

PH.: 2025-01

OPCC File: 2021-20959

**IN THE MATTER OF**  
**THE POLICE ACT R.S.B.C. 1996 c. 367 AS AMENDED**  
**AND**  
**IN THE MATTER OF THE PUBLIC HEARING**  
**INTO THE CONDUCT OF**  
**SERGEANT NATE HOLT, DETECTIVE CONSTABLE SARAH HANNAH,**  
**CONSTABLE ADAM SUTHERLAND, AND FORMER CONSTABLES JASON**  
**ANSTEY, ROB ARMSTRONG, AND JARRET SLOMBA**  
**OF THE NELSON POLICE DEPARTMENT**

**Before: Adjudicator Brent G. Hoy**  
**Appointed Retired Judge**

**REASONS AND RULING ON THE APPLICATIONS FOR PARTICIPANT STATUS**

(Made by DONOVAN FISHER, the CHIEF CONSTABLE OF THE NELSON POLICE DEPARTMENT, and the NELSON POLICE BOARD, and the CANADIAN POLICE ASSOCIATION, and the BRITISH COLUMBIA POLICE ASSOCIATION)

Public Hearing Counsel:	Chris Massey
Commission Counsel:	Kate Phipps, Emma Ronsley
Counsel for Respondent Members: Sgt. Holt Det. Cst. Hannah Cst. Sutherland Former Cst. Anstey Former Cst. Armstrong	Christine Joseph
Former Member Cst. Slomba:	(Did not Appear on Application)
Counsel for the Attorney General of BC:	Steven Davis, Samrah Mian
Counsel for Chief Cst. Fisher	

and the Nelson Police Board: Steven Boorne  
Counsel for Canadian Police Assoc. and BC Police Assoc.: David Crossin KC, Kelly Twa  
Dates of Hearing: October 24, 2025  
Date of Decision: November 20, 2025

## **Introduction**

1. Three current members and three former members of the Nelson Police Department (“Nelson PD”) face allegations of Discreditable Conduct and Neglect of Duty. The allegations relate to alleged inappropriate contributions the officers made, both on and off duty, to a WhatsApp chat group for their Platoon.
2. The Chief Constable of the Nelson PD and the Nelson Police Board jointly apply to participate in this matter.
3. The Canadian Police Association (“CPA”) and the British Columbia Police Association (“BCPA”) also jointly apply to participate in this matter.

## **Background**

4. On December 17, 2021, the Nelson PD informed the Office of the Police Complaint Commissioner (“OPCC”) that they had learned of the existence of an A Platoon WhatsApp chat group in which participants exchanged work-related communications and inappropriate material and comments.
5. On February 2, 2022, the former Police Complaint Commissioner ordered that the Vancouver Police Department (“VPD”) conduct an external investigation into the allegations.
6. On May 4, 2022, the VPD investigating officer applied, pursuant to s. 103 of the *Police Act*, for, and was granted, a Search Order authorizing the investigator to

search the cell phone of one of the Nelson PD members and to seize communications in the WhatsApp chat.

7. On February 24, 2023, after reviewing the Final Investigation Report, the external discipline authority from the VPD decided, under s. 112 of the *Police Act*, that the Members appeared to have committed Discreditable Conduct and Neglect of Duty. The discipline authority directed that the allegations proceed to a discipline proceeding.
8. The discipline proceeding was convened in April 2023 and was initially scheduled to be heard on its merits in February 2024. In January 2024, the discipline proceeding was adjourned as the members indicated they intended to apply to the Supreme Court for a declaration that s. 103 of the *Police Act* is unconstitutional. Section 103 is the section that had been relied on by the investigating officer to obtain the Search Order authorizing the search of the member's cell phone and the contents of the WhatsApp chat.
9. In August 2024, the members filed a Petition in Supreme Court challenging the constitutionality of s. 103 of the *Police Act*. That matter has not been heard. Counsel for the members has advised that this Petition has now been placed in abeyance.
10. In August 2024, following the filing of the Petition, the Police Complaint Commissioner appointed the Honourable Wallace Oppal K.C., a retired judge, to act as a new discipline authority. The Notice appointing Mr. Oppal explained the Police Complaint Commissioner's view that the appointment was necessary in the public interest due to the legal issues raised by the members and associated procedural complexities and delays in the matter proceeding.
11. The members who had filed the Petition then brought an application before Mr. Oppal seeking a ruling that a discipline authority did not have jurisdiction under the

*Police Act* to determine the constitutional validity of a provision of the *Police Act* or grant a remedy for a *Charter* violation. In reasons released in June 2025, Mr. Oppal determined he did not have such jurisdiction and that s. 154 of the *Police Act* gives an adjudicator presiding over a public hearing exclusive jurisdiction to decide questions of law, including constitutional questions. In his reasons, Mr. Oppal reviewed some of the practical reasons why it might be more appropriate for a constitutional question to be decided at a public hearing. While adjudicators at public hearings are retired judges, discipline authorities are often senior police officers. Mr. Oppal observed that public hearings can build a more comprehensive body of evidence and more closely resemble trials. Mr. Oppal also noted that at a public hearing, potential intervenors can seek standing as participants, while this is not possible at a discipline proceeding.

12. In order to allow the serious allegations and constitutional issues to be efficiently resolved in a single proceeding, the Police Complaint Commissioner determined that it was in the public interest to direct that the matter immediately proceed to a public hearing, rather than await the conclusion of the discipline proceeding.
13. On June 26, 2025, the Police Complaint Commissioner, pursuant to s. 138(1) and (2.1) of the *Police Act*, issued a Notice of Public Hearing directing that the following allegations be considered:
  - (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.

14. On September 29, 2025, counsel for five of the members filed, in this proceeding, a Notice of Constitutional Question seeking a declaration that s. 103 of the *Police Act* violates s. 8 of the *Charter* and is of no force and effect. Members' counsel also served a Notice seeking exclusion of the contents of the WhatsApp chat, on the basis that their clients' s. 8 *Charter* rights to be free from unreasonable search and seizure had been violated.

15. Public hearing counsel has advised that he may advance the alternate position that if s. 103 of the *Police Act* is unconstitutional or could not authorize the search of the member's cell phone, s. 100 of the *Police Act* could authorize the search. Section 100 provides authority to an officer conducting a *Police Act* investigation to search, without a warrant or order, certain premises and items on police premises. In response to public hearing counsel indicating that he may rely on s. 100 as authority for the investigating officer's search of the cell phone, counsel for the members filed a Notice, in this proceeding, challenging the constitutionality of s. 100 of the *Police Act*.

16. By virtue of the *Constitutional Question Act*, the Attorney General of BC is a party to the constitutional challenges to ss. 100 and 103 and has indicated that it will participate in those constitutional applications.

## **Applications for Participant Status**

17. The Chief Constable of the Nelson PD (the "Chief") and the Nelson Police Board (the "Board") apply to participate broadly in this proceeding. They seek to receive

disclosure, examine and cross examine witnesses, call evidence, and make submissions on the following matters:

- (a) The application of the Supreme Court of Canada's decision in *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22 ("York Region District School Board") to this case and whether there is a reduced expectation of privacy in the police workplace;
- (b) Matters related to policy, training and practice within the Nelson PD, and any proposed recommendations; and
- (c) The appropriate disciplinary and corrective measures.

18. The CPA and BCPA seek standing to provide written and oral submissions on the following two issues:

- (1) The interpretation of ss. 100 and 103 of the *Police Act*, including whether s. 103 authorizes an order to "enter" a cellphone as a "place"; and
- (2) How the regulatory context of the *Police Act* informs, (i) a police officer's expectation of privacy, and (ii) whether a search of private communications authorized by s. 100 and/or 103 is reasonable.

## **Positions of the Applicants and Parties**

### Chief Constable and the Nelson Police Board

19. The Board points out that it has governance and oversight responsibilities for the Nelson PD and acts as the employer of the Chief Constable and the members of the Nelson PD. The Chief Constable has responsibility for the overall supervision and command of the Nelson PD. These applicants assert that they have interests that may be affected by my findings and any recommendations I may make, especially regarding any potential changes in policy, practice or training.

20. These applicants also assert that my findings may have an impact on the reputation of the Chief and the Board.

21. The Chief and Board seek to participate in the constitutional challenges to ss. 100 and 103, the substantive hearing into whether misconduct has been committed and the penalty phase, should this be necessary. They also reserve the right to later seek to participate in the s. 8 *Charter* challenge to the Search Order.
22. With respect to the constitutional challenges to ss. 100 and 103 of the *Police Act*, the Chief and Board seek standing to address the correct analytical framework of the s. 8 analysis within the employment/regulatory context and whether there is a diminished expectation of privacy in the police workplace.
23. The board asserts that, as the employer responsible for the police workplace at issue in this public hearing, it is uniquely qualified to address the question of whether there is or ought to be a diminished expectation of privacy within the police workplace and within the Nelson PD in particular.
24. The Chief and Board also point out that they will be responsible for implementing any changes that flow from my findings or recommendations.
25. The Chief and Board also seek to participate to be able to respond to anticipated evidence which may suggest that there was a permissive culture within the Nelson PD which allowed the conduct at issue to flourish, and that there was a failure by the Nelson PD to provide sufficient guidance and leadership.
26. The Chief submits that, as he has general supervision and control over the Nelson PD, he is ultimately responsible for training, policies, and internal procedures and as such has an interest in ensuring that these matters are fully and fairly canvassed during the hearing.
27. The Chief and Board also seek to participate in the portion of the hearing addressing discipline and corrective measures, should a finding of misconduct ultimately be made. They assert that they would be most qualified to assist me regarding what a reasonable penalty would be, from the perspective of the

employer, and are uniquely qualified to provide evidence and submissions on the suitability of the members continuing to occupy the office of police constable if they are found to have committed misconduct. The Chief and Board also seek to provide evidence and submissions on the feasibility of any prospective disciplinary action.

28. Finally, the Chief and Board seek a direction that they are entitled to receive complete disclosure at the outset, including the complete contents of the WhatsApp chat. They assert that they require this to be on a level playing field with other parties and to properly prepare to participate.

*The Canadian Police Association and the British Columbia Police Association*

29. The CPA is an organization that speaks for approximately 60,000 members of 160 police services across Canada. Its membership includes both sworn police personnel and civilian members.
30. The BCPA is an association of the unions and associations that represents the approximately 3,000 municipal police officers in BC below the rank of Inspector.
31. The CPA and BCPA seek limited participant status to provide written and oral submissions on the s. 8 *Charter* challenges to ss. 100 and 103 of the *Police Act*. Specifically, they seek to make submissions on the correct interpretation of these sections and the regulatory context from an officer's perspective, and whether a police officer subject to an investigation has an expectation of privacy in electronic communications. They do not seek to receive disclosure.

*The Police Complaint Commissioner*

32. The Police Complaint Commissioner does not object to either application for participant status. They point out that, in assessing whether, and the extent to which, an applicant's participation will further the conduct and contribute to the

fairness of the public hearing, an adjudicator should consider whether the applicant offers a distinct and useful perspective on an issue raised in the proceeding. They also caution that I should be mindful of duplication, which can impact on the efficiency of the hearing process.

33. On the issue of disclosure, the Police Complaint Commissioner submits that disclosure should only be ordered where it is necessary for the applicant's participation.

*Public Hearing Counsel*

34. Public hearing counsel adopts the position of the Police Complaint Commissioner on these applications.

*Respondent Members and Former Members (Holt, Hannah, Sutherland, Anstey and Armstrong)*

35. Five of the six respondent members were represented by a single counsel on this application and presented a united position.

36. With respect to the application of the CPA and BCPA, the respondent members take no position with respect to the request of these agencies to participate on the correct interpretation of ss. 100 and 103, and support their application to make submissions on an officer's reasonable expectation of privacy.

37. With respect to the application of the Chief and Board, the respondent members take the position that, while some level of participation is justified, the scope of participation sought is overly broad.

38. They oppose the application of the Chief and Board to lead evidence and make submissions on the correct analytical framework for examining the *Charter* analysis within the employment/regulatory framework, arguing that the Chief and Board have no interest or special expertise that would further the conduct of the hearing.
39. The respondent members acknowledge that participation of the Chief on the expectation of privacy in the police workplace and on training, policies, and procedures would further the conduct of the hearing.
40. The respondent members assert that it would not be appropriate to grant the Chief or Board standing on the issue of whether the officers committed misconduct. They say such participation is not contemplated in the *Police Act* to ensure the process is free from internal politics and pressures.
41. Should the issue of disciplinary and corrective measures need to be addressed, the respondent members take the position that the participation of the Chief and Board should be limited to standing to lead evidence and make submissions concerning the impact and feasibility of various disciplinary or corrective measures.
42. The respondent members oppose the application of the Chief and Board to receive full disclosure. They take the position that there is no need for them to receive disclosure prior to the substantive hearing. They assert that the disclosure contains material over which they have a privacy interest, and which will not be released into the public domain or to their employer if the constitutional challenge is successful. They submit that, as privacy interests are assessed on a normative basis and are content neutral, access to the communications in the WhatsApp chat is unnecessary for the Chief and Board to meaningfully participate in the constitutional challenge.
43. Counsel for the respondent members advised that she is working with public hearing counsel and commission counsel to draft an agreed statement of facts for the constitutional challenge, which will alleviate the need for any party to lead

evidence of the contents of any of the WhatsApp messages at the hearing into the constitutional validity of s. 103 of the *Police Act*.

#### Former Constable Jarrett Slomba

44. Former Constable Slomba did not participate in this application. I am told he was served with notice of this proceeding and, to date, has declined to participate. As he had the opportunity to be heard on this application and declined to participate, I did not have the benefit of his perspective.

#### **Legal Framework**

45. At a public hearing, public hearing counsel, commission counsel and the members who are subject to the proceeding automatically have standing to participate.

46. Section 144 of the *Police Act* permits an adjudicator to grant participant status to other persons. When considering an application for participant status, the adjudicator is required to consider the following factors:

- (a) whether, and to what extent, the person's interests may be affected by the findings of the adjudicator;
- (b) whether the person's participation would further the conduct of the public hearing;
- (c) whether the person's participation would contribute to the fairness of the public hearing.

47. Section 145 of the *Police Act* provides that, if participant status is granted, the adjudicator may make orders respecting the scope and manner of participation:

- (1) Subject to section 146 [rights of participants], an adjudicator of a public hearing may make orders respecting
  - (a) the manner and extent of a participant's participation,

- (b) the rights and responsibilities, if any, of a participant, and
- (c) any limits or conditions on a participant's participation.

(2) In making an order under subsection (1), the adjudicator may

- (a) make different orders for different participants or classes of participants, and
- (b) waive or modify one or more of the adjudicator's orders as necessary.

## **Discussion**

### *Application of the CPA and BCPA*

48. The CPA and BCPA apply for limited participant status. They seek to participate in the constitutional challenges to ss. 100 and 103 of the *Police Act*. The participation they seek is limited to making submissions on the interpretation of those sections and matters related to a police officer's expectation of privacy. They do not seek to receive disclosure.

49. As bodies who represent those subject to the regime at issue and analogous regimes, the CPA and BCPA bring a useful perspective which will further the conduct of this public hearing. It is also reasonable to presume that their members may be affected by my ruling on the correct interpretation of ss. 100 and 103 and regarding the nature of a police officer's expectation of privacy. I am satisfied that the limited participation they seek will not unduly lengthen the hearing or distract from its primary purpose.

50. I am prepared to grant the CPA and BCPA the standing they seek. Specifically, they may participate by making written and oral submissions on:

- (i) the interpretation of ss. 100 and 103 of the *Police Act*, including whether s. 103 authorises an order to "enter" a cellphone as a "place", and

(ii) how the regulatory context of the *Police Act* informs (a) a police officer's expectation of privacy, and (b) whether a search of private communications authorized by s. 100 and/or 103 is reasonable.

51. Unless I direct otherwise, counsel for the CPA and BCPA participate jointly and will make their submissions after counsel for the respondent members' counsel and will endeavour to not duplicate submissions made by other counsel.

*Application of the Chief Constable and Nelson Police Board*

*Standing on the Constitutional Challenges to ss. 100 and 103*

52. The Chief and Board first seek to participate in the constitutional challenges to ss. 100 and 103 of the *Police Act*. They seek to lead evidence and make submissions on the correct analytical framework for examining the s. 8 issues within the employment/regulatory context (including the applicability of York Region District School Board) and on whether there is a diminished expectation of privacy in the police workplace.

53. While I am not persuaded that the interests of the Chief or Board will be directly affected by my determination about whether s. 100 or 103 is constitutionally compliant, I am satisfied that the conduct of that portion of the hearing may benefit from the perspective of the employer and commander of the police force. While the perspective of police members more broadly will be advanced by the CPA and BCPA, there has not been a similar application for participant status from an organization representing police boards or chiefs of police more broadly.

54. I am also satisfied that the Chief and Board can offer a useful perspective and perhaps evidence regarding an officer's expectation of privacy in the workplace generally and specifically within the Nelson PD during relevant time.

*Participation in the Substantive Hearing and Regarding Recommendations*

55. The Chief and Board also seek to participate in the substantive hearing into whether a finding of misconduct is warranted. While I am not privy to the details of the underlying discipline proceedings, the materials filed on this application and the information contained in the Notice of Public Hearing suggest that the training, policies, and practices of the Nelson PD will be relevant and possibly subject to scrutiny.
56. Should this hearing proceed to a substantive hearing, I am persuaded that the Chief and Board may be affected by evidence and findings regarding the state and adequacy of their training, policies, and practices. The Chief and Board are also well placed to ensure that I have before me an accurate and complete picture of Nelson PD's training, policies, and practices, at the relevant time, to the extent they are relevant to matters at issue in this public hearing.
57. As Retired Judge Baird Ellen noted in *Re: Ludeman and Logan*, when considering an application by a Chief Constable to participate:

In order to determine whether an officer in a matter is relying on a reasonable interpretation of his training or of departmental policy and practice, it will be necessary to have a full and accurate picture of what that policy is, from the department's perspective. That evidence may or may not benefit the members, but will clearly assist in an objective assessment of their actions. (PH 2019-01 (March 12, 2020), para 27)
58. Section 143(9)(c) of the *Police Act* mandates that, at the conclusion of this hearing, I recommend to the Chief Constable of the Nelson PD or the Nelson Police Board, any changes in policy or practice that the I consider advisable.

59. Adjudicator Baird Ellen made the following observation in *Re: Ludeman and Logan*:

If there are potential issues of policy and practice such that recommendations under Section 143(9)(c) may arise, either because a department perceives that those issues are engaged or because they flow objectively from the allegations, my view is that more and earlier information relating to training and policy afforded to the public, in a public hearing, is clearly better. It is clearly in the public interest to have evidence pertaining to the standards expected of members of the particular department, when considered in light of the ultimate goal of upholding confidence in the administration of police discipline. As put by Adjudicator McKinnon, “Everyone benefits from full disclosure.” (PH 2019-01 (March 12, 2020), para 29)

60. As the bodies who will be the recipients of, and primarily responsible for implementing, any recommendations I make regarding policies or practices, the Chief and Board have an interest in those potential recommendations and the evidence which might inform them. They are also well placed to offer a useful perspective and possibly evidence relevant to potential recommendations.

61. The Chief and Board maintained in their submissions that they should be granted standing to address the ultimate issue at the substantive hearing, that is, what findings of misconduct should be made. I am not persuaded that it is appropriate for the Chief or Board to lead evidence or make submissions directly addressing the issue of whether a finding of misconduct should be made. By initially appointing an external discipline authority, and subsequently calling this public hearing, the Police Complaint Commissioner has determined that it is in the public interest that the determination of whether the members committed misconduct be made by an independent adjudicator. At a public hearing, the parties who have standing to directly address the issue of whether misconduct has been committed include public hearing counsel, commission counsel and counsel for the members. The Chief and Board are not parties as of right, but strangers to this proceeding, who can apply, as any other interested party, for standing pursuant to s. 144 of the *Police Act*. I am not

persuaded that the Chief's or Board's interests are sufficiently engaged by the issue of whether the officers committed misconduct to justify granting them standing to directly address this issue. Nor do I think granting them standing on this ultimate issue will further the conduct of the public hearing. As such, I am not persuaded it would be helpful or advisable to grant the Chief or Board standing to directly address this issue.

*Participation on Disciplinary and Corrective Measures*

62. Finally, the Chief and Board seek standing to participate in this phase of the public hearing concerning disciplinary and corrective measures. They seek to lead evidence and make submissions "regarding a reasonable penalty from the perspective of the employer" and "the suitability of the responding members continuing to occupy the office of police constable in Nelson".
63. The responding members submit that it is premature to decide whether the Chief and Board have standing to participate in the disciplinary and corrective measures portion of the hearing, as it is not known whether there will be a finding of misconduct. They submit that if the issue is decided now, the Chief and Board's standing should be limited to filing evidence and submissions concerning the impact and feasibility of various disciplinary measures.
64. Given that the matter was fully argued before me, and given that I have the power to modify a grant of standing, I see no reason to defer the issue of the Chief and Board's participation, which might then require a further application to address the matter in the future. The Chief and Board are well positioned to address the impact and feasibility of various disciplinary or corrective measures. It is in their interest, and possibly the interest of a member who is facing potential disciplinary or corrective measures, that I have the best evidence about impact and feasibility and the Chief and Board's position on these matters. I am not persuaded, however, that their grant of standing for this phase should be any broader than "impact and

feasibility". The matter what would be appropriate disciplinary and corrective measures (should such a determination be required) will be addressed by public hearing counsel, commission counsel and counsel for the respondent members. For the same reasons I did not grant the Chief and Board standing to directly participate on the ultimate issue of whether misconduct has been committed by the members, I am not persuaded that I should grant the Chief or Board standing to directly address the issue of what disciplinary or corrective measures are appropriate, beyond what they can offer on the impact and feasibility of any proposed or prospective disciplinary or corrective measures.

### *Disclosure*

65. I am not persuaded that the participation of the Chief and Board requires that they receive full disclosure at this juncture. As counsel for the responding members points out, the disclosure contains a significant amount of information over which her clients maintain a claim of privacy. If their constitutional challenge is successful, this information may never make its way into the public domain. The Chief and Board are not parties, but are strangers to the proceeding who have received a limited (though not narrow) and specific grant of standing. The Attorney General, public hearing counsel and commission counsel, as parties to the constitutional challenge, all have access to the disclosure and are well placed to determine what evidence should be placed before me at that stage, in the public interest. As I understand it, those parties and counsel for the respondent members intend to place the evidence about the contents of the WhatsApp chat they feel I need to consider before me in the form of an agreed statement of facts. If that record is sufficient for me to decide the matter, it should also be sufficient to allow the Chief and Board to meaningfully participate to the extent their grant of standing permits them to.

*Manner of Participation Throughout the Hearing*

66. While I am providing the Chief and Board a rather broad grant of standing to participate in multiple phases of this public hearing, it is important that their participation not unduly lengthen the proceeding or distract from its primary aim. Should the Chief or Board have relevant evidence, such as policies or training materials they feel should be placed before me, these should be provided, in advance, to the parties. Should the Chief or Board identify a witness who they feel has relevant evidence to give, they should identify the witness to the parties and provide a summary of their anticipated evidence. This will give public hearing counsel, who has primary responsibility for putting the evidentiary record before me, an opportunity to consider whether they wish to lead the evidence. If they do not do so, counsel for the Chief and Board may seek to do so.

67. Counsel for the Chief and Board will jointly participate and will lead evidence, cross examine witnesses and make submissions after public hearing counsel and commission counsel (but before counsel for the respondent members) and will endeavour to not duplicate evidence or submissions.

*Summary*

68. The Chief Constable of the Nelson PD and the Nelson Police Board are jointly granted standing to participate in this public hearing as follows:

- (1) Chief and Board are granted standing jointly and, unless I direct otherwise, shall participate through the same counsel or team of counsel;
- (2) On the constitutional challenges to ss. 100 and 103, the Chief and Board may lead evidence, cross examine witnesses and make submissions on the correct analytical framework for examining s. 8 issues within the employment/regulatory context (including the applicability of York Region District School Board), and on whether there is a diminished expectation of privacy in the police workplace;

- (3) During the substantive hearing, the Chief and Board may lead evidence, cross examine witnesses and make submissions regarding the training, policies and practices of the Nelson PD, to the extent they are relevant to matters at issue in this proceeding;
- (4) The Chief and Board may participate in the disciplinary and corrective measures portion of the hearing, should a finding of misconduct occur, by leading evidence, cross examining witnesses and making submissions about the impact and/or feasibility of any proposed or prospective disciplinary or corrective measures;
- (5) The Chief and Board may lead evidence, cross examine witnesses and make submissions regarding any proposed or prospective recommendation;
- (6) The Chief and Board are not entitled to receive disclosure at this stage, but are at liberty to apply to vary this direction should the matter proceed to a substantive hearing following the constitutional challenge;
- (7) The Chief and Board do not have standing to lead evidence or make submissions directly addressing whether a finding of misconduct should be made or what would be an appropriate disciplinary action or corrective measure;
- (8) The Chief and Board shall identify and provide copies to the parties of any document or record they seek to have placed before me and shall identify and provide a summary of the anticipated evidence of any witness they seek to have testify, in advance of tendering the evidence or calling the witness. If public hearing counsel does not seek to tender the evidence or call the witness, counsel for the Chief and Board may do so; and
- (9) Counsel for the Chief and Board will lead evidence, cross examine witnesses and make submissions after public hearing counsel and commission counsel (but before counsel for the respondent members) and will endeavour to not duplicate evidence or submissions.

69. I thank counsel for their thoughtful and thorough submissions on this application.

**Decision Delivered the 20<sup>th</sup> day of November, 2025.**

A handwritten signature in blue ink, appearing to read "Brent G. Hoy".

**ADJUDICATOR BRENT G. HOY**

**APPOINTED RETIRED JUDGE**