



Office of the
Police Complaint Commissioner

British Columbia, Canada

PH: 2025-01
OPCC File: 2021-20959

NOTICE OF PUBLIC HEARING

Pursuant to section 138(1) and (2.1) of the *Police Act*, R.S.B.C. 1996, c.367

**In the matter of the Public Hearing into the Conduct of
Sergeant Nate Holt, Detective Constable Sarah Hannah, Constable Adam Sutherland,
Former Constable Jason Anstey, Former Constable Rob Armstrong,
and Former Constable Jarret Slomba of the Nelson Police Department**

- To: Sergeant Nate Holt (#78) (Members)
Detective Constable Sarah Hannah (#79)
Constable Adam Sutherland (#84)
Former Constable Jason Anstey (#86)
Former Constable Rob Armstrong (#89)
Former Constable Jarret Slomba (#58)
c/o Nelson Police Department
Professional Standards Section
- And to: Chief Constable Donovan Fisher (Chief Constable)
c/o Nelson Police Department
Professional Standards Section
- And to: Mr. Wallace T. Oppal, K.C. (Discipline Authority)

SUMMARY

1. This proceeding involves three current members and three former members of the Nelson Police Department ("NPD") (together, the "Members"). From March of 2019 to January of 2021, the Members contributed, while on and off duty, to a WhatsApp group chat for members of A Platoon (the "Group Chat").
2. In February of 2023, a police discipline authority found that the Members appeared to have committed discreditable conduct under the *Police Act* (the "Act") by actively participating in the Group Chat and sharing racist, sexist, or other discriminatory or inappropriate content.

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Police Complaint Commissioner

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The discipline authority also found an appearance that five of the Members had neglected their duties to report the existence and contents of the Group Chat, and one had neglected his duty as a supervisor to address the Group Chat and ensure a respectful workplace environment. The matters then headed to a discipline proceeding to be decided on their merits.

3. Important issues are at stake in this case. Indeed, increasing attention is being paid across Canada and elsewhere to whether police or other professionals commit misconduct if they post or engage with discriminatory or otherwise inappropriate content in chat groups they consider to be private.
4. Unfortunately, while the discipline proceeding here first convened in April of 2023 and my office has repeatedly sought to have this matter move forward more quickly, the allegations have yet to be resolved. The delay largely relates to anticipated and actual legal challenges from five of the Members regarding the constitutionality of a search that was authorized by the BC Provincial Court under the Act and resulted in the seizure of the contents of the Group Chat from the personal smartphone of one of the Members.
5. Five of the six Members filed a formal constitutional challenge in the BC Supreme Court in August of 2024, more than two years after the contested search was authorized and executed, and seven months after their counsel advised she had instructions to file. The court case has not moved forward since August 2024 and no dates are set for next steps. More recently, a discipline authority found that he did not have authority under the Act to decide the constitutional challenges at a discipline proceeding, while noting that an adjudicator at a public hearing would not be so restricted.
6. I have determined that it is in the public interest to call a public hearing to deal with these matters before a retired judge acting as an adjudicator. A public hearing is the fastest and most efficient way to bring all the necessary issues to a resolution and is consistent with the importance of determining disciplinary matters in a timely way. An adjudicator has full and exclusive jurisdiction under the Act to decide all necessary questions of fact and law that arise at a public hearing, including constitutional challenges such as those raised here.
7. Police hold positions of substantial authority and as a result are held to a higher standard of behaviour, on and off duty. Delays in addressing alleged violations of these standards can erode public trust. In this case, ending the discipline proceeding and calling a public hearing is necessary to ensure that important allegations of misconduct and associated constitutional issues are resolved in a timely manner that preserves public confidence in the

administration of police discipline and provides needed legal clarity to municipal police officers across the province.

BACKGROUND

The Ordered Investigation

8. On December 17, 2021, the NPD informed the Office of the Police Complaint Commissioner (“OPCC”) that an NPD sergeant had advised it of the existence of an A Platoon “WhatsApp” group chat in which participants exchanged work-related communications as well as “pornographic images, internet memes and a host of other inappropriate material and comments.”
9. On February 3, 2022, the former Police Complaint Commissioner (“Former Commissioner”) ordered under s. 93 of the Act that the Vancouver Police Department (“VPD”) conduct an external investigation into whether members of the NPD had committed misconduct in relation to the Group Chat, which could potentially be defined as discreditable conduct contrary to s. 77(3)(h) of the Act.

Search Order and Amended Order for Investigation

10. Section 103(1) of the Act allows a court, acting on an application by an investigator under the Act, to issue a search order that authorizes the investigator to enter a place and exercise powers that can include removing a record or other thing.
11. On May 4, 2022, the VPD investigating officer (“Investigator”) obtained an Order to Enter and Search (“Search Order”) issued by a Judicial Justice of the BC Provincial Court pursuant to s. 103(1) of the Act. The Search Order authorized the Investigator to enter the personal cellular phone of one of the Members and search for and seize communications in the Group Chat. That Member had previously shown the Investigator the contents of the Group Chat on the Member’s personal smartphone.
12. On May 6, 2022, the Investigator provided the Member with a copy of the Search Order and successfully exported the contents of the Group Chat from the Member’s personal cellular phone.
13. On June 10, 2022, the Former Commissioner issued an amended order for external investigation to, among other things, identify the six Members as participants in the Group Chat.

Reassignments and Suspension

14. Section 110 of the Act allows a discipline authority to transfer, reassign, or suspend a member subject to investigation in certain circumstances. If the discipline authority suspends a member, the police board may decide it is in the public interest to require that a suspension be without pay.
15. By August of 2022, two of the Members had resigned from the NPD. On August 1, 2022, the discipline authority decided under s. 110 of the Act to reassign three of the remaining Members to non-operational duties, and to suspend the fourth. The Nelson Police Board determined that suspension would be without pay.
16. By 2025, one of the three reassigned Members had also resigned from the NPD. The three Members still with the NPD applied to lift or vary their s. 110 reassignments and suspension. On June 16, 2025, the discipline authority rejected their application, finding the measures would remain in place until the misconduct allegations had been determined on their merits. The three Members who resigned remain subject of this misconduct process.

Discipline Authority finds an Appearance of Misconduct

17. On February 9, 2023, the Investigator issued a final investigation report (“FIR”) with respect to the allegations against the Members. The FIR reviewed the contents of the Group Chat obtained pursuant to the Search Order and recommended substantiating allegations of misconduct against the Members.
18. On February 24, 2023, an external discipline authority from the VPD decided under s. 112 of the Act that each of the Members appeared to have committed discreditable conduct by actively participating in the Group Chat and sharing inappropriate material and comments. The discipline authority also found an appearance that five Members had neglected their duties to report the existence of the Group Chat, and one had neglected his duty as a supervisor to address the Group Chat and ensure a respectful workplace environment.
19. The discipline authority determined that if the allegations were proven at a discipline hearing, the range of discipline would be up to and including a reduction in rank (for five of the Members) or dismissal (for the sixth Member). The discipline authority directed that the allegations proceed to a discipline proceeding and for that proceeding to be convened in April of 2023.

The Discipline Proceeding is Adjourned

20. On April 11, 2023, a discipline proceeding was convened and adjourned. On June 5, 2023, the discipline authority set the discipline proceeding to be heard on its merits from February 5 to 9, 2024.
21. On November 21, 2023, a lawyer representing five of the Members (“Member Counsel”) advised during a case management discussion that her clients were considering filing a constitutional challenge relating to the Search Order.
22. On January 5, 2024, Member Counsel applied to adjourn the discipline proceeding set for February 5 to 9, 2024. She advised she had been instructed to file a petition in the BC Supreme Court seeking a declaration that s. 103 of the Act is of no force and effect, and an order quashing the Search Order, based on alleged violations of the Members’ rights under s. 8 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”) to be free from unreasonable search and seizure.
23. On January 30, 2024, the discipline authority granted the respondent members’ application and adjourned the discipline proceeding pending the outcome of the anticipated *Charter* challenge in the BC Supreme Court.
24. On July 17, 2024, the discipline authority advised the OPCC that the discipline proceeding had been scheduled to resume from November 12 to 15, 2024.
25. While this matter remained at a discipline proceeding, the OPCC expressed concerns to the Discipline Authority on a number of occasions respecting the timeliness of these proceedings and to address any legal challenges or questions swiftly.

The Charter Petition

26. On August 22, 2024 – roughly 27 months after the Search Order was issued and executed – Member Counsel filed a petition in the BC Supreme Court on behalf of five of the six Members (“*Charter* Petition”). The Attorney General of British Columbia is the sole respondent. The *Charter* Petition alleges that s. 103 of the Act does not provide sufficient safeguards to protect privacy rights and is therefore inconsistent with s. 8 of the *Charter* and of no force and effect. If the Court agrees but suspends its general declaration of invalidity, or reads s. 103 down to remedy the violation, the *Charter* Petition requests individual relief that would quash the Search Order.

Appointment of Retired Judge as Discipline Authority

27. On August 28, 2024, I exercised my authority under s. 135(1) of the Act and designated the Honourable Wallace T. Oppal, K.C., retired judge of the Court of Appeal for British Columbia, to act as a new discipline authority in this matter. The Notice of Appointment explained my view that this appointment was necessary in the public interest due to the legal issues raised by Member Counsel and associated procedural complexities and delays to date.

Ruling on Discipline Authority Jurisdiction

28. On October 23, 2024, Mr. Oppal granted the Members' request to adjourn the hearing dates set for November 12 to 15, 2024. He was not persuaded the discipline proceeding should be adjourned until the *Charter* Petition was completely resolved in the court system, as that could take years. However, he was prepared to vacate dates on the basis the discipline proceeding would be heard early in the new year.

29. The same five Members who had filed the *Charter* Petition then brought an application before Mr. Oppal seeking a ruling that discipline authorities do not have jurisdiction under the Act to determine the constitutional validity of provisions in the Act or grant remedies for *Charter* violations. In their written submissions dated March 17, 2025, these Members state that while discipline authorities cannot make such determinations at discipline proceedings, adjudicators can do so at public hearings arranged under the Act.

30. On March 18, 2024, Mr. Oppal heard oral arguments from Member Counsel regarding the application. No other party had standing to make submissions regarding the issues raised. At the end of the hearing, Mr. Oppal advised he was granting the application with written reasons to follow.

31. On June 19, 2025, Mr. Oppal released written reasons for his decision. He found that s. 154(1) of the Act gives adjudicators presiding over public hearings exclusive jurisdiction to decide all matters and questions of fact and law that arise, including constitutional questions. Noting the absence of a similar express provision for discipline authorities at discipline proceedings, Mr. Oppal found that he did not have jurisdiction as a discipline authority to decide the constitutional challenge.

32. Mr. Oppal's decision reviews practical reasons why it is more appropriate to have constitutional questions decided at public hearings than discipline proceedings. He notes that adjudicators are retired judges while discipline authorities are typically senior police

officers. He adds that public hearings can build a more comprehensive body of evidence and more closely resemble trials, while discipline proceedings are constrained to witnesses and submissions from only the respondent members. Finally, he notes that other potential interveners may obtain standing as participants at a public hearing, but not at a discipline proceeding.

33. Given his findings, I have determined that it is necessary to order a public hearing and to do so immediately rather than at the conclusion of the discipline proceeding.

A PUBLIC HEARING IS NECESSARY

34. Section 138(1) of the Act requires the Commissioner to arrange a public hearing or review on the record if the Commissioner considers a hearing or review to be necessary in the public interest, having regard for all relevant factors including those listed in s. 138(2) of the Act.

35. I have decided a public hearing is necessary in this case for the following reasons:

- a) The misconduct allegations raise serious issues that go to the heart of public trust in policing. Police officers are entrusted with substantial authorities to keep the peace and enforce the law, including powers to use appropriate force when necessary. Because of these responsibilities, police officers are held to higher standards of behaviour. If it comes to light that police officers have made sexist, racist, or other discriminatory or inappropriate comments, whether on or off duty, or in public or in conversation with other officers, their abilities to carry out their responsibilities in a fair and impartial manner may be called into question. Such conduct may be likely to bring a police department into disrepute in the opinion of a reasonable member of the public.

Similarly, a police officer who fails to report or take steps in their power to address such conduct may be neglecting their duty to prevent or combat discriminatory or unsafe conditions in the workplace, to the detriment of other officers. This too could undermine public confidence in the police. The seriousness of such issues weighs in favour of sending this matter to a public hearing where all the necessary legal arguments and practical and ethical implications can be fully explored.

- b) There is a pressing need to obtain clarity on these serious issues. Increasing attention is being paid across Canada and elsewhere to whether police or other professionals commit misconduct if they post or engage with discriminatory or otherwise inappropriate content in chat groups they consider to be private. Sending this matter

now to a public hearing will allow an adjudicator to provide important guidance on critical questions, including the extent to which police officers can expect to maintain privacy over such communications, and whether or in what circumstances participation in a closed group chat may be work-related or bring discredit to a department. The adjudicator's eventual decision in this case should help municipal police officers across British Columbia understand their obligations in this regard.

- c) A public hearing is also necessary to respect the BC legislature's intent to have allegations of police misconduct addressed in an expeditious and efficient manner. As of the date of this Notice of Public Hearing, it has been roughly 40 months since an investigation was ordered, 37 months since the Search Order was executed, 17 months since Member counsel indicated instructions to make a constitutional challenge, and 10 months since five of the Members filed the *Charter* Petition. Mr. Oppal has found he cannot decide important constitutional questions at the heart of the matter, and no dates are set for next steps regarding the *Charter* Petition.
- d) I agree that adjudicators have the power to determine constitutional issues at public hearings. In all the circumstances, ending the discipline proceeding now and calling a public hearing is necessary to ensure the serious misconduct allegations and associated constitutional issues can be fully and efficiently resolved in a single proceeding before an adjudicator.
- e) In making this decision, I am mindful that the NPD is a relatively small municipal police department. As discussed earlier, two Members have been reassigned to non-operational duties since August of 2022, one Member has been suspended without pay pending a resolution of these matters, and three Members have resigned. This has undoubtedly had a significant impact on fellow officers, the operations of the NPD, and the community of Nelson as a whole. In sending this matter to a public hearing, I aim to ensure the allegations of misconduct and related legal issues can be fairly resolved in the fastest way possible to restore operational clarity and preserve public confidence in the administration of police discipline.

THE PUBLIC HEARING

36. I made my decision to arrange a public hearing on June 19, 2025. This Notice records and communicates the reasons for that decision and the appointment of a retired judge to act as adjudicator.

37. Section 143(2) of the Act states that a public hearing is a new hearing concerning the conduct that was the subject of an investigation or complaint. Section 143(3) of the Act states that a public hearing is not limited to the evidence and issues that were before a discipline authority at a discipline proceeding.
38. In my view, the public hearing should consider the following allegations:
- a) That Sergeant Holt, Detective Constable Hannah, Constable Sutherland, and former Constables Anstey, Armstrong and Slomba, committed *Discreditable Conduct* pursuant to s. 77(3)(h) of the *Police Act* by participating in the Group Chat and/or sharing inappropriate material and comments.
 - b) That Sergeant Holt committed *Neglect of Duty* pursuant to s. 77(3)(m)(ii) of the *Police Act* by failing, as a supervisor, to attempt to correct the behaviour or reprimand his platoon members for their participation and content shared within the Group Chat.
 - c) That Detective Constable Hannah, Constable Sutherland, and former Constables Anstey, Armstrong and Slomba, committed *Neglect of Duty* pursuant to s. 77(3)(m)(ii) of the *Police Act* by failing to report the existence and contents of the Group Chat.
39. Pursuant to s. 143(4) of the Act, public hearing counsel will present to the adjudicator the case relative to each allegation of misconduct against each respondent officer. The OPCC will provide disclosure in due course to public hearing counsel, the respondent members or their agents or counsel, and Commission counsel.
40. Pursuant to s. 143(5) of the Act, public hearing counsel, the respondent members or their agents or legal counsel, and Commission counsel may:
- a) call any witness who has relevant evidence to give, regardless of whether the witness was interviewed during the original investigation or called at the discipline proceeding;
 - b) examine or cross-examine witnesses;
 - c) introduce into evidence any record or report concerning the matter; and
 - d) make oral or written submissions, or both, after the evidence has been called.

41. Pursuant to s. 144(1) of the Act, a person, other than public hearing counsel, the member and Commission counsel, may apply to be a participant at the public hearing by applying to the adjudicator in the manner and form the adjudicator requires.
42. Pursuant to s. 143(9) of the *Police Act*, the adjudicator presiding over the public hearing in this case must do the following:
- a) decide whether any misconduct has been proven;
 - b) if misconduct has been proven, determine the appropriate disciplinary or corrective measures to be taken in accordance with section 126 of the Act; and
 - c) recommend to the chief constable or the board of the Nelson Police Department any changes in policy or practice that the adjudicator considers advisable in respect of the matter.

THE DISCIPLINE PROCEEDING IS CANCELLED

43. When the Commissioner arranges a public hearing in respect of conduct that is the subject of an ongoing discipline proceeding, s. 123(3) of the Act requires the discipline authority to cancel the discipline proceeding.
44. As I have now arranged a public hearing, Mr. Oppal must cancel the discipline proceeding involving the Members.

APPOINTMENT OF RETIRED JUDGE

45. Section 142(1) of the Act requires the Commissioner to appoint an adjudicator for a public hearing. An appointment under s. 142(1) of the Act must be made pursuant to s. 177.2 of the Act.
46. Section 177.2 of the Act, in turn, requires the Commissioner to request the Associate Chief Justice of the Supreme Court of British Columbia to consult with retired judges of the Provincial Court, Supreme Court, and Court of Appeal and recommend retired judges who the Commissioner may include on a list of potential adjudicators. Appointments under the Act are to be made in accordance with published procedures established under s. 177.2(3).
47. I have published on the OPCC website the appointment procedures established under s. 177.2(3) of the Act (the "Appointment Procedures") and the list of retired judges who may be appointed for the purposes of, among other things, s. 142 of the Act.

48. In accordance with the Appointment Procedures, I have appointed the Honourable Brent Hoy, retired BC Provincial Court Judge, to preside as Adjudicator in these proceedings pursuant to ss. 142(1) and (2) of the Act. I have considered the factors set out in the Appointment Procedures, namely:

- (a) the provision under which the appointment is being made;
- (b) the current workloads of the various retired judges;
- (c) the complexity of the matter and any prior experience with the *Police Act*; and
- (d) any specific expertise or experience of a retired judge with respect to a particular issue or sensitivity associated with the matter.

49. Retired Judge Hoy has confirmed his availability to preside over this matter and reported no conflicts.

50. Dates for the public hearing have not yet been determined. As required by the Act, the public hearing will start on the earliest practicable date.

Inquiries with respect to this matter may be directed to the Office of the Police Complaint Commissioner:

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DATED at the City of Victoria, in the Province of British Columbia, this 26th day of June, 2025.



Prabhu Rajan
Police Complaint Commissioner