



Royal Canadian Mounted Police
External Review Committee



2012-13
Annual Report

Canada 



© Minister of Public Works and Government Services Canada 2013

Cat. Number PS20-2013

ISSN 0837-4589



Royal Canadian Mounted Police
External Review Committee



2012-13
Annual Report

Canada 



June 6, 2013

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 2012-13, 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". The signature is written in a cursive, slightly slanted style.

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.....	6
Disciplinary Appeals Process	7
Discharge and Demotion Appeals Process	7
Outreach and Communication	7
PART III - What We Did This Year	11
Case Review	11
Referrals.....	11
Cases Completed and Recommendations Issued	12
Grievance Reviews.....	13
Disciplinary Appeals	13
Processing	13
Other Activities.....	14
PART IV - Highlights of This Year's Cases	15
Grievances.....	15
Disciplinary Appeals.....	22
PART V - Appendices	25
Overview of ERC Recommendations, 2012-13.....	25
RCMP Process and the Role of the ERC	31
Grievances.....	31
Discipline.....	32
Discharge and Demotion	33
History of the ERC	34
ERC and its Staff in 2012-13	35
ERC Address.....	35



PART I

Message from the Chair



Catherine Ebbs
Chair

In the not too distant past, I attended the funeral of a respected senior RCMP member who died in heroic service to his calling. I was struck by a personal observation given during the eulogy - the member had been known by a 'nickname' that was bestowed during cadet training. It was disclosed that it was a name that he "hated with a passion." However he was never able to shake it, in part because his colleagues believed he knew they meant it affectionately. It is not known if he attempted to stop the use of the nickname.

What is clear is that the nickname was belittling and that, despite knowing his distaste for the name, his colleagues continued to use it.

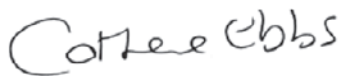
I recognize that collegiality, in some professions, can involve a measure of good-natured ribbing and that this can help to create an atmosphere of inclusion. Particularly in workplaces exposed to great stress from outside, this can build a bond of camaraderie that can be relied on in difficult situations. On the other hand, this very same mechanism can be used to ostracize an individual without good reason. A person can quickly find themselves on the outside of the group, excluded from friendship, support and career opportunities. A workplace culture that allows this can eventually become unruly and unmanageable.

Policies aimed at preventing harassment all recognize that everyone has a role to play in creating and maintaining a fair, supportive and ethical workplace. Managers are required to accommodate the needs of individuals while fostering a



productive healthy workplace. This presents an ongoing challenge shared by RCMP managers and members. I have witnessed the efforts the RCMP has been undertaking to create a culture of respect for the diversity of its workforce. With sufficient attention and support, I feel confident that the RCMP can rise to the challenge.

As my final term as Chair of the External Review Committee comes to a close, I am pleased to again, recognize the exceptional talent of the dedicated and hard-working team of public servants who make up the ERC. They have provided me with responsive administrative support, expert professional advice, constructive criticism, thoughtful insight, and a positive work environment to which I have been excited to return every morning. I am thankful to them for allowing me to discharge my duties to the best of my ability, making findings and recommendations that have lasting benefit to the RCMP and to the Canadians they serve.



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 Commissioner of the RCMP, 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, harassment prevention, relocation and transfer allowances, and workforce adjustment.

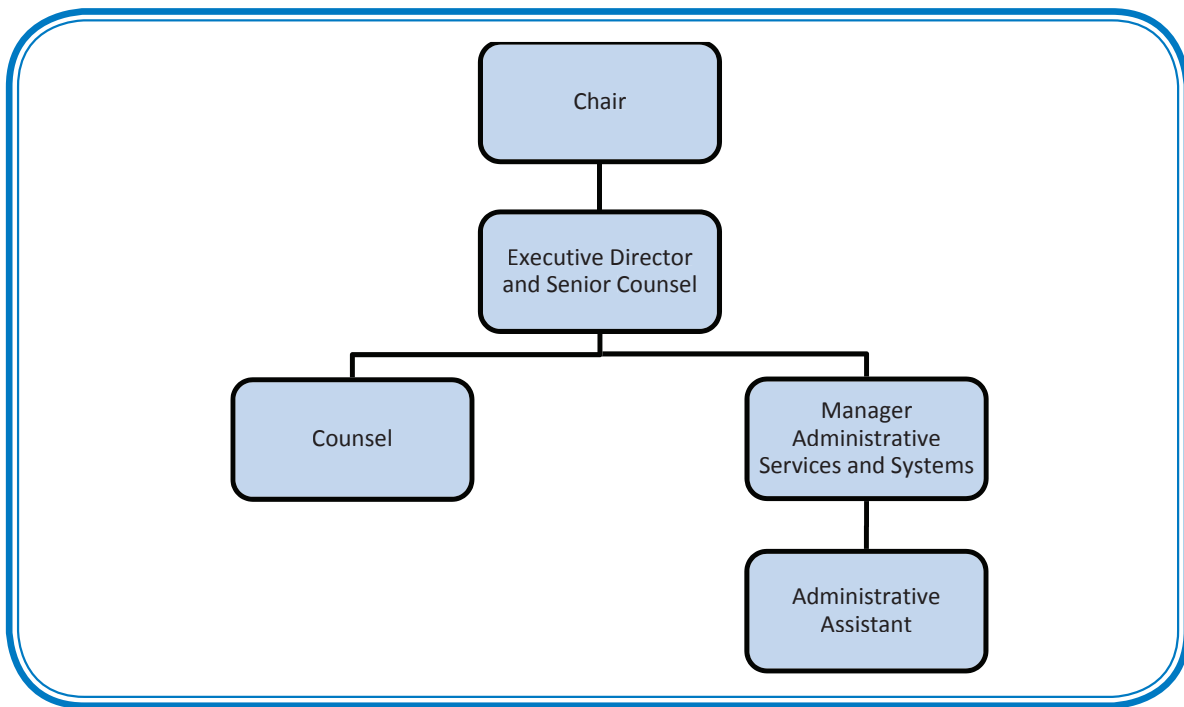
As one of two bodies which oversee the RCMP (the other being the Commission for Public Complaints Against the RCMP), the ERC has an important function in maintaining public confidence in the RCMP by

helping to ensure that the RCMP respects the law and human rights in labour relations.

In 2012-13, the ERC's budget was approximately \$1.6 million, and it began the year with a staff of eight, including the Chair. The ERC spent approximately 90% of its time and resources on case review, and 10% 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)*¹, no one who is appointed to the ERC can be a member of the RCMP.



¹ Please note: At the time of publication Parliament is considering a bill to amend the *RCMP Act* and related legislation, which may change the provisions outlined throughout this Annual Report that were in effect during this reporting period.



In addition to the Chair, the ERC is managed by an Executive Director/ Senior Counsel who oversees a staff of six. 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 Commissioner of the RCMP 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 Commissioner of the RCMP 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.

Five types of grievances which must be referred to the ERC for review, as per section 36 of the RCMP Regulations:

- (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.

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 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 Commissioner of the RCMP 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 Commissioner of the RCMP, 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 Commissioner of the RCMP. 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, its quarterly newsletter *Communiqué*,

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

an extensive searchable database of summaries of the ERC's findings and recommendations, summaries of Commissioner of the RCMP's 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 802,924 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, 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. The ERC was able to deliver only one such initiative this year.

The Chair of the ERC was invited to four separate Parliamentary Committee hearings in 2012-13. She testified before two House of Commons Committees (Standing Committee on Public Safety and National Security on October 17, 2012; and the Standing Committee on the Status of Women on November 20, 2012), and the Standing Senate Committee on National Security and Defence on



March 4, 2013 for its Study on Harassment in the RCMP and again on April 29, 2013 in its consideration of a Bill to amend the *Royal Canadian Mounted Police Act*. The text of Ms. Ebbs' testimony can be found on the website of the Parliament of Canada at www.parl.gc.ca as well as the audio and video recordings of her appearances.

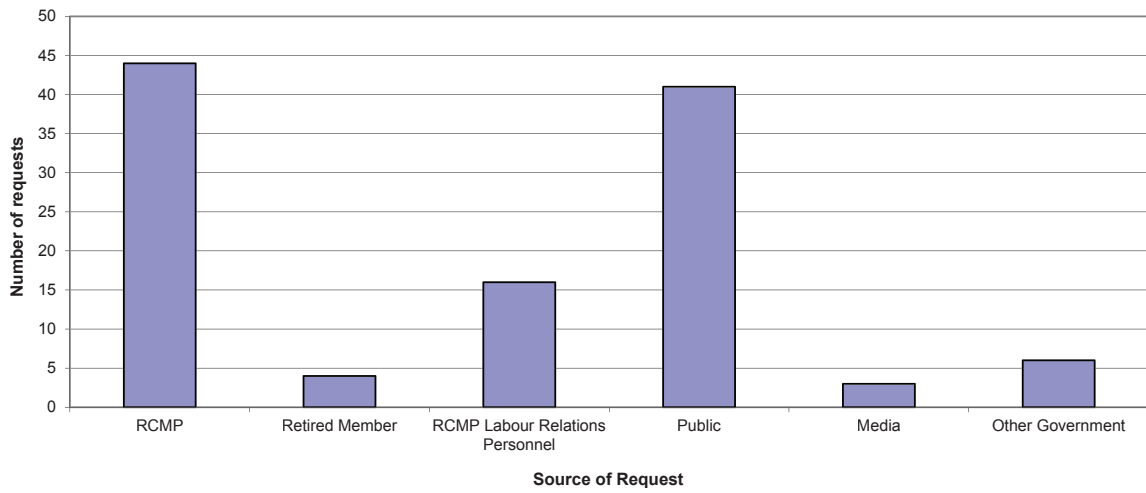
Requests for Information

The ERC also responds to formal and informal requests for information. In 2012-13, the ERC received a total of 114 requests. On average, the ERC provided an answer to each request within two days. Just over half of the requests came from the RCMP itself. Members of the public were the second largest group of requesters.

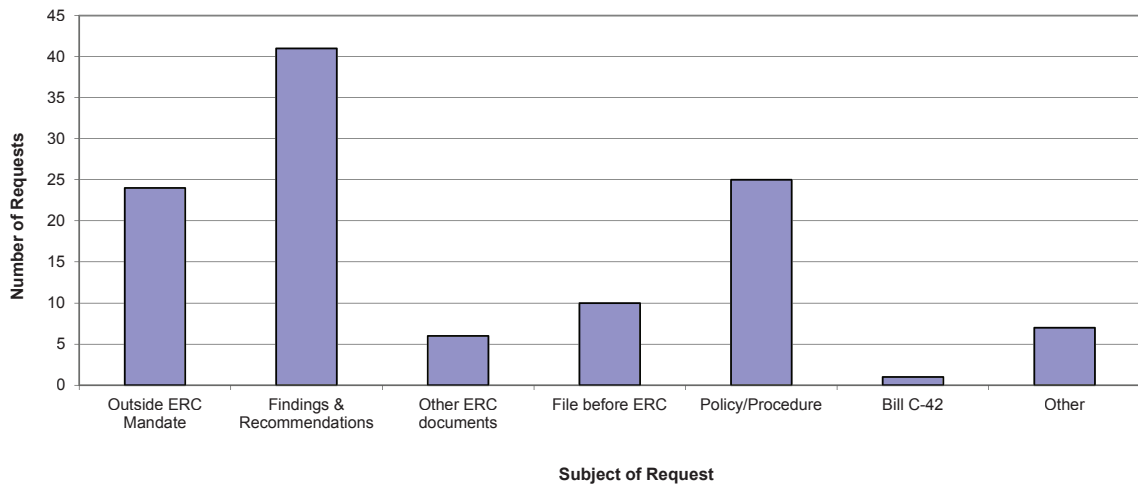
The graphs below illustrate the general categories of requests received and their sources. Several requests were straightforward and requesters were provided with a timely response or were re-directed to the appropriate office. However, other requests were complicated and required more time and effort 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.



Requests for Information by Source



Requests for Information by Subject



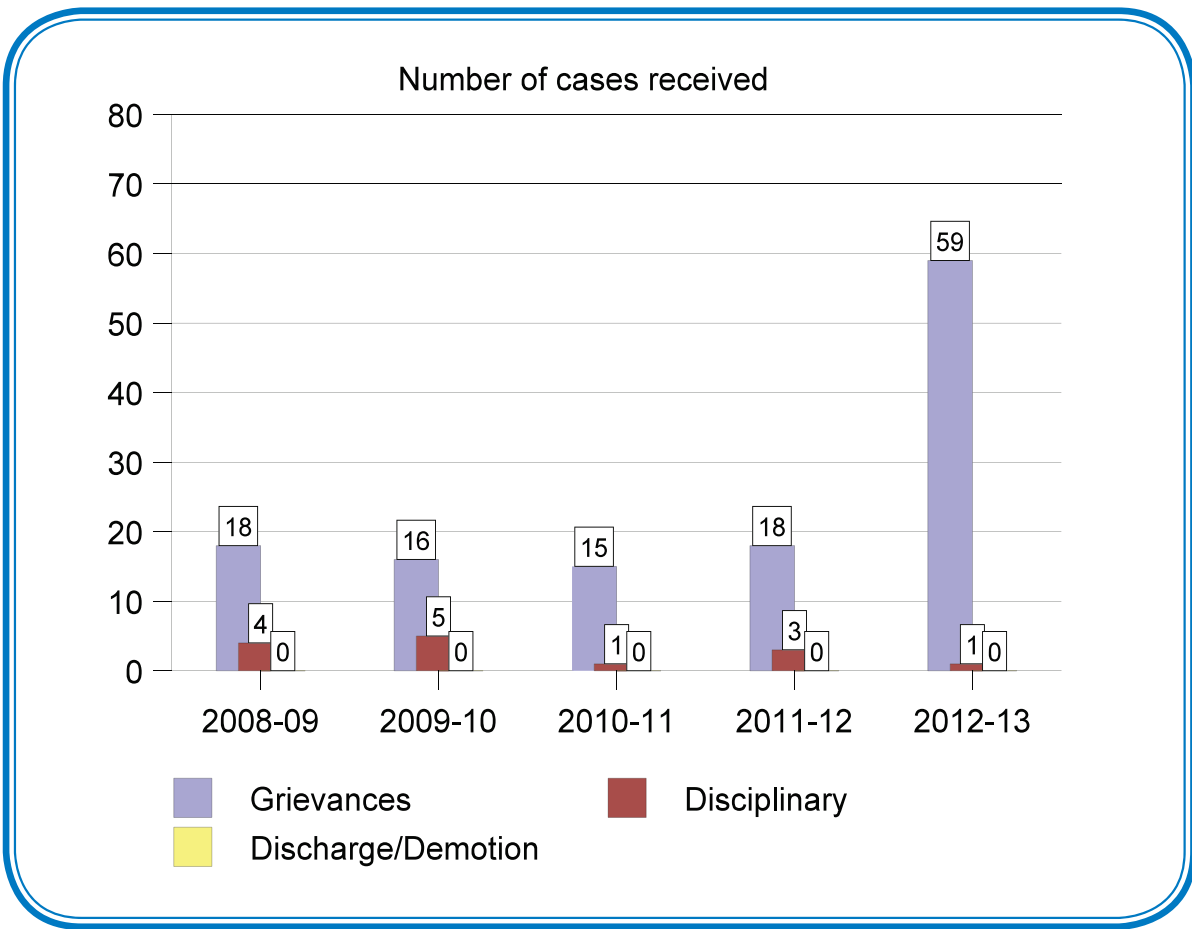
PART III

What We Did This Year

Case Review

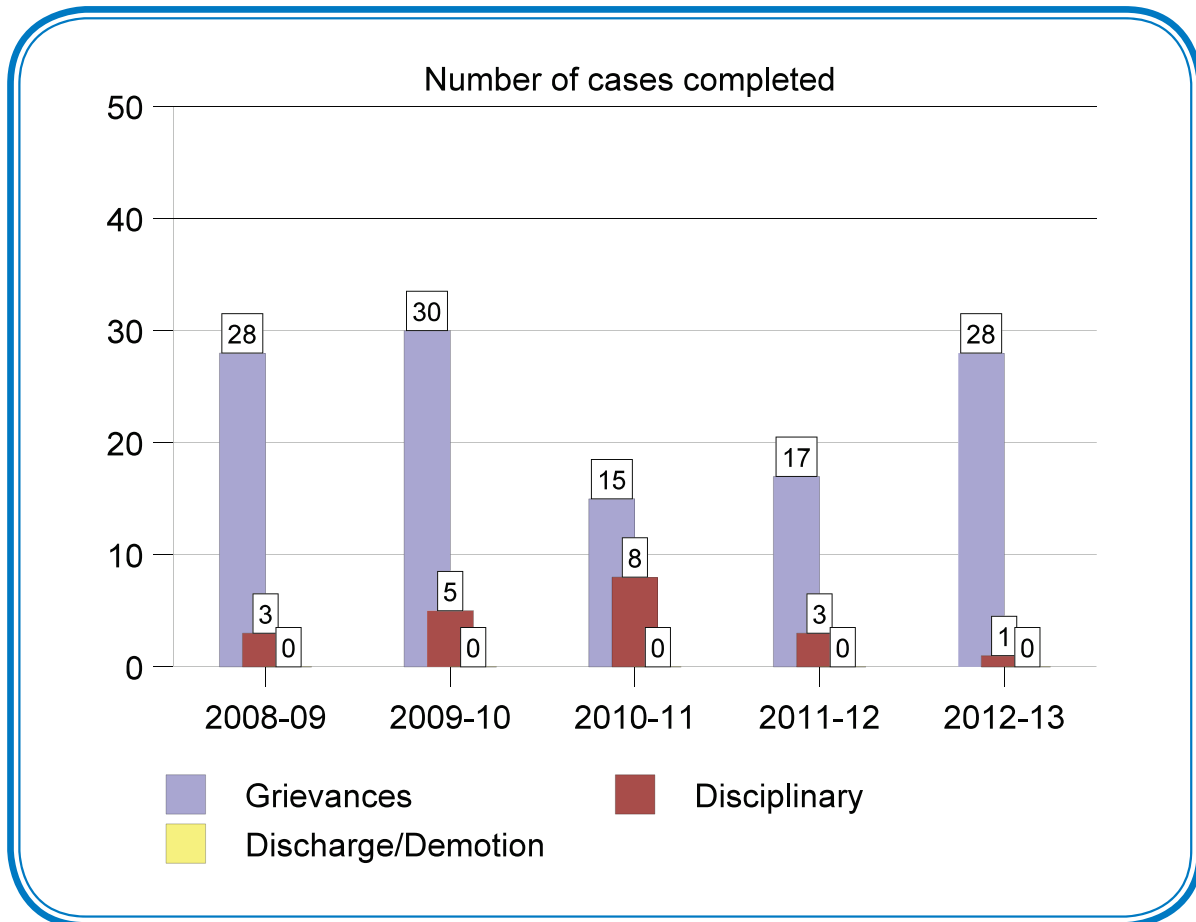
Referrals

Sixty case files were referred to the ERC in 2012-13: 59 grievances and 1 disciplinary appeal. The ERC received no referrals of discharge and demotion appeals this year.



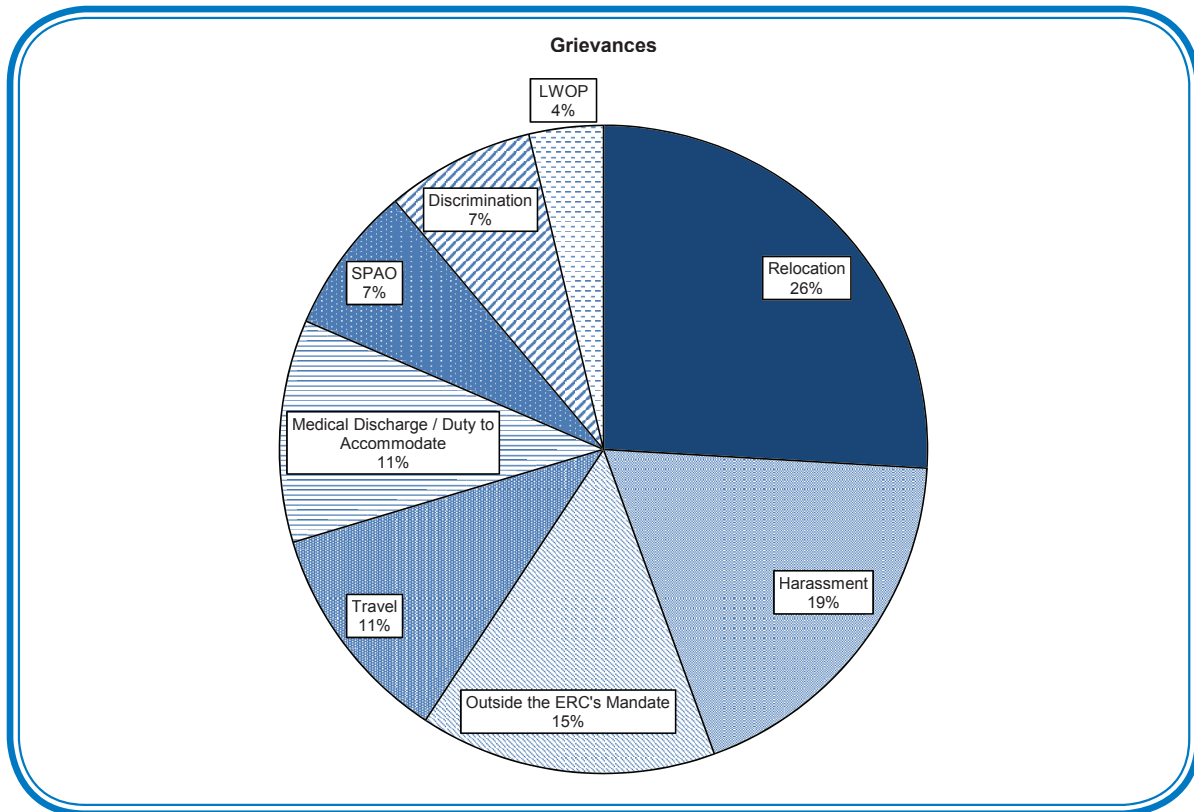
Cases Completed and Recommendations Issued

The ERC completed 29 cases in 2012-13: 27 findings and recommendations were issued regarding grievances and one was issued regarding a disciplinary appeal. One case was 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 2012-13, relocation and harassment issues were still prominent.

Disciplinary Appeals

This year, the ERC reviewed and made recommendations in one disciplinary appeal which was initiated by the member. It involved a sanction consisting of a reprimand, a forfeiture

of 4 days' pay and counseling. The ERC recommended that the appeal be allowed (D-124).

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 2012-13, 47 grievances and appeals were pending before the ERC. At the fiscal year end of 2012-13, there were 78 cases before the ERC for review. They were distributed as follows:

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

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 disciplinary appeals, the ERC applies the rule of law and is guided by the principles of fairness, impartiality, independence, and transparency. 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 cases that the ERC reviewed this year.

Grievances

Under Part III of the *Act*, a member may submit 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, for example, a member's right to claim a benefit and the extent to which an accommodation request was properly addressed.

The ERC considered a number of interesting issues this year, as discussed below.

Stoppage of Pay and Allowances Orders

The *RCMP Stoppage of Pay and Allowances Regulations* provide that when a member has been suspended from duty, a Stoppage of Pay and Allowances Order (SPAO) may also be imposed. According to RCMP policy, an SPAO is justified in “*extreme circumstances*” where the member is clearly involved in the commission of an offence that is so “*outrageous*” as to significantly affect the proper performance of his/her duties.

The ERC has emphasized that an SPAO is an interim measure designed to protect the integrity of the RCMP in the most severe cases. This year, the

ERC reviewed two SPAO grievances, and considered whether allegations were sufficiently outrageous so as to warrant an SPAO.

In **G-529**, the Grievor failed an integrity test by stealing \$100.00 which the Force had placed in a vehicle he was required to search. An SPAO was issued, and a Level I Adjudicator denied an ensuing grievance, finding that the Grievor's conduct was outrageous.

The ERC found that the Grievor had not engaged in outrageous conduct, and recommended that the grievance be allowed. It emphasized that a transgression should not be deemed outrageous solely because it was committed by a member. It pointed to RCMP policy, which states that SPAOs will not apply to "*minor Criminal Code offences*". It viewed the Grievor's offence, which ultimately resulted in a fine, as falling within that category.

In **G-549**, the ERC examined the impact of a Grievor's alcohol addiction on the determination of whether his conduct was outrageous. The Grievor had twice driven a vehicle while impaired, the first time causing a collision, and the second time while prohibited from driving. He then underwent treatment for an alcohol addiction. The Respondent

issued an SPAO, which was grieved. The Level I Adjudicator found that the Grievor's misconduct was outrageous, and refused to take into account the Grievor's alcohol addiction.

The ERC recommended that the grievance be allowed. It referred to a former Commissioner's statement that the outrageous threshold could be described in terms such as "*shocking*", "*atrocious*" and "*grossly immoral or offensive*". It indicated that, in determining if an offence is outrageous, all factors affecting the conduct must be considered. In this case, the conduct was a manifestation of the Grievor's alcohol addiction problem. Although the conduct was serious, the ERC found that it did not meet the outrageous threshold when the disability was considered.

Because of the extreme nature of SPAOs, the ERC also recommended in **G-529** that the Commissioner order a review of the rules surrounding the imposition of SPAOs, to ensure that two elements were in place. The first is a monitoring system of regular reviews to ensure that an SPAO is still necessary. The second is the prioritization of cases involving an SPAO at every step of the disciplinary process.

Compliance with Human Rights Authorities

The RCMP is required to comply with certain human rights authorities. The *Canadian Human Rights Act (CHRA)* is the most significant such authority. It is a federal statute which protects employees from discrimination on the “*prohibited grounds*” of race, origin, religion, colour, age, sex, sexual orientation, marital and family status, disability and pardoned conviction. The other authorities are internal and external policies that set out and amplify the Force’s *CHRA* duties.

Over the years, the ERC has made findings and recommendations that have helped the Force follow these authorities, and pursue its goal of “*providing a working environment free from any form of discrimination*”. This year, the ERC reviewed two grievances with human rights issues.

In **G-548**, the ERC dealt with a situation where a seemingly well-intentioned plan for a discussion translated into a clear instance of racial and ethnic discrimination.

The Force placed an Indo-Canadian Member on a team that was tasked with investigating Indo-Canadian targets. The Respondent later held a meeting with the Member to explore whether the Member, or the Member’s friends and relatives, were associated

with any targets. The Respondent also tried to ascertain if the Member was comfortable working on the investigation. The Member viewed this as discriminatory, and as an attack on his integrity. The Respondent saw it as a courtesy. However, he admitted that no one had checked to see if there was a link between the Member and any targets. Moreover, no other member was similarly singled out.

At Level I, the Member asserted that he suffered discrimination on the bases of his race and his ethnic origin. The Respondent contended that the Member was not prejudiced, as he remained a highly valued part of the investigation team who was not excluded from anything. The Level I Adjudicator denied the grievance. He conceded that the Respondent breached subsection 7(b) of the *CHRA*, which bars an employer from “*differentiating adversely in relation to*” an employee on a prohibited ground. He nevertheless agreed with the Respondent that no prejudice ensued.

The ERC concluded that the grievance should be allowed. It found that the Respondent plainly engaged in a discriminatory practice, contrary to subsection 7(b) of the *CHRA*. The Member alleged, and the Respondent did not dispute, that he was treated differently in the course of his work exclusively because of his race and ethnic origin, which are prohibited

grounds of discrimination. The ERC went on to find that the discrimination was prejudicial, or “*adverse*”, since it caused the Member serious anguish and stress. It did not matter if the Respondent felt he was granting a courtesy.

The ERC recommended a number of remedies. Among them were a written apology from the Respondent to the Member, an order that the Respondent take human rights training, and an order to ensure that members are properly trained in situations involving human rights issues.

G-542 involved concerns about the RCMP’s administration of its accommodation process. That process was created in accordance with government and Force accommodation policies, which were designed to promote adherence to *CHRA* principles by protecting workers with disabilities.

The Force removed the Grievor from operational police duty in light of his hearing condition. It then gave him administrative work he found intolerable, including filling envelopes, rearranging files, shredding paper, and emptying trash. Months later, he went off duty sick with stress and depression. Many officials were assigned to his file. Although they attempted to

accommodate his conditions by looking for permanent duties, they were not successful. They also offered him unspecific opportunities which he declined. During that protracted accommodation process, there were several delays and communication breakdowns. In addition, records were improperly kept, and some officials misunderstood their roles. The RCMP ultimately tried to return the Grievor to unwanted duties.

The Grievor grieved the general oversight of his accommodation process. He went on to retire. A Level I Adjudicator denied the grievance. He concluded that the Grievor’s lack of cooperation with Force officials conflicted with policy, and was the primary reason why he did not have a job.

The ERC found that the grievance should be allowed. It asserted that although the Grievor was partially responsible for his own missed opportunities, the record established that the Force did not meet all of its accommodation obligations under human rights authorities. Specifically, the Force failed to comply with provisions of accommodation policy regarding consultations, job searches, record-keeping obligations, and priorities during lateral/promotional opportunities.

As a result, the ERC recommended that the Commissioner of the RCMP apologize to the Grievor on behalf of the Force for the shortcomings in the Grievor's accommodation process. It also recommended that the Commissioner order a review of the matter to help determine how the RCMP accommodation process might be improved for the benefit of all stakeholders.

Harassment

A harassment grievance can involve either an allegation of harassing behaviour, or an allegation that the Force improperly handled or decided a harassment complaint.

The ERC reviewed four harassment grievances this year. All of them raised issues of standing. If a member has standing it means that the member has a right to grieve. Specifically, subsection 31(1) of the *RCMP Act* provides that a member has a right to present a grievance if the member is "*aggrieved by any decision, act or omission*" that was made "*in the administration of the affairs of the Force*", and for which "*no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders*".

In **G-538** to **G-540**, the Level I Adjudicator found that the Grievor did not have standing to grieve the

alleged mishandling of his harassment complaints, since he had already grieved the alleged underlying harassing behaviour. The ERC found that the Adjudicator erred in two ways. First, he erroneously believed the subject-matter and respondents in the different grievances were the same. Second, he incorrectly assumed that the Grievor's allegations had been dealt with.

In **G-543**, the Level I Adjudicator found that the Grievor did not have standing to present his harassment grievance because one of the remedies he sought was for the Respondent to be disciplined. The Adjudicator concluded that the proper forum for the matter was the discipline process under the *RCMP Act*. The ERC disagreed for two reasons. First, the Respondent's discipline was not the only remedy the Grievor sought. Second, the discipline process is not a process in which a member may make an application and seek a remedy. The Grievor had no power to initiate the discipline process, and would not have been a party to it. The existence of the discipline process was therefore not a bar to presenting a grievance in these circumstances.

In addition to standing, **G-538** to **G-540** raised issues surrounding the processing of harassment complaints. In those cases, the Member grieved the Force's handling of his harassment

complaints. The ERC found that procedural breaches had rendered his harassment complaint process unfair. It reasoned that, during the process, neither party received opportunities to provide their version of events, and no interviews or inquiries were done before final decisions were made. In some instances, the Force failed to address all of the Grievor's allegations.

The ERC noted that RCMP Harassment Policy requires the Human Resources Officer (HRO) to review a complaint to decide whether the allegation meets the definition of harassment. The question that must be answered is: assuming that the allegations are true, do they fall within the definition of harassment? This assessment cannot be made arbitrarily. The HRO must make inquiries and obtain necessary clarification.

Practically speaking, the ERC stated that the HRO cannot make a decision at least until clarification is sought from the Grievor. It also reiterated that only in rare cases can a complaint be dealt with without an investigation. A decision to not investigate should be exercised carefully and only in the most exceptional situations where it is simply inconceivable that a full investigation would establish that any harassment had occurred.

The ERC recommended that the Commissioner allow the grievances on the merits.

Lastly, while harassment is a broad concept that can capture a wide range of things, including the objectionable or bad faith performance of a member's duties, the ERC observed in **G-543** that sometimes seemingly harassing behaviour simply does not meet the harassment test.

In that case, the Grievor alleged that a Return to Work Coordinator harassed him by, among other things, inquiring into his medical status, trying to return him to work, advising him that his refusal to return to work represented a breach of policy, and handling his file without tact.

The ERC highlighted the objective test for determining if harassment had occurred, namely, whether a reasonable observer would conclude that an impugned act fell within the definition of harassment. It found that none of the allegations amounted to harassment. The record illustrated that the Respondent carried out his work as required, based his decisions on the information of health care professionals, properly instructed stakeholders, and acted without haste or forcefulness in so doing.

Moreover, he expressed his messages in ways that were neither rude, degrading, insulting, intimidating, demeaning, or otherwise offensive.

The ERC recommended that the grievance be denied.

Leave Without Pay Requests

RCMP members may request Leave Without Pay (LWOP) for various reasons while maintaining continuity of their employment. This is recognized through a Government-wide policy, as well as the RCMP's own Leave Policy, which provides a framework for processing LWOP requests. For instance, the RCMP Leave Policy states that LWOP may be approved for purposes which include education, care and nurturing of preschool-aged children, and personal needs. It further identifies the appropriate authority for LWOP approval.

The ERC has consistently recognized that a degree of deference needs to be given to discretionary decisions, such as those made by the Force in deciding LWOP requests. This past year, the ERC reviewed such a decision.

In **G-547**, the Grievor submitted an LWOP request after being offered a scholarship to study law at an American university. The Force denied the request "*due to critical*

human resource levels", and because the Grievor had not completed a three-year commitment he had made to supervisors. The Grievor grieved this refusal, and a Level I Adjudicator denied the grievance.

The ERC considered the grievance, even though LWOP could no longer be granted because the Grievor had resigned. The question of how LWOP requests are dealt with is important to all members, and there had been serious consequences on the Grievor. The ERC found that it was reasonable for the Force to consider human resource levels and previous work commitments when reviewing an LWOP request. Further, the ERC reviewed the RCMP Leave Policy, which stated that although a member could be granted Education LWOP at an educational institution, that institution "*must be publicly funded and registered by the provincial ministry of education*". An American university failed to meet this requirement.

The ERC added that even if all RCMP Leave Policy requirements had been met, the Force could still have refused the LWOP request given the discretionary nature of the decision, as long as it acted fairly in so doing. The ERC recommended that the grievance be denied.

Disciplinary Appeals

The Commissioner must refer an appealed decision of an RCMP disciplinary Adjudication Board (Board) to the ERC before considering the appeal. The ERC will review the entire record of proceedings, including the hearing transcript, tendered evidence, Board's decision, and appeal submissions. The ERC will then submit a thorough report to the Commissioner and the parties, containing its findings and recommendations with respect to the issues arising from the appeal.

D-124 was the only disciplinary appeal the ERC considered this year. In that case, the parties proceeded by way of the Early Resolution Discipline Process (ERDP). The Member admitted to acting in a disgraceful manner by deploying his taser too hastily. The Board imposed a sanction consisting of a reprimand, a forfeiture of four days' pay, and a counseling recommendation. That penalty was greater than the one sought by the Force. The Member appealed the sanction decision.

The ERC concluded that the Board's sanction decision contained overriding and determinative errors. It found that the Board overstated the extent to which the Appellant's actions conflicted with

policy, and that the Board made key unsupported findings. In the ERC's view, those errors led the Board to impose a disproportionate penalty. It recommended that the Commissioner allow the appeal and reduce the sanction to a reprimand and a forfeiture of two days' pay.

The ERC further commented on two issues which had not been raised by the parties. The first issue pertained to concerns arising from the ERDP. The second involved procedural fairness.

As the ERC noted in **D-115**, neither the *RCMP Act, Regulations*, or *Commissioner's Standing Orders* specifically mentions the ERDP. However, subsection 46(2) of the *RCMP Act* provides that Board proceedings shall be dealt with "*as informally and expeditiously as the circumstances and considerations of fairness permit*".

According to the 2011-12 Adjudicative Services Branch's Annual Report on the Management of the RCMP Disciplinary Regime, the ERDP allows for more timely resolution of formal disciplinary hearings where the allegations would not reasonably result in a Board considering a sanction of dismissal. The underlying philosophies of the ERDP seem to include flexibility,



expediency, modern approaches, and problem-solving. One Member Representative (MR) described the ERDP 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.

In **D-124**, the Board noted that it was appointed “*in recognition of the fact that the parties wished to dispose of the matter expeditiously by way of the Early Resolution Discipline Process*”. The ERC pointed out that the record contained no further information about the ERDP, and echoed two recommendations it had made previously. Namely, that:

1. information about the ERDP be clearly documented, easily accessible, and provided to members who are subject to disciplinary hearings so that they are fully informed about

the ERDP before making a decision to participate in it; and,

2. the record of the proceedings contain confirmation that the member who is subject to discipline received this information.

The ERC observed that although the parties proceeded by way of an agreed statement of facts and did not tender any other evidence, both counsel later tried to introduce more facts via their submissions. The ERC remarked that this was contrary to the *RCMP Act* and *Commissioner’s Standing Orders (Practice and Procedure)*, which require that testimony be provided under oath or affirmation, or that evidence not entered by testimony be entered on consent of the parties.

In this case, the parties did not expressly consent to the introduction of new facts. However, the ERC found that there was implied consent, primarily because neither party objected at the hearing or on appeal. The ERC nonetheless reemphasized that boards should be advised of the importance of ensuring that the record clearly show that all evidence was tendered in accordance with statutory and regulatory requirements.

The ERC further commented that the Board acted in a procedurally unfair way, in two respects. First, it failed to advise the parties that it was considering a sanction more severe than the one proposed by the Force. Second, it did not give the parties a chance to make submissions on that possibility. The ERC recommended to the Commissioner that these procedural fairness breaches serve as further bases for allowing the appeal and reducing the sanction imposed.

PART V

Appendices

Overview of ERC Recommendations, 2012-13

ERC Case Number	Subject Matter	ERC Recommendation
Disciplinary Appeals		
D-124	<p>Appeal of sanction consisting of reprimand, four-day pay forfeiture, and counselling recommendation.</p> <p>Alleged misuse of taser.</p> <p>Management of Early Resolution Discipline Process (ERDP).</p> <p>Overriding & determinative errors.</p> <p>Procedural fairness.</p>	<p>Allow the appeal.</p> <p>Vary sanction to reprimand and two-day pay forfeiture.</p> <p>Ensure information about ERDP is clearly documented, easily accessible, and provided to members who are subject to disciplinary hearings so that they are fully informed about ERDP process before opting to participate in it.</p> <p>Ensure record confirms that member subject to discipline receives such information.</p> <p>Advise adjudication boards of importance of ensuring that records clearly show that all evidence was tendered in accordance with statutory and regulatory provisions.</p>
Grievances		
G-525	<p>Referability.</p> <p>Immediate Operational Readiness compensation while on naval ship.</p>	<p>Grievance not referable to the ERC.</p> <p>ERC does not have legal authority to review matter or make a recommendation.</p>
G-526	<p>Referability.</p> <p>Immediate Operational Readiness compensation while on naval ship.</p>	<p>Grievance not referable to the ERC.</p> <p>ERC does not have legal authority to review matter or make a recommendation.</p>

ERC Case Number	Subject Matter	ERC Recommendation
G-527	<p>Standing.</p> <p>Disputed relocation decision rendered by Treasury Board.</p> <p>Deficiencies in Force's handling of Grievor's relocation file.</p>	<p>Deny the grievance.</p> <p>Apologize to Grievor for deficiencies in handling of his relocation file.</p>
G-528	<p>Time limits and extension.</p> <p>Isolated Posts.</p> <p>Shipment of personal effects.</p>	<p>Allow the grievance - matter timely.</p> <p>Return matter to Level I for submissions and decision on the merits.</p>
G-529	<p>Suspension Without Pay.</p> <p>Extreme and outrageous conduct.</p> <p>Disclosure obligations.</p> <p>Inadequacy of Level I reasons.</p>	<p>Allow the grievance.</p> <p>Retroactive reinstatement of pay/allowances.</p> <p>Review Grievor's file for pension implications.</p> <p>Review rules surrounding unpaid suspensions.</p>
G-530	<p>Standing.</p> <p>Private non-commercial accommodation.</p>	<p>Allow the grievance - standing established.</p> <p>Quash Level I decision.</p> <p>Return matter to Level I for merits proceedings.</p>
G-531	<p>Standing.</p> <p>Refusal to hold accommodation process in abeyance.</p>	<p>Allow the grievance - standing established.</p> <p>Return matter to Level I for process to continue.</p>
G-532	<p>Time limits and extension.</p> <p>Home Equity Assistance Program.</p>	<p>Allow the grievance - retroactively extend limitation period.</p> <p>Return matter to Level I for process to continue.</p>
G-533	<p>Time limits and extension.</p> <p>Private non-commercial accommodation allowance.</p> <p>Burden of persuasion.</p>	<p>Deny the grievance.</p> <p>Matter not timely, and merits impossible to assess in any event given lack of information.</p>

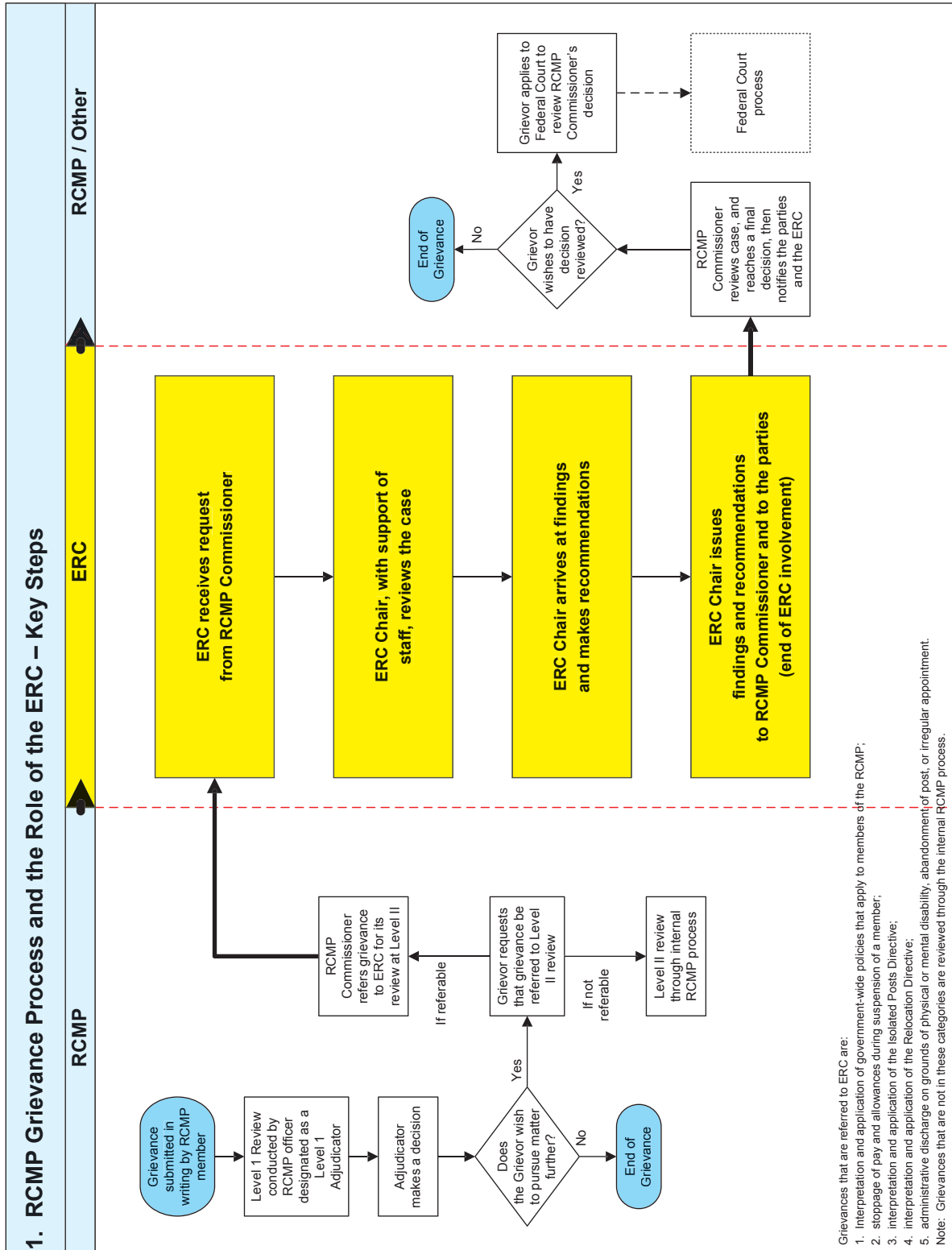
ERC Case Number	Subject Matter	ERC Recommendation
G-534	<p>Time limits and extension.</p> <p>Private non-commercial accommodation allowance.</p> <p>Burden of persuasion.</p>	<p>Deny the grievance.</p> <p>Matter not timely, and merits impossible to assess in any event given lack of information.</p>
G-535	<p>Standing.</p> <p>Preliminary medical board issues.</p>	<p>Deny the grievance - standing not established.</p>
G-536	<p>Referability.</p> <p>Dental expenses.</p>	<p>Grievance not referable to the ERC.</p> <p>ERC does not have legal authority to review matter or make a recommendation.</p>
G-537	<p>Time limits and extension.</p> <p>Sale of house during relocation.</p> <p>Entitlement to requested remedy.</p>	<p>Deny the grievance on basis of untimeliness.</p> <p>If merits are examined, find that Grievor not entitled to requested remedy, but might possibly be entitled to different remedy.</p>
G-538	<p>Harassment.</p> <p>Standing.</p> <p>Lack of investigation.</p> <p>Procedural fairness.</p>	<p>Allow the grievance on the merits.</p> <p>Apologize to Grievor for Force's failure to properly deal with his harassment complaint.</p>
G-539	<p>Harassment.</p> <p>Standing.</p> <p>Lack of investigation.</p> <p>Procedural fairness.</p>	<p>Allow the grievance on the merits.</p> <p>Apologize to Grievor for Force's failure to properly deal with his harassment complaint.</p>
G-540	<p>Harassment.</p> <p>Standing.</p> <p>Lack of investigation.</p> <p>Procedural fairness.</p>	<p>Allow the grievance on the merits.</p> <p>Apologize to Grievor for Force's failure to properly deal with his harassment complaint.</p>

ERC Case Number	Subject Matter	ERC Recommendation
G-541	<p>Relocation expenses.</p> <p>Possible travel expenses.</p> <p>Need for written pre-authorization.</p> <p>Special circumstances.</p>	<p>Allow the grievance.</p> <p>Conduct review to determine amount of reimbursable relocation expenses, and seek Treasury Board's approval to reimburse.</p> <p>Alternatively, conduct review of Grievor's file to determine if travel expenses are reimbursable.</p>
G-542	<p>Duty to accommodate disability.</p> <p>Privacy rights.</p>	<p>Allow the grievance.</p> <p>Apologize to Grievor on behalf of Force for shortcomings in his accommodation process.</p> <p>Conduct review of Grievor's case to determine how accommodation process may be improved.</p>
G-543	<p>Harassment complaint.</p> <p>Standing.</p> <p>Return to work process.</p>	<p>Deny the grievance on the merits.</p>
G-544	<p>Transfer.</p> <p>Crown-paid relocation.</p> <p>Principal residence.</p> <p>Exceptional circumstances.</p>	<p>Allow the grievance.</p> <p>Conduct review to determine if Grievor wants to pursue submission requesting Treasury Board Secretariat approval of Crown-paid relocation.</p> <p>If yes, ensure review includes preparation of submission requesting Treasury Board Secretariat approval.</p> <p>If no, apologize to Grievor for Force's failure to initially take such steps on exceptional basis.</p>
G-545	<p>Referability.</p> <p>Municipal police pension buyback.</p>	<p>Grievance not referable to the ERC.</p> <p>ERC does not have legal authority to review matter or make a recommendation.</p>

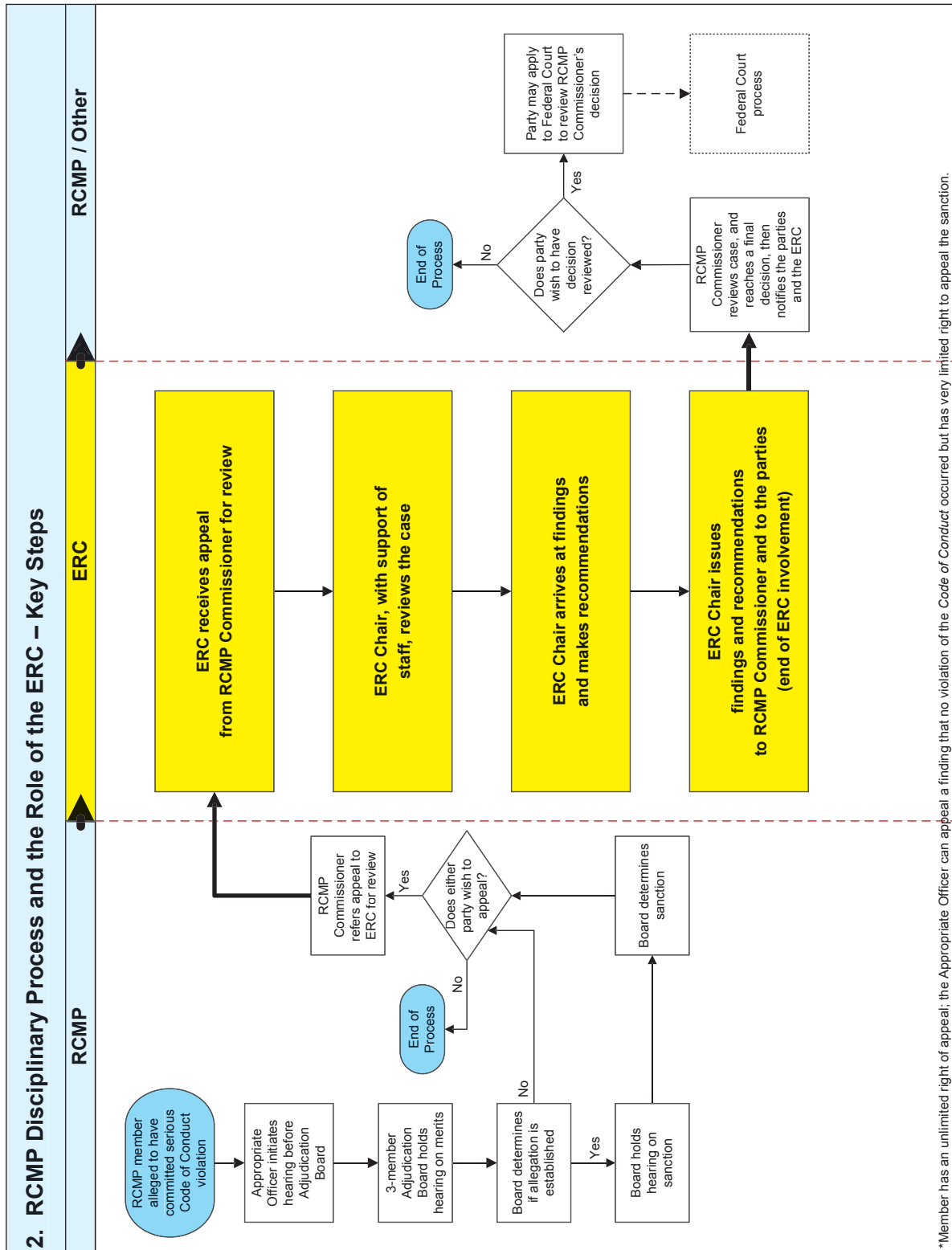
ERC Case Number	Subject Matter	ERC Recommendation
G-546	<p>Time limits and extension.</p> <p>Developmental opportunities.</p> <p>Discrimination.</p> <p>Human Rights.</p>	<p>Allow the grievance - matter timely or, in the alternative, extension justified.</p> <p>Return matter to Level I for merits proceedings.</p>
G-547	<p>Leave without pay.</p> <p>Resignation from Force.</p> <p>Participation in Early Resolution Process.</p> <p>Key document not in record.</p>	<p>Deny the grievance.</p> <p>Apologize to Grievor for Respondent's failure to participate in Early Resolution Process.</p> <p>Conduct review to clarify who has responsibility to ensure Level I Adjudicator receives complete record.</p>
G-548	<p>Discrimination.</p> <p>Human rights.</p> <p>Admissibility of belated Level II submissions.</p> <p>Remedial authority.</p>	<p>Allow the grievance.</p> <p>Respondent apologize to Grievor, in writing, for discriminatory act of singling out Grievor for special questioning solely because of Grievor's race and ethnic origin.</p> <p>Respondent undergo appropriate human rights training.</p> <p>Review RCMP's human rights practices to ensure Respondent's discriminatory practice not a standard or common RCMP practice, and to ensure members properly trained in handling situations involving human rights issues.</p>
G-549	<p>Suspension Without Pay.</p> <p>Outrageous conduct.</p> <p>Disability.</p> <p>Apprehension of bias.</p> <p>Disclosure obligations.</p> <p>Adequacy of Level I reasons.</p>	<p>Allow the grievance.</p> <p>Retroactive reinstatement of pay/allowances.</p> <p>Review Grievor's file for pension implications.</p>

ERC Case Number	Subject Matter	ERC Recommendation
G-550	Travel expenses. Private non-commercial accommodation allowance.	Allow the grievance. Review private non-commercial accommodation allowance provisions in relevant Treasury Board and Force policies so clarification may be prepared for distribution to those who may find themselves either making, or ruling on, related claims.
G-551	Harassment. Lack of ascertainable position. Burden of persuasion.	Deny the grievance.

RCMP Process and the Role of the ERC • Grievances

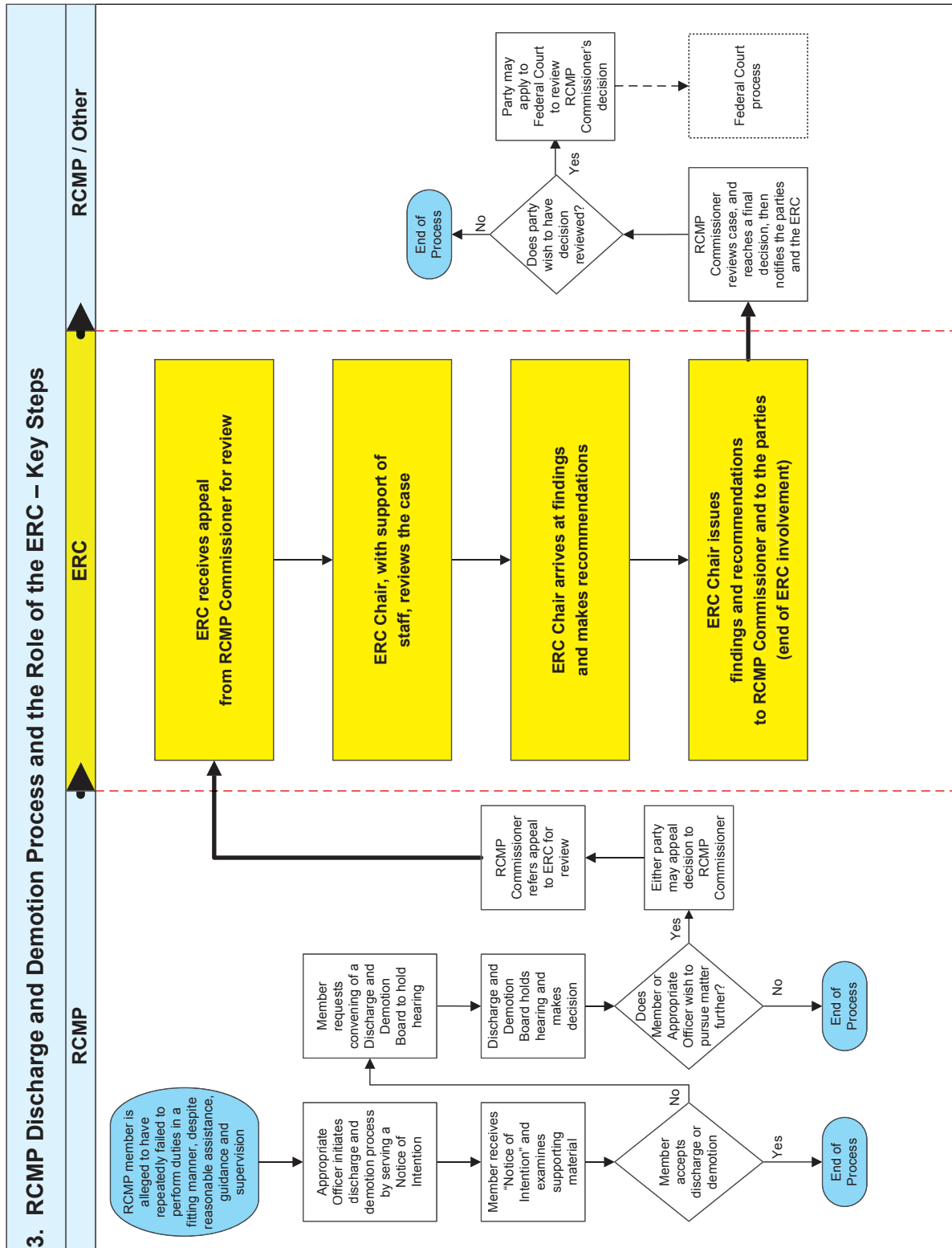


RCMP Process and the Role of the ERC • Discipline



*Member has an unlimited right of appeal; the Appropriate Officer can appeal a finding that no violation of the Code of Conduct occurred but has very limited right to appeal the sanction.

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.

People sometimes confuse the ERC and the Commission for Public Complaints Against the RCMP (CPC). The ERC and the CPC were established at the same time in the same legislation 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. She has since been re-appointed successively until July 31, 2013.

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 2012-13*

Catherine Ebbs, Chair

David Paradiso, Executive Director
and Senior Counsel

Lorraine Grandmaitre, Manager,
Administrative Services and Systems

Josh Brull, Counsel

Martin Griffin, Counsel

Jill Gunn, Counsel

Emilia Péch, Counsel

Jonathan Haig, Administrative

Assistant

Ahmad Mir, Financial Analyst

* Includes secondments and terms