



RCMP External
Review Committee

Comité externe
d'examen de la GRC

ANNUAL REPORT 2017-18



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June 25, 2018

The Honourable Ralph Goodale, P.C., M.P.
Minister of Public Safety and Emergency Preparedness
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 2017-18, so that it may be tabled in the House of Commons and in the Senate.

Yours truly,

David Paradiso
Interim Chairperson



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Message from the Chair

I am honoured to have been appointed interim Chairperson of the RCMP External Review Committee (ERC) for a period of one year beginning June 18, 2018. The position became vacant on February 26, 2018, when the Minister of Justice and Attorney General of Canada announced the appointment of former Chair Elizabeth Walker to the bench of the Federal Court of Canada. From that date, to protect the integrity of the ERC's findings and recommendations, she recused herself from any further involvement with the files before the ERC. Had Elizabeth Walker continued as the Chair of the ERC, this would have been her fourth Annual Report to Parliament. During her time with the ERC, Justice Walker upheld the importance to the RCMP of building a healthy, fair and respectful workplace for its members. The ERC continued to provide the Commissioner of the RCMP with the analysis and constructive support that is intended from a robust external review.

I am pleased to have the privilege of providing this annual report to Parliament on the activities and recommendations of the ERC in 2017-18. As this report covers a period prior to my appointment and reflects the work of the dedicated staff of the ERC under the leadership of Justice Walker, I may take no credit.

The ERC conducts independent reviews of appeals of important labour and employment decisions affecting RCMP members, including harassment complaints, dismissals for misconduct and discharges due to disability or poor performance. These reviews provide an assurance of fair and transparent processes and decision-making, support the integrity of the RCMP recourse system and promote confidence in the Force, ultimately contributing to its ability to serve Canadians well.

In 2017-18, findings and recommendations for final decisions were issued by the ERC to the Commissioner of the RCMP for 26 cases on a range of matters. During the year, the ERC began to implement new resources in support of the appeal case review program and continued to focus on improving its case review practices.

The ERC reviews two streams of appeal case referrals: one under the current legislation amended in late 2014 and another under the legacy legislation. In 2017-18, we received a total of 95 referrals in both streams. We expect to receive referrals at similar rates for several years before cases in the legacy stream dwindle. The backlog of cases at the ERC increased from 173 at the end of 2016-17 to 238 at the end of 2017-18.

Addressing the critical capacity requirements and operational challenges will remain a priority so that the ERC will be positioned to benefit the RCMP members, the managers and the Force effectively into the future. The ERC is committed to innovation and adaptability to support strong performance while also ensuring continued excellence in its reviews, findings and recommendations.



David Paradiso
Interim Chairperson

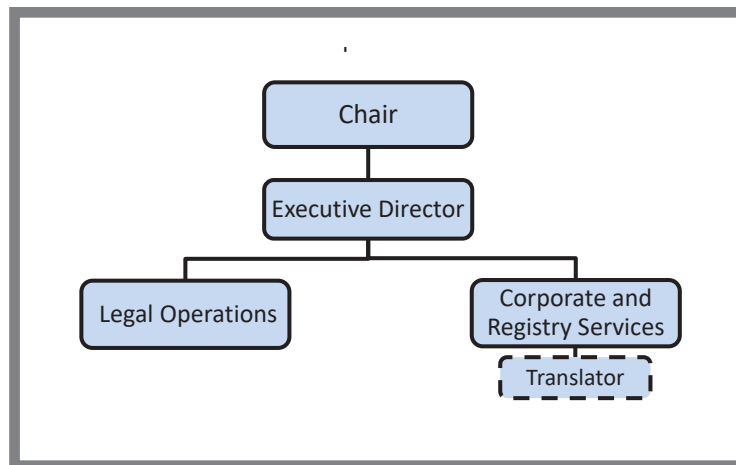


PART I – Role and Organization

The ERC carries out independent reviews of certain RCMP employment and labour relations matters involving regular and civilian RCMP members, including appeals of disciplinary decisions and decisions regarding allegations of harassment, among others. As a quasi-judicial tribunal, the ERC applies the rule of law and supports transparency, fairness and impartiality in RCMP processes and decision-making. Once the ERC has reviewed a case, it issues findings and recommendations for a final decision to the Commissioner of the RCMP.

The Chair of the ERC, appointed by order of the Governor in Council for a fixed term, is the organization's chief executive officer and deputy head, and reports to Parliament through the Minister of Public Safety and Emergency Preparedness. No member of the RCMP is eligible to be appointed as the Chair or as a member of the ERC (the Chair is currently the sole member of the ERC).

ERC staff include legal counsel who have expertise in labour, employment and administrative law, program administrators who deliver registry and corporate services, an executive director and an in-house expert translator



The ERC Appeal Case Review Program

The *RCMP Act* and *RCMP Regulations* require the Commissioner of the RCMP to refer appeals of certain cases to the ERC for its review and issuance of findings and recommendations for a final decision. The case review process begins when a referred file from the RCMP arrives at the ERC.



Each referred file is pre-screened shortly after its receipt. Pre-screening has several purposes: to verify file contents and completeness; to assess file complexity and key considerations (e.g. the extent of impacts on the member or on the RCMP workplace); and, to provide basic information that will assist in setting ERC priorities for the selection of cases for review.

In its reviews, the ERC examines the entire record of each case including the initial decision(s) made, the submissions of the parties and supporting documentation. The ERC Chair may request that one or both parties provide additional information or submissions. The Chair considers all of the evidence, legal issues and case law, relevant legislation and policies before making findings and recommendations for a final decision on the appeal. The Chair has the authority to hold a hearing if necessary, although this option has not been exercised since 2001.

The Chair's findings and recommendations are provided to the Commissioner of the RCMP and to the parties involved. The Commissioner of the RCMP (or a delegate) is the final decision-maker and must consider the ERC's findings and recommendations. If the Commissioner does not follow the ERC's recommendations, the *RCMP Act* requires the Commissioner to include the reasons for not doing so in the decision.

The work of the ERC benefits both RCMP members and the Force as an organization in a number of ways: supporting fair and transparent processes and decisions; enhancing confidence both within and outside the Force in the integrity of RCMP labour and human resource management practices; and, providing ongoing support for a healthy and productive RCMP workplace that serves Canadians well.

As of November 28, 2014, the scope and nature of the cases referred to the ERC by the RCMP changed when amendments to the *RCMP Act*, *RCMP Regulations* and associated *Commissioner's Standing Orders (CSOs)* came into force as part of the implementation of the *Enhancing RCMP Accountability Act*. The ERC now receives two streams of case referrals:

- under the current legislation (as amended in late 2014); and
- "legacy" referrals under the former legislation (for cases that commenced within the RCMP prior to the 2014 amendments to the *RCMP Act*).

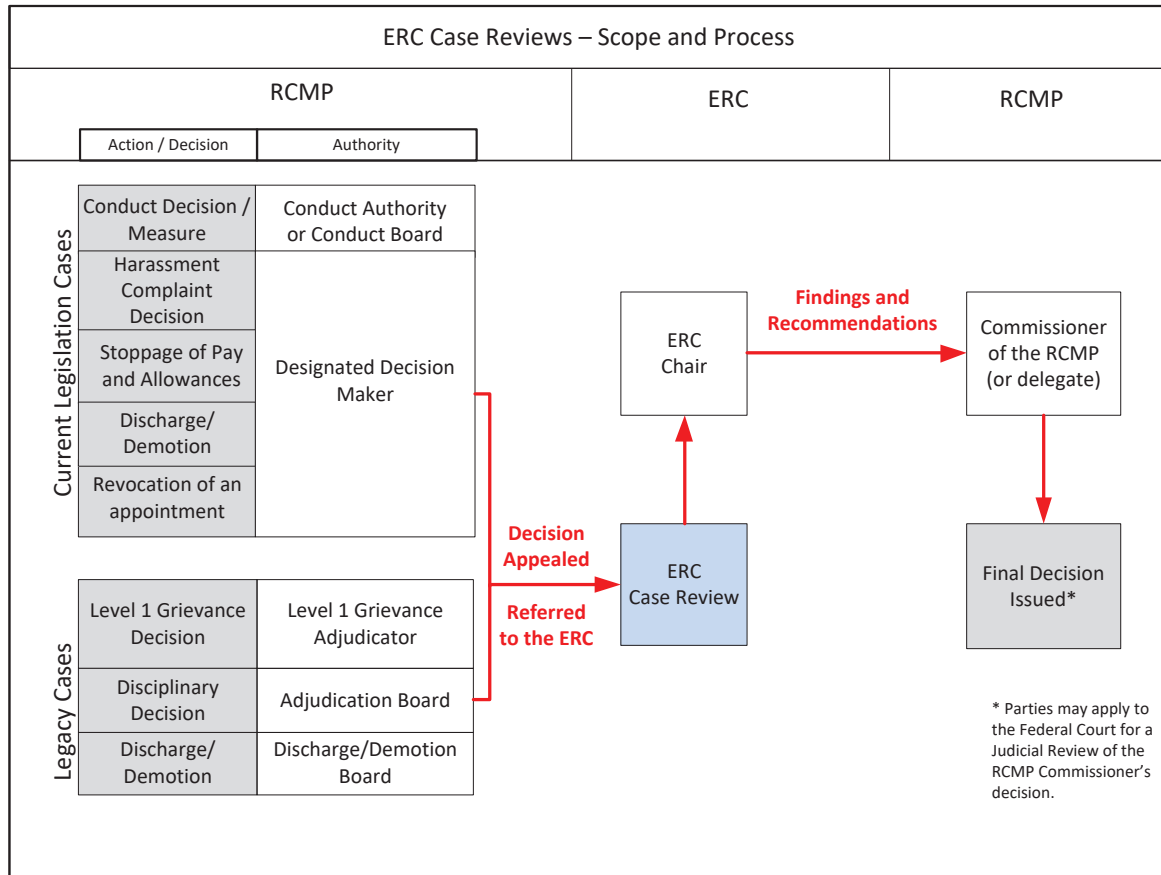
Cases are generally processed in the order in which they are received by the ERC in the interests of fairness and equity. However, the ERC is continuing to develop its framework for assigning priority for its case reviews, recognizing, in particular, that sanctions under the current legislation apply to members immediately (not pending



appeal decisions, as for legacy cases) and that there are differing impacts of our delays on the members involved and on the RCMP as an organization. In addition, the ERC has prioritized cases involving preliminary issues (such as time limit questions, a member's standing to appeal or whether a matter is actually referable to the ERC) since such cases can often be processed quickly and it is important to remit them to the RCMP to be dealt with within the Force. In setting case priorities in all instances, the ERC remains cognizant of possible effects on equity and fairness.

The general scope and process for ERC case reviews is represented in Figure 1.

Figure 1



Current Legislation Cases

The appeals that are referred to the ERC for its review, findings and recommendations under the current legislation are:

Conduct Decisions/Measures Imposed on Members

There is a wide range of conduct measures which can be imposed on a member of the Force for a contravention of the *RCMP Code of Conduct*. Conduct measures may be imposed by: a Conduct Authority, who is a manager at one of several possible levels, as identified in the *CSOs*; or, a Conduct Board, which consists of one or more persons appointed by an officer who has been designated by the Commissioner.

Conduct measures fall into three categories: **remedial** (e.g. admonishment, direction to undergo training, a reprimand); **corrective** (e.g. financial penalty of not more than 80 hours deducted from pay, forfeiture of annual leave up to 80 hours, deferment of a pay increment, suspension from duty without pay for up to 80 hours, or ineligibility for promotion for up to one year); and, **serious** (e.g. removal of duties, ineligibility for promotion, deferment of a pay increment for up to two years, demotion, transfer, suspension from duty without pay, financial penalty deducted from pay). A member who is the subject of a Conduct Authority decision may appeal any finding that an allegation was established and/or any resulting conduct measure imposed.

A Conduct Board is convened when the dismissal of a member is sought by a Conduct Authority. If a Conduct Board finds an allegation has been established, the *RCMP Act* provides that one or more of the following measures be imposed: recommendation for dismissal; direction to resign within 14 days or be dismissed; or, one or more of the other measures available under the *CSOs*. Appeals of a Conduct Board decision may be made by the member or by the Conduct Authority who initiated the hearing. The appeal may be based on any finding that an allegation was established and/or on any conduct measure imposed.

Appeals of Conduct Authority and Conduct Board decisions to impose the following measures are referable to the ERC (pursuant to section 45.15 of the *RCMP Act*):

- a) financial penalty of more than one day of a member's pay;
- b) demotion;
- c) direction to resign; and,
- d) dismissal or a recommendation for dismissal.



Decisions on Harassment Complaints*

An appeal by a complainant of a written decision regarding a harassment complaint following an investigation of the complaint is referable to the ERC. A respondent in a harassment complaint (the person alleged to have engaged in harassing behaviour) may not appeal the decision following an investigation; however, the respondent may appeal the conduct measures imposed on him or her as a result of the harassment decision.

Decisions to Discharge or Demote a Member*

An appeal of a decision to discharge or demote a member for the following reasons is referable to the ERC: unsatisfactory performance; unauthorized absence from duty; conflict of interest; and, disability, as defined in the *Canadian Human Rights Act*.

Appeal of an Order to Stop a Member's Pay and Allowances*

An appeal of a decision ordering the stoppage of a member's pay and allowances where the member has been suspended from duty (for contravening or being suspected of contravening the *RCMP Code of Conduct*, an Act of Parliament or an Act of a provincial legislature) is referable to the ERC.

Revocation of an Appointment*

An appeal of a decision revoking the appointment of a person as a member or revoking the appointment of a member by way of promotion to a higher rank or level due to an error, omission or improper conduct is referable to the ERC.

*Pursuant to section 17 of the *RCMP Regulations (2014)*.

Legacy Legislation Cases

The cases referred to the ERC under the former RCMP legislation are set forth below. Based on historical trends, it is estimated that legacy legislation cases will continue to be referred to the ERC for approximately four to five years:

Grievances

Legacy grievances covering a broad range of member rights and interests, from claims for reimbursement of expenses to the right to work in an environment free from harassment and discrimination, are referred to the ERC. Under the former *RCMP Act*, an RCMP officer designated as a Level I Adjudicator considers and decides a grievance. If the grievor is dissatisfied with the Level I Adjudicator's decision, the grievor may file a Level II grievance which is decided by the Commissioner of the RCMP or a designate.



Under *Part III* of the former *RCMP Act* and section 36 of the former *RCMP Regulations, 1988*, the Commissioner refers grievances on the following matters to the ERC for review:

- the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members;
- the stoppage of the pay and allowances of members made pursuant to subsection 22(3) of the former *RCMP Act*;
- the Force's interpretation and application of the *Isolated Posts Directive*;
- the Force's interpretation and application of the *RCMP Relocation Directive*; and
- administrative discharge for reasons of physical or mental disability, abandonment of post or irregular appointment.

Appeals of Discipline (Adjudication) Board Decisions

Under *Part IV* of the former *RCMP Act*, 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, the appropriate sanction. The matter is heard by an Adjudication Board consisting of three 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, the Appellant and the Respondent provide written submissions to the Commissioner. The Commissioner then refers the file to the ERC for its review.

Appeals of Discharge/Demotion Board Decisions

Under *Part V* of the former *RCMP Act*, a discharge or a demotion proceeding may be initiated against a member for failing to perform their duties in a satisfactory manner. When this happens, the member may request that a Discharge and Demotion Board, consisting of three RCMP officers, 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. The Commissioner then refers the appeal to the ERC for its review.

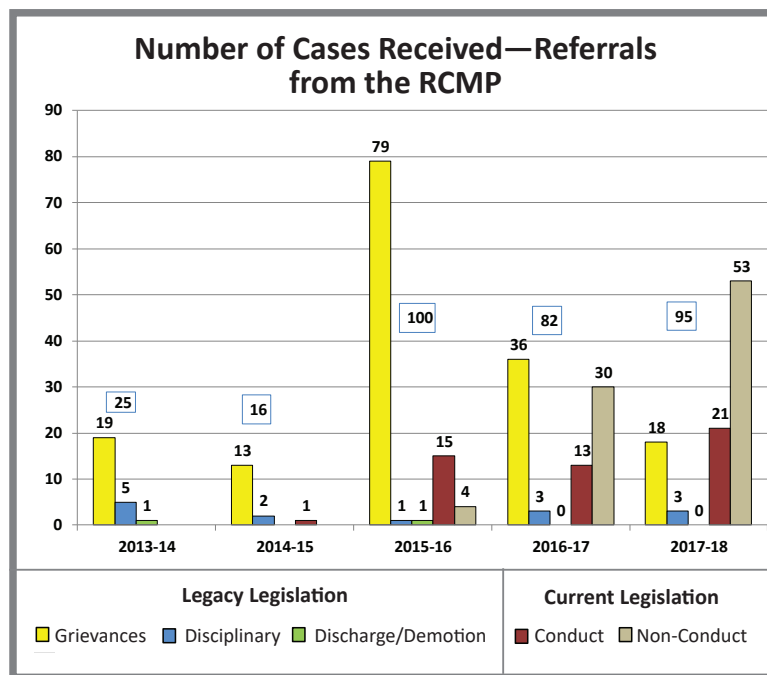


PART II – Our Results for 2017-18

Case Reviews

Files Referred to the ERC for its Review

The ERC received a total of 95 referrals from the RCMP in 2017-18: 74 current legislation cases and 21 legacy legislation cases.



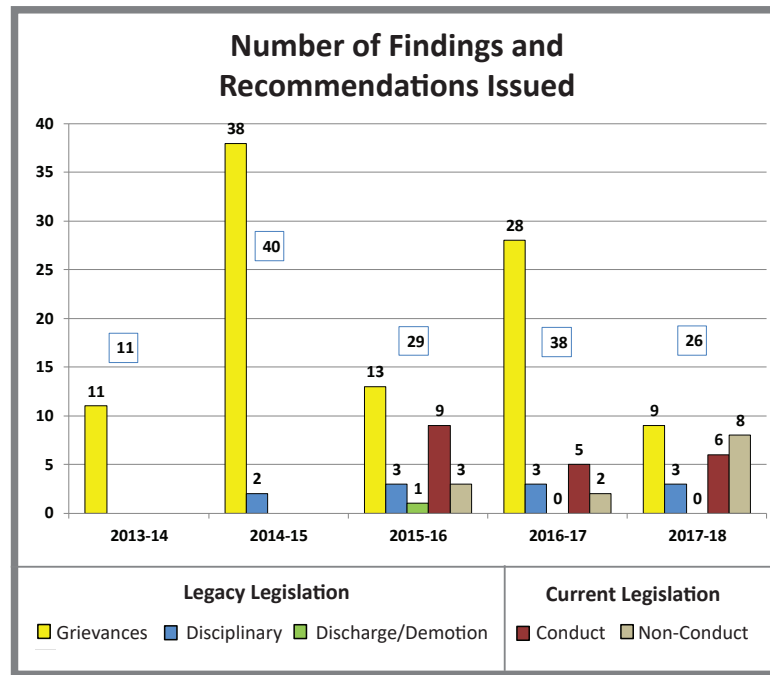
Of the 74 current legislation cases referred to the ERC, 21 were regarding conduct matters: 20 conduct authority decision appeals; and, one conduct board decision appeal. The remaining 53 non-conduct cases received comprised: 43 appeals of harassment complaint decisions; seven appeals of decisions to discharge a member due to disability and one appeal of a discharge due to administrative reasons; and, two appeals of an order to suspend pay and allowances.

Twenty-one legacy cases were referred to the ERC: 18 grievance files addressing a broad range of employment matters (i.e. harassment, duty to accommodate, relocation costs, travel costs, and medical requirements to perform duties); and, three appeals of discipline adjudication board decisions.



Reviews Completed

The ERC completed reviews and issued findings and recommendations for 26 cases: 14 under the current legislation and 12 under the legacy legislation. This is 22% less than the average number of reviews completed over the prior two years and 11% less than the average number completed over the past five years (n.b. The ERC Chair position became vacant in late February and no findings and recommendations were issued after that time to year end).



Current Legislation Cases

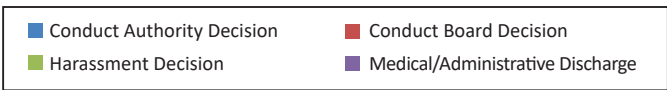
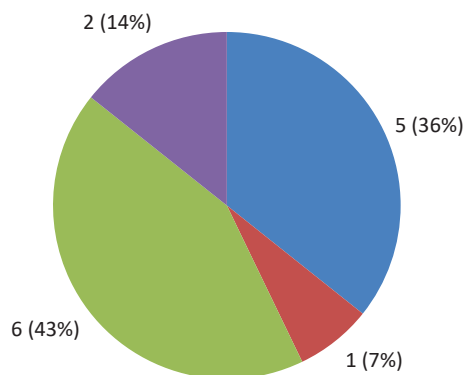
The 14 findings and recommendations for current legislation cases addressed five conduct authority decisions, one conduct board decision, six harassment investigation decisions, one discharge due to disability and one administrative discharge. The ERC continues to invest substantial time in assessing new legal issues arising in the current legislation cases, along with the associated impacts of recent RCMP policies and guidelines and new file content.

Legacy Legislation Cases

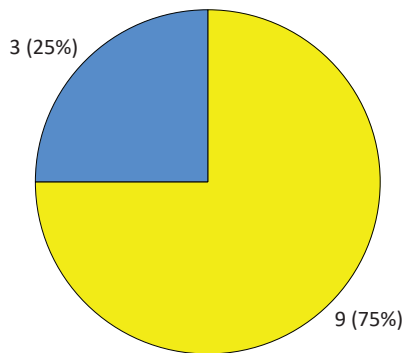
Of 12 findings and recommendations issued by the ERC for legacy cases, nine were for grievances and three for disciplinary files. The discipline files included one member appeal of an order to resign, and two appeals by managers of adjudication board decisions that allegations of disgraceful conduct against a member were unfounded.



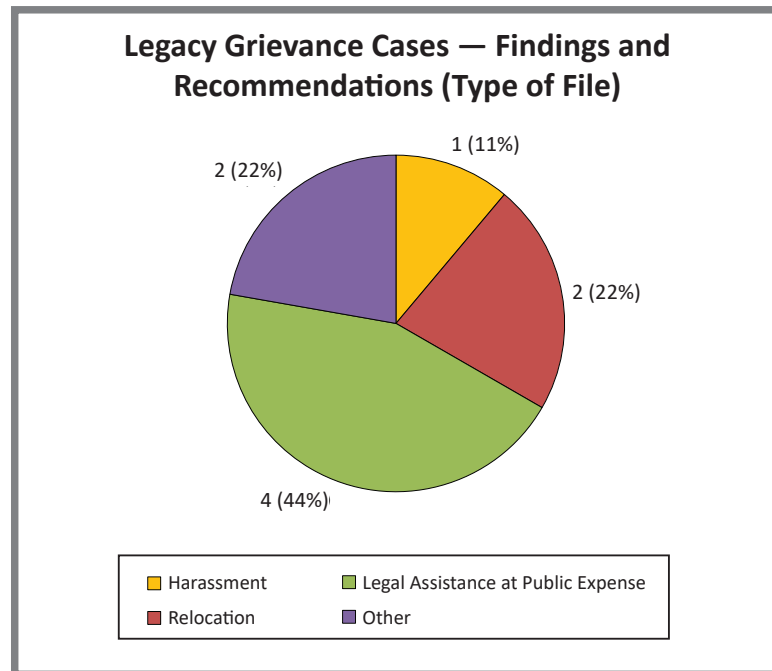
Current Legislation Cases — Findings and Recommendations (Type of File)



Legacy Cases — Findings and Recommendations (Type of File)



The nine grievance cases reviewed by the ERC addressed: four claims for legal assistance at public expense; two for relocation costs; and one case each for an allegation of harassment, isolated post costs and meal allowance costs. Three of these nine files also involved a consideration of preliminary issues (i.e. a time limit question, or determining whether the file was actually referable to the ERC).



RCMP Commissioner Final Decisions Received

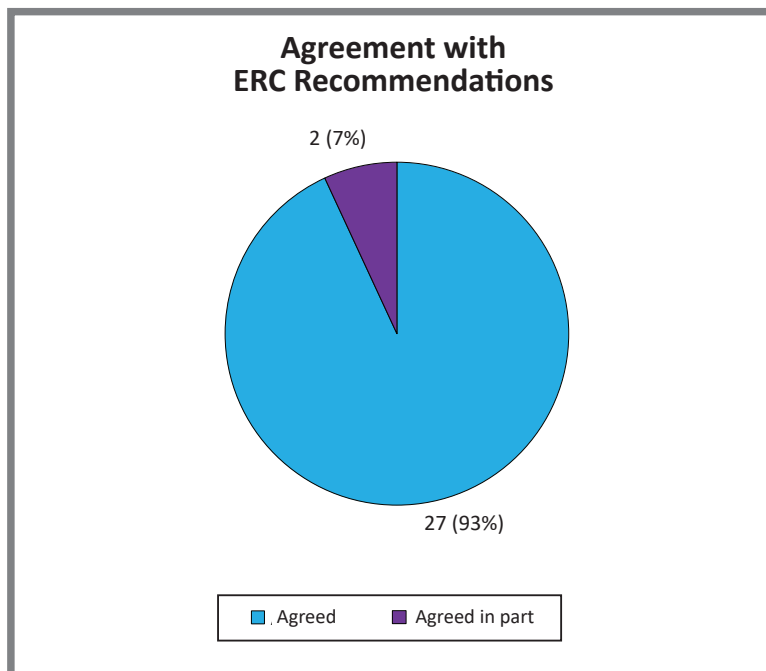
The ERC received the final decision of the Commissioner of the RCMP (or of a delegate) for 29 files for which the ERC had previously issued findings and recommendations: nine current legislation cases (four conduct authority, one conduct board, one discharge due to disability, one administrative discharge, one stoppage of pay and allowances order, and one harassment complaint decision); and, 20 legacy cases (14 grievances and six discipline files).

Extent of Agreement with ERC Recommendations

The final decision-maker agreed with ERC recommendations in 93% of cases (27-19 legacy, eight current legislation); partly agreed in 7% (2 - one legacy, one current legislation); and disagreed in none.



For one of the two files where the Commissioner agreed in part with the ERC, the ERC had recommended that the member's appeal of the allegations and of the severity of the conduct measures imposed both be allowed. The Commissioner agreed with the ERC's recommendations with respect to the allegations but chose to impose different conduct measures than those the ERC had recommended. For the second file, the ERC found that there had been a breach of procedural fairness and recommended that a new hearing be ordered. The delegated decision-maker agreed there had been a breach of procedural fairness but did not order a new hearing; he instead elected to make the decision that, in his opinion, the Adjudication Board should have made.



In considering whether the Commissioner agrees, agrees in part or disagrees with recommendations made by the ERC, it is important to distinguish between ERC findings and recommendations:

- findings express a legal assessment of the evidence, of the processes undertaken and/or the correctness of the first level decision (in light of the appeal being made); for example, whether the rules of procedural fairness were followed or whether a sanction imposed on a member was supported by reasons in the decision;
- recommendations are based on the findings and generally address: the specific elements and impacts of a decision on a member (such as recommending that a decision be upheld or that conduct measures be varied); and, occasionally, more general or systemic management issues that are identified through the review of a file (such as clarification of a Force policy or guideline).



The Commissioner may agree with ERC findings but not with the ERC's recommendations. For example, the Commissioner of the RCMP may agree with an ERC finding that there was a breach of procedural fairness but may decide not to follow the recommendation of the ERC that the file be considered by a new Board. Similarly, the ERC may find that an allegation has been established but recommend a reduced conduct measure (e.g. demotion or financial penalty instead of dismissal). The Commissioner may also find the allegation to have been established, but may decide not to reduce the conduct measures. When the RCMP Commissioner or the delegated decision-maker decides not to follow the recommendations of the ERC, the final decision must indicate the reasons for doing so.

Highlights of Cases Completed in 2017-18

This section summarizes key aspects of selected cases that the ERC reviewed and in respect of which it issued findings and recommendations in 2017-18.

An overview of all findings and recommendations issued in 2017-18 is at **Annex B**.

Current legislation Cases

In 2017-18, the ERC addressed a number of important issues in its findings and recommendations under the current legislation. This was the third full year of operation of the RCMP's recourse processes under the current legislation.

Harassment Appeals

This year, the ERC made findings with respect to some important questions which arose out of harassment appeals. One concerned when a single incident may be considered sufficiently severe to constitute harassment. Another involved whether a failure to collectively assess multiple allegations of harassment amounted to an error of law.

In **NC-009**, the Appellant lodged a harassment complaint wherein he alleged, in part, that a peer (Alleged Harasser) treated him in a way that he felt was belittling, condescending and otherwise offensive during a meeting with a representative of a partner agency. The Respondent decided the incident did not give rise to harassment given that it was *"one instance and could have been addressed [with the Alleged Harasser] through performance management"*. The Appellant filed an appeal, arguing in part that the Respondent erred by finding that the incident was not a severe event which in and of itself constituted harassment. The Appellant added that the Respondent had failed to explain what could amount to a single, severe incident of harassment, under policy.



The ERC concluded that the Respondent's determination did not warrant appellate intervention. Relying on RCMP and Treasury Board (TB) policies as well as on human rights and labour law jurisprudence, the ERC noted that a hallmark of harassment is repetitive, offensive behaviour and that one single incident shall qualify as harassment only in rare cases where it is serious and has a long-lasting impact. Such an event cannot be one instance of workplace animosity or conflict, without more. Otherwise, any single unpleasant event or argument could be deemed harassment, which would trivialize the RCMP harassment complaint process. Although the event in question caused the Appellant to feel unsettled, it involved no physical violence, threat or sexual harassment. Furthermore, the ERC noted that the Appellant and the Alleged Harasser held the same rank and continued to work with one another for a number of months without any apparent ongoing issues.

The ERC recommended, however, that the appeal be allowed and that the matter be remitted to the Respondent or to a new decision-maker. This recommendation was based on other grounds which concerned a misapplied definition under policy and a misconstrued common law test.

In *NC-010*, the Appellant submitted a harassment complaint alleging that his supervisor (Alleged Harasser) mistreated him in a number of ways, over time. The Respondent determined that the complaint was not established. He found, in part, that the conduct set out in each of the multiple allegations was neither inappropriate nor offensive. The Appellant presented an appeal wherein he took several positions, including the position that the Respondent erred in law by omitting to collectively evaluate all of the alleged incidents of harassment.

The ERC found that the Respondent did not err. The ERC acknowledged that, as harassment is ordinarily established on the basis of a series of incidents, it will generally be fundamental to a determination of whether harassment occurred that a decision-maker consider all the impugned incidents as a series or pattern. It will thus usually be insufficient for a decision-maker to simply review incidents individually and draw conclusions as to whether or not each incident on its own constituted harassment. Yet, RCMP grievance jurisprudence establishes that, in some cases, it is acceptable not to assess harassment allegations collectively. In matters like the present one, where it is reasonably determined that the conduct set out in each allegation was not offensive, inappropriate or otherwise troubling, a failure to collectively assess all of the allegations will not result in an error of law as there is no series of inappropriate or offensive incidents which could be reviewed holistically to ascertain a pattern of harassment.

The ERC recommended that the appeal be dismissed.



Conduct Board Appeal

The ERC had the opportunity to address its first appeal of a Conduct Board decision. The principal issues addressed in the case touched on the manner in which the Conduct Board had determined the appropriate sanction to impose.

In **C-017**, the Member (Respondent) had forged an email which made it appear that a Crown Attorney had not approved of charges being laid against a person arrested for impaired driving. The Respondent authored this email so that the person would not have their driver's license revoked and lose their employment. Before the Conduct Board, the Conduct Authority (Appellant) sought the Respondent's dismissal. Instead, the Conduct Board imposed a financial penalty of sixty days' forfeiture of the Respondent's pay.

On appeal, the ERC found no reviewable error by the Board in its assessment of the Respondent's ability to continue his employment in the RCMP despite an obligation to disclose his misconduct in the future when testifying in court proceedings. The Board's conclusion that the retention of the Respondent would not place an untenable administrative burden on the Force was consistent with the case law and the Board's consideration of all relevant factors. The ERC further found that the Board had properly not considered certain aggravating factors suggested by the Appellant, as these factors were in fact essential constituents of the allegations themselves. Further, the ERC found that there was no error in the Board's imposition of a significant forfeiture of pay as there is no statutory limit to the amount of a financial penalty in the current conduct regime. Finally, given the adversarial rather than inquisitorial nature of hearings before conduct boards, the ERC disagreed with the Appellant that the Board itself ought to have called specific witnesses. The ERC recommended that the appeal be dismissed.

Conduct Authority Appeals

The ERC also reviewed various issues in conduct authority decision appeal cases. These included the proper test for establishing a breach of section 4.1 of the *Code of Conduct*, the circumstances in which a decision-maker's actions may give rise to a reasonable apprehension of bias and the deference owed on appeal to findings made with respect to witness credibility.

In **C-015**, a Conduct Authority (Respondent) found to be established two allegations that the Appellant failed to remain on duty contrary to section 4.1 of the *Code of Conduct*, for which various conduct measures were imposed. On appeal, the ERC addressed the Appellant's argument that the Respondent had failed to apply a five-part test in deciding the allegations. The ERC disagreed as the test invoked by the Appellant referenced the five criteria relating to an allegation of discreditable conduct pursuant to section 7.1 of the *Code of Conduct*. The Respondent had properly



identified and applied the test applicable to section 4.1, which required that he find that the Appellant was scheduled to work, did not attend his shift as scheduled and was not authorized to do so. However, the ERC found that a reasonable apprehension of bias arose from the fact that the Respondent had, during the conduct meeting at which the Appellant expected to respond to the allegations, presented to the Appellant a completed decision regarding the allegations and conduct measures. Lastly, the ERC found that the Respondent had, in deciding on appropriate conduct measures, relied on an irrelevant aggravating factor.

The ERC recommended that the Commissioner allow the appeal and make the finding that, in the Commissioner's opinion, the Respondent should have made.

In **C-016**, the Appellant was alleged to have assaulted his ex-spouse. The estranged couple's daughter was a witness to the altercation. Both the Appellant and his ex-spouse were arrested for assault but no criminal charges were forthcoming. Following this incident, the Appellant contacted his daughter on numerous occasions in order to explain, or convince her of, his version of the incident. His daughter eventually told him to cease contacting her. The Conduct Authority (Respondent) found that the Appellant had conducted himself in a disgraceful manner by assaulting his ex-spouse and by communicating with his daughter for the purpose of influencing her recollection of events. On appeal, the ERC addressed the Appellant's argument that the Respondent had erred in assessing witness credibility and had improperly relied on the evidence of the Appellant's daughter. The ERC determined that the Respondent had considered all of the evidence and had reasonably found that the credibility of both the Appellant and his ex-spouse could not be assessed with certainty. Moreover, the ERC found that the Respondent had not erred in finding that the Appellant's daughter's testimony was credible and in rejecting the Appellant's argument that she was an unreliable witness by virtue of being overly influenced by his ex-spouse.

The ERC recommended that the appeal be dismissed.

Appeal of Order to Discharge on the Ground of Having a Disability

Under the current legislation, the Force may initiate proceedings to discharge a member by reason of the member having a disability as defined in the *Canadian Human Rights Act* (CHRA). In such cases, the Force is required to serve on the member a Notice of Intent to Discharge (NOI) informing the member of certain rights which include providing a written response to the NOI. This year, the ERC made findings and recommendations in a case underscoring the importance of a member's right to procedural fairness in such proceedings.

In **NC-007**, the Respondent received a Recommendation to Discharge the Appellant on the ground that the Appellant had a disability as defined in the CHRA and was no longer able to meet the Force's employment requirements. The Respondent issued a NOI to the Appellant which advised the Appellant of his right to respond to



the NOI prior to the Respondent deciding whether to discharge the Appellant. The Appellant sent the Respondent an email (Appellant's email) to which were attached various documents which, the Appellant believed, included his response to the NOI (NOI submissions). Owing to a technological issue, the NOI submissions were not delivered to the Respondent via the Appellant's email and neither the Appellant nor the Respondent realized at that time that the NOI submissions were missing. On the basis of the material before him, the Respondent issued an Order to Discharge the Appellant. The Appellant appealed the Respondent's decision on various grounds.

The ERC viewed the key issue as being whether the Appellant's right to procedural fairness was breached by the Respondent's failure to consider the NOI submissions. The ERC emphasized that the Appellant was owed a high degree of procedural fairness given the potential impact of discharge proceedings. While the Respondent's failure to realize that all attachments had not been provided with the Appellant's email was inadvertent, he overlooked clear language in the Appellant's email which specifically referred to attached NOI submissions. The Respondent's assumption that the Appellant had not provided NOI submissions denied the Appellant an important participatory right in a proceeding which had significant prejudicial consequences on him. The ERC found that the Order to Discharge the Appellant was invalid and must be set aside.

The ERC recommended that the appeal be allowed and that the matter be remitted, with directions for rendering a new decision to the Respondent or to another decision-maker.

Legacy Legislation Cases

The ERC issued findings and recommendations in a number of types of legacy cases under the former *RCMP Act* in 2017-18. These included disciplinary appeals and grievances involving various issues.

Disciplinary Appeals

This year, the ERC issued findings and recommendations for three legacy disciplinary appeal cases that had been commenced under the former legislation. These cases addressed various important issues including the circumstances in which an Adjudication Board may depart from a joint submission on sanction, the test for disgraceful conduct and, finally, the impact of criminal findings in disciplinary proceedings.

Test to Depart from a Joint Submission on Sanction

In *D-133*, the Appellant used an RCMP credit card to purchase fuel for a personal vehicle. Before an Adjudication Board, the parties presented an Agreed Statement



of Facts and the Appellant admitted that his actions constituted disgraceful conduct. The parties also made a joint submission on sanction proposing a reprimand and a forfeiture of 10 days of the Appellant's pay. The Board rejected the joint submission and ordered the Appellant to resign from the Force within 14 days or be dismissed.

The Appellant appealed the Board's decision on the ground that the Board had erred in disregarding the joint sanction proposed by the parties.

The ERC agreed with the Appellant that the Board had erred in rejecting the joint submission on sanction. The test to apply in deciding whether to deviate from a joint submission requires that the joint submission be deferred to unless it would bring the administration of justice into disrepute or is otherwise contrary to the public interest. The ERC noted that while the Board recognized the deference to be given to joint submissions and identified the correct legal test, it did not in fact apply the substance of the public interest test to the case before it. The Board placed significant emphasis on the lack of honesty and integrity involved in the misconduct but did not provide specific reasons as to why the joint submission on sanction, pursuant to which the Appellant would be retained in the Force, would be contrary to the public interest and bring the administration of justice into disrepute. The deceitful nature of the misconduct, the Appellant's junior status and the impact of a finding of misconduct on the Appellant's ability to be deployed were not on their own sufficient to disregard an otherwise reasonable joint submission.

On the basis of the Board's error in its treatment of the joint submission, and in light of a further error by the Board in treating expert evidence, the ERC recommended that the appeal be allowed and that the Commissioner impose the joint sanction which had been proposed by the parties.

Disgraceful Conduct Test

In *D-134*, the Member (Respondent) was in possession of two unloaded RCMP service pistols at his home which he was to deliver to members of his unit the next day. The Respondent permitted two children who were family members to handle the unloaded pistols and used his RCMP Blackberry to take photographs of them handling the firearms. The RCMP discovered the photographs, which resulted in an allegation that the Respondent had engaged in disgraceful conduct contrary to subsection 39(1) of the *Code of Conduct*. An Adjudication Board held a hearing. Photographs of the children handling the firearms, as well as a written statement by the Respondent explaining that the handling had occurred in a safe and supervised manner, were presented to the Board. Three RCMP firearms instructors testified as to how they and other RCMP members had on occasion permitted civilians to handle and manipulate RCMP-issued firearms in a safe handling environment. The Board held that the allegation was not established as no authority or rule was violated and the Respondent's conduct was within the expected norms of behaviour among RCMP members.



On appeal, the Appropriate Officer (Appellant) argued that the Board had improperly assessed the evidence in applying the test for disgraceful conduct. In the Appellant's view, a reasonable person with knowledge of all circumstances, including the realities of policing in general and the RCMP in particular, would have concluded that the Respondent's conduct in photographing children displaying police firearms was disgraceful, particularly as the conduct was neither work-related nor authorized. The ERC disagreed and found that the Board's reasons showed that it had committed no reviewable error in addressing the components of that test. The Board referred to the evidence of three witnesses who had described many situations where civilians had been allowed to handle Force-owned weapons. Further, the Board explained that the Respondent's conduct was distinguishable from prior disciplinary cases where statutory violations, potential danger, personal benefit, damage or dishonesty were involved. The Board clearly relied on the witness evidence and prior cases as establishing an objective norm within and among RCMP members, which accorded with the reference in the reasonable person test to knowledge of policing in general and the RCMP in particular.

The ERC recommended that the appeal be dismissed.

Impact of Criminal Findings in Disciplinary Proceedings

In **D-135**, the Appropriate Officer (Appellant) appealed a decision by an Adjudication Board (Board) that three allegations of disgraceful conduct against a member (Respondent) were not established. The Respondent had interacted with Individual A, who had displayed belligerent and aggressive behaviour which included spitting at members. At a Force detachment, the Respondent dragged Individual A into a cell when she refused to walk. Once in the cell, the Respondent placed his knee on Individual A's back and, concerned about spitting, held her head down while she was searched on the floor. The Respondent later dealt with another belligerent prisoner, Individual B, by physically compelling her to sit on the floor when she was uncooperative. The Board held a hearing and found that the allegations of disgraceful conduct pursuant to subsection 39(1) of the *Code of Conduct* were not established. The Board took into account the Respondent's criminal acquittals on charges of having assaulted Individual A and Individual B, which were based on conclusions that the Respondent's use of force had been reasonable. The Board also undertook its own assessment of the evidence and explained why it viewed the use of force as reasonable.

The ERC addressed the Appellant's argument that the Board had placed undue emphasis on the Respondent's criminal acquittals and had thus abdicated its own obligation to consider the evidence. The ERC disagreed for two reasons. First, the Board's reasons showed that it had arrived at its own findings of fact after hearing the evidence and making its own credibility determinations. For each allegation, the Board had set forth relevant surrounding circumstances, examined those circumstances from the Respondent's perspective and concluded that the Respondent's actions



had been objectively reasonable and did not constitute unnecessary force. Second, because the Board's findings of fact were essentially the same as those of the criminal trial judges, it made no error in observing that its analysis regarding the reasonableness of the Respondent's use of force must necessarily lead to the same result. Deciding otherwise would undermine the credibility of the judicial process. The ERC further found that the Board's decision reflected a detailed and balanced assessment of the evidence and that it had applied the correct test for deciding whether the Respondent's conduct was disgraceful.

The ERC recommended that the appeal be dismissed.

Grievance Reviews

The ERC addressed a number of key issues in findings and recommendations issued in 2017-18 for grievance reviews commenced under the former *RCMP Act*. Some of these findings and recommendations were intended to clarify the rights and obligations of members and decision-makers in relation to requests for and terminations of Legal Assistance at Public Expense (LAPE). The ERC also reviewed several matters which conveyed or re-emphasized some assorted general principles applicable to grievances.

LAPE Grievances

G-649 and **G-650** involved two Grievors who together arrested a complainant for resisting arrest and assaulting a police officer. During the ride to the detachment, the complainant purposely hit his head against the Plexiglas divider and suffered facial injuries he alleged were attributable to an assault by the Grievors. The Grievors were charged with Assault and brought to trial. They asked for LAPE on three occasions and the RCMP granted each request. At trial, they testified that they did not assault the complainant, whose injuries they said were self-inflicted. The judge considered the complainant to be more credible than the Grievors and found the Grievors guilty.

The Grievors appealed their convictions and sought further LAPE for the appeal phase. These requests were denied by the Respondent, who believed the Grievors had not acted in good faith or in the interest of the Crown, two of the three eligibility criteria for LAPE set out in the Treasury Board's LAPE Policy (TB LAPE Policy). The Respondent provided no further explanation for his decision. The Court of Appeal went on to order a new hearing, finding in part that the trial judge had based his credibility findings on unreliable evidence and had possibly made a further error. The Grievors filed grievances challenging their denied requests for LAPE at the appeal phase.

The ERC found that the Respondent's refusals of the Grievors' requests for appeal phase LAPE violated the Grievors' rights to procedural fairness and conflicted with the TB LAPE Policy. The Respondent's decisions offered no reasons and simply contained refusals of the Grievors' LAPE requests and brief references to the TB LAPE Policy. There was no analysis of the presumption of eligibility mandated by the Policy and no



account of the basis on which LAPE eligibility criteria were not met. In his submissions, the Respondent stated that he based his decisions on the trial judge's findings. Although a judgment of a trial judge or the findings made as part thereof could be relevant and appropriate to an evaluation of a request for appeal stage LAPE in some cases, this was not one of them, as the findings of the trial judge relied on by the Respondent were the very findings being contested by the Grievors. In other words, in these matters, the reasons for the requests for LAPE and the grounds for the refusals of those requests were indistinguishable.

The ERC recommended that the grievances be allowed, finding that the Grievors' requests for appeal stage LAPE should be reconsidered and approved pursuant to the TB LAPE Policy.

In **G-648**, the Grievor was charged with Breach of Trust after allegedly watching a live recording of and failing to stop a non-violent sexual encounter between two female prisoners. After asking for and receiving LAPE for a court appearance and initial consultation with a lawyer, the Grievor sought further LAPE for the preliminary inquiry phase. The Respondent denied that request and terminated the previously approved LAPE, finding that the Grievor had not acted in good faith or in the interests of the Crown. The Respondent explained that the Grievor ought to have known that the sexual encounter required intervention, especially in light of the serious risks that were inherent in the encounter and of the dangers of not intervening. The Grievor filed a grievance.

The ERC found that the Respondent's decision to refuse the Grievor's request for LAPE for the preliminary inquiry phase was not consistent with the TB LAPE Policy. There was no evidence that the Respondent considered the presumption of eligibility for LAPE required by the TB LAPE Policy and neither the documentation before the Respondent when making his decision nor the evidence in the record as a whole provided a substantive basis for a conclusion that the Grievor failed to satisfy the eligibility criteria, which would have rebutted the presumption.

The ERC further found that the Respondent's termination of the Grievor's previously approved LAPE was inconsistent with the TB LAPE Policy. The onus was on the Respondent to identify information that would permit the termination of LAPE pursuant to that policy. Yet neither the Respondent's decision nor the record contained information which became available after the approval of the Grievor's LAPE that would make it clear that the Grievor did not satisfy the basic eligibility criteria. The Respondent did not assert that the initial approval of LAPE was improper nor did he explain why it became clear that the Grievor no longer satisfied the eligibility criteria.

The ERC recommended that the Commissioner allow the grievance.



Other Grievance Principles

In addition to the grievances highlighted above, the ERC reviewed a number of other grievances which led it to make findings that either conveyed or re-emphasized some general principles.

In **G-643**, the ERC recommended that the grievance, which involved a decision not to reimburse relocation costs, be allowed. The ERC found that, pursuant to the relevant relocation policy, the Grievor was entitled to be reimbursed interim accommodation and meal costs and an allowance for the period of time between his vacating the old post and the delivery of his effects to the new post, during which he was “*necessarily separated*” from his effects, through no fault of his own.

In **G-644**, the ERC recommended that the grievance, which concerned a decision not to grant a request for Vacation Travel Assistance (VTA), be denied. The ERC found that the Grievor had a responsibility to be familiar with policies that were relevant to his situation (i.e. in this case, the provisions of an isolated posts and government housing policy which dealt with VTA). The fact that the Grievor received inaccurate information from a member which contributed to the Grievor applying for VTA beyond the deadline for so doing did not, in itself, negate that responsibility.

Additionally, in **G-646**, the ERC recommended that the grievance, which involved a decision that the Grievor’s harassment allegations were not established, be denied. The ERC found that the Grievor did not submit sufficient evidence or arguments to establish his position that the investigator’s failure to interview more witnesses resulted in an investigation that omitted crucial evidence. The Grievor did not show how the evidence of further witnesses would have added to the investigation, was obviously vital or may have materially affected the Respondent’s decision.

Preliminary Issues in Current Legislation and Legacy Legislation Cases

The ERC reviewed files with preliminary issues under both the current and the legacy legislation in 2017-18. Preliminary issues are matters in a grievance or an appeal that might either prevent the ERC from reviewing the case or could even remove a grievor’s or an appellant’s right to grieve or appeal a decision. The ERC made findings and recommendations with respect to a number of preliminary issues this past year.

Referability – Conduct Matters – Current Legislation

The coming into force of the current *RCMP Act* changed the ERC’s mandate by modifying the types of cases referable to the ERC. Under the current *RCMP Act*, in order for an appeal regarding a conduct issue to be referable to the ERC, it must satisfy the criteria identified in subsection 45.15(1) of the *RCMP Act* in that the appeal must relate to one of the conduct measures identified or to any finding that resulted in its imposition.



In **C-018**, a conduct meeting was held with the Appellant, as a result of which the Respondent issued a written decision finding that the Appellant had engaged in harassment in contravention of section 2.1 of the *Code of Conduct*. However, the Respondent did not impose conduct measures as the one-year limitation period for the imposition of such measures under subsection 42(2) of the *RCMP Act* had expired. The Appellant appealed the Respondent's Decision on various grounds. However, as no conduct measures were imposed by the Respondent, the ERC determined that it had no legal authority to issue findings and recommendations to the Commissioner.

Conversely, in **C-020**, the ERC considered whether the imposition of a forfeiture of annual leave in and of itself made the appeal referable pursuant to paragraph 45.15(1)(a) of the *RCMP Act*, which refers to "a financial penalty of more than one day of the member's pay". The ERC determined that paragraph 45.15(1)(a) does not include a forfeiture of annual leave. A clear distinction is drawn in the *Commissioner's Standing Orders (Conduct)* between a financial penalty deducted from a member's pay and other conduct measures that have or may have financial impacts on the member. Only an appeal involving a financial penalty of more than one day deducted from the member's pay is referable to the ERC pursuant to paragraph 45.15(1)(a) of the *Act*.

Referability – Harassment Matters – Current Legislation

Under the current *RCMP Act* and pursuant to subsection 17(a) of the *RCMP Regulations, 2014*, harassment cases referred to the ERC are limited to appeals of decisions described in subsection 6(1) or paragraph 6(2)(b) of the *Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints)*. Subsection 6(1) relates to a decision as to whether a harassment complaint was filed within the prescribed one-year time limit and paragraph 6(2)(b) refers to the decision as to whether an alleged harasser has contravened the *Code of Conduct*.

In **NC-006**, the Appellant had filed a harassment complaint against an employee of another enforcement agency who had been working with the Appellant on a joint task force. The Respondent concluded that the RCMP's harassment policy did not permit the RCMP to investigate or impose measures against alleged harassers employed by other agencies. The Appellant appealed the Respondent's decision. As the Appellant was not challenging one of the two types of referable decisions regarding harassment complaints referred to above, the ERC found that it did not have jurisdiction to render findings and recommendations in the matter.

Similarly, in **NC-012**, the Appellant, who had been the subject of a harassment complaint (Complaint), wrote a letter (Appellant's Letter) to the Respondent, who was the designated decision-maker in the Complaint. The Appellant's Letter raised concerns regarding a witness in the Complaint. The Respondent rendered a decision regarding the Complaint and, subsequently, responded by letter (Respondent's Letter) to the Appellant's Letter by advising the Appellant that an appeal of the decision regarding the Complaint was the most suitable avenue to address any concerns the



Appellant may have. The Appellant filed an appeal of the Respondent's Letter. The ERC found that the Appellant's Letter could not be characterized as a harassment complaint and, consequently, that the Respondent's Letter in response was not a decision of the type identified in subsection 17(a) of the *RCMP Regulations*. As a result, the ERC did not have jurisdiction to review the matter.

Referability – Legacy Legislation

In **G-642**, Grievors claimed retroactive compensation for meals taken while on overtime. The Respondent informed the Grievors that their claims could not be approved as per a policy contained in the Force's Administration Manual which governed overtime compensation. The Respondent's decision was grieved. The ERC examined whether the grievance was referable pursuant to subsection 36(a) of the former *RCMP Regulations* which captured grievances relating to "*the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members*". As the grievance related to the Force's interpretation and application of its own internal policy, rather than a government-wide policy that had been made to apply to members, the ERC could not review the grievance.

Time Limits to Seek Redress

Issues surrounding the time limits applicable to grievances and appeals arose in several cases referred to the ERC this past year.

In **C-019**, the ERC noted that the Appellant had filed his appeal of a conduct authority's decision one day outside the 14-day time limit prescribed by section 22 of the *Commissioner's Standing Orders (Grievances and Appeals)*. On two separate occasions, the ERC requested the Appellant's submissions explaining the delay, but the latter failed to respond. The ERC found that the Appellant had filed his appeal outside the statutory time limit. It further found that, absent an explanation from the Appellant, there were no exceptional circumstances in this case which would warrant an extension of time pursuant to subsection 29(e) of the *CSOs (Grievances and Appeals)*.

A time limits issue which arose in **NC-011** highlighted the difference between the 14-day time limit to appeal decisions in relation to harassment complaints pursuant to section 38 of the *CSO (Grievances and Appeals)* and the 30-day time limit to submit a grievance against harassment-related decisions under legacy legislation. The Appellant sought to contest the Respondent's decision regarding his harassment complaint by filing a Grievance Form. Under the current legislation process, the appeal should have been initiated through a Statement of Appeal. Further, the Appellant submitted the Grievance Form after the 14-day time limit set out in section 38 of the *CSO (Grievances and Appeals)* had expired, but less than 30 days after he learned of the decision. The ERC observed that if the Appellant had presented



his Grievance Form within the required 14-day time limit, the appeal would have been filed within the prescribed limitation period notwithstanding a defect in form. However, given the failure to submit the appeal in any form within the required timeframe, the ERC found that the 14-day time limit had not been met. While the Appellant had been provided with several opportunities to explain the delay, he had failed to do so, as a result of which a recommendation to extend the time limit due to exceptional circumstances was not warranted.

Outreach and Communications

ERC outreach and communications activities support transparency, accountability and awareness of RCMP workplace issues, and the operation of the RCMP recourse system.

Publications and Website

The ERC *Communiqué* publication provides summaries of ERC findings and recommendations and summaries of final decisions of the Commissioner of the RCMP for files the ERC has reviewed. It is distributed to RCMP detachments and offices with recourse responsibilities across Canada and is posted on the ERC website. Two *Communiqués* for the 2017-18 period have been published and distributed.

An extensive searchable database for summaries of ERC findings and recommendations and of the decisions of the Commissioner of the RCMP is available on the ERC website. The website also contains ERC articles, discussion papers and specialized reports on key issues related to recourse, appeals and ERC case reviews. <http://www.erc-cee.gc.ca/index-en.aspx>

Outreach

Outreach activities with the RCMP include participation in learning, orientation or special events at National Headquarters, Divisional Headquarters or detachments. The ERC met with RCMP Professional Responsibility Sector staff and managers in January 2018 to provide an update on the ERC appeal case review program and on key issues in ERC findings and recommendations. Regular discussions with RCMP managers on program administration supported operations for each organization, coordination in program delivery between organizations, and ERC planning.

Requests for Information

The ERC receives requests for information from RCMP members (current and retired), RCMP recourse system personnel, the public, media and other government organizations. In 2017-18, the ERC received and responded to a total of 139 requests. This represented a decrease from 185 last year, while still being above the annual average of 122 requests over the eight previous years.



For the requests received this year:

- 61% came from current or retired RCMP members (including from law firms on behalf of a member), most often asking about the status of a referred file at the ERC or requesting copies of findings and recommendations from completed files;
- 24% from the public (e.g. private individuals, law firms), most often for copies of findings and recommendations;
- 10% from RCMP recourse system personnel, most often asking about the status of referred files or for copies of findings and recommendations;
- 4% from other government organizations; and,
- 1% from the media.

Subject of the Request	Person Requesting the Information					Total
	RCMP Member	RCMP Recourse*	Public	Media	Other Gov't	
Status of a file that is before the ERC	68	4	-	-	-	72
Copy of findings and recommendations	8	10	8	-	-	26
Matter outside the ERC mandate	-	-	22	-	4	26
ERC role, policies or procedures	4	-	3	2	-	9
A case/matter not referred to the ERC	4	-	-	-	-	4
ERC reports or publications	1	-	-	-	1	2
Total	85	14	33	2	5	139

*RCMP personnel who have a role in referable files (e.g. a Member Representative) or in administering the recourse and appeal process (e.g. a case file manager from the RCMP's Office for the Coordination of Grievances and Appeals).

There continues to be a relatively large number of requests from RCMP members, although down from the previous year (85 in 2017-18 compared to 94 in 2016-17). The number of requests from the public also decreased (from 52 to 33). In terms of the subjects of requests, the proportional distribution is similar to previous years generally. There were notably fewer requests for copies of findings and recommendations (down to 26, from 69 last year).

The ERC responded to and provided an answer for each request within one day in over four out of five cases. When there was a need to undertake research or verifications, the response was provided as soon as possible.



Corporate Management and Planning

A key focus for the ERC in 2017-18 was the advancement of proposals for additional funding to support the integrity of the appeal case review program. Communication and coordination with central agencies and the portfolio department were important elements of this work. The approval of additional funding for the ERC from late 2017-18 through 2020-21 was announced by the Minister of Public Safety and Emergency Preparedness in the fall of 2017. The implementation of new funding began in 2017-18.

The ERC continued to receive a wide scope of corporate services infrastructure, advice and transactional support from Public Safety and Emergency Preparedness Canada under a memorandum of understanding. The small agency and administrative tribunal communities were also sources of advice and support, both through established networks and informally.



PART III – Operational Outlook

The ability of the ERC to achieve program objectives over the next several years will depend greatly on the ERC's ability to hire, develop and retain expert legal and program management resources, creating the capacity needed to address the backlog of cases awaiting review and projected workloads. The size of the backlog and the associated operational challenge for the ERC remains significant, with a caseload of 238 files at the end of 2017-18.

Future Workload

The ERC actively monitors and manages its caseload, which is essential to support day-to-day operations, risk and opportunity identification, and planning. A key challenge and objective is to estimate the kinds, numbers and complexities of files that will be referred to the ERC in coming years, and to then gauge what that will mean for actual workloads. The ERC will continue to engage the RCMP to support these efforts, as appropriate. The ERC will also work with central agencies and the portfolio department to address developments and pressures.

The current indication is that both the number of referrals to the ERC each year and overall file complexity will continue to increase beyond earlier projections.

For case referrals under the current legislation, the ERC received an increased number of total referrals in 2017-18 compared to the previous year (74, compared to 43). The ERC also received a growing proportion of more complex files compared to last year (52 harassment, discharge and conduct board files, compared to 30 such files the previous year). The evolving mix of file types is being monitored closely in order to help project ERC future requirements as reliably as possible.

For case referrals under the legacy legislation, we anticipate that referrals will remain at close to historical levels (i.e. 30-35 files per year, with a mix of relatively less and more complicated files); and for several more years, until all legacy files commenced in the RCMP that are potentially referable to the ERC will have run their course.

Based on current assessments, up to 120 case referrals total per year are anticipated for the next several years. With this operating reality, it is projected that the length of delay in completing work on files will continue to increase until planned additional human resources are on strength and trained. For legacy files received at the ERC today, this means a wait of approximately five years (compared to an historical two to three year wait time) and for current legislation files a wait of approximately two years on average.



Service Standards

The *RCMP Act* requires that the ERC establish and make public service standards with time limits for the completion of its case reviews. The ERC had targeted the end of fiscal year 2017-18 to issue service standards. However, the ERC requires further additional information and experience working with current legislation cases before it can reasonably project the future complexity and, by extension, the workloads and associated time frames for completion of reviews that should be expected. Also, given the current length of delays between the ERC's receipt of a case for review and the initiation and completion of a review, it is likely difficult now to set standards that would be meaningful to RCMP members, managers and the public. In light of these considerations, the target to have service standards in place for legacy and current legislation cases has been revised to the spring of 2019. The ERC will need to reassess the viability of that target over the next year based on further analysis and any new information.



ANNEXES

ANNEX A

List of Laws, Regulations and Orders

Laws

RCMP Act

Enhancing Royal Canadian Mounted Police Accountability Act

Regulations

Under the *RCMP Act* (in force as of November 28, 2014)

RCMP Regulations (SOR/2014-281)

Regulations Prescribing an Oath of Secrecy (SOR/2014-280)

RCMP Stoppage of Pay and Allowances Regulations (SOR/84-886)

RCMP External Review Committee Rules of Practice and Procedure (SOR/88-313)

Royal Canadian Mounted Police External Review Committee Security and Confidentiality Regulations (SOR/88-397)

Under the *RCMP Act* (prior to November 28, 2014)

RCMP Regulations (SOR/88-361)

(Selected) Commissioner's Standing Orders

Under the *RCMP Act* (in force as of November 28, 2014)

Commissioner's Standing Orders (Conduct) (SOR/2014-291)

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

Commissioner's Standing Orders (General Administration) (SOR/2014-293)

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

Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints) (SOR/2014-290)

Under the *RCMP Act* (prior to November 28, 2014)

Commissioner's Standing Orders (Grievances) [Repealed] (SOR/2003-181)

Commissioner's Standing Orders (Representation), 1997 [Repealed] (SOR/97-399)

Commissioner's Standing Orders (Disciplinary Action) [Repealed] (SOR/88-362)

Commissioner's Standing Orders (Classification Redress Process for Members) (SOR/2001-248)

Commissioner's Standing Orders (Practice and Procedure) [Repealed] (SOR/88-367)

Commissioner's Standing Orders (Qualifications) [Repealed] (SOR/88-366)

Commissioner's Standing Orders (Dispute Resolution Process for Promotions and Job Requirements) [Repealed] (SOR/2000-141)



ANNEX B

Overview of ERC Findings and Recommendations in 2017-18

Current <i>RCMP Act</i>		
Appeals of a Decision by a Conduct Authority or Conduct Board		
ERC Case Number	Subject Matter of the Appeal (<i>Code of Conduct</i> Section) Key Issues	ERC Findings and Recommendations
C-015	<p>Failure to remain on duty (section 4.1 of the <i>Code of Conduct</i>).</p> <p>Appeal of the Conduct Authority's finding that the allegation was established.</p> <p>Appeal of the conduct measures imposed.</p>	<p>Allow the appeal.</p> <p>Reasonable apprehension of bias raised by Conduct Authority's decision to present to the Appellant a completed record of decision at the conduct meeting.</p> <p>Conduct Authority relied on an irrelevant aggravating factor.</p> <p>Recommend that the Commissioner, in making the finding that the Conduct Authority should have made, find that the allegations are established.</p> <p>Further recommend that the Commissioner reduce the conduct measures imposed.</p>



<p>C-016</p>	<p>Discreditable conduct (section 7.1 of the <i>Code of Conduct</i>).</p> <p>Unauthorized use of RCMP equipment (section 4.6 of the <i>Code of Conduct</i>).</p> <p>Assault on estranged spouse and attempted witness tampering.</p> <p>Appeal of Conduct Authority's findings that allegations were established.</p>	<p>Dismiss the appeal.</p> <p>The Conduct Authority did not commit any manifest and determinative errors in assessing witness credibility or in his overall appreciation of the evidence.</p>
<p>C-017</p>	<p>Discreditable conduct (section 7.1 of the <i>Code of Conduct</i>).</p> <p>Failure to provide accurate account (section 8.1 of the <i>Code of Conduct</i>).</p> <p>Conduct Authority Representative sought Member's dismissal. Conduct Board imposed financial penalty of 60 days forfeiture of pay.</p> <p>Appeal by the Conduct Authority Representative of the conduct measure imposed by the Conduct Board.</p>	<p>Dismiss the appeal.</p> <p>No reviewable error by the Conduct Board in assessing the Member's ability to continue his employment in the RCMP despite an obligation to disclose his misconduct in the future when testifying in court proceedings.</p> <p>Conduct Board did not err in its weighing of mitigating and aggravating factors.</p> <p>No error by the Conduct Board with respect to financial penalty imposed as there is no statutory limit to amount of forfeiture of pay in the current RCMP conduct regime.</p> <p>Conduct Board did not contravene principles of procedural fairness when it did not call specific witnesses, as it was the Conduct Authority Representative's responsibility to do so.</p>



<p>C-018</p>	<p>Engaging in harassment (section 2.1 of the <i>Code of Conduct</i>).</p> <p>Appeal of Conduct Authority's finding that the allegation was established.</p> <p>Whether the ERC has jurisdiction to review the appeal.</p>	<p>No legal authority for the ERC to review the appeal, not referable (outside subsection 45.15(1) of the <i>RCMP Act</i>).</p> <p>No conduct measure imposed. Appeal did not relate to one of the conduct measures identified at subsection 45.15(1) of the <i>RCMP Act</i>.</p>
<p>C-019</p>	<p>One allegation established under section 4.2 of the <i>Code of Conduct</i> (diligence in performing duties).</p> <p>Appeal filed over 14 days after the day the Member was served with the decision.</p> <p>Whether a retroactive extension of the 14-day time limit to file an appeal was justified.</p>	<p>Dismiss the appeal.</p> <p>Appellant did not file his appeal within the 14-day time limit prescribed by section 22 of the <i>CSOs (Grievances and Appeals)</i>.</p> <p>Appellant did not provide an explanation that would warrant a retroactive extension of the time limit pursuant to subsection 29(e) of the <i>CSOs (Grievances and Appeals)</i>.</p>
<p>C-020</p>	<p>Allegation of Discreditable Conduct (section 7.1 of the <i>Code of Conduct</i>).</p> <p>Conduct Authority found that allegation established and imposed forfeiture of annual leave.</p> <p>Member appealed Conduct Authority's decision.</p> <p>Whether ERC has jurisdiction to review the appeal.</p>	<p>No legal authority for the ERC to review the appeal, not referable (outside subsection 45.15(1) of the <i>RCMP Act</i>).</p> <p>Forfeiture of annual leave is not one of the conduct measures identified in subsection 45.15(1) of the <i>RCMP Act</i>.</p>



Appeals of a Decision Regarding Non-Conduct Matters

ERC Case Number	Subject Matter of the Appeal / Key Issues	ERC Findings and Recommendations
NC-006	<p>Member appeal of Respondent's decision not to address the Member's harassment complaint against a member of another police force involved in a joint operation.</p> <p>Whether the ERC has jurisdiction to review the appeal.</p>	<p>No legal authority for the ERC to review the appeal, not referable (outside subsection 17(a) of the <i>RCMP Regulations</i>).</p> <p>The Appellant's complaint was never investigated by the Force and no decision regarding the complaint was rendered. As a result, the appeal did not relate to a decision regarding a harassment complaint.</p>
NC-007	<p>Member appeal of Respondent's decision to order the Member's discharge on the basis of having a disability.</p> <p>Respondent's failure to receive and consider the Member's submission in response to the Notice of Intent to Discharge.</p> <p>Member's right to procedural fairness.</p>	<p>Allow the appeal.</p> <p>The Member forwarded his submission to the Respondent as an attachment to an email. Owing to a technical issue, the submission was not delivered with the email.</p> <p>The Member's email contained clear indicators that he believed his submission was attached. The Respondent's failure to realize that the attachment was missing, while inadvertent, resulted in the Appellant being denied an important participatory right in the discharge proceedings.</p> <p>Remit the matter, with directions for rendering a new decision, to the Respondent or to another decision-maker.</p>



<p>NC-008</p>	<p>Member appeal of decision to discharge him from RCMP on the basis that he no longer possessed a basic requirement for the carrying out of his duties, namely, the required security clearance.</p> <p>Whether the ERC has jurisdiction to review the appeal.</p>	<p>No legal authority for the ERC to review the appeal, not referable (outside section 17 of the <i>RCMP Regulations</i>).</p> <p>The discharge of a member for not possessing a basic requirement for the carrying out of his/her duties is not one of the grounds for discharge set forth in section 17 of the <i>RCMP Regulations</i>.</p>
<p>NC-009</p>	<p>Member appeal of Respondent's decision that harassment complaint was not established.</p> <p>Test to be applied when deciding whether harassment occurred.</p> <p>Alleged single, severe incident of harassment.</p> <p>Assessment of harassment allegations and certain evidence.</p>	<p>Allow the appeal.</p> <p>Objective test for determining whether harassment took place was improperly applied by focusing on the perspective of the Alleged Harasser instead of the perspective of the reasonable bystander.</p> <p>A single incident will constitute harassment only in rare cases where it is serious and has a long-lasting effect.</p> <p>Respondent did not err in the evaluation of allegations or of certain evidence.</p> <p>Recommend that the matter be remitted to the Respondent or to a new decision-maker with directions for a new decision.</p>



<p>NC-010</p>	<p>Member appeal of Respondent's decision that harassment complaint was not established.</p> <p>Assessment of harassment allegations collectively.</p> <p>Assessment of certain evidence.</p> <p>Consideration of supervisory duties of Alleged Harasser in assessing the allegations.</p>	<p>Dismiss the appeal.</p> <p>A failure to assess harassment allegations collectively is not erroneous if it is reasonably determined that the conduct set out in each harassment allegation was neither offensive nor inappropriate.</p> <p>Respondent committed no manifest and determinative error in assessing the evidence.</p> <p>Not erroneous to consider supervisory responsibilities of Alleged Harasser when assessing the allegations, as dealings underlying the allegations flowed from the Alleged Harasser's position.</p>
<p>NC-011</p>	<p>Member appeal of Respondent's decision that harassment complaint was not established.</p> <p>Time-limits applicable to appeal process.</p> <p>Appeal filed over 14 days after the day the Member was served with the decision.</p> <p>Whether a retroactive extension of the time limit was warranted.</p>	<p>Dismiss the appeal.</p> <p>Appellant did not file his appeal within the 14-day time limit prescribed by section 38 of the <i>CSOs (Grievances and Appeals)</i>.</p> <p>Subsection 43(d) of the <i>CSOs (Grievances and Appeals)</i> provides to an appeal adjudicator the power to extend, in exceptional circumstances, the 14-day time limit to file an appeal.</p> <p>No such extension warranted in this case as the Member did not provide any explanation regarding the failure to meet the 14-day time limit.</p>



<p>NC-012</p>	<p>Member had been the subject of a harassment complaint. Prior to the Respondent rendering a decision regarding the complaint, the Member wrote a letter to the Respondent, who was the Commanding Officer, and raised concerns about a witness in the complaint.</p> <p>The Respondent answered the Member's letter by his own letter stating that the Member should raise his concerns through an appeal of the Respondent's decision which had been rendered in relation to the complaint.</p> <p>The Member filed a statement of appeal and identified the Respondent's letter as the subject-matter of his appeal.</p>	<p>No legal authority for the ERC to review the appeal, not referable (outside subsection 17(a) of the <i>RCMP Regulations</i>).</p> <p>The Respondent's letter was not a decision regarding a harassment complaint.</p>
<p>NC-013</p>	<p>Member appeal of Respondent's decision that harassment complaint was not established.</p> <p>Time-limits applicable to appeal process.</p> <p>Appeal filed over 14 days after the day the Member was served with the decision.</p> <p>Whether a retroactive extension of the time limit was justified, partly in light of alleged health issues.</p>	<p>Dismiss the appeal.</p> <p>Appellant did not file the appeal within the 14-day time limit prescribed by section 38 of the <i>CSOs (Grievances and Appeals)</i>.</p> <p>No extension warranted pursuant to subsection 43(d) of the <i>CSOs (Grievances and Appeals)</i>. The record did not indicate that the Appellant had a continuing intention to lodge an appeal. Unfamiliarity with relevant authorities is not an adequate reason for failing to respect the statutory limitation period. No evidence of health issues precluding a timely appeal.</p>



Former RCMP Act

Appeals of Discipline (Adjudication) Board Decisions

ERC Case Number	Subject Matter of the Appeal / Key Issues	ERC Findings and Recommendations
D-133	<p>Disgraceful conduct – alleged misuse of credit card issued to the Member by the RCMP.</p> <p>Early Resolution Discipline Process.</p> <p>Joint submission on sanction of 10 days' forfeiture of pay refused by the Adjudication Board.</p> <p>Adjudication Board ordered the Member to resign or be dismissed.</p> <p>Member appeal on the sanction.</p>	<p>Allow the appeal and recommend that the joint submission on sanction which had been proposed to the Adjudication Board be imposed.</p> <p>The Board failed to properly apply the substance of a legal test which must be considered when deciding whether to disregard a joint submission on sanction.</p> <p>The Board erred in its assessment of mitigating factors to be considered in deciding sanction.</p>



<p>D-134</p>	<p>Disgraceful conduct – alleged misuse of RCMP-issued service pistols.</p> <p>Appropriate Officer appeal of the Board’s findings that the allegation was not established.</p> <p>Application of disgraceful conduct test to information and evidence before Board.</p>	<p>Dismiss the appeal and uphold the Board’s decision.</p> <p>The Board’s reasons reflected the reasonable person test which must be applied in deciding an allegation of disgraceful conduct. The Board identified an objective standard of conduct based on prior cases and the evidence provided by witnesses.</p>
<p>D-135</p>	<p>Disgraceful conduct – allegations of excessive use of force.</p> <p>Appropriate Officer appeal of the Board’s findings that the allegations were not established.</p> <p>Board’s reliance on criminal acquittals; assessment of the evidence and credibility of witnesses; proper test for disgraceful conduct.</p>	<p>Dismiss the appeal and uphold the Board’s decision.</p> <p>The Board did not err in the manner it considered the acquittals entered at the member’s criminal trial, which were based on the same circumstances that were before the Board.</p> <p>The Board committed no manifest and determinative error in its assessment of the facts or the credibility of witnesses.</p> <p>The Board applied the correct test in relation to allegations of disgraceful conduct.</p>



Reviews of Grievance Decisions

ERC Case Number	Subject Matter of the Grievance / Key Issues	ERC Findings and Recommendations
G-642	<p>Decision that the Grievors' overtime meal expenses could not be retroactively reimbursed.</p> <p>Whether ERC has jurisdiction to review the grievance.</p>	<p>No legal authority for the ERC to review the grievance.</p> <p>The subject matter of the grievance relates to a decision made pursuant to an internal Force policy, not a government-wide policy applicable to members. The grievance is therefore not referable as it falls outside the scope of section 36 of the <i>RCMP Regulations</i>.</p>
G-643	<p>Decision that the Grievor was not entitled to interim travel allowances when relocating to a new post, as he was not necessarily separated from the household goods and effects that he required during the transition.</p> <p>Interpretation of the definition of "household goods and effects" contained in the 2007 <i>RCMP Integrated Relocation Program</i>.</p>	<p>Allow the grievance.</p> <p>While some of the Grievor's belongings had been delivered to the new post at the time he arrived, he was without sufficient household effects for a subsequent period of time as he awaited shipment of remaining items. As a result, the Grievor was entitled to the interim travel allowances he sought.</p>



<p>G-644</p>	<p>Decision that the Grievor was not entitled to vacation travel assistance at an isolated post, as he had made his request after the fiscal year had ended.</p> <p>Interpretation of the <i>Isolated Post and Government Housing Directive</i>.</p> <p>Based on erroneous information provided by his supervisor, the Grievor had not submitted his request within the fiscal year.</p>	<p>Deny the grievance.</p> <p>The Grievor was not entitled to receive the vacation travel assistance he requested as such a request had to be made during the applicable fiscal year.</p> <p>The fact that the Grievor had been given erroneous information did not render him eligible for the benefit. Members are responsible for familiarizing themselves with applicable policy.</p>
<p>G-645</p>	<p>Decision that Grievor must pay storage expenses incurred during a relocation.</p> <p>Time Limit at level I – whether grievance was presented within 30 days of when the Grievor knew or ought to have known he was aggrieved.</p> <p>Consideration of extension of time limit.</p>	<p>Deny the grievance.</p> <p>Grievance submitted roughly 25 days after time limit expired.</p> <p>Extension was unwarranted, as Grievor did not possess continuing intention to grieve and his explanations for the delay were not persuasive.</p>



<p>G-646</p>	<p>Decision that the Grievor's harassment complaint was not established.</p> <p>Delay in the harassment complaint process.</p> <p>Adequacy of the harassment investigation- number of witnesses interviewed.</p>	<p>Deny the grievance.</p> <p>A delay of 18 months in completing the harassment complaint process was unacceptable and inconsistent with provisions contained in applicable harassment policies. However, the delays in the process did not further aggrieve the Grievor and did not compromise the integrity of the investigative process.</p> <p>There was no evidence that the investigator's failure to interview additional witnesses resulted in an investigation that omitted crucial evidence.</p>
<p>G-647</p>	<p>Decision to deny the Grievor's request for Legal Assistance at Public Expense (LAPE).</p> <p>The Grievor incurred legal expenses as a result of being the subject of a criminal investigation resulting in several criminal charges.</p>	<p>Allow the grievance in part.</p> <p>A decision to authorize or deny LAPE must consider applicable LAPE policy criteria, including whether the member's actions were within the scope of his or her duties.</p> <p>Two of the criminal matters related to actions taken by the Grievor which were within the scope of his duties.</p> <p>With respect to a third matter, there was insufficient information for the Respondent to conclude that the Grievor had failed to meet eligibility criteria. The Grievor was entitled to LAPE in relation to these matters.</p> <p>The Grievor was not entitled to LAPE in relation to charges arising from circumstances outside the scope of his duties or employment with the RCMP.</p> <p>Recommend that the Grievor be permitted to provide a detailed accounting of legal fees incurred in relation to the matters for which LAPE should have been provided.</p>



<p>G-648</p>	<p>Decision to deny the Grievor's request for Legal Assistance at Public Expense (LAPE) for a preliminary inquiry and to terminate Grievor's previously approved LAPE.</p>	<p>Allow the grievance.</p> <p>Failure to consider the presumption of eligibility for LAPE required by applicable LAPE policy. No substantive basis for finding that the Grievor had failed to meet eligibility criteria for formerly approved or newly requested LAPE.</p> <p>Recommend that Grievor be required to submit a detailed statement of account regarding legal fees incurred by him, for presentation to approval authority.</p> <p>Recommend that Grievor be permitted to make detailed request for LAPE for trial phase of criminal proceedings.</p>
<p>G-649</p>	<p>Decision to deny the Grievor's request for Legal Assistance at Public Expense (LAPE) at appeal phase.</p>	<p>Allow the grievance.</p> <p>Decision to refuse LAPE contained no reasons, no analysis of presumption of eligibility mandated by applicable LAPE policy and no explanation of basis on which eligibility criteria not met.</p> <p>Recommend that Grievor's request for LAPE at appeal phase be reconsidered and retroactively approved, subject to advice of the Advisory Committee on Legal Assistance and Indemnification.</p>



G-650	Decision to deny Grievor's request for Legal Assistance at Public Expense (LAPE) at appeal phase.	<p>Allow the grievance.</p> <p>Decision to refuse LAPE contained no reasons, no analysis of presumption of eligibility for LAPE mandated by applicable LAPE policy and no explanation of basis on which eligibility criteria not met.</p> <p>Recommend that Grievor's request for LAPE at appeal phase be reconsidered and retroactively approved, subject to advice of the Advisory Committee on Legal Assistance and Indemnification.</p>
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ANNEX C

Staff and Contacts

Staff in 2017-18

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