

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 PARTICIPANT STATUS

(Made by The Chief Constable of the Vancouver Police Department)

Counsel for the Chief Constable of the Vancouver Police Department:	Naomi Krueger
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
Date of Hearing:	December 17, 2025
Date of Decision:	January 7, 2026

Introduction

1. The Chief Constable of the Vancouver Police Department (“VPD”) applied for participant status in the matter of the members of the Nelson Police Department (“Nelson PD”) who are facing allegations of discreditable conduct and neglect of duty arising from the use of inappropriate language in a WhatsApp chat group.
2. The role of the VPD was to conduct an external investigation into the allegations which was ordered by the former Police Complaint Commissioner (“PCC”).
3. During the investigation, Sgt. Hyde, who had been appointed as the investigating officer by Chief Palmer, applied for and was granted a Search Order pursuant to s. 103 of the *Police Act*. This Order authorized the search and seizure of the WhatsApp communications on a cell phone from one member of the Nelson PD.
4. This application is opposed by members’ counsel. Commission’s counsel also opposes except for an order as allowed in *Re: Ludeman and Logan PH 2019-01 (March 12, 2020)*. All other counsel either take no position or have been silent.

Background

5. Dates and other proceedings related to this matter have already been reviewed in the Participant Status Ruling made on November 20, 2025 and will not be repeated. What is relevant to this application relates to a Notice of Constitutional Question seeking a declaration that s. 103 of the *Police Act* violates s. 8 of the *Charter*. Members’ counsel says her clients s. 8 *Charter* Rights to be free from unreasonable search and seizure have been violated and seeks exclusion of the contents of the WhatsApp chat.
6. Public hearing counsel says that if s. 103 is unconstitutional then s. 100 of the *Police Act*, which authorizes a search without a warrant of certain premises and items on police premises, could instead authorize the search. The constitutionality s. 100 of this is also challenged by members’ counsel.

7. On November 20, 2025 counsel for the Chief of the Nelson PD and the Nelson Police Board (the “Board”) were given a rather broad grant of participant standing with varying degrees of involvement dependent on the phase of the public hearing. The standing of the Nelson Chief and Board to call witnesses, examine and cross examine and make submissions are addressed in detail in that prior ruling. Their participation on the constitutional challenges will include a review of the correct analytical framework for s. 8 issues within the employment/regulatory context and the question of whether there is a reduced expectation of privacy in the police workplace. Furthermore, as they have governance and oversight responsibilities over the members of the Nelson PD, their interests are intimately bound to any potential changes in policy, practise or training which might be recommended as a result of my duty to examine these considerations pursuant to s. 143(9)(c).
8. Counsel for the PCC did not object to the participation of the Nelson PD or the Board but she does in relation to the VPD’s application. Alternately she notes there is not at this time a clear link between the issues to be addressed and the interests of the VPD but those circumstances may change as the facts evolve and thus she recommends a “watching brief” status such as was ordered in *Re: Ludeman and Logan PH 2019-01 (March 12, 2020)*.

Legal Framework

9. At a public hearing, public hearing counsel, commission counsel and the members counsel automatically have standing to participate. Section 144 of the *Police Act* permits an adjudicator to grant participant status to other persons. By s.144(2) 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.
10. 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

- 11. On February 3, 2022, the VPD, was appointed by the former PCC pursuant to s. 93 of the *Police Act* to conduct an external investigation into whether the members of the Nelson PD had committed misconduct in relation to a WhatsApp chat. Chief Palmer of the VPD appointed Sgt. Hyde as the investigating officer.
- 12. This was a source of some discussion between counsel in determining the role and relational status of the investigator to VPD as opposed to PCC. From the applicant's perspective the utilization of a particular police agency may be a source of performance responsibility reflective of the police agency due to the appointment process and resultant investigative chain, its delegation and acceptance of authority. In her submission counsel for the VPD points out that pursuant s. 34(1) of the *Police Act* the Chief Constable has general supervision and command over the department. This, as I understand the submission, may in its turn be a source of damage to the reputation of the VPD if aspects of Sgt. Hyde's investigation are called into question or criticized.
- 13. On the other hand, as pointed out by member's counsel, the investigator is no more than a person authorized to investigate. By Division 3 of the *Police Act*, an investigator appointed under the legislation is not acting as an extension of their particular police agency but as an investigator pursuant to the *Act* who had been tasked by the PCC to carry out the purposes and objectives of the legislation.
- 14. Guidance on this can be found by examining other provisions of the legislation. By s. 177(1), the PCC has the responsibility to oversee and monitor complaints as well as their investigations. Section 177(4)(b.4) also speaks of the PCC's general

responsibilities to oversee and monitor investigations, establish guidelines and procedures to be followed by members and municipal police departments on administrative and procedural matters associated with investigations.

15. Furthermore, s. 97 of the *Act* establishes a statutory scheme for the PCC to monitor and direct investigations being conducted by appointed investigators. This section empowers the PCC to require an investigator to provide it with progress reports and any information or record related to the investigation. Sections 97(1)(c) and (d) gives the PCC the ability to provide advice on further investigative steps or direct that further investigative steps be taken.
16. The statutory structure imposes an obligation on an investigator with a police agency to investigate, with the PCC providing guidance, procedure and possible directives of the investigative steps. While conducting a *Police Act* investigation, the investigator's association with any particular police agency is secondary to their statutory duty as overseen by the PCC.
17. While s. 34(1) of the *Police Act* establishes that the Chief Constable has general supervision and command of the department, this stipulation would be supplanted to the degree necessary to allow the PCC to engage their mandate of directing and overseeing investigations.

Test for Participant Status – First Branch

18. Pursuant to section 144(2)(a) I must consider:

whether and to what extent, the person's interests may be affected by the findings of the adjudicator;

Applicant's Submissions

19. In submissions, the interests which the VPD says are affected are summarized as follows:

- (i) While acknowledging the limitations on the Chief Constable to direct and guide the investigative steps, with respect to the constitutional issues to be decided in relation to the Search Order, the Chief of the VPD says he may be affected by its results and thus has an interest in the outcome of the proceedings.
- (ii) Particularizing that interest, given the constitutional issues raised there is a real possibility of an impact on VPD's reputation as an investigating agency.
- (iii) As well that interest includes a need to ensure that the role of the VPD is properly contextualized in its capacity as an investigating agency pursuant to the *Police Act*.
- (iv) Furthermore, that interest is to ensure that the constitutionality of the Search Order is determined within the civil law context of the *Police Act*.
- (v) And to make certain that any findings upon the constitutional issues do not inadvertently, directly or indirectly imply the VPD acted with disregard for the NPD's member's constitutional rights.

Members' Submissions

20. The members oppose the application on the basis that it is unclear how the constitutionality of s.100 or 103 of the *Police Act* would have any impact on the VPD's reputation.

21. Counsel for the members also points out that the VPD was not acting as an "investigation agency" but is simply a municipal police department who employs the statutorily appointed investigative officer.

Analysis

22. I accept members' counsel's submissions on the first test in opposition to this Application.

23. I fail to see a connection between the Chief Constable concerns for the reputation of the VPD and the constitutional questions at issue.

24. I find the Chief's participation is not necessary to ensure that the role of the VPD be properly contextualized as an investigating agency. This is plainly evident from the

legislation, some of which I have reviewed in the preceding paragraphs of this ruling. It is a secondment of an officer for the purposes of an investigation with the oversight and guidance of the PCC. Furthermore, as Public Hearing Counsel notes, part of her role and that of Commission Counsel is to ensure the proper legislative framework is presented.

25. As for the point by VPD that their participation will be necessary to ensure that the constitutional question is kept within the civil law context, this is without doubt a central issue all participants will have an interest in determining.
26. Of the assertion that the VPD has somehow acted without due regard for the affected member's constitutional rights I return to my earlier comment that it is not the VPD *per se* who conducted the investigation but rather an investigator employed by the VPD who was statutorily mandated into that role by function of the *Police Act*.

Test for Participant Status - Second and Third Branches

27. Sections 144(2)(b) and (c) require that I consider:
 - (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.

Applicant Submissions

28. This is a summary of the Applicant's submissions on the second and third test. They are, in many respects, a repeat of the points made in relation to the first branch.
 - (i). Given public hearings are open to the public, there is a need to ensure the evidence and arguments regarding the constitutional questions and VPD's role as the investigating agency are fully and accurately canvassed.
 - (ii). Furthermore, there is a need to understand the standards and procedures followed by VPD in a criminal versus civil investigation and to thus ensure the public has confidence in the VPD's execution of their duties and protection of the public as appointed pursuant to the *Police Act*.
 - (iii). Allowing the Chief Constable participant status will contribute to the conduct and overall fairness of the hearing as one will be more fully informed on matters directly relating to VPD's interests.

Members' Submissions

29. Members' counsel submits that the VPD brings no valid interest or unique expertise nor would their participation further the conduct of or enhance the fairness of the Public Hearing. All appropriate evidence and issues can be adequately addressed by the parties and other participants who have already been granted participant status.

Analysis

30. In this application I have considered *Re: Lobel and Viet Hoang (s.144 Application) PH 2018-02 (July 12, 2018)*. This ruling involved a VPD member's alleged misconduct related to investigative detention and whether he could subsequently search for identification. The issue to be addressed was whether or not training had been provided such that it gave a lawful excuse for the member's conduct. The investigator was also a member of VPD. In this decision, there was a clear connection between the issue of the alleged misconduct and the "nature and quality" of the training given to the member. This engaged VPD's interests as it struck at the one possible justification for the conduct - that is whether or not training for the member was adequate. Participant status was allowed noting this would contribute to the hearing's overall fairness.

31. Also referred to is *Re: Ludeman and Logan (s. 144 Application) PH 2019-01 (March 12, 2020)*. The question to be determined was similar to that in the preceding decision. The issue was the sufficiency of the training, policy and practise provided by VPD to the members in relation to entering premises and the use of force. The submission made was that as the adjudicator was required to make recommendations pursuant to s. 143(9)(c) as to policy or practise and as the Chief Constable has general supervision and control over VPD by s. 34(1), any adverse findings may create vicarious civil liability on the part of the Chief Constable or the Vancouver Police Board. Furthermore, any reasonable recommendations to be made under s. 143(9)(c) would require complete and accurate evidence of current training, policy and practice and the need to thus potentially call evidence. As well, the public interest required VPD to defend its reputation.

32. Adjudicator Baird Ellan noted that in matters of abuse of authority the question of intent is addressed from the perspective of an officer's training with expert evidence giving possible guidance on that assessment. Thus, to determine whether the member reasonably relied on his training, department policy and practise, may require evidence of what that might entail from the department's perspective. The Adjudicator further agreed that meeting the

requirements of s. 143(9)(c), issues of training and policy may be relevant. At paragraph 20 she disagreed with the watching brief proposal with these words:

“It is my view that the suggestion of a watching brief as opposed to a right of participation is a distinction without a difference, and that to have Counsel for the Chief Constable present as a participant from the outset would be, in the circumstances of this case, less disruptive than to have him relegated to a watching brief with the need to renew his application at some later stage in the proceedings.”

33. While granting participant status, its extent was to be determined during the course of the hearing. Furthermore, she confined her order to the facts of the case presented. As in *Re: Lobel and Viet Hoang* (supra), the subject officers were VPD members and the adequacy of the VPD’s policies, practices and training was expected to be a central issue.
34. In the matter at hand, the Chief of the VPD seeks standing to participate in the phases of this hearing respecting the constitutionality of the *Police Act* provisions and the Search Order. The Chief grounds his application, not in an assertion that the adequacy of the VPD’s policies, practices and training will be scrutinized as part of the examination of the subject officer’s conduct, but on the basis that the officer appointed to investigate the conduct is a VPD member.
35. It is a matter of law whether there is a breach based upon the facts presented. How the Search Order was obtained and executed is inherently part of the discussion of its lawfulness as one reviews the legislation’s constitutionality. Furthermore, it is noteworthy to repeat that the legislative scheme permits secondment of a VPD officer with oversight and guidance by the PCC for the purposes of investigations.
36. In this analysis, it is also useful to remember that a Search Order is an investigative tool with authority for its issuance given by the *Police Act*. This is quite distinct from that referred to in *Re: Lobel and Viet Hoang* or *Re: Ludeman and Logan* (supra) for in those decisions the question to be addressed was whether there might be a lawful excuse to the misconduct alleged given the training, policy and practise which had been afforded to the member.
37. In the case at bar, the Search Order’s connection to the alleged misconduct was only a step towards establishing evidence of the misconduct being investigated. It did not touch upon any questions affecting the subject members’ training, policy or practise. It was an investigative tool which is subject to constitutional and *Charter* questions as to its lawful issuance.
38. I accept the position advanced by counsel for the members that the Chief’s proposed participation would not meaningfully advance the conduct of this Public Hearing especially given the diversity of interests of each of the other participants. In my view allowing the

VPD Chief participant status would not further the constitutional analysis or truth finding process of this Public Hearing or its fairness as it relates to the misconduct allegations but rather may become a distraction focussing upon other collateral matters. Furthermore, allowing participant status even as a “watching brief” does not in my view advance the conduct of the Public Hearing or contribute to its fairness.

Conclusion

39. This application is dismissed. I thank counsel for their helpful submissions.

Decision Delivered the 7th day of January, 2026.



ADJUDICATOR BRENT G. HOY

APPOINTED RETIRED JUDGE

