

**NATIONAL
POLICE
FEDERATION**



**FEDERATION
DE LA POLICE
NATIONALE**

MEMBERS' RIGHTS AND RESPONSIBILITIES

QUICK REFERENCE HANDBOOK

PART II: Conduct Proceedings

Chapter 3: Investigations

**The mission of the National Police Federation is
to provide strong, professional, fair and progressive representation
to promote and enhance the rights of RCMP members.**

**The National Police Federation
encourages all members to be aware of their
rights and responsibilities in conduct proceedings.**

***The information in this handbook does not constitute legal advice.
Members who become involved in a conduct process are advised to
immediately consult a lawyer or representative.***

CONDUCT PROCEEDINGS: INVESTIGATIONS

Right to Notice of the Investigation – Conduct Investigation Mandate Letter

A conduct authority initiating an investigation must do so in writing as soon as feasible by preparing a Conduct Investigation Mandate Letter. The Letter must be served on the subject member as soon as feasible, and must include (Conduct Policy, s. 6.8.1):

- the alleged contravention(s); and
- the scope and extent of the investigation.

Right to an Impartial Investigator / Right to Object to the Assigned Investigator

A subject member may object to the assigned investigator by filing with the conduct authority a written objection, including reasons. The conduct authority will determine whether to assign another investigator and must advise the subject member as soon as feasible (Conduct Policy, 6.8.1.12, 6.8.2.2).

Right to a Timely, Procedurally Fair, Neutral, and Sufficiently Thorough Investigation

Subject members have a right to a procedurally fair investigation which, along with the resulting investigation report, must be neutral and sufficiently thorough.

When initiating an investigation, the conduct authority must arrange for one that is appropriate, proportionate, timely, and that will enable him/her to determine if there has been a contravention (*RCMP Act*, s. 40(1), Conduct Policy, s. 4.2.1.3.1).

An investigation should be completed within 90 days of the subject member being served with the Mandate Letter, or if it relates to an integrity or serious matter, within 14 days of the subject member being served (Conduct Policy, s. 6.1).

Right to Regular Status Updates

Every 30 days, up until either the member is served with the conduct authority's decision, or a hearing is initiated, the conduct authority **must** advise the subject member **in writing** of the status of the investigation (Conduct Policy, s. 6.8.1.7).

Obligation Not to Discuss the Matter with Witnesses

For the duration of the conduct process, a subject member is not permitted to discuss the allegations and events subject to the conduct process with any witness or complainant. Any collusion, intimidation, or attempts to influence the statement of a witness may lead to further *Code of Conduct* allegations (Conduct Policy, s. 4.2.2.3).

Obligation Not to Disseminate a Third-Party's Personal Information

During a conduct process, materials containing third-party personal information may be disclosed to a subject member. In compliance with the *Privacy Act*, the Oath of Secrecy, and the *Code of Conduct*, a subject member **must not make copies of or further disseminate** materials containing third-party personal information without the written authorization of the conduct authority (Conduct Policy, s. 14.1).

Polygraph Examination Rights (Conduct Policy, s. 6.6)

Investigators, conduct authorities, and persons under the Commissioner's jurisdiction are prohibited from requesting a subject member to submit to a polygraph examination.

However, a subject member **may** request a polygraph examination by submitting a written request to the member in command of the divisional Professional Responsibility Unit.

Only a Commanding Officer can approve the subject member's request. If approved, the results of the polygraph examination will be included in the investigation report.

INVESTIGATION INTERVIEWS

INVESTIGATION INTERVIEWS: CONDUCT vs. STATUTORY SUBJECT AND WITNESS MEMBERS RIGHTS AND OBLIGATIONS		
	Conduct Investigation	Statutory Investigation
Subject Members	<p>Common law right to silence: - no obligation to cooperate and provide a voluntary statement (Conduct Policy, s. 6.3).</p> <p><u>BUT:</u></p> <p>The investigator has the power to <u>require</u> a subject member to answer questions (<i>RCMP Act</i>, s. 40(2)).</p> <p><u>If required to answer</u>, refusing to do so could result in a <i>Code of Conduct</i> allegation of failing to carry out a lawful order or direction (<i>Code of Conduct</i>, s. 3.3).</p>	<p><i>Charter</i> right to silence.</p>
Witness Members	<p>1. Maintaining silence risks <i>Code of Conduct</i> consequences: - Obligation to report misconduct of another member as soon as feasible (<i>Code of Conduct</i>, s. 8.3).</p> <p>2. The investigator has the power to <u>require</u> a witness member to answer questions (<i>RCMP Act</i>, s. 40(2)).</p> <p><u>If required to answer</u>, refusing to do so could result in a <i>Code of Conduct</i> allegation of failing to carry out a lawful order or direction (<i>Code of Conduct</i>, s. 3.3).</p>	<p>Maintaining silence risks <i>Code of Conduct</i> consequences: - Obligation as a member to maintain the integrity of the law, law enforcement and the administration of justice (<i>RCMP Act</i>, s. 37).</p> <p>- Obligation to report misconduct of another member as soon as feasible (<i>Code of Conduct</i>, s. 8.3).</p>

Right to Have Statement Recorded or Verified for Accuracy

To ensure the accuracy of a member's statement to an investigator (Conduct Policy, s. 6.3):

- the statement should be electronically recorded;
- the statement should be written by the member; or
- the member should verify the accuracy the investigator's interview notes by signing the notes.

Interviews Conducted Outside of Canada (Conduct Policy, s. 6.2)

Code of Conduct investigators have no legal authority to undertake investigations in a foreign country without prior authorization from that foreign country.

An interview conducted outside of Canada is subject to the rules and laws of Canada regarding admissibility for *Code of Conduct* proceedings.

SEARCHES

Right to Be Secure Against Unreasonable Search or Seizure (Charter, s. 8)

An investigator must obtain the Designated Officer's approval to apply to a justice for a search warrant. The designated officer must determine whether it is in the public interest to proceed with a search warrant. A search warrant may be obtained to authorize (*RCMP Act*, s. 40.2; Conduct Policy, s. 6.4, 6.8.6.1):

- the search of any place or receptacle;
- the search of a dwelling-house;
- the search of a computer system, the printing of data, and the seizure of the print out; and
- the use of any copying equipment at the place to make copies of data seized.

STRATEGY: Any member who believes that their *Charter* right to be secure against unreasonable search or seizure is being infringed or denied should:

- read the search warrant (if any);
- immediately consult with legal counsel; and
- take thorough notes of what is being searched, how the search is being conducted, and what, if anything, is seized.

PRODUCTION ORDERS

Subject Member's Right to Not Be Subject to a Production Order

The *RCMP Act* specifically prohibits production orders that would require a subject member to either produce, or prepare and produce, a document that relates to the alleged *Code of Conduct* contravention for which the subject member is under investigation (*RCMP Act*, s. 40.3(3); Conduct Policy, s. 6.5.5).

Witness Member's Duty to Comply with a Production Order Despite Risk of Self-Incrimination (*RCMP Act*, s. 40.8)

Witness Member's Right to Request an Exemption from Complying with a Production Order

A member who is named in a Production Order may, **within 15 days** after the day the Order was made, apply in writing to any justice for an exemption from the requirement to comply, but only after providing notice to the peace officer to whom the document is to be produced (*RCMP Act*, s. 40.7).

RESULTS OF THE INVESTIGATION

Subject Member's Right to a Final Investigation Report

The investigator's final investigation report provided to the conduct authority should include (Conduct Policy, s. 6.8.3.6):

- a summary of the activities undertaken during the investigation;
- an outline of the evidence, information or materials acquired;
- **no** recommendations or suggested conclusions about whether the allegation is established; and
- the related documents.

Subject Member's Right to Request Consideration of a Supplemental Investigation

A subject member may request, in writing and with reasons, that the conduct authority / conduct board consider a supplemental investigation on a specific point or issue that pertains directly to whether the allegation is established (*Conduct CSOs*, s. 15(4); *Conduct Policy*, s. 7.2.2.6, 10).

Right to Have Any Contraventions Dealt with in a Fair and Consistent Manner, and at the Most Appropriate Level of the Force (*RCMP Act*, s. 36.2(d))

Conduct Authority's Prima Facie Determination and Expected Timelines

A conduct authority is expected to do the following, **within 30 days** of receiving the Investigation Report (*RCMP Act*, s. 41(1), 42(1); *Conduct Policy*, s. 1.3, 3.7, 4.1, 4.2, 7.1, 7.2, 9.1, 11.2, 11.3):

- determine, on a *prima facie* basis, whether the subject member has contravened the *Code of Conduct*;
- if there is insufficient evidence to support a *prima facie* finding, inform the subject member of this in writing;
- determine whether the gravity of the contravention and the surrounding circumstances warrant:
 - a conduct board hearing;
 - remedial, corrective, or serious conduct measures; or
 - available and appropriate non-conduct administrative measures;
- if a conduct hearing is warranted, the appropriate level of conduct authority must initiate the hearing by notifying the Designated Officer;
- if remedial, corrective or serious conduct measures are sufficient, the conduct authority must determine whether they have the requisite authority to impose the appropriate conduct measures;
- if they do have the requisite level of authority, the conduct authority must hold a conduct meeting to give the subject member an opportunity to respond, and the conduct authority may impose appropriate conduct measures; and
- if it is clear that they do not have the requisite level of authority, the conduct authority must, **no later than seven days after reviewing the investigation report**, refer the matter to the next level

of conduct authority, who must then make the above decisions without influence from the first conduct authority.

ABBREVIATIONS AND REFERENCES

<i>Charter</i>	<i>Canadian Charter of Rights and Freedoms</i> , Part I of the <i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act 1982 (UK), 1982</i> , c 11. (online: https://laws-lois.justice.gc.ca/eng/Const/page-15.html)
<i>Code of Conduct</i>	<i>Code of Conduct of the Royal Canadian Mounted Police</i> , Schedule to the <i>Royal Canadian Mounted Police Regulations, 2014</i> . (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-281/page-6.html#h-30)
<i>Conduct CSOs</i>	<i>Commissioner's Standing Orders (Conduct)</i> , SOR/2014-291. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-291/index.html)
<i>Conduct Policy</i>	Conduct – AM ch. XII.1 (Jan. 22, 2019) (available on the RCMP Infoweb)
<i>RCMP Act</i>	<i>Royal Canadian Mounted Police Act</i> , RSC 1985, c R-10, as amended on November 28, 2014, by the <i>Enhancing Royal Canadian Mounted Police Accountability Act</i> , SC 2013, c 18. (online: https://laws-lois.justice.gc.ca/eng/acts/R-10/index.html)

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