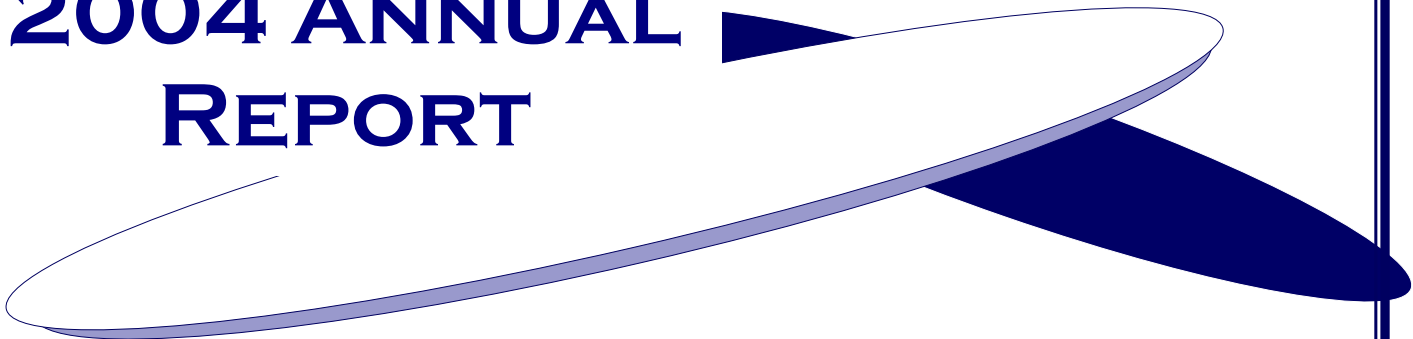


2004 ANNUAL REPORT



Nova Scotia Police Commission



**Police
Commission**

P.O. Box 1573
1601 Lower Water Street,
Suite 300
Halifax, NS B3J 2Y3

Bus: 902-424-3246
Fax: 902-424-3919
E-Mail: pol-
com@gov.ns.ca

May 17, 2007

The Honourable Murray Scott
Minister of Justice
4th Floor, 5151 Terminal Road
P.O. Box 7
Halifax, NS B3J 2L6

Dear Minister:

I have the honour to submit to you the Annual Report of the Nova Scotia Police Commission for the calendar year 2004, pursuant to the provisions of Section 9 of the *Police Act*, R.S.N.S. 1989, Chapter 348.

Thank you for your continued support for the work of the Commission.

Yours truly,

Nadine Cooper Mont
Chairman
NCM/pjw

Mission Statement

The mission of the Nova Scotia Police Commission is to deliver judicious, timely, impartial, client-oriented service to the public, to the police services and to the police officers within its jurisdiction.

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Role of the Commission

The primary role of the Nova Scotia Police Commission is to investigate and conduct hearings on citizens' complaints alleging misconduct by municipal police officers. The Commission's Police Review Board is also empowered to hear and rule on police officer's appeals against disciplinary penalties or dismissals that are imposed or ordered by chiefs of police and boards of police commissioners.

The responsibilities of the Nova Scotia Police Commission are outlined in Sections 5 and 5(A) of the Police Act which states that: "The Nova Scotia Police Commission shall perform the functions and duties assigned to it by the Police Act, the Governor-in-Council or the Minister of Justice".

These responsibilities include the following:

- 1) consult with and advise boards of police commissioners and other police authorities and chiefs of police on all matters relating to public complaints and internal discipline;
- 2) conduct investigations and inquiries in accordance with the Act;
- 3) provide investigative and administrative support to the Review Board; and
- 4) make recommendations with respect to amendments to the Act or the Regulations, or to any other enactment dealing with law enforcement.

According to Section 8 of the *Police Act*, when requested by a board of police commissioners, or directed by the Minister of Justice, the Nova Scotia Police Commission is also required to investigate the conduct and performance of any member of a municipal police force, the administration of any police force, the system of policing in any municipality, and the policing needs of a municipality.

Furthermore, the Nova Scotia Police Commission, when directed by the Minister of Justice, is responsible for inquiring into any matter relating to the extent, investigation or control of crime as well as the enforcement of law.

Administrative History

The Nova Scotia Police Commission was established by proclamation of the *Police Act* in 1976. Initially, the Police Commission reported to the Attorney General; it was responsible for improving the effectiveness of municipal police forces and relations between the police and the public. Initially the Police Commission provided a large number of services relating to provincial policing and security including:

- 1) development and approval of training programs for police officers,
- 2) development of programs to improve public awareness of police functions, duties and responsibilities,
- 3) maintenance of statistics and research services,
- 4) determinations of the adequacy, efficiency, and effectiveness of the police services provided by municipalities,
- 5) recommendations for appointment or re-appointment of Provincial Civil Constables, Special Constables, and By-Law Enforcement Officers; and
- 6) other duties under the Private Investigators and Private Guards Act and the Police Services Act.

In 1992, changes to the *Police Act* resulted in the re-organization and re-orientation of the Nova Scotia Police Commission. The majority of the services listed above were transferred to the Police and Victim Services Division of the Department of the Solicitor General. These services are now the responsibility of the Department of Justice. The Police Commission retained its responsibility for investigating matters related to the conduct and performance of duties by police, the administration of a police force, the system of policing in municipalities, and the police needs of municipalities.

The Police Commission investigates, and when appropriate, attempts to negotiate a resolution to public complaints upon an appeal by the complainant. If the investigator determines that the complaint has merit he/she will recommend a full hearing before the Nova Scotia Police Review Board.

Where the Police Commission's investigator cannot satisfactorily resolve a complaint, or has determined the complaint does not merit a complete review by the Nova Scotia Police Review Board, he/she may refuse to recommend a hearing. The complainant may then seek an order to refer the complaint to the Police Review Board by appealing the decision of the investigator to the full body of the Police Commission.

The Nova Scotia Police Review Board was established through amendments to the Police Act in the mid-1980's. It replaced the Police Commission as the adjudicating body for citizen complaints and for appeals against decisions made in internal discipline matters. The Board also conducts hearings into matters of internal discipline that are referred to it by the Police Commission. The Chairman of the Police Commission also acts as the Registrar of the Police Review Board, and the Police Commission is responsible for providing all of the administrative support needed by the Police Review Board to carry out its responsibilities.

Commission & Review Board Membership

Under the provisions of Section 4(1) of the Police Act, the Commission is composed of not less than three persons appointed by the Governor-in-Council.

As of December 31, 2004 the members of the Police Commission and Police Review Board were:

Members of the Police Commission		Members of the Police Review Board	
Nadine Cooper Mont	Chair	Marion Ferguson	Chair
Denise Mentis-Smith	Vice Chair	Lester Jesudason	Alternate Chair
Paul D. Gates	Member	Orville Symonds	Alternate Member
Betty Thomas	Member	Brian McIntosh	Alternate Member
Frances Hinton	Member	Charles Schafer	Member
Daniel Paul	Member	Peter James	Alternate Member

Commission Staff

E. Garry Mumford	Director
Pamela J. Whittaker	Coordinator to the Commission & Review Board
Norma MacDonald/Judy Baxter	Secretary to the Director

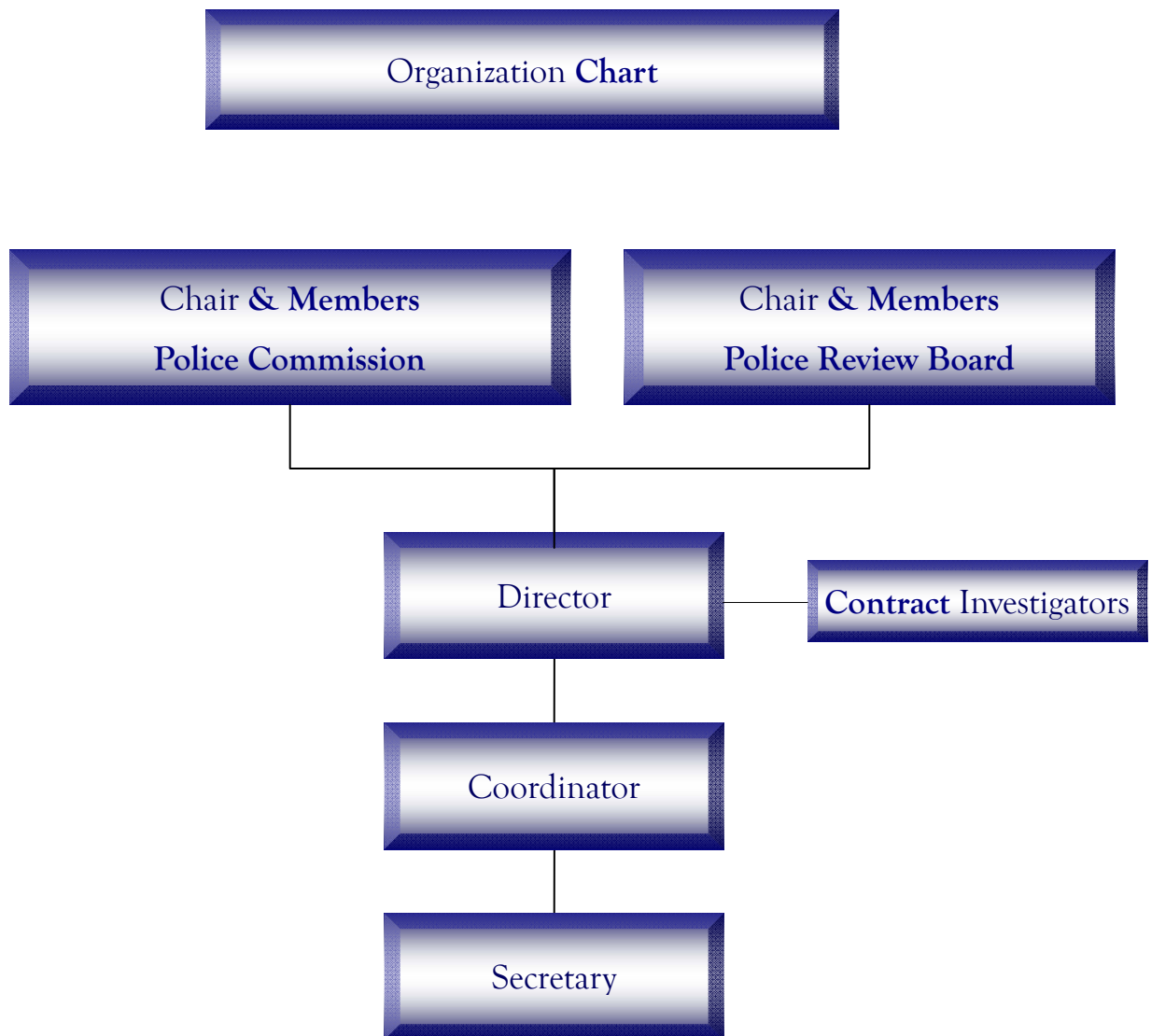
Staff Offices



The Nova Scotia Police Commission offices are located at Summit Place, 1601 Lower Water Street, Suite 203, Halifax, Nova Scotia.

Mailing Address: P. O. Box 1573
Halifax, Nova Scotia B3J 2Y3

Telephone: (902) 424-3246
Facsimile: (902) 424-1777
E-Mail: polcom@gov.ns.ca



Activities of the Commission

During the reporting year, the Commission met to review appeals submitted to it as outlined in Section 15 of the *Police Act Regulations*, and also to attend to regular business items. Three meetings were held in 2004. In those meetings the Commission, in its quasi-judicial function, heard twelve appeals arising from the Commission investigator's decisions not to refer these matters to the Police Review Board. In eleven cases the Commission upheld the investigator's decision to not refer the complaint to the Police Review Board for a hearing.

As Director of the Nova Scotia Police Commission, Mr. E. Garry Mumford routinely represents the Police Commission at various meetings and conferences. Among the events and/or presentations he attended or hosted in 2004 are the following:

- January 26 - Met with CPIC Field Operations
- February 3 and April 26 - Met with Nova Scotia Ombudsman in Halifax
- March 26 - Met with CACOLE Executive Director in Halifax
- April 29 & 30 - Nova Scotia Association of Chiefs of Police meeting in Truro
- June 24/27 - Annual CACOLE conference in Toronto
- September 20 - Police Ethics Seminar in Halifax
- September 29/Oct 1 - Presentation at joint Nova Scotia Association of Chiefs of Police and Nova Scotia Association of Police Boards conference in Kentville
- October 17 - Attend Law Enforcement Memorial Service
- November 24 - Presentation to Ombudsman and staff in Halifax

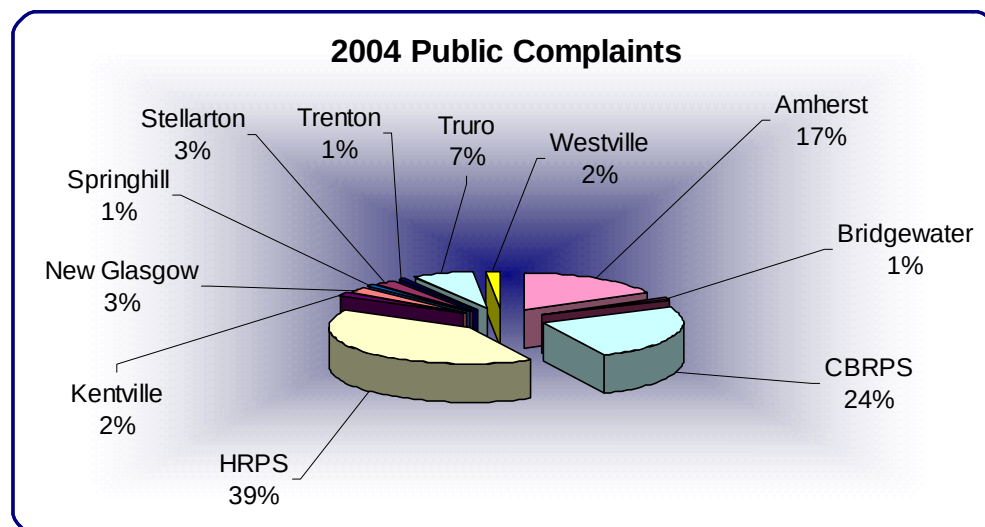
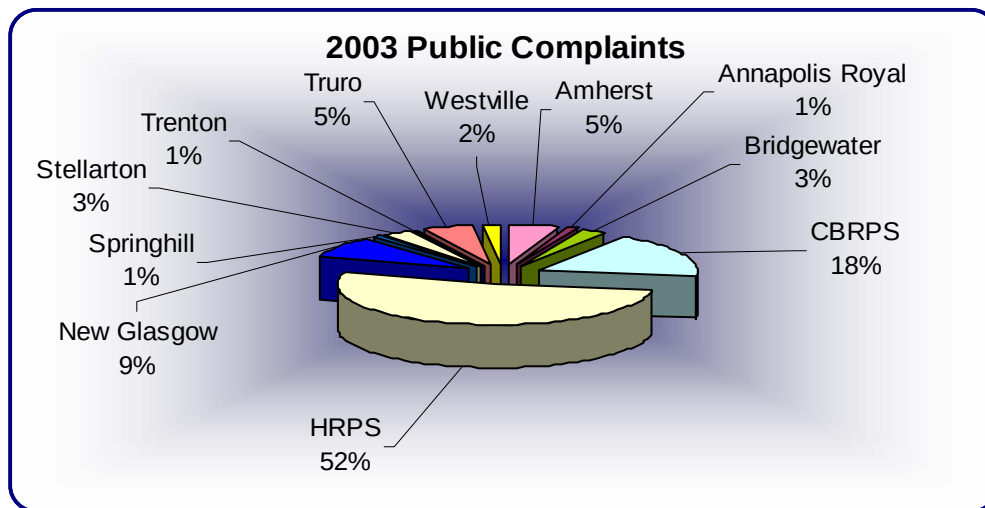
Public Complaints & Internal Discipline

The table below depicts the number of public complaints and internal disciplinary matters received from each of the 12 municipal police departments over the last two years by the Nova Scotia Police Commission.

Department	2003		2004	
	PC	ID	PC	ID
Amherst	8	2	20	5
Annapolis Royal	2	0	0	0
Bridgewater	4	0	1	1
CBRPS	29	13	29	8
HRPS	84	12	47	13
Kentville	0	0	2	0
New Glasgow	14	0	3	1
Springhill	1	0	1	0
Stellarton	5	1	3	0
Trenton	1	0	1	0
Truro	8	3	8	5
Westville	3	0	2	0
Totals	159	31	117	33

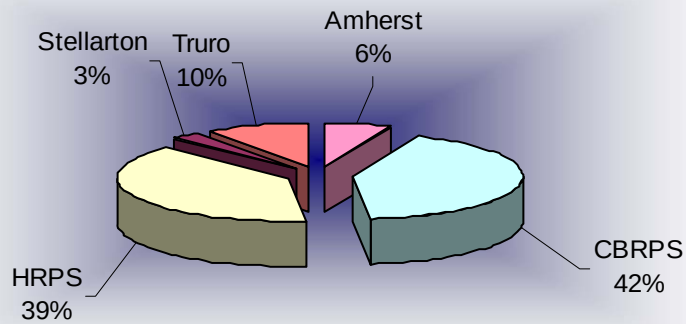
PC = Public Complaints
ID = Internal Discipline

Public Complaints - A total of 117 public complaints were received in 2004. This represents a 35% decrease over the number filed with the Commission in 2003.

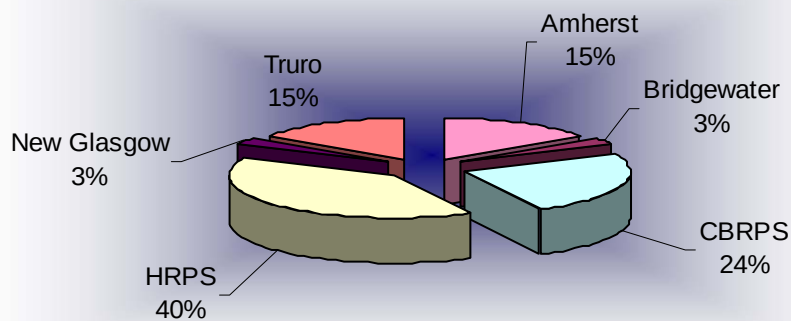


Internal Discipline - A total of 33 internal disciplinary matters were received in 2004. This represents a .06 percent increase from the number filed with the Commission in 2003.

2003 Internal Discipline



2004 Internal Discipline



Allegations & Founded Defaults

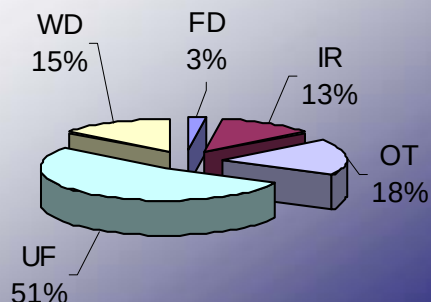
A complaint may contain several allegations. Consequently, in order to more accurately reflect the nature of complaints, the table below indicates the total number of allegations captured from both the public and internal files opened in 2004.

Abrev.	Alleged Defaults	Public	Founded	Internal	Founded
AA	Abuse of Authority	128	12	1	1
CP	Corrupt Practice	0	0	2	1
ED	Engages in Deceit	9	0	0	0
DC	Discreditable Conduct	48	2	18	9
ID	Improper Disclosure	3	0	1	1
IUF	Improper use of Firearm	0	0	0	0
INS	Insubordination	0	0	0	0
ND	Neglect of Duty	30	2	13	9
PE	Public Expectation	5	0	0	0
DP	Damages Property	1	0	2	2
HRA	Human Rights Act	5	1	0	0
CLD	Consumes Liquor or Drugs	0	0	1	0
	Totals	229	17	38	23

Disposition of Public Complaints

Disposition - Public	Abbreviation	2003	2004
Founded	FD	4	6
Informal Resolution	IR	20	8
Other ⁽¹⁾	OT	28	32
Still Under Investigation ⁽³⁾	SUI	0	3
Unfounded ⁽²⁾	UF	83	49
Withdrawn	WD	24	19
	Total	159	117

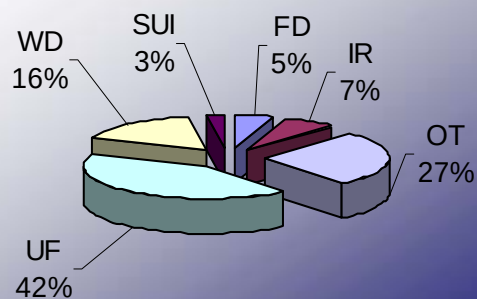
Disposition of Public Complaints 2003



These graphs illustrate the percentage of complaints filed with the Nova Scotia Police Commission in 2003 and 2004 and their disposition at the printing of this report.

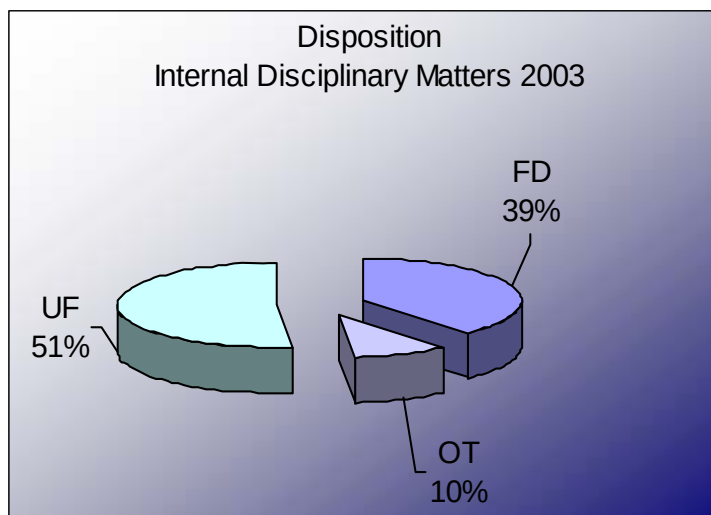
- (1) Other includes: Filed beyond eligible time period, extensions not granted, officers resigned, criminally investigated.
- (2) Unfounded: can result from: (a) investigated and deemed unfounded at the department level; (b) not appealed by the complainant or deemed unfounded by the Police Review Board as a result of a hearing.
- (3) Still Under Investigation: includes at the Department level, the Commission level or awaiting hearing.

Disposition of Public Complaints 2004

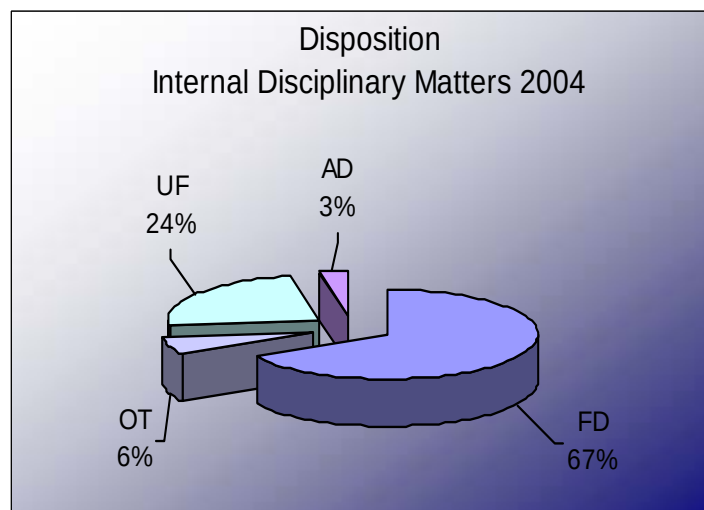


Disposition of Internal Disciplinary Matters

Disposition - Internal	Abbreviation	2003	2004
Founded	FD	12	22
Other	OT	3	2
Unfounded	UF	16	8
Abandoned by Department	AD	0	1
Still Under Investigation	SUI	0	0
	Total	31	33



These graphs illustrate the percentage of internal disciplinary matters filed with the Nova Scotia Police Commission in 2003 and 2004 and their disposition at the printing of this report.

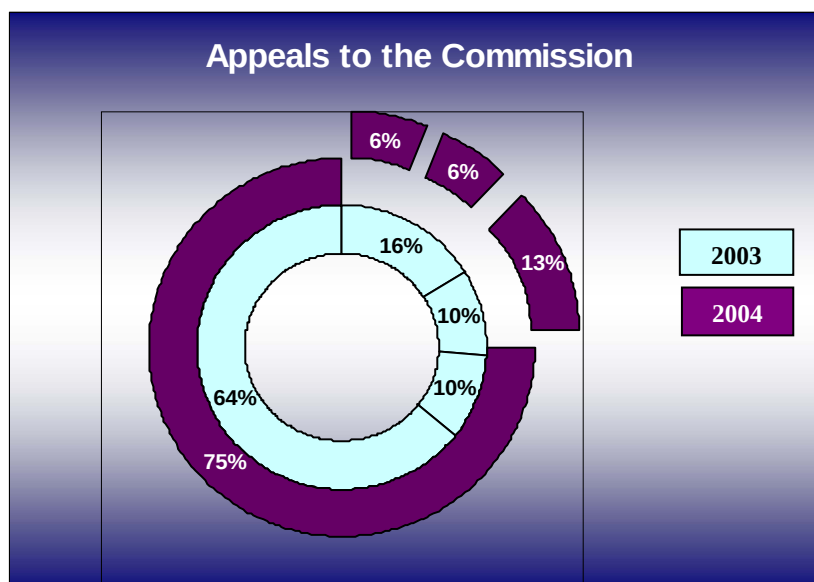


Appeals to the Commission

The Police Commission investigated 16 appeals by complainants in 2004 arising out of complaints that were not sustained at the department level.

The disposition of these matters are itemized in the tables below:

Legend	Abbreviation	2003	2004
Investigator referred to Police Review Board	R	5	1
Complaint Withdrawn	W	3	0
Complaint Informally Resolved by Investigator	IR	3	1
Still under investigation by Commission	SUI	2	2
Investigator did not refer to Police Review Board	NR	18	12
Totals		31	16
% of Complaints not referred		64 %	75 %

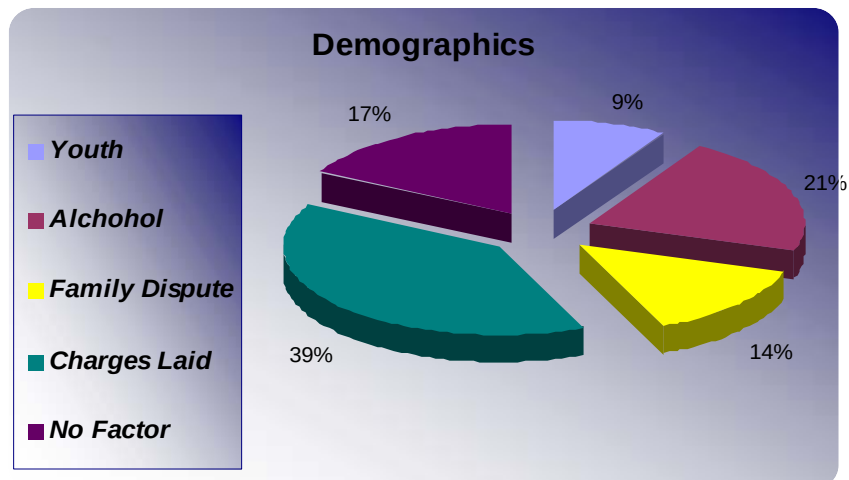
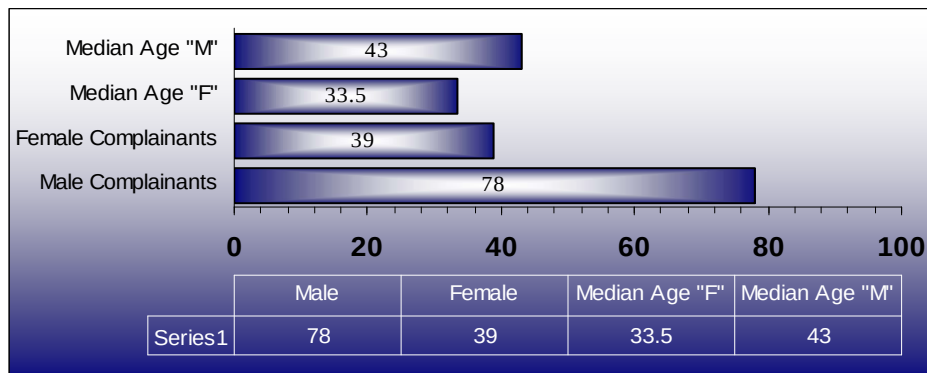


Of the 12 matters not referred to the Review Board by the Commission investigators, 5 complainants appealed this decision to the Commission. The Commission overruled the investigator in one of these appeals.

Demographics

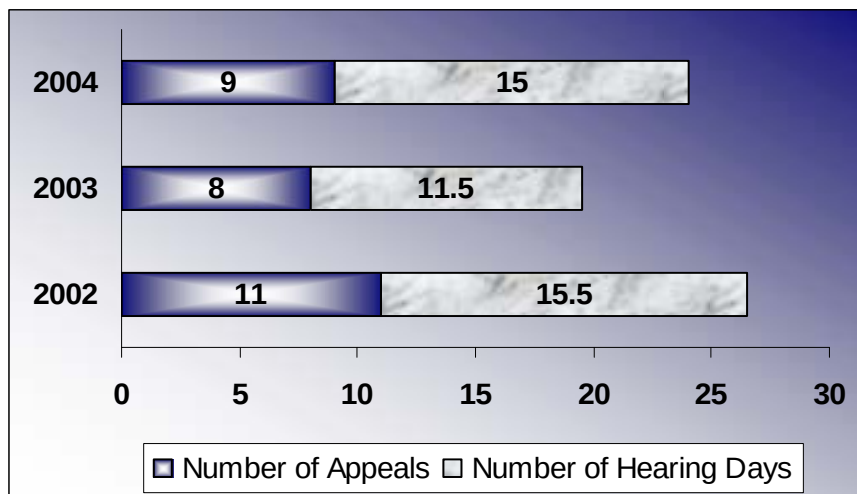
In 2003 there were 39 complaints filed by women with a median age of 33.5. Men accounted for the other 78 public complaints filed; their median age is 43.

The figures shown below indicate the actual number of instances in 2004 where there were reports of alcohol involvement, youth involvement, charges laid; and/or family disputes on the part of the complainants or other parties. All data has been collected from complaint forms or from investigation reports.



Police Review Board Hearings

	2002	2003	2004	Average
Number of Appeals	11	8	9	9.3
Number of Hearing Days	15.5	11.5	15	14



Noteworthy Police Review Board Decisions

CASE NO. 1: Appeal of a decision as a result of a public complaint.

NATURE OF COMPLAINT: A Notice of Review, in Form 13, filed by Mrs. "S" in regard to her public complaint against a member of the Stellarton Police Department and a decision by the Chief of Police

HEARING DATE: February 5, 2004

BEFORE: Mr. Lester Jesudason - Alternate Chair
Mr. Brian McIntosh - Member
Mr. Orville Symonds - Member

COUNSEL: Mr. David Fisher on behalf of the named Constable
Mr. Brian Creighton on behalf of Chief of Police
Mr. "F" on behalf of Mrs. "F"

DECISION DATE: February 25, 2004

Summary of Decision: Appeal granted.

This matter came before the Nova Scotia Police Review Board by way of a Form 13 Notice of Review filed by a constable of the Amherst Police Department in relation to a public complaint made by Mrs. "F" on January 7, 2003.

In his decision, the Chief found the constable guilty of committing a disciplinary default in that the constable engaged in discreditable conduct contrary to Section 5(1) (a)(i) of the Police Act Regulations. The constable was issued a reprimand and had to undergo constructive counseling.

On December 19, 2002 at around 4:00 p.m., Mr. "F" and his son arrived at the courthouse property to pick up his wife who works at the courthouse. At that time, Mr. "F" observed the constable put his marked police car by the courthouse. The area in which the constable parked his car was a "no parking area".

Mr. "F" and his son were approximately 110 feet away from the constable when Mr. "F" observed him leaving his vehicle and walking towards the Court House. At this

point, a brief exchange occurred between Mr. "F" and the constable. According to Mr. "F" he was in clear view of the constable and said: "You're in a tow away zone" to which the constable replied, "it appears to be" and kept walking. The constable states he heard a voice coming from the parking lot area which said words to the effect of "you're in a tow away zone" to which he replied, "maybe it is". He claims he did not know who made the comment to him though he noticed one person leaning over his car in the parking lot. The constable then indicated the voice said, "maybe I should call someone" to which he replied "maybe you should". According to the constable, he thought that the person that was making the comments to him was simply joking and he therefore made no attempt to ascertain who it was because he was in a hurry to get to the Court House.

All parties agree that the exchange between Mr. "F" and the constable was fairly matter of fact with no shouting or yelling.

The Form 8, which was received by the constable on February 21, 2003, makes reference to a disciplinary default contrary to Section 5(1)(a)(i) of the Regulations of the Police Act. At the hearing, the parties agreed the Board could also consider whether a disciplinary default was committed contrary to Section 5(1)(a)(v) of the Police Act Regulations.

Mr. Creighton, on behalf of the Chief, asked the Board in its decision to issue clarification, for future reference, whether sections not specified in the Form 8 could be also be the subject of a disciplinary default.

The Board did not feel it is necessary to decide this issue in the present case since Mr. Fisher conceded that the Board could consider whether or not a disciplinary default was committed to contrary to Section 5(1)(a)(v) despite that section not being named in the Form 8. The Board did encourage any investigating officer who completes a Form 8 to be as thorough as possible when completing it. Whether or not the failure to specify a particular section in a Form 8 would preclude the Board from considering whether or not a disciplinary default arises in relation to that section was not presently before the Board. The Board suggested that if an officer makes an objection based on such a failure in a future case, the Board's ruling will depend on the facts of that particular case; it may well consider issues of prejudice and whether or not the officer had notice of the factual foundation of any alleged disciplinary default despite the fact the particular section was not identified in the Form 8.

Turning to the disposition in the present case, the Board heard evidence that Mr. "F" and the constable had a previous history. A few months prior to this incident Mr. "F" was assaulted at a hospital where he worked and this same constable was assigned to investigate the matter. The constable laid charges against both Mr. "F" and the per-

son who assaulted him with the end result being that Mr. "F" was completely exonerated of any wrongdoing. While there is no evidence that the constable acted inappropriately in the course of that investigation, the Board understood why Mr. "F" would be upset at having been charged criminally in relation to an assault where he was the victim.

Keeping this background in mind, the Board also understood why Mr. "F" would be upset when he observed the constable park in a no parking zone which he thought was an offence. The Board found it understandable that Mr. "F" would conclude that the constable was deliberately ignoring him when Mr. "F" tried to question him about where he parked.

The test for discreditable conduct is primarily an objective one. The Board consulted Paul Ceyssens' Legal Aspects of Policing for guidance and considered the conduct of the officer in relation to the reasonable expectations of the community and what a reasonable person in the community who is dispassionate and fully apprised of the circumstances of the case would conclude. The Board considered not only the immediate facts surrounding the case but also any appropriate rules and regulations and the subjective element of good faith.

The Board did not find that the constable was parking in an area he considered to be "illegal" and found that there was no intention on his part to be discourteous to Mr. "F". Based on the findings of fact the Board did not find that the constable engaged in discreditable conduct pursuant to Section 5(1)(a)(i) or 5(1)(a)(v) of the *Police Act Regulations*. The Board allowed the constable's appeal and found he had committed no disciplinary default and accordingly ordered that the finding and penalty imposed by the Chief be rescinded. The Board also ordered that no costs would be awarded.

CASE NO. 2: Appeal of a disciplinary decision as a result of a public complaint.

NATURE OF COMPLAINT: An appeal filed by a member of the Amherst Police Department, requesting a review of a decision made by the Chief on the 13th day of May, 2003 in relation to an internal disciplinary complaint

HEARING DATE: February 6, 2004

BEFORE: Mr. Lester Jesudason - Alternate Chair
Mr. Brian McIntosh - Member
Mr. Orville Symonds - Member

COUNSEL: Mr. David Fisher on behalf of the named Constable
Mr. Brian Creighton on behalf of Chief of Police

DECISION DATE: April 16, 2004

Summary of Decision: Appeal Denied.

On February 6, 2004, the Nova Scotia Police Review Board met to consider the appeal filed by a constable of the Amherst Police Department, requesting a review of a decision made by the Chief on January 9, 2004, in relation to an internal disciplinary allegation made by the Deputy Chief on September 15, 2003.

In that decision, the Chief found that the constable was guilty of committing a disciplinary default by engaging in discreditable conduct and insubordination contrary to Sections 5(1)(a)(i), 5(1)(a) (iv) and 5(1)(b)(i) of the Code of Conduct in the *Police Act Regulations*. The Chief imposed a penalty of a reprimand and required the constable to apologize to the Deputy Chief.

Based on the evidence, the Board made the following findings of fact. On September 12, 2003, the Deputy and the constable attended the Amherst Police Department's annual firearms qualifications and training session at the Federal Institute at Springhill, Nova Scotia. Prior to the commencement of the training, the constable approached the Deputy and questioned him as to why the officers had to take the training. The Deputy's response was that, while the province did not mandate the train-

ing, the Amherst Police Department had made a decision that its members were required to take it. The constable did not immediately accept this answer and continued to question the Deputy.

At some point during the training, the Deputy played the role of a perpetrator and got hit on his belly by a paintball bullet. After the training was over, the Deputy was speaking with other constables and made reference to his bruise and said words to the effect of, "You wouldn't shoot up poor Dean like this if he were here would you?" By "Dean", the Deputy was referring to the Deputy of the Springhill Police Department.

The constable was not directly involved in the conversation. However, upon hearing the Deputy's comment, he made a response to the effect of, "No, because we respect him." and walked out of the door of the hut that opened onto the firing range.

The Deputy was upset by the comment and followed the constable and said to him, "What did you say?" The constable ignored the question and continued walking out the door. The Deputy followed him outside the door and indicated to the constable that he had "crossed the line" to which the constable replied, "maybe I did."

A number of the other officers heard the constable's comment and they all felt that the constable's comment was inappropriate. The constable testified that he probably should not have made the comment to the Deputy; he characterized it as an "off the cuff remark in jest" comment. The constable testified that he attempted to communicate with the Deputy to apologize for his comment. However, when he met with no success in his initial contacts, he did not make any further attempts as he believed the Deputy was going to charge him with a disciplinary default.

Mr. Fisher, conceded that the comment made by the constable was inappropriate and acknowledged that it is important that one not offend someone else in the workplace. He indicates that the constable responded to the Deputy's joke and suggested that the Deputy could have dealt with the matter in an informal way as opposed to invoking the disciplinary process. The Board did not accept the suggestion that the constable's comments should be construed as merely being a "joke". The Board made this finding for a number of reasons including that the Deputy and the constable had a prior "history", the two had earlier been involved in a somewhat animated discussion about whether or not the training was necessary and that the constable acknowledged that his comment may have "crossed the line".

The Board accepted that, in the circumstances, the constable's comments do not necessarily constitute insubordination or "oppressive or abusive conduct" contrary to Regulations 5(1)(b)(i) or 5(1)(a)(iv) of the Code of Conduct. However, the Board did find that a disciplinary default was committed under Regulation 5(1)(a)(i).

The Board commented that it is aware that, in small town police departments, formalities may be somewhat less rigidly applied and noted that if the comment made by the constable was made directly to the Deputy in the absence of any other members, it might be inclined to accept the argument that the comment was inappropriate but did not warrant formal discipline. However, in the case at bar, not only was the comment made in the presence of other members, but it was also made in the presence of members from another police department. As a Senior constable, the constable should not only have considered the effect his comment would have on the Deputy, but also on the other officers who were present in the area. The Board found that the constable's comment was "prejudicial to discipline or reasonably likely to bring discredit on the reputation of the Police Force" contrary to Regulation 5(1)(a)(i).

Notwithstanding the above, the Board commended the constable for attempting to apologize to the Deputy later on the day in question and ultimately doing so a week or two prior to the commencement of this hearing. Thus, in recognition of the fact that a reprimand represents the lower end of the penalty scale for a disciplinary default, the Board ruled that affirming the Chief's penalty of a reprimand was appropriate in this case. The Board also orders that no costs would be awarded in this matter.

CASE NO. 3: Appeal of a decision as a result of a public complaint.

NATURE OF COMPLAINT: A Notice of Review, in Form 13, filed by Mrs. "S" in regard to her public complaint against one member of the Stellarton Police Service and a decision by the Chief of Police before the Nova Scotia Police Review Board

HEARING DATE: January 22, 2004

BEFORE: Ms. Marion Ferguson, Chair
Mr. Lester Jesudason, Alternate Chair
Mr. Orville Symonds, Member

COUNSEL: Ms. "S" on behalf of herself and assisted by her husband Mr. "S"
Mr. David Fisher on behalf of the constable

DECISION DATE: Oral decision: January 22, 2004
Written Decision: July 30, 2004

Summary of Decision: Appeal denied

This matter came before the Nova Scotia Police Review Board by way of a Notice of Review filed by Ms. "S", appealing the Stellarton Police Chief's January 23, 2003 decision that a constable of the same police service had not breached the *Police Act* Code of Conduct in relation to an August 30, 2002 incident involving Ms. "S".

Prior to this matter coming to hearing, the constable's solicitor, Mr. David Fisher, raised a preliminary objection to the Review Board's jurisdiction to hear the complaint because the investigator appointed by the Chief had failed to serve a Form 8 (Notice of Allegation) on the constable pursuant to regulation 12(4). Mr. Fisher argued, therefore, that the Board is deprived of jurisdiction to hear this matter.

A review of the file materials confirms that a Form 8 was not served on the constable until March 10, 2003, more than four months after the date the complaint was made. Moreover, the Board notes that it was actually the Police Commission's investigator who ultimately served the Form 8 and not the departmental investigating sergeant.

In his evidence before the Board, the sergeant confirmed that he did not serve the Form 8 and that it was an “oversight” on his part. He testified that he did however meet with and speak on the telephone with both parties on different occasions.

A reading of Regulation 12(4) clearly establishes there is no discretion for the investigator not to issue a Form 8, and moreover, section 34 of the *Police Act* provides that “No member of the municipal police force is subject to reduction in rank, to dismissal, or to any other penalty for breach of the Code of Discipline except after proceedings have been taken in accordance with this *Act* and the regulations.

Mr. Fisher argued that because the *Police Act* contains provisions addressing the “fundamental rights” of police officers, strict compliance with the statute and each of its regulations is required. He submitted that a Form 8 provides an officer with notice that he is being investigated and that the officer is under no obligation to say anything.

For her part, Ms. “S” argued that this failure was “immaterial” as the officer received copies of the complaint when she filed her appeal and extension application and that the constable was also advised in telephone conversations with the sergeant. It was the complainant’s submission that the constable had suffered no harm as a result of non- service of the Form 8.

In considering this argument, the Board relied upon case law provided by the parties. A detailed review is available in the Board’s decision but only a sampling is being reported in this summary. In *White v. Dartmouth* (1991), 106 N.S.R. 2d 45, the Nova Scotia Supreme Court stated that “The *Police Act* does not expressly set out its purpose. However, it is obvious from its broad scope that the *Act* clearly covers public protection from the abuse of police power, and protection of police officers from unwarranted disciplinary action. While this dual purpose offers no clear guidance to the interpretive issue facing me, it does suggest a fair and proper balance be maintained between those two laudable objectives.”

In *Heighton v. Kingbury* [2003] N.S.J. No. 277, the Court of Appeal had occasion to consider the dismissal of an officer where the Chief had failed to give notice of a meeting with him under Regulation 21(8) and indeed had failed to meet with the officer at all, in advance of a meeting with the relevant Board of Police Commissioners dismissing him. The officer elected not to seek a review of the decision dismissing him to the Review Board but took the matter on judicial review, a process which culminated before the Court of Appeal.

At paragraph 96 of that decision Mr. Justice Chipman wrote:

[96] In my opinion, these cases support the proposition that whenever in the *Police Act* or Regulations “shall” is used in connection with a material step in the procedure such step is mandatory, not directory. The omission of such step has the effect of depriving the board or the chief officer, as the case may be, of jurisdiction in the matter.These provisions are disciplinary in nature affecting the fundamental rights of the police officer. All material requirements must be complied with. The case law demonstrates that there is a clear statutory intent that a police officer is not to be disciplined except pursuant to the procedures set out in the *Police Act* and Regulations.

The Nova Scotia Supreme Court has ruled that a minor deviation was not fatal to the proceedings and emphasized the issue of whether fairness has been affected by the technical deficiency. In *White v. Dartmouth (City)*, a constable argued that she was convicted of a disciplinary offence for which she had not been charged. The Form charging the offence described the correct offence but referred to an incorrect section in the regulation. On application for judicial review the court held the Board did not err in law in substituting the correct section number and finding the constable guilty. The error did not materially affect the procedural fairness of the hearing as the constable knew the case to meet and was fully prepared to respond.

The Board noted there was no evidence that had the constable been given the Form 8 at the time the sergeant initially contacted him, that he would have acted any differently in the subsequent investigation. There was no evidence that he did not understand that a complaint had been made against him.

The Board was satisfied that even before the time the notice ought to have been given, the content of the complaint had already been drawn to the attention of the constable and his counsel by the Police Commission on or about October 30, 2002, 2 days after the complaint was filed. The constable received further information in early December 2002, when the investigator contacted him to discuss possible informal resolution of the matter. Thus the Board finds he had *de facto* notice of the complaint against him, along with its nature and particulars. (The Board noted that if strict compliance with the *Act* had been realized, it would have presumably been at this juncture, that is, the Form 8 should have been served by the sergeant at this time of “initial contact” (which the Board was given to understand was by telephone).

While the Board considered that the failure of the investigator to serve the Form 8 was unfortunate, it could not consider that (in the circumstances of this case) the failure was “material” with respect to the term as employed by Heighton in the passage cited above. Regulation 12 may be attributed to serving the purpose of protecting the rights of a police officer as an office holder. However, in at least the circumstances of this case, it cannot be said that based on the facts as set out above, it had been demonstrated that, unlike the officer in Heighton, the constable’s position has been compromised, prejudiced or harmed by the failure to serve the Form 8 in a timely manner. For all of the foregoing reasons, the application made by the constable was denied and the matter proceeded to a hearing on the merits. There was no award as to costs.

CASE NO. 4:	Appeal of a decision as a result of an internal complaint.
NATURE OF COMPLAINT:	An Application for a finding that the Review Board has no jurisdiction to consider an application for review of the dismissal of one officer's allegation of disciplinary default against another and challenged the legal authority of the Governor in Council to promulgate section 23(2) of the <i>Police Act Regulations</i>
HEARING DATE:	February 5, 2004
BEFORE:	Ms. Marion Ferguson, Chair Mr. Peter James, Member Mr. Lester Jesudason, Alternate Chair
COUNSEL:	Mr. Joel Pink Q.C. on behalf of the Superintendent Ms. Karen Fitzner on behalf of (then) Acting Chief of Police Mr. David J. Bright Q.C. on behalf of the Sergeant (as Intervenor by agreement of the parties) Mr. William Leahey on behalf of the complainant Constable
DECISION DATE:	Decision: August 13, 2003 Written reasons: April 14, 2004
<u>Summary of Decision:</u>	Application Granted.

On June 9 and 10, 2003, the Nova Scotia Police Review Board heard the preliminary objection of Mr. Joel Pink Q.C., on behalf of his client a Halifax Regional Police (HRP) Superintendent, in the matter of an internal complaint of a constable against the Superintendent.

Mr. Pink's motion sought a finding that the Review Board has no jurisdiction to consider an application for review of the dismissal of one officer's allegation of discipli-

nary default against another and challenged the legal authority of the Governor in Council to promulgate section 23(2) of the *Police Act Regulations*.

Regulation 23(2) provides that "Where a decision is made ... that no disciplinary default has been committed by the member, the person who filed the allegation may, within fourteen days after receiving the decision initiate a review of the decision by the Review Board by filing with the Registrar a Notice of Review in Form 13 of the schedule 3."

There can be no dispute that - in its terms- regulation 23(2) purports to allow for an application for review in such circumstances.

The Superintendent's objection is a significant one, with the direct implication of eliminating a significant component of a jurisdiction which up to now, has been assumed and exercised by the Review Board and at the same time, involving a challenge to the exercise of authority by the Governor-in-Council.

In considering the objection, the Review Board initially identified generally applicable principles of statutory interpretation. It then reviewed its own jurisdictional authority as a statutory tribunal and considered how its authority is to be exercised. Next, the Review Board addressed what legal basis at common law is necessary to establish the right or opportunity for statutory review or appeal.

Against this backdrop, the Review Board proceeded to apply the principles of statutory interpretation to provisions of the *Police Act* potentially capable of supporting regulation 23(2). It first considered the plain and ordinary meaning of the statutory language and then the place of that language in the context of the statute itself.

Last of all, the Board concluded with a consideration of the language of the relevant statutory provisions in light of the purpose of the statute and the balance, which in the Review Board's view, its relevant provisions intend to create.

Having conducted this analysis, the Review Board came to the conclusion that it does not have the jurisdiction, which the constable's application seeks to invoke.

Process of Statutory Interpretation

Effectively, the question raised by the objection is one of statutory interpretation of relevant regulation-making powers established by the *Police Act*. The appropriate de-

parture point for consideration of the matter is an analysis of the Review Board's power to consider its own jurisdiction.

The Review Board is an authority constituted by statute to determine issues of fact and to apply principles of law in certain police-related matters. Its legislated authority derives entirely from the express or necessarily implicit powers conferred on it by the *Police Act* and because of specific provisions of that *Act*, from regulations made under it by the Governor in Council.

Submissions made by some of the Respondents in this matter sought a "declaration" by the Review Board that regulation 23(2) is *ultra vires* the regulation making power conferred on the Governor in Council.

The Review Board does not consider it necessary to make such a "declaration" nor to consider whether or not it might have authority to do so.

Rather, as follows from the authorities cited, the Review Board not only may, but also must consider its own legislation and regulations made under it closely and correctly in order to properly exercise its jurisdiction under the *Act*.

In this case, the inquiry is whether or not the regulation that the constable invokes is legislatively authorized to confer jurisdiction on the Review Board to entertain his request for a review.

Right of Appeal at Common Law

Common law authorities more generally address the nature of a right of "appeal" as opposed to matters of "review." However, in considering whether sections of the *Police Act* specifically empower the creation of regulations establishing the right to review asserted in this case, the Review Board has found it helpful to refer to the status of a right of appeal at law.

In the view of the Board, it is clear that excepting where there is some explicit or necessarily implied provision of the statute or an authorized regulation, there is no basis for the widespread implication of a generalized right of review in a statutory regulatory scheme such as that established under the *Police Act*.

The Board summarized case law decisions, and stated that each of the principles establishes that:

1. a right of appeal, (or for the purpose of the consideration of this particular case, a right to invoke a review), is a substantive right and one not lightly to be implied;
2. a right of appeal is not one of procedure but one of substance; and
3. a statutory provision which authorizes the making of regulations or even regulations regarding practice and procedure, is not sufficient to authorize a regulation establishing a right of appeal;

The Board found these principles have strong implications for how s. 46(1) of the *Police Act* is to be interpreted.

Relevant Principles of Statutory Interpretation

The Board found that statutory interpretation could not obscure the reality that it is ultimately the Legislature, which has the authority to set out the content of the statute. Where a statute, on a clear reading of its language and barring any necessary implications within it, does not provide for a certain power or authority, the conclusion that a right or power is not created is to be respected.

The Board reviewed the interpretation of subordinate legislation, such as regulations and found that the words of the *Act* itself contemplate only two relevant forms of review for the Police Review Board: the “public complaint” and the review of the finding that an officer has committed a disciplinary default.

The legislation is also consciously restrictive of the definition of the term, “complaint” as used in the context of the section and otherwise in the *Act*. That term is defined by section 2(e) of the statute, inter alia, to mean “...any communication received from a member of the public ...which alleges that a member of a force breached the Code of Conduct and Discipline or alleges the failure of the force itself to meet public expectations.”

Likewise, the second and only other explicit, statutorily created right of access to the Police Review Board set out by the *Act*, applies where discipline has been imposed on a member of a force. Significantly, the section does not contemplate that a member who has instigated a process considering a finding of disciplinary default, might appeal a finding that no default was committed. Nor indeed does it provide that such a member might appeal the penalty imposed on an officer where the allegation has been considered founded.

In the opinion of the Review Board, this fact that the section provides for only a disciplined officer and not the complaining officer to have a right of review is of sharp significance in the overall interpretation of the *Act*. Indeed, section 35, in the case of a disciplined officer's right to initiate review, like section 27 in the case of a review of a public complaint, which provide for the promulgation of regulations to implement such a review, leaves to the regulations only the imposition of time limits and forms to allow it to become operative.

The silence of the statute on the right of an officer in the position of the constable to have the right to initiate review of a dismissal of his complaint against another officer, the superintendent, juxtaposed against the expressly stated right to seek review, which is given by the statute to a disciplined officer or to the complainant who has failed in a public complaint, are in the Review Board's opinion, significant in the interpretation of the *Act*.

Finally, the apparent distinction in language that the statute creates between matters of complaint and matters of internal discipline are of potential significance in the interpretation of the section.

"Review" is used in section 46(1)(n) to describe the notice [of review] to the Police Review Board or in other words a document; or the time limit [for review], a procedural requirement. These differences in their plain meaning could be taken to suggest that the section draws a distinction between "internal" disciplinary matters, in which the making of regulations is authorized, and "review," an external function, in which it is not.

Moreover, the section is also silent on the express power to create a right of review of a disciplinary matter. It refers only to "notice of review to the Police Review Board," and not to the right to create the opportunity for review. It encompasses "notice of review" in the context of an authority to make regulations in respect of "procedures" not matters of substance as a right of review is described at common law.

Conclusion

The application, which these reasons address, began as an application that the Review Board "declare" regulation 23(2) *ultra vires* on the grounds that section 46(1)(n) does not authorize its promulgation by the Governor-in-Council and, by implication, that there is no other regulation-making authority in the statute which could support its creation.

The Review Board expressly declines to engage in making such declarations, even assuming that it might otherwise have the jurisdiction to do so. Apparently, the Review

Board has concluded that the section is not sufficiently broad to support jurisdiction in this Review Board and thus to entertain this appeal.

Equally, the submission has been made that regulation 23(2) conflicts with section 35 of the *Act*, and so the argument goes, because of this putative conflict, regulation 23 (2) must be ineffective.

The Review Board expressly finds that there is nothing in the content of section 35 which, of itself, would preclude an effective regulation 23(2) from granting a right of appeal to the Review Board for an officer whose complaint against another officer has been dismissed. As appears from this decision, on other grounds, this decision has come to the same result.

Ultimately, the Review Board has determined that this attempt to invoke a right of appeal by the constable cannot be successful because the terms of the statute do not support regulation 23(2).

Therefore, considering the nature of the right of review, the language of the *Act* in its grammatical and contextual context (including particularly ss.46(1) (a) (i) and (n) of the *Police Act*) against the purpose of the statute, the Review Board concludes that the statute does not bear an interpretation founding the authority of regulation 23(2) to provide jurisdiction to hear the constable's application for a review of the Acting Chief's October 28, 2002 decision. Mr. Pink's application was therefore granted.

Nova Scotia 2004 Police Resources & Population *

Police Force	Police Officers				Population per Police Officer	Other Personnel	Total Operating Cost
	Population	Male	Female	Total			
Population (100,000+)							
Cape Breton Regional	106,246	169	0	169	629	79	15,777,270
Halifax Regional	211,607	357	46	403	525	213	40,546,735
Population (5,000 - 14,999)							
Amherst	9,691	22	1	23	421	10	1,981,289
Bridgewater	7,904	19	1	20	395	9	1,856,744
Kentville	5,803	14	2	16	363	1	1,239,999
New Glasgow	9,520	22	1	23	414	15	2,114,168
Truro	11,674	28	4	32	365	28	3,156,229
Population (<5,000)							
Annapolis Royal	548	3	0	3	183	0	136,474
Springhill	4,177	10	0	10	418	6	917,405
Stellarton	4,867	10	1	11	442	10	1,110,023
Trenton	2,807	7	0	7	401	8	754,667
Westville	3,939	7	0	7	563	4	622,416

Use caution in comparing forces: The number of officers may not reflect the number available for general community policing because some officers in certain communities are restricted to specific locations (e.g. ports, airports). Operational expenditures may vary considerably between police services for many reasons.

Statistics Canada - Source: Adapted from Statistics Canada, Police Resources in Canada 2004, catalogue no 85-225-x1e. * reference period 2003 and found on page (s) 38 & 39. Information is used with the permission of Statistics Canada. Users are forbidden to copy the data and re-disseminate them, in an original or modified form, for commercial purposes, without the expressed permission of Statistics Canada. Information on the availability of the wide range of data from Statistics Canada can be obtained from Statistics Canada's Regional Offices, it's World Wide Web site at <http://www.statcan.ca>, and it toll-free access number 1-800-263-1136

