

Office of the
Police Complaints Commissioner
and the Nova Scotia
Police Review Board



ANNUAL REPORT 2022

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Office of the Police Complaints Commissioner and the Nova Scotia Police Review Board
Annual Report 2022

Office of the Police Complaints Commissioner

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Mission Statement

The mission of the Office of the Police Complaints Commissioner and the Nova Scotia Police Review Board is to deliver timely, impartial, client-oriented service to the public, to the municipal police services and to the police officers within its jurisdiction.

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Executive Summary

The Office of the Police Complaints Commissioner (OPCC) is a civilian, independent office which monitors complaints and investigations involving municipal police in Nova Scotia. The OPCC provides support to the Police Review Board which has the responsibility for deciding appeals from complainants or police officers dissatisfied with decisions of police agencies.

A member of the public may start a complaint against a municipal police officer or municipal police force by signing and filing a signed prescribed form within one year¹ after the incident giving rise to the complaint. Subject to certain exceptions, complaints are investigated by the police agency from which they arose. Unless a complaint is resolved to the satisfaction of the complainant and the officer, or withdrawn by the complainant, or an extension has been granted by the Police Complaints Commissioner, the investigation must be completed within 60 days from the date a complaint is filed.

Once an investigation has been completed the Chief / Delegated Disciplinary Authority, or, in the case of a complaint against a chief of police, the municipality's Board of Police Commissioners, has 30 days to decide if the subject officer may have committed a disciplinary default. The decision maker must then either file a Form 11 decision or schedule a private meeting with the subject officer by issuing a Form 10 Notice of Meeting. There is no fixed timeline for when a meeting is to be scheduled.

After a Form 10 meeting, the Chief / Delegated Disciplinary Authority or Board of Police Commissioners must decide whether the subject officer has committed a disciplinary default. No later than 30 days after the decision is made, the Chief / Delegated Disciplinary Authority or Board of Police Commissioners must file a Form 11 decision including reasons for the decision.

Where the complainant or subject officer is not satisfied with the decision, they may file a Notice of Review. Upon receiving a Notice of Review from a subject officer, the Police Complaints Commissioner must refer the file to the Review Board for a hearing. Upon receiving a Notice of Review from a public complainant, the Police Complaints Commissioner is required to attempt to resolve the complaint and, in attempting to do so, may conduct an independent investigation. If resolution is not successful, the Commissioner must send the file to the Review Board for a hearing, unless satisfied the complaint is frivolous, vexatious, without merit or an abuse of process.

In 2022, the OPCC received 182 public complaints. In addition, there were 43 internal complaints, in which officers alleged conduct breaches by other officers in the same police force.

¹ *If the incident occurred on or after January 15, 2020, the Complaints Commissioner may extend the time for filing a complaint if satisfied that there are good reasons for doing so and that doing so would not be contrary to the public interest: Section 29 of the Police Act Regulations.*

As of February 24, 2023, 18 public complaints filed in 2022 had been withdrawn, 2 had been abandoned, 46 had been set aside because they did not meet the statutory requirements for filing a complaint, 24 had been informally resolved, 1 investigation had been discontinued because the officer(s) retired or resigned, 3 complaints had been investigated by police and found to be substantiated in whole or in part, 57 complaints had been investigated by police and found to be unsubstantiated, and 31 were still under investigation.

OPCC received a total of 22 requests for review of public complaints in 2022. Eight public complaints were referred to the Police Review Board during the year, together with two internal disciplinary matters.

The average of almost two requests for review per month in 2022 was similar to the rate of review requests in 2021, but far higher than the rate of requests in earlier years. Significantly more time has been required for review request decisions than in the past.

Beginning with a secondment at the first of the year, OPCC experienced significant staff changes in 2022. Two persons moved into new managerial roles and a new fulltime intake clerk carried out the work previously done by two persons working part time. Until the staff changes were completed, a retired former intake clerk provided excellent temporary assistance.

In spite of staffing challenges and in addition to regular work, OPCC staff developed and produced a spreadsheet containing thousands of entries in response to a FOIPOP request for an anonymized summary of public and internal complaint outcomes from 2010 through 2021.

Role of the Police Complaints Commissioner

The Office of the Police Complaints Commissioner was established under the *Police Act* effective January 1, 2006.

Section 12(1)(b) of the *Police Act* states that the Police Complaints Commissioner shall “perform the duties assigned to the Complaints Commissioner by this Act, the regulations, the Minister or the Governor in Council.”

If a member of the public files a complaint alleging that a municipal police officer has committed misconduct described in Section 24 of the *Police Regulations* within the time limit or extended time limit set out in the Regulations, the Commissioner refers the complaint to the chief of the officer’s police force for investigation. The Office of the Police Complaints Commissioner (OPCC) monitors the investigation to ensure timeliness.

A complainant who is not satisfied with the decision made by the police agency following an investigation may request that the Commissioner refer the complaint to the Police Review Board. If the Commissioner cannot satisfactorily resolve the complaint, he/she forwards the matter for a hearing before the Police Review Board, unless he/she has determined the complaint is frivolous, vexatious, without merit or an abuse of process.

A decision of the Commissioner not to refer a complaint to the Review Board is final, although subject to possible judicial review in the Supreme Court of Nova Scotia.

Role of the Police Review Board

The primary role of the Police Review Board is to conduct reviews of public complaints and police officers' appeals against disciplinary penalties or dismissals.

The responsibilities of the Police Review Board are outlined in Section 18 of the *Police Act* which states:

The Review Board shall perform the functions and duties assigned to it by this *Act*, the regulations, the Minister or the Governor in Council and . . . shall

- 1) Conduct investigations and inquiries in accordance with the *Act*; and
- 2) Conduct hearings into complaints referred to it by the Complaints Commissioner in accordance with the *Act* or the regulations

Section 19(1) of the *Police Act* provides that the Minister may direct the Review Board to investigate, inquire into and report to the Minister upon any matter relating to:

- (a) the extent, investigation or control of crime
- (b) the enforcement of law
- (c) the operation and administration of a police department

Police Review Board hearings into public complaints are open to the public unless the Review Board orders otherwise. Review Board hearings regarding internal disciplinary appeals are not open to the public.

A decision of the Police Review Board is final, although subject to possible judicial review in the Supreme Court of Nova Scotia.

Review Board Members

Under the provisions of Section 13(1) of the *Police Act*, the Nova Scotia Police Review Board is composed of not fewer than three persons appointed by the Governor-in-Council.

As of December 31, 2022, the members of the Police Review Board were:

- Jean McKenna**, Chair
- Hon. Simon J. MacDonald**, Vice Chair
- Peter Mancini** KC
- Kimberly Ross**
- John Withrow**
- Siobhan Doyle**
- Lisa Emery**
- Tim McDermott**
- Mary Potter**
- Darlene Bowie**
- Don McMillan**
- Nadine Bernard**
- Patrick H. Curran**
Police Complaints Commissioner

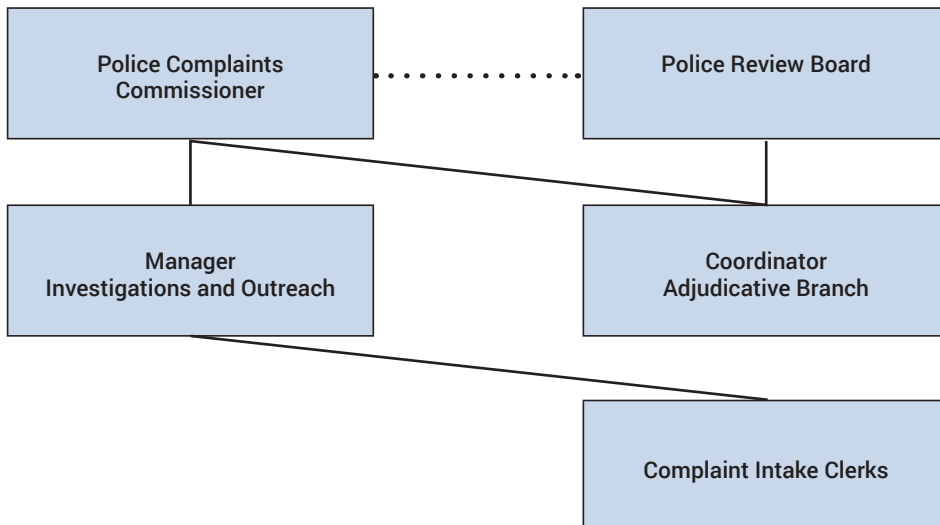
OPCC Staff and Contact Information

- Joni Keeping, Manager**
Investigations and Outreach
- Amanda McLean, Coordinator**
Adjudicative Branch
- Claire Doucette**
Complaint Intake Clerk

The Office of the Police Complaints Commissioner is located at 1690 Hollis St., Halifax, NS.

- Mailing Address:**
PO Box 1573, Halifax NS, B3J 2Y3, Canada
- Telephone:** (902) 424-3246
- Facsimile:** (902) 424-1777
- Email:** polcom@novascotia.ca
- Online:** www.novascotia.ca/opcc

Organizational Chart



Number of complaints

A total of 225 complaints were filed with the Office of the Police Complaints Commissioner in 2022. 182 of the complaints were public allegations, while the other 43 arose internally, with one officer alleging misconduct by another officer in the same police agency.

Complaints by Municipal Agency

Department	2021		2022	
	Public Complaints	Internal Complaints	Public Complaints	Internal Complaints
Amherst	6	2	8	0
Annapolis Royal	0	0	4	0
Bridgewater	1	3	5	0
Cape Breton Regional Police Service	32	7	33	5
Halifax Regional Police Service	78	34	96	33
Kentville	1	0	3	1
New Glasgow	6	1	9	0
Stellarton	2	0	1	0
Truro	31	0	18	4
Westville	0	0	1	0
RCMP/No agency indicated	0	0	4	0
Total	157	47	182	43

Disposition of Complaints

This is a snapshot of the progress of complaint files, as of February 24, 2023.

Disposition of Public Complaints

Disposition	*2021	2022
Informal Resolution	14 (18)	24
Other**	51 (51)	47
Unsubstantiated	41 (60)	57
Withdrawn	16 (16)	18
Still Under Investigation	26 (0)	31
Abandoned	6 (6)	2
Substantiated	2 (5)	3
Substantiated in Part	1 (1)	0
Total	157	182

*Numbers in brackets show dispositions for 2021 complaints as of February 24, 2023.

**Includes complaints received beyond the time limitation for filing, where no breach of the code of conduct alleged, against officers retired or resigned, or against an RCMP officer or a Sheriff. More information may be requested by the Commissioner before a decision is made whether to proceed with a complaint. In situations where the complaint is against a member of the RCMP or a Sheriff, the complainant is directed to the appropriate body to pursue their complaint.

Disposition of Internal Complaints

Disposition	2021*	2022
Informal Resolution	2 (4)	5
Other	4 (10)	4
Unsubstantiated	8 (10)	9

Withdrawn	2 (2)	2
Still Under Investigation	16 (1)	17
Substantiated	14 (18)	6
Abandoned	1 (1)	0
Substantiated in Part	0 (1)	0
Total	47	43

*Numbers in brackets show dispositions for 2021 complaints as of February 24, 2023.

Code of Conduct Allegations

	Public		Internal	
	2021	2022	2021	2022
Alleged Defaults				
Abuse of Authority	55	33	1	4
Corrupt Practice	13	1	4	5
Engages in Deceit	2	4	4	6
Discreditable Conduct	56	75	44	40
Improper Disclosure	3	0	1	1
Improper use of Firearm	0	0	0	0
Insubordination	0	3	4	3
Neglect of Duty	29	48	13	20
Complaint Against Department	0	5	0	0
Damages Property	1	0	2	0
Liquor or Drug Infraction	1	0	0	0
Total	160	169	73	79

Note: A complaint may contain several allegations of misconduct

Requests for Review

A total of 22 Requests for Review of public complaints were received in 2022, resulting in 8 public complaints being referred to the Police Review Board together with 2 internal disciplinary matters.

Budget and Staffing

	2021–22	2022–23
	Estimate	Forecast
Departmental expenses by object		
Salary and employee benefits	223,000	193,000
Operating costs	204,000	241,000
Gross expense		
Total - Nova Scotia Police Complaints Commissioner	<u>427,000</u>	<u>434,000</u>
Funded staff (number of FTEs)	3.0	3.0
Less: Staff funded by external agencies	—	—
Total – Funded staff	<u>3.0</u>	<u>3.0</u>

Appendix 1

The Public Complaint Process

How long do I have to file a complaint?

As of January 15, 2021, complaints had to be filed within one year of the date of the incident giving rise to it, unless the Complaints Commissioner extended the time for filing upon being satisfied there was good reason for the extension and that it would not be contrary to the public interest.

Where do I file a complaint?

You may make your complaint against a police officer, including a Chief of Police, or a police department in general to any of the following:

- Any municipal police department;
- The Board of Police Commissioners for the area which the police force is responsible for policing;
- The Office of the Police Complaints Commissioner.

If a complaint is filed at a police department or a board of police commissioners, the Office of the Police Complaints Commissioner receives a copy of it.

How do I file a complaint?

A Complaint Form (Form 5) must be submitted in writing, dated and signed by the complainant. You can obtain the Form 5 from any municipal police department, local board of police commissioners, or OPCC's office. The Form 5 can also be found on OPCC's web site:

www.novascotia.ca/opcc/publications/Form_5_and_Form_5A.pdf

You must include the date, time, place and details of the incident that you are complaining about.

What happens next?

What happens after I make my complaint?

Unless the Commissioner concludes that a Form 5 complaint does not meet the conditions for filing a complaint, OPCC directs the Chief of the police department where the police officer works to complete an investigation within 60 days after the complaint was filed. The police department where the police officer works will try to resolve the complaint informally if you and the officer(s) complained about agree. If there is no informal resolution, the police department will proceed with the investigation. The police department's investigation must be completed 60 days from the day the complaint is received by the OPCC, unless the Commissioner grants an extension of time for completion. You will receive notice of any extension and of the completion of the investigation.

Who decides the outcome of the case?

The Chief of Police / Delegated Disciplinary Authority or the Municipal Board of Police Commissioners (if the complaint is against the Chief of Police) will review the investigation and decide what further action, if any, will be taken.

This process may take several months.

You, the officer complained about and the Police Complaints Commissioner will be notified of the decision (Form 11).

Common Questions and Answers

What is the role of the Police Complaints Commissioner in the Police Department's Investigation?

The Commissioner ensures that timelines provided in the *Police Act* Regulations are adhered to.

What can I do if I am not satisfied with the decision of the Chief, or the Municipal Board of Police Commissioners?

If you are not satisfied with the decision, you may file a Notice of Review (Form 13) with the OPCC within 30 days of receipt of the police department's decision (Form 11).

The Police Complaints Commissioner will review the file and attempt to resolve the matter. If unable to resolve the matter, the Commissioner will refer the complaint to the Police Review Board for hearing unless satisfied it is frivolous, vexatious, without merit or an abuse of process.

If the complaint is not referred to the Police Review Board, you will be notified that no further action will be taken with respect to your complaint.

What can I do if my complaint is not referred to the Review Board?

No further action can be taken under the ***Police Act***, but the decision not to refer could be the subject of a judicial review in the Supreme Court of Nova Scotia.

What happens when my complaint is referred to the Review Board?

A panel of three members will conduct a hearing into your complaint. You will be contacted by the Clerk of the Board and a hearing date will be scheduled. You may be represented by a lawyer if you wish. The Police Review Board does not provide legal representation for you. If you are not represented by a lawyer, the Clerk of the Police Review Board will, upon request, assist you with preparation of subpoenas for witnesses.

Is my complaint kept confidential?

Complaints are considered confidential; however, if your complaint is referred to the Police Review Board, the hearing is open to the public (including news media) unless the Review Board orders otherwise, and Review Board decisions may be published online.

Who sits on the Police Review Board?

The Police Review Board is made up of members of the public appointed by the government.

What can the Review Board do?

The Review Board may:

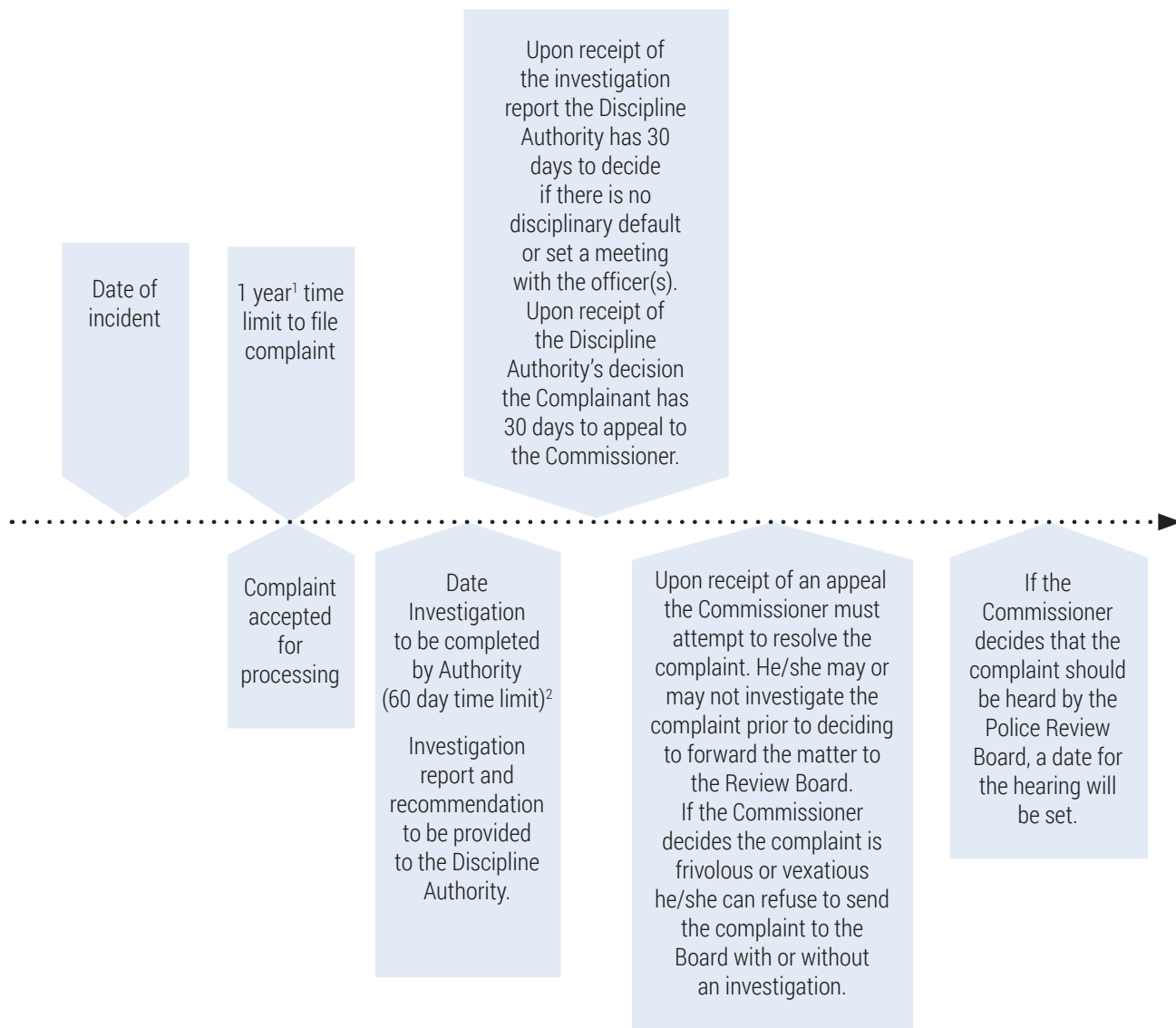
- Substitute a finding that in its opinion should have been reached
- Affirm or change any penalty which has been imposed
- Dismiss the matter

The Review Board cannot award compensation.

What if I am dissatisfied with the Review Board's decision?

The Review Board's decision is final, but the decision could be the subject of a judicial review in the Supreme Court of Nova Scotia.

Filing a Public Complaint Timeline Example



¹ Complainants may apply to the Commissioner to extend the time for filing.

² There are provisions for police department investigators to apply for extensions of time to investigate.

Appendix 2

Professional Association



The Office of the Police Complaints Commissioner is a member of the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE). CACOLE is a national non-profit organization of individuals and agencies involved in the oversight of police officers in Canada. CACOLE is dedicated to advancing the concept, principles and application of civilian oversight of law enforcement throughout Canada and abroad.

The first meeting of heads of oversight agencies happened in the fall of 1995. The first conference was held in Halifax in September of 1996. CACOLE was ultimately established in 1997, and is an incorporated non-profit organization under the Canada Incorporations Act. The national organization is governed by a set of By Laws and is managed by an elected, volunteer Board of Directors representing oversight agencies in each province.

For more information please visit CACOLE's website at: www.cacole.ca

Office of the Police Complaints Commissioner

1690 Hollis St., 3rd Floor

PO Box 1573

Halifax, Nova Scotia B3J 2Y3

Telephone: 902 424-3246

Facsimile: 902 424-1777

Email: polcom@novascotia.ca

Online: www.novascotia.ca/opcc

