

IN THE MATTER of a public
complaint of D.B., Z.B., and K.B.
Against Constables B.M., SS, and I.W. made under
The Royal Newfoundland Constabulary Act 1992

**Decision re Application of the Royal Newfoundland Constabulary Public Complaints
Commission to have Jerome Kennedy, Q.C. removed as solicitor of record for Constable
Steven Simmons**
(Heard November 3, 2020)

The Royal Newfoundland Constabulary Public Complaints Commission (“the Commission”) has applied to have Jerome Kennedy Q.C. removed as solicitor of record for Constable Steven Simmons (“Constable SS”) as a result of what the Commission characterizes as a conflict of interest.

For reasons noted below, the Application is granted.

Background

Until recently, Randy J. Piercey, Q.C. (“Mr. Piercey”) was solicitor of record for Constable SS in this matter. On October 22 2020, Mr. Piercey advised that he was in a conflict of interest as he had previously represented one of the complainants. Mr. Piercey dutifully arranged to have Jerome Kennedy, Q.C., (“Mr. Kennedy”) represent Constable SS.

The Commission advised the various Counsel participating that in its view, Mr. Kennedy was in conflict and could not represent Constable SS. Mr. Kennedy and his client do not share this view.

The hearing on the merits was to begin November 2, but the hearing of the within Application and this related decision has delayed the start of that hearing until at least November 9, (but now to a date to be determined).

The incident which precipitates this public complaint occurred on November 8 2017. The incident has also precipitated at least two other matters. **1.** A civil action (2019 01G 7155) initiated by the complainants in the public complaint, wherein they have sued, amongst others, each of the Constables party to this public complaint, and Sergeant Derrick Cole (“Sgt. Cole”), a supervisor working at the time of the November 8 2017 incident who spoke with Constable SS. ; **2.** A Matter of the Royal Newfoundland Constabulary Regulations (internal disciplinary matter) where various

disciplinary offences were laid against Sgt. Cole. Decisions related to that matter are currently under appeal.

Preliminary Objection at Outset of this Application

At the start of the hearing of the within Application, the Commission objected to Mr. Kennedy's arguing on the issue of conflict, as in the Commission's view, Counsel other than Mr. Kennedy (from a different law firm) should be engaged to argue the conflict issue. The objection arose once it became apparent that Mr. Kennedy intended to call witnesses (Constable SS and Sgt. Cole) who had sworn affidavits in relation to the conflict issue, as well as a partner at his law firm, Roebbothan Mckay Marshall ("RMM") John Drover ("Mr. Drover").

Mr. Kennedy felt it was appropriate for him to argue the within Application.

Based on case law presented in the brief of the Commission (e.g.; *Scotia Mortgage Corporation v. Furlong*, 2017, NLSC) there is a common practice whereby once an allegation of conflict of interest is launched, the lawyer/law firm against whom the allegation is made will remove themselves from the matter and have separate counsel/another law firm argue the conflict issue. This, admittedly, would appear to be a more practical approach, given for one in my view it would afford the subject client (in this case Constable SS) objectivity of an unimpeachable nature from a separate lawyer and firm, not directly involved in the allegation of conflict. However, in the within matter, Mr. Kennedy has not stepped aside in relation to the determination of the conflict issue. He is solicitor of record for Constable SS until such time that I might order otherwise. As such, if Constable SS wished to maintain Mr. Kennedy for the within Application, then I am prepared to allow it. I agree it is problematic as the Commission has noted, but Mr. Kennedy nor his client wished to insert separate Counsel, and in my view that is their right. Notably, in *R. v. Iceberg Quest Ocean Tours Inc.*, 2015, NLPC, the firm of record for the Respondent in an Application to have that firm removed due to an alleged conflict of interest, also appeared on the Application.

Position of the Commission

Sgt. Cole has been subpoenaed as a witness to appear at the hearing on the merits in the public complaint. In the civil action noted above, Sgt. Cole is a Defendant and is represented by Mr. Drover of RMM. Constable SS is a Defendant in that matter as well, and is represented by the firm of O'Dea Earle.

Sgt. Cole is also represented by Mr. Drover of RMM in the above noted appeal of two decisions of the Royal Newfoundland Constabulary Disciplinary Tribunal. Mr. Drover (and Julie Morris) also represented Sgt. Cole at the hearing which decisions are the subject of the appeal.

The Commission views Mr. Kennedy as being in conflict. They say as a result of John Drover and Mr. Kennedy's law firm, RMM, representing Sgt. Cole in related matters dealing with the same facts and circumstances (incident of November 8 2017), Mr. Kennedy is in conflict.

The Commission says that if Mr. Kennedy acts for Constable SS, Sgt. Cole will be subject to cross examination by Mr. Kennedy, and likely criticism in any potential opening statement and closing argument. They also note that an examination in chief (and subsequent cross examination) of Constable SS will result in criticism of Sgt. Cole.

The Commission intends to lead evidence at the hearing of the public complaint that in their view will indicate information given to Sgt. Cole by Constable SS on November 8 2017 in relation to the incident was likely inaccurate and potentially embellished.

The Commission also says that the interests of Sgt. Cole and Constable SS will diverge in the civil matter concerning the degree of culpability in relation to how any potential damage award may be apportioned. The Commission notes that given the public complaint is by its very nature public, presumably transcripts could be sought further to the discovery process in the civil action.

In the opinion of the Commission, Mr. Kennedy's duty to his client, Constable SS, will require an attack on the evidence of Sgt. Cole including whether Sgt. Cole provided the requisite supervision dictated by his duties as a supervisor. The Commission is of the view that an attack on Sgt. Cole in examination and argument by Mr. Kennedy would be important to Constable SS's litigation strategy.

Position of Constable SS

Constable SS says there is no disqualifying conflict of interest. He says that in the circumstances of the public complaint, Sgt. Cole is not a witness adverse to his interest as the conversation between he and Sgt. Cole on November 8 2017 was taped and a transcript of the same is available. If the conversation was not taped and each party was relying on their recollections of the conversation, then theoretically a conflict could arise. Constable SS says it is significant he

previously swore an affidavit for Sgt. Cole's disciplinary hearing which said that he was satisfied with the advice given to him by Sgt. Cole.

Constable SS notes 3.4-10 of the Law Society of Newfoundland and Labrador Code of Professional Conduct (the "Code"), which says:

3.4-10 Unless the former client consents, a lawyer must not act against a former client in:
(a) the same matter,
(b) any related matter, or
(c) any other matter if the lawyer has relevant confidential information arising from the representation of the former client that may prejudice that client.

Constable SS says affidavits filed in relation to the conflict of interest allegation, waive any perceived or potential conflict of interest.

Issues and Analysis

Is there a Conflict of Interest?

The Code (most recently amended version January 2020) defines a conflict of interest as:

the existence of a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person.

As recently noted by Justice Chaytor in ***Alderwood Estate and Retirement Centre Ltd. v. Regular***, 2019, NLSC, citing ***MacDonald Estate v. Martin***, 1990, SCC, the Supreme Court of Canada has prescribed a two-question test to be asked to determine if a conflict of interest exists:

- (1) Did the lawyer receive confidential information attributable to the solicitor and client relationship relevant to the matter at hand? and, if so,
- (2) Is there a risk that it will be used to the prejudice of the client?

Question 1 can be answered in the affirmative. Obviously there exists a solicitor client relationship as between RMM and Sgt. Cole. The retainer of RMM by Sgt. Cole is sufficiently related to the public complaint of which Constable SS is partially the subject, as it is also entirely in relation to the November 8 2017 events. The events of November 8 2017 are central to the

retainer of RMM by both Sgt. Cole and Constable SS. Further, while no evidence was proffered at the within Application that confidential information was or is being transmitted as between Mr. Drover and Mr. Kennedy, I also cannot say that there wasn't or isn't. This is not at all to cast aspersions upon patently reputable and established Counsel such as Mr. Drover or Mr. Kennedy, but only to adhere to comments by Justice Sopinka in *MacDonald Estate* and relied upon by Justice Adams in *Dobbin et al. v. Acrohelipro Global Services Inc. et al.*, 2004, NLSC (decision affirmed on appeal) at paragraph 12 as to a necessary inference:

*In my opinion, once it is shown by the client that there existed a previous relationship which is sufficiently related to the retainer from which it is sought to remove the solicitor, the court **should infer** that confidential information was imparted unless the solicitor satisfies the court that no information was imparted which could be relevant. This will be a difficult burden to discharge. Not only must the court's degree of satisfaction be such that it would withstand the scrutiny of the reasonably informed member of the public that no such information passed, but the burden must be discharged without revealing the specifics of the privileged communication.*

(Emphasis mine)

The ability to make such inference was also noted by Justice Chaytor in *Alderwood* at paragraph 19:

...Once the applicant has shown that there existed a previous solicitor-client relationship which is sufficiently related to the retainer from which it is sought to remove the solicitor, the court should infer that confidential information was imparted. ...

Moreover, as to discharging the burden and based on the testimony of Mr. Drover, there seem to have been no new and proactive measures taken either by way of physical or electronic barriers to establish an ethical wall as between Mr. Drover's files and Mr. Kennedy's files. I don't see this as something that could withstand the scrutiny of the reasonably informed member of the public.

Question 2 can also be answered in the affirmative. In *Alderwood*, Justice Chaytor said at paragraph 20:

With respect to the second question posed in the MacDonald Estate test, the Supreme Court of Canada made clear that the existence of relevant confidential information is such as to render the lawyer's disqualification to be automatic.

The legal interests of Constable SS and Sgt. Cole are directly adverse to each other. The hearing of the public complaint may indeed put Mr. Kennedy in a position whereby he cross examines Sgt. Cole in respect of his actions on November 8 2017, to the benefit of Constable SS, but to the detriment of Sgt. Cole. This would be a breach of RMM's duty to Sgt. Cole. Conversely, (but less

likely) is the scenario where the full extent of vigorous cross examination of Sgt. Cole is not employed by Mr. Kennedy, when perhaps it should have been, in a potential effort to maintain the RMM fiduciary duty to Sgt. Cole, thereby breaching that same duty to Constable SS. That said, it is possible that Mr. Kennedy would not see fit to cross examine Sgt. Cole. But that does not remove the almost certainty that Mr. Kennedy would still conduct a direct examination of Constable SS, with the possibility of a breach of the RMM fiduciary duty to Sgt. Cole again rearing its head. Taking it a step further, transcripts of such examinations could end up forming part of the civil litigation involving both Constable SS and Sgt. Cole, having an impact there as to the degree of possible culpability attributed to each officer. Such transcripts might also find their way into a new trial, should the remedy of a new trial which is sought in the Notice of Appeal relating to the Sgt. Cole internal disciplinary matter, be granted.

If There is a Conflict of Interest Can Mr. Kennedy Still Represent Constable SS at the Hearing of The Public Complaint?

Members of our Law Society are bound by the Code as per Rule 8.02(2) of the *Law Society Rules*, which Rules are authorized by the *Law Society Act*, SNL 1999 C. L-9.1.

Benchers of our Law Society made significant amendments to Section 3.4 (Conflicts) of the Code at the December 2015 Convocation, much of which are germane to the within Application. Undoubtedly these amendments were made with a view that our Code be in lock step with caselaw such as *R v. Neil*, 2002, SCC. Section 3.4-1 and Commentary [1] under it states:

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

*[1] Lawyers have an ethical duty to avoid conflicts of interest. Some cases involving conflicts of interest will fall within the scope of the bright line rule as articulated by the Supreme Court of Canada. The bright line rule prohibits a lawyer or law firm from representing one client whose legal interests are **directly adverse** to the **immediate legal interests of another** client even if the matters are unrelated **unless the clients consent**. However, the bright line rule cannot be used to support tactical abuses and will not apply in the exceptional cases where it is unreasonable for the client to expect that the lawyer or law firm will not act against it in unrelated matters...*

(Emphasis mine)

In *Neil*, at paragraph 29, Justice Binnie stated:

... The bright line is provided by the general rule that a lawyer may not represent one client whose interests are directly adverse to the immediate interests of another current client — even if the two mandates are unrelated — unless both clients consent after receiving full disclosure (and preferably independent legal advice), and the lawyer reasonably believes that he or she is able to represent each client without adversely affecting the other.

(Emphasis mine)

This was articulated perhaps more plainly in *Wallace v Canadian Pacific Railway*, 2013, SCC, where the Supreme Court of Canada revisited the “bright line” rule that applies to conflicts of interest among current clients. At paragraph 31:

The bright line rule holds that a law firm cannot act for a client whose interests are adverse to those of another existing client, unless both clients consent. It applies regardless of whether the client matters are related or unrelated.

Both Constable SS and Sgt. Cole executed affidavits in relation to the conflict of interest alleged by the Commission. These amount to what Constable SS submits are consents, sufficient to be the tools which operate to withstand disqualification of Mr. Kennedy as his Counsel.

Consent is expounded upon in our Code at Section 3.4-2 and its related Commentary:

3.4-2 A lawyer must not represent a client in a matter when there is a conflict of interest unless there is express or implied consent from all affected clients and the lawyer reasonably believes that he or she is able to represent the client without having a material adverse effect upon the representation of or loyalty to the client or another client.

(a) Express consent must be fully informed and voluntary after disclosure.

...

[1] Disclosure is an essential requirement to obtaining a client’s consent and arises from the duty of candour owed to the client. Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

[2] Disclosure means full and fair disclosure of all information relevant to a person’s decision in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed. The lawyer therefore should inform the client of the relevant circumstances and the reasonably foreseeable ways that the

conflict of interest could adversely affect the client's interests. This would include the lawyer's relations to the parties and any interest in or connection with the matter.

[2A] **While this rule does not require that a lawyer advise a client to obtain independent legal advice about the conflict of interest, in some cases the lawyer should recommend such advice.** This is to ensure that the client's consent is informed, genuine and uncoerced, especially if the client is vulnerable or not sophisticated.

[3] Following the required disclosure, the client can decide whether to give consent. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs.

(Emphasis mine)

Consent in the context of a conflict of interest is also expounded upon in a variety of case law. In *R. v. Parsons*, 1992, NLCA, Justice Marshall stated at paragraph 27:

While the public has a definitive interest in the fairness of process designed to resolve private disputes, this concern is heightened in criminal matters as public confidence in the integrity and fairness of the criminal justice system is indispensable to modern society. Therefore, the ultimate fairness of a public prosecution cannot be left entirely to private compact of the individuals immediately concerned. Whilst waivers and consents will remain important considerations, the test as to whether use of confidential information might occur should be applied, regardless of the presence of consents of immediately affected parties, in all criminal proceedings where the disqualification of counsel for conflict of interest in circumstances like the present case is in issue. If the conclusion is that such use might occur, then this fact should be balanced against the existence of the consents in an assessment of the overriding concern of the public perception in the fairness of the process.

(Emphasis mine)

The affidavits presented here do not operate to waive the conflict of interest. In addition to the Code at Section 3.4-2 and the above comments in *Neil*, guidance can also be found in *Acrohelipro*. There, it was submitted that even if counsel who was accused of being in conflict of interest was indeed found to be so, that such conflict had been waived and therefore the remedy of having

the conflicted counsel removed was not available. At paragraph 45, quoting from *Saskatchewan River Bungalows Ltd. and Fikowski v. Maritime Life Assurance Co.*, SCC, 1994, Justice Adams wrote:

Waiver will be found only where the evidence demonstrates that the party waiving had (1) a full knowledge of rights; and (2) an unequivocal and conscious intention to abandon them.

The principles of this test to determine the validity of a consent were also articulated as pointed out by Counsel for the Commission, in *Chiefs of Ontario v. Ontario*, 2003, Ont. Court of Justice, at paragraph 4, and paraphrased here:

Did the client have independent legal advice?

Was there full disclosure by the law firm?

Did the law a firm in obtaining the consent fulfill its obligations to its client?

As to the affidavit of Constable SS, considering the above portions of the Code, and requirements dictated by the case law, my view is as follows:

1. He did not obtain independent legal advice. While the option was provided to him, it does not appear that it was recommended. Independent legal advice is not a requirement, but to the extent it would have allowed Constable SS to be deemed fully informed, it would have helped. Insofar as a witness can be deemed “sophisticated”, that quality can be attributed to Constable SS. However, we can also attribute a measure of vulnerability to him, given he is clearly distraught by the events of November 8 2017 and the related public complaints process. Add to that the time constraints of a pending hearing on the merits and his desired representation for same being at stake via the within Application, there is no doubt in my mind that independent legal advice should have been obtained.
2. It is not clear to me that Constable SS was made aware of the reasonably foreseeable ways that the conflict of interest could adversely affect his interests. I do not doubt that Mr. Kennedy explained what a conflict of interest is and used case law to assist, and went through the affidavit word for word, but I am not as confident that Constable SS received an explanation which allowed him to appreciate for example the potential relevance to the civil action noted above. His testimony certainly did not allow me to garner that he has that appreciation, nor does his affidavit highlight it.

As to the affidavit of Sgt. Cole, considering the above portions of the Code, and requirements dictated by the case law, my view is as follows:

1. He did not obtain independent legal advice. While the option was provided to him, it does not appear that it was recommended. Penned edits to the affidavit add that the concept of independent legal advice was explained and understood, but such edits do not indicate that it was recommended. Independent legal advice is not a requirement, but to the extent it would have allowed Sgt. Cole to be deemed fully informed, it would have helped. Insofar as a witness can be deemed "sophisticated", that quality can be attributed to Sgt. Cole in the sense that he is a seasoned police officer close to retirement with a wealth of experience, having surely testified many times before. However, he did not seem to have a full appreciation for the concept of conflict of interest during his testimony. There is no doubt in my mind that independent legal advice should have been obtained.
2. It is not clear to me that Sgt. Cole was made aware of the reasonably foreseeable ways that the conflict of interest could adversely affect his interests. I do not doubt that Mr. Drover explained what is a conflict of interest is and used case law to assist, but I am not as confident that Sgt. Cole received an explanation which allowed him to appreciate for example the potential relevance to the civil action noted above. His testimony certainly did not allow me to garner that he has that appreciation, nor does his affidavit highlight it.

The affidavits do not nullify the conflict of interest.

Also, possibly relevant is 3.4-4 of our Code which deals specifically with concurrent representation.

Notably, Mr. Kennedy went to great lengths at the hearing of the within Application to stress that there are no competing interests. This section contemplates that scenario. Assuming for the moment that there are no competing interests, Sgt. Cole and Constable SS cannot succeed in showing that this section of the Code is complied with either.

This section states:

3.4-4 Where there is no dispute among the clients about the matter that is the subject of the proposed representation, two or more lawyers in a law firm may act for current clients with competing interests and may treat information received from each client as confidential and not disclose it to the other clients, provided that:

- (a) disclosure of the risks of the lawyers so acting has been made to each client;*
- (b) the lawyer recommends each client receive independent legal advice, including on the risks of concurrent representation;*

- (c) the clients each determine that it is in their best interests that the lawyers so act and consent to the concurrent representation;*
- (d) each client is represented by a different lawyer in the firm;*
- (e) appropriate screening mechanisms are in place to protect confidential information; and*
- (f) all lawyers in the law firm withdraw from the representation of all clients in respect of the matter if a dispute that cannot be resolved develops among the clients.*

As already highlighted, neither Sgt. Cole or Constable SS can establish an affirmative answer to (a), (b), or (e). While this section of the Code is likely geared more toward matters such as a corporate acquisition files, it is worth referencing, nevertheless.

Other Relevant Issues

The Use of Other Counsel

Constable SS's brief, notes that mechanisms such as retaining other counsel to question the "disputed" witness can be adopted to allow for counsel of choice.

This possibility was addressed for example in *R. v. Brissett*, 2005, Ont. Court of Justice, provided in the brief of the Commission. My reasoning for such a solution not being viable here is similar to what was found there. Injection of a lawyer independent of RMM to cross examine Sgt. Cole would not resolve the conflict. While Mr. Kennedy suggested that Sgt. Cole is not a key witness, and that may be the case, strategy may change as it relates to Mr. Kennedy's questioning and he may indeed be an important witness for Constable SS's case. Moreover and as noted above, Mr. Kennedy will surely conduct a direct examination of Constable SS, from which questions could arise that lead to a breach of the RMM fiduciary duty to Sgt. Cole. It flies in the face of practicality to suggest that Mr. Kennedy would also substitute a lawyer independent of RMM to examine Constable SS, who is surely a principal witness and in that scenario his own client.

Tactical advantage

Constable SS's brief, and submissions at the hearing, indicate that the bright line rule cannot be successfully raised by a party who seeks to abuse it for a tactical reason, such as to delay proceedings due to lack of preparation. Put in simpler terms, it was suggested at the hearing of the within Application that the Commission was not ready to proceed with the hearing of the public complaint, and that was their true motivation for making this Application.

I don't accept that a tactical advantage is being sought and make 2 points in that regard:

1. No viable evidence was presented to me to suggest that the Commission is not prepared to start the hearing of this public complaint on the dates that were set (and moreover the Commission says they are ready);
2. On October 15 (about one week before the conflict issue arose) the Commission provided me with three subpoenas for witnesses requiring appearances on November 2.

To suggest that the Commission is trying to gain a tactical advantage in that they wish to achieve a delay in the main hearing by way of making this Application, is to suggest that their making of the Application is at least in part disingenuous. I believe that Counsel for the Commission saw what they viewed to be a conflict of interest, and as would be their responsibility, made an Application in relation to the same. Based on conduct of the Commission prior to the conflict issue arising, they appear to have been ready to commence on November 2nd.

Counsel of Choice

Constable SS notes in his brief, and as well at the hearing, that an important and countervailing value in conflict of interest situations is that a litigant should not be deprived choice of counsel without good cause. I agree.

At paragraph 22 in **Wallace**:

In addition to retaining an emphasis on risk of prejudice to the client, the Court concluded in Martin that an effective and fair conflicts rule must strike an appropriate balance between conflicting values. On the one hand stands the high repute of the legal profession and the administration of justice. On the other hand stand the values of allowing the client's choice of counsel and permitting reasonable mobility in the legal profession. The realities of large law firms and litigants who pick and choose between them must be factored into the balance. ...

And at paragraph 9 in **Alderwood**:

The freedom of parties in litigation to be represented by counsel of their choice is an important principle of our judicial system but it must be balanced against other principles designed to prevent lawyers from acting in matters that could give rise to a conflict of interest, or the perception of a conflict of interest.

Constable SS was clear in his testimony that he wishes to maintain Mr. Kennedy as his Counsel. I can appreciate why, as he likely views Mr. Kennedy as a seasoned lawyer who will argue zealously for him. Constable SS also suggested there is nobody else who could act for him.

This proceeding (hearing of the public complaint) has not yet begun. Mr. Kennedy would not at this stage have a high number of hours into preparation for the hearing of the public complaint. There are in my view other local lawyers with comparable expertise who would not be in conflict, and who could represent Constable SS. There is good cause here (the established conflict of interest in this matter) to not allow Constable SS to have Mr. Kennedy as his Counsel.

Summary and Comments

The Application of the Commission is granted. Mr. Kennedy is to be removed as Constable SS's solicitor of record. Mr. Kennedy nor any member of RMM can act for Constable SS at the hearing of the public complaint.

I wish to reiterate my remarks above that this decision does not equate to casting aspersions upon Mr. Kennedy, Mr. Drover, or RMM. Indeed, various well-regarded counsel in our province have at one time been found to be in conflict. Mr. Kennedy is a former Minister of Justice, Queen's Counsel, and well-regarded litigator. Mr. Drover, while not the direct subject of this Application, should be noted also as an experienced and respected litigator. RMM is an established law firm. None of this, however, avoids the Commission having established that there is a conflict of interest here, and Mr. Kennedy cannot act for Constable SS.

The granting of this Application necessarily results in the delay of the remaining dates which were set for the hearing on the merits in this matter (November 9-13) as Constable SS will need to retain new Counsel, assuming he does not elect to represent himself. As it has already been agreed per s.32.(3) of the *Royal Newfoundland Constabulary Act, 1992* that all complaints are being heard together, and Constable SS no longer has representation, this inevitably delays the hearing of the complaints as against Constables I.W. and B.M. as well. Even if Constable SS decided to self-represent, he, like any Counsel he might hire, would need time to properly prepare.

Constable SS should advise the Commission no later than 20 November, as to his intentions in relation to representation at the hearing of this public complaint, so that all parties can turn their minds as soon as possible to the setting of new dates. Delays in sitting for the hearing of the public complaint to date have resulted largely now from four separate Applications (one which was averted last minute via agreement of Counsel), each of which should not necessarily be

deemed undue, but which have delayed the main hearing nonetheless. The pandemic also prevented May 2020 dates from being adhered to, and my own essential travel prevented August dates from being adhered to. This public complaint stems from events on November 8 2017, with the complaints being made on May 1 2018, and the reference to the Adjudicator having been made on July 2 2019. I am hopeful there will be no further delays. Since my first meeting with Counsel on 15 November 2019 there have been various overtures made as to the impact on the lives of the Constables in relation to the November 8 2017 events and public complaints process, but no actual evidence had ever been tendered in that regard, until the hearing of the within Application, by way of Constable SS's testimony. It is clear to me that much further delay is undesirable.

There is no Order as to costs.

Thank you very much to all Counsel for their submissions, both oral and written.

Dated this 6th day of November 2020
Andrew Wadden - Adjudicator