

IN THE MATTER of a public
Complaint of A.A
Against S/Sgt T.B. made under the
Royal Newfoundland Constabulary Act 1992

Chief of the Royal Newfoundland Constabulary

APPLICANT

AND

S/Sgt. Tim Buckle

FIRST RESPONDENT

AND

**Royal Newfoundland Constabulary Public
Complaints Commissioner**

SECOND RESPONDENT

Procedural Decision

Preliminary Application for Standing by the Chief of the Royal Newfoundland Constabulary

Hearing Date: July 18, 2023

Decision Date: November 27, 2023

For the Applicant: Erin Matthews

For the First Respondent: Bernard Coffey, K.C.

For the Second Respondent: James Strickland

Adjudicator: John Whelan Q.Arb., Chief Adjudicator RNCPC

PROCEDURAL HISTORY

1. On January 13, 2023 Complaint #17-34936 and Complaint #17-18798 were referred to the Chief Adjudicator for a hearing by Acting Commissioner Augustine Bruce.

2. Complaint #17-34936 involves the circumstances surrounding the allegedly unlawful detention of the Complainant on or about 7 April 2015 and subsequent statements made by the Respondent Officer following the detention.

3. Complaint #17-18798 involves an allegation that on or about 7 April 2015 the Respondent Officer conducted himself in a manner unbecoming to a police officer.

4. On or about May 2, 2023, the Applicant herein applied for standing pursuant to Section 30(1)(e) of the *Royal Newfoundland Constabulary Act, 1992* ("the Act").

POSITION & ARGUMENTS OF THE APPLICANT

5. The Applicant submits that the Chief of the RNC should be granted standing per s.30(1)(e) of the Act.

6. The Applicant submitted that the Chief of the RNC has a substantial interest in the outcome of the hearing. Namely, that:

- i. The proceedings are conducted in public and there is a strong likelihood that the subject matter of the proceedings will influence public perception;
- ii. An Order made by the Chief Adjudicator under Section 35 of the Act may have significant operational and/or administrative impacts within the RNC;
- iii. Fairness and transparency of the proceedings requires participation be granted to the Chief of the RNC who is in a unique position to assist with the hearing;
- iv. The identification of issues that may result in recommendations being issued by the Chief Adjudicator to the Minister of Justice and Public Safety would be incomplete without the participation of the Chief of the RNC;
- v. The Chief of the RNC is well positioned to assist the Chief Adjudicator and other parties achieve an expeditious and fair adjudication;
- vi. The matter involves the conduct of a retired member and the Chief of the RNC has a substantial interest in recommendations that may be made in relation to retired members; and,
- vii. Complaint 17-18798 involves "private" correspondence on a government issued phone and will likely have impacts on policy and procedures involving recording keeping of text exchanges within the RNC.

POSITION & ARGUMENTS OF THE FIRST RESPONDENT

7. The First Respondent submits that:

- i. The Chief Adjudicator is to act as an impartial and unbiased adjudicator and is not responsible for general inquiries into the operations of the police force;
- ii. That the interests of the Chief of the RNC can be satisfied without being granted party status in the proceeding;
- iii. That there has been an increasing misuse of the “substantial interest” standing provisions within the *Act* and that such use is contrary to the intention of the legislature;
- iv. That s.30(1)(d) of the *Act* is the exclusive mechanism for the Chief of the RNC to be granted standing at a hearing.

POSITION OF THE SECOND RESPONDENT

8. The Second Respondent has taken no position on the merits of the Application. The Second Respondent stated that based on the referral, if standing was granted to the Applicant, it would have to be granted under s.30(1)(e) of the *Act*.

ANALYSIS

9. This application centres on two key issues:

- i. Is the Chief of the RNC permitted to apply for standing under s.30(1)(e) of the *Act*?
- ii. If the Chief of the RNC is permitted to apply for standing under s.30(1)(e), has the Chief established a “substantial interest” in this Complaint?

10. While the First Respondent raised interesting concerns regarding the potential misuse of standing applications under s.30(1)(e), I find that such analysis would be beyond the scope of my authority. If the Applicant is not excluded from applying for standing under s.30(1)(e), the relative frequency of applications under that section would not be determinative of whether the provision was being abused. Seeking standing under s.30(1)(e) is a discretionary act of an interested party, if it is being used with greater frequency by the Chief of the RNC, that does not necessarily equate to inherent misuse.

SECTION 30(1)(e) ROYAL NEWFOUNDLAND CONSTABULARY ACT

11. Section 30 of the *Act* states:

30. (1) The parties to a proceeding before an adjudicator are

(a) the commissioner, who shall have the carriage of the matter;

(b) the complainant;

(c) the police officer who is the subject of the complaint;

(d) the chief, in the case of an appeal by the police officer who is the subject of the complaint; and

(e) a person who satisfies the adjudicator that he or she has a substantial interest in the complaint.

12. The Applicant has taken the position that the language of s.30(1)(e) enables the Chief to apply for standing. The First Respondent has taken the position that the inclusion of the Chief in s.30(1)(d) serves to exclude the Chief from applying for standing under s.30(1)(e).

13. I have previously canvassed this issue in another matter.¹ I have found that the inclusion of the Chief in s.30(1)(d) does not exclude the Chief from applying for standing under s.30(1)(e) if the Chief is able to meet the standard of “substantial interest.”

DOES A SUBSTANTIAL INTEREST EXIST?

14. The Complaints alleges that the First Respondent

- i. Unlawfully detained an individual;
- ii. Made false or misleading statements in order to support the unlawful detention of the above individual; and,
- iii. Communicated with a peer in a manner that could bring disrepute to the RNC.

15. While not included in the originating referral, the unlawful detention arises from the alleged misuse of the *Mental Health Care and Treatment Act, 2015* to detain the Complainant.

16. I find that the mechanism of the alleged unlawful detention is liable to generate significant media interest and public scrutiny. Further, it is likely that the policies and procedures of the RNC related to detentions under the *Mental Health Care and Treatment Act* are likely to be key considerations during the hearing.

17. Accordingly, I find that the Applicant has established that the Chief possess a substantial interest in relation to the matter under consideration given the potential public scrutiny of the Respondent Officer’s conduct and the potential impact upon operational policies and procedures.

18. While the First Respondent has raised the potential of allowing the Chief to become a party to the hearing at a later date, I find that the balance of convenience warrants inclusion of the Chief from the outset. While the concerns regarding the participation of the Chief by the First Respondent are warranted, it is my opinion that the benefits of inclusion outweigh the concerns supporting exclusion.

¹ See generally *Ball v. Simmons (Standing)*, 2023-06-13 available at <https://www.rncpcc.ca/files/Decision-Cst-SS-Application-for-Standing-RNC-Chief.pdf> Last Accessed on 2023-11-27.

19. As noted in the *Ball v. Simmons* standing decision,

39. *Handrigan J. in Royal Newfoundland Constabulary Chief of Police v. Royal Newfoundland Constabulary Public Complaints Commissioner,*² dealt with an application by a former RNC Chief to quash an evidentiary decision made by an Adjudicator. Justice Handrigan noted, at para 36, that “recommendations would certainly be of interest to the Chief of Police” but that those recommendations are “ancillary to and not the predominant purpose of the legislation. It might support the Applicant having party status, but it does not accord him the full right of participation that is enjoyed by the other participants.”³

40. *I find, in this instance, given the nature of the complaint and the potential for material public scrutiny and potential recommendations that may flow from my findings that the substantial interest requirement has been satisfied.*

41. *However, I do find that the First Respondent’s concerns regarding a fair and just proceeding are warranted. As with any party, there is a risk that the Chief would approach the proceeding with their own interests at the forefront of their mind. In this instance, the First Respondent is concerned that their interests would be adverse to the interests of the Chief. Undoubtedly, there would be other scenarios where the Second Respondent may be concerned about the Chief’s interests being adverse to their own. Clearly, the granting of party status comes with attendant risk that the participation will take the shape of something other than the interest in the global functioning of the RNC.*

42. *Accordingly, while there is no statutory provision explicitly allowing for limited party status under s.30(1) of the Act, I will be exercising my discretion to limit the participation of the Applicant to topics and matters that are of a general interest to the RNC and not to the specifics of the Complaint.*

ORDER

20. The Applicant will be granted status as a Party to the Complaint per s.30(1)(e) of the Act. The right of participation by the Chief will be restricted to matters of general interest to the RNC. The Chief will not be allowed to call evidence without the consent of the First and Second Respondent and my

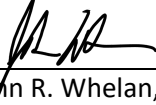
² 2001 CarswellNfld 161, [2001] N.J. No. 161

³ *Ibid.*, at para 36.

determination that the evidence is relevant. As per the representations of counsel, the participation of the Chief shall be limited to his roles and responsibilities as found in s.6(1) of the *Act*.

21. Further, the Applicant will be responsible for their own costs for their participation in the hearing.

Dated this 27th day of November, 2023



John R. Whelan, Q. Arb.

Chief Adjudicator