

PROCEDURAL HISTORY

1. On May 1, 2024 Public Complaint 2021-11843 was referred to the Chief Adjudicator by Commissioner Reid.

2. Complaint #2021-11843 alleges that between 27 November 2020 and 22 January 2021 the First Respondent breached s.3(1)(d), s.(3)(j), and s.3(o) of the *Royal Newfoundland Constabulary Public Complaints Regulations* with respect to an investigation conducted for Public Complaint 2019-53528.

3. On or about 20 September 2024, 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

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

5. 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. An issue relevant to the Complaint is the appointment of investigators under s.24(4) of the *Royal Newfoundland Constabulary Act, 1992*, which is the role of the Chief of the Deputy Chief.

POSITION & ARGUMENTS OF THE FIRST RESPONDENT

6. The First Respondent opposes the application.

7. The First Respondent argued that while the Chief may have a general interest, that should not overrule the fact specific nature of the adjudication before me. The Respondent cautioned that to grant the Chief standing runs the risk of allowing improper evidence being injected into the proceeding.

8. The First Respondent cautioned that granting the Chief status as a party because “they are positioned to assist the tribunal” runs the risk that the adjudicator may treat the Chief as either an expert witness, or grant the Chief some implied elevated standing within the proceeding.

9. The First Respondent stated that the decision to grant standing must be done on the balancing of interests. The Respondent noted the following:

- i. The actual Chief (Roche) is likely a material witness to the proceeding as Roche appointed the Respondent to the investigation
- ii. It is likely that the actual Chief will be called as a witness to the proceeding
- iii. The within Complaint was referred directly to the Commission due to an allegation by the Complainant at the Chief may be biased

10. The First Respondent states that it is possible that Chief Roche and the First Respondent may actually be adverse parties in this adjudication. Additionally, the First Respondent states that there may be an adverse relationship between the Complainant and Chief Roche since the Complainant made a prior allegation of bias against Chief Roche.

11. The First Respondent states that while adjudicators have traditionally placed procedural restrictions on the Chief of the RNC when they are granted standing, such procedural restrictions will not be sufficient to protect the procedural fairness interests of the Complainant and the First Respondent.

12. The First Respondent stated that whatever public relations risks that may be present in this instance are purely speculative. Further, any learning or “lessons” can be gleaned by the RNC via the decision and any Orders that may arise from this adjudication.

13. During oral argument, the First Respondent also cautioned that granting status to the Chief of the RNC may somehow elevate the opinion evidence of the Chief to the level of quasi-expert testimony.

POSITION OF THE SECOND RESPONDENT

14. 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

15. 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?

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

16. 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.*

17. 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?

18. The Complaints alleges that the First Respondent

- i. Negligently investigated a public complaint
- ii. Conducted himself in a manner contrary to the Act

19. 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

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 2024-12-19.

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

³ *Ibid.*, at para 36.

20. While the First Respondent, and Respondent Officers in other applications, have argued that the above findings of Handrigan J. should be read in the context of cautioning the granting of public interest standing to the Chief of the RNC, that has not been the interpretation adopted by this Public Complaints Commission.

21. The Applicant has demonstrated material media attention in this matter. Further, there is the possibility that I may conclude that the Chief, in his prior role, had incorrectly selected an investigator under s.24(4) of the Act. Either of these likely satisfy the threshold of establishing a substantial interest in the matter.

22. 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, specifically the investigation of public complaints.

23. On the balancing of interests, while I appreciate the concerns raised by the First Respondent, I do not find they are sufficient to displace the interest held by the Chief of the RNC. The First Respondent has suggested that Chief Roche may have interests adverse to either the Complainant or the First Respondent, or possibly both. That may be true, but those interests would be adverse whether or not the Chief was granted standing. Whether Chief Roche is an adverse witness is not impacted by whether or not the Office of the Chief of the RNC is granted standing. The Complaints process contemplates an adversarial hearing, so the identified risk is likely a feature rather than a bug. However, it is a feature that can be mitigated to ensure a fair hearing.

24. As I 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,⁴ 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."⁵

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

⁴ 2001 CarswellNfld 161, [2001] N.J. No. 161

⁵ *Ibid.*, at para 36.

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.

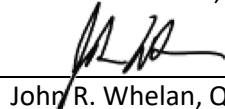
25. The concerns raised by Respondent counsel in the above matter ring equally true for the instant case. While the Chief of the RNC can be granted standing, they will not be granted any form of elevated standing at the proceeding. In fact, they will be given quite the opposite.

ORDER

26. 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 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.

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

Dated at St. John's, NL, this 13th day of January, 2025



John R. Whelan, Q. Arb.
Chief Adjudicator