

**NATIONAL
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MEMBERS' RIGHTS AND RESPONSIBILITIES

QUICK REFERENCE HANDBOOK

PART V: PUBLIC COMPLAINTS AGAINST RCMP MEMBERS OR EMPLOYEES (Part VII or Part VII.2 of the *RCMP Act*)

Chapter 1: Making a Complaint

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.

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member with whom a complaint is filed, are advised to consult a lawyer or
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A PUBLIC COMPLAINT MUST CONCERN WORK-RELATED CONDUCT

A public complaint **must concern the conduct, in the performance of any duty or function** under the *RCMP Act*, the *Witness Protection Program Act (WPPA)*, or the *Integrated Cross-border Law Enforcement Operations Act (ICBLEO Act)*, **of any person who, at the time that the conduct is alleged to have occurred, was:**

- **a member** (*RCMP Act*, Part VII, s. 45.53(1));
- **a person appointed or employed under Part I of the *RCMP Act*** (*RCMP Act*, Part VII, s. 45.53(1)); or
- **a designated officer** (Canadian or American) appointed by the Commissioner as a cross-border maritime law enforcement officer **under the *ICBLEO Act*** (*RCMP Act*, Part VII.2, s. 45.94(1)(b)).

The conduct **must** have occurred either:

- **on-duty**; or
- **off-duty** where the member held himself/herself out to be a police officer, acted with authority, thereby placed himself/herself on duty (National Guidebook, p. 22).

ANY INDIVIDUAL MAY MAKE A PUBLIC COMPLAINT

Any individual includes (*RCMP Act*, s. 45.53(1), (2), (4)):

1. an RCMP member, ***if*** the complaint has not been or could not have been adequately dealt with, or could not more appropriately be dealt with, according to a procedure provided for under the *RCMP Act* or any other Act of Parliament;
2. a third party; or
3. the Chairperson of the Civilian Review and Complaints Commission for the RCMP (CRCC) ***if*** they are **satisfied that there are reasonable grounds to investigate** a member's conduct in the performance of any duty or function under the *RCMP Act*, the *WPPA*, or the *ICBLEO Act* (*RCMP Act*, s. 45.59(1), 45.94(1)).

HOW TO FILE A PUBLIC COMPLAINT

A person, including a member, who wishes to make a public complaint **must** formally record the complaint on Public Complaint **Form 4110**, and file the complaint with one of the following (*RCMP Act*, s. 45.53(8); AM XII.2, s. 5):

- the CRCC;
- any member of the RCMP;
- any other person appointed or employed under Part I of the *RCMP Act*; or
- the provincial authority that is responsible for receiving complaints against police in the province in which the subject matter of the complaint arose.

TIME LIMIT FOR MAKING A PUBLIC COMPLAINT

A public complaint **must** be made either:

- **within one year** after the day on which the conduct is alleged to have occurred (*RCMP Act*, s. 45.53(5));
- or**
- within **any longer period granted** by either the CRCC or the Commissioner/delegate, ***if*** the CRCC or the Commissioner/delegate is of the opinion that (*RCMP Act*, s. 45.53(6)):
 - there are **good reasons for extending** the time limit; and
 - that doing so is **not contrary to the public interest**.

REQUESTING AN EXTENSION OF THE ONE-YEAR TIME LIMIT

Complainant's Right to Request an Extension of Time

If a complainant is filing their complaint late, they **must be given an opportunity** to provide reasons for the delay (AM XII.2, s. 7.1).

Extensions Require Consideration of Relevant Factors and NPCD Approval

When deciding whether to grant an extension, the Commissioner/delegate should consider relevant factors and **must obtain the National Public Complaints Directorate's (NPCD's) approval of their decision** (National Guidebook, p. 26).

Complainant and CRCC Must Be Notified if Commissioner/Delegate Denies Extension of Time

If a complaint is made after the one-year time limit and the Commissioner/delegate does not extend the time limit, the Commissioner/delegate must notify both the CRCC and the complainant (*RCMP Act*, s. 45.53(7)).

ABBREVIATIONS AND REFERENCES

AM XII.2	Administrative Manual, chapter XII.2 – Public Complaints
CRCC	Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (website: https://www.crcc-ccetp.gc.ca/)
<i>ICBLEO Act</i>	<i>Integrated Cross-border Law Enforcement Operations Act</i> , SC 2012, c 19, s 368 (online: https://laws.justice.gc.ca/eng/acts/I-14.7/index.html)
National Guidebook	National Public Complaints Guidebook, November 5, 2014
NPCD	National Public Complaints Directorate
<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)
<i>WPPA</i>	<i>Witness Protection Program Act</i> , SC 1996, c 15 (online: https://laws-lois.justice.gc.ca/eng/acts/w-11.2/)

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Chapter 2: Receiving and Triaging Complaints, Rights to Notice, and Interference Offences

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MEMBERS' RESPONSIBILITIES WHEN RECEIVING A PUBLIC COMPLAINT

Assist Complainant with Completing the Complaint Intake Form (Public Complaint Form 4110)

Any member receiving a public complaint **must** ensure that the complainant is provided with the Complaint Intake Form (Public Complaint, **Form 4110**), and **must** assist the complainant in completing the Form and clarifying the complaint by (AM XII.2, s. 5.2; National Guidebook, p. 23-25):

- asking pertinent questions to diligently and properly elicit and assess relevant information;
- obtaining overall details and determining the factual basis for the complaint;
- clearly identifying the subject member's/employee's behaviour that led to the complaint; and
- ensuring that the allegations are worded properly, accurately reflect the complainant's concerns, and sufficiently articulate the specific conduct complained of.

Facilitate Initial Acknowledgement and Notifications

NOTE: Although the *RCMP Act* states that the member who receives a complaint is responsible for the written acknowledgement and notifications, in practice, these tasks are performed by the National Public Complaints Directorate (NPCD).

When receiving a completed Form 4110 and any supporting documents, a member complaint-taker **must, as soon as feasible** (*RCMP Act*, s. 45.53(10); AM XII.2, s. 5; National Guidebook, p. 23):

- **acknowledge** the complaint in writing to the complainant;
- **immediately forward the complaint Form 4110 and any supporting documents to the NPCD;**
- via the chain of command, **forward a copy of the complaint to the Professional Responsibility Unit (PRU);**
- once the complainant has reviewed and signed the completed Form 4110, provide them with a copy; and
- via the appropriate channels, **provide written notice of the complaint to:**
 - **the Commissioner/delegate** (via the chain of command);
 - **the Civilian Review and Complaints Commission for the RCMP (CRCC)** (via the NPCD); and
 - **the provincial authority** that is responsible for receiving complaints against police in the province in which the subject matter of the complaint arose (via the Divisional PRU).

COMPLAINT TRIAGE

The Commissioner/delegate **must** examine the complaint to **determine whether** the complaint should be (AM XII.2, s. 5.3, 12.1, 12.5; National Guidebook, p. 50):

- dealt with under the public complaints process in **Part VII** of the *RCMP Act*;
- investigated as a *Code of Conduct* allegation under **Part IV** of the *RCMP Act*; or
- investigated as a **serious incident** under Part VII.1 or VII.2 of the *RCMP Act*.

If Complaint Alleges Serious Injury, Death, or Statutory Offence, Must Be Dealt with as a “Serious Incident”

If a public complaint contains at least one allegation that suggests that a member was involved in an incident in which a serious injury was sustained, a death occurred, or a statutory offence was committed, the complaint must be treated and investigated as a serious incident (AM XII.2, s. 12.2; National Guidebook, p. 21, 50).

***For more information on Serious Incident Investigations,
please refer to the NPF’s Quick Reference Handbook,
Part VI, Serious Incident Investigations.***

THE RCMP INVESTIGATES UNLESS THE CRCC ASSUMES JURISDICTION

The RCMP will be responsible for investigating a public complaint **unless** the CRCC notifies the Commissioner/delegate that it will investigate or inquire into the complaint (*RCMP Act*, s. 45.6(1)).

If CRCC Assumes Jurisdiction, Members Must Not Deal with the Complaint

If the Chairperson of the CRCC notifies the Commissioner/delegate that the CRCC will investigate or institute a hearing, the RCMP **must not** investigate, report on, or otherwise deal with the public complaint (*RCMP Act*, s. 45.6(2), 45.66(1),(2); AM XII.2, s. 15.4).

COMPLAINTS THAT CANNOT BE DEALT WITH AS A PUBLIC COMPLAINT

Neither the RCMP nor the CRCC will deal with a complaint under the Public Complaints process if the complaint:

- relates only to **off-duty conduct** (*RCMP Act*, s. 45.53(1));
- **is made by an RCMP member, appointee, or employee, and** the complaint has been or could have been adequately dealt with, or could more appropriately be dealt with, according to **another procedure** provided for under the *RCMP Act* or any other Act of Parliament (eg: a grievance procedure, a *Code of Conduct* procedure, or a *Criminal Code* investigation) (*RCMP Act*, s. 45.53(4), 45.61(2), 45.67(2)).
- **concerns any decision made under Part IV (Conduct)** of the *RCMP Act* (s. 45.53(3), 45.61(1)(a), 45.67(2); National Guidebook, p. 44)).

COMMISSIONER'S/DELEGATE'S AND THE CRCC'S DISCRETION TO NOT INVESTIGATE A COMPLAINT

Except for complaints initiated by the Chairperson of the CRCC, in certain circumstances, the Commissioner/delegate has discretion to refuse to investigate or to terminate an investigation of a public complaint (*RCMP Act*, s. 45.61(1)). According to the National Guidebook, this discretion should be exercised **only in the clearest of cases** (p. 44).

If the Commissioner/delegate refuses or terminates an investigation, they **must notify, in writing, the subject member, the complainant,** and the CRCC (*RCMP Act*, s. 45.61(3) and (4)).

If the CRCC refuses to investigate, the **CRCC must notify** the complainant and the Commissioner/delegate, who, in turn, **must notify the subject member** (*RCMP Act*, s. 45.67(1), (3), and (4)).

Circumstances in Which Discretion May Be Exercised	Commissioner/ Delegate May Refuse to Investigate or Terminate an Investigation	CRCC May Discontinue Investigation
If the complaint has been or could have been adequately dealt with, or could more appropriately be dealt with, according to another procedure provided for under the RCMP Act or any other Act of Parliament.	✓	✓
If the complaint is trivial, frivolous, vexatious or made in bad faith.	✓	✓
If the complaint is from an uninvolved third-party individual	✓	✓
If the complaint concerns any decision made under Part IV of the RCMP Act.	✓	
If, in all the circumstances, it is not necessary or reasonably practicable to investigate the complaint.	✓	✓

SUBJECT MEMBER’S AND COMPLAINANT’S RIGHTS TO NOTIFICATIONS

Subject Member’s Qualified Right to Timely Notice of a Complaint

The Commissioner/delegate **must**, as soon as feasible after being notified of a complaint, provide written notification of the substance of a complaint to the subject member **unless** doing so might compromise or hinder any investigation in respect of the complaint (*RCMP Act*, s. 45.54, 45.59(4); AM XII.2, s. 11.4).

Subject Member’s / Complainant’s Rights to Notice of Decision (NOD) to Not Investigate or to Terminate an Investigation

If the Commissioner/delegate directs the Force to not investigate or to terminate an investigation into a complaint, the **Commissioner/delegate must provide written notice to the complainant and the subject member. The notice must include** (*RCMP Act*, s. 45.61(3); National Guidebook, p. 45):

- the Commissioner’s/delegate’s decision;
- reasons for the decision, which must accurately reflect why the decision was made, and fully justify the decision; and
- the complainant’s right, if not satisfied with the decision, to refer the complaint to the CRCC for review within 60 days of being notified of the decision.

STATUTORY OFFENCES UNDER THE *RCMP ACT* FOR INTERFERING WITH A PUBLIC COMPLAINT PROCESS

The following offences are indictable (maximum 5 years imprisonment) or punishable on summary conviction (maximum fine of \$5,000, or six months imprisonment, or both):

- **harassing, intimidating or threatening** any person with the intent to compel that person to abstain from making a complaint under Part VII or VII.2 (*RCMP Act*, s. 50.1(1)(a));
- **harassing, intimidating or threatening** (*RCMP Act*, s. 50.1(1)(b)):
 - an individual who makes a complaint under Part VII or VII.2;
 - an individual at whom the conduct being complained of was directed;
 - a person, having reasonable grounds to believe that the person will be questioned or summoned by the CRCC when it deals with a complaint made under Part VII or VII.2;
 - a person who is carrying out any power, duty or function under any of Parts VI to VII.2;
- **wilfully obstructing, or knowingly making any false or misleading statement to, or knowingly providing false or misleading information to,** a person who is carrying out any power, duty or function under any of Parts VI to VII.2 (*RCMP Act*, s. 50.1(1)(c));
- **destroying, mutilating, altering, falsifying or concealing a document or thing, or making a false document or thing,** knowing that the document or thing is likely to be relevant to an investigation of, or a hearing to inquire into, a complaint made under Part VII or VII.2, or to a review under any of those Parts (*RCMP Act*, s. 50.1(1)(d));
- in any manner, **directing, counselling, or causing** any person to, **or proposing** to any person that they, do anything mentioned above.

ABBREVIATIONS AND REFERENCES

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CRCC	Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (website: https://www.crcc-ccetp.gc.ca/)
National Guidebook	National Public Complaints Guidebook, November 5, 2014
NOD	Notice of Decision to Not Investigate a Public Complaint or Notice of Decision to Terminate a Public Complaint Investigation
NPCD	National Public Complaints Directorate
PRU	Professional Responsibility Unit
<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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Chapter 3: Withdrawals and Informal Resolutions

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WITHDRAWAL OF A PUBLIC COMPLAINT

Complainant's Right to Withdraw Their Public Complaint at Any Time

A complainant may withdraw a public complaint at any time **by sending written notice to the Civilian Review and Complaints Commission for the RCMP (CRCC)** (*RCMP Act*, s. 45.55(1); AM XII.2, s. 14).

The RCMP considers a complaint formally withdrawn once the National Public Complaints Directorate (NPCD) receives written confirmation from the CRCC (AM XII.2, s. 14.3.3).

Subject Member's Right to Notice of Withdrawal

As soon as feasible after receiving notification from the CRCC of a withdrawal, the Commissioner/NPCD **must notify the subject member in writing** of the withdrawal (*RCMP Act*, s. 45.55(3) and (4); AM XII.2, s. 14.3.4)

WITHDRAWAL DOES NOT NECESSARILY END ALL PROCESSES

NOTE: Despite the withdrawal of a public complaint, the alleged conduct may still be the subject of (*RCMP Act*, s. 45.55(5), 45.94; AM XII.2, s. 14.4):

- a public complaint investigation;
- a CRCC review; or
- a CRCC hearing.

INFORMAL RESOLUTION OF PUBLIC COMPLAINTS BY THE CRCC

If the CRCC is seized of a complaint, the CRCC may resolve it informally (*RCMP Act*, s. 45.56(5)).

INFORMAL RESOLUTION OF PUBLIC COMPLAINTS BY THE RCMP

The Commissioner/delegate **must consider** whether informal resolution of a complaint is possible (*RCMP Act*, s. 45.56(1)).

Complainant's and Subject Member's Consent Required for Informal Resolution Attempts

Informal resolution **may only be attempted if both the complainant and the subject member consent** (*RCMP Act*, s. 45.56(1)). Either party may withdraw their consent at any time (AM XII.2, s. 10.1).

Even for Significant or Serious Allegations, Informal Resolution Is Permissible

Even if a complaint alleges misconduct or statutory offences, it is still permissible for the complainant and the subject member to informally resolve the complaint between them.

Complainant's and Subject Member's Rights to "Without Prejudice" Resolution Discussions

"WITHOUT PREJUDICE" INFORMAL RESOLUTION DISCUSSIONS

Any answer given or statement made by a complainant or a subject member in the course of informal resolution attempts is inadmissible and cannot be used or received against that person in any subsequent criminal, civil or administrative proceeding, unless the proceeding is (*RCMP Act*, s. 45.56(2); AM XII.2, s. 9.3; National Guidebook, p. 43):

- a prosecution under section 132 (perjury) or 136 (giving contradictory evidence) of the *Criminal Code*; or
- a civil or administrative proceeding regarding an allegation that, with intent to mislead, the witness gave the answer or statement knowing it to be false.

Examples of Possible Remedial Actions

Remedial actions that may be taken to address a public complaint, or part of a public complaint, include, but are not limited to (AM XII.2, s. 2.1.19; National Guidebook, p. 40, 42, 67):

- providing operational guidance to a subject member;
- extending an apology to the complainant from either the subject member (a subject member cannot be ordered to apologize to a complainant), the Commanding Officer or the Commissioner;
- making a procedural or policy amendment;
- conducting conciliatory discussions;
- reimbursing an expense; or
- addressing claims made in relation to the incident giving rise to the complaint.

Remedial Actions Cannot Include Conduct Measures

Any remedial action taken under the public complaints process is to be distinguished from a conduct measure, which may only be imposed via a Part IV *Code of Conduct* proceeding (AM XII.s, s. 2.1.19; National Guidebook, p. 67).

Subject Member's and Complainant's Rights to a Written Informal Resolution Agreement

The terms of any informal resolution, including a detailed record of the manner by which each complaint allegation has been addressed and any remedial action, **must** be documented on the **Form 4110**. The subject member's and the complainant's agreement to those terms **must** be signified in writing. A copy of the agreement **must** be provided to the CRCC (*RCMP Act*, s. 45.56(3); AM XII.2, s. 9.3.1).

The complaint is formally resolved once all the terms of the agreement have been carried out (National Guidebook, p. 41).

A SUCCESSFUL INFORMAL RESOLUTION MAY NOT END ALL OTHER PROCESSES

CAUTION: Notwithstanding a successful informal resolution of a public complaint, the subject member's conduct may still be dealt with by way of (AM XII.2, s. 9.1.1, 9.1.2):

- a complaint initiated by the CRCC Chairperson;
- a civil proceeding;
- a statutory proceeding; and/or
- an administrative proceeding (such as a Part IV *Code of Conduct* proceeding).

IF NO INFORMAL RESOLUTION AGREEMENT

If there is no informal resolution agreement, and if the complaint is sufficiently serious, an investigation will be initiated (AM XII.2, s. 10.1; National Guidebook, p. 43).

Subject Member's / Complainant's Right to Not Have the Facilitator Become the Investigator

The informal resolution **facilitator cannot become the complaint investigator unless both parties consent**. If either party objects to the facilitator investigating, or if the facilitator perceives themselves to be in a conflict of interest, an alternate investigator must be assigned (AM XII.2, s. 10.3).

ABBREVIATIONS AND REFERENCES

AM XII.2	Administrative Manual, chapter XII.2 – Public Complaints
<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)
CRCC	Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (website: https://www.crcc-ccetp.gc.ca/)
<i>Criminal Code</i>	<i>Criminal Code</i> , RSC 1985, c C-46 (online: https://laws-lois.justice.gc.ca/eng/acts/c-46/)
National Guidebook	National Public Complaints Guidebook, November 5, 2014
NPCD	National Public Complaints Directorate
<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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Chapter 4: RCMP Investigation of Complaint, Final Report, and Review by the Civilian Review and Complaints Commission (CRCC)

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MEMBERS' RIGHTS IN AN RCMP INVESTIGATION OF A PUBLIC COMPLAINT (Non-Serious Incident)

Right to a Procedurally Fair Investigation

Investigations of public complaints are to be timely, professional, fair, effective, thorough, impartial, culturally sensitive, and conducted in a manner that promotes public confidence (AM XII.2, s. 1.1, 3.1; National Guidebook, p. 52-53).

Right to an Impartial and Appropriate Investigator

In assigning an investigator, the Commander/delegate must consider, among other things (AM XII.2, s. 11.2):

- the investigator's rank in relation to the subject member and any potential witnesses;
- the investigator's experience, capability, and training;
- any conflicts of interest;
- any actual or perceived risks to the conduct of a fair and impartial investigation; and
- any reasonable concerns raised by the subject member about the intended investigator.

The investigator must conduct the investigation diligently and impartially using recognized investigative procedures to gather evidence (AM XII.2, s. 11.5).

Right to Silence in an RCMP-Conducted Investigation

**MEMBERS CANNOT BE COMPELLED TO
PROVIDE A STATEMENT OR ANSWER A QUESTION**

NOTE: If a subject member is suspected of having committed a statutory offence, they have all the legal protections afforded to any Canadian citizen.

NOTE: Although a member who has been identified as being able to provide relevant witness information can be required to disclose their police notebooks (AM XII.2, s. 4.4; OM 25.2), subject members and witness members:

- have the right to not self-incriminate (*Charter*, s. 7), and
- cannot be compelled by the RCMP to provide oral or written statements or answers (AM XII.2, s. 4.4).

-- MEMBERS ARE RESPONSIBLE FOR EXERCISING THEIR RIGHT TO SILENCE --

**IF A MEMBER VOLUNTARILY PROVIDES
AN ORAL OR WRITTEN STATEMENT OR ANSWER**

CAUTION: A voluntary statement or answer can be used against you in any subsequent proceeding.

Before making a statement or giving an answer, a member must first be informed (AM XII.2, s. 4.4.1, 4.4.3):

- of the potential use of their statement in other proceedings (criminal, civil, administrative);
- that knowingly making a false or misleading statement could constitute an offence under the *Criminal Code*;
- that it is an offence under s. 50.1(1)(c) of the *RCMP Act* to knowingly make a false or misleading statement, or knowingly provide false or misleading information, to a public complaint investigator;
- that they could also face *RCMP Code of Conduct* proceedings for providing a false or misleading statement; and
- that, even in the course of providing a voluntary oral or written statement, a member still retains the s. 7 *Charter* right to decline to answer a question asked by the investigator.

Before a subject member provides a voluntary statement, the investigator will require the subject member to formally record on Form 6441, as part of their statement, the subject member's acknowledgement that their recorded and/or written statement can be used against them in each of the possible processes (criminal, civil, administrative) (AM XII.2, s. 4.4.2).

Subject Member's and Complainant's Rights to Request a Copy of Their Own Statement

A subject member or a complainant may request a copy of their own written and/or audio recorded statement (AM XII.2, s. 11.9).

Subject Member's and Complainant's Qualified Rights to Periodic Investigation Status Updates

Unless doing so might compromise or hinder any investigation into the complaint, the Commissioner/delegate **must** provide the complainant and the subject member with **meaningful written notification of the status of the investigation, such as what has been accomplished since the last update, and what remains outstanding** (*RCMP Act*, s. 45.63; AM XII.2, s. 11.8; National Guidebook, p. 56):

- no later than **45 days** after being notified of the complaint; and
- **monthly thereafter** during the investigation.

Resignation or Termination of Subject Member Does Not End the Complaint Investigation

Whether or not a subject member resigns or terminates employment with the RCMP, a public complaint investigation **must** continue to conclusion (AM XII.2, s. 11.6).

CONDUCT COMPLAINED OF MAY BE DEALT WITH IN OTHER CONCURRENT PROCEEDINGS

Despite any ongoing RCMP investigation into a public complaint, a subject member's conduct may also be dealt with in other proceedings, such as (AM XII.2, s. 4.1):

- civil litigation proceedings;
- statutory offence proceedings (including criminal / serious incident); and/or
- administrative proceedings (including Part IV *Code of Conduct*).

If Conduct Proceedings Occur, Certain Information Must Be Shared Between the Processes

In the public complaint process, **representations made with respect to the conduct's impact on the complainant must be disclosed** to the RCMP, and **must be taken into consideration** by the conduct authority or conduct board before imposing conduct measures (*RCMP Act*, s. 45.57(2); AM XII.2, s. 4.2.1).

As soon as practicable after the conclusion of a conduct process, the **CRCC and the complainant must be notified of the final conduct decision and the conduct measures imposed against the subject member, if any** (*RCMP Act*, s. 45.171; AM XII.2, s. 4.2).

COMMISSIONER'S/DELEGATE'S FINAL REPORT / LETTER OF DISPOSITION (LOD)

Disposition Should be Within 90 Days

Whether a complaint is resolved by informal resolution or a formal investigation, the time to process a public complaint, from receipt to investigation to issuing the LOD, should not exceed 90 days. If an extension is required, the rationale **must** be documented. Further extension rationales **must be documented monthly** (AM XII.2, s. 8.3, 9.2, 11.7, 13.3).

Subject Member's / Complainant's Right to the Commissioner's/Delegate's Final Report / LOD

As soon as feasible after completion of the investigation, and once the National Public Complaints Directorate (NPCD) has approved the LOD, the Commissioner/delegate **must** have the LOD sent to the complainant, the subject member, and the CRCC. **The LOD must be factual, accurate, concise, based on the Investigation Report, and set out** (*RCMP Act*, s. 45.64; AM XII.2, s. 13.2, 13.4, 13.5; National Guide, p. 56-57):

- a summary of the complaint;
- the findings of the RCMP's investigation;
- a summary of any action that has been or will be taken with respect to the disposition of the complaint; and
- notice of the complainant's right, if not satisfied with the RCMP's disposition of the complaint, to refer the complaint to the CRCC for review within 60 days after receiving the LOD.

Examples of Possible Remedial Actions

Remedial actions that may be taken to address a public complaint, or part of a public complaint, include, but are not limited to (AM XII.2, s. 2.1.19; National Guidebook, p. 40, 42, 67):

- providing operational guidance to a subject member;
- extending an apology to the complainant from the subject member (note that a subject member cannot be ordered to apologize to a complainant), the Commanding Officer, or the Commissioner;
- making a procedural or policy amendment;
- conducting conciliatory discussions;
- reimbursing an expense; or
- addressing claims made in relation to the incident giving rise to the complaint.

Remedial Actions Cannot Include Conduct Measures

Any remedial action taken under the public complaints process is to be distinguished from a conduct measure, which may only be imposed via a Part IV *Code of Conduct* proceeding (AM XII.s, s. 2.1.19; National Guidebook, p. 67).

SUBJECT MEMBER'S RIGHT TO GRIEVE THE INVESTIGATION OR THE LETTER OF DISPOSITION (LOD)

If a subject member is not satisfied with any decision, act or omission made in the conduct of the investigation, or in the LOD, the subject member may present a grievance in accordance with Part III of the *RCMP Act*.

***For more information on presenting a grievance, please refer to
the NPF's Quick Reference Handbook, Part III, Grievances.***

COMPLAINANT'S RIGHT TO HAVE THE CRCC REVIEW THE RCMP'S HANDLING OF THE COMPLAINT

The CRCC **must review** every complaint referred to it (*RCMP Act*, s. 45.71). A complainant may refer their complaint to the CRCC if they are not satisfied with the Commissioner's/delegate's (*RCMP Act*, s. 45.7):

- **decision to refuse** to investigate the complaint;
- **decision to terminate** an investigation; or
- **investigation report.**

Time Limit for Referring Complaint to the CRCC for Review, and Requests for Extension

A referral to the CRCC must be made either:

- within **60 days** after being notified of the Commissioner's/delegate's decision or receiving the investigation report (*RCMP Act*, s. 45.7(1)); **or**
- within any longer period granted by the CRCC if the CRCC is of the opinion that there are **good reasons for extending** the time limit, **and** that doing so is **not contrary to the public interest** (*RCMP Act*, s. 45.7(2)).

Notice to Commissioner, and Provision of Material to the CRCC

If a complainant refers a complaint to the CRCC (*RCMP Act*, s. 45.7(3)):

- the CRCC **must** notify the Commissioner/NPCD of the referral; and
- the Commissioner/NPCD **must** provide the CRCC with a copy of either:
 - the Commissioner's/delegate's notice directing the Force to not commence or continue an investigation; or
 - the Commissioner's/delegate's Final Report / LOD.

COMPLAINANT'S AND SUBJECT MEMBER'S RIGHTS TO CRCC'S FINAL REPORTS

The CRCC **must provide the complainant and the subject member with its final written reports**, including any findings and recommendations, whether the CRCC is satisfied with the Commissioner's/delegate's decision or report (*RCMP Act*, s. 45.71(2)), or unsatisfied (*RCMP Act*, s. 45.72(2)).

NO RIGHT OF APPEAL OR JUDICIAL REVIEW OF CRCC'S FINAL F&Rs

All of the CRCC's F&Rs contained in a final report are final and cannot be appealed to or reviewed by any court (*RCMP Act*, s. 45.77).

ABBREVIATIONS AND REFERENCES

AM XII.2	Administrative Manual, chapter XII.2 – Public Complaints
<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)
CRCC	Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (website: https://www.crcc-ccetp.gc.ca/)
<i>Criminal Code</i>	<i>Criminal Code</i> , RSC 1985, c C-46 (online: https://laws-lois.justice.gc.ca/eng/acts/c-46/)
F&Rs	Findings and Recommendations
LOD	Letter of Disposition – final letter disposing of the complaint
National Guidebook	National Public Complaints Guidebook, November 5, 2014
NPCD	National Public Complaints Directorate
<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
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**NATIONAL
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NATIONALE**

MEMBERS' RIGHTS AND RESPONSIBILITIES

QUICK REFERENCE HANDBOOK

PART V: PUBLIC COMPLAINTS AGAINST RCMP MEMBERS OR EMPLOYEES *(Part VII or Part VII.2 of the RCMP Act)*

Chapter 5: Civilian Review and Complaints Commission (CRCC) Investigations and 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.**

***The information in this chapter does not constitute legal advice.
Members who become involved in a public complaint process as a
complainant, a subject member, a witness member, an investigator, or as a
member with whom a complaint is filed, are advised to consult a lawyer or
representative.***

While every effort has been made to ensure accuracy, in the event of any discrepancies or errors, the relevant provisions of the *RCMP Act*, applicable federal statutes, the *RCMP Regulations, 2014*, *Commissioner's Standing Orders*, Treasury Board policies and RCMP policies govern.

MEMBERS MUST COOPERATE WITH CRCC VIA THE NPCD

The National Public Complaints Directorate (NPCD) (National Guidebook, p. 15):

- is the single point of contact between the RCMP and the CRCC;
- centrally coordinates service delivery to the CRCC;
- provides support, information, direction, and advice to all regions and divisions of the RCMP; and
- ensures the timely and efficient management of all public complaints.

When the CRCC notifies the Commissioner/delegate that it will be conducting any activity, including summoning witnesses, or conducting a review, an investigation, or a hearing, the NPCD will (AM XII.2, s. 15; National Guidebook, p. 64-65):

- ensure that there is no actual or perceived interference with a CRCC investigation;
- coordinate with the CRCC to determine how best to provide the required information to the CRCC within the 30-day timeframe;
- enlist divisional resources to assist, coordinate all RCMP activities to support the CRCC's requirements, and ensure that the CRCC receives all information to which it is entitled;
- consult with the Commissioner/delegate, who will determine whether any information will be identified as sensitive or privileged, and whether to refuse the release of any of that information to the CRCC; and
- ensure non-disclosure of information that must not be disclosed to the CRCC.

MEMBERS SHOULD BE ADVISED OF THEIR STATUS AS A SUBJECT OR A WITNESS

Before a member provides any statement to a CRCC investigator, the investigator should advise the member (National Guidebook, p. 62):

- whether they are a subject member or a witness member; and
- the nature of the complaint and the specific allegations.

CAUTION: NO PROTECTION FOR VOLUNTARY STATEMENTS MADE TO THE CRCC

A CRCC investigator should advise a subject member or a witness member that (National Guidebook, p. 62):

- unless the CRCC compels to the member do so, the member is free to choose whether to provide a statement or submit to an interview;
- if the member has not been compelled, but chooses to provide a statement or to submit to an interview, any statement the member makes will be *voluntary*;
- voluntary statements can be used against the member;
- any statement the member makes will be recorded by the CRCC; and
- the member may request a copy of any statement they provide to the CRCC.

CAUTION: MEMBERS CANNOT VOLUNTARILY PROVIDE TO A CRCC INVESTIGATOR COPIES OF POLICE NOTES, DOCUMENTATION OR FILE MATERIAL

A CRCC investigator should not request, and members must not voluntarily provide, copies of their notes or any documentation or file material of any kind, which is the property of the RCMP.

A member may only provide such documentation or material if (National Guidebook, p. 62-63):

- the CRCC investigator has compelled the member to provide the information; or
- the CRCC has properly requested access to the information, via the NPCD, pursuant to the information access provisions in s. 45.39 of the *RCMP Act*.

CRCC MAY COMPEL TESTIMONY AND OTHER EVIDENCE IN AN INVESTIGATION OR A HEARING, EVEN IF INCRIMINATING

The CRCC has broad investigatory and inquiry powers and may, **in either an investigation or a hearing** (*RCMP Act*, s. 45.65(1); National Guidebook, p. 62):

- **summon** and enforce the attendance of **witnesses** before the CRCC;
- **compel witnesses to give oral or written evidence** on oath;
- **compel witnesses to produce any documents and things** that the CRCC considers relevant for the full investigation, hearing and consideration of the complaint;
- **administer oaths**;
- **receive and accept any evidence and other information**, whether on oath or by affidavit or otherwise, **that the CRCC sees fit**, whether or not that evidence or information is or would be admissible in a court of law; and
- **make any examination of records and any inquiries** that the CRCC considers necessary.

Incriminating Testimony or Evidence May Be Compelled

If a witness member is **compelled to do so by the CRCC**, the witness member must answer any question or produce any document or thing, **even if** the response to the question, or the document or thing produced, **may tend to criminate them or subject them to any criminal, civil or administrative action or proceeding** (*RCMP Act*, s. 45.65(2)).

Member's Statutory Protections for Compelled Testimony, Evidence, and Derivative Evidence

If a witness member is compelled by the CRCC, any testimony given, or any document or thing produced, and any evidence derived from that compelled testimony, document, or thing, is **inadmissible and cannot be used or received against the witness member in any proceeding, except for** (*RCMP Act*, s. 45.65(3)):

- a prosecution under section 132 (perjury) or 136 (giving contradictory evidence) of the *Criminal Code*; or
- a civil or administrative proceeding regarding an allegation that, with intent to mislead, the witness gave the answer or statement knowing it to be false.

MEMBERS' RESPONSIBILITIES REGARDING SENSITIVE OR PRIVILEGED INFORMATION

Members Cannot Be Compelled to Produce Privileged Evidence if CRCC Has a Right of Access

Despite the CRCC's power to compel testimony and other evidence, when the CRCC has a statutory right to access certain privileged information, the **CRCC cannot try to obtain that privileged information by compelling a member to produce it** (*RCMP Act*, s. 45.4(1), 45.4(2), 45.65(5)).

Members Must Inform if CRCC-Requested Information is Potentially Privileged or Sensitive

If a member is aware that information requested by the CRCC is potentially privileged or may give rise to a risk of serious harm to a person, the **member must inform** (AM XII.2, s. 15.7):

- their immediate line officer;
- the divisional Professional Responsibility Unit; and
- the NPCD.

CRCC CANNOT USE MEMBERS' STATEMENTS OR ANSWERS COMPELLED IN OTHER RCMP PROCEEDINGS

The **CRCC cannot receive or accept any compelled answer or statement** made (*RCMP Act*, s. 45.65(4)):

- in response to a question relating to the matter **before a board of inquiry**, appointed under s. 24.1 of the *RCMP Act*, when the board of inquiry required the witness to answer (see *RCMP Act*, s. 24.1(7));
- in response to a question relating to the matter being heard **before the RCMP External Review Committee (ERC)**, when the ERC required the witness to answer (see *RCMP Act*, s. 35(8));
- in response to a question relating to the matter being investigated **in a Code of Conduct investigation**, when the investigator required the member to answer (see *RCMP Act*, s. 40(2));
- in response to a question relating to the case **before the conduct board**, when the conduct board required the witness to answer (see *RCMP Act*, s. 45.1(5));
- in response to a question in any **investigation of or hearing into any other public complaint**, when the CRCC required the witness to answer (see *RCMP Act*, s. 45.65(2)).

CRCC CANNOT USE MEMBERS' STATEMENTS MADE DURING INFORMAL RESOLUTION

The CRCC **cannot** receive or accept into evidence **any answer or statement made in the course of an informal resolution attempt** (*RCMP Act*, s. 45.65(4), see also s. 45.56(2)).

MEMBER'S RIGHT TO APPLY FOR LEGAL ASSISTANCE AT PUBLIC EXPENSE

A member who has been compelled by a summons to attend before the CRCC to participate in an investigation, hearing, or review, may be eligible for Legal Assistance at Public Expense (LAPE) (AM XII.2, s. 15.3).

For more information on eligibility and applying for LAPE, please refer to the Treasury Board's Policy on Legal Assistance and Indemnification.

NO RIGHT TO WITNESS FEES

If a member is summoned to attend before the CRCC as a witness, the member is **not entitled** to receive witness fees and allowances (*RCMP Act*, s. 45.65(6)).

INVESTIGATION STATUS UPDATES

Complainant's and Subject Member's Qualified Rights to Periodic Written Updates on the Status of the Investigation

Unless doing so might compromise or hinder any investigation into the complaint, the CRCC **must** provide the complainant and the subject member with written notification of the status of the investigation (*RCMP Act*, s. 45.69):

- no later than **45 days** after being notified of the complaint; and
- **monthly thereafter** during the investigation.

REPORTS FOLLOWING A CRCC INVESTIGATION OR HEARING INTO A PUBLIC COMPLAINT

On completion of an investigation or hearing, **the CRCC must** send a written report to the Commissioner/delegate and the Minister of Public Safety setting out any Findings and Recommendations (F&Rs) concerning the complaint as the CRCC sees fit (*RCMP Act*, s. 45.76(1)).

The **Commissioner/delegate must**, as soon as feasible after receiving the CRCC's report, provide the CRCC and the Minister of Public Safety with a written response indicating (*RCMP Act*, s. 45.76(2)):

- any further action that has been or will be taken with respect to the complaint; and
- if the Commissioner/delegate decides not to act on any of the CRCC's F&Rs, the reasons for not doing so.

Subject Member's and Complainant's Rights to CRCC's Final Report

After receiving the Commissioner's/delegate's response, the **CRCC must prepare a final written report** setting out any F&Rs concerning the complaint that the CRCC sees fit, **and send a copy of the report to** (*RCMP Act*, s. 45.72(2)):

- the complainant;
- the subject member;
- the Commissioner/delegate;
- the Minister of Public Safety; and
- if there is a contract policing agreement with the province, the provincial minister responsible for policing in the province in which the conduct complained of occurred.

NO RIGHT OF APPEAL OR JUDICIAL REVIEW

All of the CRCC's F&Rs contained in the final report are final and cannot be appealed to or reviewed by any court (*RCMP Act*, s. 45.77).

RIGHT TO THE RETURN OF DOCUMENT OR THING PRODUCED TO RCMP OR CRCC

Any document or thing that a person, including a member, produced to the RCMP or the CRCC **must**, **upon the person's request**, be released to that person within a reasonable time after the completion of the CRCC's final report (*RCMP Act*, s. 45.78).

ABBREVIATIONS AND REFERENCES

AM XII.2	Administrative Manual, chapter XII.2 – Public Complaints
<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)
CRCC	Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (website: https://www.crcc-ccetp.gc.ca/)
<i>Criminal Code</i>	<i>Criminal Code</i> , RSC 1985, c C-46 (online: https://laws-lois.justice.gc.ca/eng/acts/c-46/)
ERC	RCMP External Review Committee (website: https://www.erc-cee.gc.ca)
F&Rs	Findings and Recommendations
LAPE	Legal Assistance at Public Expense
National Guidebook	National Public Complaints Guidebook, November 5, 2014
NPCD	National Public Complaints Directorate
<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)
TB Policy on Legal Assistance and Indemnification	Treasury Board Policy on Legal Assistance and Indemnification (April 23, 2012) (online: https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=13937)

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