

DISCHARGE FOR HOMOSEXUALITY

1. Policy

Regular members who are or have been involved in homosexual activities are unsuitable as members of the Force and shall be discharged in accordance with RCMP Regulation 74.

2. General

- a. Any investigation by the Force into the homosexual behaviour of a regular member must be carefully managed to ensure that the rights of the individual are fully respected. Those conducting such investigations should be sensitive to the personal and confidential nature of the matters being investigated.
- b. This bulletin shall be a Commissioner's Standing Order made pursuant to the RCMP Act, Section 21(2), notwithstanding that it is not in the usual format for a CSO. No changes, amendments or revisions shall be made in any manner whatsoever to this bulleting or its appendices without the express approval of the Commissioner.

3. Definition

- a. For the purposes of this bulletin, the following words have the several meanings hereby assigned to them, over and above their ordinary meanings, unless there be something in the subject or context repugnant to such construction, that is to say:
 1. Words importing the singular number include the plural number and words importing the plural number include the singular.
 2. The words "Homosexual Activity" means the involvement of a regular member in sexual behaviour with a person of the same sex.
 3. The word "Act" means the Royal Canadian Mounted Police Act.

3. a. 4. The word "Board" means a Discharge Board and includes a member appointed to hear a reference for review under this bulletin.
5. The word "form" means a form set out in this bulletin.
6. The word "examine" shall include examination in Chief, cross examination, re-examination and includes questioning by the Board.
7. The words "Statutory Holiday" shall be as defined in Admin. Man. II.5.D.11.
8. The words "Notice of Intent" means a notice in writing of the intention to recommend the discharge of the member.
9. The words "parties to the review" means a member who sends a request under paragraph 6.b.2. for a review of his/her case by a discharge Board and the commanding officer to whom the request is sent.
10. The word "representative" means a member who is representing or assisting another member and includes professional counsel.
11. Where a period of time is prescribed by this bulletin and expressed as a number of days, the period shall be computed as being consecutive days exclusive of the first and inclusive of the last which includes Saturdays and Sundays. Where the time limit for the doing of a thing expires on a statutory holiday the thing may be done on the day next following that is not a statutory holiday.
- a. The time limits specified in the para. 6.b.2. may be extended upon written application to the C.O.
- b. No time shall be extended after the expiration of the initial time limit.
- c. Where a time is extended, any reference in this bulletin to the time shall be construed as a reference to the time so extended.

3. a. 11. d. No proceedings under this Bulletin is invalid by reason only that the time constraints imposed on the Board in paragraphs 10.a.2., and 10.b.18., were not met.
12. The words "commanding officer" means the members commanding officer.

4. C.O.

- a. On being advised that a regular member has engaged in, ^{is} ~~is engaging in or may engage in~~ homosexual behaviour, discreetly inquire into the facts of the situation using, when necessary, the offices of the Health Services officer for your division.
- b. If your inquiry tends to substantiate the initial report, have an investigation conducted of the circumstances by a member senior in rank to the member being investigated.
- c. If you believe it necessary or the member so requests and the Health Services officer so recommends refer the subject for psychiatric examination.

5. Investigator

Conduct a thorough and discreet investigation into the situation and submit a complete report directly to the C.O.

6. C.O.

- a. If the investigation indicates that there are reasonable grounds to believe that a member has engaged in, ^{is} ~~is engaging in or may be engaging in~~ homosexual behaviour, serve the member with a "Notice of Intent to Recommend Discharge". For service of documents see Appendix "B".
- b. The Notice of Intent shall include:
1. a statement of the basis upon which the Commanding Officer makes his/her recommendation to discharge. Attach copies of all documenta-

6. b.
 1. tion appropriately indexed and marked F-1, F-2, etc., to denote Force tendered documents in support of the recommendation;
 2. advice that the member served with a Notice of Intent may, within 7 days after the day the member is served with the Notice, send to the C.O. a request in writing for a review of his/her case by a Discharge Board in the official language of the member's choice;
 1. If the member does not submit a request in writing for a review of his case prior to the expiration of the 7 day period, the member's silence shall be construed to mean that he/she does not wish such a hearing, and a recommendation will be made to the Commissioner for final determination.
 3. advice that the member and/or the member's representative may attend the hearing and make oral or written representation;
 4. advice that if the member wishes to call witness, he/she must supply a list of the witnesses along with a brief account of the testimony expected from each; and
 5. advice that should the member neither wish to request a hearing, nor be discharge, then he/she may resign from the Force. Any such decision will be that of the member, and no pressure will be applied to force the member to resign.
- c. Forward the original and a copy of the Notice, together with a completed certificate of service, (see Appendix "A") to the O i/c Internal Affairs Branch, as soon as possible after service has been effected.

7. Member

- a. On being served a "Notice of Intent to Recommend Discharge", you have seven days to request a review of the C.O.'s recommendation by a Discharge Board. Send your request to your C.O.

7. a. 1. Failure to request a review within the seven day time period will be construed to mean that no review is desired and the recommendation will be forwarded to the Commissioner for final determination.

b. Representation

1. You may be represented or assisted before a discharge hearing by any member except:
 - a. members of a Discharge Board,
 - b. members of Complaint and Internal Investigation Section,
 - c. any member involved in the investigation of any contravention of Section 25 or 26 of the Act under review in relation to a member subject of such review,
 - d. members of any Discipline Section or Internal Affairs Branch,
 - e. officers in the member's chain of command, or
 - f. any member called or reasonably expected to be called as a witness in the matter before the Board.
2. The restrictions imposed by 7.b.1.a., b., c. and d. above, shall apply for a period of two years subsequent to the removal of such members from those duties identified; unless the member is posted to duties specifically requiring him/her to represent members on a full time basis.
3. You are encouraged to seek the assistance of a representative as soon as possible following the service of the Notice of Intent. This will then ensure that your interests are fully protected and informed decisions can then be made with respect to the selection of witnesses required, further documentation, etc. Make all requests for a member representative through channels.

7. b. 4. After selecting a member representative, notify your Commanding Officer of the representative's name.

8. C.O.

- a. Forward the member's request for a review by a Discharge Board to the Commissioner ATTN: IAB immediately it is received by the member.
- b. A member's request for his/her choice of representative shall be granted unless the member so requested cannot be made available due to exigencies of service or other reasonable cause.
- c. A legally trained member will be provided by Internal Affairs Branch to represent your interest before the Board.

9. D/Commissioner (A) or D.O.P.

- a. The appointment of Discharge Boards shall be made by:
 - 1. the D/Commr.(A.) for special constables and civilian members appointed to positions which are level designated at the senior management level, and above (see App. II-4-15 of the Admin. Manual); and
 - 2. the D.O.P. for all other members.
- b. The D/Commr., (A), or the D.O.P., as the case may be:
 - 1. shall within seven days after the date a request for a review is received by Internal Affairs Branch, appoint an officer, who shall constitute the Board to conduct the requested review.
 - 2. shall cause to be personally served, upon the member requesting the review, a notice in writing setting out the name of the officer appointed as the Board.
 - 3. may revoke the appointment of the Board and appoint a new Board prior to the hearing date

9. b. 3. where the officer constituting the Board is unable to continue as the Board.

10. Discharge Board

a. Preliminary Matters

1. Prior to reviewing the case in respect of which you were appointed, you will be provided by IAB with the written or documentary evidence that the member requesting the review had served upon him/her.
 - a. Review all documentary evidence placed before you (either by the member or by the Commanding Officer).
 - b. Consider the member's petition to allow witnesses (those considered essential to a full and fair hearing should be allowed). Any decision respecting denial of any witnesses and reasons therefor shall form part of the written record or the hearing.
2. Set the place, date, and time for the Discharge hearing. The hearing for which the Board was appointed must be conducted within six weeks of the Board's appointment.
3. Notify members who will be witnesses of the date, time and place and direct them to appear.
 - a. Forward copy of the notification to the member's CO/director.
4. Have personally served on the member a copy of your decision concerning witnesses, reasons for any denial and the date, time and place of hearing (such date to be not less than seven days following this service). At the same time forward a copy of this correspondence to Headquarters, ATTN: OIC IAB.
5. You may request that the information or material contained in any document filed or presented pursuant to this bulletin be made more complete or specific.

10. b. Hearing Procedures

1. General

- a. After providing the member due notice, as provided in 10.a.4., convene to review the matter in respect of which the Board was appointed, and for that purpose give the member requesting the review a full and ample opportunity to appear before you either in person or through a representative and to:
 1. make representation to the Board;
 2. present documentary evidence to the Board;
 3. with your permission, call witnesses before the Board.
- b. Notwithstanding any other provision of this bulletin, where a member who has requested a review of his/her case by a Discharge Board, is unwilling to appear in person before the Board, you shall adjourn the hearing and forward all documentation to the Commissioner for final determination.
- c. In any Discharge proceeding, the civil standard of proof, that is "a balance of probabilities", shall apply.
- d. The strict rules of evidence will seldom, if ever, apply to hearings held under the provisions of this bulletin. This does not, however, relieve you from the responsibility of acting only on evidence which has cogency at law. You may consider any evidence, oral or written, as long as it is relevant to the issues in the hearing.
- e. Although you are granted wider discretion than a court of law in the area of evidentiary matters, you must be constantly aware of and cautious about relying on evidence that is mostly hearsay or documents of dubious value.

10. b. 1. f. Where any matter arises during the course of any proceeding before the Board which is not provided for by this bulletin, you may deal with in such manner as you deem appropriate.
- g. No proceeding under this bulletin is invalid by reason only of any defect in format or of any technical irregularity that does not affect the substance of the form or notice. If you are of the opinion that the member who is subject of the hearing will not be prejudiced in the presentation of his/her representation by an amendment, you may make such order for the amendment of the notice or form as you consider necessary to meet the circumstances.
1. Such an amendment shall be endorsed on the form or notice and signed and the hearing shall proceed as if the notice or form had been originally drawn as amended.
- h. Handle all proceedings as informally and expeditiously as the circumstances and considerations of fairness permit.
- i. For the purposes of section 16 of the Canada Evidence Act, proceedings before a Discharge Board are legal proceedings.
2. The Setting
- a. Uniformed personnel who are called as witnesses at a hearing shall wear the service order of dress in effect at the time, in the locale where the hearing is being conducted. The member who is the subject of the hearing shall have the option of wearing uniform or civilian clothing.
3. Hold the hearing in private except that:
- a. When a juvenile is called to testify at the hearing, his/her parent or guardian may attend the hearing when the juvenile testifies.

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10. b. 3. b. You may authorize, in concurrence with the member subject of the hearing, a member to attend the hearing as an observer for the purpose of becoming familiar with the procedures under this bulletin.
 - c. You may authorize a specified technician to attend the hearing for the purpose of operating recording equipment.
 4. Swear the stenographer in the following terms:

"I swear that I will, to the best of my ability, truly record the evidence to be given before this Board and such other matters as may be required and will deliver to the Board a true transcript of the same. So help me God."
 5. Read to those present the statement of unsuitability contained in the Notice of Intent.
 6. Allow the member to speak to any decision respecting his petition for witnesses. Should you reverse your decision in respect of a previous decision not to allow a witness, the hearing must be adjourned to allow for the attendance of that witness.
 7. If it is proposed to have an interpreter, swear the interpreter in the following manner:
 8. "I swear that I will, to the best of my ability, truly interpret and translate as I shall be required to do. So help me God."
 9. Before the presentation of oral evidence by a witness, swear such witness in the following manner:

"I swear the evidence to be given by me shall be the truth, the whole truth and nothing but the truth. So help me God."
 10. If any objection is made to any of the oaths, and you are satisfied with the sincerity of the objection or that any oath would have no

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10. b. 10. binding effect on the conscience of the person then a solemn affirmation shall be deemed sufficient.
 - a. The form of a solemn affirmation shall be as prescribed for the appropriate oath but the words "I solemnly affirm" shall be substituted for the words "I swear" and the words "So help me God" shall be omitted.
 11. When a question is objected to on the grounds of substance or form or the witness claims privilege, the witness need not answer the question until your decision as to the objection has been announced.
 - a. After announcing your decision, a witness shall answer the question unless the objection or the claim has been allowed.
 12. Witnesses may be examined by:
 - a. a representative of either party;
 - b. the Board; or
 - c. the member who is the subject of the hearing, but only if the member is not represented.
 13. Have all proceedings recorded by a competent stenographer supplemented by recording equipment.
 14. If clarification of any evidence or matter must be sought outside the hearing, or additional witnesses are required, adjourn the hearing and request the commanding officer to obtain the necessary clarification or member witnesses. Notwithstanding, you may, if you consider it advisable, adjourn the hearing for such time and to such place, and upon such terms as you consider necessary.
 15. If a member requests a voluntary discharge through either retirement or resignation during discharge proceedings:

10. b. 15. a. Adjourn the hearing and once discharge has been effected, the proceedings shall be deemed concluded.
- b. Transcripts of the proceedings up to the adjournment shall be typewritten and sent through channels to Headquarters, ATTN: OIC Internal Affairs Branch.
16. After hearing all oral evidence and representation, adjourn the hearing to consider all evidence taken before you.
17. After considering the evidence, decide whether or not the Commanding Officer's recommendation has been supported by the evidence. Then:
 - a. whenever possible, after a brief adjournment, render an immediate oral decision with a written decision to follow within two weeks, or
 - b. where an immediate decision is not possible, adjourn the hearing and render a written decision:
 1. within two weeks after the hearing if a transcript of the proceedings is not required, or
 2. within four weeks after the hearing if a transcript of the proceedings is required.
18. Render your decision and include in the decision:
 1. a statement of your findings on questions of fact material to the decision.
 2. reasons for the decision, and
 3. your recommendation.
19. Where you decide that the Commanding Officer's recommendation has been supported by the evidence recommend that the member be discharged.

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10. b. 20. Where the evidence does not support the commanding officer's recommendation, direct that the member be retained in the Force.
21. Send your decision and the following attachments to the Commissioner ATTN: OIC Internal Affairs Branch, and two copies of the decision without attachments to the commanding officer, and one copy without attachments to the member:
- a. the original "Notice of Intent" to recommend Discharge;
 - b. all documentation supplied to the Board by:
 - 1. the commanding officer, and
 - 2. the member or his representative.
 - c. written decisions and reasons therefor respecting witnesses denied the member by the Board;
 - d. any written representation on behalf of the member;
 - e. a complete certified copy of the transcript of the proceedings.
22. Have personally served on the member whose case was reviewed by the Board, a copy of the Board's decision (without attachments).
23. The original transcript of the Discharge Board hearing shall be forwarded direct to the Board. You will subsequently forward the original transcript to the OIC Internal Affairs Branch.

11. Commr.

- a. Consider the recommendations and make a determination on the members suitability.
- b. Any such decision shall be in writing and shall be personally served on the member.

12. Member

On service of the "Notice of Intent to Recommend Discharge", you have seven days in which to make written representations to the Commissioner with respect to the recommendation. Receipt of your written representations by your C.O. will constitute receipt by the Commissioner.