

REVIEW ON THE RECORD – SUBMISSION OF COMMISSION COUNSEL

In the matter of the Review on the Record into the Ordered Investigation of Constable Ravinder (Rob) Thandi of the Abbotsford Police Department

A. INTRODUCTION

1. The statutory authority for a review on the record is found in section 141 of the *Police Act*. An adjudicator appointed by the police complaint commissioner is to conduct a “review on the record of the disciplinary decision” issued under s. 128 of the *Act*. Section 141(9) mandates that the standard of review to be applied by an adjudicator to a disciplinary decision is correctness.
2. The Supreme Court of Canada has defined the standard of correctness in the following terms:

As important as it is that courts have a proper understanding of reasonableness review as a deferential standard, it is also without question that the standard of correctness must be maintained in respect of jurisdictional and some other questions of law. This promotes just decisions and avoids inconsistent and unauthorized application of law. When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

Dunsmuir v. New Brunswick 2008 SCC 9 at para. 50.

3. The record of a disciplinary decision consists of:

141(3)(a) the final investigation report of the investigating officer, any supplementary reports or investigation reports under section

132 [adjournment of discipline proceeding for further investigation] and all records related to the investigation and the discipline proceeding,

(b) the records referred to in section 128 (1) [disciplinary disposition record],

(c) the report referred to in section 133 (1) (a) [review of discipline proceedings]...

4. The record here includes a comprehensive Final Investigation Report ("FIR") and Supplemental FIR, and transcripts of the Discipline Proceedings held before DA Chief Rich which ran on and off from February into May of 2016. At those proceedings witnesses testified, including Dr. [REDACTED] Mr. Thandi's treating psychiatrist, and Thandi himself. On 14 June 2016 DA Rich issued his findings with respect to the allegations made against Mr. Thandi; these findings were supported by comprehensive written reasons (Form 3). On 4 August 2016 DA Rich issued a Disciplinary Disposition Record (Form 4) setting out corrective measures which included dismissal for allegations 1-7 and 9-10; once again, these findings were supported by written reasons.

B. ERRORS ALLEGED BY THANDI

5. The following arguments have been advanced by Mr. Thandi in the written submission filed by his counsel:

- a. The DA failed to recognize that Mr. Thandi's Bipolar II condition affected his ability to appreciate "the nature and quality of his actions", and that he conflated this with the "irresistible compulsion" caused by his Obsessive Compulsive Disorder ("OCD");
- b. The DA failed to understand that Bipolar II can interact with and exacerbate the symptoms of OCD;
- c. The DA erred when he found that the evidence failed to establish on a balance of probabilities that the OCD had compelled him to disobey a direction from Staff Sergeant Dhillon that he had breached no contact orders with [REDACTED] and members of her family (allegations 3-7 and 9-10);

- d. The DA erred when he found that the evidence failed to establish on a balance of probabilities that Mr. Thandi's OCD had compelled him to search [REDACTED] name on police databases (allegation 15);
- e. The DA erred when he found that the British Columbia *Human Rights Code* was irrelevant to the Discipline Proceedings;
- f. The DA erred when he found that by application of the doctrine of abuse of process, the entering of guilty pleas by Mr. Thandi in the Provincial Court had determined the mental fault requirement for allegations arising from the same conduct at the Discipline Proceedings (allegations 1-2);
- g. The DA erred when he failed to take proper account of the impact of Mr. Thandi's illnesses and the medications he was taking to treat those illnesses in assessing his credibility as a witness at the Discipline Proceeding;
- h. The DA erred in failing to appreciate the limited probative value of "after the fact" admissions of wrongdoing by Mr. Thandi.
- i. The DA erred in failing to appreciate or take proper account of the Abbotsford Police Department's failure to accommodate Mr. Thandi's mental illness, and the role its members played in the arrest and criminal prosecution of Mr. Thandi.

C. POSITION OF THE POLICE COMPLAINTS COMMISSIONER

6. The PCC submits that the DA was correct when he found that allegations 1-12 and 15 had been made out on the evidence. The PCC also submits that the DA was correct when he imposed corrective measures for these defaults, which included dismissal for allegations 1-7 and 9-10.

D. RESPONSE TO ERRORS ALLEGED BY THANDI

The DA failed to recognize that Mr. Thandi's Bipolar II condition affected his ability to appreciate "the nature and quality of his actions", and that he conflated this with the "irresistible compulsion" caused by his Obsessive Compulsive Disorder ("OCD").

The DA failed to understand that Bipolar II can interact with and exacerbate the symptoms of OCD.

7. Mr. Thandi argues that the DA misunderstood Dr. [REDACTED] evidence regarding the connection between Mr. Thandi's mental illnesses and his successful application to have [REDACTED] and her son added to his APD benefits package. He is critical of what the DA said about this evidence at paragraph 106 of his 14 June reasons. At paragraph 63 of the reasons he reproduces what Dr. [REDACTED] "actually said" before arguing that the DA had misunderstood this evidence.

Thandi submission at paras 61-65.

8. The passage from Dr. [REDACTED] evidence reproduced at paragraph 63 of the Thandi submission can be found in its entirety at paragraph 106 of the DA's reasons. Paragraph 107 is cross examination of Dr. [REDACTED] on the same point. What is clear from Dr. [REDACTED] evidence is that his opinion amounts to little more than speculation regarding possible drivers for Mr. Thandi's conduct.

DP transcript 2 February pp. 37-8, ll. 1598-1625; then in cross examination at pp. 49-50, ll. 2149-2159; p. 51, ll. 2218-2224.

9. In cross examination, Dr. [REDACTED] specifically disavowed any notion that he could or was commenting as to whether Mr. Thandi had committed a fraudulent act when he applied to add [REDACTED] and her son to the APD benefits package. He added "what I can do is to give you...my best speculation as to could that be related to illness."

DP transcript 2 February p. 48, ll. 2089-2095.

10. It is significant as well that Dr. [REDACTED] is not certified as a forensic psychiatrist, and has never been qualified to give opinion evidence about the relationship between a mental disorder and criminal responsibility. Dr. [REDACTED] had been Thandi's treating psychiatrist since 2005.

DP transcript 2 February 2016, p. 41, ll. 1766-1775; p. 42, ll. 1808-9.

11. The DA reasonably found that Dr. [REDACTED] contemporaneous notes of meetings with Mr. Thandi at around this time were more persuasive than speculation regarding Thandi's conduct. In those notes Dr. [REDACTED] offered the view that Mr. Thandi was doing well; there was no mention of elevated mood or anything else which might have raised a red flag. It is respectfully submitted that this conclusion was available to the DA on the evidence.

Form 3, paragraph 108.

DP transcript 2 February p. 26, ll. 1092-1102; pp. 52-53, ll. 2260-2304.

12. The record also included a report dated 17 April 2013 prepared by Dr. [REDACTED] an occupational psychiatrist employed by the APD (document number 44 at the DP's). Dr. [REDACTED] acknowledged that he had read the report, and in particular Dr. [REDACTED] opinion that Thandi was employable as a police officer with certain accommodations; he agreed with that finding.

DP transcript 2 February pp.79- 80, ll. 3464-3510.

13. The submission then moves on to Bipolar II disorder and its potential to impact Mr. Thandi's ability to understand the nature and quality of his actions.

Thandi submission at para. 66.

14. It is respectfully submitted that there are two relatively straightforward responses to this part of the submission, which once again seems aimed primarily at Mr. Thandi's application to add [REDACTED] and her son to his APD benefits package:

- i. As discussed above, the DA preferred the contemporaneous notes of Dr. [REDACTED] to his after the fact musings as to what Thandi's mental state may have been at the time; and
- ii. There is clear evidence that Mr. Thandi did in fact understand what he was doing when he applied to add these two people to his benefits package, and that it was wrong; his explanation that he considered them to be part of his family does not change the fact that he knew that he was misrepresenting [REDACTED] and her son as "actual" family members who were qualified for those benefits when he knew they were not.

15. It is respectfully submitted that the record is replete with evidence from Mr. Thandi himself which establishes beyond doubt that he had the requisite guilty mind when he applied for these benefits, and that he knew it was wrong:

- a. In the warned statement that he gave to APD officers when he was arrested on these and other allegations, he said that he knew he had committed an offence when he completed this form; he explained that he did not know what else to do because he did not want to lose his girlfriend, who was not welcome in the home where he was living with his mother, but it would be too expensive for him to move out himself. He decided to take a chance and go ahead with the application despite knowing that it was probably fraud and the potential consequences for that conduct.

FIR Appendix 6, 13 June 2014, II. 1421-1462.

- b. In the same warned statement, he admitted that he had misled [REDACTED] at the APD's human resources department when he "corrected" the date that he began cohabiting with [REDACTED] and that he knew this was wrong and unlawful when he did it.

FIR Appendix 6, 13 June 2014, II. 1633-1658.

- c. At the end of his warned statement, Constable Thandi indicated very clearly that he understood what it was that he had done by adding [REDACTED] and her son to his benefits package:

"Let's cut the bullshit...I did fraud, I did this. Would I do it again to help them, yeah, maybe I would. You know, maybe I would. Here I am. You do what you do 'cause that's what you believe in, right. And uh, here I am,

so. *Bipolar or no bipolar or you know, bad guy or good guy, I don't know...*"

FIR Appendix 6, 13 June 2014, ll. 2148-2153.

- d. When he was interviewed by the Abbotsford PSS investigator for the *Police Act* case, he again admitted that he knew it was wrong to add [REDACTED] to his benefits, and that he intentionally sent the email to [REDACTED] to backdate those benefits.

FIR Appendix 21, 23 June 2015, pp. 5-6.

- e. When questioned by his own counsel at the Discipline Proceeding, he testified that he did his best to be honest when questioned by the APD PSS investigator on 23 June 2015.

DP transcript, 1 February 2016, pp. 55-6.

16. When he testified at the Disciplinary Proceedings, Constable Thandi did more than simply acknowledge his signature on the application forms:

- a. He said that he did not look into or consider the regulations when he filled in the forms because he believed he would be together with [REDACTED] and her son for a long time, that they would move in together and be a family, and that he was not on his meds when the forms were mailed.

DP transcript, 1 February 2016, pp. 32-3.

- b. When confronted in cross examination with the benefits application form where he asserted that he had been cohabiting with [REDACTED] from 11/01/2011 he said "well now that I look back, yes, it was false...and I knew it was false at the time." He testified he knew that by his signature on those forms he was asserting that the information was true, and that as a result [REDACTED] and her son would be added to the plan when they were not eligible for those benefits.

DP transcript, 3 February 2016, pp. 36-7.

- c. He was confronted with a text message located on [REDACTED] phone dated 9 April 2014 (which he said he could not recall) where he suggested that they [REDACTED] and her son) needed to be removed from the plan and should get any dental work they needed before that happened. He agreed that they had

to be removed because they should not have been on the plan at all, then added that "the relationship was over so I had to get them off."

DP transcript, 3 February 2016, p. 40.

- d. In response to a final series of questions posed by his own counsel, Constable Thandi said he did not remember filling in the forms for the benefits application; he just filled them out and signed without reading them. He agreed that he should read things before signing them.

DP transcript, 3 February 2016, p. 64.

17. In his written submission at paragraphs 74 to 81, counsel for Mr. Thandi in effect argues that the DA failed to understand "the very direct role played by Bipolar II disorder and the impact of treating mental illness in a disciplinary manner (sic)" (para. 75), before concluding with the assertion that DA Rich had "accurately described the effect and symptoms of Cst. Thandi's Bipolar II disorder and then punished him for it" (para. 81). In his comprehensive reasons, DA Rich reviewed in detail evidence advanced in support of Mr. Thandi's argument that he was not culpable due to his OCD and Bipolar II disorders, and found that the defence had not been made out for specified allegations. He also commented on these findings in his decision imposing corrective measures:

Counsel asserted that Cst. Thandi had been in a hypomanic state when he committed the frauds in January 2013 and that Cst. Thandi's conduct was non-culpable. The contemporary medical evidence simply does not support that assertion, which is reflected in my first decision. I found that he committed the fraud knowing that it was wrong, and was in a mental state where he could have stopped himself, but did not want to. I accept that his OCD and anxiety were very serious by April 2014, which is also reflected in the findings I made in my first decision. I cannot accept that Cst. Thandi's misconduct should be treated as non-culpable at this stage

Form 4 at paragraph 17.

18. Mr. Thandi then argues that the absence of evidence from Dr. [REDACTED] that he was in a hypomanic state at the relevant time does not mean that he was not in a hypomanic state. This of course shines a light on the evidentiary gaps which confronted DA Rich.

Mr. Thandi has not argued that the DA was incorrect when he ruled that he bore the onus of demonstrating that his mental illness operated in such a way as to render his conduct non-culpable. A submission which is premised on the absence of evidence does not fill that void.

Thandi submission, paras. 82-91.

19. An example of this can be found at paragraph 92 of Mr. Thandi's submission, which suggests that Dr. [REDACTED] had (he) been aware of the actions of Cst. Thandi during this period and the out of character way he was acting, this would have been an indication he was in a hypomanic state." The first problem is that Dr. [REDACTED] did not say exactly that. In this passage he was asked if he was satisfied that Thandi was doing well when he saw him on 13 March 2013:

RA: Yes. Had I known that other things were going on that would be have been evidence of (unintelligible) elevated mood to go back and have another look but certainly given the context of what I was seeing he was off work at that time anyway, umm, that's how he presented in my office.

DP transcript, 2 February 2016, p. 52, ll. 2271-2276.

20. That answer underscores why it was that DA Rich was not able to find in this evidence anything which could support a finding of non-culpability due to mental illness. In this passage, Dr. [REDACTED] said he would have to know more, and that this background might be a starting point for further inquiries. He did not offer the opinion that Thandi was in a hypomanic state at that time, nor could he have done so.

21. The balance of this portion of the written submission is an attempt to re-argue those aspects of the case which counsel suggests should lead to a different answer at this review on the record. None of these facts were put to Dr. [REDACTED] in the form of a hypothetical question. There is nothing in any of it which is capable of undermining the findings made by DA Rich in his two sets of reasons.

Thandi submission, paras. 95-108.

The DA erred in failing to appreciate the limited probative value of “after the fact” admissions of wrongdoing by Mr. Thandi

22. Mr. Thandi argues that post conduct admissions that he knew his behaviour was wrong cannot be used against him to find that he knew his conduct was wrong at the time.

Thandi submission, paras. 109-120.

23. A summary of these admissions has been provided in this submission at paragraphs 15 and 16. It is respectfully submitted that it was open to DA Rich to find on this evidence that Mr. Thandi clearly admitted that he knew this conduct was wrong at the time. Mr. Thandi certainly did not say that he acted without that awareness at the time, or that he only come to this realization much later.

The DA erred when he failed to take proper account of the impact of Mr. Thandi’s illnesses and the medications he was taking to treat those illnesses in assessing his credibility as a witness at the Discipline Proceeding

24. Once again, much of this submission is premised on a finding that Mr. Thandi was in a hypermanic phase when he engaged in this conduct. What flows from this, it is argued, is that the DA failed to factor this into his credibility assessment of Mr. Thandi.

Thandi submission, para. 124.

25. Once again, Mr. Thandi argues that the evidence should have lead the DA to a different conclusion, and that failures to recall or confused answers are to be attributed to his illness at the time of the impugned

conduct.

Thandi submission, paras. 121-140.

26. It is respectfully submitted that DA Rich made no error in his approach to the issue of Thandi's credibility as a witness at the Discipline Proceedings. The same psychiatric evidence which was available to him on the larger issue of culpability and the defence advanced by Thandi was applied in this context as well. It is clear that DA Rich took account of the fact that Thandi suffered some deficits in this area which could fairly be related to his illness and the stress he was experiencing as a result of the Discipline Proceedings themselves.

Form 3, para. 111.

27. In any event, Mr. Thandi's credibility as a witness at the Discipline Proceedings was not central to the DA's decision making in this case, which perhaps explains the way the issue was introduced in his reasons, where he said "(T)his case, *to some extent*, involves the assessment of credibility of Cst. Thandi." His direct findings on Thandi's credibility are limited to a couple of discrete areas in his evidence.

Form 3, paras. 24, 116.

The DA erred when he found that the evidence failed to establish on a balance of probabilities that the OCD had compelled him to disobey a direction from Staff Sergeant Dhillon that he had breached no contact orders with [REDACTED] and members of her family (allegations 3-7 and 9-10)

The DA erred when he found that the evidence failed to establish on a balance of probabilities that Mr. Thandi's OCD had compelled him to search [REDACTED] name on police databases (allegation 15)

28. These arguments, with respect, fail to take account of Mr. Thandi's evidence that he declined to report his breaches of the no contact orders either because he did not

know what to do, or to avoid getting into further difficulties with his employer, and that he believed [REDACTED] lacked any real privacy interest in the information on these police databases. It was open to the DA to find on this evidence that Mr. Thandi failed to establish that this conduct was caused by his mental illness.

29. At the Disciplinary Proceeding, Constable Thandi was questioned by the DA and his own lawyer, and was cross examined by presenting counsel regarding the breach and deceit allegations:

- a. He was questioned by his lawyer about failure to report breaches to his superior officer. He said he did not report because he "didn't know what to do", and that he "wasn't sure what to do so I just didn't do anything. I didn't want to talk...to tell him...I didn't want to tell Paul (Dhillon) that I did talk to (unintelligible) right and I felt bad about doing it, I felt horrible about doing it."
DP transcript, 1 February 2016, p. 66, ll. 2902-2913.

- b. He recalled meeting with Staff Dhillon on 23 May to review his restrictions, and that this meeting was held the day after he breached the order by meeting [REDACTED] in the parking lot of the restaurant where she worked. He agreed that initially he did not disclose that contact to Staff Dhillon, but did not recall assuring Dhillon that everything in his statement was truthful because he said he was "in crisis at the time."
DP transcript, 3 February 2016, pp. 47-8.

- c. In re-examination, DA Rich asked Thandi why he did not report all of the no contact breaches. He initially said that he should have but could not say why he did not, and he spoke of his mind taking "a blender", and that rash decisions were difficult for him. When pressed further he agreed that he did not want to get into trouble, and that he was conscious of the fact that this would happen if he came forward and admitted the breaches.
DP transcript, 3 February 2016, pp. 59-60.

30. At the Discipline Proceeding he was cross examined about the data base searches:

- a. He recalled accessing the CFSEU file in circumstances where he was not authorized to do so, but he claimed not to have turned his mind to the fact that this was done without authority, or that disclosing this information to a

civilian might be a problem because as far as he was concerned, [REDACTED] had been there and was aware of the event.

DP transcript, 3 February 2016, pp. 54-5).

- b. He was taken through documents which established that he had run [REDACTED] name through APD databases. He acknowledged that he knew this to have been unauthorized because there was no investigative purpose attached to those entries.

DP transcript 3, February 2016, pp. 55-6.

The DA erred when he found that by application of the doctrine of abuse of process, the entering of guilty pleas by Mr. Thandi in the Provincial Court had determined the mental fault requirement for allegations arising from the same conduct at the Discipline Proceedings (allegations 1-2).

31. The submission here is that DA Rich rigidly applied the doctrine of abuse of process as set out by the Supreme Court of Canada in *Toronto (City) v. C.U.P.E. Local 79 2003 SCC 63* to bar Mr. Thandi from "re-litigating" the mens rea element for fraud. Mr. Thandi argues that DA Rich failed to take account of exceptions to the abuse doctrine which he says apply in his case.

32. Mr. Thandi also argues that his evidence at the discipline proceedings, that he simply could not afford an expensive challenge to Canada's NCRMD law in section 16 of the *Criminal Code*, caused him to make the pragmatic decision to plead guilty despite not having had a "criminal mind" when he applied to add [REDACTED] and her son to his APD benefits package.

Thandi submission at paras. 152-3.

33. It is submitted that DA Rich was correct when he determined that Mr. Thandi's guilty pleas in a criminal court for the same conduct was sufficient here to establish that Mr. Thandi had the requisite mens rea for fraud, and that a finding to the contrary would

run afoul of the doctrine of abuse of process in *Toronto (City) v. C.U.P.E. Local 79*. His reasons for doing so fall squarely within the four corners of the doctrine. It is respectfully submitted that the discretionary factors which may be applied to prevent the doctrine from operating in an unfair way do not arise on the facts of this case.

Form 3 at para. 39.

***Toronto (City) v. C.U.P.E. Local 79* at paragraphs 51-55.**

34. Mr. Thandi argues that it was wrong to employ the equitable doctrine of abuse of process in this case “to prevent an individual from advancing a defence of mental illness in the most appropriate venue.” The problem with that submission is fairly apparent; even if it can be said that DA Rich was not correct in applying the doctrine to his findings on intent for allegations 1 and 2, it is clear that the question of Mr. Thandi’s mental state at the time of the benefits application was fully litigated. Indeed, this was the central issue before the DA. Mr. Thandi was not prevented from testifying as to his intent at that critical time, and his counsel called the evidence of [REDACTED] in support of a submission that, due to mental illness, Mr. Thandi lacked the intent to commit the offence of fraud in s. 380 of the *Criminal Code*, and thus also lacked the intent to commit the misconduct offence in section 77 of the *Police Act*. DA Rich went on to consider that defence in some detail, and concluded that while it applied to some of the allegations, insofar as allegations 1 and 2 were concerned, Mr. Thandi failed to prove on a balance of probabilities that he was in a state of irresistible compulsion due to his mental illness.

Thandi submission at para. 160 and 165-6.

Form 3 at paragraphs 68 and 123-4.

35. In his reasons, DA Rich reviewed Mr. Thandi’s history and treatment for mental illness. He considered the evidence of Dr. [REDACTED] and his clinical notes, and a report prepared by Dr. [REDACTED] following an independent medical examination which was required by the APD. The first allegation of fraud arose on 30 January 2013. Dr. [REDACTED] saw Mr. Thandi on 18 January 2013; he noted that Thandi had clearly entered a sustained remission and was coping with work well. Dr. [REDACTED] examined Mr.

Thandi on 17 April 2013 and found that he was fit. Thandi contacted APD human resources on 2 May 2013 and advised that he had made a mistake on the eligibility date for the [REDACTED] benefits application (the second allegation of fraud). DA Rich noted the absence of any evidence in the record which would support a finding that Mr. Thandi was in a hypomanic state at these critical times in 2013.

Form 3 at paras. 74-89, see in particular paras. 87-89, 106-108.

36. In his findings regarding allegations 1 and 2, DA Rich determined first that Thandi's statement about "cutting the bullshit" and admitting the fraud was probative, and that it reflected "his intention to do what it takes to help [REDACTED] and her son." He then found that the evidence had failed to establish on a balance of probabilities that his mental illness compelled him to commit these offences, either because he was in a hypomanic state and/or was driven by his OCD.

Form 3 at paragraph 124;

For additional evidence in the record supporting a finding that Mr. Thandi possessed the requisite criminal intent at the material time, see this submission at paragraphs 15 and 16, *supra*.

37. After making these findings, DA Rich adverted once again to his earlier conclusion that it would be an abuse of process to find that Mr. Thandi did not commit fraud due to mental illness in light of his guilty plea to allegations of fraud arising from the same conduct.

Form 3 at para. 125.

The DA erred when he found that the Human Rights Code was irrelevant to the Discipline Proceedings.

38. Mr. Thandi argues that DA Rich erred in law in failing to apply the *Human Rights Code* and relevant jurisprudence to his decision making in these *Police Act* proceedings.

Thandi submissions at paras. 183-212.

39. The *Human Rights Code* is stand alone legislation, the provisions of which are triggered with the filing of a complaint filed with the British Columbia Human Rights Tribunal. The discriminatory practices which form the subject matter of this statute may be litigated in that forum, but they do not operate as some sort of overarching code to be applied across the legislative spectrum. In particular, the *Code* has no application to discipline proceedings instituted under the *Police Act*. It is respectfully submitted that not only was DA Rich correct in concluding that the *Human Rights Code* was irrelevant to his task, he lacked jurisdiction to apply the *Code* to the matter before him.

Human Rights Code, RSBC 1996 chapter 210, sections 21-39.

40. The cases cited by Mr. Thandi in support of his submission arise from complaints filed before a board of inquiry or tribunal pursuant to human rights legislation in British Columbia and in other jurisdictions which employ a similar legal framework for this specialized litigation.

Thandi submissions at paras. 188-192.

41. In this case DA Rich noted correctly that however one might interpret the *Code* and its jurisdictional reach, it does not apply where decisions which determine whether or not Mr. Thandi will continue in his employment as a police officer with APD were not being made by the department as employer, but arise as a matter of professional discipline governed by the *Police Act* pursuant to an investigation ordered by the Police

Complaint Commissioner.

Form 3 at para. 73.

The DA erred in failing to appreciate or take proper account of the Abbotsford Police Department's failure to accommodate Mr. Thandi's mental illness, and the role its members played in the arrest and criminal prosecution of Mr. Thandi.

42. Mr. Thandi complains of the conduct of his employer in pursuing a criminal prosecution for fraud rather than dealing with the matter internally as an employment issue, the circumstances surrounding his arrest, and perceived failures or omissions in the investigation carried out by Sgt. Fefchak, in particular a failure to investigate "issues of compulsion."

Thandi submissions at paras. 175-186, 213-215.

43. It is respectfully submitted that none of these issues bear upon the questions to be determined in this review on the record.

E. CORRECTIVE MEASURES

44. Mr. Thandi's written submissions have not dealt in any detail with the reasons of DA Rich in his disciplinary disposition record (form 4) dated 4 August 2016. Under the heading "remedy sought", Mr. Thandi asks that the findings on substantiation be vacated and that the matter be re-considered with a view to permitting a return to work with adequate supervision and support. Mr. Thandi has not apparently challenged the decision to order suspensions without pay for allegations 8-12 and 15.

Thandi submissions at para. 216.

45. DA Rich carefully considered the factors set out in section 126 of the *Police Act* when considering the imposition of corrective measures for the allegations which he found to have been substantiated.

Form 3 at paras. 23-44.

46. Central to his findings here was the fact of substantiation for "serious deceit or integrity" offences, and his determination that this required that he consider dismissal as an appropriate corrective measure. This is consistent with other decisions where dismissal has been ordered.

Form 4 at para. 42.

Decision on Review on the Record, Constable Felipe Gomes, 26 June 2015

47. DA Rich characterized the misconduct related to the benefits application as a "serious integrity offence." He referred to Mr. Thandi's conduct in disobeying the order of a superior officer to report any contact with witnesses (which was itself contrary to orders) as "serious misconduct", for which dismissal must also be considered. It is respectfully submitted that DA Rich was correct to have characterized Mr. Thandi's conduct in this way.

Form 4 at paras. 23-24.

Gomes, supra.

48. Mr. Thandi's record of employment included a serious disciplinary matter from June 2010 which was summarized by DA Rich in his reasons. The report from that case which followed a pre-hearing conference was attached as Appendix A. DA Rich also referred to a previous negative Performance Appraisal, and Thandi's evidence at the Disciplinary Proceedings which contradicted that evidence.

Form 4 at paras. 31-36.

49. Under the heading "other aggravating or mitigating circumstances", DA Rich considered Mr. Thandi's illness and its impact on his judgment as a relevant factor in determining "whether he can continue to be a police officer." He also considered Mr. Thandi's poor performance and demeanour as a witness at the Discipline Proceeding, and his concern that this is something that could repeat itself in a courtroom setting.

Form 4 at paras. 43-44.

50. Given these circumstances, it is respectfully submitted that DA Rich was correct when he ordered Mr. Thandi's dismissal for substantiated allegations 1-3 and 7.

F. ORDER SOUGHT

51. That the disciplinary decisions made by DA Rich in this case, which include his rulings on substantiation of counts and imposition of corrective measures, are correct and should be upheld.

All of which is respectfully submitted



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