

The Public Complaint Process

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.

Complaint Process effective January 1st, 2008

Section 25.2(1) of the *Police Act* establishes the duty of the chief of police, civic authority or the New Brunswick Police Commission to immediately “characterize” a complaint once received as:

- a) a service or policy complaint,
- b) a conduct complaint, or
- c) a combination of the complaints referred to in paragraphs (a) and (b)

Under subsection 25.1(4) of the *Police Act*, the period of time to process a conduct complaint shall not exceed six months.

Since the new complaint process came into force on January 1st, 2008, it has become evident to the Commission that amendments to the *Police Act* will be required as there is sometimes insufficient time for the Commission to properly and effectively fulfill its legislative mandate to review investigation reports and exercise its authority within the currently prescribed timelines.

In the processing of complaint files over the last few years, the Commission has identified a number of other deficiencies in the *Police Act* as well as in the *Code of Professional Conduct Regulation* which, unless they are corrected, could significantly impact the ability of the Commission to carry out its oversight mandate and potentially undermine public confidence in the police discipline process. Steps are being taken to ensure that those deficiencies are brought to the attention of the proper authorities for remedial action.

As the *Police Act* does not define the word “complaint”, police forces have seemingly adopted their own methodology to define what constitutes a “complaint” reportable to the Commission under the *Police Act*, or what constitutes an “informal complaint” or a citizen’s “concern” brought to a Chief of Police’s attention and dealt with expeditiously at the local level without reporting it to the Commission. Notwithstanding the fact that in many cases, some citizens might be reluctant to come forward with those concerns if they were to get drawn into a formal process, dealing with those concerns judiciously and appropriately provides an opportunity for a Chief of Police to take the pulse of the population and adjust service delivery, when so required, to meet the highest possible service standards and client satisfaction. A similar objective would be achieved if a Chief was to hold focus groups to obtain feedback on the quality of policing in his/her jurisdiction and hear client’s concerns about any aspect of policing.

Doing so can arguably be deemed to fall within the duties and responsibilities of a Chief of Police to ensure that the members of the police force carry out their duties in accordance with the Act and Regulation and apply professional police procedures in the day-to-day operations of the police force.

However, in the absence of clear parameters distinguishing between matters that are reportable to the Police Commission or others that can be appropriately dealt with informally at the local level, there is an inherent risk of either over-reporting or under-reporting *Police Act* complaints. As the bulk of those complaints are filed with the Chief of Police and subsequently forwarded to the Commission for processing, the manner in which the Chief of Police assesses the matter does have a direct impact on the number of complaints/allegations the Commission accounts for in its annual report.

Significant variances between police forces on the number of public complaints they receive could give the public the impression of a problem area within a specific police force where in fact, this may not be the case at all. Whether real or perceived, however, this has the potential to significantly erode public confidence in their respective police force and should be addressed.

In the absence of a definition of what constitutes a complaint or of a decision matrix to standardize the assessment process to bring uniformity throughout Municipal and Regional Police Forces, it is left to individual Chiefs of Police to adopt their own standards and report statistics accordingly. The Commission is receptive to furthering the discussion and accepting any suggestions from the Chiefs of Police to address this concern.

Characterizing a Complaint

Immediately after receiving a complaint, the chief of police, civic authority or Commission must characterize the complaint as a service or policy complaint, a conduct complaint, or a combination of the aforementioned complaints of service, policy and conduct complaint. The processing of these complaints varies depending on characterization.

Under the *Police Act* the processing of “**service/policy**” complaints is different from the processing of “**conduct**” complaints.

Service or Policy Complaints

Where the Commission receives a complaint which it characterizes as a **service or policy** complaint, a copy of the complaint shall be sent to the civic authority which has authority over the police force and to the Chief of Police.

Where a civic authority characterizes a complaint received against the police force over which it has authority as a **service or policy** complaint, or receives a **service or policy** complaint from the Commission, the civic authority shall refer the complaint to the Chief of Police for whatever action considered appropriate, or the civic authority will retain the complaint and, in consultation with the Chief of Police, take whatever action is considered appropriate.

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

- An example of a “**service**” complaint would be individuals complaining that they never see the police in their neighborhood. The civic authority will consult with the Chief who will provide a breakdown of the number times police vehicles have patrolled the area in question. It could end up being that the individual did not see the police vehicles when they were travelling in their area or that there may need to issue a directive to patrol the area more often or a certain number of times per day, week or month.
- An example of a “**policy**” complaint would consist of the actions of an officer and the policy, or absence thereof of such a policy, governing police assistance for a particular reason. The manner in which to resolve this matter would be to develop a new policy.

Where a service or policy complaint is referred to the Chief of Police by the civic authority, the Chief will advise the civic authority of the resolution of the complaint and will advise the complainant and the Commission in writing of the disposition of the service or policy complaint.

Conduct Complaints

Conduct complaints are breaches of the *Code* as identified under section 35 (a) to (m) of the *Code of Professional Conduct* Regulation 2007-81.

- An example of a “**conduct**” complaint would be an individual who lodges a complaint alleging that an officer abused its authority when arresting and detaining the individual.
- An investigation will be carried out and the results may reveal that the officer did abuse its authority which may require disciplinary or corrective measures such as a written reprimand and a direction to undertake special training or retraining.

Processing and disposing of conduct complaints

What follow is the various methods for processing and disposing of conduct complaints.

Withdrawal of a complaint

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. If the notice of withdrawal is filed with the chief of police, he or she shall, immediately after receiving the notice, provide a copy of the notice of withdrawal to the Commission and, if the complaint concerns the conduct of a police officer, to the affected police officer. If the notice of withdrawal is filed with the civic authority, the civic authority shall, immediately after receiving the notice, provide a copy of the notice of withdrawal to the Commission and, if the complaint concerns the conduct of a chief of police, to the affected chief of police.

If the notice of withdrawal is filed with the Commission, the Commission shall, immediately after receiving the notice, provide a copy of the notice of withdrawal to the appropriate chief of police or civic authority and, if the complaint concerns the conduct of a member of a police force, to the affected member of a police force. Notwithstanding the withdrawal of a complaint, the Commission may process the complaint, or order the chief of police or civic authority, as the case may be, to process a service, policy or conduct complaint. The chief of police or the civic authority may, on their own motion, process such a complaint.

False or misleading statements, complaints made in bad faith and preventing the filing of complaints

While the Commission has a duty to ensure that complainants are provided with any information or assistance required in filing their complaint and see that each complaint is thoroughly investigated, it must remain vigilant in ensuring that complaints are made to seek redress for a legitimate purpose.

This is why the *Police Act* also provides that no person shall knowingly make a false or misleading statement when filing a service, policy or conduct complaint or do so in bad faith, prevent, hinder, obstruct or interfere with a person filing such complaint. A person who violates these provisions commits an offence punishable under the *Provincial Offences Procedure Act* (or under the *Criminal Code of Canada* for public mischief).

Methods of disposition of conduct complaints and the role of the Commission

SUMMARY DISMISSAL

Application: 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.

Action by Chief: If the chief of police decides to summarily dismiss a conduct complaint or part of a conduct complaint, the chief of police shall give the complainant and the Commission notice in writing of the decision, including the reasons for the decision.

Action by the Complainant: Nil

Action by Commission: Mandatory review of the decision. The Commission either confirms the decision and gives the chief of police notice in writing of its decision, or rescinds the decision and then orders the chief of police to proceed with processing the conduct complaint. When such an order is issued, the Commission gives the complainant and the police officer notice in writing of its decision.

Comments:

A complaint is **frivolous** when, on its face, it is devoid of substance or, on its face, it is of no consequence. A complaint is then deemed to be **trivial**, although this category is solely an implied standard of assessment of the merit of a complaint. One has to be mindful, however, that what may appear trivial or frivolous to some, may bear substantial importance to others. Alternate measures can then be invoked to alleviate the concerns of the complainant outside the ambit of the *Code of Professional Conduct Regulation*.

A complaint is **vexatious** when it involves a repetition of unsubstantiated complaints from the same person, all of which share a common theme.

A complaint is not **made in good faith** when it is made dishonestly for an improper purpose. Bad faith normally requires the presence of two elements: firstly, the desire to achieve an improper purpose and, secondarily, an act of an improper nature that furthers the improper purpose.

INFORMAL RESOLUTION

Application: If the Commission refers a conduct complaint to a chief of police to process the complaint, the chief of police shall determine whether the conduct complaint can be resolved informally. If the chief of police decides to attempt to resolve the conduct complaint informally, he or she shall give the complainant and the police officer notice in writing of his or her decision to attempt to resolve the complaint informally.

Action by the Chief: Where a complaint is resolved informally, the details of the results of the informal resolution shall be set out in writing, and the chief of police shall give the complainant and the Commission notice in writing of the results of the informal resolution.

Action by the Complainant: The complainant may request the Commission to review the results within **14 days**.

Action by the Commission: Elective review or mandatory review of the informal resolution if the complainant so request and confirms the decision or rescinds it and orders the chief to investigate.

Comments: If nothing stands out to warrant a formal review and if the complainant does not ask for a review, the file is automatically closed after the **14 day** period has elapsed.

FORMAL INVESTIGATION

Action by the Chief: A chief of police shall proceed with an investigation into a conduct complaint if:

- the chief of police and the police officer fail to achieve consensus on an informal resolution,
- the chief of police determines that an attempt to resolve the complaint informally is inappropriate, or
- the Commission orders an investigation.

The chief shall provide notice of his decision to the complainant, to the subject police officer and to the Commission. If the chief of police conducts an investigation into a conduct complaint, the chief of police may appoint, as an investigator:

- a member of a police force to which the police officer being investigated belongs and who is of a higher rank than the police officer being investigated,
- a member of another police force who is of a higher rank than the police officer being investigated, if he or she determines an external investigation is necessary in order to preserve public confidence in the complaint process or, if the Commission orders it, or
- he or she may appoint an investigator from the list established and maintained by the Commission.

Upon conclusion of the investigation, the chief of police shall provide to the Commission with the investigation report as well as a copy of all documents received in the course of the investigation. He or she shall also provide a summary of the investigator's findings and conclusions to the police officer and the complainant.

Where the chief of police determines that there is sufficient evidence that the police officer committed a breach of the code, he or she then proceeds to a settlement conference.

Action by the Complainant: Cooperate with the investigator in establishing the facts surrounding the complaint.

Action by the Commission: Confirms or rescinds the characterization. If characterization is confirmed, it monitors the file and reviews the investigator's report with its findings and conclusions. If the Commission processes a conduct complaint or takes over from a chief of police the processing of a conduct complaint, it shall appoint as an investigator a police officer of another police force who is of a higher rank than the police officer being investigated, or appoint an investigator from the list it establishes and maintains. The Commission may, if, in its opinion the investigation was inadequate, order a new investigation by the chief of police or a chief of police of another police force.

DECISION TO TAKE NO FURTHER ACTION

Application: Upon review of the investigation report, the chief of police shall take no further action where the chief of police determines that there is insufficient evidence that the police officer committed a breach of the code.

Action by the Chief: If the chief of police decides to take no further action, the chief of police shall give the police officer,

complainant and the Commission notice in writing of his or her decision and shall give the complainant notice in writing that he or she may request the Commission to review the decision.

Action by the Complainant: Accepts the decision and takes no further action or requests that the Commission reviews the decision. Although the *Police Act* is silent on the time limit to request the Commission to carry out such a review, the Commission has adopted a policy consistent with other provisions of the *Act* and grants a period of **14 days** to formulate this request.

Action by the Commission:

- elective review of the decision to confirm or rescind the decision or
- mandatory review if requested by the complainant. Will confirm the decision or rescinds it and orders the chief to proceed to a settlement conference.

PURPOSE OF A SETTLEMENT CONFERENCE

The purpose of a settlement conference is to provide the police officer with an opportunity to respond to the alleged breach of the code and to reach an agreement with the chief of police concerning disciplinary and corrective measures. The parties to a settlement conference are the police officer and the chief of police. The complainant may attend and make representations at a settlement conference.

PRINCIPLES OF DISCIPLINE AND CORRECTION

The disciplinary and corrective measures agreed to by the parties to a settlement conference or imposed by an arbitrator shall 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 the member unless:

- (a) the disciplinary and corrective measures would bring the administration of police discipline into disrepute,
- (b) the disciplinary and corrective measures would bring the reputation of the police force with which the member is employed into disrepute, or
- (c) the circumstances make it impractical for the parties to a settlement conference to agree to, or the arbitrator to impose, disciplinary and corrective measures that seek to correct and educate the member.

DISCIPLINARY AND CORRECTIVE MEASURES

The parties to a settlement conference may agree to or an arbitrator may impose one of the following disciplinary and corrective measures or any combination of the following disciplinary and corrective measures:

- (a) a verbal reprimand;
- (b) a written reprimand;
- (c) a direction to undertake professional counseling or a treatment program;
- (d) a direction to undertake special training or retraining;
- (e) a direction to work under close supervision;
- (f) a suspension without pay for a specified period of time;
- (g) a reduction in rank; or
- (h) dismissal.

OTHER MEASURES

A chief of police or civic authority, as the case may be, may issue an apology on behalf of the police force or on behalf of both the police force and the member alleged to have committed a breach of the *Code of Professional Conduct*, if the member so consent. Operational or administrative policies could also be developed or amended by a chief of police to prevent the reoccurrence of such breaches of the *Code*.

POWERS OF THE COMMISSION

Notwithstanding any other provision of this *Act*, 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. The provisions of this *Act* that apply to the powers that a chief of police or civic authority may exercise when processing a conduct complaint also apply with the necessary modifications to the Commission when it processes a conduct complaint or takes over from a chief of police or civic authority the processing of a conduct complaint.

Any decision made by the Commission when it processes a conduct complaint, takes over from a chief of police or civic authority the processing of a conduct complaint, or reviews a decision made by a chief of police or civic authority, the Commission's decision **is final**.

Code of Professional Conduct

STANDARDS

It is incumbent upon every member of a police force:

- to respect the rights of all persons;
- to maintain the integrity of the law, law enforcement and the administration of justice;
- to perform his or her duties promptly, impartially and diligently, in accordance with the law and without abusing his or her authority;
- to avoid any actual, apparent or potential conflict of interests;
- to ensure that any improper or unlawful conduct of any member of a police force is not concealed or permitted to continue;
- to be incorruptible, never accepting or seeking special privilege in the performance of his or her duties or otherwise placing himself or herself under any obligation that may prejudice the proper performance of his or her duties;
- to act at all times in a manner that will not bring discredit on his or her role as a member of a police force; and
- to treat all persons or classes of persons equally, regardless of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity.

BREACH OF THE CODE

A member of a police force commits a breach of the code if he or she does any of the following:

➤ **Engages in discreditable conduct**

*A member of a police force engages in discreditable conduct if the member, **while on duty**:*

- acts in a manner that is prejudicial to the maintenance of discipline in the police force with which he or she is employed, or
- acts in a manner that is likely to bring the reputation of the police force with which he or she is employed into disrepute or
- is oppressive or abusive to any person,
- **while off duty**, asserts or purports to assert authority as a member of a police force and does an act that would constitute a breach of the code if done while the member is on duty or,

*A member of a police force engages in discreditable conduct if the member **while on or off duty**:*

- contravenes a provision of the *Police Act*, the regulations under the *Act* or a rule, guideline or directive made under the *Act*,

- withholds or suppresses a complaint or a report concerning a complaint,
- fails to report to a member of a police force whose duty it is to receive the report, or to Crown counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an *Act* of the Legislature, an *Act* of another province or territory of Canada or an *Act* of the Parliament of Canada,
- tampers with information that is material to a proceeding or potential proceeding under the Complaints and Discipline provisions of the *Police Act* or
- fails to disclose to the investigator, or to the chief of police or civic authority, as the case may be, information that is material to a proceeding or a potential proceeding under the Complaints and Discipline provisions of the *Police Act*.

➤ **Neglects his or her duties**

A member of a police force neglects his or her duties if:

- the member, without lawful excuse, fails to promptly and diligently obey or carry out any lawful order, or perform his or her duties as a member,
- the member fails to work in accordance with official police force policies and procedures,
- the member leaves an area, detail or other place of duty without due permission or sufficient cause or,
- having left an area, detail or other place of duty with due permission or sufficient cause, fails to return promptly, or the member is absent from or late for duty (i.e. failure to attend court) without reasonable excuse.

➤ **Engages in deceitful behaviour**

A member of a police force engages in deceitful behaviour if:

- the member, with intent to deceive, falsify or mislead, destroys, mutilates, conceals, alters, expunges or adds to all or any part of an official document, record or report, or
- willfully or negligently makes a false, misleading or inaccurate statement pertaining to his or her duties.

➤ **Improperly discloses information**

A member of a police force improperly discloses information if:

- the member, except as required in the performance of his or her duties, as authorized by his or her supervisor or as required by due process of law, discloses information that is acquired by the member in the course of his or her duties,
- gives notice directly or indirectly to any person against whom any warrant or summons has been or is about to be issued, except in the lawful execution of such warrant or service of such summons, or
- removes or copies an official document, record or report of any police force, or
- makes, signs or circulates a petition or statement, in respect of a matter concerning any police force knowing that all or any part of the petition or statement is false, or having reckless disregard as to the truth of the petition or statement.

➤ **Commits corrupt practice**

A member of a police force commits corrupt practice if:

- the member fails to properly account for, or to make a prompt and true return of, any money or property received by the member in the course of his or her duties,
- without adequate reason, the member uses or attempts to use his or her position as a member of a police force for personal advantage,
- the member accepts a bribe,

- the member agrees to be under a pecuniary or other obligation to any person in a manner that might affect the proper performance of his or her duties, or
- the member directly or indirectly solicits or receives a gratuity, gift, benefit or testimonial that might affect the proper performance of his or her duties.

➤ **Abuses his or her authority**

A member of a police force abuses his or her authority if:

- the member, without lawful authority, detains, arrests or searches a person,
- uses unnecessary force on a person,
- **while on duty**, uses language or acts in a manner that is discourteous, uncivil, abusive or insulting to a person or
- **while on duty**, uses language or acts in a manner that tends to demean or show disrespect to a person on the basis of that person's race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity, or
- harasses, intimidates or retaliates against a complainant.

➤ **Improperly uses and cares for firearms**

A member of a police force improperly uses and cares for firearms if:

- **when on duty**, the member has in his or her possession any firearm other than one that is issued by the police force to the member,
- **when on duty**, other than when on a firearm training exercise, discharges a firearm, whether intentionally or by accident, and does not report the discharge of the firearm as soon as is practicable, or
- fails to exercise sound judgment and restraint in respect of the use and care of a firearm.

➤ **Damages police force property**

A member of a police force damages police force property if:

- the member, without reasonable excuse, loses, destroys or causes any damage to any police force property, or any property the care of which has been entrusted to the member in the course of his or her duties, or
- fails to report any loss or destruction of or any damage to any such property, however caused.

➤ **Misuses intoxicating liquor or drugs in a manner prejudicial to duty**

A member of a police force misuses intoxicating liquor or drugs in a manner prejudicial to duty if:

- the member, on reporting for or **while on duty**, is unfit for duty as a result of drinking intoxicating liquor, using a drug for non-medical purposes or intentionally misusing a prescription drug, or
- the member, without proper authority, makes any use of, or receives from any other person, an intoxicating liquor or a non-medical drug **while on duty**.

➤ **Is convicted of an offence**

A member of a police force is guilty of a breach of the code if:

- the member is convicted of an offence under an *Act* of the Legislature, an *Act* of another province or territory of Canada or an *Act* of the Parliament of Canada that renders the member unfit to perform his or her duties or that is likely to bring the reputation of the police force with which the member is employed into disrepute.

➤ **Engages in insubordinate behaviour**

A member of a police force engages in insubordinate behaviour if:

- the member is insubordinate by word, act or demeanour, or without lawful excuse, disobeys, omits or neglects to carry out any lawful order.

➤ **Is a party to a breach of the code**

➤ **Engages in workplace harassment**