



RCMP External
Review Committee

Comité externe
d'examen de la GRC

ANNUAL REPORT 2023 - 2024

Charles Randall Smith
Chairperson

Canada 

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Democratic Institutions and Intergovernmental Affairs, 2024

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MESSAGE FROM THE CHAIRPERSON



I am pleased to present the 2023-2024 RCMP External Review Committee's (ERC) Annual Report. As Chairperson, I am incredibly proud of the progress we have made in reducing the backlog and the impact and contribution we have to fair and equitable labour relations and accountability within the Royal Canadian Mounted Police (RCMP) through our independent and impartial review of appeal cases.

Throughout the fiscal year, we have continued to streamline case review processes to make them more efficient and timely. This included leveraging technology for data management, and implementing best practices in case file review. The diligent work to fulfill the mandate has resulted in the completion and issuance of 96 Findings and Recommendations, representing the largest number of Findings and Recommendations submitted to an RCMP Commissioner in a single year. As we continue to meet our service standards, the ERC will adapt and evolve as needed and be innovative to meet and address new demands and reporting requirements.

We have fostered a culture that champions diversity, inclusion and accessibility. Through informative sessions, training programs, and open dialogues, we strive to ensure that each team member feels appreciated and empowered to enrich an environment that values inclusivity, accessibility and respect. Our commitment to prioritizing the mental health and overall well-being of our employees remains at the forefront.

I would like to express my sincere appreciation to everyone at the ERC for their contributions over the past year. Your dedication, expertise, and collaboration have been instrumental in advancing our shared goals and objectives.

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

Charles Randall Smith

CORPORATE MANAGEMENT AND ACHIEVEMENTS

Human Resources Management and Finance

As a small organization, the departure of key employees and absence of corporate memory across the organization underscores the importance of succession planning. The ERC has started to put in place a succession plan that will enable seamless transfer of knowledge, knowledge management and transition of roles and responsibilities. By emphasizing continuous learning, the organization aims to equip individuals for evolving roles, nurturing a workforce that is flexible, adaptable, and dynamic.

The ERC remains dedicated to promoting an inclusive, diverse, and accessible workplace through its staffing practices, ensuring that individuals are valued, recognized and treated with respect. The ongoing training, information sessions as well as open dialogue at meetings will emphasize the continuous commitment and improvement of inclusivity, diversity and accessibility in ERC's backbone. This work requires dedication and creativity in meeting not only the training needs but of its application in processes and strategies.

In 2023-2024, the ERC met all of its financial reporting requirements and ensured good and sound management of its financial resources. The ERC has reviewed its financial processes and monitoring strategies this year in order to better meet the Treasury Board financial policies. This includes targeting our percentage of indigenous contracts with a clear plan to report on its successful implementation in the coming years. This also enabled us to put in place frameworks and additional monitoring measures to ensure streamlined processes at the ERC.

Mental Health and Wellness

In support of its priority and commitment to employees' mental health, wellness and well-being the ERC has continued to provide and offer wellness support through presentation sessions like "Toxic Positivity" and "Decision Burnout", monthly informational publications, and resources sharing. The ERC has modified the format of the all-staff meetings to further incorporate and enhance a segment dedicated to presenting topics of interest that are suggested by employees.

Additionally, the ERC has offered leadership coaching and assistance to employees transitioning into new roles as managers and supervisors as part of its succession plan.

Throughout the fiscal year and the annual survey, ERC employees have reiterated that the hybrid work model's flexibility enhances their well-being and promotes a healthy work-life balance by being able to work remotely which is their preferred work location. Additionally, the ERC has confirmed that employees can effectively perform their duties remotely with no impact on productivity.

The ERC remains a preferred workplace for its employees, consistently adapting and growing in response to a dynamic workplace. By adapting consistent Occupational Health and Safety (OHS) protocols and ensuring up-to-date tools and guides, the ERC has fully implemented the OHS Committee and respects its accountability and effective *raison d'être*. We will continue to prioritize the health and wellness of our staff, recognizing that an organization's excellence is rooted in the well-being of its employees.

Diversity and Inclusion

ERC's Corporate Services has launched an Inclusivity Hub, part of this initiative is a monthly newsletter. These newsletters are full of apropos information, resources, activities and more all surrounding diversity, accessibility, mental health and well-being.

The ERC published its first annual progress report in December 2023 on the actions identified in its Accessibility Plan 2023-2025 aimed at the elimination and prevention of the barriers identified within the organization. The objective is to foster a culture of inclusiveness with a strong emphasis and focus on accessibility at the ERC.

Information Management

With the implementation of GCdocs and the migration of data having been completed, the ERC plans to finalize the integration of GCdocs this coming fiscal year and promote the effective use of the business workspace to improve our reporting capabilities. This will streamline the tracking, analysis, and creation of detailed reports, supporting better decision-making processes.

This year, the ERC will prioritize refining the search layout on its website to ensure that RCMP Members and the general public can easily access up-to-date information related to the topics covered in its reviews and its corporate reports.

ERC's Way Ahead

As a small organization, the ERC places great importance on fostering an environment that supports and promotes mental health, well-being, diversity and inclusion. It also recognizes the challenges and values of retaining employees through flexibilities it can offer in an evolving workplace. Succession planning for key roles at the ERC will be paramount in ensuring the successful hand-off to new leadership commencing at the ERC and will open a new cycle of knowledge, diversity and savoir faire.

The ERC will continue to adapt to meet the demands of a shifting landscape and of an ever-evolving public service.

ERC ROLE AND PROCESS

Mandate of the ERC

The ERC is an independent administrative tribunal enacted by the *Royal Canadian Mounted Police Act* and separate from the RCMP. It carries out impartial reviews of certain RCMP employment and labour relations matters involving RCMP members, including appeals of disciplinary decisions, appeals of certain types of administrative discharges and of stoppage of pay and allowances decisions, among others. As a quasi-judicial tribunal, the ERC applies the rule of law and supports transparency, fairness and impartiality in RCMP processes and decision-making. Once the ERC has reviewed a case, it issues Findings and Recommendations for a final decision to the Commissioner of the RCMP.

As an arms-length civilian oversight 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 from the RCMP and process certain types of cases that were initiated before November 2014. These are making their way through the system in place before the enactment of the new *RCMP Act*.

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 whether 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 regimes, the case record, which includes relevant material and submissions made by the parties, is sent to the Registrar of the ERC 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.

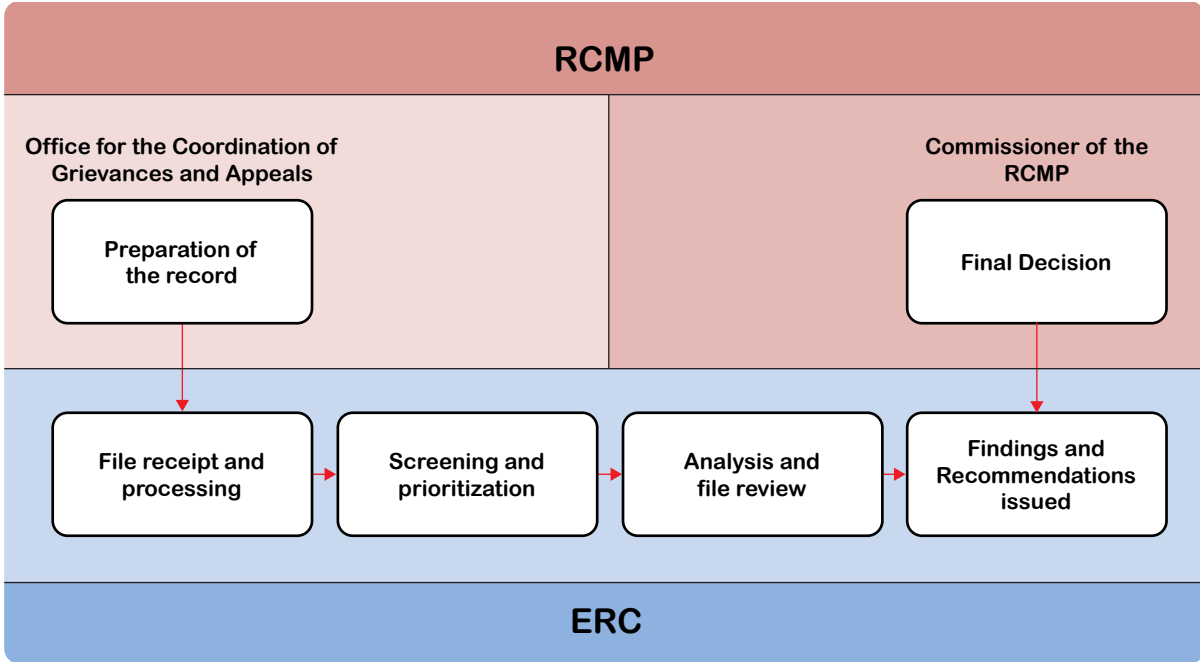
ANALYSIS AND PREPARATION OF THE FINDINGS AND RECOMMENDATIONS

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 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.

FINDINGS AND RECOMMENDATIONS ISSUED

A report with the Chairperson's 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 Findings and Recommendations. The Commissioner or his delegate is not bound by any finding or recommendation. However, the Commissioner or his delegate is legally required to provide reasons in their decision if they deviate from the Findings and Recommendations of the ERC.



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 Findings and Recommendations in cases under its charge.

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 (85%) target for 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 2023-2024, the ERC met the prescreening service standard in 100% of the cases it received.

Findings and Recommendations Service Standard

Seventy-five percent (75%) of files coming into the ERC will be completed within 12 months.

The service standard for the completion of the Findings and Recommendations within 12 months came into effect on April 1, 2022. In 2023-2024, the ERC met this service standard

by issuing, within 12 months of receipt, Findings and Recommendations in 77% of its cases received in 2022-2023.

During 2023-2024, the ERC received 20 cases. The results against the service standard for those cases will be reported in the 2024-2025 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

This fiscal year, the ERC continued to address its backlog in a strategic and methodical manner. 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's additional permanent funding allowed the organization to finalize the hiring and training of new legal counsels, bringing its legal team to 17 counsels. This enables the ERC to address files at a faster pace.

The ERC continued with the following strategies to address its backlog of cases:

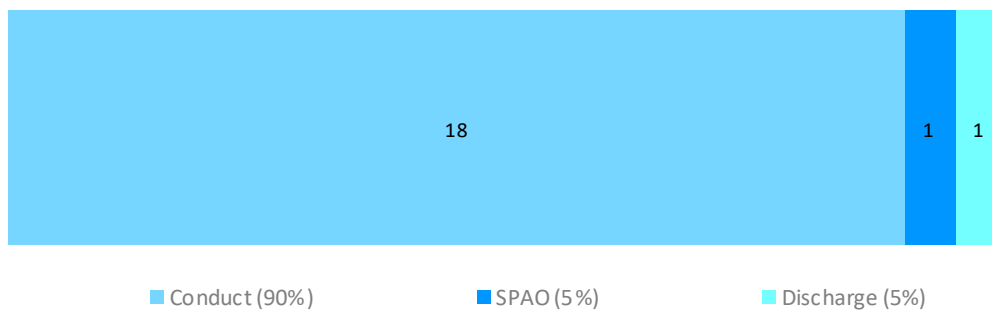
- Continue the prescreening process to reduce delays caused by files with procedural issues or missing documents.
- Use of a prioritization system to manage the ERC's response to the increase of incoming appeal files.
- Implement a list of files that were referred to the ERC prior to 2019, and assign 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.

These strategies permitted the ERC to reduce its caseload to 270 cases from 348 at the beginning of the fiscal year. Namely, the priority list of cases referred prior to 2019 originally comprised of 138 cases, was reduced to 17 cases.

RCMP External Review Committee YEAR IN REVIEW 2023-2024

Files Received

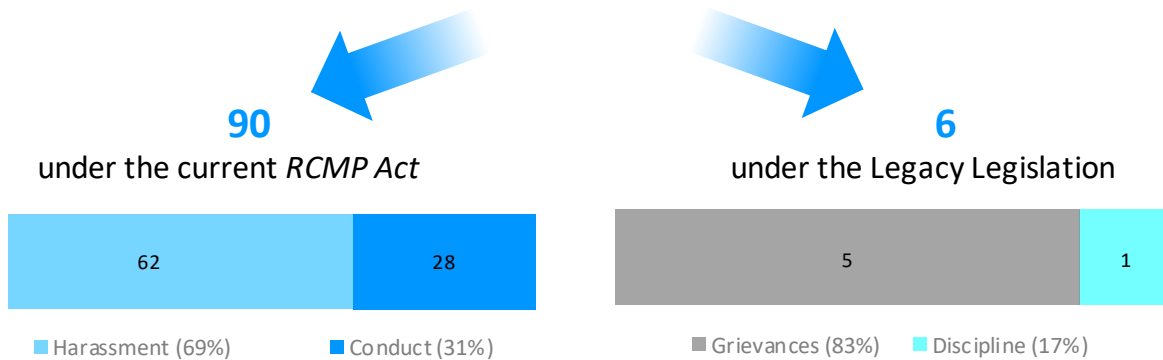
The RCMP referred **20** cases to the ERC.



Note: No files were received under the legacy legislation in 2023-2024.

Files Completed

The ERC completed **96** cases during 2023-2024.



RCMP External Review Committee Year in Review 2023-2024

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.)

100%
of cases were
pre-screened within the
30-day service standard

77%
of the completed cases were
completed within the
12-month service standard*

* These results are for the 31 cases received during the 2022-2023 fiscal year. Results for the 20 cases received during the 2023-2024 fiscal year will be reported in the 2024-2025 Annual Report.

RCMP External Review Committee Year in Review 2023-2024

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, 2023
348 cases
were active before the ERC.

The ERC received 20 new cases.

The ERC reviewed
18 cases
subject to its service standard.

The ERC reviewed
78 cases
that predated its service standard.

(Note: 2 appeals were withdrawn before the ERC made its Findings and Recommendations.)

As of March 31, 2024
270 cases
were active before the ERC.

Legacy Legislation:
6 Grievances
1 Discipline Appeal

Current Legislation:
145 Harassment
115 Conduct
2 Admin Discharge
1 Stoppage of Pay and Allowances

CASE HIGHLIGHTS: 2023-2024

Below are summaries of key issues arising from select ERC Reports of Findings and Recommendations.

Procedural Fairness

Procedural fairness refers to the most basic rules that govern decision-making processes.

For example, procedural fairness requires that decision makers perform their functions neutrally, and not prejudge the outcomes of cases they decide. A party who argues that a decision maker is biased need not prove actual bias. Rather, they must show a “reasonable apprehension of bias”. This situation may arise where a decision maker appears to make up their mind before they meaningfully hear a party to a matter. If a decision maker is found to have come to a decision while having a reasonable apprehension of bias, the decision will usually be set aside.

In C-098, the ERC found that the Conduct Authority reached a decision in a procedurally unfair manner because they had a reasonable apprehension of bias against the Appellant.

On the same day the Conduct Authority received the *Code of Conduct* investigation report, they wrote in the Appellant’s performance evaluation that the Appellant had shown “poor judgement” in relation to the incident at the root of the conduct matter. The Appellant had not yet received an opportunity to be heard on the allegations against him, and the Conduct Authority had not yet decided if those allegations were made out. The Appellant presented a formal request that the Conduct Authority step down as the decision maker. But the Conduct Authority declined to do so.

The ERC applied the test for deciding if there was a reasonable apprehension of bias. It found that the Conduct Authority’s comment in the Appellant’s performance evaluation would lead an informed person, who reviewed matters realistically and practically, to believe that it was more likely than not that the Conduct Authority had prejudged the case and failed to decide it fairly. The ERC concluded that the evidence was solid enough to overcome the strong presumption of decision maker neutrality, and to convincingly demonstrate a reasonable apprehension of bias.

The ERC recommended allowing the appeal.

In NC-173, the ERC considered if a decision maker’s release of their Decision very shortly after they received the harassment investigation report displayed a reasonable apprehension of bias.

The ERC observed that a short period of reflection does not necessarily indicate that a decision maker failed to appropriately review and consider the record before them. Decision makers often do preparatory work (e.g., summarizing and weighing evidence) throughout a proceeding. This is acceptable. But it is essential to keep an open mind during the decision-making process.

The ERC found that there was a reasonable apprehension of bias in this case, and that the process was therefore procedurally unfair. The record showed that the decision maker could not have done preparatory work because they signed the Decision on the same day they received the investigation report, which was over 500 pages long and contained roughly ten hours of recordings. The ERC reasoned that an informed person would find it highly unlikely, if not inconceivable, that a decision maker could have fully examined and thoughtfully considered that report on the same day they came to the Decision. As a result, the decision maker created a perception that they made up their mind about the case before they fully reviewed the record.

The ERC recommended allowing the appeal.

In **NC-164** to **NC-166**, the ERC considered whether a decision maker's findings against the Appellant in overlapping proceedings gave rise to a reasonable apprehension of bias.

The RCMP alleged that the Appellant offended the *Code of Conduct*. After the Appellant learned of the *Code of Conduct* investigation, he presented harassment complaints against three senior RCMP members who had been involved in the events at the heart of the allegation against him. The decision maker held that the Appellant violated the *Code of Conduct*. They later found that none of the senior members had harassed the Appellant. The Appellant appealed. He argued that the decision maker's findings against him in the conduct process led the decision maker to have a reasonable apprehension of bias against him in the harassment complaint process.

Recognizing that making similar decisions in related cases does not by itself show a reasonable apprehension of bias, the ERC found that multiple factors disclosed a reasonable apprehension of bias in this situation. Namely, the conduct and harassment complaint processes involved the same parties, many of the same witnesses, and considerations of much of the same evidence. The decision maker's conclusions in the harassment complaint process echoed the conclusions they had made in the conduct process. In addition, although the decision maker received the harassment investigation report well before the conduct process ended, they dismissed the harassment complaints days after deciding that the Appellant had contravened the *Code of Conduct*. These factors, when considered together, showed a reasonable apprehension of bias.

The ERC recommended allowing the appeals.

Another important principle of procedural fairness is the right to be heard. Generally, a party has the right to know the case they are facing, and to present and support their side of the story.

In **NC-147**, the ERC stressed that, in the context of an RCMP harassment complaint process, procedural fairness requires that a complainant receive the opportunity to address an alleged harasser's response to the complaint.

The Appellant appealed a Decision that his harassment complaint was not made out. The ERC recommended allowing the appeal on a ground that did not relate to procedural fairness. However, the ERC further observed that, after the Appellant filed the harassment complaint:

- the Alleged Harasser was invited to, and did, respond to the complaint in writing;
- in that response, he disputed the complaint and offered his side of the story; and
- the Appellant was not given a chance to address the Alleged Harasser's response.

The ERC recommended that the new decision maker ensure that the decision-making process was procedurally fair by inviting the Appellant to respond to the Alleged Harasser's response.

Similarly, in **NC-155**, the ERC found that the Appellant was denied procedural fairness because he was not given a chance to review and respond to a key document, and because the decision maker did not receive a submission the Appellant had presented.

The Appellant brought a harassment complaint against the Alleged Harasser. Investigators then obtained audio interviews from the parties and witnesses, as well as a lengthy written statement from the Alleged Harasser. They went on to circulate a preliminary investigation report (PIR), to which they attached summarized audio interviews. The parties responded to the PIR via written rebuttals. Investigators later sent a final investigation report to the decision maker. This report appeared to contain everything they had gathered, except the Appellant's rebuttal to the PIR (Rebuttal). The decision maker decided that the Alleged Harasser did not harass the Appellant.

On appeal, the ERC found that the process informing that Decision was procedurally unfair. To begin, the Appellant had no opportunity to review and respond to the Alleged Harasser's written statement, since it was not attached to the PIR. This was a vital statement. It was over 13 pages long and included information that went beyond what was found in the Alleged Harasser's audio interview. The Appellant's right to be heard included the chance to respond to that statement.

Moreover, although the Appellant properly filed his Rebuttal, the decision maker somehow never received it and was therefore unable to consider it. The Appellant was entitled to have his case placed before the decision maker, and the Rebuttal was a crucial part of that case. It contained replies to opposing positions, clarified an earlier statement, and stressed the value of talking to a specific witness. It also offered useful context and cast doubt on certain information.

The ERC recommended allowing the appeal.

Legal Tests

It is important for a decision maker in any type of proceeding to properly apply a relevant legal test. Not doing so can amount to an error of law and result in an overturned decision.

In **C-096**, the ERC found that the Conduct Authority erred by applying the wrong legal test, and described when and how it would be appropriate to apply that test.

In deciding whether the Appellant had misused a police car, contrary to section 4.6 of the *Code of Conduct*, the Conduct Authority considered, in response to the Appellant's representative's argument, if the RCMP could have dealt with the matter as a performance issue rather than as a conduct issue. The ERC found that the Conduct Authority committed two mistakes in this regard. First, they applied a test that was meant to be used only to differentiate misconduct from poor performance in matters of alleged neglect of duty. Second, they applied a version of the test that became outdated when the present *RCMP Act* took effect.

As the ERC noted in C-013, section 4.2 of the current *Code of Conduct* (Diligence in Performing Duties and Carrying Out Responsibilities) differs from its predecessor by making no reference to knowingly failing to be diligent. The ERC in turn identified a new test under section 4.2. Namely, a contravention of that section may be shown by a degree of neglect that separates misconduct from a mere performance issue, or by the presence of an element of willfulness to the conduct.

In **NC-162**, the ERC found that the decision maker, using template language, erred by placing the responsibility to prove a *prima facie* case of harassment on the Complainant. Applying this incorrect burden of proof, the decision maker concluded that the Complainant failed to make out ten allegations of harassment. The ERC pointed out that a harassment complaint process is not an adversarial process. It is more like an inquiry. A decision maker must therefore consider all relevant information to decide whether there has been a *prima facie* contravention of the *Code of Conduct*. Requiring the Complainant to prove harassment was accordingly an error of law. The ERC recommended allowing the appeal and assigning the matter to a new decision maker.

Yet, in **NC-167**, the ERC found that a decision maker who used the same template language in a Decision did not make an error of law. The difference was that, in their reasoning throughout the Decision, the decision maker placed no onus on the Complainant. They instead reviewed all the evidence and found that the alleged incidents did not occur, on a balance of probabilities. Relying on the Supreme Court of Canada, the ERC noted that a decision maker's misstatement of a legal test creates a presumption of an error of law. This presumption can be rebutted by looking beyond the misstatement and assessing the decision as a whole. Taking that approach, the ERC found that the decision maker applied the correct test despite using the wrong wording. The ERC concluded that there was no error of law and recommended dismissing the appeal.

The opposite happened in **NC-142**. In that case, the decision maker correctly set forth the relevant legal test at the beginning of the Decision but went on to misapply part of that test.

The Appellant brought a harassment complaint accusing the Alleged Harasser of inappropriately touching him. After an investigation, the decision maker issued a Decision in which she properly identified the objective, reasonable person test for ascertaining harassment. That is, what would an informed, reasonable person in the complainant's situation believe? The decision maker later found that the Alleged Harasser meant for the touch to be funny and felt it would be acceptable in view of the parties' friendship. On this basis, the decision maker said she did not believe the Alleged Harasser reasonably ought to have known his behaviour would be offensive or harmful.

The ERC found that the decision maker erred in law by assessing the Alleged Harasser's intent in deciding if there had been harassment. The decision maker should have applied the relevant legal test by asking how a reasonable person, in the same situation as the Appellant, would see the Alleged Harasser's behaviour? Would that person have felt offended or harmed? Would the existence of a friendship have affected their perspective? The decision maker also should have asked whether the disputed touch went beyond the usual limits of interactions in the workplace.

The ERC recommended allowing the appeal and assigning the matter to a new decision maker.

Aggravating and Mitigating Factors

Aggravating and mitigating factors are considerations that relate to the blameworthiness of the subject member and to the seriousness of their conduct. Factors that justify harsher conduct measures are aggravating. Factors that justify milder conduct measures are mitigating.

The weight a decision maker places on aggravating and mitigating factors attracts substantial deference. A conduct measure may later be changed if the decision maker failed to consider

a relevant factor or erred in their evaluation of a factor. But these errors of principle will warrant interference only where they appear to have had a bearing on the conduct measure imposed.

In **C-095**, the ERC found that the Conduct Authority relied on appropriate aggravating factors.

The Conduct Authority directed that the Appellant forfeit significant pay after concluding that he had lacked diligence in performing his duties, contrary to section 4.2 of the *Code of Conduct*. On appeal, the Appellant argued that the Conduct Authority erred by treating his lengthy career as an aggravating factor, and by attaching weight to his past misconduct, which was 14 years' old.

The ERC was not persuaded by those positions. The Conduct Authority was entitled to treat the Appellant's long service as an aggravating factor. Although seniority may mitigate misconduct in some circumstances, it can aggravate it in others, such as in this case, where the Appellant held a supervisory role. Furthermore, while a lengthy stretch of employment untarnished by discipline can mitigate fresh misconduct, older discipline may aggravate the fresh misconduct where, as in this matter, the older discipline was serious. Each case must be dealt with on its own facts.

The ERC recommended dismissing the appeal.

Conversely, in **C-091**, the ERC found that the Conduct Authority relied on some inappropriate aggravating factors.

After alleging and concluding that the Appellant offended section 4.6 of the *Code of Conduct* by misusing a police car, the Conduct Authority imposed a conduct measure consisting of a loss of five days' pay. The aggravating factors the Conduct Authority set forth in support of this conduct measure included the Appellant's: a) refusal to speak with the investigators; b) inclusion of certain positions in his defence; and c) reporting of similar *Code of Conduct* breaches by others.

The ERC found that the Conduct Authority should not have treated those things as aggravating factors. The Appellant had the right to remain silent and to defend himself against the allegation. The ERC therefore recommended allowing the appeal of the conduct measure. However, upon reviewing the evidence and conduct measure guidance materials, the ERC found that a loss of five-days' pay was a reasonable conduct measure in this case and recommended maintaining it.

Similarly, in **C-074**, the ERC determined that the Conduct Authority's reliance on an irrelevant aggravating factor resulted in the selection of an unreasonable conduct measure.

After concluding that the Appellant breached section 4.1 of the *Code of Conduct* by going home and leaving his duty area without permission, the Conduct Authority ordered a conduct measure consisting of a forfeiture of two days' pay. One of the aggravating factors they relied on was the fact that the Appellant went off duty sick (ODS) shortly after those incidents and remained ODS.

On appeal, the Appellant asserted that the Conduct Authority wrongly treated his ODS status as an aggravating factor. The Appellant stressed that he went ODS due to a genuine disability, and that the Conduct Authority had accepted this fact.

The ERC agreed with the Appellant. The record did not include any evidence to suggest that the Appellant's ODS status was improper. Rather, the evidence indicated that health professionals had diagnosed the Appellant with a serious medical condition during his ODS period. Moreover, the Conduct Authority recognized that diagnosis as a mitigating factor. The Conduct Authority otherwise did not explain why they viewed the Appellant's ODS status as an aggravating factor.

Upon analyzing the remaining aggravating and mitigating factors, the ERC recommended allowing the appeal and reducing the conduct measure from a loss of two days' pay to a loss of one day of pay.

In **C-100**, the ERC clarified that, whereas a police employer is responsible for proving alleged misconduct, a subject member is responsible for demonstrating a mitigating circumstance.

The Conduct Authority imposed serious conduct measures against the Appellant after finding that he contravened section 2.1 of the *Code of Conduct* by harassing and sexually harassing a peer. One of the mitigating factors the Conduct Authority listed was a single, positive report of the Appellant's performance, provided by a supervisor. On appeal, the Appellant argued that the Conduct Authority erred by not treating his positive work history as a mitigating factor. The ERC found that the Appellant offered no evidence of a positive work history (e.g., annual reviews) in support of that alleged mitigating factor. The ERC in turn recommended dismissing the appeal.

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.canada.ca/en/rcmp-external-review-committee.html>

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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