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 2005, 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
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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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.
The Nova Scotia Police Commission was established by proclamation of the Police Act in 1976. At that time, 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.
Commissions of Inquiry

Pursuant to Section 8 of the Police Act the Minister of Justice, the Honourable Michael G. Baker, Q. C., directed the Nova Scotia Police Commission to conduct two inquires. The reports into these inquires were released in 2005.

Dean Richard Inquiry

In the early morning hours of July 7, 1996, 22-year-old Dean Richard of Lower Sackville, N.S. was critically injured as a result of a tragic motor vehicle accident on Highway 102 near the exit for Highway 103 located in the Halifax Regional Municipality. Mr. Richard had been a passenger in a vehicle that overturned and he was thrown onto the highway near the median. Within a very short time span, another vehicle driving by the accident scene, struck Mr. Richard and he became entangled in the undercarriage of this vehicle which dragged him some distance. Sadly, on the following day, Dean Richard died as a result of his injuries. Shortly thereafter, his parents, Charles and Karen Richard, started seeking answers to many questions they had concerning what actually happened at the accident scene and the follow up Halifax Regional Police investigation. In their view, the answers they received provoked more questions; they subsequently asked the Minister of Justice to order a public inquiry. The Minister did so on the 29th of March, 2000.

Minister Baker directed the Commission to inquire into and report to him, as soon as is practicable, on matters relating to the death of Dean Richard as the result of a traffic accident or accidents which occurred on Highway #102 in the Halifax Regional Municipality on or about July 7, 1996.

He further defined the scope of the inquiry to inquire into, investigate, and report on the following:

- upon any external or internal investigations, analyses, reviews, assessments, evaluations, carried out by the Halifax Regional Police Service, or any member or employee thereof, and which are, directly or indirectly, related to the death of Dean Richard;

- upon all investigations, analyses, reviews, assessments, evaluations and audits carried out by any component of the Government of Nova Scotia, or any employee thereof, and which are, directly or indirectly, related to the death of Dean Richard;

- on matters described in sub-section 8(2)(a) & (b) of the Police Act and which the Commission determines is necessary for the purposes of this inquiry and which are, directly or indirectly, related to the death of Dean Richard.

all of the applicable provisions of the Police Act. (R..S., c.348, s. 1) and the Public Inquiries Act. 1992, c.28, s.5 shall be available to the Commission in the discharge of its duties and functions during the course of this inquiry.
On July 5, 2005, the Commissioner of Inquiry made her report to the Minister of Justice. Within the report the Commission outlined 7 recommendations to the Minister. The report can be accessed at the following website:


**James Guy Bailey Inquiry**

Shortly before 9:00 p.m. on May 16, 2000, James Guy Bailey Jr. of Sydney Mines, N.S. was arrested by a member of the Cape Breton Regional Police Service for being intoxicated in a public place. He was subsequently incarcerated in the police cells at the Central Lock Up of the Cape Breton Regional Police H.Q.’s in Sydney. Shortly before 2:00 a.m. on May 17, 2000, the on duty gaol guard found Mr. Bailey to be unresponsive. He did not respond to emergency resuscitation efforts at the gaol and was transported to the emergency department of the Cape Breton Regional Hospital where he was pronounced dead at about 2:45 a.m.

On the 25th of January, 2001 pursuant to Section 8 of the Police Act, the Honourable Michael G. Baker, the Minister of Justice and Attorney General, in and for the Province of Nova Scotia, directed the Nova Scotia Police Commission to inquire into and report to him on matters related, either directly or indirectly, to the death of James Guy Bailey. Minister Baker further directed that the scope of the inquiry would be to inquire into, investigate and report on the following:

- any of the matters described in clauses 8(2)(a) & (b) of the Police Act and which the Commission determines are, directly or indirectly, related to the death of James Guy Bailey;

- upon the involvement of any member of the Cape Breton Regional Police Service or any of its employees, or of any other person who, as determined by the Commission, may have information related, directly or indirectly, to the death of James Guy Bailey;

- upon all investigations, documents, reports, files reviews analyses, assessments, evaluations, and related material (including material retained in electronic format, and/or video recordings, and/or voice recordings), which the Commission determines may be relevant to this inquiry;

- whether there was compliance with applicable statutes, regulations, orders, rules or directions;

- upon any matter which the Commission determines may be relevant to this inquiry.
During the course of the investigation in excess of 100 people were inter-
viewed either through the Cape Breton Regional Police Service investigation, the On-
tario Provincial Police investigation or through the Commission investigation. Hun-
dreds of pages of documents related to this matter were obtained, reviewed and
catalogued by Commission staff, all of which was disclosed to the various legal coun-
sels.

M. Jean Beeler was named as Chair of the Inquiry. Ms. Beeler selected two
other Commission members, Betty Thomas and Frances Hinton to sit on the Inquiry
with her. Commission Investigator Dennis Squires also led this investigation, and
Jean McKenna was once again engaged as counsel. Ms. McKenna's principal task
was the presentation of witnesses and exhibits. As well, she acted as advisor and
legal counsel to the Commission and to the Inquiry.

The Director of the Police Commission, Gary Mumford, synchronized the efforts
of the investigation and the preparation for these public hearings. The Executive
Secretary, Pamela Whittaker (Little), compiled and distributed the documents, and
coordinated the dates and venues for the proceedings.

On October 22, 2001 a preliminary meeting was held in Sydney, Nova Scotia
with all counsel to the proceedings. Pursuant to the Police Act, persons likely to be
directly affected by the investigation or inquiry were entitled to reasonable legal fees
for their necessary representation in the course of the inquiry. In all, the Commis-
sion identified ten parties. During the preliminary meeting, all of the material col-
lected during the three investigations was released to the parties.

The evidentiary part of the Inquiry began in Sydney, Nova Scotia with a three
week sitting in February. The Inquiry reconvened for two weeks in October and a
further week in November. An additional four weeks of evidence and final argu-
ments were heard in February and May of 2003.

The Commission of Inquiry made their report to the Minister of Justice on Sep-
tember 1, 2005. Within the report, the Commission outlined 50 recommendations to
the Minister. The report can be accessed at the following website:

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, 2005 the members of the Police Commission and Police Review Board were:

### Members of the Police Commission

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nadine Cooper Mont</td>
<td>Chair</td>
</tr>
<tr>
<td>Paul D. Gates</td>
<td>Member</td>
</tr>
<tr>
<td>Betty Thomas</td>
<td>Member</td>
</tr>
<tr>
<td>Daniel Paul</td>
<td>Member</td>
</tr>
<tr>
<td>Ken Langille</td>
<td>Member</td>
</tr>
<tr>
<td>Ross Wagg</td>
<td>Member</td>
</tr>
</tbody>
</table>

### Members of the Police Review Board

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marion Ferguson</td>
<td>Chair</td>
</tr>
<tr>
<td>Lester Jesudason</td>
<td>Alternate Chair</td>
</tr>
<tr>
<td>Charles Schafer</td>
<td>Member</td>
</tr>
<tr>
<td>Peter James</td>
<td>Alternate Member</td>
</tr>
</tbody>
</table>

### Commission Staff

- **E. Garry Mumford**: Director
- **Pamela J. Whittaker**: Coordinator to the Commission & Review Board
- **Mirella Lopresti**: 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) 424-3919
- **E-Mail**: polcom@gov.ns.ca
Organization Chart

Chair & Members
Police Commission

Chair & Members
Police Review Board

Director

Coordinator

Secretary

Contract Investigators
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. Two meetings were held in 2005. In those meetings the Commission, in its quasi-judicial function, heard seven appeals arising from the Commission investigator’s decisions not to refer these matters to the Police Review Board. In six 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 2005 are the following:

- February 2 - CACOLE Conference Committee meeting in Ottawa
- April 20-21 - Nova Scotia Chiefs of Police Conference in Truro
- May 9-10 - Race and Identity: The Challenge of Change, Human Rights Conference in Halifax
- June 7 - Police Leadership forum in Truro
- September 15 - FOIPOP Training session in Bible Hill
- September 28 - Nova Scotia Chiefs of Police Association Conference in Pictou
- October 3 - CACOLE annual conference in Montreal
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.

<table>
<thead>
<tr>
<th>Department</th>
<th>Public</th>
<th>Internal</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2004</td>
<td>2005</td>
<td>Change</td>
<td>2004</td>
<td>2005</td>
<td>Change</td>
</tr>
<tr>
<td>Amherst</td>
<td>20</td>
<td>10</td>
<td>-10</td>
<td>5</td>
<td>1</td>
<td>-4</td>
</tr>
<tr>
<td>Annapolis Royal</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bridgewater</td>
<td>1</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>-1</td>
</tr>
<tr>
<td>CBRPS</td>
<td>29</td>
<td>26</td>
<td>-3</td>
<td>8</td>
<td>3</td>
<td>-5</td>
</tr>
<tr>
<td>HRPS</td>
<td>47</td>
<td>31</td>
<td>-16</td>
<td>13</td>
<td>12</td>
<td>-1</td>
</tr>
<tr>
<td>Kentville</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>New Glasgow</td>
<td>3</td>
<td>9</td>
<td>6</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Springhill</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Stellarton</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Trenton</td>
<td>1</td>
<td>0</td>
<td>-1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Truro</td>
<td>8</td>
<td>8</td>
<td>0</td>
<td>5</td>
<td>4</td>
<td>-1</td>
</tr>
<tr>
<td>Westville</td>
<td>2</td>
<td>0</td>
<td>-2</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Totals</td>
<td>117</td>
<td>99</td>
<td>-18</td>
<td>33</td>
<td>22</td>
<td>-11</td>
</tr>
</tbody>
</table>

**PC** = Public Complaints  
**ID** = Internal Discipline
Public Complaints - A total of 99 public complaints were received in 2005. This represents a 18% decrease over the number filed with the Commission in 2004.
Internal Discipline - A total of 22 internal disciplinary matters were received in 2005. This represents a 33 percent decrease from the number filed with the Commission in 2004.
A complaint may contain several allegations. Consequently, in order to more accurately reflect the nature of complaints, the table below summarizes both the nature and number of allegations captured from the public and internal files opened in 2005.

<table>
<thead>
<tr>
<th>Abrev.</th>
<th>Alleged Defaults</th>
<th>Public</th>
<th>Founded</th>
<th>Internal</th>
<th>Founded</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA</td>
<td>Abuse of Authority</td>
<td>126</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>CP</td>
<td>Corrupt Practice</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>ED</td>
<td>Engages in Deceit</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>DC</td>
<td>Discreditable Conduct</td>
<td>35</td>
<td>1</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>ID</td>
<td>Improper Disclosure</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>IUF</td>
<td>Improper use of Firearm</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>INS</td>
<td>Insubordination</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>ND</td>
<td>Neglect of Duty</td>
<td>13</td>
<td>0</td>
<td>13</td>
<td>9</td>
</tr>
<tr>
<td>PE</td>
<td>Public Expectation</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>DP</td>
<td>Damages Property</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>HRA</td>
<td>Human Rights Act</td>
<td>13</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>CLD</td>
<td>Consumes Liquor or Drugs</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td></td>
<td><strong>192</strong></td>
<td><strong>2</strong></td>
<td><strong>29</strong></td>
<td><strong>20</strong></td>
</tr>
</tbody>
</table>
Disposition of Public Complaints

<table>
<thead>
<tr>
<th>Disposition - Public</th>
<th>Abbreviation</th>
<th>2004</th>
<th>2005</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founded</td>
<td>FD</td>
<td>6</td>
<td>2</td>
<td>-4</td>
</tr>
<tr>
<td>Informal Resolution</td>
<td>IR</td>
<td>8</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>OT</td>
<td>32</td>
<td>27</td>
<td>-5</td>
</tr>
<tr>
<td>Unfounded</td>
<td>UF</td>
<td>49</td>
<td>44</td>
<td>-5</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>WD</td>
<td>19</td>
<td>14</td>
<td>-5</td>
</tr>
<tr>
<td>Still Under Investigation</td>
<td>SUI</td>
<td>3</td>
<td>2</td>
<td>-1</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>117</strong></td>
<td><strong>99</strong></td>
<td><strong>-18</strong></td>
<td></td>
</tr>
</tbody>
</table>

(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.

These graphs illustrate the percentage of complaints filed with the Nova Scotia Police Commission in 2004 and 2005 and their disposition at the printing of this report.
These graphs illustrate the percentage of internal disciplinary matters filed with the Nova Scotia Police Commission in 2004 and 2005 and their disposition at the printing of this report.
The Police Commission investigated 19 appeals by complainants in 2005 (a 16% increase over 2004) arising from complaints that were not sustained at the department level.

The disposition of these matters are detailed in the table and chart below:

<table>
<thead>
<tr>
<th>Legend</th>
<th>Abbreviation</th>
<th>2004 %</th>
<th>2005 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigator referred to Police Review Board</td>
<td>R</td>
<td>6%</td>
<td>11%</td>
</tr>
<tr>
<td>Complaint Withdrawed</td>
<td>W</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Complaint Informally Resolved by Investigator</td>
<td>IR</td>
<td>6%</td>
<td>11%</td>
</tr>
<tr>
<td>Still under investigation by Commission</td>
<td>SUI</td>
<td>13%</td>
<td>5%</td>
</tr>
<tr>
<td>Investigator did not refer to Police Review Board</td>
<td>NR</td>
<td>75%</td>
<td>73%</td>
</tr>
</tbody>
</table>

Of the 15 matters not referred to the Review Board by the Commission investigators, 12 complainants appealed this decision to the Commission. The Commission overruled the investigator in 1 of these appeals.
In 2005 there were 30 complaints filed by women with a median age of 34.5. Men accounted for the other 69 public complaints filed; their median age is 33.0.

The figures shown below indicate the actual number of instances in 2005 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

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Appeals</td>
<td>8</td>
<td>9</td>
<td>4</td>
<td>7.0</td>
</tr>
<tr>
<td>Number of Hearing Days</td>
<td>11.5</td>
<td>15</td>
<td>7.5</td>
<td>11.3</td>
</tr>
</tbody>
</table>

![Bar chart showing the number of appeals and hearing days for 2003, 2004, and 2005.](chart.png)
CASE NO. 1: Appeal of a decision as a result of a public complaint.

NATURE OF COMPLAINT: The public complaint of Mr. “A” against one Sergeant and five constables, all of the Truro Police Service.


BEFORE: Ms. Marion Ferguson, Chair
Mr. Lester Jesudason, Alternate Chair
Mr. Peter James, Member

COUNSEL: Ms. Jennifer Biernaskie and Ms. Amanda Carew on behalf of the Complainant Mr. “A”
Mr. David Fisher on behalf of the named officers
Mr. John Rafferty Q.C. on behalf of the Chief of Police of the Truro Police Service

DECISION DATE: June 24, 2005

Summary of Decision: Appeal granted against one constable.

The matter came before the Nova Scotia Police Review Board by way of a Notice of Review filed by Mr. “A” regarding Truro Chief of Police’s February 19, 2004 decision. The decision held that the officers named in Mr. “A”’s July 18, 2003 Form 5 complaint, had not breached the Police Act Code of Conduct and Discipline in relation to his arrest.

Mr. “A” filed a complaint against one sergeant and five constables, all of the Truro Police Service. The complaint alleges that these officers used unnecessary force in his June 1, 2003 arrest. Mr. “A” was charged with assaulting one of the constables during police response to a disturbance at a local bar on the same date. Mr. “A” was later acquitted of the charge.

Prior to hearing, counsel for the officers made a preliminary objection to the Board’s jurisdiction to consider the complaint against Constable “M” on the grounds that the Board had lost jurisdiction over this constable when he left the Truro Police Service in
2004. In addition, an extension to investigate request by the authority’s investigator did not include this constable; consequently, the Chair did not extend the time to complete the investigation in regard to him.

Counsel submitted that since the Chair’s decision to extend the time to investigate did not include Constable “M” and because the investigation is a mandatory step in the statutory process as provided under the Act, the Board had no jurisdiction to hear the complaint against that officer.

Counsel for the complainant, opposed the motion, arguing that as a “defacto investigation” of Constable “M” was later carried out by the Police Commission’s investigator and since the officer had received notice of the offence alleged, (having been served with a copy of the Form 8 outlining its particulars), no prejudice had accrued to him. Further, it was her position that public policy supported the Board denying the motion.

After considering the submissions of the parties, the Board agreed that as no request had been made to extend the time to investigate the complaint against this constable therefore the Board had no jurisdiction to consider the appeal against that officer.

The complainant’s counsel made preliminary motions for an exclusion of witnesses, closing the hearing to the public and press and a further motion during the presentation of opposing counsel’s case to reopen her case. The Board granted the request for the exclusion of witnesses but denied her motions for closing the hearing to the public and press. It held that the need for transparency and openness in the public complaint process are paramount and that the proper administration of justice in the current case was best served by keeping the hearing open. After hearing the submissions of both sides and applying the doctrine of fairness to the interests of the parties, the Board denied the motion to reopen her case.

The Board noted that the complainant’s Form 5 outlining his complaint against the named officers did not include all of the particulars of his complaint. However, it accepted that the process of making a public complaint against a policing authority can be difficult or even intimidating for some complaining citizens. Nevertheless, where competency is not at issue, the Board concluded that there is an obligation on the part of the person bringing the complaint to properly, and as accurately as possible in the circumstances of the particular case, identify the officer or officers complained about and what each may have done to warrant the complaint being filed. An officer is entitled to have as complete a description of the facts leading to an allegation of disciplinary default, as possible in the circumstances of the case.
The complainant, twenty five year old Mr. “A”, told the Board that on the night of Saturday, May 31, 2003, he was at the Engine Room beverage room to see a musician (a relative) perform. The complainant told the Board that he was the “designated driver” for a group of family and friends and that he does not “smoke, drink or do drugs.” Like all the witnesses the Board was to hear from, he described the bar as being “busy” that night, with between 200 and 300 patrons.

Mr. “A” testified that he only drank water that night and that while he was walking off the dance floor to rejoin his table, “something happened” in front of the bar and that almost immediately the bouncers were directing everyone outside. Mr. “A” said he saw his “Uncle Bill” exiting the bar entrance “with a ripped shirt” and he admitted that at this, he then said to his mother, Ms. “A”, who was standing next to him, “if anyone hurts my Uncle Bill I’m going to kill them.” It was his evidence that he did not raise his voice when he made this statement. He told the Board that Constable “H” then told him to “step up behind the pole, please,” and that he, in response, was “polite” and complied with the officer’s request.

The complainant alleged that at he was looking over the crowd and “had a clear view” of his aunt and uncle, down at one end of the parking lot, heading back to their van. He was the designated driver and knew that his uncle had been drinking; he wanted to intercept him before he possibly got behind the wheel. Consequently, he told the Board that while holding his girlfriend Angela Rogers by the hand, “I walked calmly” out “into and around the crowd” in the parking lot and the “next thing I knew,” someone had grabbed “my right arm.” He testified that he then heard a voice asking, “where are you going?”

It is the complainant’s evidence that he did not see that the person who had hold of his arm was a police officer and that, using a move his brother had taught him when they were young, “I went up and over and (the person) lost his grip.” At that point, he testified that he was “foot ball tackled” by a police officer, and was pushed by that officer several feet, landing face first, on the hood of a parked taxi. While on the hood of the taxi, he alleged that he was placed in a chokehold, pepper sprayed and handcuffed by the police.

The complainant denied opposing counsel’s submission, that, from a face-on position, he placed two hands on Constable “T”s chest and then pushed the officer. The complainant denied suggestions that he was ‘flailing’ and “resisting arrest,” stating that, “I was laying there and they were pushing me, I couldn't get my arm out. I wasn’t pushing.”

Constable “C” stated that while the officers were attempting to get (Mr. “A”) into the handcuffs,” the complainant was “yelling, grunting and moving his arms forward.” It
was at this point, that is, while Mr. “A” was sitting up on the car bonnet “facing us” and while Constable “M” was attempting to put “on the hold,” which “wasn’t working because (the complainant) wasn’t going unconscious,” that he made the decision to pepper spray Mr. “A”.

The Board found that the combined physical police response to the threat posed by Mr. “A” was virtually instantaneous and concluded that while Mr. “A” was being immobilized on the taxi hood, the four police officers had achieved a substantial level of physical control over him and that the threat as presented by Mr. “A”, immediately prior to being sprayed by Constable “C”, was not increasing.

The Board accepted that the level of force to be applied by a police officer to another person in a potentially dangerous situation is to be judged against what the officer reasonably perceives the threat to be. However, the Board concluded that even making allowances for the difficulty of the context of this matter, it could not conclude from the facts that Constable “C”’s perception of the threat to either himself or his fellow officers as a group, at that moment was sufficient to warrant the application of pepper spray, and that it was not reasonable in the circumstances.

With respect to Mr. “A” ’s specific allegation of inadequate supervision by the Sergeant of his officers that night, the Board found that the evidence did not support such a finding due to the many issues the sergeant was overseeing at that time.

In conclusion, the Board found that Constable “C” contravened section 5(i)(g)(ii) of the Code of Conduct by his decision to pepper spray the complainant. There were no costs to either party.

CASE NO. 2: Appeal of a decision as a result of a public complaint.
**NATURE OF COMPLAINT:** An appeal filed by Mr. “J”, Complainant against a sergeant of the Halifax Regional Police, requesting a review of a decision made by the Deputy Chief on February 10, 2004

**HEARING DATE:** June 29, 2005 at the Nova Scotia Police Commission Office, Halifax, Nova Scotia

**BEFORE:** Mr. Lester Jesudason, Alternate Chair  
Mr. Peter James, Member  
Mr. Charles Schafer, Member

**COUNSEL:** Mr. “J” on behalf of himself  
Mr. Patrick Duncan on behalf of the Sergeant  
Ms. Karen Brown on behalf of the Halifax Regional Municipality

**DECISION DATE:** October 28, 2005

**Summary of Decision:** Appeal Dismissed

This matter came before the Nova Scotia Police Review Board sitting at Halifax, Nova Scotia on June 29, 2004 by way of an appeal filed by Mr. “J”, Complainant, requesting a review of the decision made by the Deputy Chief of the Halifax Regional Police Department on February 10, 2004 which dismissed Mr. “Js” complaint against Sergeant “S” of the Halifax Regional Police.

Mr. “J” indicated that on the evening of May 24, 2005, he was at a nightclub. At approximately 2:30 a.m. on May 25th, he received a call from a friend of his who was at the Liquor Dome who requested that Mr. “J” pick him up. Mr. “J” indicated he drove his vehicle to Argyle Street and discovered there were no parking available. He therefore decided to park in front of the Argyle Bar and Grill hoping to see his friend. He indicated that he had his music turned on in his car and that it was quite loud. Mr. “J” testified that Sergeant Smith came over to his vehicle and said words to the effect of, “move your fucking car” three times. Mr. “J” indicated that he eventually replied with words to the effect of “screw you” and drove off.

He left the area and, as he arrived near the Delta Barrington, he noticed a police car behind him. The police car pulled him over and Constable “D” came over and asked to
see his driver’s license, registration and insurance papers. Mr. “J” inquired as to why
he was being pulled over to which Constable “D” replied that Mr. “J” had made an ille-
gal left-hand turn and also indicated that he had been asked to pull Mr. “J” over by
another officer.

At this point, Mr. “J” decided to turn on a recording device he carried with him. Mr.
“J” recorded his conversation with Constable “D” and that recording was played into
the record of these proceedings during this hearing. Mr. “J” gave Constable “D” his
license and was issued a ticket for failing to comply with the directions of a police of-

After being stopped by Constable “D” and receiving the ticket, Mr. “J” indicted that he
went back to Argyle Street to discuss the matter with the sergeant.

In the sergeant’s evidence he indicated that he had noted that a vehicle was double-
parked and had been there for several minutes. He indicated that his concern was for
pedestrians who cross the lane and that the vehicle made it a very narrow lane of
traffic. He was concerned that intoxicated pedestrians could walk out into the lane of
traffic without providing adequate notice to drivers. He therefore decided to get the
driver to move his vehicle.

The sergeant approached the vehicle, which had its stereo up loud. He told Mr. “J” he
could not park his vehicle in the area and that he had to move it. According to the
sergeant, he had to raise his voice because of the stereo volume and, while he could
not remember his specific words, he used words to the effect of, “could you please
move your vehicle” or “you can’t park there, sir”. Mr. “J” did not respond, or even
acknowledge his presence, so the sergeant stated he repeated his words. Again, he
received no acknowledgment and he stated that he tried several more times and at
one point, the sergeant indicated that Mr. “J” said words to the effect of, “you don’t
know who you are fucking dealing with”.

Since he did not receive compliance, the sergeant decided he would have to do a for-
mal traffic stop and asked Mr. “J” to pull his vehicle out ahead to the curb. Mr. “J” did
not agree to this request so the sergeant attempted to walk in front of Mr. “J”’s vehi-
cle. The sergeant then claims that Mr. “J” sped off clipping him on his left hip area.
The sergeant took the license plate number and called it in on the radio requesting
that other vehicles respond. Constable “D” responded and the sergeant requested
that he stop Mr. “J”s vehicle.

The sergeant indicated that Mr. “J” approached him again a few minutes later at
which time Mr. “J” asked him if he was the person who had asked Constable “D” to
issue him the ticket. When the sergeant acknowledged that he was, Mr. "J" indicated that he was going to beat him in court and embarrass him. After this, Mr. "J" left the area.

The sergeant testified that the bar door staff had pointed out Mr. "B" to him and that the reason he did not originally approach Mr. "B" was because he was not concerned that he might need a witness. He indicated that it was only after Mr. "J" approached him for the second time that he decided it would be beneficial to have an independent witness. The sergeant indicated that he did not charge Mr. "J" with hitting him with his vehicle because he was not injured and did not want to make a big deal about it.

In this case, the sergeant and Mr. "J" have two very different versions of the events that transpired in the early morning hours of May 25th, 2005. Certainly, if the evidence established on a balance of probabilities that Mr. "J"s" version was correct whereby Sergeant Smith simply came up to his vehicle and proceeded to use profanity with him, the Board would be inclined to conclude that the sergeant's behavior constituted discreditable conduct. However, the sergeant vehemently denies that, at any time, he used profanity with Mr. "J". To the contrary, the sergeant’s evidence suggests that he politely asked Mr. "J" to move his vehicle and that it was Mr. "J" who was being non-compliant and made use of profanity. The Board also notes that the one independent witness, Mr. "B" gave evidence which largely corroborated the sergeant’s evidence that the request the sergeant made to Mr. "J" to move his vehicle was done in a polite manner.

Mr. "J" has the legal burden of establishing that the sergeant committed a disciplinary default on the balance of probabilities. While the board commends Mr. "J" for his efforts at the hearing, unfortunately for him, it could not accept his evidence over that of the sergeant and particularly that of the independent witness, Mr. "B". As such the Board found that Mr. "J" had not discharged his burden of establishing that the sergeant committed a disciplinary default contrary to the Regulations passed pursuant to the Police Act. Consequently, his complaint is hereby dismissed without costs to any party.
### Nova Scotia 2005 Police Resources & Population *

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*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.

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Statistics Canada - Source: Adapted from Statistics Canada, Police Resources in Canada 2005, catalogue no 85-225-x1e, *reference period 2004* and found on page(s) 40 & 41. 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, its World Wide Web site at http://www.statcan.ca, and its toll-free access number 1-800-263-1136.