



RCMP External
Review Committee

Comité externe
d'examen de la GRC

Canada 

Annual Report 2022-2023

Charles Randall Smith
Chairperson

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Message from the Chairperson



I am honoured to present the 2022-2023 RCMP External Review Committee's (ERC) Annual Report. The ERC completed 84 cases this fiscal year, the highest number of cases submitted to a Commissioner of the RCMP in any one year since the organization's inception in 1988.

In 2022, as part of the ERC's outreach initiative, I visited almost every commanding officer across our great nation. I also had an ad hoc meeting with the President of the National Police Federation (NPF), whom I thanked for the added value the NPF has brought to the appeals that are referred to the ERC. I recently met with the former Commissioner subsequent to my outreach

visits and provided her with valuable feedback given to me by the commanding officers.

With the new strategies in place at the ERC, it will be noticed that there's a marked change in terms of timeliness and efficiency. With our relatively new service standard in place that requires the ERC to complete a file within one year of its receipt, I am pleased to state that we have achieved this goal at 100%.

The ERC's accomplishments would not have been possible without the leadership of my General Counsel and Director General, Corporate Services and Chief Financial Officer. They have highly honed skills and abilities that have resulted in what I believe to be one of the best places to work in the federal public service. I would also like to commend all the ERC staff for their dedication and professionalism.

At the ERC, we have created an environment that hugely supports diversity and inclusion. We have given information sessions and training to all of our employees and have open forum discussions where everyone is valued.

The ERC will continue to thrive with its evolving strategies to achieve in eliminating its backlog and to continue to meet its service standards. The health and safety of its employees will remain a priority throughout its achievements.

Charles Randall Smith

Corporate Management and Achievements

Mental Health and Wellness

The ERC's management commitment to employees' wellness, mental health and safety continues to be a priority for the organization. The ERC continued to publish information on mental health and wellness sharing resources with employees and highlight key events such as the "Bell Let's Talk Day", Mental Health Week and the Mental Illness Awareness Week. Ongoing services available on mental health, work-life balance and self-care continued to be offered to all employees. This year, we incorporated a monthly wellness session on various health topics in an open forum.

The third year of the pandemic made the ERC realize how adaptable and flexible its work could be. All employees were working remotely with hardly any issues and no impact on productivity. In fact, this fiscal year proved to be one of the most successful for the ERC. Based on internal wellness surveys, 95% of employees were happy, healthy and appreciated the flexibilities that came from working remotely. They mentioned how much their quality of life had increased dramatically and how work-life balance was much more easily attainable with remote work. The ERC ensured that every employee was working in a home office that was suitable and equipped for their health and safety. New policies were created and tools were developed to maximize the health and safety for all employees.

Employees all attended the prevention of harassment and violence in the workplace courses at the Canada School of the Public Service. The ERC's learning curriculum was revised to include mandatory training on mental health and wellness, as well as continued evolving leadership.

The ERC is a workplace of choice for employees as we continue to adapt and evolve with the changing world, but always with its employees' health and wellness in the forefront as any organization can only be good if its employees are taken care of.

Financial and Human Resources Management

A key priority in 2022-2023 was to increase the ERC's full-time equivalents (FTE) count to 33. The ERC increased its indeterminate FTE complement to address the increasing number of cases received from the RCMP. The staffing, virtual onboarding and training of these new resources was highly successful. The ERC went from 24 to 28 employees overall, the new additions being LP's for the legal team. The ERC is now in its most successful year to date in addressing the backlog and its output of Reports of Findings and Recommendations.

Again this year, the ERC met all of its financial reporting requirements and ensured good and sound management of its financial resources.

The ERC reviewed its financial framework and risk assessment and compared it with other administrative tribunals for best practices.

Diversity, Equity, Anti-Racism and Inclusion

The ERC continued its commitment to diversity, equity, anti-racism and inclusion. Management's commitment is to work with employees on their awareness and education on ongoing diversity issues in the Public Service and in the world. Based on internal surveys, employees are more self-aware and feel more comfortable in these discussions. We continue to look at the language, format and style used in our Reports of Findings and Recommendations to ensure that we do not demonstrate any unconscious bias. We have open discussions on various topics and self-reflect as an organization to see how we can continue to evolve and adapt our processes.

We all know that these are topics that cannot all be addressed overnight, but it is part of the ERC's priorities to continue the work and be better as people and as a small part of the Public Service.

Digital Transformation

The ERC has revamped its case and information management system this year and has implemented GCdocs. This was a big project for the ERC with the migration of data and the required clean up. Its successful implementation was rolled out and the new case management system is now being downloaded so that ERC internal reporting will be more in depth and easily accessible. This data is the basis of all ERC reporting to show our successes and where improvements are needed.

We have also embarked on the Canada.ca platform and the new ERC website is now up and running. We are now in the process of updating the pages and information, as well as adding ERC summary highlights.

The Future of the ERC

As the ERC's number of employees increased to 28 in 2022-2023, we are very proud of our accomplishments and our adaptability as a micro organization. The ERC has adhered to the Direction on prescribed presence in the workplace and it is too soon to say if the productivity has been impacted but we can surely state that the overall wellness of its employees is affected. We are committed to continue the work that we do and to support our employees the best way we can.

ERC case management strategies will need to evolve as we move forward in order to adjust to the overall number of incoming files. With ERC's new case management system, it will simplify data gathering to adjust accordingly.

ERC Role and Process

Purpose of the ERC

The ERC carries out independent, arms-length reviews of certain RCMP employment and labour relations matters involving RCMP members, including appeals of disciplinary decisions, stoppage of pay and allowances decisions and certain types of administrative discharges, 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 a Report of Findings and Recommendations for a final decision to the Commissioner of the RCMP.

As an arms-length tribunal, the ERC contributes to the RCMP decision-making processes in key RCMP labour and employment matters, by enhancing the credibility, integrity and transparency of these processes.

Roles of ERC – Current Legislative Framework

The ERC's areas of operation fall under two legislative frameworks. The first is based on the current legislative framework that was established in November 2014 with the amendments to the *RCMP Act*. Under that legislative framework, the ERC provides independent appellate reviews of decisions made by the RCMP management in the following matters:

1. Conduct Authority and Conduct Board decisions;
2. Harassment complaint decisions for complaints filed before January 1, 2021;
3. Stoppage of pay and allowances orders;
4. Certain categories of discharges and demotions (medical discharges, unsatisfactory performance, absence from duty without authorization and conflict of interest); and
5. Revocation of appointments.

Roles of ERC – Legacy Framework

In addition to areas under the current legislative framework, the ERC continues to receive and process certain types of cases that were initiated before November 2014. It is anticipated that the remaining 11 grievances and 2 discipline cases will have been processed and completed in the next fiscal year.

When reviewing a Level II grievance, the ERC will perform a *de novo* analysis of the facts of the case. In the other cases, the ERC performs an appellate function; which means the ERC will review the decision to see if any reviewable error has been made.

Process Steps

Receipt of the Case File from the Office for the Coordination of Grievances and Appeals (OCGA)

Under both frameworks, the case record, which includes relevant material and submissions made by the parties, is sent to the ERC Registrar through the RCMP's OCGA.

Screening and Prioritization

The record is then examined by ERC Counsel for completeness and prioritized on the basis of various factors, including the severity of the decision being grieved or appealed.

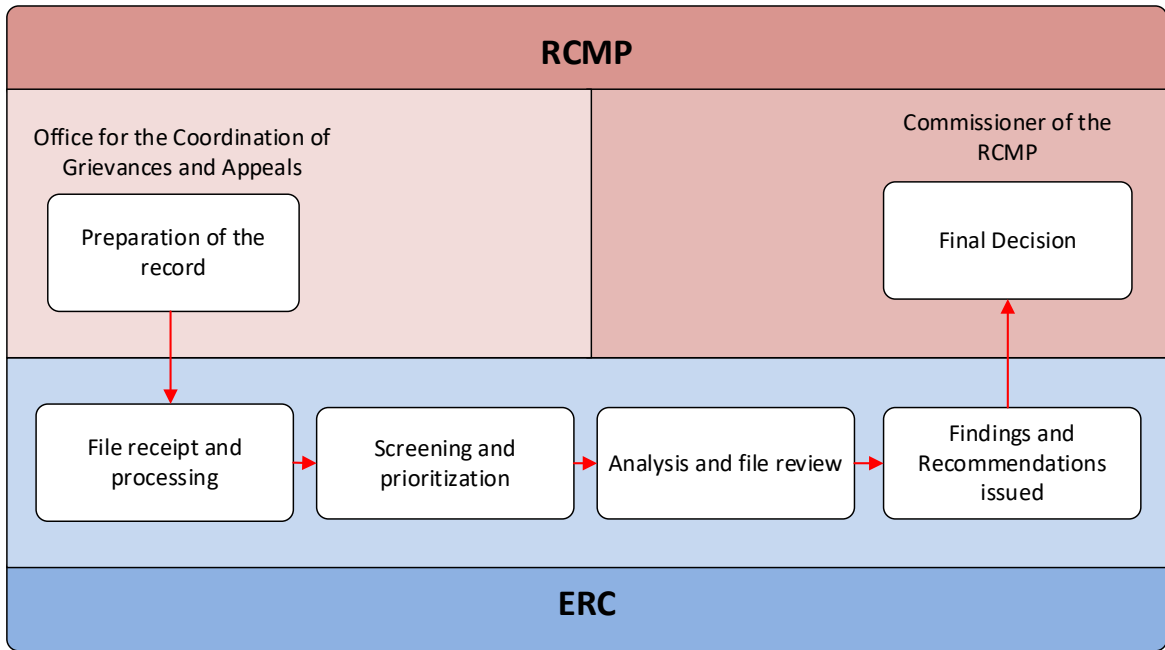
Analysis and Preparation of the Report of Findings and Recommendations

The Chairperson, with the assistance of ERC Counsel, reviews the record as well as applicable laws, jurisprudence, regulations and policies, in order to prepare his Report of Findings and Recommendations.

Pursuant to the *RCMP External Review Committee Rules of Practice and Procedure*, the ERC has the authority to seek further submissions from parties on an issue which needs clarification.

Report of Findings and Recommendations Issued

The Chairperson's Report of Findings and Recommendations is 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 in the RCMP process and must consider the ERC's Report of Findings and Recommendations. The Commissioner, or their delegate, is not bound by any Report of Findings and Recommendations. However, the Commissioner, or their delegate, is legally required to provide reasons in their decision if they deviate from the ERC Report of Findings and Recommendations.



Service Standards – Update

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. It states:

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 complete, meaningful and objective Reports of Findings and Recommendations in cases under its charge. Equally important is that the cases be dealt with in a timely manner.

Service Standards

In April 2020, the ERC introduced two service standards that were phased in over a period of time. They are:

Prescreening Service Standard

Eighty-five percent of all files coming into the ERC will be prescreened within 30 days of receipt.

This step serves two purposes. The first purpose is to ensure that the case records referred to the ERC are complete and that there are no issues that would prevent the ERC from reviewing a case; such as a jurisdictional issue, missing documents or an outstanding preliminary issue. 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.

During the fiscal year 2022-2023, the ERC met the prescreening service standard in 97% of the cases it received.

Report of Findings and Recommendations Service Standard

Seventy-five percent of files coming into the ERC will be completed within 12 months.

The service standard for the completion of the Report of Findings and Recommendations within 12 months came into effect on April 1, 2022. In 2022-2023, the ERC received 31 cases that fell within this service standard. The ERC is happy to report that of those cases, it issued the Reports of Findings and Recommendations in 11 cases during 2022-2023. All of those cases were completed within the 12-month service standard. The remaining 20 cases are all within 12 months of their referral. Results on the service standard for those cases will be reported in next year's Annual Report.

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 can ensure that it will make every effort to shorten these delays.

Backlog Reduction

Upon entering the new fiscal year, the ERC workload was comprised of 402 cases. As mentioned in the previous Annual Report, the number of cases to be reviewed by the ERC grew significantly following the modifications made to the *RCMP Act* in 2014 and led to delays in the ERC's review of grievances and appeals. The ERC obtained additional permanent funding in fall 2020 that allowed the organization to increase its legal team to 14 legal counsel. This enables the ERC to address files at a faster pace.

To facilitate the reduction of the case backlog, the ERC had developed the following strategies:

- Continue the prescreening process to reduce delays caused by files with procedural issues or missing documents and review the priority to be assigned to a file.
- Implement a prioritization system to manage the ERC's response to the increase of incoming appeal files.
- Use new permanent funding to add employees, create an additional team of ERC legal counsel and increase the ERC's case review capacity.
- Implement a list of files that were referred to the ERC prior to 2019, and assign a team of ERC legal counsel dedicated to the review of these files on a priority basis.
- Assign another team of ERC legal counsel dedicated to the review of priority cases where a member has been discharged from the RCMP.
- Implement a service standard, effective April 1, 2022, that 75% of new incoming files will be completed within 12 months of their arrival.

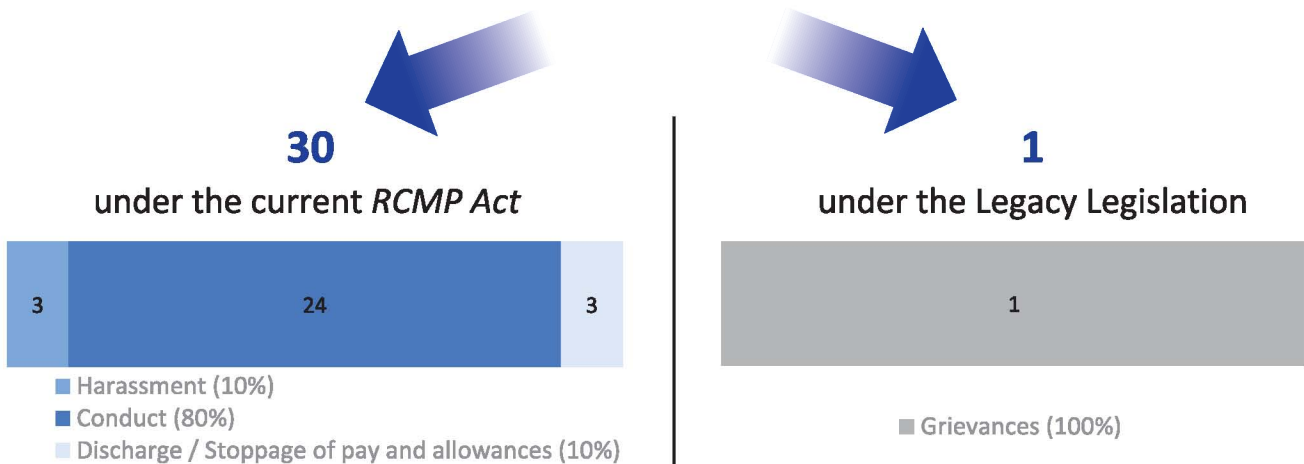
These strategies permitted the ERC to reduce its caseload to 348 cases. Namely, the priority list of cases referred prior to 2019 originally comprised of 138 cases was reduced to 59 cases. The legal team assigned to the service standard cases reviewed 11 of the 31 cases received, all within the established 12-month period.

The ERC also reviewed its analysis and drafting processes in order to find efficiencies and streamline the review of cases without compromising the integrity and thoroughness of these processes.

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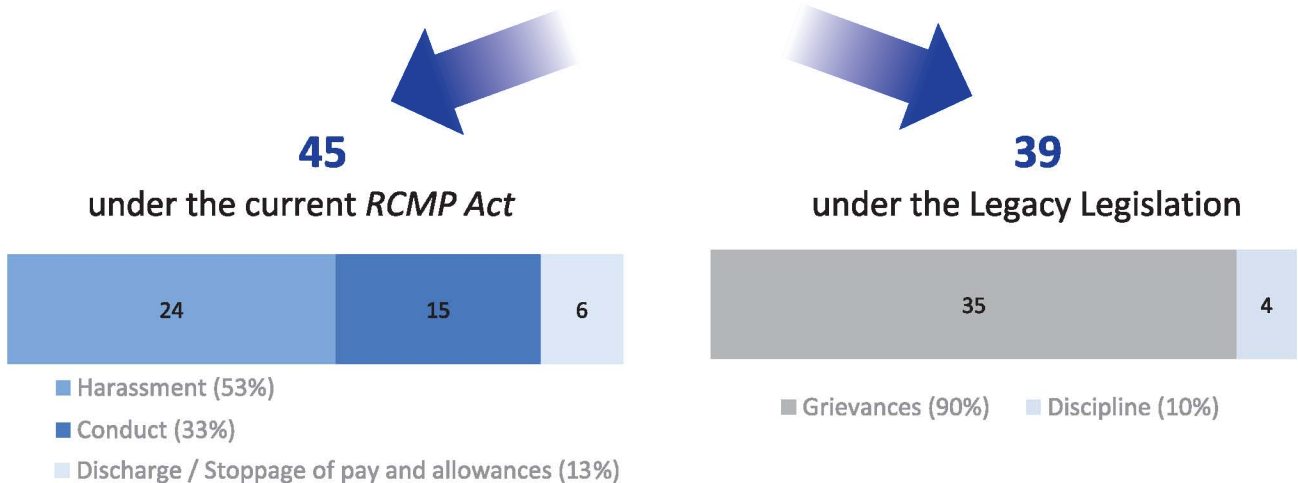
Files Received

The RCMP referred **31** cases to the ERC.



Files Completed

The ERC completed **84** cases during 2022-2023.



(Note: 1 appeal was withdrawn before the ERC made its Findings and Recommendations.)

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Backlog Reduction

ERC Caseload

In addition to meeting its service standards, the ERC strives to reduce its backlog of cases so that it can provide Findings and Recommendations in a timely manner and ensure fairness for the parties involved.

On April 1, 2022
402 cases
were active before the ERC.

The ERC received 31 new cases.

The ERC reviewed
11 cases
subject to its service standard.

The ERC reviewed
73 cases
that predated its service standard.

(Note: 1 appeal was withdrawn before the ERC made its Findings and Recommendations.)

As of March 31, 2023
348 cases
were active before the ERC.

Legacy Legislation:
11 Grievances
2 Discipline Appeals

Current Legislation:
208 Harassment
126 Conduct
1 Admin Discharge

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Service Standards

Service Standard 1 Pre-screening	Indicator
The ERC will pre-screen the appeal record to confirm that it is complete and ready for review.	30 calendar days from the date the ERC receives the appeal record. (The ERC will meet this standard for 85% of all cases received.)

Service Standard 2 Findings and Recommendations	Indicator
The ERC will provide the Commissioner of the RCMP with a report containing the ERC Chairperson's Findings and Recommendations.	12 months from the date the ERC receives the appeal record. (The ERC will meet this standard for 75% of cases received starting April 1, 2022)

97%
of cases were
pre-screened within the
30-day service standard

100%
of the completed cases were
completed within the
12-month service standard*

* 20 of 31 cases received in 2022-2023 are still under review by the ERC. None of those cases have exceeded the 12-month service standard. Complete 2022-2023 service standard results will be reported as part of the 2023-2024 Annual Report.

Case Highlights: 2022-2023

Below are summaries of key issues arising from select ERC Reports of Findings and Recommendations issued in the last fiscal year.

Appeals

The law permits the Commissioner to allow an appeal of an RCMP decision-maker's decision if that decision was reached in a procedurally unfair manner, is based on an error of law, or is "clearly unreasonable." This year, the ERC considered several appeals that raised these issues.

Procedural Fairness

Procedural fairness refers to the most basic rules that decision-makers must follow when individuals' rights are affected. For example, in an RCMP proceeding, a member is entitled to receive and review the evidence against them, and to meaningfully present their case to a neutral decision-maker.

In **NC-118**, the ERC found that the decision-maker denied the Appellant procedural fairness by basing her decision to discharge him partly on an undisclosed discussion she had with a doctor.

The RCMP began a formal process to discharge the Appellant on the ground that it could not accommodate his disability without experiencing undue hardship. The Appellant received disclosure of the documents the RCMP was relying on in support of its case. He also received a chance to make arguments against his discharge. At some point in the discharge process, the decision-maker privately emailed questions to the Health Services Officer (HSO) relating to the Appellant's situation. The HSO answered those questions and provided further information. The Appellant learned of this off-the-record exchange only after he received the decision to discharge him. The email exchange was annexed to the Record of Decision.

On appeal, the ERC found that the decision-maker deprived the Appellant of his procedural right to be heard. Given that the Appellant's employment with the RCMP was at risk, he was owed a high degree of procedural fairness. Namely, he had a right to know about the decision-maker's conversation with the HSO, and to review the statements they made and the evidence they discussed involving his case. He also had a right to correct or challenge that information.

The ERC recommended that the appeal be allowed.

A similar issue arose in **C-067**. In that matter, the ERC found that the Conduct Authority denied the Appellant procedural fairness by not giving her a key document before her Conduct Meeting.

After the RCMP alleged that the Appellant offended the *Code of Conduct*, it appeared to fulfill its disclosure obligation by giving her the documents it was relying on to support that allegation. Yet, on appeal, the Appellant claimed that at the Conduct Meeting, the Conduct Authority referred to a document she never received. The Appellant backed this claim, in part, by filing secretly-made recordings of the meeting. The Conduct Authority later described the undisclosed document as performance-related, and said it did not influence his decision to establish the allegation. The ERC requested that the Conduct Authority file a copy of the document on appeal. He did not do so.

The ERC concluded that the Conduct Authority deprived the Appellant of her right to respond to significant information that had been before him. The undisclosed document related to the Appellant's performance, which was a live issue at the Conduct Meeting. The fact that the Appellant never received it limited her ability to defend herself, and to make an informed appeal.

The ERC recommended that the appeal be allowed.

The ERC also found that the secret recordings of the Conduct Meeting did not meet criteria for admitting new evidence on appeal. The recordings would not have affected the outcome of the decision. Moreover, their admission was not in the interests of justice. The ERC explained that: they were not filed at the outset of the appeal, their admission could place a chill on workplace communication, and the parties' submissions otherwise enabled a proper hearing of the appeal.

In **C-060**, the ERC concluded that the Conduct Authority reached his decision in a procedurally unfair way, largely because he had a "reasonable apprehension of bias" against the Appellant. A reasonable apprehension of bias may arise if a decision-maker makes up their mind, or appears to make up their mind, before meaningfully hearing a party.

The RCMP brought allegations that the Appellant had breached the *Code of Conduct*. During the Conduct Meeting, the Conduct Authority did not seem to give the Appellant a chance to respond to the allegations. Rather, he quickly turned to a discussion about which conduct measures she should receive. The next day, he signed a final decision in which he found that the allegations were made out, and ordered conduct measures consisting of losses of pay.

During the appeal, in which the Appellant partly took issue with how the Conduct Meeting had unfolded, she received disclosure, including two emails dated one day before that meeting. One of the emails was from an advisor to the Conduct Authority. It contained a draft copy of the decision which stated that the allegations had been "**ESTABLISHED**" [*original emphasis*], and included spaces for the Conduct Authority to fill in reasons why. The other email was a reply in which the Conduct Authority thanked the advisor for the draft, and discussed which conduct measures he would be ordering. The final decision was mostly the same as the draft, with the Conduct Authority having filled in reasons for finding that the allegations were established.

In the Appellant's opinion, the Conduct Authority concluded that the allegations were established before he even met with and listened to her. She believed that the only issue in the Conduct Authority's mind during the Conduct Meeting was which conduct measures to give her.

The ERC found that there was a reasonable apprehension of bias. An "informed person" who reviewed this matter realistically and practically, and thought it through, would believe it was more likely than not that the Conduct Authority decided the case unfairly. The record strongly suggested that he made up his mind that the allegations were established before the Conduct Meeting took place. This removed the benefit of the doubt that he was being impartial.

The ERC recommended that the appeal be allowed.

Error of Law

An error of law often involves a decision-maker's misunderstanding or misapplication of the law. For example, a decision-maker in an RCMP proceeding may commit an error of law by misinterpreting or misapplying a provision of the *RCMP Act*, or a legal principle.

In **C-071**, the ERC considered whether the Conduct Authority erred in law by misapplying subsection 42(2) of the *RCMP Act*. That provision prevents conduct authorities from imposing conduct measures more than one year after learning about a member's alleged misconduct.

The issue in this appeal was whether subsection 42(2) of the *RCMP Act* permitted the Conduct Authority to make findings of misconduct more than one year after previous conduct authorities had become aware of the conduct. Upon learning that the Appellant was "sexting" with another member, the Appellant's wife informed the RCMP of her concerns, and made a complaint to a police oversight office. That office carried out an investigation. One of its conclusions was that the Appellant had misused, and failed to secure, an RCMP device. The Conduct Authority chose to address this alleged misconduct through a conduct process, even though previous conduct authorities knew about it over a year earlier. The Conduct Authority went on to find that the Appellant committed the alleged misconduct. However, she did not give the Appellant any conduct measures, noting that subsection 42(2) of the *RCMP Act* prohibited her from doing so.

The Appellant filed an appeal. He argued that the Conduct Authority erred in law by finding that subsection 42(2) of the *RCMP Act* allowed her to make findings of misconduct beyond the one-year time limit for imposing conduct measures. In the Appellant's view, once that time limit had run out, a Conduct Authority could not order conduct measures or make findings of misconduct.

The ERC found that the Conduct Authority did not commit an error of law. Both the Federal Court and the Federal Court of Appeal dealt with this very issue in a separate matter while the Appellant's case was ongoing. The Appellant was aware of those proceedings.

The Courts read subsection 42(2) of the *RCMP Act* as allowing a conduct authority to make findings on allegations after the time limit set forth in that provision expired. The Courts reasoned that the *RCMP Act* was not vague on this point; Parliament meant for the time limit to apply only to conduct measures. The ERC was bound by this finding. It recommended that the appeal be dismissed.

Conversely, in **NC-125**, the ERC concluded that the decision-maker in a harassment complaint process erred in law by finding that the Complainant had to prove that harassment took place.

The Complainant brought a harassment complaint alleging that his supervisor repeatedly excluded, embarrassed and otherwise mistreated him. Following an investigation, the decision-maker decided that he could not come to a finding of harassment. The decision-maker explained, in part, that the Complainant had not shown that harassment occurred.

On appeal, the ERC found that the decision-maker made an error of law by misapplying a legal principle. RCMP and common law authorities indicated that a review of a harassment complaint is not an “adversarial” process. This means that a complainant does not have an onus of proof, and that a decision-maker does not function like a judge. Rather, the review is supposed to be “inquisitorial.” The aim is to consider all the available evidence and determine what happened.

The ERC recommended that the appeal be allowed.

Clearly Unreasonable

A decision that is clearly unreasonable is so flawed that no amount of deference to the decision-maker will justify letting it stand. This is a rigid legal standard because it means a decision will be reasonable if a sound line of analysis, and at least some evidence in the record, supports it.

In **NC-101**, the ERC considered whether a decision to discharge the Appellant for medical reasons was clearly unreasonable.

The events that led to the decision unfolded as follows. The Appellant was off duty sick for many years. Over that time, the RCMP repeatedly tried to gradually return her to work. She refused each of those attempts, for a variety of reasons. The RCMP also twice tried to transfer her to a large city, at public expense, where she could access the specialized care that she needed. But she turned down those opportunities for reasons that were personal or unrelated to her employment. Following a proceeding, the decision-maker concluded that it was not possible to accommodate the Appellant’s disability short of undue hardship, and ordered her discharge.

The Appellant brought an appeal. She argued that the decision was clearly unreasonable.

The ERC found that the decision was not clearly unreasonable. The ERC noted that a clearly unreasonable flaw will raise “no real possibility of doubting that a decision is defective.” It then indicated that the decision was not defective, given that there was ample evidence in support of it. The RCMP tried to accommodate the Appellant’s disability several times. Each time it did so, the Appellant rejected the accommodation, then displayed reluctance, then went on to assert a new restriction that made an accommodation impossible. She also frustrated the RCMP’s efforts at accommodation for reasons that were irrelevant to the process, or out of the RCMP’s control. The decision-maker discussed this evidence in detail, and relied on it in ordering the discharge.

The ERC recommended that the appeal be dismissed.

In **NC-102**, the ERC considered whether a decision to issue a Stoppage of Pay and Allowances Order (SPAO) against the Appellant was clearly unreasonable.

The decision-maker imposed the SPAO after local police charged the Appellant with various offences, including exposing himself in public to multiple witnesses, and the RCMP opened a *Code of Conduct* investigation. The decision-maker held that the criteria for issuing the SPAO were met, including a requirement the Appellant be “clearly involved” in the alleged incidents.

On appeal, the Appellant argued that the Decision was clearly unreasonable. He explained that he was not clearly involved in alleged incidents, and disputed the reliability of witness evidence.

The ERC found that the decision-maker’s analysis of the “clearly involved” requirement did not result in a clearly unreasonable decision. The decision-maker’s reasons sufficiently linked the evidence to his key findings. He recognized inconsistencies in certain witness descriptions of the possible wrongdoer, but explained why he still found that the Appellant was clearly involved in the alleged incidents. He also noted areas of consensus among the witnesses that pointed to a clear involvement. Moreover, he identified objective evidence (e.g., surveillance footage) in support of a clear involvement. He ultimately concluded that, although some of the evidence could have been stronger, the evidence in its entirety supported a finding of clear involvement.

The ERC recommended that the appeal be dismissed.

Legacy Cases

The ERC continues to review certain categories of grievances. It also examines appeals of adjudication board decisions. These matters are described as “legacy” cases because the RCMP referred them to the ERC under provisions of an earlier version of the *RCMP Act*.

Grievances

In **G-775** and **G-776**, the ERC considered whether the Grievor had “standing” in two grievances. Standing refers to a series of conditions that must be met before a grievance may be heard. The conditions are set forth in subsection 31(1) of the *RCMP Act*. One condition is that no other redress process is available under the *RCMP Act* or its regulations.

The events that led to the two grievances were as follows. The Grievor filed a harassment complaint, which the Respondent dismissed without holding an investigation. The Grievor disputed that decision by way of the two grievances. He raised several concerns regarding the Respondent’s handling of the complaint, and argued that the complaint should have been investigated. In order to resolve the two grievances, the parties agreed that the Grievor would present a new harassment complaint, and that the Respondent would make a new decision. The parties also agreed that the Grievor would withdraw the two grievances, but retain a right to grieve the Respondent’s new decision. The Grievor filed a fresh harassment complaint. It included the same allegations found in the first complaint. The Respondent again rejected the complaint without holding an investigation. The Grievor contested the new decision by way of a new grievance in which he raised various issues, including the failure to investigate his allegations. However, the Grievor never withdrew the first two grievances.

The RCMP referred both the new grievance, and the first two grievances, to the ERC.

The ERC found that the Grievor did not have standing in the first two grievances. The ERC explained that the issues the Grievor raised in the first two grievances could be dealt with in the new grievance. The new grievance therefore amounted to another redress process available under the *RCMP Act* that could remedy the harms alleged in the first two grievances.

The ERC recommended that the first two grievances be dismissed.

In **G-782**, the ERC found that the Grievor experienced discrimination based on his disability.

This matter involved an alleged entitlement to pre-discharge leave. The Grievor was an officer who was on sick leave before being medically discharged. RCMP policy stated that officers earned a set number of hours of leave immediately before their discharges, in recognition of the unpaid overtime they had worked as officers. The Respondent’s office decided that the Grievor was not entitled to this leave prior to his medical discharge, since he was already off work. The Grievor filed a grievance. He argued that the RCMP had discriminated against him based on his disability, and caused him financial harm. The Adjudicator denied the grievance.

The ERC found that the Grievor established a case of discrimination by showing that:

- disability was a protected ground under human rights law;
- he suffered harm; and
- his disability was a factor in that harm.

The ERC then found that the Respondent did not justify the decision to refuse earned leave to an officer who was being medically discharged as a “*bona fide* occupational requirement”. The ERC explained that the decision was not:

- rationally connected to the performance of the job;
- made in an honest, good faith belief that it was necessary to fulfill an employer goal; and
- reasonably necessary to achieve a legitimate, work-related purpose.

The ERC recommended that the grievance be allowed. It further recommended that the RCMP correct the Grievor’s service record by extending his discharge date, and by providing him with his earned leave.

Appeals of Adjudication Board Decisions

In **D-139**, the ERC found that the Adjudication Board (Board) made fundamental errors by agreeing to change a key part of an allegation at the beginning of the hearing.

The proceeding unfolded as follows. The RCMP served the Appellant with a Notice of Hearing (Notice) alleging that he committed disgraceful conduct while he was off-duty. The Notice set forth the Particulars of the allegation. One of the Particulars stated that the Appellant “criminally harassed” his ex-girlfriend (Particular 3). On the first day of the hearing, the Respondent asked the Board to amend Particular 3 by changing the words “criminally harassed” to “harassed.” The Board approved that request. The Board then went on to decide that the allegation was established. The Appellant appealed this decision. He submitted, in part, that the Board erred by allowing the Respondent to amend Particular 3 in the manner described above.

The ERC found that the Board made clear and determinative errors by agreeing to amend Particular 3. Most notably, the Board did not follow subsection 45.11(1) of the *RCMP Act*. That provision permitted an amendment to correct a technical defect in a Notice, so long as the change did not affect the Notice’s substance, and did not prejudice the conduct of the subject member’s defence. In the ERC’s view, amending the alleged wrongdoing from “criminal harassment” to “harassment” was at odds with subsection 45.11(1). This change suddenly and unexpectedly altered the substance of the case against the Appellant and, in turn, prejudiced the conduct of his defence. The ERC added that the change was procedurally unfair because it deprived the Appellant of a meaningful opportunity to respond to the revised case against him.

The ERC recommended allowing the appeal and ordering a new hearing.

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 Reports of Findings and Recommendations of the current and previous ERC Chairpersons, as well as summaries of the decisions of the Commissioner of the RCMP.

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