

**IN THE MATTER OF THE POLICE ACT,
R.S.B.C. 1996,
C. 367 AS AMENDED**

***AND IN THE MATTER OF A POLICE ACT PUBLIC HEARING
INTO ALLEGATIONS CONCERNING CONSTABLE BRIAN HOBBS,
VANCOUVER POLICE***

BEFORE: Adjudicator Brian M. Neal QC, (*rt*)

PUBLIC HEARING COUNSEL:

B. HICKFORD

COMMISSION COUNSEL:

G. DELBIGIO, Q.C.

COUNSEL FOR CONSTABLE HOBBS:

M.K. WOODALL

PLACE AND DATE OF HEARINGS:

VANCOUVER, B.C.
NOVEMBER 6, 7 & 15,
2017

**REASONS FOR JUDGMENT
ON APPLICATIONS-PART II**

I – The Applications

[1] On June 5, 2017 the Police Complaint Commissioner (the “Commissioner”) ordered a Public Hearing be convened into certain allegations concerning Constable Brian Hobbs (the “Applicant”) pursuant to ss. 138(1) and 143(1) of the *Police Act* R.S.B.C. 1996, c. 367 as amended.

[2] I have been appointed as Adjudicator with respect to this Public Hearing as a result of the Commissioner’s order.

[3] Counsel for the Applicant has made application that I recuse myself from these proceedings. The recusal application is set out in a Notice of Motion dated October 11th 2017 (the “Notice of Motion”).

[4] The Notice of Motion seeking recusal is based on the argument that there is a reasonable apprehension of bias resulting from the fact that Mr. Brock Martland (“Mr. Martland”) has been retained to provide legal advice to myself as Adjudicator.

[5] The Applicant sought an initial hearing and ruling on parts 1 to 3 of the Notice of Motion requesting the following orders, namely that:

(1) *An order be made pursuant to s. 143(5) and 147 of the Police Act directing the Police Complaint Commissioner and the Deputy Police Complaint Commissioner to:*

(a) *Attend the public hearing to answer questions relevant to the retainer of Mr. Martland as lawyer for the Adjudicator in these proceedings, including but not limited to the topics addressed in the letters attached to the affidavit of Kaari Hytainen sworn 18 September 2017, pgs. 100-106 (“the Letters”); and*

(b) *to bring the all records of communication of any kind among any combination of the following person concerning the retainer of Mr. Martland to act as lawyer for the Adjudicator in these proceedings: the Adjudicator, Mr. Brock Martland, the Police Complaint Commissioner, the Deputy Police Complaint Commissioner, and any employee of the OPCC.*

(2) *The Affidavit of Andrea Spindler dated 14 September 2017 not be admitted into evidence.*

(3) *In the alternative to the relief sought in paragraphs 1 -3, that Andrea Spindler be directed to attend the review on the record for cross-examination on her affidavit.*

[6] On November 10, 2017 a decision was released on the foregoing matters denying the applications set out in the first three parts of the Notice of Motion.

[7] The last component of the applications set out in the Notice of Motion is that:

“4. *The Adjudicator will recuse himself, and take no further action in these proceedings.*”

II- Evidence in support of the Recusal Application

[8] Mr. Martland, a lawyer in private practice, has appeared on the record in connection with these proceedings as counsel retained to provide advice to myself as Adjudicator. It is the existence of that retainer and the circumstances surrounding the same that are at the crux of the Applicant’s recusal motion.

[9] The affidavit evidence before me with respect to Mr. Martland’s circumstances relevant to these proceedings is set out in the following:

- (a) The affidavit of Tom Stamatakis sworn September 29th, 2017, (the “Stamatakis Affidavit”);
- (b) The affidavit of Kaari Hytainen sworn September 18th, 2017, (the “Hytainen Affidavit”); and
- (c) The affidavit of Andrea Spindler sworn September 14, 2017 (the “Spindler Affidavit”).

[10] The evidence in these affidavits can be summarized as follows, namely that:

- (a) Mr. Martland has been retained by the Office of the Police Complaint Commissioner (the “OPCC”) to serve as legal counsel in other *Police Act* proceedings, including personal representation for the Commissioner when subpoenaed by the accused in *R. v Plummer*, Vancouver Registry no 18393-1 BCPC;
- (b) Mr. Martland is retained to act as legal counsel to adjudicators in several other proceedings under Part II of the *Police Act*;
- (c) There is no direct, specific evidence concerning Mr. Martland’s retainer with respect to these proceedings. The Spindler Affidavit deposes to an appointment process used for counsel in another proceeding, but does not touch on Mr. Martland’s retainer in these proceedings, nor the specific circumstances surrounding that appointment;

- (d) There is, however, evidence in the Spindler Affidavit of a general procedure followed by the OPCC with respect to the appointment of adjudicators and counsel retained by adjudicators. That evidence can be summarized as follows:
- (i) Under the *Police Act*, the Associate Chief Judge of the Supreme Court compiles a list of qualified retired judges to serve as Adjudicators, and consults with the Commissioner on appointments required.
 - (ii) Adjudicators are given the option of retaining legal counsel by the OPCC to assist with their duties;
 - (iii) Adjudicators are told that if they wish to secure legal advice, they may retain counsel from a list of lawyers with expertise in *Police Act* matters and administrative law principles who already have service contracts with the OPCC. Alternatively, adjudicators may retain different counsel with similar qualifications; and
 - (iv) Once retained, the lawyer concerned is required to enter into a contract with the OPCC as the relevant budgetary authority of government and paid at prevailing government rates;
- (e) Mr. Martland has advised Mr. Stamatakis, President of the Police Union, that he is “*working exclusively for the OPCC on Police Act matters and could not act for police members because of his OPCC relationship*”; and
- (f) There are several other lawyers with experience in the *Police Act* field who do not have contractual relationships with a police union and are “independent of the OPCC”. However, these assertions set out in the Stamatakis Affidavit do not provide any evidence as to the relationship of such lawyers to the OPCC counsel appointment process, nor, of course, the relevance of such information to Mr. Martland’s retainer in these proceedings.

III- Applicant’s submissions with respect to recusal

[11] The submission of Counsel for the Applicant is that the evidence surrounding the appointment of Mr. Martland as counsel for myself as Adjudicator raises a reasonable apprehension of bias.

[12] The Applicant concedes that the facts in evidence do not meet the evidentiary test necessary to show actual bias, however, it is argued that such facts do raise the reasonable possibility of such a perception which would support the recusal of myself as Adjudicator.

[13] Specifically, the recusal argument advanced by the Applicant, and detailed in submissions, can be summarized as follows, namely that:

- (a) Historically, adjudicators appointed under the *Police Act* have not had the benefit of legal advice in the course of their duties. The Applicant submits that there is no statutory authority for such advice and further, as all adjudicators are retired judges, there is no need for such advice;
- (b) Mr. Martland has been appointed as counsel to adjudicators in this, and other proceedings, as a result of the direct or indirect influence of the Commissioner, or persons acting under his authority;
- (c) Mr. Martland has represented the Commissioner personally in *R v Plummer*, a criminal proceeding (Vancouver Supreme Court Registry 27081). The specific nature of the representation alleged relates to a subpoena issued to the Commissioner in connection with those proceedings requiring that the Commissioner attend and provide evidence;
- (d) The selection and payment of lawyers such as Mr. Martland advising adjudicators raises a perception that there is insufficient institutional independence between the Commissioner and such adjudicators, including myself;
- (e) There is a reasonable apprehension that Mr. Martland's relationship with the Commissioner and OPCC staff, could taint the independence of adjudicators, including myself. It is alleged that such may arise by virtue of:
 - (i) The indirect influence of the OPCC or the Commissioner as a result of Mr. Martland advancing OPCC positions and interests and potentially asserting undue or improper influence in the course of decision making during the course of these proceedings;
 - (ii) The reasonable perception that Mr. Martland and the Commissioner may have discussed these proceedings; and
 - (iii) A resulting unconscious, implicit, bias in Mr. Martland's advice to myself as Adjudicator in favour of the Commissioner's perceived positions;
- (f) Well established principles of judicial independence applicable to the role of adjudicators under the *Police Act* established in *Sekela v BC (Police Complaint Commissioner)* 2001) BCCA 572 and *R. Sussex Justices, ex parte McCarthy* [1924] 1 KB 256 may be violated as a result of Mr. Martland's potential influence on proceedings while he maintains his

- other professional relationships and service obligations;
- (g) There exists a reasonable perception of a lack of independence with respect to my role as Adjudicator in these proceedings. Specifically, it is submitted that an important piece of evidence has been denied the Applicant with respect to the actual facts detailing Mr. Martland's appointment as counsel to myself as Adjudicator. Counsel for the Applicant maintains that:
- (i) The decision to dismiss the applications to call as witnesses the Commissioner, Deputy Commissioner and Andrea Spindler has meant that the Applicant has been denied the details of how, when and on what specific terms Mr. Martland was retained;
 - (ii) Each of the Commissioner, Deputy Commissioner and Ms. Spindler would have been likely to know the details surrounding Mr. Martland's appointment; and
 - (iii) As Adjudicator in these proceedings, I would also be likely to know the specifics of Mr. Martland's retainer arrangements; and
- (h) Counsel for the Applicant submits that the foregoing facts establish that there is a reasonable apprehension that the Commissioner selected Mr. Martland to act for myself as Adjudicator, when he was also the personal lawyer of the Commissioner. The submission is that such facts raise a further apprehension of a lack of institutional independence between the Commissioner, the OPCC and myself, creating the foundation for a further reasonable apprehension of bias.

IV - The Position of Commission Counsel and Public Hearing Counsel

[14] The joint position of both Commission Counsel and Public Hearing Counsel is that there are no grounds warranting recusal of myself as Adjudicator. Both Counsel submit that no reasonable, right minded person properly considering the relevant facts, law and evidence could conclude that there is any apprehension of bias affecting the discharge of my role as Adjudicator.

[15] Specifically, the position of both Counsel can be summarized as follows:

- (a) The Applicant bears the burden of substantiating the allegations of a reasonable apprehension of bias and loss of institutional independence. It is submitted that any such evidence must be sufficient to rebut the presumption of regularity, and not merely suspicion or innuendo;

(b) The circumstances surrounding Mr. Martland's status as counsel in these proceedings are unrelated to any other proceedings. The focus of this hearing is the conduct of Constable Hobbs, not the OPCC or Commissioner;

(c) It is submitted that there is no evidence that Mr. Martland has any demonstrated conflict of interest with respect to the issues to be considered in this Public Hearing. Furthermore, it is submitted that Mr. Martland is bound by professional obligations to maintain the confidence of client deliberations and advice, to avoid conflicts of interest and to serve the best interests of his clients. Counsel submit that there is simply no evidence to support any inference or perception that such duties might be compromised as a result of Mr. Martland's other retainers or clients, nor any reasonable basis on which any informed person could conclude that such action was a possibility;

(d) There is no evidence that Mr. Martland's representation of the Commissioner in the *Plummer* proceedings has relevance to this Public Hearing. It is submitted that Mr. Martland is representing the Commissioner in his institutional, not personal, capacity, as he serves as counsel to an intervenor in the *Plummer* appeal. Furthermore, it is also submitted that there is no evidence of any reasonable apprehension of bias affecting myself as Adjudicator arising as result of Mr. Martland's representation of the Commissioner in the *Plummer* matter;

(d) It is specifically denied that there is any evidence supporting an inference that the Commissioner has arranged for his personal lawyer to serve as counsel in these proceedings to advance the Commissioner's objectives. It is also submitted that there is no evidence to support the perception that there was any improper influence in facilitating the retainer of Mr. Martland in the discharge of the OPCC mandate under section 177 of the *Police Act*;

(e) There is no legislative or legal restriction which would restrict adjudicators from retaining legal advisors to assist in Part II proceedings under the *Police Act*. Given the complexity of such proceedings, it is submitted that such advice is entirely reasonable and appropriate;

(f) There is no evidence supporting a perception that Mr. Martland's influence as counsel has extended beyond his appropriate role as a legal advisor; and

(g) There is no evidence to support a perception that any of the principles established in *Sekela* or *Sussex Justices supra*, may be violated as a result of Mr. Martland's role in these proceedings.

V - Issues:

[16] The issues to be determined are whether or not:

- (a) The evidence adduced supports the conclusion that there is a reasonable apprehension of bias in my role as Adjudicator as a result of Mr. Martland's retainer with respect to these proceedings;
- (b) The evidence supports the perception that my role as Adjudicator is insufficiently independent of the Commissioner and OPCC; and
- (c) If so, whether or not I should recuse myself from further involvement in these proceedings.

VI - The test for recusal

[17] All Counsel agree that the test with respect to any application for recusal based on a reasonable apprehension of bias is an objective test. Specifically, the test is whether an informed person, viewing the matter realistically and practically, and having thought the matter through, would have a reasonable apprehension of bias. This test was succinctly set out in the Supreme Court of Canada decision, *Committee for Justice & Liberty v Canada (National Energy Board)* [1978] 1 S.C.R. at 394:

“[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information.”

[18] The onus is on the Applicant to establish an evidentiary foundation in support of the recusal motion. *Sutherland v BC (Superintendent of Motor Vehicles)* 2017 BCSC 263 at paras 76 & 77. Specifically, such evidence must directly address the presumption of regularity, *omnia praesumuntur rite esse acta*. This presumption of law establishes that in the absence of evidence to the contrary, public officers are presumed to act fairly and impartially in discharging their duties: *Adams v BC (Workers' Compensation Board)* [1989 BCJ No. 2478 BCCA at paragraphs 10 to 13. The Applicant bears the responsibility of establishing evidence beyond a mere suspicion or innuendo to rebut the presumption of regularity.

VII - Analysis:

[19] I am not satisfied that a reasonable, right minded person fully considering the facts in evidence, and considering the matters raised realistically and practically would conclude that there is a reasonable apprehension of bias arising as a result of Mr. Martland's retainer. Nor can I find that there is any evidence that would support the perception that my role as Adjudicator in these proceedings is anything other than independent of the Commissioner and the OPCC. Let me explain.

VIII - The lack of information concerning Mr. Martland's appointment:

[20] I have considered the submissions of Counsel for the Applicant with respect to this matter and cannot agree that it raises any further reasonable apprehension of bias or lack of institutional independence with respect to the discharge of my role as Adjudicator. Specifically, I find that a reasonable, right minded person would conclude that:

- (a) The evidence relevant to this Application is that set out in the record of these proceedings and the three affidavits before me. Any personal knowledge I may have concerning the appointment of Mr. Martland as counsel is not part of these proceedings, nor can it be, as reflected in the Applicant's own submissions (Exhibit # 7) on this point at paragraphs 23-27;
- (b) As noted above, the evidence before me confirms that Mr. Martland has been retained by the OPCC to provide legal advice to myself as Adjudicator. The fact that the Applicant may not be aware of all circumstances and terms of the retainer relating to Mr. Martland is a collateral issue not relevant to these proceedings and not necessary to consider this application. There is simply no evidence supporting a perception that there has been any improper action on the part of any party in retaining or using the services of Mr. Martland in these proceedings; and
- (c) Mr. Martland, as counsel, has a set professional of obligations to myself as Adjudicator, and to any other parties he may represent. Submissions on behalf of the Applicant confirm that the existence of Mr. Martland's role and, by implication, the existence of those professional obligations, are known to the Applicant. I find that the same would also be well known by any reasonable, right minded person considering the circumstances of this proceeding.

[21] Considering the foregoing, I find that there is simply no evidence of any other relevant circumstances concerning Mr. Martland’s retainer that might have a bearing on the perception of a reasonable apprehension of bias or lack of institutional independence. On this issue, I cannot find that there is any reasonable apprehension of bias or a loss of such independence as alleged by the Applicant.

IX - The use of Lawyers by Adjudicators

[22] With respect to concerns raised by Counsel for the Applicant as to the use of lawyers by adjudicators, I find that a reasonable, right minded person would consider that:

(a) The *Police Act* is inherently complex. As noted by Justice Newbury in *Florkow v BC (Police Complaint Commissioner)* 2013, BCCA 92 at para 6 the Act is:

“ dense, complicated and often confusing. Its provisions are hedged around exceptions, qualifications and limitations that are often located in other sections not close in proximity. One must frequently follow cross references to other sections, and few provisions can be said to stand alone. It is not a model of clarity.”;

(b) There is clear authority for legal counsel to be made available to decision makers in administrative tribunals: *Omineca Enterprises Ltd. V British Columbia* B.C.J. No 2337 (C.A.);

(c) There is no evidence whatsoever that would support the perception that Mr. Martland as counsel might assert undue or improper influence in the course of these proceedings; and

(d) The general practice of the OPCC, as outlined in the Spindler Affidavit, is that decisions on whether or not to retain a legal advisor, rests with adjudicators in each proceeding.

[23] As such, I cannot find that any reasonable, right minded person properly considering the foregoing would conclude that the fact that a lawyer such as Mr. Martland has been retained to provide legal advice to an adjudicator, including myself, has any relevance to, or bearing on, a reasonable apprehension of bias.

X - The Role of the Commissioner

[24] A substantial component of the Applicant’s submissions relate to the existence of the possibility of indirect influence of the Commissioner in these proceedings through Mr.

Martland. I will address Mr. Martland's role further in these reasons, however, before doing so, it is important to properly consider the role of the Commissioner.

[25] I find that any reasonable, right minded person properly considering the circumstances surrounding the unique role held by the Commissioner would conclude that:

(a) The Commissioner, as an independent officer of the Legislature, has a statutory duty to oversee and monitor complaints concerning police officers, investigations concerning those complaints and the conduct of discipline proceedings under Part 11 of the *Police Act*;

(b) The Commissioner made the decision to order this Public Hearing concerning the Applicant's alleged conduct pursuant to ss. 138(1) and 143(1) of the *Police Act*;

(c) The *Police Act* does not assign responsibility to the Commissioner to decide the outcome of misconduct complaints or allegations arising in relation to public hearings. The responsibility for making such decisions rests solely with adjudicators, who are all retired judges, appointed in consultation with the Associate Chief Judge of the B.C. Supreme Court: section 142 *Police Act*;

(d) In discharging the Commissioner's many duties set out under the *Police Act*, a key responsibility of the Commissioner is to ensure public confidence in matters of police discipline: *Florkow supra*, para 2. The interest of the Commissioner is a process, not personal, interest in *Police Act* proceedings to foster confidence in discharge of the Part 11 mandate;

(e) With respect to public hearings, the Commissioner has specific legislative authority to fully engage as a party in such proceedings through counsel, notwithstanding the fact that the Commissioner also has authority to initiate such proceedings: Section 143 (1) & (5) *Police Act*. Unlike a private party, the Commissioner has a specific legislative mandate to engage in and monitor all aspects of public hearing processes to serve the broader public interest;

(f) The Commissioner has the right to make submissions through counsel in such proceedings;

(g) The Commissioner has a statutory duty to monitor all complaint proceedings and where required, to "inform, advise and assist" adjudicators appointed under Part 11 of the *Police Act*: section 177 (2) (j) *Police Act*; and

(h) With respect to these proceedings, I find that there is no evidence of any conflict of interest or improper actions of the Commissioner, or any person acting on his behalf under the *Police Act*. Furthermore, there are no facts in evidence which might support the reasonable perception of such a conflict of interest or breach of duty.

[26] I find that a reasonable, right minded person properly considering the statutory role of the Commissioner and facts adduced in connection with this recusal application could not conclude that there is any reasonable apprehension of bias affecting my role as Adjudicator arising as result of discharge of the Commissioner's duties in connection with these proceedings.

XI - The role of Mr. Martland

[27] With respect to Mr. Martland, a reasonable, right minded person considering the evidence adduced in support of the recusal application would conclude that:

(a) Mr. Martland, as a lawyer in private practice, has acted for adjudicators appointed under the *Police Act* in various proceedings, including a retainer to provide legal advice to myself as adjudicator in these proceedings;

(b) There is no evidence that Mr. Martland is a staff member of the OPCC or government;

(c) Mr. Martland has represented the Commissioner when subpoenaed to give evidence in a criminal prosecution unrelated to the allegations involving the Applicant. There is no evidence that such representation is a personal matter for the Commissioner outside the scope of his statutory role. Nor is there any evidence that supports the perception of any other relationship between Mr. Martland, the Commissioner or any other member of the OPCC outside professional duties;

(d) As a lawyer, Mr. Martland is bound by professional obligations to serve the best interests of his various clients, to maintain confidentiality of solicitor client deliberations and to avoid conflicts of interest in the discharge of his services. The Applicant does not allege, and has never alleged, that Mr. Martland is in breach of any of those duties. However, there is no evidence supporting the Applicant's submission that there may be a reasonable perception that Mr. Martland is at risk of breaching his professional duties to his clients with respect to this or any other proceeding by serving as a conduit for OPCC or Commissioner positions concerning the Applicant;

(e) As a private lawyer with apparent particular expertise in *Police Act* matters, Mr. Martland has apparently chosen to restrict his practice by refusing requests to represent police officers or their associated unions. There is no evidence as to other dimensions of Mr. Martland's practice, and in particular, no evidence that Mr. Martland acts exclusively for the Commissioner, the OPCC or other adjudicators;

(f) There is no evidence as to how and in what manner Mr. Martland was retained to serve as a legal advisor in these proceedings. As noted above, the Spindler Affidavit does not depose to any of the specific facts relevant to this Public Hearing. There is collateral evidence in that affidavit of a general counsel appointment process, but no direct evidence of its application in these proceedings;

(g) There is no evidence raising any reasonable perception of improper influence or actions relating to Mr. Martland's appointment as counsel, or his service in providing legal advice to myself as Adjudicator. Specifically, there is no evidence whatsoever supporting a perception that Mr. Martland is consciously or unconsciously acting as a conduit for the Commissioner in these proceedings. There is no evidence whatsoever that Mr. Martland has had any prior or current retainer in any manner relating to the Applicant; and

(h) In summary, the allegations raised in submissions of the Applicant in this regard do not rise beyond unfounded suspicion and innuendo.

XII - The Relationship between Mr. Martland, the Commissioner and the OPCC

[28] The key submission of the Applicant is that the relationship between Mr. Martland, the Commissioner and the OPCC raises a reasonable apprehension of bias with respect to my role as Adjudicator in these proceedings and establishes evidence of my compromised independence as a decision maker. I find that a reasonable, right minded person carefully considering that matter in the context of the evidence adduced would conclude that:

(a) The principles of the *Sussex Justices* decision are distinguishable in their application to these proceedings for the following reasons:

(i) In *Sussex Justices*, a lawyer available to Judges presiding in a criminal trial was also a member of a firm representing the interests of a person in a civil proceeding relating to the same accident. The Court of Kings Bench found that such representation created a reasonable apprehension of bias as a result of the lawyer's collateral conflicting interest in the civil proceeding. In the current proceedings concerning the Applicant, there is no evidence that Mr. Martland is representing the interests of any

party other than myself. In particular, there is no evidence whatsoever that Mr. Martland represents the Commissioner or the OPCC with respect to any direct or collateral proceedings involving the Applicant, or interests of the Applicant; and

(ii) The fact that Mr. Martland has represented the Commissioner in other unrelated proceedings and has a restricted practice raises no reasonable apprehension of bias in my role as Adjudicator. There is simply nothing beyond suspicion or innuendo to support the contention that in some manner Mr. Martland could potentially breach his professional obligations as a lawyer to influence the outcome in these proceedings consistent with the Commissioner's express or implied wishes. No reasonable, objective right minded person knowing Mr. Martland's professional obligations and client relationships could come to such a conclusion;

(b) In the current Public Hearing, the concern raised with respect to the potential influence of the Commissioner attempts to characterize the Commissioner as a conventional party. He is not. The Commissioner has a statutory mandate, as noted above, which includes a legislated duty to participate in public hearing processes, to monitor the processes and where needed, to assist and support adjudicators such as myself in connection with the same. Any potential issues of conflict are met by the provisions of the statute which mandate the Commissioner to carry out a wide range of specific duties under Part II of the *Police Act*; and

(c) There is no evidence that my independence as Adjudicator could be perceived to be compromised in violation of the principles outlined in *Sekela*, supra, as a result of Mr. Martland's retainer, or in any other manner,

XIII - Application of the Recusal Test

[29] Taking into consideration the professional responsibilities of Mr. Martland, the statutory duties of the Commissioner as an independent officer of the Legislature, and my legislated responsibilities as Adjudicator, I cannot find that any reasonable, right minded person could conclude, on the evidence adduced, that there could be a reasonable apprehension of bias affecting my role as Adjudicator. There is simply no air of reality to the concerns raised other than those based on unfounded suspicion and innuendo.

[30] I am satisfied that any reasonable, right minded person fully considering the facts, law and evidence adduced would dismiss any suggestion of the perception of a reasonable apprehension of bias or lack of independence arising in these proceedings and affecting my role as Adjudicator.

[31] I find that on the evidence adduced, there is no reasonable basis for the apprehension of bias in these proceedings arising as result of any relationship between, or actions of, the Commissioner, the OPCC or Mr. Martland. Nor is there any evidence to support a reasonable apprehension of bias or compromised independence resulting from a perception that decisions in this proceeding might be influenced by anything other than the facts, the law and the submissions of the parties.

[32] The application for recusal is denied.

[33] This Public Hearing of evidence in this matter will commence January 8, 2018 at Robson Square Courthouse at 9:30 am.

Brian M. Neal Q.C. (*rt*)

Adjudicator

November 29, 2017
