

**NATIONAL
POLICE
FEDERATION**



**FEDERATION
DE LA POLICE
NATIONALE**

MEMBERS' RIGHTS AND RESPONSIBILITIES

QUICK REFERENCE HANDBOOK

PART X DISABILITY ACCOMMODATIONS

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,
particularly when their ability to perform their duties is at stake.**

The information in this handbook does not constitute legal advice. Members who are or may become subject to a disability accommodation process are advised to consult a lawyer or an NPF 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*, and RCMP policies govern.

LEGAL FRAMEWORK

The Canadian Charter of Rights and Freedoms

Canadian Human Rights Act (CHRA)

RCMP Act

Commissioner's Standing Orders (Employment Requirements) (Employment CSOs)

Disability Management and Accommodation Program Manual (DMAPM)

DEFINITIONS OF “DISABILITY” AND “DISABLING HEALTH EVENT”

Disability

The *CHRA*, which prohibits employment discrimination on the basis of disability (s. 3(1) and 7), defines disability as **any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug** (s. 25).

For the purpose of the RCMP's Disability Management and Accommodation Program (DMAP) Policy, **disability** is defined as (DMAPM, ch 1, s. 1.3):

a physical or mental condition that is both:

- 1) permanent, or ongoing, or episodic, or of persistence; and
- 2) a substantial or significant limit on the member's ability to carry out some of life's important functions or activities, such as employment.

Disabling Health Event

A disabling health event is an incident in which a member is injured or becomes ill, physically or mentally, and that affects a member's health and ability to perform work duties. A disability may result from a single disabling health event or a series of events (DMAPM, ch 1, s. 1.4).

Examples of Disabilities

- mobility restrictions
- hearing impairment
- depression
- alcoholism
- chronic conditions (eg: diabetes, multiple sclerosis)
- chronic pain
- vision impairment
- anxiety
- addictions
- environmental sensitivities
- learning disabilities
- bi-polar disorder
- post-traumatic stress disorder (PTSD)

MEMBER'S RIGHT TO HAVE THEIR DISABILITY ACCOMMODATED

Members with a disability have the right to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices (*CHRA*, s. 2).

It is a prohibited discriminatory practice if, because of a member's disability, the RCMP (*CHRA*, s. 3(1) and 7):

- discharges a member;
- demotes a member; or
- in the course of employment, differentiates adversely in relation to a member.

The **duty to accommodate** is a legal obligation under the *CHRA* that requires the RCMP to (DMAPM, ch 1, s. 2.1.1):

- identify and remove barriers that have an adverse impact on members; and
- implement measures necessary to allow members to perform their duties to the best of their abilities.

Members are entitled to reasonable – not perfect – accommodation.

LIMITS ON A MEMBER'S RIGHT TO DISABILITY ACCOMMODATION

A member's right to have their disability accommodated, and the RCMP's duty to accommodate, are subject to two limitations:

- 1) if the ability requirement is a ***bona fide occupational requirement (BFOR)***; and
- 2) if accommodating the disability would impose **undue hardship** on the RCMP.

1) Bona Fide Occupational Requirement (BFOR)

Discharging, demoting, or adversely differentiating in relation to a member because of the member's disability **will not constitute a discriminatory practice if the RCMP can establish, on a balance of probabilities that the discharge, demotion or differentiation is based on a BFOR** (CHRA, s. 15(1)(a)).

To establish that the requirement for or the standard for a particular ability is a BFOR, the RCMP must be able to establish, on a balance of probabilities, **all of the following three criteria** (CHRA s. 15(2); *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3 (Meiorin); *Granovsky v Canada (Minister of Employment and Immigration)*, [2001] 1 SCR 703):

1. the RCMP adopted the standard for a purpose **rationally connected** to the performance of the job;
2. the RCMP adopted the particular standard in an **honest and good faith belief that it was necessary** to the fulfilment of that legitimate work-related purpose;
and
3. **the standard is reasonably necessary** to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, the RCMP **must demonstrate that it is impossible to accommodate individual employees sharing the same functional limitation or restrictions without imposing undue hardship upon the RCMP**, in terms of health, safety, cost, or the prospect of substantial interference with the rights of other members.

If the BFOR is proven, the RCMP is exempted from the duty to accommodate the member's disability.

2) Undue Hardship

The RCMP is required to make **every reasonable effort** – up to the point of undue hardship – to help ill or injured or disabled members to (DMAPM, ch 1, s. 2.4.3):

- remain at work; or
- if an absence from work is required to support their recovery, to return to work when they are able.

Undue hardship is the limit, short of which the RCMP is expected to accommodate a member in a given situation. To determine if an accommodation would impose undue hardship on the RCMP, as there is no standard definition, relevant factors must be taken into consideration, including but not limited to (see DMAPM, ch 1, s. 2.1.3):

- the realistic ability of the RCMP to meet the costs associated with the accommodation;
- the health and safety of other RCMP employees and of the public; and
- whether the accommodation involves significant interference with the rights of others.

Undue means disproportionate, improper, inordinate, excessive, or oppressive, and expresses a notion of seriousness or significance (*Council of Canadians with Disabilities v Via Rail*, 2007 SCC 15, at para 140). Some hardship is to be expected, but only undue hardship can relieve the RCMP of the duty to accommodate (*Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970 at 984).

MEMBER'S RESPONSIBILITIES UNDER THE DMAP

If seeking disability accommodation a member **must** (see DMAPM, ch 1, s. 3; ch 2, s. 2.1.2, 4; ch 3, s. 2 ch 7, s. 5):

- inform their supervisor as soon as possible about the existence of an illness, injury or disability;
- advise their supervisor if the illness, injury, or disability is due to a workplace illness or injury;
- actively participate in all medical and rehabilitation treatment designed to facilitate the member's return to work;
- promptly provide necessary medical information and documentation / medical certificate to:
 - verify the existence of an illness, injury, or disability;
 - support an absence from work; and/or
 - if returning to work, identify the functional limitations or restrictions imposed by the disability;
- identify any barriers to treatment, recovery, or effective participation in the DMAP;
- throughout the recovery process, maintain regular contact with their supervisor and, in more complex cases, with the Disability Management Advisor (DMA) and the Occupational Health Team (OHT);
- provide an expected return-to-work date, as soon as possible;
- make their return-to-work / accommodation requirements known;
- participate in discussions about their accommodation / modified work needs, be open to reasonable suggestions for accommodation, and discuss alternative options;
- cooperate in good faith to arrive at a workable solution and accommodation plan;
- be flexible and willing to accept less-than-perfect solutions, provided those solutions effectively meet their accommodation needs;
- once accommodation has been provided, meet the required job performance standards;
- communicate to their supervisor / DMA any concerns about the accommodation, and inform them when accommodation is no longer required or if the accommodation plan requires adjustment; and
- if accommodations require a staffing action, cooperate with the Career Development and Resourcing Advisor (CDRA).

CAUTION: Failing to cooperate with the DMAP could lead to:

- a **stoppage of the member's pay and allowances** due to an unauthorized absence from duty (see *Employment CSOs*, s. 4(1));
- the exhaustion of the RCMP's duty to accommodate, and an **administrative discharge** from the Force for having a disability (*RCMP Act*, s. 20.2(1)(g); *Employment CSOs*, s. 6(a); DMAPM, ch 4, s. 4.2).

MEMBER MAY BE REQUIRED TO UNDERGO A MEDICAL EXAMINATION OR AN ASSESSMENT

For the purpose of establishing a member's ability to perform their duties, the Commissioner / delegate may require a member to undergo a medical examination or an assessment by a qualified person specified by the Commissioner / delegate (*RCMP Act*, s. 20.2(1)(c)).

The Commissioner has authorized the following persons to arrange for a medical examination or assessment to establish a member's fitness for duty (DMAPM, ch 1, s. 2.2.2):

- supervisor
- manager
- director
- director general
- commanding officer
- assistant commissioner
- deputy commissioner.

If required to undergo a medical examination or an assessment by a qualified person for the purpose of establishing the member's ability to perform their duties, a **member must** (*Employment CSOs*, s. 19; DMAPM, ch 1, s. 2.2.3):

- **present themselves** to the qualified person **on the dates and at the times specified by that person**, including for the purpose of any follow-up appointments; and
- **undergo any tests, examinations or other assessments required by the qualified person to establish the member's ability to perform their duties.**

CAUTION: Disobeying a lawful order to undergo a medical examination or an assessment could lead to a *Code of Conduct* process.

Members have obligations and duties, including complying with requests for information and participating in RCMP-mandated medical examinations or assessments, especially if they wish to continue receiving their full salary and benefits (see *Gravelle v Canada (Attorney General)*, 2017 FC 742, at para. 32).

ACCOMMODATED MEMBERS

An accommodated member (DMAPM, ch 4, s. 1.5):

- will continue to be subject to operational or administrative needs of the RCMP, including routine transfer and succession planning; and
- may apply for promotion.

DMAP: RCMP'S RESPONSIBILITIES TO THE MEMBER

When a Member Advises the Force

When a member advises of the existence of a disability and requests accommodation for their needs, the RCMP **must** (see DMAPM – ch 4, s. 1.4):

- consider the member's request in good faith;
- maintain confidentiality;
- deal with accommodation requests in a timely manner;
- request only the information necessary to respond to the member's accommodation request (information related to the nature of the limitation or any restrictions)
- work collaboratively with the member to explore, consider and identify reasonable accommodation measures that meet their work-related needs;
- recognize that a member is entitled to interim/informal/temporary accommodation pending a formal diagnosis and/or a physician's letter outlining the member's functional limitations and restrictions; and
- if the ability is not a BFOR, accommodate the member up to the point of undue hardship.

If Member Does Not Advise the Force: Duty to Inquire

If a member does not request any accommodation, but appears to have a disability requiring accommodation (eg: performance is suffering due to alcoholism, member is exhibiting atypical or inappropriate behaviour), the RCMP is responsible for recognizing the possible disability and respectfully approaching the member to assist (DMAPM, ch 4, s. 1.4, 2.3) (see also *Krieger v Toronto Police Services Board*, 2010 HRTO 1361).

The RCMP is NOT Required to:

- create an unnecessary job;
- remove an aspect of a member's duties that is an essential BFOR;
- retain a member if the member is unable to meet their responsibilities despite being provided with reasonable accommodations; or
- retain a member if the member cannot provide a return-to-work date in the foreseeable future.

MEMBERS' RESPONSIBILITIES TO ACCOMMODATED MEMBERS

All members are expected to assist and support accommodation initiatives (DMAPM, ch 4, s. 1.8).

**MEMBER'S LIMITED PRIVACY RIGHTS
RE: PERSONAL HEALTH INFORMATION**

A member's medical information is confidential. However, for the DMAP to succeed, a member must share information with personnel who play a key role in delivering the DMAP.

The Federal Court has noted the following principles (see *Gravelle v Canada (Attorney General)*, 2017 FC 742, at para. 32):

- while an RCMP member's privacy right is quasi-constitutional, it is not absolute and is subject to reasonable limits;
- members have obligations and duties and are required to comply with DMAP requests for medical information; and
- a member's refusal to disclose required medical information could even result in discharge.

MEMBERS MUST DISCLOSE SOME, BUT NOT ALL PERSONAL HEALTH INFORMATION		
NOTE: Members requiring disability accommodation for medical reasons are <i>not</i> required to disclose their diagnosis or any intimate details of their disability.		
Type of Medical / Health Information	Who May Access and Use the Information	Purpose for Which They May Access and Use the Information
<ul style="list-style-type: none"> - Diagnosis or details of the disability - Other information that is unrelated or unnecessary for DMAP 	Nobody.	None.
Medical / health information related to the case and necessary for DMAP.	<p><u>ONLY:</u></p> <p>Occupational Health Team:</p> <ul style="list-style-type: none"> - Doctor (HSO) - Psychologist (if appropriate) - Nurse 	<ul style="list-style-type: none"> - Confirming absence is medically required; - Requesting independent medical exam; - Ensuring treatment compliance; - Assessing fitness for duty; - Understanding a member's abilities, limitations, and restrictions; - Identifying risk factors; - Confirming ability to return to work without posing a safety risk; - Return-to-work planning; and - The accommodation process.
<ul style="list-style-type: none"> - Prognosis for return-to-work; - Functional abilities, limitations, restrictions, and whether they are temporary or permanent 	<ul style="list-style-type: none"> - Supervisor - DMA - Other H.R. experts involved in benefits administration, return-to-work planning and the accommodation process 	<ul style="list-style-type: none"> - Return-to-work planning; and - DMAP

Member's Right to Access Their Own Occupational Health File

A member may access their Occupational Health file through informal means by contacting the Divisional Occupational Health Services (see IMM ch 3.1, s. K.2) (DMAPM, ch 5, s. 4.5).

A member need not make an ATIP request to access this file.

FINDING DISABILITY ACCOMMODATION OPTIONS

The Search for Disability Accommodation Options

A member in need of accommodation has a duty to participate in the search for accommodation, and will work closely with their supervisor and the DMA to design and implement an effective and reasonable accommodation plan.

The search for reasonable accommodation involves a “progressive concentric circle” approach (DMAPM, ch 4, s. 4.3). For **temporary accommodation**, the search begins at the detachment level, and if appropriate, moves to the divisional level. For **permanent accommodation**, the search area may be broader, and may include the division and, if needed, progress to other divisions (DMAPM, ch 4, s. 4.3)

Whenever possible, a member will be accommodated within their existing position (DMAPM, ch 4, s. 4.1.4, 4.3.3).

If different options are available, preference will be given to the option that balances the RCMP's operational needs with the member's work-related needs (DMAPM, ch 4, s. 4.1.5).

A member is expected to take reasonable alternative employment assignments when they are offered (DMAPM, ch 4, s. 4.1.6).

If a member refuses to accept a proposed accommodation, they must offer a reasonable explanation (DMAPM, ch 4, s. 5.1.9).

Once a **return-to-work plan** has been developed, **all parties involved, including the member, must sign** the plan to show their agreement with, commitment to, and support for the plan (DMPAM, ch 4, s. 5.2.6).

Examples of Possible Disability Accommodations

Accommodation may include, but is not limited to (DMAP, ch 4, s. 4.1, 4.3):

- graduated return-to-work
- modified hours of work
- reassignment or alternate jobs
- purchasing or modifying equipment
- providing assistive devices
- changing or modifying the work environment
- modified duties
- temporarily re-assigning marginal duties from existing positions

**IF REASONABLE ACCOMMODATION IS NOT POSSIBLE:
COMMISSIONER MAY ADMINISTRATIVELY DISCHARGE A MEMBER
FOR HAVING A PHYSICAL OR MENTAL DISABILITY**

When it appears that the RCMP cannot reasonably accommodate the member, either due to a BFOR or because it would be impossible to accommodate the member's permanent disability without incurring undue hardship, the Employee Management Relations Officer (EMRO) determines if the RCMP has fulfilled its duty to accommodate.

If the RCMP has fulfilled its legal obligations, the RCMP may commence proceedings to administratively discharge the member.

The Commissioner may discharge any member for having a disability, as defined in the *CHRA* (*RCMP Act*, s. 20.2(1)(g), 21(2)(g); *Employment CSOs*, s. 6(a)).

**For information on members' rights and responsibilities in
administrative discharge proceedings,
please refer to
the NPF's Members' Rights and Responsibilities Quick Reference Guide,
PART XI – Administrative Discharge or Demotion**

MEMBER'S RIGHT TO SEEK ASSISTANCE

An ill, injured, or disabled member may, at any time in the process, seek the assistance of:

- an NPF representative;
- an informal conflict management practitioner;
- a peer-to-peer coordinator; and/or
- the Employee Assistance Services.

HOW THE NPF CAN HELP

An NPF representative also has a duty to cooperate in the accommodation process, and may assist a member who is seeking accommodation by:

- serving as a first point of contact;
- providing advice and guidance to the member;
- assisting the member in the initial steps of formal accommodation processes; and
- at the member's request, facilitating, advising on, assisting in discussions to explore options, or advocating for the member's accommodation.

**DISABILITY ACCOMMODATION IN POLICING
SELECTED CASE LAW**

DISABILITY	REQUESTED ACCOMMODATION	DECISION AND CASE CITATION
Diabetes (unpredictable insulin reactions which, on occasion, caused unconsciousness)	Officer complained of discrimination when police service restricted the officer's duties. When condition stabilized, officer was returned to regular duty.	No discrimination. Police service acted reasonably in viewing the officer's condition as a potential risk to himself and the public (<i>Barnard v Fort Frances (Town) Board of Commissioners of Police</i> (1987), 9 CHRR D/4845 (Ont. Bd. Inq.)).
Visual Acuity		Visual acuity standards for special constables found to be a <i>bona fide</i> occupational requirement. No accommodation required (<i>Seguin v Royal Canadian Mounted Police</i> (1989), 10 CHRR D/5980 (CHRT)).
Visual Acuity	Contact lenses	Uncorrected visual acuity standard for regular police officers is a <i>bona fide</i> occupational requirement – if a lens is lost, risk to the officer, other officers, and the public would be considerable (<i>Cotterall v Vancouver Police Board</i> (1994), 26 CHRR D/510 (BC HRC)).
Hearing	Hearing aid	Uncorrected hearing standards for special constables found to be reasonable and necessary and thus a <i>bona fide</i> occupational requirement – duties involved a sufficient risk of loss or malfunctioning of hearing aids (<i>Patry v Royal Canadian Mounted Police</i> , [1995] CHR D no 5 (QL) (CHRT)).
Learning Disability	Write exams in a private room and have additional time to complete them	Training academy directed to attempt to accommodate learning disability. Academy's application for judicial review was dismissed (<i>Justice Institute of British Columbia v British Columbia (Attorney General)</i> (1999), 17 Admin LR (3d) 267, 99 CLLC 230-023 (BCSC)).
Crohn's Disease (asymptomatic, no functional limitations)	No accommodation requested.	Officer's discharge, which was based on police service's apprehension of future absenteeism, was a human rights violation (<i>Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)</i> ; <i>Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)</i> , 2000 SCC 27).

Spinal disorder (asymptomatic, no pain, no functional limitations)	No accommodation requested.	Police service's refusal to hire, due to their apprehension of a risk that the recruit would develop incapacitating and recurring lower back pain, was a human rights violation (<i>Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)</i> ; <i>Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)</i> , 2000 SCC 27).
Obsessive Compulsive Disorder (OCD) arising from a fear of contamination due to exposure to blood or bodily fluids	Payment for Cognitive Behavioural Therapy (CBT); extension of probationary period.	Police service offered to pay for CBT, but probationary officer did not pursue the therapy. Civilian data entry position offered and accepted. No obligation to further accommodate (<i>Buttar v Halton Regional Police Services Board</i> , 2013 HRTO 1578).

ABBREVIATIONS AND REFERENCES

ATIP	Access to Information and Privacy
BFOR	<i>Bona Fide Occupational Requirement</i>
<i>Canadian Human Rights Act</i>	<i>Canadian Human Rights Act</i> , RSC, 1985, c H-6. (online: https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#h-256800)
CDRA	Career Development and Resourcing Advisor
<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</i> , 2014. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-281/page-6.html#h-30)
CSOs	<i>Commissioner's Standing Orders</i>
DMA	Disability Management Advisor
DMAP	Disability Management and Accommodation Program
DMAPM	Disability Management and Accommodation Program Manual

<i>Employment CSOs</i>	<i>Commissioner's Standing Orders (Employment Requirements)</i> , SOR/2014-292. (online: https://laws.justice.gc.ca/eng/regulations/SOR-2014-292/FullText.html)
HSO	Health Services Officer
NPF	National Police Federation
OHT	Occupational Health Team
<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>RCMP Regs</i>	<i>Royal Canadian Mounted Police Regulations, 2014</i> , SOR/2014-281. (online: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-281/index.html)

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