



RCMP External  
Review Committee

Comité externe  
d'examen de la GRC

# **ANNUAL REPORT 2019-2020**

Charles Randall Smith





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Review Committee

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June 26, 2020

The Honourable William Sterling Blair, P.C., C.O.M, 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 2019-20, so that it may be tabled in the House of Commons and in the Senate.

Yours truly,

A handwritten signature in blue ink that reads 'Charles Randall Smith'.

Charles Randall Smith  
Chairperson



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## Message from the Chairperson



I was appointed Vice-Chair on April 11, 2019 and became the Chair of the ERC on June 18, 2019.

First and foremost, I wish to thank Mr. David Paradiso, my predecessor, for his work and leadership at the ERC. His support during my transition from Vice-Chair to Chair was invaluable.

With tremendous support from the team at the ERC, we have completed 70 reports of Findings and Recommendations that were forwarded to the Commissioner of the RCMP during the fiscal year 2019-20 which marks the highest total ever in a year for the ERC.

We continue to carefully assess and refine our processes for case review, aiming to achieve our dual purpose of issuing Findings and Recommendations that are timely and that fully address concerns raised by the RCMP and its members. The ERC has made significant changes this year, as detailed in this report, which have reduced our case inventory for the first time in five years. Other changes are ongoing and will be reported in the next Annual Report.

During fiscal year 2020-21, the ERC team and I will continue to produce high quality Findings and Recommendations to the Commissioner of the RCMP.

A handwritten signature in blue ink that reads "Charles Randall Smith". The signature is fluid and cursive, written in a professional style.

Charles Randall Smith





## ERC Role and Process

### Purpose of the ERC

The ERC provides an independent, arms-length review and oversight of significant employment, labour and discipline matters within the RCMP that are referred to it under the *RCMP Act* and are making their way to the Final Decision Maker, the Commissioner of the RCMP or her delegated Adjudicator.

The ERC is a quasi-judicial tribunal; it provides Findings and Recommendations to the Commissioner of the RCMP. By integrating the ERC into the RCMP's decision making process in key human resource management matters, the process's credibility, integrity and transparency are enhanced.

### Roles of ERC – Current Legislative Scheme

The ERC areas of operation fall under two legislative regimes. The first is based on the current legislative scheme that was established in 2014. Under that legislative scheme, the ERC provides an independent appellate review of decisions made by the RCMP management in the following matters:

1. Conduct decisions and measures;
2. Harassment complaint decisions;
3. Stoppage of pay and allowance orders;
4. Certain categories of discharges and demotions (including medical, unsatisfactory performance, absence from duty without authorization and conflict of interest); and
5. Revocation of appointments.

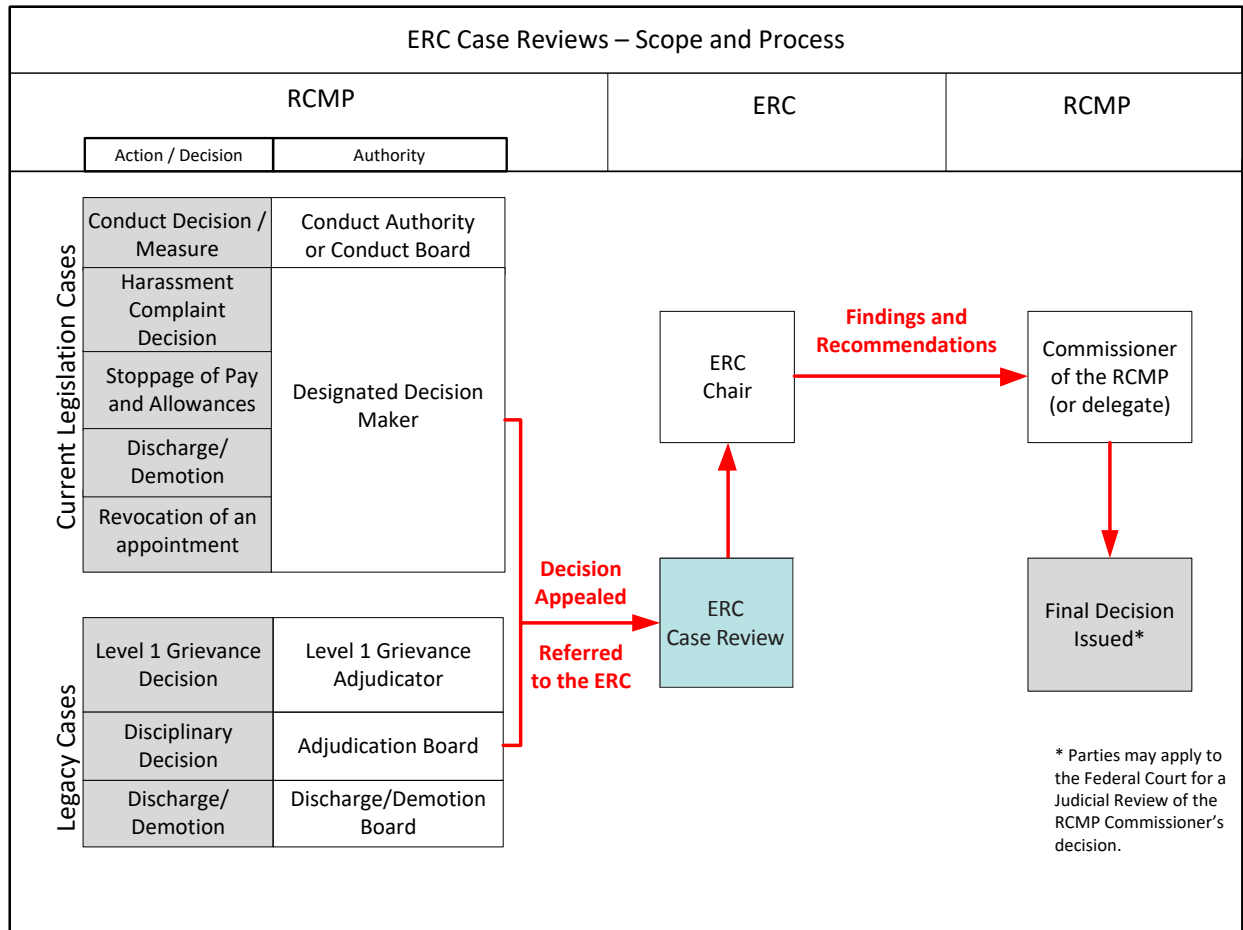
### Roles of ERC – Legacy Scheme

In addition to areas under the current legislative scheme, the ERC continues to receive and process cases that were initiated in the pre-2014 regime. These fall into three categories:

1. Certain categories of Level II grievances;
2. Disciplinary decisions; and
3. Performance related discharges and demotions.

Legacy cases pertaining to Level II grievances require the ERC to perform a *de novo* analysis. In the other cases, the ERC performs an appellate function.

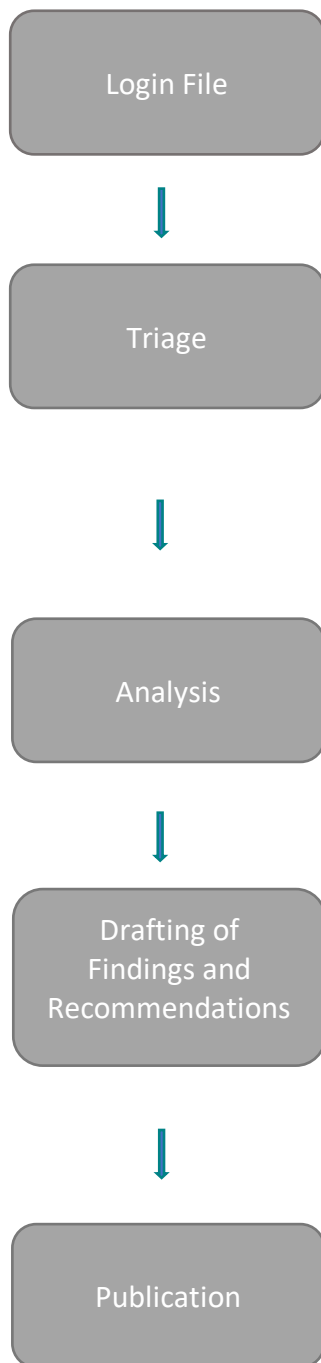
The table below illustrates the ERC's role within both legislative regimes.



## Process

Under both regimes, the grievance or appeal record, which includes relevant material and submissions made by the parties, is sent to the Registrar of the ERC through the RCMP's Office of Coordination of Grievances and Appeals (OCGA). The record is then examined for completeness and triaged on the basis of various factors with emphasis on the impact to the member and the organization. The case is then analyzed and once completed, 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. The Commissioner or her delegate is not bound by any recommendation. However, the Commissioner or her delegate is required to provide reasons in their decision if deviating from the recommendations of the ERC.

## Main Phases in ERC's Processes



### Login File

- RCMP refers a file to the ERC.
- ERC assigns a file number and informs the parties that the file is before the ERC.

### Triage

- ERC Counsel review the record to ensure that: 1) the matter was correctly referred to the ERC, 2) that no documents or process steps were missed and 3) the file is assessed to determine its priority.
- ERC Registry staff follow-up with the OCGA to address issues of missing documents or submissions.

### Analysis

- The Chair, with the assistance of ERC Counsel, reviews the record, applicable laws, regulations and policies in order to form his Findings and Recommendations.

### Drafting of Findings and Recommendations

- The Chair, with the assistance of ERC Counsel, prepares a report and summary outlining the Chair's Findings and Recommendations to the Commissioner of the RCMP.

### Publication

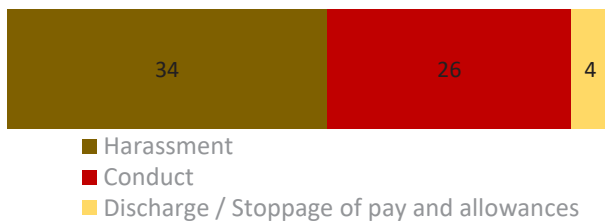
- ERC Registry staff forward a copy of the Findings and Recommendations to the Commissioner of the RCMP and the parties.
- ERC Registry staff publish the summary of the Chair's Findings and Recommendations on the ERC's website.

# RCMP External Review Committee Year in Review 2019-20

## - Files Received -

The RCMP referred **73** matters to the ERC.

**64**  
under the current *RCMP Act*



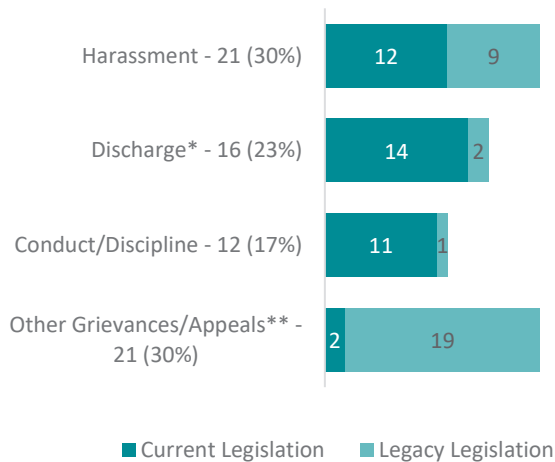
**9**  
under the Legacy Legislation



## - Cases Reviewed From Case Load -


The ERC reviewed **70** cases in which it provided Findings and Recommendations to the RCMP.


### Appeals/Grievances Reviewed



### Evidence reviewed:

 **37,929** pages of documents

 **101** hours of audio

 **31** hours of video

\* Discharge not related to conduct (medical, absent from duty or poor performance).

\*\* Denied Travel/Relocation claims, suspension without pay, denied payment of legal fees or discrimination.

# RCMP External Review Committee Year in Review 2019-20

## - Findings and Recommendations -

The ERC issued **70** Findings and Recommendations.

**39**

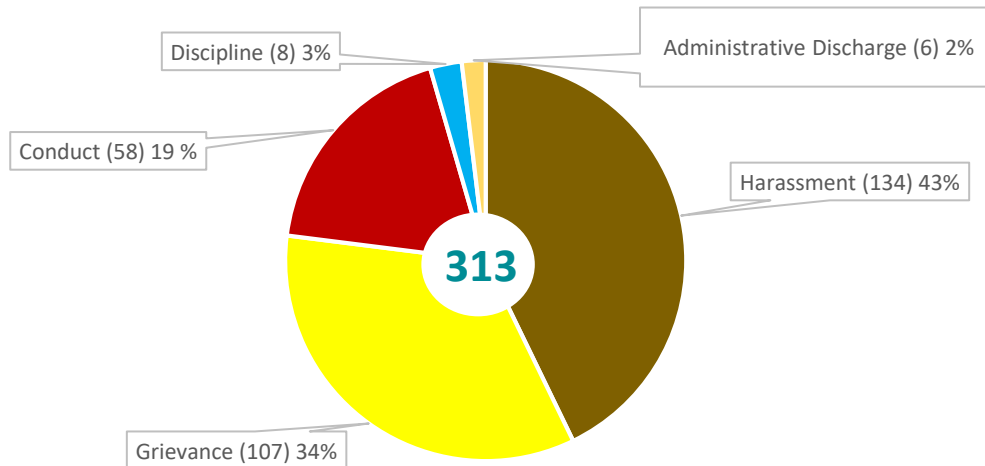
under the current RCMP Act

**31**

under the Legacy Legislation

(Note: 2 appeals were withdrawn and 8 files were returned to the RCMP without the ERC making a recommendation)

## Current ERC Case Load



The ERC's Case Load decreased from **320** to **313** cases.  
(First decrease in 5 years)

Commissioner or the delegated adjudicator rendered decisions in **51** cases.

**82%**

Agreed with the  
ERC.

**4%**

Agreed with the  
ERC in part.

**14%**

Disagreed with  
the ERC.

## Steps to deal with Backlog of Cases

Over the past five years, the number of files requiring the ERC's Findings and Recommendations has outpaced the organization's capacity to do so in a timely fashion. The number of files that require the ERC's Findings and Recommendations has increased from 65 on March 31, 2015 to 320 on March 31, 2019. This increase was due to a drastic increase in the number of files referred to the ERC due in part to the changes made to the *RCMP Act* in November 2014.

The ERC's case backlog decreased for the first time in 5 years during the 2019-20 fiscal year and currently sits at 313 cases.

In order to improve its efficiency and diminish the backlog of files, the ERC has taken the following steps:

1. Hired a General Counsel;
2. Introduced Project Management and Process Redesign to the ERC workflow;
3. Designed a process that prioritizes files that have a high impact on the RCMP and its members;
4. Focused on triaging cases that had not been pre-screened for the analysis and drafting of Findings and Recommendations;
5. Ongoing: Shortening the time it takes to process and analyze cases, and prepare Findings and Recommendations;
6. Ongoing: Improving ERC process flow;
7. Ongoing: Issue service standards to reasonably project future workloads and related processing timelines; and
8. Ongoing: Developing a staffing plan to potentially increase human resource capacity to deal with the backlog of cases.

## 2019-20 – Case Highlights

### Legacy Grievances

#### *Decision to Screen Out and Not Investigate a Harassment Complaint*

In **G-676**, the ERC considered the appropriateness of a decision by the RCMP to screen out a harassment complaint without holding an investigation.

The Grievor alleged in a harassment complaint that two of her superiors harassed her in a manner which amounted to discrimination based on her sexual orientation and race. A limited fact-finding exercise took place in which the Grievor and one Alleged Harasser, but no other witnesses were interviewed. Based on a report prepared by a Human Resource Officer, the Respondent issued a decision rejecting the complaint on the basis that the alleged conduct did not meet the definition of harassment.

The Grievor filed a grievance which was denied by a Level I Adjudicator on the basis that the decision to screen out the complaint was reasonable. At Level II, the Grievor submitted that the Respondent had not properly considered whether the allegations amounted to harassment.

The ERC recommended that the grievance be allowed, as the decision to screen out the complaint was not consistent with applicable policy. While the RCMP harassment policy at the time allowed for the screening out of a harassment complaint, the legal test required an assessment of whether the allegations in a harassment complaint, if assumed to be true, fell within the definition of harassment. The ERC emphasized that the discretion to screen out and not investigate a harassment complaint must be exercised only where it is simply inconceivable that a full investigation would lead to the conclusion that any harassment had occurred.

The ERC found that the complaint should have been screened into the harassment complaint process for a full investigation. Some of the allegations, if assumed true and considered both individually and holistically, related to harassment as they involved discrimination and abuses of authority. A full investigation would have permitted a greater understanding of these incidents.

The ERC recommended that the Commissioner apologize to the Grievor for the RCMP's non-compliance with relevant harassment authorities, as it would be impractical to properly investigate the complaint owing to the passage of time since relevant events had taken place.

The Commissioner accepted the ERC's recommendation and allowed the grievance.

#### *Eligibility for Relocation Benefits*

In **G-662**, the ERC considered whether a member could, on an exceptional basis, be entitled to relocation benefits despite not meeting an eligibility deadline for the benefits.

The Grievor was transferred to a new location as a result of which he decided to sell his home. The RCMP Integrated Relocation Program (IRP) stated the Grievor could be reimbursed various expenses in relation to the sale of his home if it was sold within two years from the date he had received his transfer notice (the sale deadline). The Grievor's home was listed for sale. There were significant challenges selling it, which included difficult market conditions. Further, an offer on the home fell through shortly before the sale deadline. The Grievor eventually sold the home after the sale deadline. An RCMP relocation reviewer then forwarded a business case to the Respondent on the Grievor's behalf. The business case emphasized that, because the Grievor's circumstances were exceptional, he should receive benefits relating to the sale of his home despite missing the sale deadline. The Respondent refused that request.

The Grievor grieved the Respondent's decision. A Level I Adjudicator denied the grievance, finding that the Grievor was aware of the sale deadline and had not respected it.

The ERC recommended that the grievance be allowed. The Grievor's unique situation met the definition of exceptional circumstances set out in the IRP, in that it was outside the Grievor's control, rare, extreme and unforeseen. While difficult market conditions in and of themselves might not reasonably be characterized as exceptional, they provided the context in which a sales agreement had fallen through immediately prior to the expiry of the sale deadline. Further, there was uncertainty amongst RCMP and third-party relocation staff assisting the Grievor regarding the actual deadline to sell the home. The Grievor was also not reminded of the imminent sale deadline as it approached, nor was he advised of the consequences if the deal for the sale of his home fell through. The ERC concluded that the Respondent should have referred the Grievor's business case to the Treasury Board Secretariat (TBS), which had the authority to approve reimbursements in exceptional circumstances.

The ERC recommended that the Commissioner order a review of the Grievor's case to determine whether he still wished to pursue reimbursement and, if so, that such a review include the preparation of a submission to the TBS for those relevant expenses.

The Commissioner accepted the ERC's recommendation and allowed the grievance.

#### *Eligibility for Medical Travel Benefits*

In **G-663**, the ERC addressed the issue of a member's eligibility for medical travel expenses.

The Grievor lived in an isolated post with his wife, who became pregnant. Her pregnancy was considered high risk and she was advised to obtain the care she needed in a city where it was available. The couple took a number of multi-day trips to and from that city to attend medical appointments. The Grievor did not review government or RCMP policy to learn his medical travel obligations, nor did he get pre-approval to travel.

In the first documented communication between the Grievor and an RCMP official, the official stressed the necessity of securing pre-approval for medical travel, described how to do so and provided an authority emphasizing this information. The couple later took a final medical-



related trip to the city but again did not get pre-approval to travel. After his child was born, the Grievor submitted a medical travel expense claim for his trips. It was refused because approval was not secured at the times of travel. The Grievor filed a Level I grievance, which was unsuccessful.

The ERC recommended that the grievance be denied at Level II. The Grievor did not follow or familiarize himself with key medical travel authorities which were both available and provided directly to him. Those authorities required that isolated post medical travel be pre-approved in writing. Members have long been expected to familiarize themselves with authorities that apply in their circumstances and ensure that any claims are made in compliance with the authorities.

The ERC acknowledged that the Grievor conducted himself in good faith under what must have been stressful circumstances. However, this did not change the fact that his claim was refused because he omitted to familiarize himself with and follow relevant and available authorities.

The Commissioner accepted the ERC's recommendation and denied the grievance.

## Legacy Discipline

### *Treatment of Expert Evidence*

In **D-136**, the ERC examined the treatment of expert evidence by an Adjudication Board (Board) and sanction imposed by that Board. The Appellant had been disciplined for similar conduct. But in a separate appeal, the ERC recommended, and the Commissioner agreed to overturn that earlier decision.

In the present matter, two allegations of disgraceful conduct were brought against the Appellant. She had driven her vehicle in a ditch while visibly impaired and provided a false identity to the members of the public that were helping her extract her vehicle. She was later seen by these same persons driving her vehicle again. They contacted the RCMP as they thought the Appellant was driving while impaired. The Appellant left the scene and concealed her vehicle in bushes, resulting in the RCMP having to search for her.

The Board found the allegations established. During the hearing on sanction, both the Appellant and Respondent called expert witnesses to testify as to the Appellant's psychological condition. The Board ordered the Appellant's dismissal. The Appellant appealed this decision, arguing that the Board did not have proper reasons to deviate from her expert witness' testimony, and that it imposed a sanction that was too harsh in light of the mitigating factors.

The ERC recommended that the appeal be dismissed. The Board did not make any findings contrary to the Appellant's expert's opinion, as this expert had not testified or provided evidence on the issue of a nexus between the Appellant's misconduct and condition. Conversely, the Respondent's expert witness testified that the Appellant's condition could not explain the Appellant's provision of a false name and partial concealment of her vehicle. Lastly,

notwithstanding the Commissioner's decision to overturn the finding of misconduct in a previous case, dismissal remained warranted in the present matter.

The Commissioner accepted the ERC's recommendation and dismissed the appeal.

### Legacy Discharge for Performance Issues

In **R-007**, the ERC examined the appeal of a decision by a Discharge and Demotion Board (Board) to discharge a member that had performance difficulties.

The Appellant, a regular member, displayed significant difficulties documenting his files and keeping up with tasks related to ongoing investigations. The Appellant was given close supervision and assistance by a supervisor over several months. Despite this assistance, the Appellant remained unable to perform his duties at a satisfactory level, as a result of which the RCMP sought the Appellant's discharge. The Board held a hearing and after hearing evidence of the Appellant's challenges and of efforts to assist him, it ordered the Appellant's discharge.

The Appellant appealed the Board's decision on procedural grounds. He also raised several grounds of appeal relating to the Board's rationale. The ERC recommended that the appeal be denied. There was no reason to overturn the Board's decision based on the procedural grounds advanced by the Appellant.

The ERC then addressed the Appellant's other grounds of appeal. In one ground of appeal, the Appellant alleged that the Board gave insufficient weight to his high workload and to problems with the supervision he received, which he claimed were significant factors explaining his inability to perform. The ERC found that the Board made no reviewable error in assessing those factors. The Board explained why it gave minimal weight to evidence that some members perceived the detachment workload as particularly onerous. It further expounded why it viewed a significant number of the Appellant's overdue tasks as routine, rather than complex. Those findings were supported by the record. The Board also clarified why it viewed the supervision of the Appellant as reasonable and sufficient. The Board's observations of the direction and advice provided to the Appellant to help him improve his performance were supported by the record.

The ERC also disagreed with another ground of appeal, in which the Appellant asserted that the Board's decision was based on an insufficient, overly negative work sample. The record supported the Board's finding that it received a thorough and balanced sample of the Appellant's work. The Board stated how it weighed the Appellant's strengths against his continuing difficulties, which it viewed as unsustainable and unacceptable by RCMP standards. The Board's findings reflected an analysis of the facts before it and merited deference absent a palpable and overriding error.

The Commissioner has not yet issued a decision in this appeal.

## Current Legislation Conduct Appeals

### *Assessment of Evidence*

In **C-025**, the ERC considered whether a Conduct Authority made a manifest and determinative error in assessing evidence leading to a finding that the Appellant violated the *Code of Conduct*.

The Appellant was deployed to a foreign country and signed an undertaking pertaining to rules to be followed while deployed. During the deployment, the Appellant's roommate informed a senior officer that she believed the Appellant was intimately involved with a local national, which would be a breach of the undertaking. The senior officer then met with the Appellant, who denied having an affair with a local national and provided a statement to the senior officer to that effect. Upon the Appellant's return to Canada, a *Code of Conduct* investigation took place where the Appellant faced two allegations: not respecting his pre-deployment undertaking by having an intimate relationship with a local national; and misleading the senior officer by denying any intimate involvement with a local national. Following a Conduct Meeting, the Respondent found both allegations established and imposed conduct measures consisting of a forfeiture of eight days of pay and a reprimand.

Although the appeal had not been presented within 14 days as required by legislation, the ERC recommended that the Commissioner retroactively extend this time limit. The Appellant had shown an ongoing intention to present an appeal, there was a reasonable explanation for the brief delay in so doing, no prejudice would result from an extension and the appeal had merit.

The ERC recommended that the appeal be allowed, as the Respondent's decision was clearly unreasonable. The evidence did not support a finding that the Appellant engaged in an intimate relationship with a local national. While the Appellant had received text messages, which were of an intimate nature, there was insufficient evidence to determine whether they had been sent by a local national and they did not in and of themselves establish an intimate relationship.

The Commissioner's delegated Adjudicator agreed with the ERC's recommendation and allowed the appeal.

### *Test for Deciding Appropriate Conduct Measures*

In **C-033**, the ERC examined whether a Conduct Authority applied the required test in selecting conduct measures to impose on a member who it found had breached the *Code of Conduct*.

The Appellant conducted a traffic stop and seized currency from a passenger. The passenger stated during the stop that the seized currency was of a certain amount, but the money was not counted by the Appellant. Several weeks later, the Appellant agreed to meet with the passenger to return the currency, as long as the passenger could provide documentation to support lawful possession of it. When the Appellant and passenger met, the passenger alleged that the amount of currency being returned was less than that initially seized. Given the

dispute over the amount, and since the passenger had provided no documentation to verify the source of the currency, the Appellant returned the currency to an exhibit locker.

A *Code of Conduct* investigation revealed that the Appellant, in handling the currency, omitted to follow policy requirements, one of which was to count the currency as soon as practicable. Following a Conduct Meeting, the Respondent determined that the Appellant had not properly handled an exhibit, contrary to the *Code of Conduct*. The Respondent imposed conduct measures consisting of a forfeiture of two days' pay and a direction to review applicable policies.

The Appellant appealed the conduct measures imposed against him, arguing that they were too severe and that the Respondent had not taken into account relevant mitigating factors.

The ERC recommended that the appeal be denied and that the conduct measures be confirmed. The Respondent applied the applicable three-part test for imposing appropriate conduct measures. First, the Respondent identified a broad range of conduct measures which could be imposed. Second, the Respondent properly identified applicable mitigating and aggravating factors supported by the record. Mitigating factors included the absence of dishonesty by the Appellant, and the fact he had no prior discipline. Aggravating factors included the Appellant's rank and specialized role in detecting and interdicting contraband, and his undermining of the public expectation that seized currency would be properly handled. Third, the conduct measures reflected the severity of the misconduct and did not depart from the pattern of discipline identified in comparable cases involving other members.

The Commissioner has not yet issued a decision in this appeal.

In **C-030**, the ERC reviewed a Conduct Authority's finding that a member abused his police authority, and the conduct measures imposed against the member.

The Appellant took a meal break at a diner, where he was seen looking at a female customer. The Appellant pulled over the female's vehicle immediately after she left the diner. During the traffic stop, he identified himself to her, gave her an RCMP business card on which he handwrote his name and personal cell number, but did not issue a ticket or a warning.

The RCMP initiated a *Code of Conduct* investigation in which the Appellant did not clearly explain why he stopped the female's vehicle and gave her his number. The Respondent held a Conduct Meeting and later issued a decision finding that the Appellant breached the *Code of Conduct* by abusing his authority as a police officer. The Respondent imposed on the Appellant conduct measures including a forfeiture of six days of pay.

The Appellant appealed the finding that he contravened the *Code of Conduct*. Alternatively, he asked that his six-day pay forfeiture be overturned or reduced on the basis that it was too harsh.

The ERC recommended that the appeal be allowed in part. First, it accepted the Respondent's finding that the Appellant violated the *Code of Conduct*. Contrary to the Appellant's positions, a review of the record showed that the Respondent did not ignore relevant considerations, rely on irrelevant considerations or assess evidence in a way that led to a clearly unreasonable decision.

However, the ERC found that the six-day pay forfeiture required intervention as the Respondent did not apply the test for selecting appropriate conduct measures. After noting the applicable range of penalties for the Appellant's conduct and restating mitigating and aggravating factors, the ERC found that the gravity of the conduct, and its nexus with requirements of the policing profession, were best reflected by a two-day pay forfeiture. This outcome was consistent with penalties imposed by Canadian police services, including the RCMP, for comparable conduct.

The Commissioner has not yet issued a decision in this appeal.

#### *Conduct Board*

In **C-027**, the ERC reviewed a Conduct Authority's appeal of a Conduct Board (Board) decision not to dismiss a member who was found to have committed multiple *Code of Conduct* violations.

The member had confiscated alcohol from youths and, instead of disposing of it as per policy, gave it to local firefighters as a gesture of "esprit de corps". He then created a misleading entry in the Police Reporting Occurrence System and wrote an email to his superior falsely stating that the alcohol was disposed of locally. He further asked the Fire Chief to lie on his behalf.

A *Code of Conduct* process was initiated. The member faced five allegations of discreditable conduct. The Board found all five allegations established. However, it also found, after reviewing the applicable aggravating and mitigating factors and case law, that the member's contraventions did not warrant dismissal, which had been sought by the Conduct Authority. The Board instead imposed a forfeiture of 35 days of pay.

The Conduct Authority raised several grounds of appeal, urging that dismissal was warranted.

The ERC recommended that the appeal be denied. It addressed all the grounds of appeal and concluded that the Board did not err in assessing the evidence before it, the issues regarding the RCMP's ability to employ the member, the risk of recurrent behaviour by the member or the impact of the member's actions on the administration of justice. The Board had reviewed and relied on case law where police officers retained their employment even though their honesty and integrity were found to be lacking. Although the Board did consider an irrelevant mitigating factor, that consideration was not determinative in respect of its overall decision.

The Commissioner's delegated Adjudicator accepted the ERC's recommendation, denied the appeal and confirmed the conduct measures imposed.

## Current Legislation Non-Conduct Appeals

### *Discharge on the Ground of Disability*

In **NC-030**, the ERC examined the manner in which the RCMP reached its decision to discharge a member on the basis of her disability.

The Appellant was off duty sick for more than two years. The RCMP Health Services Officer (HSO) assigned to her a medical profile indicating that she could not return to any duties in the reasonably foreseeable future. She was also told that a medical discharge was possible. This surprised her, as she believed the RCMP had been sent records supporting her return to work.

The Appellant's practitioner wrote to the HSO, stating that the Appellant's health was improving and that, with time, she could return to perform restricted and eventually full duties. Despite this, the RCMP held a medical discharge process. In the HSO's view, information offered by the Appellant's practitioner did not contain sufficient clinical evidence to change his medical opinion.

The Respondent ordered the Appellant discharged, finding that her disability prevented her from meeting employment requirements and that the RCMP accommodated her disability to the point of undue hardship. He explained that he spoke to the HSO before making his decision and that he was told the Appellant's medical profile was justified despite her practitioner's contrary views.

The ERC recommended that the Appellant's appeal be allowed, and her discharge quashed. It reasoned that the Respondent violated a principle of procedural fairness by basing his decision on information he obtained during a private conversation with the HSO without first disclosing to the Appellant that he had obtained such information or offering her an opportunity to address it. Moreover, the Respondent did not say why he preferred the HSO's evidence to the evidence of the Appellant's practitioner. This omission to address opposing evidence central to the outcome of the matter rendered the Respondent's decision clearly unreasonable and resulted in a flawed finding that the RCMP accommodated the Appellant's disability to the point of undue hardship.

The Commissioner's delegated Adjudicator accepted the ERC's recommendation and allowed the appeal.

In **NC-031**, the ERC considered whether the RCMP satisfied its duty to accommodate a disabled member who had been on sick leave for a significant period of time. Medical reports indicated that the Appellant had a medical condition which prevented her from attending work and was caused by a workplace conflict. However, more recently, her attending physician, medical specialist and HSO all indicated that she could eventually return to work if a position elsewhere was found for her.

The RCMP initiated medical discharge proceedings, as the Appellant had not returned to work. At the outset, the Appellant asked that the Respondent recuse himself as decision-maker in those proceedings since he had previously determined that a harassment complaint lodged by the Appellant regarding the workplace conflict was unsubstantiated. The Respondent denied that request on the basis that the two processes were unrelated. The Respondent found that the Appellant could not fulfill her employment requirements, that the RCMP met its duty to accommodate her disability and she should be discharged on the basis of her disability.

The ERC found the Respondent did not have to recuse himself, as his finding in the harassment complaint did not in and of itself reverse the presumption of his impartiality as a decision-maker.

However, the ERC recommended that the appeal be allowed on other grounds. The discharge process required a high degree of procedural fairness, which the Respondent omitted to provide by not disclosing to the Appellant two documents on which he partially based his decision. The ERC therefore recommended that the matter be returned for a new decision.

The ERC also considered the merits of the appeal and found that the RCMP did not discharge its burden of showing that it accommodated the Appellant to the point of undue hardship. The evidence revealed that the RCMP ignored medical experts who indicated the Appellant could return to work in another position and, further, had not explored if such a position was available.

The Commissioner's delegated Adjudicator accepted the ERC's recommendations and allowed the appeal.

#### *Investigation Leading to Finding of No Harassment*

In **NC-042**, the ERC found that a decision that harassment allegations were not established was based on a deficient investigation and therefore clearly unreasonable.

The Appellant filed two harassment complaints against a superior who had supervised him. The complaints became the subject of a joint harassment and *Code of Conduct* investigation where seven witnesses were interviewed. On two occasions during the investigation, the Appellant indicated that the Alleged Harasser had interfered with a witness. The Respondent found that the complaints were not established, but did not address the alleged witness interference.

The ERC recommended that the appeal be allowed. The investigation was deficient as the investigators omitted to address crucial evidence of witness interference either with the Alleged Harasser or with the witness who the Alleged Harasser allegedly approached. Moreover, the Respondent's decision was clearly unreasonable as the reasons provided were insufficient and the Respondent did not address a significant issue raised by the complainant.

The Commissioner's delegated Adjudicator accepted the ERC's recommendation and allowed the appeal.

## Corporate Management and Planning

A key priority has been and remains the need to increase the case review capacity of the ERC. Program integrity funding was approved in 2017 and expires at the end of the fiscal year 2020-21. These additional funds were provided to enable the ERC to begin to reduce its large backlog of cases.

The ERC has seven indeterminate full-time equivalents (FTE). A further nine FTEs are resourced this year using temporary program integrity funding that ends in March 2021.

Additional permanent funding is required for the ERC appeal case reviews program to continue to address a mounting program integrity risk, which has reached crisis mode. A program resource base to meet ongoing operational demands needs to be established.

The ERC has received an increasing number of cases for review from the RCMP since the current RCMP recourse regime was implemented in 2014. A backlog of cases has grown since then, leading to lengthening wait times before ERC reviews are completed. The long delays cause great injustices to the RCMP and its members. The resources requested for this initiative will allow the ERC to reduce the backlog and wait times, restoring program integrity.

Staff retention and development and long-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 and temporary capacity such as secondments, term or casuals. 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.

The *RCMP Act* requires that the Chairperson establish and make public service standards with time limits for the completion of its case reviews. The new Chairperson will establish service standards in 2020-2021 and will be able to share in the next annual report.

Other corporate services' priorities were the:

- 1) Restructuring the Registry unit and processes;
- 2) Restructuring our organizational chart and responsibilities;
- 3) Implementing various corporate financial reports and data management; and
- 4) Managing the accommodations re-fit project for the ERC's office space, which continued throughout the year.