

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

**REASONS AND RULING ON THE APPLICATION BY MARGARET GRAY FOR
EXTENDED PARTICIPANT STATUS**

Public Hearing Counsel:	Brock Martland KC, Nick Martin
Commission Counsel:	Christopher Considine KC
Counsel for Ms. Gray:	Ian Donaldson KC
Counsel for Cst. Folkestad:	Christine Joseph
Counsel for Cst. Birzneck:	Michael Shirreff, Greg Cavouras
Counsel for Cst. Cain:	Glen Orris KC
Counsel for Cst. Wong:	Kevin Westell
Counsel for Cst. Spencer:	Claire Hatcher
Counsel for Cst. Sahota:	Brad Kielmann
Counsel for Cst. Thompson:	Tam Boyar
Counsel for the VPD Chief Constable:	David T. McKnight
Agent for the BC Police Assoc.	M. Kevin Woodall
Adjudicator's Counsel:	Greg DelBigio KC

Introduction

1. This Public Hearing is being held regarding allegations of misconduct against seven police officers [the Members] under the *Police Act* [R.S.B.C. 1996] c. 367 [the *Act*]. Ms. Gray, the applicant, is the mother of the deceased, Myles Gray. These reasons pertain to an application for extended participant status brought pursuant to s. 144(2) of the *Act* brought by Mr. Ian Donaldson KC, counsel for Margaret Sheila Gray.
2. Each of the Members named above is facing an allegation of misconduct by Abuse of Authority by using unnecessary force, intentionally or recklessly, in the performance of their duties (s. 77(3)(a)(ii)(A) of the *Act*) in relation to Mr. Gray's death, which occurred on August 13, 2015. Also arising from this incident, six of the seven Members face allegations of Neglect of Duty by failing to make and preserve contemporaneous notes and/or furnish required reports or statements in a timely way, contrary to s. 77(3)(m) (ii) of the *Act*.
3. On December 11, 2024, Mr. Rajan, the BC Police Complaint Commissioner [PCC], in the Notice of Public Hearing, directed a public hearing take place to inquire into the circumstances surrounding the death of 33-year-old Myles Gray, who died after police constables of the Vancouver Police Department [VPD] used force to subdue and restrain him. The PCC decided a public hearing "is necessary in the public interest", in accord with s. 138(1) of the *Act* having had regard for all relevant factors, including those listed in s. 138(2). The PPC stated (at p. 8), "There is a reasonable prospect that a public hearing will assist in better understanding the truth of what happened on August 13, 2015. It will allow the best available evidence to be presented and tested in a transparent way before a retired judge."
4. This tragic event was triggered by a single instance of Mr. Gray's behaviour in relation to a woman watering her garden with a hose. This interaction prompted her son to call 9-1-1, and Cst. Sahota was dispatched to the call.

She attended, interacted with Mr. Gray, and then called for backup. Events unfolded from that point. This case raises issues “indisputably of the utmost seriousness”, to quote the PCC (Notice of Public Hearing, para. 37(a)).

5. As the adjudicator at this Public Hearing required to decide this application, I am required by virtue of s. 144(2) of the *Act* to consider the three factors enumerated therein. In addition, s. 145 of the *Act* permits the adjudicator to specify the manner and extent of a participant’s participation, their rights and responsibilities, and any limits or conditions appropriate to their participation.
6. This matter has an eleven-year history of investigations and legal process as of August 13, 2026.

Relevant Background

7. These are the circumstances of the incident itself, which I plan to refer to only sparingly, given that I am in the middle of the Public Hearing and the Members have yet to commence their cases. The following are the alleged facts.
8. On August 13, 2015, Myles Gray, a 33-year-old man with a documented history of bi-polar disorder and steroid use, was going about his regular business by delivering greenery to a floral wholesaler in Burnaby, when he abandoned his vehicle only partially unloaded, left his wallet and keys in it, and walked away. Ultimately, he shed his shirt and shoes. The wholesaler’s representative called to inquire about his whereabouts and his mother, Ms. Gray, and his father went to look for him.
9. While walking in the area, Mr. Gray’s behaviour was observed by one witness on two occasions that afternoon. She described his behaviour as “odd” and “unusual”, and not of someone she wanted to approach, or have approach her or her older friend as they talked in the parking lot of the place

where she worked. A short time later she saw him walking purposefully along the side of a major street.

10. Thereafter, in a residential neighbourhood Mr. Gray took the hose of a woman watering her garden and sprayed her with it, while making some sexually suggestive comments to her. She screamed and her son called 9-1-1. The son then kept Mr. Gray in sight by following at a distance until Cst. Sahota attended to where Mr. Gray was. She was working alone and driving a police wagon. Cst. Sahota approached Mr. Gray and had some interaction with him that was of concern to her in terms of her physical safety. She called for backup. She was joined by Cst. Birzneck and Cst. Folkestad. The three of them went to where Mr. Gray was located, which turned out to be the back yard of a private residence.
11. During their dealings with Mr. Gray, an intense physical altercation occurred between him and the three Members. Two more officers, Cst. Wong and Cst. Thompson arrived to assist. They joined in the physical struggle to handcuff and gain control of Mr. Gray. Cst. Folkestad and Cst. Sahota withdrew because of injuries they sustained. Shortly thereafter, two more VPD police officers arrived to assist, Cst. Cain and Cst. Spencer.
12. After about six minutes in total Mr. Gray was subdued and came to be under the physical control of the police. He sustained many injuries during this altercation. A few minutes later he stopped breathing and was resuscitated. Then he stopped breathing again. Several other VPD members, who have already testified at this Public Hearing, arrived on the scene towards the end of the altercation. Mr. Gray was pronounced dead at the scene after a period of intense efforts at resuscitation by EHS attendants.

13. An accurate, but brief summary of the forensic pathologist, Dr. Orde's opinion is that he considered the cause of Mr. Gray's death to be multifactorial, but he stated, "I think the only thing that we can say for sure is that he wouldn't have died on the day he did, had it not been for his interaction with police personnel at the scene of his death." (Transcript, p. 1976, ll. 14-17)

Relevant Antecedents

14. Prior to the commencement of the Public Hearing, Mr. Donaldson applied for limited participant status on behalf of Ms. Gray to receive the disclosure being made to all the Members in these proceedings by the Office of the PCC. In reasons dated April 4, 2025, I granted Ms. Gray limited participant status pursuant to s. 144 of the *Act*, such that she was entitled to be provided with full disclosure of any materials the parties intended to rely on at the hearing, pursuant to s. 145.
15. An undertaking was entered into between counsel to safeguard the sensitive nature of these materials. Ms. Gray and her counsel, Mr. Donaldson, received full disclosure. Whereas several applications were made and ruled upon prior to the commencement of the Public Hearing, this application was not made in advance.
16. On its first day, January 19, 2026, Public Hearing Counsel [PHC], then Mr. Brad Hickford, called Ms. Gray to testify. On the same day Mr. Donaldson filed this application to extend her level of participation at the Public Hearing with him continuing to act as her counsel. However, as the hearing was adjourned to February 24, 2026, after two and a half days of evidence, Mr. Donaldson's application was not heard or decided until the hearing resumed with Mr. Martland KC taking over as PHC from Mr. Hickford.

17. Responding to Ms. Gray's application, counsel for various parties filed their written Responses between January 13, 2026, and March 2, 2026, and Mr. Donaldson filed written Replies.
18. On February 25, 2026, the Public Hearing resumed with a new PHC, Mr. Brock Martland, assisted by Mr. Nick Martin. PHC continued to call witnesses.
19. On March 2, 2026, counsel presented brief oral submissions regarding their Responses and Mr. Donaldson replied. At that time, Mr. M. Kevin Woodall, Agent for the BC Police Association, made oral submissions by way of video link.
20. Mr. Considine KC, counsel for the Commissioner, and Mr. Hickford and subsequently Mr. Martland as PHC, effectively took no position, although Mr. Hickford made some favourable comments about Mr. Donaldson's involvement on behalf of Ms. Gray at the 2024 Inquest regarding Myles Gray's death.
21. Counsel for the Members are opposed to Ms. Gray receiving extended participant status at this Public Hearing. Also opposed are Mr. Kevin Woodall, agent for the BC Police Association, and Counsel for the Chief Constable of the VPD, Mr. McKnight.
22. On March 6, 2026, during a block of days when Mr. Martland, PHC, was presenting his case and was soon to call several expert witnesses, I indicated on the record that I was granting Ms. Gray's application for extended participation on an interim basis, with written reasons to follow that would include consideration of her continued extended participation on for the next part of the hearing when the Members will present their case. At that time, I stated the following (Transcript, pp. 1720-1721):

Next, brief comments in relation to Mr. Donaldson's application for expanded participant status on behalf of Margaret Gray, the mother of Myles Gray.

I have considered all the materials filed in relation to this application. In my respectful view it is appropriate to grant the application at this time to this limited extent. From now until the end of the evidence being placed before me at this public hearing by public hearing counsel, Mr. Donaldson will be permitted to cross-examine the remaining witnesses. I will then reassess the efficacy and fairness of his continued involvement on behalf of Ms. Gray.

I will not require further submissions on this matter, and in my reasons, I will set out why I consider this to be appropriate. I will set out any further conditions or limitations I consider necessary should I find it appropriate that this expansion of the participant status previously afforded to Ms. Gray is to continue into the next phase of the hearing.

I give this direction based on considerations relevant to participant status contained in section 144(2) of the Act and a preliminary finding that Mr. Donaldson's application on behalf of Ms. Gray satisfies those considerations to a sufficient degree.

Pursuant to section 145(1) of the Act I may make orders respecting: (a) the manner and extent of a participant's participation, the rights and responsibilities of any of a participant, and (c) any limits or conditions on a participant's participation. The only limit I place on this determination currently is that in the unlikely event of Mr. Donaldson not being able to continue to act for Ms. Gray, no cross-examination in this regard will be permitted. And in making this interim determination, I am mindful of the overarching responsibility to maintain fundamental fairness to the Members whose conduct is at issue. [Emphasis added]

23. It is worth noting the above ruling was an interim one limited in scope, and it afforded to Ms. Gray through her counsel, Mr. Donaldson, an opportunity to cross-examine the expert witnesses who were part of PHC's case. On March 6, 2026, Dr. Shapiro, the toxicologist was asked several questions by Mr. Donaldson. On March 9, 2026, Dr. Orde, the forensic pathologist who conducted the autopsy on Mr. Gray, testified. He was cross-examined by several counsel including Mr. Donaldson. Other counsel cross-examined Dr. Orde on March 10th. The questions asked by Mr. Donaldson did not waste time and were relevant.

24. On March 11, 2026, PHC called Mr. Michael Massine, who was found to be an expert in the police use of force. His evidence in direct took up most of the day and cross-examination of him continued on March 12th and 13th. On March 12th Mr. Donaldson asked Mr. Massine a number of relevant questions. At the end of the hearing day on March 13th, I indicated to Mr. Donaldson he was able to continue with one limitation, and that reasons would be forthcoming.
25. That portion of the hearing concluded on March 13, 2026, leaving a small portion of PHC's case still to be heard (Mr. Massine being the last witness), and has yet to reconvene.
26. Dates were scheduled for the Public Hearing to recommence on April 29th and continue on days during the month of May. On April 29, 2026, the hearing was unable to proceed as counsel for Cst. Thompson, Scott Wright, was appointed to the Provincial Court Bench. Cst. Thompson has since retained new counsel. The Public Hearing is now set to recommence on September 28, 2026, and to continue on various days through the fall into December 2026, with final submissions likely to be in February or March 2027.

The Application

27. In the application Ms. Gray seeks the following orders, that:
- a) She be granted extended participant status in this public hearing, in accordance with s. 144 of the *Police Act*;
 - b) She be allowed to participate in the questioning of witnesses concerning, *inter alia*, the treatment of Myles Gray, alternative options available to the officers, and the unfolding of events; and
 - c) To participate, through her counsel, by questioning other witnesses who may testify at this public hearing.

Applicant's Position

28. In her affidavit, sworn February 14, 2025, Ms. Gray sets out her efforts over many years and in different forums (a civil lawsuit commenced, the investigation by the Independent Investigations Office [IIO], the review by the BC Prosecution Service, the police discipline proceedings under the *Act*, and the Inquest) to determine how it was the force used by the Members that resulted in the death of her 33-year-old son, Myles, was necessary and not excessive.
29. It is clear even after ten and a half years (now 11 years) since her son died, Ms. Gray remains firmly resolved to find out, to the greatest degree possible, how it was that her son died during his interaction with the Members. She knew of his bipolar diagnosis and had observed her son display some unusual and out-of-character behaviour within the several weeks prior to his death. She admitted to knowing about his steroid use and advising him against it. She was involved in his life to the extent that she knew where he was living and working, and how he was. Ms. Gray was also aware that at 33-year-old Myles made his own decisions, and it seems she respected that.
30. Ms. Gray referred to the great loss and sadness caused to her and her family by Myles' death and the circumstances of it. As a result of her commitment to finding out as best as she was able what happened to Myles, she sought legal counsel.
31. Mr. Donaldson has assisted by representing her. He filed the Notice of Civil Claim, dated February 16, 2016, in relation to Mr. Gray's death. Mr. Donaldson also appeared for the family at Inquest in 2023. With the disclosure from the Coroner and the assistance of Mr. Donaldson, she was able to counter the suggestion in the Inquest testimony of several of the Members that the immediate cause of Myles' death was "excited delirium".

This appears to have had considerable impact on the Coroner's jury, who returned a verdict of "homicide".

32. Ms. Gray states that she is also motivated to find out what may be done to prevent other families in the future from suffering the pain and loss caused by the death of a beloved family member in similar circumstances.

33. At the heart of the applicant's position is that her participation will make a positive difference to the evidence presented at the Public Hearing.

Specifically, the application reads:

10. Ms. Gray respectfully submits that her participation will increase the prospect of the best available evidence being presented and tested in a transparent way. The Adjudicator's decision making will be informed and improved with the benefit of the additional and better evidence at the public hearing, as the Commissioner found. [...]

16. The Applicant has a genuine interest in developing the most extensive factual underpinning that can be developed. She submits that the search for the truth is enhanced by cross-examination, sometimes referred to as the 'crucible in which the truth is tested'. The applicant submits respectfully that her participation in the process will add a dimension to eliciting the evidence which is not shared by the other parties.

34. Mr. Donaldson's submissions thoroughly advance his client's interests in this matter. I have reviewed them and considered them. I will set out some of the most significant points, relying in large measure on his Reply Submissions as they highlight the issues raised in the Members' Responses:

- Ms. Gray's perspective on the circumstances of her son's death is unique in for far as the police relied on a suggestion that Myles died as a result of 'excited delirium'. Due to her participation at the Inquest held eight years after his death that suggestion as contributing to his death was rejected by the jury. Initially, the forensic pathologist, Dr. Orde, was unable initially to determine a cause of death "largely due to the inaccurate information that had been provided to him based on the statements provided to the IIO.

However, by the time Dr. Orde testified at the Inquest, a body of evidence had been developed to allow him to express an opinion, which formed the basis for the basis for the jury's verdict." (Reply to Cst. Cain's Response, para. 3) The verdict was that Myles Gray's death was found to be a "homicide".

- Ms. Gray does not dispute that PHC and Counsel for the PCC are going to attempt to uncover the truth.
- It is submitted that to grant Ms. Gray extended participation status would be to countenance 'piling on' (too many counsel in the role of "prosecutor" i.e. the role of PHC), which she denies. Mr. Donaldson indicates that he has no intention of being a quasi-prosecutor.
- Ms. Gray's interest in the civil action may well be affected by the adjudicator's decision, and this represents a direct interest to be considered in s. 144(2). He submits that Ms. Gray does not seek to use this hearing as an examination for discovery, or to take advantage of any particular aspect of this process.
- Mr. Donaldson referred to two authorities in support of this application. The first case is *Berg v. Police Complaint Commissioner*, 2006, BCCA 146 [*Berg*], para. 28, where the Court of Appeal referred to a decision of Justice Stromberg-Stein's made earlier in that litigation, where she determined the sister of the deceased was "personally affected by the conduct complained of." After the *Berg* the present s. 144 was enacted. In the second decision, which is earlier, *Doern and Jones v. Morrison, Police Complaint Commissioner*, 2001 BCCA 404 (in chambers) Proudfoot, J.A. was persuaded to grant intervenor status by a submission of Richard Peck KC that the applicant, Ms. McInnis, had "an interest in the appeal as a complainant", and as such may bring a different perspective to the appeal. Justice Proudfoot concluded that Ms. McInnis could make a useful

contribution to the case “without injustice to the respondents.” Mr. Donaldson submits that this theme, that an applicant could make a useful contribution “without injustice to the respondents” is important support for Ms. Gray’s application, and that it predates the present s. 144.

- He submits as Ms. Gray’s counsel he is not obliged to give effect to her feelings or beliefs. Rather, counsel carries out their duties as they see fit and deem appropriate within the bounds of the particular matter at hand.
- Mr. Donaldson submits that fairness at this hearing does not just flow one way, in the direction of the Members.

The Issues

35. The two issues that arise in relation to Ms. Gray’s application for extended participant status are:

(1) Given the factors to be considered in relation to an application for participant status, and by reasonable inference, any extension of participant status, as contained in s. 144(2) of the *Police Act*, is it appropriate to extend Ms. Gray’s participation at this Public Hearing to permit her counsel, Mr. Donaldson, to cross-examine witnesses, including the Members, and any other witnesses called on behalf of the Members?

(2) If it is appropriate to extend Ms. Gray’s participation at this Public Hearing, are there any orders necessary to define or limit her counsel’s participation pursuant to s. 145 of the *Act*?

Positions of the Other Parties regarding Ms. Gray's Application

36. Mr. Brad Hickford, PHC (at the time the application was argued), initially took a neutral position and then was supportive of Mr. Donaldson's involvement at this public hearing. As public hearing counsel he did not believe that he should be taking any position: "Whether or not Ms. Gray and the Gray family should have counsel and what their counsel's level of participation should be is not for me to comment on [...] Unless Mr. Donald's [sic] participation was of an unreasonable or troublesome nature, I would not be taking any position with respect to his level of participation." (Jan. 20, 2026, Transcript Vol. 1, p. 173, ll. 8-16)

37. Mr. Hickford also suggested that were I to look at the transcript from the Coroner's Inquest "[...] to see the types of questions and the length of cross-examination that Mr. Donaldson conducted with respect to his questions of the witnesses, that those questions as [he saw] it were specific and to the point and the examinations were not of a lengthy nature." (Vol. 1, p. 173, ll. 18-23) He disagreed with a written submission of Mr. Westell that Mr. Donaldson's participation "could fundamentally change the nature of the Public Hearing and have a massive impact on [PHC's role] in scheduling and calling witnesses at the public hearing."

38. Mr. Considine, Counsel for the PCC, stated "The position of the Commissioner is that it's within your discretion. That should there be an expansion of Mr. Donaldson's role, it would be to ensure that he wouldn't duplicate or replicate questions and information that's been provided by public hearing counsel or myself as Commission counsel. I agree with your comment this morning that the ultimate questions should not really be addressed by Mr. Donaldson. That it's much better to have that addressed by member counsel as well as public hearing counsel and myself. It may well be that there may be some helpful policy observations or recommendations that

Mr. Donaldson might have, so long as they don't touch on the ultimate questions before you." (Vol. 1, pp. 174-175, ll. 17-6)

39. Mr. D. McKnight, Counsel for the Office of the Chief Constable of the VPD

filed a written submission on behalf of the Office of the Chief Constable, dated February 4, 2026). On behalf of his client, he is opposed to the application brought on behalf of Ms. Gray for several reasons, the foremost being that "it is role of Public Hearing counsel, and not the role of participants, to uncover and present the evidence he considers to be relevant to the matters at issue."

40. Referring to a report of Josiah Wood, QC (as he was then), published by the Office of the Police Complaint Commissioner in 2007, entitled '*Report of the Review of the Police Complaint Process in British Columbia*', Mr. McKnight offered an historic perspective in support of his position.

41. Mr. McKnight acknowledges that while the facts of this case are tragic for the Gray family, the parties and participants "should not lose sight of the overall goal of public hearings or misconduct proceedings generally". He referred to the purpose of Part 11 of the *Act*, which "is designed to ensure that the public interest of accountability and transparency in policing are maintained and to ensure that the public's trust in civilian oversight is maintained and advanced." He submits that the legal interest of the Gray family remains the same in these proceedings "as any other member of the public." Therefore, "as members of the public, their interests are being advanced by Public Hearing counsel, whose job it is to ensure that the adjudicator has the facts she need to make decisions about the misconduct at issue."

42. Mr. McKnight further submits on behalf of the Office of the Chief Constable, that "it is an unusual circumstance, and potentially a dangerous precedent, to allow a complainant or third party in circumstances where that person was not present to witness any of the conduct at issue, to have status that is elevated

above the public given the purpose of these proceedings”. His position is that Mr. Donaldson’s representation of Ms. Gray at the Inquest and his cross-examination of witnesses was sufficient to provide an opportunity for Ms. Gray and the family to understand what happened between Myles Gray and the Members who attended.

43. Mr. M. Kevin Woodall, Agent for the BC Police Association (granted limited participant status on this application) provided in thorough written submissions dated February 6, 2026, which I have read and considered. He also made brief oral submission by video link on March 2, 2026.
44. To a substantial degree his submissions as to why Ms. Gray should not be granted extended participation status for this hearing include points raised by counsel for the Members. They were helpful to put s. 144 of the *Act* in an historical context. I will refer briefly to the key points he made in his oral submissions.
45. The first factor to consider under s. 144(2) of the *Act* is Ms. Gray’s “interests that may be affected by the findings of the adjudicator”, arising as a result of her civil claim are insufficient to support her application for extended participation status.
46. Mr. Woodall submitted to claim that because Ms. Gray is a Claimant in a civil action that her “legal” interests may be affected by my findings is dubious in the extreme. He further submitted that her application did not explain how such interests may be affected (i.e. by res judicata or issue estoppel). The issues and the parties would need to be the same (ie. same issues and same parties). Furthermore, he submitted that the civil claim relates to “private grievances”, whereas the Public Hearing is in relation to allegations of professional misconduct by the Members. He expressed a concern that to

grant Ms. Gray extended participation status would provide a forum “to shadow box” issues that may arise in the civil case.

47. Mr. Woodall further submitted that absent a finding of sufficient “interests” her application should fail. Ms. Gray’s position is not any different from that of anyone else who might lose a person in a similar way. Thus, she has no “automatic” right to participate. Therefore, if I as the adjudicator “take the fact that Ms. Gray is a plaintiff in the civil case out of the equation, as I suggest you should, it remains that she has not identified any way in which her interests might be affected”.

48. Next, her case is not different from any other affected person or family member of a deceased person who might find themselves attending any public hearing. He submitted that her entire argument for participation is confined to the fact that she's a close family member of the deceased. He reminded me that in his written submissions, the Legislature considered and rejected the idea that an affected person or their family members might have a presumptive, automatic right to participate solely on the basis they are an affected person or family member of an affected person.

49. Mr. Woodall also pointed out the Public Hearing is a formal hearing with defined procedure. Right-thinking citizens would agree that jeopardy here is very serious, and due process must be observed.

50. Glen Orris KC, Counsel for Cst. Derek Cain, filed a written response, dated January 15, 2026, in which he submitted among other things, that implicit in Ms. Gray’s application is the assertion that PHC, Mr. Hickford, “is either incompetent or otherwise unable to call evidence and/or cross-examine effectively so as to bring forward the true facts leading to her son’s tragic death.” Further, that by extending her participant status she will “see to it that

all relevant evidence will be forthcoming.” Mr. Orris submits that neither she nor her counsel “bring any new or different ability” in this regard.

51. Mr. Orris further submits Ms. Gray’s view, as articulated (January 13, 2026, Affidavit, at para. 10) is that the existing participants cannot be relied upon to get to the truth, and her family needs representation as a step to ensure:

[...] the families of the deceased are not mere spectators in a system which sometimes feels as if it is designed to protect institutions, rather than dive deeply in order to uncover the truth, however difficult that may be for some of the participants.

52. Given Ms. Gray’s position is that the Members involved in the altercation with her son must be at fault, her counsel, acting on instructions, will be obliged to pursue this issue, resulting in “an obvious and understandable bias, which will undoubtedly discredit this Public Hearing.”

53. Kevin Westell, Counsel for Cst. Josh Wong, filed written submissions dated February 13, 2026. His position is to grant Ms. Gray’s application would render the Public Hearing unfair and prejudice the Members’ right to a fair hearing. He submits that “a public hearing is an adversarial process, akin to a criminal trial”, and the role of PHC is similar to that of a prosecutor in so far as the former is “a quasi-judicial minister of justice, and must be objective, and without *animus* toward the Members.” Mr. Westell submits that the Canadian adversarial system of justice requires no less, whether the matter is criminal or administrative in nature.

54. He further submits that to represent a party to an adversarial proceeding, other than as counsel designated by the state, requires counsel to represent their client “resolutely and honourably within the bounds of the law”. It also demands that the lawyer “fearlessly raise every issue, and advance every argument, and ask every question that is in their client’s interest, as long as their course of action is authorized by law.” He submits that Ms. Gray’s

activities demonstrate “a clear, public and undisguised *animus*” towards the Members. She seeks to have the Members held accountable for her son’s death as grave misconduct and have them dismissed as police officers with the VPD at a minimum, if the criminal investigation is not re-opened.

55. Mr. Westell stated that Ms. Gray is entitled to her views and opinions about the cause of her son’s death, but as the applicant, “she is without objectivity and therefore unable to play a quasi-judicial or ministerial role” at the Public Hearing. He does not raise these concerns to suggest that the Applicant or her counsel has acted inappropriately (I assume at the Inquest), but to point out her position and the instructions she will give her counsel, Mr. Donaldson.

56. Mike Shirreff, one of two Counsel for Cst. Eric Birzneck, filed Response submissions on February 13, 2026, in which he made a significant number of points that militate against permitting Ms. Gray through her counsel to continue to participate during the Members’ part of the hearing, including the following:

Respectfully, what is contemplated through the Application is a fundamental re-casting of these proceedings into a forum for Ms. Gray to advance her personal views with respect to the respondents – either as a ‘prosecutor’ or in service of her other legal proceedings against the respondents. Such a notion is disconnected from the detailed structure of the Police Act and the statutory purposes of a public hearing, which is focused on the professional conduct of the respondent officers.

57. He further submits that the order sought “would result in an administrative process that is fundamentally unfair to the respondents and not be in keeping with the foundational principles of natural justice.” It is therefore, “unnecessary” and “will only distract from the narrow question before the adjudicator.”

58. Counsel for Cst. Birzneck also submits in relation to the factors for an adjudicator to consider before granting a person participant status under s. 144(2) of the *Act*, that Ms. Gray's interests are not directly engaged by the determinations the Adjudicator is required to make as to whether the conduct of each of the Members constitutes misconduct under the *Act*. Their position, stated at para. 5 of the application, acknowledges that fact.
59. Counsel cites the ruling in *Re Lobel and Hoang*, PH 2018-02 [*Lobel and Hoang*], by Adjudicator McKinnon, where he found "that "interest" means more than a general desire for a certain result: rather it refers to the legal rights, obligations, and liabilities of a party". He submits none of those are at issue here. "While it certainly could be said that Ms. Gray has an "interest" in the factual underpinnings of the determinations regarding misconduct, that interest is satisfied by her receipt of the extensive disclosure provided to her as previously ordered."
60. In terms of the second factor, counsel submits that Ms. Gray does not identify "any material way" in which expanding her participation at this point in the hearing would "further the conduct of the public hearing". Given that s. 143(9) of the *Act* sets out what the adjudicator "must do", there is "absolutely no reason why permitting an additional non-statutory actor to question witnesses would further those objectives." Section 143(5)(b) of the *Act* sets out who may examine or cross-examine witnesses (PHC, counsel for the PCC, and the police members facing allegations of misconduct, or their counsel), and it does not refer to a "participant" or their counsel.
61. Nor does the substance of Ms. Gray's application address how her proposed expanded participation "would contribute to the fairness of the public hearing", which is the third factor. Counsel submits to permit this would fundamentally undermine the fairness of the hearing, given that it is only the Members and

not Ms. Gray who face jeopardy in these proceedings. Ms. Gray's motives are disconnected from the matters addressed by the *Act*.

62. Cst. Birzneck's counsel submits that to the extent Ms. Gray wishes to provide submissions and a different perspective on the events and findings of experts (including Dr. Orde, the forensic pathologist, and Dr. Shapiro, the toxicologist), she may be able to do so at the end of the Public Hearing given that s. 143(7) of the *Act* permits a complainant to do so provided the public hearing concerns conduct that was the subject of an "admissible complaint". However, Mr. Shirreff indicated there is an unresolved procedural question about the application of that section to Ms. Gray as the initial complaint was initiated by the PCC.

63. Cst. Birzneck's counsel also made submissions about several other matters including proceedings related to these events:

- Ms. Gray and her former husband, and a corporate entity have sued the City of Vancouver, the Vancouver Police Board, the Vancouver Police Department and Police Officers John Doe Nos. 1 thru 11 for the wrongful death of Myles Gray, in a Notice of Civil Claim filed on February 11, 2016.
- The comments of Ms. Gray in Affidavit #1 at para. 16, filed in these proceedings, dated February 14, 2025, where she states:

[...] It defied belief that my son, unarmed and essentially unclothed, was so badly injured and died and that there had not been inappropriate use of force. As a parent, I felt that the police had murdered my son. I know that this may not be legally correct, but from my perspective this could not rationally be explained.
- Similar sentiments appear in the disclosure provided to the Members in which Ms. Gray makes allegations that they intended to bring about the death of her son. Due to these perceptions, she bears hostility and *animus* towards them.

- The Gray family has engaged with social media to advocate for their perspective of these events. One example, from the public Facebook page entitled Justice for Myles Gray is:

Myles Gray was heinously beat to death by multiple Vancouver officers. Kory Folkestad, Joshua Wong, Eric Birzneck, Beau Spencer, Derek Cain and Hardeep Sahota. Myles was insanely beaten and purposely held down until he was dead. He was denied EMT care.

64. Regarding the Inquest held in relation to Mr. Gray's death, counsel point out that Ms. Gray and her family had participant status under s. 31 of the *Coroners Act*.
65. Regardless of how the Inquest proceeded, Mr. Shirreff submits that the "family had a complete and nearly unlimited right to participate in the proceeding to explore the circumstances of Mr. Gray's death." In light of shift in the expert opinion evidence and the verdict regarding cause of death at the Inquest, Mr. Donaldson in the CBC News on May 1, 2023, suggested that the Inquest proceedings could provide a basis for the Crown to reconsider the decision not to charge any of the Members in connection with Mr. Gray's death.
66. In conclusion, Mr. Shirreff reminded me that the Public Hearing is not the forum in which to address "shortcomings or unsatisfactory features of other legal proceedings".
67. Scott Wright, Counsel for Cst. Nick Thompson, filed a Response to the application, dated February 13, 2026, in which he submitted, "There is nothing more than a bald assertion that participation by Ms. Gray will further the conduct of the hearing", and he then quoted from the application at paras. 10 and 16, which are set out in Paragraph 33 of these Reasons.

68. Mr. Wright, now Judge Wright, submits that there is “no gap to be filled” with PHC and counsel for the PCC fulfilling their statutory roles, and there is no indication how participation by Ms. Gray would assist in exploring the circumstances and all relevant evidence beyond “these bald assertions”. To rely on the role Mr. Donaldson played at the Inquest is a flawed comparison given the different nature and purpose of the two proceedings. Counsel submits that “[a]t the inquest there was a notional gap to be filled by Mr. Donaldson to cross-examine with the aim of assigning blame to the respondent officers. No such gap exists in this hearing.”
69. Mr. Wright also submitted that Ms. Gray does not represent the public interest as she has a firmly held view of what occurred that she has repeatedly posted on social media by naming the Members and posting photographs of them, labelling them as murderers. He pointed out that as Mr. Donaldson is obliged to act on her instructions, her views of the matter would necessarily inform his conduct on the examinations of witnesses. “Any involvement with the evidence would necessarily be done with that view in mind.”
70. Mr. Wright filed the Affidavit of Tana Nacu, a legal secretary, dated February 23, 2026, which attaches posts on an X (formerly Twitter) account with the handle @MargieSRGray retrieved from that site, an article from the Victoria Times Colonist website dated May 1, 2023, and two articles from the Coast Reporter website, one dated May 3, 2023, and another dated October 11, 2024.
71. Those posts and articles refer to the Members involved with Ms. Gray’s son on August 13, 2015, as: “murderers”; “that they savagely killed our Myles with their fists and boots”; they “sadistically bludgeoned unarmed Myles to death”; one post includes named headshots of the Members and the headline “These 7 VPD officers killed my son Myles Gray” accompanied by a list of Mr. Gray’s extensive injuries; another displays a wanted poster with a picture and the title

“Wanted: VPD Hardeep Sahota, Badge: [omitted] Age: Unknown”, with text “Wanted for her involvement in the 2015 MURDER of Myles Gray & FAILURE TO COMPLY with an IIO Investigation until legal action was threatened. She is currently the Subject of a Police Act investigation & SHOULD NOT BE ENGAGING WITH THE PUBLIC, especially vulnerable community members. Currently deployed as a School Liaison Officer at John Oliver Secondary School”; and “Myles Gray was heinously killed by these Vancouver BC police officers. A story of injustice, murder, zero accountability and no repercussions. A homicide rife with cover-ups and shame for a city and a country. These officers continue to be employed as police by Vancouver and two work as armed school liaison officers. Be worried Vancouver”, and so on.

72. Cst. Kory Folkestad, Cst. Hardeep Sahota, and Cst. Beau Spencer adopted the submissions made on behalf of Cst. Birzneck and the BCPA.

Applicable Sections of the Act

73. Subsection 144(1) states:

A person, other than public hearing counsel, commission counsel and the member or former member concerned, may apply to be a participant in a public hearing by applying to the adjudicator in the manner and form the adjudicator requires.

74. Subsection 144(2) sets out the factors an adjudicator is to consider regarding applications for participation as follows:

(2) On receiving an application under subsection (1), an adjudicator may accept the applicant as a participant after considering all of the following:

- (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.

75. Section 145 of the *Act* permits the adjudicator to circumscribe the ambit of a participant's participation at the public hearing, and to change any such order as necessary:

(1) Subject to section 146, 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.

Analysis and Conclusions

76. In reaching my decision to grant interim limited participant status to Ms. Gray to the end of PHC's case at this Public Hearing given on March 6, 2026, I considered the three factors that informed a determination of participation under s. 144(2) in my brief oral reasons quoted above.

77. In considering "whether, and to what extent" Ms. Gray's "interests may be affected" by my findings (s. 144(2)(a)), I granted interim participant status because I was of the view that Ms. Gray's interests may be affected by my findings in light of her civil suit against the Members and other parties, and because of the "homicide" finding by the Coroner's jury at the Inquest, indicating based on the evidence heard that the death of Myles Gray occurred as a result of the Members' actions.

78. The material before me included the filed Notice of Civil Claim and information that Mr. Donaldson's representation of Ms. Gray at the Inquest resulted in a possible cause of Mr. Gray's death due to "excited delirium" not being advanced. It included the evidence of Dr. Orde, the forensic pathologist,

attributing the responsibility for Mr. Gray's death to the actions of the Members. The change in the toxicology opinion evidence by the reviewing toxicologist, Dr. Shapiro, was also significant.

79. For these reasons I was firmly of the view that I ought to permit Mr.

Donaldson the opportunity to cross-examine these two expert witnesses, and Mr. Massine, the use-of force expert at this Public Hearing, and he did so. Ms. Gray's application for participant status remained undetermined up to this point in the Public Hearing due in part to it being filed on the first day of hearing, and because of other pressing matters. Mr. Donaldson did not cross-examine any of the earlier witnesses called by PHC.

80. I considered that the evidence regarding the Inquest supported Ms. Gray's application for extended participation by her counsel at the Public Hearing to further "the conduct of the public hearing", the second factor in s. 144(2)(b), in terms of my fact-finding responsibility. I decided it was unlikely to be repetitive or time-wasting. I also found Mr. Donaldson's representation on behalf of Ms. Gray likely to be important to the truth-seeking function of this hearing in terms of the expert witness' testimony.

81. I also considered this limited interim decision to "contribute to the fairness of the public hearing", the third factor in s. 144(2)(c), in the overall context of the public hearing – fair to the Members, the other participants, and to be in the public interest. While the Inquest and this Public Hearing are very different proceedings for markedly different purposes, the evidence of Dr. Orde and Dr. Shapiro was and is key evidence in both.

82. At the end of the proceedings on March 13, 2026, I considered it likely that Mr. Donaldson would continue to be involved in the Public Hearing on behalf of Ms. Gray, on condition that he continued to be her counsel and any further cross-examination be conducted by him. Potentially, this would include cross-

examination of the Members who chose to give evidence and other witnesses called on behalf of the Members. However, I wished to have time to further consider that given the language of s. 144(2), and the submissions I received, which I have summarized above. The interim ruling was and remains that Ms. Gray's participant status ends at the conclusion of PHC's case, absent a favourable ruling going forward.

83. I turn now to Ms. Gray's present application for extended participant status.

84. On behalf of Ms. Gray, it is submitted that she, through her counsel, brings a different perspective to the Public Hearing. I accept that is so. As a mother who lost her son due to his interaction with the Members, her loss and sadness remain palpable. She cannot accept how it was necessary for the Members to inflict the injuries found on his body to subdue him. Without criminal charges being laid against the Members, or findings of professional misconduct followed by severe consequences, she has developed an abiding mistrust of the law and legal institutions. These sentiments appear to have fueled the public *animus* she has expressed against the Members on public sites and news outlets. While understandable, it is unfortunate.

85. With great determination Ms. Gray has pursued the truth regarding the death of her son and sought justice in his name. The application for extended participation envisages full participation by her counsel to the end of the hearing. Distilling her position for extended participation to its essence, it is because she has continued in her search for answers and the truth all these years. Due to her perseverance, and by virtue of the efforts of herself and her counsel, they appear to have had considerable impact on the verdict by the Coroner's jury on Mr. Gray's cause of death as a "homicide". I point out that transcript of the Inquest is not in evidence before me, but this information is included in the affidavits of Ms. Gray filed in this application. While Ms. Gray bears this *animus* toward the Members, she also has developed a strong interest in how the police deal with people who have mental health issues.

86. I note what is sought in this application is unusual and appears not to be the subject of prior decisions. I also note that the language of s. 144(2) provides the adjudicator with considerable discretion as to determinations of participant status. Indeed, that was the submission of Mr. Considine KC, counsel for the PCC. Mr. Considine agreed that if extended participation status was granted, it would be appropriate that a condition be imposed that Ms. Gray's counsel would not be permitted to make submissions on the evidence regarding alleged misconduct.
87. As my summaries of the positions of the Members' counsel, the submissions on behalf of the BCPA, and those on behalf of the Chief Constable of the VPD reflect, there is considerable opposition to granting extended participant status to Ms. Gray.
88. Turning to s. 144(2) of the *Act*, I note it does not state that a member of the victim's family may not become a participant. The wording "...an adjudicator may accept the applicant as a participant after considering all of the following ...". This requires an adjudicator to consider all of (a), (b), and (c). The wording reflects the discretion afforded to an adjudicator. An applicant could theoretically satisfy several or all the factors to at least a minimal degree, and still not be found by an adjudicator to be a participant. Nor, in my view, does s. 144(2) rank the three factors to be considered in terms of their significance to such a determination.
89. In relation to s. 144(2)(a) "whether, and to what extent, the person's interests may be affected by the findings of the adjudicator" I am aware of and generally agree with the decision of Adjudicator McKinnon *Re Lobel and Hoang*, in which he found "that "interest" means more than a general desire for a certain result: rather it refers to the legal rights, obligations, and liabilities of a party". Clearly, a personal, subjective interest alone is not likely to advance such an application. However, in the present circumstances I find the applicant's legal rights include the pending civil action for damages for

wrongful death. This is not because the outcome at a public hearing such as this one would carry any weight at a subsequent civil trial or even be admissible. Rather, Ms. Gray's legal interests are engaged here because of the possibility of new facts emerging in the evidence of the Public Hearing, particularly in relation to expert opinion evidence.

90. This is an unusual case, with a paucity of information as to the details surrounding the struggle between Mr. Gray and the Members. It is shockingly old, and yet relatively recently new information has affected the opinions of the two key experts. I do not accept that Ms. Gray, having received disclosure and participated at the Inquest via counsel, and having received disclosure in relation to this proceeding, rules out the possibility of additional new evidence, particularly from the expert witnesses.

91. Therefore, I find that Ms. Gray has a sufficient legal interest that may be affected by my findings in relation to her son's death as a result of the actions of one, some or all the Members, for which a Notice of Civil Claim has been filed. In the tragic and opaque circumstances pertaining to alleged misconduct by the Members in relation to Mr. Gray's death, I find this to be sufficient in relation to the factor in s. 144(2)(a).

92. Turning to the factor in s. 144(2)(b), "whether a person's participation would further the conduct of the public hearing", I find that further limited extended participation by Ms. Gray through her counsel, will further the conduct of the Public Hearing. This is so because of the apparent impact Mr. Donaldson had at the Inquest in terms of cause of death. The cause of death and the alleged use of unnecessary force appear to be intertwined. I have been advised that the Members intend to call two experts as part of their defence. To date, Mr. Donaldson's cross-examinations of the experts called by PHC have been relevant and have not wasted time. I anticipate that will continue to be the case. I will strictly enforce the level of participation afforded to Ms. Gray

through her counsel to ensure the fairness of this proceeding and its efficient conduct.

93. Regarding s. 144(2)(c) “whether the person’s participation would contribute to the fairness of the public hearing”, I am of the view that limited extended participation by Ms. Gray through her counsel contributes in a significant and meaningful way to the fairness of the Public Hearing. While a fair hearing for the Members is the overarching goal, truth-seeking and accountability as may be required is fundamental to public confidence regarding their use of force. I am confident that my findings here and the limitations I will impose strike an appropriate balance between these interests.

94. I have carefully considered the scope of involvement to afford Mr. Donaldson as Ms. Gray’s counsel. I find several points raised by the submissions of Members’ counsel to be persuasive as to whether Mr. Donaldson may cross-examine witnesses in the Members’ part of the hearing, including the Members who choose to testify. I do not regard s. 143(5)(b), which sets out who “may” examine or cross-examine witnesses and does not include counsel for a party with participant status, to prevent Mr. Donaldson from engaging in cross-examination that is limit in scope. However, I have decided that apart from expert witnesses who are called on behalf of the Members, it is not appropriate to extend Ms. Gray’s participant status to that extent.

95. My concern is not that Mr. Donaldson will use an opportunity at the Public Hearing as a form of examination for discovery. Rather it is having examined all the Members at the Inquest under oath or solemn affirmation in 2023 regarding their involvement in the physical struggle with Mr. Gray with legal standing to do so (albeit at a proceeding with a very different legal purpose), I find to permit Mr. Donaldson further opportunities to cross-examine the Members would be excessive and unfair in the present case. To permit him to cross-examine the Members who testify in this proceeding as counsel for a non-statutory participant adverse in interest takes this matter beyond the

scope of a public hearing relating to matters of professional discipline. It is also unnecessary given the very experienced PHC and counsel for the PCC.

96. Whether Ms. Gray's end-goal here is truth-seeking, to put flesh on the bones of a stalled civil suit, to attempt to convince the Crown to review again whether criminal charges should be laid, or some or all of the above, none of those end-goals in my view, warrant Mr. Donaldson at this Public Hearing having an opportunity to cross-examine the Members again about their actions regarding the same incident from over 11 years ago. If I was to find otherwise, it would amount to significant procedural unfairness against the Members.

97. However, I have decided it is entirely in keeping with the three factors contained in s. 144(2) I am obliged to consider that Ms. Gray's limited participant status be extended to the end of this Public Hearing to permit Mr. Donaldson to cross-examine expert witnesses called on behalf of the Members. The reasons for this are the same regarding the s. 144(2) factors that I have referred to above, both in respect of my March 6th decision to grant interim limited participant status to the end of PHC's case, and in relation to the present application for extended participation going forward.

98. Consistent with the above and arising from the alleged circumstances in evidence to date, in combination with aspects of Ms. Gray's testimony, I find that Mr. Donaldson is permitted to make submissions at the end of the hearing on policy matters regarding police interaction with individuals undergoing significant mental health challenges. This is appropriate given the role that Ms. Gray's counsel will play regarding the upcoming expert testimony.

99. I conclude these reasons by pointing out that others involved in this Public Hearing in addition to Ms. Gray are interested in truth-seeking and justice, and the way to proceed at this hearing is with respect for the law, the process, the parties, and the participants. I thank all counsel and Mr. Kevin Woodall for their thorough and helpful submissions.

Summary of Findings and Orders

100. For these reasons, I find that Ms. Margaret Gray's application for extended participant status at this Public Hearing pursuant to s. 144(2) of the *Act* is granted to the following limited extent:

- i. PURSUANT to s. 145(1)(a) of the *Act* her counsel, Ian Donaldson KC, is permitted to cross-examine only the expert witnesses called on behalf of a Member or the Members; AND Mr. Donaldson is not permitted to cross-examine the Members or other witnesses who are called;
- ii. AND pursuant to s. 145(1)(a) of the *Act*, Mr. Donaldson is permitted to make submissions at the end of the Public Hearing regarding the policy matters that have arisen, but is not permitted to make submissions on the evidence in relation to the alleged misconduct;
- iii. FURTHER, pursuant to s. 145(1)(b) of the *Act*, in the event that Ms. Gray continues to post or otherwise have published comments similar to the ones I have referred to in these reasons, including but not limited to those posts or published comments that post the Members' names and pictures with vilifying comments, call them or any of them "murderers", or contain information linking this incident to their unfitness for present duties, she will place in serious jeopardy any further participation in this proceeding by Mr. Donaldson on her behalf.

- iv. AND pursuant to s. 145(1)(a) of the *Act*, only Mr. Donaldson is permitted to cross-examine the expert witnesses, unless due to unforeseen circumstances he is unable to appear, in which case Ms. Tanya Chamberlain KC may appear on his behalf. In event that he is no longer able to act for Ms. Gray, Ms. Gray will not be able to cross-examine the experts called on behalf of the Members.

Dated this 1st day of September, 2026

Elizabeth A. Arnold-Bailey

The Honourable Elizabeth A. Arnold-Bailey (BCSC Ret'd)

Adjudicator