



RCMP External
Review Committee

Comité externe
d'examen de la GRC

ANNUAL REPORT 2024-2025

CHARLES RANDALL SMITH
CHAIRPERSON



Canada 

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MESSAGE FROM THE CHAIRPERSON



I am pleased to present the 2024-2025 RCMP External Review Committee's (ERC) Annual Report.

This year marked a significant milestone for the ERC as we issued 105 Reports of Findings and Recommendations, the highest number of case file reviews since the organization's inception in 1988. This achievement reflects our commitment to enhancing the efficiency and effectiveness of our strategies on reducing the backlog of cases and our continued independent and impartial review process of appeal cases brought before us.

Throughout the year, we have met our service standards and have adapted

to address new and evolving demands and corporate reporting requirements. Although the organization is not included in the second phase of the refocusing government spending review, the recent collective agreement ratifications have required us to redistribute funding to offset salary increases and retroactive payments.

A core priority for the ERC remains fostering a strong workplace culture of diversity and inclusion, accessibility and employee well-being. We will continue to strive to foster and strengthen support for employees through a variety of initiatives including information sessions, training programs, and continued open dialogue for a dynamic and adaptable workplace that prioritizes wellness and where each team member feels valued and empowered.

I would like to take this opportunity to thank each and every member of the ERC for their hard work and dedication this past year. Without their expertise, collaboration and commitment, the efforts we have made would not have been possible.

Looking ahead, we remain committed to continuous improvement and innovation.

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

Charles Randall Smith

Corporate Management and Achievements

Human Resources Management and Finance

Succession planning remained a priority for the ERC this year. As a micro-organization, maintaining corporate memory is essential and vital to ensuring continued operational success. With senior staff members expected to retire in the coming years, a strong and robust succession plan supports a smooth knowledge and leadership transition.

The ERC updated its Code of Conduct in alignment with the Government of Canada's efforts to modernize Values and Ethics in the Public Sector. The ERC remains committed to fostering a safe, inclusive, diverse and accessible workplace to all of its employees and to promote these values across the organization. The ERC's mandatory training list was also updated to reflect the Government of Canada's requirements surrounding digital security.

As part of the three-year cyclical review process, the ERC updated its Policy on Workplace Harassment and Violence Prevention. All staff completed the necessary training required, in compliance with public service standards.

Although the ERC is exempt from the refocusing government spending review, the ratification of recent collective agreements has necessitated a reallocation of funds to cover salary increases and retroactive payments. As a micro-organization with a highly specialized workforce, the ERC operates with limited resources to deliver its mandate. While exempt, the ERC aligns with its intent by actively pursuing efficiencies, minimizing non-essential expenses, and optimizing budget allocations to maintain fiscal responsibility.

In 2024-2025, the ERC met all of its financial reporting requirements and ensured good and sound management of its financial resources. We have continued to review and develop internal procedures to streamline ERC processes.

Mental Health and Wellness

Through the fiscal year, ERC employees emphasized the value of the hybrid work model in fostering work-life balance. This feedback, gathered through regular discussions and the annual employee survey, highlighted the model's positive impact on employees' well-being.

The ERC also updated its Occupational Health and Safety tools, resources and protocols and prioritized the health and wellness of its employees throughout the fiscal year as the success and excellence of an organization is rooted in the well-being of its employees.

Diversity and Inclusion

In 2024-2025, the ERC participated in the Government of Canada's Employment Equity consultations and updated its internal policies and guides to reflect the emerging government priorities.

As part of ongoing efforts to promote inclusion, the ERC continues to publish a monthly newsletter through its *Inclusivity Hub*, sharing resources, activities, and information related to diversity, accessibility, mental health and overall employee well-being.

In light of the refocusing government spending initiatives, the ERC remains dedicated to supporting the mental health and well-being of its employees. We will continue to foster open dialogue and hold and promote informative sessions that promote mental wellness.

Information Management

The ERC continued to integrate GCdocs into its procedures and workplace during the 2024-2025 fiscal year. At this time all employees have been onboarded and training is underway to ensure a smooth and effective transition to this new platform. The organization will continue to build on its investments in information technology tools to enhance efficiencies and streamline operations.

Moving Forward

As a micro-organization, the ERC recognizes and understands the importance of fostering an environment that prioritizes, supports and promotes mental health, well-being, diversity and inclusion while continuing its operational obligations.

Succession planning will continue to remain a strategic priority for the ERC to ensure the effective transfer of knowledge and responsibilities and to streamline processes.

The ERC will continue to evolve and adapt in response to demands of changing work and of an ever-evolving workplace.

ERC Role and Process

Mandate of the ERC

The ERC is an independent administrative tribunal enacted by the *RCMP 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 1st, 2021;
3. Stoppage of pay and allowances orders;
4. Certain categories of discharges and demotions (medical discharges, unsatisfactory performance, absence from duty without authorization and conflict of interest); and
5. Revocation of appointments.

Roles of ERC – Legacy Framework

In addition to areas under the current legislative framework, the ERC continues to receive and process certain types of cases from the RCMP that were initiated before November 2014. Although the ERC was able to address the last two legacy cases in its backlog, some cases are still making their way through the system that was 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 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 ERC Registrar through the RCMP's OCGA.

Screening and Prioritization

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

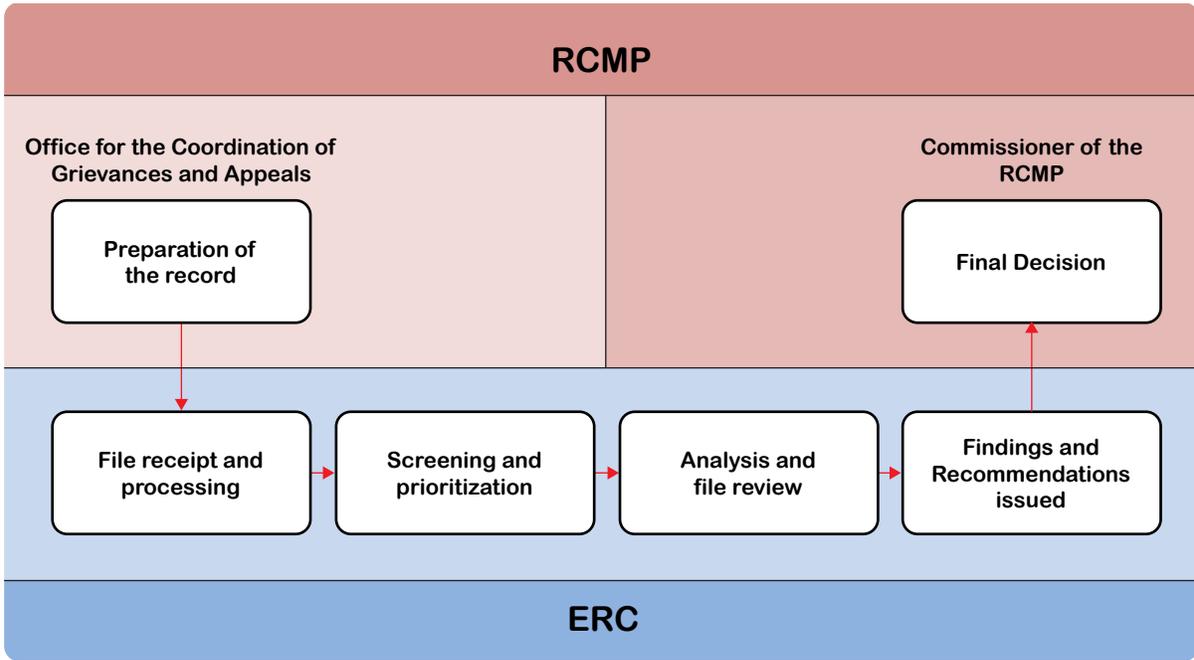
Analysis and Preparation of the Findings and Recommendations

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's 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 ERC's Findings and Recommendations.



Service Standards – Update

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

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

It is of the highest importance to the ERC to prepare complete, meaningful and objective 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

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 2024-2025, the ERC met the prescreening service standard in 97% of the cases it received.

Findings and Recommendations Service Standard

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 1st, 2022. In 2024-2025, the ERC met this service standard by issuing,

within 12 months of receipt, Findings and Recommendations in 90% of its cases received in 2023-2024.

During 2024-2025, the ERC received 36 cases. The results against the service standard for those cases will be reported in the 2025-2026 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 section of the Annual Report provides an overview of the backlog reduction efforts undertaken throughout this fiscal year. It highlights the key achievements, challenges and lessons learned from these efforts. The ERC's focus has been on improving efficiency, optimizing workflow and leveraging technology to accelerate backlog clearance.

The primary objective of the backlog reduction was to reduce delays for members whose appeals are before the ERC. This was achieved by implementing process improvements for faster issuance of Findings and Recommendations, enhancing team productivity and accountability and preventing further backlog accumulation.

Key Achievements

- The ERC continued to use the following strategies to address its backlog of cases:
 - A prescreening process to reduce delays caused by files with procedural issues or missing documents.
 - A prioritization system based on the severity of the decision under appeal to manage the ERC's response to the increase of incoming appeal files.
 - A streamlining of the review process while maintaining high quality legal analyses.
- These strategies resulted in the ERC reducing its caseload to 194 cases from 270 at the beginning of the fiscal year.
- The priority list of cases referred to the ERC prior to 2019, originally comprised of 138 cases, was completely depleted in this fiscal year.
- The legal team is separated into two streams: one assigned to the service standard cases reviewed 23 cases and the other reviewed 82 cases from the backlog that predated the service standard.
- The ERC is processing the last legacy case of its backlog; however, five new legacy cases were referred to the ERC at the end of the fiscal year. We expect all legacy cases to be completed by the end of next fiscal year.

Challenges

Resource constraints

While the ERC was able to optimize its full-time equivalent (FTE) resources upon being granted permanent funding, this fiscal year, the ERC has had to absorb more than half of the salary increase and retroactive pay following an economic increase for Legal Management (LC) and Law Practitioner (LP) classifications. To this end, in 2025-2026 and following years, the ERC will have to adjust its staff complement and spending to remain within its budget allocation. This reduction of staff presents a risk in the organization's capacity to meet its core responsibility, established service standards and results.

Complex cases

Some backlog cases, and more recent cases, require extensive review, research and analysis. For example, a cluster of harassment appeals involved numerous alleged issues and records containing over 40 000 pages. Further, recent Supreme Court of Canada jurisprudence provides mandatory guidelines for administrative tribunals to follow when providing written reasons on particular issues such as the *Canadian Charter of Rights and Freedoms (Charter)*.

Stakeholder Dependencies

A few cases were placed in abeyance at the subject member's request due to ongoing informal discussions. Further, some cases were put on hold while the parties resolved disclosure issues.

Lessons Learned

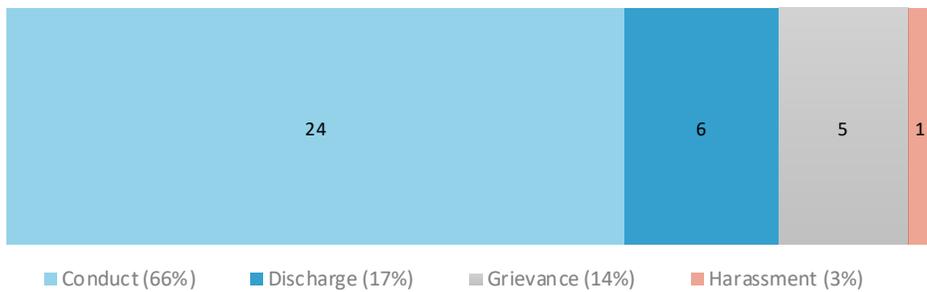
- Early intervention works: The prescreening process has demonstrated that addressing issues early on reduces the delays once the case file is assigned to counsel for review.
- Clear prioritization matters: Establishing a clear prioritization system based on factors such as the matter at hand and the time elapsed has contributed to a methodical backlog reduction.
- Continuous monitoring is essential: Ongoing monitoring of RCMP internal processes, trends and changes is essential to ensure sustained improvements and adaptability.

This year's backlog reduction efforts have yielded significant improvements, but continuous efforts are necessary to maintain momentum. In the coming year, the focus will be on improving workflow coordination and communication amongst Senior Counsels and Counsels, establishing a proactive approach to backlog prevention and strengthening workforce training. By implementing these strategies, the ERC aims to sustain the improvements and prevent backlog accumulation in the future.

RCMP External Review Committee Year in Review 2024-2025

Files Received

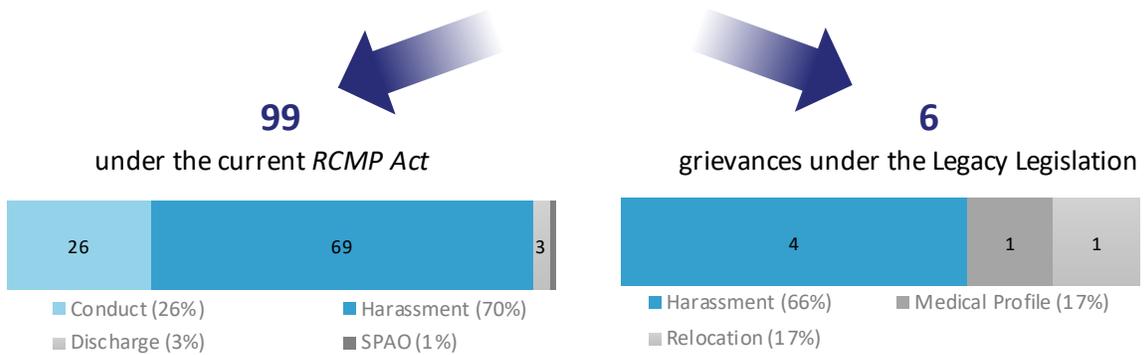
The RCMP referred **36** cases to the ERC.



Note: The five grievances are likely to be the last files received under the legacy legislation.

Files Completed

The ERC completed **105** cases during 2024-2025.



RCMP External Review Committee Year in Review 2024-2025

Service Standards

Service Standard 1 Pre-screening	Indicator
The ERC will pre-screen the appeal record to confirm that it is complete and ready for review.	30 calendar days from the date the ERC receives the appeal record. (The ERC will meet this standard for 85% of all cases received.)
Service Standard 2 Findings and Recommendations	Indicator
The ERC will provide the Commissioner of the RCMP with a report containing the ERC Chairperson’s Findings and Recommendations.	12 months from the date the ERC receives the appeal record. (The ERC will meet this standard for 75% of cases received starting April 1, 2022.)

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

90%
of the completed cases were
completed within the
12-month service standard*

* These results are for the 20 cases received during the 2023-2024 fiscal year. Results for the 36 cases received during the 2024-2025 fiscal year will be reported in the 2025-2026 Annual Report.

RCMP External Review Committee Year in Review 2024-2025

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, 2024
270 cases
were active before the ERC.

The ERC received 36 new cases.

The ERC reviewed
23 cases
subject to its service standard.

The ERC reviewed
82 cases
that predated its service standard.

(Note: 7 appeals were withdrawn before the ERC made its Findings and Recommendations.)

As of March 31, 2025
194 cases
were active before the ERC.

Legacy Legislation:
5 Grievances
1 Discipline Appeal

Current Legislation:
74 Harassment
110 Conduct
4 Admin Discharge

Case Highlights: 2024-2025

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

Limitation Period Extensions

A limitation period is a time limit to take a specific action, such as filing a grievance or an appeal. Not respecting a statutory limitation period will ordinarily lead to a decision-maker dismissing the matter before them. In certain circumstances, however, parties may obtain an extension of time. Further to applicable caselaw, the ERC will assess if an extension is warranted by considering whether:

- 1) there was a continuing intention to pursue the grievance or appeal;
- 2) the grievance or appeal reveals an arguable case;
- 3) there is a reasonable explanation for the delay;
- 4) an extension will result in prejudice to the other party; and
- 5) there are additional, relevant factors in the circumstances.

Every factor need not be met to permit an extension. Rather, the decision-maker will determine how much weight to give each factor on a case-by-case basis. The aim is to ensure that justice is served.

Among the cases the ERC reviewed this year, **G-792** and **NC-236** illustrate how a balancing of these factors can result in different outcomes when the ERC considers whether extensions are justified.

In **G-792**, the ERC found that a harassment grievance should be denied because the Grievor did not file it on time, and an extension was unjustified in the circumstances.

In this case, the Grievor did not present his Level I grievance within 30 days of the alleged harassment, contrary to a requirement under the *RCMP Act*. The legislation allows for an extension of that period, though, if the Commissioner is satisfied that the circumstances support it.

A Level I Adjudicator denied the grievance. The Adjudicator found that the Grievor presented it after the limitation period expired and that the facts did not justify an extension.

The Grievor resubmitted his grievance at Level II. In his view, an extension was warranted. He argued that he had been unfamiliar with the RCMP grievance process. He also alleged that he was advised to complain to the Canadian Human Rights Commission (CHRC) because the RCMP grievance process was not available to him. He added that he filed his Level I grievance after the CHRC told him that he must exhaust available recourse options within the RCMP before he could engage the CHRC.

The ERC found that the Grievor had presented an arguable case on the merits. However, in balancing the above-noted factors, it further found that an extension was not warranted.

First, the Grievor had not shown that he had a continuing intention to pursue the grievance. The ERC explained that he had deliberately sought recourse for the alleged harassment through an external process rather than the RCMP grievance process.

Second, the Grievor did not give a reasonable explanation for his extended delay in filing a Level I grievance. He did not provide any evidence of the advice he allegedly received that the RCMP grievance process was unavailable to him. Additionally, in this case, a lack of familiarity with the grievance process did not justify a failure to respect a statutory limitation period. The record also showed that the Grievor had used the grievance process in another matter during the period of the alleged harassment. This suggested that he had an earlier opportunity to become familiar with his statutory obligations under the grievance process.

Finally, the ERC found that a two-year extension of the limitation period would be prejudicial to the Alleged Harasser's ability to respond to the grievance.

For these reasons, the ERC concluded that it would not be in the interests of justice to recommend an extension, and recommended denying the grievance.

Conversely, in **NC-236**, the ERC's balancing of factors led it to find that an extension was justified.

This matter involved an appeal filed after the 14-day limitation period set out in the *Commissioner's Standing Orders (Grievances and Appeals)*.

The decision under appeal informed the Appellant of his right to appeal. There was an instructional error, though, that made it unclear whether he had 14 or 30 days to submit an appeal.

The Appellant filed his appeal eight days after the 14-day limitation period expired. He explained that the instructional error caused him to believe that he had 30 days to appeal. He requested an extension of the limitation period principally on this basis.

The ERC began its analysis by finding that the Appellant did not provide a reasonable explanation for the delay. Although the instructional error might have caused confusion, there is an expectation that members be familiar with the authorities that apply to their circumstances. Additionally, if there was any uncertainty, the Appellant should have sought clarification on the limitation period.

The ERC found that the three remaining factors favoured the Appellant. First, there was an arguable case that raised questions about the Respondent's application of a legal test and failure to investigate a harassment complaint. Second, the record showed that the Appellant had an ongoing intention to appeal the decision. Finally, the delay did not result in prejudice to the Respondent.

The ERC concluded that an extension of the limitation period would best serve the interests of justice and recommended granting an extension.

Off-Duty Conduct

This year, the ERC addressed a number of cases concerning the conduct of RCMP members while off duty. It is not uncommon for members to argue that seemingly private matters fall outside the domain of the RCMP conduct process. The RCMP's *Code of Conduct* is clear that it applies to members wherever they are in the world, and regardless of whether they are on duty. To ensure the public's trust, the RCMP expects members to maintain a very high level of conduct.

In **C-120**, **C-102** and **C-122**, the ERC considered the application of the *Code of Conduct* in matters the subject members viewed as strictly personal and beyond the scope of conduct proceedings.

C-120 involved a parenting dispute between a member and his ex-spouse. After the former couple had a disagreement concerning child support payments, the member inappropriately used his RCMP status to prevent their child from travelling internationally and made a false statement in so doing.

The member argued that the RCMP had no authority to engage the conduct process. In his opinion, the issue was strictly a family-law matter. The Conduct Board (Board) disagreed. It explained that the Respondent used his status as a police officer to gain an advantage over his ex-spouse with the US and Canadian border agencies. The Board found that the member behaved discredibly. It imposed conduct measures including a financial forfeiture and a period of ineligibility for promotion. The Conduct Authority appealed this decision and sought the member's dismissal.

On appeal, the ERC agreed with the Board's concerns about the member's off-duty conduct. Although the matter began with a family dispute, the Respondent's actions had a serious impact on the Force's reputation, particularly with its federal and international partner agencies.

The ERC recommended allowing the Conduct Authority's appeal on other grounds.

In **C-102**, the Appellant appealed the decision of a Conduct Authority, who found that his online messaging with a Community Police Officer was discourteous behaviour.

The Community Police Officer worked at the same detachment as the Appellant. In a conversation on an instant messaging app, the Appellant made unsolicited and explicit sexual comments to her. She reported the conversation to a coworker and said that it had made her feel uncomfortable.

On appeal, the Appellant argued, among other things, that his private conversation with the Community Police Officer did not happen in the workplace and that, therefore, the RCMP had no authority to subject him to a conduct proceeding.

The ERC found that the *Code of Conduct* requires members to be courteous in their interactions with colleagues. Although the conversation in question did not occur in the physical workplace, the Community Police Officer was a work colleague at the same detachment, and the Appellant's sexual remarks made her uncomfortable working with him. The ERC recommended dismissing the appeal.

C-122 involved a member who went to court with his neighbour over a personal dispute. In her decision, the judge made some negative findings concerning the member's credibility.

Upon learning of the Court's decision, the RCMP opened a *Code of Conduct* investigation including allegations that the member had been dishonest with the Court. The matter was ultimately brought before a Conduct Board (Board), which found that none of the allegations were established.

The Conduct Authority appealed, arguing that the decision was clearly unreasonable because the Board should have adopted the Court's findings on credibility.

The ERC found that the Board's decision was reasonable. The ERC concluded that the Board could reassess the facts to determine whether the Appellant's behaviour in Court contravened the *Code of Conduct*. In so doing, it accepted the Board's distinction between a party to a dispute remembering events differently and one who gives a false or misleading statement. The Board provided a rational and tenable line of analysis in support of its findings. The ERC recommended dismissing the appeal.

Performance Issue vs. Conduct Process

The ERC also reviewed a number of cases that touched on the divide between performance issues and conduct matters.

In **C-123**, the ERC found that it was acceptable to deal with concerning behaviour as both a performance issue and a conduct matter.

In this case, the Appellant committed several policy infractions during a traffic stop, including turning off his in-vehicle camera system at an inappropriate time and failing to arrest an individual with an outstanding warrant against him. The Appellant's supervisor went on to give him verbal guidance on how to properly conduct a traffic stop. Later, the supervisor learned that the Appellant provided inaccurate information about his handling of the traffic stop.

Following a *Code of Conduct* investigation, a Conduct Authority found one allegation of negligence of duty and one allegation of dishonesty were established.

At the conduct meeting and on appeal, the Appellant argued that the RCMP could not use the conduct process in the circumstances because his supervisor had already given him performance guidance on the proper steps to conduct a traffic stop.

The ERC found that the Respondent could use the conduct process in this matter. It noted that the conduct process begins when a conduct authority becomes aware that a member has engaged in a behaviour that appears to contravene the *Code of Conduct*. In this case, the Appellant's supervisor was not the conduct authority. The ERC also found that a supervisor explaining how to correctly apply policy and procedure does not prevent a conduct authority from using the conduct process where it appears that a subject member may have offended the *Code of Conduct*.

The ERC nevertheless recommended allowing the appeal on an unrelated ground.

Conversely, **C-105** involved behaviour that was appropriately addressed as a conduct matter, rather than as a performance issue.

The Conduct Authority found that the Appellant breached the *Code of Conduct* when he engaged in an improper vehicle pursuit that ended with the Appellant discharging his firearm at the fleeing driver.

On appeal, the Appellant argued that this decision was unreasonable because the RCMP should have dealt with the matter as a performance issue.

The ERC found that the RCMP Conduct Policy requires conduct authorities to rule out a violation of the *Code of Conduct* before they consider whether the matter can be addressed as a performance issue. In this case, the Conduct Authority considered numerous concerns regarding the misuse of a police vehicle during a pursuit, including using high speeds in school zones, a failure to disengage once the pursuit was over, and a false statement about what took place. It was reasonable for the Respondent to use the conduct process. The ERC recommended dismissing the appeal.

In **C-115**, the ERC reached a similar conclusion.

The Appellant prepared a report stating that certain exhibits had been returned to their owner. Later, a colleague found these exhibits in the detachment and reported the discovery.

The Conduct Authority opened a conduct process, alleging the Appellant had knowingly filed a false police report. The Appellant explained that she assumed the exhibits were returned to the owner because other items had been returned to that individual. The Respondent found the Appellant's explanation unreasonable, and that the allegation was established.

On appeal, the Appellant argued that her conduct should have been treated as a performance issue.

The ERC reiterated that only after the conduct authority has ruled out a *Code of Conduct* violation can they consider treating the matter as a performance issue. In the present case, the information provided to the Conduct Authority required him to move forward with the conduct process. There was evidence that the Appellant had lost exhibits and falsely reported their whereabouts.

The ERC recommended allowing the appeal, but on a different basis.

Sexual Misconduct

This year, the ERC addressed several cases of alleged sexual misconduct, and considered a range of issues in so doing. Such misconduct is very serious because it can result in long-term harm to victims, the culture of trust in the workplace, the Force's relationships with communities, and the public's confidence in the Force.

In **C-106**, the ERC considered the test to be applied in conduct proceedings where a member is alleged to have engaged in sexual assault.

In this case, the Conduct Board (Board) found that the subject member behaved discredibly by sexually assaulting another member. The Board imposed severe conduct measures short of a dismissal.

The Conduct Authority appealed the decision and argued that the Board should have considered dismissal as an appropriate conduct measure. They submitted that the Board erred by failing to acknowledge that the misconduct was a criminal sexual assault.

The ERC found that, in conduct proceedings where a member is alleged to have engaged in sexual assault, decision-makers must apply the criminal-law test for that offence. This approach reflects Federal Court case law, as well as how other professional discipline bodies deal with the issue. The ERC concluded that the Board erred in law in failing to apply the criminal-law test for sexual assault.

The ERC found that the subject member's actions met the elements of the criminal-law test for sexual assault and were discreditable. Upon considering the gravity and repetitiveness of the Appellant's conduct, the range of sanctions, and the aggravating and mitigating factors at play, the ERC recommended ordering the subject member to resign within 14 days, or he would be dismissed.

In **C-111**, the Appellant faced an allegation of discreditable conduct for alleged sexual misconduct after a court acquitted him of sexual assault charges arising from the same incident. The victim alleged that the Appellant had touched her inappropriately in a number of ways.

In the criminal proceedings, the judge found that there was a reasonable doubt regarding whether the touching was for a sexual purpose. Therefore, the Crown had not proven an essential element of sexual assault to the criminal-law standard, and the Court found the Appellant not guilty.

However, the Conduct Board (Board) had to apply the less rigid civil-law standard: a balance of probabilities. The Board found, given all the surrounding circumstances, the Appellant's behaviour was sexual in nature. The Board concluded that the Appellant's actions satisfied the definition of sexual assault, which is touching for a sexual purpose without consent. The Board directed the Appellant to resign from the Force within 14 days, or he would be dismissed.

On appeal, the Appellant argued that the Board erred in law and contravened principles of procedural fairness in coming to different conclusions than the criminal trial judge.

The ERC disagreed. It found that it was open to the Board to conclude that the Appellant had touched the victim for a sexual purpose. The Board was not bound by the criminal court acquittal. A conduct proceeding is a separate process than a criminal trial and has a different standard of proof. Although it would be impermissible to re-litigate the matter, this is not what happened here. The Board did not make any findings that conflicted with the court's decision. A finding that a member committed police misconduct on a balance of probabilities can be consistent with a finding that the same member is not guilty beyond a reasonable doubt of a related, criminal charge.

The ERC recommended denying the appeal and confirming the conduct measure.

In **C-126**, the ERC considered the soundness of the conduct measure the Appellant received for committing sexual harassment; namely, a direction to resign within 14 days or be dismissed.

The Conduct Board (Board) found that the Appellant sexually harassed and made discriminatory comments towards other members, including subordinates and members of the 2SLGBTQI+ community.

The Appellant believed the conduct measure was too severe, and that the decision to impose it was therefore clearly unreasonable. In his view, the Board did not follow precedent and failed to properly consider his acknowledgement of wrongdoing and sincere apology.

The ERC agreed with the Appellant, to an extent. It found that the Board made a problematic finding in its conduct measures analysis. Specifically, the Board found that the Appellant showed no rehabilitation potential, while paradoxically finding that he had a minimal likelihood of reoffending.

But, despite this concern, the ERC concluded that the Board's overall chain of analysis was not clearly unreasonable. The Board gave a clear picture of the irreparable damage to the employment relationship the Appellant had created through his misconduct, which could not be restored through his apology or contrition. The ERC recommended dismissing the appeal.

Charter Considerations

The Supreme Court of Canada has recently made it clear that, when a party raises an argument involving the *Charter*, administrative decision-makers must clearly acknowledge and analyze the rights and values that are engaged.

In **NC-243**, the ERC underscored the importance of addressing the Appellant's *Charter* argument.

The Appellant gave media interviews and posted a letter on social media criticizing RCMP management. He also stopped wearing the yellow stripe on his work trousers and grew a goatee to raise awareness about his concerns with the Force's working conditions. The Appellant's superior addressed these actions. This resulted in the Appellant filing a harassment complaint in which he argued, in part, that his superior had breached his freedom of expression. Following an investigation, the decision-maker dismissed the Appellant's complaint.

The ERC found this decision was clearly unreasonable because the decision-maker did not grapple with the Appellant's subsection 2(b) *Charter* argument - freedom of expression - which

was a key part of his harassment complaint. As a result, the decision-maker's reasons were insufficient.

The ERC recommended allowing the appeal and remitting the matter to a new decision-maker, with directions to consider and respond to the alleged *Charter* contravention.

In **NC-254**, the ERC discussed the importance of considering *Charter* values where it is clear from the submissions or the record that they are relevant.

The Appellant took issue with how the Alleged Harasser reintegrated her into the workplace following an extended period of leave. The decision-maker found that the Alleged Harasser's actions did not amount to harassment.

On appeal, the Appellant argued that RCMP policy required the Alleged Harasser to respect the Appellant's privacy concerning her medical information. The Appellant further asserted that the Alleged Harasser abused his authority by forcing her to disclose her medical information.

The ERC turned its mind to the possibility that there was a breach of privacy, contrary to section 8 of the *Charter*. The ERC noted that administrative decision-makers have an obligation to address *Charter* values and *Charter* rights when the record or submissions bring those issues forward. In cases involving the right to privacy, in response to a search by a government employee, the decision-maker may have to consider whether such a search offended the complainant's *Charter*-protected right against unreasonable search and seizure.

In this case, however, the Appellant neither alleged a violation of the *Charter* nor made arguments about a search or seizure of her medical information. There was also insufficient information in the record and in the Appellant's arguments to necessitate that the ERC consider the *Charter* right.

The ERC 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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