APD PSS File: M14-22

OPCC File: 2014-9552

IN THE MATTER OF THE APPEAL FROM DISCIPLINE PROCEEDING OF

CST. RAVINDER THANDI #244

PURSUANT TO THE PROVISIONS OF THE POLICE ACT

Review on the Record

1. This is a review on the record in respect of the above-referenced disciplinary proceedings pursuant to s. 141 of the Police Act.

2. The standard of review to be applied by an adjudicator to a disciplinary decision in a review proceeding under s. 141 of the Police Act is "correctness". (s. 141(9) Police Act).

3. Constable Thandi suffers from two mental illnesses Obsessive-Compulsive Disorder (OCD) and Bipolar II (para 2 of Findings date June 14, 2016 the "Findings")

4. These illnesses "wax and wane" and may be more prominent at times and they may be in remission at other times (para 3 of the Findings dated June 14, 2016 [hereinafter the "Findings"])

Non-Medical Facts

5. Constable Thandi met [redacted] at some point in 2011 and a friendship of some kind developed by 2012 with Cst. Thandi and Ms. [redacted] with their children spending time together and Cst. Thandi taking her and her children to Disneyland. Cst. Thandi felt it was a romantic relationship and a permanent one. He began to act as a father figure to her son, began planning to build an addition to his home for

Ms. [redacted] and her son and spending lavishly on her. Ms. [redacted] denied a relationship of a sexual or romantic relationship. By April 2014 she had a restraining order brought against him and was involved with her boyfriend.

6. On January 30, 2013 Cst. Thandi emailed the Abbotsford Police Department's Human Resources Advisor to ask her to add Ms. [redacted] and her son to his Benefits Plan.

7. In February 2013 Cst. Thandi was in a motor vehicle accident, he had significant whiplash and chest injuries. The injuries aggravated a preexisting an abdominal muscle injury. He was off work for a number of months. (February 2, 2016 lines 1091 – 1108)

8. On March 17, 2013 Cst. Thandi's private memory stick was improperly accessed and an exercise given him by Dr. [redacted] some years earlier was misunderstood to be a suicide note. Cst. Thandi was sent for an IME. Also at this time false accusations were made by Sgt. [redacted] that Sgt. Thandi was faking the injuries from his car accident and he was actually off due to his depression. (February 1, 2016 pages 38 – 40)

9. On April 17, 2013 Cst. Thandi attended an IME with Dr. [redacted] in which Dr. [redacted] described him "does not appear depressed or anxious. He is friendly, talkative, articulate". Exhibit 9, Findings para 81

10. On May 2, 2013 the Human Resources Advisor stated that Ms. [redacted] could not be added because the two had only cohabited since November 1, 2012 less than the full year required. Cst. Thandi misrepresented to the Advisor that he and Ms. [redacted] had been living together since November 1, 2011 and signed the MSP and Pacific Blue Cross forms adding Ms. [redacted] and her son to his Benefits Plan. On April 2014 Cst. Thandi contacted the Human Resources Advisor and stated that the

relationship with Ms. [redacted] had ended and she needed to be removed from the Benefits Plan.

11. The amount of payments which were made as a result of the Cst. Thandi's misrepresentations was $2,526.54. Cst. Thandi repaid this amount.

12. Approximately one week after meeting with Cst. Thandi on April 14, 2014 Dr. [redacted] met with the Chief Constable and the HR Director and was told about the investigation about to take place and that Cst. Thandi was subject to the 'no contact' orders with [redacted] ,her mother and father and the places she frequented which included long standing places frequented by Cst. Thandi and his family. Dr. [redacted] advised the Chief Constable that Cst. Thandi would be unable to abide by these conditions due to his OCD. (Findings para 94) (February 2, 2016 lines 1723 – 1743)

13. On April 29, 2014 Cst. Thandi was served with a no contact order prohibiting him from any contact with [redacted] or her family or from attending her work place [redacted]. This was a restaurant which Cst. Thandi and his family frequented and where the owner who was a friend worked. (the "workplace").

14. Cst. Thandi contravened that order concerned with her safety because she was dating a known criminal who her mother said was abusive to her. Cst. Thandi asked other officers to look into the matter but was ignored. This made him more anxious. He sent a text message on April 29, 2014, attempting to call Ms. [redacted] house between April 30, 2014 and May 23, 2014 and contacting Ms. [redacted] grandfather, contacting Ms. [redacted] at her work place on May 22, 2014 approaching her at the workplace parking lot and speaking to her for five minutes. He did not report these breaches and in fact on May 23, 2014, with the exception of admitting texting Ms. [redacted], he denied having any contact with her. (February 1, 2016 2295 – 2348)

15. On June 1, 2014 Cst. Thandi texted Ms. Thandi and did not report this contact. Despite a Recognizance of Bail issued whereby contact with Ms. [redacted] was prohibited, Cst. Thandi sent text messages on June 8, 9, 10, 11, 13 and July 8, 2014.

16. Between July 9 and Sept 19, 2014 Cst. Thandi attended at her workplace three times.

17. On April 11, 2014 Cst. Thandi again obsessed about [redacted] safety used the police database to search for information related to Ms. [redacted] and unrelated to the performance of his duties as a police officer. Between February 20, 2012 and April 11, 2014 Cst. Thandi conducted multiple police database searches regarding Ms. [redacted].

Charges

18. In April 2014 Cst. Thandi was charged on a Notice of Discipline Proceeding with 14 counts of misconduct contrary to s. 77 of the Police Act. He was investigated for a period of 9 months on 17 allegations but only 13 were substantiated by the investigating officer. These were:

    a. Committing a public trust offence (related to defrauding Medical Services Plan and Pacific Blue Cross),
    b. Neglect of Duty (related to failure to obey an order by texting Ms. [redacted] and then not reporting the contact, having contact with Ms. [redacted] mother and grandfather and failing to report those contacts, physically approaching Ms. [redacted] at her place of employment and [redacted] subsequent contact with her and not reporting the contact).;
    c. Deceit (relating to making a false statement that he had no contact with Ms. [redacted]);
    d. Discreditable Conduct (failing to adhere to his Recognizance of Bail Order ne breaching an ordered restricting by texing Ms. [redacted]); Discredible conduct (relating to breaching an order and attending Ms [redacted] workplace);

e. Unauthorized Use of Police Resources (relating to accessing police databases unrelated to his duties as a member).
f. Improper Disclosure of Information (disclosing information improperly acquired information to Ms. [redacted]).

19. On May 23, 2014 Cst. Thandi was issued a Notice of Suspension.

20. On June 13, 2014 Cst. Thandi was publicly arrested on his birthday, made to wear a 'bunny suit' and placed in a cell for a number of hours. Press releases about the fraud charges were released during a press conference failing to report that this was a benefits issue and the amount had been repaid. (February 1, 2016 lines 2052 - 2181, 2231 – 2255; February 3, 2016 3324 - 3344)

21. On April 20, 2015 Cst. Thandi pled guilty to 2 charges of fraud and 1 count of defrauding Pacific Blue Cross and received a 12-month conditional discharge. His compensation was terminated.

22. In addressing the court on sentencing Cst, Thandi was extremely apologetic stating that he tried to help "[redacted] and cared for her very much. But I allowed my judgment to get clouded . . . ". In evidence at the hearing Cst. Thandi stated that he didn't want to plead guilty because he felt he did not have the "mens rea" but was acting on the advice of his lawyer that fighting the charges would cost more than he could afford. (findings para 9 – 11) (February 1, 2016 2415 – 2423)

23. Cst. Thandi has admitted the conduct element of these allegations but submits that his mental illness is a defence.

MEDICAL TIMELINE

24. Cst. Thandi had been receiving medical help from Dr. [redacted] since 2005 when he was diagnosed with obsessive compulsive disorder ("OCD") plus a major depression and in at the time of his divorce 2009 he was diagnosed with Bipolar II (Feb 2, 2016 517 to 521, 670 – 709; February 1 2016 lines 1010 – 1013) (Findings para 77, 78)

25. The Chief Constable in Paragraph 79 stated that in January through to May of 2010 Dr. [redacted] said Cst. Thandi's mood disorder was in sustained remission and he had minimal OCD symptoms. (Findings para 79)

26. Dr. [redacted] evidence was that in March 2010 was anxious and off work but by March 23, 2010 his mood had improved. By November 13, 2010 he was sustained remission and Dr. [redacted] did not see him for six months. (February 2, 2016 lines 774 – 1063)

27. The summer of 2011 was a low time for Cst. Thandi with improvement in his mood by fall. Dr. [redacted] said he was much improved by December. Cst. Thandi saw Dr. [redacted] on January 9, 2012 and then did not see him for one year (Findings para 80) (February 2, 2016 lines 1069 – 1092)

28. In 2011 Cst. Thandi met [redacted], by early 2012 he was seeing her daily. He described being with her as 'like therapy'. (para 113, February 1, 2016 lines 1091 – 1097; 1316 - 1363)

29. The PharmaNet records indicated that he was off his medication from May 2012 through to April 2014.

30. On May 2012 Cst. Thandi received a Notice of Expectations that set out a number of areas where he was failing to meet the minimum standard of a patrol constable.

Some of these comments were that he was not taking direction well. (Findings para 81) He had no history of this behavior.

31. Dr. [redacted] saw Cst. Thandi on January 18, 2013. He reported was that Cst. Thandi was coping with work well. (Findings para 85) (February 2, 2016 lines 1092 – 1102)

32. The Chief Constable stated in paragraph 87 of his Findings that Dr. [redacted] saw Cst. Thandi on March 2013 and found he was fit, doing well, and coping with work well. In this the Chief Constable is in error. Dr. [redacted] gave evidence that in January 2013 Cst. Thandi was in remission and working but by March he came to see Dr. [redacted] because he had been in a motor vehicle accident in February and had whiplash and chest injuries and was not working. Dr. [redacted] did not note a return to work until September 2013 in an administrative capacity. Clearly this accident had a significant impact on Constable Thandi. (February 2, 2016 1092 – 1102)

33. On April 17, 2013 Cst. Thandi attended an IME with Dr. [redacted] who described Cst. Thandi was "friendly, talkative, articulate." "He does not appear depressed or anxious". Dr. [redacted] noted that Cst. Thandi's "thought content did not reveal any phobias, anxiety disorders such as PTSD, SAD, panic attacks or GAD." (para 88)

34. Dr. [redacted] saw Cst. Thandi July 2013 where he was still off work due to the injuries from the car accident aggravating an abdominal injuries. (February 2, 2016 1092 – 1102)

35. On September 3, 2013 Dr. [redacted] saw Cst. Thandi. He was back working but in administration and his mood presented as fine. (Findings para 90) (February 2, 2016 1092 – 1102)

36. On April 14, 2014 Dr. [redacted] saw Cst. Thandi. Cst. Thandi was anxious, depressed and his OCD had increased. Cst. Thandi advised Dr. [redacted] that he had stopped

taking his medication. He re-started his medications shortly after this appointment. (Findings para 91)

37. Dr. [redacted] restarted Cst. Thandi on his medication after seeing him in April 2014 but these caused cognitive side effects and so Dr. [redacted] had to stop the medication and try a different one. By June 2014 Cst. Thandi had some self-harm ruminations and for the first time made concrete suicidal plans. Dr. [redacted] again adjusted the medications. (February 2, 2016 lines 1138 – 1145; February 2, 2016 3324 - 3344)

38. By July 2, 2014 he had shown some improvement but his medications were continually adjusted to try and keep his mental state in acceptable limits up to January 2015. (February 2, 2016 lines 1349 - 1368)

39. Between April 2014 and January 2015 his medications were being continually readjusted due to cognitive issues and in an effort to stabilize his mood. (February 2, 2016 lines 1322 – 1369)

40. By the beginning of March 2015 Cst. Thandi saw Dr. [redacted] and was distressed and unstable because he had been suspended without pay. By April his mental state was stable until the end of May at which time he became distressed over a departmental suicide and about his financial situation. By July his mental state had relapsed and he had passive suicidal ruminations unable to attend the APD questioning. After September his medications were adjusted, he was stabilized and mood remained within relatively good limits but with moments of deep distress and anxiety. (February 2, 2016 lines 1369 – 1402; 1564 – 1572; 3324 - 3344)

Obsessive Compulsive Disorder

41. Dr. [redacted] defined an obsessive compulsive disorder ("OCD") as consisting of three elements:

    a. obsessions, which can be mental or physical or both so they can be ruminative or they can be actions, rituals, . . .

b. the second element is resistance that they try and resist the compulsions of ruminations . . . .

c. And the third is . .. insight. . . in the sense that they know it's silly and they know that it doesn't really mean anything . . . they know that yeah I'll probably will have germs on my hands but they . . have to wash their hands so many times or check so many times in order to get their anxiety to get over that peak and come down again. (February 2, 2016 lines 111 – 123)(February 1, 2016 754 – 778)

Bipolar II

42. Constable Thandi was first diagnosed with OCD in 2005 and then in 2009 diagnosed with Bipolar II. Bipolar is a reoccurring and remitting mood disorder with severe depression as a frequent component of the disorder and hypomania as a less frequent component of the disorder and is easily missed as the person may simply appear to be doing well. (February 2, 2016 lines 182 – 186)

43. Dr. [redacted] testified as to the elements of bipolar II disorder from the DSM IV and indicated that there was little change in the diagnoses in DSM V. The following summary definition of bipolar II disorder from the DSM V is included in the Wikipedia definition as follows:

The DSM-5 has specific criteria for the diagnosis of hypomanic episodes

A hypomanic episode is a distinct period of abnormally and persistently elevated, expansive or irritable mood that lasts at least four consecutive days.

For both a manic and a hypomanic episode, during the period of disturbed mood and increased energy, three or more of the following symptoms (four if the mood is only irritable) must be present and represent a noticeable change from your usual behavior:

a. Inflated self-esteem or grandiosity

b. Decreased need for sleep (for example, you feel rested after only three hours of sleep)
c. Unusual talkativeness
d. Racing thoughts
e. Distractibility
f. Increased goal-directed activity (either socially, at work or school, or sexually) or agitation
g. Doing things that are unusual and that have a high potential for painful consequences — for example, unrestrained buying sprees, sexual indiscretions or foolish business investments
(February 2, 2016; 304 – 354)

44. Dr. [redacted] gave evidence that with Bipolar II these periods of elation can be more difficult to recognize then with a person who has Bipolar I. A person with Bipolar II may stabilize in a mildly depressed state so that may be his or her normal. When that person's mood becomes elevated he or she becomes quite happy and energetic. Dr. [redacted] stated **"if it doesn't result in dysfunction it may not be recognized or reported or diagnosed** . . . " (February 2, 2016 2016 page 5 line 158 – 169, page 6 line 182 – 186 and 188 to 205 Page 8 lines 294 – 302, lines 442 – 451 and 468 – 476)

45. Dr. [redacted] gave evidence that Bipolar I and II both affect the frontal lobe function, which is the centre of executive and moral thinking. Dr. [redacted] gave evidence as to the role the frontal lobes play in judgment. He stated

". . . it's called the executive function so it's the management and administration it's the rule book . .. they have no inhibitor it just comes out . .. So that's the frontal lobes main job. . . as people get more elated their decision making becomes impaired." (Feb 2, 2016 page 6 182 – 186, Page 16 lines 658 – 668)

46. Dr. [redacted] described that the elation experienced by a person in a hypomanic state would be similar to a surfer riding a surfboard metaphorically a great distance above the tiny and unimportant events occurring on land which are not brought into his current attention and decision-making. Grandiosity and inappropriate

confidence are also indicia of the disorder so that an individual believes entirely in the appropriateness of the decisions made and is unable to foresee the consequences of his reckless behaviour. (Findings, infra paragraph 106; Feb 2, 2016 lines 1612 – 1625; 1598 – 1625)

Stressors Can Trigger Bipolar Presentation

47. Significant stressors such as divorce, car accidents, financial pressures and unwarranted investigations (as was the case here) can serve as triggers for the hypomanic state which may be followed by a decision to cease taking medication given that they are feeling so well. (February 2, 2016 1524 – 31, 1549 – 1555, 1564 – 1594)

48. The core of the disorder is summarized in the DSM 5 (supra) as:
"Doing things that are unusual and that have a high potential for painful consequences — for example, unrestrained buying sprees, sexual indiscretions or foolish business investments"

49. Constable Thandi's whirlwind romance with a woman 20 years his junior who was raised in the foster care system and associated with known criminals was certainly an inappropriate relationship destined to turn out poorly. Despite this he demonstrated absolute confidence and conviction in his relationship with the woman of his dreams who was "his medicine", He talked about renovating the family home to live with his mother (despite his mother's concerns) assuming the role of a father in relation to her young son, paying for his recreational activities and lessons, paying for [redacted] schooling, finding her job taking her and her son to Disneyland and paying for an $8000 breast augmentation. Moreover he was on aware that the relationship had ended and was extremely dismayed when she showed up with the new boyfriend requesting that he stay away from her. All of this conduct falls squarely within the definition of bipolar II characterized by hypomania, impaired judgment and decisions which turn out poorly. (February 1, 2016 1204 – 1216)

FINDINGS OF CHIEF CONSTABLE

50. In paragraph 68 of the Findings dated June 14, 2016 (The "Findings") Chief Constable Rich stated:

> I consider that the proper approach in this case is to consider whether the evidence of Cst. Thandi and Dr. [redacted] and the submissions by Cst. Thandi's counsel rebut the presumption that he acted voluntarily, knowing what he was doing was wrong. I have decided that the most useful test for this context, from all of the cases cited above, is to ask whether any of the alleged misconduct occurred because Cst. Thandi was in a state of irresistible compulsion due to his mental illness. If I conclude that Cst. Thandi has proven, on a balance of probabilities, that he was suffering from such a compulsion, then, even though he knew what he was doing and that his actions amounted to misconduct, he would not have been able to stop himself. ***Cst. Thandi does not struggle with mental illnesses that render him unable to know or appreciate the nature and quality of his actions. He does suffer from illnesses where it is possible he would not be able to stop himself from acting, even when he knows it is wrong, as he is driven to reduce his anxiety and responds to a strong compulsion***. On the other hand, if the evidence does not lead to the conclusion that Cst. Thandi was in a state of irresistible compulsion when he committed the acts he has admitted to, I will conclude that the misconduct is substantiated. (emphasis added)

51. While it is acknowledged that a person suffering from a mental illness bears an onus of proof that they suffer from a mental illness it is submitted that this onus is met where the illness is proved and the impugned behavior is consistent with the disorder.

Chief Constable Errs in Application of Medical Evidence

52. The Chief Constable mischaracterizes the relevant issue in addressing aspects of his OCD condition related to "irresistible compulsion" and ignoring the fact that Bipolar 11 by definition affects an individual's judgment and his ability to appreciate "the nature and quality of his actions". Cst. Thandi's illnesses interact as his Bipolar condition worsens his compulsion can move to being occupied and resisting thoughts to acting on such thoughts as was the case when he breached the no contact conditions.

53. The Chief Constable found that Cst. Thandi did not advise Dr. [redacted] that he was not taking his medications intentionally because he "did not want to be accountable to his doctor for his decision to stop taking medications" (Findings para 86) We will see that the mania, elation, extreme sense of well-being and impaired judgment often lead to persons with Bipolar II to go off their medication. We should not judge persons with illness by an ideal standard but rather by what occurs with other persons suffering from this disorder .Since the medications have side effects and hypomania is so compelling it is not surprising that persons with Bipolar 11 may go off their medication especially where they have had limited experience in recognizing the hypomanic phase of their disorder.

54. The Chief Constable found that Cst. Thandi "had an irresistible compulsion" to break the terms of the 'no contact' orders and contact the people he was forbidden to contact, and as such was not responsible when breached the court "no contact" order. (Findings para 131 - 135)

False Distinctions Drawn to Impute Culpability

55. The Chief Constable found Cst. Thandi guilty of deceit and neglect of duty for failing to report the breaches of contact with the [redacted] family because the Chief Constable determined that that Cst. Thandi did not have a compulsion to disobey the order to advise Staff Sergeant Dhillon that he had breached those orders. (Findings para 136 - 140) This surgical separation of aspects of his mental illnesses is completely unsupported by the evidence. While he was compelled to breach the no contact orders ,given his obsessive fears for Ms. [redacted] safety, he continued to be a broken suicidal and severely depressed individual. Severe depression also impacts an individual's ability to take initiative or make prudent judgments.

56. The Chief Constable found that "running Ms. [redacted] on police databases" between February 20, 2012 and April 11, 2014 was not due to his OCD and therefore Cst. Did not establish that his illness created an irresistible compulsion on the balance of probabilities (para 148 – 149) The evidence led was that this action was done

repeatedly and very close in time and all related to irrational concerns regarding her safety completely consistent with his OCD disorder.

ERRORS IN DECISION

1. Chief Constable confused OCD with Bipolar II
2. Chief Constable failed to understand that:
    a. Bipolar II is a mental illness that impairs judgment; and
    b. in suffering from Bipolar II Cst. Thandi does in fact suffer from a mental illness that prevents him from understand the nature and quality of his actions.
    c. That Bipolar 11 and OCD can each interact and Bipolar 11 depression can make the normal presentation of OCD more severe causing the individual not simply to struggle with thoughts but to actually act on those thoughts.

3. Erroneously determined that the Human Rights Code does not apply.

4. Erroneously determined the guilty plea entered by Cst. Thandi, in return for a conditional discharge, was an acknowledgment that Cst. Thandi had the requisite mental fault component in committing the fraud and to determine otherwise would amount to abuse of process.

5. Made a credibility determination as to Cst. Thandi's motives based on Cst. Thandi's confused and mistaken recollection of events ignoring the role his illness and medication played in recalling past events.

6. Failed to understand that the very limited probative value of after-the-fact admissions of wrongdoing as having minimal if any value in determining the degree of culpability when an individual is suffering from a mental illness.

7. Failed to acknowledge the role the APD played failing to accommodate Cst. Thandi's mental illness and the impact of this on his current level of functioning . The humiliating and demeaning treatment in publically arresting him ,exposing him to criminal prosecution,and publically announcing fraud charges which all unnecessarily increasing his stress levels and aggravated his illness.

Confused OCD with Bipolar

57. It is apparent that Chief Constable Rich failed to understand Cst. Thandi's bipolar disorder and in fact confused it with the OCD He stated that "Cst Thandi does not struggle with mental illnesses that render him unable to know or appreciate the nature and quality of his actions. He does suffer from illnesses where it is possible he would not be able to stop himself from acting, even when he knows it is wrong as he is driven to reduce his anxiety and responds to strong compulsion" (para 68)

58. In fact Cst. Thandi suffers from two disorders:

    a. OCD where in certain circumstances he is not able to stop himself from acting to reduce his anxiety and therefore responds to strong compulsion
    b. and Bipolar II which impairs his judgment rendering him unable to appreciate the nature and quality of his actions. His mania provided extreme confidence in his decisions however flawed and his elation gives him a false sense of wellbeing and omnipotence.

59. Dr. [redacted] testified that Cst. Thandi's OCD typically involved intrusive thoughts which he did not act on but when his depression and mania deteriorated as it did after he was charged and remained unemployed his ability to resist the compulsion was diminished.

60. The inability to reflect on one's decisions and make accurate logical and moral judgments and have insight to ones behavior while in a condition of mania and elation is at the core of the Bipolar II disorder.

Chief Constable Misunderstands Evidence

61. Chief Constable Rich appears to have misunderstood Dr. [redacted] evidence. In para 106 of his findings he stated "Counsel for Cst. Thandi asked Dr. [redacted] for his observations about Cst. Thandi putting Ms. [redacted] on benefits: "his OCD would have kicked in and driven him to think he must do this."

62. In this Chief Constable Rich is quoting lines 1598 – 1625 where Dr. [redacted] was talking about the role Bipolar II played in putting Ms. [redacted] on his benefits and he simply referred to the interaction of Bipolar II and OCD.

Insight, Judgment & Impulse Control Impaired Before Compulsion

63. Dr. [redacted] evidence actually was:

> "***he went into a period of elevated mood*** and thought this was a good idea. His OCD ***then*** kicks in and he really kind of gets I must do this I must do this and ***the fact is he didn't even have insight that he shouldn't do it or it's silly or whatever*** I think I would even . . . . analogy would be surfing at Big White and we're just going with it in fact if someone stands in front of the wave and says stop straight over him, ***I think his judgment was impaired it seemed like a good . . idea at the time***. I have never felt in talking to Rob . . that he was trying to defraud anybody he's never explained it in that way and it's almost I think he's always felt it was seemed like a good idea at the time the right thing to do for someone he . . . felt he loved and was in love with him. ***I think the fact that in reality that might have been different strongly suggest that . .. . this was probably related to abnormal mood***" (February 2, 2016 lines 1612 – 1625 page 37 and 38) emphasis added

64. In the above quote Dr. [redacted] is explaining how the 'elevated mood' phase of a Type II bipolar disorder would affect the judgment. He uses an illustration of riding a large wave to describe how during this period of elation the consequences or ramifications of the person's actions would "not be considered or there not seems to be very much . . . . it's more about the now how I feel now like . . . it seems like a good idea at the time. . ." and the part of a person's frontal lobe that would stop or put the brakes on such an impulsive decision, is impaired. (February 2, 2016 lines 1630 – 1653)

Bipolar 11 Worsens OCD

65. Dr. [redacted] gave evidence as to the comorbidity of the mood disorder and the OCD, how a relapse of the Bipolar II mood disorder would worsen the OCD symptoms:

> "Now Dr. [redacted], we've heard from Constable Thandi that, his OCD, did not seem to be problematic while working but after work and in his social environment, can you tell me something about the context of, of OCD in terms of, its expression?
>
> > RA: Yes, I think I was thinking about this the other day how best to describe it I guess the best way to describe it an iceberg. So for most of the time somebody has OCD symptoms that they either control themselves or are controlled as in this case with appropriate medication and as long as things are in remission while there might be some obsession about the work, neat writing and this sort of stuff, and they're not dysfunctional and then whatever triggers a relapse the rest of the iceberg underneath starts to bubble up and in my opinion, experience it's been the comorbidity the coincidence of the mood disorder so a ***relapse of the mood disorder comes as mood disorder symptoms and typically as you might expect a worsening of the obsessive compulsive disorder***. So when it goes into remission it still there you can see it but appears to be pretty harmless.) PP 45 (emphasis added)

BIPOLAR II IS A MENTAL ILLNESS THAT PREVENTED CST. THANDI FROM UNDERSTANDING THE NATURE AND QUALITY OF HIS ACTIONS

66. The DSM definition of Bipolar II is, in substance, defined by out of character behavior of engaging in "high-risk activities which have the likelihood of turning out poorly". By definition, this is a disorder which impacts judgment while providing the individual with profound feelings of confidence which further impair their ability to reflect on the command their decisions. (February 2, 2016; 641 – 648)

67. Both hypomania and depression impact frontal lobe function, which is the center of executive and moral thinking. Bipolar II disorder is also characterized by a lack of impulse control and a manic belief in the correctness of one's actions. This impairment affects the ability of an individual to appreciate the consequences of their actions, including the appropriateness of embarking upon a high risk intimate relationship as was the case here. Dr. [redacted] evidence as to the frontal lobe function was :

> ". . . it's called the executive function so it's the management and administration it's the rule book, it's the right, it's where you learn the rules . . . . " (658 – 659)

68. And people who have an impaired frontal lobe:

> ". . . they have no inhibitor it just comes out. So that's the frontal lobes main job, it can be affected by many things it's clearly affective in mood disorders because ***as people get more elated their decision making becomes impaired.***" (February 2, 2016 lines 658 – 668)

Impaired Judgment

69. Dr. [redacted] described a Bioplar II elevated state as:

> ". If you're depressed or you're in an elevated mood you interpret to the world through those things so if . . you're high . . . everything's good, great everything you see is good at his extreme of course he started to get delusional and you imagine that oh she looked at me that way it must be she's in love with me. . . in depression, oh, that person knows I'm . . . bad and evil I must kill

myself. So what I'm saying is that your mental state colors everything". (February 2, 2016 2732 – 2738)

70. Dr. [redacted] stated that in an impaired state Cst. Thandi would not appreciate the consequences or the ramifications of his decision. (February 2, 2016 lines 1612 – 1641)

71. On June 23, 2015 Cst. Thandi was interviewed and asked by the investigator why Cst. Thandi put Ms. [redacted] and her son on his benefits, stating Cst. Thandi "obviously did this knowingly that it was fraudulent". Cst. Thandi replied "At the time I didn't think about that way " and explained:

> JL: So, what w-were you thinking then?
> RT: 'Cause the plan, I was thinking about our relationship, that we were gonna be moving in together and were gonna carry forward. And for me at the time it was just a formality. Of course, I own it, of course I do. Like, you know, it's a mistake. I shouldn't have put it on my benefits.
> (Appendix 21, page 5)

72. Dr. [redacted] stated that in speaking with Cst. Thandi he did not think he was "trying to defraud anybody he's never explained it in that way and it's almost I think he's always felt it was a good idea at the time the right thing to do for someone he felt he loved and was in love with him. I think the fact that in reality that might have been different strongly suggests that . . this was probably related to abnormal mood." (February 2, 2016 1618 – 1625)

73. In evidence on February 1, 2016 Cst. Thandi was asked why he placed Ms. [redacted] on his benefits. He stated "Well [redacted] and [redacted], they were part of my family; like I treated [redacted] like he was my son and I was – I wanted her to have everything my family had so I (U/I) put her on my medical . . . Cause she was part of my family . . . We were together, moving in and we were a family so I didn't even consider any of that. Cause it felt natural for me to have her as part of my family so." (Feb 2, 2016 1392 - 1409)

The Chief Constable Identified Cst. Thandi's Lack of Judgment

74. In fact Chief Constable Rich consistently identified Cst. Thandi's "inability to control himself", his poor judgment as well as his "confused and contradictory" evidence. In paragraph 111 of the Findings he stated:

> Cst. Thandi gave very unusually and emotionally charged evidence. He observed that he was under tremendous stress, was not sleeping and did not have a clear mind. His evidence was consistent with his own assessment. Some of his answers were confused and contradictory. He used profane language several times. When describing his arrest by APD members, he referred to them as c**ts. This is the first time I have heard a police officer use that term while giving evidence. It illustrated the strength of the emotions Cst. Thandi is dealing with and ***his inability to control himself, even in a formal setting***." (emphasis added)

75. The Chief Constable fails to understand the very direct role played by Bipolar 11 disorder and the impact of treating mental illness in a disciplinary manner.

76. The failure of the Chief Constable to fully comprehend the profound impact of public shaming, criminal prosecution and lengthy unemployment without pay on an individual (who has coped well with two psychiatric diagnoses) is unfortunate as it demonstrates the complete inability to stand in the shoes of Constable Thandi and at least to try understand how his illnesses operated to impact his judgment.

77. Here the APD has inappropriately responded to an employee, who has largely successfully navigated two serious mental illnesses, and created the conditions which led him to bottom out only then to coldly comment on the behavior that was in large part unnecessarily created by the APD actions. In contrast Dr. [redacted] described Constable Thandi as a "hero" given his ability to survive his illnesses and his treatment at the hands of the APD. (February 1, 2016 2052 – 2169 and 2235 – 2250)

78. In his Disciplinary and Corrective Measures dated August 4, 2016 (the "Disciplinary Measures Record"), Chief Constable Rich found that Cst. Thandi

exhibited a "lack of insight into his performance and his characterization of what occurred is part of Cst. Thandi's ongoing difficulty. He is not self-aware, but is confident that he is. He continually lacks judgment about how he is performing in his work environment." (Findings on discipline para 35)

79. Chief Constable Rich noted that "Cst. Thandi's work performance is variable. . . . there is no doubt he can do good work. It is not an issue of competence, although at times there were concerns with judgment." (para 36).

80. In the above paragraphs Chief Constable Rich is describing the impairment in judgment which is central to Bipolar 11 disorder but since he is misunderstood the evidence it appears to be attributing this as culpable or at least reckless conduct.

81. Chief Constable Rich accurately described the effect and symptoms of Cst. Thandi's Bipolar II disorder and then punished him for it.

FAILURE OF DR. [redacted] TO DETECT A HYPOMANIC STATE FROM BRIEF CLINICAL VISITS

82. The failure of Dr. [redacted] to diagnose Cst. Thandi's elevated mood from brief office visits does not mean Cst. Thandi was not in a hypomanic state over the relevant period.

83. The uncontested expert evidence of Dr. [redacted] was that the elevated moods of are difficult to recognize because a person may be stabilizing in a mildly depressed state so that may be their normal and then for a few weeks he is quite happy and energetic "if it doesn't result in dysfunction it may not be recognized or reported or diagnosed . . . " (February 2, 2016 page 6 line 188 to 205, 227 - 235)

BIPOLAR 11 DISORDER DIFFICULT TO DIAGNOSE

84. Dr. [redacted] gave evidence that "Bipolar II is difficult to diagnose patients usually seek help when they are depressed because of symptoms of hypomania are often mistaken for high functioning behavior or simply attributed to personality, patients are not typically aware of the hypomanic symptoms, neither are their doctors. . . " February 2, 2016 lines 2616 – 2626)

85. Constable Thandi testified about earlier periods in 2007 where he was working on weekends, doing his MBA and running two businesses all of which would have been viewed as high functioning behavior except perhaps to his wife who ultimately sought a divorce.

86. Dr. [redacted] stated that on a brief face-to-face visit " . . you can interpret as oh he's doing rather well. If he's doing rather well he seems happy and somebody says he's done this then you say wait a minute so without that you know factor x to know that there's dysfunctional somewhere here . . . " Therefore Dr. [redacted] stated: "I would put down he's in remission he's doing well because I I'm not aware of where that behavior has led him, I wasn't aware at the time you're talking about . . ." (February 2, 2016 lines 2384 – 2392) (Findings para 104)

87. In March 2013 Constable Thandi was being investigated due to what was mistakenly viewed to be a suicide note but in fact was a cognitive exercise given to Constable Thandi by Dr. [redacted] some years earlier when Cst. Thandi was depressed after going through a painful divorce. Both Dr. [redacted] and Dr. [redacted] were interviewing Constable Thandi with respect to the potential for suicidal/depressive behavior and concluded there was none. In fact it is likely that Constable Thandi was still in a sustained manic phase given that his whirlwind romance with Ms. [redacted] was still continuing "at least in his mind".

Context is Crucial

88. Dr. [redacted] evidence was that there were limits to what could be determined during the brief clinical visit ". . . without the behavior yeah him can you come pick me up consequences of his elevated mood I didn't see his elevated mood that does not mean he had it means that it wasn't expressed to me in that situation for the fifteen, twenty minutes he was in the room. . .. " February 2, 2016 lines 2632 – 2635

89. During the brief clinical visits with Dr. [redacted] Cst. Thandi did not speak in unreasonable terms and, although he may have characterized the relationship with Ms. [redacted] as something other than it was, he didn't characterize it in 'some dramatic romantic way . . . " and ". . .his description of the relationship was not of itself anything bizarre it was like an invested piece of information" . (February 2, 2016 lines 2314 – 2323, February 2, 2016 lines 2330 – 2331; line 2344 – 2345)

90. Dr. [redacted] also noted that Cst. Thandi did not speak in a way that indicated abnormal thought processes. (Findings para 88) There is no evidence that either Dr. [redacted] or Dr. [redacted] pursued the details of his relationship at all or obtained collateral evidence . In order to determine whether he was suffering from a hypomanic episode they would really need to have interviewed Ms. [redacted] to determine whether his understanding of the relationship was accurate and whether his behavior and goals for them as a couple were appropriate and shared.

91. It is only in hindsight when the whole of his conduct is put in perspective that the hypomania phase is understood. There is no evidence that Constable Thandi historically had made poor decisions in his relationships or finances or as a police Constable. The simple question to be determined is whether it is more likely than not that the conduct he engaged in in relation to Ms. [redacted] was caused or materially contributed to by his Bipolar 11 disorder and OCD.

Cst. Thandi: Fraud Out of Character Behaviour

92. Dr. [redacted] stated that if he had 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. (Findings para 109; February 2, 2016 lines 2271 – 2286)

93. The Chief Constable stated that "Cst. Thandi's desire to set up house with Ms. [redacted] could be potentially probative of a finding that he was in a hypomanic state. . . . That a middle-aged man would want to set up house with a younger woman he sees as being highly attractive, would be considered by some as unwise and a sign of irrational decision-making. However, I note that it is also something that many men, with no diagnosis of mental illness, have decided to do with their lives. " (Findings para 122)

94. The Chief Constable in focusing on this single fact of a winter / spring romance but ignores the whole of Cst. Thandi's conduct. He ignores the core component of the bipolar condition which is the failure to reflect on the consequences of ones decisions resulting "engaging in high risk activity with a high probability of a poor outcome".

TOTALITY OF BEHAVIOR

95. This was not simply a relationship with a younger woman but rather with a young woman who had been raised in the foster care system and whose mother was also bipolar.

96. Thandi described [redacted] as being the answer to all his problems, his "medicine".

97. He spent lavishly on her even though she never moved in with him, he raised her child, provided hockey lessons , paid for expensive breast augmentation , lavish trips and was shocked when she showed up with a boyfriend who was a known fraud artist. This conduct as a whole, **including improperly claiming benefits**, is

certainly not a typical relationship involving an older man and a younger woman and these decisions all fell into the category "of decisions likely to turn out poorly".

98. Dr. [redacted] testified that psychiatric symptoms are an exaggeration of normal behaviors. There are a wide variety of individuals capable of making poor decisions, some as a result of frontal lobe issue such as ADHD, concussions, addiction or poor parenting. Bipolar II is not defined by decisions which are delusional or grossly distorted but rather demonstrating poor judgment in engaging in high-risk behavior which has a likelihood of turning out poorly, as was the case in this situation.

99. The mere fact that hypomania can involve what appears to be decisions which may be made by others in no way negates the diagnosis where there is a longstanding diagnosis. The depressive aspect of the condition and the impugned behavior falls squarely within the hypomanic aspect of bipolar II. Dr. [redacted] testified that the behavior is characterized as an illness when it stretches into dysfunction (February 2, 2016 page 4 line 93-100; 1635 – 1653)

100. While it is normal behavior to build a life together with someone considered attractive, it is not normal to believe this is what is happening and take steps to achieve that when the object of desire has a completely different view of the relationship. It was not normal behavior for Cst. Thandi to act with absolute conviction, spending lavishly in the certainty that he and [redacted] [redacted] would live together as a family permanently, all while Ms. [redacted] had a different view of the relationship and had very different goals.

101. Cst. Thandi was planning to build an addition to his house where Ms. [redacted] and her son were going to live with them. He immersed himself with her and her son acting as a father figure to her son by enrolling him in hockey lessons, placing them on his benefits illegally and working in a goal oriented way to "save" and improve her life, while she was, at best, ambivalent about their relationship. By 2014 she denied any romantic or sexual relationship, obtained a no contact order and had a

boyfriend. In fact, Cst. Thandi was acting in a grandiose, goal-oriented way, ignoring signals from Ms. [redacted] that he should 'put on the brakes' giving clear indication he was in a hypomanic phase with his judgment impaired. (February 2, 2016; lines 2306 – 2314, 2342 – 2345; February 1, 2016 lines 1201 - 1216) (February 3, 2016 3243 – 3299, 3375 - 3385)

102. Although Dr. [redacted] assessed Cst. Thandi as psychiatrically fit and on his medication on March 21, 2013 he did so in a vacuum while Cst. Thandi was off work and without any input from collateral witnesses. Cst. Thandi did not speak in unreasonable terms or bizarre terms and so no red flags were raised. However, Dr. [redacted] stated "Had I known that other things were going on that would have been evidence of . . . elevated mood .". (February 2, 2016 lines 2271 – 2276) (2306 – 2353)

103. Chief Constable Rich failed to understand the importance of collateral witnesses identifying out of character conduct, such as the lavish spending of money and extreme statements of love, all indicating impaired judgment in a way that a face to face 15 – 20 minute appointment would not. (February 2, 2016 1242 – 1251, 2630 – 2638 February 3, 2016 3243 - 3299)

104. Constable Thandi's entire behaviour pattern during the time he committed the offences was completely out of character with his entire pattern of behaviour in the previous 20 years. The fact that a police officer making in excess of $120,000 year would throw away his career for medical benefits in the amount of $2,000 is an indication of impaired judgment. Constable Thandi testified that despite initially filling out the form and dealing with the number of other questions that he simply did not consider what he was doing was wrong. Clearly his judgment was profoundly compromised because he believed Ms. [redacted] to be his spouse and to be inseparable. He was in such an elated and omnipotent state that he absolutely believed in the correctness of his decision.

PATTERN OF BEHAVIOUR INDICATES A PRE-DEPRESSIVE ELEVATED PHASE

105. Dr. [redacted] gave evidence that Bipolar II is primarily a depressive disorder and it is hard to detect when a Bipolar II patient moves in to a hypomanic state because his baseline is depressed so a hypomanic state seems to be a normal happy state. (188 – 191)

106. Dr. [redacted] stated that the elevated moods are difficult to recognize because "for a few weeks(U/I) he's quite happy he's quite energetic he's doing really well. . . in fact what's happened is that the baseline was actually there and what you see now is a little bit (U/I)" (February 2, 2016 lines 188 – 205)

107. Therefore, when Cst. Thandi attended the IME, Dr. [redacted] specifically noted a lack of depression and that Cst. Thandi "friendly and talkative". As Cst. Thandi's baseline was depressive notable 'friendliness and talkativeness' (talkativeness being one the DSM criteria) as well as a lack of depression, indicates the existence of a hypomanic state. (Findings para 88)

108. Furthermore, a depressed stage usually follows a hypomanic phase and Dr. [redacted] medical records clearly indicate a period of depression commencing in April 2014 when Cst. Thandi returned to Dr. [redacted] care and begins taking his medications again. Cst. Thandi lost his feeling of well-being that an elevated state can give and realized he needed assistance to cope with the depression and anxiety. (Findings para 91, 95)

NO PROBATIVE VALUE OF AFTER THE FACT ADMISSIONS OF WRONGDOING TO DETERMINE CULPABILITY

109. Dr. [redacted] stated;

> During that period of elation the consequences or ramifications of the decision in the person's mind is "more about the now how I feel now . . . it seems like a good idea at the time . . . " Afterwards the patient can look back and see that what he did was silly and impacted on other people in a negative way (February 3, 2016 lines 1633 – 1653)

110. Severe depression also impairs frontal lobe functioning which is the center of our ability to make sound judgments, control impulses and look forward to anticipate the consequences of one's actions. While Cst. Thandi had a self-awareness of the onset of this aspect of this disorder and frequently pulled himself off the job, this was not always the case. For example, Cst. Thandi had no awareness of his hypomanic state which was not diagnosed until 2009 even though his behavior in 2007 in running multiple jobs going to school and working at the APD on weekends and feeling invincible was symptomatic of classic grandiosity and mania.

Retrospective Admissions

111. An acknowledgement by a mentally ill individual in remission that he now knows his behavior was wrong in no way answers the question as to whether he was criminally culpable at the time of the impugned behavior..

112. Where a mental illness creates problematic behavior, further impairs an appropriate assessment of the behavior, and generates strong obsessive thoughts with limited impulse control, the probative value of after-the-fact admissions of wrong is of no value in determining the degree of culpability.

113. Constable Thandi's evidence was that while he could say that, in retrospect his conduct was wrong or silly at the time. Due to the hypomanic period he was in and the obsessive compulsive elements of his disorder, he was not able to have that degree of insight into his actions or stop him from breaching the court orders while his condition was worsening. (February 3, 2016 3375 – 3385)

114. Constable Thandi's admission that the application for benefits was false was predicated with "well now that I look back, yes, it was false". The fact that he goes on to acknowledge that he knew it at the time is of limited significance given that he is being pressed by an experienced trial lawyer and is torn between the need to admit his wrong and the challenge of recalling the flawed thinking processes which led to his impaired judgment.

Poor Judgment May Involve Superficially Logical Thinking

115. Constable Thandi when asked questions by the Chief Constable as to whether there may be logical aspects to his decisions, he agreed but made it clear that he was "confused and ashamed" of the decision and he understood in retrospect and with medication how wrong those decisions were:

> BR: -- the other explanation was that you wanted to go to the restaurant.
> RT: Well of course I always wanted never never did I not want to go of course, yeah, great food, my friend is there and, and my son's birthday and all I can say is my mind was just I'm just mixed right up and that's the stupidest decision I made and I own it I really do.
>
> RT: Vaguely, I, I just this whole situation I just feel embarrassed, shameful, I've let him and him and him everybody down and, ah, those thoughts are all there and at that time too I don't know, umm, it's an internal struggle it's a battle going on.
> DC: Mm-hmm.
> TR: And it is confusing it really is sometimes until now I can now that I've been on medication for a while I think it did I reflect on it and what the hell like what --.

116. The above quote demonstrates his remorse and discussed with his decision and the losing struggle he had with OCD which was fanned by the deterioration of his mood disorder and the profound depression which he was experiencing at what was undoubtedly the lowest point of his life.

117. The exercise of trying to assess what aspect of ones thinking was logical during an episode of mental illness is profoundly flawed as persons who have flawed

judgement still pursue goal directed behavior which appears logical to others and to the affected individual. The difference is persons not laboring under a mental illness have a clear understanding of the consequences they will face for violating a no contact and functioning frontal lobes which allow them to control their impulses .

118. On in cross-examination by Discipline Senior one sees the same struggle in answering questions as to whether he knew that falsifying the application was wrong. It was only in hindsight that he had an appropriate perspective on his actions:

JW: And and you know that that statement was false, correct?

RT: Well now that I look back, yes, it was false, yeah.

JW: And you knew it was false at the time that you prepared that document?

RT: Yes.

JW: You signed that document?

RT: Yes.

JW: And you knew that by preparing that document and submitting it that Ms. [redacted] would be added to your benefits package --
RT: Yes.
JW: -- in in circumstances where you knew she should not have been added?
RT: From looking back retrospect, yes of course

Ll 1550-1573

119. The above exchange demonstrates a person, who is not immediately in crisis, reflecting on illogical decisions made at a previous time and being asked about his thinking at the time. He acknowledges what is obvious and logical to his functioning mind but struggles to make it clear that in fact he had no memory of the actual process and only sees the wrongness looking back in retrospect.

120. The following quote also confirms his lack of memory of the events which occurred over this period of hypomania and subsequent depression:

JW: And I'm going to suggest to you that you knew that having her on the plan could get you into trouble? 1730

RT: You can suggest that, yes, but from when I look at it, yeah of course.
JW: You agree that you knew that back when you sent that text message? 1733
RT: I don't recall sending the text message.

P 48

RT: I'm not -- I'm not denying anything at all. Pp 48 1710- 1735 1994 1995

CREDIBILITY

121. The Chief Constable stated at para 24 of his Findings:

"This case to some extent, involves the assessment of credibility of Cst. Thandi"

122. The Chief Constable quoted Adjudicator Smart in Charters para 48 – 51 of his Findings that . . "Credibility has two aspects. It involves an assessment of the honesty or sincerity of the witness as well as the reliability of their evidence. The evidence of a dishonest witness will seldom be reliable but the reverse is not necessary true. An honest witness may believe their evidence is accurate but may be mistaken." DA Rich quoted the case saying " Amongst these factors [to inform an assessment of credibility] is whether a witness' evidence "harmonizes with independent evidence that has been accepted"

123. Chief Constable Rich quoted in para 50 of his Findings from *Bergen v. Gu*lker 2014 BCSC 5 at para 24 – 25 which stated that in gauging a witness' evidence a court may also consider the witness' power of recollection.

124. In this case Cst. Thandi was misunderstood in an assessment of credibility due to the misapprehension of his disorder and the effect of medication on his cognitive

facilities and his memory. There was no evidence whatsoever given by Dr. [redacted] that an individual in a hypomanic phase would be able to accurately recall his distorted thinking when in a period of remission.

125. The decision of the Chief Constable in addressing inconsistencies in the evidence, of an individual suffering from two as significant mental illnesses, and later inappropriately charged with fraud, subject conditions which isolated for him from his support groups and friends and dismissed without pay, is profoundly flawed choosing to ignore the impact of Constable Thandi's mental illness on his ability to give reliable evidence. The lack of reliability and his confusion is in fact more congruent with his disorders than perfect recall. (February 2, 2016 lines 1139 – 1145)

126. Chief Constable Rich stated that Cst. Thandi's ". . . evidence lacks credibility because of the confused state in which he gave evidence. For example, he stated he did not remember sending a text to Ms. [redacted], in contravention of an order he had received just a few hours earlier. The evidence he gave about stopping taking medication and whether he told his doctor, or is open and frank with his doctor, was confused and contradictory and therefore lacking in credibility" [Findings para 116]

127. In fact the very fact that his decision-making was confused and flawed is strong evidence that he was in a hypomanic phase. In addition if he is suffering from mania which is a profound confidence in his own judgment he would have no reason to report to Dr. [redacted] that he was off his medication. In most cases of addiction an individual feels high when taking medication whereas the profoundly disturbing aspect of bipolar II is that individuals feel high when they are not taking their medication.

128. It is a condition of the disorder that they will go off their medication given their feelings of elation and their failure to tell their treating psychiatrist is simply an aspect of their hypomanic behavior and impaired judgment. They lack the ability to see that this period of elation, which feels so wonderful, is in fact a part of their

disorder. Constable Thandi did not have experience with a sustained period of hypomanic behavior although in retrospect his hyper activity in 2007 likely fit this definition but since it did not work out poorly (except in relation to breaking up his marriage) it was not seen as dysfunctional by himself or Dr. [redacted].

129. Cst. Thandi gave evidence to the best of his ability but some of it was mistaken as he had poor recollection of when he was or was not on medication. (February 1, 2016 1316 – 1323; February 3, 2016 lines 743 - 774) It is said that to the hammer everything is a nail. It is shocking how an individual who has gone through a sustained period of psychiatric illness and mistreatment by his employer should be criticized regarding his ability to recall when and if he was on medication. An intact recollection is in fact the only evidence that may raise questions as to the veracity of his illness.

FAILURE TO TAKE MEDICATION

130. Further both Dr. [redacted] and Constable Thandi gave evidence that the medications he was on after April 2014 caused memory loss and cognitive problems. (February 2, 2016 1139 – 1145)

131. Constable Thandi simply cannot remember exactly when he took his medication and when certain conversations took place. This is entirely in line with his diagnosis and the side effects of his medication. If he had presented with detailed dates and times in his evidence, this would be indications of coaching. (February 1, 2016 1309 – 1323 February 3, 2016 lines 1327 – 1329 lines 743 - 774)

Failure to Take Medication: Part of Disorder

132. There was no basis to determine that Cst. Thandi stopping his medication without advising Dr. [redacted] was intentional and because "he did not want to be accountable to his doctor for his decision to stop taking medication." (Findings para 86) Rather

than understand the impact which legation and mania have on judgment the Chief Constable wishes to reduce his actions to a moral failing.

Impaired Executive Functioning Not Lack of Credibility

133. This conclusion demonstrates a desire to assess culpability when in fact Constable Thandi had impaired executive thinking. The frontal lobes are what allow us to stand outside of ourselves and look at the consequences of our decisions. A person who is experiencing a manic confidence in their own decisions and a sense of well-being has no effective ability to understand the downside of their decision not to take medication.
134. While there were routine short appointments where Dr. [redacted] routinely renewed prescriptions by sending authorizations to his GP. There was no evidence as to the extent to which medication even came up during the two-year period which he was off medication given that he was viewed to be doing well. Cst. Thandi was very aware of his depressive episodes and booked off work to deal with these. He had no history of hypomania causing poor decision making and thus neither he nor Dr. [redacted] were looking for this.

OFF MEDICATION DURING RELEVANT PERIODS

135. The evidence led by Dr. [redacted] is that individuals who are suffering from hypomania are so overwhelmed with feelings of well-being that they routinely go off their medication. The fact that Constable Thandi was incorrect about when he discontinued his medication demonstrates his poor memory. The PharmaNet records indicated that he was off his medication from May 2012 through to April 2014. This is entirely consistent with him being in a hypomanic phase.

136. Dr. [redacted] stated that although Constable Thandi suffered from poor judgment in stopping his medications, this was not considered non-compliance. He clarified that non-compliant patients are "non-compliant from the get go" whereas Constable

Thandi suffered from "an error of judgment and, hopefully. . . learned not to do that". (February 2, 2016 Page 24 lines 989 – 1000) He was not refusing to take his medication in a period of depression but rather in a period when he felt fantastic.

137. This error in judgment was facilitated by the fact that his illness was primarily depressive in nature and that he did not recognize what was likely a hypomanic episode in 2007. I cannot think of events which are more likely to be burned into Constable Thandi's memory then the nightmare which he has gone through over the past 3 ½ years.

138. Dr. [redacted] stated that likely Cst. Thandi entered an elevated mood and decided that he would stop his drugs, likely because he and Dr. [redacted] had discussed reducing his drugs if Cst. Thandi entered a period of lengthy remission. Cst. Thandi, in an elevated mood, made an error of judgment thinking he was complying with Dr. [redacted] advice. (February 2, 2016 lines 989 – 1000)

139. Dr. [redacted] gave evidence that he and Cst. Thandi had a conversation where Cst. Thandi asked if he would be on medications all his life and Dr. [redacted] said that if Cst. Thandi was well for some period of time he and Dr. [redacted] could stop and reduce and modify his medications. Dr. [redacted] felt that he misunderstood this conversation and in an elevated mood, where he felt well and not depressed, he misunderstood what Dr. [redacted] said and went off his medications. (February 2, 2710 – 2738)

140. Constable Thandi gave evidence that he felt that if he felt fine the medication was unnecessary and "that's why I went off" but "now looking back in retrospect it's a learning experience for me I shouldn't have done that." (February 3, 2016 Lines 905 – 908)

LYING/DECEIT

141. The Chief Constable found that ". . . . even though Cst. Thandi knew he was not to contact these people, his anxiety and his OCD were overpowering him. . . . in these unique circumstances, I finding he knowingly disobeyed these lawful orders because he was acting on a compulsion that his will power was unable to counteract." In paragraph 136 the Chief Constable found "However, it is also my view that Cst. Thandi did not have a compulsion to disobey the order to advise Staff Sergeant Dhillon of these contacts." (Findings paras 134 – 140)

142. The Chief Constable, perhaps feeling guilty for imposing the conditions which Dr. [redacted] advised he would not be capable of complying with, surgically separates which behaviors Constable Thandi could or could not control without any basis in the extensive medical evidence led.

143. The Chief Constable stated that if Cst. Thandi had been suffering from a hypomanic phase at the time he could appreciate that the lying and failure to report the breaches would be attributable to Cst. Thandi's mental illness. (Findings para 140) He is referencing the fact that, post the laying of criminal charges and his suspension , that he was in a profound depression. To suggest that a desperate individual who breached conditions, that his own psychiatrist predicted he could not keep, would then have had the insight and ability to follow through reporting those breaches to his superior and face further sanction is pure make-believe.

144. The Chief Constable failed to understand that both hypomania and depression impact frontal lobe function, which is the center of executive and moral thinking. This impairment affects the ability of an individual to appreciate the consequences of their actions, including the appropriateness of embarking upon a high risk intimate relationship as was the case here. (February 2, 2016 2732 – 2738)

145. Furthermore Dr. [redacted] gave evidence that between April 2014 and up to January 2015 Cst. Thandi's medications were being continually readjusted due to cognitive issues and in an effort to stabilize his mood. (February 2, 2016 1322 – 1369)

146. Specifically after restarting his medication in April 2014 cognitive side effects occurred and Dr. [redacted] had to switch medications, medications had to be switched in June 2014 and again in September. During the period of the breaches of the court order and Cst. Thandi lying about those breaches his mood was unstable and his cognition was affected. During this time he had memory loss and his judgment was affected. (February 2, 2016 1138 – 1145; 1322 - 1369)

147. At the time of the breaches, the misuse of police resources and lying about the contact, Cst. Thandi had been put under extreme pressure and subjected to public humiliation and publicity. The APD had arrested him on his birthday, made him change into a 'bunny suit', placed him in a cell for a number of hours and released this information to the media in a press release. He had already served him with no contact orders which the APD had been warned he would not be able to obey and subjected him to an investigation. He was severely depressed, anxious and took steps to commit suicide and likely would have but for his decision to visit his ex-wife. His medications were being changed between April 2014 and January 2015 and some of them caused cognitive problems. (February 1, 2016 lines 2052 - 2181, 2231 – 2255; 1564 – 1589; February 1, 2016 2052 – 2169 and 2235 – 2250; February 2, 2016 3325 - 3344)

CULPABILITY

148. The Chief Constable stated that not every unlawful act constitutes misconduct. Something more is required, usually a mental fault component (para 28)

149. Cst. Thandi has admitted the conduct component of his wrongdoing but due to his mental illness which demonstrably affects the judgment and his ability to appreciate the nature and quality of his actions, he denies the mental fault component (para 25)

GUILTY PLEA

150. The Chief Constable was in error in stating that the fact that Cst. Thandi pled guilty to criminal charges and received a conditional discharge was a formal acknowledgement that Cst, Thandi had the requisite mens rea to commit fraud. (Findings para 36, 39)

151. In fact a guilty plea often with constitute a pragmatic decision, with both parties deciding not to waste resources to prosecute and convict when a case is less serious or unlikely to constitute a public danger.

COST TO CONSTABLE THANDI

152. Constable Thandi testified that he had spent $30,000 consulting several criminal lawyers only to be told that introducing a defence of mental illness would likely many thousands of dollars, which he did not have. Given his limited financial resources, Cst. Thandi made a pragmatic decision to plead guilty and he received a conditional discharge. In fact he would effectively have had to expand the 18 century definition of mental illness to more properly deal with issues of hypomania and OCD. It is unlikely that this challenge and the various appeals all the way to the Supreme Court of Canada could be dealt with for under $500,000 and extensive expert medical evidence. The Police Union provides no resources for criminal charges but did provide Constable Thandi resources to challenge his dismissal which was the most appropriate forum for issues of his mental illnesses and culpability to be determined from an employment and mental health perspective.

153. Constable Thandi gave evidence as to why he pled guilty. He stated: "I didn't want to plead guilty. I felt I did not have a criminal mind. Then Mens Rea just was not there, but my lawyer said this is a good deal, take it." He was told it would cost

$80,000 to fight it and perhaps more as it went through the levels of appeal. Cst. Thandi made a pragmatic decision to plead guilty and concentrate on the Police Act charges. It cannot be treated the same a conviction after the weighing of evidence. (February 1, 2016 2410 – 2423)

154. The Chief Constable was in error in stating that "I must accept, given the plea, that Cst. Thandi had the requisite mens rea to commit fraud. Any other conclusion would amount to an abuse of process and violate the principles set out in *Toronto (City) v. CUPE Local 79*, 2003 SCC 63 at para 45 – 56. The Chief Constable ignores the detailed submissions which were made that in fact the Toronto case specifically outlines exceptions where subsequent proceedings are the better venue for determining at the substance of the issues to be determined.

ABUSE OF PROCESS

155. Chief Constable Rich ignores the fact that detailed submissions were advanced at the hearing which outlined the exception to the operation of the doctrine of abuse of process as outlined by Justice Arbour in the decision of *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77. These submissions received no meaningful analysis by DA Rich. In the Supreme Court of Canada decision, the Court recognized that the doctrine of abuse of process is not to be rigidly applied and that judicial discretion governs its application to avoid injustice.

156. The facts of the *Toronto (City)* decision involved a full trial and appeal and an attempt to reargue the factual basis led in the previous hearing. The facts of the subject case are in direct contrast to the aforementioned decision in that Constable Thandi entered into a guilty plea and there was no determination on the merits. While there are statutory provisions deeming the conviction to be conclusive, there is a separate issue then as to whether the equitable doctrine of abuse of process

should be applied to preclude the underlying human rights and employment issues from being determined in a subsequent hearing on these issues.

157. The *Criminal Code* defence of insanity is founded on an 18th Century common law defence and largely requires a psychosis or significant break with reality. In order to advance Bipolar II disorder as a defense in a criminal prosecution, Constable Thandi would likely have had to face off against the resources of the Federal Government and take the matter to the Supreme Court of Canada, which is clearly beyond his means. While Bipolar I disorder can involve psychotic breaks, this is not the case with Bipolar II, which is often difficult to diagnose in that the condition can be seen largely as a depressive disorder and a hypomanic state may be viewed as an indication that the patient is doing well.

Discretionary factors

158. Justice Arbour in *Toronto (City) v. C.U.P.E., Local 79, supra* makes it very clear that the doctrine of abuse of process is a discretionary remedy, and as such, is fundamentally flexible in its application. In paragraph 53 she notes as follows:

> "The discretionary factors that apply to **prevent the doctrine of issue estoppel from operating in an unjust or unfair way** are equally available to prevent the doctrine of abuse of process from achieving a similar undesirable result. There are many circumstances in which the bar against re-litigation, either through the doctrine of res judicata or that of the abuse of process, would create unfairness. **If for instance, the stakes in the original proceeding were too minor to generate of full and robust response, while the subsequent stakes were considerable**, fairness would dictate that the administration of justice would be better served by permitting the second proceeding to go forward then by insisting that finality should prevail. An inadequate incentive to defend, the discovery of new evidence in appropriate circumstances, or a tainted original process may all overcome the interest in maintaining the finality of the original decision (emphasis added)
>
> **(Danyluk infra, at paragraph 51, Franco, supra, at paragraph 55)**

159. It is submitted that the guilty plea fell into the exception outlined by the Supreme Court of Canada in the *Danyluck v. Ainsworth Technologies Inc.*, [2001] 2 SCR 460 decision "in that the stakes in the original proceeding "(given the conditional discharge) "were too minor to generate a full and robust response while subsequent stakes were considerable (ie the loss of his career and reputation) .. Given that it did not represent a complete determination on the merits, no abuse of process would take place if a different conclusion were reached in a complete hearing and after a comprehensive examination of the medical evidence. Cst. Thandi's lack of criminal record, numerous letters of reference and the minimal nature of the offense should be weighed against the disproportionate costs and uncertainty of Cst. Thandi having to fund a mental illness defence all the way to the Supreme Court of Canada. Surely what was done with proper legal advice was the same decision which all but the wealthiest Canadians would do.

160. Since the doctrine of abuse of process is an equitable principle it should not be used to prevent an individual from advancing a defence of mental illness in the most appropriate venue.. It is certainly accurate to say that the guarantee of a conditional discharge would not justify a more right robust response where the appropriate venue was under the Police Act or had the APD made a more appropriate decision how this was handled by way of labour arbitration

Application of Exception

The exception identified by Justice Arbour has been applied in a number of arbitration decisions. **In the Matter of an Adjudication under the Nova Scotia Corrections Act** 2012 CarswellNS .This decision involved a corrections officer who was dismissed based on his guilty plea to assault involving his wife. The arbitrator held that the **Toronto v CUPE** decision (supra) was distinguishable. He reviewed the following decisions before deciding that he was in a position to hear the evidence and knew in detail and deal with discrepancies in the complainant's oral evidence versus her witness statement which were not canvassed in the trial of the matter:

> "70 After the hearing, Counsel for the Union asked permission to submit further cases on the application of the *Toronto (City)* (*supra*) rule which was raised by the Employer, and was so permitted. In *Chinook Health Region v. H.S.A.A.* (2009), 188 L.A.C. (4th) 10 (Alta. Arb.) (Tettensor, chair) the Grievor had pled guilty to assault based on agreed facts. It was held that the doctrine of abuse of process did not apply to restrict the evidence the Employer could call to support the discipline. In *Windsor (City) v. C.U.P.E., Local 543* (2008), 176 L.A.C. (4th) 412 (Ont. Arb.) (McLaren) it was held that*Toronto (City)* did not apply because the criminal process reached no findings of fact. In *Kenora Assn. for Community Living v. O.P.S.E.U., Local 702* (2005), 141 L.A.C. (4th) 160 (Ont. Arb.) (Springate), the arbitrator found that he was bound by the Grievor"s plea of guilty to a charge of possessing a controlled substance, but was not bound by the court's finding that the Grievor intended the marijuana only for personal use."

161. The Board concluded that the doctrine of abuse of process did not prevent the arbitration board from looking at the circumstances surrounding a guilty plea beyond those before the court. The majority concluded that the Toronto decision was distinguishable given that there had been a full trial with cross-examination and judicial findings as well as an appeal.

162. The Supreme Court of Canada in the decision **of Danyluck v. Ainsworth Technologies Inc., [2001] 2 SCR 460** refused to apply the doctrine of abuse of process as a matter of fairness. The court concluded that the employment standards decision met the criteria of being a judicial decision and had technically created an issue of estoppel. Justice Bennie noted that while the technical factors of issue estoppel were met, that the doctrine of issue estoppel, like abuse of process, is an equitable principle. Justice Bennie noted as follows:

> "I conclude that the preconditions to issue estoppel are met in this case."
>
> The Exercise of the Discretion
>
> "62 The appellant submitted that the Court should nevertheless refuse to apply estoppel as a matter of discretion. There is no doubt that such a discretion exists. In *General Motors of Canada Ltd. v. Naken*, 1983 CanLII 19 (SCC), [1983] 1 S.C.R. 72, Estey J. noted, at p. 101, that in the context of court proceedings "such a discretion must be very limited in

application". In my view the discretion is necessarily broader in relation to the prior decisions of administrative tribunals because of the enormous range and diversity of the structures, mandates and procedures of administrative decision makers.

63 In *Bugbusters*, *supra*, Finch J.A. (now C.J.B.C.) observed, at para.

32:It must always be remembered that although the three requirements for issue estoppel must be satisfied before it can apply, the fact that they may be satisfied does not automatically give rise to its application. Issue estoppel is an equitable doctrine, and as can be seen from the cases, is closely related to abuse of process. The doctrine of issue estoppel is designed as an implement of justice, and a protection against injustice. It inevitably calls upon the exercise of a judicial discretion to achieve fairness according to the circumstances of each case.

Apart from noting parenthetically that estoppel *per rem judicatem* is generally considered a common law doctrine (unlike promissory estoppel which is clearly equitable in origin), I think this is a correct statement of the law. Finch J.A.'s *dictum* was adopted and applied by the Ontario Court of Appeal in*Schweneke*, *supra*, at paras. 38 and 43:

"The discretion to refuse to give effect to issue estoppel becomes relevant only where the three prerequisites to the operation of the doctrine exist. . . . The exercise of the discretion is necessarily case specific and depends on the entirety of the circumstances. In exercising the discretion the court must ask – is there something in the circumstances of this case such that the usual operation of the doctrine of issue estoppel would work an injustice?

. . . The discretion must respond to the realities of each case and not to abstract concerns that arise in virtually every case where the finding relied on to support the doctrine was made by a tribunal and not a court.

See also *Braithwaite*, *supra*, at para. 56."

64 Courts elsewhere in the Commonwealth apply similar principles. In *Arnold v. National Westminster Bank plc*, [1991] 3 All E.R. 41, the House of Lords exercised its discretion against the application of issue estoppel arising out of an earlier arbitration, *per* Lord Keith of Kinkel, at p. 50:

> One of the purposes of estoppel being to work justice between the parties, it is open to courts to recognise that in special circumstances inflexible application of it may have the opposite result . . . ."
>
> "66 In my view it was an error of principle not to address the factors for and against the exercise of the discretion which the court clearly possessed. This is not a situation where this Court is being asked by an appellant to substitute its opinion for that of the motions judge or the Court of Appeal. The appellant is entitled at some stage to appropriate consideration of the discretionary factors and to date this has not happened.

163. Justice Bennie reviewed the legislative purpose of the Employment Standards legislation as constituting a relatively expeditious process to deal with employment disputes. He concluded that it would be unfair to have the disposition in these proceedings to act as an estoppel for a claim of $300,000 in commissions. By analogy, while a guilty plea is a decision of a provincial court, it is not subject to appeal and there is no possibility of inconsistent findings of fact which go to the heart of the abuse of process doctrine this is different in the case at hand.

164. Like a guilty plea, the employment standards hearing in this decision, in contrast to a Supreme Court hearing for wrongful dismissal, could not be said to be robust or resulting from a full hearing on the merits. A guilty plea is a pragmatic approach to dealing with a minor though important offense, which likely would result in an absolute or at least a conditional discharge for an individual, leaving them without a criminal record.

165. There are no policy reasons as to why the full facts surrounding the event leading to a guilty plea should not be examined completely where the issues involved in the Police Act proceeding are different than those involved in the criminal charges and the employee has greater access to legal resources. It is respectfully submitted that fairness dictates that the full circumstances of Constable Thandi's guilty mind and psychiatric issues can be canvassed given that the vast majority of this evidence was not canvassed before the court.

166. In addition, given that the discipline representative has examined at length on his state of mind, it is fundamentally unfair that a different and more nuanced finding is not possible given the guilty plea despite the presiding officer having extensive psychiatric evidence available to him. It is respectfully submitted that there is no opportunity for different findings of fact to be made and that the guilty plea was not a robust judicial proceeding which should bind the presiding officer when the questions before the presiding officer are very different than whether there simply was a fraudulent act committed given that they involve questions of moral culpability and the extent to which that culpability goes to preclude Constable Thandi from acting as a constable with the APD.

167. Mental illness is a reality both inside and outside of the police force. Mental illness can affect between 15 and 25 percent of the population. While an individual with mental illness generally poses little risk to the public or fellow employees, mental illness is significantly related to unnecessary absenteeism resulting from an individual's lack of awareness of their condition where not receiving proper treatment, including medication.

168. Constable Thandi has demonstrated himself to have tremendous resilience in dealing with his psychiatric disorders. He is a valuable asset to the APD and should be used as a resource to assist in dialogue with other APD members and staff. What the APD does in this particular circumstance demonstrates as much about whether it cares for other constables as any meetings, management directives or even pay increases.

Financial Resources

169. The Police Union did not fund any of Cst. Thandi's criminal defence but have funded his disciplinary hearing and, to a lesser degree, his appeal. In addition, the disciplinary processes and/or grievance procedures are much more appropriate and cost-effective mechanisms for determining what are essentially employment and

Human Rights issues.

170. The APD investigation which spanned several years yet at no time did it attempt to determine the extent to which his psychiatric disorders played a part in the impugned conduct. It is remarkable that hundreds of thousands of dollars of police resources were spent to investigate and prosecute an event which was admitted but no resources were expended to understand his disorders.

Errors in Judgment Not Restricted to Mental Illness

171. This case illustrates the fantasy that individuals with mental illness cannot function in a position of responsibility given the employers fear of relapse or that it will impact their judgment.

172. Yet the research on the human mind, and the experience of judges and litigators, shows the extent to which healthy individuals cherry pick facts to address deep fear or anger .Similarly stress , fear and adrenaline can impair judgment in even the healthiest individuals. A person with a mental disability may be more aware of their own emotions and can certainly possess greater empathy in dealing with crisis situations as was the case with Constable Thandi.

173. Constable Thandi should be judged on the basis of the facts which are that he demonstrated himself as a capable police constable who proudly served the citizens of Abbotsford for two decades .Over this time he never receiving a single promotion despite applying for dozens of positions.

174. Aside from a massage parlor incident which occurred after a painful divorce his record was good despite coping with 2 serious illnesses. It is interesting to note that he expressed deep shame around this incident which likely occurred in a manic phase followed by a depressive phase making his remorse more painful. His failure to obtain Union representation or involve his psychiatrist shows a lack of judgment and is constant with Bipolar 11 which can involve reckless sexual behavior.

Conduct of APD

175. Moreover, their actions of arresting Constable Thandi in a public place on his birthday after luring him out of his house with the offer of a heart-to-heart chat with a colleague resulted in him being suicidal and, for the first time in his career, actively taking steps toward committing suicide. His charges were publicly announced in a press conference and had a profound impact on a proud Sikh whose extended family is comprised of proud members of the Canadian and Indian military and police and sheriff services. (February 1, 2016 2052 – 2169 and 2235 – 2250)

176. Constable Rich allowed the prosecution to proceed and conditions to be imposed which Dr. [redacted] advised he as incapable of complying with given his OCD and his sever anxiety for the safety of Ms. [redacted].

177. Had this conduct been properly dealt with as an employment matter, Chief Constable Rich would not have been faced with the legal questions as to the role of the Police and the proper application of human rights legislation. If it was felt to be necessary to proceed with criminal charges, then this should have been dealt with by way of diversion.

178. In fact the APD had other high profile police discipline cases and the "politics of being tough on crime" and "equal treatment" prevailed over respect for Human Rights and taking the opportunity to understand mental illness, protect the public while showing leadership to it workforce In recent years the APD has had three suicides.

Hundreds of Thousands of Dollars Spent on Investigation None on Understanding

179. The ADP investigator Sgt. Fefchak testified that he spent nine months full time conducting the investigation. Along with this investment, there were many other officers involved in interviewing numerous witnesses and several interrogations of Constable Thandi. Sgt. Fefchak testified that no attempt was taken to understand the role his psychiatric conditions played in his decision to improperly obtain benefits even though he testified that he worked with Cst. Thandi for three years and found him to be a very capable officer.

180. Sgt. Fefchak testified that other than a brief interview of Dr. [redacted], at Constable Thandi's insistence, no effort whatsoever to understand the role that Constable Thandi's disorders may have played in his conduct. At no time was Dr. [redacted] ,the occupational psychiatrist that had been consulted in 2013, called to provide an interview or opinion.

Defense of Compulsion Understood but Not Pursued

181. Sgt. Fefchak testified that while he understood that issues of compulsion were relevant defences in criminal prosecutions, they took no steps to investigate in this area and believed that that would be dealt with during the hearing. It is respectfully submitted that this demonstrates a significant departure from a reasonable employment practice which would seek to understand the "out of character behavior" of a long-term police Constable who had successfully dealt with these two challenging psychiatric conditions for almost two decades.

182. Even the most perfunctory investigation would have demonstrated that he had been off his medication for most of the critical period, and therefore, likely to engage in "high-risk behavior which is likely to turn out poorly" which is the hallmark of Bipolar II disorder.

HUMAN RIGHTS LEGISLATION

183. Rather than focusing on the fact that Constable Thandi's period of disability followed major life changes (ie: divorce, painful MVA injuries, false allegations by Sgt. [redacted] (that he was not injured in a MVA-leading to forced leave) and his current romance and decision to go off medication leading to hypomania. Instead of having his human rights protected the APD took the path of least resistance and least public criticism and treated him as a criminal so flawed that he threw away his career for a few thousands of dollars of benefits for another.

184. Had the situation been handled differently he would have avoided several years of profound depression, suicidal thoughts and profound emotional pain and humiliation..ADP's terrible treatment in publically shaming a proud constable and member of the Sihk religion, when options such as diversion or arbitration were available.

185. His employer ignored the medical evidence and dealt with this matter purely as a discipline matter. The Human Rights Code requires that an employer respond compassionately and appropriately to individuals suffering from a disability and be governed by medical evidence in determining their return to gainful employment.

186. As with any other issue of causation the only issue is whether his disability was a material cause of his impugned behavior.

Chief Constable Erred in Concluding Human Rights Legislation Does not Apply

187. DA Rich has determined that human rights legislation does not apply to the case of Cst. Thandi stating in paragraph 72 "In labour law cases . . . .as stated above police discipline is conceptually and jurisdictionally distinct from labour law." This is a rejection of protections which have been described by the Supreme Court of Canada has described as having a "fundamental" "almost constitutional" stature.

Rosin v. Canada (Canadian Forces) (1990), 16 C.H.R.R. D/441 (Fed. C.A.).

HUMAN RIGHTS CODE SUPERCEDES POLICE ACT WHERE CONFLICT

188. The golden rule of statutory interpretation is that the adjudicator should seek to determine the intent of the Legislature. The intent of the Legislature is contained in not merely the provisions of the *Police Act* but also the provisions of the *Human Rights Code*. Not only are police officers subject to the disciplinary provisions of the *Police Act* but they and their employers are also subject to the protections of the *Human Rights Code*.

Parry Sound (District) Welfare Administration Board v. OPSEU Local 324 2003 SCC 42 para 41

Obligation to Give True Effect of Legislation –Removal of Discrimination

189. The Courts have held that the Human Rights Code is of a special nature and should be applied so as to give its purpose the true effect, that of removal of discrimination. The failure of a lay employer to properly understand the impact of mental illness and provide the necessary medical deference is a direct assault on the legislative mandate to give the legislation its "purpose and true effect".

190. In *Crane v. British Columbia (Ministry of Health Services)* 2005 BCHRT 31 the court discusses the context in which the purpose of the *Human Rights Code* are furthered and states in paragraphs 72:

> A helpful place at which to start is the decision of the Federal Court of Appeal in *Rosin v. Canada (Canadian Forces)* (1990), 16 C.H.R.R. D/441 (Fed. C.A.). In that case, Linden J.A. began by summarizing the interpretative principles generally applicable to the interpretation of human rights legislation, as follows (at para. 5):
>
> > In the interpretation of human rights codes, the Canadian courts have consistently accorded them a meaning which will advance their broad purposes. **Our courts view human rights codes not as ordinary statutes but as special, as fundamental, as "almost constitutional" in their nature.** For example, Mr. Justice Lamer, as he then was, declared that a human rights code "is not to be treated as another ordinary law of general application. It should be recognized for what it is, a fundamental law." (See

Insurance Corp. of B.C. v. Heerspink, [1982] 2 S.C.R. 145 at 158 [3 C.H.R.R. D/1163 at D/1166]; see also La Forest J. in *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84 [8 C.H.R.R. D/4326].) Mr. Justice McIntyre of the Supreme Court of Canada reiterated this view in *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536 at 547[7 C.H.R.R. D/3102 at D/3105, para. 24766] when he wrote:

> The accepted rules of construction are flexible enough to enable the Court to recognize in the construction of a human rights code the special nature and purpose of the enactment ... and give to it an interpretation which will advance its broad purposes. Legislation of this type is of a special nature, not quite constitutional but certainly more than the ordinary — and it is for the courts to seek out its purpose and give it effect. The Code aims at the removal of discrimination.

Chief Justice Dickson (as he then was) has outlined the correct way to approach human rights legislation. Such laws should be given not only their plain meaning but also "full recognition and effect" and, in accordance with the *Interpretation Act* [R.S.C. 1985, c. I-21], "a fair, large and liberal interpretation as will best ensure that their objects are attained." Chief Justice Dickson warned: "We should not search for ways and means to minimize those rights and to enfeeble their proper impact." (See *Action travail des femmes v. C.N.R.*, [1987] 1 S.C.R. 1114 at 1134, (1987), 40 D.L.R. (4th) 193 (S.C.C.) at 206 [8 C.H.R.R. D/4210 at D/4224, para. 33238].)

191. In the herein case. rather than giving the Human Rights legislation an interpretation which would advance "its purpose and effect" being the removal of discrimination, the Chief Constable chose a binary conclusion that it did not apply at all .He did not even say it should be applied after the Police act issues were decided but simply chose to ignore this application.

192. The leading Supreme Court of Canada decision *Insurance Corp of B.C. v. Heerspink,* [1982] 2SCR 145 at para 33 identifies the interpretation and application of human rights legislation as different from other statutes which may be interpreted technically and concludes that human rights legislation must be applied

in the broadest and most generous manner in accordance with the fundamental nature of the rights protected.

193. Human rights legislation is not subservient to the *Police Act* and, if anything, the protection of the *Human Rights Code* applies to modify findings of culpability and reduce or eliminate penalties that would otherwise be appropriate where a person was not suffering from a physical or mental disability. In the *ICBC v. Heerspink, supra* decision the Supreme Court of Canada modified the provisions of the Insurance Act to accommodate the individuals rights under the Human Rights Code.

194. It is the obligation of each employer and authority to understand mental illness and accommodate an individual suffering from the same to the point of undue hardship. Where a person is unable to perform the duties of their position as result of her physical or mental disability the conduct is regarded as non-culpable given that the individual does not have the ability to carry out some or all of the duties of the position and may need accommodations or supports, for a period of time or indefinitely, to allow them to perform their work. The focus in nonculpable cases is not on the conduct but rather the individual's prognosis and their ability to return to a normal level of work performance. Many positions are available to Cst. Thandi bot in the APD and in the City of Abbotsford but none were considered in favor of termination.

Onus of Proof Satisfied

195. While the current law requires the mentally ill individual to demonstrate the role their mental illness played in the impugned behavior, it is respectfully submitted that this is done by simply advancing the relationship between the mental illness and its ability to impair cognitive judgment. It is submitted that this is sufficient to meet any onus, particularly in light of the evidence of Constable Thandi's ability to manage two significant mental illnesses prior to 2012.No medical evidence to the contrary was advance.

196. Rather than focusing on the Constable Thandi's period of disability following major life changes, and his current disability, largely created by the ADP's terrible treatment, the Human Rights Code requires that an employer respond compassionately and appropriately to individuals suffering from a disability and be governed by medical evidence in determining their return to gainful employment.

Causation /Nexus

197. In addressing the issue of establishing a nexus or causation between Constable Thandi's disorders and his conduct assistance can be obtained from the Supreme Court of Canada decision of Athey v Leonati [1996]3 SCR.458 in which the Supreme Court of Canada indicated that the "but for" test was appropriate i.e. but for the accident with the injuries have occurred. The court went on to determine that where that test was not helpful the test to be applied was whether the accident "materially contributed" to the injuries regardless of whether it was the *sole cause* of those injuries.

198. It is respectfully submitted that it is artificial and unhelpful to try to dissect issues of self-interest or typical motivations which may or may not have played a role in a disabled person's decision. This is extremely difficult to after the fact attempt to determine whether these factors even entered into their consideration in a meaningful way. In the context of a mental illness the only meaningful question that can be asked is whether there is probative evidence that the illness "materially contributed" to the impugned conduct. Individuals suffering from mental illness will still act in a logical and goal directed manner and will explain their behavior as such but may still be exercising very poor judgment due to their illness.

199. Constable Thandi in being asked the above questions by the Chief, Constable as to whether there were logical aspects to his decisions which included furthering his self-interest , he agreed but made it clear about how " confused and ashamed" he was of the decision to breach the no-contact provisions and he understands "in retrospect "and with medication how wrong those decisions were:

> BR: -- the other explanation was that you wanted to go to the restaurant.
> RT: Well of course I always wanted never never did I not want to go of course, yeah, great food, my friend is there and, and my son's birthday and all I can say is my mind was just I'm just mixed right up and that's the stupidest decision I made and I own it I really do.
>
> TR: Vaguely, I, I just this whole situation I just feel embarrassed, shameful, I've let him and him and him everybody down and, ah, those thoughts are all there and at that time too I don't know, umm, it's an internal struggle it's a battle going on.
> DC: Mm-hmm.
> TR: And it is confusing it really is sometimes until now I can now that I've been on medication for a while I think it did I reflect on it and what the hell like what --.

200. The above quote demonstrates his remorse and disgust with his decision and the losing struggle he had with OCD which was fanned by the deterioration of his mood disorder and the profound depression which he was experiencing at what was undoubtedly the lowest point of his life. This questioning demonstrates the failure to understand the subtle impacts of mental illness and how it can impact judgment, impulse control and restraint where logic is still intact.

201. Alternatively using the "but for" test the question to be asked is whether it was the more probable than not that Constable Thandi would have committed this wrong "but for" his psychiatric conditions which impacted his impulse control and judgment.

Provisions of the Human Rights code to make accommodations

202. The *Human Rights Code* specifies a duty to accommodate until the point of undue hardship. No evidence that APD had experienced any hardship. The former Human Resources Manager of the APD was very helpful in their accommodations and

there was no evidence that there were staffing issues whatsoever.

203. The APD not only failed to accommodate Constable Thandi but it has treated him in an extreme and humiliating manner without any psychiatric support thus worsening his illness. February 2, 2016 1564-1572.

Warning by Dr. [redacted] that Cst.Thandi Could Not Comply With Conditions

204. The APD served Cst. Thandi with orders after they had been warned by Dr. [redacted] Cst. Thandi would be unable to abide by the conditions of those orders (Findings para 94 and 134)

205. Constable Thandi was publicly arrested, handcuffed and taken to the Mission detachment, made to change into a 'bunny suit' and placed in a cell for a number of hours. The charges were released to the media in a press release. (February 1, 2016 lines 2052 - 2181, 2231 – 2255)

206. Such humiliating treatment has proved to be a stressor which negatively impacted on his mental health (February 2, 2016 Page 1575 – 158; 3324 - 3344)

Suspension Without Pay Aggravates Illness

207. Constable Thandi was suspended without pay after the investigation. Dr. [redacted] indicated that financial stress would aggravate Cst. Thandi's disorders. However at no time did Constable Fefchak or any of the other investigating officers make an effort to understand his psychiatric disorders and the role they may have played in his reckless conduct which led to him unlawfully obtaining benefits or his ability to comply with conditions imposed. (February 1, 2016 lines 2473 – 2532)

208. The charges have affected his business as he is not allowed to cross the border into the USA due to his conditional discharge and cannot attend trade shows or go on buying trips. This has further aggravated his financial stress. (February 1, 2016 lines 2537 to 2576)

LEGAL DECISIONS

209. In *Camrose Police Service v. MacDonald* 2013 ABCA 422 the court determined that the Presiding Officer was in error in giving no weight to the expert and the evidence that MacDonald was suffering from depression and that this contributed to the commission of certain offences (paragraphs 31 and 33)

210. Dr. [redacted] evidence is that Bipolar II impairs the judgment and as such is a mental illness that renders him unable to know or appreciate the nature and quality of his actions while in hypomanic state. Dr. [redacted] described a Bioplar elevated state as:

> ". If you're depressed or you're in an elevated mood you interpret to the world through those things so if . . you're high . . . everything's good, great everything you see is good at his extreme of course he started to get delusional and you imagine that oh she looked at me that way it must be she's in love with me. . . in depression, oh, that person knows I'm . . . bad and evil I must kill myself. So what I'm saying is that your mental state colors everything" February 2, 2016 2732 – 2738

211. *Toronto (Metropolitan) v. Metropolitan Civil Employees Union Local 43* 13 C.L.A.S. 30 concerned an ambulance driver who was employed for 20 years and had an exemplary employment and service record. He was fired due to the improper use on numerous occasions over a five-year period of department of ambulance services credit cards for the purchase of gasoline for his own private car. The court found in paragraphs 9 and 10:

> . . . The conduct in which the grievor engaged constituted a total aberration from everything that previously existed, both in his personal and employment life. That conduct has been analyzed by a highly qualified psychiatrist with specialist credentials in this particular area of forensic psychiatry. He is satisfied that the grievor's action took place in the context of an underlying depression that finds its roots in the grievor's stress and job dissatisfaction problems which, when coupled with the death of the grievor's mother and other family problems led to the condition of depression. Individuals react differently in such circumstances, and it is Dr. Byers' view that the grievor's depression led to the criminal activity which ultimately resulted in his discharge, , , .

> ... The grievor has established over 20 years an otherwise unblemished and enviable employment record. In all aspects, including his direct patient care, the service that he has rendered to his employer has been above reproach. In these circumstances, he is entitled to very favourable consideration when evaluating whether or not a return to his job is appropriate. If given another chance, there exists every expectation that the grievor's work performance will continue to be at the same level of quality as in the past and that there is no significant risk of a repetition of the conduct that led to his arrest. We feel that there is every indication that a viable employment relationship can be re-established in view of the grievor's past relationship with his fellow employees and his supervisors.

212. The arbitrator therefore not only looked at the Grievor's mental health issues and stressful circumstances at the time the breaches took place but placed these in the whole of the Grievor's past history and exemplary conduct determining that his actions were an aberration of everything that came before and determined a viable employment relationship could be re-established.

FAILURE TO ACCOMODATE

Constable Thandi was a Capable Constable despite his Disabilities

213. Constable Thandi worked with the investigating officer Sgt. Fefchuck for three years. Sgt. Fefchuck described Constable Thandi as a very capable police officer who we enjoyed working with. Constable Thandi testified that his OCD condition actually allows him to be extremely methodical and detailed and that working is a very important part of his life. He testified that his understanding of mental illness allowed him to respond effectively to many troubled individuals and to other members on the Force who were dealing with their own mental health issues.

THE ROLE THE APD PLAYED IN AGGRAVATING CST. THANDI'S MENTAL DISORDERS

214. Constable Thandi's current long-standing profound depression was largely the result of the APD's failure to deal with this matter as an employment issue. The APD choose to expose him to the humiliation of criminal charges, press releases regarding the fraud charges (without explanation), years of unemployment, and finally, the termination of his compensation which resulted in overwhelming financial stress given his denial of disability benefits.

215. The subsequent termination of his income prior to the discipline hearing has placed additional crushing burdens on a man who has lost the career he loved, his self-respect and his friends all because he had two serious mental conditions which he managed successfully for two decades.

REMEDY SOUGHT

216. Constable Thandi seeks to have his the Police Act convictions vacated with retroactive compensation and to have this matter referred back to the APD to determine, with psychiatric advice, an appropriate graduated return to work in his patrol position or other appropriate position.

Respectfully Submitted ;

Derek C Creighton
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