

## MEMORANDUM OF UNDERSTANDING

BETWEEN

THE NATIONAL POLICE FEDERATION (“NPF”)

-and-

ROYAL CANADIAN MOUNTED POLICE (“RCMP”)

WHEREAS the NPF and the RCMP desire to ensure a fair and robust process for the resolution of harassment and violence in the RCMP;

AND WHEREAS the NPF and the RCMP are committed to a work place free from work place harassment and violence, including bullying, by and towards RCMP Members, other employees, and any other person working or providing services to the RCMP;

AND WHEREAS the NPF and the RCMP jointly recognize the right of RCMP Members to work in an environment that is respectful and free from harassment and violence;

THE NPF AND THE RCMP AGREE AS FOLLOWS:

### **Definitions**

1. In this Memorandum of Understanding (MOU):

“**Applicable Partner**” means the National Policy Health and Safety Committees.

“**Decision Maker**” means a Commanding Officer of a division and a Head of an NHQ business line or their delegates.

“**Conciliation Practitioner**” means a person, internal or external to the organization, qualified to conduct initial case consultation, mediation, conciliation, facilitated discussions, conflict coaching, workplace assessments, and conflict management training and awareness sessions.

“**Designated Recipient**” is the work unit in a work place or person that is designated under the *Work Place Harassment and Violence Prevention Regulations* by the Commissioner to receive notices of occurrence.

“**Employer**” means the Royal Canadian Mounted Police.

“**Harassment and violence**” mean any action, conduct, or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment.

“**Investigator**” means a person trained in investigative techniques, with knowledge, training and experience relevant to harassment and violence in the work place, and with knowledge of the *Canada Labour Code*, the *Canadian Human Rights Act* and any other legislation that is relevant to harassment and violence in the work place. An investigator may not have been employed by the RCMP in any capacity within the preceding five (5) years.

“**Member**” means all employees who are represented within the bargaining unit of the NPF.

“**Principal Party**” means the person who is the alleged victim of harassment and violence, regardless of whether they personally filed the notice of occurrence.

“**Notice of occurrence**” means a harassment and violence complaint filed by a Principal Party or a witness, in writing or orally, and provided to the employer or Designated Recipient, including a complaint alleging reprisal.

“**Occurrence**” means an occurrence of harassment and violence in the work place.

“**Responding Party**” means a person who is alleged to be responsible for the occurrence in a notice of an occurrence.

“**Witness**” means a person who witnessed an occurrence or is informed of an occurrence by the Principal Party or the Responding Party.

## **Aims**

2. The NPF’s and the RCMP’s shared aims of this MOU are:
  - i. to supplement the obligations of the employer under Part II of the *Canada Labour Code* and the *Work Place Harassment and Violence Prevention Regulations* in respect of work place harassment and violence, where the Responding Party is a Member of the bargaining unit represented by the NPF;
  - ii. to acknowledge and provide a meaningful response to the recommendations in the Bastarache Report;

- iii. to implement a transparent, robust, and procedurally fair process to investigate and resolve harassment and violence in the work place;
  - iv. to eliminate work place harassment and violence and to promote a harmonious work environment that is safe, non-discriminatory and inclusive;
  - v. to implement an investigation process independent of the RCMP;
  - vi. to remove the perception of bias from investigations and decisions related to harassment and violence in the work place;
  - vii. to enhance and support a robust framework to address and remedy incidents of harassment and violence in the work place;
  - viii. to rebuild the Membership's trust in the investigation and resolution of harassment and violence in the work place; and
  - ix. to ensure a consistent and procedurally fair process for principal and responding parties to a notice of occurrence.
3. For greater clarity, this MOU does not create a separate occurrence investigation process from what is provided for under the *Work Place Harassment and Violence Prevention Regulations* and the RCMP Work Place Harassment and Violence Prevention, Investigation and Resolution policy.
4. This MOU must be read in conjunction with the RCMP Work Place Harassment and Violence Prevention Investigation and Resolution policy and the *Work Place Harassment and Violence Prevention Regulations*. If any provision of either this MOU or the policy conflicts with a provision in the *Regulations*, the provision in the *Regulations* prevails.

#### **Filing a Notice of Occurrence**

5. The RCMP shall establish an intake unit ("Designated Recipient") for the purposes of administering the process and this MOU. The Designated Recipient is responsible for:
- a) receiving notices of occurrence under this MOU;
  - b) assessing the notices of occurrence in accordance with article 10 of this MOU;

- c) referring notices of occurrence to an external investigator in accordance with Article 20 of this MOU; and
  - d) maintaining the list of external investigators developed with NPF through the National Policy Health and Safety Committee, in accordance with Article 21 of this MOU.
6. A Member, who is a Principal Party, may file a notice of occurrence under this MOU in writing or orally and provide the notice of occurrence to the Designated Recipient established by the RCMP.
  7. Any employee of the RCMP, who is not a Principal Party, but who observes an occurrence, or who reasonably believes that a Member has either committed or been a victim of an act of harassment and violence, may file a notice of occurrence.
  8. Commissioned officers and Conduct Authorities must file a third-party notice of occurrence when they have a reasonable belief that a Member has been the victim of harassment and violence.
  9. All persons engaged by a notice of occurrence, including the Designated Recipient, the conciliator, if applicable, and the investigator, must protect the confidentiality of the parties and witnesses to the notice of occurrence, subject to existing laws, and the interests of procedural fairness.

### **Internal Assessment**

10. The Designated Recipient must close a notice of occurrence within fifteen (15) days of receiving the notice if:
  - a) the notice of occurrence is filed by a Member or an employee filing a third-party notice of occurrence, and it is not possible to verify the identity of the Principal Party;
  - b) the Responding Party is neither the employer nor an employee, exposure to harassment and violence is a normal condition of the Principal Party's work, and the employer has measures in place to address that work place harassment and violence;  
or
  - c) the Principal Party is a former employee of the RCMP; their employment ended more than three (3) months before the notice of occurrence was filed; and they did not obtain an extension of the three (3) month time limit from the Minister, pursuant to S. 3 of the *Work Place Harassment and Violence Prevention Regulations*.

11. Within 7 days of receipt of the notice of occurrence, the Designated Recipient will notify the Principal Party and the witness, if the notice was filed by a non-anonymous witness, that the notice of occurrence has been received and is being processed. The Designated Recipient may request further details from the Principal Party or witness.
12. Within 7 days of receipt of the notice of occurrence, the Designated Recipient will notify the Decision Maker that a notice of occurrence has been filed and is being processed.
13. The Designated Recipient will notify the Responding Party if actions being considered in the course of the informal resolution would affect the rights of the Responding Party. In addition, if the employer determines that the work place health and safety of the Principal Party or other employees are at risk, the employer may be obligated to take measures. While information will be shared only to the extent required to address outstanding work place health and safety concerns, the NPF and the RCMP acknowledge that there may be circumstances where such measures can require contacting the Responding Party and disclosing the identity of the Principal Party and the allegations in the notice of occurrence.

#### **Removal of the Principal Party or the Responding Party from the Work Place**

14. Following the filing of a notice of occurrence, the RCMP may remove the Principal Party from the work place and inform the NPF when the Principal Party is in the bargaining unit represented by NPF, unless exigent circumstances apply.
15. Following the filing of a notice of occurrence, the RCMP may remove the Responding Party from the work place and inform the NPF when the Responding Party is in the bargaining unit represented by NPF, unless exigent circumstances apply.

#### **Informal Resolution**

16. The Designated Recipient, the Principal Party, and if contacted, the Responding Party, will make reasonable effort to resolve an occurrence before assigning an investigator. Those efforts must begin no later than 45 days after the day on which the notice of occurrence is provided to the Designated Recipient.
17. The Principal Party and the Responding Party may attempt to resolve an occurrence by conciliation.
18. A notice of occurrence can be resolved informally at any point during this process until such time as the assigned investigator provides their report.

19. If a notice of occurrence is not resolved informally, and if the Principal Party requests it, an investigation of the notice of occurrence must be carried out.

### **External Investigation**

20. Unless reasonable efforts to resolve an occurrence are ongoing, the Designated Recipient will assign an investigator from the jointly developed list described in this MOU at the earlier of:

- a) when the Principal Party requests an investigation; or
- b) forty-five (45) days after the day on which the Designated Recipient received the notice of occurrence.

#### **I. Investigation List**

- 21. The RCMP and the NPF will jointly develop the list of persons who may act as an investigator.
- 22. The RCMP will ensure that there is a sufficient number of investigators on the list to meet capacity and administrative timelines.

#### **II. Investigator**

- 23. Immediately upon receiving the notice of occurrence, the investigator will advise the Principal Party and the Responding Party of the investigator's appointment. The Principal Party and the Responding Party will have seven (7) days to object to the investigator on the grounds of either a conflict of interest or a reasonable apprehension of bias. The investigator will be responsible for determining whether there is a conflict of interest or a reasonable apprehension of bias. If the investigator determines that there is either a conflict of interest or a reasonable apprehension of bias, the investigator shall recuse themselves.
- 24. If the investigator does not recuse themselves, and if either the Principal Party or the Responding Party disagrees with the investigator's determination, the disagreeing party may advise the Designated Recipient, who must decide within seven (7) days whether a new investigator will be appointed.
- 25. Within fourteen (14) days of receiving the notice of occurrence and relevant materials, the investigator shall review the notice and the relevant materials.
- 26. The investigator may obtain additional information on the notice of occurrence from the Principal Party to conduct an initial assessment.

27. If, after reviewing the notice and the relevant materials, the investigator determines that the occurrence does not meet the definition of harassment and violence, the investigator may recommend that the occurrence be resolved through conciliation. If the occurrence is resolved through conciliation before the investigator has provided their report, the investigation must be discontinued. If the Principal Party does not agree to resolve the occurrence through conciliation, the investigator shall complete their report, indicating the occurrence does not meet the definition of harassment and violence as per the *Work Place Harassment and Violence Prevention Regulations*, and shall submit their report to the Designated Recipient.
28. The investigator may consider and investigate events that transpire after the date of the notice of occurrence, including but not limited to any reprisals alleged to have occurred. If additional occurrences are identified, the investigator must update the Designated Recipient.

### **III. Witness Cooperation**

29. All employees of the RCMP including Members are to cooperate when required by an investigator pursuant to S. 126(1)(e) of the *Canada Labour Code*.

### **IV. Investigator May Propose Conciliation Prior to Submitting Report**

30. If the investigator determines during the investigation there is an opportunity to resolve the occurrence through conciliation, they shall notify the Designated Recipient and propose conciliation to the Principal Party and the Responding Party. If both parties agree, the investigator shall advise them of their options: an internal or external practitioner. The conciliation can continue until the investigation report is submitted. The NPF agrees that conciliation under this article satisfies the RCMP's obligation under the *Work Place Harassment and Violence Prevention Regulations*.
31. The investigator may conciliate a notice of occurrence on the consent of the Principal Party and the Responding Party.
32. RCMP management, with the consent of the Principal Party, will participate in the conciliation if the practitioner recommends that their participation is necessary to resolve the notice of occurrence.
33. If the Principal Party and the Responding Party resolve the notice of occurrence through conciliation, the practitioner shall inform the Designated Recipient immediately. The Designated Recipient will notify the investigator to discontinue their investigation.

34. All conciliations conducted under this MOU are without prejudice to the parties and are strictly confidential. The parties must agree that any practitioners are not compellable as witnesses in any proceeding. If the notice of occurrence is resolved through conciliation, only the fact that the parties have reached a resolution will be disclosed to a Conduct Authority in any Code of Conduct proceeding involving the Responding Party or the Principal Party, unless otherwise required by law. The existence of a resolved notice of occurrence is strictly confidential and will not be recorded in any Member's personnel file.

#### **V. Opportunity for the Parties to Comment Before Conclusion of Investigation**

35. At the conclusion of the investigation, but before a final report is prepared, the investigator will provide to each party a copy of the summary of the evidence received. The Principal Party and the Responding Party may, within ten (10) days after the day on which the party receives the copy provide comments or submissions to the investigator, unless, at a party's request, the Designated Recipient extends the time limit in exceptional circumstances.

#### **Investigation Report**

36. The investigator will provide a copy of their final report to the Designated Recipient. The investigator's report must contain a general description of the occurrence, their conclusion on whether each allegation of harassment and violence is substantiated or not, their conclusions on the circumstances in the work place that contributed to the occurrence, and their recommendations to eliminate or minimize the risk of a similar occurrence.

37. If the investigator concludes that the notice of occurrence is substantiated, the investigator must include recommendations to ensure a safe work place in the future, and to that end, may recommend:

a) work place restoration measures, including but not limited to:

- i. coaching or training for the parties;
- ii. a transfer; or

b) any other measures to protect the Principal Party from a future occurrence.

38. The RCMP will provide the investigator's report to the work place Health and Safety committee or representative for their review and a joint determination on which recommendations set out in the report are to be implemented.



39. The Designated Recipient will provide a copy of the investigator's report to the Principal Party and Responding Party within twenty-one (21) days of receiving a copy of the report from the investigator.

#### **Assessment of Whether to Commence Part IV Conduct Proceedings**

40. The Designated Recipient shall provide the investigation report and all relevant materials to the appropriate Decision Maker for an assessment of whether to commence a conduct proceeding under Part IV of the *RCMP Act*.
41. If the investigator concluded that the notice of occurrence was substantiated, the Decision Maker must commence a conduct proceeding against the Responding Party under s. 40 (1) of the *RCMP Act*.
42. If the investigator concluded that the notice of occurrence was substantiated, but the Decision Maker disagrees and is not satisfied that the Responding Party contravened a provision of the *Code of Conduct*, the Decision Maker must include reasons for their disagreement in the record of decision.
43. If the investigator concluded that the notice of occurrence was not substantiated, but the Decision Maker identifies additional behaviour that may be a breach of the code of Conduct, the Decision Maker may commence a conduct proceeding under Part IV of the *RCMP Act*.

#### **Reprisal Investigation**

44. If, within two (2) years after the date of receiving the investigation report, the Principal Party files a notice of occurrence alleging reprisal, all efforts will be made to ensure that the new notice of occurrence is investigated by the original investigator. If the original investigator is unavailable, a new investigator shall be appointed from the list required by this MOU.

#### **Record Keeping, Reporting, and Ongoing Consultation**

45. The investigator must provide the Designated Recipient with their full investigation file, which will be retained by the Designated Recipient for ten (10) years. In the event of a reprisal investigation, the file will be made available to the investigator appointed to investigate the alleged reprisal.

46. The Designated Recipient will proactively collect feedback from all stakeholders involved in the individual processes. Every six months, the Designated Recipient will produce and share with the NPF a report about the implementation of this MOU.
47. Every six months, the RCMP will provide an anonymized report to the NPF of all Members of the bargaining unit represented by the NPF who were removed from the work place, whether the Members were a Principal Party or a Responding Party to a notice of occurrence.
48. The NPF and the RCMP agree to meet no less frequently than every six months to discuss the process established by this MOU. This discussion will include the content of the reports described in Articles 45 and 46 of this MOU, experiences with individual investigators, and any other issues related to harassment and violence in the RCMP.
49. In the event of a disagreement over the implementation or content of this MOU, the NPF and the RCMP agree to attempt to resolve the issues of disagreement through meaningful consultation and discussion.
50. Should the RCMP, in consultation with the NPF, decide to move to a fully independent, external investigation and resolution process for notices of occurrence, the NPF and the RCMP commit to reviewing this MOU and adjusting it as is necessary.
51. The investigators and any other relevant stakeholders may provide comments on the process established by this MOU. These comments will be provided to the NPF and the RCMP to better inform their discussions about improving this process.
52. This MOU shall be effective from the date of signing and will remain in effect until such time that either the NPF or the RCMP provides the other with 60 days' written notice of its intent to discontinue this MOU.

Dated: this 8<sup>th</sup> day of September, 2021



Brian Sauvé  
President NPF



Brenda Lucki  
Commissioner RCMP