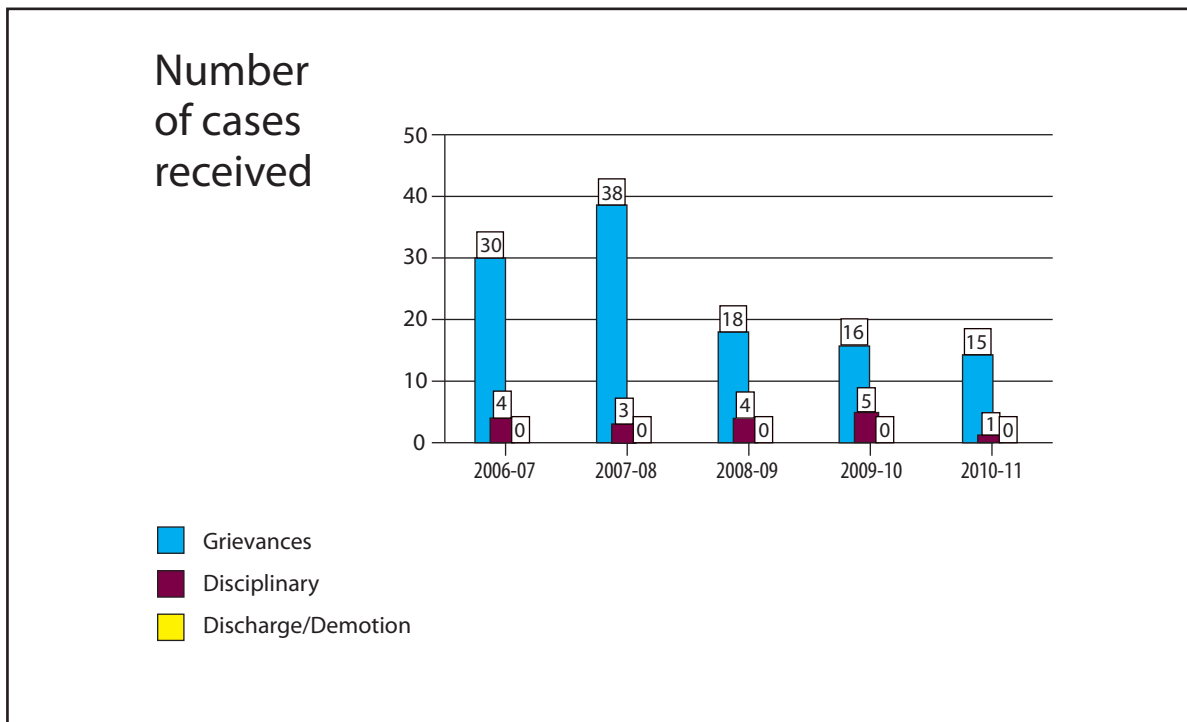
PART III

What We Did This Year

Case Review

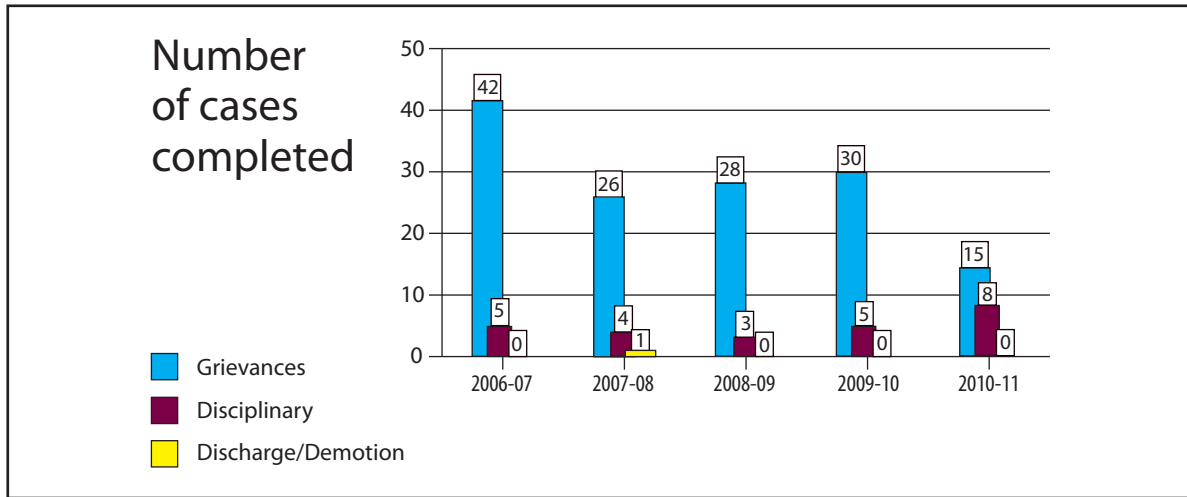
Referrals

Sixteen case files were referred to the ERC in 2010-11: 15 grievances and 1 disciplinary appeal. The ERC received no referrals of discharge and demotion appeals this year.



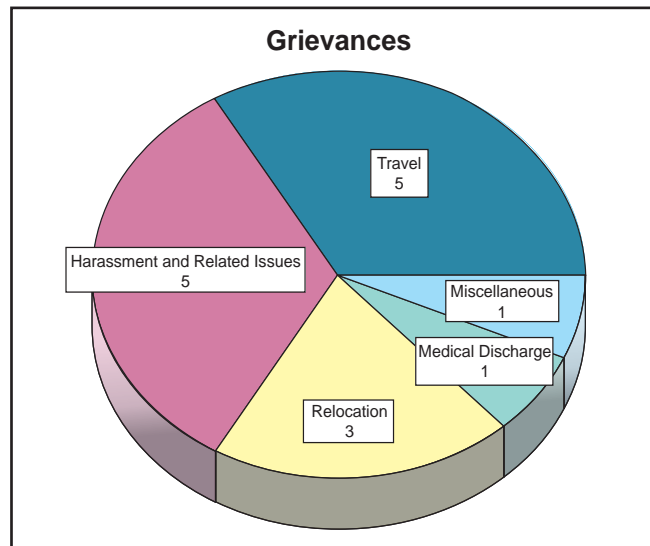
Cases Completed and Recommendations Issued

The ERC completed 23 cases in 2010-11: 15 findings and recommendations were issued regarding grievances and eight were issued regarding disciplinary appeals. No cases were withdrawn before the ERC could issue its findings and recommendations. The ERC did not issue any findings and recommendations in discharge or demotion cases this year.



Grievance Reviews

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



In the last few years, travel, harassment, and relocation issues accounted for a significant portion of grievance reviews. In 2010-11, travel and harassment issues combined represented two-thirds of all the grievance recommendations issued.

Disciplinary Appeals

This year, the ERC reviewed and made recommendations in eight disciplinary appeals. Six were initiated by a member. Three involved a sanction consisting of an order to resign within 14 days or be dismissed from the Force. The other three involved a forfeiture of pay and reprimand. The ERC recommended that four appeals be dismissed (D-113, D-115, D-116 and D-118), that one be allowed (D-119) and that one be allowed in part (D-114).

Two disciplinary appeals were initiated by the Appropriate Officer (AO). The ERC recommended that both of these appeals be dismissed (D-117 and D-120).

Processing

For grievances, the ERC's 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, it strives for a standard of six months. These service standards are not currently being met. The ERC continues to pursue avenues for a permanent resource allocation that will allow it to reach and sustain an acceptable review rate.

At the start of 2010-11, 46 grievances and appeals were pending before the ERC. At the fiscal year end of 2010-11, there were 39 cases before the ERC for review. They were distributed as follows:

- 34 pending grievances;
- 5 pending disciplinary appeals; and
- 0 pending discharge and demotion appeals.

This reduction in the number of pending cases signals a move toward a shorter delay for cases before the ERC. If this trend continues, the ERC will reach the point where its turn-around rate will be reasonable. However if the relatively small number of cases that reach the ERC ever surges, the delays will again increase significantly. This occurred one year when the ERC received 30 cases more than it received historically and it created lengthy delays in the processing of subsequent cases.

Other Activities

In addition to its case review function, the ERC must meet every statutory obligation required of all departments in the Public Service. The ERC is fully committed to delivering on its mandate, while ensuring compliance with legislation and policy.

The ERC's workload includes disproportionately significant reporting and corporate requirements. The ERC has few staff members who are involved in the collection, analysis and reporting of its corporate data to the central agencies that oversee the various aspects of management. As a result,

these staff members are called upon to become the ERC's subject matter experts for a number of different areas including procurement, finance, human resources and knowledge management. These staff members assume many roles to address corporate management demands in order to meet the same reporting requirements of large departments and agencies. The ERC also uses a variety of external consultants to ensure that it thoroughly meets all of its obligations. Given the ERC's small size and budget, these reporting pressures take combined human and financial resources away from 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. It issues findings and recommendations the same way that an adjudication body issues decisions.

The following sections highlight some of the grievances and disciplinary appeals that the ERC reviewed this year.

Disciplinary Appeals

The ERC reviews appeals from decisions of RCMP disciplinary adjudication boards (boards) to ensure that hearing processes are fair, and that boards do not err in making findings. Boards are required to hold hearings to decide whether allegations of misconduct have been established, and if so, the sanction(s) that should be imposed. In so doing, boards must act fairly. This obligation arises from common law principles of fairness, and from specific provisions in the *RCMP Act*.

Where allegations are established, a board imposes sanctions which can range from a reprimand to dismissal from the Force. In deciding on an appropriate sanction, a board will assess many factors. These include sanctions imposed in similar cases, and a member's prior discipline record.

The ERC considered several interesting disciplinary issues this year. They are highlighted below.

Early Resolution Discipline Process

Subsection 46(2) of the *RCMP Act* provides that board proceedings are to be dealt with “*as informally and expeditiously as the circumstances and considerations of fairness permit*”. With this principle in mind, the Force created an “Early Resolution Discipline Process” (ERDP). The ERDP serves as an informal, simplified decision-making model. It aims to ensure that disciplinary cases are addressed quickly, and that members do not have to wait for extremely long periods of time under the pall of potential discipline. One Member Representative (MR) described it as follows:

The [ERDP] *is aimed at reducing the backlog of discipline cases and to streamline and expedite the formal disciplinary process. One of the requirements of the eligibility for [the ERDP] is that the member admit to the allegations, at least to the point where the contentious issues are workable. Not only is the [ERDP] beneficial to the member (who has the matter dealt with quickly) but benefits also accrue to the Force which saves the very significant costs of a contested discipline hearing.*

This year, for the first time, the ERC received appeals containing issues which arose out of the administration of the ERDP. The following is a summary of its key findings and recommendations.

D-115 involved a Member who consumed alcohol, hit a parked car with a police vehicle he did not have authority to use, then left the scene of the accident without telling anyone what happened. He later reported the accident, and paid for the damage. The parties chose to expedite the case via the ERDP. A Board was promptly appointed, the Member admitted the allegations, and a joint submission on sanction was proposed. The Board preferred a stricter penalty, which it asked Counsel to speak to. Counsel felt the penalty was too harsh. They offered more information to bolster

their joint submission. The Board imposed the stricter sanction. The Member appealed it.

The ERC found the Board's decision to be sound, and recommended that the appeal be denied. However, it made some observations about the way in which the ERDP should be administered. Specifically, it commented that a member facing discipline ought to be able to make informed decisions about the process under which a case is heard. As a result, it recommended that information about the ERDP be clearly documented, easily accessible, and given to a member subject to a disciplinary hearing before the member decides to participate in the ERDP. It also recommended that the record confirm that the member received such information.

The ERC further remarked that the ERDP cannot remove a board's statutory powers, relieve it of its statutory duties, or fetter its statutorily-entrenched discretion. It explained that since information was not entered under oath or affirmation, or by affidavit, the Board could consider it only if the parties agreed on it. The record revealed that they did. The ERC nevertheless recommended that future boards be advised of the importance of ensuring that records

clearly show that all evidence was tendered on consent, or in accordance with statutory and regulatory provisions.

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

D-117 gave rise to another issue regarding the use of the ERDP. The Member admitted that he violated Force policy by failing to immediately disclose that he inadvertently discharged a firearm into a vehicle at the scene of an accident. The parties relied only on an Agreed Statement of Facts, upon which the Board declared itself bound. The Board held that it did not prove that the Member knew, at the time of discharge, that a round struck a vehicle. It also held that his delay in reporting the discharge was not disgraceful, as it was related to his good faith performance of police duties.

The RCMP appealed. It asserted that the Board misapplied the test for disgraceful conduct. The Member disagreed. He distanced himself from his earlier admission by arguing that his conduct was not disgraceful, and that the Board was correct to make such a finding.

The ERC found the Board's decision to be sound, and recommended that the appeal be denied. However, it was concerned with the Member's new position that his conduct was not disgraceful. His turnabout implied that he may have improperly admitted the allegation just so his case would be handled quickly. The ERC recommended that all participants in the ERDP ensure that there be no admission by a member unless the member receives full information and advice from an MR, admits all the factual elements, and so advises the MR. It observed that this principle mirrored provisions in codes of lawyer conduct.

Discretion to Initiate Hearing

An AO has the authority to initiate a formal hearing into alleged misconduct which is brought to his or her attention. Subsection 43(1) of the *RCMP Act* indicates that where the AO is of the opinion that informal discipline would be insufficient, given the gravity of the alleged contravention and surrounding circumstances, a hearing shall be initiated into the matter.

In **D-114**, the ERC reviewed the wording of subsection 43(1) of the

RCMP Act, and emphasized that the AO is not required to be convinced, through factual conclusions based on available evidence, that an offence has occurred. Rather, that provision requires the AO to convene a hearing where it “*appears*” that a member has contravened the *Code of Conduct*. It also requires the AO to turn his or her mind to the sufficiency of informal discipline “*if the contravention were established*”.

This wording confirms that the AO’s role does not extend to assessing whether alleged acts are indeed established. Instead, the *RCMP Act* as a whole entrusts boards to consider the evidence submitted at the hearing when deciding whether or not each allegation is established on a balance of probabilities (s. 45.12(1)).

Assessment of Witness Credibility

The ERC has often stated that it will give considerable deference to a board’s findings of fact based on credibility of witnesses, and that it will not interfere unless the board made a manifest and determinative error. In **D-119**, it examined the Board’s treatment of the facts, and assessment of witness credibility. The Board’s finding that one allegation of disgraceful conduct was established

was mostly based on the testimony of the AO’s witnesses. The Board held that the Member’s explanation of the events was not credible. It stated that there was clear and convincing proof of the particulars alleged, and that the Member’s behaviour was disgraceful and warranted discipline.

After the hearing, the Member was approached by a witness who demanded, in a hostile demeanor, an apology. The Member appealed, and sought authority to file fresh evidence of this conversation, in relation to the witness’ credibility.

The ERC found that the Board made manifest and determinative errors in its credibility assessments and findings of fact. There were several inconsistencies in the testimony of the AO’s witnesses, and especially the witness who showed animus towards the Member. This led the Board to place too much weight on such testimony, ignore some of the Member’s evidence, and ultimately draw conclusions which were not supported by the record. The ERC found that the record showed that the Member’s actions took place in a context that did not support a finding of disgraceful conduct. Rather, the record suggested that the incident arose from a combination of inattention, administrative errors and misunderstandings. The

ERC recommended to the RCMP Commissioner that he allow the appeal.

Doctrine of Relitigation

In **D-116**, the ERC reviewed the doctrine of relitigation. It prohibits improper attempts to impeach or contradict a judicial finding by relitigating an issue in a different forum. The Member pleaded guilty to a criminal charge of uttering threats. Both parties asked the sentencing judge for a conditional sentence, in part, because the Member apparently suffered from a health condition during the time of the incident. No medical evidence was presented. The sentencing judge granted the request on the ground that “*there [was] a medical basis for the [Member’s] actions...*”.

After the criminal process had run its course, the Force initiated disciplinary proceedings against the Member. At the hearing, the Member admitted to the allegation. The Board found that the act amounted to disgraceful conduct meriting discipline. Counsel for the Member submitted medical reports about the Member’s condition. The Board weighed the witness testimony and medical evidence before it. It ultimately directed the

Member to resign within 14 days, or be dismissed.

The ERC recognized that the Board and the sentencing judge differed on whether there was a link between the Member’s medical condition and the offence. However, it concluded that the Board’s finding did not amount to relitigation. It explained that the Board was in a very different position from the sentencing judge, as there was different information presented to each. Specifically:

- the conflict involved a mitigating factor which did not impeach the actual finding of guilt;
- a reasonable person would deduce that the integrity of the adjudicative process was not tainted, since the Board had medical evidence and the sentencing judge did not;
- it would be unfair to bar the AO from addressing such evidence, in light of the facts that he did not raise it and that he was not a party to the criminal hearing; and,
- the public interest in having full and fair disciplinary proceedings for RCMP members outweighed the concern in this case that there may be the appearance of inconsistency.

Duty to Act Fairly in Imposing Sanction

Once an allegation has been established against a member, a board must turn its mind to an appropriate sanction. It is sometimes the case that a member is agreeable to the sanction proposed by the AO. This occurred in **D-114**, where the AO suggested that a three-day pay forfeiture be applied to each of the two established allegations. Although the Member downplayed the applicability of some authorities put forward by the AO to justify the sanction, he did not propose an alternative. Without notice to the parties, the Board imposed pay forfeitures that were significantly harsher than those sought by the AO. It also issued reprimands for each allegation.

The ERC found that the Board had a duty to act fairly in the circumstances. The Member's failure to make representations regarding the AO's suggested sanction implied that he considered that sanction reasonable. Since the penalty imposed was significantly stricter, the Board was required to advise the parties of this possibility before rendering its decision. It also had to tell the parties that it was considering reprimands, as the AO had not proposed that they form part of the sanction. The Member therefore would likely not

have thought of making submissions regarding their appropriateness.

Grievances

Under Part III of the *RCMP Act*, a member may present a grievance if he or she is aggrieved by a decision, act or omission that is made in the administration of the affairs of the Force. The ERC reviews certain categories of grievances after a Level I Adjudicator has issued a decision on the matter. In so doing, the ERC considers preliminary issues such as adherence to time limits, standing to grieve, sharing of information, and admissibility of evidence. It also examines the substantive elements of a grievance. These can include, just for example, a member's right to claim a benefit and the extent to which a harassment complaint was properly addressed.

The ERC considered several procedural and substantive issues this year, as highlighted below.

Standing

A member's right to grieve is subject to statutory requirements commonly referred to as "*standing*". Subsection 31(1) of the *RCMP Act* confers a right to grieve on a member who is

“aggrieved” by any “decision, act or omission” made “in the administration of the affairs of the Force”, in respect of which “no other process for redress is provided by the Act, the regulations or the Commissioner’s standing orders”. A finding that a member does not have standing can be fatal to a grievance. It is therefore very important that statutory standing provisions are interpreted fairly and reasonably.

Examples of this year’s cases involving standing touched on two key elements of the test under s. 31(1) of the *RCMP Act*. These include the requirement that a decision, act or omission be made in the administration of the affairs of the Force, and the availability of an alternate process for redress.

In **G-495**, the Grievor was serving in an isolated post for which the *Isolated Post and Government Housing Directive (Directive)* provided for two vacation travel assistance (VTA) benefits per fiscal year. The Treasury Board Secretariat (TBS) amended the *Directive*. As a result, the VTA benefit at the Grievor’s post dropped from two payments to one payment per fiscal year. The Grievor argued that the Force did not adequately inform him of this key change to the *Directive*. He also opined that the change was unwarranted, unjustifiable, financially harmful, and bad for his post.

The ERC found that the Grievor had standing to grieve the Force’s purported failure to properly inform him of a significant change to the *Directive*. It reasoned that this argument involved an alleged omission by the Force which may have deprived the Grievor of information to which he was entitled, and which he needed in order to make crucial financial decisions. However, it found that the Grievor did not have standing to grieve the actual changes to the *Directive*. It explained that the *Directive* was a TBS policy which only the TBS could alter. The changes to the *Directive* therefore were not a decision, act or omission made in the administration of the Force’s affairs.

In **G-501**, the ERC considered whether an interim step in the discharge process could be grieved. Specifically, the Grievor grieved a Notice of Intention to Discharge. He argued that since s. 36(e) of the *RCMP Regulations* referred to grievances relating to administrative discharges, he had standing to grieve a Notice of Intention to Discharge. He also opined that the *RCMP Regulations* did not prohibit filing a grievance for the service of such a Notice. The Grievance Respondent replied that this Notice was enumerated in policy as a non-grievable matter, as there was another process for redress.

The ERC closely reviewed the provisions of the *RCMP Regulations* dealing with the discharge process. It found that the structure of the *RCMP Regulations* clearly did not anticipate that members would have access to the grievance procedure at each interim step in the discharge process, but rather only after an AO's final decision was made. It reasoned that since the Notice of Intention to Discharge was an interim step in the discharge process as a whole, another avenue existed for contesting it.

The ERC also commented on the Level I Adjudicator's finding that the Grievor did not have standing as he was not aggrieved by the Notice of Intention to Discharge. The ERC found that the service of the Notice was an act that affected the Grievor personally. He therefore was aggrieved under s. 31(1) of the *RCMP Act*. In the end, the ERC recommended to the RCMP Commissioner that he deny the grievance on the basis that the Grievor had access to an alternate process of redress.

Importance of Sufficient Information

If a record contains relevant information, and is well documented, then it will help an adjudicator properly consider a grievance and

reach a well-informed decision. If a record does not contain sufficient information, then it will restrict an adjudicator's ability to do these things. As the RCMP Commissioner explained in G-374, "*[h]aving sufficient documentation is essential to an efficient grievance process, and subsequently a good working environment*". This year, the ERC dealt with grievances concerning the importance, and responsibility, of ensuring that grievance records contain sufficient information and documents.

G-505 involved a Grievor who was transferred to a different city. He sold his home, with a possession date of February 12, 2009. Shortly after the sale, he bought a new home which was being built in his new city. He advised the Force that he would be on a vacation from February 9-28, 2009. He also claimed he would take possession of his new home around March 2, 2009. His household effects were stored from February 9 to March 3, 2009. This resulted in a Storage-in-Transit (SIT) cost of several thousand dollars. He took possession of his new home on March 2, 2009, as per his plan. He allegedly could not have done so sooner. The builder "*had workers inside the home that day finishing the house [and] had to send the painters back the following day*".

The parties isolated the provision of relocation policy which governed the payment of SIT expenses. However, they found it unclear, and disagreed about what it said. The Grievor felt it required his SIT cost to be paid from the Core Envelope, which generally funded basic relocation expenses in almost all moves. The Grievance Respondent thought it required the cost to be paid out of the Personalized Envelope, which may have meant it would be out of the Grievor's pocket. She reasoned that the expense flowed from the Grievor's decision to select a closing date that fell after a vacation.

A Level I Adjudicator accepted the Grievance Respondent's view. He denied the grievance, despite the Grievor's claim that it was virtually impossible for him to move into his new home before he did. The ERC found that the applicable policy provision gave rise to two crucial questions. First, when was the Grievor's new home ready for occupancy? Second, was there other suitable occupancy that could have been ready sooner? As the record did not contain sufficient information or material to answer these questions, a fully informed decision could not be made. The ERC recommended that the RCMP Commissioner allow the grievance and return the matter to the proper authority for a review of how

the Grievor's SIT expenses should be handled, once the critical information was obtained.

In **G-506**, the Grievor grieved the Grievance Respondent's decision to not investigate his harassment complaint. The Level I Adjudicator denied the grievance on its merits. He held that the Grievor was obligated, and had failed, to file sufficient evidence to prove his case. Specifically, the record did not contain the harassment complaint, a material report, and other vital documentation.

The ERC found that the Level I Adjudicator was unable to make an informed decision because essential documents, which were clearly available, were missing from the record. However, in this particular case, it disagreed that it was the Grievor's responsibility to provide those documents. It reasoned that the *Commissioner's Standing Orders (Grievances) (CSO)*, and RCMP grievance policy, were unclear on the point. Moreover, they could reasonably have led a grievor to think that it was up to the Grievance Respondent, or the Grievance Coordinator, to place certain material in the record.

The ERC found that when a grievor otherwise presents full submissions

and supporting evidence, a Level I Adjudicator should use the authority in the CSO and RCMP grievance policy to request missing basic documents so that the matter can be addressed. It based its finding on G-374. In that decision, the RCMP Commissioner stated: “*adjudicators should exercise the authority to request relevant documentation in order to ensure that well-grounded decisions are forthcoming*”.

The ERC recommended that the RCMP Commissioner allow the grievance by quashing the Level I decision. It also recommended that he refer the grievance back to the Level I Adjudicator, for a reconsideration and redetermination, once the record was made complete. Additionally, it recommended that he order a review of relevant Force policy for the purpose of clarifying who has the responsibility to ensure that a Level I Adjudicator receives a complete record.

Private Accommodation Allowance During Relief Duties

The RCMP provides policing services to numerous remote areas which are known as “*isolated posts*”. It is committed to attracting members to isolated posts, and to taking care of

them and their families while they are there. One way it does this is to accommodate members serving at some of these posts by providing Crown-owned accommodations. When a member of an isolated post is on leave, relief duties are provided by members from other areas, on a voluntary basis. These members fall under the *Treasury Board Travel Directive (TBTD)*, as they are on travel status for the duration of their relief service, and they sometimes reside in Crown-owned accommodations.

The *TBTD* defines three types of accommodations available to government employees on travel status. They include commercial accommodation, government and institutional accommodation, and private non-commercial accommodation. When an employee chooses to reside in a private non-commercial accommodation, he/she is entitled to a Private Accommodation Allowance (PAA).

In 2010-11, the ERC reviewed a number of grievances involving disputes over the entitlement to the PAA. The question in each grievance was whether Force-owned residences fell under the definition of “private non-commercial accommodation”.

In **G-496**, **G-497** and **G-498**, the Grievors performing relief duties

resided in Crown-owned, self-contained, detached houses. They had the RCMP's approval to do so. The Force informed the Grievors that while travelling, they were obligated to stay in shared self-contained accommodation, for which a PAA would not be paid. Only if such an accommodation was not available could they stay in a detached self-contained accommodation, and claim a PAA.

The ERC carefully reviewed the definitions of the accommodations listed in the *TBTD*. It found that a detached, self-contained dwelling fell within the "private non-commercial accommodation" category, whether Crown-owned or not. It also found that there was an institutional/non-residential component to the "government and institutional accommodation" category which removed from its scope anything akin to a private place of residence, even though it may be government-owned.

The ERC reasoned that the categorization of the residences as "shared self-contained accommodation" was not relevant, as it was used to determine rent level and accommodation sharing matters, which had no bearing on the issue at hand. For a member on travel status,

an accommodation's private non-commercial nature is not altered.

The Force also argued that the Grievors were not entitled to the PAA, as their residences were considered barracks. RCMP policy barred travelling members from claiming a PAA while staying in barracks. The ERC found that the residences did not fall within the description of "suitable" police quarter/barracks, as there was no room cleaning or meals provided, as required by policy.

The ERC recommended that the RCMP Commissioner allow the grievances. In **G-498**, it also recommended that host detachments make sure that clear and consistent instructions be prepared and given to relief members before their departure for an isolated post.

Fair Administration of Harassment Complaints

The ERC is committed to helping the RCMP achieve its goal of providing a harassment-free workplace. This year, the ERC examined grievances dealing with the Force's interpretation and application of government and Force harassment policies. Its findings and recommendations re-emphasize

longstanding principles concerning the importance of fairness in the assessment of harassment complaints, as well as in the treatment of harassment grievances.

Fairness is fundamental to the process in which the Force reviews harassment complaints. For instance, when a complaint is filed, policy requires a decision-maker to have knowledge of all relevant facts prior to deciding that an investigation is not necessary to assess a complaint. If a decision-maker has met one party before making this decision, the other party should have a similar meeting. This ensures that both parties have a full opportunity to be heard on the issue (**G-504**). Further, the review leading to a decision not to investigate must be a careful one, and should generally not be limited to simply reading the material provided by a complainant (**G-506**).

Fairness is also important when a member grieves the outcome of a

harassment complaint. A grievor, for instance, is entitled to request relevant and necessary information which is under the control of the Force when presenting such a grievance (subsection 31(4) of the *RCMP Act*). Grievance respondents cannot, in responding to such a request, redact information that is necessary to the grievor and which meets the criteria at s. 31(4), unless certain exceptions apply. These exceptions are certain categories of protected material outlined in the *Commissioner's Standing Orders*.

Further, grievance respondents should address all of a grievor's requests for information under s. 31(4) of the *RCMP Act*. Although it may sometimes be challenging for respondents to address lengthy and detailed requests, a failure to at least respond to an item sought may raise a concern that a grievor had insufficient information to properly present a grievance (**G-493**).

PART V

Appendices

Overview of ERC Recommendations, 2010-2011

ERC Case Number	Subject Matter	ERC Recommendation
<i>Disciplinary Appeals</i>		
D-113	Appeal on sanction of resignation/dismissal. On-duty sexual activity.	Dismiss the appeal.
D-114	Appeal on merits and on sanction. Duty to initiate hearing. Duty to act fairly in imposing sanction.	Allow the appeal on sanction. Dismiss the appeal on merits.
D-115	Appeal on sanction. Administration of Early Resolution Discipline Process (ERDP)	Dismiss the appeal. Ensure that information about the ERDP is clearly documented, easily accessible, and provided to members who are subject to disciplinary hearings so that they are fully informed about the process before making a decision to participate in it. Ensure that the record confirms that the member subject to discipline received this information. Advise adjudication boards of the importance of ensuring that records clearly show that all evidence was tendered in accordance with statutory and regulatory provisions.
D-116	Appeal on sanction of resignation/dismissal. Uttering threats. Doctrine of relitigation.	Dismiss the appeal.

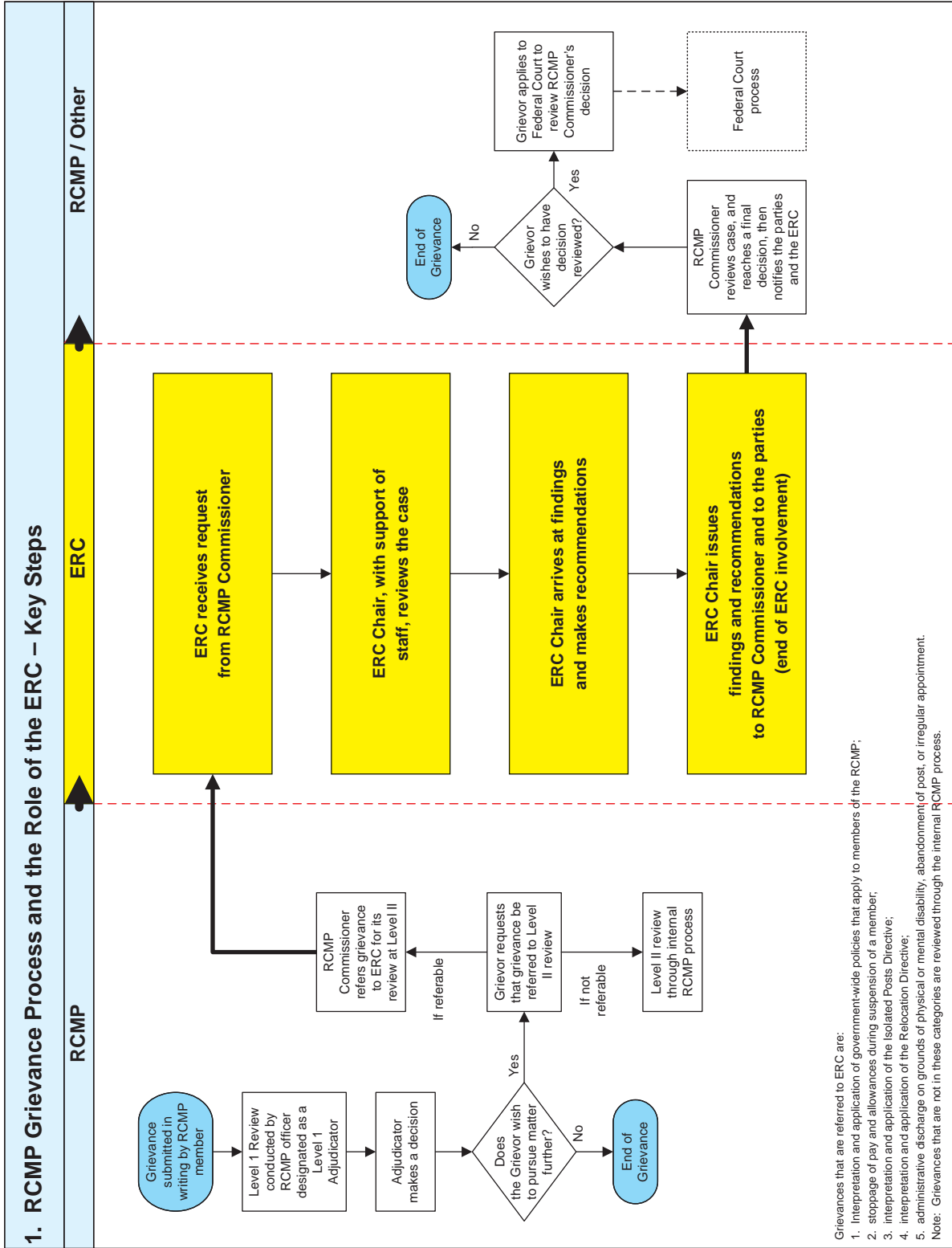
ERC Case Number	Subject Matter	ERC Recommendation
D-117	<p>Appropriate Officer appeal on merits.</p> <p>Administration of Early Resolution Discipline Process (ERDP)</p>	<p>Dismiss the appeal.</p> <p>Ensure that information about the ERDP is clearly documented, easily accessible, and provided to members who are subject to disciplinary hearings so that they are fully informed about the process before making a decision to participate in it.</p> <p>Ensure that the record confirms that the member subject to discipline received this information.</p> <p>Advise adjudication boards of the importance of ensuring that records clearly show that all evidence was tendered in accordance with statutory and regulatory provisions.</p> <p>Take steps to ensure that members make no formal admission(s) prior to receiving information and advice from a member representative, particularly about the implications of an admission.</p>
D-118	<p>Appeal on merits and on sanction of resignation/ dismissal.</p> <p>On-duty sexual activity.</p> <p>Falsification of police notes.</p> <p>Inaccurate warned statements.</p>	<p>Dismiss the appeal.</p>
D-119	<p>Appeal on merits.</p> <p>Requesting lieu time off for hours already received as overtime.</p> <p>Preliminary motions.</p> <p>Fresh evidence on appeal.</p> <p>Errors in credibility assessments and findings of fact.</p>	<p>Allow the appeal on the merits and consider the fresh evidence raised on appeal.</p> <p>Apologize to the Member for the several instances of unfairness and prejudice that occurred through the disciplinary process.</p> <p>Review the disciplinary process in this case.</p> <p>Provide training with regard to new leave management systems.</p>

ERC Case Number	Subject Matter	ERC Recommendation
D-120	<p>Appropriate Officer appeal on merits.</p> <p>Unauthorized use of Force travel card for various purposes, including gambling.</p> <p>Early Resolution Discipline Process. (ERDP)</p>	<p>Dismiss the appeal.</p> <p>Make sure that all participants in the ERDP ensure that there be no admission by a member unless (s)he receives full information and advice from the Member Representative, admits all the elements of the allegation, and so advises his or her Member Representative.</p>
Grievances		
G-493	<p>Harassment investigation.</p> <p>Apprehension of bias.</p> <p>Access to relevant information.</p>	<p>Allow the grievance.</p> <p>Apologize to the Grievor for the breaches in the handling of his harassment complaint.</p>
G-494	<p>Time Limits.</p> <p>Temporary Dual Residence Allowance.</p>	<p>Allow the grievance.</p> <p>Find that the matter was timely at Level I, or retroactively extend the Level I time limit.</p> <p>Return the record to Level I so the parties can engage in Early Resolution and/or make submissions on the merits.</p>
G-495	<p>Standing.</p> <p>Change to a Treasury Board Directive.</p> <p>Vacation Travel Assistance.</p>	<p>Deny the grievance on the merits.</p>
G-496	<p>Private accommodation allowance for relief duties at a northern post.</p> <p>Crown-owned property.</p> <p>Treasury Board <i>Travel Directive</i>.</p>	<p>Allow the grievance, but do not consider the Grievor's request for interest.</p>
G-497	<p>Time Limits.</p> <p>Private accommodation allowance for relief duties at a northern post.</p> <p>Crown-owned property.</p> <p>Treasury Board <i>Travel Directive</i>.</p>	<p>Allow the grievance, and order that a request for repayment be cancelled.</p> <p>Retroactively extend the Level I time limit.</p>

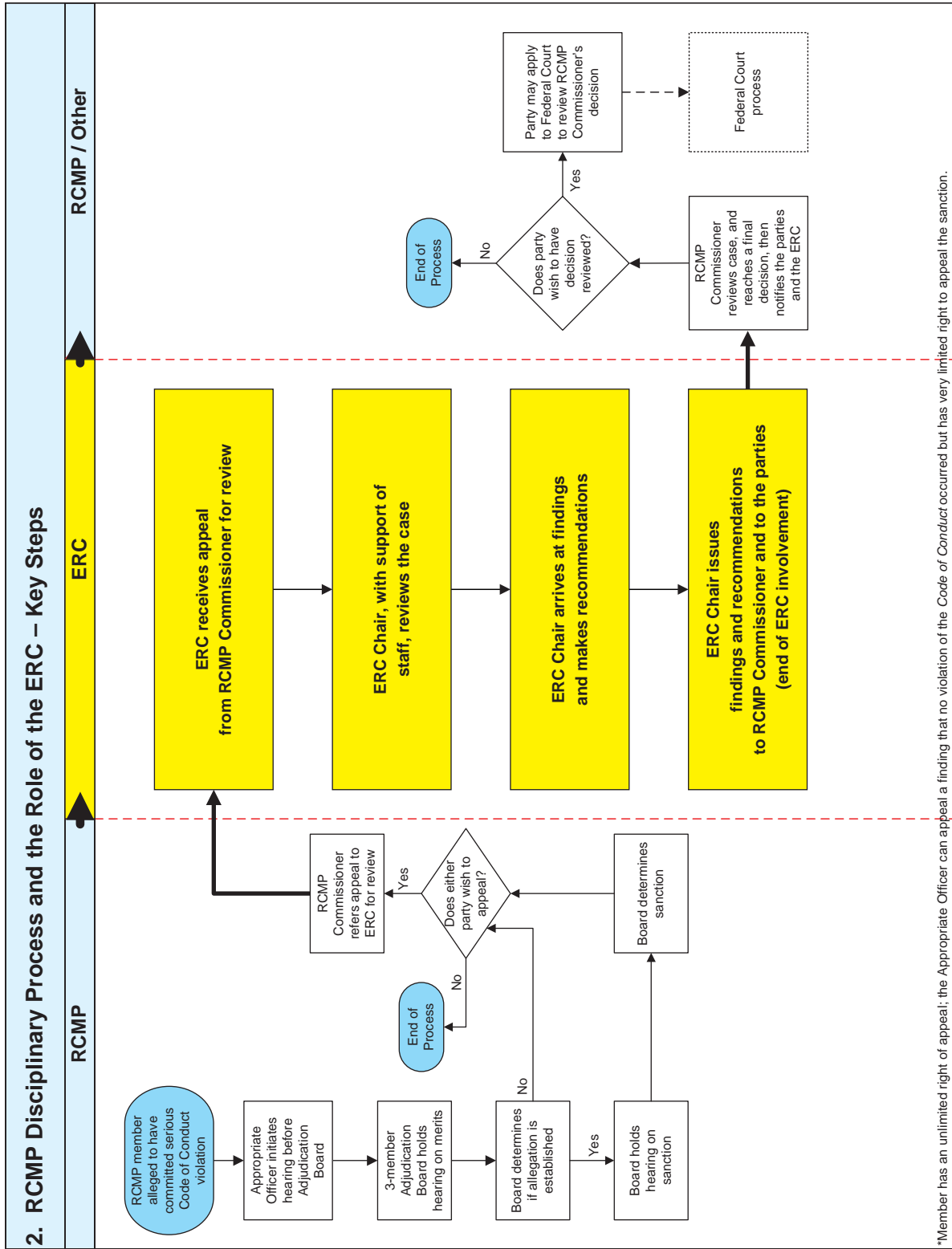
ERC Case Number	Subject Matter	ERC Recommendation
G-498	<p>Private accommodation allowance for relief duties at a northern post.</p> <p>Crown-owned property.</p> <p>Treasury Board <i>Travel Directive</i>.</p>	<p>Allow the grievance, and order that a request for repayment be cancelled.</p> <p>Order that host detachments ensure that clear and consistent instructions are prepared and given to relief members before their departure for a northern post.</p>
G-499	<p>Standing.</p> <p>Allegation of harassment.</p> <p>Duty of fairness.</p>	Deny the grievance on the merits.
G-500	<p>Treasury Board <i>Travel Directive</i>.</p> <p>Expense claims for meals taken in travel status of less than one day, while outside headquarters area.</p>	<p>Allow the grievance.</p> <p>Authorize any applicable meal expense claims, assuming those claims comply with all other relevant authorities.</p> <p>Ensure that Force travel policy is applied in a manner consistent with section 3.2.9 of the Treasury Board <i>Travel Directive</i>.</p>
G-501	<p>Standing.</p> <p>Notice of intention to discharge for medical reasons.</p>	Deny the grievance on the basis that the Grievor had an alternate process of redress in the medical discharge process, under s.20 of the <i>RCMP Regulations</i> .
G-502	<p>Time limits.</p> <p>Dress policy - Walking Out Orders for female members.</p> <p>Discrimination.</p>	Deny the grievance on the merits.
G-503	<p>Referability.</p> <p>Denied request for reimbursement of house purchase legal fees.</p> <p>Exceptional circumstances.</p>	<p>Allow the grievance.</p> <p>Reconsider the Grievor's request.</p> <p>Find that his situation was exceptional.</p> <p>Order a reimbursement of the house purchase legal fees incurred.</p>
G-504	<p>Standing.</p> <p>Harassment complaint.</p> <p>Procedural fairness in responding to complaint.</p> <p>Admissibility of new information at Level II.</p>	<p>Allow the grievance.</p> <p>Apologize to the Grievor for the breaches in the handling of her harassment complaint.</p>

ERC Case Number	Subject Matter	ERC Recommendation
G-505	<p>Storage-in-Transit expenses.</p> <p>Integrated Relocation Program.</p> <p>Completeness of the Record.</p>	<p>Allow the grievance.</p> <p>Order that the matter be returned to the proper authority for a review of how the Grievor's Storage-in-Transit expenses should be handled, once certain key information is obtained.</p>
G-506	<p>Harassment complaint.</p> <p>Refusal to investigate.</p> <p>Completeness of the record.</p>	<p>Allow the grievance by quashing the Level I decision.</p> <p>Refer the grievance back to the Level I Adjudicator, for a reconsideration and redetermination, once the record is made complete.</p> <p>Order a review of relevant Force policy for the purpose of clarifying who has the responsibility to ensure that a Level I Adjudicator receives a complete record.</p>
G-507	<p>Breach of confidentiality obligation by workplace assessment coordinator.</p> <p>Disclosure request</p> <p>Procedural fairness, right to be heard.</p>	<p>Deny the grievance on the merits.</p> <p>Deny disclosure request as documents not relevant.</p> <p>No breach of procedural fairness by Respondent.</p>

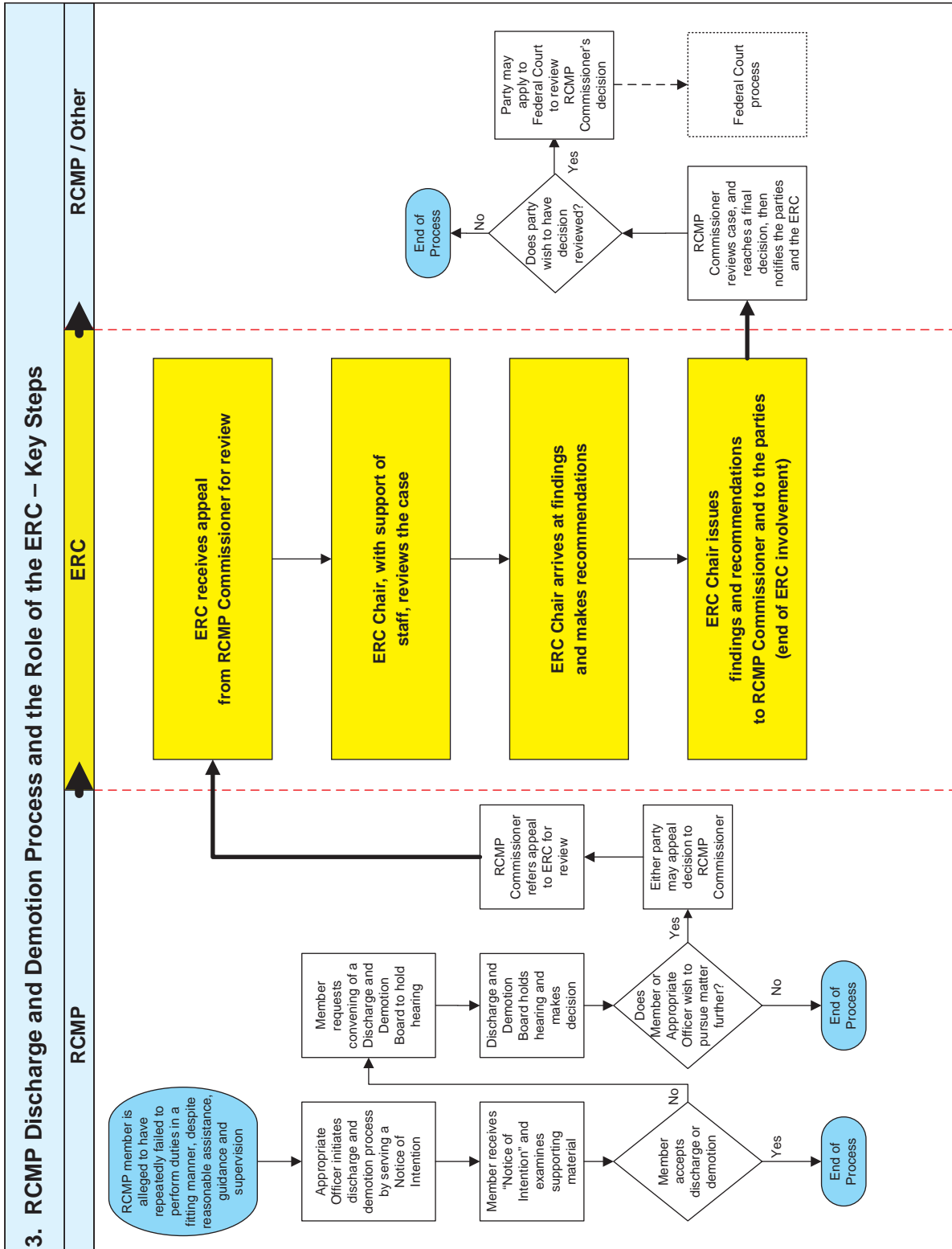
RCMP Process and the Role of the ERC • Grievances



RCMP Process and the Role of the ERC • Discipline



RCMP Process and the Role of the ERC • Discharge and Demotion



History of 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 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 within the RCMP, whereas the CPC examines 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.

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 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 then as Executive Director/Senior Counsel, before becoming Acting Chair.

Ms. Ebbs was appointed as full-time Chair on November 1, 2005, for a three-year term. She was 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.

ERC Address

P.O. Box 1159, Station B
Ottawa, Ontario
K1P 5R2

Telephone: 613-998-2134
Fax: 613-990-8969

E-mail: org@erc-cee.gc.ca
Internet site at: www.erc-cee.gc.ca

ERC and its Staff in 2010-2011*

Catherine Ebbs, Chair

David Paradiso, Executive Director
and Senior Counsel

Lorraine Grandmaitre, Manager,
Administrative Services and Systems

Josh Brull, Counsel

Jean-Jacques Desgranges, Counsel

Martin Griffin, Counsel

Jill Gunn, Counsel

Caroline Verner, Counsel

Jonathan Haig, Administrative Assistant

* Includes secondments