

**NATIONAL
POLICE
FEDERATION**



**FEDERATION
DE LA POLICE
NATIONALE**

MEMBERS' RIGHTS AND RESPONSIBILITIES

QUICK REFERENCE HANDBOOK

PART II: Conduct Proceedings

Chapter 6: Conduct Hearings

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 HEARINGS

One-Year Time Limit for Conduct Authority to Initiate a Hearing

A conduct authority *shall not* initiate a hearing “*after the expiry of one year from the time the contravention and the identity of that member ... became known to the conduct authority that investigated the contravention or caused it to be investigated*” (RCMP Act, s. 41(2); Conduct Policy, s. 11.4).

Right to Adequate Written Notice of the Conduct Hearing

As soon as feasible after appointing the board member(s), the conduct authority must have the subject member served with a copy of the Notice of Hearing and the Investigation Report, including supporting material (RCMP Act, s. 43(2); Conduct CSOs, s. 15(1) and (2); Conduct Policy, s. 11.6).

Right to an Unbiased Conduct Board / Right to Object to the Appointment of a Member of the Conduct Board

Conduct board members must be unbiased, impartial, and independent (Conduct Policy, s. 16).

A subject member may, with reasons, object to the appointment of a board member (RCMP Act, s. 44; Conduct Policy, s. 11.7, 16.2).

Objection Procedure (RCMP Act, s. 44):

Within seven days after being served with the Notice of Hearing, the subject member must provide the Designated Officer with the objection in writing, including reasons for the objection.

Right to Make Written Submissions, and Responsibility to Provide Plea and Documents

Within 30 days after being served with the Notice of Hearing, or within another period as directed by the conduct board, the subject member must provide to the conduct authority and the conduct board (*Conduct CSOs*, s. 15(3)):

- a written admission or denial of each allegation;
- any written submissions that the subject member wishes to make; and
- any evidence, document or report (other than the investigation report) that the member intends to introduce or rely on at the hearing.

Witness Selection Rights and Responsibilities

Within 30 days after being served with the Notice of Hearing, each party must submit a list of the witnesses they want to have summoned, and must include the following information for each witness (*Conduct CSOs*, s. 18):

- name and address;
- the reasons for requesting their appearance;
- a summary of their anticipated evidence; and
- the appropriate means that will allow them to testify.

Rights and Responsibilities in the Use of Expert Witnesses

(*Conduct CSOs*, s. 18(1), 19)

If there are issues in respect of which the subject member may want to rely on expert testimony, the subject member must, **within 30 days after being served with the Notice of Hearing**, provide the board with a list of those issues.

Right to Notice of Date, Place and Time of Hearing

The subject member must be served with a written Notice of Place, Date and Time, which must be included in the record of proceedings (*Conduct CSOs*, s. 26(b)).

Right to Have the Hearing Conducted in the Official Language of the Subject Member's Choice

(*Conduct Policy*, s. 11.9)

Right to a Public Hearing (*RCMP Act*, s. 45.1(2))

Right to Request that the Hearing, or a Portion of It, Be Held in Camera

In certain circumstances, at the request of either party or on its own initiative, a board may order that a hearing, or any part of it, be held *in camera* (*RCMP Act*, s. 45.1(2)).

Right to Request a Limited Publication Ban

A subject member may request that the conduct board make an order directing that any of the following information not be published in any document or broadcast or transmitted in any way (*RCMP Act*, s. 45.1(7)):

- information that could identify a complainant, a witness or a person under the age of 18; and
- information disclosed during any part of the hearing held *in camera*.

Right to a Procedurally Fair Hearing

The conduct board must deal with the proceedings before it as informally and expeditiously as the principles of procedural fairness permit (*Conduct CSOs*, s. 13).

Right to Have the Hearing Recorded (*Conduct CSOs*, s. 22)

Right to Be Present for the Hearing Unless Failing to Attend Without Reasonable Cause

A conduct board may hold a hearing in the absence of the subject member only if the board is satisfied that the subject member (*RCMP Act*, s. 45.1(8); *Conduct CSOs*, s. 14):

- received reasonable notice of the date, time and place of the hearing; and
- has failed to attend without reasonable cause.

Right to Have the Allegations Read Out at the Beginning of the Hearing, and to Admit or Deny Each Allegation (*Conduct CSOs*, s. 20)

Right to a Reasonable Opportunity to Be Heard

- right to examine or cross-examine witnesses;
- right to make written or oral submissions on the evidence;
- right to make written and oral submissions on the conduct measures to be imposed, if any (*Conduct CSOs*, s. 24(1)).

MEMBERS TESTIFYING AT A BOARD HEARING

CAUTION: Board-compelled testimony may not be immune from use in subsequent criminal, civil or administrative proceedings.

Members who anticipate giving evidence in a conduct board hearing are urged to consult legal counsel before doing so.

Right to Waive Procedural Rights

A subject member may waive a right provided for under the Conduct CSOs, but any such waiver must be made in writing (*Conduct CSOs*, s. 28).

CAUTION: Members are urged to consult legal counsel before waiving any procedural rights.

Right to a Decision

After considering the relevant evidence, the conduct board must decide whether each allegation contained in the Notice of Hearing is established (*RCMP Act*, s. 45.(1); *Conduct Policy*, s. 11.10).

Right to a Decision that (*RCMP Act*, s. 45(3); *Conduct CSOs*, s. 24(2), 25(1) and (3); *Conduct Policy*, s. 11):

- **is recorded in writing** and includes:
 - a statement of the board's findings on questions of fact material to the decision;
 - reasons for the decision; and
 - a statement of the conduct measure(s) imposed, if any;
- **is based solely on the evidence presented;**
- **contains sufficient reasons for the decision;**
- if an allegation is established, **considers aggravating and mitigating circumstances** in determining the appropriate conduct measures;
- if an allegation is established, **states the conduct measures imposed;**
- if an allegation is established, **imposes conduct measures that are proportionate** to the nature and circumstances of the contravention;
- **advises the parties of the right to appeal;**
- **is rendered and signed as soon as feasible** after the hearing; and
- **is served** on the subject member and the conduct authority **as soon as feasible**.

When the Board's Decision Takes Effect (*Conduct CSOs*, s. 25(2)):

An **oral decision**, if rendered in the presence of the subject member, takes effect **immediately**.

A **written decision** takes effect **as soon as it is served on the subject member**.

Right to the Creation of a Record of the Proceedings

After the hearing, the board must compile a record of the conduct proceedings, which must include (*Conduct CSOs*, s. 26):

- the Notice of Hearing;
- the Notice of Date, Place and Time of the Hearing;
- a copy of any other information provided to the board;
- a list of any exhibits entered at the hearing;
- if there was a pre-hearing conference, the written directions, decisions, agreements and undertakings, if any, that arose from the pre-hearing conference (*Conduct CSOs*, s. 16);
- the recording of the hearing;
- the transcript of the hearing, if any; and
- a copy of all written decisions of the board.

Right Not to Have a Contravention Used Against the Subject Member in ANY Criminal Proceeding

Section 47.5 of the *RCMP Act* states:

No evidence that a conduct measure has been imposed under Part IV against a member shall be used or receivable against the member in any criminal proceeding.

Right to Appeal the Board's Decision

Within 14 days after being served with the conduct board's written decision, a subject member may appeal, on any ground (*RCMP Act*, s. 45.11(1)):

- any finding that an allegation was established; and/or
- any conduct measure imposed.

Procedures for Appealing: *Grievances and Appeals CSOs*, s. 22-34.

Rights Regarding Exhibits Tendered by the Subject Member

After the conclusion of all proceedings, including any appeal proceeding, a subject member has the right to (*Conduct CSOs*, s. 27):

- the return of all exhibits tendered, unless the board decides otherwise;
- refuse the return of an exhibit; or
- request that the board cause an exhibit to be destroyed or disposed of.

ABBREVIATIONS AND REFERENCES

<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)
Conduct Policy	Conduct – AM ch. XII.1 (Jan. 22, 2019), available on the RCMP Infoweb.
<i>Grievances and Appeals CSOs</i>	<i>Commissioner's Standing Orders (Grievances and Appeals)</i> , SOR/2014-289. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-289/index.html)
<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)

The National Police Federation gratefully acknowledges
Jill Gunn, LL.B., LL.M., Barrister and Solicitor, for compiling this Handbook.