



RCMP External  
Review Committee

Comité externe  
d'examen de la GRC

# Rising to the Challenge

in Unprecedented Times

**ANNUAL REPORT 2020-2021**

Charles Randall Smith





RCMP External  
Review Committee

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d'examen de la GRC

June 25, 2021

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 2020-2021, 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 R. Smith".

Charles Randall Smith  
Chairperson



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## Message from the Chairperson



I am pleased to present the RCMP External Review Committee's (ERC) Annual Report for fiscal year 2020-2021. This past fiscal year has been a challenge for all of us. This agency rose to the challenge in every aspect.

With the safety of all personnel as my first priority, we were able to quickly and efficiently mobilize our workforce from working from the office to working remotely from home. This challenge required exceptional and focused planning and implementation by my Senior Director of Corporate Services and Chief Financial Officer.

This year, the ERC has set another milestone in its history by issuing 75 Reports containing Findings and Recommendations, its highest ever total. I want to thank my legal and registry team for their ongoing dedication and hard work that made this possible.

During the fiscal year, the ERC received additional permanent funding from the Government of Canada. This will enable the organization to eliminate a daunting and growing backlog of cases by acquiring more resources. This will position the ERC to be successful in meeting its service standards and being successful in its strategies that have been implemented to address the backlog. We will be hiring additional staff throughout the 2021-2022 fiscal year.

RCMP members are entitled to receive timely answers to their grievances and appeals. With this in mind, we have improved the intake process, found efficiencies in how cases are treated and improved the clarity and conciseness of our Findings and Recommendations. We strive for our work to be of value to all parties, regardless of the recommended outcome.

During 2020-2021, our agency met with and made presentations to the National Police Federation. We also met with the RCMP. I value a good working relationship with the Federation, which plays a key role as the certified bargaining agent for RCMP members, as well as with the RCMP, a vitally important organization.

The ERC remains fully committed to its independent role of providing findings and recommendations which thoroughly address important employment, labour and conduct matters within the RCMP.

Respectfully,

A handwritten signature in blue ink that reads "Charles R. Smith". The signature is written in a cursive, flowing 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.

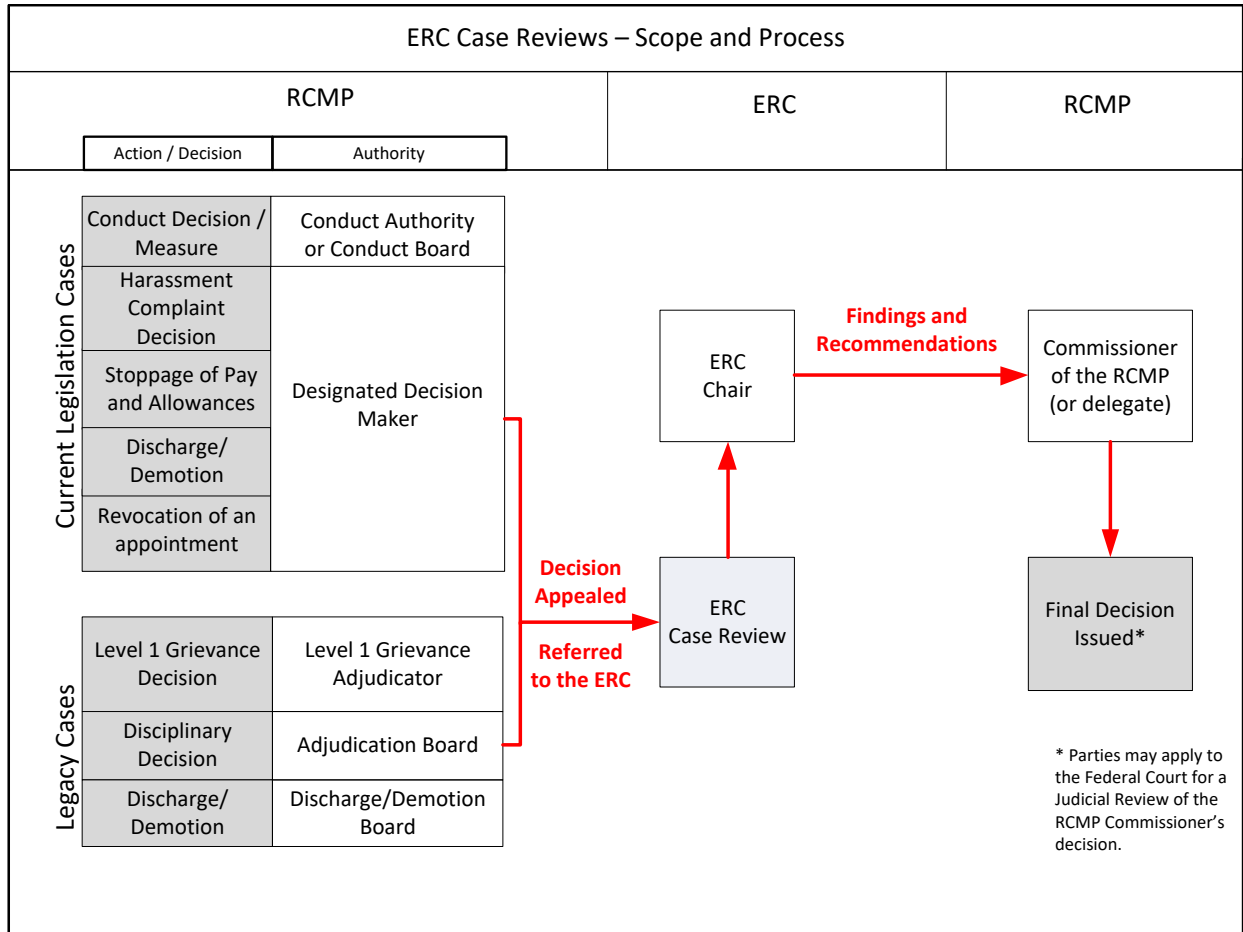
## Roles of ERC – Legacy Scheme

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 sanctions; 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.

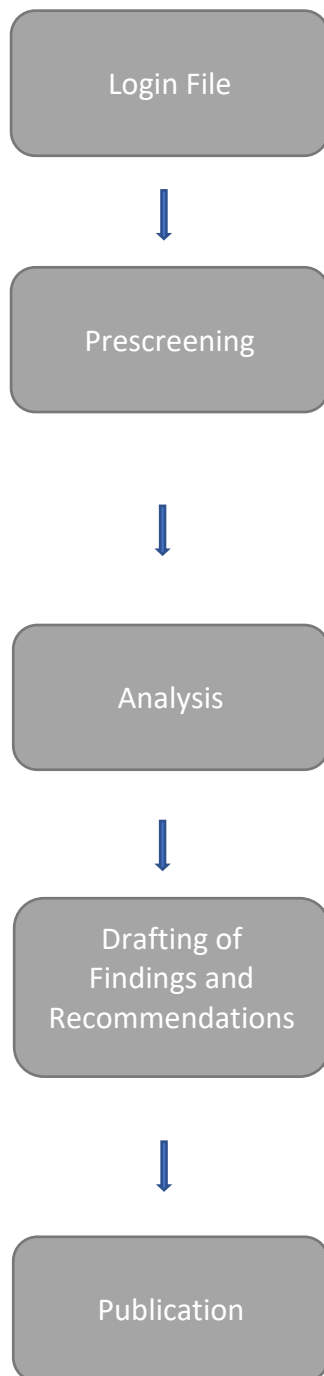
The table below illustrates the ERC’s role within both legislative regimes.



## 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 prioritized 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 finding or recommendation. However, the Commissioner or her delegate is required to provide reasons in their decision if deviating from the findings and 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.

### Prescreening

- 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 so that the RCMP can address procedural issues or missing documents.

### 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.

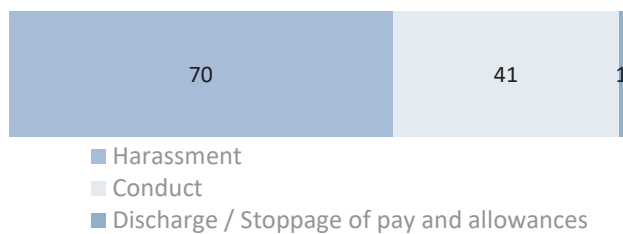
# RCMP External Review Committee Year in Review 2020-2021

## Files Received

The RCMP referred **115** cases to the ERC.

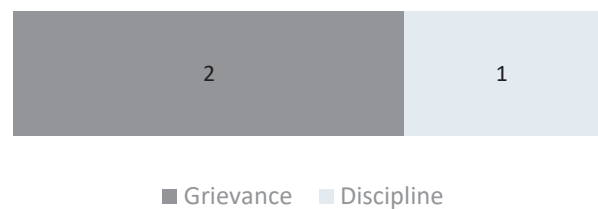
**112**

under the current *RCMP Act*



**3**

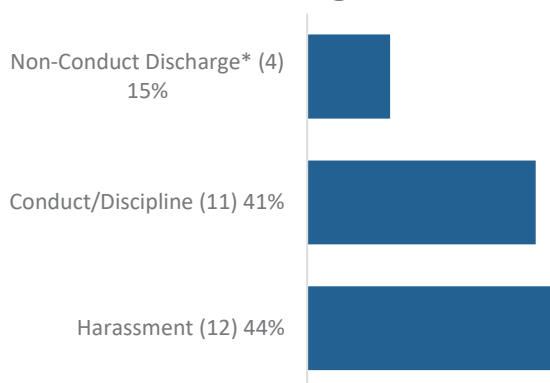
under the Legacy Legislation



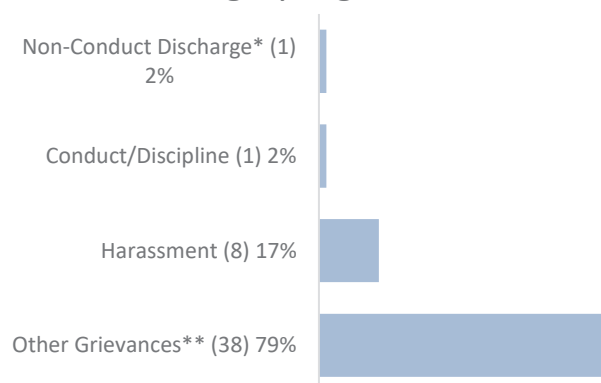
## Cases Reviewed From Case Load

The ERC issued **75** Reports of Findings and Recommendations.

### Current Legislation



### Legacy Legislation



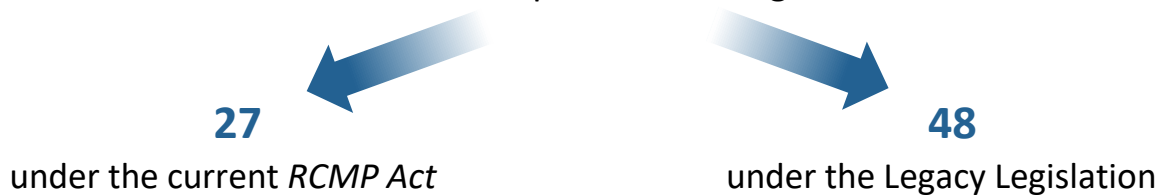
\* Discharge not related to conduct (medical, absent from duty or poor performance).

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

# RCMP External Review Committee Year in Review 2020-2021

## Findings and Recommendations

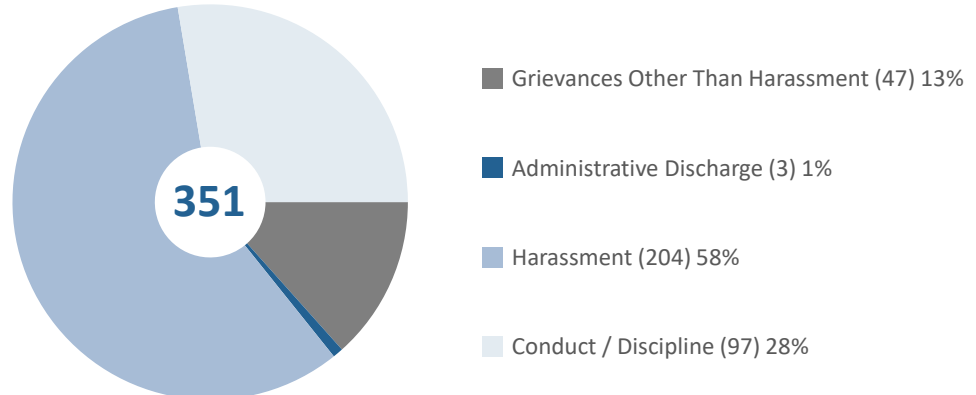
The ERC issued **75** Reports of Findings and Recommendations.



(Note: two appeals were withdrawn before the ERC made its Findings and Recommendations)

**75** Reports of Findings and Recommendations  
is the most ever issued by the ERC in a single year.

## Current ERC Case Load



Commissioner or the delegated adjudicator rendered decisions in **89** cases.

**76%**  
Agreed with the ERC.

**24%**  
Disagreed with the ERC.

# Service Standards

## Introduction

This year, the ERC introduced two service standards that will be phased in over a period of time. They are:

### **Fiscal Years 2020–2022**

85% target for all files coming into the ERC will be prescreened within 30 days of receipt.

### **Fiscal Year 2022–2023 and beyond**

75% of files coming into the ERC will be completed within 12 months.

85% of files will be prescreened within 30 days of receipt.

## Background

Section 28.1 of the *RCMP Act* requires the ERC to establish and publish service standards with respect to the time required for the ERC to review appeals and grievances.

Section 28.1 of the *RCMP Act* states that:

*The Committee shall establish, and make public, service standards respecting the time limits within which it is to deal with grievances and appeal cases that are referred to it and specifying the circumstances under which those time limits do not apply or the circumstances under which they may be extended.*

It is of the highest importance to the ERC to prepare meaningful and objective findings and recommendations in cases under its charge. Equally important is that the cases be dealt with in a timely manner. Due to a historic lack of resources to deal with the caseload, certain cases have not been answered in a timely manner.

## Circumstances Under Which Time Limits do not Apply or may be Extended

The ERC will always strive to meet its service standards, but there are situations that are beyond its control that may cause delay. Section 28.1 of the *RCMP Act* requires the ERC to identify those circumstances. They typically include:

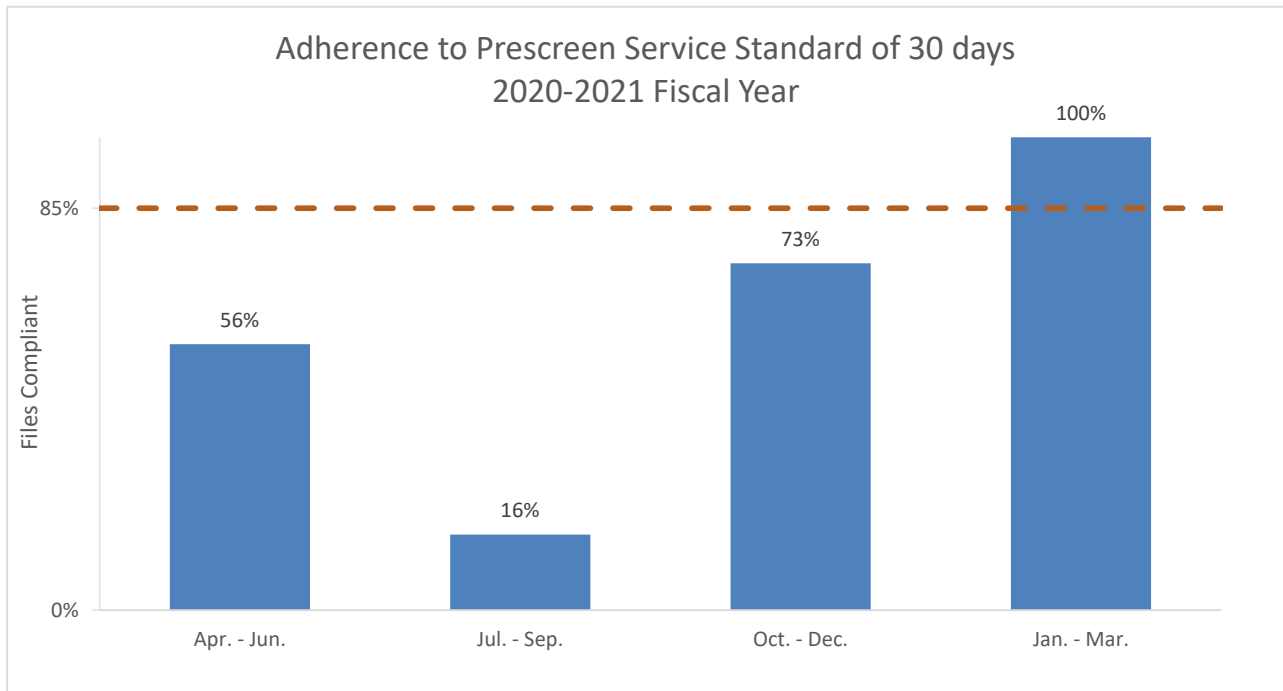
- The ERC has received incomplete documentation for the case to proceed.
- The parties are required to send further clarifications or submissions for the case to be properly assessed.
- The ERC has approved a party's request for an abeyance.

The ERC will make every effort to shorten these delays.

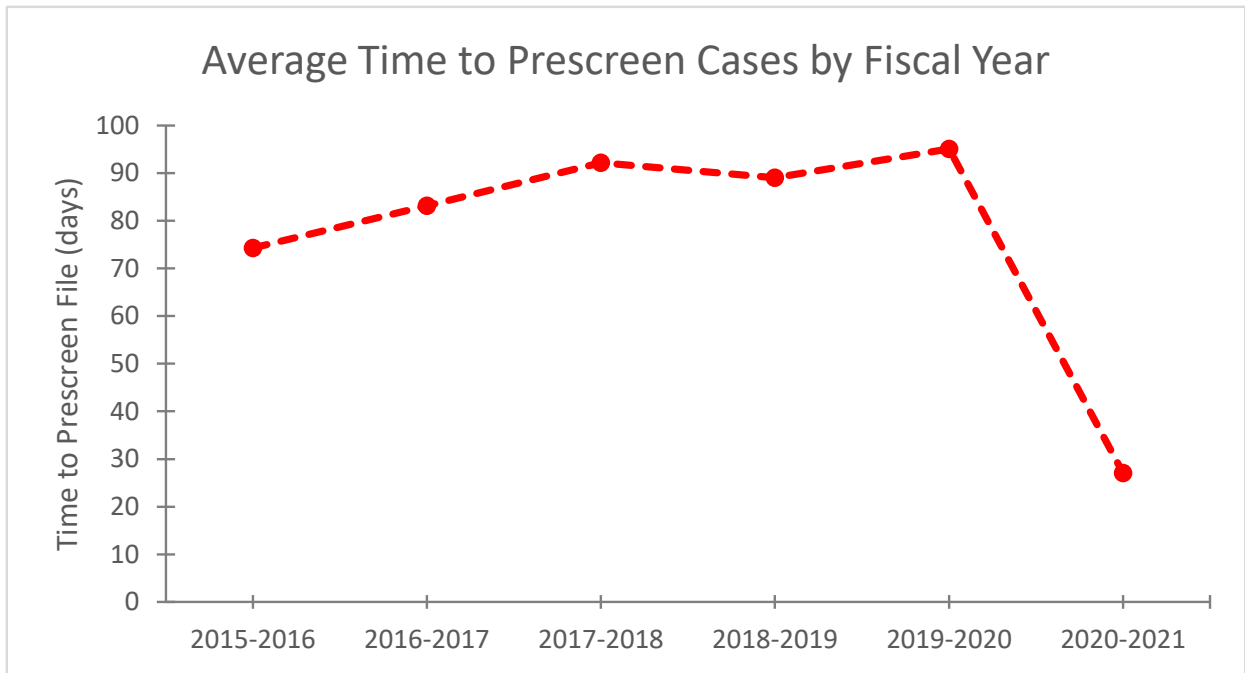
## Service Standard for Prescreening

The first service standard to be introduced was that cases will be prescreened within 30 days upon receipt at the ERC. This serves two purposes. The first purpose is to improve the time it takes to finish a Findings and Recommendation by ensuring that the case records submitted to the ERC are complete and that no additional documents or submissions are required. The second purpose is to ensure that cases be assessed as quickly as possible so that cases can be assigned for review in the proper sequence, priority being given to high-impact matters.

The ERC developed tools to monitor its adherence to the prescreening service standard so that it can meet its target. We were able to improve adherence throughout the year and for the last quarter, the ERC exceeded the service standard as all new cases were prescreened in less than 30 days.



Over the past five years, cases were prescreened, on average, from 74 to 95 days after arriving at the ERC. This year, with the introduction of the new service standard, cases were prescreened in an average of 27 days.



### Service Standard for Reports of Findings and Recommendations

The service standard to complete a report of Findings and Recommendations within one year comes into effect on April 1, 2022. The ERC will make its first report on its adherence as part of its 2022–2023 Annual Report.



## Strategies for the Backlog of Cases

The number of cases to be reviewed by the ERC grew from 65 on March 31, 2015 to 351 on March 31, 2021. This increase arose following the modifications made to the *Royal Canadian Mounted Police Act* in 2014 and led to delays in the ERC's review of grievances and appeals.

Reduction of the backlog of cases is paramount to ensure that the ERC can provide Findings and Recommendations in a timely manner and ensure fairness for the parties involved. To ensure the reduction of the case backlog, the ERC has developed the following strategies:

- Implementation of a prescreening service standard to reduce delays caused by files with procedural issues or missing documents.
- Use new permanent funding to add new employees and increase the ERC's case review capacity.
- Implement pilot projects within the ERC's case review process to increase efficiency.
- Assign a team of ERC Counsel dedicated to the review of backlog cases to ensure that backlog reduction continues after the implementation of the ERC service standard for Findings and Recommendations.

## Accomplishments in Fiscal Year 2020-2021

- During the COVID-19 pandemic, the ERC's productivity levels in every step of the case file management stayed on course and efficiencies were found. The ERC produced a record number of 75 Findings and Recommendations while navigating the challenges presented by the pandemic.
- Two pilot projects were completed during the year that targeted clusters of older ERC cases that could be resolved in a shorter period of time due to specific criteria.
- New process efficiencies shortened the time to complete analysis of cases without negatively impacting the ERC's ability to provide extensive independent and impartial review of the cases referred to it.
- Additional permanent funding enabled the ERC to substantially complete staffing processes for new resources.
- Successfully navigated the challenges that the COVID-19 pandemic brought on the ERC by focusing on the mental health and wellbeing of all its employees.
- Implemented MS Teams to enable employees to communicate effectively while working remotely.
- Ensured that all employees are safely and securely established in their home office by following guidelines and procedures.

## Goals in Fiscal Year 2021-2022

- Prepare for the implementation of the two-team approach to case review on April 1, 2022.
- Continue to meet the ERC's service standard to prescreen 85% of all cases within 30 days of receipt.
- Integration and successful virtual onboarding and training of new employees in the ERC.
- Implementation of Bill C-65.
- Continue ongoing communications with employees.
- Implementation of revised Learning and Development and Awards and Recognition policies.
- Prepare for the phased in approach to return to the workplace post pandemic.

## 2020-2021 – Case Highlights

Below are summaries of the key aspects of select ERC Findings and Recommendations.

### Legacy Grievances

#### *Alleged Discrimination*

The ERC reviewed legacy grievances that involved alleged discrimination. One such grievance involved the RCMP's decision to amend a member's medical profile based on his medical condition.

In **G-734**, the ERC considered whether the RCMP's decision to change a member's medical profile was discriminatory. The Grievor had surgery due to an injury sustained on duty. He later resumed his regular duties. A Health Services Officer (HSO) subsequently reviewed the Grievor's situation in light of scientific guidelines relating to the type of surgery he had undergone. As a result, the HSO changed the Grievor's occupational factor from an "O2" to an "O3" designation. This resulted in the Grievor being transferred to an administrative position, and this restricted him from operational duties. Years later, the Grievor requested that his occupational factor be changed back to an "O2". The Respondent denied the request.

The Grievor challenged the Respondent's decision on various grounds. One of these grounds alleged that the RCMP had breached the *Canadian Human Rights Act* (CHRA) by discriminating against the Grievor on the basis of a perceived disability. The Level I Adjudicator denied the grievance.

The ERC recommended that the grievance be denied at Level II. It concluded that the change to the Grievor's medical profile had not breached the CHRA. The purpose of the scientific guidelines, used by the HSO when changing the Grievor's medical profile, was to ensure that members could safely and effectively perform fully operational police functions. Physical altercations are an ever-present risk of those functions. The scientific guidelines indicated that the type of surgery performed on the Grievor increased the risk of serious personal injury when performing operational policing. Medical evidence in the record, and the risk identified in the scientific guidelines, showed that designating the Grievor at the "O2" level would impose undue hardship on the RCMP. The RCMP accommodated the Grievor by assigning him to a position reflecting an "O3" designation. This mitigated the risk of his medical condition interfering with the performance of his duties.

#### *Alleged Harassment*

The ERC reviewed legacy grievances involving harassment. Two of those grievances examined the sufficiency of information gathered by the RCMP in order to deal with harassment complaints.

In **G-732**, the ERC considered the appropriateness of a decision to screen out a harassment complaint without conducting an investigation. The Grievor alleged in a harassment complaint that the Alleged Harasser, an RCMP Health Services practitioner, had included false statements in his medical records thereby preventing him from returning to operational duties. The complaint was not investigated. Instead, it was directly forwarded to the Respondent who issued a decision rejecting the complaint on the basis that the alleged conduct did not amount to harassment.

The Grievor filed a grievance which was denied by a Level I Adjudicator. At Level II, the Grievor submitted, among other arguments, that the Respondent had erred in not ordering an investigation into the allegations.

The ERC recommended that the grievance be denied. The RCMP harassment policy at the time required that an investigation be considered if the allegations contained in a harassment complaint, assumed to be true, fell within the definition of harassment. The Respondent found that the allegations, which pertained mainly to the steps taken by the Alleged Harasser when evaluating the Grievor, did not meet this legal test. The ERC agreed, noting that the Grievor's complaint largely appeared to take issue with the manner in which his medical condition and his medical profile had been assessed. This included certain diagnoses rendered by the Alleged Harasser. These concerns should have been raised through another process, and therefore the Respondent's decision to screen out the complaint was reasonable.

In **G-689**, the ERC examined the manner in which a harassment complaint had been decided based on a limited gathering of facts. The Grievor had received late-night texts from a phone belonging to a male colleague, the Alleged Harasser. The texts, one of which was inappropriate, invited her to a party. The Alleged Harasser soon apologized to the Grievor in writing, insisting that somebody else had used his phone to send the inappropriate text. The Grievor acknowledged that apology. However, according to the Grievor, the Alleged Harasser later admitted in-person to sending that text and apologized. The Grievor found that apology insincere, partly because she had learned that some of her male peers, one of whom she believed was the Alleged Harasser, had given her a derogatory nickname.

The Grievor lodged a harassment complaint. The Alleged Harasser filed a written reply to which he attached the text messages between the two parties. No further investigation was undertaken. The Respondent found that the complaint was unsubstantiated. He reasoned that the Grievor had accepted an apology from the Alleged Harasser, that a lack of sincerity was not harassment and that the case involved an isolated incident. The Grievor filed a Level I grievance which was denied. She resubmitted the grievance at Level II.

The ERC recommended that the grievance be allowed. It found that the Respondent had decided the complaint in a manner inconsistent with applicable authorities. The Grievor was entitled, as a matter of fairness, to be interviewed and to respond to the Alleged Harasser's written reply to her complaint. Further, it was evident that what had transpired was serious,

contentious and not exclusively confined to the text messages. Given this, the limited information before the Respondent was insufficient to preclude the need for an investigation, during which witnesses could have been interviewed to help clarify if harassment had occurred. The ERC recommended that the Commissioner quash the Respondent's decision that the complaint was unsubstantiated.

### Current Legislation Conduct Appeals

The ERC examined current legislation conduct-related appeals. One of those appeals involved sexual harassment by a member towards other members while attending an off-duty party. Another involved a member's use of his position as a police officer to initiate inappropriate interactions with two women, one of whom was a minor.

In **C-042**, conduct proceedings were initiated against the Respondent, a member, in relation to his conduct during a party attended by several other members. The Respondent, who was intoxicated, had inappropriately touched a member. He also made a crude gesture and sexually explicit comment to another member, and he later inappropriately touched that other member as well.

A Conduct Board found that three allegations of Discreditable Conduct pursuant to section 7.1 of the RCMP *Code of Conduct* relating to unwanted sexual touching had been established. The Board also considered a fourth allegation pursuant to section 2.1 of the *Code of Conduct*, which requires members to treat every person with respect and courtesy and to not engage in harassment. The Board found the section 2.1 allegation, relating to the crude gesture and sexually explicit comment, to be established on the basis of disrespectful and discourteous behaviour. However, the Board found that the behaviour did not constitute harassment, given an insufficient nexus between the incident and the workplace. The Board did not dismiss the member, but imposed conduct measures which included significant forfeitures of pay and a direction to undergo treatment.

The Appellant Conduct Authority, who had initiated the conduct proceedings, appealed the Board's finding on the fourth allegation, taking the view that the Board had improperly assessed the question of whether sexual harassment in the workplace had taken place. The Appellant also appealed the conduct measures imposed and sought the Respondent's dismissal.

The ERC recommended that the appeal be allowed, and that the Respondent be found to have engaged in sexual harassment pursuant to section 2.1 of the *Code of Conduct*. The Respondent's crude gesture and sexually explicit comment amounted to sexual harassment and there was a sufficient nexus to find that the party, almost exclusively for RCMP members, was an event related to the workplace. Further, the Respondent's actions negatively affected the work environment of one of the members involved.

The ERC found that while dismissal would normally be appropriate in such circumstances, compelling mitigating factors in this particular case supported lesser conduct measures. These included significant medical conditions, the absence of prior discipline, the presence of a strong performance record, and support for the Respondent from members and civilians. In light of its finding that sexual harassment had occurred, the ERC recommended that the forfeiture of five days' pay, which had been imposed for the fourth allegation, be replaced by a forfeiture of 20 days' pay. This was in addition to the significant forfeitures imposed for the other allegations.

In **C-045**, the ERC reviewed a member's appeal of a Conduct Board decision to dismiss him. The Appellant had accessed RCMP electronic files to obtain the phone numbers of two female members of the public. He used this information to initiate personal contact. One of the women was a minor. The Appellant initiated a number of inappropriate text messages and photo exchanges with the minor.

A Conduct Board was convened before which the Appellant faced two allegations of discreditable conduct and two allegations of unauthorized use of government-issued equipment. The Board found that all four allegations were established and imposed the conduct measure of dismissal. The Appellant raised multiple grounds of appeal, one of which was that dismissal was a disproportionate conduct measure.

The ERC recommended that the appeal be denied, finding that dismissal was a proportionate conduct measure. The Board's justification for dismissal reflected values outlined in the RCMP *Conduct Measures Guide*, namely that "RCMP members are expected to remain professional at all times and not use their position for personal gain". The Board noted that the Appellant had exploited his position as a police officer in his interactions with both individuals. The Board emphasized the "extraordinarily inappropriate" nature of the Appellant's misconduct with the minor, a finding supported by the text messages and photos contained in the record. Further, a key consideration in the Board's rationale was that the Appellant's actions fell short of the "bedrock expectation that members shall only act to protect the health and safety of Canada's youth". The Board's finding was consistent with principles found in jurisprudence regarding the duty of police officers to protect children and vulnerable members of society.

## Current Legislation Non-Conduct Appeals

### *Alleged Harassment*

The ERC reviewed non-conduct appeals of decisions addressing harassment complaints. Among the issues raised in those appeals was whether retired members have standing to appeal harassment decisions. Another issue pertained to the procedural rights members have when they are concerned about the impartiality of decision-makers in the harassment process. A further issue involved the test to be applied when deciding whether harassment complaints are established.

In **NC-061**, the ERC addressed the question of whether members having submitted harassment complaints, and who are later retired from the Force at the time a decision is rendered, may appeal that decision. Pursuant to section 36 of the *Commissioner's Standing Orders (Grievances and Appeals)* (*CSO (Grievances and Appeals)*) an appellant must be a "member" to appeal a decision regarding a harassment complaint. The ERC had previously taken the position, in **NC-032**, that former members at the time of appealing a harassment decision have standing, as although they are no longer "members", they are seeking redress in relation to a decision arising from their employment with the RCMP. However, the Final Adjudicator in **NC-032** concluded, after reviewing the current legislative scheme, that section 36 of the *CSO (Grievances and Appeals)* demonstrates a clear intent to exclude former members from being able to appeal harassment decisions.

The ERC revisited the issue in **NC-061** and considered the legislative scheme, the Final Adjudicator's position in **NC-032** and applicable jurisprudence. The ERC maintained the position that former members should be granted standing. While true that section 36 of the *CSO (Grievances and Appeals)* defines an "appellant" as a member, any interpretation given to that provision must be remedial, fair and in line with the overall objectives of the RCMP harassment complaint process and its governing legislation. The ERC highlighted jurisprudence that has consistently recognized the right of former employees to grieve matters arising from the course of their employment. Further, the objective of the framework addressing harassment within the RCMP is to correct behaviour that negatively impacts the health of individuals, teams and the organization. Interpreting the *CSO (Grievances and Appeals)* in a manner that does not enable the harassment complaint process, including its appeal mechanism, to run its course, would undermine the goal of resolving disputes relating to alleged harassment.

In **NC-066**, the ERC examined, among various issues, a question of procedural fairness arising from a decision-maker's refusal to recuse himself. The Appellant had filed a harassment complaint against the Alleged Harasser, his direct supervisor. The Respondent directed a limited investigation of the complaint, and only the Appellant and Alleged Harasser were interviewed. During the investigation, the Appellant requested that the Respondent recuse himself from deciding the complaint, because of indications that the Respondent and Alleged Harasser had previously communicated regarding issues related to the complaint. Before ruling on the Appellant's recusal request, the Respondent obtained information from the Alleged Harasser as to the nature of their prior communications. The Appellant was not notified of this information. The Respondent, in a written ruling, then decided not to recuse himself. He later rendered a decision finding that the complaint was not established.

The Appellant appealed the Respondent's decision. He took issue with the manner in which the Respondent had consulted the Alleged Harasser prior to ruling on the recusal issue.

The ERC found that, in keeping with principles of procedural fairness, the Respondent was required to provide the Appellant with an opportunity to address any information obtained from the Alleged Harasser before deciding whether to recuse himself. Because the Appellant

had not been given such an opportunity, his right to be heard had been breached. The ERC recommended that the matter be remitted to another decision-maker and that a new decision be rendered.

In **NC-056**, the ERC addressed the test which must be applied by decision-makers when deciding whether a harassment complaint has been established. In that matter, the Appellant had presented a harassment complaint against his supervisor, the Alleged Harasser. The complaint contained allegations of incidents where the Alleged Harasser had made comments which the Appellant perceived as offensive. The Respondent directed that a limited investigation take place, and only the Appellant and Alleged Harasser were interviewed. The Respondent rendered a decision finding that the complaint was not established. Included in the Respondent's findings were conclusions that the Alleged Harasser had not intended to disparage, belittle or offend the Appellant when making allegedly improper comments. The Appellant appealed the Respondent's decision.

The ERC recommended that the appeal be allowed. In deciding whether harassment had taken place, the Respondent had to apply a test that reviewed the Alleged Harasser's conduct from the perspective of a reasonable person placed in the Appellant's situation. The Respondent had not properly applied this test because his findings regarding certain allegedly offensive comments focused on the Alleged Harasser's intention rather than a reasonable person's perspective. Additionally, the record strongly suggested that other witnesses, who had not been interviewed, could have provided evidence which would have assisted the Respondent in more thoroughly assessing the Appellant's complaint.

The ERC recommended that the matter be remitted to another decision-maker to assess whether further investigation was possible and to render a new decision.

#### *Discharge on Ground of Disability*

The ERC examined cases where members appealed discharges on the ground of disability. In one of those cases, the ERC emphasized that medical discharge proceedings must be procedurally fair. In that same case, as well as another, the ERC further underscored that decision-makers must address conflicting medical evidence when deciding whether to discharge a member.

In **NC-054**, the Appellant was diagnosed with a medical condition that resulted in an RCMP Health Services Officer (HSO) placing a restriction on the Appellant's medical profile. The Appellant's overall health worsened, and he began a final period of Off Duty Sick leave during which at some point he was hospitalized. Subsequently, the Appellant's medical practitioners reported that he could return to work performing administrative duties. The HSO disagreed and changed the Appellant's medical profile, precluding the Appellant from returning to work.

The RCMP initiated a medical discharge proceeding. The Respondent twice collected evidence from the HSO without informing the Appellant and then rendered a decision discharging the



Appellant, partly based on evidence privately obtained from the HSO. The Appellant appealed this decision. One of the grounds of appeal included a denial of procedural fairness and a failure to explain why the HSO's evidence had been preferred over that of the Appellant's medical practitioners.

The ERC recommended that the appeal be allowed. Because the Appellant's employment was at risk, a high standard of procedural fairness was required. The Respondent was expected to consider an HSO's conclusions when deciding whether to discharge a member. However, the Respondent irreparably breached the Appellant's right to be heard by relying on privately-obtained evidence without providing the Appellant the opportunity to address it. The Respondent also made a reviewable error by omitting to explain why the HSO's medical evidence was preferred over the conflicting medical evidence of the Appellant's medical professionals, which favoured a return to work. The ERC recommended that the Appellant be reinstated.

In **NC-055**, the Appellant began a continuous three-year absence from duty on sick leave during which she regularly provided RCMP Health Services with medical certificates from her medical practitioners. A Health Services Officer (HSO) eventually determined that it was highly unlikely that the Appellant's condition would sufficiently improve to enable her to return to work. As a result, the Appellant's medical profile was amended to reflect that her medical condition precluded RCMP employment in any capacity. The Appellant's medical practitioners subsequently provided information to the HSO which indicated that she was fit for duty with restrictions, and able to do "non-front-line work". However, the HSO noted that information received from the Appellant's medical practitioners did not contain clinical evidence that would change his opinion regarding her occupational prognosis. Discharge proceedings were then initiated. The Respondent rendered a decision finding that the RCMP had met its duty to accommodate the Appellant and ordered her discharge.

The Appellant appealed the Respondent's decision. The Appellant argued that the Respondent had erred by finding her unfit for duty when the latest information from her medical practitioners indicated that she could do non-front line work.

The ERC recommended that the appeal be allowed. It found that the RCMP had not met its duty to accommodate the Appellant to the point of undue hardship. There were indications in the record that the Appellant's medical practitioners had deemed her fit for a certain type of work, and it was unclear whether the HSO had reviewed this information. The HSO's generic statement that correspondence did not contain new or updated clinical evidence was an inadequate explanation. Further, the Respondent, when deciding whether to discharge the Appellant, did not have the benefit of knowing the content of the medical information submitted to the HSO. At the very least, the HSO should have explained, without providing confidential medical details, why the information provided by the Appellant's medical practitioners was insufficient to change his opinion.

The ERC recommended that the Appellant be reinstated.

# Corporate Management and Achievements

## COVID-19 Pandemic Realities and the ERC

As the worldwide situation related to COVID-19 impacted all of us, and most specifically the Public Service, the ERC adapted rapidly to the recommendations made by public health authorities and central agencies and immediately implemented working from home for all employees. The mental, physical health and safety of our employees was now more than ever at the forefront. Corporate Services were the ones to ensure that working remotely/working from home was possible for all employees during these exceptional circumstances.

The ERC already had implemented flexible work arrangements, telework and flexible work hours to promote and encourage work life balance to maintain a healthy lifestyle. It further equipped employees with the necessary tools to transition to working from home on a full time basis when the pandemic started. Ergonomic assessments and the dissemination of information on how to connect and stay safe in a home office was re-introduced to effectively manage the security and safety of employees in their home office environment.

With the new permanent funding that the ERC received this year, resourcing strategies and onboarding procedures were adjusted to a virtual platform. This proved to be beneficial for the successful integration of new employees, both in the legal operations as well as in Corporate Services.

The ERC management's communication strategy at the onset of the pandemic ensured that communication to employees was timely, transparent, easily accessible and supportive of employee's mental health. Team meetings took place every week with individual teams. Further, executive management communicated on a daily basis in order to ensure rapid implementation of any new measures or restrictions.

A return to the workplace strategy was implemented and presented at the monthly staff meeting to ensure a phased in approach for employees. However, the ERC has, since the beginning of the pandemic, been working remotely and stayed in the Phase I category.

## Mental Health and Wellness of Employees

Management's commitment to employees' wellness, mental health and safety is a priority to the organization. Communications about services available on mental health, work life balance and self-care at weekly team meetings, monthly staff meetings and individual discussions were and continue to be a standing item. The ERC soon realized that it needed to be more hands on with employees when the pandemic started and, as a result, created a wellness bulletin. This bulletin focuses on wellness and mental health tips to stay healthy in every way possible. Taking care of each other was, and remains, important now more than ever.

Being a micro-organization, the ERC has more flexibility in how it can address its employees' individual needs and adjust its communications accordingly. During the past year, the ERC ensured that all employees had access to various forums offering help and encouraged employees at every opportunity to seek advice, support and help if needed.

### Financial Management

A key priority in 2020-2021 has been the need to increase the ERC's case review capacity. The ERC worked with the portfolio department and central agencies to address its permanent funding requirements. This work resulted in the ERC receiving additional permanent ongoing funding in the Fall of fiscal year 2020-2021 to support the integrity of the appeal case review program.

With this additional ongoing funding, the ERC will increase its indeterminate full-time equivalents (FTE) complement to address the increasing number of cases received 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 additional resources will allow the ERC to reduce the backlog and wait times, restoring program integrity.

The ERC again met all of its financial reporting requirements and ensured good and sound management of its financial resources.

The ERC implemented a virtual process for paying invoices and an approval system for all financial reporting and record keeping processes.

### Technology and Digital Use

The ERC was well equipped to ensure that employees would be able to work remotely as it had acquired the experience from its 2019 office space re-fit project. The ERC had already implemented encrypted digital electronic signatures in 2019. Corporate Services were able to expeditiously provide employees with the necessary equipment and IT instructions to ensure continued connectivity and to successfully work from home. The ERC had also deployed Microsoft Teams, enabling employees' continued collaboration, productivity and exchanges in a virtual environment to ensure business continuity.

## Website and Contact Information

### Website

More information on the ERC including details about its mandate, service standards and its plan to reduce the backlog of cases can be found on the ERC's website: <https://www.erc-cee.gc.ca/>.

The ERC's website also has an index where you can search for summaries of all Findings and Recommendations of the current and previous Chairs of the ERC, as well as summaries of the decisions of the Commissioner of the RCMP.

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