

# Guideline on Time Limit Extension for Making a Complaint

## 1. Policy Statement

The New Brunswick Police Commission (the “Commission”) is committed to providing exemplary service to all members of the public. The Commission aims to address *Police Act* complaints equitably, comprehensively, and in a timely manner in accordance with the law and the principles of natural justice. The Commission has a duty of procedural fairness in applying statutory provisions and when making decisions which will affect the rights, privileges or interests of an individual.

## 2. Purpose

The purpose of this policy is to ensure that the provision of subsection 25.1(1) of the *Police Act* (the *Act*) is administered in a fair, consistent and equitable manner; i.e. that the one-year time limit imposed by subsection 25.1(1) is extended by the Commission under subsection 25.1(2) in appropriate and defensible circumstances.

This policy is to be considered in conjunction with any other policies and/or legislation that apply to each situation and this policy will not be unreasonably applied.

## 3. Definitions

*Complainant* – means a person who files a conduct, service or policy complaint.

*Respondent* – means the person or police force the complaint is against.

## 4. Legislative provision

Time limits, section 25 of the *Act* provides that:

*25.1(1) Subject to subsection (2), a complaint shall be filed within one year after the date of the incident or omission, or occurrence of the conduct that is the subject of the complaint.*

*25.1(2) The Commission may, where in the opinion of the Commission circumstances so warrant, extend the time for the filing of the complaint.*

## 5. Continuing violations

For allegations to constitute a continuing violation there must be a succession or repetition of separate breaches of the *Code of Professional Conduct* of the same or similar character. These must be breaches which could be considered as separate contraventions of the *Act*, and not merely one breach which may have continuing effects or consequences<sup>1</sup>.

Further, the allegations must occur with sufficient frequency<sup>2</sup>. If a continuing violation of the *Act* is alleged in a complaint, only the last alleged instance of the violation must fall within the one-year time limit. In such complaints, a time limit extension (TLE) under subsection 25.1(2) is unnecessary for alleged acts outside the one-year time limit if they are part of the alleged continuing violation.

However, if the Commission is of the view that the alleged acts that are outside the one-year time limit do not constitute a continuing violation, the Commission may require a Complainant to seek a TLE under subsection 25.1(2) in order for those alleged acts to be considered as part of the complaint.

## 6. Commission’s Discretion under subsection 25.1(2) of the *Police Act*

The Commission may extend the one-year time limit for making a complaint under subsection 25.1(1), by taking into consideration the following:

### a. continuing intention to pursue the complaint:

It should be evident that the Complainant has always intended to pursue the complaint despite the delay in filing. If the Complainant seeks an extension of time to file a complaint where it is clear the Complainant was previously fully aware of the relevant facts, and yet had no intention to pursue the substance of the complaint, this should weigh towards denying an extension.

1 Manitoba v. Manitoba (Human Rights Commission), [1983] M.J. No. 223 at para. 19.

2 A.B. v. Brunswick News Inc. (No.4), (2009) 69 CHRR D/246 (NB BdInq) at para. 115.

### **b. the merit of the complaint:**

The complaint should be reviewed simply to determine whether the complaint is or may be credible. The purpose at this stage is not to judge whether the complaint will be successful, or that the substance of the complaint is true, but to eliminate obviously frivolous complaints.

### **c. the Respondent will not be unduly prejudiced by the extension:**

The Commission should consider whether the delay in filing the complaint will prejudice the Respondent and means an actual loss of evidentiary position as a result of the disappearance of a witness, document or other evidence.

### **d. there is a reasonable explanation for the delay:**

If there is a reasonable explanation for the delay, then this should weigh towards granting an extension. Examples of reasonable explanation include not learning of the act(s) complained of until near or after the time-limit and/or special circumstances which prevented a Complainant from filing the complaint within the prescribed time-limit, for example:

- mental or physical disability;
- the exercise of a statutory or other applicable appeal or review right in a timely and appropriate fashion; and
  - internal complaint with Respondent employer;
  - a grievance procedure;
  - an appeal in the courts; or
  - an appeal of a WorkSafeNB decision.
- any other justified reason as determined by the Commission.

The Commission may also consider whether there is some overriding factor that necessitates an extension be granted. *"The ultimate question is always whether, in all the circumstances and considering the factors referred to above, the justice of the case requires that an extension of time be granted".*<sup>3</sup>

## **7. TLE request process**

If the complaint or part of the complaint is outside of the one-year time limit for making a complaint, the Complainant is required to submit a completed *Time limit extension request* within 15 business days to the Commission. The Complainant's submission, including the complaint form, will be sent to the Respondent for response who will also be provided 15 business days to submit the completed *Response to time limit extension* to the Commission.

The Commission members will consider all the documentation in determining whether the circumstances warrant an extension of the time limit to make a complaint.

The parties to the complaint will be advised in writing of the Commission's decision.

## **8. For more information**

Further information about the *Act* or this guideline may be obtained by contacting the Commission at 506-453-2069 or by visiting the Commission's website at <https://www.nbpolicemission.ca/> or email us at [nbpc@gnb.ca](mailto:nbpc@gnb.ca).

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