



RCMP External
Review Committee

Comité externe
d'examen de la GRC

ANNUAL REPORT

2018-19



Canada 



© Minister of Public Services and Procurement Canada

Cat. Number PS20E-PDF
ISSN 1700-8069



RCMP External
Review Committee

Comité externe
d'examen de la GRC

June 17, 2019

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 2018-19, so that it may be tabled in the House of Commons and in the Senate.

Yours truly,

A handwritten signature in black ink, appearing to read "David Paradiso".

David Paradiso
Interim Chairperson



Table of Contents

Message from the Chair	1
PART I - Role and Organization	3
The ERC Appeal Case Review Program	3
Current Legislation Cases	5
Legacy Legislation Cases	7
PART II - Our Results for 2018-19	9
Case Reviews	9
Files Referred to the ERC for its Review	9
Reviews Completed	10
RCMP Commissioner Final Decisions Received	12
Highlights of Cases Completed in 2018-19	13
Preliminary Issues	13
Harassment in the Workplace.....	15
Stoppage of Pay and Allowances.....	17
Miscellaneous Issues.....	18
Outreach and Communications	22
Publications and Website.....	22
Outreach.....	22
Requests for Information.....	22
Corporate Management and Planning	24
PART III – Operational Outlook	25
ANNEX A	27
ANNEX B	29
ANNEX C	42



Message from the Chair

All institutions, in both the private sector and in the public sector are recognizing an expansion of the demands placed upon them by the public. No longer satisfied with organizations that are focused only on the delivery of their specific products or services, society has begun to demand that organizations also adhere to standards of accountability that were not expected of them previously. People have begun to look to these organizations to preserve the environment, promote human rights, adhere to ethical research and business practices, and protect the dignity of their employees and the communities in which they operate, all the while remaining productive and competitive in the market.

Today, society also imposes its view of culture on its public institutions, wanting to see its diversity reflected in the composition of workforces and executive management. The public expects to see respect and inclusiveness embodied by the organizations it supports. It trusts an authority that models its same values. While a specific set of those particular values may be difficult to define consistently, there are some minimum standards that the public expects will be met. The health of a workplace is an indicator that the public notices and that influences public confidence.

As the broader federal public service does, the RCMP evaluates and reports on its effectiveness as an organization at meeting specified outcomes, its procurement activities are scrutinized against greening government initiatives, its policy development is informed through a gender-based analysis, and it administers a workplace employee survey among many other initiatives.

The RCMP has accepted the public sentiment that community safety and law enforcement are just the beginning of what policing means to the public. Respect for the rule of law, for the dignity of individuals, and a supportive harassment-free, representative workplace that has a service orientation, are at the base of a proud Canadian public service.

Following legislative changes, new internal RCMP processes for grievance reviews and appeals have been put in place, and the RCMP membership has moved towards certification of its first fully independent collective bargaining agent. As this development ushers in a new dynamic between RCMP members and management, together they can create a rapport that will bring the RCMP closer to the ideal of being a public institution that embodies values that will engender public confidence.

The ERC is an integral part of the systems that assure the public that the RCMP can adhere to employment principles that are legally and publicly accepted. By analyzing RCMP appeal cases from its perspective as an independent review body applying current jurisprudence, the ERC offers the RCMP management and its members recommendations that accord with developments in employment and labour law.



How the RCMP and its members respond to the ERC's recommendations can determine how well they reconcile themselves to each other and to the public for real and perceived injustices of the past. I am confident that the RCMP has the capacity to create an internal culture that will burnish the Force's reputation as a public institution that holds the confidence of Canadians and their pride.

It has been my distinct privilege to participate in this chapter of the RCMP's development. The staff of the ERC has my deepest respect for its unwavering professionalism, collegiality and dedication to its mandate acquitted with uncompromising excellence.



David Paradiso
Interim Chairperson

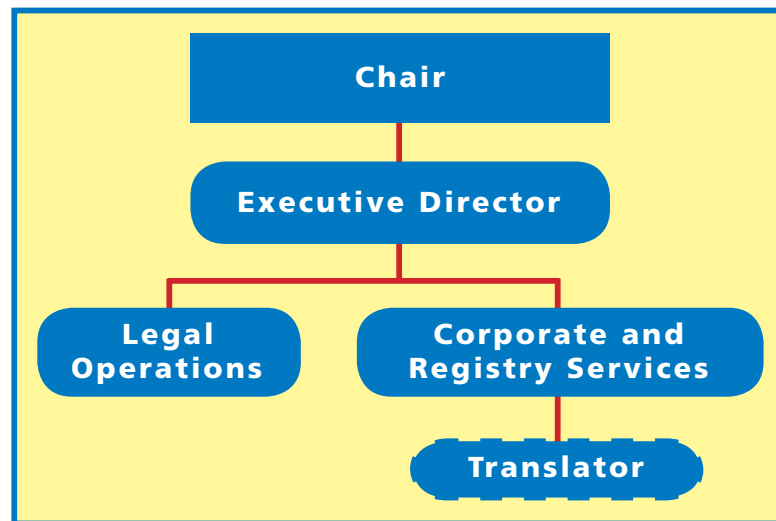


PART I – Role and Organization

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*).

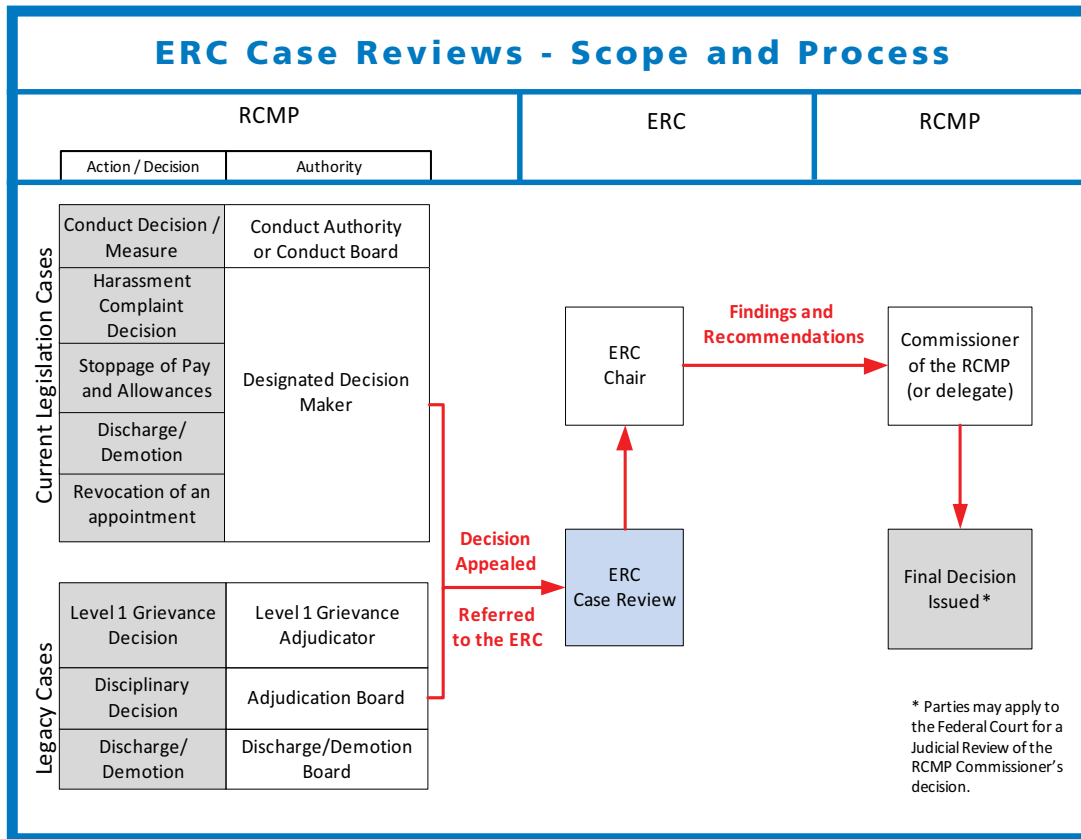
Cases are generally processed in the order in which they are received by the ERC in the interests of fairness and equity. However, the ERC is continuing to develop its framework for assigning priority for its case reviews, recognizing, in particular, that sanctions under the current legislation apply 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 another three to four 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 appeals to the ERC for its review.

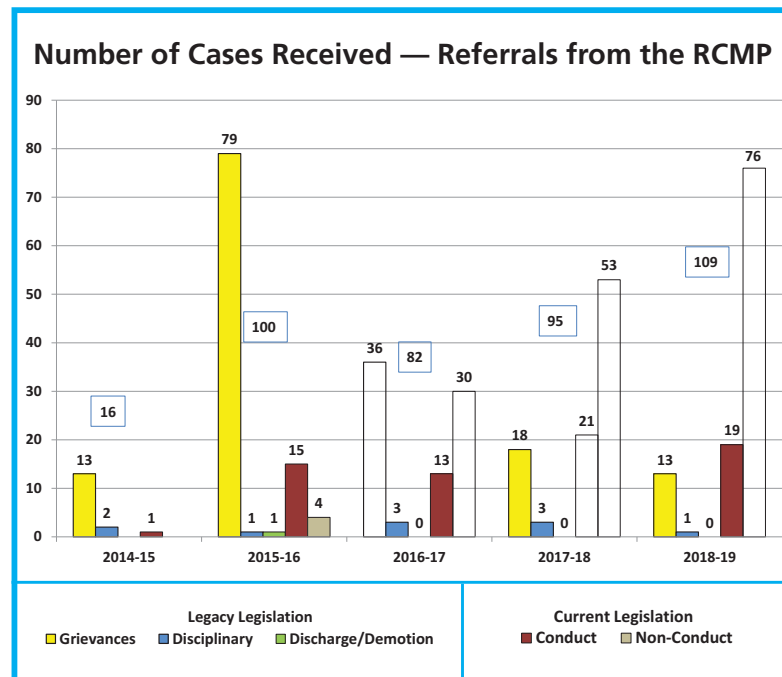


PART II – Our Results for 2018-19

Case Reviews

Files Referred to the ERC for its Review

The ERC received a total of 109 referrals from the RCMP in 2018-19: 95 current legislation cases and 14 legacy legislation cases. This represents a clear majority of current legislation cases. While the number of legacy legislation cases referred is reducing or levelling out, the ERC anticipates receiving legacy case referrals for another approximately three to four years based on current indications.



Of the 95 current legislation cases referred to the ERC, 19 were regarding conduct matters: 15 conduct authority decision appeals; and, four conduct board decision appeals. The remaining 76 non-conduct cases received comprised: 68 appeals of harassment complaint decisions; five appeals of decisions to discharge a member due to disability; and three appeals of discharge decisions due to administrative reasons.

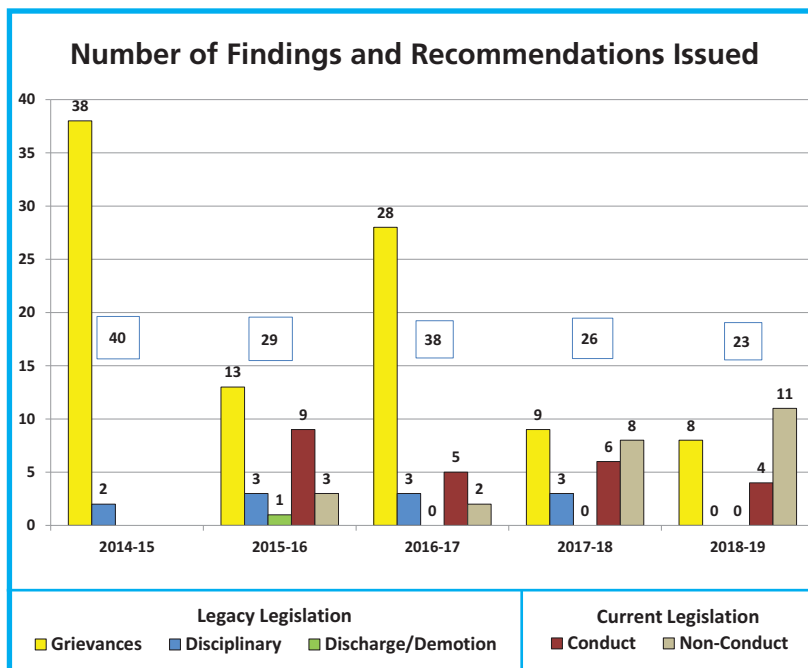
Fourteen legacy cases were referred to the ERC: 13 grievance files addressing a broad range of employment matters (i.e. harassment, stoppage of pay and allowance, relocation costs, travel costs, and discrimination); and, one appeal of a discipline adjudication board decision.



Reviews Completed

The ERC completed reviews and issued findings and recommendations for 23 cases: 15 under the current legislation and 8 under the legacy legislation. This is 28% less than the average number of reviews completed over the prior two years and 20% less than the average number completed over the past five years. This is attributable to the vacancy in the ERC Chairperson position from late February 2018 until the appointment of the Interim Chairperson for a one-year term effective June 18, 2018, until which time no findings and recommendations could be issued by the ERC, the Chairperson of which is the sole member.

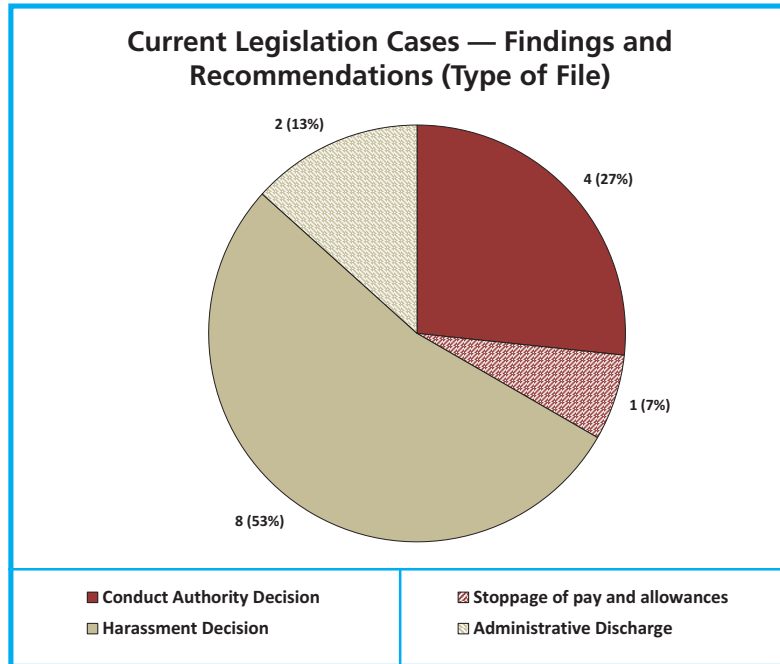
Although the ERC has been working on cases referred under the current legislation for four years, the number completed is still relatively limited. They represent a variety of often more complex cases (e.g. discharge decision appeals, conduct board decision appeals). As a result, the ERC continues to focus its attention on assessing new legal issues as they relate to updated RCMP policies and guidelines, and new situations generally.



Current Legislation Cases

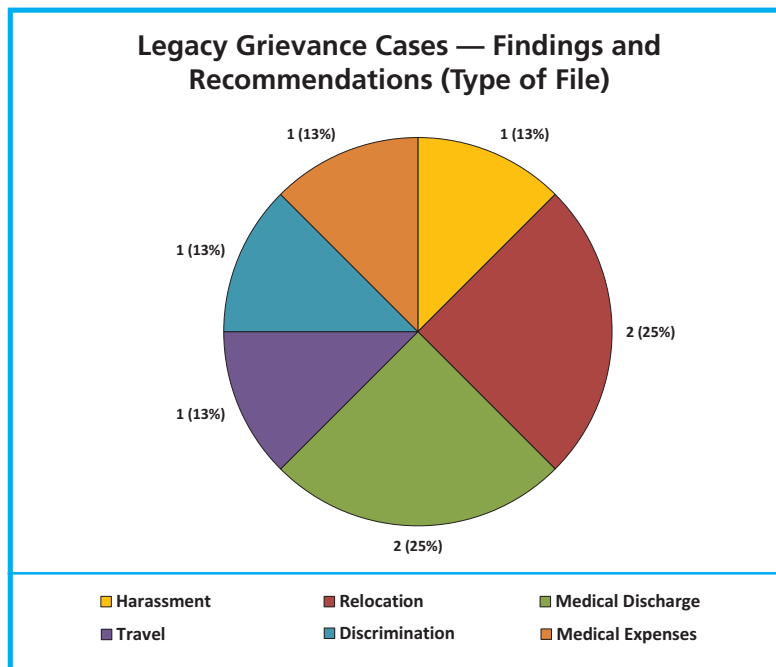
The 15 findings and recommendations for current legislation cases addressed four conduct authority decisions, eight harassment investigation decisions, one order to stop pay and allowances and two administrative discharge decisions.





Legacy Legislation Cases

All eight of the findings and recommendations issued by the ERC for legacy cases were for grievances: two medical discharges; two relocation costs claims; and one case each for an allegation of harassment, travel costs claim, medical expenses and discrimination (based on disability). Three of these eight files also involved a consideration of preliminary issues (i.e. a time limit question, or determining whether the file was referable to the ERC).



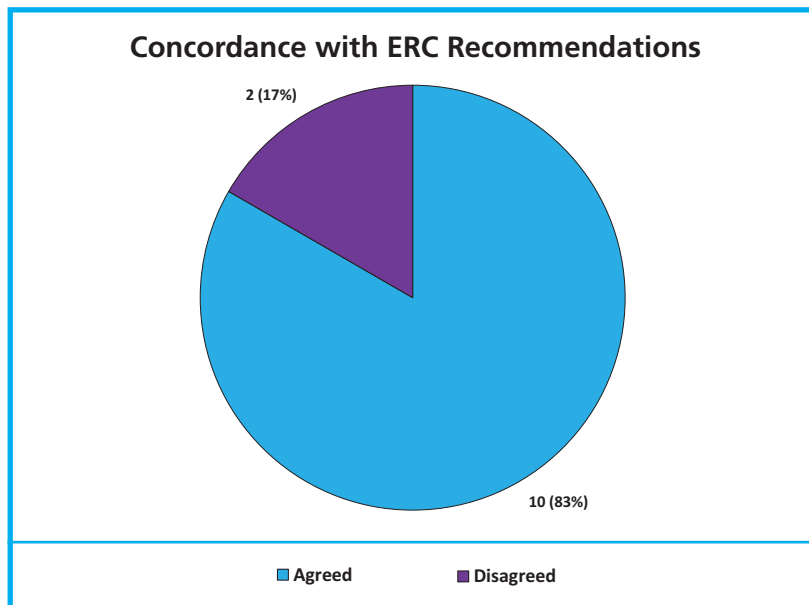
RCMP Commissioner Final Decisions Received

The ERC received the final decision of the Commissioner of the RCMP (or of a delegate) for 12 files for which the ERC had previously issued findings and recommendations: five current legislation cases (one conduct authority decision, one stoppage of pay and allowances order, and three harassment complaint decisions); and seven legacy cases (all grievances).

Concordance with ERC Recommendations

The final decision-maker agreed with ERC recommendations in 83% of cases (ten – five legacy, five current legislation); and disagreed in 17% of cases (two – two legacy cases).

Both cases where the Commissioner disagreed with the ERC's recommendation were legacy grievances. In a grievance against a decision to medically discharge a member, the ERC recommended exercising discretion to consider the merits of the grievance despite a potential mootness issue. The Commissioner disagreed and chose to conclude the grievance on its mootness. The second was a grievance against the denial of a non-elective medical travel claim. The ERC found that the Grievor presented their Level II grievance outside the statutory limitation period and that the circumstances did not support a retroactive extension of the limitation period. The Commissioner disagreed and allowed the grievance.



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 RCMP Commissioner or delegated decision-maker may agree or disagree with ERC findings and/or with the ERC's recommendations.¹ When the RCMP Commissioner or the delegated decision-maker decides not to follow the recommendations of the ERC, the *RCMP Act* requires that the final written decision indicate the reasons for not doing so.

Highlights of Cases Completed in 2018-19

This section summarizes key aspects of selected cases that the ERC reviewed and in respect of which it issued findings and recommendations in 2018-19.

An overview of all findings and recommendations issued in 2018-19 is at **Annex B**.

Preliminary Issues

The ERC reviewed files with preliminary issues under both the current and the legacy legislation in 2018-19. 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. This year, the ERC made a number of findings and recommendations with respect to the preliminary issues regarding the referability of a case to the ERC and regarding time limits.

¹ 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 newly constituted Conduct 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 measure(s).



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. Paragraph 6(2)(b) refers to a decision as to whether an alleged harasser has contravened the *Code of Conduct* by engaging in harassment.

In the related matters of **NC-022**, **NC-023** and **NC-024**, which involved the same Appellant and different alleged harassers, the ERC concluded that the Appellant's harassment-related appeals were not captured by the applicable referability provisions set forth in the *RCMP Regulations, 2014*. The Respondent decided the Appellant's harassment complaints were established, following which conduct measures were imposed on the alleged harassers. The Appellant nevertheless lodged an appeal, arguing that investigators had not been impartial, and contesting the fact that no redress had been awarded to him. The ERC found that none of the appeals fell within the scope of subsection 17(a) of the *RCMP Regulations, 2014*, explaining that they did not relate to a decision involving whether the RCMP *Code of Conduct* had been contravened, or whether a harassment complaint was made within the one-year time limit for so doing. The ERC therefore declined to review the appeals further.

Referability – Discharge Matters – Current Legislation

In accordance with subsection 17(d) of the *RCMP Regulations, 2014*, and paragraph 20.2(1)(g) of the *RCMP Act*, an appeal of a written decision to discharge a member, other than a Deputy Commissioner, shall be referred to the ERC only if the discharge is grounded on a disability, an unauthorized absence (or departure) from duty or a conflict of interest.

In **NC-017** and **NC-018**, the ERC found that appeals of decisions to discharge members on other grounds were not captured under subsection 17(d) of the *RCMP Regulations, 2014*. The appeals in question were of written decisions to discharge members for being absent from duty as a result of being detained in custody or imprisoned and/or for being convicted of indictable offences. As neither of the discharges was imposed on the ground of a disability, unauthorized absence (or departure) from duty, or conflict of interest, the ERC declined to review the appeals.

Time Limits to Seek Redress – Harassment Complaints and Appeals Thereof

In 2018-19, the ERC examined issues regarding the time-limit for filing a harassment complaint. Subsection 2(1) of the *Commissioners Standing Orders (Investigation and Resolution of Harassment Complaints)* prescribes that time limit as being within one year of the last incident of harassment alleged in a complaint.



In the matters of **NC-019**, **NC-020** and **NC-021**, which were submitted by the same Appellant, the ERC found a harassment complaint to be untimely that was filed by the Appellant years after the last incident of harassment alleged in his complaint. The Appellant argued that the complaint was timely because it was only upon his learning about an internal review conducted years after the impugned conduct had taken place that he realized he was harassed, and that he presented his complaint within a year of learning of that independent review. The ERC did not accept the Appellant's explanation, finding that he possessed all the information required to render an informed decision as to whether to lodge a harassment complaint within the limitation period, prior to learning of the review, and that there was no new information revealed by the review that may have reset the time limit.

This year, the ERC also addressed an appeal pertaining to the 14-day time limit for appealing a decision that a harassment complaint was not established, as prescribed by section 38 of the *Commissioner's Standing Orders (Grievances and Appeals)*.

In **NC-014**, the ERC found that the Appellant's submission of an appeal more than 14 days, but fewer than 30 days after she received a decision dismissing her harassment complaint, was untimely. The Appellant argued that she thought she had 30 days to present her appeal, as members had 30 days to file grievances. She added that she was not familiar with the 14-day time limit as she was on medical leave and argued that she lacked access to policy. The ERC did not accept that explanation. It reasoned that members were expected to be familiar with authorities relevant to their situations, that the *Commissioner's Standing Orders (Grievances and Appeals)* was publically accessible and that the Appellant's condition did not prevent her from familiarizing herself with the 14-day time limit for filing her appeal. It accordingly concluded that the appeal was submitted outside the time limit and that the Appellant's explanation did not raise any exceptional circumstances.

Harassment in the Workplace

In 2018-19, the ERC reviewed important issues in cases involving alleged harassment in the RCMP workplace.

In **NC-016**, an appeal submitted under the current legislation, the ERC found that a decision by the Respondent that the Appellant's harassment complaint was not established did not warrant intervention by the final decision-maker.

The Appellant was removed from a project by a supervisor. The Appellant's Staff Relations Representative (SRR) asked the Officer in Charge of the Appellant's unit (Alleged Harasser), whose responsibilities included overseeing the project, to look into the circumstances surrounding the Appellant's removal. The Alleged Harasser conducted a fact-finding exercise during which his attempts to meet in person with the Appellant were unsuccessful. The Alleged Harasser later wrote an email to the SRR, explaining what he had learned as a result of his fact-finding exercise. In the email, the



Alleged Harasser documented information he had obtained, including concerns raised by individuals regarding the Appellant's performance on the project.

The Appellant filed a harassment complaint against the Alleged Harasser, claiming that the Alleged Harasser lacked the objectivity to conduct the fact-finding exercise fairly. He further claimed that the Alleged Harasser's email to the SRR depicted relevant events in a one-sided manner prejudicial to the Appellant. Following an investigation, the Respondent decided that the complaint was not established. The Appellant appealed the Respondent's decision, arguing in part that the Respondent failed to properly address his concerns regarding the Alleged Harasser's lack of objectivity and the allegedly one-sided and prejudicial email.

The ERC recommended that the appeal be dismissed and that the Respondent's decision be confirmed, finding that the Respondent had appropriately addressed the Appellant's concerns in relation to the Alleged Harasser's perceived lack of objectivity and one-sided, prejudicial email.

The ERC reasoned that the Respondent properly noted that the Alleged Harasser carried out the fact-finding exercise as part of his managerial authority to better understand the Appellant's removal from the project. In that context, the existence of supervisory relationships between the Alleged Harasser and other individuals involved in the project, as well as the Alleged Harasser's awareness of certain actions taken by the Appellant, did not raise concerns of a lack of objectivity during the fact-finding exercise. Furthermore, the Respondent found that the Alleged Harasser's email was meant to synopsise what the Alleged Harasser had learned from the fact-finding exercise, without having been able to fully understand the Appellant's concerns, given his inability to meet the Appellant in person.

The ERC further found that, although the Respondent's reasons did not detail all of the specific concerns raised by the Appellant regarding the impugned fact-finding exercise and email, those reasons implied that the Respondent viewed the content of the email not as purposely selective but rather as a product of the context in which the exercise occurred.

In **G-657**, the ERC recommended that a grievance filed under the legacy legislation be denied in relation to a finding on one allegation in a harassment complaint, and that the grievance be allowed in part in relation to a finding on a separate allegation in the harassment complaint.

The Grievor was accused of harassment by one of his subordinates. The harassment complaint, which contained multiple allegations, included an allegation that the Grievor had, during a specific timeframe, excluded the subordinate from conversations (first allegation). A harassment investigation took place. The subordinate, in addressing the first allegation, told an investigator that his exclusion by the Grievor from certain conversations had been ongoing and not limited to the timeframe initially specified



in the complaint. This information was not conveyed to the Grievor. The Respondent later concluded that the first allegation was founded, and in so doing considered events beyond the timeframe originally specified in the complaint.

The Respondent also concluded that a second allegation, namely that the Grievor had improperly demanded that the subordinate surrender his cell phone, had been established.

The Grievor grieved the Respondent's decision. A Level I Adjudicator denied the grievance, and the Grievor presented his grievance to Level II.

The ERC recommended that the grievance be allowed in part as the Respondent's analysis of the first allegation was inconsistent with applicable harassment authorities which indicated that a harassment complaint must provide the date and description of an alleged incident. Both the investigation report and the Respondent's impugned decision suggested that the scope of the first allegation had expanded from an original limited timeframe identified in the complaint to an indeterminate period. There was no indication that the Grievor was notified of this adjustment or was provided with an opportunity to respond accordingly. The ERC concluded that the Respondent had erred in expanding the scope of the first allegation and failing to allow the Grievor to address such an amendment.

The ERC recommended that the Commissioner apologize to the Grievor for this procedural error, as it would be impractical to reconsider the matter owing to a significant passage of time since the complaint had been lodged.

The ERC also recommended that the Commissioner deny the grievance as it pertained to the second allegation, finding that the Respondent's decision was consistent with applicable harassment authorities and otherwise supported by the record.

Stoppage of Pay and Allowances

In 2018-19, the ERC considered, and recommended that the Commissioner deny, an appeal under the current legislation involving the RCMP's administration of its Stoppage of Pay and Allowances (SPA) process.

In **NC-015**, the Respondent served the Appellant with a Notice of Intent to order a SPA (Notice). The Notice was based on information arising from several separate incidents, some of which were revealed to the Respondent after the first incident had been made known to the Respondent. The Notice was accompanied by disclosure of the material the Respondent possessed, including a copy of the statement of the alleged victim in the first incident, and summaries of statements obtained from the alleged victims in the subsequent incidents still under investigation by a third party.



Prior to providing his response to the Notice, the Appellant requested disclosure of all materials involving the most recent incidents, “including the full statements” of witnesses. This request was denied on the basis that the criminal investigation into the most recent incidents was being conducted by a third party and was still ongoing. The Respondent ultimately ordered an SPA.

The Appellant urged that the SPA process had not been initiated in a timely fashion and challenged the Respondent’s application of SPA criteria in the circumstances.

The ERC found that the Respondent initiated the SPA in a timely fashion, as the Respondent had indicated that the principal basis of the decision to issue the Notice was the totality of the circumstances that had been brought to her attention, including the more recent incidents, which were serious and troubling.

The ERC also found that the Respondent had not contravened a principle of procedural fairness by refusing to disclose to the Appellant the full statements and recordings thereof, as that material was not available for the Respondent’s consideration.

The ERC further found that, in applying SPA criteria, a decision maker must be and in this case was clearly satisfied that there is sufficient reliable information in the circumstances to reach the decision to order a SPA.

Lastly, the ERC found that that the Respondent ordered the SPA on the basis of the information that was available at the time, that this was not a manifest and determinative error and that the SPA order was not clearly unreasonable in light of the evidence available.

Miscellaneous Issues – Discrimination, Procedural Fairness, Code of Conduct

In 2018-19, the ERC reviewed other cases under both the current and legacy legislation which raised different issues including, but not limited to, discrimination on the basis of disability, procedural unfairness and the application of various sections of the RCMP’s *Code of Conduct*.

Discrimination on Basis of Disability

In **G-658**, the ERC considered a legacy grievance involving a suggestion that a subject member was removed from her position in the RCMP Undercover Operations program (UC Program), in light of disability-based discrimination. The ERC recommended that the grievance be denied.



While off-duty, the Grievor was arrested and charged after she left a store without paying for certain health products. Following the Crown's withdrawal of the charges, a single allegation of disgraceful conduct, contrary to subsection 39(1) of the former RCMP *Code of Conduct*, was brought against the Grievor. She admitted the allegation but urged that her conduct was the result of a medical condition. An Adjudication Board found the allegation established, listed the Grievor's medical condition as a mitigating factor and ordered sanctions that were proposed by the parties in a joint submission. The Board noted that the issue of the Grievor's honesty and integrity may affect her ability to be deployed, given police discipline disclosure obligations in court ("McNeil" disclosures).

Although he commended the Grievor's rehabilitation efforts, the Respondent decided to remove her from the UC Program, explaining that, in light of that program's unique evidentiary credibility challenges, it could be staffed only by undercover operators whose activities and integrity were beyond reproach. The Grievor was not precluded from serving in other positions within the RCMP. The Grievor submitted a Level I grievance challenging the Respondent's decision. She contended that her transgression was attributable to a disability, that she was now fit to serve in the UC Program and that unspecified anti-discrimination principles set forth in Canadian human rights legislation were not respected. The Level I Adjudicator denied the grievance on its merits.

The ERC found that the Grievor failed to meet the *prima facie* test for discrimination, as she had not demonstrated how her medical condition, which was a disability, was a factor in the decision to remove her from the UC Program. The ERC explained that the adverse impact suffered by the Grievor related to her record of misconduct, not to her disability. The Grievor did not show that the adverse impact differed from that which would have resulted for any other member of the UC Program with the same record of misconduct. The fact that the Grievor's disability played a role in the conduct for which she was disciplined was insufficient to establish a link between her disability and the impact of her removal from the UC Program.

Procedural Unfairness

In **C-023**, the ERC found that a Conduct Authority contravened the rules of procedural fairness in deciding that the subject member had provided false or inaccurate documentation on "*police reports*", as the record showed that the member had prepared only one police report.

In plain view of the Appellant, a handcuffed and seemingly disoriented suspect became involved in an interaction that ended with him suffering a facial wound (Incident). The Appellant drafted a Report to Crown Counsel (RTCC) covering the Incident as well as the prior arrest of the suspect. She also handwrote police notes, and authored a short "*Will Say*" stating only that she was the lead investigator in the arrest. The suspect's lawyer later filed a complaint, asserting in part that the Appellant and another member



who was present during the Incident had prepared misleading documents about the Incident.

An allegation of placing false or inaccurate documentation on police reports, contrary to section 8.1 of the RCMP *Code of Conduct*, was brought against the Appellant. The allegedly corrupted reports were repeatedly identified to the Appellant as the RTCC and the “*police report*”. During the Conduct Meeting, the Appellant indicated, among other things, that she had written just one report involving the Incident, namely, the RTCC. The Respondent concluded that the Allegation was established and imposed against the Appellant a reprimand and a multi-day pay forfeiture.

The ERC found that, by deciding that the Appellant prepared and included false or inaccurate documentation in a police report other than the RTCC, the Respondent fatally contravened a principle of procedural fairness, namely, that an individual must know the full case against them and be permitted to make an informed defense. The allegation referred to “*police reports*”, in the plural. Yet it was clear from the record that, although the Appellant drafted the RTCC, she neither wrote nor was aware of another “*police report*” attributed to her. A copy of such a report was not divulged or described to the Appellant, nor was it identified or identifiable in the record.

The Appellant did author two documents other than the RTCC pertaining to the handling of the suspect (i.e. written notes and a “*Will Say*”), but neither could reasonably be viewed as a police report and nothing in the record implied that they were construed by the Respondent as reports including false or misleading documentation.

It was therefore not possible for the Appellant to know the full case against her or to make an informed defense.

The ERC recommended that the Commissioner allow the Appellant’s appeal, find that the Allegation was not established and rescind the conduct measures imposed.

Applications of Sections 4.6 and 4.2 of the Code of Conduct

This year, the ERC considered two conduct appeals in which it was required to address certain notable issues regarding the application of sections 4.6 and 4.2 of the RCMP *Code of Conduct*.

In **C-022**, the Appellant became the subject of an internal investigation into an allegation against him. He then went on medical leave and took residence in a location outside of his detachment area without first obtaining his superior’s permission to do so. While on medical leave, he used RCMP information technology (IT) resources to gather information for the purpose of defending himself against the allegation. New allegations were subsequently made against the Appellant, including one allegation



that he misused government-issued equipment and property contrary to section 4.6 of the *RCMP Code of Conduct*, one allegation that he was not diligent in the carrying out of a duty (i.e. in this case, obtaining permission to change locations) contrary to section 4.2 of the *Code of Conduct*, and another allegation. The Respondent determined that the alleged contraventions of sections 4.6 and 4.2 were established.

As the ERC found that the Respondent did not offer sufficient reasons in the decision regarding those two allegations, it addressed the findings the Respondent should have made with respect to each allegation, pursuant to the requirements of paragraph 45.16(2)(b) of the *RCMP Act*.

The ERC concluded that the record supported a finding that the Appellant's alleged violation of section 4.6 was established. The Appellant's use of RCMP IT resources to defend himself, while on medical leave and therefore unfit for duty, was unauthorized, as relevant policy required that such use be limited to official police administrative, operational or duty-related purposes. Such purposes did not include use by a member to build a defense against conduct allegations.

However, the ERC concluded that the record did not support a finding that the Appellant's alleged violation of section 4.2 was established. Although the Appellant had failed to obtain his commander's approval to leave his detachment area for more than 24 hours, as required by policy, that omission was not accompanied by at least one of the two factors comprising the test for ascertaining a breach of section 4.2, namely: 1) an element of willfulness; or 2) a degree of neglect that would cross the threshold from a performance issue into a conduct matter. Rather, the Appellant's omission appeared to be inadvertent in the circumstances.

Conversely, in **C-024**, the ERC found that the Respondent had appropriately concluded that the subject member breached section 4.2 of the *RCMP Code of Conduct*. That matter involved an Appellant who faced an alleged violation of section 4.2 after admittedly failing to create a file and initiate an investigation upon receiving a report from a distressed individual that her spouse had threatened her. Although the Respondent omitted to explicitly identify the test for ascertaining a breach of section 4.2 in her decision, she made observations evincing a finding of an element of willfulness in the Appellant's conduct, in satisfaction of the test. Specifically, the Respondent noted that, given the Appellant's policing experience and knowledge of applicable Divisional policies and principles concerning how to address alleged uttered threats, it was not reasonable to conclude he was not aware how to proceed in the circumstances.



Communications and Outreach

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. Three *Communiqués* were published and distributed during the 2018-19 period.

An extensive searchable database of 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 officials from the RCMP Office for the Coordination of Harassment Complaints in November 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 and planning. The Interim Chairperson met twice with the Commissioner of the RCMP during the year to discuss the ERC program and case review process. Once a bargaining agent for RCMP members has been approved, the ERC anticipates offering to meet at the same frequency with the head of the bargaining agent.

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 2018-19, the ERC received and responded to a total of 157 requests. This represented an increase from 139 last year, and is above the annual average of 124 requests over the nine previous years. For the requests received this year:



- 58% 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;
- 22% from the public (e.g. private individuals, law firms), most often for copies of findings and recommendations;
- 17% from RCMP recourse system personnel, most often asking about the status of referred files or for copies of findings and recommendations;
- 2% from other government organizations; and,
- 1% from the media.

Subject of the Request	Person Requesting the Information					
	RCMP Member	RCMP Recourse*	Public	Media	Other Gov't	Total
Status of a file that is before the ERC	65	16	-	-	-	81
Copy of findings/recommendations	14	7	19	-	-	40
Matter outside the ERC mandate	4	1	13	-	-	18
ERC role, policies or procedures	6	1	-	1	1	9
ERC reports or publications	2	2	3	-	2	9
Total	91	27	35	1	3	157

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

There continues to be a relatively large number of requests from RCMP members, similar to the previous year (91 in 2018-19 compared to 85 in 2017-18). The number of requests from the public increased modestly (from 33 to 35). In terms of the subjects of requests, the proportional distribution is similar to previous years generally, but with an increase in requests for copies of findings and recommendations (up to 40, from 26 last year) and fewer requests on matters outside of the ERC's mandate (down to 18 from 26 last year).

The ERC responded to and provided an answer for each request within two days in two out of three cases; the average response time was 3.3 days. When there was a need to undertake research or verifications, the response was provided as soon as possible.



Corporate Management and Planning

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.

A corporate service priority over the year was managing the accommodations re-fit project for the ERC's office space, which continued throughout the year and carried over into 2019-20. The project is anticipated to be completed in June 2019.

Increasing the case review capacity of the ERC using program integrity funding approved in 2017 was a priority so that the ERC will be able to begin to reduce its large backlogged caseload. The number of resourced staff positions at the ERC increased from eight at the beginning of 2018 to fifteen by the end of March, 2019. The posting of the appointment opportunities for both the ERC Chairperson and the Vice Chairperson signalled a long-needed increase in the ERC's capacity to write reports in response to the appeals referred by the RCMP Commissioner. The ERC looks to those appointments to support its goal of reducing the wait times to a reasonable period.

The ERC continued to work with the portfolio department and central agencies in pursuit of a long term program resource level, which remains of particular importance given that the program integrity funding approved in 2017 for the ERC will end on March 31, 2021.



PART III – Operational Outlook

Operational challenges for the ERC will remain significant, with a caseload of 319 files at the end of 2018-19. One hundred and nine cases were referred to the ERC for review in 2018-19, up from 95 cases the year before.

The ERC received an increased number of referrals of cases under the current legislation in 2018-19 (95) compared to the previous year (74). The ERC also received a growing proportion of more complex files compared to last year (80 harassment, discharge and conduct board files, compared to 52 such files the previous year). The mix of file types is being monitored closely to help project future workload.

For case referrals under the legacy legislation, we received 14 in 2018-19, compared to 21 the previous year. It is anticipated that referrals will remain in the area of 20 cases per year for approximately three to four more years, until all legacy files commenced in the RCMP that are potentially referable to the ERC will have run their course.

The current indication is that the total number of referrals to the ERC annually over the next several years will be in the area of 110 cases or more under the current and legacy legislation combined. Given that, it is projected that the length of delay in completing work on files will continue to increase for the next 12 to 18 months, until all planned staff are hired and trained. This translates into a wait time following the referral of a case to the ERC of approximately five years on average for legacy legislation cases and two-and-one-half years or more on average for current legislation cases.

The ability of the ERC to begin to reduce its backlog and the associated wait times will depend primarily on two factors: the ERC's ability to attract, develop and retain expert legal counsel and program management staff; and, the appointment of adequate Committee member capacity to issue findings and recommendations reports (i.e. a Chairperson, a Vice Chairperson, and possibly additional members as provided for by statute).

Staff retention and development and longer term program planning all remain challenging given the ERC's funding situation. Temporary additional program integrity funding constitutes about 70% of current ERC resources, with the last year of the additional funding being 2020-21. In this circumstance, the ERC can hire additional staff only on a time-limited basis. With this comes the increased risk of losing staff who may move on to permanent professional opportunities; or equally, the challenge of attracting qualified people to work at the ERC absent permanent opportunities.



The ERC will continue to work with the portfolio department and central agencies to address pressures and resource requirements. In doing so, the ERC believes that a longer-term perspective on the delivery of the appeal case review program is essential. Given the size of the existing caseload and future workload projections, it is clear that it will take a number of years to reduce the already large backlog and the resulting wait times. Nonetheless, the ERC will continue to monitor its case review practices to seek efficiencies.

The *RCMP Act* requires that the Chairperson establish and make public service standards with time limits for the completion of its case reviews. The Interim Chairperson has now targeted spring 2020 to allow the next Chairperson to issue service standards, recognizing that person's need for additional information and experience working with the legislation to analyse the situation and to reasonably project future workloads and related processing timelines.



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 2018-19

Current RCMP Act		
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-021	<p>Failure to be diligent in performance of duties and responsibilities (section 4.2 of the <i>Code of Conduct</i>).</p> <p>Conduct Authority found allegation to be established and imposed forfeiture of annual leave, temporary ineligibility for promotion and directions to review policy and undergo training.</p> <p>Whether any of conduct measures imposed fall within scope of relevant referability provisions.</p>	<p>Appeal not referable to ERC, as conduct measures imposed not among those set forth in subsection 45.15(1) of <i>RCMP Act</i>.</p> <p>ERC will not review appeal further or make a recommendation.</p>



<p>C-022</p>	<p>Failure to be diligent in performance of duties and responsibilities (section 4.2 of the <i>Code of Conduct</i>).</p> <p>Unauthorized use of RCMP equipment and property (section 4.6 of the <i>Code of Conduct</i>).</p> <p>Failure to carry out lawful orders and directions (section 3.3 of the <i>Code of Conduct</i>).</p> <p>Conduct Authority found allegations established and imposed reprimand and forfeitures of pay and leave.</p> <p>Appeal of Conduct Authority's findings that the three allegations were established and of conduct measures imposed.</p>	<p>Allow the appeal of the allegations.</p> <p>Conduct Authority's failure to provide meaningful reasons regarding his disposition of the three allegations rendered his decision clearly unreasonable.</p> <p>Recommend that Commissioner, in making the findings the Conduct Authority should have made, find that the allegation under section 4.2 of the <i>Code of Conduct</i> is not established, and that the allegations under sections 4.6 and 3.3 of the <i>Code of Conduct</i> are established.</p> <p>Dismiss the appeal of the conduct measures. No submissions received from member as to how conduct measures should be varied if an allegation(s) not established.</p>
<p>C-023</p>	<p>Placement of false and misleading documentation in police reports (section 4.2 of the <i>Code of Conduct</i>).</p> <p>Appeal of Conduct Authority's finding that the allegation was established.</p> <p>Appeal of conduct measures imposed.</p>	<p>Allow the appeal.</p> <p>Violation of procedural fairness.</p> <p>Allegation identified "police reports" in plural but Appellant was aware of and record contained only one relevant police report written by her.</p> <p>Appellant could not know full case against her or present informed defense.</p> <p>Recommend that Commissioner find allegation not established and rescind conduct measures imposed.</p>



<p>C-024</p>	<p>Failure to be diligent in performance of duties and responsibilities (section 4.2 of the <i>Code of Conduct</i>).</p> <p>Appeal of Conduct Authority's finding that the allegation was established.</p> <p>Appeal of conduct measures imposed.</p> <p>Denied request for case conference.</p>	<p>Dismiss the appeal.</p> <p>Disregard case conference request, as no objections made to its denial.</p> <p>Conduct Authority did not commit any manifest and determinative errors in assessing the evidence.</p> <p>Analysis of whether section 4.2 of <i>Code of Conduct</i> was contravened requires determination of whether impugned conduct involved: 1) an aspect of willfulness; or 2) a degree of neglect elevating conduct from performance to misconduct issue.</p> <p>Respondent found an element of willfulness in Appellant's conduct.</p>
---------------------	--	---

**Appeals of a Decision
Regarding Non-Conduct Matters**

ERC Case Number	Subject Matter of the Appeal / Key Issues	ERC Findings and Recommendations
<p>NC-014</p>	<p>Member appeal of Respondent's decision that Member's harassment complaint was not established.</p> <p>Whether appeal filed within statutory time limit.</p>	<p>Dismiss the appeal.</p> <p>Appeal filed outside 14 day time limit.</p> <p>No exceptional circumstances to extend the time limit.</p>



<p>NC-015</p>	<p>Member appeal of Respondent's decision to order Member's stoppage of pay and allowances (SPA).</p> <p>Alleged error by Respondent in not basing her decision on all evidence and not waiting for an ongoing third party investigation to be completed.</p> <p>Whether SPA was untimely.</p> <p>Procedural fairness – Member had not received disclosure of full witness statements or recordings thereof in ongoing investigation by third party.</p>	<p>Dismiss the appeal.</p> <p>Respondent based her decision on sufficient evidence available at time.</p> <p>SPA was timely, as Respondent based her decision on totality of the circumstances.</p> <p>No breach of procedural fairness as a result of non-disclosure of witness statements and recordings thereof. These materials were not available for the Respondent's consideration.</p>
<p>NC-016</p>	<p>Member appeal of Respondent's decision that harassment complaint was not established.</p> <p>Sufficiency of harassment investigation.</p> <p>Consideration of supervisory duties of Alleged Harasser in assessing the harassment allegations.</p>	<p>Dismiss the appeal.</p> <p>Harassment investigation was sufficiently thorough.</p> <p>Respondent made no reviewable error in rendering his decision.</p>



<p>NC-017</p>	<p>Member appeal of decision to discharge from the Force for reasons other than contravention of <i>Code of Conduct</i>.</p> <p>Decision to discharge relying on grounds set forth in subsections 6(c) and 6(f) of <i>CSO (Employment Requirements)</i>, namely being convicted of an offence punishable by indictment and being absent from duty as the result of being detained in custody or imprisoned.</p>	<p>Appeal not referable to ERC, as it fell outside the scope of subsection 17(d) of <i>RCMP Regulations, 2014</i>.</p> <p>Grounds for discharge identified in subsections 6(c) and 6(f) of <i>CSO (Employment Requirements)</i> are not included in the list of grounds set forth in subsection 17(d) of <i>RCMP Regulations, 2014</i>.</p>
<p>NC-018</p>	<p>Member appeal of decision to discharge from the Force for reason other than contravention of <i>Code of Conduct</i>.</p> <p>Decision to discharge relying on ground set forth in subsection 6(f) of <i>CSO (Employment Requirements)</i>, namely being convicted of an offence that is punishable by indictment.</p>	<p>Appeal not referable to ERC, as it fell outside the scope of subsection 17(d) of <i>RCMP Regulations, 2014</i>.</p> <p>Ground for discharge identified in subsection 6(f) of <i>CSO (Employment Requirements)</i> is not included in the list of grounds set forth in subsection 17(d) of <i>RCMP Regulations, 2014</i>.</p>



<p>NC-019</p>	<p>Member appeal of Respondent's decision that harassment complaint not filed within one year of the last incident of alleged harassment.</p>	<p>Dismiss the appeal.</p> <p>Appellant's discovery of incidents of perceived harassment via internal review conducted years after last incident did not bring Appellant's harassment complaint within one-year time limit set out in subsection 2(1) of <i>CSO (Harassment)</i>.</p> <p>Appellant possessed all information required to render an informed decision as to whether to present a harassment complaint prior to learning of the internal review.</p>
<p>NC-020</p>	<p>Member appeal of Respondent's decision that harassment complaint not filed within one year of the last alleged harassment incident.</p>	<p>Dismiss the appeal.</p> <p>Appellant's discovery of incidents of perceived harassment via internal review conducted years after last incident did not bring Appellant's harassment complaint within one-year time limit set out in subsection 2(1) of <i>CSO (Harassment)</i>.</p> <p>Appellant possessed all information required to render an informed decision as to whether to present a harassment complaint prior to learning of the internal review.</p>



<p>NC-021</p>	<p>Member appeal of Respondent's decision that harassment complaint not filed within one year of the last alleged harassment incident.</p>	<p>Dismiss the appeal.</p> <p>Appellant's discovery of incidents of perceived harassment via internal review conducted years after last incident did not bring Appellant's harassment complaint within one-year time limit set out in subsection 2(1) of <i>CSO (Harassment)</i>.</p> <p>Appellant possessed all information required to render an informed decision as to whether to present a harassment complaint prior to learning of the internal review.</p>
<p>NC-022</p>	<p>Member appeal of Respondent's decision that harassment complaint established.</p> <p>Member takes issue with alleged bias of investigators and failure to provide redress.</p>	<p>Appeal not referable to ERC, as it fell outside the scope of subsection 17(a) of <i>RCMP Regulations, 2014</i>.</p> <p>Subsection 17(a) limited to appeals of harassment decisions on bases that they relate to decision involving whether complaint was made within one-year time limit or whether <i>Code of Conduct</i> was contravened.</p> <p>ERC will not review appeal further or make a recommendation.</p>



<p>NC-023</p>	<p>Member appeal of Respondent's decision that harassment complaint established.</p> <p>Member takes issue with alleged bias of investigators and failure to provide redress.</p>	<p>Appeal not referable to ERC, as it fell outside the scope of subsection 17(a) of <i>RCMP Regulations, 2014</i>.</p> <p>Subsection 17(a) limited to appeals of harassment decisions on bases that they relate to decision involving whether complaint was made within one-year time limit or whether <i>Code of Conduct</i> was contravened.</p> <p>ERC will not review appeal further or make a recommendation.</p>
<p>NC-024</p>	<p>Member appeal of Respondent's decision that harassment complaint established.</p> <p>Member takes issue with alleged bias of investigators and failure to provide redress.</p>	<p>Appeal not referable to ERC, as it fell outside the scope of subsection 17(a) of <i>RCMP Regulations, 2014</i>.</p> <p>Subsection 17(a) limited to appeals of harassment decisions on bases that they relate to decision involving whether complaint was made within one-year time limit or whether <i>Code of Conduct</i> was contravened.</p> <p>ERC will not review appeal further or make a recommendation.</p>



Former *RCMP Act*

Appeals of Discipline (Adjudication) Board Decisions

ERC Case Number	Subject Matter of the Appeal / Key Issues	ERC Findings and Recommendations
	<i>Nil for 2018-19 reporting period</i>	<i>Nil for 2018-19 reporting period</i>

Reviews of Grievance Decisions

ERC Case Number	Subject Matter of the Grievance / Key Issues	ERC Findings and Recommendations
G-651	<p>Decision to deny a reimbursement of fees with regard to the obtaining of a medical form.</p> <p>Whether subject of grievance falls within scope of relevant referability provisions.</p>	<p>Grievance not referable to ERC.</p> <p>Issue related solely to interpretation of internal policy, and therefore not captured by subsection 36(a) of the <i>RCMP Regulations, 1988</i>.</p> <p>ERC will not review grievance further or make a recommendation.</p>



<p>G-652</p>	<p>Decision that Grievor be medically discharged from RCMP.</p> <p>Finding that Grievor failed to satisfy her burden of persuasion, as no submissions or evidence presented.</p> <p>Grievor passed away during Level II process.</p> <p>Admissibility of Grievor's new Level II argument that Level I process was procedurally unfair.</p> <p>Consideration of whether procedural fairness denied to Grievor.</p>	<p>Allow the grievance.</p> <p>Although grievance might be moot, exercise discretion to hear case in light of pension/estate implications as well as vital issue that grievance process be procedurally fair.</p> <p>Grievor's new Level II argument in relation to procedural unfairness admissible. Alleged unfairness comprised series of mainly subtle acts and omissions which occurred over time, total effect of which did not become evident to the Grievor until she received Level I decision.</p> <p>Grievor denied procedural fairness. Office for the Coordination of Grievances concluded Level I submission stage after directly inviting Grievor to file a rebuttal submission without stipulating a deadline for so doing.</p> <p>Recommend that Level I Decision be quashed and that appropriate steps be taken to permit a rebuttal to be made on Grievor's behalf.</p> <p>Recommend that, if no rebuttal is received, deny Level I grievance on its merits on basis that Grievor's burden of persuasion not satisfied.</p>
---------------------	---	--



<p>G-653</p>	<p>Decision to appoint Medical Board to hold medical discharge proceedings.</p> <p>Time Limit at level I – whether grievance was lodged within 30 days of when the Grievor knew or ought to have known she was aggrieved.</p> <p>Grievor passed away during Level II process.</p> <p>Consideration of extension of time limit.</p>	<p>Deny the grievance.</p> <p>Although grievance might be moot, exercise discretion to hear case for reasons of practicality and compassion.</p> <p>Grievance initiated roughly 4 to 24 months after time limit expired and Grievor filed no submissions as to why case should be deemed timely.</p> <p>Extension unwarranted. Grievor did not possess continuing intention to grieve, there was no explanation for delay in grieving and extension would have prejudiced RCMP.</p>
<p>G-654</p>	<p>Decision that Grievor entitled only to reimbursement of travel expenses at the lower of two kilometeric rates.</p> <p>Time Limit at Level II – whether grievance was presented within 14 days after Grievor served with Level I decision.</p> <p>Consideration of extension of time limit.</p>	<p>Deny the grievance.</p> <p>Grievance submitted one day after time limit expired.</p> <p>Extension was unwarranted, as the Grievor did not demonstrate a continuing intention to grieve and his explanation for the delay was not persuasive.</p>
<p>G-655</p>	<p>Decision to deny Grievor’s request for a House Hunting Trip (HHT) on basis that pre-approval not obtained.</p> <p>Alleged unfamiliarity with policy, and belief that HHT implicitly authorized.</p>	<p>Deny the grievance.</p> <p>Grievor was required to familiarize himself with the applicable policy.</p> <p>Circumstances not exceptional.</p>



<p>G-656</p>	<p>Decision to deny Grievor's request for a Real Estate Incentive.</p> <p>Whether Grievor was entitled to Real Estate Incentive after listing home on market, pursuant to RCMP Integrated Relocation Policy.</p>	<p>Deny the grievance.</p> <p>Pursuant to Integrated Relocation Policy, Grievor forfeited his right to claim Real Estate Incentive the moment he listed his home on the market.</p> <p>Relocation information provided to Grievor by Relocation Coordinator was reasonable.</p> <p>Recommend that the standardized communication from the relocation coordinator to relocating members remind members of their obligation to be familiar with relevant policies.</p>
<p>G-657</p>	<p>Decision that two harassment allegations were established against the Grievor.</p> <p>Time limit at Level I — whether letter sent to supervisor amounted to a grievance presentation.</p> <p>Fairness of harassment investigation and resolution process.</p>	<p>Allow the grievance in part.</p> <p>Grievance filed on time as letter to supervisor contained all information required for a valid grievance under the <i>CSO (Grievances)</i>.</p> <p>Respondent's finding on one allegation was consistent with applicable policies and principles of procedural fairness.</p> <p>However, Respondent erred by expanding scope of the other allegation without allowing Grievor to address such an amendment.</p> <p>Recommend that Commissioner apologize to Grievor for error in harassment investigation and decision-making process.</p>



<p>G-658</p>	<p>Decision to remove Grievor from her role in RCMP Undercover Program after Adjudication Board found she had engaged in disgraceful conduct.</p> <p>Whether Level I Adjudicator biased.</p> <p>Whether decision was discriminatory on basis of disability, given that a medical condition was a mitigating factor in Grievor's misconduct.</p>	<p>Deny the grievance.</p> <p>No support for a finding of likelihood that Level I Adjudicator was biased.</p> <p>Prima facie test for discrimination not met.</p> <p>Decision to remove Grievor from Undercover Program related to her record of misconduct, not disability.</p> <p>Disclosure obligations in court could create unique evidentiary credibility issues for undercover operators.</p>
---------------------	---	--



ANNEX C

Staff and Contacts

Staff in 2018-19

Josh Brull, Counsel
Julie Brunet, Director, Corporate Services and Registrar
Jamie Deacon, Executive Director
Martin Griffin, Counsel
Jonathan Haig, Senior Officer, Program Operations
Martin Héroult-Leroux, Administrative Officer
Patricia Hum, Legal Counsel
Silvia Kunz, Senior Officer, Plans and Reports
Renaud Lacroix, Administrative Officer
Émilie Larouche-Côté, Legal Counsel
Trupati Patel, Counsel
Dale Randell, Counsel
Artour Rostorotski, Legal Counsel
Caroline Verner, Counsel
Daniel Willis, Counsel

Contact Information

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

Telephone: 613-998-2134
Fax: 613-990-8969
E-mail: erc-cee@canada.ca
Internet: www.erc-cee.gc.ca

