

DISCHARGE FOR
HOMOSEXUALITY

STANDING ORDER
APPROVED

COMMISSIONER

DATE: _____

Comment: The title of the CSO focuses on homosexuality whereas the rationale in the Aide-Mémoire is primarily based on behavioural manifestations of this kind of sexual preference (see in particular paragraph 16 in the Aide-Mémoire).

Suggested Wording: Discharge for
Homosexual Behaviour

1. Regular Members

1.a. General

1.a.1. Regular members of the Force who are homosexual are not suitable for continued service in the Force and may be recommended for discharge under Regulation 74, RCMP Regulations.

Comment: The focus of the unsuitability should be the "behaviour" rather than the state of homosexuality. First, the unsuitability of homosexual behaviour is more supportable from a policy justification standpoint. Furthermore, it is easier to "evidence" homosexual behaviour rather than homosexuality in general. This is particularly true in establishing a member is "unsuitable for duties" under Regulation 74 or "other grounds of unsuitability" within the meaning of S.45.2(2) of the previously proposed amendments to the RCMP Act (Bill C-13).

Suggested Wording:

1.a.1 Homosexual behaviour on the part of a regular member may give rise to circumstances where the member's continued service in the Force may not be in the best interests of the Force or the member involved. In such circumstances, the member may not be suitable for continued service and may be recommended for discharge.

1.a.2. This bulletin outlines the procedures for recommending the discharge of homosexuals.

Comment: Since the procedures call for investigation and review, it seems the wording in this paragraph should be broader. The addition of "where warranted" removes one aspect of the overall discriminatory nature of the CSO by adding an element of discretion.

CSO

ANALYSIS

Suggested Wording:

1.a.2 This bulletin outlines procedures for recommending the discharge of members for homosexual behaviour where warranted.

Comment: The use of the word "investigation" suggests an offence oriented inquiry. While homosexual behaviour may be unsuitable in the Force, it is neither necessarily illegal nor immoral. Therefore, it is suggested that the term "review" which is less formal, be used in place of "investigation".

The concern about the impact of such a review should focus on the member's right to natural justice and privacy.

Suggested Wording:

1.a.3 Any review by the Force of the homosexual behaviour of a member must be carefully managed to ensure that the rights of the individual are respected. Those conducting the review should be sensitive to the personal and confidential nature of the behavior in question. It is essential that those conducting the review remember that homosexual behaviour is not illegal and conduct themselves accordingly.

1.a.3. Any investigation into homosexual activities must be carefully managed to ensure innocent persons are not made to suffer. It should be borne in mind that the member being investigated may be the object of malice and therefore it is essential all investigations cause the subject minimal embarrassment.

Comment: It would appear that this paragraph is required because this Standing Order will be published in the form of an Administrative Bulletin. All CSOs are made pursuant to subsection 21(2) of the RCMP Act.

Suggested Wording:

1.a.4 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 ... of the Commissioner.

1.a.4 This bulletin shall be a Commissioner's Standing Order, notwithstanding it is not the usual format for a CSO and is made pursuant to the RCMP Act, Section 21(2). No changes, amendments or revisions shall be made in any manner

CSO

ANALYSIS

whatsoever to this bulletin or its appendices without the express approval of the Commissioner.

1.b. Definitions

1.b.1. For the purpose of this bulletin, the words: "homosexual" means one who has a sexual propensity for persons of one's own sex.

Comment: Continue the emphasis on homosexual behaviour.

Suggested Wording:

1.b.1. For the purpose of this bulletin, the words "homosexual behaviour" mean acts of a sexual nature engaged in by one person with one or more other persons of the same sex.

1.c. All Members

1.c.1. If you become aware or suspect a regular member of the Force is a homosexual, discreetly report the matter to your C.O. through channels.

Comment: Two issues should be addressed in this paragraph. Firstly, because of the serious consequences which can result from accusing a member of homosexual behaviour, it is imperative that such reporting be based on more than mere suspicion. Furthermore, in an effort to respect the private and confidential nature of the situation, the initial report should be made directly to the Division Staffing Officer.

Suggested Wording:

1.c.1. If you have reasonable grounds to believe a member of the Force is engaged in homosexual behavior, discreetly report the matter directly to the Division Staffing Officer.

1.d. Division Staffing Officer

1.d.1. After an initial assessment of the information provided concerning the homosexual behaviour of a member, advise the C.O.

(Note the consequential changes to the paragraph numbering.)

CSO

ANALYSIS

At this point, the allegations have been determined to be founded on "reasonable grounds" by the member and have been assessed by the D.S.O., it is left for the C.O. to have a formal but discreet review conducted. This review by a person with senior rank should determine the facts and so advise the C.O.

There is no need to mention the Health Services Officer. The comments on paragraph 1.d.2.2. apply.

1.d.1.

Comment: In the interest of consistency, continue the emphasis on homosexual behaviour, and change "investigation" to "review".

1.d. C.O.

Suggested Wording:

1.d.1. On advice a regular member is homosexual discreetly inquire into the allegation using, where necessary, the office of the Health Services Officer for your division.

1.e. C.O.

1.e.1 On advice that a regular member is engaging in homosexual behaviour, have a review conducted into the allegations by a member of a senior rank to the member in question to substantiate the allegations.

1.d.2. If your inquiry tends to substantiate the initial report:

1.d.2.1. have an investigation conducted into the allegation by a member of senior rank to the member being investigated.

CSO

ANALYSIS

1.d.2.2. If you believe it necessary or the member so requests and the Health Services Officer so recommends refer the subject for psychiatric examination.

Comment: There is no medical evidence to suggest that homosexuality is necessarily a psychiatric disorder and to include this provision may give rise to future difficulties in any challenge of this directive. It also betrays a bias against homosexuals which our recommended focus on homosexual behaviour rendering a member unsuitable for service seeks to avoid.

Suggested Wording:

Eliminate this paragraph.

1.e. Investigator
1.e.1. Conduct a full and discreet investigation into the allegation and submit a full report directly to the C.O.

Comment: Replace "investigation" with the term "review". Continue the emphasis on behavior.

Suggested Wording:

1.f Member conducting review

1.f.1 Conduct a full and discreet review of the allegations of homosexual behavior and submit a full report directly to the C.O.

1.f. C.O.
1.f.1. If the investigation indicates with reasonable certainty that a regular member is a homosexual, serve the member with a "Notice of Intent to Recommend Discharge" and send copies of all material to the Commissioner, Attn: OIC Internal Affairs Branch.

Comment: Replace "investigation" with the term "review".

Since the ramifications of a review for the member may be serious both professionally and personally, it is important that the allegations of homosexual behavior are based on sufficient evidence and supportable material.

Also, provision should be made for the situation where insufficient evidence is available upon which to justify discharge i.e., C.O. discussing report with member.

CSO

ANALYSIS

Suggested Wording

1.g. C.O.

1.g.1 If the review confirms that a member is engaging in homosexual behavior which renders his continued service not in the best interests of the Force or the member involved, serve the member with a "Notice of Intent to Recommend Discharge", including particulars upon which recommendation is based.

(See following for paragraph 1.g.2)

1.g.5 If insufficient evidence is available upon which a discharge can be justified, an interview may be conducted with the member in order to discuss the findings of the report.

1.g.6 Send all material to the Commissioner, Attn: OIC Internal Affairs Branch and advise action taken.

1.f.2. Advise the member he has seven days in which to make written representation to the Commissioner through you.

1.g. MEMBER

1.g.1. On service of the "Notice of Intent to Recommend Discharge", you have seven days in which to make

Comment: The procedure established under this section is extreme in comparison with procedures for discharge in other contexts.

In situations where it is concluded that the member is unsuitable for continued employment, he or she should be entitled to the minimum guarantees of natural justice in keeping with the current trends in administrative law.

Therefore it is suggested that

i) under the current Act that a discharge board be convened pursuant to Regulation 70(1). As well, the decision of the discharge board should be appealable to the Commissioner in keeping with the existing practice in such matters.

CSO

ANALYSIS

written representation to the Commissioner. Receipt of your written representation by your C.O. will constitute receipt by the Commissioner.

1.g.2. Should the Commissioner accept the recommendation for discharge, you will have seven days from the date of notification to request your discharge from the Force. Should you not do so, you will be discharged from the Force as unsuitable on the eighth day, or in the case of an officer on the date as ordered by the Governor-in-Council.

1.h.C.O.

1.h.1. On receipt of the members written representation, or on the eighth day, if no representation is submitted, forward the Notification, written representation and all other investigative or related materials to the Commissioner, Attn: OIC Internal Affairs Branch.

ii) under the proposed amendments to the RCMP Act consideration should be given to including homosexual behaviour as one of the "other grounds" for discharge to be elaborated by the Governor in Council pursuant to an amended section 21(1). This will involve only the minimum procedure and avoid the more involved procedure for unsuitability in the Discharge and Demotion part of the proposed Bill.

In keeping with the practice within the Force, the discharge board should be ordered at the member's request, or where no such request, at the option of the C.O.

Suggested Wording:

1.g.2. Advise the member that a discharge board will be ordered if so requested by him.

1.g.3. Where the member requests, or where appropriate in the circumstances, order that a discharge board be scheduled as soon as possible and advise the member of the date and of his right to make representations to the discharge board.

1.g.4. Where no discharge board is ordered, immediately forward the notice and all other material to the Commissioner, Attention: OIC Internal Affairs Branch.

1.h. Member

1.h.1. Upon service of the "Notice of Intent to Recommend Discharge" review same and decide whether to request a discharge board.

1.h.2. Where a discharge board is requested and ordered and when served with the date for the discharge board, prepare any representations you may wish to make to the discharge board.

CSO

ANALYSIS

1.h.3. Attend a discharge board hearing.

1.h.4. Where no recommendation for discharge is made, make yourself available to discuss the findings of the report with the C.O., if invited to do so.

1.i. Discharge Board

1.i.1. Conduct a suitable inquiry into the recommendation for discharge and based on your findings, make the appropriate recommendation to the Commissioner.

1.i.2. Advise member of your recommendation, and where you have recommended discharge, advise the member of his right to appeal to Commissioner within 7 days.

1.j. Member

1.j.1. Any appeal of the Discharge Board recommendation must be made within 7 days. Receipt of your written appeal by your C.O. will constitute receipt by the Commissioner.

1.k. Commissioner

1.k.1 Upon receipt of the appeal by the member or on the eighth day after receipt of the recommendation of the discharge board, if no appeal is submitted, consider that recommendation, together with the Appeal where appropriate, and make a decision with respect to the member's discharge.

1.k.2 With respect to an officer, make a decision concerning a recommendation for discharge.

2. CIVILIAN MEMBERS
AND ALL OTHER
EMPLOYEES

2.a. C.O.

Comment: In the interests of consistency the focus should be on homosexual behaviour. The comments on paragraphs 1.a.1 and 1.a.3 "behavior" and "review" respectively apply to this part.

CSO

ANALYSIS

2.a.1. When it is brought to your attention that an employee, other than a regular member, is a homosexual, discreetly inquire into the allegation using, when necessary:

2.a.1.1. the Health Services Officer;

2.a.1.2. your internal investigation section.

2.a.2. Report your findings with your recommendations to this Headquarters.

Suggested Wording:

When it is brought to your attention that an employee is engaging in homosexual behaviour and where warranted by the circumstance, conduct a discreet review into the situation.

Eliminate this paragraph.

Eliminate this paragraph.

No change.