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 Administration Manual	Last Amended 2004-10-25 Rev. 65 XII.2 Public Complaints
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A. ORIGINATOR

- A. 1. Admin Support NCO

B. REFERENCES

- B. 1. Rules Respecting Public Complaints Against the Royal Canadian Mounted Police - AM Appendix X-3-7
- B. 2. RCMP Act 1988 - Code of Conduct (Part IV) Investigations

C. COMMISSIONER'S STANDING ORDER

- C. 1. Commissioner's Letters of Delegation
- C. 1. a. The Commissioner has authorized Commanding Officers/Specific Officers to act on his behalf in specific circumstances concerning public complaints. In addition, the delegated authority is expanded (by interpretation of "unit and detachment commander") to include the list of designated OIC HQ Units.

D. POLICY**E. PART VII PUBLIC COMPLAINTS (CIVILIAN/REGULAR MEMBERS)**

- E. 1. General
- E. 1. a. A Part VII (Public Complaint) matter **must relate to the conduct (not performance), of a member or other person acting in the capacity to which they were appointed under the R.C.M.P. Act and while engaged in the performance of that duty.**
- E. 1. b. Complaints concerning the conduct of members or other persons appointed under the Act, who are not acting in the capacity of their appointment and are not engaged in the performance of their duty, lie outside the jurisdiction of Part VII (Public Complaints). They will be accepted and reviewed as either a statutory, Code of Conduct or administrative investigation.
- E. 1. c. Where a member is not acting in the capacity to which they were appointed and is not engaged in the performance of their duty, but subsequently engages in the performance of their duty by identifying themselves as a police officer in an effort to exercise authority, Part VII (Public Complaint) of the R.C.M.P. Act then applies.
- E. 1. d. Part VII (Public Complaints) do not include provisions for disciplining members. If an allegation is substantiated, the member could receive administrative or operational guidance but not discipline. However, a parallel Code of Conduct investigation can also be conducted which may result in discipline being administered.

NOTE: Where it becomes apparent to an investigator or a member, that an

Officer or NCO in command of a detachment may have committed a breach of the Code of Conduct, then the investigator or member will report that to the A. & P. Officer, who may authorize the Code of Conduct investigation. (See Division Supplement AM.XII.4.)

- E. 1. e. An inquiry may be made by a member of the public in which they are simply looking for information or an explanation as to why the police or another employee acted in a certain manner. If you are able to satisfy their inquiry, document your efforts in your notebook, and the Admin 380 general file.
- E. 2. Multiple Investigations
- E. 2. a. Public complaint investigations are separate and distinct from statutory or Code of Conduct investigations. These investigations must be kept separate because the administrative/legislative obligations, possible sanctions and disclosure provisions are unique and independent, and because the statement preambles are different.
- E. 2. b. Multiple investigations can be done simultaneously, with witness statements and evidence gathered in one type of investigation, being used in another one being conducted.
- E. 2. c. The implicated employee **must be aware** of the type of investigation being conducted.
- E. 2. d. Implicated employee statements should be taken at the end of the investigation. If multiple types of investigations are being conducted, then they should be obtained in the following order:
- Statutory (warned voluntary statement); PROS
 - Part VII Public Complaint (voluntary statement); Admin 380
 - Part IV Code of Conduct (obligated or ordered statements). Admin 392
1. Voluntary statements obtained from implicated employees can be used in any investigation.
2. Part IV, Section 40 statements must only be used in a Code of Conduct investigation, unless the implicated member authorizes its use for other investigations.
- E. 2. e. One administrative file should be generated for each type of investigation and documented by way of form 1624. A manual diary date system will be used to manage these complaints.
- E. 3. Statutory Investigations
- E. 3. a. When information is received indicating that an employee may have committed a criminal offence, then the first priority is to complete a criminal investigation.
- E. 3. b. If the alleged offence occurred outside of RCMP jurisdiction, the allegation must

be referred to the police department having primary responsibility. They may agree that the statutory investigation be conducted by RCMP investigators outside their normal jurisdiction.

- E. 3. c. Implicated employees are afforded all rights entitled under the Charter of Rights and Freedoms and in Common Law (ie: police warning) and, depending on the member's role and duties being performed at the time of the alleged offence, legal fees may be covered at public expense. (AM VIII.4)
- E. 3. d. "Witness" statements and "voluntary warned" statements from implicated employees can be used in all investigations (Part VII (Public Complaint) and Part IV (Code of Conduct), without having to obtain a waiver.
- E. 4. Investigator
 - E. 4. a. Document your full criminal investigation on form 1624 as you would any other statutory investigation. Form C237 reports are only required for complex matters.
 - E. 4. b. Depending on the seriousness of the allegations, notify the Admin. Support NCO.
 - E. 4. c. Where there is sufficient evidence that an employee has breached a statute, a report to Crown Counsel **must** be forwarded to determine if a charge is warranted.
 - 1. Present all the evidence and refrain from offering recommendations.
 - 2. If the decision is made to not forward a report to Crown Counsel (ie: trivial in nature or there is sufficient independent evidence to support a finding of "Unfounded"), then the reasons must be fully documented.
 - E. 4. d. If the statutory allegation surfaced as a result of a Public Complaint, a Part VII (Public Complaint) investigation is necessary.

F. NON-PART VII PUBLIC COMPLAINTS (EMPLOYEES OTHER THAN RM/CMs)

- F. 1. A complaint made which implicates a public service employee, municipal employee, guard, matron or an auxiliary member of the RCMP does not fall under the provisions of Part VII of the RCMP Act, but rather an administrative investigation may be undertaken.
- F. 2. Any complaint received that concerns off duty conduct, but which may impact on the employee's continued employment or their ability to fulfill his/her employment responsibilities, will be accepted and reviewed as either a statutory or administrative investigation.
- F. 3. Non-Part VII investigations, upon appeal, are not reviewable by the Commission for Public Complaints Against the RCMP (C.P.C.), but are referred to the CO instead, if the complainant is not satisfied with the results of the investigation. They should direct their correspondence to:

Commanding Officer
RCMP "M" Division
4100 - 4th Avenue
Whitehorse, YT, Y1A 1H5

F. 4. Statements from implicated employees are voluntary and Sec. 40 does not apply. Employees, at common law, are obligated to account to their employer for their actions.

F. 5. All other provisions as noted in this chapter apply.

G. PUBLIC COMPLAINT

G. 1. Public complaints are to be recorded on form 4110 outlining full details of the incident. Form 4110 can be used to record up to four (4) subject members and or complainants. All allegations must be specifically listed and included on the form. If sufficient space is not available, then attach a supplemental sheet. Ensure that the complainant signs the form and provide them with the top copy.

G. 2. Depending on the seriousness of the allegations, the officer or NCO i/c of the unit/detachment should be promptly notified of any Public Complaint involving a member/employee under their command.

G. 3. Pursuant to Part VII, Section 45.35(1)(b) of the R.C.M.P. Act, public service employees, or temporary civilian employees are not authorized to receive Public Complaints against members of the Force.

G. 3. a. Should a public service employee, municipal employee or a temporary civilian employee be made aware of information regarding a Public Complaint, then the information must be passed immediately to a CM or RM according to the Act.

G. 4. Section 45.39 of the R.C.M.P. Act requires that both the implicated employee(s) and complainant be notified within 45 days of the initiation of a Public Complaint and every 30 days thereafter with regards to the status of the investigation (form MDiv 184-2).

G. 4. a. This notification can be delayed if notifying the implicated employee could adversely affect or hinder the investigation.

G. 5. Copies of form 4110 are to be forwarded immediately to the Admin Support NCO.

H. INFORMAL RESOLUTION BY A MEMBER

H. 1. Informal resolution should be considered as an option, in the first instance, to dispose of a public complaint. However, if it is in the best interests of the Force to conduct an investigation (ie: warranted allegations), then one should be completed. Conversely, determine if an investigation is really warranted. If not, then every effort should be made to resolve the complaint or terminate the investigation. Factors to be considered include availability of resources, the nature of the allegation, the reasons why an investigation may or may not be warranted, etc.

H. 2. Attempt to resolve the matter by meeting separately or jointly, with the complainant and

implicated employee(s). This can be done by the detachment commander or the assigned investigator, prior to the completion of form 4110, at the time of completion or during the initial stages of the investigation (ie: when the complainant is being interviewed by the investigator).

- H. 3. Do not record admissions, statements or remarks made by the complainant or implicated member(s) during this process in the file, as they are considered to have been made "without prejudice".
- H. 4. If the resolution is satisfactory to the parties involved and the Force then have the complainant and the implicated employee sign Section 9 of form 4110. Their signatures simply indicate that the matter was informally resolved and no inference should be made with respect to the validity of the complaint.
 - H. 4. a. Explain to the complainant that the matter is now closed and that further investigation will not be done,
 - H. 4. b. Document this conversation in your notebook and in the file in the event that the complainant subsequently alleges lack of understanding of this process, misinformation or coercion in signing the 4110 and,
 - H. 4. c. Complete the statistical report on form 4110 and forward to the Admin. Support NCO for review.
 - H. 4. d. Appropriate administrative or operational guidance can be provided to the implicated employee even though the matter has been resolved informally.
 - H. 4. e. If the complaint came in from the Commission for Public Complaints Against the RCMP (C.P.C.) then a copy of the 4110 informally resolving the matter is to be sent to the C.P.C., in order for them to conclude their file.
 - H. 4. f. A copy of the form 4110 will be forwarded by the Admin Support NCO to the Public Complaints Management Unit HQ Ottawa for their attention.

I. WITHDRAWING A COMPLAINT

- I. 1. A complainant may wish to withdraw a complaint after an investigation has been initiated.
 - I. 1. a. Have the complainant indicate their reason for withdrawing the complaint, in Section 9 of the 4110, and have them sign the form. Depending on the allegations or circumstances, investigation may still be required despite the wishes of the complainant. Conclude the investigation and forward to the Admin. Support NCO.
 - I. 1. b. The Admin. Support NCO will prepare a final letter of disposition outlining the complainant's wishes to withdraw and utilize the termination provisions as provided under s. 45.36(5) of the Act.

NOTE: Where a complainant refuses to meet with or be interviewed by the investigator or cannot be located, the investigator must determine the full scope of the incident and any possible ramifications arising from it. If there is sufficient

information to proceed with an investigation then it should be concluded and the findings outlined. If there is insufficient information with which to proceed then the investigation may be terminated according to Section 45.36(5) of the R.C.M.P. Act.

J. INVESTIGATING A PUBLIC COMPLAINT

J. 1. Termination Provisions

J. 1. a. Before undertaking a full investigation or during the investigation itself, consider whether the investigation is suitable for termination pursuant to Section 45.36(5) of the RCMP Act, namely:

1. the complaint is one that could appropriately be dealt with, initially or completely, according to a procedure provided under any other Act of Parliament;
2. the complaint is trivial, frivolous, vexatious or made in bad faith;
3. having regard to all the circumstances, investigation or further investigation is not necessary or reasonably practicable.

J. 1. b. The termination provisions provided by the Act are not catch all legislation to preclude an investigation. A complaint must be determined, by whatever steps may be reasonably necessary, to fall into one of the categories suitable for termination. The OIC Internal Affairs Branch, HQ Ottawa has issued an interpretation and guidelines to assist in this regard. If the termination provisions apply, supporting rationale which justifies termination must be provided in the letter of disposition to the complainant.

Terminology which states that the complaint is being terminated is incorrect and constitutes inappropriate use of the termination provisions. A complaint, in itself, cannot not be terminated. An investigation into a complaint may not be commenced or, the investigation which has been undertaken into the complaint may be terminated. These provisions should be used only in the clearest of cases. The complainant has a right to have the C.P.C. review the complaint/decision, so it is imperative that termination is fully justified and the wording accurately reflects the rationale.

1. When exercising this prerogative, the exact wording from the provision used under s. 45.36(5) must be quoted in the letter.
2. Where a complaint has multiple allegations, the investigation into some of them may be suitable for termination, while others will result in a finding. (eg. With respect to 45.36(5)(a), the lawfulness of an arrest or charge of a person may be addressed by the court; whereas alleged rude behaviour by our member will not. In this case, the rude behaviour allegation will need to be reviewed and commented on in the final letter of disposition).
3. If sufficient evidence exists to recommend a finding with respect to a particular allegation (ie: Unfounded, Unsubstantiated Or Substantiated), then the

termination provisions would not apply.

J. 2. Statements

- J. 2. a. Statements obtained pursuant to Part VII (Public Complaints) are voluntary. Use form MDiv 184-4.
- J. 2. b. Although employees are not required to provide a statement, once the complainant has established a "case to meet" (credible evidence to substantiate the allegation based on the civil "balance of probabilities" standard), then the onus shifts to the implicated person to provide evidence to the contrary. There is a "tactical compulsion" to provide evidence to the contrary; otherwise the risk of the allegation(s) being supported is substantial. The findings of the Public Complaint will be based on the relevant material contained in this file. Obligated statements obtained pursuant to Part IV (Code of Conduct) will not be used nor considered, unless the member expressly authorizes its use under a Part VII (Public Complaint) investigation by signing a waiver (form MDiv 184-4).
- J. 2. c. Depending on the circumstances and the seriousness of the allegations, formally prepared statements, paraphrased statements, transcribed audio or video recorded interviews, may be sufficient.

1. If a paraphrased statement is obtained from a witness, it must accurately reflect the conversation on form 1624 or C-237.
2. If a statement is recorded, it may not be necessary to have it transcribed. The investigator can complete the investigation, paraphrase the statement and if required, listen to the tape. If a disclosure request is made, a copy of the tape can be forwarded to the C.P.C. in lieu of a typed transcript.

J. 3. Detachment/Unit Commanders

- J. 3. a. Ensure that form 4110 is properly completed and immediately forwarded to the Admin Support NCO. If a public complaint is lodged against a detachment/unit commander or if the commander finds himself/herself in a conflict, notify the Admin. Support Officer immediately. The Admin. Support NCO will then direct the complaint to a neighbouring detachment or other appropriate unit for investigation.
- J. 3. b. Assign an impartial investigator, one who is not in a conflict of interest position (ie: directly supervises the implicated employee) and define the scope of the investigation (ie: statutory, Code of Conduct, Public Complaint, etc.).
1. Send a copy to both the investigator and implicated employee(s). Implicated employees may waive right to receive interim letter by signing waiver.
- J. 3. c. Authorize and encourage informal resolution of the complaint if appropriate. Since the investigation is still at the preliminary stages, follow the Informal Resolution process as noted in AM.XII.2.H.

- J. 3. d. It should be noted that the resolution of public complaints is a 2 step process, which includes the investigator and the decision maker.
- J. 3. e. Admin. Support NCO will maintain a suitable HRMIS diary date system:
 - 1. which allows for a review on the progress of the investigation, and
 - 2. ensures that the complainant and the subject member receives 30 day notifications on the progress of the investigation, as required by the RCMP Act.
- J. 4. Investigators
 - J. 4. a. Document the entire investigation on form 1624 by accurately paraphrasing witness statements and outlining other evidence that is available. No other independent reporting format is required.
 - J. 4. b. Upon completion of the investigation, list each specific allegation on form 1624 and, based on a balance of probabilities, recommend findings and provide brief rationale or remarks. A separate report is not required. The following definitions are provided for reference:
 - 1. Substantiated - A complaint which is verified or held true by the existence of competent supportive evidence.
 - 2. Unsubstantiated - A complaint which is not specifically verifiable: a decision based on a balance of probabilities cannot be reached. The complaint investigation lacks credible "independent evidence"(ie.tapes, forensic, non-police witnesses, corroborating reports, etc.)

NOTE: With a finding of Unsubstantiated, "no inference" shall be drawn regarding the veracity of the allegations. If the case is submitted to an adjudication board, then the credibility of witnesses would become a factor for consideration.
 - 3. Unfounded - One which is lacking a solid basis of fact and is therefore groundless or unwarranted.
 - J. 4. c. It is the role of the Admin. Support NCO to prepare, for the decision maker, a concise Letter of Disposition to the complainant.

NOTE: Do not use substantiated, unsubstantiated or unfounded in the final letter of disposition. They are used for employee notification only. Use other phrases which outline the findings and simply indicate whether or not the allegation is supported or not.

- 1. In cases where discipline or operational guidance is provided to the subject member, the corrective measures taken must be identified. This is to be included in the final letter, as the complainant must be notified as to what measures were taken.

NOTE: The preamble, subtitles and appeal paragraph must be included. In the case of RM/CMs, the appeal is to the C.P.C.; and with all other employees, the appeal is to the CO. Avoid the use of police jargon and acronyms.

2. If an apology is warranted, then use the following, "On behalf of the R.C.M.P., I apologize for the actions of _____. Remedial action (or discipline) in the form of _____ has been taken to ensure that this behaviour does not reoccur."
3. If one of the allegations pertains to a criminal offence and a Crown Counsel report has been submitted, then do not comment on the criminal allegation, but rather state: "As a result of our investigation, a report to Crown Counsel was submitted to determine if criminal charges are warranted against _____. You will be advised accordingly once we receive their decision (or, indicate the decision that Crown Counsel has made).

- J. 4. d. Complete the statistical report on form 4110 for each complainant and employee involved and forward copies to the OIC A & P for statistic preposes.
- J. 4. e. Forward the complete admin file and the diskette. Retain a file copy at the detachment.

K. APPEAL OF DECISION BY COMPLAINANT (REGARDING RM/CM)

- K. 1. Disclosure Requests from the C.P.C.
 - K. 1. a. If a complainant is dissatisfied with the investigation or findings, they can request that the C.P.C. review their complaint.
 - K. 1. b. The C.P.C. will subsequently request a "relevant material disclosure package" which is to contain all relevant material gathered during the Part VII (Public Complaint) investigation. The information to be disclosed must be relevant and will not include the following:
 1. Part IV, section 40 statements (without the release of the member);
 2. Privileged correspondence, miscellaneous file material, inter-office correspondence; or
 3. Correspondence that is personal or private to our employees, such as assessments and correspondence which is gathered during Code of Conduct investigations.
 - K. 1. c. Upon receiving a request for disclosure from the C.P.C., the Admin. Support NCO will forward the document directly to them.
 - K. 1. d. The Chairman of the C.P.C. will then complete a review and prepare an Interim Report which is forwarded to the Commissioner. Once the Commissioner has responded to the report, the Chairman will prepare a Final Report and forward a copy to the implicated member.
 - K. 1. e. 90 day interim notices will not be provided to members for a C.P.C. review.

- K. 2. Appeal of Decision by Complainant (Non Part VII Complaints)
- K. 2. a. If a complainant is dissatisfied with the investigation or the findings in regard to non-Part VII complaints, then he/she can request a review by the CO.
- K. 2. b. The CO will appoint an independent officer to review the investigation and prepare appropriate correspondence for the CO's Review and signature.