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**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Royal Newfoundland Constabulary Public Complaints Commission v.
Constable J.S.*, 2025 NLSC 90

Date: July 24, 2026

Docket: 202501G3416

BETWEEN:

**THE ROYAL NEWFOUNDLAND
CONSTABULARY PUBLIC
COMPLAINTS COMMISSION**

APPLICANT

AND :

CONSTABLE J.S.

RESPONDENT

Before: Justice David G. Conway
Edited Transcript of Oral Reasons for Judgment

A Judicial Review of: A Decision of the Royal Newfoundland Constabulary Public Complaints Commission pursuant to the *Royal Newfoundland Constabulary Act, 1992*, dated the 16th day of January 2025.

Place of Hearing: St. John's, NL

Dates of Hearing: October 7 & December 8, 2025

Date of Oral Judgment: December 23, 2025

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Summary:

The Commission seeks to quash a decision of the Chief Adjudicator, who dismissed a complaint against the Respondent.

Held: The decision of the Chief Adjudicator was reasonable. The Application for judicial review is dismissed.

Appearances:

James R. Strickland	Appearing on behalf of the Applicant
Jerome P. Kennedy, K.C.	Appearing on behalf of the Respondent
Erin E. Matthews	Appearing on behalf of the Chief of the Royal Newfoundland Constabulary

Authorities Cited:

CASES CONSIDERED: *Abbass v. Royal Newfoundland Constabulary Public Complaints Commission*, 2025 NLSC 149; *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8; *Coronado v. Memorial University of Newfoundland and Labrador*, 2025 NLSC 124; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65

STATUTES CONSIDERED: *Royal Newfoundland Constabulary Act, 1992*, S.N.L. 1992, c. R-17; *Royal Newfoundland Constabulary Public Complaints Regulations*, Nfld. Reg. 970/96

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

JUDGMENT

CONWAY, J.:

INTRODUCTION

[1] This is an Application for judicial review filed by the Royal Newfoundland Constabulary Public Complaints Commission (“Commission”).

[2] The Respondent is Constable J.S. who was, at all material times, a member of the Royal Newfoundland Constabulary (“RNC”).

[3] The Respondent was subject to a complaint filed on March 23, 2017 (“Complaint”), in accordance with the *Royal Newfoundland Constabulary Act, 1992*, S.N.L. 1992, c. R-17 (“Act”).

[4] The Complaint concerned the detention of Andrew Abbass by officers of the RNC on April 7, 2015.

[5] The Complaint was referred to the Chief Adjudicator, in accordance with the *Act*, and hearing dates were held in 2023 and 2024.

[6] The Decision of the Chief Adjudicator on the merits of the Complaint is dated January 16, 2025 (“Merits Decision”).

[7] The Merits Decision determined, among other things, that the actions of the Respondent did not constitute discreditable conduct contrary to section 3(1) of the regulations under the *Act*, *Royal Newfoundland Constabulary Public Complaints Regulations*, Nfld. Reg. 970/96 (“*Regulations*”).

[8] The Commission seeks an order in the nature of *certiorari* to have the Merits Decision quashed, with the Complaint being remitted to an adjudicator under the *Act*. The Commission also seeks its costs.

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BACKGROUND

[9] The background facts and circumstances concerning Mr. Abbass' detainment are summarized in paragraphs 7 through 14 of the Originating Application:

7. On April 7, 2015, Andrew Abbass ("Mr. Abbass" or the "Complainant") was detained under the *Mental Health Care & Treatment Act* (SNL 2006 c. M-9.1) by RNC personnel. He was delivered to the Western Health Care Corporation, where he was held for six days and underwent psychiatric evaluation. Mr. Abbass was released from hospital on April 13, 2015.
8. At the time of his detainment Mr. Abbass was not certified as suffering from any recognized psychiatric condition. He was not charged with any criminal offence in relation to the incident.
9. Shortly after his detainment, Mr. Abbass made an application to this Honourable Court for a writ of *habeas corpus*, which was denied.
10. Mr. Abbass appealed the decision to the Newfoundland and Labrador Court of Appeal. On April 13, 2017, the Court of Appeal overturned the decision and remitted the matter back to this Honourable Court.
11. Following rehearing, on April 27, 2018, this Honourable Court issued a writ of *habeas corpus*, finding that the detention of Mr. Abbass under the *Mental Health Care & Treatment Act* was not shown to be lawful.

The Dunphy Inquiry and Subject Text Messages

12. Over the course of January through March 2017, the Commission of Inquiry respecting the Death of Donald Dunphy ("CIDDD") held public hearings. The Respondent and another officer, T.B., provided testimony at those hearings.
13. Through the public testimony at the CIDDD, Mr. Abbass became aware of a text message exchange between the Respondent and T.B., which had been unearthed during a forensic investigation of the Respondent's mobile phone data.

14. The mobile phone data showed that on April 7, 2015, the date of the detainment of Mr. Abbass, the Respondent and the other officer, T.B., exchanged the following messages via Blackberry messenger:

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S/Sgt. T.B.: Arrested Abbass under MHCTA (19:32:08hrs)
Cst. [J.S.]: Saw that! Nice (19:32:19hrs)
S/Sgt. T.B.: He's at hospital now (19:32:23hrs)
Cst. [J.S.]: Loser (19:32:48hrs)
S/Sgt. T.B.: Yup (19:33:00hrs)

[10] The circumstances of Mr. Abbass's detainment are also noted in a separate oral judgment that I gave on September 12, 2025, which is *Abbass v. Royal Newfoundland Constabulary Public Complaints Commission*, 2025 NLSC 149.

JUDICIAL REVIEW

[11] The Commission has challenged the reasonableness of the Merits Decision by way of judicial review.

[12] Given this, the issue of whether judicial review is available to the Commission in these circumstances has arisen.

[13] Section 30 of the *Act* outlines who the parties may be for a proceeding before an adjudicator. These parties include, among others, the Commissioner, the Complainant and the police officer who is subject to the complaint.

[14] Section 36(1) of the *Act* gives a complainant or a police officer who is the subject of the complaint the right to appeal a decision of an adjudicator. The *Act* does not grant the Commission a statutory right to appeal a decision of an adjudicator.

[15] The question becomes whether the Commission has the right to seek judicial review of a decision of an adjudicator.

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[16] The Supreme Court of Canada decision in *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8, is instructive in these circumstances.

[17] I find that, based upon *Yatar*, I must look at the statutory scheme and intent of the legislature as to whether judicial review is precluded in these circumstances.

[18] I would note that here there is no limited right of appeal for a complainant or a police officer who is the subject of a complaint. They can file an appeal based upon questions of law or questions of mixed fact and law. That is different from the circumstances in *Yatar*, where the legislation only provided a limited right of statutory appeal based upon questions of law.

[19] Here, there is no right of appeal granted to the Commission, which is obviously more restrictive than a limited right of appeal.

[20] The legislature did not add a privative clause to the *Act* to seek to preclude judicial review, which strongly suggests that judicial review is not precluded. In fact, the *Act* is silent concerning judicial review.

[21] I find that judicial review is available in these circumstances. There is no reasonable alternative available to the Commission to challenge the Merits Decision.

[22] The Commission was a party to the proceedings before the Chief Adjudicator. To preclude judicial review in these circumstances would not be appropriate.

[23] I find, based upon the wording of the *Act*, the intent of the legislature and *Yatar*, that judicial review is available to the Commission to seek to challenge the Merits Decision. I also find, in the circumstances, that conducting a judicial review is appropriate.

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[24] I am mindful of the Supreme Court of Canada's comments in paragraph 54 of *Yatar*:

When an applicant brings an application for judicial review, a judge must consider the application: that is, at a minimum, the judge must determine whether judicial review is appropriate. If, in considering the application, the judge determines that one of the discretionary bases for refusing a remedy is present, they may decline to consider the merits of the judicial review application (*Strickland*, at paras. 1, 38 and 40; *Matsqui*, at para. 31). The judge also has the discretion to refuse to grant a remedy, even if they find that the decision under review is unreasonable (*Khosa*, at para. 135; *Strickland*, at para. 37, quoting *Minister of Energy, Mines and Resources*, at p. 90).

[25] I do not find that there is a discretionary basis for refusing the remedy that is sought by the Commission. As such, I will proceed to assess the Application for judicial review on its merits.

Timeliness of the Complaint

[26] A preliminary issue was raised by the Respondent concerning the timeliness of the Application for judicial review.

[27] Under Rule 54.06 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D ("*Rules*"), an application for judicial review must be filed and served within a reasonable time after the date of a decision.

54.06. An originating application for an order in the nature of *certiorari* shall be filed and served within a reasonable time after the date of

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- (a) filing of the judgment;
- (b) issuing of the order or award;
- (c) service of the warrant;
- (d) rendering of the report of the inquiry

to which it relates.

[28] Previously, Rule 54.06 required that an Application for judicial review had to be filed and served within 6 months.

[29] The *Rules* are not binding on the Court in terms of timelines, although a statute can impose binding timelines from which the Court is not able to deviate. With respect to this, see paragraph 83 (i-iv) of *Coronado v. Memorial University of Newfoundland and Labrador*, 2025 NLSC 124:

- (i) section 33 of the *Act* has a plain meaning requiring an application for judicial review to be filed with the Court and served on all parties to a complaint within 30 days of service of the dismissal of a complaint;
- (ii) the nature of the *Act* and the complaint process support the conclusion that the timelines in section 33 of the *Act* are mandatory;
- (iii) there is nothing in the *Rules* or otherwise that allows the Court to extend or amend the timelines in section 33 of the *Act*; and
- (iv) interpreting section 33 of the *Act* as outlined results in overall fairness to the parties and the process.

[30] Here, the *Act* does not set out a time limit for seeking judicial review. As I noted, the *Act* is silent with respect to judicial review.

[31] In terms of the timeliness of the Application for judicial review, the Respondent raised issues of institutional delay and laches, among other submissions. These submissions were also made to the Chief Adjudicator, who did not accept them.

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[32] Needless to say, the Complaint was filed in 2017, and proceedings related to the Complaint are still ongoing. That being said, I do not find that institutional delay or the concept of laches are considerations when dealing with the timeliness of the Application for judicial review.

[33] The Merits Decision was rendered in January 2025, and the Application for judicial review was filed and served in June 2025. That time-period for seeking judicial review is not exceptional by any means.

[34] In terms of what constitutes a reasonable period of time, I find that the Court must look at the circumstances and use its discretion to decide what is reasonable. What is a reasonable period of time in one situation may not be a reasonable period of time in another situation.

[35] Some of the factors to consider as to whether a time-period is reasonable could include the following, although this is not an exhaustive list:

- prejudice to one of the parties resulting from the delay in seeking judicial review;
- the reasons for not seeking judicial review sooner;
- the merits of an application for judicial review, to the extent that an application is not frivolous or vexatious; and
- whether costs or some other form of remedy could effectively deal with any unfairness resulting from the delay in seeking judicial review.

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[36] Here, the Commission had to assess its legal options, including the fact that there is no right of appeal under the *Act* for the Commission. An approximate 6-month time period for a party to weigh their legal options and file an application for judicial review is not a significant period of delay.

[37] Furthermore, there is no prejudice that results from the delay, other than prolonging what were already prolonged proceedings.

[38] Finally, it cannot be said that the Application for judicial review is frivolous or entirely lacks merit. The Commission has cogent arguments for why it states that the Merits Decision is unreasonable.

[39] In these circumstances, I find that the Application for judicial review was filed and served by the Commission in a reasonable time after the date of the Merits Decision.

Merits

[40] I will now turn to the merits of the Application for judicial review.

[41] The Merits Decision will be assessed according to the reasonableness standard outlined in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[42] I must determine whether the Merits Decision is reasonable. The reasonableness standard is a deferential form of judicial review. A reviewing court does not substitute its own decision on the merits or re-decide a matter when conducting a judicial review.

[43] The Commission takes issue with the wording and phrasing used by the Chief Adjudicator. In particular, the Commission submits that the Chief Adjudicator unreasonably applied sentencing principles in the Merits Decision. The Commission also submits that the Chief Adjudicator unreasonably imported a *de minimus* test when determining whether the Respondent's conduct was discreditable.

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[44] The Merits Decision starts out by noting the procedural history, exhibits and background facts. The Commission does not take issue with any of this. In fact, the parties to the hearing did not contest the background circumstances or facts.

[45] There were no issues of credibility or conflicting facts that the Chief Adjudicator had to decide. This is different from many disciplinary hearings involving police officers where the facts and the credibility of witnesses is very much in issue.

[46] The Merits Decision goes on to outline the issues to be determined. These included the admissibility of the text messages in question and whether, if admissible, these text messages constituted disreputable conduct on behalf of the Respondent, contrary to the *Regulations* under the *Act*.

[47] Again, the Commission does not take issue with how the Chief Adjudicator framed the issues to be determined.

[48] The Merits Decision goes on to outline why the text messages are admissible. The Commission takes no issue with this assessment.

[49] The part of the Merits Decision that the Commission submits is unreasonable starts at paragraph 47. This is the Chief Adjudicator's assessment of whether the text messages constitute misconduct.

[50] The Chief Adjudicator references the applicable parts of the *Act* and *Regulations*. He then outlines the discreditable conduct test as stated in *Spurrell v. Priddle and Puddicombe* (Decision of the RNCPC, 24 March 2016), which the parties agree is the appropriate test to apply.

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[51] The Chief Adjudicator then notes the contextual factors outlined by the Commission and by the Respondent, with reference to case law.

[52] Finally, the Chief Adjudicator assesses whether the text messages constitute discreditable conduct. He notes that no evidence was placed before him of what the reasonable expectations of the community would have been in the circumstances.

[53] The Chief Adjudicator then restates the test by noting in paragraph 56 of the Merits Decision that: "Essentially, the question becomes whether a reasonable person, dispassionate and fully apprised of the circumstances in this case, would consider the conduct of the respondent to be discreditable."

[54] There is nothing unreasonable in terms of stating the issue in this manner. That is exactly what the test involves and what the Chief Adjudicator was being asked to decide.

[55] The Commission's issues with the reasonableness of the Merits Decision basically comes down to paragraphs 57 through 62 of the Merits Decision:

57 I find that the following circumstances are relevant to the determination of this matter:

- i The respondent had been recently involved in an incredibly stressful event, specifically the fatal shooting of Donald Dunphy (mitigating factor);
- ii At the time of the messages, the Respondent was on approved leave as a result of the shooting incident (mitigating factor);

- iii At the time of the messages, the Respondent was not involved with the decision to detain the Complainant under the *MHCTA* (mitigating factor);
- iv The Respondent was not involved with the actual detention of the Complainant under the *MHCTA* (mitigating factor);
- v The correspondence with T.B. was made in a private setting and not intended for public consumption (mitigating factor);
- vi There was no RNC policy prohibiting the off-duty communication between members about particular files (neutral factor);
- vii Referring to the detention of an individual under the *MHCTA* as “nice” is not acceptable, particularly from a police officer, as it may bring the administration of justice and the reputation of the RNC into disrepute (aggravating factor);
- viii Referring to an individual detained under the *MHCTA* as a “loser” is not acceptable, particularly from a police officer, as it may bring the administration of justice and the reputation of the RNC into disrepute (aggravating factor);
- ix A communication, albeit private, between two officers regarding the detention of an individual under the *MHCTA* when that individual had been critical of one of the officers may bring the administration of justice into disrepute (aggravating factor).

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58. Based on the totality of the circumstances before me, I conclude that the Respondent’s text message exchange with T.B. was not appropriate but does not constitute discreditable conduct by the Respondent.

59. I find that the decisions in *Sljivo and Holmes*, relied upon by the RNCPC, are distinguishable from the instant case. In *Sljivo*, the officers were on-duty and the nature of the comments by the officers towards the disabled child were, in my view, significantly more damaging to the individual specifically and to the reputation of the police force generally. Similarly, I find that the language used by the officer in *Holmes* was significant [*sic*] more inflammatory than the language used by the Respondent in this instance.

60. To be clear – the Respondent’s commentary towards the Complainant was not appropriate. The Respondent admits as much. However, I cannot conclude that the comments were significant enough to cause a credible risk to the reputation of the RNC.

61. I find that the Respondent’s comments fall below an implied *de minimis* threshold for complaints of officer conduct. While the conduct of the Respondent in this instance may satisfy the technical minimums to constitute a breach of s.3(1) of the *Regulations*, the conduct lacks the severity necessary to warrant such a conclusion.

62. Consequently, I find that the Respondent has not breached s.3(1) of the *Regulations*.

[56] I see nothing in the Chief Adjudicator's assessment and analysis that I would consider unreasonable.

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[57] In paragraph 57 the Chief Adjudicator outlines the circumstances that are relevant to determining whether the text messages constitute disreputable conduct. There are nine points listed.

[58] The Chief Adjudicator weighs each of these factors as to whether it is supportive of the position of the Commission, supportive of the position of the Respondent, or neutral.

[59] The Commission submits that the use of the words *mitigating factor* and *aggravating factor* should be construed as meaning that the Chief Adjudicator was using sentencing principles in his analysis of the test. I disagree.

[60] What the Chief Adjudicator is doing in paragraph 57 is weighing out all the considerations and factors of whether the text messages constituted disreputable conduct by the Respondent. That is exactly what is involved in the disreputable conduct test.

[61] While the use of the words "mitigating" and "aggravating" may be unfortunate phrasing, there is no basis to conclude that the Chief Adjudicator was somehow applying the wrong test or using principles of criminal law in his analysis. One could substitute the words "positive factor" and "negative factor" in their place without losing any meaning. In fact, the Chief Adjudicator at paragraph 57(vi.) states "neutral factor."

[62] It is apparent that the Chief Adjudicator was conducting his analysis based upon pros, cons, and neutral considerations. There is nothing unreasonable about that.

[63] In light of the context and factors, the Chief Adjudicator then goes on in paragraph 58 to conclude, based upon the totality of the circumstances, that the text messages do not constitute disreputable conduct on behalf of the Respondent.

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[64] That conclusion is one that the Chief Adjudicator was entitled to make, based upon all of the information and circumstances. There was not one single possible outcome that the Chief Adjudicator was bound to reach. The Chief Adjudicator made a judgment call, which he was entitled and required to do, and I see no basis to conclude that this conclusion was unreasonable.

[65] The Chief Adjudicator then distinguishes this case from two other cases that were referenced, which provides further context to the conclusion that the text messages did not constitute disreputable conduct.

[66] In fact, the Chief Adjudicator goes on to reference the difference between inappropriate conduct and disreputable conduct.

[67] The Commission takes issue with how the Chief Adjudicator explained that point. In particular, the Commission takes issue with the comments in paragraph 61 of the Merits Decision, which reference a *de minimus* threshold.

[68] Taken in context, it is clear that the Chief Adjudicator was simply explaining, using other words, the fact that the comments in the text messages did not meet the threshold test for finding that they constituted disreputable conduct.

[69] I take the comments of the Chief Adjudicator in paragraph 61 of the Merits Decision to be *obiter dicta*. The Chief Adjudicator had already made the decision that the Respondent had not engaged in disreputable conduct.

[70] While the use of the words “*de minimus*” may be unfortunate, and even if these comments are not *obiter dicta*, I do not find that these comments would somehow make the decision unreasonable.

[71] What the Chief Adjudicator is effectively saying was that the comments of the Respondent did not rise to the level of constituting disreputable conduct in these circumstances. Again, that was the Chief Adjudicator’s decision to make.

[72] In terms of my assessment of the Merits Decision and its reasonableness, I would note paragraph 13 and 15 in *Vavilov*:

Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a “rubber-stamping” process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

...

In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker’s place.

[73] In this case, I find that the Merits Decision is transparent, intelligible and justified. That is, I find that the Merits Decision is reasonable.

[74] While the Court or another adjudicator could have reached a different conclusion based upon the facts and circumstances, that alone does not make the Merits Decision unreasonable.

CONCLUSION

[75] The Application for judicial review is dismissed.

[76] I will hear submissions with respect to costs at a later date, as needed.

[77] Judgment accordingly.



DAVID G. CONWAY
Justice