



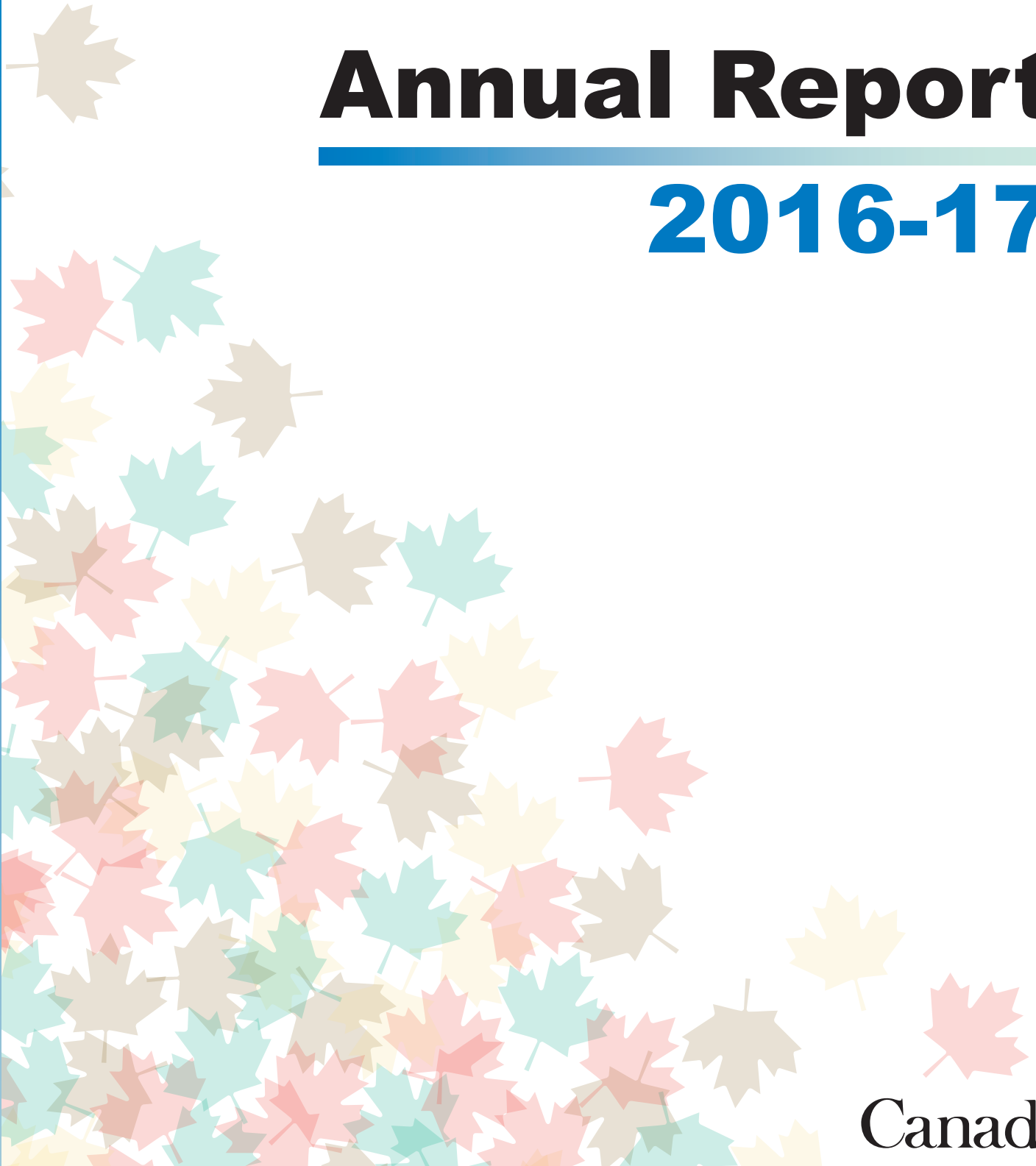
RCMP External  
Review Committee

Comité externe  
d'examen de la GRC

# Annual Report

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## 2016-17



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RCMP External  
Review Committee

Comité externe  
d'examen de la GRC

June 19, 2017

The Honourable Ralph Goodale, P.C., M.P.  
Minister of Public Safety and Emergency Preparedness  
269 Laurier Avenue West  
Ottawa, Ontario  
K1A 0P8

Dear Minister:

In accordance with Section 30 of the *Royal Canadian Mounted Police Act*, I am pleased to submit to you the annual report of the RCMP External Review Committee for fiscal year 2016-17, 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 'Elizabeth Walker'.

Elizabeth M. Walker  
Chair



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# Message from the Chair

I am pleased to provide my annual report to Parliament on the activities and recommendations of the RCMP External Review Committee (ERC) in 2016-17.

The ERC is an independent review body in the labour and human resources management system of the RCMP. As a critical part of the oversight system for the RCMP, we are focused on supporting a healthy, fair and respectful RCMP workplace. Our reviews of appeals of important workplace issues for RCMP members (including harassment, dismissals and discharges) provide an assurance of fair and transparent processes and decision-making, enhance the integrity of the RCMP recourse system and promote confidence in the system within and outside the Force. We also support the public interest in a well-functioning national police service.

In 2016-17, the ERC continued to improve its delivery of case reviews. We issued findings and recommendations in 38 cases, an improvement of 31% over the prior year and 48% over the ERC's previous five-year average annual output. We also developed revised report formats to address new procedural and legal issues arising in case referrals under the current *RCMP Act*, as amended in late 2014, and further standardized our reports for legacy cases. Our efficiency improvements are the result of our dedicated and experienced team, who worked under increased pressures and whose professionalism and versatility were unwavering as we faced many challenges arising from the new case referrals.

As a consequence of the 2014 amendments to the *RCMP Act*, we now receive case referrals under both the current *RCMP Act* (as amended) and the prior, legacy *RCMP Act*. In 2016-17, we received 82 case referrals, an increase of 183% over the average number of cases (29) received over the five years prior to the 2014 amendments. At the end of 2016-17, with the number of referrals having far outpaced ERC capacity to complete reviews for two full years, our caseload of 173 files had increased more than two and one-half times from the 65 cases at the ERC at the end of 2014-15 despite improved ERC productivity. We expect high rates of referrals to continue for the next number of years, as we will continue to receive both legacy legislation and current legislation files. In addition, many recent case referrals under the new *RCMP Act* involve significant legal complexity and volumes of materials (e.g. medical discharge cases, harassment appeals and conduct board matters) and require considerable case review resources.

The ERC continues to face critical capacity challenges to its ability to complete case reviews in a timely manner. Additional delays in our responsiveness will substantially reduce the utility of our findings and recommendations to both RCMP members and the Force. In light of these challenges and the importance of independent review of the labour and employment appeals referred to us, I remain committed to working with the appropriate authorities to ensure adequate funding for the ERC to address our backlog and to meet the expectations of RCMP members, the RCMP itself and the public.



Elizabeth M. Walker  
Chair





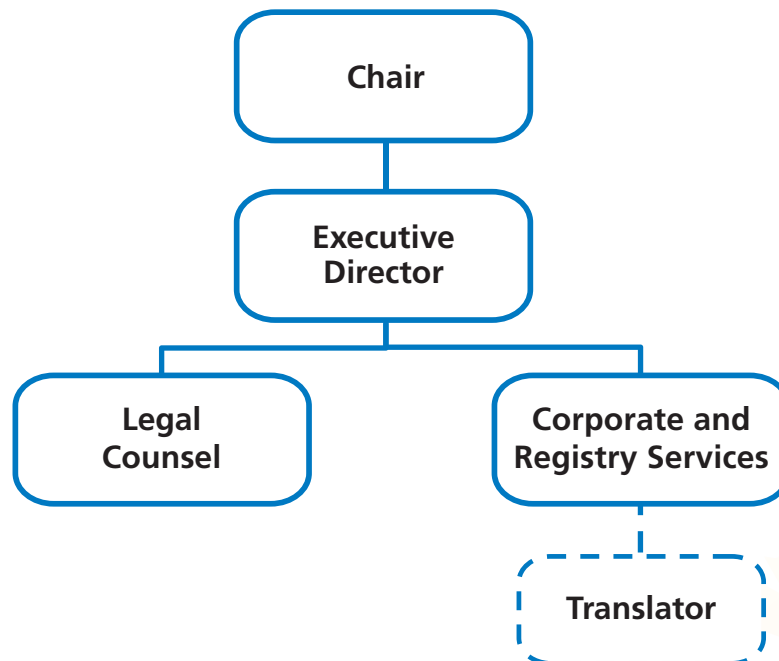
# PART I - Role and Organization

The ERC carries out independent reviews of certain RCMP employment and labour relations matters involving regular and civilian RCMP members, including appeals of disciplinary decisions and decisions regarding allegations of harassment, among others. As a quasi-judicial tribunal, the ERC applies the rule of law and supports transparency, fairness and impartiality in RCMP processes and decision-making.

The ERC is the only independent review mechanism available to RCMP members for the cases that are referred to it, other than the courts. Once the ERC has reviewed a case, it issues findings and recommendations to the Commissioner of the RCMP for a final decision.

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

ERC staff include legal counsel who have expertise in labour, employment and administrative law, program administrators who maintain case review operations and deliver corporate services, an Executive Director and an in-house expert translator.



## The ERC Case File Review Program

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

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

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

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

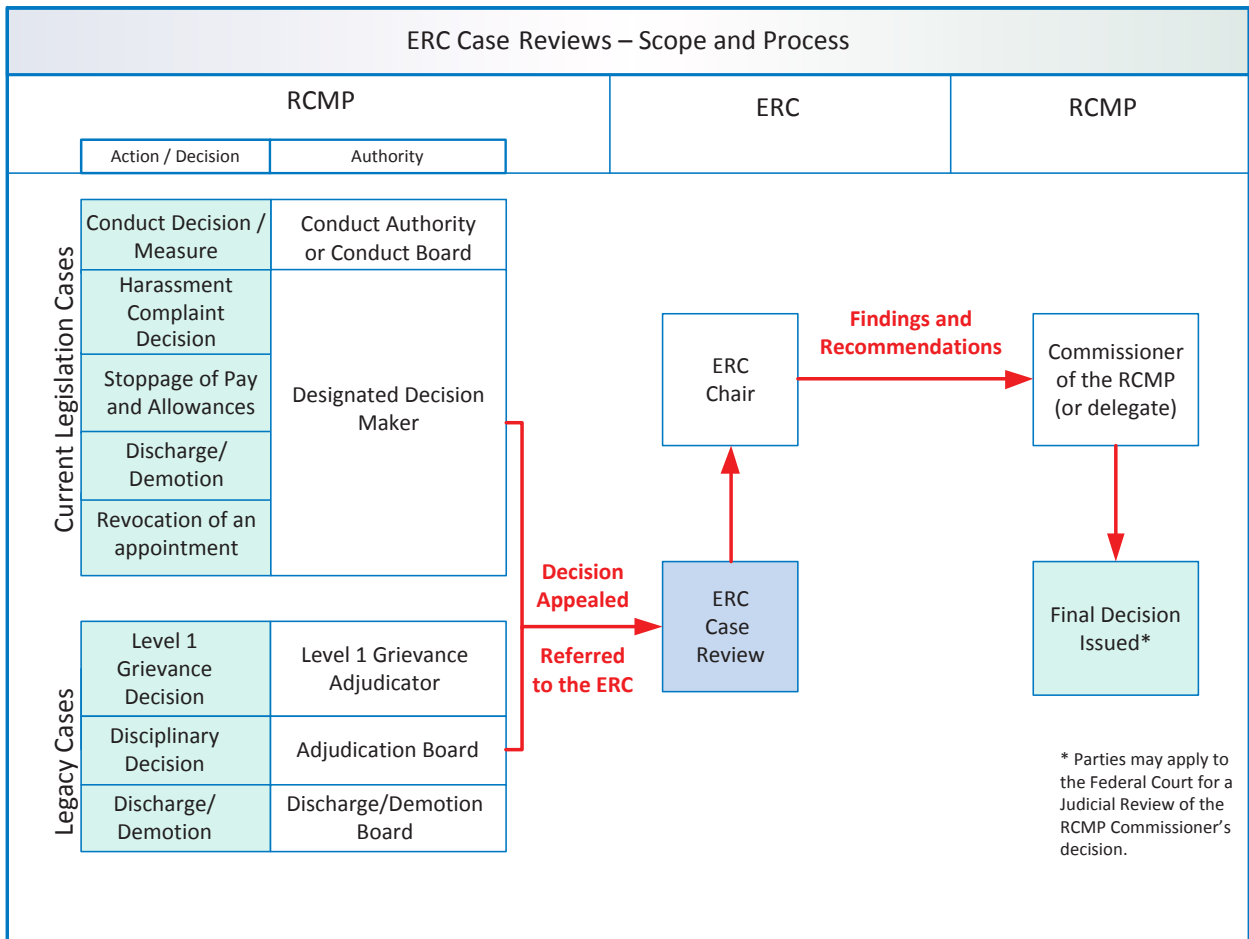
The work of the ERC benefits both RCMP members and the Force as an organization in a number of ways: supporting fair and transparent processes and decisions; enhancing confidence both within and outside the Force in the integrity of RCMP labour and human resource management practices; and, providing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

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

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

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

**Figure 1**



Cases are generally processed in the order in which they are received by the ERC in the interests of fairness and equity. However, the ERC is continuing to develop its framework for assigning priority for its case reviews, recognizing, in particular, that sanctions under the current legislation apply to members immediately (not pending appeal decisions, as for legacy cases) and that there are differing impacts of our delays on the members involved and on the RCMP as an organization. In addition, the ERC has prioritized cases involving preliminary issues (such as time limit questions, a member's standing to appeal or whether a matter is actually referable to the ERC) since such cases can often be processed quickly and it is important to remit them to the RCMP to be dealt with within the Force. In setting case priorities in all instances, the ERC remains cognizant of possible effects on equity and fairness.

## Current Legislation Cases

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

### Conduct Decisions/Measures Imposed on Members

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

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

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

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

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

### Decisions on Harassment Complaints\*

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

## Decisions to Discharge or Demote a Member\*

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

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

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

## Revocation of an Appointment\*

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

## Legacy Legislation Cases

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

## Grievances

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

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

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

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

## Appeals of Discipline (Adjudication) Board Decisions

Under *Part IV* of the former *RCMP Act*, when an RCMP member is alleged to have committed a serious violation of the *RCMP Code of Conduct* and formal discipline is initiated, an internal hearing is held to determine whether or not the allegations are established and, if so, the appropriate sanction. The matter is heard by an Adjudication Board consisting of three RCMP officers. If, after the Board renders its decision, either the Force or the member wishes to appeal that decision to the Commissioner of the RCMP, the Appellant and the Respondent provide written submissions to the Commissioner. The Commissioner then refers the file to the ERC for its review.

## Appeals of Discharge/Demotion Board Decisions

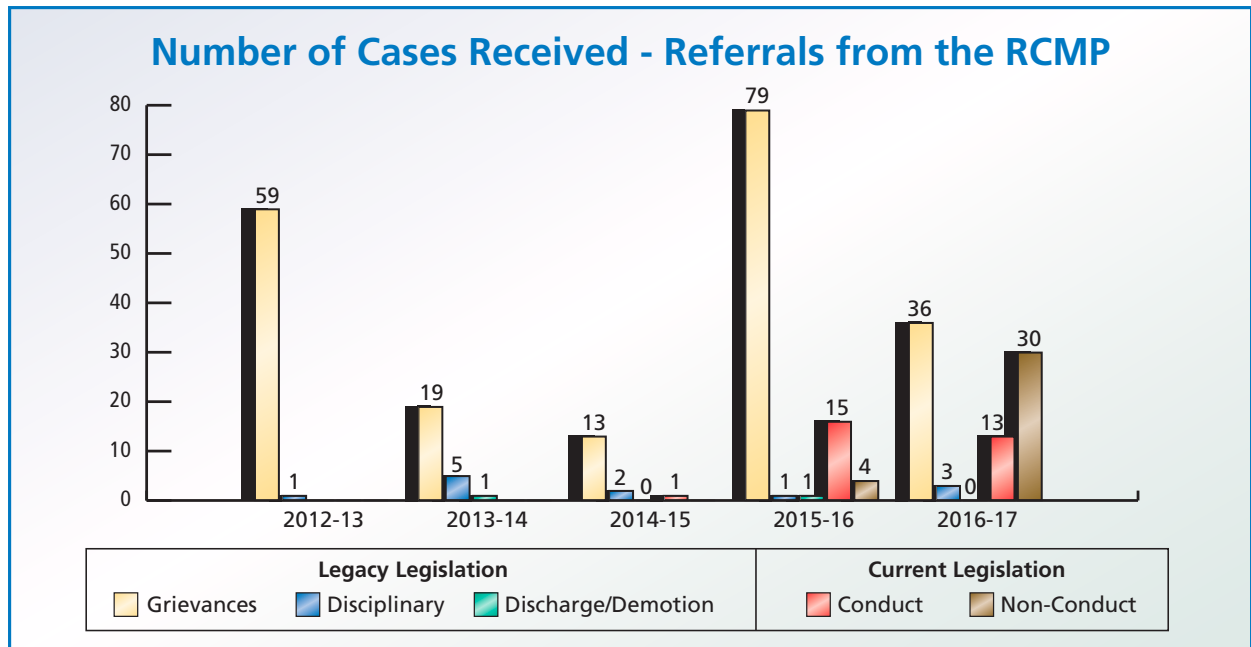
Under *Part V* of the former *RCMP Act*, a discharge or a demotion proceeding may be initiated against a member for failing to perform their duties in a satisfactory manner. When this happens, the member may request that a Discharge and Demotion Board, consisting of three RCMP officers, be convened to review the matter. The decision of the Board may be appealed by either the member or the Appropriate Officer who initiated the proceeding. Appeal submissions are made in writing to the Commissioner of the RCMP. The Commissioner then refers the appeals to the ERC for its review.

# PART II - Our Results for 2016-17

## Case Reviews

### Files Referred to the ERC for its Review

The ERC received 82 referrals from the RCMP in 2016-17 divided between current legislation files (43) and legacy legislation files (39).

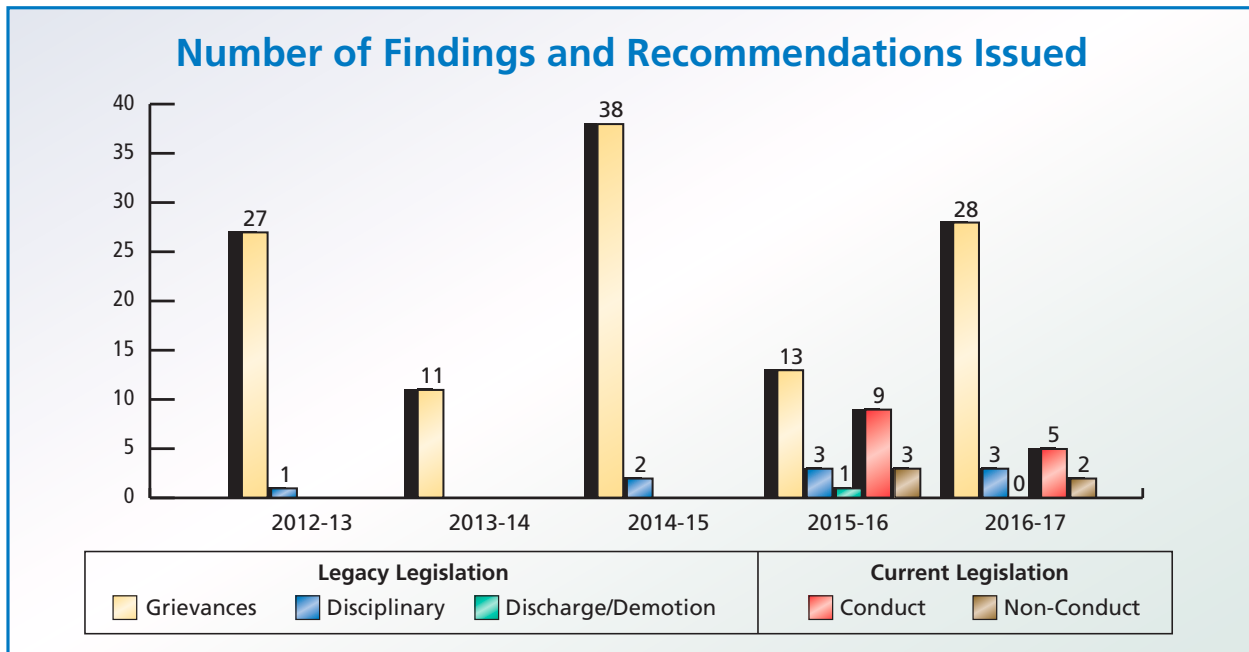


The 13 conduct files received comprised 11 conduct authority decision appeals and two conduct board decision appeals. Of the 30 non-conduct files received, 21 involved harassment complaint decisions, seven involved decisions to discharge a member for medical disability or performance reasons, and two involved an order to suspend pay and allowances.

The 36 grievance files received in the year addressed a broad range of employment matters (harassment, discrimination, isolated post costs, language requirements, legal assistance at public expense, meal allowances, promotional processes, relocation costs, medical discharge, suspension of pay and allowances, and medical requirements to perform duties). Of the three discipline files received, two were member appeals of an adjudication board decision to demote them and one was an appropriate officer (manager) appeal of an adjudication board decision which imposed no sanction on the member.

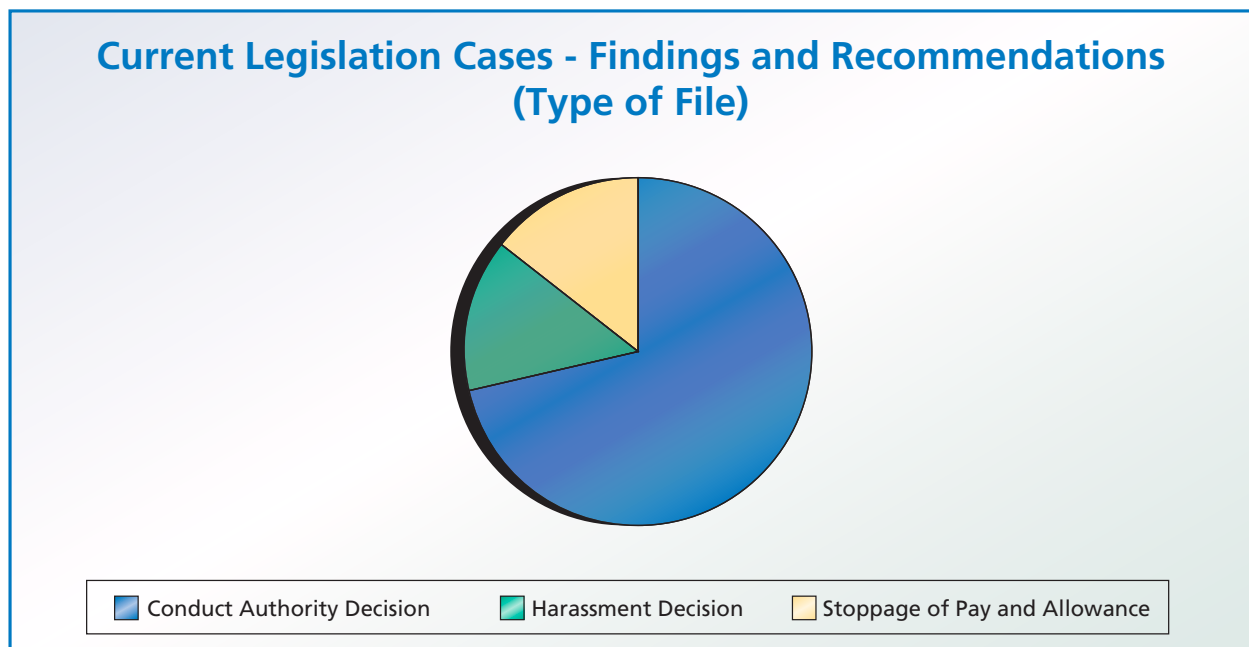
## Reviews Completed

The ERC completed reviews and issued findings and recommendations for 38 files: seven current legislation cases and 31 legacy cases.



### Current Legislation Cases

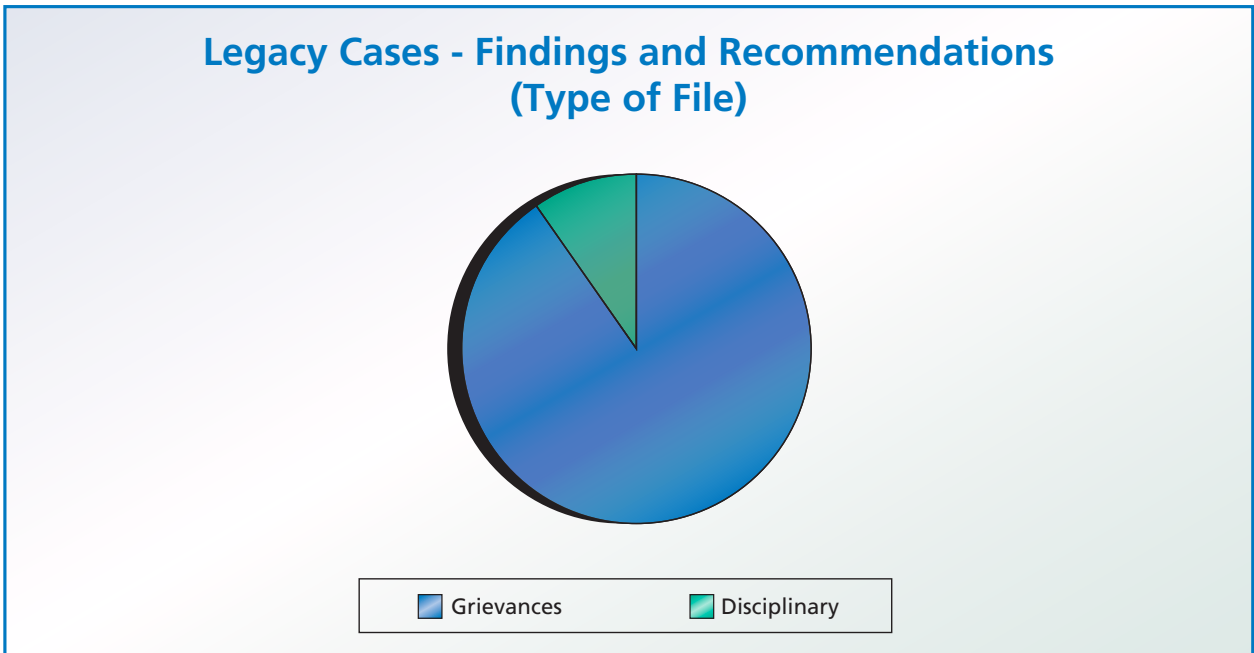
The seven findings and recommendations for current legislation cases comprised five conduct authority decisions, one harassment investigation decision and one order to stop a member's pay and allowances. The ERC continues to invest substantial time in assessing new legal issues arising in the current legislation cases, along with the associated impacts of new RCMP policies and guidelines, new file content and related management processes within the Force.



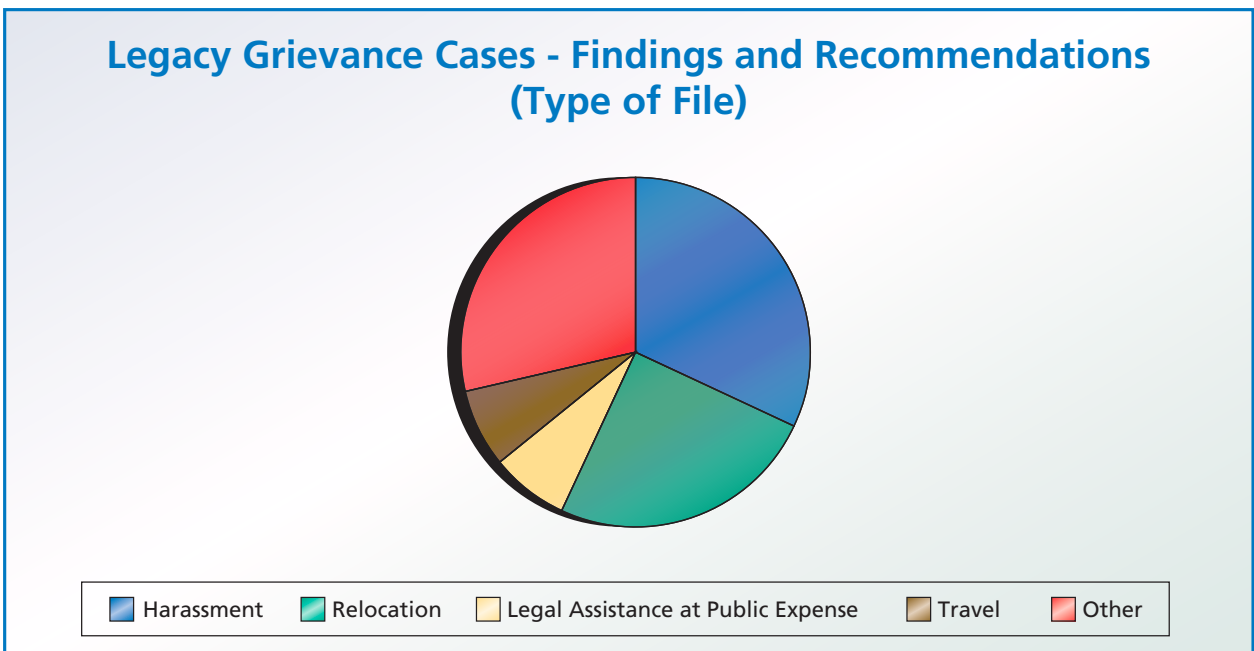


## Legacy Legislation Cases

Of 31 findings and recommendations issued by the ERC for legacy cases, 28 were for grievances and three for disciplinary files. The discipline files included two member appeals (an order to resign and a forfeiture of five days' pay) and an appeal by a manager of a decision that an allegation of disgraceful conduct was unfounded.



The 28 grievance files reviewed by the ERC were as follows: nine harassment; seven relocation costs; two legal assistance at public expense; two travel expense claims; and eight others (duty to accommodate, foreign service allowances, compensation for duties, isolated post costs, language requirements, request for leave without pay, meal allowance and medical requirements). Fifteen of the 28 grievance files also involved a consideration of preliminary issues (i.e. time limit questions, file referability or member standing to grieve).

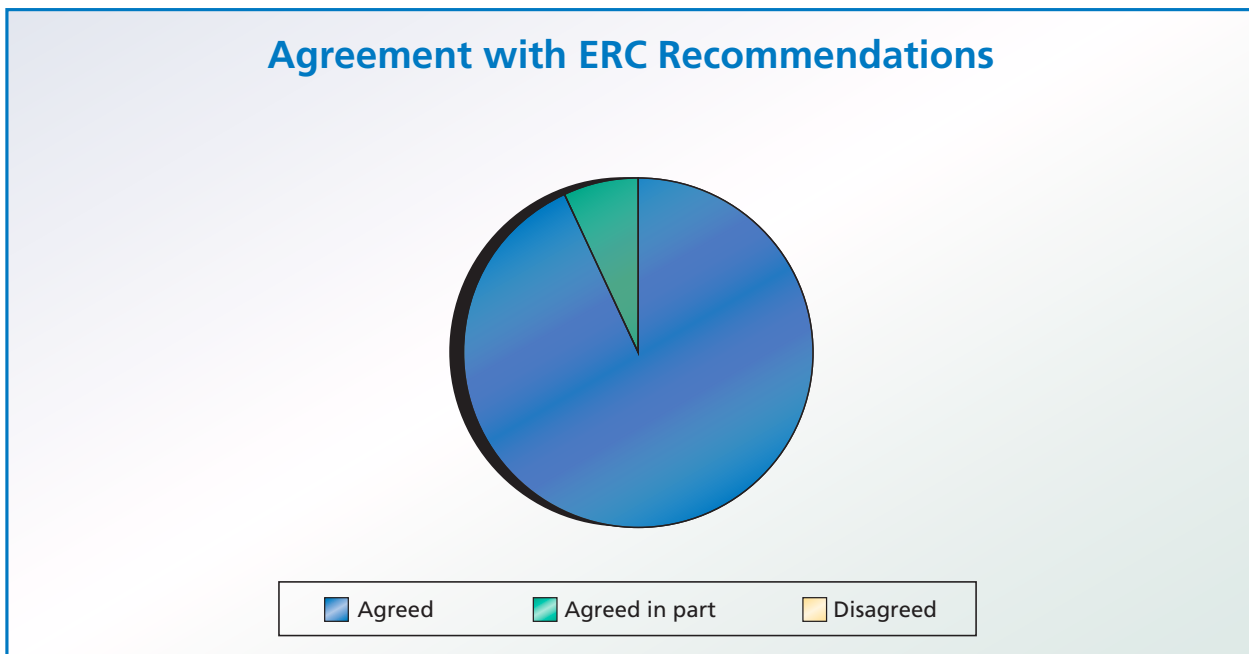


## RCMP Commissioner Final Decisions Received

The ERC received the final decision of the Commissioner of the RCMP for 28 files for which the ERC had previously issued findings and recommendations: 22 legacy cases (19 grievances, two discipline and one discharge files); and, six current legislation cases (four conduct authority and two harassment files).

### Extent of Agreement with ERC Recommendations

The Commissioner of the RCMP agreed with ERC recommendations in 93% of cases (22 legacy cases; 4 current legislation cases), partly agreed in 7% (0 legacy cases; 2 current legislation case) and disagreed in none. For one of the files in which the Commissioner agreed in part with the ERC, the ERC recommended that the member's appeal of two allegations of discreditable conduct and of the conduct measures imposed be allowed. The Commissioner found one of the two allegations was established and the conduct measures imposed in respect of that allegation were maintained. For the other file, the ERC made recommendations in respect of multiple grounds for appeal regarding the allegations and conduct measures that were imposed. The Commissioner of the RCMP agreed with all but one of the ERC's recommendations, disagreeing with respect to the recommendation to reduce one of the imposed conduct measures from a forfeiture of 5 days' pay to a forfeiture of 3 days' pay.



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

- findings express a legal assessment of the evidence, of the processes undertaken and/ or the correctness of the first level decision (in light of the appeal being made); for example, whether the rules of procedural fairness were followed or whether a sanction imposed on a member was supported by reasons in the decision;

- recommendations are based on the findings and generally address: the specific elements and impacts of a decision on a member (such as recommending that a decision be upheld or that conduct measures be varied); and, occasionally, more general or systemic management issues that are identified through the review of a file (such as clarification of a Force policy or guideline).

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

## Highlights of Cases Completed in 2016-17

This section summarizes key aspects of selected cases that the ERC reviewed and in respect of which it issued findings and recommendations in 2016-17.

An overview of all findings and recommendations issued in 2016-17 is at **Annex B**.

### Current Legislation Cases

In 2016-17, the ERC addressed a number of important issues in its findings and recommendations under the current legislation. This year was the second full year of operation of the RCMP's new recourse processes under the current legislation.

#### Conduct Appeals

The ERC addressed the issue of new arguments made on appeal and several procedural fairness issues across five conduct authority decision appeal cases in 2016-17.

#### ***New Arguments on Appeal***

In **C-014**, the Conduct Authority (Respondent) undertook a *Code of Conduct* investigation into an allegation made by the Appellant's spouse that the Appellant had engaged in disgraceful conduct by subjecting his spouse to ongoing domestic violence. An Investigation Report was prepared and supplied to the Respondent who disclosed the Report to the Appellant, held a Conduct Meeting and ultimately found that the allegation was established. On appeal, the Appellant argued that the Investigation Report was defective in many respects, stating that he had not mentioned these alleged deficiencies to the Respondent at any point because he presumed the Respondent would identify them herself.

Consistent with the general principle that appeal bodies should not entertain new arguments made on appeal in all but exceptional circumstances, the ERC found that the Appellant was not permitted to contest the contents of the Investigation Report for the first time on appeal. The ERC recommended that the appeal be denied as the Appellant had not established his various grounds of appeal.

The ERC stated that an appeal is a review of the findings and conclusions made by a decision-maker in the initial decision, not an open “second chance” to consider evidence anew. The Appellant had a full opportunity to raise any concerns with the Investigation Report before the Conduct Meeting and his failure to do so left the Respondent no opportunity to address his concerns. The Appellant’s assumption that the Respondent would identify, on her own, his concerns with the Investigation Report, did not establish the existence of exceptional circumstances which would warrant the consideration of the new argument on appeal.

### ***Procedural Fairness – Right to be Heard***

In **C-011**, it was alleged that the Appellant contravened section 8.1 of the *Code of Conduct* by placing inaccurate information in a Report to Crown Counsel. Following an investigation, the Conduct Authority (Respondent) received an Investigation Report and hundreds of pages of evidence on which the Report was based. A Conduct Meeting was held at which the Respondent took the Appellant’s written submission and indicated that he would seek guidance, implying the Appellant would be able to offer oral submissions at a further Conduct Meeting. No subsequent Conduct Meeting was held. The Respondent concluded that the allegation was established and imposed conduct measures, including a forfeiture of pay. Subsequently, the Respondent admitted that he had not reviewed any of the hundreds of pages of evidence supporting the Investigation Report. He had relied solely on the Investigation Report.

The ERC found that the Appellant’s right to procedural fairness was irreparably breached when he was denied an appropriate opportunity to discuss his views on the allegation and potential conduct measures at the Conduct Meeting. The Conduct Meeting contemplated under the *RCMP Conduct Policy* is central to the conduct process. It is the one opportunity for a member to address in person an allegation and to discuss with a conduct authority any potential conduct measures. In order for a Conduct Meeting to fulfill its role in the conduct process, a member must receive a full opportunity to make submissions. The meeting cannot, without a member’s consent, be limited to written submissions only. The Appellant had a legitimate expectation that he would receive the opportunity to make oral submissions at a Conduct Meeting.

The ERC also found that the Respondent did not properly hear the matter before him contrary to *RCMP Conduct Policy* provisions and the principles of procedural fairness on which they are based. The Respondent failed to ensure that his decision was fully informed by all of the evidence.

The ERC recommended to the Commissioner of the RCMP that he allow the appeal and make the finding that the allegation against the Appellant was not established. The ERC also recommended that the appeal be allowed in respect of the conduct measures imposed on the Appellant and that the conduct measures be rescinded.

In the final decision for this case, the Conduct Appeal Adjudicator (as the delegate of the Commissioner of the RCMP) agreed with the ERC’s findings and recommendations to allow the appeal on the allegation and found that the allegation was not established as the Appellant’s right to procedural fairness was seriously and irreparably breached. The Conduct Appeal Adjudicator also agreed with the ERC that the appeal of the conduct measures should be allowed and, accordingly, rescinded the conduct measures.

### ***Procedural Fairness – Absence of Reasons***

In each of **C-010**, **C-012** and **C-013**, the Conduct Authority (Respondent) in the particular case found that allegations were established and imposed conduct measures. In reviewing these conduct appeals, the ERC found that the Respondents provided no reasons for their respective decisions. In its findings and recommendations, the ERC revisited and reinforced some of the key principles of procedural fairness that it discussed in a number of its findings and recommendations for conduct appeals the previous year.

Specifically, in **C-010**, the ERC found that the Respondent's failure to give written reasons for a decision on the allegations contravened section 8 of the *CSOs (Conduct)* and section 9.2.1.14 of the *RCMP Conduct Policy*. The absence of reasons constituted a breach of procedural fairness and rendered the decision clearly unreasonable. In **C-012** and **C-013**, the ERC reached the same conclusion and added that the *CSOs (Conduct)* and the *Policy* also included a requirement to give written reasons in support of the imposition of conduct measures.

The ERC recommended that the Commissioner of the RCMP allow the appeals in all three cases in light of the breaches of procedural fairness and that he make the findings that should have been made on the allegations and that he levy conduct measures on the bases of the records before him.

### ***Stoppage of Pay and Allowances Order Appeal***

In **NC-005**, the member was suspended from duty as a result of allegations that he had sexual relations on a number of occasions with members of the public while on duty. Following an investigation in which several recorded witness statements were obtained, the Respondent served the Appellant with a Notice of Intent (Notice) to order the stoppage of the Appellant's pay and allowances (SPA Order) on the basis that the behaviour in question would constitute a breach of the Force's *Code of Conduct*. The Appellant was provided with an opportunity to respond to the Notice and received copies of relevant material in the Respondent's possession, which included written summaries of the witness statements but not the audio recordings or transcripts of the statements. In his response to the Notice, the Appellant argued that witness statement summaries alone were insufficient disclosure. The Respondent ultimately ordered that the Appellant's pay and allowances be stopped and, in so doing, ruled that he was not required to consider or disclose to the Appellant full witness statements in the context of deciding whether to issue an SPA Order. The SPA Order was appealed.

The ERC found that, because an SPA Order can have a critical impact on a member, procedural fairness required that the Respondent disclose to the Appellant all available, relevant evidence including audio recordings of witness statements if no transcript was then available. This would ensure that the Appellant had an opportunity to make representations effectively. The Respondent was also required to consider all available evidence prior to issuing an SPA Order. The Respondent's omissions in this regard breached the Appellant's right to a fair hearing. The ERC recommended that the matter be remitted to the Respondent for a new decision once the Appellant had received proper disclosure and had been given an opportunity to respond to the Notice.

## ***Referability of a file to the ERC – allegation of retaliation for having made a harassment complaint***

In *NC-004*, the Appellant had lodged a harassment complaint against his superior. The Appellant later alleged that his superior retaliated against the Appellant because of the harassment complaint. The retaliation allegation was reviewed by a decision-maker who found that no retaliation had taken place. The Appellant appealed that decision.

Appeals made by a complainant in respect of a written decision regarding a harassment complaint are referable to the ERC pursuant to section 17 of the *RCMP Regulations*. The process for dealing with a harassment complaint is set out in the *CSOs (Harassment)* as well as the Force's *Policy on the Investigation and Resolution of Harassment Complaints (Policy)*. With respect to an allegation of retaliation stemming from the making of a harassment complaint, section 6 of the *Policy* requires that such an allegation be reviewed to determine its validity but also specifies that the allegation is not to be investigated or resolved as a harassment complaint. Therefore, the ERC determined that the appeal was not referable to the ERC as it did not relate to a decision taken in respect of a harassment complaint; rather, it was an appeal related to a decision in respect of an allegation of retaliation.

## **Legacy Legislation Cases**

The ERC issues findings and recommendations in many types of legacy cases each year. This was the situation in 2016-17, with cases which included discipline appeals, financial compensation issues, harassment and other grievance issues.

### **Disciplinary Appeals**

This year, the ERC issued findings and recommendations for three legacy disciplinary appeal cases that had been commenced under the former legislation. All three cases involved notable issues.

### ***Reasonable apprehension of bias of adjudication board members***

In *D-130*, an Adjudication Board (Board) was appointed to consider four disciplinary allegations brought against the Appellant by the Appropriate Officer (AO). However, prior to hearing evidence in relation to the allegations, the Appellant requested the recusal of Board Member A because the Appellant believed that Board Member A was in a conflict of interest. After being advised of this request, Board Member A sent a copy of his draft decision denying the recusal request to the AO's representative (AOR) and indicated that he wished to discuss it with the AOR. Board Member A then had a brief telephone call with the AOR, after which he issued his decision declining to recuse himself. The communications between Board Member A and the AOR were not known to the Appellant's Member Representative at the time. On appeal, the Appellant argued that these private communications raised a reasonable apprehension of bias with respect to Board Member A. The Appellant also took issue with the conduct of Board Member B who, after having heard a motion presented by the Appellant, was observed discussing issues raised by the motion with a motion witness.

The ERC found that the actions of the two Board Members raised a reasonable apprehension of bias. Board Member A's private communications with the AOR prior to deciding a request for his recusal displayed an inappropriate, one-sided familiarity with the AOR. Board Member B, in discussing a matter with a witness prior to a decision being rendered by the Board, could be perceived as having aligned himself with one side in the case, regardless of whether the discussion ultimately influenced the decision. For these reasons and in light of other established grounds of appeal, the ERC recommended that the appeal be allowed and that a new hearing be ordered.

### ***Allegation of disgraceful conduct***

In **D-131**, the Appropriate Officer appealed a decision by an Adjudication Board (Board) that an allegation of disgraceful conduct against a member was not established even though the member had admitted the allegation. The member arrived on scene in response to a 10-33 call, a code that signifies that officer safety is in jeopardy. The member applied knee strikes to a suspect he observed physically resisting arrest by two other officers. The member's intervention subdued the suspect. Proceeding by way of the Early Resolution Discipline Process, the Board held a brief video hearing, reviewed an agreed statement of facts and briefly referred to the Incident Management Intervention Model (IMIM), without inviting submissions on the Model. The Board held that the Member acted in a way that a reasonable person with knowledge of policing would not have found disgraceful. The ERC recommended that the appeal be dismissed and that the Board's decision be upheld.

The ERC highlighted two key principles. First, a member's admission of an allegation is not determinative. The test to establish an allegation is objective and must be based on all of the information before a board. Second, the fact that the Board briefly deliberated the IMIM without inviting the parties to address the applicability of the policy to the matter was not by itself procedurally unfair. As senior officers of the RCMP, the members of the Board would have knowledge of the IMIM and likely some experience in its application. A police discipline board may use its own experience and specialized knowledge when making assessments as long as it does not do so to fill in a gap in the record or to make an essential finding of fact. There was no evidence that the Board misused the IMIM in either way.

### ***Allegation of acting in a disgraceful or disorderly manner***

Case **D-132** dealt with an allegation of acting in a disgraceful or disorderly manner that could bring discredit on the Force, contrary to subsection 39(1) of the *Code of Conduct*. However, the basis of the allegation was the making of a misleading statement to a supervisor. Consequently, the parties agreed that the Respondent would be required to meet the higher standard of proof required in section 45 of the former *RCMP Regulations* to establish the member's intention to make one or more false, misleading or inaccurate statements. An Adjudication Board (Board) concluded that the allegation was established and imposed conduct measures consisting of a reprimand and forfeiture of five days' pay.

The ERC concluded that section 45 of the former *Regulations* required that the misleading or inaccurate statement be made voluntarily and that the person making the statement know that it was misleading, false or inaccurate. The ERC found that the Board did not make a palpable or overriding error by finding that the Appellant had acted knowingly and voluntarily. The ERC also found that a member's omission to provide relevant information in a statement or report referred to in section 45 of the *Regulations*, which omission renders the statement false, misleading or inaccurate, is clearly within the parameters of section 45. The ERC recommended that the appeal be dismissed.

## Grievance Reviews

The ERC addressed a number of key issues in findings and recommendations issued in 2016-17 for grievance reviews commenced under the former *RCMP Act*.

### ***Harassment Complaint Decisions***

The prevention and resolution of harassment is an essential part of creating and maintaining a healthy, productive work environment and the ERC is committed to supporting the RCMP in achieving its goal of providing a harassment-free workplace. The ERC completed findings and recommendations for a number of harassment grievances under the former *RCMP Act*. Most of the issues in the grievances dealt with the initial screening of a harassment complaint by the responsible officer.

The importance of a responsible officer applying the appropriate test during the screening of a harassment complaint was a key issue in several grievances. In **G-631**, **G-632** and **G-633**, the ERC confirmed that the test is whether, assuming the allegations in a harassment complaint are true, one or more of the allegations falls within the definition of "harassment" as set forth in the RCMP's *Harassment Policy*. If one or more allegations meet this test, the complaint must not be screened out of the process and mediation and/or an investigation must be considered and pursued.

In **G-631**, the ERC found that once the responsible officer had determined that eight of ten allegations would constitute harassment if proven true, he should have screened in the harassment complaint and initiated appropriate action, including exploring mediation and determining if an investigation was required. In this case, the responsible officer incorrectly decided not to do so because he determined that not all of the allegations would have constituted harassment.

In **G-632**, the ERC emphasized that a complaint must not be screened out because a responsible officer believes there is no substantive justification for it (e.g. a lack of evidence supporting the allegation). It is enough that the allegation, if it were proven true, would constitute harassment. Underlying this determination is the principle that the discretion to screen out a complaint prior to a full investigation of the allegation(s) should be exercised very carefully and sparingly.

Once the Force investigates a harassment complaint because the screening test has been met, if a grievor alleges that the investigation was unfair or incomplete, the burden rests on the grievor to prove his or her assertions. This was the situation in **G-616**, where the ERC stated that the Grievor had the burden to identify witnesses and provide evidence demonstrating alleged faults in the investigation. The ERC found that the Grievor had failed to do so.

In **G-628**, a member submitted a grievance against their manager grieving a decision of the manager to refuse overtime that had been claimed by the member. Three days after receiving the grievance, the manager initiated a *Code of Conduct* investigation against the member for claiming overtime when the member allegedly knew that he was not entitled to it. The member then filed a second grievance complaining of harassment and maintaining that the *Code of Conduct* investigation initiated against him was an act of reprisal for the overtime grievance. The decision at Level I was that no reprisal or harassment had taken place. The member grieved that decision.



The ERC found that a member raising the issue of reprisal had to demonstrate (based on the reasonable person test) that there was the intention to take reprisals. The ERC observed that there were no apparent reasons, other than to penalize the Grievor, for the manager to have initiated a *Code of Conduct* investigation three days after being informed of the overtime grievance. The ERC found that the Grievor had been subjected to reprisals. However, it also found that the Grievor did not provide evidence that any of the manager's actions constituted harassment.

### ***Legal Assistance at Public Expense***

The ERC issued findings and recommendations for two grievances which involved claims by the grievors for legal assistance at public expense (LAPE) pursuant to the Treasury Board's *Policy on Legal Assistance and Indemnification (TB LAPE Policy)*. The cases involved issues critical to the provision of LAPE to members facing criminal charges as a result of their work as police officers. The ERC recommended in both cases that LAPE be provided to the individual members.

In **G-635**, the Grievor was charged with several criminal offences stemming from a complicated murder investigation. The presiding Court imposed a ban on the disclosure of information related to the investigation. The Grievor grieved a decision by the Respondent to deny the Grievor's request for trial phase LAPE and to terminate the Grievor's existing LAPE in respect of preliminary stages of the process.

There are three elements of note in the ERC's report. First, the ERC stated that LAPE decisions are of particular significance to RCMP members and found that the Respondent had provided no reasons for his decision. Further, neither the disclosure of materials during the Early Resolution phase nor the Respondent's written submissions could rectify the Respondent's lack of reasons. Second, the ERC found that the Respondent's decision was contrary to section 6.1.4 of the *TB LAPE Policy* which requires an approval authority to presume that the requesting member has met the basic eligibility criteria in section 6.1.5 "*unless or until there is information to the contrary*". The presumption of eligibility does not disappear upon the laying of serious criminal charges as such a result would be counter to the purpose of the *TB LAPE Policy*. There was little information on the record regarding the Grievor's conduct due to the disclosure ban. The Respondent made repeated attempts to obtain an evidentiary basis for the criminal charges against the Grievor. If any evidentiary basis was provided to the Respondent, his decision should have reflected that information. Finally, the ERC found that the Respondent's decision to terminate the Grievor's previously approved LAPE was inconsistent with section 6.1.12 of the *TB LAPE Policy* which permits termination of LAPE only if, subsequent to the initial approval, it became clear that the Grievor did not act in good faith, in the interests of the Crown or within the scope of his duties or course of employment. The ERC stated that the onus was on the Respondent to identify information that would permit the termination of LAPE in accordance with section 6.1.12.

In **G-636**, the Grievor grieved the Respondent's decision to terminate his LAPE upon the issuance of a stoppage of pay and allowances order (SPA Order) and decision (SPA Decision) against the Grievor. The Grievor was facing a criminal charge of assault causing bodily harm. The Grievor had been a Constable for 3½ years when he was the first officer to respond to a highest priority and risk call involving shots fired. During the encounter, which was video-taped by a local reporter, the Grievor kicked the suspect in the head when the suspect responded slowly to the Grievor's orders.

As in **G-635**, the ERC in **G-636** found that the Respondent's termination decision was inconsistent with section 6.1.12 of the *TB LAPE Policy*. The Respondent's justification for termination was the SPA Decision which did not involve an assessment of the LAPE eligibility criteria. An SPA Order and the provision of LAPE each serve different purposes and are based on different criteria. An SPA Order is intended to protect the Force's interests in extreme circumstances while LAPE, which may be provided to a member facing criminal charges, is intended to safeguard the member's rights. An SPA Order is not necessarily inconsistent with the provision of LAPE and is not, in and of itself, justification for termination. In this case, there was no new information, evidence or analysis in the SPA Decision that justified termination of the Grievor's LAPE.

### ***Referability of files to the ERC***

Under the former *RCMP Act*, five types or categories of grievances identified at section 36 of the *RCMP Regulations* were referable to the ERC for review at Level II of the Force's grievance process:

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

If a grievance does not relate to a matter set forth in section 36, it is not referable to the ERC for review and the ERC has no legal authority to issue findings and recommendations.

In several cases in 2016-17, the ERC determined that grievances it had received were not referable as they did not involve the interpretation and application of one of the categories of matters identified in section 36. In **G-618**, **G-619**, **G-620** and **G-623**, the issue was whether the grievances related to the Force's interpretation and application of the *RCMP Relocation Directive*. In all four cases, the grievor had applied to be included in a Force project, the purpose of which was to retroactively correct certain inconsistent interpretations of provisions regarding transfers in the *Relocation Directive*. To be eligible, members were required to satisfy certain criteria related to the nature of their transfer and dates on which they had occurred. The grievor in each of the four cases was found to be ineligible to participate in the project on the basis that they did not meet the criteria. The members grieved those determinations. The ERC determined that the grievances were not referable at Level II pursuant to subsection 36(d) as they did not involve the Force's interpretation of the *Relocation Directive* itself. They instead related to the interpretation and application of eligibility requirements related to a separate, internal initiative undertaken and established by the Force.

A similar outcome resulted in **G-637** where, due to inconsistent past application of policy, the Force issued a Bulletin directing that members having resided in a specific type of accommodation while on travel status were eligible for an allowance provided for in the *National Joint Council Travel Directive (NJCTD)*. Eligibility was retroactive to a specified date.

The Grievor believed he was entitled to the allowance. However, his travel occurred prior to the date specified in the Bulletin. His grievance against the retroactive date chosen was denied and re-submitted at Level II. The ERC concluded that the grievance was not referable under subsection 36(a) as it disputed the eligibility date for retroactive benefits, an issue which did not engage the interpretation and application of the government-wide *NJCTD*.

The ERC also addressed the issue of whether a grievance is referable to the ERC where the central issue to be decided in the grievance involves compliance with internal Force policies but certain aspects of the grievance peripherally bring into play one of the categories identified at section 36 of the *Regulations*. This was the situation in **G-634**, where the Grievor grieved the Force's decision to modify her Medical Profile (MP). The Grievor also raised arguments regarding the use of her personal information during the process. The grievance was denied at Level I. The ERC acknowledged that the Grievor had presented certain privacy arguments which would involve the interpretation and application of government-wide policy applicable to members. However, these arguments were derivative to the question of the amendment of the Grievor's MP which was the central issue in the case. The amendment of the MP turned on the interpretation of an internal RCMP policy. As the grievance was based on the Force's interpretation and application of an internal policy, the ERC determined that the grievance was not referable.

## Outreach and Communications

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

### Publications and Website

The ERC *Communiqué* publication provides summaries of ERC findings and recommendations and summaries of final decisions of the Commissioner of the RCMP for files the ERC has reviewed. It is distributed to RCMP detachments and offices across Canada and is posted on the ERC website. The ERC published and distributed three *Communiqués* in 2016-17.

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

### Outreach Activities

Outreach activities with the RCMP include participation in learning, orientation or special events at National Headquarters, Divisional Headquarters or detachments. The ERC met with RCMP labour relations and Member Workplace Services Program (MWSP) managers in May 2016 to provide an update on the ERC case review program. In November 2016, as part of Force learning activities in support of the implementation of the MWSP, a presentation on the role of the ERC was provided to new RCMP Member Workplace Advisors to assist them in their duties working with RCMP members.

## Requests for Information

The ERC receives requests for information from RCMP members (current and retired), the public, media and other government organizations. In 2016-17, the ERC received and responded to 185 requests, an increase from 143 last year and well above the annual average of 114 requests over the past eight years. For the requests received this year:

- 51% came from current or retired RCMP members (including law firms on behalf of a member), most often asking about the status of a referred file at the ERC or requesting copies of findings and recommendations from completed files;
- 28% from the public (e.g. law firms, private individuals), most often for copies of findings and recommendations;
- 17% from RCMP recourse system personnel, most often asking about the status of referred files or for copies of findings and recommendations; and,
- from the media (3%) and other government organizations (2%).

The increase in requests over the previous year is principally attributable to more requests from RCMP members (94 compared to 60). The number of requests from the media also increased (five compared to one). The number of requests from the public remained close to constant, declining by one to 52.

In terms of the subjects of requests, there were more requests this year compared to last about the status of referred files at the ERC (72 compared to 33) and for copies of findings and recommendations for completed files (69 compared to 49).

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

Subject of the Request	Person Requesting the Information					Total
	RCMP Member	RCMP Recourse*	Public	Media	Other Gov't	
Status of a file that is before the ERC	51	20	1	-	-	72
Copy of findings and recommendations	28	10	31	-	-	69
Matter outside the ERC mandate	3	-	16	-	2	21
ERC role, policies procedures	6	1	3	1	-	11
A case/matter not referred to the ERC	5	-	-	2	-	7
ERC reports or publications	1	-	1	2	1	5
<b>Total</b>	<b>94</b>	<b>31</b>	<b>52</b>	<b>5</b>	<b>3</b>	<b>185</b>

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

## Corporate Management and Planning

The ERC benefitted from a wide scope of corporate services infrastructure, advice and transactional support provided by Public Safety and Emergency Preparedness Canada under a memorandum of understanding. The ERC also worked with and received support and advice from the small agency and administrative tribunal communities on various management issues (e.g. management of internal services) through established networks and informally.

A key focus for the organization in 2016-17 continued to be risk management and integrated planning to address mounting and serious program pressures, including undertaking analysis to gauge those pressures and develop proposals to address them. Early communication and coordination with central agency centres and with the portfolio department were important elements of this work.



# PART III – Operational Outlook

The ability of the ERC to achieve program objectives over the next several years will primarily be a function of the ERC's capacity to manage the backlog of case files awaiting review and to address future referrals in a reasonably timely manner.

## Ensuring a reasonable measure of timeliness

Timely review of referred cases is critical to the mandate of the ERC. We will continue to focus on program improvement and efficiency. However, such improvements alone will not fully address the existing caseload and the anticipated numbers of referrals that the ERC will receive in future years. The ERC caseload (the number of files at the ERC awaiting or under review) at March 31, 2017 was 173, an increase from 129 at March 31, 2016 and from 65 at March 31, 2015. The caseload continues to grow as the number of files referred to the ERC continues to significantly exceed organizational capacity.

The ERC caseload of 173 files at the end of 2016-17 represented approximately four years' of work at current ERC resource levels and file completion rates. We anticipate referrals of approximately 80 files per year in each of the next five to six years. Based on current resources, we will be able to complete up to 40 files annually. Given this operating reality, it is projected that the length of delay in completing work on files will continue to increase dramatically. For legacy files received at the ERC today, an historical two to three year wait time has increased to five years. For current legislation files received today, the wait time has increased to over one year.

The ERC recognizes the need to minimize further increases in delays and to address the very pressing immediate and long term requirements of the case review program. Further improvement of our case review efficiency while ensuring substantive excellence of our findings and recommendations is part of the solution. Most significantly, the ERC will continue to work with the portfolio department and central agencies to advance proposals to address core program requirements.

## Monitoring file complexity and workload

File referrals in 2016-17 indicate that overall file complexity and relative workload are increasing as the recourse system within the RCMP enters its third year. We received an increased number of total referrals under the current legislation this year compared to last (43 compared to 19). We have also received a growing proportion of more complex files compared to last year (30 harassment, discharge and conduct board files compared to three such files the previous year).

In the legacy file context, we anticipate that referrals to the ERC will remain at or close to historical levels and types (i.e. from 35-40 files per year, with a variety of both relatively less and more complicated files) for approximately five years, until all legacy files commenced in the RCMP will have run their course.

Monitoring trends is critical to risk identification, management and planning. We actively manage our caseload through the ERC Case Review Committee and other management mechanisms. A key challenge and objective is to reliably estimate the kinds, numbers and complexities of files that will be referred to the ERC in future years and to reasonably assess what that means for workload. The ERC will continue to engage the RCMP to support these efforts, as appropriate.

### Establishing service standards

The *RCMP Act* requires that the ERC establish and make public service standards with time limits for the completion of its case reviews. We anticipate having service standards in place at the end of the 2017-18 fiscal year for both legacy and current legislation files. The ERC would note, however, that it will be challenging to set service standards that are meaningful to RCMP members, to the Force and to the public given the current and projected length of delays between the ERC's receipt of a file and its completion of a review.



# Annexes

## ANNEX A

### List of Laws, Regulations and Orders

#### Laws

*RCMP Act*

*Enhancing Royal Canadian Mounted Police Accountability Act*

#### Regulations

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

*RCMP Regulations (SOR/2014-281)*

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

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

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

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

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

*RCMP Regulations (SOR/88-361)*

#### (Selected) Commissioner's Standing Orders

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ANNEX B

### Overview of ERC Findings and Recommendations in 2016-17

<b>Current RCMP Act</b>		
<b>Appeals of a Decision by a Conduct Authority</b>		
<b>ERC Case Number</b>	<b>Subject Matter of the Appeal (Code of Conduct Section) Key Issues</b>	<b>ERC Findings and Recommendations</b>
C-010	<p>Discreditable conduct – operating a vehicle while impaired (s. 7.1).</p> <p>Unfit for duty due to impairment (s. 4.3).</p> <p>Sufficiency of Conduct Authority's reasons for decision.</p>	<p>Allow the appeal of the findings of misconduct due to the insufficiency of the Conduct Authority's reasons for the decision.</p> <p>The Commissioner should make the findings that the Conduct Authority should have made (per s. 45.16(2)(b) of the Act)</p> <ul style="list-style-type: none"> <li>- find one of the two allegations are established (unfit for duty)</li> <li>- rescind conduct measures imposed in respect of the unsubstantiated allegation and confirm the remaining conduct measures imposed.</li> </ul>

<p>C-011</p>	<p>Placing inaccurate statements in a report to a Crown Counsel (s. 8.1).</p> <p>Conduct Authority originally imposed forfeiture of five days' pay but, after issuing the decision, attempted to amend the conduct measure to a forfeiture of five days' annual leave.</p> <p>Appeal of the finding of misconduct and of the conduct measures imposed.</p> <p>Appropriate Conduct Meeting not provided to Appellant.</p> <p>Respondent stated that he had not reviewed any of the hundreds of pages of evidence which had been marshalled for him, other than the Investigation Report.</p>	<p>The Conduct Authority imposed a forfeiture of pay on the Appellant and, as a result, the appeal is referable to the ERC. The Respondent's subsequent attempt to change that conduct measure to a forfeiture of annual leave was not done pursuant to applicable policies and was prohibited by other authorities.</p> <p>The Respondent should have made no finding or found that the Allegations were not established, given that the Appellant did not have a proper opportunity to make submissions.</p> <p>Allow the appeal of the finding of misconduct, due to an irreparable breach of the Appellant's right to procedural fairness caused by the failure to hold a proper Conduct Meeting, and review all the evidence.</p> <p>Allow the appeal in respect of the conduct measures imposed on the Appellant and rescind the conduct measures.</p>
<p>C-012</p>	<p>Mishandling of exhibits (s.4.4). Appeal only on the conduct measures imposed.</p> <p>Sufficiency of the Conduct Authority's reasons for imposing specific conduct measures.</p> <p>Appropriate test to impose conduct measures.</p>	<p>Due to the insufficiency of the Conduct Authority's reasons on conduct measures, allow the appeal of the conduct measure.</p> <p>Recommend that the Commissioner impose a reprimand (per s. 45.16(3)(b) of the Act).</p> <p>Procedural fairness dictates that reasons must be given when imposing a specific conduct measure. Conduct Authority did not provide any reasons.</p> <p>Conduct Authority did not follow the three-part test for imposing conduct measures.</p>

<p>C-013</p>	<p>Failing to be diligent in performance of duties (s. 4.2 of the <i>Code of Conduct</i>); failing to carry out lawful order and direction (s. 3.3); lying to a superior (s. 8.1).</p> <p>Multiple conduct measures imposed.</p> <p>Appeal of findings that the allegations were established and of the conduct measures imposed.</p>	<p>Allow the appeal in part.</p> <p>Conduct Authority's reasons insufficient with respect to the Appellant's failure to be diligent in performance of duties. However, recommend that the Commissioner, in making the finding that the Conduct Authority should have made (per s. 45.16(2)(b) of the <i>Act</i>) determine that the allegation was established.</p> <p>Insufficient evidence of a failure to carry out a lawful order and direction. Recommend that the Commissioner find the allegation not established.</p> <p>Record supports finding of lying to a superior. Recommend that the Commissioner confirm the allegation as established.</p> <p>Recommend that Commissioner allow the appeal of conduct measures imposed and substitute lesser conduct measures.</p>
<p>C-014</p>	<p>Discreditable conduct – ongoing domestic violence (s. 7.1). Forfeiture of 15 days' pay imposed.</p> <p>Appeal of the finding of misconduct.</p> <p>Alleged reliance upon limited materials including questionable investigation report and witness summaries.</p> <p>Alleged errors in factual findings and credibility assessments.</p> <p>Alleged reasonable apprehension of bias.</p>	<p>Dismiss the appeal and confirm the Conduct Authority's decision.</p> <p>The Appellant could not challenge the contents of the Investigation Report for the first time on appeal.</p> <p>Nothing in the Conduct Authority's decision suggested she relied upon limited materials.</p> <p>The Conduct Authority's factual findings and credibility assessments did not give rise to a clear or manifest error that was determinative to the decision on appeal.</p> <p>No reasonable apprehension of bias was established.</p>

## Appeals of a Decision Regarding Non-Conduct Matters

ERC Case Number	Subject Matter of the Appeal / Key Issues	ERC Findings and Recommendations
NC-004	<p>Allegation that the Respondent to a harassment complaint had retaliated against the Complainant.</p> <p>Appeal of the decision/finding that no retaliation had taken place.</p> <p>Whether the ERC has jurisdiction to review the appeal.</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.17 of the <i>RCMP Regulations</i>).</p> <p>An appeal addressing a decision in respect of a retaliation allegation is not referable to the ERC.</p>
NC-005	<p>Appeal of Respondent's decision to stop the Member's pay and allowances while the Member is suspended from duty due to a suspected breach of the <i>Code of Conduct</i>.</p> <p>Procedural fairness: the level of disclosure to be provided to the Member when responding to the Notice of Intent to Stop Pay and Allowances.</p>	<p>Allow the appeal.</p> <p>A Notice of Intent to Stop Pay and Allowances was provided to the Appellant, to which were attached relevant investigation materials including witness statement summaries. Respondent did not provide to the Appellant witness statement recordings or transcripts, and relied only on the summaries to render his decision.</p> <p>The Respondent's omissions in not disclosing witness statement recordings or transcripts and in relying only on statement summaries to render his decision breached the Appellant's right to a fair hearing.</p> <p>Recommend that the Commissioner order the disclosure of witness statement transcripts and/or audio recordings to the Appellant and that the Appellant have a further opportunity to make submissions; remit the matter to the Respondent for a new decision.</p>

## Former RCMP Act

### Appeals of Discipline (Adjudication) Board Decisions

ERC Case Number	Subject Matter of the Appeal / Key Issues	ERC Findings and Recommendations
D-130	<p>Allegations of disgraceful conduct and neglect of duty. Member appeal of Board findings on the allegations and of various rulings made by the Board regarding preliminary matters.</p> <p>Procedural fairness - whether errors made by members of the Board in dealing with preliminary matters compromised the fairness of the proceedings.</p>	<p>Allow the appeal and order a new hearing.</p> <p>As a result of the manner in which the preliminary matters were addressed by Board members, two potentially material witnesses had not provided evidence and the fairness of the proceedings as a whole was called into question by a reasonable apprehension of bias.</p>
D-131	<p>Disgraceful conduct – excessive force.</p> <p>Appropriate Officer appeal of the Board’s finding that the allegation was not established.</p> <p>Appeal of Board’s alleged misapprehension of the agreed facts; reliance on the Incident Management Intervention Model (IMIM) without inviting submissions on that policy; and placement of inadequate weight on the Respondent’s admission of the allegation.</p>	<p>Dismiss the appeal and uphold the Board’s decision.</p> <p>The Board made no manifest and determinative error in its apprehension of the agreed facts set out in the agreed facts or in its consideration and weighing of the Respondent’s admission of the allegation.</p> <p>The fact that the IMIM may have generally informed the Board’s deliberations is not, in and of itself, procedurally unfair; there is no evidence that the Board used the IMIM to fill in a gap in the record or to make an essential finding of fact.</p>
D-132	<p>Disgraceful conduct – lying to a supervisor, making an inaccurate report.</p> <p>Burden of proof (as per s.45 of the <i>RCMP Regulations</i>).</p>	<p>Dismiss the appeal and uphold the Board’s decision.</p> <p>Board did not make a manifest or determinative error in its evaluation of the intent of the Appellant.</p>

## Reviews of Grievance Decisions

ERC Case Number	Subject Matter of the Grievance / Key Issues	ERC Findings and Recommendations
G-614	<p>Duty to accommodate.</p> <p>Discrimination based on disability.</p> <p>Whether designating a position as fully operational was a <i>bona fide</i> occupational requirement.</p>	<p>Force, as a whole, fulfilled its duty to accommodate the Grievor.</p> <p>Grievor established a <i>prima facie</i> case of discrimination.</p> <p>Designation of position as fully operational could not be justified as a <i>bona fide</i> occupational requirement.</p>
G-615	<p>Decision to recover relocation fees erroneously paid to Grievor.</p> <p>Time limit – whether the grievance was presented within 30 days of when the Grievor knew or ought to have known he was aggrieved.</p>	<p>Deny the grievance.</p> <p>Time limit was not met.</p>
G-616	<p>Harassment investigation for three allegations of harassment established against the Grievor.</p> <p>Whether the harassment investigation was sufficiently thorough.</p>	<p>Deny the grievance.</p> <p>The harassment investigation was sufficiently thorough.</p>
G-617	<p>Severance pay package – purchased prior service.</p> <p>Jurisdiction of the ERC.</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.36 of the <i>RCMP Regulations</i>).</p>
G-618	<p>Retroactive Corrective Payment of Relocation Benefits Project.</p> <p>Jurisdiction of the ERC.</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.36 of the <i>RCMP Regulations</i>).</p>
G-619	<p>Retroactive Corrective Payment of Relocation Benefits Project.</p> <p>Jurisdiction of the ERC.</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.36 of the <i>RCMP Regulations</i>).</p>
G-620	<p>Retroactive Corrective Payment of Relocation Benefits Project.</p> <p>Jurisdiction of the ERC.</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.36 of the <i>RCMP Regulations</i>).</p>

G-621	<p>Decision of an Interdepartmental Committee on Accommodation Deficiencies to reduce the cost of the Member's work-related overseas accommodation.</p> <p>Whether the Member has standing to grieve.</p>	<p>Deny the grievance.</p> <p>The member lacks standing because the impugned decision was not made within the administration of the affairs of the RCMP but by an interdepartmental government body that is headed by a different department and that primarily consists of people who are not RCMP members and whose duties are neither governed by an RCMP authority nor overseen by RCMP personnel.</p>
G-622	<p>Denial of mid-shift meal claims at dinner rate pursuant to <i>Treasury Board Travel Directive</i>.</p> <p>Whether Grievor was entitled to claim an amount in excess of the lunch rate without a receipt.</p>	<p>Deny the grievance.</p> <p>Grievor was entitled to claim meals at the lunch rate. A receipt was required to claim any amount in excess of that rate.</p>
G-623	<p>Retroactive Corrective Payment of Relocation Benefits Project.</p> <p>Jurisdiction of the ERC.</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.36 of the <i>RCMP Regulations</i>).</p>
G-624	<p>Refusal to treat the Grievor's leave during an extended period of part-time service as Leave without Pay (LWOP), thereby preventing Grievor from being able to buy back that time as pensionable service.</p> <p>Whether the refusal was consistent with applicable authorities.</p>	<p>Deny the grievance.</p> <p>The refusal to treat hours the Grievor did not work during his part-time service as LWOP was consistent with the terms and conditions of the Grievor's employment, RCMP and Treasury Board leave policies and relevant case law.</p>
G-625	<p>Two decisions: 1. Decision that the Grievor's supervisor counselled him to falsify an MVA report; 2. Decision to sever one allegation from a three-part allegation and to investigate only the severed allegation.</p> <p>Whether the ERC has jurisdiction to review the grievance.</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.36 of the <i>RCMP Regulations</i>).</p> <p>The decisions were made as part of an RCMP <i>Code of Conduct</i> investigation and not as part of a harassment complaint pursuant to the <i>Harassment Policy</i>.</p>



G-626	<p>Promotions – linguistic profile.</p> <p>Request for intervention filed by the member as per CSO (Promotions).</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.36 of the <i>RCMP Regulations</i>).</p>
G-627	<p>Decision to deny the Grievor’s claims for two transfer allowances in respect of his transfer to and return from a foreign country.</p> <p>Whether the Grievor has standing to grieve.</p>	<p>Deny the grievance.</p> <p>The Grievor has no standing as he had not submitted any receipts or made any claims prior to submitting his grievance.</p> <p>On the merits of the grievance, the <i>Foreign Services Directive</i> and not the RCMP’s <i>Integrated Relocation Policy</i> (IRP) applied to the Grievor’s transfers; therefore, the Grievor had no entitlement to the IRP’s transfer allowance.</p>
G-628	<p>Harassment – whether action taken by alleged harasser (initiating a <i>Code of Conduct</i> investigation) constituted harassment.</p> <p>Alleged reprisals contrary to s.31(5) of the <i>RCMP Act</i>.</p>	<p>Allow the grievance.</p> <p>Grievor was subjected to reprisals for having filed an overtime-related grievance against his supervisor.</p> <p>However, the supervisor’s actions did not constitute harassment.</p>
G-629	<p>Harassment.</p> <p>Whether the Respondent’s informing the Grievor of possible sanctions in the context of this case constituted harassment (in doing so, did the Respondent fail to provide a respectful work environment).</p>	<p>Deny the grievance.</p> <p>Informing the Grievor of the possible outcome of a <i>Code of Conduct</i> process does not constitute harassment.</p> <p>Grievor did not demonstrate that the Respondent did not follow the harassment policy.</p>
G-630	<p>Decision to screen out the Grievor’s harassment complaint.</p>	<p>Allow the grievance.</p> <p>Recommend an apology to the Grievor.</p> <p>The harassment complaint was improperly screened out based on an inadequate review of relevant materials and subsequent corrective actions were not adequate.</p>

G-631	<p>Decision to screen out the Grievor's harassment complaint.</p> <p>Whether the test for screening out a harassment complaint was properly applied.</p>	<p>Allow the grievance.</p> <p>Apologize to the Grievor for the Force's failure to properly screen his harassment complaint.</p> <p>Once the Respondent found that some of the Grievor's allegations were "<i>related to harassment</i>", he should have screened in the complaint. Instead, he screened out the complaint on the bases of substantive determinations that should not have been made without an investigation.</p>
G-632	<p>Decision to screen out the Grievor's harassment complaint.</p> <p>Whether the test for screening out a harassment complaint was properly applied.</p>	<p>Allow the grievance.</p> <p>Apologize to the Grievor for the Force's failure to properly screen the harassment complaint.</p> <p>The Grievor's harassment complaint was screened out on the bases of substantive determinations that should not have been made at the screening stage.</p>
G-633	<p>Decision to screen out the Grievor's harassment complaint.</p> <p>Whether the test for screening out a harassment complaint was properly applied.</p>	<p>Allow the grievance.</p> <p>Apologize to the Grievor for the Force's failure to properly screen the harassment complaint.</p> <p>The Grievor's harassment complaint was screened out on the bases of substantive determinations that should not have been made at the screening stage.</p>

G-634	<p>Amendment of the Grievor's Medical Profile.</p> <p>Whether ERC has jurisdiction to review the grievance.</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.36 of the <i>RCMP Regulations</i>).</p> <p>Principal subject matter of the grievance relates to a decision made pursuant to internal Force policy, not to a government-wide policy applicable to members.</p>
G-635	<p>Decision to deny the Grievor's request for Legal Assistance at Public Expense (LAPE) in respect of his criminal trial and to terminate the Grievor's authorized LAPE.</p>	<p>Allow the grievance.</p> <p>Recommend the reinstatement of the Grievor's previously approved LAPE and the authorization of LAPE for the trial phase of the Grievor's criminal proceedings.</p> <p>Insufficiency of the Respondent's reasons.</p> <p>Insufficient evidence to rebut the presumption that the Grievor was entitled to LAPE and to terminate existing LAPE.</p>
G-636	<p>Decision to terminate the Grievor's authorized Legal Assistance at Public Expense (LAPE).</p>	<p>Allow the grievance.</p> <p>Recommend the reinstatement of the Grievor's previously approved LAPE.</p> <p>Insufficient evidence to justify the termination of LAPE. The issuance against the Grievor of a stoppage of pay and allowances order insufficient in and of itself to justify the termination of LAPE.</p>

G-637	<p>Decision to establish an eligibility date for receiving a retroactive private non-commercial accommodation allowance, pursuant to an RCMP Bulletin.</p> <p>Whether the ERC has jurisdiction to review the grievance.</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.36 of the <i>RCMP Regulations</i>).</p> <p>The Respondent's decision involved the creation of an eligibility date pursuant to his rule-making authority set forth in the <i>RCMP Act</i>; not the interpretation and application of the National Joint Council Travel Directive.</p>
G-638	<p>Decision to require the Grievor, a newly engaged member of the RCMP, to pay for certain storage and related costs involved in his relocation to his first posting.</p> <p>Whether the ERC has jurisdiction to review the grievance.</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.36 of the <i>RCMP Regulations</i>).</p> <p>The only policy applicable to the grievance and that either party relied on was an internal RCMP policy and not a government-wide policy applicable to members.</p>
G-639	<p>Decision to discontinue paying the Grievor's medical travel expenses following a bridging period during which Grievor could obtain local medical care.</p> <p>Whether the ERC has jurisdiction to review the grievance.</p>	<p>No legal authority for the ERC to review the file, not referable (outside s.36 of the <i>RCMP Regulations</i>).</p> <p>The grievance related to the interpretation and application of an internal RCMP policy. The Respondent did not interpret or apply a government policy applicable to members.</p>
G-640	<p>Decision that the Grievor was ineligible to receive a retroactive Living Cost Differential (LCD) benefit covering an earlier period of service at an isolated post.</p> <p>Whether the decision was consistent with applicable Isolated Posts policy and other authorities.</p>	<p>Deny the grievance.</p> <p>Neither party identified any provision of Isolated Post policy which permitted the retroactive payment of the LCD requested by the Grievor. The Grievor did not suffer discrimination.</p>

G-641	Decision that Grievor's harassment allegations were not substantiated.	<p>Deny the grievance.</p> <p>Reasonable apprehension of bias and conflict of interest on the part of the Respondent are not established.</p> <p>The Respondent satisfied his disclosure obligations and was not required to create evidence as requested by the Grievor.</p>
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## ANNEX C

### Staff and Contacts

#### Staff in 2016-17

Josh Brull, Counsel

Jamie Deacon, Executive Director

Lorraine Grandmaitre, Manager, Corporate Services

Martin Griffin, Counsel

Jill Gunn, Counsel

Jonathan Haig, Administrative Officer

Caroline Verner, Counsel

Elizabeth Walker, Chair

#### Contact Information

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

Telephone: 613-998-2134

Fax: 613-990-8969

E-mail: [org@erc-cee.gc.ca](mailto:org@erc-cee.gc.ca)

Internet: [www.erc-cee.gc.ca](http://www.erc-cee.gc.ca)