

REVIEW ON THE RECORD – SUBMISSION OF COMMISSION COUNSEL ON PROPOSED NEW EVIDENCE

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

A. INTRODUCTION

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

The record of a disciplinary decision consists of:

141(3)(a) the final investigation report of the investigating officer, any supplementary reports or investigation reports under section 132 [adjournment of discipline proceeding for further investigation] and all records related to the investigation and the discipline proceeding,

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

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

2. The Act also allows for a discretion to consider evidence in addition to that which is set out in section 141(3):

141(4) Despite subsections (2) and (3) of this section and section 137 (2) (a) [circumstance when member or former member concerned is entitled to public hearing], if the adjudicator considers that there are special circumstances and it is necessary and appropriate to do so, the adjudicator may receive evidence that is not part of either of the following:

(a) the record of the disciplinary decision concerned;

(b) the service record of the member or former member concerned.

B. POSITION OF THE POLICE COMPLAINT COMMISSIONER

3. The PCC opposes Constable Thandi's application to offer additional testimony at this review on the record for the following reasons:

- (a) It is respectfully submitted that Constable Thandi has not identified any "special circumstances" which would make it necessary or appropriate for the adjudicator to hear and consider his proposed testimony; there is nothing in the proposed evidence which changes the essential factual underpinnings for the disciplinary decision or the disciplinary measures ordered in this case.
- (b) The first area of "new evidence" identified by Constable Thandi (his inability to access disability benefits resulting from his dismissal for cause) is simply a natural and expected consequence flowing from the fact of dismissal.
- (c) The proposed new evidence regarding Constable Thandi's recollection and judgment when in a hypomanic state, which is linked here to the APD benefits application, is wholly inconsistent with what the Constable has said in prior statements and in his testimony at the Discipline Proceedings, and is in any event premised on his failure to recall, rather than anything which could potentially alter the Discipline Authority's conclusion with respect to whether Thandi's actions were compelled by his mental illnesses.

C. DISCUSSION

(i) The Central Issue at the Discipline Proceeding

4. After Constable Thandi completed his evidence at the Discipline Proceedings there was an exchange between DA Rich and counsel for Constable Thandi. DA Rich asked counsel to confirm that his client was admitting the facts, but would be asking the DA to find that the offences were not made out “due to the mental element that’s required.” Counsel replied “right.” **(3 February 2016, p. 79)** This was of course the reason why the DA heard testimony from Thandi’s treating psychiatrist Dr. [REDACTED], and from Constable Thandi himself. The submissions which followed were focused to a considerable degree on this very issue.

5. In his Disciplinary Decision dated 14 June 2014, DA Rich noted that counsel had agreed that Constable Thandi bore the burden of proving the existence of a mental illness **(para. 23)**. He then went on to summarize the legal issue in this way:

*As stated above, Cst. Thandi has admitted the conduct elements of all of the allegations. His counsel submitted that his mental illnesses provide a complete defence to all allegations. By this I understood him to mean that Cst. Thandi’s mental illnesses prevented him from forming the necessary mental intent for each allegation...my primary task at this point is to analyze the fault element required for each of the allegations and determine whether the fault element, in addition to the conduct element, is satisfied.” **(para. 25)***

6. After reviewing jurisprudence which had considered mental illness “defences” in the professional regulatory context, DA Rich held that:

*“...the proper approach...is to consider whether the evidence of Cst. Thandi and Dr. [REDACTED]...rebut the presumption that he acted voluntarily, knowing what he was doing was wrong (and to ask) whether any of the alleged misconduct occurred because Cst. Thandi was in a state of irresistible compulsion due to his mental illness. **(para. 68)**.*

7. DA Rich ultimately found that Constable Thandi that the evidence called had failed to rebut the presumption that he acted voluntarily, knowing what he was doing was wrong (**para. 68**), and had failed to establish on the balance of probabilities that his mental illnesses (either a hypomanic state or OCD) compelled him to: commit fraud (**paras 124**), repeatedly fail to report no contact breaches of the APD order to Staff Sgt. ██████ (**paras 136-7**), lie to Staff ██████ regarding ongoing contact with Ms. ██████ (deceit) (**para. 140**), breach terms of his recognizance of bail (**para. 144**), improperly use police resources, and disclose police information (**paras. 146 and 149**).

8. Conversely, DA Rich found that Constable Thandi had established that his breaches of the APD no contact orders were not substantiated because they were driven by anxiety and OCD which were “overpowering him”, and that “he knowingly disobeyed these lawful orders because he was acting on a compulsion that his willpower was unable to counteract.” (**paras 134-5**).

9. In his written reasons setting out the discipline to be imposed for each of these service offences, DA Rich found that the evidence at the Discipline Proceedings did not support the assertion that Constable was in a hypomanic state when he committed the frauds (**Discipline Disposition Record, para. 17**).

(ii) The APD Benefits

10. There is an inescapable fact which confronts Constable Thandi in this case; on 20 April 2015 he plead guilty to two charges of fraud contrary to s. 380(1) of the *Criminal Code* for having added Ms. ██████ and her son to his APD benefits package. He acknowledged his mistake and took full responsibility in comments he made in court prior to the passing of sentence. As a matter of law, his guilty plea is an admission that

he had the requisite *mens rea* for the offence of fraud (**See Findings of Discipline Authority, 14 June 2014, at paras 38-9**).

11. This was not the only time that Constable Thandi admitted he knew what he was doing and that it was wrong when he filled out the forms and completed the process for adding Ms. [REDACTED] and her son to these plans:

- a. In the warned statement that he gave to APD officers when he was arrested on these and other allegations, he said that he knew he had committed an offence when he completed this form; he explained that he did not know what else to do because he did not want to lose his girlfriend, who was not welcome in the home where he was living with his mother, but it would be too expensive for him to move out himself. He decided to take a chance and go ahead with the application despite knowing that it was probably fraud and the potential consequences for that conduct (**Appendix 6, 13 June 2014, II. 1421-1462**).
- b. In the same warned statement, he admitted that he had mislead Ms. [REDACTED] at the APD's human resources department when he "corrected" the date that he began cohabiting with Ms. [REDACTED], and that he knew this was wrong and unlawful when he did it (**13 June 2014, II. 1633-1658**).
- c. At the end of his warned statement, Constable Thandi indicated very clearly that he understood what it was that he had done by adding Ms. [REDACTED] and her son to his benefits package:

"Let's cut the bullshit...I did fraud, I did this. Would I do it again to help them, yeah, maybe I would. You know, maybe I would. Here I am. You do what you do 'cause that's what you believe in, right. And uh, here I am, so. Bipolar or no bipolar or you know, bad guy or good guy, I don't know..." (**13 June 2014, II. 2148-2153**).

- d. When he was interviewed by the Abbotsford PSS investigator for the *Police Act* case, he again admitted that he knew it was wrong to add Ms. [REDACTED] to his benefits, and that he intentionally sent the email to Ms. [REDACTED] to backdate those benefits **(Appendix 21, 23 June 2015, pp. 5-6)**.
 - e. When questioned by his own counsel at the Discipline Proceeding, he testified that he did his best to be honest when questioned by the APD PSS investigator on 23 June 2015 **(1 February 2016, pp. 55-6)**.
12. When he testified at the Disciplinary Proceedings, Constable Thandi did more than simply acknowledge his signature on the application forms:
- a. He said that he did not look into or consider the regulations when he filled in the forms because he believed he would be together with Ms. [REDACTED] and her son for a long time, that they would move in together and be a family, and that he was not on his meds when the forms were mailed **(1 February 2016, pp. 32-3)**.
 - b. When confronted in cross examination with the benefits application form where he asserted that he had been cohabiting with Ms. [REDACTED] from 11/01/2011 he said “well now that I look back, yes, it was false...and I knew it was false at the time.” He testified he knew that by his signature on those forms he was asserting that the information was true, and that as a result Ms. [REDACTED] and her son would be added to the plan when they were not eligible for those benefits **(3 February 2016, pp. 36-7)**.
 - c. He was confronted with a text message located on Ms. [REDACTED] phone dated 9 April 2014 (which he said he could not recall) where he suggested that they (Ms. [REDACTED] and her son) needed to be removed from the plan and should get any dental work they needed before that happened. He agreed that they had

to be removed because they should not have been on the plan at all, then added that “the relationship was over so I had to get them off.” **(3 February 2016, p. 40)**

- b. In response to a final series of questions posed by his own counsel, Constable Thandi said he did not remember filling in the forms for the benefits application; he just filled them out and signed without reading them. He agreed that he should read things before signing them **(3 February 2016, p. 64)**.

13. Constable Thandi was also cross examined at the Discipline Proceeding regarding his psychiatric condition in January through to April 2013, which is the time frame for his dealings with APD’s human resources department regarding the benefits applications. Clinical notes prepared by his treating psychiatrist Dr. [REDACTED] were put to him in cross examination; Thandi agreed with Dr. [REDACTED] opinion that he was doing well in January 2013, that his psychiatric condition was in remission in March and April 2013, and that by April 2013 he could work without restrictions **(3 February 2016, pp. 21-3, 26-7)**.

14. Constable Thandi gave confusing and at times contradictory evidence at the Discipline Proceeding regarding the period of time when he was not taking the medications which were being prescribed for him by Dr. [REDACTED]. He appeared to settle on 2012 (or at least most of it) when he was off his medications without the knowledge of Dr. [REDACTED], and March 2013 when he started back onto his prescribed drug regime. There was another break in September 2013, then he went back on his medications continuously from April 2014 through to the date of his testimony **(3 February 2016 pp. 21, 23, 28-31, 58)**.

15. In his Discipline Decision, DA Rich referred to Constable Thandi’s Pharmanet records and concluded that Thandi had stopped taking his medications in May of 2012,

and did not begin taking them again until April 2014. He found as well that Constable Thandi had stopped his medications without notice to his employer or Dr. [REDACTED] **(Findings of Discipline Authority at para. 82).**

(iii) Breaches of No Contact/No Go and Deceit

16. There is also a great deal in the record regarding breaches of orders imposed by Constable Thandi's superiors at APD (and later by the court) that he not have contact with Ms. [REDACTED] and others from her family. Although DA Rich found that Constable Thandi's OCD rendered this conduct non-culpable, a review of what he said in police statements and in his testimony may be helpful when considering his request to testify yet again in this review on the record, and to understand the extent to which Constable Thandi has offered fairly detailed recollections of these events.

17. Constable Thandi was interviewed by Staff Sergeant [REDACTED] on 23 May 2014 regarding possible breaches of the no contact/no go orders imposed by APD:

- a. He admitted to unlawful telephone contact with Ms. [REDACTED] mother and grandfather, and his understanding that his conduct breached the APD orders. **(Appendix 3, 23 May 2014, II. 34-43, 65, 70, 81-4, 100-102)**
- b. He denied having had contact with Ms. [REDACTED] herself beyond a single text message. He said he had not seen her and had not met with her. He assured Staff [REDACTED] that he was telling the truth. Staff [REDACTED] reminded him that the consequences for breach could include additional *Police Act* charges, and Thandi once again assured him that he was telling the truth **(II. 112-129, 140-148).**
- c. [REDACTED] asked if there was anything else he should know. Constable Thandi said he had seen Ms. [REDACTED] the day before; he went on to describe his

encounter with her at the parking lot of the restaurant where he worked (**ll. 150-183**).

- d. ██████ warned him once again that breaches can have severe consequences (**line 234**).

At his APD PSS interview Constable Thandi offered the following:

- a. He blamed his compulsive behaviour for having sent a series of text messages to Ms. ██████ mere hours after being ordered by a superior office at APD that he have no contact with her. He said he knew he should not have done it, but that he did it anyway. (**23 June 2015, pp. 6-7**)
- b. He said that he knew he was wrong when he answered a telephone call from Ms. ██████ mother, and that he should not have done it; he said the same respecting a telephone conversation with Ms. ██████ grandfather. (**23 June 2015, pp. 9, 12-13**)
- c. He knew that he should not have had personal contact with Ms. ██████ at the restaurant parking lot where she worked. He knew as well that he had been ordered to report contacts like these and had failed to do so, even though he had received a warning letter from his superior (**23 June 2015, pp. 14, 17**).
- d. He said that he lied to avoid getting into trouble when he denied contact with Ms. ██████. He added that he had not been thinking rationally at the time due to lack of sleep and memory loss that he attributed to his medication (**23 June 2015, p. 18**).
- e. He was asked about breaching the terms of his bail order in the criminal case by attending to the restaurant where Ms. ██████ worked (he was subject to a no go condition for her residence and place of employment); he said that it was his son's birthday, and he thought it would be okay because he believed

she would not be there (she was not there as it turned out) **(23 June 2015, p. 21).**

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

- a. He talked about his decision to go to the Greek restaurant for his son's birthday; he said he rationalized it in his head, and made sure she would not be there, but police attended and he was breached **(1 February 2016, pp. 54-5)**
- b. He was questioned by his lawyer about the no contact breach with Ms. [REDACTED] grandfather and the incident where he approached Ms. [REDACTED] at the parking lot restaurant and he was able to recall details of those events **(1 February 2016, pp. 65-66)**
- c. He was questioned by his lawyer about failure to report breaches to his superior officer and he offered an explanation **(1 February 2016, p. 66).**
- d. In cross examination he recalled being served with the APD no contact order. He said that he knew what "no contact" meant and the kinds of conduct that would violate the order **(3 February 2016, p. 43).**
- e. He recalled meeting with Staff [REDACTED] on 23 May to review his restrictions, and that this meeting was held the day after he breached the order by meeting Ms. [REDACTED] in the parking lot of the restaurant where she worked. He agreed that initially he did not disclose that contact to Staff [REDACTED], but did not recall assuring [REDACTED] that everything in his statement was truthful because he said "he was in crisis at the time." **(3 February 2016, pp. 47-8)**

- f. He recalled that he was served with a notice of suspension from his duties at APD at this same meeting on 23 May and a second no contact/no go order for Ms. [REDACTED] and others. He also recalled that he exchanged text messages with Ms. [REDACTED] on that same day, after he had been served with the order. He agreed that he disobeyed a direct order when he knew that it was wrong **(3 February 2016, pp. 49-50, 52-3)**.

- g. He said he thought he could get away with the visit to the Greek restaurant for his son's birthday **(3 February p. 53)**.

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

(iv) Unauthorized Use and Disclosure of Police Resources

19. Constable Thandi was also questioned regarding his unauthorized use of police resources (data base searches of Ms. [REDACTED]) and his decision to pass along to Ms. [REDACTED] information from a CFSEU file containing intelligence regarding one of her male companions.

20. At the APD PSS interview, he agreed that it was not appropriate to give Ms. [REDACTED] information from the CFSEU file, but added that he "thought nothing of it at the time." **(23 June 2015, pp. 22 and 24)**

21. At the Discipline Proceeding he was cross examined about this conduct:
- a. He recalled accessing the CFSEU file in circumstances where he was not authorized to do so, but he claimed not to have turned his mind to the fact that this was done without authority, or that disclosing this information to a civilian might be a problem because as far as he was concerned, Ms. [REDACTED] had been there and was aware of the event **(3 February 2016, pp. 54-5)**.
 - b. He was taken through documents which established that he had run Ms. [REDACTED] name through APD databases. He acknowledged that he knew this to have been unauthorized because there was no investigative purpose attached to those entries **(3 February 2016, pp. 55-6)**.

(v) The Proposed Evidence/Will Say

22. As a general comment, it appears that Constable Thandi wants to more or less “take another kick at the can”, and in doing that he will apparently say a number of things which directly contradict aspects of his two police statements and his testimony at the Discipline Proceeding. It is respectfully submitted that here is nothing in this proposed new evidence which undermines or could potentially undermine the central pillar of the DA’s ruling at the conclusion of that matter: with the exception of the breach offences, Constable Thandi was not in “a state of irresistible compulsion due to mental illness” when he committed these professional conduct offences, and that he acted voluntarily, knowing what he was doing was wrong.

23. Constable Thandi now says that he is unable to recall events which for the most part he was able to recall in prior statements and testimony. He also says in his “will say” that a person like himself (a police officer well aware of the consequences which flow from fraud, an experienced businessman familiar with contracts, and an honourable man and practicing Sikh who comes from a long line of family members with a history of

police and military service) would not have acted with a fraudulent intent when the benefits forms were completed and filed.

24. It appears now that Constable Thandi's assertion that he simply could not have intended fraud when the forms were completed is grounded both on his lack of memory, and his assertion that he of all people could not have had a guilty mind. Leaving aside this critical issue of credibility, and accepting at face value that these lapses in memory are honest and sincere, failing to recall that something has happened falls far short of establishing on a balance of probabilities that the conduct itself was not intended, or that it was the irresistible product of his mental illnesses.

25. Leaving aside as well everything that Constable Thandi has said in the past about having completed the benefits application knowing that it was wrong, a "good character" defence cannot alter the legal landscape in light of Constable Thandi's guilty pleas in the related criminal case. And there is also Constable Thandi's prior service record of discipline to balance against his assertion that he would not have intentionally engaged in this type of conduct.

26. Finally, there is the question of the proposed new evidence and a review of the disciplinary and corrective measures imposed by DA Rich. This issue was considered in the Disciplinary Disposition Record:

Counsel asserted that Cst. Thandi had been in a hypomanic state when he committed the frauds in January 2013 and that Cst. Thandi's conduct was non-culpable. The contemporary medical evidence simply does not support that assertion, which is reflected in my first decision. I found that he committed the fraud knowing that it was wrong, and was in a mental state where he could have stopped himself, but did not want to. I accept that his OCD and anxiety were very serious by April 2014, which is also reflected in the findings I made in my first decision. I cannot accept that Cst. Thandi's misconduct should be treated as non-culpable at this stage (para. 17)

27. It is respectfully submitted that the proposed new evidence does nothing to undermine these findings by DA Rich when he imposed discipline and corrective measures for these service offences.

D. ORDER SOUGHT

27. That the adjudicator dismiss Constable Thandi's application to present additional evidence at this review on the record.

All of which is respectfully submitted,

Mark Jetté
Commission Counsel