

The Complaint Process and Frequently Asked Questions

The police have special powers to enforce the law and restrict the free movement of citizens. Occasionally, conflicts between the public and the police may arise. It is important that the public gives feedback to improve the service the police provide to our communities. Members of the public may file a complaint against a municipal or regional police officer if they believe the officer acted improperly. The Commission also hears complaints from people who are concerned about municipal or regional police services or any other aspect of policing in New Brunswick.

The New Brunswick Police Commission is independent and investigates complaints about the conduct of police officers who are members of municipal or regional police forces and assesses the adequacy of policing anywhere in the province. It also oversees the resolution of policy and service complaints.

The New Brunswick Police Commission is committed to ensuring that your complaint will be thoroughly investigated, and that your rights and the rights of the police officers concerned are protected.

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Definitions

Code - *Code of Professional Conduct Regulation –Police Act*

Chief of Police - A police officer in charge of a police force, an acting chief of police and a police officer designated by the chief of police to act on his or her behalf.

Civic Authority - A board, joint board or, where a board or joint board has not been established, a mayor & council, or any person designated by the civic authority to act on their behalf. For example, the Civic Authority for the Kennebecasis Regional Police Force is the Kennebecasis Regional Joint Board of Police Commissioners; Fredericton is the Chief Administrative Officer of the City of Fredericton (delegated by the Mayor & Council); and Bathurst is the Mayor & Council.

Complainant - The person who files a service or policy complaint or a conduct complaint against a police officer.

Conduct complaint - A Conduct complaint is when a complainant is alleging that the conduct of a police officer was not appropriate (example: an officer is alleged to have used excessive force while arresting a complainant). For a complaint to be considered a conduct complaint the officer must allegedly have breached one or more of the items found in s. 35 of the *Code of Professional Conduct – Police Act*.

Commission – The New Brunswick Police Commission

Informal resolution - A way to resolve complaints between the chief of police and police officer in a way both consider being a fair resolution, which will help to ensure higher standards of conduct in the future.

Police Officer - A police officer appointed pursuant to the *Police Act*, but does not include a member of the Royal Canadian Mounted Police, an auxiliary police constable or a retired police officer.

Policy complaint - A Policy complaint is when the complainant is alleging that the policy of a police force is either ineffective or non-existent (example: an officer is alleged to have conducted personal business while in uniform and no policy is in place to address this).

Service complaint - A Service complaint is when the complainant is alleging that the police force or officer failed to provide them with service or an inappropriate level of service (example: an officer is alleged to have taken a longer than reasonable amount of time to respond to a call for service).

Summary Dismissal - The chief of police may summarily dismiss a conduct complaint, in whole or in part if, in the opinion of the chief of police, the complaint or part of the complaint is frivolous, vexatious or not made in good faith.

General Information

Q. What is a complaint?

A. Complaints generally have to do with the actions or inactions of a police officer or police force that affected you personally or that you witnessed. Most complaints are about police actions that may affect public trust.

Q. Who can make a complaint against the police?

A. Any member of the public can make a complaint against the police. A parent or guardian may file a complaint on behalf of a person who is under the age of 18. Where the person affected is mentally incompetent, a parent or guardian may file the complaint on the person's behalf.

Q. Is my complaint under the *Police Act* confidential?

A. The subject officer of your complaint will receive a copy of the complaint. If the chief of police, civic authority or the Commission determines that your complaint is not frivolous, vexatious or not made in bad faith and that the complaint cannot be dealt with through informal resolution, an investigator appointed under the *Police Act* will be provided with a copy of your complaint. If your complaint involves allegations of a criminal nature and a criminal investigation is undertaken, additional disclosure will be required as necessary in the criminal investigation/proceedings.

If your complaint proceeds to an arbitration hearing the hearing will be open to the public unless the Chair of the New Brunswick Police Commission, in accord with the *Police Act*, decides to close the hearing to the public. You could be called as a witness at a hearing about your complaint. The Commission publishes all arbitration hearing decisions on its website unless the proceedings have been closed to the public.

The Commission is subject to the strict privacy requirements set out in the New Brunswick *Right to Information and Protection of Privacy Act* and will not disclose any information related to your complaint except as required by the *Police Act*.

Filing a Complaint

Q. When should a person file a complaint?

It is important that the complaint be filed as soon as possible after the incident. Timeliness will improve the chances of assembling reliable testimony and may assist in a speedier resolution of the matter.

Q. Is there a time limit to file a complaint?

A. Your complaint must be filed no more than 12 months after the incident occurred. If your complaint exceeds this time limit, please contact the Commission.

Q. How do I file a complaint?

A. The complaint must be made in writing and filed with the Chair of the Commission or with the appropriate chief of police or civic authority.

You can complete the Commission's online complaint form; send an e-mail or letter to the Commission with all the details of your complaint; download/print a complaint form and submit it by fax, e-mail, mail; or submit your complaint in person at our office.

Forms will be sent by mail to complainants who request them by letter or telephone.

Q. If I file my complaint at a police station, how will it get to the Commission?

A. Police stations must accept complaints at the time they are submitted and should not request that a complainant come back at another time. If a complaint is filed with a chief of police (at a police station) or civic authority, they must provide a copy of the complaint to the Commission in a timely manner.

Q. What if I need help completing the complaint form?

A. The chief of police, civic authority or Commission, as the case may be, will provide you with any information or assistance (within reason) you require in filing the complaint.

Q. What language should I file my complaint in?

A. Complaints are accepted in both of New Brunswick's Official Languages, English and French.

Q. Can I file an anonymous complaint?

A. No, anonymous complaints will not be accepted and must always be in writing. Complainants must identify themselves when submitting a complaint so that a fair and transparent investigation can be conducted.

Q. Can I withdraw my complaint after I file it?

A. A complainant may, at any time, file a written notice of withdrawal of a complaint with the chief of police, civic authority or Commission, as the case may be. Notwithstanding the withdrawal of a complaint, the Commission, chief of police or civic authority may choose to process the complaint.

Who Can I File a Complaint About

Q: Can I file a complaint about a Chief or Deputy Chief of police?

A: Yes, file your complaint with the Commission or civic authority. For the purposes of this document, and references to a police officer or subject officer also apply to the chief of police with the necessary changes.

Q. Can I file a complaint about an off-duty police officer?

A. Yes, file your complaint and the chief or Commission will determine if the off-duty conduct constitutes a breach of the *Code*.

Q. Can I file a complaint about a retired police officer?

A. No, unfortunately the Commission has no jurisdiction over retired police officers even if the incident occurred while they were employed as a police officer.

Q. Can I file a complaint against an auxiliary police officer?

A. No, the complaint division of the *Police Act* does not apply to auxiliary police officers. Please contact the appropriate chief of police.

Q. Can I file a complaint against an RCMP officer with the Commission?

A. No, the New Brunswick *Police Act* complaint process does not apply to the RCMP. Complaint about/against the RCMP can be sent to the Civilian Review and Complaints Commission for the RCMP.

Characterization of a Complaint

Q. What are the types of complaints?

A. Your complaint will be characterized as a conduct, service or policy complaint, or any combination thereof. For explanations of each complaint type, please see the Definitions section.

Q. Who characterizes a complaint?

A. If you filed your complaint with the chief of police or civic authority, they will characterize it and the Commission will review the characterization decision and either confirm or rescind that decision. If your complaint is filed directly with the Commission, we will characterize it.

Q. What if I disagree with the characterization of my complaint?

A. Address your concerns to the Commission. We will consider your concerns and make a final decision on the characterization of your complaint. Any decision made by the Commission with respect to the characterization of a complaint is final.

Service/Policy Complaints

Q. Who will get a copy of my service/policy complaint?

A. The Commission, the chief of police and the civic authority which has authority over the police force.

Q. Who will review my service/policy complaint?

A. The civic authority will refer the complaint to the chief of police for whatever action is considered appropriate, or the civic authority will retain the complaint and, in consultation with the Chief of Police, take whatever action is considered appropriate.

Q. How long will it take for my complaint to be resolved?

A. There is no statutorily-defined timeline for the completion of service and/or policy complaints; however, the Commission requests that the chief or civic authority make best efforts to complete these complaints within six months.

Q. How will my complaint be resolved?

A. Service/policy complaints are dealt with by the civic authority and do not bare consequences other than to be resolved by changing an existing service or policy, developing a new policy or service or simply informing the person of the pertinence and adequacy of the existing policy and service level.

Conduct Complaints

In this section, any reference to the chief of police or civic authority applies to the Commission if the Commission has assumed the processing of a complaint. Any references to police officer also apply to a chief or deputy chief of police if the complaint is concerning the conduct of a chief or deputy chief of police.

Q. Who will process my conduct complaint against a police officer?

A. The appropriate chief of police.

Q. Who will process my conduct complaint against a chief or deputy chief of police?

A. The civic authority.

Q. Can the Commission process a conduct complaint?

A. In exceptional circumstances, if the Commission considers it to be in the public interest, it may, at any time before an arbitrator has been appointed, process a conduct complaint or take over from a chief of police or civic authority the processing of a conduct complaint.

Q. Can the Commission or Chief of Police begin an investigation into a specific incident if no complaint has been filed?

A. Yes, the *Police Act* states "A chief of police may, on his or her own motion, and shall, on the request of the Commission, examine the conduct of a police officer, whether or not a conduct complaint is filed."

Q. How long will it take for my complaint to be resolved?

A. The period of time between the filing of a conduct complaint and the date the chief of police serves the police officer with a notice of settlement conference (if applicable) under section shall not exceed six months.

This timeline can be suspended if there is a criminal investigation or proceedings relating to the complaint; the file will remain suspended until the criminal investigation/proceedings are complete.

Resolution of Conduct Complaints

Summary Dismissal

Q. My complaint was summarily dismissed after it was forwarded to the chief of police for investigation. What does this mean?

A. The chief must have reasonable grounds to believe that no misconduct occurred; if reasonable grounds do not exist, the complaint will be summarily dismissed as unsubstantiated. Complaints will only be summarily dismissed following a complete and thorough review and the Commission will review the results of all summarily dismissed files.

Q. What happens if the Commission agrees with the chief of police and finds that my complaint is unsubstantiated?

A. If the Commission reviews your complaint, and is in agreement with the chief of police that your complaint is unsubstantiated, your complaint will be considered closed. Once your complaint is closed, you cannot make a complaint about the same incident again.

Q. What happens if the Commission disagrees with the chief of police and finds that my complaint is substantiated?

A. If, upon review of your complaint, the Commission finds that your complaint has wrongly been summarily dismissed; the Commission will issue a directive to the chief of police to proceed with the processing of the complaint.

Q. What is a frivolous complaint?

A. A complaint that is frivolous may be a complaint that is trivial or lacks an air of reality. Frivolous complaints may assign blame where there is none.

Q. What is a vexatious complaint?

A. A vexatious complaint may be one that is made out of anger or the desire to seek retribution. Vexatious complaints may lack a reasonable purpose or may be made with the intention to harass or annoy. Vexatious complaints may be repetitive such as filing the same complaint numerous times after a previous complaint was closed, or filing repeated complaints about the same person.

Q. What is a 'bad faith' complaint?

A. The chief of police may determine that a complaint was made in bad faith if there is clear evidence that the complaint was made for an improper purpose or with a hidden motive. A bad faith complaint may be made with the intention of deceiving the Commission or police force.

Q: Can I be charged if I file a complaint that is deemed frivolous, vexations or not made in good faith?

A: Yes, the *Police Act* states that no person shall knowingly make a false or misleading statement when filing a complaint, file a complaint that is made in bad faith or prevent, hinder, obstruct or interfere with a person filing a complaint. Any person who does so commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category F offence.

Informal Resolution

Q. What is informal resolution?

A. Informal resolution is a way to resolve complaints between the chief of police and police officer in a way both consider being a fair resolution, which will help to ensure higher standards of conduct in the future.

Q. What are the benefits of informal resolution?

A. Informal resolution may be beneficial to both the complainant and the respondent officer by encouraging dialogue, exploring alternative perspectives and promoting understanding between the parties.

Q. What are some possible outcomes of informal resolution?

A. Informal resolution may include an apology, an explanation by a senior member of the police service, referral to education, training or mediation.

Q. Will I be informed of the results of the informal resolution?

A. When a complaint is resolved informally the details will be sent to the complainant.

Q. Will the informal resolution appear in the officer's disciplinary record?

A. Complaints that are resolved through informal resolution will not result in an entry in the service record of discipline of the subject police officer.

Q. My complaint was resolved informally but I disagree with the results, what can I do?

A. You may request the Commission review the results within 14 days. If the Commission reviews your complaint, and is in agreement with the action taken by the chief of police, your complaint will be considered closed. If, upon review of your complaint, the Commission finds that the results of the informal resolution were not appropriate the Commission will issue a directive to the chief of police to proceed with an investigation into the complaint.

Q. What if I disagree with the decision of the Commission?

A. The decision of the Commission is final.

Investigation

Q. I was advised an investigator was appointed to investigate my complaint. What does this mean?

A. A chief of police will proceed with an investigation into a conduct complaint if the chief and police officer are unable to agree on an appropriate informal resolution, the chief determines an attempt at informal resolution is not appropriate, or the Commission orders an investigation.

Q. Who will investigate my complaint?

A. The chief of police will appoint an investigator within their police force that is of a higher rank than the officer(s) being investigated, a member of another municipal or regional police force in New Brunswick that is a higher rank than the officer(s) being investigated or an investigator from the Commission's list of investigators.

Q. What is the Commission's list of investigators?

A. The Commission establishes and maintains a list of persons who are knowledgeable in investigative techniques and procedures and have indicated a willingness to act as a *Police Act* investigator.

Q. What if I don't think an adequate investigation was conducted?

A. Address your concerns to the Commission. If the Commission is in agreement, we will order a new investigation.

Q. What happens once an investigation is complete?

A. Once the chief of police has reviewed the investigation report, the chief will either take no further action if the investigation determined there was not sufficient evidence that the officer committed a breach of the *Code* or proceed to a settlement conference if there was sufficient evidence the officer committed a breach of the code.

No Further Action

Q. The chief of police told me that “no further action” would be taken with respect to my complaint. What does this mean?

A. This means the investigation determined that there was not enough evidence that the officer engaged in misconduct. No further investigation will be conducted and no disciplinary actions will be taken against the officer.

Q. I disagree with the decision to take no further action, what can I do?

A. You may request that the Commission review the decision. Although the *Police Act* is silent on the time limit to request the Commission to carry out such a review, we have adopted a policy consistent with other provisions of the *Act* and grant a period of 14 days for the complainant to make this request.

Upon review, we will either confirm the decision of the chief of police and close the file or rescind the decision to take no further action and order the chief to proceed to a settlement conference.

Settlement Conference

Q. What is a settlement conference?

A. A settlement conference is an opportunity for an officer to respond to the alleged breach of the *Code* and to reach an agreement with the chief, civic authority or the Commission concerning disciplinary and corrective measures. Typically, disciplinary and corrective measures seek to correct and educate the member of a police force who is alleged to have committed a breach of the *Code* rather than to blame and punish.

Q. Who attends the settlement conference?

A. The parties to a settlement conference are the police officer and the chief of police. The police officer may choose to attend the settlement conference with a representative.

You, as the complainant, may attend and make representations at a settlement conference and may be accompanied by a support person of your choice; however, the support person may not make representations on your behalf without the consent of the parties.

While you will be invited and can attend the settlement conference, the chief is not obligated to allow you to stay for the duration.

Q. What disciplinary and corrective measures can be imposed at a settlement conference?

A. The chief and police officer can agree to one or any combination of the following disciplinary and corrective measures: a verbal reprimand; a written reprimand; a direction to undertake professional counseling or a treatment program; a direction to undertake special training or retraining; a direction to work under close supervision; a suspension without pay for a specified period of time; a reduction in rank; or dismissal.

Q. What happens if the police officer and chief fail to reach a settlement?

A. The chief of police will serve the officer with a notice of arbitration hearing.

Q. What happens if the police officer does not attend the settlement conference?

A. The chief of police will serve the officer with a notice of arbitration hearing.

Q. Will I be notified of the settlement that was reached?

A. Yes, the chief will provide you with a copy of the letter of settlement.

Q. I disagree with the settlement that was reached, what can I do?

A. You may request that the Commission review the settlement within 14 days of receiving the letter of settlement. Upon review, we will either confirm or rescind the settlement within 30 days. We will rescind a settlement if it does not align with established principles of discipline and refer the matter back to the chief with recommendations for settlement or serve a notice of arbitration hearing.

Arbitration Hearing

Q. What is an arbitration hearing?

A. Arbitration is a form of dispute resolution; it is the judicial determination of a dispute by an independent third party.

An arbitration hearing is held when an officer has allegedly breached the *Code* and either did not present themselves to a settlement conference or when an agreement on suitable disciplinary or corrective measures could not be reached within a reasonable period of time.

The standard of proof in an arbitration hearing is on a balance of probabilities. Saying something is proven on a balance of probabilities means that it is more likely than not to have occurred (i.e., the probability that something happened is more than 50%).

Arbitration hearings conducted under the *Police Act* use an independent arbitrator. The parties (chief of police and police officer) hand over their power to resolve the complaint by agreeing on disciplinary and corrective measures to the arbitrator. The arbitrator acts like a judge, hearing the details of the dispute and then issuing a decision on it. This decision is final and binding on all parties involved.

Q. Is an arbitration hearing public?

A. Yes, unless (in rare circumstances) the arbitrator, in accord with the *Police Act*, decides to close the hearing to the public.

Q. Will I be required to attend the arbitration hearing?

A. Possibly; you could be called as a witness at the hearing about your complaint.

Q. What disciplinary and corrective measures can an arbitrator impose?

A. The arbitrator may impose one or any combination of the following disciplinary and corrective measures: a verbal reprimand; a written reprimand; a direction to undertake professional counseling or a treatment program; a direction to undertake special training or retraining; a direction to work under close supervision; a suspension without pay for a specified period of time; a reduction in rank; or dismissal.

Q. Can an arbitrator dismiss a matter?

A. Yes. If the arbitrator finds that the member of a police force is not guilty of a breach of the *Code*, they will dismiss the matter.

Q. I disagree with the measures imposed by the arbitrator, what can I do?

A. The decision of the arbitrator is final and binding on all parties involved.