

PH: 2024-02
OPCC File: 2015-11014

**IN THE MATTER OF
THE POLICE ACT R.S.B.C. 1996 c. 367
AND IN THE MATTER OF THE PUBLIC HEARING
INTO THE CONDUCT OF
CONSTABLES KORY FOLKESTAD, ERIC BIRZNECK, DEREK CAIN, JOSH WONG,
BEAU SPENCER, HARDEEP SAHOTA, AND NICK THOMPSON
OF THE VANCOUVER POLICE DEPARTMENT**

Before: The Honourable Elizabeth Arnold-Bailey, Adjudicator

**RULING ON THE APPLICATION OF PUBLIC HEARING COUNSEL
TO DETERMINE THE PERMISSIBLE USES OF INQUEST TRANSCRIPT
AT THE PUBLIC HEARING IN RELATION TO ALLEGED POLICE MISCONDUCT**

Public Hearing Counsel, Applicant:	Bradley Hickford
Counsel for the BC Police Complaint Commissioner:	Christopher Considine KC
Counsel for Cst. Birzneck, in Response:	Greg Cavouras/Mike Shirreff
Counsel for Cst. Folkestad, in Response:	Christine M. Joseph
Counsel for the Chief Constable of the VPD:	David T. McKnight
Adjudicator's Counsel:	Greg DelBigio KC
Date of Hearing:	November 28, 2025
Place of Hearing:	Vancouver, BC
Date of Decision:	April 8, 2026

Introduction

1. This ruling arises from the Application of Public Hearing Counsel [PHC], Mr. Hickford, as to what uses may be made at this Public Hearing of transcript from the Inquest held between April 17 and May 1, 2023, in relation to the death of Myles Gray.
2. On August 13, 2015, Mr. Gray died at the scene of an altercation with the seven Vancouver Police Department [VPD] members named above [the Members], having sustained many external and internal injuries delivered by the Members.
3. This is the fourth ruling on procedural matters to be decided in relation to the Public Hearing that commenced on January 19, 2026, was adjourned after several days to February 24, 2026, having recommenced with Mr. Martland KC as Public Hearing Counsel. Recently, the hearing has continued weekdays from February 24 to March 13, 2026. The matter adjourned on March 13th to new dates commencing on April 29, 2026, at which time PHC is expected to close his case, and the case on behalf of the Members will commence.
4. At the hearing the Members face allegations of misconduct under the *Police Act*, [RSBC 1996] c. 367, specifically pursuant to s. 77(3)(a)(ii)(A) - the intentional or reckless use of unnecessary force on a person, and s. 77(3)(m)(ii) – the neglect of duty by failing to make and preserve contemporaneous notes and/or reports or statements as required.
5. Counsel are in agreement that the following uses of a transcript of a witness's testimony at the Myles Gray Inquest are permitted:
 - i. Any witness who testified at the Inquest may refresh their memory from the Inquest transcript prior to testifying at the Public Hearing.

- ii. Any witness testifying at the Public Hearing may refresh their memory during their testimony by referencing or being referred to the evidence they gave at the Inquest.
 - iii. The testimony a witness gave at the Inquest may be admitted for its truth if the witness cannot be located to testify at the Public Hearing, provided it accords generally with the criteria of the principled exception to the rule against hearsay, and the adjudicator finds that it accords with the factors to be considered under s. 143(6)(b) of the *Act*.
 - iv. The Inquest transcripts of evidence from the missing witnesses who would otherwise be required to testify at the Public Hearing are to be assessed on a case-by-case basis.
6. However, there remains disagreement as to whether a witness at the Public Hearing who testified at the Inquest, may be cross-examined using a prior inconsistent statement contained in their Inquest testimony. This issue may have particular significance when Members testify at the Public Hearing as I understand that all seven Members were summoned by the coroner to testify at the Inquest and did so.
7. Whether a witness's prior testimony at an inquest held under the *Coroners Act*, [SBC 2007] c. 15, may be used, if at all, at a subsequent public hearing under the *Police Act* where the witness gives evidence inconsistent with their prior inquest testimony, is a difficult issue to resolve. This is because the *Coroners Act* contains a statutory prohibition that prevents a witness's inquest testimony from being used "against" the witness in a subsequent proceeding, in this case a public hearing under the *Police Act*. Thus, the statutory provision barring use of a witness's testimony at an inquest against them in a subsequent proceeding has the potential to be circumvented at a public hearing under the *Police Act*, where the adjudicator has a wide discretion to admit evidence whether or not it would be admissible in court.

Public Hearing Counsel's Application

8. PHC submitted it is necessary that the Adjudicator determine the proper interpretation of s. 35(3) of the *Coroners Act* in view of s. 143(6)(a) of the *Police Act*. In particular, he submits whereas s. 143(6)(a) of the *Police Act* provides the Adjudicator with the discretion to accept evidence that would not normally be admissible in court, s. 35(3) of the *Coroners Act* bars the use of witness transcripts of testimony at inquests from being used against the witness in a subsequent "trial" or "proceeding".
9. PHC referred to a recent civil case, *Din v. British Columbia (Attorney General)*, 2025 BCSC 879 [*Din*], which was the only decision available dealing with s. 35 of the *Coroners Act*.
10. In *Din* the plaintiffs alleged perjury against a police officer and other defendants. Justice Elwood found that perjury is a crime under the *Criminal Code* and not a cause of action in a civil proceeding. The justice interpreted s. 35(3) (*Din* at para. 88) to prevent the plaintiffs from using any answers provided by any of the witnesses at the inquest to prove any of the allegations against the defendants. At para. 89 the justice held that as "unjust or as unfair to the plaintiffs" as this may seem, the purpose of s. 35(3) is to "promote full and frank testimony by witnesses who appear at Coroners inquests" and the barrier it creates "serves an important function in the administration of justice", one "created by the Legislature that cannot be ignored by the Court."
11. PHC submitted that he was not asking me to ignore the barrier to further use of a witness's inquest testimony created by s. 35(3) of the *Coroner's Act*. Rather, he submitted the *Din* case is clearly distinguishable from an interpretation of s. 35(3) in light of s. 143(6)(a) of the *Police Act*, which is also a provision of validly enacted provincial legislation. It is his position that the wording of s. 143(6)(a) of the *Police Act* with "its general exclusion from the normal rules of evidence" supports a finding that s. 35(3) of the *Coroner's Act* does not apply to evidence at the Public Hearing.

12. PHC also submitted that this Public Hearing under the *Police Act* is not a “trial”, nor is it a “proceeding” as defined by the *Supreme Court Act*. Next, he submitted that by virtue of s. 39 of the *Interpretation Act*, which states that the definition section of the *Supreme Court Act* “so far as the terms defined can be applied, extends to all enactments relating to legal proceedings”, also excludes inquests.
13. PHC submitted this was the case despite the definition of “legal proceeding” contained in s. 65(1) of the *Coroners Act*, which “includes an inquiry, an inquest, an arbitration, a disciplinary proceeding...” Rather, the effect of s. 65(1), which includes an inquest and a disciplinary proceeding as legal proceedings, is limited in s. 65(1) by the words “In this section”. Moreover, he submitted that the definition of “proceeding” as provided by the *Supreme Court Act* takes priority over the *Coroners Act* by virtue of s. 39 of the *Interpretation Act*.
14. Therefore, Mr. Hickford submitted that I should find “that the *Coroners Act* is an enactment relating to legal proceedings, and that a public hearing under the *Police Act* is not a “trial” or “proceeding” under the above definition. As such, the exclusion of evidence given at the Inquest by virtue of s. 35(3) – that it “must not be used or admitted into evidence against the witness in any trial or proceeding” – does not apply to public hearings under the *Police Act*.
15. It is not necessary to canvas Mr. Hickford’s further submissions given the agreement between counsel on other uses of the Inquest transcript.

Submissions of Counsel for the Police Complaint Commissioner

16. In his written submission on the proposed uses of transcripts of witness testimony given at the Coroner’s Inquest into the death of Myles Gray, Counsel for the PCC, Mr. Considine KC, indicated that he agreed with the law as set out by Mr. Hickford, which he then summarized in point form as follows:

- a. The Adjudicator has discretion under section 143(6) of the *Police Act*, to accept information at a Public Hearing, whether or not such information would be admissible in court.
 - b. Section 35 of the *Coroners Act* prohibits the use of witness transcripts as “evidence against a witness” in a subsequent “trial” or other “proceeding.”
 - c. Use of the Transcripts in a fashion other than placing [them] in evidence against a witness may not run afoul of the *Coroners Act*.
 - d. A *Police Act* Public Hearing, after considering the *Interpretation Act* and available definitions in *Coroners Act* and the *Supreme Court Act*, may not be considered a “trial” or other “proceeding.”
 - e. If the transcripts are potentially admissible at the Public Hearing, then the appropriate test to apply is whether they are “sufficiently relevant, necessary, and appropriate.” [OPCC File 2012-8138 at para 34]
17. Counsel for the PCC further submitted it is open to the Adjudicator to find that the prohibition in s. 35 of the *Coroners Act* does not apply to this Public Hearing and, in any event, the broad discretion granted to the Adjudicator by s. 143(6) of the *Police Act* may permit the admission and use of transcripts of testimony given at the Inquest to be used at the Public Hearing if the Adjudicator determines them to be sufficiently necessary, relevant, and appropriate. The transcripts contain direct evidence from witnesses, given under oath and formally transcribed, about the circumstances of the death of Mr. Gray. As such, they are presumptively reliable.
18. Further submissions on behalf of the PCC related to the agreed-upon uses set out earlier in this Ruling.

Submissions in Response on behalf of Constable Folkestad and other Members

19. In her excellent submissions on behalf of Cst. Folkestad, Ms. Joseph, framed the issues that may arise regarding the various uses of transcript from the Inquest at the Public Hearing. Those submissions were clear and thoughtful, and of assistance.

20. I am going to paraphrase and summarize certain submissions made by Ms. Joseph in point form:

- Efforts to receive an indication of PHC's proposed uses for Inquest evidence, including testimony of the Members at the Inquest, were unsuccessful.
- In the absence of clarification that no use of Inquest evidence given by the Members would be made by PHC, Cst. Folkestad and the other Members are strongly opposed to any such use.
- Cst. Folkestad adopts the submissions made on behalf of Cst. Birzneck and the other Members that a public hearing is undoubtedly a "proceeding", which makes s. 35(3) of the *Coroners Act* applicable.
- Section 35(3) operates as an absolute prohibition on the use of the Members' Inquest testimony in this Public Hearing, its only exception being a prosecution for perjury, which is inapplicable.
- The language of s. 35(3) is mandatory insofar as it uses the words "must not be used" in relation to any answers provided by a witness before a coroner.
- Given that s. 3(2)(a) of the *Coroners Act* presumptively requires an inquest to be held when an individual dies while in the custody of a peace officer, police officers are often compelled to give evidence at inquests. That being the case, it is critically important that they be afforded the full legal protection of s. 35.
- The comments of Justice Elwood in *Din* (at para. 89) are applicable in this instance, namely that s. 35 of the *Coroners Act* promotes "full and frank testimony" by the witnesses who appear at an inquest, and "[t]he barrier that it creates against the use of any of the testimony ... serves an important function in the administration of justice." Furthermore, "[i]t is a law created by the Legislature that cannot be ignored by the Court."
- The legal prohibitions on the use of compelled testimony are rooted in the constitutional right against self-incrimination, and what is described as a *quid pro quo* between the individual and the state: *R. v. Noel*, 2002 SCC

67 at paras. 21-24; *Securities Commission v. Branch*, [1995] 2 SCR 3, at para. 35.

- Given that Cst. Folkestad and the other Members were compelled to testify at the Inquest into Myles Gray’s death by virtue of s. 32 of the *Coroners Act*, and s. 35(3) provides the vital safeguard of use “immunity” recognized in *Noel* and *Branch* (cited above), s. 35 must be given a “robust” interpretation.
- The decision of *Diaz and Hughes*, OPCC 2012-8138, is distinguishable on its facts because a) the evidence at issue was voluntary evidence, and b) provided in an earlier stage of the same *Police Act* process, the admission of which was specifically contemplated by virtue of s. 131(1)(a) of the *Police Act*.
- While s. 143(6) of the *Police Act* allows the adjudicator to “receive and accept information that the adjudicator considers relevant, necessary and appropriate, whether or not the information would be admissible in any court”, it is submitted on behalf of Cst. Folkestad and the other Members that an adjudicator’s discretion to accept “relevant, necessary and appropriate” does not rise to the level of ignoring a fundamental legal protection.
- Furthermore, it is submitted that the discretionary authority contained in s. 143 cannot override the constitutional protection provided by s. 35 of the *Coroners Act*.

Submissions in Response on behalf of Constable Birzneck and other Members

21. Counsel for Constable Birzneck, Mr. Shirreff and Mr. Cavouras, agree with Constable Folkestad’s submissions, but add the following:

- The protection of section 35 of the *Coroners Act* is broad and is not limited to merely prohibiting the Inquest transcripts from being placed into evidence at the Public Hearing.
- The Public Hearing convened in this matter, contrary to PHC’s submission, is a “proceeding” and therefore engages s. 35 of the *Coroners Act*. There are a

- number of sound reasons for this. The *Coroners Act* contains frequent references to “proceeding” and proceedings”: “proceedings of an inquest” s. 27(2), a “criminal proceeding” s. 27(2)(b), a “civil proceeding” s. 35(2)(b), an “other proceeding” s. 35(3), an undefined proceeding “any proceeding” s. 61(a)/(b), and a “legal proceeding”.
- Section 65 of the *Coroners Act* [which I note comes under the heading ‘Protection of Information and Legal Records’] does not limit what may constitute a “legal proceeding” and states:

65 (1) In this section, "legal proceeding" includes an inquiry, an inquest, an arbitration, a disciplinary proceeding, and a criminal or civil proceeding in which evidence is or may be given, and includes a proceeding before a tribunal, board or commission, but does not include a review under Part 4 [*Reviews and Investigations of Critical Injuries and Deaths*] of the *Representative for Children and Youth Act*. [Emphasis added]
 - Given the numerous references to different types of proceedings in the *Coroners Act*, and specifically the use of the phrase “any trial or other proceedings” in s. 35(3), it is clear that the Legislature intended for the prohibition to apply to a range of different proceedings, and it is unreasonable to suggest that it does not apply to a public hearing under the *Police Act*.
 - PHC’s reference to the definition of “proceeding” in the *Supreme Court Act* is clearly directed at proceedings contemplated under that *Act*, not all conceivable legal proceedings in British Columbia.
 - Nor does PHC’s reference to s. 39 of the *Interpretation Act* assist in his effort to narrow the ambit of s. 35(3) of the *Coroners Act*. Section 39 states, “The definitions section of the *Supreme Court Act*, so far as the terms defined can be applied, extends to all enactments relating to legal proceedings.” The reference to “so far as the terms defined can be applied” indicates that the Legislature was careful to limit the applications of the definitions from the *Supreme Court Act*, calling for consideration of the other enactment.
 - Given that s. 1 of the *Coroners Act* defines an “inquest” as a “proceeding under Part 4 before a coroner, with a jury to determine the particulars of a

deceased person and the cause of that person's death", if a "proceeding" under the *Coroners Act* only included the terms used in the *Supreme Court Act*, an inquest would not constitute a proceeding. This would make the *Coroners Act* self-contradictory, which is an undeniably illogical and untenable interpretive result.

- In addition, by using the words "any trial or other proceedings" in s. 35(3) of the *Coroners Act*, the Legislature deliberately chose very broad language in framing this prohibition, which points away from any reliance on the *Supreme Court Act* definition of the word "proceedings".

The Relevant Statutory Provisions

22. To rule upon this application, I must consider s. 35 of the *Coroners Act*, in particular s. 35(3) in relation to s. 143(6)(a) of the *Police Act*.

23. Section 35 of the *Coroners Act* states:

- (1) While giving evidence at an inquest, a witness may receive advice from counsel.
- (2) A witness is considered to have objected to answering, but still must answer, any question that may
 - (a) Incriminate the witness in a criminal proceeding, or
 - (b) Establish the witness's liability in a civil proceeding.
- (3) Any answer provided by a witness before a coroner must not be used or admitted into evidence **against** the witness in any trial or proceeding, other than a prosecution for perjury in respect of the answer provided. [Emphasis added]

24. Section 143(6) of the *Police Act* states:

The Adjudicator may

- (a) Receive and accept information that the Adjudicator considers relevant, necessary and appropriate, whether or not the information would be admissible in any court, and

(b) Without limiting section 145, exclude anything unduly repetitious. [Emphasis added]

Analysis and Conclusions

25. On the one hand, few would disagree that it is very much in the public interest for witnesses compelled to testify at an inquest to be afforded a wide protection against the future use of their evidence against them. This is so given the significant benefit to the public in having the fullest possible inquiry available under the *Coroners Act* in relation to certain kinds of deaths, including those that occur when the person is detained or in the custody of the police (as “peace officers” as per (s. 3(2)(a) and s. 18(2)).
26. On the other, it is also very much in the public interest, particularly in a public hearing into alleged police misconduct where a person dies and unnecessary force is alleged to have been used by police officers, that witnesses, including police officers, offer their testimony in a truthful and forthright manner that is at least substantially consistent with their prior accounts.
27. Evidence by witnesses in each of these different forums is given under oath or solemn affirmation and recorded. The Members all testified at the Inquest. Each of them may choose whether to testify at the Public Hearing.
28. If a Member testifies at the Public Hearing and their testimony is apparently inconsistent with their evidence at the Inquest, and PHC or other counsel wish to cross-examine them regarding that inconsistency, to what extent, if at all, will that be permitted? Counsel for the Members seek an answer to this question prior to making decisions regarding their case.
29. Section 35(3) of the *Coroners Act* restricts the use of a specific category of evidence namely, where:
- a. A witness has provided evidence before the coroner;

- b. That same witness is also a witness “in any other trial or other proceeding”; and
- c. The proposed use of the evidence is that the evidence be “admitted in evidence against the witness”.

30. Regarding the reference in s. 35(3) of the *Coroners Act* to the same witness then testifying “in any other trial or other proceeding”, PHC submitted that a public hearing under the *Police Act* ought not to be considered “any other trial or proceeding”, and therefore there is no impediment to using the Inquest evidence as evidence at the Public Hearing.

31. Counsel on behalf of Cst. Birzneck made helpful submissions in this regard. They pointed out that the *Coroners Act* contains frequent references to “proceeding” and “proceedings”, including an “other proceeding”, “any proceeding” and “legal proceeding”. Furthermore, they submitted that this Public Hearing is a “disciplinary proceeding”, which is one of the enumerated categories of “legal proceedings” referred to in s.65(1) of the *Coroners Act*. Included in their submission was the proposition that as s. 1 of the *Coroners Act* defines an inquest as a proceeding before a coroner with a jury, if a “proceeding” under the *Coroners Act* only included terms used in the *Supreme Court Act*, an inquest would not constitute a proceeding. This would amount to a contradiction within the *Coroners Act* itself. I agree that this would be an illogical and unworkable result.

32. Furthermore, I note that Part 11, Division 3 of the *Police Act*, which sets out the process respecting police misconduct, is generously populated by the term “discipline proceeding”. A review on the record or a public hearing under the *Police Act* are clearly “proceedings” that review or hear afresh allegations of misconduct arising from discipline proceedings. Section 138(2.1) states that the police complaint commissioner may determine whether a public hearing is necessary in the public interest. In particular, s. 142 (3) deals with the dates the adjudicator must arrange and requires that “the police complaint commissioner must serve written notice of

the proceeding on the following people..." This pertains to both reviews on the record and public hearings.

33. I find the argument that a public hearing under the *Police Act* is not a proceeding has no merit and I reject it. I note the use of the word "proceeding" arguably casts even a wider net than the terms "trial" or "legal proceeding". There can be no doubt that a public hearing under Part 11, Div. 3 of the *Police Act* is a "proceeding".
34. Clearly, there is an apparent tension between s.35(3) of the *Coroners Act* which acts as a prohibition against certain uses of evidence, and s.143(6)(a) of the *Police Act* which grants an adjudicator the jurisdiction to "receive and accept information that the adjudicator considers relevant, necessary and appropriate, whether or not the information would be admissible in any court"...
35. More specifically, that apparent tension is whether, or in what circumstances an adjudicator may admit as evidence in a public hearing, which the *Coroner's Act* prohibits from use. However, that tension does not exist, and the legal question need not be addressed or answered if the s.35(3) prohibition regarding use is not engaged.
36. Section 35(3) is both specific and limited in its scope. Subject to the exception for a perjury prosecution, "[a]n answer provided by a witness before a coroner must not be used or admitted in evidence against the witness in any trial or other proceeding".
37. As I have already determined that this Public Hearing is a "proceeding" as that word is used in s.35(3), the issue revolves around the meaning of "against" because the prohibition is not against any or all uses of evidence. Instead, the prohibition is specific to use "against" the witness.
38. In particular, the issue in this case is whether PHC's proposed use of the evidence, which is opposed by the Members, is captured by the word "against" as that word is used in s.35(3). I find that it is not.

39. In arriving at this conclusion, I am guided by the law in relation to s.13 of the *Charter* as explained in *R. v. Nedelcu*, 2012 SCC 59 [*Nedelcu*].

40. Section 13 is a protection against self incrimination and provides as follows:

13 A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

41. While I acknowledge that the word "against" as it is used in s.35(3) is different than the word "incriminate", as that word is used in s.13, I find that the purpose of the protections is generally the same.

42. In *Nedelcu*, Mr. Justice Moldaver writing for the majority, explained that s.13 extends or expands the protections offered by s. 5 of the *Canada Evidence Act*:

It is clear that the drafters of the *Charter* considered s. 5 of the *Canada Evidence Act* when crafting s. 13. As Binnie J. noted in *Henry*, there is "a consensus that s. 13 was intended to extend s. 5 of the *Canada Evidence Act*" (para. 23). Binnie J., relying on statements in *Dubois* and *Noël*, also confirmed that s. 13 is not limited to questions a witness might have been entitled to refuse to answer at common law and that s. 13 is intimately linked, although not necessarily limited to, the traditional role and function of s. 5 of the *Canada Evidence Act*. Although s. 5(2) requires the witness to specifically invoke its protection, s. 13 contains no such requirement. Therefore, s. 13 of the *Charter* is broader in application than s. 5 of the *Canada Evidence Act*, as Arbour J. noted in *Noël*, at para. 53:

[*R. v. Mannion*, 1986 CanLII 31 (SCC), [1986] 2 S.C.R. 272,] is a case where it is unlikely that the accused would have sought the protection of the *Canada Evidence Act* when he gave his original evidence since that evidence did not "tend to criminate" him when it was given. In that sense s. 13 is an expansion of the statutory protection, and one fully in line with the broad constitutional protection against compulsory self-incrimination. [Emphasis added]

43. However, in *Nedelcu*, at para. 28, the majority also explained that cross-examination on apparent inconsistencies is not prohibited by s.13:

On that example, surely the Crown would not be precluded, on the basis of *Henry*, from cross-examining on the apparent inconsistencies relating to her

morning activities, with a view to testing the witness's powers of recollection and hence, the overall credibility and reliability of her testimony — particularly as to her ability to remember what she was wearing at the time of the robbery. Using non-incriminating evidence for impeachment purposes does not engage s. 13. [Emphasis added]

44. Thus, in *Nedelcu*, the Supreme Court of Canada clarified the distinction between incriminating evidence and evidence that challenges the witness's credibility and reliability in relation to s. 13 protection, the result being protection from impeachment in relation to incriminating evidence, and no protection for evidence that challenges a witness's credibility and reliability.

45. Similarly, I find that s.13 *Charter* protections are at least as broad as the protections offered by s.35(3) of the *Coroners Act* and, given that s.13 does not protect against impeachment on non-incriminating inconsistencies to test a witness's credibility and reliability, neither does s.35(3).

46. In the event that this is a step too far, I am of the view that s. 13 of the *Charter* and the Supreme Court decision in *Nedelcu* provide a solid basis upon which to exercise my discretion under s. 143(6) of the *Police Act* to permit prior statements made by a Member to be put to them in cross-examination at this Public Hearing to test the reliability and credibility of their testimony. I consider this to be a well-circumscribed and fair approach, which does not appear to run afoul of s. 35(3) of the *Coroners Act*. It may be of use in this Public Hearing, and therefore I find it to be "relevant, necessary and appropriate".

Summary as to Findings

53. Therefore, I find and direct the following:

- i. A public hearing under the *Police Act* is a "proceeding" under s. 35(3) of the *Coroners Act*.

- ii. The word “against” in s. 35(3) refers to a specific use “against” the witness that, by virtue of s. 13 of the *Charter* and the case of *Nedelcu*, offers protection to a witness in relation to their prior “incriminating” answers, but not in relation to their credibility or reliability as a witness. As written and interpreted, “against” a witness does not preclude the use of their prior inconsistent statements to assess the witness’s credibility and reliability. That being so, there is no conflict with s. 35(3).
- iii. The prohibition in s. 35(3) against a witness’s answer before a coroner being used or admitted in evidence “against” that witness in any trial or other proceeding, does constitute a barrier to the use of the witness’s answer in a subsequent proceeding (except in a prosecution for perjury), unless it may be used for impeachment purposes in relation to the witness’s credibility or reliability.
- iv. Alternatively, I am of the view that s. 13 of the *Charter* and the Supreme Court decision in *Nedelcu* provide a solid basis upon which to exercise my discretion under s. 143(6) of the *Police Act* to permit prior statements made by a Member to be put to them in cross-examination at this Public Hearing to test the reliability and credibility of their testimony.

Dated at the City of Kelowna, British Columbia, the 8th day of April, 2026

Elizabeth A. Arnold-Bailey

The Honourable Elizabeth A. Arnold-Bailey
Adjudicator