



National Guidebook - Investigation and Resolution of Harassment Complaints Guidebook

Office for the Coordination of Harassment Complaints

November 11, 2014

A guidebook to support the implementation of the provisions of Bill C-42, the *Enhancing Royal Canadian Mounted Police Accountability Act*, dealing with issues of harassment within the RCMP.

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ACKNOWLEDGEMENT

This guidebook is founded upon the best practices laid out in the previously published Treasury Board *Guide on Applying the Harassment Resolution Process*, the Treasury Board's *Is it Harassment? A Tool to Guide Employees* and the RCMP's *Harassment in the Workplace Guide and Service Standards for Delegated Managers and Harassment Prevention Coordinators*.

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GLOSSARY

“**Act**” Means the *Royal Canadian Mounted Police Act*, (R.S.C., 1985, c. R-10), as amended. “**Code of Conduct**” means the Code of Conduct of the Royal Canadian Mounted Police set out in the schedule to the *Regulations*. [LINK]

“**Complaint**” means an allegation, or allegations, of harassment, submitted in writing, preferably in the form provided by the Commissioner [link to form 3919] to the Office for the Coordination of Harassment Complaints.

“**Complainant**” means an RCMP employee who has submitted a complaint.

“**Decision maker**” means a person designated in writing by the Commissioner, to render a decision in respect of a complaint. In the majority of cases, decision-makers are divisional commanding officers.

If the respondent is a member, the decision-maker will also be designated to act as a conduct authority in respect of a member respondent under subsection 2(3) of the Act. If a decision-maker initiates a conduct board under subsection 43(1) of the Act, then the conduct board will serve as the decision-maker for the purposes of the harassment investigation and resolution process.

If the respondent is a Public Service Employee (PSE), the decision-maker in respect of a complaint is the person identified in section 5.4 of the Investigation and Resolution of Harassment Complaints policy. If the decision-maker is not the delegated manager, the identification of the delegated manager who may impose disciplinary measures against a PSE respondent is as established under the Treasury Board Guidelines for Discipline. [Link to: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=23370§ion=text>]

The persons occupying the following positions are designated as decision-makers for the purpose of the policy:

- a. The Commanding Officer of the division in which the respondent is located.
- b. The Commanding Officer of National Headquarters, if the respondent is an employee posted to an “N” or “S” collator, notwithstanding the physical location of the employee’s posting.
- c. The Assistant Commissioner, Federal Policing Special Services, if an employee is posted outside of Canada.
- d. For a Commanding Officer, an Assistant Commissioner, a Deputy Commissioner, or a senior executive.
- e. The Senior Officer designated by the Commissioner in respect of disclosures

made under the *Public Servants Disclosure Protection Act*. [link : [PSDPA policy](#)] [that also include sufficient information to mandate an investigation under the Investigation and Resolution of Harassment Complaints policy.](#)

- e. Any other person designated by the Commissioner.

“Delegated Manager” means a person delegated in writing by the Commissioner to render a decision on disciplinary measures in respect of a complaint against a Public Service Employee.

“Employee” means, for the purposes of this policy, persons appointed to work in the RCMP by virtue of the Act, including Public Service Employees, members, temporary, term, or casual employees, and reservists when called up for duty.

“Exceptional circumstances” means unusual conditions preventing the application of the harassment investigation and resolution process from being conducted in the manner set out under the policy. The individual has little or no control over the situation and the circumstances are to be assessed on a case by case basis by the decision-maker.

“Final investigation report” means the report completed by an investigator mandated by a decision-maker to conduct an investigation into a complaint. It is submitted to the decision-maker following the completion of the investigation and includes supporting material relating to the report where applicable.

“Frivolous complaint” means a complaint is of little weight or importance, or for which there is no rational argument based upon the evidence or law in support of the complaint. Examples would include complaints that obviously cannot be sustained, or that are not practically capable of being resolved due to a lack of information, confusing information, or for which no practical benefit would be realized through the application of the policy. For example, a complaint may not proceed any further when, based on an initial review, it is evident that it will not be possible to substantiate it because the complainant provided no specific allegations or information surrounding the allegations and, upon request, does not provide the necessary information to initiate a proper investigation of precise behaviours, acts, events or displays.

“Harassment” means any improper conduct by an individual that is directed at and is offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises an objectionable act, comment, or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the Canadian Human Rights Act (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

Harassment includes sexual harassment, which means any conduct, comment, gesture or contact of a sexual nature that is likely to cause offence or humiliation to any employee, or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

Harassment, if established, is a contravention of the RCMP Code of Conduct [Link to RCMP Regulations, 2014 – Schedule (Code of Conduct)] in respect of a member, and a member who is found to have engaged in harassing conduct may be subject to conduct proceedings under the RCMP Act, and subject to consequences, up to and including dismissal.

Harassment may also be a contravention of the RCMP Code of Conduct for Public Service Employees [LINK], and a PSE found to have engaged in harassing conduct may be subject to disciplinary proceedings and consequences, up to and including dismissal.

The legitimate and proper exercise by an employee of powers, duties, functions, authorities or responsibilities provided for under the Act, Regulations, or *Commissioner's Standing Orders*, is not harassment.

“Harassment advisor” means a person responsible for the administration of matters relating to the harassment complaint investigation and resolution for a division.

“Investigation and Resolution of Harassment Complaints process”(harassment process) means any of the administrative actions, decisions, or processes provided for by the Act, Regulations, *Commissioner's Standing Orders*, or the Force's policies relating to the investigation and resolution of a complaint.

“Harassment reviewer” means a person responsible for the administration of matters relating to the harassment complaint investigation and resolution process within the Office for the Coordination of Harassment Complaints.

“Informal Resolution Process” means procedures used by the parties to attempt to resolve a complaint informally, and includes the Informal Conflict Management System established under section 30.2 of the Act.

“Investigator” means a person mandated by a decision-maker to conduct an investigation into a complaint, and who is named in a Harassment Investigation Mandate Letter as the investigator.

“Member” means a member as defined in sec. 2 of the *Act*.

“Office for the Coordination of Harassment Complaints” (OCHC) means the centralized unit in the RCMP that is responsible for administrative matters relating to the harassment complaint investigation and resolution.

“Office for the Coordination of Grievances and Appeals” means the office of the RCMP that is responsible for administrative matters relating to grievances and appeals.

“Parties” means the complainant and the respondent identified in a complaint being dealt with under the harassment investigation and resolution process.

“Public Service Employee” means a person appointed under the *Public Service Employment Act*.

“Regulations” means the *Royal Canadian Mounted Regulations, 2014*.

“Respondent” means, for the purposes of this policy, any employee identified in a complaint as allegedly having engaged in harassing conduct.

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Introduction

1. Purpose

The *Enhancing Royal Canadian Mounted Police Accountability Act (Act)* significantly amended the RCMP's governing statute, the *Royal Canadian Mounted Police Act* (1988), with the aim of strengthening RCMP accountability and transparency. This has resulted in many important changes to a number of systems, including conduct management, grievances, and most importantly for the purpose of this guidebook, the harassment resolution process. This guidebook is designed to serve both as a complete guide and reference handbook, available to RCMP personnel at every level. The RCMP is committed to developing and maintaining respectful workplaces that seek to identify and address inappropriate or disrespectful behaviours as and when they occur. The RCMP recognizes that conflict may occur in the workplace from time-to-time, impacting morale and leading to a negative work environment that affects individual well-being and team effectiveness. A failure to apply respectful workplace principles or to respond quickly to inappropriate or unacceptable behaviours can lead to situations of perceived or real harassment. Harassment is a serious workplace infliction that can negatively impact groups, individuals and entire organizations, and the RCMP is committed to providing the means necessary to reduce the presence and impact of harassment at all times.

The purpose of this guidebook is to establish organizational consistency and adeptness with respect to all aspects of harassment complaint management, where preventive efforts, such as early resolution or attempts at correcting inappropriate conduct or actions have not resulted in expected outcomes, such as changed behaviours in the workplace. This guidebook will provide information and details regarding the entirety of the harassment process, beginning with the development of a complaint, complaint intake, informal resolution, investigation and resolution. The ultimate goal of enhancing harassment complaint management is to assist in the maintenance of respectful workplaces through effective, timely and equitable resolution of harassment complaints.

2. What's New – Highlights of the New Process

The amendments to the *Act* authorize the Commissioner to establish a process for the investigation and resolution of harassment complaints that overcomes the previously bifurcated structure that failed to fully remedy the different systems created by Part IV of the *RCMP Act* and the *Financial Administration Act*. As a result, the RCMP has established a simplified and streamlined process for dealing with allegations of harassment. The Investigation and Resolution of Harassment Complaints policy and *Commissioner's Standing Order (Investigation and Resolution of Harassment*

Complaints) (CSO) will improve the RCMP's ability to effectively address and manage harassment complaints - benefiting the complainant, the respondent and the RCMP.

The improvements to the process are highlighted below:

- Creation of the Office for the Coordination of Harassment Complaints (OCHC) - The OCHC has been created in direct response to recommendations from the Commissioner for Complaints against the RCMP, the Parliamentary Committee on the Status of Women, and the Senate Committee on Security and Defense, each of which conducted in-depth examinations of the RCMP's procedures for responding to harassment complaints. The OCHC will act as the harassment policy center providing information and support to divisional harassment advisors and management concerning all matters relating to the Harassment complaint investigation and resolution, and will be the centre of expertise for the application and interpretation of the CSO and policy. It will also act as the centralized intake unit, receiving initial complaints, serving as the first point of contact for complainants entering the process, and ensuring that complaints are forwarded to divisional harassment advisors.
- Provision of a single Process to address Harassment Complaints – Employees will benefit from having access to a single, comprehensive and effective harassment complaint investigation and resolution process.
- Informal Resolution Process - Is available to parties as a means to resolve a complaint throughout the harassment process, up until a final decision has been provided to the parties, or, in respect of a respondent member, a hearing has been initiated under subsection 41(1) of the Act or a conduct measure has been imposed under 42(1) of the Act.
- Preliminary Investigation Report - The complainant and respondent will be provided with a copy of a preliminary investigation report prior to a final decision being made in respect of the complaint and will be afforded an opportunity to respond to the information contained in the preliminary investigation report.
- Conduct Measures - The complainant will be informed in writing if disciplinary or conduct measures have been taken as a result of the complaint, subject to the provisions of the *Privacy Act* [LINK].(EN: <http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>, FR: <http://laws-lois.justice.gc.ca/fra/lois/P-21/index.html>)Records Management - The Administrative Case Management Tool (ACMT) is the electronic case management system to be used for all complaints of harassment, and will provide for ongoing monitoring of ongoing cases and timely reporting.

3. Roles, Responsibilities and Expectations

Office for the Coordination of Harassment Complaints (OCHC)

The OCHC is the RCMP's national policy center providing information and support to harassment advisors and management concerning all matters relating to the Investigation and Resolution of Harassment CSO and policy. The office is staffed by Harassment Reviewers (HR) whose function is to ensure consistency in the handling and managing of harassment allegations force-wide.

The Key functions of the OCHC are:

- receiving and undertaking an initial assessment of a complaint to ensure that it is as complete as possible in consultation with the complainant where appropriate, before referring the complaint to the Harassment Advisor for the initiation of the harassment investigation and resolution process and any subsequent determinations by the decision-maker;
- providing information and support to Harassment Advisors and management concerning all matters relating to this policy;
- perform monitoring and review functions in respect of this policy;
- reviewing investigations and decisions to monitor the consistent and appropriate application of this policy;
- conducting quality reviews of harassment complaint investigation and resolution files;
- ensuring that all information is properly entered onto the Administrative Case Management Tool (ACMT);
- provide statistics and reports as directed by the Professional Responsibility Officer; and
- conduct quality assurance reviews of this policy.

Harassment Advisor (HA)

The Harassment Advisor represents a job function and not necessarily a position. In some divisions, this role may be assumed by an employee on an ad hoc basis on the direction of a commanding officer, a manager responsible for the administration of human resource functions, or at the request of a decision-maker.

A Harassment Advisor is responsible for:

- ensuring the parties are aware of available support and advisory services during the investigation and resolution process;
- informing the parties of legislated and administrative time frames, as required, and monitoring the application of those time frames;
- supporting the decision-maker by monitoring and coordinating the procedures

contained in the *Commissioner's Standing Orders (Investigation and Resolution of Harassment)*, the requirements set under the policy and any other applicable policy, and any applicable collective agreement, and monitoring the application of confidentiality requirements;

- coordinating the harassment complaints process and advising the parties of the status of the investigation in writing every 30 days;
- ensuring that documents relating to the process are placed only on the harassment file, and on an employee's discipline or conduct file where appropriate.
- ensuring that the parties are provided with the information to which they are entitled subject to the *Access to Information Act* [link: <http://laws-lois.justice.gc.ca/eng/acts/A-1/>] and *Privacy Act* [link: <http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>], thus protecting the personal information of the parties;
- providing information and support to divisional management concerning all matters relating to this policy in the division for which the Harassment Advisor is responsible;
- informing divisional Public Service Labour Relations advisors as soon as practicable when a complaint involving a public service employee, either as a complainant, a respondent, or both, is received and providing updates to the Public Service Labour Relations advisors in regard to the progression of the investigation and resolution process when appropriate; and
- if a public service employee is a complainant or respondent, ensuring that the decision-maker, the parties, or any other individuals with a responsibility to support the implementation of the harassment complaint investigation and resolution process, are aware of, and respect, any articles that form part of any applicable collective agreements.

Decision-maker (DM)

The decision-maker is the person designated in writing by the Commissioner to render a decision in respect of a harassment complaint.

If the respondent is a member, the decision-maker will also be designated as a conduct authority, or, if a conduct board is appointed under s. 43 of the Act, the conduct board will serve as the decision-maker.

If the respondent is a public service employee (PSE), the decision-maker in respect of a complaint is the person identified below. If the decision-maker is not the delegated manager, the identification of the delegated manager who may impose disciplinary measures against a PSE respondent is established under the Treasury Board Guidelines for Discipline (Link to: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=22370§ion=text>) and under Public Service Manual 2.4. Delegation of Authorities (link to: <http://infoweb.rcmp-grc.gc.ca/rcmpmanuals/eng/psm/2/psm2-4/psm2-4.htm>).

The persons occupying the following positions are designated as decision-makers:

- the Commanding Officer of the division in which the respondent is located;
- the Commanding Officer of National Headquarters, if the respondent is an employee posted to an “N” or “S” collator, notwithstanding the physical location of the employee’s posting;
- the Assistant Commissioner, Federal Policing Special Services, if an employee is posted outside of Canada;
- for a Commanding Officer, an assistant commissioner, or a deputy commissioner, a senior officer or a senior executive;
- the Senior Officer designated by the Commissioner in respect of disclosures made under the *Public Servants Disclosure Protection Act* [link: <http://laws-lois.justice.gc.ca/eng/acts/P-31.9/>] that result in a harassment complaint investigation and resolution process; and
- any person designated by the Commissioner.

The key responsibilities of the decision-maker are to:

- if necessary, separate the complainant and respondent, hierarchically, physically, or both, for the duration of the harassment investigation and resolution process;
- remain impartial throughout the process;
- in consultation with a Harassment Advisor or the OCHC, identify the scope and nature of the allegations presented within the complaint;
- ensure that the police service of jurisdiction is informed without delay, as the circumstances require, of any incidents that may constitute a criminal offence;
- ensure that individuals conducting an investigation:
 - meet the qualifications required for investigators as established by the Commissioner;
 - have no supervisory relationship with the parties;
 - are certified as harassment investigators by the RCMP; and
 - are not in a conflict of interest with the parties.
- ensure she or he is not in a conflict of interest with the parties, any witnesses, or other persons who form part of the harassment complaint investigation and resolution process;
- inform the OCHC, in writing when she or he is unable to fulfill the decision making role due to an objection, conflict of interest or other reason;

NOTE: The Professional Responsibility Officer will arrange for an alternative decision-maker to be designated where required.

- mandate an investigation as deemed necessary, issue a Harassment Investigation Mandate Letter and direct the investigator(s) to conduct the investigation as soon as

practicable, to be vigilant for opportunities for informal resolution during the investigation, and ensure that there is an ability for the investigator(s) to conduct the investigation on a priority basis;

- based on the information, evidence or materials presented in the final investigation report, make a determination as to whether the complaint is established on a balance of probabilities or has not been established, and provide the decision to the parties in writing;
- if the respondent is a public service employee, in addition to providing the written decisions to the parties, provide the written decision with any appropriate recommendations to the respondent's delegated manager, in order that the delegated manager can make a determination as to possible disciplinary action;
- if the respondent is a member determine on a prima facie basis if the respondent has contravened the Code of Conduct, and if so then follow the procedures set out under *Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints)* and the *Commissioner's Standing Orders (Conduct)*, or initiate a conduct hearing under subsection 41(1) of the Act;
- if the respondent is a member, and it is determined that there is no prima facie basis to demonstrate a contravention of the Code of Conduct, provide the written decision to the parties and their respective managers for appropriate action;
- provide any recommendations to the divisional commanding officer or the divisional manager responsible for the administration of human resources functions, as deemed appropriate, to assist in the remediation of the workplace.

Supervisor or Manager

A supervisor or manager can expect to be able to exercise his/her managerial authorities and responsibilities without fear of being found to have engaged in harassing behavior, as long as the exercise of his/her authorities and responsibilities is performed in a legitimate, proper, and respectful manner.

A supervisor or manager has the responsibility to:

- lead by example and to exhibit respectful behaviour in his or her interactions with employees and other persons in the workplace;
- be vigilant and monitor the workplace for disrespectful behaviours that could contribute to the development of a workplace that is no longer free of harassment;
- address any situations of inappropriate behavior or conduct that may lead to incidents of harassment whether or not a complaint has been made as soon as feasible once becoming aware of the situation;
- report behavior that appears to be or may be perceived to be harassment by colleagues to the appropriate level of management;
- direct employees to the proper sources of information and support relating to

concerns in respect of harassment issues;

- obtain advice and guidance from support services and sources of information such as, Harassment Advisors, OCHC, ICMP, Public Service Labour Relations, or other support services as required;
- ensure training and information related to the establishment and maintenance of a harassment-free workplace is made available to all employees;
- address all potential harassment situations confidentially and ensure that employees who are part of a harassment investigation and resolution process are aware of and respect the confidentiality of the process accordingly; and
- take action during and following the implementation of the harassment investigation and resolution process to address concerns of individuals in the workplace.

If a supervisor or manager is advised of an incident or behavior that appears to be or perceived to be harassment by an employee who was not the person at whom the behavior was directed, the supervisor or manager must take appropriate steps to determine if a response consistent with the Workplace Relations Services process would be appropriate, or if an investigation should be initiated under Part IV of the Act or under this policy and the *Commissioner's Standing Order (Investigation and Resolution of Harassment Complaints)*, or to otherwise determine if other processes, such as but not limited to performance management procedures, would be appropriate.

If an employee submits a complaint of harassment to a supervisor or manager in the manner set out under this policy, the supervisor or manager must forward the complaint to the OCHC without delay.

Delegated manager

The delegated manager has the responsibility to:

- ensure he/she is the delegated manager of the respondent, and that he/she has the right level of delegation and the personnel authorities under which he/she may render a decision according to the legislation, collective agreements, and compensation plans;
- ensure he/she is not in conflict;
- seek guidance from his/her divisional Public Service Human Resources Advisor as soon as a written decision and recommendations are received from a decision-maker;
- based on the written decision, evidence or materials presented from a decision-maker, made a determination regarding possible disciplinary action;
- initiate a disciplinary hearing and ensure the respondent is afforded the opportunity to have a union representative attend as per their collective agreement;

- initiate a rendering of decision meeting and provide the decision on the disciplinary measures, if imposed, to the respondent and ensure the respondent is afforded the opportunity to have a union representative attend as per their collective agreement; and
- advise the decision-maker on the decision on the disciplinary measures.

Harassment Investigator

A Harassment Investigator has the responsibility to:

- conduct a harassment investigation as directed by the decision-maker through a Harassment Investigation Mandate Letter;
- take statements and gather, examine and record all relevant facts and material;
- identify gaps in information, identify potential sources of additional information and persons who may be able to supplement or corroborate any of the information obtained, and conduct appropriate supplementary investigation as required;
- prepare a preliminary investigation report summarizing the salient facts and circumstances of the case for provision to the parties;
- provide a copy of the preliminary report to the parties and afford them an opportunity to respond to the information contained in the report;
- receive submissions from the parties provided in response to the preliminary investigation report and determine if supplementary investigational steps are appropriate, and if the investigator believes it to be appropriate and necessary, conduct any supplementary investigational steps;
- if the investigator determines that further investigational steps are necessary, conduct appropriate supplementary investigation as required and provide a copy of the new information acquired to the parties and afford them an opportunity to respond to the new information within seven days of having been provided the information, subject to an extension granted by the decision-maker;
- if no further investigational steps are believed to be appropriate and necessary, complete a final investigation report, summarize the activities undertaken during the investigation, provide all relevant evidence acquired, and materials gathered and provide the final investigation report containing only the information gathered, with no opinions, editorializing or recommendations from the investigators to the decision-maker; and
- if the decision-maker determines that further investigational steps are necessary, conduct appropriate supplementary investigation as required and provide a copy of the new information acquired to the parties and afford them an opportunity to respond to the new information within seven days of having been provided the information, subject to an extension granted by the decision-maker.

Complainant

Complainants can expect:

- to file a complaint in the official language of their choice;
- to have any retaliation as a result of their participation in the RCMP harassment complaint investigation and resolution process addressed as soon as practicable, once any retaliation has been reported to a supervisor or manager, or a supervisor or manager becomes aware of any retaliation;
- to be provided with an opportunity by OCHC to include supplemental information following the initial complaint submission, within the time limit set under this policy, to ensure that the complaint is sufficiently complete to enable a decision-maker to determine an investigational mandate or render a decision as to whether allegation(s) of harassment is/are established;
- during meetings and interviews related to the investigation and resolution of the complaint, to be accompanied by a person of their choice, including but not limited to, a bargaining agent representative or SRR, who has agreed to do so and who is not a party to the complaint;
- to be provided with a copy of their statement in the form recorded by the investigator(s) as soon as practicable following completion of the statement, and to be able to dispute the accuracy of the statement to the investigator within seven days of being provided with the statement, subject to an extension of time approved by the decision-maker at the request of the complainant;
- to be provided a copy of the preliminary investigation report and be afforded an opportunity to respond to the information contained in the preliminary investigation report within seven days of being provided with the preliminary investigation report, unless granted an extension of time by the decision-maker, prior to it being submitted to the decision-maker;
- that no documentation relating to the complaint be placed on any file other than one created specifically for a harassment investigation and resolution process;

EXCEPTION: A copy of any documents outlining the imposition of disciplinary or conduct measures is to be placed on an employee's discipline or conduct file.

- to be advised of the status of the harassment investigation and resolution process in writing every thirty (30) days; and
- to be informed in writing if disciplinary or conduct measures have been taken as a result of the complaint subject to the provisions of the [Privacy Act](#).

NOTE: The complainant will not be informed of the quantum or the type of measures administered

Complainants have the responsibility to:

- provide written details of the alleged harassment when filing a complaint with the OCHC, unless exceptional circumstances prevent the complainant from doing so; and
- fully participate in the harassment investigation and resolution process.

A complainant who is a member is to be aware that he or she is:

- subject to the *Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints)*;
- subject to the Code of Conduct [Link to RCMP Regulations – Schedule (Code of Conduct)] at all times;
- subject to the Act and the *Commissioner's Standing Orders (Conduct)*, to attend as a witness during a conduct proceeding in respect of a member respondent;
- subject to the Treasury Board Guidelines for Discipline [<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=22370§ion=text>], to attend as a witness during a disciplinary proceeding in respect of a respondent public service employee; and
- subject to Part IV of the Act and the *Commissioner's Standing Orders (Conduct)*, if a complaint is found to be frivolous, vexatious, or made in bad faith.

A complainant who is a public service employee is to be aware that he or she is:

- subject to the Treasury Board Guidelines for Discipline [<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=22370§ion=text>], to attend as a witness during a disciplinary proceeding in respect of a respondent public service employee;
- subject to attendance during a conduct proceeding under Part IV of the Act [LINK] where summonsed in respect of a member respondent;
- subject to a disciplinary process under the Treasury Board Guidelines for Discipline [<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=22370§ion=text>] if a complaint is found to be frivolous, vexatious or made in bad faith; and
- able to submit a grievance in a manner consistent with the public service employee complainant's applicable collective agreement or grievance policy, as the case may be.

Employee

Every RCMP employee can expect:

- to be provided with a safe and respectful workplace; and
- to receive information and learning opportunities relating to harassment awareness, prevention, and resolution.

Every RCMP employee has a responsibility to:

- treat every person with respect and courtesy and not engage in discrimination or harassment;
- report behavior that may constitute harassment;
- complete any mandatory training in respect of the awareness, prevention and resolution of harassment as directed by the Commissioner;
- make known to a person exhibiting behaviours that appear to be or may be perceived to be harassing, when appropriate to do so and within a reasonable time of an incident, that the behaviours are not acceptable, and that they must cease;
- where appropriate, try to resolve a concern relating to behaviour that appears to be or may be perceived as harassment through discussion or early resolution;
- immediately seek assistance from a supervisor/manager, a Labour Relations Advisor, Harassment Advisor, Informal Conflict Management practitioner, bargaining agent representative or staff relations representative, as appropriate, to address or resolve the situation;
- subject to the Act, cooperate with persons investigating or administering the harassment investigation and resolution process by making himself or herself available for meetings and providing information as requested; and
- respect the confidentiality of the process by limiting disclosure of information arising from the complaint to include only that information which another person needs to know in order to address the complaint or administer the harassment investigation and resolution process.

If an employee witnesses an incident or series of incidents that appear to constitute harassment, but the employee is not the subject of the behavior observed, the employee should bring the incident or incidents to the attention of their supervisor/manager, if it would not be appropriate for the employee to intervene at the time of the behaviour.

An employee may also seek advice or guidance as to appropriate action from Harassment Advisors, the Office for the Coordination of Harassment Complaints

(OCHC), Informal Conflict Management Program (ICMP), Public Service Labour Relations, Staff Relations Representatives, Bargaining Agent Representatives, or other support services.

4. Service of Documents

A document that is required to be served under the Act must be served as soon as feasible. It may be served personally, by mail, by courier or by electronic transmission. [\[LINK Royal Canadian Mounted Police Regulations sec. 16\]](#)

4.1 Type of Service

4.1.1 Personal service

- to the individual or to a person who has attained the age of majority, who is not under a legal disability and who is residing at the individual's place of residence; or
- if the individual is a minor or under a legal disability, to a person who has attained the age of majority, who is not under a legal disability and who is residing at the individual's place of residence, or to the person acting on the individual's behalf.

4.1.2 Service by mail or courier

- by mailing the document by ordinary mail to the individual's last known address, accompanied by an acknowledgement of receipt card;
- by mailing the document by registered mail to the individual's last known address;
- by delivering the document by courier to the individual's last known address; or
- if the individual is a minor or under a legal disability, by mailing the document by registered mail or delivering the document by courier to the last known address of the person acting on the individual's behalf.

4.1.3 Service by electronic transmission

Service of a document on an individual by electronic transmission is effected by sending it to the last known email address or, if the individual is a minor or under a legal disability, by sending it to the individual's last known email address of the person acting on the individual's behalf.

4.2 Proof of service

Proof of service of a document on an individual is demonstrated by:

- in the case of service by ordinary mail, an acknowledgement of receipt card signed by the individual or by a person who has attained the age of majority, who is not under a legal disability and who is acting on the individual's behalf;

- in the case of service by registered mail, a post office receipt signed by the individual or by a person who has attained the age of majority, who is not under a legal disability and who is acting on the individual's behalf;
- in the case of service by courier, an acknowledgement of receipt card signed by the individual or by a person who has attained the age of majority, who is not under a legal disability and who is acting on the individual's behalf;
- if the individual is a minor or under a legal disability, a post office receipt or an acknowledgement of receipt card signed by the person who is acting on the individual's behalf;
- in the case of service by electronic transmission, an electronic acknowledgement of receipt from the individual or from a person who is acting on the individual's behalf; and
- in all cases, an affidavit of service.

4.3 Deemed service

In the absence of proof of service, the document is deemed to have been served on the seventh day after the day on which:

- it was mailed;
- the party sending the document gave it to the courier to deliver; or
- it was electronically transmitted.

4.4 Refusal to accept service

If an individual refuses to accept personal service, service is deemed to have been effected at the time of the refusal, if the person attempting service;

- records the refusal on the document; and
- leaves a copy of the document with the individual by any reasonable means.

4.5 Late service

If an individual establishes that they were acting in good faith but, for reasons beyond their control, did not receive the document on the date on which it was served, a person required under the Act to make a decision may determine a different date for service or extend the time for service of the document.

4.6 Alternative service

The Commissioner may permit alternate methods of service when the document is required to be served personally but service cannot feasibly be effected.

5. Overview of the Complaint Process

The RCMP is committed to providing a safe and respectful workplace free of discrimination and harassment. Harassment complaints against RCMP employees will be handled in a fair, effective, thorough, impartial, and sensitive manner that promotes public and organizational confidence.

Any employee of the RCMP can file a written harassment complaint. The complaint needs to be filed within one year of the last incident of alleged harassment unless there are extenuating circumstances that prevented the complainant from doing so. If a complaint is filed outside of the one year time frame, the complainant may provide an explanation for the decision-maker's consideration. The decision-maker will determine if the complaint should proceed or be found to be outside of the time allotted for making a complaint.

The main components of the harassment complaint process are:

- Complaint by Employee or Representative
- Intake Procedures
- Review by Decision-maker
- Informal Resolution Process (if appropriate)
- Harassment Investigation Process
- Preliminary Report and response
- Final Written Decision
- Appeal or Grievance (depending on the category of the employee)

PART I - IS IT HARASSMENT?

1. Harassment Defined

Essentially, the definition of harassment means that a pattern of behaviours needs to be established to find that harassment has occurred. While a person subject to inappropriate behaviours may believe that each and every action on the part of the person they believe to be harassing them constitutes harassment on its own, generally speaking a single act or event will rarely meet the definition on its own. It is the repetitive nature of a respondent's behaviour that generates the harassment, not every single utterance or act. In other words, harassment consists of repeated and persistent behaviours towards an individual that a reasonable person would believe would likely torment, undermine, frustrate or provoke a reaction from the target of the behaviours.



Sexual and physical assaults, stalking, uttering threats or damaging another person's property are criminal acts that must be investigated as criminal matters. An employee may contact the police force of local jurisdiction or immediately notify their supervisor or manager, who in turn must advise the police.

2. Where can harassment occur?

The scope of the policy applies to employee behavior in the workplace and/or at any location and/or any event related to work, including while:

- on travel status;
- at a conference where the attendance is sponsored by the employer;
- at employer sponsored training activities/information sessions; and
- at employer sponsored events, including social events.

3. What criteria have to be met to establish whether there was harassment?

To substantiate harassment allegations, the following points need to be considered:

- did the respondent behave in an improper and offensive manner that may include

objectionable acts, comments or displays, or acts of intimidation or threats, or acts, comments or displays in relation to a prohibited ground of discrimination under the *Canadian Human Rights Act*,

- was the behaviour directed at the complainant;
- does the complainant indicate that they were offended or harmed, including the feeling of being demeaned, belittled, personally humiliated or embarrassed, intimidated or threatened;
- should the respondent have known or reasonably ought to have known that such behaviour would cause offence or harm;
- did the behaviour occur in the workplace or at any location or any event related to work, including while on travel status, at a conference where attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events; and
- can a demonstrable pattern of behaviour be identified, consisting of a series of incidents or one severe incident which had a lasting impact on the individual? Note that in the case of sexual harassment particularly, a single incident may be viewed to be more significant in circumstances when the relationship between the complainant and the respondent is one where the respondent has influence or power over the complainant with regard to career advancement, performance review, absenteeism, day to day management of activities, work assignments and the carrying out of progressive disciplinary measures.

In order to make a finding of harassment, each of the above elements must be present. If even one of these elements cannot be proven, there will not likely be a finding of harassment.

Remember that each case is unique and should be examined in its own context and according to the surrounding circumstances as a whole.

4. Inappropriate behavior that is not harassment but still may need to be addressed

- Talking loudly in the workplace
- Always being in a bad mood
- Slamming doors
- Constantly interrupting colleagues in a meeting
- Barging in on colleagues who are having a conversation
- Complaining about trivial things

5. Examples of what does not generally constitute harassment

- Carrying out managerial duties where the direction was carried out in a respectful

and professional manner. Exercising the normal supervisory functions such as assigning and appraising work is not harassment, but how such functions are exercised can risk giving rise to the potential for harassment or perceptions of harassment

- Allocating work
- Following up on work absences
- Requiring performance to job standards
- Taking corrective, disciplinary or conduct measures in accordance with approved procedures
- A single or isolated incident such as an inappropriate remark or having an abrupt manner
- Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job
- A social relationship welcomed by both individuals
- Friendly gestures among co-workers such as a pat on the back
- Supervisory mistakes
- Work-related stress
- Conditions of work
- Difficult professional constraints such as a budget reduction exercise
- Conflicts. Unresolved conflicts and build-up of stress inducers can be precursors to harassment, but are not necessarily harassment in and of themselves.
- Constructive criticism about the work mistake and not the person
- Counselling an employee on his/her performance appraisal when done in a non-discriminatory or respectful manner.

6. Examples of behaviours that could be found to be harassing

- Preventing a person from expressing himself or herself by yelling at the person; threatening; constantly interrupting that person; prohibiting the person from speaking to others.
- Unwanted sexual advances which may or may not be accompanied by threats or explicit or implicit promises.
- Making rude, degrading or offensive remarks to or about the complainant.
- Engaging in reprisals for having made a complaint under this Policy.
- Discrediting the complainant by spreading malicious gossip or rumours, ridiculing him/her, humiliating him/her, calling into question his/her convictions or his/her private life, shouting abuse at him/her.
- Compelling the complainant to perform tasks that are inferior to his/her competencies that demean or belittle him/her, setting the person up for failure, name calling in private or in front of others.

- Isolating the complainant by no longer talking to him or her, denying or ignoring his or her presence, distancing him or her from others.
- Making fun of the complainant's beliefs, values, political and/or religious choices, and mocking his or her weak points.
- Harassing a complainant based on a prohibited ground of discrimination (as described in *Canadian Human Rights Act* and contained in the Policy)
- Note: a behavior that is not directed at any one identifiable person may be harassment when it relates to a prohibited ground of discrimination (such as displaying sexually explicit material or telling racist or religious jokes).

7. If you believe you may be subject to inappropriate behaviours ask yourself

- What was the context in which the incident(s) took place?
- Was the behaviour improper, inappropriate, and disrespectful, given the context in which it occurred?
- Was the behaviour directed at me?
- Was I offended by the behaviour?
- Did the incident occur within the scope of the Policy?
- Was this the first incident or is it a series of incidents?
- What is my work relationship with this individual?
- Are individuals doing things, saying things to make me feel uncomfortable?
- Would a reasonable person who is well informed of all the circumstances and finding himself or herself in the same situation as yours view the conduct as unwelcome or offensive? The behaviour in question is not only assessed by the impact or effect on you, but it is also assessed against a reasonably objective standard.
- Are there other factors contributing to the situation (level of stress, workload, professional constraints, etc.)?
- Am I being singled out and treated differently than my colleagues, or being given the "silent treatment"?
- Is the incident related to my work performance?
- Am I being criticized regularly even though my standards have not changed and my performance has always been satisfactory or better?
- Am I being blamed for mistakes I believe are not my fault?
- What impact(s) and/or consequences did this incident(s) have on me?
 - Physically?
 - Emotionally?
 - Professionally?
- Are the working relationships different from any I have previously experienced?
- How would this behaviour be perceived by other work colleagues?

- Are there other factors in my life that could impact on my reaction to this event? What steps have I taken or should I take to increase my ability to manage the situation and protect my health?
- Is this usual behaviour for the individual? Are there any personal or professional circumstances that are contributing to his/her behaviour?
- Have I spoken to the individual and tried to clarify the situation? Have I informed him/her of the impact the situation has had on me?
- Have I asked him/her to stop the behaviour?
- Has the other person expressed regrets and stopped or has the behaviour continued?
- Have I considered resolving the situation through informal means of conflict resolution, such as a facilitated discussion, coaching or mediation?
- Have I accessed support services, such as my supervisor, manager, ICMS, EAS? If not, why not?
- If I choose to file a complaint, will it be characterized by the intention to honestly inform?

8. If you believe you have been subject to inappropriate behaviour

If you believe you have been subject to inappropriate behavior and may feel harassed, you are encouraged to make it known to the other person as soon as possible in an attempt to resolve the problem. The earlier the problem is addressed and discussed, the better the chance of it being resolved and the inappropriate behaviour stopped.

If the problem is not resolved, or if you feel you cannot speak directly to the other person, you should notify your supervisor, or the manager at the next level.

In order to take the next steps to resolve this situation, you can also seek advice/support from:

- A divisional Informal Conflict Resolution practitioner
- A union representative or Staff Relations representative
- A Harassment Advisor
- A Labour Relations advisor
- The Employee Assistance Program
- Other departmental resource person (i.e. Elder)

9. Time limit to file a complaint

A complaint of harassment must be filed within one year of the last event of alleged harassment leading to the complaint unless there are exceptional circumstances. If a complaint is filed outside of the one year time limitation then reasons for any delay must

be provided in a precise and concise manner. A decision-maker is responsible for determining if a complaint that falls outside of the time limitation should be investigated through the harassment investigation and resolution process, based on the reasons provided by the complainant.

10. Alternate complaint Procedures

If harassment is based on one of the grounds of discrimination prohibited under the *Canadian Human Rights Act*, an employee has the right to file a complaint with the Canadian Human Rights Commission. The Commission will expect that you first try to resolve the issue where it took place by using an internal dispute resolution process in your workplace. For more information on the Human Rights complaint process please see [<http://www.chrc-ccdp.gc.ca/index.html>].

If applicable, an employee may also make:

- a complaint under the Canada Labour Code Regulations, Part XX [[link: OSM – ch. 15 Violence Prevention in the Work Place](#)];
- a disclosure as provided for under the *Public Servants Disclosure Protection Act*. [[link: AM-2252](#)]; or
- a grievance in a manner consistent with the public service employee's applicable collective agreement or grievance policy. [PSM – ch.2.2. Complaints and Grievances]

Every effort should be made to resolve conflicts in a fair and respectful manner without having to resort to a written complaint process. Complainants are urged to resolve conflict through discussion with the other party and when necessary their manager. Awareness and early intervention are most often the most effective means of addressing inappropriate behaviours. Prevention of harassment through a most proactive approach can address improper or offensive behaviour while at the same time tackling underlying issues for the benefit of everyone involved.

PART II - INFORMAL RESOLUTION PROCESS

The RCMP is committed to providing a safe and respectful work environment, where differences are respected and conflicts are addressed collaboratively, at the lowest level and at the earliest opportunity.

Harassment is serious and needs to be addressed promptly and with sensitivity. The primary goal in responding to a complaint of harassment is to resolve allegations of harassment in the most informal way practicable, and with the least disruption possible for the parties involved and the work environment. While harassment allegations require access to a rigorous investigation and resolution process, it is consistent with such a process that cases may, upon closer exploration, and with the consent of all parties, be effectively dealt with through informal resolution.

Every effort should be made to resolve conflicts in a fair and respectful manner without having to resort to the written complaint process, which can quickly become adversarial in nature. Complainants are urged to resolve workplace conflicts, concerns regarding the conduct of others in the workplace, or inappropriate behaviours through discussion with the other party, and when necessary, a concerned party's manager. This is the most proactive approach in dealing with offensive behaviour and is very often more effective at tackling underlying issues contributing to potentially harassing behaviours.

A harassment complaint can be resolved informally at any step of the complaint process, up until the date on which the decision-maker provides a final written decision to the parties, or until the date on which a decision-maker initiates a conduct board under subsection 41(1) of the Act [[link to Act](#)].

The RCMP Informal Conflict Management Program (ICMP) seeks to promote and sustain a healthy work environment that encourages team building, open communication and mutual respect for all RCMP employees. The ICMP National Policy Centre is the authority for all Informal Conflict Management Services; it establishes qualifications for conflict management practitioners in the RCMP and provides informal conflict management skills training in the RCMP. The program has full-time Informal Conflict Management Practitioners who are experienced in conflict management processes and skills training.

ICMP is an informal, confidential and voluntary alternative to formal dispute resolution mechanisms (such as grievances, formal harassment complaints, adjudications, appeals and litigation).

Communications that occur during informal resolution efforts are confidential and

without prejudice to the parties, as set out in the CSO [*Investigation and Resolution of Harassment Complaints*]. This is a very important point and one that requires highlighting given that one of the objectives of informal resolution efforts is to encourage full and frank discussions in a safe environment in order to reach a mutually satisfactory solution and lead to an informal resolution of the complaint.

The idea behind implementing the ICMP is to equip all RCMP employees with the skills, knowledge and ability to manage and resolve their own conflicts at the earliest moment, while maintaining their right to use existing formal dispute resolution mechanisms.

ICMP focuses on the prevention and early resolution of conflict using collaborative approaches and processes. The services are available when people are unable to resolve or would like assistance with managing their own conflicts; they include:

- **Confidential consultations:** an opportunity for employees to talk with a Divisional ICM Practitioner and explore options available to them to help resolve their issues.
- **Individual conflict coaching:** one-on-one support to help a person deal with a conflict situation
- **Facilitated discussions:** using techniques designed to improve the flow of information between parties to a dispute.
- **Mediation:** A voluntary process in which an impartial and neutral third party assists employees to create a mutually acceptable solution to their problem.
- **Workplace Assessments:** A process to identify various group dynamics which contribute to workplace conflict.
- **Group Interventions:** an opportunity for group members to identify issues that are causing difficulties, and to explore ways of improving the work environment.
- **Awareness sessions & skills training**

ICMP is available throughout the harassment investigation and resolution process as noted above. The ICMP policy [LINK] provides further information on this valuable support service. For ease of reference, the following points have been drawn from the policy.

ICMP Raison d'être

A short-term goal is to assist employees with managing conflict in a productive and efficient way.

A long-term goal is to enhance effective communication and conflict management skills within the workforce by assisting all employees in the prevention, intervention and management of workplace disputes.

The ultimate goal is to provide RCMP employees with the necessary infrastructure, awareness and skills required to be able to resolve their conflicts voluntarily and respectfully.

IRP Benefits

Informal resolution has the following benefits:

- The complaint is dealt with expediently and to the satisfaction of all parties.
- May only require a minimal investigation or none at all.
- There is no recording of answers or statements as any of those made during the Informal Resolution process are considered to have been made “without prejudice.” This includes apologies and/or statements of regret.
- Could be used as mitigating factor in the event an investigation leads to the potential for conduct or disciplinary measures being imposed against an employee. decision-maker

For more information on the Informal Conflict Management Program see [<http://infoweb.rcmp-grc.gc.ca/hr-rh/workplace-milieu-de-travail/conf/index-eng.htm>].

PART III - COMPLAINT PROCESS

As a Decision-maker, Harassment Reviewer, Harassment Advisor, your responsibility is to receive the complaint and to administer the complaint process in a timely manner. See attached Annex A for harassment process service standards. These service standards must be respected unless extenuating circumstances exist.

1. Submitting a Written Complaint

1.1 Complaint by Employee

Any employee may submit a complaint in writing preferably using form 3919, within one year of the last event of alleged harassment leading to the complaint, unless exceptional circumstances prevent the complainant from doing so. If a complaint is submitted outside of the time limitation, it is the responsibility of the complainant to explain the reasons for this occurring, and to request an extension of the time limitation from the decision-maker.

It is preferred that an employee use form 3919, since the form has been specifically designed to assist an employee in formulating his/her complaint, by identifying the elements of the complaint that are necessary for a decision-maker to make a determination in respect of a complaint, and to provide for consistency in the manner in which complaints are initiated. If an employee is unable to use form 3919, a complaint may be submitted in writing to the OCHC in an alternative format, as long as the necessary information identified below is included. The OCHC may request an employee to transfer a written complaint onto form 3919 for reasons of expediency and effective administration of a harassment complaint investigation and resolution process.

A complaint should be as precise and concise as possible and must include:

- the nature of the allegations;
- the name of the respondent;
- the relationship between the respondent and the complainant (e.g., supervisor, colleague, etc.);
- the dates, times and locations of incidents;
- a description of any incidents alleged to be harassing in nature;
- any efforts undertaken by the complainant to attempt to resolve the situation;
- any potential witnesses; and
- if the last incident identified in the complaint occurred more than one year before the submission of the complaint, an explanation as to the timing of the submission of the complaint.

NOTE: It is important for employees to be precise, concise and clear when writing a complaint. In order to determine if harassment has occurred, a decision-maker will consider the severity and impropriety of the behaviour (act, comment or display) in the circumstances and context of each situation. Essentially, the definition of harassment means that more than one act or event need to be present in order to constitute harassment and that taken individually, this act or event need not constitute harassment. It is the repetition that generates the harassment. In other words, workplace harassment consists of repeated and persistent behaviours towards an individual to torment, undermine, frustrate or provoke a reaction from that person. It is a behaviour that with persistence, pressures, frightens, intimidates or incapacitates another person. Each behaviour, viewed individually, may seem inoffensive; however, it is the synergy and repetitive characteristic of the behaviours that produce harmful effects.

Please note that one single incident can constitute harassment when it is demonstrated that it is severe and has an important and lasting impact on the complainant.

1.2 Complaint by Non-RCMP personnel

Non-RCMP personnel include but are not limited to students, contractors, municipal employees, and custodial services personnel, employees of other departments or persons working or attending courses on the premises of the RCMP. The written complaint process as set out in the Investigation and Resolution of Harassment policy applies to RCMP employees only. While other persons working on the premises of the RCMP cannot access the written complaint process supervisors and managers are nevertheless expected to respect the spirit and intent of this policy to ensure that all harassment concerns raised by non-RCMP personnel or in respect of non-RCMP personnel are addressed.

NOTE: Cadets at Depot are not employees, given the contractual nature of their relationship with the RCMP. Nevertheless, a cadet may submit a complaint in respect of an RCMP employee under this policy, or may follow any applicable Depot policies or procedures. If a cadet wishes to complain about another cadet, then the following process is specifically provided for cadets [LINK].

Upon receipt of a written complaint from a non-RCMP employee, the OCHC will open an ACMT (Administrative Case Management Tool) file and forward the information to the Harassment Advisor (HA) in the Division in which the respondent is employed.

Upon receipt, the HA will provide the information to the manager of the respondent to take appropriate steps to determine if a response under the Respectful Workplace

Policy would be appropriate, or if an investigation should be initiated under Part IV of the *RCMP Act*, or whether other processes, such as but not limited to performance management procedures would be appropriate.

Non-employees may also submit a public complaint against a member [LINK to public complaints policy].

1.3 Complaint received through Representative

In a situation where an employee who has had inappropriate or potentially harassing behaviors directed at them is unable for medical reasons to submit a complaint, but has advised a third party of sufficient details that would enable the third party to complete and submit a complaint, then that third party may prepare a complaint on behalf of the employee as their representative in the manner set out in Section 10 of the Policy.

The representative may only submit the complaint to the OCHC if the employee at whom the alleged behavior was directed provides written authority for the representative to submit the complaint. Written authority may be provided in documentary or electronic format to the OCHC.

2. Intake procedures and review by OCHC

2.1 Initial actions following the receipt of a complaint at the OCHC

When a written complaint is received by the OCHC, a Harassment Reviewer (HR) will be assigned to manage and coordinate the complaint at the national level. The HR will:

- Open an ACMT case file in accordance with the ACMT User Manual.
- Confirm with the Office for the Coordination of Grievances and Appeals that no grievance has been submitted in relation to the same allegations of harassment.
- Acknowledge to the complainant the complaint has been received within seven days of receipt of the complaint at OCHC.
- Review the complaint to determine if the complaint has been submitted within twelve months (one year) from the last incident and all the information at Section 10 and 11 of the Policy has been provided.
- Confirm that the employee behavior occurred in the workplace or at any location or any event related to work, including while: on travel status, at a conference where the attendance is sponsored by the employer, at employer sponsored training activities/information sessions, and at employer sponsored events, including social events.

2.2 Additional information required from the complainant or the one year time limit has been exceeded

If additional information is required from the complainant in order to clarify a complaint, or if it appears the one year time limitation has been exceeded, the HR will contact the complainant in order to obtain the required information and any clarification necessary from the complainant.

The complainant will have seven days from the date of contact from the HR to provide the additional information. In the event the complainant does not provide the requested information, the complaint will be forwarded, as received, to the decision-maker (through the harassment advisor).

2.3 OCHC informs decision-maker through the Harassment Advisor

Once the complainant is satisfied with the complaint the HR shall forward the complaint and any attachments accompanying the complaint to the decision-maker through the harassment advisor located in the division in which the respondent is physically posted.

2.4 Is Informal Resolution Process appropriate?

Following the receipt of the complaint from the OCHC, the HA will review the complaint and determine whether the Informal Resolution Process (IRP) is appropriate. The HA may consult with Informal Conflict Management Practitioners and/or Conduct Advisors as required to make this determination.

3. Review by Decision-maker

The role of the decision-maker is integral to making the complaint process work; ensuring the confidentiality of the complaint process is respected by all parties involved; and assisting in restoring the workplace when necessary. The decision-maker is also ultimately responsible for determining if harassment occurred or not.

3.1 Interim administrative measures

The decision-maker must consider if interim administrative measures (temporary reassignment, suspension, stoppage of pay and allowances) should be implemented given the overall circumstances, and the necessity to protect the integrity of the RCMP and its processes pending the outcome of the harassment complaint and investigation process. The decision-maker will consult with the HA or Public Service Labour Relations when considering the need for interim administrative measures. These measures can only be applied when a decision to initiate the Investigation and Resolution of

Harassment Complaints process has been made.

Depending on the type of interim administrative measure selected, the appropriate documentation will need to be completed and provided to the respondent, the respondent and complainant's managers, and any other person as required to implement interim administrative measures. [link policy]

3.1.1 Member and PSE Respondent Temporary Reassignment

The decision-maker in consultation with the respondent's Line Officer can first contemplate what can be done within their area of responsibility (such as a change in duties within the workplace, a change in work location within the district, a transfer to another watch, etc.), and then engage the Career Development and Resourcing Officer if a longer term solution is required. When determining whether alternative duties are available, the decision-maker should:

- 1) consider the member's knowledge, skills and abilities;
- 2) consider the availability of appropriate duties or meaningful work required to be performed in the current or an alternative location;
- 3) consider whether the provision of alternative duties will address any risks identified with the alleged misconduct if the member remains in the workplace; and
- 4) take into account the public interest.

Where the Temporary Reassignment is selected, the decision-maker will complete the Notice of Temporary Reassignment.

3.1.2 Member Respondent Suspension

The authority to suspend a member respondent comes from Section 12 of the *Act* in cases where the integrity and operations of the RCMP would be seriously jeopardized if the member respondent was not suspended. Additionally a suspension will be ordered once a decision to initiate a conduct hearing has been made. The decision to suspend a member respondent will be made by the person with the delegated authority to suspend (typically the Line Officer or the Commanding Officer).

For information on suspensions consult *Commissioner's Standing Orders (Conduct)* [LINK] and *the Conduct policy* [LINK].

3.1.2.1 Reinstatement

The member respondent must be informed in writing when he/she is reinstated. A member may not be reinstated if the member is the subject of any other investigation or charges for an offence under an Act of Parliament or of the legislature of a province, and the integrity or operations of the RCMP would be seriously jeopardized if the member respondent was reinstated, taking into account public expectations.

3.1.2.2 Outside employment and activities

A member respondent may engage in any legitimate secondary employment outside the RCMP, subject to the relevant policy and approval governing outside activity. Refer to Administration Manual XVII.1.12 [Outside Employment and Activities].

3.1.3 PSE Indefinite Suspension Without Pay Pending Investigation

A suspension is used for a serious act of misconduct for which lesser disciplinary action has already been applied or where a more severe disciplinary measure is considered necessary.

A suspension will be applied in accordance with the requirements of the applicable collective agreement.

For more information on the suspension of a public service employee consult with your Labour Relations Section.

3.1.4 Member Respondent Stoppage of Pay and Allowances

A member respondent pay and allowances may be stopped under Section 22(2)(b) of the Act in exceptional circumstances where the member respondent is clearly involved in the contravention of any provision of the Code of Conduct or an Act of Parliament or legislature, and the conduct has a highly detrimental impact on the integrity or operations of the RCMP or the member respondent's ability to perform his/her duties (link to Act).

Every 90 days, the designated officer will review the circumstances pertaining to the Order to Stop the Pay and Allowances of the suspended member and provide findings and recommendations to the delegated person who made the Order as to whether or not the stoppage of pay and allowances should continue.

A member the can appeal an order to stop the pay and allowances.

3.1.4.1 Reinstatement

The conditions for reinstatement are the same as for a suspension (refer to section 3.1.2.1 Reinstatement in this Guidebook). The member respondent must be advised in

writing when he/she is reinstated. A member respondent's pay and allowances may not be reinstated if the member respondent is the subject of any other investigation or charges for an offence under an Act of Parliament or of the legislature of a province, and there is clear involvement and the conduct has a highly detrimental impact on the integrity or operations of the RCMP or the member respondent's ability to perform his/her duties.

3.1.4.2 Outside employment and activities

A member respondent may engage in any legitimate secondary employment outside the RCMP, subject to the relevant policy and approval governing outside activity. Refer to Administration Manual XVII.1.12 [Outside Employment and Activities].

3.2 Decision-maker reviews complaint and submissions clarifying the complaint

Once the decision-maker has received the complaint and submissions clarifying the complaint from the HA, s/he will review the complaint and take the following action depending on the circumstances of the complaint:

- determine if the complaint has been submitted within the time-limit; and
- determine if an extension to the time limit is to be granted if the complaint has made a request for an extension; and
- mandate an investigation in accordance Harassment Investigation and Resolution policy or the Commissioner's Standing Orders (Investigation and Resolution of Harassment);.

If the decision-maker determines the complaint was submitted outside of the time-limit, a final written decision will be provided to the parties and their respective managers/supervisors as soon as feasible. The decision will include a statement of the findings and reasons for the decision.

3.2.1 Is the Complaint Timely?

In determining whether a complaint has been filed within the twelve-month time limit, the Treasury Board of Canada Secretariat (TBS) has provided guidance advising that "a complaint is calculated from the date of the occurrence of the last repeated incident or from the date of the single severe incident. Once the complainant can demonstrate that an incident occurred less than twelve months prior to the filing of the complaint, the allegations can go back further in time to describe behaviors or events if they are directly related to the complaint. This is especially necessary in cases where the complainant intends to demonstrate a pattern of events. The investigation can look into these behaviors or events, subject to proper recollections by witnesses and parties

involved, as well as availability of any documentary evidence.”

3.2.2. Exceptional Circumstances

Some consideration should also be given to extenuating circumstances where a complaint may otherwise have been deemed to be filed outside of the time limit. The decision-maker will make a determination based on the extenuating circumstances to accept the complaint or not. Examples of extenuating circumstances may include: illness, or circumstances outside the control of the complainant (e.g. administrative delays or administrative error).

3.2.3 Mandating a Harassment Investigation

If after reviewing the complaint and any submissions, the decision-maker determines the complaint is timely and/or extenuating circumstances are accepted, and further information is required in order to make a finding in respect of the complaint, the decision-maker will mandate an investigation into the complaint.

The decision-maker shall prepare a Harassment Investigation Mandate Letter, for the investigation of the complaint, and provide the parties, the investigator(s), and the manager(s) of the parties, as the case may be, with the Harassment Investigation Mandate Letter through the HA.

4.0 Decision-maker Informal Resolution Process

4.1.1 IRP accepted by complainant and respondent

If the decision-maker agrees with the assessment by the HA, and the parties agree to an informal resolution of the complaint, the decision-maker will advise the parties in writing that the investigation and resolution process will be held in abeyance for 30 days pending the outcome of the IRP.

It is the responsibility of the complainant and respondent to initiate the contact with the informal conflict management practitioner (ICMP). Alternatively, the parties may request the HA to make the contact, although the HA will not have any other role to play in the IRP.

30 days after the investigation has been put into abeyance, the harassment advisor will contact the parties to determine the status of the IR efforts. If the parties, with the agreement of the practitioner, request further time to attempt to resolve the complaint the decision-maker may grant an additional 30 days and continue to hold the investigation in abeyance. If the parties do not request additional time then the investigation will continue. The request for an additional 30 days is to be made utilizing

the Investigation and Resolution of Harassment Complaints policy template [link].

4.1.2 IRP successful, Complainant withdraws complaint

If informal resolution process is successful and the complaint is resolved, the complainant will advise the decision-maker of their desire to withdraw the complaint. This advisement must be made in writing by sending the written submission to the HA, asking that the complaint be considered to be withdrawn, utilizing the template provided.

If a complainant later indicates that he or she isn't satisfied with the informal agreement, consider re-opening the complaint file, if:

- there are new circumstances not dealt with in the original complaint;
- there is a compelling indication they did not understand the implications of the agreement; or
- there is compelling information showing that the complainant believes that they were coerced or pressured into signing the informal resolution.

If there is any doubt about the conclusiveness of the informal resolution, it should be dealt with in favour of the complainant, thus resulting in the re-opening or re-investigation of the complaint. However, given the potential for a chilling effect on the use of informal resolution in the event that an agreement may not be considered final, re-opening a complaint should occur only under exceptional circumstances, as set out above.

4.1.3 IRP unsuccessful, harassment complaint investigation and resolution process proceeds

If the IRP is unsuccessful, the ICMP identifies the process is no longer an avenue of resolution, or one/both of the parties are no longer willing to pursue IRP, advise the decision-maker immediately utilizing the Investigation and Resolution of Harassment Complaints policy template [link].

If the ICMP identifies the informal process is no longer an avenue of resolution, they will immediately advise the decision-maker through the HA. The decision-maker will in turn advise the parties in writing the Investigation and Resolution of Harassment Complaints process will proceed.

If the complainant or respondent wish to withdraw from the IRP they must immediately advise the decision-maker of their desire to withdraw utilizing the Investigation and Resolution of Harassment Complaints policy template [link]. The decision-maker will in

turn advise the parties and the investigators in writing the Investigation and Resolution of Harassment Complaints process will proceed.

5. Harassment Investigation Process

The HA will identify a date for the completion of the harassment complaint investigation and communicate this date to the parties.



NOTE: Every effort must be taken to complete an investigation within 90 days of the service of the Harassment Investigation Mandate Letter or 14 days if it is a serious or integrity matter.

If the investigation cannot be completed within that time, the investigator can request an extension from the decision-maker. If an extension is granted, the investigator will update the decision-maker every 14 days as to the status of the investigation.

5.1 Scope of mandate

The investigator will contact the decision-maker to clarify any issues with the scope of the investigation. Only the decision-maker has the authority to the extent and scope of the investigation.

5.2 Additional allegations

The investigator is responsible for advising the decision-maker should additional allegation(s) not covered in the original mandate surface during the investigation.

For example: During a statement for a harassment investigation, the member respondent admits to lying to his supervisor; in this case the investigator should complete the statement and advise the decision-maker of the potential new separate conduct allegation. In this case the same investigators could be used to investigate the new conduct allegation under a separate Part IV conduct mandate.

5.3 Priority of Harassment Complaint Investigations

The following types of investigations will be given priority and assigned to experienced investigators:

- 1) an investigation involving a suspended member; and/or,
- 2) an investigation, which if the allegation is established, would likely result in corrective or formal measures being imposed, or the initiation of a conduct

- hearing under s. 41.(1) of the Act;
- 3) allegations of sexual harassment.

5.4 Decision-maker mandates the HA to conduct a limited investigation

Subject to the circumstances of the complaint, the decision-maker may mandate the HA to conduct a limited investigation. An HA may be mandated when the only follow up required consists of an interview with the complainant for clarification purposes, and an interview with the respondent. If investigatory steps beyond this limited scope are required, the decision-maker should mandate two investigators to complete the investigation.

Notwithstanding that an investigation mandated to an HA will be of limited scope, the investigation must still be conducted as per the process identified in Section 4.0 Investigation and Resolution of Harassment Complaints Process.

The HA will be identified in the Harassment Investigation Mandate Letter and may be subject to an objection from either party.

5.5 Decision-maker mandates two investigators for an in-depth investigation

It is anticipated that the majority of complaints will require more than a limited investigation which will require decision-makers to mandate two investigators for in-depth investigations. Where possible, the investigative team should be representative of the complainant and respondent. One of the investigators will act as the lead investigator, based on their experience as a harassment investigator.

The investigators are to be identified in the Harassment Investigation Mandate Letter and may be subject to an objection from either party.

5.6 Objection to Decision-maker

The complainant or respondent may object to the decision-maker within a reasonable time after being advised of the identity of the decision-maker, and ask that the decision-maker recuse him or herself. Generally, this will occur when the complainant receives written acknowledgement of the receipt of their complaint, or when respondent receives notice of being named in a complaint. An objection must be made in writing and must utilize the template for the Investigation and Resolution of Harassment Complaints policy [\[link\]](#).

The decision-maker will decide if the objection will be upheld or denied and will provide written reasons in support of the decision using the template for the Investigation and Resolution of Harassment Complaints policy [\[link\]](#).

If the decision-maker accepts an objection in relation to their role, the decision-maker will request an alternate decision-maker be appointed through the OCHC.

5.7 Objection to Investigator

The Complainant or Respondent may object to one or both of the investigators by submitting a written objection to the decision-maker using the template provided. The objection must be lodged as soon as feasible after the parties receive the Investigation Mandate Letter.

The decision-maker will decide if the objection will be upheld or denied and will provide written reasons in support of the decision using the template provided.

If the decision-maker accepts the objection in relation to the investigator, the decision-maker will name an alternate investigator in an amended Harassment Investigation Mandate Letter.

5.8 HA provides information package as part of the Mandate Letter

If an investigation is to be pursued the divisional HA will provide a copy of the Harassment Investigation Mandate and an information package to the complainant, the respondent and their respective manager(s).

The information package will include:

- details on how to access support services for pursuing opportunities for informal resolution process;
- the identification of sources of support (EAP, Labour Relations, ICMP, bargaining agent representatives, Staff Relations Representative);
- a description of the process that will be followed during the implementation of the harassment investigation and resolution process;
- an explanation of the confidentiality requirements and the possible consequences of failing to respect this requirement; and
- information in respect of possible consequences for either party in the event there is an established allegation of retribution or retaliation.

5.9 Respondent opportunity to respond to the complaint

The respondent is provided with the opportunity to respond to the complaint, subject to the *RCMP Act*, Commissioner's Standing Orders or applicable Treasury Board policies.

As the harassment investigation process could result in the imposition of a conduct or disciplinary measure against a respondent, the respondents will be advised of their options in regard to providing a statement or otherwise responding to the complaint, and the possible use of their response in a conduct or disciplinary proceeding.

5.9.1 Updates to respondent, complainant and respective manager(s)

The HA is responsible to advise the respondent, complainant and respective manager(s)/supervisor(s) in writing of the status of the investigation every 30 days (unless extenuating circumstances exist, such as where the provision of an update could jeopardize a criminal investigation).

5.10 Statements

Statements taken during the investigation shall be in writing or recorded using electronic means, at the discretion of the investigators.

A witness from whom a statement has been taken shall confirm the accuracy of the statement by signing the written statement or by confirming in writing that the statement is accurate if the statement is in electronic format.

The complainant and the respondent will be provided with copies of their statements in the form in which it was recorded as soon as feasible. The parties are not required to make a request.

For greater clarity, if the statement is in writing, the witness will sign each page of the statement. If the statement is in electronic format the investigator will send a copy of the statement to the witness in the form it was recorded, and the witness will be required to review the statement and confirm in writing (i.e. email) the accuracy of the statement.

The witness may request a copy of their statement at any time during the harassment investigation and resolution process, and if a witness does make such a request the investigators will provide a copy of the witness' statement in whatever format was used by the investigator to record the statement.

For greater clarity the phrase "copy of their statement in whatever format" in reference to a statement means if a statement was taken down in writing, the witness will be

provided a copy of the written statement. If the statement was recorded using electronic means, the witness will be provided with a sound file or similar media copy of the statement.



Witnesses shall be advised their statement may form part of a conduct or disciplinary proceeding, in which case the statement may be open to release as part of disclosure requirements under those proceedings, and the witness may be required to give evidence under oath on the basis of their statement.

5.10.1 Member Respondent statement

The member respondent will be given an opportunity to provide a statement during the Harassment Investigation. The investigator will ensure that the member respondent is given a reasonable opportunity to consult with a Staff Relations Representative or any other person of their choice before giving a statement. The investigator will use the Member Respondent Statement form template [link]) when obtaining a statement from the member respondent.

A best practice is for the investigator to send an e-mail notification to the member respondent with the following information:

- explaining the investigator has been assigned the investigation;
- outlining the member respondent's rights and obligations;
- outlining the member respondent's option to obtain the assistance from a Staff Relations Representative or other person; and
- exploring a suitable time/location for a statement.

The member respondent is not obliged to provide a statement; if applicable, the investigator will note in the investigation report that the member respondent declined the opportunity to provide a statement.

Under section 40(2) of the Act, a member respondent can be compelled to answer questions should a decision-maker determine it is in the RCMP's best interest to obtain information through an ordered statement. Before compelling a member respondent to answer questions under section 40(2) of the Act, the decision-maker must consult with both the HA, divisional conduct advisors and the OCHC harassment reviewer.

5.10.2 Presence of medical issues

In instances where the member respondent is on medical leave, the investigator will consult with the Health Services Officer to determine the ability of the member respondent to provide a statement, and if there are special considerations that should be taken into consideration when seeking to obtain a statement. If necessary, a member may be required by the decision-maker to undergo a medical examination or

an assessment by a qualified person to establish the member's ability to participate in the harassment investigation process.

5.10.3 Polygraph examination

The investigator, the decision-maker or any person under the Commissioner's jurisdiction will *not* request the member respondent submit to a polygraph examination for the purpose of a Harassment Complaint and resolution investigation. However the member respondent may voluntarily request an opportunity to submit to such an examination.

A public service employee or civilian witness may undergo a polygraph examination for the purpose of a Code of Conduct investigation only if the witness has been informed of the purpose of submitting to a polygraph examination. The witness must also be advised that the examination and, if applicable, the ensuing statement can be used in the Code of Conduct investigation and/or a statutory investigation.

Only a Commanding Officer can approve a request for a polygraph examination. Refer to Conduct Policy.

5.11 PSE Respondent Statements

A public service employee respondent will be given an opportunity to provide a statement during the harassment investigation process. The investigator will ensure that the public service employee respondent is given a reasonable opportunity to consult with a legal counsel, union representative, or any other person of their choice before giving a statement. The investigator will use the Public Service Employee Respondent Statement provided when obtaining a statement from the public service employee respondent.

A best practice is for the investigator to send an e-mail notification to the public service employee respondent with the following information:

- explaining the investigator has been assigned the investigation;
- outlining the public service employee respondent's rights and obligations;
- outlining the public service employee respondent's option to obtain the assistance from a union representative or other person; and
- exploring a suitable time/location for a statement.

The public service employee respondent is not obliged to provide a statement; if applicable, the investigator will note in the investigation report that the public service

employee respondent declined the opportunity to provide a statement.

5.12 Requests for extensions

The decision-maker manages requests for extensions from the investigator and any of the parties.

5.13 Disclosure of information

During the investigation, the investigator should remain aware that disclosure of personal information is strictly regulated under s. 8(1) of the *Privacy Act* which stipulates specific criteria about the release of harassment complaint and resolution investigations.

5.14 Search Warrant

As the harassment investigation process is considered to be an investigation initiated under Part IV of the Act, an investigator may seek judicial authorization to conduct a search under the authority of a warrant, as provided for in the Act. An intention to conduct a search during a harassment complaint and resolution investigation should be evaluated on a case-by-case basis in consultation with the harassment advisors, conduct advisors and harassment reviewers. The guidelines surrounding the use of search warrants within the context of a Code of Conduct investigation are outlined in Conduct Policy.



NOTE: The Information to Obtain a Search Warrant must be reviewed and approved by the designated officer prior to submission to a Justice of the Peace or judge.

5.15 Production Order

Similarly, an investigator may seek to obtain documented information through the use of a production order. Section 40.3 of the Act allows for production orders to be issued upon reasonable grounds to believe that a document will afford evidence with respect to the contravention of a provision of the Code of Conduct. The investigator must comply with sections 40.3 to 40.8 of the Act outlining the disposition and requirements with respect to a production order, where applicable. The investigator can also refer to Operational Manual 21.12 for general guidance on production orders, and the Conduct Policy for guidelines in respect of the use of production orders in the context of a Code of Conduct investigation.

Please note that a production order cannot be used to require a member respondent to produce or prepare documents related to the alleged contravention(s).

5.16 Notebooks

A member's notebooks are the property of the RCMP and must be surrendered upon request.

5.17 Respondent resignation

In the event a respondent resigns while the investigation is ongoing, the investigator will nevertheless complete the investigation even if a decision-maker or a conduct board no longer has jurisdiction to impose conduct or disciplinary measures against a respondent. The completed investigation will be reviewed by the decision-maker, and a decision will be made on whether the allegation(s) is established on a prima facie basis (see section 6.1 of this Guidebook). This information will be captured on the appropriate database (HRMIS, National Code of Conduct Database, NARMS) and the harassment file can then be concluded.

5.18 Preliminary Investigation Report

The investigators shall prepare a preliminary investigation report when they are satisfied the mandate of the investigation has been met and shall provide a copy of the preliminary investigation report to the parties.

The preliminary investigation report will provide a summary of the facts obtained during the investigation, a list of persons interviewed, materials reviewed, and any other information the investigators deem as necessary to provide the parties with an overview of the steps taken in conducting the investigation as mandated by the decision-maker. The parties may respond to the preliminary investigation report by providing a written response to the investigators within seven days of the parties being provided the preliminary investigation report.

The parties may request an extension to the 7 days response time by submitting a request to the decision-maker utilizing the Investigation and Resolution of Harassment Complaints policy template [\[link\]](#).

If the decision-maker denies the request for an extension, the process set out under this policy will continue uninterrupted.

5.18.1 Representations and assessing the completeness of the Investigation

The investigators will consider any representations made to them in writing by the parties, and will determine if additional investigative steps, corrections or changes are

appropriate or necessary.

The following questions may be used in assessing the completeness of the information collected:

- Are all of the key investigative issues which were identified in the planning phase adequately addressed?
- For each allegation, does the file contain each party's version of what happened?
- Have all the relevant witnesses been interviewed and their testimony recorded?
- Have all supporting documents been reviewed?
- Is there a need to go back and collect or verify additional information?
- Have new important questions emerged?

If in the opinion of the investigator, supplementary investigative steps are not required, go to "5.18 Final Investigation Report."

If the investigator considers supplementary investigative steps are appropriate or necessary, the investigators will complete those further steps, following which they will prepare a final investigation report and submit it to the decision-maker through the HA.

5.19 Final Investigation Report

5.19.1 Submission of the harassment complaint and resolution final investigation report

Once the harassment complaint and resolution investigation is completed, the investigator will forward the investigation report in *electronic format* to the HA for presentation to the decision-maker.

The final investigation report will contain all of the relevant materials and information gathered by the investigators, including but not limited to, witness statements, submissions from the complainant and respondent, or agreements entered into as a result of informal resolution efforts.



Investigators will NOT include an opinion as to the veracity of the allegations; this is a decision for the decision maker alone. The final investigation report will provide only the information gathered, with no opinions, editorializing, or recommendations from the investigators.

5.19.2 Review of final investigation report for completeness

The HA shall provide the final investigation report to the decision-maker.

The decision-maker shall review the final investigation report and determine if additional investigative steps are appropriate or necessary. Particular attention should be devoted to ensuring that the following elements are present:

- the requirements of the mandate have been met;
- the respondent was informed of the allegations;
- the investigator was independent and had no vested interest in the outcome of the investigation;
- the parties were given an opportunity to be accompanied or assisted during the investigation;
- the key witnesses have been identified and interviewed;
- all relevant documents and policies have been examined;
- the key investigative issues have been thoroughly explored (i.e. who, what, where, when, why, how);
- the investigator properly identified gaps and challenged inconsistencies in evidence;
- the investigator only included information that directly related to the allegations;
- the investigation report is concise and is not a complete retelling of the investigation;
- spelling and grammar are correct and there are no critical inaccuracies (e.g. names of witnesses, dates, locations, terminology);
- the investigation report is well organized (i.e. evidence, analysis, conclusion);
- the investigation report does not contain information that has no relevance or bearing on the outcome of the investigation; and
- the investigation report meets the requirements of the applicable access to information and privacy laws.

The decision-maker may contact the investigators to have any shortcomings addressed if the decision-maker has concerns.

5.19.3 Supplemental investigation

If, after a review of the investigation, it becomes necessary to obtain further information (e.g., if new information is presented to the decision-maker subsequent to the preparation of the final report), the decision-maker can request a supplemental investigation in writing, and advise the respondent and complainant that further investigation is required, and the nature of any further investigation. In terms of a time line for the completion of a supplemental investigation, the investigator should make every effort to complete the investigation within 14 days. A copy of the supplemental investigation report will be provided to the respondent and complainant for representations. Please note that a conduct board also has the authority to order a supplemental investigation.

If additional steps are required, go to 5. Harassment Investigation Process- If no additional steps are required, go to 6.0 Final Written Decision.

6. Final Written Decision

The decision-maker will prepare a final written decision and provide it to the parties through the HA. The final decision must include a statement of the decision-maker's findings, reasons for the decision, how the decision-maker considered any submissions of the parties, findings in respect of credibility, and if the respondent was subject of the imposition of discipline or conduct measures.

There will be two versions of the decision: the complainant's version will not set out the quantum of any conduct or disciplinary measures imposed on a respondent if applicable, while the respondent's version will include the actual measures imposed, if any.

6.1 Considerations in the Decision Making Process

The decision-maker must decide based on a balance of probabilities, that the evidence provided demonstrates that harassment has occurred. If the evidence does not meet the threshold of a balance of probabilities, then the decision-maker must conclude that the allegations are not established. Making a determination in a harassment investigation can be especially challenging in situations where two people present different versions of incidents. However, two conflicting views should not necessarily lead the decision-maker to conclude that the allegations are not established. Rather, each account should be carefully assessed in light of all of the other information and evidence collected. Facts analysis is more than a counting game; the number of witnesses who can support a version of events should not be the only consideration. At times, fewer strong pieces of information may outweigh a larger number of weaker pieces of information. The decision-maker must be able to account for and explain the different weight allotted to the evidence collected, and where credibility is an issue must explain how he or she determined the credibility of one version of events over another.



Even if the body of information contains significant contradictions or if there is a lack of convincing evidence, the DECISION MAKER is still required to render a decision.

What should be done when there are no witnesses to corroborate an allegation? One

way to broach the subject is to rely on the degree of probability. If other similar incidents have been corroborated by witnesses, it may be more likely that the incident under review occurred. The decision-maker should carefully consider whether there are sufficient elements to make the alleged behaviour believable.

To determine the likelihood of the allegations, the decision-maker should consider the following questions:

- Are the facts plausible?
- Do the facts flow logically?
- Are the facts well explained?
- Are the facts sufficiently detailed?

Factors that affect the credibility of a witness include:

- Direct, firsthand knowledge of the allegations;
- Expertise in the relevant subject area;
- Level of maturity;
- Status of the source;
- Relationship between the source and the parties; and
- Consistency or contradictions in the witnesses' information in comparison with other information gathered during the investigation.

6.1.1 Repetitious behaviour versus single event

It is important to consider the severity and impropriety of the behaviour (act, comment or display) in the circumstances and context of each situation. Essentially, the definition of harassment means that more than one act or event needs to be present in order to establish a pattern of behaviour that constitutes harassment. This may mean that when taken individually a series of acts or behaviour may not constitute harassment on their own, but when taken in totality all of the incidents add up to meet the definition. It is the repetition that generates the harassment. In other words, workplace harassment consists of repeated and persistent behaviours towards an individual that may torment, undermine, frustrate or provoke a reaction from that person. Harassment generally consists of behaviours that over time, pressures, frightens, intimidates or incapacitates another person. Each behaviour viewed individually may not seem offensive; it is the combined effect and repetitive characteristic of the behaviours that produce harmful effects.

That being said, it is important to note that one single incident can constitute harassment when it is demonstrated that it is so severe that it has a serious and lasting impact on the complainant.

6.1.2 Intent

In order to conclude that harassment occurred, the intent of the respondent to cause offence or harm by his/her acts, comments or displays does not need to be demonstrated; it is the impact on the other person that is taken into account. However, if this intent was present and can be demonstrated, it may be an aggravating factor in the determination of appropriate conduct measures.

6.1.3 Reasonableness

To determine if a person ought to have reasonably known that the behaviour was improper, we must ask what a reasonable person, well informed of all of the circumstances and finding himself or herself in the same situation as that of the complainant, would conclude. The behaviour in question is not only assessed by the impact or effect on the person, but it is also assessed against a reasonably objective standard. Did the behaviour exceed the reasonable and usual limits of interaction in the workplace? Would a reasonable person be offended or harmed by this conduct?

6.1.4 Sexual Harassment

In the case of alleged sexual harassment it is also important to note that a single incident may be viewed to be more significant in circumstances when the parties' relationship at work is one where the respondent has influence or power over the complainant with regard to career advancement, performance review, work assignment and when the incident(s) leads to adverse job related consequences for the complainant.

Because sexual harassment does not generally occur in public, in order to make a determination as to whether someone was sexually harassed, circumstantial evidence is considered by drawing inferences from certain behaviour. For the same reason, the credibility of witnesses can be even more critical in sexual harassment cases than in any other type of harassment. Cases may be determined based on an assessment of the credibility of the parties and witnesses. Credibility implies that witnesses tell the truth without any attempt to hide or exaggerate the facts, in a straightforward and honest manner.

NOTE: In 2000, the Federal Court of Appeal in *Stadnyk v. Canada (Employment and Immigration Commission)*¹ provided guidance to decision-makers faced with considering the veracity of a complaint of sexual harassment, by introducing the concept of the "reasonable woman" or "reasonable victim" standard into Canadian law. Although this standard of reviewing evidence in respect of a sexual harassment complaint has not been developed further by the courts, the

¹ 2000, CanLII 15796 (FCA).

Stadnyk case is helpful in ensuring that decision-makers take into consideration the broader, cultural and societal context from which a complaint has originated.

The “reasonable woman” or “reasonable victim” standard was first identified as an appropriate test for evaluating a sexual harassment complaint by the United States 9th Circuit Court in *Ellison v. Bradley*, 1991.² In that case, the Court stated that analyzing a complaint of sexual harassment should include awareness that certain behaviours are subject to interpretation based on the “different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women.”³

The Canadian Federal Court of Appeal made a similar observation at paragraph 25 in *Stadnyk*,

The one remaining issue, and it is an important issue, is as to the proper test for sexual harassment. I am in full agreement with the (Human Rights) Tribunal that, where the complainant is a woman, the test must be at least that of the reasonable woman. I believe that the Tribunal had proper expert evidence before it to confirm that male-female interaction may well be perceived differently by men than by women and that it would be wrong to judge the propriety of such interaction simply on the basis of the so-called “reasonable-man,” whether that term is taken to include only the male gender or whether it is taken to include people generally.

In other words, when considering a sexual harassment complaint, decision-makers must take the time to consider a broader definition of how an incident may appear to a reasonable man or woman. This same form of consideration may also apply to complaints based on other forms of discrimination as referred to in the *Canadian Human Rights Act*.

6.2 Determining whether the allegation is vexatious or made in bad faith

If there is evidence to demonstrate that the allegations are vexatious or made in bad faith, the investigator should establish whether the evidence indicates:

- the allegation was made merely for the purpose of vexing or annoying or embarrassing a person;
- the allegation was calculated to lead to no practical result;
- the probable presence of bad faith on the part of the person making the allegation which can be indicated by an intention to mislead the investigator or the presence of ill-will.

² 924 F.2d 872 (1991)

³ 2000, CanLII 15796 (FCA)

The standard for establishing that a harassment complaint was made in bad faith is high. It entails more than just poor judgment or negligence. It implies the conscious doing of a wrong for a dishonest purpose or due to moral underhandedness on the part of the complainant. It is characterized by an intention to mislead.

A complaint can be characterized as vexatious or made in bad faith if no practical outcome would be achieved by its pursuit. In such cases, there may be some indication that the same issues raised by the complainant were addressed by proceedings under another redress process for which a remedy has already been granted.

In determining whether a particular allegation is vexatious or made in bad faith, the decision-maker should determine whether there is any reasonable ground upon which the complaint can be substantiated. In other words, the investigation should establish whether the filing or the pursuit of an allegation is reasonable in light of the circumstances of the case.

6.3 Public Service Employee Respondent – Established Complaint

Upon receipt of the final investigation report, the decision-maker will review the report, and decide if the complaint is established on a balance of probabilities. If the decision-maker determines that the complaint is established in respect of a PSE respondent, the following considerations are important to note:

The decision-maker will provide a copy of the written decision to the respondent and the respondent's delegated manager.

The respondent's delegated manager will assume responsibility for determining if disciplinary action against the respondent is warranted. Before taking disciplinary action the delegated manager should consult the divisional Public Service Human Resources Advisor. Please refer to Public Service Manual Part 2. (LINK: <http://infoweb.rcmp-grc.gc.ca/rcmpmanuals/eng/psm/2/psm2-5/psm2-5.htm>).

The delegated manager will report in writing, to the decision-maker through the HA, if a disciplinary measure is imposed. The types of disciplinary measures can be found at (LINK: <http://infoweb.rcmp-grc.gc.ca/rcmpmanuals/eng/psm/2/psm2-5/psm2-5.htm>).

The divisional Public Service Human Resources Advisor must also be advised for processing to the Public Service Labour Relations Directorate. Please refer to Public Service Manual (LINK: <http://infoweb.rcmp-grc.gc.ca/rcmpmanuals/eng/psm/2/psm2-5/psm2-5.htm>).

If a disciplinary measure is not considered to be warranted, go to 7. Final Written Decision – Complaint not established – refer to managers for appropriate action.

6.4 Member Respondent – Established Complaint

Following receipt of the final investigational report, a decision-maker will make a determination on the complaint in accordance with the decision-maker *Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints)* and *Commissioner's Standing Orders (Conduct)* when the respondent is a member.

For the purpose of subsection 2(3) of the *Act*, the decision-maker is also designated as a conduct authority in respect of the respondent. This designation provides the decision-maker with the ability to make a decision on the complaint through the application of the conduct management system.

6.4.1 Prima facie finding

Following review of the final investigational report, the decision-maker must determine whether or not the information contained in the report supports a prima facie finding that the member respondent's conduct would amount to a contravention of the Code of Conduct:

Prima facie: A prima facie finding exists when, based on a presumption that the information contained in the report is accurate, and in the absence of any rebuttal or response from the respondent, the decision-maker determines there would be sufficient information available to find the essential elements of the alleged contravention of the Code of Conduct would be established.

Where a prima facie case is established, the decision-maker will then ascertain if he or she can continue to act as the decision-maker, or if the case would require the initiation of a conduct hearing. Specifically, if it appears to a decision-maker that he or she would not have the authority to impose conduct measures on a respondent member if the complaint were to be established, then the decision-maker would initiate a conduct hearing. A conduct board would then serve as the decision-maker for the purpose of the harassment investigation and resolution process. This determination should be made in consultation with the HA, divisional conduct advisors, or OCHC harassment reviewers.

Example:

If dismissal is *not* considered: The decision-maker has the authority to continue to act.

If dismissal *is* considered: The decision-maker will need to initiate a conduct hearing.

If the decision-maker continues to act as the decision-maker, he or she must complete a

Notice of Conduct Meeting and have it served on the member respondent. The Notice will include a complete copy of the final investigation report. The conduct meeting should occur within 7 days of providing the Notice to the member respondent. Ultimately, the decision-maker will attempt to have the conduct meeting process completed (including the imposition of conduct measures, if any) within 30 days of having received the completed final investigation report. Note that more than one conduct meeting may be required based on the complexity of the issue(s), whether the member respondent made representations or if a supplemental investigation was ordered. The Conduct Management policy provides a complete description of the administration of a conduct meeting [LINK]. For the purposes of this guidebook, the following steps may occur, depending on the totality of the circumstances:

- The decision-maker sets a date for the conduct meeting and meets with the member respondent to discuss the alleged contravention(s) of the Code of Conduct.
 - As a matter of good practice, the selection of a date for the meeting can be done in consultation with the member respondent. However the decision-maker remains responsible to ensure the meeting takes place in accordance with time lines set out in policy.
 - Based on geographical and other restrictions, the parties can arrange to meet in person, via teleconference, videoconference, or other suitable method.
- The respondent will be provided the opportunity to make representations in writing or directly to the decision-maker during the meeting.
 - The member respondent can elect to provide written representation to be considered by the decision-maker at least two (2) days prior to the conduct meeting and also provide oral submissions during the conduct meeting.
 - The respondent may also make requests for time extensions directly to the decision-maker in writing.
- At the meeting, the decision-maker will duly consider the representations (written and/or oral) of the member respondent, and arrange further meetings as required.

6.4.2 Supplemental investigation

A member respondent may request that the decision-maker consider requesting a supplemental investigation on a specific point or issue that pertains directly to whether or not the allegation is established. The decision-maker will consider the request and provide his/her decision to the member respondent in writing. A decision-maker may also direct, on his or her own volition, that a supplemental investigation be undertaken at any point before a decision is made on whether the allegation(s) is established. The

ability to make such a request also rests with a conduct board.

If a supplementary investigation is ordered, the member will be provided with the opportunity to consider and respond to the new information [LINK to Conduct Management policy].

6.4.3 Determining if the allegation(s) is established

Once the decision-maker has received and reviewed all relevant information (investigation report, supplementary report, submissions by the member respondent), he/she will determine, on a balance of probabilities, whether the member respondent has contravened a provision of the Code of Conduct.



NOTE: *Balance of probabilities* means a test to determine whether it is more likely than not that the alleged event occurred.

The decision-maker will have the member served with a written decision in respect to his or her finding on each allegation, including the reasons for the finding.

The decision-maker should consult with the HA and/or divisional conduct advisors if, in his/her opinion,

- 1) the contravention of the Code of Conduct is not established; or
- 2) there is a contravention of the Code of Conduct but, in the decision-maker's opinion, it does not warrant any conduct measures (e.g., mitigating factors involved).

6.4.4 The allegation(s) is established

The decision-maker may impose one or more of the conduct measures provided under the CSOs (*Conduct*). [Link – Conduct Management policy].

6.4.4.1 Conduct Hearing (dismissal)

After consultation with the conduct advisor and the national conduct advisor, the decision-maker may initiate a conduct hearing where it appears to the decision-maker that the dismissal of a member respondent may be warranted. In order to initiate a hearing, the Decision-maker is required to complete a Notice to Designated Officer to request the initiation of a conduct hearing. The decision-maker must then prepare and serve a copy of the Notice of Conduct Hearing on the member respondent.

The designated officer will appoint board members.

The Conduct Management policy [LINK] provides the procedures that are applicable to the administration of a conduct hearing. It is important for member respondents to be aware that if they have been served with a Notice of Conduct Hearing they may be eligible to receive legal representation from the Member Representative Directorate.

Following the final decision, the complainant will be served with a copy of the written decision, and will be advised if corrective or disciplinary measures have been taken as a result of the complaint, subject to the provisions of the *Privacy Act*.

NOTE: Specifically, the complainant will not be told the quantum of any conduct measure imposed.

6.5 Final Written Decision – PSE and Member Respondent - Complaint Not Established

6.5.1 Refer to manager for appropriate action and conclude file

If the decision-maker is not satisfied on a balance of probabilities that the complaint has been established, although the decision-maker may deny the complaint, the decision-maker may also make recommendations or provide considerations for the parties, supervisors/managers etc. to access/obtain advice from other resources such as Informal Conflict Management Program, Public Service Labour Relations, EAP, SRR, to resolve the workplace conflict or otherwise address the impact the investigation or incident may have had on the workplace.

Examples of recommendations include:

- informing employees about the employer's commitment to a respectful workplace;
- delivering workshops on harassment prevention, anger management, meaningful conversations, collaborative problem solving, etc.;
- developing communication tools;
- identifying risk factors;
- promoting a culture of self-awareness, collaboration and respect; for example, putting in place 360-degree feedback mechanisms or comparable processes to ensure that results are achieved in a manner that respects employees; or
- providing appropriate training and tools to those who are involved in managing and resolving harassment complaints.

Manager's Guide" [link <http://www.tbs-sct.gc.ca/gui/rwfhc02-eng.asp>] is available to employees, managers/supervisors in assisting in workplace restoration.

7. Appeal or Grievance

7.1 Member appeal process

It is important to note that a member may not present a grievance under Part III of the *Act* in respect of an allegation of harassment. The Investigation and Resolution of Harassment Complaints process is established under the CSO, the policy and described in this guidebook is the process provided to members to address concerns relating to harassment.

The *Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints)* and the *Commissioner's Standing Orders (Grievances and Appeals)* provide the process for redress in respect of any decision, act or omission made in the course of administering or applying a harassment investigation and resolution process. [LINK]

7.2 PSE Grievance Process

Upon the provision of the final decision in writing that disposes of the complaint, a PSE complainant or respondent may present a grievance as provided for under the applicable grievance process.

Annex A RCMP Harassment Process Service Standards

Step 1 - Acknowledging Receipt:

The Harassment Reviewer will acknowledge receipt of a complaint within 7 days of the complaint being received by the OCHC (as determined by the date of receipt of an email, or the date stamp placed on a document by the OCHC received through the mail).

NOTE: The complainant will be provided 7 days to provide the Harassment Reviewer with such clarifications of the complaint as is necessary.

Step 2 - Reviewing the Complaint:

Upon receipt of all the necessary information the Harassment Reviewer will forward the complaint to the Decision-maker. The Decision-maker will determine if the complaint is timely and, if applicable, mandate an investigation within 7 days of receipt from OCHC.

Step 3 - Exploring Options:

Consideration will be given to the application of the informal resolution processes. If appropriate and accepted by the parties, informal resolution may be attempted for 30 days following approval from the decision-maker approves, with a possible extension for a further 30 days.

Harassment investigations should be completed and a final investigation report provided to the decision-maker within 90 days of being mandated.

Step 4 - Rendering a Decision and notifying in writing:

Within 30 days of receipt of the final investigation report the decision-maker will review the report, and determine if:

- in the case of a PSE respondent, a complaint is established on a balance of probabilities;
- in the case of a member respondent, if a prima facie case exists to proceed with a conduct proceeding or initiate a conduct hearing. Step 5 – Restoring the well-being of the workplace will commence within one year of the complaint submission.

NOTE: Steps 1, 2, 3, and 4 will be completed within 12 months from the receipt of the complaint unless extenuating circumstances are present, and step 5 is initiated within the same time frame.

Calculation of Time

Time periods will be computed as consecutive days and will exclude the first day and include the last day.

When a statutory or administrative time limit expires on Saturday or on a Sunday or other statutory holiday, the time limit will be extended to the next day that is not a Saturday or a Sunday or other statutory holiday.

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