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

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TABLE OF CONTENTS

1 INTRODUCTION

We were asked to review a random sample of lodged[1] complaints from the 11 independent municipal police departments in British Columbia (the "Departments"). The sample was identified by the Police Services Division of the Ministry of Public Safety and Solicitor General.

In conducting our review, we were asked to focus on the following questions:

How are complaints handled by municipal police Departments? Without limiting the generality of the foregoing:

1. What efforts are made to gather necessary evidence to complete investigations?
2. What actions are taken by management to facilitate the complaint process?
3. Are the decisions made with respect to complaints appropriate based on the evidence in the complaint files, including:
    - Complaint classification (e.g., public trust, internal discipline or service or policy);
    - Disposition (e.g., summarily dismissed, informally resolved, unsubstantiated, substantiated); and
    - Disciplinary action taken.
4. Is the adjudicated discipline imposed?
5. Are complaints finalized within a reasonable time period?

During the months of December, 2005, and January and February, 2006, we traveled to Abbotsford, New Westminster, Delta, West Vancouver, Central Saanich, Oak Bay, Victoria, Saanich, Vancouver, and Port Moody to review complaint files that had been identified for our sample. The complaint files from the Department in Nelson that had been identified for our sample were made available to us for review in the Lower Mainland.

[1] This refers to complaints that are formally "lodged" in accordance with s. 52 of the *Police Act*, RSBC 1996, c. 367 (the "*Police Act*").

2 REVIEW

2.1 LODGED COMPLAINTS

There were 294 lodged complaints in the sample. For each of them, we reviewed the complete complaint file from the Department in question. We also had access to and, as necessary, reviewed the corresponding file maintained by the Office of the Police Complaint Commissioner (the "OPCC").

Both of us personally reviewed the Department's complete file for every complaint in the sample.[2] Our review was based on a form of audit outline that we had created for our review.[3] The first reviewer took primary responsibility for completing the audit outline for any given file. Occasionally, the second reviewer would suggest changes or additions to the audit outline. For each file, we reached consensus on our conclusions and filled out and signed one audit outline, the contents of which we used as the basis for this report.

2.2 NON-LODGED COMPLAINTS

In addition to the lodged complaint files in the sample, we also reviewed any available files or records maintained by the respective Departments for "non-lodged" complaints.[4] There were a total of 100 non-lodged complaints in respect of which we reviewed files or records. The primary focus of our review of non-lodged complaints was to determine whether they could or should have been dealt with under Part 9 of the *Police Act*.

The record keeping for non-lodged complaints varied from Department to Department. Generally speaking, though, the records of non-lodged complaints were far less comprehensive than the files kept for lodged complaints. From the information available, we were often unable to determine the precise nature of non-lodged complaints or the steps, if any, that Departments had taken to respond to them. For each of the non-lodged complaints,[5] we completed a form of audit outline that was simpler than the one we created for lodged complaints.[6]

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[2] There were a few files in respect of which one or the other of us declared a conflict based on past knowledge of or dealings with the Complainant. In those cases the one of us who had declared the conflict neither reviewed the file nor participated in completing the audit outline.

[3] A copy of the outline we used for lodged files is attached as Annex I to our report.

[4] This refers to complaints that are not formally "lodged" in accordance with s. 52 of the *Police Act*.

[5] We did not complete audit outlines for the non-lodged complainants from one Department, whose files we reviewed without the benefit of our outline.

[6] A copy of the outline we used for non-lodged files is attached as Annex II to our report.

2.3 THE "DISCIPLINE" FILES

The final group of files that we reviewed were a total of 30 lodged complaint files in which some degree of discipline or correction was said to have been imposed. These "Discipline Files" originated from Delta, New Westminster, Saanich, Vancouver, Victoria, and West Vancouver. We were asked to review them after it became clear that only a small percentage of the complaint files in the main sample had actually resulted in the imposition of any form of disciplinary or corrective action.

For our review of the Discipline Files we did not have access to the Departments' files. We reviewed only the files kept by the OPCC. We knew from our review of the files in the main sample that the OPCC files often did not contain the entire contents of the investigative files maintained by Departments. This was also true of the Discipline Files and sometimes it limited what we could say about the Discipline Files or the level of confidence with which we could say it.

2.4 CATEGORIES OF COMPLAINTS

After our review of the files, and to assist us in preparing our report, we attempted to divide the public trust complaints we had reviewed into rough categories. These were based on our sense of the primary discipline default being alleged in the complaints, as reflected in our own brief summaries of the complaints in the completed audit outlines. Our categorization is not intended, and should not be taken, as a systematic, empirical, or statistically valid analysis.

Occasionally, Complainants expressly alleged one or more of the specific discipline defaults set out in s. 4 of the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98 (the "*Code of Conduct*"), which might assist us to classify them. Often the Discipline Authority[7] would, in characterizing the complaint, attempt to identify the broad category of default into which it fell. This too would help us to categorize complaints but the practice was neither uniform nor systematic across the Departments. Our categorization does not necessarily accord with the characterizations provided by the Discipline Authorities.

A significant number of the complaint files we reviewed involved abuse of authority in one form or another as the primary complaint.[8] Many complaints involved allegations of excessive force, unjustifiable arrest, or improper search and seizure, all of which are categories of abuse of authority as that is defined under s. 10 of the *Code of Conduct*. For the purposes of our rough classification we tried to distinguish between these forms of alleged abuse of authority.

Issues with arrest we categorized under the general heading of abuse of authority, except that we specifically identified complaints involving so-called "SIPP" arrests[9] and the so-called practice of "breaching"[10] suspects.

In addition, we tried to identify complaints involving other specific discipline defaults, including neglect of duty, discreditable conduct that fell below or outside the category of abuse of authority, improper off duty

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7 See: the definition of "discipline authority" in s. 46 of the *Police Act*.

8 There is a confusing overlap between the definitions of "abuse of authority" and "discreditable conduct" under the *Code of Conduct*, whereby abuse of authority seems to encompass conduct that is both more serious (e.g. "unnecessary force", "harassment", and "intimidation") and less serious (e.g., acting in a manner that is "discourteous" or "uncivil" while on duty) than discreditable conduct (which includes on duty conduct that is "likely to discredit the reputation of the municipal police Department with which the police officer is employed"). The *Code of Conduct* would be clearer and more comprehensible if some attempt were made to distinguish more clearly between conduct that constitutes "discreditable conduct" and that which constitutes "abuse of authority".

9 This refers to an arrest for being found severely "intoxicated in a public place", pursuant to s. 41 of the *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267.

10 This refers to briefly arresting and moving a suspect on the ground of an "apprehended" breach of the peace, pursuant to s. 31 of the *Criminal Code*, R.S.C. 1985, C-46.

conduct, and improper disclosure of information. We also specifically identified complaints that primarily involved the failure to deal properly with Complainants' property, which, depending on the context, could also amount to neglect of duty, discreditable conduct, or abuse of authority.

The results of our rough classification are set out in the table below.[11]

	Main Sample	Discipline Files	Non-Lodged
Excessive Force	92	4	12
Abuse of Authority[12]	81	10	18
Neglect of Duty	61	2	19
Discreditable Conduct[13]	22	6	7
Improper Search and Seizure	23	1	6
Improper Handling of Property	17	1	5
Improper Off Duty Conduct[14]	10	5	1
Improper Disclosure of Information	7	2	3
SIPP	7	-	-
Breaching	6	-	-

2.5 OUR APPROACH

The authors of this report are a 28-year member of the RCMP, with extensive experience in conducting and overseeing internal investigations into alleged police misconduct, and a Ministry of Attorney General lawyer, with more than 14 years of legal experience, including several years as Crown counsel.

We recognize that policing is a stressful, complex, and dangerous occupation and one without which our society could not function properly. We also understand that police officers' duties to uphold the law and investigate crime give them extraordinary powers. The daily activities of police officers, perhaps more so than those of any other occupational group, can have serious, sometimes grave, effects on the lives and liberty of citizens. For that reason, policing in a free and democratic society carries with it the added burden of public accountability.

The form and focus of our report is narrative rather than statistical. Some numbers and percentages can be generated from our work and, where appropriate, we have referred to them in our report. We have also had the benefit of statistical information generated by an administrative audit carried out by a team from Police Services Division and, where appropriate, we have also referred to those data. In reviewing the files and in writing our report, however, we have tried to identify and describe particular concerns about the files, rather than trying to compile empirical data.

The majority of the complaint files we reviewed demonstrated to us that, on the whole, the Departments are investigating and concluding public complaints in a manner that is both reasonable and appropriate. We saw many fine examples of professionalism, thoroughness, and objectivity in the handling of police complaints

[11] There is some overlap among the identified categories of complaints. Some complaints involved more than one primary alleged default. Some complaints could not be easily classified. For these reasons, the totals in the table do not add up to the same number of public trust complaint files that we reviewed.

[12] This includes improper arrests but not improper searches, SIPPs, or Breaches.

[13] This includes all conduct falling below or outside the category of abuse of authority and refers, for the most part, to on duty conduct that is "likely to discredit the reputation of the municipal police Department with which the police officer is employed."

[14] Several cases involved the commission of an offence while off duty. Although we could have, we did not separately identify these cases under the default of committing an offence under s. 4(j) of the *Code of Conduct*.

but we have not dwelled upon those in our report because we viewed our task as one of critical review and analysis.

The thrust of our work has been to identify and describe specific issues or concerns related to the handling of complaints and, where appropriate, to criticize the handling of complaints by the Departments. Even in cases in which the ultimate result appeared to us to have been reasonable and appropriate, sometimes we identified issues for criticism. In rare cases our concerns and criticisms related to all aspects of the handling of particular complaints, including the underlying police conduct, the investigation of the complaint, and the actions of the Discipline Authority. From our review we also tried to identify problems associated to specific provisions of Part 9 of the *Police Act*, some of which may indicate that amendments should be considered.

Having conducted a detailed review of more than 400 complaint files, we have had a good opportunity to examine all aspects of the process for dealing with complaints under the *Police Act*. The investigation and handling of complaints by the Departments is a key part of that process but it does not occur in a vacuum. The oversight by the OPCC also has a significant bearing on the way that complaints are investigated, handled, and concluded. The OPCC's handling of complaint files fell outside our terms of reference, however, so we have not commented upon it in this report.

2.6 OUR FINDINGS

As a result of our review, we identified a number of specific concerns or criticisms, which we have grouped under the following general headings:

- The *Police Act*;
- Non-Lodged Complaints;
- Characterization;
- Summary Dismissal;
- Informal Resolution;
- Investigation;
- Excessive Force;
- Breaching;
- Search and Seizure & Improper Handling of Property;
- Review by Crown Counsel;
- The Discipline Authority;
- Lack of Substantiated Complaints;
- "Informal" Disciplinary Action; and
- The "Discipline" Files.

We will discuss each of these issues in detail in the pages that follow.

3 THE POLICE ACT

Underlying several of the concerns we identified in our review were problems with the current form of the *Police Act*, which is in some respects too detailed and in other respects not detailed or clear enough. In our view this has contributed to problems in the intake, handling, investigation, and closing of files by the Departments and it has weakened the OPCC's oversight function. In some instances, it appears that Departments have simply neglected or chosen not to comply with certain provisions of the *Police Act*.

What follows is a brief discussion of some of the provisions of the *Police Act* and associated problems that we noted in the course of our review.

3.1 SECTION 46 (DEFINITIONS)

3.1.1 "Complainant"

We saw a few cases in which Departments treated complaints by a lawyer or agent on behalf of a Complainant as third party complaints, thereby giving rise to lesser obligations of notice and disclosure. There is no reasonable basis for restricting complaints made by an agent on behalf of the Complainant in this way. The definition of "Complainant" should include the Complainant's lawyer or agent.

3.1.2 "Respondent"

In some of the files we reviewed, the fact that the Respondent was no longer on active duty was held up as a basis for removing the complained of conduct from scrutiny under the *Police Act*. The public interest in accountability continues even after the Respondent is no longer on active duty. This is particularly so when the retirement, resignation, or medical leave of the Respondent may have come about in whole or in part as a result of the conduct giving rise to a complaint. We think the *Police Act* should be clarified in its application to officers who have retired, resigned, or gone onto medical leave since the incident or conduct giving rise to a complaint. It may also be appropriate for the OPCC to have some specific powers of oversight over "deals" reached to send officers to pension or onto medical leave when they are under investigation or facing discipline under the *Police Act*.

These are examples of files in which issues arose about who could be considered a "Respondent" under the *Police Act*:

- File Example #1: An officer who was off duty and on extended medical leave was arrested in another jurisdiction and charged with impaired driving. The Discipline Authority wrote to the OPCC advising of the arrest and suggesting that no Form 1 needed to be filed pending the outcome of criminal proceedings. The then Police Complaint Commissioner concurred. Ultimately Crown counsel accepted a guilty plea to a Motor Vehicle Act offence and the officer resigned, after which the Discipline Authority wrote to the OPCC stating that a Form 1 was no longer appropriate. The OPCC replied by stating that the OPCC may have provided "mixed messages" previously but the current Police Complaint Commissioner believed that the *Police Act* continued to give him jurisdiction even after officers resign or retire. The OPCC then concluded that the complaint would be deemed to be lodged and substantiated but that no disciplinary or corrective measures were appropriate. [15]
- File Example #2: The Discipline Authority wrote to the OPCC forwarding the investigation report and advising that the officer had retired therefore the file would be closed. The OPCC replied that the matter was substantiated but no disciplinary sanction was imposed as the officer had resigned.

3.2 SECTION 52

The requirement that a complaint must be lodged in the prescribed form before it can qualify for formal treatment under the *Police Act* seems to us to be unduly formalistic. We saw many cases of so-called non-lodged complaints, which, although not in the prescribed form, were written and signed by the Complainant and which contained detailed particulars that would have been sufficient to merit full investigation and handling under the *Police Act*.

Many of the non-lodged complaints we reviewed appeared to disclose allegations of significant or serious public trust defaults that, notwithstanding the lack of a Form 1, ought to have been fully investigated and reported on, and, in a few cases may have justified formal discipline under the *Police Act*.[16]

These are some files that raised questions about the wisdom of requiring all complaints to be formally lodged:

- File example #3: A note on the police file indicated: "matter initially assigned as a Non-lodged file". The requirement to complete a Form 1 served only to delay the process.
- File example #4: The Complainant wrote a letter of complaint in September 2003 and again in January 2004 and did not receive a reply. She submitted a Form 1 in February 2004. Her initial letter to police clearly alleged discipline defaults yet she was not advised about the requirement to complete a Form 1 or the process involved in processing complaints. The requirement of a "Form 1" delayed the process and inconvenienced the Complainant unnecessarily.
- File example #1: The OPCC wrote to the Department advising as a matter of policy that a signed letter of complaint, though not in Form 1, should be deemed to be a legal complaint under the *Police Act*. This policy does not appear to have been communicated to the Departments or applied consistently by them, or the OPCC.[17]
- File example #5: This file involved complaints from three different citizens, who contacted the police to complain about a service and policy matter. While some of the complaints were in

[15] This file is also cited as an example in Section 3.2 of the report.

[16] We will discuss our concerns about the handling of Non-Lodged complaints in more detail below.

[17] This file is also cited as an example in Section 3.1.2 of the report.

writing, none was in Form 1. The police asked the OPCC to order an investigation under s. 55(3) of the *Police Act*. The OPCC wrote back suggesting that someone in the Department would have to complete a Form 1 in order for the OPCC to process the complaint because the *Police Act* does not appear to permit the Police Complaint Commissioner (the "Commissioner") to order investigations into service or policy complaints.

There was an indication from a few files we reviewed that the OPCC and some of the Departments appear to believe that in some cases it may be appropriate to refuse to accept for lodging, or to treat as incapable of lodging, certain complaints that on their face appear to comply with the basic formality requirement of completing and lodging a Form 1 under the *Police Act*. For example:

- File example #6: A stale complaint that was similar or identical to other complaints (previously summarily dismissed) by the same Complainant, alleging that the police were breaking into or otherwise tampering with his vehicle. The OPCC refused to characterize the complaint, thereby refusing to accept it for lodging.

In our view, the *Police Act* requires that if a Form 1 is completed it must be accepted for lodging under the *Police Act*. If the complaint is invalid or baseless on its face, then it ought to be dealt with by summary dismissal. The mandatory requirements of the *Police Act* should not be circumvented by refusing to accept for lodging complaints that on their face meet the formality requirements under the *Police Act*.

3.3 SECTION 52.1

The requirement under the *Police Act* that all complaints be characterized either as public trust, internal discipline, or service and policy, seems to us to be an unnecessary step that gives rise to delay and paperwork and does not serve to advance or expedite the process of handling complaints.

Of the public complaint files we reviewed, only a few did not fall squarely into the category of public trust, as that is defined under the *Police Act*. In our view all complaints from the public should be presumptively characterized as public trust, subject to the Discipline Authority convincing the Commissioner that this characterization would be inappropriate in any particular case. The *Police Act* should also require that, instead of spending time and energy on the largely fruitless process of characterizing complaints, the Discipline Authority should be required to provide particulars of the complaint, including the category of public trust default alleged and some factual particulars of the impugned police conduct. In our view this would help to encourage better, more timely, and more complete investigations.[18]

3.4 SECTION 52.2

Although duress is one obvious ground for scrutinizing withdrawn complaints, it ought not to be the only focus of the Commissioner's attention. We saw no withdrawn complaints in which duress was a significant issue. But we did see several withdrawn complaints that, for other reasons, may have merited closer scrutiny than they received from the OPCC. The OPCC's powers to deal with withdrawn complaints should be clarified and possibly expanded.

These are examples of cases where issues other than duress arose with respect to withdrawn complaints:

- File example #7: The Complainant alleged that while handcuffed and not resisting arrest he was pepper sprayed and assaulted. The incident that gave rise to the complaint also gave rise

[18] We discuss the issues of characterization and particularization in more detail below.

to charges against the Complainant of assaulting and obstructing a peace officer and causing a disturbance. The Respondent had had several other complaints of excessive force or abuse of authority made against him. He became involved in plea negotiations between Crown and defence counsel which resulted in the criminal charges against the Complainant being stayed in return for the Complainant agreeing to withdraw his complaint under the *Police Act*. This appeared to us to amount to a possible abuse of the police complaint process.[19]

- File example #8: The Respondent initiated an investigation of his cousin for prohibited driving, which ended in his having a physical struggle with his aunt (the Complainant), who had attempted to stop the Respondent from arresting her son. The aunt ultimately agreed to withdraw her complaint but only on the condition that, after withdrawal, the Respondent would meet her, face to face, to discuss what had occurred. After withdrawal, the Respondent refused to participate in a meeting with his aunt.
- File example #9: This was a complaint initiated by the Organized Crime Agency ("OCABC") about an officer improperly requesting criminal records checks for personal reasons through an OCABC research analyst. The Form 1 was internally generated and then internally withdrawn without the Department addressing that misuse of police databases for personal purposes constitutes a serious violation of the privacy interests that the police are obliged to protect.

3.5 SECTION 54

We had concerns about a significant number of the complaints that had been summarily dismissed. Particularly in some Departments we found that the power to dismiss complaints summarily was misunderstood, misapplied, or abused. The problems with summary dismissal may stem, at least in part, from the ambiguous language of s. 54(1) of the *Police Act*. On the one hand, this provision would seem to permit Departments to weed out complaints that, on their face, are obviously devoid of merit or unworthy of consideration, without inquiring into their merits. On the other hand, the reference in paragraph (b) to "further investigation" seems to require that some degree of initial investigation must be conducted before a complaint can be dismissed on the ground that there would be "no reasonable likelihood" of "producing evidence of a public trust default." It is unclear what form the initial investigation must take or how extensive it must be. In some Departments, paragraph (b) seemed to be used as a justification for carrying out partial investigations, selectively focussed on dismissing complaints.

In our view, the summary dismissal provisions should be clarified. It might also be appropriate to include additional grounds for summary dismissal, such as:

- another Act or process exists to deal with the substance of the complaint; and
- the complaint is predominantly an issue internal to the Department or is made in order to advance an internal or civil dispute that might be better dealt with through, for example, grievance arbitration.

3.6 OTHER STATUTORY ISSUES

- Where no public complaint has been made and no Form 1 has been lodged, some Departments take the view that the *Police Act* requires there to be an order from the Commissioner under s. 55(3)

[19] This file is also cited as an example in section 13.6 of the report.

before a Discipline Authority can commence an investigation into a possible discipline default.[20] It is unclear whether this is a correct interpretation of the *Police Act*, given that s. 64(5) specifically permits the Discipline Authority to "deal with" a discipline default as an internal discipline matter where, among other things, no Form 1 has been lodged. If it is a correct interpretation of the *Police Act*, however, the question arises whether it unduly restricts the power of a Discipline Authority to investigate possible police misconduct.

- When complaints are found to be unsubstantiated, should some other recourse, short of a full public hearing, be available to an aggrieved Complainant or to the Commissioner? We saw numerous files in which the Complainant, sometimes quite justifiably, was dissatisfied with the investigation or the findings in relation to his complaint but the OPCC could not do anything to address this dissatisfaction because of the seemingly high threshold for ordering a public hearing. Perhaps, as seems to be the view of Departments and the OPCC, public hearings are something to be avoided.[21] If so, then some other more efficient or expeditious means should be put in place for routinely dealing with complaints, the handling of which by police, though not egregious, may have left questions unanswered or concerns unaddressed.
- Section 55.2 of the *Police Act* provides that a person employed by the Department out of which a complaint arises may be appointed as investigating officer but does not appear to require the appointment of an investigating officer to investigate complaints that are lodged and not summarily dismissed or informally resolved. Based on the definition of "investigating officer" under s. 46, the apparently mandatory obligations placed upon the investigating officer under s. 56(6), and the fact that the investigating officer and the Discipline Authority are clearly intended to be two different people with distinct responsibilities, this is probably a legislative gap. It could be remedied by revising s. 55(1) so that the words "initiate an investigation into" be removed and replaced with "appoint an investigating officer to investigate".
- The *Police Act* should more clearly delineate and distinguish between the role of investigating officer ("Investigator") and the role of Discipline Authority.[22] The requirement in s. 56(6) that the Investigator formulate "findings, conclusions, [and] recommendations" tends to cloud the distinction between the Investigator and the Discipline Authority, and permits the Discipline Authority to avoid, or entirely abdicate, the responsibility for determining whether a complaint is substantiated and whether to impose correction or discipline. This in turn can lead to the perception or the reality that the Investigator, motivated towards justifying certain findings, conclusions, or recommendations, might conduct an investigation that is less than completely objective.
- Section 56(7) requires that investigations into public trust complaints must be completed within 6 months of the lodging of the complaint. This seemingly clear deadline is made obscure by s. 56(8), which provides that "an investigation is completed when the discipline authority has reviewed the final investigation report … and has determined what course of action to follow." The clause "determined what course of action to follow" is probably intended to refer to the Discipline

[20] File example #10: The Respondent, while off duty, allegedly assaulted a man whom the Respondent discovered was having an affair with his wife. The victim did not wish to proceed with a complaint or any action against the officer and took full responsibility for what happened. The DA felt constrained from commencing his own investigation into the matter so he requested the OPCC to order one under s. 55(3). This file is also cited as an example in Sections 14 and 15 of the report.

[21] It is not at all clear to us that this was the Legislature's intention in passing s. 60 of the *Police Act*. Public accountability appears to be one of the primary purposes of the *Police Act* and public hearings are one of the primary means of effecting that purpose. It may be that the manner in which some of the high-profile public hearings into police conduct have been conducted in this province provides a disincentive for ordering public hearings but authorities in other jurisdictions, the Law Enforcement Review Board in Alberta for example, seem to be able to hold regular and relatively expeditious public hearings.

[22] This issue will be discussed in more detail below.

Authority's determination under s. 57.1 of whether the evidence in the final investigation report is "sufficient to warrant the imposition of disciplinary or corrective measures." If so, this should be clarified.

- The power of the Discipline Authority to offer the Respondent a prehearing conference ought to be removed from the *Police Act* or its scope ought to be limited and clarified. In a number of cases we saw what appeared to be reasonable suggestions for proposed discipline reduced in severity after a prehearing conference, without any reason or explanation for the reduction. There were also several cases in which the Discipline Authority offered a prehearing conference and reduced the proposed discipline even though, in our view, the discipline default was too serious to qualify for a prehearing conference and the ultimate discipline agreed upon was unreasonably lenient. If the process of offering prehearing conferences and reducing proposed discipline is to be permitted to continue, particularly in the case of serious defaults, it ought to be more open to public scrutiny and oversight by the OPCC.
- The *Police Act* ought to permit the Discipline Authority to impose a higher level of disciplinary or corrective measure, perhaps up to and including a brief suspension without pay, without the Respondent being able to demand a full public hearing. For less serious defaults where less serious discipline is appropriate, a "paper" hearing on a relatively tight timeline ought to replace the recourse to a full public hearing under the *Police Act*.
- "Managerial advice" or "advice as to future conduct" is not included within the range of corrective or disciplinary measures provided for under the *Police Act* and the *Code of Conduct*. Nevertheless, on the files we reviewed, this "informal discipline" was imposed by Discipline Authorities far more frequently than any other type of corrective or disciplinary action. This "informal discipline" ought to be specifically regulated, or prohibited, under the *Police Act* and the *Code of Conduct*.
- The *Code of Conduct* ought to be amended to include a mandatory duty to report another officer who has committed a discipline default.
- The *Code of Conduct* ought to be amended to include, as a specified discipline default, a police officer's failure or refusal to cooperate fully with a *Police Act* investigation.
- Section 17 of the *Code of Conduct*, which deals with the "mental element" for disciplinary default, is confusing. It appears to import criminal law terms into an administrative or disciplinary context, in which the burden of proof is based on the civil standard.

4 NON-LODGED COMPLAINTS

Section 52(4) of the *Police Act* stipulates that a complaint may initially be submitted orally or in writing but, before the complaint may be processed under the *Police Act*, the complaint must be committed to writing in the prescribed form and the complaint must be lodged with one of the persons referred to in s. 52(2). These formality requirements have led, perhaps unintentionally, to the creation of a category of non-lodged complaints that fall outside the strict requirements of the *Police Act*. From our review, it was apparent that, even when a Complainant provided a signed statement or letter setting out a complaint, most Departments would not process it under the *Police Act* unless the Complainant also completed and signed a Form 1.

The handling of non-lodged complaints varied from Department to Department. Some simply accepted them as formal complaints, or attached them to a prescribed form and deemed them to be formal complaints.[23] Others did not deal with them unless they were written and lodged in the prescribed form. Most Departments often carried out some degree of investigation, even when the complaints were very informal, but the investigations into non-lodged complaints tended to be less thorough and sometimes less timely. In dealing with non-lodged complaints, the Departments generally did not provide the level of notice or reporting to the Complainants or the OPCC that they would have been required to provide if the complaints had been formally lodged under the *Police Act*.

One file we reviewed contained a letter from an OPCC Analyst suggesting that the OPCC's policy is that a written and signed complaint should be deemed to be lodged under the *Police Act* regardless of whether a Form 1 is actually completed and lodged. This approach makes sense but does not appear to have been systematically followed by Departments or enforced by the OPCC subsequently.

Most of the 105 non-lodged complaints we reviewed were made by telephone, in person, or by letter. Although s. 52(5) of the *Police Act* requires a person receiving a complaint to assist the Complainant in completing a record of complaint in the prescribed form, few of the records of non-lodged complaints that we reviewed documented any significant efforts by complaint takers to assist the Complainant in completing a Form 1, particularly when complaints were made orally.[24] Written complaints were often followed up with advice from the Department about the process of lodging a formal complaint but, for whatever reason, Complainants did

[23] In one Department, upon the receipt of a letter complaint, the DA completes a Form 1, attaches a copy of the letter, and indicates that the signature of the Complainant appears on the appended letter of complaint. The matter is then dealt with as a lodged complaint under the *Police Act* without further inconveniencing the Complainant whose letter clearly manifested an intention to lodge a complaint against the police.

[24] One Department's policy stipulates that when a person makes a complaint to the on duty NCO that cannot initially be resolved informally the person complaining must to be advised to submit the complaint in writing to the Chief Constable or the OPCC. The language of the policy suggests a process that is designed to discourage complaints based on bureaucracy.

not usually pursue the matter further. In one Department almost all non-lodged complaint files contained a copy of a letter acknowledging receipt of the complaint and containing "boiler plate" language stating that the complaint would be dealt with under the *Police Act* but in most cases there was no evidence that this was actually done.

Of the non-lodged complaints we reviewed, the large majority alleged clear discipline defaults, some of them quite serious, but they were not formally processed under the *Police Act*. Some Departments investigated non-lodged complaints up to a point (but no further) where the Discipline Authority could justify dismissing the complaint. Others took no apparent action in response to non-lodged complaints and appeared to place on file any documents received or generated as a result of a non-lodged complaint. The OPCC was rarely informed of the existence or the manner of resolution of non-lodged complaints from any of the Departments.

These are examples of the types of allegations made in non-lodged complaint files that we reviewed:

- Non-Lodged complaint file example #1: Spousal Assault victim alleged that police or EHS had failed to provide her with medical attention that she believed she ought to have received.
- Non-lodged complaint file example #2: Complainant was stopped by police for speeding, and questioned about impaired driving and the smell of marihuana in his car; his vehicle was allegedly searched for drugs without consent.
- Non-lodged complaint file exampe #3: Complainant's son was in a crosswalk and a passing car grazed his hand. The police allegedly neglected their duty by failing to investigate or pursue the matter.
- Non-lodged complaint file example #4: Complainant alleged that while walking his dogs three officers on bicycles pushed him into the bushes and issued him two tickets for having unlicensed dogs off leash.
- Non-lodged complaint file example #5: An officer allegedly provided confidential CPIC information to a newspaper reporter relating to an ongoing investigation.
- Non-lodged complaint file example #6: Complainant alleged that the police had broken down the door and used a "stun gun" on him inside his girlfriend's apartment.
- Non-lodged complaint file example #7: Complainant alleged that he was lodged into cells and his necklace was lost or stolen.
- Non-lodged complaint file example #8: Complainant alleged that police attended his home and unjustifiably questioned him about sexual assault or sexual harassment. He felt police were "accusing, threatening and menacing" and that they had improperly threatened to charge him criminally if he did not re-pay a damage deposit to a previous tenant.
- Non-lodged complaint file example #9: Complainant alleged that he was arrested for no reason while walking to the store and advised by police that he had no rights.
- Non-lodged complaint file example #10: Complainant was stopped by police and allegedly directed from his vehicle, handcuffed, and pushed face-first into his van. The Complainant also alleged that the police officer used profanity and acted unprofessionally.
- Non-lodged complaint file example #11: Complainant was stopped for speeding. He was directed from his vehicle, physically searched and his vehicle was searched. The Complainant alleged that the police did not have grounds for the searches.
- Non-lodged complaint file example #12: Complainant alleged that he was thrown over the hood of a police car and pepper sprayed for no reason.

- Non-lodged complaint file example #13: Complainant alleged that the police watched an individual break into her house and steal an expensive camera and failed to immediately arrest the individual and recover her property. The suspect was eventually arrested but the property was never recovered.
- Non-lodged complaint file example #14: A lawyer wrote to police complaining that his client alleged that four officers had pushed their way into his home, handcuffed him, trashed his house while searching it and left without explanation or legal justification. He also alleged that $3,200 cash was missing after the police departed.

5 CHARACTERIZATION

Section 52.1 requires the Discipline Authority to characterize a lodged complaint as public trust, internal discipline, or service or policy, and send a notice of the decision on characterization to the Commissioner for his review and approval. The Commissioner must then notify the Discipline Authority, the Complainant, and the Respondent of the final decision on characterization.

From our review, it became apparent that the process of characterization of complaints was time consuming and labour intensive without providing commensurate value to the complaint process. The large majority of the complaints we reviewed clearly fell into the public trust category. Therefore it seemed to us that it would be more appropriate that complaints from the public should be presumptively characterized as public trust, unless the circumstances clearly dictated a different characterization.

In the course of our review we saw examples from some Departments in which the initial effort to characterize the complaint also involved some effort to particularize it, by specifying the type of discipline default alleged, the basic facts from the complaint that supported the allegation, and, if there was more than one Respondent, the particular allegations made against each respective Respondent. In virtually every case that they were attempted, such initial attempts at particularization resulted in investigations that were more focused and more complete.

In our view in order to make the initial process of opening a public trust complaint file more meaningful, the *Police Act* should require that upon receipt of a complaint, the Discipline Authority must particularize it by specifically identifying the variety of discipline default alleged and the specific facts alleged in the complaint that are said to give rise to the default. Where there is more than one Respondent, the defaults against each of them should be particularized in this way. These particulars should be set out in a notice that is sent to the Complainant, the Respondent, and the OPCC.[25]

These are some examples demonstrating the value of particularizing complaints:

- File example #11: The Complainant was attempting to make a lane change but one driver would not let him into his lane. The Complainant gave "the finger" to that driver, who turned out to be an off duty police officer. The off duty police officer then stopped the Complainant, took his driver's licence and registration, and directed the Complainant to attend the police office to pick up his identification, along with a violation ticket. Clarity about the actual nature of the allegation was

[25] Some Departments are already doing this to some extent by providing a "Summary of Incident" along with the characterization. This preliminary step serves to ensure that the concerns of the Complainant are clearly articulated and understood at the outset, which is the first step to ensuring that the Department can address the Complainant's concerns.

lacking. The complaint was classified as "off duty conduct" but it was unclear what aspect of the conduct the Complainant was complaining about: the issuance of the ticket while the officer was off duty; the taking of his driver's license and registration; the direction to attend the police office to pick up his ticket and identification; the officer's attitude; or, the apparent conflict between personal and professional life which, if proved, could have amounted to abuse of authority.

- File example #12: The police were called to attend a domestic dispute, which gave rise to a complaint about various aspects of their conduct. After receiving the complaint, the Investigator wrote to the Complainant, confirming and re-stating her complaint as follows: "You complained that Constables [X] and [Y] attended [address] on [date]. While there, the constables kept you out of the suite for 2 ½ hours, they kept your bank cheque, and intimidated you in front of other people in the building." This went beyond alleging "abuse of authority" and pared down a somewhat rambling complaint into a clearer, more manageable case, which in turn led to an investigation that clearly articulated and addressed the Complainant's concerns.
- File example #13: The two Complainants (a couple) had been at the residence of an acquaintance, drinking. When the male Complainant briefly left the residence, the acquaintance locked the door, turned out the lights, and tried to sexually assault the female Complainant. The male Complainant became frantic and forced his way back into the residence, allegedly committing a minor assault on the acquaintance's brother. When police attended, they directed the irate male Complainant to leave the residence. When he failed to do so, a struggle ensued and the male Complainant was arrested. The Complainants' written complaints set out various allegations of misconduct, including excessive force in the arrest of the male Complainant, neglect of duty in failing to investigate the sexual assault, assault of the female Complainant by pushing her with a baton, and conflict of interest in that the attending investigating officer sometimes employed the alleged sexual assaulter. To the dissatisfaction of the Complainants, the investigative report focussed narrowly on the first two issues of abuse of authority and neglect of duty, without addressing the allegation of assault of the female Complainant and the alleged conflict of interest of the Respondent. The file would have benefited from a clearer framing or particularization of the issues at the outset.

6 SUMMARY DISMISSAL

Our review revealed that there were considerable variations among Departments in their interpretation of the *Police Act* and the correct procedures for complying with it. Some of the unique procedures developed by some Departments, in our view, could have the potential of leading to dissatisfaction and an erosion of public confidence in the ability of police officers to conduct full, fair, and objective investigations into alleged police misconduct. This was particularly true of some Departments' interpretation and application of the summary dismissal provisions contained in s. 54(1) of the *Police Act*.

Section 54(1) of the *Police Act* provides that a Discipline Authority may summarily dismiss a complaint if:

(a) The complaint is frivolous or vexatious;[26]

(b) There is no likelihood that further investigation would produce evidence of a public trust default; or

(c) The complaint concerns an act or omission that, to the knowledge of the Complainant or third party Complainant, occurred more than 12 months before the complaint was made.

As we have already suggested above, this section seems to be inherently ambiguous. On the one hand it seems to permit Departments to weed out complaints, without inquiring into their merits, if they are obviously devoid of merit or unworthy of consideration. On the other hand, the reference in paragraph (b) to "further investigation" seems to require that some degree of investigation must be conducted before a complaint can be dismissed on the ground that there would be "no reasonable likelihood" of "producing evidence of a public trust default." It is unclear what form the initial investigation must take or how extensive it must be. In some instances, paragraph (b) seemed to be used as a justification for carrying out partial investigations, selectively focussed on dismissing complaints.

The OPCC has issued a Practice Directive on Summary Dismissal but it does not help to remove the uncertainty about the proper use of summary dismissal. It states that s. 54 is not meant to preclude an investigation but it goes on to say that the complaint must be determined "on its face" to fall into one of the categories suitable for termination. The Practice Directive says that a file review may present sufficient documentation to show that the allegation is "unfounded" and goes on to suggest that supporting documentation may be necessary to support a "finding" relating to summary dismissal. In our view, summary dismissal should not involve a "finding" or a conclusion that the complaint is "unfounded" on the merits. It should merely involve the Discipline Authority being "satisfied" that the complaint falls into one of the three categories described in

[26] It is important to point out that we saw no examples of misuse or abuse of s 54(1)(a) of the *Police Act*. The problems we saw almost invariably involved s. 54(1)(b) of the *Police Act*.

s. 54(1) and, as such, will not result in further investigation by the police. The OPCC's Practice Directive seems to confuse summary dismissal with a "finding" or "determination" on the merits.

In our view, the summary dismissal provisions are predominantly intended for use in the preliminary stages of complaint handling, prior to taking significant investigative steps, such as interviewing witnesses and taking duty reports from Respondent officers. Once the investigation has progressed beyond a preliminary stage, the Discipline Authority should be compelled to make a decision on the merits of the complaint. Neither the *Police Act* nor the OPCC's Practice Directive makes this clear.

For the purposes of our review, we assumed that a complaint should not be summarily dismissed under s. 54(1)(b) if, either on its face or after a very preliminary investigation or file review, it disclosed an allegation, or facts that could reasonably support an allegation, of a public trust default. If a complaint met this test then, in our view, it justified a full investigation and a determination of whether it was substantiated on the merits. For example if the complaint was reasonably capable of belief, even if it was not particularly credible in itself or was less credible than other information on file, or if there was a significant dispute or disagreement between the Complainant and the Respondent about the conduct giving rise to the complaint, then in our view summary dismissal was not appropriate. In our view, the more evidence or information that was available (or that might become available through further investigation) to support the Complainant's version of events, the less appropriate summary dismissal was.

To determine whether summary dismissal is appropriate, we thought it might be useful to refer to the following guidelines:

- File review is a form of investigation;
- Depending on the case, file review alone may justify summarily dismissing a complaint or in some cases it may even justify making a determination on the merits of the complaint;
- Where a finding on the merits can be made on the existing evidence then summary dismissal should not be employed;
- Summary dismissal should not be used as a means of avoiding an investigation or a final determination in circumstances were either or both are warranted;
- Where a dispute exists in the evidence and the Discipline Authority is prepared to resolve that dispute one way or another, then summary dismissal should not be employed;
- Summary dismissal should normally arise only in the preliminary stages of complaint assessment or investigation but there may be rare cases where it could be utilized later in the process of investigating or addressing a public trust complaint; and
- If there is another statute or process that allows for the subject matter of the complaint to be dealt with fully and completely then summary dismissal should be used and the complaint should be directed to that process.

6.1 INCONSISTENCIES AMONG DEPARTMENTS IN THE USE OF SUMMARY DISMISSAL

Of the public trust complaints in the main sample, 85 (or roughly 28%) had been summarily dismissed. There was great variation among the Departments in the rate at which they summarily dismissed complaints. Resort to it by the respective Departments, ranged from zero to 75% of their public trust complaints in the main sample. One department summarily dismissed about 58% of its public trust complaints in the main sample.

When the figures for this Department were removed, it turned out that approximately 23% of the public trust complaints in the main sample had been summarily dismissed.

In some cases we felt that the power to summarily dismiss was being ignored or used too sparingly.[27] In our view it could have been used to dismiss a number of complaints at an earlier stage.[28]

In other cases that had been summarily dismissed, we felt that there was enough information on file or there had been a thorough enough investigation to justify a finding that the complaint was unsubstantiated on its merits.[29]

In the case of many complaints it was our view that summary dismissal was inappropriate and that a full investigation ought to have been carried out. These are some examples: [30]

- File example #23: This was a complaint of unlawful arrest and excessive force both at the scene of an arrest and at the booking area of the police station. A number of serious allegations were not investigated or addressed. The bulk of the investigation involved obtaining the video of the booking area and confronting the Complainant with discrepancies between his account and the video. When the Complainant suggested that the Investigator should "get rid" of the complaint, the Investigator processed it as a summary dismissal, without inquiring at all into the allegations of misconduct at the scene of the arrest.
- File example #24: The Complainant was arrested and charged with obstruction after he suggested that a police officer had no right to issue a traffic ticket to a cyclist. The charges were ultimately stayed by Crown counsel. The Complainant's allegation that an officer had made a false statement in the Report to Crown counsel was summarily dismissed after a partial investigation that failed to address the main issues raised in the complaint.
- File example #25: The Complainant alleged that the police had been biased and wrongly relied on his past criminal record instead of the actual facts in their investigation of him. He also alleged that the Respondent failed to act professionally, referring to him as an "idiot" and an "asshole". Although the Respondent specifically admitted having told the Complainant to "quit being an asshole", the Discipline Authority determined that the Respondent had acted appropriately and summarily dismissed the complaint.

6.2 SUMMARY DISMISSAL VERSUS FINAL DETERMINATION

Confusion about the difference between summary dismissal and a final determination on the merits seemed to affect a number of the complaint files we reviewed. The distinction is significant because the recourse

[27] For example:
- File example #14: The Complainant alleged that police failed to become involved in a civil dispute with his brother concerning the care of their sick mother. This is a case which could have been dealt with by summary dismissal but was not. The OPCC essentially "deemed" it to have been informally resolved so that it could close its file.
- File example #15: The Complainant claimed to be a "seer" who was concerned that police would not take into account her information about an ongoing homicide investigation and also that an unidentified police officer had tampered with a file relating to her provision of information to crime stoppers. The matter was dismissed as unsubstantiated but probably should have been summarily dismissed.

[28] In an email on one file we reviewed, a Deputy Chief Constable described the complaint as the "penultimate confirmation" that the *Police Act* should be amended to screen out "nonsensical, idiotic and frivolous complaints." This obviously reflects a lack of familiarity with or misunderstanding of the proper scope of s. 54(1), which would seem to be aimed at screening out precisely those types of complaints.

[29] File examples #16, 17, 18, 19, 20, 21 and 22.

[30] More examples of inappropriate summary dismissals appear below under other specific topics.

available to a Complainant differs depending on whether the complaint is summarily dismissed under s. 54 or a determination is made under s. 57.1. [31]

We saw a number of files, from a variety of Departments, in which complaints were summarily dismissed on the basis that there was no reasonable likelihood that further investigation would produce evidence of a public trust default but in which the Investigators or Discipline Authorities also implied or directly asserted that the complaint was unfounded on its merits, even though a full investigation had not been undertaken. For example:

- File example #26: This complaint of abuse of authority involved an allegation that an officer had sworn at and possibly discriminated against a First Nations driver. The Discipline Authority found the complaint to be "unsubstantiated" but then went on to state: "pursuant to section 54 of the B.C. *Police Act*, the discipline authority is satisfied that there is no reasonable likelihood that further investigation would produce evidence of a public trust default and has therefore decided to conclude your complaint." To make matters even more confusing, the Investigator apparently admitted to the Complainant that the Respondent could have acted more professionally and that the Respondent had received managerial advice as a result of his conduct. Then, after the Commissioner questioned whether it was really appropriate in the circumstances to say that the complaint had been unsubstantiated, the Discipline Authority re-classified the complaint as, in part, substantiated and concluded that "management advice could stand as a sufficient resolution" to the complaint.[32]
- File example #27: This was one of a number of files in which the Discipline Authority determined the complaint to be "unsubstantiated" (based on a review of the relevant facts obtained through an investigation) but also "summarily dismissed" the complaint.[33]
- File example #28: The Complainant alleged that the police had used excessive force in arresting his neighbour and that when he had attended the police station to complain two police officers had attempted to dissuade him from of making a complaint. Although he summarily dismissed the complaint, the Discipline Authority went on to state that he felt the Respondents had acted appropriately in arresting the neighbour and in attempting to informally resolve the complaint. This gives the impression that the Discipline Authority made a finding as opposed to summarily dismissing the complaint. Given the divergence in the respective versions of events, and the possibility that other witnesses (not interviewed) might have corroborated the complaint, this was likely inappropriate.[34]

6.3 INAPPROPRIATE INVESTIGATORS' COMMENTS

On some of the complaint files that had been summarily dismissed, we saw emails and correspondence in which the Investigator appeared to evince a predisposition toward collecting just enough information to justify summary dismissal or made other inappropriate comments about complaints or Complainants. This could reasonably create a perception that the Investigators, and their Departments, did not take public

[31] After summary dismissal the Complainant is entitled to apply for a review by the Commissioner, who may order the Department to investigate the complaint if he concludes that it is in the public interest to do so. After a determination under Section 57.1 the Complainant is entitled to request the Commissioner to order a public hearing into the complaint.

[32] This file is also cited as an example in Section 15 of the report.

[33] Since this and other similar files from this Department involved thorough investigation and reviews of the relevant facts, the use of s. 54 appeared more likely to be the result of a misunderstanding about which section of the *Police Act* applied, rather than a misuse of the summary dismissal provisions.

[34] This file is also cited as an example in Sections 8.3, 12 and 13.4 of the report.

complaints seriously or were using summary dismissal as a way of avoiding having to deal with complaints on their merits. The majority of these complaints did not fall under the definition of frivolous or vexatious but alleged serious misconduct requiring investigation in order to establish the facts. These are some examples:

- File example #29: This file contained an email from the Investigator advising a Respondent officer that a Form 1 had been lodged and that he anticipated being able to summarily dismiss the complaint down the road.
- File example #30: The day after the Form 1 was lodged the Investigator sent an email to the Respondents notifying them of the complaint. The email is titled "Don't shoot the Internal Guy"and suggests that the Complainant has concerns about the police seizing "his B&E (I mean bike) tools". The email goes on to say that the Investigator may require a bit more information prior to dismissal. Another email sent to a clerical support person on the same day says that the complaint will be dismissed so there is no need to worry about follow up letters.[35]
- File example #31: This was the second of two complaints relating to a serious allegation of excessive force and deceit by police officers who had arrested the Complainant's friend. The first complaint had been summarily dismissed. The second complaint was filed after the Complainant learned the names of two independent witnesses who corroborated his version of events. Before conducting an investigation into the second complaint, the Investigator sent an email to the Respondent stating "I will be dismissing this also but unfortunately you have to be served." The Investigator then followed through on his promise, concluding the second complaint without taking any steps to deal with clear evidence of an assault and the alleged cover up by the arresting officers made by the complainant.[36]

[35] This file is also cited as an example in Sections 8.2, 12 and 13.4 of the report.

[36] This file is also cited as an example in Sections 8.2, 8.4, 9 and 12 of the report.

7 INFORMAL RESOLUTION

Section 54.1(1) of the *Police Act* requires the Discipline Authority "promptly after receiving a public trust complaint … [to] determine whether an informal resolution of the complaint is appropriate." In a few Departments, generally those in which the Chief Constable retained the Discipline Authority role, there were obvious indications on files that the Discipline Authorities were suggesting, recommending, or directing that Investigators or supervisors pursue informal resolution of complaints at an early stage. These indications came in the form of memos, emails, or handwritten notes on files. In most Departments, however, we saw no clear evidence on the files that Discipline Authorities systematically considered and determined whether informal resolution was appropriate. This meant that in most Departments there was no clear evidence of compliance with the mandatory provisions of s. 54.1(1).

This apparent failure to consider the appropriateness of informal resolution seems to have translated into very few informal resolutions of complaints in our sample. With one exception, the Departments did not appear to pursue the option of informal resolution under the *Police Act* with any vigour. Of the public trust complaints in the main sample, there were only 25 that were informally resolved. [37]

7.1 "INFORMAL RESOLUTION" LEADING TO WITHDRAWAL

A number of complaint files that started out as attempts at informal resolution ended up being withdrawn by the Complainant. In these cases it appeared that the Respondent, or his supervisor, had "spoken to" or "discussed the matter with" the Complainant and, evidently, made some informal efforts to address the substance of the complaint. Because of the level of informality involved, it is difficult to say whether there is anything inappropriate about the way these files were concluded. For example:

- File example #32: A homeless person alleged that he was approached by police officers who were disrespectful to him, subjecting him to verbal and physical abuse. He said that one officer called him a "sack of shit". The supervisor of the Respondents agreed to "speak with" the officers and in return the Complainant agreed to withdraw his complaint.
- File example #33: The Complainant alleged that the police had failed to protect his privacy by inappropriately providing his name to a third party and that the Respondent officer was condescending in an email. Notes on file suggest that the Investigator entered into discussions with the Complainant about resolving the matter, which resulted in the Complainant withdrawing the complaint.

[37] Fifteen of these originated from a single Department and in a number of cases, for reasons that will be referred to below, the "informal resolutions" may have been inappropriate.

7.2 "INFORMAL RESOLUTION" OF UNSUBSTANTIATED COMPLAINTS

In several cases, during the course of the investigation, the substance of the complaint was actually addressed in a manner that resembled informal resolution but then the complaint itself was found to be unsubstantiated. These are some examples:

- File example #34: The Complainant, who suffers from mental health issues, alleged that the Respondent had been rude, condescending, and lacked experience or training in how to deal properly with people suffering from mental health disorders. Apparently at the instigation of the Investigator, the Respondent officer said he was sorry the Complainant felt the way he did and "wanted to rectify the situation somehow" so he agreed to take training. Since the Complainant was "very satisfied" with this, the complaint was held to be unsubstantiated.[38]
- File example #35: The Complainants were a couple transporting their seriously brain-injured child home from the hospital. Travel was very painful for the child and the parents had a letter from their doctor explaining this. The Complainants alleged that in their haste to catch a ferry and because of unfamiliarity with traffic patterns, they mistakenly crossed a solid line. The Respondent stopped them and, despite their circumstances, explanations, and statements of regret, issued them a violation ticket, which in turn caused them to miss their ferry, thereby adding to their child's pain and suffering. The Complainants alleged that the Respondent had been rude and may also have mouthed offensive language. Although the complaint was ultimately found to be unsubstantiated, the Investigator undertook a form of "resolution", arranging to have the violation ticket and fine expunged and refunded on "humanitarian grounds".[39]
- File example #36: The Complainant was arrested for stealing a bait car. His jacket was left in the car and subsequently stolen after he was arrested. His complaint was that police had failed to seize and lodge his jacket upon his arrest. Although his complaint was ultimately found to be unsubstantiated, the Investigator took significant steps to arrange for reimbursement for the cost of the jacket.

7.3 NON-COMPLIANCE WITH S. 54.2

There appeared to be some hesitancy on the part of Respondent officers to take part in the process of informal resolution under the *Police Act*. Although it is difficult to say for sure, this may be because of the requirement under s. 54.2(1) that both the Complainant and Respondent "sign a letter consenting to the resolution of the complaint in the manner set out in the letter." It appears that this may be perceived as a form of acknowledgement that the complaint has some merit, which many Respondent officers seem unable or unwilling to accept.

Sometimes Departments dealt with the requirements of s 54.2(1) by circumventing them in a manner that appears to have undermined the purpose and intent of informal resolution. In some cases,[40] this involved treating a complaint as informally resolved even though no written consent letter had been prepared or, if prepared, it had not been signed by both the Complainant and Respondent.

We saw a more troubling method of apparently circumventing the statutory requirements for informal resolution on several files from one Department. At this department the Investigator, or another senior officer assigned to pursue informal resolution, would endorse the consent form with a statement that did little

[38] This file is also cited as an example in Section 14 of the report.

[39] The file is also cited as an example in Sections 13.6 and 14 of the report.

[40] File examples #37 and #38.

more than to restate the complaint and the Complainant's view that the conduct of the Respondent had been improper. The Complainant and the Respondent would then both sign the consent form, without there having been any recognition of the validity of the complaint or the need for the Respondent officer to remedy his conduct. For example:

- File example #39: The Complainant had been a bystander to a fight outside a bar. Police arrived as the fight was breaking up and told everyone to leave. When the Complainant - who had not been involved in the fight - asked why he had to leave, the Respondent officer used the "F" expletive several times and made a comment to the Complainant implying that he was a homosexual. The Respondent's supervisor got the Complainant to sign a consent letter endorsed with the following statement:

  > I [the Complainant] have spoken to [the Respondent's supervisor] on [date] having felt that Cst. [the Respondent] had used inappropriate language toward me on [date]. I am satisfied now that this matter can now be resolved and concluded.

  Being nothing more than a repetition or restatement of the complaint, this amounts to no resolution at all for the Complainant and a lack of any real accountability by the Respondent.
- File example #40: As the Respondent officer was driving by, he heard the Complainant say "look it's the piggers." The Respondent stopped, called the Complainant a "f***ing sleazebag", arrested him, handcuffed him, placed him in the back of his police vehicle and drove off. After questioning the Complainant, the Respondent told the Complainant he "could have" arrested him for causing a disturbance, but he released the Complainant, then refused to provide the Complainant with his name, a business card, or a pen with which to write down the Respondent's police ID number. The Complainant was not opposed to informal resolution but wanted an apology from the Respondent. The Respondent's supervisor told the Complainant that the Respondent would not apologize but that the supervisor would do so on behalf of the Department. The supervisor then persuaded the Complainant to sign a consent letter bearing the following comment, which the supervisor signed on behalf of the Department.

  > I have discussed my complaint with Sgt. [the supervisor]. Sgt. [the supervisor] has apologized to me on behalf of the police Department for what I believe was the unprofessional conduct of the officer involved. I would have preferred to have the apology from the officer concerned. I accept this as a resolution to this complaint.

  Not only does this fail to comply with the requirements of s. 54.2(1), but it also fails address the Complainant's justifiable concerns about the Respondent's conduct. All the more troubling is that this same Respondent had been the subject of several complaints that we reviewed involving serious allegations of abuse of authority or excessive force.[41]

7.4 INAPPROPRIATE USE OF INFORMAL RESOLUTION

There were a number of files in which informal resolution had been either attempted or achieved but which in our view may have been too serious to be resolved informally and may have merited a fuller investigation. For example:

- File example #41: Police entered the Complainant's house to arrest the Complainant's friend for an alleged obstruction of justice that had just occurred outside. Police did not have a warrant and they used some degree of force to arrest the Complainant's friend and another friend who intervened. Several people were jostled, pushed or forced out of the way and dishes were broken.

[41] This file is also cited as an example in Sections 8.6, 12 and 13.6 of the report.

Several, ultimately unsuccessful, attempts were made at informal resolution. In our opinion, given the seriousness of the alleged conduct, informal resolution would not have been appropriate.[42]

- File example #42: The Complainant, who had been involved in a motor vehicle accident while under the influence of alcohol, fled from police, causing them to initiate a police chase. He alleges that when he was arrested the police used excessive force, fracturing his ribs. The Complainant was persuaded to sign a consent form setting out a dubious informal resolution described as follows: "[The Respondent's supervisor] will speak to [the Respondent] and ensure that he understands that [the Complainant] feels that [the Respondent] was too aggressive when he dealt with him on [date] and didn't take his concerns seriously."[43]
- File example #38: The Complainant was stopped by police for "jay walking". He alleged that an officer grabbed his arm, tried to take him to the ground, and spun him into a parked car. The Complainant is epileptic and he believed that this use of force brought on a seizure.[44]
- File example #43: The Respondent was alleged to have been rude during a traffic stop in which he had issued the Complainant a ticket for speeding. When the Complainant disputed the ticket, the officer allegedly failed to provide requested disclosure and allegedly misled the court about whether in fact disclosure had been sent.
- File example #44: A Nurse at a psychiatric facility complained that a police officer had conducted an inadequate search of a prisoner, leaving him in possession of a knife, keys, and marijuana. The internal documents on file suggest that the officer received a verbal reprimand but the signed "informal resolution" form suggests that the officer received only managerial advice. Neither the Investigator nor the Discipline Authority nor the OPCC Analyst mention or account for this disparity. If in fact a verbal reprimand was imposed, the manner of resolving this complaint may have violated the officer's procedural rights relating to the imposition of discipline under the *Code of Conduct*.[45]

One informal resolution file[46] that was in our view too serious for informal resolution also saw the OPCC becoming involved as a purported "Complainant." In this case, a constable conducting an investigation into a theft from a vehicle had identified a potential suspect, who resided at a Salvation Army shelter.

The constable's two supervisors advised him that he did not have sufficient grounds for a search warrant so they would not approve his request to apply for one. Unsatisfied, the constable enlisted the support of an acting sergeant, who, along with the constable attended at the shelter and convinced the manager to unlock the door to the suspect's room. The officers entered the room and seized the stolen property and returned it to the victim of the theft. The constable then lodged a complaint against his two supervisors alleging that they had obstructed justice by interfering with his attempts to obtain a search warrant.

This complaint, which was externally investigated, resulted in a finding that the supervisors had not misconducted themselves but that the constable and the acting sergeant had. As a result, the Commissioner ordered an investigation into a public trust default.

The public trust investigation was resolved by an informal resolution, whereby the constable agreed that he would receive a written reprimand (to be expunged after two years) and the acting sergeant was directed to

[42] This file is also cited as an example in Sections 9 and 12 of the report.

[43] This file is also cited as an example in Sections 8.6 and 12 of the report.

[44] This file is also cited as an example in Sections 7.3, 8.6 and 13.4 of the report.

[45] This file is also cited as an example in Section 15 of the report.

[46] File example #45. This file is also cited as an example in Section 12 of the report.

work under close supervision until his next annual performance review. Both officers were also required to apologize to their supervisors and distribute a statement to the other officers in the Department, the wording of which was to be approved by the Chief Constable, accepting responsibility for their actions.

This informal resolution was recorded on standard forms of consent to informal resolution, which the constable and the acting sergeant signed. The OPCC Senior Investigative Analyst signed the two consent forms, apparently on behalf of the OPCC, in the spot reserved for the Complainant. The police misconduct here, disobeying a direct order then proceeding to carry out an unlawful search of a dwelling room to seize stolen property, was very serious. It fell outside the OPCC's own guidelines for informal resolution and it merited full discipline proceedings under the *Police Act*, not the semi-secretive arrangements that apply when a matter is informally resolved.[47] The public was effectively excluded from the process, in a manner that may well have been contrary to the public interest.

[47] See s. 54.2 of the *Police Act*.

8 INVESTIGATION

Of the public trust complaints in the main sample, 146 were the subject of what were said to be full investigations. Of those, 124 were found to be unsubstantiated and 22 substantiated. The remainder were withdrawn, informally resolved, or summarily dismissed. Therefore they did not receive the same degree of investigation as those that progressed through the investigative process to a Section 57.1 (1) determination and notice.

Most of the investigations ranged from adequate to reasonably well done, with some being conducted with impressive thoroughness and objectivity. As one would expect, however, there were some investigations that did not reflect the same investigative rigour. The comments and criticisms that follow are intended to identify issues that might be of significance to the review as a whole. They are not intended to suggest that the entire investigation was flawed or unacceptable or that any further or better investigation would, apart from a few cases, necessarily have affected the outcome.

Some of the issues to be discussed under this topic are:

- Investigator selection, training, supervision and retention;
- Investigators engaged in inappropriate or unprofessional communication with Respondents creating an impression of bias and not taking complaints or the complaint process seriously;
- Investigative delay and the impact on investigations that were often left dormant for protracted periods without obtaining statements or securing evidence, some of which was time sensitive;
- Investigative rigour, including:
  - The detailed and objective search and analysis of evidence from various sources; and
  - The apparent reluctance of Investigators to re-interview Complainants, Witnesses, and Respondents in order to flesh out significant inconsistencies in the evidence;
- Full background searches on Complainants without comparable searches about Respondents, even when they had been the subject of similar allegations in the past;
- Reluctance to conduct full criminal investigations of alleged police misconduct; and
- Duty statements and the disclosure of evidence to Respondents;

8.1 INVESTIGATOR SELECTION, TRAINING, SUPERVISION AND RETENTION

Our review covered several years of investigations in all Departments, which revealed differences among investigations conducted by different Investigators under the same Discipline Authority. Although it was

apparent from our review that the Investigators were usually relatively senior members of the Departments, with investigative backgrounds, it was generally unclear whether they had received any special training prior to taking on the responsibility of investigations under the *Police Act*.

The *Police Act* places a heavy burden on Investigators, not only to investigate but also to present a final investigative report to the Discipline Authority, complete with findings, conclusions, and recommendations. This requires Investigators not only to gather and organize the evidence but also to delve into weighing the evidence on the balance of probabilities, and researching the appropriate range of disciplinary or corrective measures that might be appropriate if the allegations are substantiated. This requires Investigators to have expertise in issues related to policing in a democratic society, such as public accountability, administrative procedures, natural justice, labour law, and the intricacies of the *Police Act*. Ideally, education and training should be provided before Investigators are called upon to carry out duties under the *Police Act*.[48]

There appeared to be significant turnover in Investigators, with few remaining in the position for more than two years. Some displayed admirable professionalism and fairness in their investigations, reports, and correspondence, even when challenged with difficult situations and attitudes both internally and externally. These individuals went beyond the required minimum and their extra patience and perseverance often paid off. Through cooperation and respect they gained better quality evidence, resulting in better and more comprehensive investigations.

8.2 INAPPROPRIATE OR UNPROFESSIONAL COMMUNICATIONS

We saw a few files that contained inappropriate or unprofessional correspondence or communications. In some cases there were emails or memos on file implying that the Investigators had set out to disprove or dismiss the allegations in the complaint rather than conducting full and fair investigations.[49] There were several complaint files containing correspondence between the Investigator and the Respondent, advising the Respondent that a Form 1 had been filed but suggesting that the Investigator should be able to summarily dismiss the complaint without too much difficulty. These are some examples of files containing inappropriate or unprofessional communications:[50]

- File example #46: This was a complaint of excessive force used on a sixteen year old. In the preliminary meeting with the youth and his mother to discuss withdrawal of the complaint, the Investigator informed the youth that she did not entirely believe him but did believe that the Respondent had acted appropriately.[51]
- File example #47: This was a complaint that the police had used excessive force in arresting the Complainant and "breaching" him out of a downtown entertainment district. The Complainant received abrasions to his face and head as well as knee strikes and punches. Emails on file suggest a lack of objectivity by the Investigator, who, among other things, questions the validity of the complaint before having done any investigation. The Investigator also writes emails to the Respondent and several witness officers that are critical of the Complainant. The Investigator tells the witness officers what other witnesses have said and suggests what she would like them to say, based on the other evidence she has reviewed. The gist of her comments is to minimize

[48] One Investigator we spoke to told us that he had never received any formal training until he was nearing the end of his posting and that the formal training course for *Police Act* Investigators was a very recent development.

[49] We are unable to say whether the OPCC was privy to these examples of unprofessional correspondence on the Departments' investigative files because in our experience, the OPCC files rarely contained the complete contents of the Departments' investigative files.

[50] Other examples that have already been referred to include file examples #30 and 31.

[51] This file is also cited as an example in Sections 12 and 13.4 of the report.

the complaint and to justify the police conduct; subsequently, the evidence that the Investigator receives from the witness officers generally conforms to her suggestions.[52]

- File example #48: The Complainant alleged that police seized his bicycle, without any evidence that it was stolen, and refused to return it to him without proof of purchase. There was an email on file from the Investigator to one of the Respondents, saying "This is obviously a frivolous complaint, however he has filed a Form 1 complaint. Therefore I will need a duty report from you."[53]

8.3 INVESTIGATIVE DELAY

In some Departments we noted investigative delay that was often unexplained and without explanation.[54] On occasion, but not always, there was documentation on file offering reasons for the protracted delays. Some time-sensitive evidence such as video evidence and audio tapes that are routinely taped over are at risk of being lost when investigations are delayed. It was apparent that in some cases this sort of evidence was lost and Complainants and Respondents were disadvantaged by the delay.

Because statements make up most of the evidence on many investigations under the *Police Act*, the passage of time is an impediment to obtaining the necessary contemporaneous recounting of detail required to ensure a thorough and critical analysis of the complaint.

These are other examples of cases in which we noted concerns about investigative delay:

- File example #49: This was a complaint of excessive force (assault) lodged in April but no investigative action was documented on the file until October, at which time various police and civilian witnesses were asked to provide accounts of what they had witnessed more than five months before. One civilian witness was simply asked to forward a statement by email, which ended up being one paragraph long. The Investigator asked one of the Respondents for his notes, suggested that he was looking at summarily dismissing the complaint, and invited the Respondent to see him if he wished to look at the file to refresh his memory about the incident.[55]
- File example #50: This was an allegation of neglect of duty, in that an officer failed to document an assault file and process exhibits properly. The internally generated complaint was lodged in January 2002 with the disposition in August 2003. This was not a complex investigation yet it took nineteen months to complete.[56]
- File example #51: This was a complaint that officers had attended the Complainant's residence with mental health workers to transport the Complainant to the hospital. The Complainant alleged that he was attacked by one of the officers who tried to kill him by choking him. Initially a civilian witness identified concerns about the amount of force used by police. Two other civilian witnesses were present but were not interviewed for over a year and only after a request from the OPCC. Investigators contacted the Complainant seven months after making his complaint and requested an interview. The Complainant declined. There was no apparent reason for the

[52] This file is also cited as an example in Sections 9, 10, 11, 12, 13, 13.4 and 14 of the report.

[53] This file is also cited as an example in Sections 13.4 and 14 of the report.

[54] One Department in particular demonstrated exceptional problems with investigative delay. The problems were so pronounced that the current Commissioner, shortly after taking office, felt compelled to write a series of letters to the Department pointing out its serious failures to comply with the statutory timelines under the *Police Act*.

[55] This file is also cited as an example in Section 13.4 of the report.

[56] This file is also cited as an example in Sections 13.4 and 15 of the report.

delay which creates the impression that the complaint may not have been taken seriously. The complaint was made in March. There was no documented investigative action between April and October. The file was concluded in July of the following year. If evidence of excessive force existed, the investigation went well beyond the six-month limitation period for summary conviction offences. This opens the police up to possible criticism of wilfully delaying the investigation to avoid charges.[57]

- File example #52: The initial allegation was assault and while the first investigation did not uncover independent evidence of assault it took eight months from the date of the alleged incident to complete. This is another case where the investigation went well beyond the six month limitation period for summary conviction offences which could open the police to additional criticism.[58]
- File example #53: The Complainant was taken into police custody for SIPP. While being booked into cells he requested a phone call but his request was denied. As a result, when he was asked for his address he refused to disclose it and, when police tried to take his wallet to get his address, he resisted. Several officers and the jailer got involved in the struggle, which resulted in the Complainant receiving a broken arm, a black eye, and a bloody nose. The complaint was made in September 2002 and was not concluded until March 2004. There was a long delay in the investigation during which the only action taken was to obtain medical records (previously requested) and to write a report. There did not appear to be sufficient reason for the delay and the matter was serious enough that it likely should have been reviewed by Crown Counsel.[59]
- File example #54: This file was a complaint of a very minor nature. Nothing was done on this file and there were no status reports provided for more than seven months. The OPCC wrote to the Chief Constable expressing concern about failure to comply with statutory timelines, reporting requirements, and rules for extensions. A summary dismissal letter followed within days but the Department never directly responded to the OPCC's letter of concern. There was no obvious reason for the delay.[60]
- File example #55: The Complainant had a fight with a neighbour. The police were called and a number of officers attended. The Complainant allegedly poked an officer in the chest and made other animated gestures and was arrested. He alleged that he was punched, kicked and beaten with a baton by police. The matter was not forwarded to Crown counsel and the investigation was not completed until a month after the limitation period for summary conviction offences had expired.[61]
- File example #56: The Complainant alleged that he had been unjustifiably arrested for speaking to a child. After significant delay, the police were unable to track down the Complainant to get a full recounting of the incident from him. This failure was used as an excuse for failing to conduct a full and thorough investigation. After more time passed and several late progress reports were delivered to the OPCC, the Discipline Authority chose summary dismissal as the means to close the file.[62]
- File example #28: This complaint of excessive force was made on September 17, 2002. The investigative steps taken amounted to reviewing a Report to Crown counsel on September

[57] This file is also cited as an example in Sections 9, 12 and 13.4 of the report.

[58] This file is also cited as an example in Sections 12, 13.4 and 15 of the report.

[59] This file is also cited as an example in Sections 8.6, 9, 12 and 13.4 of the report.

[60] This file is also cited as an example in Section 13.4 of the report.

[61] This file is also cited as an example in Sections 8.6, 9, 12 and 13.4 of the report.

[62] This file is also cited as an example in Sections 13.4 and 14 of the report.

18, 2002, and trying to obtain a statement from a witness in May, 2003. The matter was then summarily dismissed on June 19, 2003.[63]

- File example #57: This was a complaint of unlawful search and detention of property. The complaint was lodged in December. No real investigation was conducted and it was summarily dismissed in June.[64]
- File example #58: This file involved the Complainant's loss of a gold chain that was broken during a struggle with police in the course of an arrest on drug charges. The Complainant alleged that he had asked police at the scene to retrieve the broken chain, which seemed to be corroborated by the prisoner booking sheet. The arrest occurred on January 18, 2003 and a Form 1 was signed on January 19, 2003. The *Police Act* investigation was suspended pending the outcome of the drug charges. The Complainant disputed the need for a suspension since the outcome of the drug charges would have no bearing on the validity of his complaint, which had only to do with the preservation and lodging of his property. The suspension, which was upheld by the OPCC, delayed the investigation from January to August, by which time the officers involved had no independent recollection of the circumstances of the loss of the chain.[65]
- File example #59: This was an allegation of unlawful arrest and excessive force. The investigation was conducted within a reasonable period of time but the unexplained delay in requesting a nightclub video tape meant that the tape had already been destroyed.[66]

8.4 INVESTIGATIVE RIGOUR

Some investigations lacked investigative rigour. This revealed itself in the following ways: investigations going only far enough to justify the underlying police conduct or to allow dismissal of the allegations; reliance on prepared statements or reports without taking steps to pursue significant points or inconsistencies in the evidence; failing or refusing to interview other witnesses; failing to focus on or address issues of lawfulness of arrest or search and seizure that may have given rise to the complaint; failing to investigate in a timely fashion; failing to complete a full investigative report; and, failing to conduct a full investigation of potentially criminal allegations for review by Crown counsel. These are some examples demonstrating these points:

- File example #60: The Complainant was a passenger in a vehicle stopped by police. He was asked to produce ID, refused and was arrested. He alleged excessive force. There was an issue about whether the arrest was lawful in this case. If not, the conduct may have amounted to an assault. The Respondent provided a prepared written statement in which issues about the legality of the arrest were not satisfactorily addressed. The statement of a witness officer lacked sufficient detail and ought to have been followed up with further inquiries. The delay in pursuing other witness statements may have adversely affected the quality of the evidence obtained. The investigation and the resulting report failed to grapple with the central issue in the case, which was the legality of the arrest.[67]
- File example #61: The police used a "Code 5" take down that involved several officers pointing their firearms at two individuals who turned about to be innocent. As the Complainant and a friend got into a vehicle they were surrounded by several police officers and ordered out of the vehicle at gun point. The Department's Use of Force expert reviewed the "Code 5" take

[63] This file is also cited as an example in Sections 6.2, 12 and 13.4 of the report.

[64] This file is also cited as an example in Section 13.4 of the report.

[65] This file is also cited as an example in Section 13.4 of the report.

[66] This file is also cited as an example in Section 12 of the report.

[67] This file is also cited as an example in Sections 9, 12 and 13.4 of the report.

down procedures and endorsed the police conduct but did not actually discuss the significant difference between drawing and pointing a firearm. The lack of an investigation report meant that the file lacked any comparative analysis of the statements of the officers involved in the incident. The significant question that was not critically analyzed was the decision of the officers to point and aim firearms at individuals. The Investigator relied on the information provided in prepared statements without taking any steps to clarify significant issues with the officers.[68]

- File example #62: The Complainant, who was suspected of being a drug trafficker, was confronted by police, violently taken down, arrested, and "breached" to a transit station, where he was released but his property including ID and cash was not returned to him. The Investigator did not investigate the officers for possible assault or unlawful confinement related to the lawfulness of the arrest and the relocation. He took no steps to speak to the Complainant. Although the Investigator obtained duty statements from two of the three officers involved, they were arguably inconsistent with each other and inconsistent with the very brief occurrence report. There was no analysis done of whether there existed a proper legal basis for violently taking down, choking, arresting, then "breaching" a person who was suspected on scant grounds of being a drug dealer.[69]
- File example #31: The Complainant made two complaints about the same incident which alleged excessive force and a refusal by police officers to identify themselves. The first complaint was summarily dismissed. Shortly thereafter the Complainant obtained statements from two, apparently objective, third party witnesses who corroborated his complaint of excessive force. The second complaint alleged that one officer who had not been named as a Respondent in the first complaint had given "false testimony" about the incident. The Investigator relied on brief email duty reports without seeking to obtain fuller statements, even in light of evidence that appeared to corroborate the complaint. The third party witnesses were not interviewed. No statements were obtained from the Respondents to the first complaint (who were technically only witnesses to the second complaint) nor were those officers interviewed. Instead they were permitted to rely on their original duty reports from the first complaint, despite the clearly contrary evidence from the third party witnesses. Nothing was done to deal with clear, corroborated evidence suggesting that excessive force had been used and that, in the first complaint, the officers involved had tried to cover it up.[70]
- File example #63: The Complainant was arrested after a street check for open liquor in public. In the course of the arrest the Complainant suffered a broken leg. She alleged excessive force and failure by police to provide sufficient medical assistance. Although the incident was investigated, the file was not forwarded to Crown Counsel to review for possible assault charges. The duty reports provided by the officers (one Respondent, one witness), particularly the Respondent, lack sufficient detail about key points leading up to and including the interaction that led to the Complainant's injury. This was not pursued by the Investigator.[71]
- File example #64: The Complainant alleged that he exited his vehicle to speak to a friend in a park when he was approached by police and asked to produce his driver's license. When he declined he was arrested for obstructing justice and handcuffed. His keys were removed from his pocket. His car was searched and his driver's license was located. He alleged unlawful arrest, excessive force, and unlawful search. The legality of the arrest was never directly addressed

[68] This file is also cited as an example in Sections 8.6, 9, 12 and 13.4 of the report.

[69] This file is also cited as an example in Sections 9, 12 and 13.4 of the report.

[70] This file is also cited as an example in Sections 6.3, 8.2, 9 and 12 of the report.

[71] This file is also cited as an example in Sections 9 and 12 of the report.

therefore the question of assault was not properly investigated. The investigation failed to address inconsistencies in the accounts provided by the officers and the Complainant.[72]

- File example #65: The Complainant was stopped by police at a transit station and asked if he had a ticket. He said no and an officer asked him for identification. When he put his hands in his pockets the officer told him to take them out and when he did not immediately respond the officer allegedly grabbed his arms and pushed him into some plexiglass. A second officer then put his hands around the Complainant's neck and allegedly choked him. No statement was ever obtained from the Complainant beyond the Form 1. There was no follow up to duty reports to explore salient issues about the use of force, including: grounds, timing, the degree and nature of the force used, and the position of officers and witnesses. There was no documentation of attempts to gain other evidence such as platform video coverage. A transit officer who was allegedly present was not interviewed in person nor were copies of his notes ever obtained. The excessive force allegation was never properly pursued although it should have been investigated under the Criminal Code and forwarded to Crown counsel for review.[73]

8.5 BACKGROUND INVESTIGATIONS OF COMPLAINANTS

Many files contained a criminal background investigation of the Complainant, which was often the first step undertaken by the Investigator in looking into a public trust complaint.[74] Comparable information, about Respondent Officers' discipline history, was not reflected on file. We do not suggest that the inclusion of such information about Respondents would necessarily be appropriate but the question arises why it is a standard practice to include it for Complainants. The presence of this sort of information on files could reasonably create an impression that if the Complainant has a criminal history, this might prejudice the full investigation or objective handling of a complaint. Although information about the Complainant's background often appeared on files, there were very few actual references to such material in notices or reports that we reviewed.

8.6 RELUCTANCE TO CONDUCT FULL CRIMINAL INVESTIGATIONS

Investigators seemed reluctant or casual about investigations of potentially criminal misconduct by police officers. Criminal investigations of excessive force were often eschewed or overlooked in favour of *Police Act* investigations that were at times inadequate in addressing fundamental issues such as lawfulness of arrests or searches. Thorough investigations with appropriately comprehensive statements documenting the independent observations of witnesses were often lacking. Rarely were full statements of Respondent officers taken, using the appropriate warnings. These are some examples of cases involving inadequate investigations of complaints alleging potentially criminal police misconduct:

- File examples #38 and #66: This was a complaint of excessive force. The Complainant was stopped by police for "jay walking". He alleged that an officer grabbed his arm, tried to take him to the ground and spun him into a parked car. Two files appeared to have been inappropriately combined and purportedly informally resolved, without proper documentation. The excessive force allegation was not pursued at all.[75]

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[72] This file is also cited as an example in Section 12 of the report.

[73] This file is also cited as an example in Sections 9 and 12 of the report.

[74] Some Departments had procedural "fly sheets" on the inside cover of the file clearly indicating that a police records check of the Complainant was a routine preliminary step in the processing a *Police Act* complaint.

[75] This file is also cited as an example in Sections 7.3, 7.4 and 13.4 of the report.

- File example #67: Unbeknownst to the Complainant, his house was inside a police perimeter that had recently been set up to catch two fleeing suspects. As he left his house to go to work, the Complainant was arrested, handcuffed by an officer who threatened to "break his f***ing arm" if he did not comply, his keys were taken from his pocket, and the police unlocked, entered, walked through, and quickly searched his house without permission. The police officers were not investigated for what could have amounted to charges of assault, unlawful confinement, and breaking and entering a dwelling house. No one interviewed the Respondent officers or required them to produce police notes. The Investigator specifically refused to interview an independent eye witness identified by the Complainant.[76]
- File example #68: The Complainant's wife collided with a tree not far from their apartment. No other motorist was involved, so she drove home and advised her husband what had happened. He went to the underground parking garage to examine the damage to their vehicle and was confronted by the police. An officer asked his name. When the Complainant, a small man in his 60's, asked why, the officer grabbed him, pushed his face onto the hood of the patrol car, and handcuffed him. At some point the Complainant was advised he was under investigation for Hit and Run. Other officers at the scene took the keys from his pocket and gained access to the underground garage to examine the vehicle. They then entered the apartment building and questioned his wife. After some time the Complainant was released from the handcuffs and escorted up to his apartment. Before leaving, the police issued a 24-hour driving prohibition to the Complainant's wife when there were no lawful grounds to do so because she was not operating or in care and control of a vehicle. There were significant inconsistencies between the officers' duty reports, which should have been addressed with follow up interviews. In his final notice dismissing the complaint, the Discipline Authority quotes law, some of which is incorrectly applied to the circumstances. The matter should have gone to Crown counsel for review of possible charges.[77]
- File example #61: The Complainant and a friend got into a vehicle and were surrounded by police and ordered out of the vehicle at gun point. The issue of pointing a firearm was not addressed or satisfactorily fleshed out in the investigation.[78]
- File example #55: The Complainant alleged that he was punched, kicked and beaten with a baton by police. The matter was not forwarded to Crown counsel and the investigation was not completed within the limitation period for summary conviction offences. The Complainant sustained significant injuries and the question of degree of force should have received an independent review by Crown counsel.[79]
- File example #69: A third party complained after observing the police interact with two males in a vehicle. The passenger was thrown on the ground and one of the officers placed his foot on the passenger's head, pressing downward. The Complainant alleged the conduct was provocative and hostile. The complaint was lodged August 20 and the file was concluded March 11. The assault allegation was not investigated as such but the Investigator did comment that the file had not been sent to Crown counsel. The Investigator had not interviewed the alleged victim or

[76] This file is also cited as an example in Sections 9 and 12 of the report.

[77] Managerial advice was imposed in this case, an issue referred to in the OPCC's closing letter, but it was directed only at the issuance of the 24-hour prohibition and not the question of excessive force. This file is also cited as an example in Sections 9 and 12 of the report.

[78] This file is also cited as an example in Sections 8.4, 9, 12 and 13.4 of the report.

[79] This file is also cited as an example in Sections 8.3, 9, 12 and 13.4 of the report.

the other occupant of the vehicle. The report suggests that because the individuals involved did not complain they felt that the police actions had been appropriate.[80]

- File example #40: This was an allegation that a police officer had called the Complainant a "f…ing sleazebag" and arrested, detained, and questioned him without legal justification. The matter was informally resolved without investigation of possible charges of assault or unlawful confinement.[81]
- File example #53: Several officers and the jailer got involved in a physical struggle with the Complainant, which resulted in the Complainant receiving a broken arm, a black eye, and a bloody nose. The matter was serious enough that it likely should have been reviewed by Crown counsel but the investigation was delayed beyond the limitation period for summary conviction offences. The complaint was made in September 2002 and the file was not concluded until March 2004. The investigation failed to produce adequate statements from the jailer and the witness officers. The jail video ought to have been secured on the investigation file as an exhibit to ensure that it could be available for any future criminal or civil process. The Investigator focussed on the fact that the police did not intend to break the complaint's arm rather than considering whether the amount of force used to subdue the Complainant was reasonable.[82]
- File example #42: The Complainant, who was arrested after a police chase, alleged that excessive force had been used in his arrest, resulting in fractured ribs. He also alleged that the arresting officer failed to call him back and respond to inquiries about the disposition of his vehicle. The matter was informally resolved. No duty reports or will-says were obtained from the Respondent officers to address the serious excessive force allegations. Even the documented interactions between the assigned Investigator and the Complainant failed to address any aspect of the excessive force complaint. The documentation focused almost exclusively on the seizure of the vehicle. The only comment related to use of force was the indication that the Complainant found one of the officers too aggressive which was contained in the body of the letter consenting to informal resolution.[83]

8.7 DUTY STATEMENTS & DISCLOSURE OF EVIDENCE TO RESPONDENTS

The *Police Act* is silent on witness and Respondent officers' duties and responsibilities during an investigation. The OPCC's "Practice Directive on Statements by Police Officers Relating to Public Trust" directs that every officer shall cooperate fully with Investigators in the conduct of investigations of public trust complaints. The Directive goes on to say that prior to requesting the Respondent to provide a statement the Investigator shall advise the Respondent officer of the details of the public trust complaint and shall provide the Respondent with copies of the Form 1 and all existing statements made by the Complainant.

The B.C. Federation of Police Officers bulletin titled "Duty Reports and Statements", dated February 1999, also provides direction to its members on police statements as they relate to *Police Act* matters. The bulletin distinguishes between a duty report and a statement, as follows:

> *"duty report" is a report by a police officer about the officer's police duties.*
>
> *"statement" means, in relation to a complaint, an oral or written report or statement, other than a duty report, about the incident or incidents described in the complaint.*

[80] This file is also cited as an example in Sections 9 and 12 of the report.

[81] This file is also cited as an example in Sections 7.3, 12 and 13.6 of the report.

[82] This file is also cited as an example in Sections 8.3, 9, 12 and 13.4 of the report.

[83] This file is also cited as an example in Sections 7.4 and 12 of the report.

The bulletin goes on to identify that a statement goes beyond the duties performed, describing or explaining how and or why events occurred. Illustrations given are: details of force used while conducting an arrest or relating a conversation alleged to involve discriminatory comments. The bulletin indicates that police officers under investigation are not obliged to provide statements but may do so voluntarily. It also emphasizes that ordered duty statements and voluntary statements by Respondents may not be entered as evidence in *Police Act* proceedings without consent of the Respondent.

Some Departments rely heavily on duty reports from Respondents and witness officers in order to conduct Public Trust investigations. The majority of duty reports we saw were reasonably comprehensive. Investigators tended to accept them at face value, however, without making further inquiries to clarify or address points that were critical in the investigation. At times this left gaps in the evidence that were not properly addressed in investigations.

The process of obtaining statements from Respondents differed from Department to Department. In some Departments Respondents were provided with copies of all statements or other evidence obtained from the Complainant in the course of the investigation prior to being required to submit a duty report. In others only the initial complaint was provided. Further information was treated as evidence that did not have to be disclosed prior to the Respondent's providing a statement. The former practice, although consistent with the guidelines provided by the OPCC, is inconsistent with ordinary investigative practices used in other types of police investigations. It is not a method that will ensure the best "pure" version of Respondent's statements. It may also fail to respect or protect the privacy rights of Complainants or other witnesses.

While we accept that a Respondent should be given proper notice of the nature of the complaint before being called upon to make a statement, this could be done by providing the Respondent with a copy of the complaint and sufficient particulars to permit the Respondent to identify the incident underlying the complaint. We are less convinced of the appropriateness of providing Respondents with complete copies of all statements and evidence emanating from the Complainant during the course of the investigation of a complaint, before Respondents are required to provide their own statements.

Undoubtedly, revealing all of the Complainant's evidence assists a Respondent in focusing his duty report on the matters relevant to the complaint. It also tends, however, to offer an advantage to the Respondent, who does not have to rely on his own unvarnished recollection of the incident. In their duty statements, Respondents often simply responded to the Complainants' evidence rather than presenting a clear, complete, and independent account of events.

We saw examples of correspondence on files in which the Investigator invited a Respondent to drop in and read the entire file before responding to the complaint. This raises the question of how a Complainant might feel knowing that the Respondent would be permitted to view the entire investigative file before having to commit to a version of events. It also gives the impression of an imbalance in the investigative process, with the advantage going to the Respondent officer.

Admittedly, in Departments that do not adequately particularize complaints, it would be difficult for an officer to respond adequately to all of the points raised by a Complainant without also being privy to all of the Complainant's evidence.

9 EXCESSIVE FORCE

As indicated above, almost one third (94) of the complaints in our main sample involved allegations of excessive force. In none of the files we reviewed, however, was a single excessive force allegation found to have been substantiated. Even without looking at the complaints themselves, this would seem to be an anomalous result.

Many of the excessive force complaints we reviewed were, in our view, appropriately investigated and found to be unsubstantiated or they were otherwise appropriately dealt with under the *Police Act*. In more than 20 excessive force cases,[84] however, we concluded that the findings, conclusions, or recommendations of the Investigator or the Discipline Authority or both were either unreasonable or inappropriate or, based on the material on file, we could not confirm their reasonableness or appropriateness. Our concerns arose primarily as a result of incomplete or inadequate investigations. This, in turn, was reflected in the Discipline Authorities' decisions, some of which were flawed because they were based on inadequate investigations and others of which seemed to go against the weight of the evidence on file.

These are some of the excessive force cases that caused us particular concern:[85]

- File example #82: The Complainant alleged that while getting on his bike he was approached and questioned by one officer when another officer came around behind him, grabbed him by his jacket hood, pulled him off his bike, and handcuffed him. When the officer noticed a knife that was in the Complainant's pocket he dragged the Complainant to a police car, threw him on the hood, and searched him. The officer asked the Complainant if he was a "skinner" then seized his bike and told him if he came up with a receipt for the bicycle he could have it back. In addition to losing his bicycle, the Complainant sustained a cut chin, broken denture, cracked rib, and bruises. This complaint involved an allegation of excessive force that did not appear to have been appropriately investigated or referred to Crown counsel.[86]
- File example #61: As the Complainant and a friend got into a vehicle they were surrounded by several police officers and ordered out of the vehicle at gun point. On thin grounds, which turned out to be inaccurate, the police believed that the vehicle had been stolen. Apart from the belief that the vehicle had been stolen, the police had no other basis for believing that the occupants of the vehicle would be armed or dangerous. Nevertheless, the police used a "Code 5" take down

[84] File examples: #31, #41, #51, #53, #55, #61, #60, #62, #63, #65, #67, #68, #69, #70, #71, #72, #73, #74, #75, #76, #77, #78, #79, #80, #81, #82 and #83.

[85] Others, that have already been described include file example #53, #67, and #68.

[86] This file is also cited as an example in Sections 11, 12 and 15 of the report.

that involved several officers pointing their firearms at two individuals who were innocent. The Department's own Use of Force expert reviewed the "Code 5" take down procedures and endorsed the police conduct but did not actually discuss the significant difference between drawing and pointing a firearm. The lack of an investigation report was significant in this case because it meant that the file lacked any comparative analysis of the statements of the various officers. One constable's duty statement articulates the reasons for having his firearm unholstered at the low ready position and pointed in a safe direction at all times. Another officer, however, describes how officers "aimed" at the Complainant, who had her hands up and appeared terrified. During the incident one officer noticed that two other officers were in the line of fire and he had to order them to reposition for safety. Neither the internal police investigation, nor the finding of the Discipline Authority seemed to acknowledge or consider that the police reaction might have been disproportionate to the threat posed.[87]

- File example #74: The Respondent allegedly assaulted one handcuffed prisoner by hitting his head against the front fender of a patrol car. As a result, the fender of the patrol car was dented and the prisoner suffered a cut to the inside of his lip and two loose teeth. The Respondent also allegedly assaulted another handcuffed prisoner by removing him from the back seat of a patrol car and forcing him to the ground. These allegations were externally investigated and resulted in criminal charges. The charges were ultimately stayed by Crown counsel during the course of the trial because of weaknesses in the evidence and because of a Use of Force expert report obtained by the Respondent's lawyer. A third complaint of alleged assault against the same Respondent, which had been suspended pending the outcome of the criminal proceedings for the first two matters, was then summarily dismissed. The alleged conduct in the three incidents was somewhat similar and very serious. Given the lower standard of proof and the different focus of the *Police Act* (corrective not punitive), it still may have been appropriate to consider imposing disciplinary or corrective measures notwithstanding the result in the criminal case. In our view, without fully reviewing all of the evidence at the criminal trial (which was not on file) and perhaps obtaining a report from another Use of Force expert, the Discipline Authority may not have been in a position to be sure that summary dismissal was appropriate.[88]
- File example #47: This was a complaint that the police had used excessive force in arresting the Complainant and "breaching" him out of a downtown entertainment district. The Complainant received abrasions to his face and head as well as knee strikes and punches. Emails on file suggest a lack of objectivity on the part of the Investigator, who, among other things, questions the validity of the complaint before having done any investigation. She also wrote emails to the Respondent and several witness officers that were critical of the Complainant. In the emails, the Investigator tells the witness officers what other witnesses have said and suggests what she would like them to say, based on the other evidence she has reviewed. The gist of her comments was to minimize the complaint and to justify the police conduct; the subsequent evidence that the Investigator received from the witness officers generally conformed to her suggestions.[89] [90]

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87 This file is also cited as an example in Sections 8.4, 8.6, 12 and 13.4 of the report.

88 This file is also cited as an example in Sections 9 and 13.6 of the report.

89 This is one of a number of cases we saw from this Department in which suspects suffered similar sorts of injuries to their faces and heads as a result of being "taken down" or "subdued" on the ground. Suspects' heads were pressed down, using knees or hands, and their faces were rubbed against the concrete or asphalt while they were being handcuffed. This may have been unintentional, or attributable to the suspect's own movements while being arrested; but, in light of the frequency (even among the files we reviewed) with which such injuries occurred and given that there were specific complaints from people who alleged that the police had intentionally rubbed their heads or faces against the ground, this may have been intentional. We saw no evidence that anything was ever done to address this apparent trend.

90 This file is also cited as an example in Sections 8.2, 10, 12, 13, 13.4 and 14 of the report.

- File example #81: The Complainant was in the back seat of a vehicle, while police were arresting her husband outside. She became concerned and demanded to know the reason for the arrest. Police told the Complainant to "shut up". When she continued to demand an explanation, the police ordered her out of the vehicle, attempted to handcuff her, and, in the course of doing so, broke her arm.

  A criminal assault investigation ought to have been pursued and the matter reviewed by Crown Counsel. There appears to have been a meeting between the Investigator and the Respondent early in the investigation but there are no notes or memos on file about the contents of their discussion at that meeting and there is no indication on file that the Respondent was interviewed in detail, even though he should have been.

  Although the Respondent was notified of the complaint relatively soon after the incident, his duty report (prepared by legal counsel) was not provided until the day after the six month limitation period for summary conviction offences would have expired. No written statement was obtained from the Complainant. A taped statement was obtained but neither the tape nor a transcription of it was on file and the Investigator's notes of the interview were obviously incomplete. There were significant gaps in the Respondent's occurrence report and duty report and significant inconsistencies between them. His notes were not on file. Neither the Complainant's husband nor her friend, both of whom witnessed the incident, was interviewed. A brief written statement provided by the friend on the evening of the incident lacked any significant detail about the issues of interest to the *Police Act* investigation.

  The Investigator's report reflected the inadequacy of the investigation, and also reflected an apparent bias in favour of the Respondent. In several respects the report misstated or overstated the evidence, in a manner which tended to justify the Respondent's conduct. The report also failed to grapple with significant gaps and inconsistencies in the Respondent's occurrence report and duty report. The evidence obtained was inadequate to support a finding that the complaint of excessive force was unsubstantiated. Indeed, even on the inadequate evidential basis that did exist, it was clear that the Investigator's conclusions were unsupportable. The Investigator failed to deal in any credible way with the lawful basis for ordering the Complainant out of the car and then arresting her. Even if there had been a lawful basis, which is not borne out by the evidence, no analysis was done of whether the force used was excessive in the circumstances.

  Finally, like the Investigator's report, the Discipline Authority's letter asserts facts and reaches conclusions which are not borne out by the evidence, which are sympathetic to the Respondent, and which fail to deal with whether the Application of any force (or the degree of force used) was reasonable in this case. The handling of this file raised the strong impression that the police were condoning or encouraging an avoidance of possible criminal liability for police misconduct. [91]

[91] This file is also cited as an example in Sections 9 and 12 of the report.

10 BREACHING

We saw a number of complaints from one Department that involved, among other things, an allegation of a practice called "breaching". This refers to briefly arresting and moving a suspect, purportedly on the basis of an "apprehended" breach of the peace, pursuant to s. 31 of the Criminal Code. In most of the cases of breaching that we saw, the practice appeared to have been based not on any reasonable and justifiable belief that the suspect had breached or was about to breach the peace but rather on a belief or more often a suspicion that the suspect had or might be engaging in criminal conduct or was otherwise "undesirable". Many of the breached suspects on the files we saw were suspected drug dealers. The officers involved usually breached them in order to remove them from a high crime area and deposit them elsewhere, usually at a transit station, with the implication that they "get out of town." We saw no evidence that anyone ever identified or commented upon the tendency of the police to resort to "breaching" and no questioning of the legality or the constitutionality of the practice, although it squarely arose in several of the complaint files we reviewed.[92]

[92] File examples: #47, #70, #80, #84, and #85.

11 SEARCH AND SEIZURE & IMPROPER HANDLING OF PROPERTY

We saw complaint files from a number of the Departments that demonstrated an unawareness of, or an inability or unwillingness to abide by, the legal and constitutional limits of police powers of search and seizure and the legal requirements upon police officers concerning detention and return of seized goods. It seemed to be a fairly consistent practice among Departments to seize property, particularly bicycles, from the holder of the property, without a search warrant and without sufficient grounds to arrest or lay a charge, and to keep the property, unless the holder of it could produce a receipt or otherwise prove that it was his. In most, if not all, of these cases no apparent attempt was made to do a report to a justice or to follow the other requirements under sections 489.1 and 490 of the Criminal Code. In virtually all such cases, complaints were routinely dismissed without any or any significant investigation or consideration of the legal or constitutional requirements.[93]

[93] File examples: #30, #82, #86, #87, #88, #89 and #90.

12 REVIEW BY CROWN COUNSEL

While some of the complaint files we reviewed had been forwarded to Crown counsel for consideration of possible charges, we found that there were a troubling number of complaints involving allegations of relatively serious police misconduct that were not investigated as criminal complaints and were not sent to Crown counsel for consideration of possible charges.[94]

Another serious concern we identified was unexplained and unreasonable delay in completing investigations into some complaints of potentially criminal conduct by police officers.[95] In some of these cases, several of which have already been described above, the conclusion of the investigation seemed to coincide with the end of the six month limitation period that would ordinarily apply to summary conviction offences. This could reasonably give the impression that the police had intentionally delayed the completion of their investigations until after the expiry of the limitation period.

[94] File examples: #23, #28, #31, #40, #41, #42, #45, #46, #47, #51, #52, #53, #55, #59, #60, #61, #62, #63, #64, #65, #67, #68, #69, #71, #72, #73, #77, #79, #80, #81; #82, #83, #91, #92, #93, #94, #95, #96, #97, #98, #99, #100, #101, #102, #103, #104 and #105.

[95] File examples: #51, #53, #55, #81, #82, and #91.

13 THE DISCIPLINE AUTHORITY

The role of Discipline Authority is difficult, time consuming and demanding. The Discipline Authority has a stewardship role in the handling of police complaints and internal discipline. The Discipline Authority is in a position to observe trends and emerging problems early on and to address them either proactively or reactively. Public complaints often provide a snapshot into public dissatisfaction, which in some cases can point out potential problem areas that require training or policy changes before they result in larger issues attracting negative publicity or litigation.

The Discipline Authority is in the best position to observe and respond to apparent trends in complaints or police conduct.[96] The Discipline Authority should, when appropriate, identify and address such trends proactively. We saw no clear evidence that Discipline Authorities were doing so.

The other aspect of the Discipline Authority's role is leadership. Decisions on police complaints send a message to the public and to police officers about what is acceptable police conduct.[97]

Complainants' interactions with police frequently involve the disadvantaged being up against the powerful. The police have ample resources and if they choose to do so, they can close ranks to defend against allegations or attacks. This was to some extent reflected in an "institutional sense" or "tone" that we noted about the way some Departments dealt with complaint files. Some members of some Departments seem to start from the premise that the police are right and that complaints are presumptively unjustified, while others demonstrated a more balanced approach. The Discipline Authority has a significant responsibility to foster an environment that rises above these types of challenges to ensure that public concerns are properly addressed even when the resulting decisions may be internally unpopular.

Decisions about alleged police misconduct are often controversial. The issues are emotionally charged, involving complex competing interests that are frequently opposed. There is often no "right" answer because some aspect of the Discipline Authority's decision may always leave someone dissatisfied. Issues of credibility abound because Complainants and witnesses often have criminal records or are marginalized persons with drug or mental health problems. They are complaining and providing evidence about police officers who are experienced witnesses, trained to articulate legal justifications for their conduct. The consequences of incorrect decisions are significant, pitting loss of public trust and confidence against the erosion of police

[96] An example of this would be the apparent trend in one Department of injury to the faces or heads of persons being subdued upon arrest. This is referred to above, in relation to the discussion of File example #47 (page 32).

[97] For example, in File examples #25 and #103, the DA excused without correction complaints concerning the use of inappropriate language. In other Departments similar conduct was treated as clearly unacceptable and action was taken to ensure that the Respondent officers understood that their behaviour was unacceptable to the DA and the Department.

morale and the loss of confidence by individual police officers about exercising the full scope of their authority in the course of their duties.

Some specific issues about the Discipline Authority that surfaced during our review were:

- Delegation of the discipline authority responsibility;
- Insufficient involvement in the decision-making process;
- Failure to ensure compliance with requirements under the *Police Act*;
- Lack of documentation on files demonstrating active supervision by the Discipline Authority of *Police Act* investigations;
- Offering prehearing conferences in serious cases where dismissal of the Respondent should have been considered;
- No apparent consideration of overall trends in individual officer conduct regardless of whether specific complaints were or were not substantiated; and
- Downgrading discipline without articulating a reason for doing so.

13.1 DELEGATION OF DISCIPLINE AUTHORITY RESPONSIBILITIES

In some Departments the Chief Constable retained the role of Discipline Authority while in others the responsibility was delegated to another senior officer. In the latter case, it was unclear what parameters had been placed on the delegation or to what degree the Chief was routinely kept apprised of the process of complaints. We saw no basis for concluding, however, that the delegation of the Discipline Authority role, in itself, had any adverse effect on the quality of the determination in any given case.

13.2 INSUFFICIENT INVOLVEMENT IN THE DECISION–MAKING PROCESS

From our review, certain Chief Constables obviously stood out as being more directly involved in the management and decision-making role on public trust complaints. There were a few Departments in which it was clear that the Chief took a direct personal role in overseeing the complaints process. These were the same Departments in which it was apparent that the Chief Constables were not only involved in the ongoing management and supervision of the complaints process, but they also exercised a degree of independence in their decision-making rather than relying entirely on the Investigator's conclusions and recommendations. These Chiefs also appeared to be keenly interested in establishing and maintaining public trust.[98] It is probably not coincidental that these same Chief Constables also made it known to us during the course of our review that they would welcome feedback on the handling of complaints by their Departments.

The *Police Act* process requires Investigators not only to investigate but also to provide findings, conclusions, and recommendations. This creates a process under which Discipline Authorities could be seen to abdicate their responsibility to review and make a determination on the merits of the complaints in favour of simply "rubber stamping" the decisions of Investigators. The majority of files we reviewed showed insufficient evidence of a truly separate and distinct process of decision-making by the Discipline Authority at the conclusion of the investigation. It was a common practice for some Investigators to prepare the Discipline Authority's final notice on the same date, and coming to the same conclusions, as the investigation report. This creates the impression of a single Investigator/decision-maker. In our view, there is value in recognizing and maintaining

[98] In one notable case the Chief Constable went out of his way to meet with and listen to a Complainant who had been extremely demanding, sarcastic and antagonistic in his emails and correspondence to the police.

the separation between the investigative and decision-making functions. Such a separation was not usually evident in the files we reviewed.

13.3 FAILURE TO ENSURE STATUTORY COMPLIANCE

There were Departments that appeared to ignore certain clear requirements under the *Police Act*. One Department failed or neglected to produce investigation reports, as specifically required under s. 56(6) of the *Police Act*. Others failed to provide investigative progress reports as required under s. 56(1) of the *Police Act* or provided them late or in a "boiler plate" form that provided no substantive information about the progress of investigations. In a very few cases the contents of these reports were misleading or plainly false. In most cases, these problems persisted for some years, which suggests that the Discipline Authority was unaware of the statutory requirements, unaware that the Department was not meeting the requirements, or consciously chose to ignore the statutory requirements. In those Departments in which there were significant problems of non-compliance with statutory requirements, even pointed letters from the OPCC sometimes failed to motivate the Departments to set up systems or allocate resources to ensure adherence to the requirements of the *Police Act*.

The majority of files we reviewed from one Department did not contain a separate investigation report. In those cases, the Discipline Authority's final notice, which had obviously been drafted by the Investigator, did double duty to fulfill both functions. Despite this fairly significant procedural deficiency, in most such cases the Discipline Authority's final notice was sufficiently detailed and comprehensive that the lack of a separate investigative report did not undermine the validity of the investigation or the Discipline Authority's decision. In a few cases, however, the lack of a separate investigative report did in our view adversely affect the overall handling of complaints.[99] On one file, the Department's practice was initially questioned by an OPCC Analyst but, ultimately, the Analyst agreed, despite the mandatory requirements under the *Police Act*, not to require the Department to provide an investigation report unless discipline was contemplated.[100]

The files of one Department stood out for the clarity of documentation detailing the nature of the decision or Section of the *Police Act* to which the decision related. This Department had also developed a computer data base program to manage and track *Police Act* investigations. The information collected also served as a management tool.

13.4 LACK OF DOCUMENTATION DEMONSTRATING ACTIVE DISCIPLINE AUTHORITY SUPERVISION

We saw a number of files which we felt required more investigation or clarification of some point or issue in order to ensure a properly informed determination. Few of the files we reviewed, however, contained any evidence of active supervision of the internal investigative process by the Discipline Authority (or other supervisor) in the form of written suggestions or directions about avenues of investigation that needed to be conducted or followed up to ensure that the final investigative product was comprehensive.

It cannot be known how much supervision Discipline Authorities actually provided because it was not documented on the files. The fact that some of the same types of shortcomings persisted over time, however, suggests that they were not identified or addressed by the Discipline Authority or a supervisor because the degree of supervision was inadequate. One concern that surfaced which may have contributed to this

[99] File examples #75, #106, #107, and #108.

[100] File example #109.

apparent absence of evidence of supervision was the established practice of routine direct communications between Investigators and OPCC analysts. This practice in effect removes the Discipline Authority from significant aspects of managing and supervising the *Police Act* investigation process.

The role that is envisioned for Investigators under the *Police Act* is to report to the Discipline Authority, who makes decisions. Frequent direct contact between Investigators and OPCC Analysts tends to mean that Discipline Authorities, who are the people specifically appointed under the *Police Act* to exercise and review the disciplinary functions within Departments, are to a great extent insulated or even isolated from the problems that arise in the day to day investigation and processing of complaints under the *Police Act*. This either results from or tends to further aggravate problems that we discuss in other places in this report, namely: the Discipline Authoritys' ability (which is made possible by the structure of the *Police Act*) to abdicate most or all of their decision-making responsibilities to Investigators; and the Discipline Authorities' tendency to miss obvious trends, in the behaviour of particular officers, in the overall operations of their Departments, or in the quality and timeliness of complaint investigations.

A serious concern we identified (and have already discussed above) was the unexplained delay in completing investigations in a number of files.[101] Some of these files involved allegations of potentially criminal misconduct, including excessive force that the Discipline Authority allowed to stretch beyond the six month limitation period that would ordinarily apply to summary conviction offences.

Some investigative files contained unprofessional comments suggesting potential bias on the part of Investigators.[102] There was no documentation on file indicating that these files had been reviewed or audited by Discipline Authorities or other supervisors to identify and correct these types of problems, which could harm the integrity of the investigative process.

An issue common to most of the Departments was a failure to address, analyze, or discuss the grounds for arrest or grounds for search and retention of items seized.[103] The actions that flowed from an arrest or search were often the trigger of complaints. Many allegations of excessive force could not be properly determined without first resolving whether an arrest or search had been lawful or reasonable. The necessary critical analysis by the Discipline Authority of the grounds for and appropriateness of arrests or searches, which was a precondition to dealing with other aspects of the complaint, was often lacking. In determining that the force used was appropriate, the Discipline Authority often missed or ignored the fact that the initial arrest or search may have been unlawful or unauthorized, making any subsequent use of force unacceptable. This was a weakness in both the investigations and the decision-making on a number of complaint files.

These are some other examples of files in which Discipline Authorities failed to address issues surrounding the legality of arrests, searches, and detention of property:

- File example #89: This was a complaint of an unlawful personal search of a street person. The statements of the Complainant and Respondent conflicted regarding the search and a witness had not been interviewed. Further investigation may not have resulted in discipline but the investigative step that was missed was significant enough that it should have been identified by the Discipline Authority.[104]
- File example #77: This case involved complaints of neglect of duty, excessive force and unprofessional conduct, including the specific allegation that the police had lost the Complainant's

[101] These files have already been discussed above: File examples #28, #49, #50, #51, #52, #53, #54, #55, #56, #57, #58, #93, and #110.

[102] These files have already been referred to above: File examples #29, #30, #46, #47, #48, #111, #112 and #113.

[103] A number of these cases have already been referred to above: File examples #38, #60, #61, #62, #66 and #73.

[104] This file is also cited as an example in Sections 11 and 14 of the report.

identification and that the Complainant had been assaulted while in jail. Delay in lodging the complaint made the investigation more difficult but little or no investigation was ultimately conducted beyond obtaining duty reports from Respondent officers and copies of police reports. The files did not contain a comprehensive interview of the Complainant but only Investigator's notes, which were difficult to read. Several witness officers and ambulance attendants were not interviewed. Criminal allegations of abuse while in custody were not addressed. The complaint of missing identification was not investigated but the Complainant's passport was attached to the file.[105]

- File example #108: The Complainant alleged that the police had seized items under a search warrant but refused to return property that was unrelated to the charges. The Discipline Authority did not document any steps to require the Investigator to determine or consider the lawfulness of retaining the exhibits. The Discipline Authority's notice stated that the items were not entered in court but there is no statement about what happened to them and why and under what authority they were being retained by police.[106]
- File example #52: The Complainant was a passenger in a vehicle the driver of which had received a 24 hour prohibition. The Complainant was given an ASD test to see if he was fit to drive but he failed. He became agitated when the officer would not return his license and a struggle ensued after which the Complainant was arrested for allegedly being drunk in public. The primary issue was the legality of the arrest, the alleged basis for which was the *Liquor Control and Licensing Act* power to arrest for being intoxicated in public. None of the officers thought it was necessary to lodge the Complainant so they released him. Instead of seeing this as weakening the initial legal basis for the arrest, the Investigator asserted that the arrest had been lawful but that the subsequent release was "negligent". In his report the Discipline Authority made no mention of the Investigator's conclusion that the release was "negligent", and ultimately concluded that the complaint was unsubstantiated, without considering the legality of the arrest.[107]

Finally, as already referred to above, one Department relied too heavily on summary dismissal, only doing partial investigations in many cases. In our view, this reflects either a lack of sufficient supervision by the Discipline Authority or the Discipline Authority's apparent condoning and approving of the dismissal of complaints on an inadequate or improper basis.

13.5 OFFERING PREHEARING CONFERENCES IN SERIOUS CASES

Section 58(7) of the *Police Act* provides that disciplinary or corrective measures accepted by a Respondent and approved by the Discipline Authority at a prehearing conference constitute a resolution of the matter, which is not open to question or review by a court on any ground, unless the Commissioner orders a public hearing.

Of the very few cases that actually resulted in discipline or corrective measures, there were a few in which the Discipline Authority's offer to the Respondent of a prehearing conference was, in our view, improper because the default established was too serious. In these cases, a prehearing conference may well have been contrary to the public interest and Section 58(2) of the *Police Act*:

- File example #114: This was an investigation into "off duty" impaired driving by a police officer, who had collided with another vehicle while operating a police vehicle. This caused extensive

[105] This file is also cited as an example in Sections 9 and 12 of the report.

[106] This file is also cited as an example in Sections 13.3 and 14 of the report.

[107] This file is also cited as an example in Sections 8.3, 12, 13.4 and 15 of the report.

damage to both vehicles. The officer attempted to leave the scene of the accident and was driving on an expired driver's license. His blood alcohol readings were 170 mg/100ml blood. The Discipline Authority offered a Pre Hearing Conference after which he agreed to impose the following corrective measures:

- Acceptance of Human Resources assistance to deal with any issues related to alcohol consumption or abuse, as deemed necessary by Human Resources;
- Acceptance of any required treatment options deemed necessary by a designated physician; and
- Acceptance of and participation in any treatment options determined to be necessary by Human Resources and the physician.

Given the seriousness of the Respondent's defaults this result may not have been appropriate.

- File example #95: This was an investigation where an officer used a police vehicle while off duty after previous orders not to do so. The Respondent had been drinking before driving and his children were in the vehicle at the time. When other officers attended he was belligerent with them and may have assaulted one or more of them. The Discipline Authority initially suggested that more severe discipline be imposed (five days without pay and attendance at an alcoholism treatment centre), which after prehearing conference was reduced to three days suspension and attendance at counselling but not necessarily at a treatment centre. The file indicates that within weeks of the imposition of the discipline, the Respondent was refusing to cooperate with the requirement of counselling. [108]
- File example #115: The Respondent made inappropriate sexual comments to two women in the course of attending a call in which the women were witnesses. The officer then made a further visit to one of the women, called her, and made further inappropriate sexual comments and suggestions to her. At all times he was on duty and in uniform. The recommended discipline (two-day suspension, psychological counselling, completion of a course on ethical police behaviour, prohibition from promotion for three years) was not severe enough given the seriousness of the incident and given that the Respondent had a prior discipline breach involving asking inappropriate sexual questions of a sixteen year sexual assault victim. The Discipline Authority elected to offer the Respondent a prehearing conference and, as a result, agreed to a lesser discipline (written reprimand, psychological counselling, completion of a course on ethical police behaviour, and restriction on promotion for two years). This case was unique and serious. The only similar case referred to as a precedent in the Investigator's report had resulted in dismissal. Dismissal ought to have been considered in this case. The offer of a prehearing conference and the agreement to a lesser penalty were inappropriate in the circumstances.[109]

In a number of cases, after a prehearing conference, the Discipline Authority reduced the proposed discipline without providing a documented rationale for doing so. This was usually after there had been a recommendation on discipline by the Investigator or an initial view as to discipline by the Discipline Authority, either or both of which appeared to be reasonable and supported by authority. For example:

- File example #94: This was an investigation related to an officer selling items on eBay that he took from a City Firehall slated for destruction. After the initial investigation report was completed and corrective measures were recommended, the Discipline Authority offered the Respondent a prehearing conference, during and subsequent to which the Discipline Authority obtained

[108] This file is also cited as an example in Sections 12 and 14 of the report.

[109] This file is also cited as an example in Section 16 of the report.

further information. Subsequently the Discipline Authority chose to dismiss as unsubstantiated a complaint of corrupt practice, leaving only a complaint of discreditable conduct. Ultimately the Discipline Authority chose to vary the initial determination that a written reprimand was appropriate to conclude that a verbal reprimand would suffice. No clear reason was given for this change.[110]

13.6 NO CONSIDERATION OF OVERALL TRENDS

In more than one Department, we saw multiple complaint files involving similar allegations of misconduct by the same officer. Notwithstanding that each of the individual complaints may have been properly found to have been unsubstantiated or summarily dismissed, a review of the files together suggested that it may have been appropriate for the Discipline Authority to act proactively, recognizing or identifying trends in order to prevent future incidents and effectively manage police personnel. While there may be insufficient grounds to make a finding of discipline default on the evidence of a single incident, the existence of a number of similar complaints of the same nature could form the grounds to suggest a problem which could be addressed from a management, training, or supervisory point of view distinct from formal corrective or disciplinary action. On the files we reviewed, we saw examples where Discipline Authorities may not have felt that they had options available to them to address concerns such as this under the *Police Act* or otherwise. In some cases the Discipline Authority documented concerns and recognized that the problem needed some form of attention.[111] In other cases there was no indication on file that the Discipline Authority had considered action beyond concluding the *Police Act* matter. An example of this includes:

- File example #116 and #117: These files involved several complaints of rude, unprofessional or unduly confrontational behaviour by a police officer. Two complaints were considered together with four others alleging similar misconduct. The Investigator's concluding comments suggest a clear recognition that the Respondent's actions would continue to give rise to public complaints and difficulties for the Department notwithstanding that the individual complaints were each found to be unsubstantiated. In our view, these complaints, taken and considered together with the others, may have risen to the level of discreditable conduct; or, at least, may have indicated that formal discipline may have been appropriate, notwithstanding that the complaints, taken individually, may have been properly determined to be unsubstantiated.[112]

[110] This file is also cited as an example in Sections 12 and 14 of the report.

[111] File examples #7, #35, #40, #74 and #118.

[112] File #116 is also cited as an example in Section 14 of the report.

14 LACK OF SUBSTANTIATED COMPLAINTS

By virtue of their responsibilities and the circumstances under which the police are often forced to interact with citizens, police actions necessarily will give rise to a broad range of complaints. Some of these are serious. Others are far less so. Some complaints are valid, while others clearly are not. As one might expect, we found in our review that most of the complaints in our sample were validly concluded as unsubstantiated, or were otherwise appropriately resolved without discipline or correction under the *Police Act*, through summary dismissal, withdrawal, or informal resolution.

Of the relatively few files that had been concluded as "substantiated", it was our view that all of them merited that conclusion. We were not always in complete agreement, however, that the ultimate disciplinary or corrective measure imposed (or not imposed) in connection with substantiated complaints gave sufficient weight to the seriousness of the particular discipline default that had been established.

One striking conclusion that flows from our review is how few of the complaints, only 24 of 294 in the main sample (8%), were found to have been substantiated. This included 22 Public Trust complaints, one Service or Policy complaint, and one Internal Discipline complaint. Even fewer complaints, only nine of 294 in the main sample (3%), were found to merit the imposition of any formal discipline under the *Code of Conduct*. This consisted of four verbal reprimands, four one-day suspensions without pay and one direction to take training. No disciplinary or corrective action, formal or informal, was taken in 265 (90%) of the 294 complaints in the main sample. Managerial advice, or some other informal discipline, was given in 20 cases.

As was true of the excessive force cases that were found to be unsubstantiated, there were a number of unsubstantiated complaints in other categories in which the findings, conclusions, or recommendations of the Investigator or the Discipline Authority or both were, in our view, either clearly unreasonable or inappropriate. In a number of instances, because of the lack of sufficient information on file, we could not confirm whether the findings, conclusions, or recommendations of the Investigator or the Discipline Authority were reasonable or appropriate.[113] In other cases, because of what we perceived to be flaws or shortcomings in the investigations themselves, we were unable to confirm whether the final resolution of the complaints was reasonable and appropriate.[114]

[113] File examples #10, #34, #35, #48, #88, #94, #95, #98, #108, #116, #119, #120, #121, #122, #123, #124 and #125.

[114] File examples #47, #56, #89, #93, #126, #127, #128, and #129.

15 "INFORMAL" DISCIPLINARY ACTION

As indicated above, in cases in which some disciplinary action was taken in response to complaints, by far the most common response of Discipline Authorities was to offer managerial advice.[115] Managerial advice was given not only in cases in which the complaints had been found to be substantiated but also in cases in which the complaints were withdrawn, informally resolved, or found to be unsubstantiated. Specific examples of complaints in respect of which managerial advice was given include: inappropriate or unprofessional language,[116] inappropriate police chases that led to property damage or injury,[117] destruction or loss of police notes,[118] failing to attend court when required,[119] improper seizure and detention of property,[120] failing to carry out a proper search of a prisoner for weapons and drugs,[121] failing to document an assault complaint or to process exhibits,[122] failing to properly secure a seized knife,[123] and assault, carried out both on and off duty.[124]

Managerial advice does not fall within the definition of Disciplinary or Corrective Measures as defined in s. 19(1) of the *Code of Conduct*. In reality, managerial advice amounts to another level of discipline below a verbal reprimand, which is the lowest level of discipline provided for in the *Code of Conduct*. It is difficult to ascertain any real difference between a verbal reprimand and managerial advice but the frequent resort to it suggests that Discipline Authorities either view a verbal reprimand as too harsh for the majority of discipline defaults or that they wish to avoid imposing any "formal" discipline or corrective measure under the *Code of Conduct*. Either way, consideration should be given to amending Section 19(1) of the *Code of Conduct* to regulate the use of managerial advice and deal with the apparent unwillingness of Discipline Authorities to limit themselves to the options for discipline provided for under the *Code of Conduct*.

[115] For the purposes of this discussion we are including managerial advice in all its forms, including advice and counseling as to future conduct.

[116] File examples #26, #130, #131, #132, #133, #134 and #135.

[117] File examples #71 and #72.

[118] File example #136.

[119] File example #137.

[120] File example #82.

[121] File example #44.

[122] File example #50.

[123] File example #123.

[124] File examples #10 and #52.

16 THE "DISCIPLINE" FILES

After reviewing the files in the main sample we reviewed a further group of OPCC files, in which, according to OPCC records, discipline or corrective measures had been imposed. Unlike the complaints in the main sample, for the Discipline Files we did not have access to the Departments' files. Therefore, we could not always be satisfied that the information available for our review was sufficient for us to be able to make an assessment of the reasonableness or appropriateness of the Department's investigation or conclusion of complaints.

The Discipline Files involved a broad range of police misconduct, including: off duty drinking driving offences, one of which involved serious damage to a police vehicle and injury to a third party, deceit or misleading statements, improper seizure, detention, or misuse of property, abuse of authority involving issuance of unjustified or improper traffic tickets, misuse of CPIC, improper, inappropriate, or obscene language or comments, public disclosure of information contrary to an express order, neglecting to document an investigation or write up a file, excessive force through misuse of an emergency vehicle, failing to comply with a court-ordered no contact order, harassing and threatening phone calls, harassment, and spousal assault.

The actions taken by Discipline Authorities included: no disciplinary action in three cases, managerial advice in seven cases, verbal reprimands in seven cases, written reprimands in ten cases, and four suspensions without pay, of one, three, and four days respectively.[125]

In most of the Discipline Files we reviewed, it is fair to say that when discipline or corrective measures were imposed they appeared to fall generally within the range of what could be considered to be reasonable and appropriate. In a number of cases, though, we felt that the discipline or corrective measures imposed were at or below the bottom end of the range of what was reasonable and appropriate.

These are examples of cases in which we thought that the ultimate disciplinary action may have been unreasonable or inappropriate:[126]

- File example #138: This was an internal discipline complaint where the officer, a recent recruit, had lied to his supervisors to attempt to cover up the fact that he had conducted an incomplete investigation. He also lied about an off duty incident to attempt to place his conduct in a better light. The discipline that was imposed (written reprimand) failed to recognize the seriousness of the recruit officer's conduct. Dismissal ought to have been considered. The form of the letter of reprimand was also arguably too lenient, suggesting only that "further breaches may result in

[125] Some cases involved more than one of these disciplinary actions, which accounts for a total greater than thirty.

[126] File example #115, which is referred to above, is also apposite here.

more serious measures." It did not specifically refer to dismissal or even state directly that further misconduct would result in more serious discipline.

- File example #139: This was a complaint against an officer with numerous past discipline defaults, for which several reprimands and suspensions had been imposed. In this case he had improperly lodged a complaint against another officer who was investigating him for a discipline default. Although the Discipline Authority acknowledged that the Respondent's documented performance history and the latest default provided "sufficient cause…to terminate", the Respondent was neither terminated nor formally disciplined in any way. The officer was permitted to sign a so-called "One Last Chance Agreement", such that any further breaches of discipline resulting in anything above managerial direction would result in termination. Based on the material we reviewed, this seems unduly lenient.

In addition to suggesting the need for some regulation, the frequent use of managerial advice also highlights the need for a more comprehensive database of precedents for police discipline in Canada. While officers in other jurisdictions are governed by different legislation, the issues and elements of conduct are similar and the broader view would provide DA's and the public in this province with confidence that disciplinary actions concerning police misconduct are consistent with decisions in similar circumstances from other jurisdictions.[127]

[127] The Law Enforcement Review Board in Alberta and the Ontario Civilian Commission on Police Oversight maintain databases of decisions that might be appropriate to consider when attempting to locate data on discipline or corrective measures with which to populate a data base in this jurisdiction.

ANNEX I: LODGED COMPLAINT QUESTIONS

	QUESTION
1	ARE THE ALLEGATIONS CLEARLY ARTICULATED IN THE COMPLAINT? IF NOT, WERE EFFORTS MADE TO CLARIFY OR EXPAND UPON THE ALLEGATIONS IN THE COMPLAINT?
2	IF THE COMPLAINT WAS WITHDRAWN PRIOR TO OR DURING INVESTIGATION WERE THERE REASONS TO CONTINUE INVESTIGATING THE COMPLAINT?
3	IF THE COMPLAINT WAS SUMMARILY DISMISSED WAS THAT DONE IN ACCORDANCE WITH S. 54(1)?
4	IF THE COMPLAINT WAS INFORMALLY RESOLVED: WAS IT DONE IN ACCORDANCE WITH THE OPCC'S GUIDELINES FOR INFORMAL RESOLUTION? WAS THAT INAPPROPRIATE IN THE CIRCUMSTANCES? IF SO, WHY WAS IT?
5	DID REPORTS PROVIDED PURSUANT TO S. 56(1) PROVIDE SUFFICIENT DETAIL OF THE PROGRESS OF THE INVESTIGATION?
6	WAS THE INVESTIGATION CONDUCTED IN A TIMELY MANNER?
7	IF THE COMPLAINT INVOLVED AN ALLEGATION OF THE COMMISSION OF AN OFFENCE, WAS AN INVESTIGATION OF THE ALLEGED OFFENCE COMMENCED AND PURSUED IN A TIMELY MANNER?
8	WAS SUFFICENT EVIDENCE OBTAINED DIRECTLY FROM THE COMPLAINANT TO COMPLETE THE INVESTIGATION? IF NOT, WHY NOT?
9	WAS SUFFICIENT EVIDENCE OBTAINED DIRECTLY FROM THE RESPONDENT TO COMPLETE THE INVESTIGATION? IF NOT, WHY NOT?
10	WERE SUFFICENT EFFORTS MADE TO GATHER THE OTHER EVIDENCE NECESSARY TO COMPLETE THE INVESTIGATION? IF NOT, WHY NOT?
11	WAS THE INVESTIGATION REPORT SUBSTANTIALLY COMPLETE? IF NOT, WHAT WAS LACKING?
12	WAS THE INVESTIGATION REPORT OBJECTIVE AND PROFESSIONAL? IF NOT, EXPLAIN.

13 DID THE INVESTIGATION REPORT INCLUDE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS AS REQUIRED UNDER S. 56(6)?

14 BASED ON THE EVIDENCE, WERE THE FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE INVESTIGATOR REASONABLE AND APPROPRIATE? IF NOT, WHY NOT?

15 DID THE DISCIPLINE AUTHORITY PROVIDE NOTICE OF THE DETAILS OF THE INVESTIGATION IN ACCORDANCE WITH SECTION 57(1)? IF NOT, EXPLAIN.

16 WAS THE FORM AND CONTENT OF THE NOTICE UNDER S. 57(1) OBJECTIVE AND PROFESSIONAL? IF NOT, EXPLAIN.

17 DID THE DISCIPLINE AUTHORITY ACCEPT THE FINDINGS, CONCLUSIONS, OR RECOMMENDATIONS OF THE INVESTIGATOR? IF SO, WAS IT REASONABLE AND APPROPRIATE TO DO SO? IF NOT WAS IT REASONABLE AND APPROPRIATE NOT TO DO SO?

18 IF AFTER RECEIVING THE INVESTIGATION REPORT THE DISCIPLINE AUTHORITY DETERMINED THAT CORRECTIVE MEASURES WERE WARRANTED WAS THAT DETERMINATION REASONABLE AND APPROPRIATE?

19 IF AFTER RECEIVING THE INVESTIGATION REPORT THE DISCIPLINE AUTHORITY DETERMINED THAT CORRECTIVE MEASURES WERE NOT WARRANTED WAS THAT DETERMINATION REASONABLE AND APPROPRIATE?

20 DID THE DISCIPLINE AUTHORITY PROVIDE NOTICE OF WHETHER CORRECTIVE MEASURES WERE WARRANTED IN ACCORDANCE WITH SECTION 57.1? IF NOT, EXPLAIN.

21 WAS THE FORM AND CONTENT OF THE NOTICE UNDER S. 57.1 OBJECTIVE AND PROFESSIONAL? IF NOT, EXPLAIN.

22 OTHER OBSERVATIONS

ANNEX II: NON-LODGED COMPLAINT QUESTIONS

QUESTION

1 ARE THE ALLEGATIONS CLEARLY ARTICULATED IN THE COMPLAINT? IF NOT, WERE EFFORTS MADE TO CLARIFY OR EXPAND UPON THE ALLEGATIONS IN THE COMPLAINT?

2 DOES THE COMPLAINT DISCLOSE POTENTIAL DISCIPLINARY DEFAULTS FALLING UNDER THE *POLICE ACT***?**

3 WERE STEPS TAKEN TO ADVISE THE COMPLAINANT ABOUT AND ASSIST THE COMPLAINANT WITH LODGING A FORM 1 COMPLAINT?

4 WAS THE COMPLAINT INVESTIGATED?

5 IF THE COMPLAINT INVOLVED AN ALLEGATION OF THE COMMISSION OF AN OFFENCE, WAS AN INVESTIGATION OF THE ALLEGED OFFENCE COMMENCED AND PURSUED IN A TIMELY MANNER?

6 HOW WAS THE COMPAINT RESOLVED? WAS THAT APPROPRIATE IN THE CIRCUMSTANCES? IF NOT, WHY WAS IT INAPPROPRIATE?

7 WAS THE OPCC NOTIFIED OF THE MANNER OF RESOLUTION OF THE COMPLAINT?

8 OTHER OBSERVATIONS