

In the Matter of Section 28 of  
Royal Newfoundland Constabulary  
Act, 1992, SNL 1992, C.R.17 (the Act)  
and Section 20 of the Royal Newfoundland  
Constabulary Public Complaints  
Regulations, Consolidated  
Newfoundland and Labrador  
Regulation 970/96 (the Regulations)

AND

In the Matter of the Public Complaint  
of Phillip Weeks

<b><u>BETWEEN</u></b>	THE ROYAL NEWFOUNDLAND CONSTABULARY PUBLIC COMPLAINTS	COMMISSIONER
<b><u>AND</u></b>	PHILLIP WEEKS	COMPLAINANT
<b><u>AND</u></b>	INSPECTOR DEAN ROBERTS	RESPONDENT

### **DECISION**

The Royal Newfoundland Constabulary Act, 1992 Part III provides for the establishment of the Royal Newfoundland Constabulary Public Complaints Commission. It also provides for the procedure for the receiving of a complaint and the procedure for the conduct of a public hearing based on the complaint. This decision results from such a hearing.

On or about May 31, 2012, Phillip Weeks, the Complainant, filed a complaint with the Royal Newfoundland Constabulary Public Complaints Commission. That complaint was received and investigated by the Commissioner pursuant to the provisions of the Act.

On April 19, 2013, the Commissioner pursuant to section 28 of the Act referred the matter to the Chief Adjudicator to conduct a hearing into the matter. The Reference was then referred to me as Adjudicator on May 29, 2013.

The hearing in this matter was initially convened on June 20, 2013, for preliminary matters. The hearing of evidence commenced and then continued on November 6, 7, 8, 12, 19, 21, December 6, 2013 and January 28, 2014.

The Reference to the Adjudicator was as follows:

**“REFERENCE TO CHIEF ADJUDICATOR**

**IN THE MATTER OF** s. 28. (2) of the  
*Royal Newfoundland Constabulary Act, 1992,*  
SNL 1992, c. R-17 (“Act”)

**AND IN THE MATTER OF** the Public Complaint  
Of Phillip Weeks dated the 31<sup>st</sup> day of May, 2012

**DATE:** April 19, 2013

**TO:** John McGrath, Q.C.

**PURSUANT** to the Act and the Regulations made thereunder, Inspector Dean Roberts is alleged to have conducted himself in a manner unbecoming a police officer and liable to bring discredit upon the Royal Newfoundland Constabulary by:

- (a) neglecting or omitting to diligently perform his duties as a police officer on December 14, 2011, while providing testimony under oath at the trial of Phillip Weeks on December 14, 2011, contrary to Section 3.(1)(d) of the Regulations, thereby committing an offence pursuant to Section 3.(2) of the Regulations;

(b) carrying out his duties in a manner contrary to the Policy and Procedures Manual while providing testimony under oath at the trial of Phillip Weeks on December 14, 2011, contrary to Section 3.(1)(j) of the Regulations, thereby committing an offence pursuant to Section 3.(2) of the Regulations;

(c) Wilfully or negligently making a false, misleading or inaccurate oral statement in an official record, at the trial of Phillip Weeks on December 14, 2011, contrary to Section 3.(1)(k) of the Regulations, thereby committing an offence pursuant to Section 3.(2) of the Regulations;

(d) Conducting himself in a manner contrary to the Act while providing testimony under oath at the trial of Phillip Weeks on December 14, 2011, contrary to Section 3.(1)(o) of the Regulations, thereby committing an offence pursuant to Section 3.(2) of the Regulations.

The particulars of the alleged offences are as follows:

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THAT Inspector Dean Roberts did, on or about the 14<sup>th</sup> day of December, 2011, at or near St. John's, Newfoundland and Labrador, provide false, misleading or inaccurate testimony while under oath at the trial of Mr. Phillip Weeks, which trial related to an Information arising from pertained to charges arising from an incident on February 22, 2010 at or near 37 Flower Hill, St. John's. In the course of said provision of false, misleading or inaccurate testimony, Inspector Roberts did contradict his earlier evidence

provided at the September 3, 2010 trial of Mr. William Earle, for charges laid against Mr. Earle arising from the same incident on February 22, 2010, and did contradict the evidence of two other constables of the Royal Newfoundland Constabulary, Constable Nicole Squires and Constable Scott Harris, who had attended at the scene of the incident on February 22, 2010, thereby causing a false, misleading or inaccurate record to be put before the Judge adjudicating at Mr. Weeks' trial.

**DATED** at St. John's, Newfoundland and Labrador, this 19 day of April, 2013.

(signed) John Rorke  
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John Rorke, Commissioner  
Royal Newfoundland Constabulary  
Public Complaints Commission"

Section 3 of the Royal Newfoundland Constabulary Public Complaints Regulations states:

**“Conduct**

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3.(1) A police officer shall not conduct himself or herself in a manner unbecoming to a police officer and liable to bring discredit upon the Royal Newfoundland Constabulary, which shall include but not limited to the following:

- (a) without good and sufficient cause make an arrest or detain a person;
- (b) use unnecessary force with a prisoner or other person contacted in the execution of duty;
- (c) be discourteous to a member of the public;

- (d) neglect or omit to promptly and diligently perform his or her duties as a police officer;
- (e) fail to record or report promptly a complaint made to him or her;
- (f) without proper authority, disclose, directly or indirectly to a person, information which he or she has acquired as a police officer;
- (g) attempt to commit, aid, abet, counsel or procure another police officer to contravene these regulations;
- (h) improperly use his or her character and position as a police officer for private advantage;
- (i) obstruct a police officer or investigator either in the course of an investigation or in the carrying out of that person's duties under an Act;
- (j) carry out his or her duties in a manner contrary to the Policy and Procedures Manual;
- (k) willfully or negligently make a false, misleading or inaccurate oral or written statement or entry in an official document or record, or otherwise pertaining to official duties;
- (l) without lawful excuse destroy, mutilate or conceal an official document or record, or alter, erase or add to an entry in that document;
- (m) place himself or herself under pecuniary or other obligation to a person in a manner that might affect the proper performance of his or her duties as a member of the Royal Newfoundland Constabulary;
- (n) report for duty or be on duty while unfit for duty as a result of impairment by alcohol or a drug; or
- (o) conduct himself or herself in a manner contrary to the Act.

2. A police officer who violates the provisions of subsection (1) commits a breach of these regulations and is liable to the penalties set out in section 33 of the Act."

The incident from which this matter arose occurred at or near a residential dwelling house located at 37 Flower Hill in St. John's, Newfoundland and Labrador on the 22<sup>nd</sup> day of February 2010. At that time and place there was a physical interaction between William Earle and Phillip Weeks. The police were called and attended at the scene. The incident included two phases. In the first phase, Mr. Weeks arrived at 37 Flower Hill, which is a dwelling house owned by Mr. Earle. He parked his vehicle in the driveway of Mr. Earle. His intention was to exercise his access right to his child, whom he believed was in the residence of Mr. Earle. Eventually it turned out the child was not there. Also, there was testimony to the effect that Mr. Weeks was under Court Order requiring him to remain away from the premises. Mr. Weeks and Mr. Earle confronted each other. Mr. Weeks entered Mr. Earle's house without consent. Each of the participants received blows from the other. Mr. Weeks then withdrew from the residence. That was the end of phase one.

Phase two occurred outside the dwelling. Mr. Weeks had partially removed his vehicle from the driveway. Mr. Earle was at or near his house. They appeared to be awaiting for the arrival of the police. At or about the time the police arrived, they came together again and Mr. Earle struck Mr. Weeks. The police then physically intervened. That was the end of phase two.

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The allegations in this Adjudication only concern Phase 2.

Following the incident criminal charges were laid against William Earle on February 24, 2010 and against Phillip Weeks on February 23, 2010.

Inspector Dean Roberts of the Royal Newfoundland Constabulary gave testimony in the trial of William Earle on September 3, 2010. Inspector Roberts also gave testimony in the trial of Phillip Weeks on December 14, 2011.

The evidence of Inspector Roberts at the trial of Philip Weeks (R. v. Weeks) was given before Judge David Orr in the Provincial Court of Newfoundland and Labrador at St. John's on the 14<sup>th</sup> day of December 2011. The transcript of his evidence is contained in Exhibit C-4 of the exhibits placed into evidence at this Adjudication Hearing.

The evidence of Inspector Roberts at the trial of William Earle (R. v. Earle) was given before Judge David Power of the same Court on the 3<sup>rd</sup> day of September 2010. The transcript of his evidence is contained in Exhibit C-7 of this hearing.

The evidence of Constable Scott Harris and Constable Nicole Squires at R. v. Weeks is also contained in Exhibit C-4. The evidence of the same Constables at the R. v. Earle is contained in Exhibit C-7.

In the Reference to Chief Adjudicator quoted above, the particulars of the alleged offence state that Inspector Dean Roberts did provide false, misleading or inaccurate testimony at the trial of Phillip Weeks. There are no details given as to which portions of the testimony were false, misleading or inaccurate. It is important to note that the entire trial record of R. v. Weeks and R. v. Earle were not placed in evidence before this Adjudication, including the decisions of Judge Orr in R. v. Weeks nor Judge Power in R. v. Earle.

The particulars however do contain two specific details as follows:

“In the course of the said provision of false, misleading or inaccurate testimony, Inspector Roberts did contradict his earlier evidence provided at the September 3, 2010 trial of Mr. William Earle ..... And did contradict the evidence of two other constables of the Royal Newfoundland Constabulary, Constable Nicole Squires and Constable Scott Harris .....

It is not the purpose or jurisdiction of this Adjudication hearing to re-hear or re-decide the case of R v. Earle or R v. Weeks. My task will be to review the evidence of Inspector Roberts and determine whether or not such contradictions occurred in any material way.

#### STANDARD OF PROOF

The Standard of Proof required in Adjudication proceedings under the Act is the civil standard of balance of probabilities. The criminal standard of proof beyond a reasonable doubt does not apply. Nevertheless, even in civil proceedings, the more serious the allegation, the clearer and more convincing ought to be the evidence (Hickey v. Ploughman, 1998, Brown, Q.C., Adjudicator)

I consider the allegation that a police officer provided false evidence in Court to be a serious allegation.

#### EVIDENCE

As previously indicated Inspector Roberts testimony was placed into evidence from the two trials at exhibits C-4 and C-7. Inspector Roberts did not testify at this hearing. Neither did Constable Squires or Constable Harris. Mr. Weeks did



testify and elaborated a number of items which he believed provided proof of the alleged details.

**1. Mr. Weeks walked toward Mr. Earle**

In his testimony before this hearing on November 8, 2013, Mr. Weeks described how he came to be situated in front of 37 Flower Hill. He stated that his truck had been parked in his driveway of 37 Flower Hill. He stated that there had been an altercation between him and Mr. Earle in front of and in the dwelling house at 37 Flower Hill which was owned by Mr. Earle. He further stated that the altercation had ended and Mr. Weeks was aware that the police had been called and were likely on the way. He stated he got into his truck to move it out of the driveway. The vehicle would not start so he put the vehicle in neutral and it rolled out of the driveway, but not completely. He states that he opened the bonnet and got out of the truck to look at the engine to see if he could determine what was the cause of the failure to start. He then said he walked around the truck to the front of his truck. The front of the truck was still in the driveway. Thus, Mr. Weeks in walking to the front of the truck was also walking in the direction of Mr. Earle. Mr. Weeks concludes by saying Inspector Roberts testified in R. v. Earle that Mr. Weeks walked 10 paces and in R. v. Weeks he walked 2 paces.

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In the R. v. Weeks trial, Inspector Roberts evidence is as follows:

**(Exhibit C-4 R. v. Weeks page 65)**

Ms. Jennifer Colford:

Q. Okay. So you went to the scene and that's 37 Flower Hill, Flower's Hill?

## Inspector Roberts

- A. Yeah, I believe. It's Flower Hill. I can (Phonetic) remember the number, yes, Flower Hill.
- Q. And so you were in plain clothes at that point?
- A. Yes, suit and tie.
- Q. All right. So when you arrived on scene you said you were driving your vehicle?
- A. Yes.
- Q. Where did you park?
- A. I parked on the corner as there is a V comes up from Flower Hill and also between Delta Hotel there is a V, where one goes up Flower Hill and the other one goes straight up to LeMarchant Road. I had stopped right in that area and I could see Mr. Earle's residence.
- Q. Okay. So when you first parked about how far away would you have been from the residence?
- A. I was 75 feet, I suppose. Somewhere around there. I'm not really good with distance for that way, but, yeah, it was 75, if I recall. I could see everything in plain view.
- Q. All right. So, I wonder if I might just have the .... So this Consent No. 5, Inspector Roberts. Is this the residence that you observed?
- A. Yeah, yeah.
- Q. Okay. Okay, so you saw that and since you were in – okay.
- A. I would have been parked over here. Flower Hill goes up here and there is a V. I was parked on the other side of the road here.
- Q. Okay. So down towards your right?
- A. Up.

- Q. Up towards your right, sorry.
- A. Up.
- Q. All right. All right. So up, not shown on this picture obviously, but?
- A. Not shown on that picture.
- Q. Okay, all right. So you parked. What did you do then?
- A. I was in my vehicle and I saw Mr. Earle standing in his driveway. He was standing around the center of his driveway and there was a pickup truck parked facing the house on the sidewalk, but you can't see. It would be below that picture, to the left of that picture, a bit further down, on the further end of the driveway. And the bonnet was up on the vehicle and there was a gentleman on the driver's side hanging over the panel part, underneath, working at something underneath the bonnet of the truck. Looking underneath the bonnet of the truck.

Mr. Earle was standing there. He seemed to be favoring one leg the way he was standing up. And looked like he was in a bit of a daze or whatever. And then I just seen Mr. Weeks walk towards Mr. Earles. He didn't run towards him. He walked towards Mr. Earles, fast. Like a little bit, not a casual walk but a little bit faster walk. His hands were down. And when he approached Mr. Earles, all I seen was Mr. Earles come down with a right hand and come on over, across and down and punched Mr. Weeks in the side of the face. And that's when I seen the two officers in my peripheral vision from the right coming down Flower Hill, and they went straight to – one went straight to Mr. Weeks and the other officer went straight to Mr. Earles, and he was giving commands to Mr. Earles to get down and kneel down on the ground and he refused to do it. And I made a yell at Mr. Earles to get down on his knees and it is like he came through and he looked at me and then he backed off and he sat down. To the top right-hand corner by his steps, that area, that's where he sat down."

Later in cross-examination by Mr. Simmonds, the following exchange takes place at page 83 of R. v. Weeks:

Q: Now, explain this to me, what you've told us today is very clear, that Mr. Weeks took two steps forward...

A: A couple of steps, whatever, yes. He walked towards him.

Q: A couple, two, three, (phonetic) steps –

A. Whatever, yeah.

In summary he states that the he observed Mr. Weeks at the side of his vehicle with the bonnet up. He then left that area and walked toward Mr. Earle. There was no statement as to the number of steps Mr. Weeks took in direct examination. In cross-examination he refers to two or three steps, or possibly more. The transcript uses the phrase "(phonetic)". I am not certain what that means.

In the R. v. Earle trial, Inspector Roberts testified as follows:

**(Exhibit C-7 R. v. Earle page 17)**

Inspector Roberts

"A. So as a result of that, making the phone calls, I then drove down to Mr. Earle's residence where he was to, just in case I could assist the officers down there, where I was only nearby.

And when I got down there I noticed Mr. Earle was standing in the parking lot of his driveway, sorry, of his house. And while he was standing there he appeared to be dazed and appeared to be favoring one leg as he was leaning to one side and he was almost like he was wobbling a little bit.

So, then I saw, also, there was a truck there in the front part of the driveway. It was a red blazer and the bonnet was up on it, and there was a male looking underneath the bonnet at the engine part of the car – of the vehicle. And I was getting out of my vehicle and I heard Mr. Earle make a comment, saying that the police was coming. And then I seen the gentleman who was underneath the bonnet who was, afterwards, was Mr. Weeks walk towards Mr. Earle.

How many steps he took? Probably eight or nine, along those lines. Then I seen Mr. Earle make a couple of steps towards him. And when they were face to face each other the only thing I can remember at that point in time was Mr. Earle striking Mr. Weeks in the side of the head. And at that point I was rushing in there and the uniform officers were coming down the side of the hill and they were separated. And Mr. Earle was put on his knees on the ground over by his door and Mr. Weeks was – I didn't know where he went. I think one of the other officers dealt with him from there.”

Later in the Earle trial, Inspector Roberts stated in answer to cross-examination by Mr. Mike King at page 30 as follows:

“Along there. Like, I can't.... never counted them but it wasn't two or three, and it wasn't four. It was more than that, right.”

This testimony is very similar in the particulars. Mr. Weeks left that area and walked toward Mr. Earle. The number of steps is said to be “eight or nine or thereabouts”, or more than four in R. v. Earle. In R. v. Weeks, Inspector Roberts did not name any number in his direct testimony, but in reply to Mr. Simmonds, the number of steps were suggested by Mr. Simmonds in his question, to which Inspector Roberts responded “whatever”. Nevertheless, the testimony is that Mr. Weeks walked towards Mr. Earle. I find that the evidence in these trials concerning the number of steps is not materially contradictory.

## **2. Inspector Roberts contradicted the evidence of Constable Harris and Constable Squires.**

~~In his evidence at the Adjudication Hearing, Mr. Weeks stated that the evidence of Inspector Roberts was contradictory to the evidence of Constable Harris and Constable Squires. The evidence of Constable Harris and Constable Squires indicates that they did not see Mr. Weeks approach Mr. Earle. However, they state:~~

1. They arrived on the scene after Inspector Roberts;
2. They did not see an individual leaning under the bonnet of his vehicle and/or leave the bonnet area and walk to the front of the vehicle; and
3. They observed the incident from the East. Inspector Roberts observed it from the North West.

On review of the evidence as a whole I conclude that their evidence does not contradict Inspector Roberts. They were not on the scene at the beginning of the incident when Mr. Weeks was leaning under the bonnet and then moved from that area.

Constable Squires states at page 92 of the Earle trial:

Mr. Mike King by cross-examination

Q. Okay. We've heard testimony earlier today from Inspector Roberts that he saw Mr. Weeks, first when he saw Mr. Weeks, Mr. Weeks was under, looking under the hood of his truck and he made approximately ten steps towards Mr. Earle. And it was only then that Mr. Earle made two or three steps toward Mr. Weeks and struck him.

Constable Squires

A. Okay.

Q. So does this sound inconsistent with what you're telling us?

A. As you mentioned, Inspector Roberts was on scene beforehand. That may have occurred as we were driving up. I can't testify to what Inspector Roberts saw.

**3. Mr. Weeks walked aggressively to Mr. Earle in R. v. Earle. This contrary to the evidence in R. v. Weeks.**

Mr. Weeks testified in the Adjudication Hearing that in R. v. Earle, Inspector Roberts testified that he (Mr. Weeks) walked aggressively towards Mr. Earle, and that this was contrary to the evidence that he gave in R. v. Weeks. In the R. v. Weeks trial, Inspector Roberts described the approach of Mr. Weeks as follows:

R. v. Weeks transcript at page 68:

".... And then I just seen Mr. Weeks walk towards Mr. Earles. He didn't run toward him. He walked toward Mr. Earles, fast. Like a little bit, not a casual walk but a little bit faster. His hands were down."

In the R. v. Earle Trial, Inspector Roberts testified at page 20 as follows:

Kathleen O'Reilly

- Q. Could you describe how Mr. Weeks was approaching Mr. Earle? Was it quickly? Was it slowly? Aggressively? Not –
- A. It wasn't slowly. He wasn't running. You know, a little bit normal than if you were walking to go downtown looking around shopping but it was a little bit faster than that, right. So it wasn't, it wasn't slow and it wasn't running at him, so.
- Q. Could you describe his demeanor, manner?
- A. No, it was so fast. Excuse me, your honour. Coming down with the flu. It was – his hands were up here, I believe it was. It was so fast I can – you know. There was nothing being said by Mr. Earle or Mr. Weeks. Nothing was said by either one of them, that I can recall or remember. I just remember him walking fast and Mr. Weeks was walking in fast motion like that. It was a little bit, you know faster.

Later at page 37 in reply to an inquiry by Judge Power, Inspector Roberts stated:

“I can't see if his hands were clenched or not. His arms were tight to his side and his hands were in this motion. It could be a fist made or open, but they were tight to his side and he was walking towards Mr. Earles (sic) a little bit faster than a normal walk.”

Upon review, I find that Inspector Roberts' evidence in both trials regarding the issue of Mr. Weeks approaching Mr. Earle in whatever manner was virtually identical.

#### **4. The position of Mr. Earle**

Mr. Weeks testified before this Hearing that at the beginning of the incident which I have described as phase 2, Mr. Earle was sitting on his doorstep. Mr. Weeks stated that the evidence of Inspector Earle to the contrary was false. In fact, the evidence of Inspector Roberts, Constable Harris and Constable Squires agree

that they observed Mr. Earle standing in his driveway. I conclude that the evidence of the three police officers coincided on this particular point.

There are other issues raised by Mr. Weeks, some of which included the possible motive of Inspector Roberts in deliberately giving contrary testimony. I have carefully reviewed all of the evidence of the three police officers and Mr. Weeks in this matter. I find that none of these allegations have been established in the evidence presented at this Adjudication Hearing.

Following completion of the evidence I was provided with comprehensive briefs from Peter O'Flaherty, the Commission Counsel, Brad Wicks, Q.C. and John Drover, counsel for Inspector Roberts and from Phillip Weeks, the Complaint. I thank the authors of the briefs as they were of great assistance to me.

It is not my obligation to retry the matter of R. v. Earle or R. v. Weeks. I do not have the full record nor do I have the written decisions of the respective Courts on record.

I have carefully reviewed all of the evidence of Inspector Roberts. In doing so I have considered in the following factors:

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1. The incident occurred in February 2010.
  2. The first trial was September 2010.
  3. The second trial was December 2011.
  4. All of the witnesses experienced the incident from different perspectives both in point of time and position.
  5. Some of the evidence by Inspector Roberts was given in direct examination, some in cross-examination. Some questions were direct and some questions were leading.



My task is to determine whether on a balance of probabilities the testimony of Inspector Roberts was materially different or contradictory to the evidence previously given. There are certain minor differences but materially there are no differences.

I have concluded on a balance of probabilities that Inspector Roberts:

- (a) did not at the trial of R. v. Weeks contradict his evidence given in R. v. Earle;
- (b) did not contradict the testimony of Constable Squires or Constable Harris; and
- (c) did therefore not provide false, misleading or inaccurate testimony while under oath while at the trial of Philip Weeks.

The complaint against Inspector Roberts is therefore dismissed. The Decision appealed from is confirmed.

Dated at the City of St. John's, in the Province of Newfoundland and Labrador, this 9<sup>th</sup> of June 2014.

  
James J. Smyth, Q.C.  
Adjudicator