

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**

RULING ON THE APPLICATION FOR DISCLOSURE

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

Counsel for Chief Cst. Fisher
and Nelson Police Board:

Steven M. Boorne

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 Canadian Police Assoc.
and BC Police Assoc.:

David Crossin KC, Kelly Twa

Dates of Hearing:

December 17, 2025

Date of Decision:

January 7, 2026

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.
2. The Chief Constable of the Nelson PD (the “Chief”) and the Nelson Police Board (the “Board”), who were earlier granted standing to participate in this hearing, apply, on the basis of a change in circumstances, to have me reconsider my decision to deny their request for disclosure.

Background

3. During the *Police Act* investigation into the members’ conduct, the contents of the WhatsApp chat were obtained by an investigator by way of a Search Order obtained pursuant to s. 103 of the *Police Act*. Five of the subject members have given notice of their intention to challenge the constitutionality of s. 103 and the Search Order. They have also provided notice that they intend to challenge the constitutionality of s. 100 of the *Police Act* (which Public Hearing Counsel has indicated he may rely on if s. 103 is found to be unconstitutional). It is anticipated that these constitutional challenges will be the first phases of this Public Hearing.

4. Earlier in this proceeding, the Chief and Board sought and were granted standing to participate in the Public Hearing. With respect to the constitutional challenges to ss. 100 and 103 of the *Police Act*, at paragraph 68(2) of the Standing Ruling I granted the Chief and Board standing to “Lead evidence, cross examine witnesses and make submissions on the correct analytical framework for examining s. 8 issues within the employment/regulatory context ...and on whether there is a diminished expectation of privacy in the police workplace.” (*Re: Holt et al* PH 2025-01 November 20, 2025).
5. As part of their earlier application for standing, the Chief and Board sought an order that they be provided with complete disclosure. The five members who participated in that application opposed the Chief and Board receiving disclosure on the basis that the disclosure contains material, including the contents of the WhatsApp chat, over which they assert a privacy interest.
6. While I granted the Chief and Board standing to participate, I declined their application to receive disclosure at this stage of the proceeding. My reasons for doing so are set out in paragraph 65 of my earlier standing decision (*Re: Holt et al* PH-2025-01 November 20, 2025).

The Renewed and Narrowed Application of the Chief and Board

7. At the time of my earlier Participant Status decision, counsel for the parties had expressed an intention to address much, or all, of the evidence on the constitutional challenges by way of an agreed statement of fact. Counsel subsequently advised that they have been unable to reach agreement, and it is now anticipated that a number of witnesses will be called on the constitutional challenges. Given this development, the Chief and Board renew and also narrow their application to receive disclosure. They now seek an order that they receive all statements, relevant email correspondence and all interview transcripts of the of the six subject members, Cst. Daniel Van Huis, Sgt. Daniel Markevich and D/Chief Cst. Raj Saini.

8. The Chief and Board point out that their grant of participant status includes standing to cross-examine witnesses. They submit that, in order to meaningfully participate and potentially cross-examine the responding members and other witnesses on the issues on which they have been granted standing, they require access to at least some parts of the investigative file.

Position of the Respondent Members

9. The respondent members maintain their opposition to the Chief and Board receiving disclosure. They submit that not much has changed since I made my initial ruling denying disclosure. They maintain their claim of privacy and assert that it remains the case that the parties to the constitutional challenge are well placed to determine what evidence should be placed before me. They assert that, as the s. 8 analysis is content neutral, the Chief and Board do not need access to the specific WhatsApp chat messages.
10. The members raise a concern that, if the Board receives disclosure, it might use it for purposes not directly related to this Public Hearing, such as the reconsideration of whether Sgt. Holt's suspension should be with or without pay. On this basis, the members urge that if I make a disclosure order, any disclosure should go only to the Chief and not the Board.
11. Finally, the members assert that if I order disclosure, it should be tied to the Chief's grant of standing and what he needs to meaningfully participate within those parameters. The members acknowledge that, to the extent their statements contain assertions about their expectation of privacy and basis for that expectation, this may be useful to counsel for the Chief and Board, but they maintain that the specific contents of the WhatsApp chat messages are not necessary for the Chief and Board to meaningfully participate on the issues they have been granted standing on at the constitutional challenge phase. The members submit that if I am entertaining making a disclosure order, their privacy interests can best be balanced with the

meaningful participation of the Chief and Board by providing the Chief edited disclosure, limited to “only those portions of the interviews and statements that contain discussions concerning expectations of privacy”.

Discussion

12. I am sympathetic to the position of the Chief and Board. When I made my initial decision, it was on the understanding that I would be presented with and deciding the constitutional challenge primarily on the basis of an agreed statement of facts. I have granted the Chief and Board standing to participate in that phase of the hearing, including the ability to cross-examine witnesses. Access to prior representations by the members and possibly other witnesses about their expectation of privacy in the workplace and their reasons for that expectation of privacy would likely assist the Chief and Board to more meaningfully participate within their grant of standing.
13. It is important to note, however, that their grant of standing at this stage is limited to “the correct analytical framework for examining s. 8 issues within the employment/regulatory context...and on whether there is a diminished expectation of privacy in the police workplace”. The materials sought no doubt contain information which goes beyond these topics, including, I understand most significantly to the members, reference to the specific contents of the WhatsApp chat messages. The members maintain their assertion of a privacy interest over the contents of these messages and are challenging the *Police Act* section and Search Order that purported to authorize their seizure.
14. It remains the case that the Attorney General, public hearing counsels and commission counsel, all parties to the constitutional challenge, are all well placed to ensure I have the appropriate evidentiary record before me.

15. On balance I am persuaded that, in the unique circumstances of this case, the privacy interests of the members in the contents of the WhatsApp chat can best be balanced with the Chief and Board's ability to participate by ordering that edited copies of the statements and interview transcripts be provided to the Chief and Board. I was not provided enough information about "email correspondence" to conclude it would materially enhance the ability of the Chief and Board to participate.
16. I have concluded that the Chief and Board should be provided with copies of the written statements and transcript of the interviews obtained during the *Police Act* investigation of this matter from the six respondent members and Cst. Daniel Van Huis, Sgt. Daniel Markevich and D/Chief Cst. Raj Saini, but that those statements and transcripts should be edited to redact the specific contents of any WhatsApp chat message referenced therein.
17. Counsel for the members who opposed the application will prepare an electronic copy of the statements and transcripts, identifying those portions of the records that reference the specific contents of the WhatsApp messages. Counsel for the members will then provide the marked copies to commission counsel. If commission counsel agrees that the proposed redactions accord with my ruling, she may provide redacted copies of the records to counsel for the Chief and Board. If there are points of disagreement, they can be brought before me. Commission counsel should retain a copy of what is provided to counsel for the Chief and Board.
18. As to the concern that the Board might inappropriately use the disclosure for some other purpose, I am satisfied this concern can be managed by including, as part of my order, a limitation on the use of the disclosure.

Order

19. I direct that:

- (1) The Chief and Board are to be provided with copies of the written statements and transcript of the interviews obtained during the *Police Act* investigation of this matter from the six respondent members and Cst. Daniel Van Huis, Sgt. Daniel Markevich and D/Chief Cst. Raj Saini, which are edited to redact the specific contents of any WhatsApp chat message referenced therein;
- (2) The Chief and Board are provided these materials solely for use in preparing for and participating in this Public Hearing in accordance with their grant of standing; and
- (3) At the conclusion of this matter, the Chief and Board shall return or destroy all copies of the disclosure provided pursuant to this order.

20. I thank counsel for their thoughtful submissions.

Decision Delivered the 7th day of January, 2026.



ADJUDICATOR BRENT G. HOY

APPOINTED RETIRED JUDGE