

**NATIONAL
POLICE
FEDERATION**



**FEDERATION
DE LA POLICE
NATIONALE**

MEMBERS' RIGHTS AND RESPONSIBILITIES

QUICK REFERENCE HANDBOOK

PART XI: ADMINISTRATIVE DISCHARGE OR DEMOTION

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 employment is at stake.**

The information in this handbook does not constitute legal advice. Members who are or may become subject to discharge or demotion proceedings are advised to immediately 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.

REASONS FOR AN ADMINISTRATIVE DISCHARGE OR DEMOTION

Reasons	Discharge	Demotion
Revocation of an appointment to the RCMP if an error, omission, or improper conduct affected the Commissioner's selection of the person (<i>RCMP Act</i> , s. 9.2).	✓	
Revocation of a promotion to a higher rank if an error, omission, or improper conduct affected the Commissioner's selection of the member (<i>RCMP Act</i> , s. 9.2).		✓
Unsatisfactory performance (<i>RCMP Act</i> , s. 20.2(1)(e) and (2)).	✓	✓
For cause other than a Code of Conduct contravention (<i>RCMP Act</i> , s. 20.2(1)(g) and (2); <i>Employment CSOs</i> , s. 6; National Guidebook, p. 33), for example: <ul style="list-style-type: none"> ▪ medical discharge: having a disability as defined in the <i>Canadian Human Rights Act</i> (a mental or physical disability, including a dependence on alcohol or a drug) ▪ being absent from duty without authorization; ▪ having left an assigned duty without authorization; ▪ being absent from duty as a result of being detained in custody or serving a period of imprisonment; ▪ being in a conflict of interest other than one set out in the <i>Code of Conduct</i>; ▪ no longer possessing a basic employment requirement for the carrying out of a member's duties (see below); or ▪ being convicted of an offence that is punishable by indictment or that would be punishable by indictment if the offence had occurred in Canada. 	✓	✓
The member has received an offer of employment as the result of the transfer of any work, undertaking or business from the Force to any other entity (<i>RCMP Act</i> , s. 20.2(1)(i)).	✓	
For the promotion of economy and efficiency (<i>RCMP Act</i> , s. 20.2(1)(k)).	✓	

EMPLOYMENT REQUIREMENTS

A member possesses the basic requirements for the carrying out of their duties if they (*Employment CSOs*, s. 2):

- are legally authorized to possess a firearm;
- hold a licence issued in Canada to operate a motor vehicle;
- have the required reliability status or security clearance; and
- are not subject to an order issued by a court or a justice of the peace prohibiting or restricting entry into any place within the member's policing jurisdiction.

Another requirement is that members report for and remain on duty unless otherwise authorized (*Code of Conduct*, s. 4.1; National Guidebook, Part IV, p. 30).

MEMBERS' RESPONSIBILITIES: EMPLOYMENT REQUIREMENTS

Members are responsible for (AM 27.3, s. 4.1; National Guidebook, s. 3.2.2):

- **being aware** of their employment requirements;
- **meeting and retaining their employment requirements** at all times;
- **advising** their commander **as soon as feasible when they are unable to meet** any employment requirements;
- **cooperating fully during attempts to address** any deficiencies or challenges that may impede their ability to meet their employment requirements; and
- **contacting a support service** if they wish assistance in addressing deficiencies or other challenges that interfere with their ability to meet their employment requirements.

RIGHT TO A PROCEDURALLY FAIR DISCHARGE OR DEMOTION PROCESS

Whether facing a discharge or a demotion, a member is entitled to (AM 27.3, s. 1.5; National Guidebook, p. 33):

- a process that is **equitable, timely, and appropriate to the circumstances**;
- **proper notice, information, and assistance**;
- an **impartial decision-maker**; and
- the **opportunity to make submissions**.

RIGHTS TO NOTICE OF SHORTCOMINGS AND ASSISTANCE FOR UNSATISFACTORY PERFORMANCE OR LOSS OF AN EMPLOYMENT REQUIREMENT

Before a commander can initiate a discharge or demotion process for unsatisfactory performance or a loss of an employment requirement, the **commander must ensure that the member is provided with** (AM 27.3, s. 1.6, 4.2.1; National Guidebook, p. 13-14):

- **information** to increase the member's awareness of employment requirements and performance expectations;
- **timely notification, as soon as a concern is identified**, that the member is not meeting the employment requirements or performance expectations, **including**:
 - the **nature of the deficiencies** giving rise to the concerns; and
 - that the **consequences** of continuing to fail to meet the employment requirements or performance expectations **may be a discharge or a demotion**;
- **processes to assist, and reasonable opportunities to address** any deficiencies, challenges, acts, omissions, incidents or conditions that could, if unaddressed, interfere with their ability to meet any requirements or expectations and result in an administrative discharge or demotion; and
- **reasonable assistance and support in attempting to address** any deficiencies, challenges, acts, omissions, incidents or conditions that may be impacting the member's ability to meet their employment requirements or performance standards.

When a member is unable to meet employment requirements or performance expectations, if the circumstances and context permit, the RCMP's priority is to attempt to identify options that will enable retention of the member. If such attempts are unsuccessful, a process may be initiated to determine if the member is to be retained, discharged, or demoted (AM 27.3, s. 1.4, 1.7).

NO DISCHARGE OR DEMOTION PROCESS IF PARALLEL CODE OF CONDUCT PROCEEDING ONGOING

If a Part IV Code of Conduct proceeding has been initiated based on the same facts that could result in the initiation of a discharge or demotion process, **the discharge or demotion process cannot be initiated until the Part IV proceeding has been either completed or discontinued** (AM 27.3, s. 2.2).

RIGHT TO A *PRIMA FACIE* DETERMINATION BY THE DECISION-MAKER

Upon receipt of an RA's Recommendation, the **decision-maker must first:** (AM 27.3, s. 4.5; National Guidebook, p. 19, 34-35):

- **consider** the materials and information provided; and
- **determine**, on a ***prima facie*** basis, whether there is a reason to discharge or demote the member.

Prima facie means at first sight; on the first appearance; on the face of it; so far as can be judged from the evidence gathered.

A decision-maker may make a ***prima facie*** determination that there is reason to discharge or demote a member if, ***presuming that the information in the Recommendation materials is accurate, and absent any submissions from the member***, there is sufficient information to support a finding, on a balance of probabilities, that despite reasonable assistance and support, the member has continued to fail to meet their employment requirements or performance expectations, and that a discharge or a demotion is warranted.

If the decision-maker is not satisfied on a ***prima facie*** basis that a discharge or demotion process should be initiated, the decision-maker **must** (AM 27.3, s. 4.5.2; National Guidebook, p. 35):

- **not** prepare a Notice of Intent (NOI); and
- **advise the RA in writing as soon as feasible and include any recommendations or observations** the decision-maker deems appropriate for the RA's and/or the commander's consideration **to assist the member** in satisfying their employment requirements or performance expectations.

If the decision-maker is satisfied on a ***prima facie*** basis that a discharge or demotion process should be initiated, the decision-maker **must initiate the process by preparing a Notice of Intent** (AM 27.3, s. 4.5.1, 6.1; National Guidebook, p. 35).

RIGHT TO NOTICE OF INTENT (NOI)

The decision-maker **must** have the member served with an NOI if the decision-maker intends to **discharge or demote a member for** (*Employment CSOs*, s. 8(1); AM 27.3, s. 4.5.1, 6.1; National Guidebook, p. 35):

- **unsatisfactory performance;**
- **cause** other than a contravention of the *Code of Conduct*;
- **promotion of economy and efficiency** in the Force; or
- an **error, omission or improper conduct** that affected the Commissioner's selection of the member **for appointment to the RCMP or for promotion to a higher rank.**

The NOI **must** set out (*Employment CSOs*, s. 9(1)):

- whether the decision-maker intends **to discharge or to demote** the member;
- **the grounds** on which the decision-maker intends to make the decision;
- **all information and materials on which the intention to discharge or demote is based** (see ERC Findings and Recommendations **NC-030** and **NC-031**);
- if only discharge is being sought, a **notice of the member's relief from duty** (see below); and
- the **member's rights of response** (see below).

ADMINISTRATIVE DEMOTIONS FOR UNSATISFACTORY PERFORMANCE OR UNMET EMPLOYMENT REQUIREMENTS

An administrative demotion (AM 27.3, s. 14; National Guidebook, p. 39):

- is **not a conduct measure** imposed for misconduct;
- **is limited to situations in which**, based on the totality of the circumstances, there is an intention to retain the member and **a demotion is the most appropriate means to assist the member** in addressing, ameliorating, or remedying the member's shortcomings in their performance or in meeting their employment requirements; and
- **must include any conditions** that the decision-maker considers **necessary to ensure that the demotion is an effective administrative support tool for the member.**

A member, other than a constable, may be administratively demoted by one or more ranks (AM 27.3, s. 14.1).

RELIEF FROM DUTY IF ONLY DISCHARGE IS BEING SOUGHT

If the NOI states that the **decision-maker only intends to discharge** the member, the **NOI must include notification that the member is relieved from duty**, effective as of the date the member is served with the NOI (AM 27.3, s. 13.1; National Guidebook, p. 35).

RIGHTS TO RESPOND TO THE NOI, TO REQUEST A MEETING FOR MAKING ORAL SUBMISSIONS, AND TO SEEK EXTENSIONS OF TIME

The NOI must advise that the member may, **within 14 days after being served with the NOI** (*Employment CSOs*, s. 9(2); AM 27.3, s. 9, 10; National Guidebook, p. 36-37):

- **provide** a written response to the NOI;
- if a written response is provided, **request, in writing and with reasons, a meeting** with the decision-maker **for the purpose of providing oral submissions**;
- **request, in writing and with reasons, an extension of time** of a specified number of days to provide a response and/or **or to request a meeting**.

LIMITED RIGHT OF ACCESS TO INFORMATION HELD BY THE RCMP

At any time after receipt of the NOI, but before a decision is rendered, the member may submit a written request to the decision-maker for access to any written or documentary information that is (*Employment CSOs*, s. 11(1); AM 27.3, s. 7; National Guidebook, p. 38):

- **under the Force's control**;
- **relevant; and**
- **reasonably necessary** to respond to the NOI.

Decision-Maker's Discretion to Grant or Deny the Request

If the request is **granted**, the information must be provided to the member as soon as feasible (AM 27.3, s. 7.2.1).

If the request is **denied**, the decision-maker **must** include their reasons for the denial in their final written decision (AM 27.3, s. 7.2.2).

Information that Cannot Be Accessed

A decision-maker **cannot** grant access to information **if** (*Employment CSOs*, s. 11(2)):

- disclosure of the information could reasonably be expected to be injurious to the defence of Canada or any state allied or associated with Canada, as defined in subsection 15(2) of the *Access to Information Act*, or to the detection, prevention or suppression of subversive or hostile activities, as defined in that subsection;
- disclosure could reasonably be expected to be injurious to law enforcement;
- disclosure is contrary to a provision of any contract entered into by the Crown;
- the information is about a person's financial or personal affairs, and the person's interest or security outweighs the member's interest in the information; or
- disclosure is prohibited by law.

RESIGNING PRIOR TO DISCHARGE AND IRREVOCABILITY OF AN ACCEPTED RESIGNATION

If a member is facing discharge proceedings, the member may wish to seek legal advice on whether they should consider resigning from the Force under s. 9.5 of the *RCMP Act* before the decision-maker renders a decision and orders the discharge.

If a member does resign, the member will cease to be a member **on the date specified by the Commissioner** in writing on accepting the resignation (*RCMP Act*, s. 9.5).

CAUTION: Once a member's written resignation is accepted by the Commissioner, the member cannot revoke their resignation (*RCMP Regs*, s. 22).

RIGHT TO REQUEST DECISION-MAKER TO RECUSE

The member may, **within 14 days** after being served with the NOI, request, in writing and **with reasons**, that the decision-maker recuse themselves (*Employment CSOs*, s. 8(2); AM 27.3, s. 8).

If the member requests recusal, the **decision-maker must** (*Employment CSOs*, s. 8(3); AM 27.3, s. 8; National Guidebook, p. 37):

- **review** the request;
- **render a decision on the request, with reasons, as soon as feasible;**
- have a copy of the decision, including reasons, **served on the member;** and
- if the decision-maker **grants** the request, contact the Professional Responsibility Officer in writing as soon as possible and ask that another decision-maker be assigned; or
- if the decision-maker **denies** the request, continue the process without interruption.

MEETING FOR PURPOSE OF PROVIDING ORAL SUBMISSIONS

A decision-maker is not obligated to meet with the member to hear oral submissions (*Employment CSOs*, s. 10; AM 27.3, s. 10).

If the decision-maker agrees to a meeting (*Employment CSOs*, s. 10; National Guidebook, p. 37):

- **the meeting must be held as soon as feasible;**
- at least two days before the meeting, **the member must provide the decision-maker with a summary of the intended oral submissions;**
- there is no expectation that the meeting will be recorded, and **no transcript will be created;**
- the decision-maker may decide to hold the meeting **in person or by electronic means;** and
- if the member fails to attend the meeting without reasonable cause, the decision-maker may make a decision without meeting with the member.

If the decision-maker denies the request for a meeting, the process will continue without interruption, but **written reasons for the denial must be included in the final written decision** (AM 27.3, 10.3, 10.4).

RECORD OF DECISION

Right to a Considered Decision with Reasons

Once the decision-maker has sufficient information from the RA, **the decision-maker must** (*Employment CSOs*, s. 12(1) and (2); AM 27.3, s. 11, 12; National Guidebook, p. 38-39):

- **review** all relevant information and material provided;
- **consider** the member's written and oral submissions (see ERC's Findings and Recommendations for **NC-007**);
- **decide, on a balance of probabilities**, whether to:
 - **retain** the member;
 - **revoke** the member's appointment or promotion under s. 9.2 of the *RCMP Act*;
 - **discharge** the member for:
 - unsatisfactory performance;
 - a cause other than a *Code of Conduct* contravention; or
 - the promotion of economy and efficiency in the Force; or
 - **demote** the member, subject to any conditions the decision-maker may impose, for:
 - unsatisfactory performance; or
 - a cause other than a *Code of Conduct* contravention;
- **prepare** a final written ***Record of Decision – Administrative Discharge and Demotion*** that includes:
 - **sufficient reasons for any interlocutory decisions** that led to the final decision;
 - **sufficient reasons for the final decision** (see ERC's Findings and Recommendations for **NC-029** and **NC-030**); and
 - if retaining the member, a statement of any terms or conditions being imposed; or
 - if discharging or demoting the member, the *Order to Discharge or Demote a Member*; and
- **have the member served with a copy of the *Record of Decision* as soon as feasible.**

Effective Date of a Decision/Order to Discharge or Demote

A decision to demote or discharge takes effect immediately (*Employment CSOs*, s. 12(3)).

RIGHTS OF APPEAL

A member **may** appeal (*Employment CSOs*, s. 20(1)(a), (c), (d) and (3)):

- a written decision under s. 9.2 of the *RCMP Act* to revoke the member's appointment to the RCMP or revoke the member's promotion;
- a written decision to discharge or demote the member for unsatisfactory performance;
- a written decision to discharge or demote the member for cause other than a contravention of the *Code of Conduct*;
- a written decision to discharge the member for the promotion of economy and efficiency in the Force; **and**
- any decision, act, or omission that led to the decision being appealed.

CAUTION: Filing an appeal does not stay the execution of (*Employment CSOs*, s. 20(4)):

- the written decision and the order for discharge or demotion;
- any other act or omission being appealed; or
- any related process.

Procedures for Appealing: *Grievances and Appeals CSOs*, s. 37-50.

MEMBER MAY SEEK JUDICIAL REVIEW OF APPEAL ADJUDICATOR'S DECISION

If there are grounds to challenge the appeal adjudicator's decision, the member may seek judicial review at the Federal Court (*Federal Courts Act*, s. 18.1(1)).

ABBREVIATIONS AND REFERENCES

<i>Access to Information Act</i>	<i>Access to Information Act</i> (online: https://laws-lois.justice.gc.ca/eng/acts/a-1/fulltext.html)
AM 27.3	Administrative Manual, Chapter 27.3, Administrative Discharge and Demotion (November 28, 2014) (available on the RCMP Infoweb)
<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)
<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)
CSOs	<i>Commissioner's Standing Orders</i>
<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)
ERC	RCMP External Review Committee
<i>Federal Courts Act</i>	<i>Federal Courts Act</i> , RSC 1985, c F-7 (online: https://laws-lois.justice.gc.ca/eng/acts/f-7/)
<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)
National Guidebook	National Guidebook – Employment Requirements (November 11, 2014) (available on the RCMP Infoweb)
NOI	Notice of Intent to Discharge or Demote a Member
NPF	National Police Federation
RA	Recommending Authority
<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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