

**REPORT ON THE  
ADMINISTRATIVE AUDIT  
CONDUCTED FOR THE REVIEW OF  
THE POLICE COMPLAINT PROCESS  
IN BRITISH COLUMBIA**

SUBMITTED BY:

**Police Services Division  
September 2006**



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## EXECUTIVE SUMMARY

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This report summarizes the findings of an administrative audit of 294 police complaint files involving the 11 independent municipal police departments in British Columbia. The audit was conducted as part of a broader review of the process for complaints against independent municipal police, which was ordered under the authority of s. 42 of the *Police Act* on June 14, 2005. The audited files were randomly selected from the total population of police complaints which were closed between June 15, 2003 and June 14, 2005—the two year period leading up to the announcement of the review. The administrative audit examined compliance with the administrative or technical aspects of the police complaint process, such as notification and reporting requirements, informal resolution and discipline procedures, and timelines. The administrative audit was conducted by staff in Police Services Division’s Research and Evaluation Unit.

In addition to the administrative audit, a substantive audit of complaint investigations was conducted by Crown Prosecutor Peter Juk and Staff Sergeant Deborah J. Chisholm of the RCMP Anti-Corruption Unit. This audit examined such issues as the quality of the investigation and the appropriateness of conclusions in light of the evidence obtained. Findings from their review are summarized in the investigative audit report.

The results of the administrative audit indicated a number of areas where compliance with the police complaint process as outlined in Part 9 of the *Police Act* was not being fully realized. These included:

- *Progress reports.* Initial reports were missing or late in roughly two-thirds of the investigated complaints examined; follow up reports appeared to be missing in approximately half of these complaints. Further, the content of progress reports was often minimal.
- *Timeliness of investigations and extensions.* Forty per cent of the fully investigated complaints examined exceeded six months in length—the timeframe for the completion of investigations specified in Part 9. Extensions were requested in about half of these cases.
- *Length of time between the conclusion of an investigation and the Discipline Authority’s Decision regarding disciplinary or corrective measures.* Part 9 specifies timelines within which the Discipline Authority must review and provide a summary of the final investigation report to complainants and respondents, including a decision regarding disciplinary or corrective measures. Compliance with this timeline was often obscured by a lack of clear dates marking the investigator’s completion of the investigation report and the Discipline Authority’s decisions which resulted from the report.

In addition to the identified procedural issues, the administrative audit revealed other concerns, including:

- An apparent degree of confusion in the use of summary dismissal versus concluding a complaint as unsubstantiated;
- Limited consideration and use of informal resolution. Informally resolved complaints accounted for about 8% of audited complaints;
- Limited use of formal disciplinary or corrective measures, which were applied in 3% of audited complaints. In contrast, managerial advice or advice to future conduct—an informal corrective measure—was noted in 6% of audited complaints;
- Failure, in some cases, to inform the OPCC of internal discipline complaints in a timely manner; and
- A considerable number of administrative errors.

# 1 INTRODUCTION AND METHODOLOGY

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As part of the review of the police complaint process, the review team audited a random sample of closed complaint files involving the 11 independent municipal police departments. There were two parts to the audit: i) a review of compliance with the administrative or technical aspects of the police complaint process, as outlined in Part 9 of the *Police Act*, and ii) a review of the investigative steps and conclusions reached in each case. The former, referred to as the administrative audit, was conducted by staff in Police Services Division's Research and Evaluation Unit. The latter, referred to as the investigative audit, was conducted by Crown Prosecutor Peter Juk and Staff Sergeant Deborah J. Chisholm of the RCMP Anti-Corruption Unit.

This report details the methodology and findings of the administrative audit. Please refer to the investigative audit report for a discussion of the findings of that review.

To initiate the audit, each of the 11 independent municipal police departments and the OPCC were asked to provide a list of all complaint files closed between June 15, 2003 and June 14, 2005. This represented the two-year period leading up to the initial announcement of the review on June 14, 2005.

While the list provided by the OPCC was used to extract the random sample of files to include in the audit, departmental lists were reviewed to identify any files that did not appear in the OPCC records. The latter were briefly examined during site visits at each department to ensure that the OPCC was notified of all complaints as required by Part 9 of the *Police Act*. The results of this analysis are discussed in s. 3.4.

According to the file list provided by the OPCC, the total number of formal complaint files closed during the review period was 783. To ensure a margin of error within plus or minus 5% at the 95% confidence interval, the review team identified a target sample size of 300 files to include in the audit. To extract the sample, computer-generated random numbers were assigned to the OPCC file list, which was stored in a MS Excel spreadsheet. The list was then sorted by random number and the first 300 files were selected for inclusion in the audit. The sample was analyzed to ensure that the distribution of complaints by department and characterization was representative of the total population of complaints.

Six files were discarded from the analysis as a result of missing data.<sup>1</sup> The resulting sample size (294) was still large enough to yield a margin of error within plus or minus five percentage points at the 95% confidence level. This means that if other samples of this size were repeatedly extracted from the population,

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<sup>1</sup> For a variety of reasons, complete data for the investigative audit was not available for six files. To ensure consistency between the administrative and investigative audits, these six files were removed from the administrative audit analysis.

the results would be within plus or minus five percentage points of the figures reported in this report, 19 times out of 20.

In advance of site visits, the review team provided each police department with the list of files from their department that had been selected for inclusion in the audit. These files were pulled and made available to the review team to examine during site visits. In addition, the review team obtained the corresponding files from the OPCC prior to each site visit. This allowed the review team to examine both the departmental file and the OPCC file for each complaint simultaneously.

The audit commenced the week of November 21, 2005 at the Abbotsford Police Department. During this first of eleven site visits, members of the review team were trained in the use of the file coding database. The database was developed using MS Access and was designed to input and store data relating to the administrative aspects of the complaints process. Five of the 13 files included in the sample from the Abbotsford Police Department were coded by all review team members and reviewed as a group to develop inter-rater reliability, and to identify ways to streamline the coding process. An additional three files were verified for inter-rater reliability before proceeding with individual file coding.

The review team conducted site visits at the remaining police departments between November 29, 2005 and January 10, 2006. The data was transferred into a statistical software analysis program (SPSS) for analysis.

## 2 COMPLAINT DEMOGRAPHICS

### 2.1 DISTRIBUTION OF COMPLAINTS BY DEPARTMENT

A total of 294 complaint files were reviewed and analyzed.<sup>2</sup> The breakdown of complaints by department was consistent with their distribution in the overall population of complaints during the review period. For example, complaints involving the Vancouver Police Department—the largest municipal police department in the province—made up about half of all complaints during the review period. Similarly they accounted for roughly half (49%) of complaints in the sample. The distribution of complaints by department is summarized in Table 1.

**Table 1: Audited Complaints by Department**

	Frequency	Percent
Vancouver	143	49
Victoria	73	25
Saanich	19	7
New Westminster	16	5
Abbotsford	13	4
Delta	9	3
West Vancouver	8	3
Central Saanich	4	1
Nelson	4	1
Port Moody	3	1
Oak Bay	2	1
<b>Total</b>	<b>294</b>	<b>100</b>

### 2.2 TYPE OF COMPLAINT

As discussed in greater detail in section 3.8, the majority of complaints in the sample were handled as matters of Public Trust alone (n=277 or 94%). Six complaints were characterized as Compound complaints, involving both Public Trust and Service or Policy aspects (2%). In addition, there were four Service or Policy complaints, four Internal Discipline complaints and three complaints determined to be outside the realm of Part 9 (each accounting for about 1% of all complaints).

<sup>2</sup> Two of these files could not be located by the Department and were reviewed based on the OPCC file only.



In the majority of complaints (n=173 or 59%), only one allegation was specified. In total, the review team noted 553 allegations in the 294 files.<sup>3</sup> The most frequently cited allegation was abuse of authority, which accounted for 48% of all allegations. Table 2 summarizes the allegations by type.

**Table 2: Types of Allegations**

	Frequency	Percent
Abuse of Authority <sup>4</sup>	268	48
Discreditable Conduct <sup>5</sup>	121	22
Neglect of Duty	63	11
Allegation Not Specified	38	7
Conduct Constituting an Offence	30	5
Other <sup>6</sup>	11	2
Improper Off-Duty Conduct	9	2
Improper Disclosure of Information	6	1
Corrupt Practice	3	1
Deceit	2	1
Improper Use and Care of Firearms	1	0
Damage to Police Property	1	0
<b>Total</b>	<b>553</b>	<b>100</b>

## 2.3 RESPONDENT OFFICERS

A total of 356 unique respondents were identified among the 294 complaints in the sample. Sixty-two of these respondents (17%) were named in more than one complaint in the sample.

There were 32 complaints (11%) where no respondents were identified (e.g., complaints against an unknown Constable) and four complaints (1%) where the respondent was the police department (i.e., Service or Policy complaints).

Where individual respondents were named, most complaints were against a single respondent (n=149 or 50% of the overall sample). A total of 67 complaints had two respondents (22%) and 24 complaints had three respondents (8%). The highest number of respondents in a single complaint was eight.

## 2.4 COMPLAINANTS

There were 262 unique complainants identified in the 294 files included in the sample. Eleven of these complainants made more than one complaint (4%). In addition, the police department (or a representative thereof) was noted as the complainant in ten files.

<sup>3</sup> Each allegation against each respondent was counted. For example, if two respondents were both alleged to have committed the disciplinary default of abuse of authority, two allegations were counted for the file.

<sup>4</sup> This figure includes five allegations identified as "excessive force" on the Notice of Complaint. In the Code of Professional Conduct Regulation, complaints of excessive force fall under the disciplinary default of Abuse of Authority.

<sup>5</sup> This figure includes six allegations identified as breaches of either departmental policy or legislation. In the Code of Professional Conduct Regulation, complaints of this type fall under the disciplinary default of Discreditable Conduct.

<sup>6</sup> This figure includes allegations which did not fully correspond with the disciplinary defaults outlined in the Code of Conduct Regulation and allegations made against the department in Service or Policy complaints.

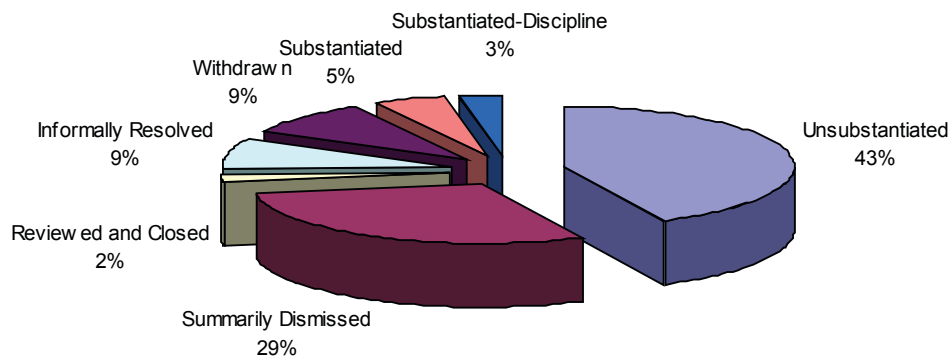
## 2.5 COMPLAINT DISPOSITION

Overall, the majority of complaints in the sample were concluded as unsubstantiated (n=126 or 43%), followed by summarily dismissed (n=86 or 29%).<sup>7</sup> However, there was considerable variation between departments with respect to complaint disposition. For example:

- the percentage of complaints within each department that were concluded as unsubstantiated ranged from a low of 5% to a high of 69%;
- the percentage of complaints within each department concluded as summarily dismissed ranged from a low of 0% to a high of 78%; and
- While the most common disposition in the overall sample was unsubstantiated, in three police departments the most common disposition was summary dismissal.<sup>8</sup>

The disposition of complaints in the overall sample is summarized in Figure 1. Complaint disposition is discussed in greater detail throughout section 5.

**Figure 1 Complaint Disposition<sup>9</sup>**



<sup>7</sup> Where a complaint resulted in different outcomes for different respondents and/or allegations within the same complaint, the most serious disposition was recorded. For example, if a complaint included allegations against some respondents that were summarily dismissed and allegations against another respondent that were substantiated, the complaint disposition was recorded as substantiated.

<sup>8</sup> These figures do not include police departments where fewer than five complaints were selected for inclusion in the sample.

<sup>9</sup> The six "reviewed and closed" complaints included three that were deemed "non-police act" matters, two that were characterized as service or policy complaints and one public trust complaint that was considered a duplicate of another complaint which was processed under Part 9 and summarily dismissed.

## 3 COMPLAINT CHARACTERIZATION AND PROCESSING

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### 3.1 RECORD OF COMPLAINT

Before a complaint can be processed as a Public Trust or Service or Policy complaint, Part 9 of the *Police Act* requires that it be committed to writing using the prescribed document—the Form 1 Record of Complaint (s. 52 (4)). A Form 1 is not required for an Internal Discipline complaint.

The majority of complaints in the sample were committed to writing using a Form 1 (n=279 or 95%). In addition, two Public Trust complaints and one Internal Discipline complaint were submitted by a complainant in writing, but not via a Form 1. The remainder of complaints appeared to have been raised by the department (n=12 or 4%).

Of the 12 complaints raised by the department, nine included an Order for a Public Trust investigation in the file. Two appeared to have proceeded to a Public Trust investigation without an Order. The remaining case was an Internal Discipline complaint, for which an Order for investigation would not be expected.

### 3.2 COMPLAINT RECIPIENT

Of the 279 complaints submitted using a Form 1, the majority were submitted to the OPCC (n=177 or 63%). However, this trend varied considerably between departments. The majority of Form 1 complaints involving most Lower Mainland departments, including Vancouver, West Vancouver, New Westminster and Delta, were received by the OPCC. The majority of Form 1 complaints involving the remaining departments were received by the department.

**Table 3: Form 1 Submitted to OPCC or Department**

Department	Received By:			Total
	OPCC	Police Department	Both	
Abbotsford	3 (27%)	8 (73%)	-	11 (100%)
Central Saanich	2 (50%)	2 (50%)	-	4 (100%)
Delta	7 (78%)	2 (22%)	-	9 (100%)
Nelson	1 (33%)	2 (67%)	-	3 (100%)
New Westminster	9 (82%)	2 (18%)	-	11 (100%)
Oak Bay	-	2 (100%)	-	2 (100%)
Port Moody	-	2 (100%)	-	2 (100%)
Saanich	7 (39%)	11 (61%)	-	18 (100%)
Vancouver	123 (88%)	16 (12%)	-	139 (100%)
Victoria	20 (28%)	50 (69%)	2 (3%)	72 (100%)
West Vancouver	5 (62%)	3 (38%)	-	8 (100%)
<b>Overall Sample</b>	<b>177 (63%)</b>	<b>100 (36%)</b>	<b>2 (1%)</b>	<b>279 (100%)</b>

### 3.3 SUBJECT OF COMPLAINT

Under Part 9, a complaint can be made against a municipal Constable, a Chief Constable or Deputy Chief Constable, or a municipal police department. The majority of complaints in the audit sample were against a municipal Constable (n=283 or 96%), though in some cases the Constable was not identified (e.g., complaints against an “unknown Constable”). Three complaints named a Chief Constable or Deputy Chief Constable (1%). Of these, two were also against the police department (i.e., Compound complaints). Four complaints were against a municipal police department only (1%) and four complaints were against both the department and a municipal Constable (1%).

### 3.4 NOTICE OF COMPLAINT TO OPCC

Part 9 requires that the Chief Constable inform the Police Complaint Commissioner of all Form 1 complaints that are lodged with the police department (s. 52 (8)). In addition, the Discipline Authority must provide the Police Complaint Commissioner with a copy of the final decision and any recommendations on disciplinary or corrective measures respecting an Internal Discipline complaint (s. 64 (4)).

In addition to the complaints selected for inclusion in the audit sample, the review team examined any complaints which appeared in the list of complaint files provided by police departments which did not appear in the list provided by the OPCC. The review team identified a total of 41 such cases. Generally speaking, the review team was able to reconcile the apparent discrepancies between the lists. The most common explanations were that the complaint was associated with or was a duplicate of another complaint (for which there was a corresponding OPCC file number), or that it was an informal complaint (i.e., there was no Form 1 or Record of Complaint). The review team found that the OPCC was not informed of six internal discipline complaints where disciplinary measures were imposed. This finding is discussed further in section 7. Other observations are summarized in Table 4.

**Table 4: Reconciliation of Complaints in Department Lists Only (Not in OPCC List)**

	Frequency	Percent
Associated with/duplicate of another complaint in OPCC list	12	29
Non-Lodged Complaint	10	24
Not yet closed by OPCC <sup>10</sup>	6	14
Information File Only (no complaint)	4	10
Corresponding OPCC File Identified	3	7
Internal Discipline Complaint – OPCC Not Notified	6	14
<b>Total</b>	<b>41</b>	<b>100</b>

Part 9 specifies timelines within which the Chief Constable must inform the Police Complaint Commissioner of Form 1 complaints lodged with the department:

“[i]f a record of complaint is lodged with a municipal police department, the chief constable for that department must send a copy of that record to the police complaint commissioner within 10 business days after the complaint is lodged” (s. 52 (8)).

To examine compliance with this timeline, the review team noted the number of business days between the date the Form 1 was received by the department and the date on the written notification of the complaint to the OPCC (usually, the “Notice of Complaint”). Form 1 complaints that were initially received by the OPCC (n=177) and complaints that did not include a Form 1 (n=15) were not included in this analysis. In addition, in some cases (n=13), the date the Form 1 was received was not apparent; these cases were also excluded from the analysis. Of the remaining 89 cases, the average length of time between the department receiving the Form 1 and forwarding notice of the complaint to the OPCC was approximately six business days, in compliance with s. 52 (8).<sup>11</sup> Fifteen complaints exceeded the 10 business days timeframe.

### 3.5 NOTICE OF COMPLAINT TO RESPONDENT

Unless it has been determined that notification could jeopardize a complaint investigation, Part 9 requires that the respondent be notified of any complaints that have been lodged against them and characterized as conduct complaints (s. 52.1 (3)). The review team noted only one complaint where a decision was made to withhold notice to a respondent using this provision.<sup>12</sup>

Based on the documentation contained in the OPCC and department files, the review team noted other cases where the respondents did not appear to have been notified of the complaints. Examples included:

- One complaint that was summarily dismissed and one complaint that was withdrawn before characterization (or preparation of the Notice of Complaint);
- Two complaints that had already been handled either as a non-lodged or a lodged complaint; and
- Two complaints against members who had since retired from the Police Department.

The review team acknowledges that these respondents may have been informed verbally.

<sup>10</sup> As noted in the introduction to this report, both the police departments and the OPCC were asked to provide a list of all complaints that were closed between June 15, 2003 and June 14, 2005. Six complaints were closed by the department during this timeframe; however they had not yet been closed by the OPCC. As a result, they did not appear in the list of files provided by the OPCC.

<sup>11</sup> Calculated using the “NETWORKDAYS” function in MS Excel.

<sup>12</sup> However, in this case, notice was provided to another respondent involved in the incident. This may have compromised the withholding of notice to the intended respondent.

### 3.6 COMPLAINT CHARACTERIZATION

Part 9 requires that the Chief Constable or Police Board<sup>13</sup> characterize a complaint *promptly* after they have received the record of complaint (s. 52.1 (1)). A complaint may be characterized as follows:

- Public Trust complaint—in general terms, a complaint about the conduct of a police officer which affects the relationship between the police officer and the public;<sup>14</sup>
- Service or Policy complaint—a complaint about the services or policies of a police department which affects the relationship between the police department and the public;
- Internal Discipline complaint—a complaint about the conduct of a police officer which affects the employee-employer relationship between the police officer and the police department; or
- Compound complaint—a complaint which involves elements of more than one of the above types of complaints.

Once a complaint has been characterized, notice of the decision on characterization must be provided to the Police Complaint Commissioner within 10 business days (s. 52.1 (3)).

A total of eight complaints were not characterized by the police department, representing approximately 3% of the sample. In all but one case, there was an apparent reason for not characterizing the complaint. For example, some complaints were withdrawn or dismissed prior to characterization and some were closed without characterization as they pertained to a matter that had already been concluded (and there was no new information in the complaint).

While in the above referenced cases, complaints were concluded and the matter closed by the OPCC without having been characterized, the review team observed other instances where the OPCC required a complaint to be characterized in order to confirm its conclusion. In some cases, this meant that the department was asked to prepare a Notice of Complaint after the concluding letter had already been distributed.

To examine the timeliness of complaint characterization, the review team calculated the number of business days between the date the Form 1 was received by the police department and the date the complaint was characterized (typically, the date on the Notice of Complaint). The findings reported below were limited by the following considerations:

- Complaints that were initiated without a Form 1 were not included in this analysis (n=15);<sup>15</sup>
- Complaints that were initially received by the OPCC were excluded from this analysis (n=177);
- Cases where the date the Form 1 was received by the department was unclear were excluded (n=13); and
- In three of the remaining cases, the complaint was not formally characterized. These cases were also excluded from this analysis.<sup>16</sup>

Among the remaining 86 cases, the average length of time between receiving the complaint and the date on the Notice of Complaint was seven business days; the median observation was four business days. In most of these cases, the Notice of Complaint was either forwarded to the OPCC on the same date, or at least appeared

<sup>13</sup> If the complaint appears to be or to include a conduct complaint against a Chief Constable, a copy of the record of complaint must be provided to the Police Board.

<sup>14</sup> Refer to s. 46 (1) of the Police Act for the full definition of a Public Trust default.

<sup>15</sup> These cases were summarized in section 3.1 of this report. They included 12 complaints that were initiated by the police department and three that were raised by a complainant, but not via a Form 1.

<sup>16</sup> A total of eight complaints were not formally characterized. However, five of these were received by the OPCC and were excluded from analysis for this reason (see second bullet).

to have been. As a result, the average length of time between characterizing the complaint and forwarding the characterization to the OPCC was very short at two business days. In three cases, the characterization was forwarded to the OPCC more than 10 business days after characterization, exceeding the timeline specified in Part 9.

### 3.7 CONFIRMATION OF CHARACTERIZATION BY OPCC

In the vast majority of cases, the characterization was confirmed by the OPCC (n=259 or 88%); there were only three instances where the decision was over-ruled by the OPCC. These included: one complaint that was re-characterized from Public Trust to a Non-Police Act matter; one that was re-characterized as a Compound complaint; and one that was re-characterized as a Service or Policy complaint. The remainder of cases were either:

- Withdrawn, dismissed or otherwise cleared prior to characterization or confirmation of the characterization (n=12 or 4%);
- Not characterized (n=1 or <1%); or
- Characterized by the OPCC (n=19 or 6%).<sup>17</sup>

### 3.8 FINAL CHARACTERIZATION

The majority of complaints in the sample were characterized as Public Trust (n=269 or 92%). In addition there were four Service or Policy complaints, four Internal Discipline and six Compound complaints.

The remainder of complaints were determined to be Non-Police Act matters (n=3 or 1%) or were not formally characterized (n=8 or 3%), either because the matter had already been dealt with, they were withdrawn or dismissed prior to characterization, or there was no complaint or bona-fide respondents specified. Only one complaint appeared to have not been characterized in oversight. Though not formally characterized, these complaints appeared to involve and were treated as matters of Public Trust. That is, they related to alleged misconducts that, if proven, would have affected the relationship between a police officer and the community and were handled using the provisions outlined throughout Part 9 for Public Trust complaints (such as summary dismissal). For the remainder of this analysis, these complaints were treated as Public Trust complaints.

**Table 5: Final Characterization**

	Frequency	Percent
Public Trust	269	92
Not characterized	8	3
Compound	6	2
Service or Policy	4	1
Internal Discipline	4	1
Non-Police Act	3	1
<b>Total</b>	<b>294</b>	<b>100</b>

<sup>17</sup> The majority of these were complaints submitted by the Pivot Legal Society.

## 4 WITHDRAWALS

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Under Part 9, a complainant may withdraw their complaint at any time by filing a written notice of withdrawal with the Discipline Authority or the Police Complaint Commissioner (s. 52.2 (1)). Roughly 10% of complaints in the sample were withdrawn by the complainant (n=30). However, three of these complaints were not ultimately concluded as withdrawn: one was later re-submitted by the complainant; one was withdrawn verbally without a signed withdrawal form; and one was already concluded as unsubstantiated when the withdrawal was received. Consequently, the total number of complaints concluded as withdrawn was 27 (9%).

Part 9 states that if the Police Complaint Commissioner suspects that a withdrawal was made under duress, the Police Complaint Commissioner must undertake reasonable efforts to determine if duress was a factor (s. 52.2 (4)).

The review team noted that when reviewing withdrawals, it often appeared that there was no contact between the OPCC Analyst and the complainant; instead, the OPCC Analyst typically discussed the withdrawal with the Internal Investigator, and reviewed file correspondence such as the Notice of Withdrawal. The review team also observed one instance where the OPCC Analyst discussed the withdrawal with the Crown prosecutor responsible for handling a related criminal charge against the complainant. It was noted that Crown had stayed the proceedings against the complainant on the condition that the complainant withdraw his complaint against the respondent. This example highlighted a concern raised by police officers during interviews that complainants, on some occasions, lodged complaints in attempt to gain leverage in pending criminal or civil matters.

The OPCC did not order continued processing of any of the withdrawn complaints in the sample.



## 5 PUBLIC TRUST COMPLAINTS

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### 5.1 SUMMARY DISMISSAL

Section 54 (1) of Part 9 contains provisions for the summary dismissal of Public Trust complaints. A total of 90 complaints in the sample included a summary dismissal under s. 54 (1), representing 31% of all complaints in the sample.<sup>18</sup> Of these:

- 78 (87% of all summary dismissals) were dismissed under sub-section (b), which states that “there is no reasonable likelihood that further investigation would produce evidence of a public trust default”;
- Six (approximately 7% of all summary dismissals) were dismissed under sub-section (a), which states that the “complaint is frivolous or vexatious”;
- Four (approximately 4% of all summary dismissals) were dismissed under sub-section (c), which states that “the complaint concerns an act or omission that...occurred more than 12 months before the complaint was made”; and
- Two (2% of all summary dismissals) were dismissed using more than one of the above justifications (e.g., sub-sections (a) no likelihood of evidence and (b) frivolous or vexatious).

Part 9 requires that the Discipline Authority provide notice to the complainant, respondent and OPCC within 10 business days of the decision to summarily dismiss a complaint (s. 54 (3)). Compliance with the timeline aspect of this requirement was difficult to assess because the date the decision was made to summarily dismiss a complaint was only rarely distinguishable from the date on the summary dismissal letter. However, the review team observed whether the notice of the summary dismissal appeared to have been provided to the appropriate parties.

In the vast majority of cases, notice was provided accordingly. Exceptions included the following:

- One complaint was amended to a summary dismissal at the OPCC’s suggestion (the police

<sup>18</sup> As noted in section 2.5 of this report, a total of 86 of the 294 files in the sample were concluded through summary dismissal. This included one Service or Policy complaint and 85 Public Trust complaints. The 90 complaints discussed in this section which involved a summary dismissal included:

- the 85 Public Trust complaints that were concluded through summary dismissal;
- two complaints that were initially summarily dismissed and later concluded through other means (discussed further in the remainder of this section); and
- three complaints wherein the allegations against some of the respondents were summarily dismissed and either substantiated or unsubstantiated against the other respondents. The disposition of these complaints was characterized in section 2.5 according to the most serious outcome (i.e., substantiated or unsubstantiated). These files are therefore not included in the count of files concluded through summary dismissal in section 2.5.

department had initially considered the matter to be informally resolved). Because the 30 day review period had already lapsed, notice of the summary dismissal was omitted. However, the complainant was contacted to ensure he was satisfied with the resolution.

- Notice was not provided to all parties in two complaints because the matter was considered to have already been handled and there was no new information.
- The department appeared to have failed to notify the respondent in one case; however, the OPCC subsequently included the respondent in the confirmation of the dismissal.

When a complaint is summarily dismissed by the Discipline Authority, Part 9 also requires that the Discipline Authority inform the complainant that they may apply to the Police Complaint Commissioner to review the decision (s. 54 (4)). In the vast majority of the summary dismissals reviewed, complainants were duly informed of this recourse. In two of the three cases where they were not informed, the OPCC required the department to send out an amended letter addressing the omission.

In all cases the OPCC reviewed the summary dismissal and, in most cases, confirmed the Discipline Authority's decision. In one case, the OPCC Analyst requested further information prior to confirming the dismissal. In two cases the OPCC amended the disposition of the complaint: one was amended to "unsubstantiated" and the other to "Non-Police Act".

The review team observed an apparent need for greater clarification between concluding a complaint as summarily dismissed versus concluding it as unsubstantiated. Concluding letters to complainants quite often combined the language that would be used for either of these dispositions. The issue is important because the recourse available to complainants differs between complaints summarily dismissed and complaints concluded as unsubstantiated. For example, when a complaint has been summarily dismissed, the complainant may apply to the Police Complaint Commissioner to review the decision. When a complaint has been unsubstantiated and the Discipline Authority has concluded that no disciplinary or corrective measures are warranted, the complainant may file a request for a public hearing.

Further, the review team noted that considerable investigative work was undertaken prior to summarily dismissing many complaints. For example, among the 90 complaints that were summarily dismissed under s. 54 (1), many included a final investigation report that was similar in content to the final investigation reports prepared for complaints concluded as unsubstantiated. If s. 54 (1) is intended to lessen the resources committed to concluding complaints that are likely to have no basis, it may not be achieving this outcome.

## 5.2 INFORMAL RESOLUTION

Part 9 also contains provisions for the informal resolution of Public Trust complaints (s. 54.1). Overall, informal resolution was rarely used in the audited complaints. It was attempted in 32 or 11% of all files in the sample and was successfully completed—following the process outlined in Part 9—in 25 or 8% of all files.

However, there was considerable variation between departments in the use of informal resolution. The percentage of files within each department where informal resolution was attempted ranged from lows of 0%, 4% and 5% in three departments to a high of 23% in another.<sup>19</sup> It is important to note that although informal resolution was used more frequently by the latter department, the review team observed that in most of these cases there was no contact between the complainant and the respondent. Instead, a resolution stating

<sup>19</sup> These figures do not include police departments where fewer than 5 complaints were selected for inclusion in the sample.

that the Internal Investigator or the respondent's supervisor would speak to the respondent and ensure they were made aware of the complainant's feelings was signed by the complainant and, later, the respondent. Complainants were thus required to trust that the action would be completed and carried out in a manner that reflected their wishes.

Part 9 states that the Discipline Authority must consider whether informal resolution of the complaint is appropriate (s. 54.1 (1)). The review team found that there was rarely any indication in the file of whether informal resolution was considered. Likewise, if it was considered and determined to be inappropriate, the reason was rarely noted.

Of the seven documented attempts that did not result in a successful resolution under s. 54.1:

- In two cases the complainant declined to participate or later withdrew their consent to the process;
- In four cases a resolution could not be reached despite initial discussions and/or meetings; and
- A resolution was reached in one case; however, it did not satisfy the criteria outlined in s. 54.2 (1) of Part 9. That is, consent forms were not completed and signed by the complainant and respondent; therefore, the OPCC documented the complaint as summarily dismissed.

Part 9 requires that the Discipline Authority notify complainants, respondents and the Police Complaint Commissioner of the results of attempts at informal resolution, whether or not they are successful (s. 54.1 (14)). However, in the four complaints referenced above where informal resolution was initiated but not ultimately successful, there did not appear to be any clear communication to each of the required parties as to these results.

Where complaints are successfully concluded through informal resolution, Part 9 requires that the complainant and respondent sign a letter consenting to the resolution (s. 54.2 (1)). As noted above, the review team noted one case where written consent to the resolution was not obtained and the OPCC concluded the complaint as summarily dismissed rather than informally resolved. In addition, the review team noted three other instances where this requirement was not fully met, yet the complaints were ultimately concluded as informally resolved. These included:

- One case where the consent letter was sent to the complainant for signature but never returned. The complainant had previously consented to the resolution; however, his consent was not obtained in writing;
- One case where the consent letter was signed by the complainant and the officer who handled the informal resolution but not by the respondent officer; and
- One case where the consent letter was signed by the complainant only.<sup>20</sup>

The review team also examined whether consent to the resolution was revoked in any of the cases where an informal resolution was reached. The review team noted one case where the complainant, after having signed the informal resolution, contacted the OPCC to express dissatisfaction with the resolution and request a review. Specifically, one of the complainant's initial interests—the creation of an incident report regarding the theft of items from his home—was not addressed by the informal resolution. File correspondence indicated that the OPCC Analyst contacted the department and was advised that the complainant would receive an incident number. The OPCC ultimately confirmed the informal resolution, albeit with some reservations.<sup>21</sup>

<sup>20</sup> The OPCC Analyst in this case noted this omission and requested a copy of the respondent's signed consent from the department. Ultimately, the OPCC confirmed the conclusion of the complaint through informal resolution in the absence of this documentation.

<sup>21</sup> This was the same incident described in the above footnote.

The final aspect of informal resolution the review team examined was s. 54.2 (5). This section states that “no disciplinary action may be taken against a respondent as a result of an informal resolution of a complaint until the informal resolution has become binding” (i.e., the 10 business day withdrawal period has passed without consent to the resolution being revoked). The review team noted one file where the respondent appeared to have received a verbal reprimand within the withdrawal period. While the department described the action taken as a verbal reprimand, the OPCC referred to the measure as “managerial advice”. It is not clear whether the action taken would have been considered “discipline” for the purpose of this section. Further clarification may be required with respect to this requirement.

### 5.3 INVESTIGATIONS

Subject to the provisions for summarily dismissing or externally investigating a complaint, Part 9 requires that the Discipline Authority *promptly* initiate an investigation into any Public Trust complaint where informal resolution is either not attempted or is unsuccessful, or an investigation is ordered by the Police Complaint Commissioner (s. 55 (1)). Excluding complaints that were withdrawn<sup>22</sup>, informally resolved or reviewed and closed, a total of 231 Public Trust complaints underwent some degree of investigation prior to being summarily dismissed, substantiated or unsubstantiated.<sup>23</sup>

#### 5.3.1 EXTERNAL INVESTIGATIONS

The *Police Act* contains provisions for the Discipline Authority or the Police Complaint Commissioner to order an external investigation into a Public Trust complaint where an external investigation is considered necessary in the public interest (s. 55.1 (1)).

External investigations were ordered in a total of 15 of the above complaints, including nine complaints submitted by the Pivot Legal Society (hereafter referred to as the “Pivot complaints”) and two complaints stemming from the “Riot at the Hyatt” (hereafter referred to as the “Hyatt complaints”). In addition to the nine Pivot complaints and two Hyatt complaints, the Police Complaint Commissioner ordered external investigations in one other complaint. The remaining three external investigations were ordered by Discipline Authorities.

The review team also noted two complaints (both relating to the same incident) where the Discipline Authority requested that a neighbouring police department conduct an external investigation but the request could not be accommodated due to resource considerations. In the end, the matter was investigated internally.

Lastly, the review team noted one complaint where the Discipline Authority requested *assistance* with an internal investigation from another department.

#### 5.3.2 RANK OF INVESTIGATING OFFICER

The *Police Act* requires that a person appointed to conduct an investigation into a Public Trust complaint be of at least equal or higher rank than the respondent officer (s. 55.2 (2)). The review team noted two complaints

<sup>22</sup> While some complaints in the sample were in the process of being investigated when the complaint was withdrawn, for the purpose of this analysis all withdrawn complaints were excluded from the analysis of investigated complaints (unless otherwise specified).

<sup>23</sup> While some complaints in the sample were summarily dismissed following a conscientious preliminary investigation, others—such as those that related to an incident that occurred more than twelve months prior to the complaint being submitted or that were frivolous or vexatious—were concluded promptly, with little investigative activities required. For the purpose of this analysis, all complaints that were summarily dismissed were included in the analysis of investigated complaints.

(both relating to the same incident) where this requirement was not fully met. This complaint involved an Inspector and was referred to another department where a Deputy Chief was initially assigned to conduct an external investigation. However, the department was not able to fulfill the request to conduct the external investigation due to resource considerations. Ultimately, the matter was investigated internally by a Sergeant, under the direction of a Deputy Chief.

### 5.3.3 SUSPENSIONS WITH PAY PENDING THE COMPLETION OF AN INVESTIGATION

Part 9 contains provisions for suspending a respondent pending the completion of a Public Trust complaint investigation (s. 56.2). There were no suspensions pending investigation in any of the complaints in the sample.

Notwithstanding this finding, interview data suggested that this was an area of difficulty. In particular, s. 56.2 (4) (b) of Part 9 states that it is the Police Board's discretion whether a respondent who has been suspended for more than 30 days will receive pay for any days (beyond the first 30 days of the suspension) that he or she could have worked had the suspension not been imposed.<sup>24</sup> Some interview participants noted a need for greater clarification as to whether there is an active or a passive onus on the Police Board to carry out this decision. One police department and Police Board had received conflicting legal opinions on this issue:

- One opinion stated that, unless the Board determined otherwise, a suspended member would continue to receive pay beyond 30 days suspension; and
- The other opinion stated that, unless the Board determined otherwise, a suspended member would cease to receive pay beyond 30 days suspension.

Other interview participants questioned whether this decision should rest with the Police Board or would fall more appropriately under the responsibilities of the Discipline Authority. Either way, one participant suggested a need for guiding principles to assist with this decision.

### 5.3.4 EXTENSIONS

The Police Act states that investigations into Public Trust complaints must be completed within six months. However, the Police Complaint Commissioner may grant an extension if:

- New leads are discovered;
- The investigation is unusually complex; or
- An extension is considered necessary in the public interest (s. 56 (9)).

Extensions were granted in a total of 40 Public Trust complaints (14% of all Public Trust complaints). This includes 35 of the 235 Public Trust complaints (or 15%) that were included in the analysis of investigated complaints as well as five complaints that were withdrawn. Three of the latter were Pivot complaints.

Amongst complaints where an extension was granted, the number of extensions ranged from one to six; the average number of extensions was just under three. When the Pivot and Hyatt complaints were excluded from analysis, the average number of extensions dropped to just over one.

The review team attempted to note the reasons for which extensions were requested and granted. In some cases, the reasons were not clearly articulated and in many cases did not correspond to the conditions outlined

<sup>24</sup> Suspended respondent officers must receive pay for the first 30 days that he or she could have worked, unless the misconduct (if proved) would constitute a criminal offence (s. 56.2 (4) (a) and s. 56.2 (5)).

in s. 56(9) of Part 9. As listed in Table 6, the most common reasons were the complexity of the investigation and public interest, which were noted in 27 or just over two-thirds of all complaints where an extension was granted.

Even though the review team did not specifically examine the OPCC's approval rate for requests for extensions, anecdotally, extensions were generally granted where requested.

**Table 6: Reason for Extension**

	Frequency	Percent
Complexity	11	27.5
Complexity and Public Interest <sup>25</sup>	10	25
Public Interest	6	15
Awaiting necessary information from complainant	3	7.5
Legal Issues	3	7.5
Awaiting Statements	2	5
Availability of Discipline Authority	1	2.5
Awaiting Discipline Authority review	1	2.5
Awaiting result of attempts at informal resolution	1	2.5
No reason specified	1	2.5
Workload	1	2.5
<b>Total</b>	<b>40</b>	<b>100</b>

### 5.3.5 REPORTS ON THE PROGRESS OF AN INVESTIGATION

The *Police Act* requires that the Discipline Authority provide status reports to the complainant, respondent and the Police Complaint Commissioner within 45 days after the start of the investigation and at least every 30 days thereafter, for as long as the investigation continues (s. 56 (1)).

Compliance with the timelines surrounding investigations was difficult to determine. In large part this occurred because the dates of key events or decisions were not consistently noted in the files. Status reports were no exception. For example, the date the investigation was initiated was not specifically noted. In its place, the review team used the date the complaint was lodged. Findings reported in this section are therefore limited.

Of the 231 complaints included in the analysis of investigated complaints, 17 were concluded in less than 45 days, thereby precluding the need for an initial report during the same timeframe. Of the remaining 214 complaints, the review team observed initial reports within 45 days of the date the complaint was lodged in 36 cases (17%) and within 50 days (i.e., coming close to meeting the specified timelines) in an additional 27 cases (13%). In 80 cases (37%), initial reports were not provided within either of these timeframes.<sup>26</sup> Progress reports were either missing or dates were unclear in the remainder of complaints, representing about one third of cases (n=71 or 33%).

Compliance with follow up reporting timelines was more subjective. The review team rated compliance using the following scale:

<sup>25</sup> Ten of the 12 Pivot complaints in the sample were granted six extensions, citing a combination of reasons including the complexity of the investigation, public interest and later in the process, an unanticipated medical leave by the Discipline Authority. The remaining two Pivot complaints were extended once, citing public interest, and were subsequently withdrawn.

<sup>26</sup> This included four cases where the *Police Act* proceedings were suspended pending the outcome of criminal charges involving the respondents.

- Excellent (e.g., no reports missing or late);
- Good (e.g., no reports late by more than five days and no reports missing);
- Fair (e.g., some reports late by more than five days and/or some reports missing); and
- Poor (e.g., most reports late and/or missing).

Eighteen of the complaints discussed above were concluded within 75 days of the date the complaint was lodged, which arguably precluded the need for subsequent follow up reports within 30 days of the initial report. Of the remaining 196 complaints, the review team rated compliance with follow up reporting requirements as excellent (n=35 or 18%) or good (n=39 or 20%) in a total of 74 complaints (38%). Fifteen complaints were scored as fair (8%) and 16 were scored as poor (8%). All follow up reports were either missing or dates were unclear in the remainder of cases (n=91 or 46%).

### 5.3.6 LENGTH OF TIME TO “COMPLETION” OF INVESTIGATION

As noted in the previous section, timelines respecting investigations were difficult to determine and unfortunately, the data obtained by the administrative audit were limited. For example, Part 9 requires that investigators complete an investigation report within 10 business days of concluding an investigation. However, the date an investigation was concluded was rarely noted. Further, in some cases investigation reports were not dated.

Part 9 also requires that the Discipline Authority determine whether disciplinary or corrective measures are warranted within 10 business days of receiving a final investigation report and serve notice of this decision to the appropriate parties (s. 57.1 (1)). The date the final investigation report was provided to the Discipline Authority was rarely noted. In its place, the review team referred to the date on the report, acknowledging the limitations of assuming that it was provided to the Discipline Authority on the same date. The review team noted two additional limitations of this proxy measure: (i) as noted above, in some cases the investigation report itself was not dated; and (ii) in most complaints involving one police department, concluding letters were prepared in place of final investigation reports. The concluding letters contained both the results of the investigation and the Discipline Authority’s decision within the same document, making it impossible to differentiate the timing of these stages of the complaint cycle.

In short, compliance with timeline requirements was obscured. Notwithstanding the above concerns and limitations, the review team noted the following:

- The average length of time between the date the complaint was lodged and the date on the final investigation report was 190 days (approximately six months); the median value was 156 days (approximately five months).
- When complaints where an extension was granted were excluded from the analysis, the above figures changed to 140 days (approximately five months) and 113 days (approximately four months), respectively.
- The average length of time between the date on the final investigation report and the “completion” of the investigation<sup>27</sup> was 12 days. When complaints where an extension was granted were excluded from the analysis, the above figure dropped to two days.<sup>28</sup>

<sup>27</sup> As outlined in s. 56(8) of Part 9, an investigation was considered to have been completed on the date the discipline authority appeared to have reviewed the final investigation report and determined a course of action.

<sup>28</sup> For many complaints in the sample, the investigation report and the Discipline Authority’s course of action were contained within the same document (i.e., the concluding letter), yielding an elapsed time of 0 days between these events. This contributed to what was likely an artificially low average number of days between the investigation report and the completion of the investigation by the Discipline Authority.

- While the above overall findings are within the six month timeframe for the completion of investigations specified in Part 9 (s. 56 (7)), this timeframe was not met in a total of 54 cases. This figure dropped to 26 when complaints where an extension was granted (n=28) were not included.<sup>29</sup> Viewed another way, this means that extensions were not requested or granted in 26 or approximately half of the complaint investigations which exceeded six months in length.
- The average length of time between the “completion” of the investigation and the conclusion of the complaint by the OPCC was 105 days (approximately 3 months). When complaints where an extension was granted were excluded from the analysis, the above figure dropped to 82 days (under three months).
- The average length of time between the date the complaint was lodged and the conclusion of the complaint by the OPCC was close to nine months. This figure dropped to approximately seven months when complaints where an extension was granted were excluded.

Although the average length of an investigation reported above falls within the six month limitation specified in Part 9, interview data suggested that there were significant concerns with respect to the timeliness of investigations. Investigations—particularly into “straightforward” complaints—were perceived as taking too long to complete. This was attributed to a number of different factors, including:

- The investigative skills and complaint process experience of some Internal Investigators;
- The heavy caseload carried by Internal Investigators in some departments, and in others, the additional policing duties for which they were responsible;
- The administrative demands of the current complaint process, which some viewed as overly-bureaucratic; and
- Legal challenges created by gaps in or conflicting legal interpretations of Part 9.

The undue length of investigations was perceived as unfair for complainants and respondents, but particularly for respondents who continue to work and interact with the public with an unresolved complaint “hanging over their head”. There was considerable interest in amending the process in such a way as to facilitate timelier conclusion of complaints.

### 5.3.7 DISCIPLINE AUTHORITY’S DECISION REGARDING DISCIPLINARY OR CORRECTIVE MEASURES

Part 9 requires that, within 10 business days of receiving a final investigation report, the Discipline Authority must decide whether the findings contained in the report are sufficient to merit the imposition of disciplinary or corrective measures (s. 57.1 (1)).

Among the 231 Public Trust complaints included in the analysis of investigated complaints, a total of 85 went on to be summarily dismissed. In the vast majority of the 146 remaining cases, the Discipline Authority determined that no *formal* disciplinary or corrective measures were warranted (n=137 or 94%). Formal measures were recommended in nine cases, including: one-day suspensions (three complaints); written reprimands (two complaints)<sup>30</sup>; verbal reprimands (three complaints); and training (one complaint). It should

<sup>29</sup> Extensions were granted in a total of 40 complaints. However, in 11 of these cases the length of the investigation could not be calculated because dates were either missing or unclear, and in one case an extension was requested but the final investigation report was prepared within six months.

<sup>30</sup> Both written reprimands were later “downgraded” as a result of the prehearing conference. One became a verbal reprimand and the other became managerial advice.



be noted that in 14 of the above complaints, *informal* corrective measures (usually managerial advice or advice to future conduct) were determined to be appropriate.<sup>31</sup>

In all but one case, the respondents, complainants and the OPCC were notified of the Discipline Authority's decision, as required by s. 57.1 of Part 9. In the exceptional case, the complainant was treated as a witness by the department but as a complainant by the OPCC. This likely accounted for the omission.

Among the nine complaints where the Discipline Authority determined that formal disciplinary or corrective measures were warranted, the respondents were offered a prehearing conference in seven or 78% of cases. Of these, disciplinary or corrective measures were accepted by the respondents in all but one case. In the exceptional case, the respondent refused to attend a prehearing conference and the Discipline Authority made arrangements for a discipline proceeding to be held. However, an informal corrective measure (i.e., managerial advice) was accepted prior to the discipline proceeding being held. Discipline proceedings were not held for any of the complaints in the sample.

Notwithstanding the limitations associated with the low number of complaints involving disciplinary or corrective measures, there appeared to be a noteworthy variation between departments with respect to their use. While complaints where disciplinary or corrective measures were imposed represented about 3% of all Public Trust complaints, they accounted for close to one-third of all complaints involving one police service (29%). Viewed another way, although complaints involving this police service represented 5% of the overall sample, they accounted for 50% of the eight Public Trust complaints where formal disciplinary or corrective measures were imposed.

Even though it is not a formal means of discipline or corrective measure in the *Code of Professional Conduct*, managerial advice was the most commonly used form of correction. Managerial advice was noted in a total of 16 Public Trust complaints and one Compound complaint. These 17 complaints included three that were informally resolved and one that was withdrawn. There may be a need for greater clarification and consistency surrounding the use of managerial advice. It appeared that in some cases it was considered a corrective measure and in some cases it was not. It was also not clear whether a complaint could still be considered unsubstantiated if managerial advice was given. In some cases the OPCC amended the disposition of a complaint from "unsubstantiated" to "substantiated" or "substantiated-in part" because advice was given.

Finally, it is important to note that because the number of complaints involving formal disciplinary or corrective measures was low, the review team re-sampled and examined *all* complaints involving disciplinary or corrective measures during the two-year period as part of the investigative audit (an additional 30 files). The results of the analyses of these files are included in the investigative audit summary report.

#### 5.4 REQUESTS FOR PUBLIC HEARINGS

The *Police Act* contains three separate provisions whereby a complainant can request a public hearing into a Public Trust complaint:

- If they are aggrieved by the Discipline Authority's decision that disciplinary or corrective measures are not warranted (s. 57.1 (3));
- If they are aggrieved by the disciplinary or corrective measures accepted by a respondent and approved by the Discipline Authority as the result of a prehearing conference (s. 58 (6)); and

<sup>31</sup> In one of these complaints, training was identified as appropriate for the respondent member; however, this appeared to have been handled informally (i.e., not as a disciplinary or corrective measure).

- If they are aggrieved by the disposition of a complaint proposed by the Discipline Authority as a result of a discipline proceeding (s. 59.1 (3)).

Similarly, respondents may request a public hearing if they are aggrieved by the disposition proposed by the Discipline Authority as a result of a discipline proceeding (s. 59.1 (3)). Respondents are automatically entitled to a public hearing, where requested, if the disciplinary or corrective measure proposed by the Discipline Authority is more severe than a verbal reprimand (s. 60 (3) (a)).

In addition, the Police Complaint Commissioner may arrange a public hearing if it is determined that there are grounds to believe a public hearing is necessary in the public interest (s. 60 (3) (b)).

Complainants requested public hearings in relation to the Discipline Authority's decision regarding disciplinary or corrective measures in 27 of the 283 Public Trust complaints in the sample (about 10%).<sup>32</sup> The Police Complaint Commissioner arranged a public hearing in response to one of these requests, related to the Hyatt complaints. The hearing was held up by legal challenges and ultimately cancelled by the subsequent Police Complaint Commissioner.

There were no other requests for public hearings by complainants or respondents in any of the Public Trust complaints in the sample and none were ordered by the Police Complaint Commissioner under s. 60 (3) (b).

## 5.5 OVERALL DISPOSITION OF INVESTIGATED COMPLAINTS

Just over half of the Public Trust complaints were concluded through a full investigation and were either unsubstantiated (n=124 or 44% of all Public Trust complaints) or substantiated (n=22 or 8% of all Public Trust complaints). Among the substantiated complaints, formal disciplinary or corrective measures were imposed in eight cases (about 3% of all Public Trust complaints).

There were noteworthy variations between departments with respect to unsubstantiated complaints. The percentage of Public Trust complaints concluded as unsubstantiated within each department ranged from a low of 6% in one department to a high of 70% in another.<sup>33</sup> Departments with low rates of unsubstantiated complaints had, in turn, higher rates of summarily dismissed complaints.

As noted previously in this report, similar types of complaints and complaint investigations appeared to result in different outcomes depending on the police department involved. Complaints that were summarily dismissed by some departments, on the grounds that there was no likelihood that further investigation would produce evidence of a disciplinary default, were more likely to be concluded as unsubstantiated by other police departments. This finding was supported by feedback obtained during interviews. There was a perception amongst some past and present Internal Investigators that the additional investigative resources required to conclude a complaint as unsubstantiated versus summarily dismissed were minimal and worthwhile for the perceived finality of an unsubstantiated complaint. In other words, these Internal Investigators believed that summarily dismissing a complaint left it open to lingering questions or doubt, whereas concluding a complaint as unsubstantiated more patently cleared the respondent officer of any misconduct.

The above observation also speaks to the apparent confusion between the two dispositions and the amount of investigative resources invested in summarily dismissing complaints noted in section 5.1.

<sup>32</sup> This figure includes 269 Public Trust complaints, six Compound complaints which included a Public Trust element, and eight complaints that, while not formally characterized, were handled as matters of Public Trust.

<sup>33</sup> These figures do not include police departments where fewer than 5 complaints were selected for inclusion in the sample.

## 6 SERVICE OR POLICY COMPLAINTS

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There were a total of 10 Service or Policy complaints in the sample: six characterized as Compound complaints and four Service or Policy complaints alone.

As outlined in Part 9, Police Boards are responsible for Service or Policy complaints involving their department. Upon receiving a complaint, the Board may:

- Request the Chief Constable to investigate and report back on the complaint;
- Initiate a study, with or without assistance;
- Initiate an investigation;
- Dismiss the complaint with reasons; or
- Take any other course of action considered necessary (s. 63.1 (1)).

The review team noted that the decision was often not clearly delineated in the file. However, requesting the Chief Constable to investigate and report appeared to be the most commonly exercised option (n=3 or 30%). In addition, in one case the Board requested an external Chief Constable to investigate and in another, a Sergeant within the same department. In two cases, the Board initiated or ordered an investigation, and in one other case the Service or Policy aspect of the complaint was investigated simultaneous to the Public Trust investigation. Only one complaint was dismissed with reasons.

As required by Part 9, the complainants and the Police Complaint Commissioner were notified of the Board's decisions regarding the course of action to be taken within 30 days after initiating the action. However, there appeared to be less awareness of the requirement to also report this information to the Director of Police Services (s. 63.1 (3)). The Director of Police Services did not appear to have been informed in two cases, and in another was notified several months later.

At the conclusion of an investigation, Part 9 also requires that the Board notify the complainant, the Director of Police Services and the Police Complaint Commissioner of the results (s. 63.1 (5)). This requirement appeared to have been met in all ten cases.

In each case, the Board's decisions were reviewed by the OPCC. In one case, the OPCC recommended a further course of action, as provided by s. 63.1 (7). In this case, the OPCC suggested that a reminder be distributed to all sworn personnel regarding the department's policy on the issue in question.

## 7 INTERNAL DISCIPLINE COMPLAINTS

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There were four Internal Discipline complaints in the sample. In all four cases, the Police Complaint Commissioner was provided with a copy of the recommendations on disciplinary or corrective measures resulting from the complaint and the final decision reached by the Discipline Authority, as required by s. 64 (4). Disciplinary or corrective measures were applied in one case. Two complaints were concluded as unsubstantiated and one was withdrawn.

The *Police Act* provides that the Police Complaint Commissioner may determine, based on the information received, that an Internal Discipline complaint should be dealt with as a matter of Public Trust and order a further investigation or a public hearing (s. 64 (7)). The department's handling of all four Internal Discipline complaints in the sample was confirmed by the OPCC.

In addition to the four Internal Discipline complaints in the sample, the review team noted six internal discipline complaints listed in departmental records for which no corresponding OPCC file number could be located. In these six cases, all involving the same department, discipline was imposed; however, the OPCC was not informed and did not have any records of the complaints. The discipline imposed ranged from verbal and written reprimands through to termination. In keeping with department practice, these and all internal discipline complaints were handled by the department's Human Resources Section.

Representatives of the OPCC advised the review team that, as a result of this audit, they had been informed of the above files and had since been working with the department on receiving more detailed information on these and other internal discipline files handled by the Human Resources Section. In correspondence with the department, the OPCC noted concerns that some of the allegations in these files should have been the subject of a Public Trust investigation. Although the OPCC had requested more detailed information in November 2005, they had yet to receive synopses of any of these files more than six months later.

## 8 OTHER OBSERVATIONS

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### 8.1 CIVIL ACTION

The review team recorded whether civil proceedings appeared to have been pursued in relation to each complaint. There was at least some reference to civil action against the department or respondent in a total of 14 complaints (5%), though it was not consistently clear whether the complainant followed through on this interest.

### 8.2 CRIMINAL CONDUCT

The review team noted that criminal conduct on the part of respondents was documented in a total of eight complaints (less than 3%). In all but one case, Crown Counsel was informed. In the exceptional case, the victim of the assault did not wish to pursue the matter in any way—either criminally or as a police complaint.

### 8.3 COMPLAINTS MADE IN CONFIDENCE

The *Police Act* contains provisions for the submission of complaints in confidence (s. 65.1). The review team noted only two complaints that were submitted in confidence. Both of these complaints were made by sworn members.<sup>34</sup>

### 8.4 ERRORS AND INCONSISTENCIES

While not included in the audit tool and therefore not documented on a consistent basis, the review team observed a considerable number of administrative errors in the complaint files in the sample. These included filing documents under the wrong file number (in some cases resulting in delays in closing a file), incorrect cross-referencing of Discipline Authority and OPCC file numbers, incorrect dating of documents (in particular, typing the wrong year), incorrect spelling of complainants' names, and inconsistency in key decisions (e.g., whether a complaint can be concluded without having been characterized). While minor in nature, these errors may detract from public and police confidence in the complaint process.

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<sup>34</sup> In addition to the above confidential complaints, the review team noted 14 other cases where the complainant was a sworn member. In five of these cases, however, it appeared that a member signed the Form 1 for administrative purposes (i.e., there was no complaint from the public; however, the department wished to pursue the matter as a Public Trust complaint).

## 9 INFORMAL OR “NON-LOGGED” COMPLAINTS

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In addition to the formal complaints that were selected for inclusion in the audit, the review team reviewed a number of informal or “non-logged” complaints at most departments.

The review team noted considerable range in the manner in which informal complaints were handled and, in particular, how information about these complaints was managed across the 11 police departments. In some cases, while hard copy files were available there was no “log” or record of complaints that would, for example, assist the department in identifying potential performance or training issues when members became the subject of multiple, similar complaints. Other departments had recently begun to track informal complaints in MS Excel spreadsheets or MS Word tables. The Saanich Police Department was in the practice of logging both formal and informal complaints in the same database system (discussed in greater detail in s. 10).

The variation in the record keeping of informal complaints affected each department’s capacity to fulfill the review team’s request for information. As a result, the sampling methods used to identify files to include in the audit of informal complaints differed between departments. In most cases, the review team was able to extract a random sample from the list of all complaints opened or closed during the review period while in other departments less systematic methods were used (e.g., pulling every fifth informal complaint file). Unlike the audit of formal complaints, the number of informal complaints reviewed at each department was not proportional to the total population of informal complaints.

In general, the review team examined a total of 15 informal complaints from most departments. Exceptions included the Abbotsford Police Department, where 14 files were reviewed, West Vancouver (n=11) and Vancouver (n=20).<sup>35</sup> In addition, informal complaints were not examined at the four smallest police departments (Central Saanich, Nelson, Oak Bay and Port Moody). In total, 105 informal complaints were reviewed.

The main purpose of this review was to determine whether complaints were being handled informally which should have been brought to the attention of the OPCC. This issue was addressed primarily by the investigative audit (refer to the investigative audit report for a summary of the findings). The data reported here are included to provide descriptive information about the informal complaints that were reviewed.

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<sup>35</sup> Abbotsford Police Department was the initial or “pilot” site for the audit of both formal and informal complaints. At this department, the review team examined half of all informal complaints included in the list, which amounted to 14 files. While at West Vancouver Police Department, the review team was only able to review 11 files due to time constraints in the audit schedule. At Vancouver Police Department, the review team identified a sample of 30 informal complaint files for audit. However, staff of the professional standards section were unable to locate some of the selected files. Twenty files were reviewed.

Of the 105 informal complaints selected for review, a total of 14 were not relevant to the main purpose of the review noted above (i.e., whether complaints were handled informally which should have been brought to the attention of the OPCC) and were excluded from further analysis.<sup>36</sup>

Of the 91 informal complaints included in further analysis:

- One third (n=30 or 33%) were similar to allegations of “abuse of authority” (e.g., complaints that an officer did not have the authority to detain and question a complainant or allegations that the complainant was being unduly targeted by police);
- Twenty (22%) were similar to “neglect of duty” (e.g., complaints that an officer did not adequately investigate an incident or failed to charge someone involved in the incident); and
- Twelve (13%) were similar to allegations of “discreditable conduct” (e.g., complaints that an officer was rude or unprofessional).

The remainder of complaints are summarized in Table 7.

**Table 7: Informal or “Non-lodged” Complaints by Type**

	Frequency	Percent
Abuse of Authority	30	33
Neglect of Duty	20	22
Discreditable Conduct	12	13
Other	10	11
Service/Policy Complaint	5	6
Improper Use or Disclosure of Information	4	4
Not specified <sup>37</sup>	4	4
Internal Discipline	3	3
Improper Off Duty Conduct	2	2
Improper Care of Firearms	1	1
<b>Total</b>	<b>91</b>	<b>100</b>

There was indication that complainants were provided with a Form 1 (or information about filing a Form 1) in 22 of the 91 non-lodged complaint files (24%). In six of these cases, it was clear that the complainant subsequently completed a Form 1; however, two of these were not forwarded to the OPCC. As a consequence, only four of the 91 non-lodged complaints (4%) went on to be processed as lodged complaints under Part 9 of the *Police Act*. In addition, in three cases the department requested that the OPCC order an investigation (3%). In total, the OPCC appeared to have been notified of 11 of the 91 non-lodged complaints.

Excluding complaints that were ultimately processed under Part 9 (i.e., the four lodged Form 1 complaints and three ordered investigations referred to above), about one third of the remaining 84 non-lodged complaints examined were concluded informally (n=30 or 36%). This meant, for example, that the department offered

<sup>36</sup> These included the following:

- Five complaints against a civilian employee and once complaint involving a CN Rail officer;
- Four information files (e.g., shadow files of regular investigations or information disclosed by a member where a complaint was anticipated but never received);
- Three internally generated reviews (e.g., policy issues reviewed by a department at its discretion in the absence of a complaint from the public);
- One “Non-Police Act” matter. In this case, the matter was brought to the attention of the Police Complaint Commissioner who determined that the matter was not relevant to the provisions of the *Police Act*.

<sup>37</sup> These cases were information files simply to document that a complainant was provided with a Form 1.

an explanation for the officers' actions. This practice does not necessarily compare with an informal resolution under s. 54.1 of Part 9, where the complainant is required to consent to the resolution. As such, comparison with the results of the audit of lodged complaints is therefore limited. However, the review team noted that the use of informal means of concluding complaints was more evenly distributed across the 11 police departments for non-lodged complaints compared with lodged complaints.

After complaints that were concluded informally, the second most common disposition was unsubstantiated (n=14 or 17%). The review team was also unable to determine a clear outcome in 14 or 17% of cases. Respondents received managerial advice in five or approximately 6% of cases. The disposition of all informal complaints is summarized in Table 8.

**Table 8: Outcome of Informal or "Non-lodged" Complaints**

	<b>Frequency</b>	<b>Percent</b>
Informally concluded	30	36
Unsubstantiated	14	17
Not Clear	14	17
Abandoned or Withdrawn	9	11
Concluded	6	7
Managerial Advice	5	6
Awaiting Complainant's Decision	4	5
Substantiated	2	2
<b>Total</b>	<b>84</b>	<b>100</b>



# 10 BEST PRACTICES

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Some of the best practices observed by the audit team included:

- *Information Management Systems:*

Saanich PD has developed a database to assist in managing complaint information. Among other benefits, the database includes features that have the potential to:

  - Save time and reduce errors associated with administrative tasks by populating “tombstone” and other complaint data into report templates;
  - Assist Internal Investigators in meeting timelines by automatically calculating diary dates for progress reports and the date by which an investigation must be completed;
  - Improve the department’s tracking of and accountability for informal or “non-lodged” complaints;
  - Assist management in identifying performance or training issues by tracking multiple complaints against individual respondents or multiple complaints of a similar nature.
- *Written application of management advice:*

In some cases where managerial advice was determined to be appropriate, the Vancouver Police Department prepared a written copy of the advice, which was signed by the respondent acknowledging that they had received and understood the advice.
- *Acknowledgement letters to complainants from departments:*

Both the Victoria Police Department and the West Vancouver Police Department sent letters to complainants acknowledging receipt of their complaint, which provided the complainant a copy of their Form 1, the Notice of Complaint, a guide to the complaint process, a list of support groups, the name of the investigator and their complaint file number. The form letter used by Victoria City Police also requested that complainants notify the investigator of any changes to their contact information.

# 1 1 SUMMARY AND CONCLUSIONS

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Overall, the review team had a number of concerns with respect to compliance with the administrative aspects of the complaints process, as outlined in Part 9 of the *Police Act*. Where procedural requirements were not met, they often reflected areas where there may be a need for greater clarification or areas where there may be insufficient resources. For example, in both cases where the requirements with respect to the rank of the investigating officer did not appear to be fully met, the department had requested an external investigation but the external agency did not have the resources to fulfill the request.

Areas where the review team noted more prevalent concerns with respect to compliance included:

- *Progress reports.* Initial reports were either more than five days late or missing in about two-thirds of all investigated complaints included in the analysis. Similarly, 30 day progress reports appeared to be missing in about half of these complaints. Anecdotally, the content of some progress reports was extremely minimal—in some cases providing no other information than that the investigation into the matter was still ongoing.
- *Timeliness of Investigations and Extensions.* While the average length of investigations fell within the six month timeframe specified in Part 9, at least 54 of 136 investigations<sup>38</sup> (40%) exceeded six months in length. Extensions were requested in about half of these cases. Where extensions were requested, they were generally granted.
- *Length of Time Between the Conclusion of an Investigation and the Discipline Authority's Decision Regarding Outcome and Disciplinary or Corrective Measures.* The *Police Act* specifies that the Discipline Authority must provide a summary of the investigation to complainants and respondents, including findings, conclusions and the Discipline Authority's decision regarding disciplinary or corrective measures, within 10 business days after receiving the final investigation report. Compliance with this requirement was often obscured by the absence of discrete dates separating the investigator's completion of the final report from the Discipline Authority's decisions which resulted from the report.
- *Disciplinary or Corrective Measures.* Formal disciplinary or corrective measures were rarely imposed (applied in 3% of files in the sample). Where they were imposed, it appeared that the lack of experience contributed to the discipline process not unfolding as anticipated. For example, in two of the eight cases where formal disciplinary or corrective measures were imposed, it appeared that the respondent was not offered a prehearing conference. This finding may have resulted from an absence of clear documentation in the files. In another case, the respondent

<sup>38</sup> Where timelines could be calculated.

refused the prehearing conference and an informal corrective measure (i.e., managerial advice) was later accepted outside of either a prehearing conference or a discipline proceeding.

Other concerns the review team identified included:

- *Un-characterized complaints.* In some cases, the OPCC required a complaint to be characterized in order to confirm its conclusion while in other cases it did not. Where it was required, the department was in some cases asked to prepare a Notice of Complaint after the complaint had already been concluded.
- *Summary Dismissal.* There appeared to be a need for clarification in the use of s. 54 (1) (b) (i.e., summary dismissal where there is no likelihood that further investigation would produce evidence of a Public Trust default). The review team noted that in some files the language used and the amount of investigative work described in the concluding letter more closely resembled a complaint concluded as unsubstantiated, rather than a summary dismissal.
- *Informal Resolution.* Informal resolution was rarely used, accounting for about 8% of the overall sample. Where it was used, the substance of the agreement often led review team members to question complainant satisfaction. For example, many informal resolution consent letters stated simply that the respondent's supervisor would speak to the respondent to ensure they were aware of the complainant's feelings.
- *Managerial Advice.* While not included as a corrective measure in the Code of Conduct Regulation, managerial advice or advice to future conduct was the most commonly used form of disciplinary or corrective measure. The review team noted that managerial advice was given in a total of 17 complaints (6%).
- *Internal Discipline Complaints.* The OPCC appeared to be encountering difficulties in exercising its oversight responsibilities with respect to internal discipline complaints. In the absence of sufficient information regarding some internal discipline complaints, the OPCC had been unable to conclude in a timely manner whether they should have been dealt with as matters of Public Trust.
- *Administrative errors.* The review team noted a considerable number of administrative errors which may detract from complainants' and respondents' confidence in the process.

