

IN THE MATTER OF THE *POLICE ACT*, R.S.B.C. 1996, C. 267

AND

IN THE MATTER OF THE PUBLIC HEARING INTO THE COMPLAINT
AGAINST CONSTABLE STEPHEN TODD
OF THE VANCOUVER POLICE DEPARTMENT

NOTICE OF ADJUDICATOR'S DECISION

TO: Constable Stephen Todd, Vancouver Police Department

AND TO: M. Kevin Woodall, Counsel for Stephen Todd

AND TO : Michael Tammen, Q.C., Public Hearing Counsel

INTRODUCTION

Stephen Todd of the Vancouver Police Department faces the following allegations of disciplinary defaults pursuant to the *Police Act* RSBC 1996, c. 267 s 77:

- 1) **Deceit** contrary to section 77(3)(f)(i)(a) of the *Police Act* – that on or about March 3, 2011, Constable Todd committed the disciplinary default of Deceit when he knowingly made a false or misleading statement to police members assigned to a homicide investigation, to wit, stating that he had no relevant or related knowledge or information pertaining to the homicide investigation.
- 2) **Deceit** contrary to section 77(3)(f)(i)(a) of the *Police Act* – that on or about April 29, 2011, May 25, 2011, June 3, 2011, and/or June 13, 2011, Constable Todd committed the disciplinary default of Deceit by knowingly making false or misleading statements to VPD Professional Standards Investigators, to wit, stating that he had fabricated the earlier statements he made to investigators regarding admissions made to him by his cousin.

- 3) **Discreditable Conduct** contrary to section 77(3)(h) of the *Police Act* – that on or about September 7 or 8th 2010, Constable Todd committed the disciplinary default of Discreditable Conduct when he revealed to his cousin, whom Constable Todd knew was a suspect in a homicide investigation, information about police wiretap and surveillance techniques.
- 4) **Neglect of Duty** contrary to section 77(3)(c)(iv) of the *Police Act* – that on or about July 18, 2010, Constable Todd received from his cousin information relevant to a homicide investigation and that Constable Todd neglected, without good and sufficient cause, to promptly and diligently fulfill his duty to take action in regards to that information including, but not limited to, advising members investigating that homicide of the information he had received from his cousin.
- 5) **Corrupt Practice** contrary to section 77(3)(c)(iv) of the *Police Act* – that on or about August 19, 2006, December 13, 2007, and July 18, 2010, Constable Todd committed the disciplinary default of Corrupt Practice, using Vancouver Police Department equipment, specifically police restricted databases, for purposes unrelated to the performance of his duties as a member.
- 6) **Improper Disclosure of Information** contrary to section 77(3)(i)(i) of the *Police Act* – that on or about July 18, 2010, Constable Todd disclosed to his cousin information he acquired in the performance of his duties as a member, specifically information he obtained from police restricted databases.

The general theory is that Constable Todd wrongfully accessed a Vancouver Police database in order to obtain information relating to a homicide investigation in Oak Bay, in which his cousin Rob Ander was a suspect. It is also alleged that he revealed to Ander information about police wiretap and surveillance techniques, and that after receiving an admission from his cousin concerning the homicide, he knowingly withheld information and then mislead police investigators.

In this hearing, he has admitted allegation #5 that he engaged in corrupt practice by improperly using the database. As well in this hearing, the conduct of the officers investigating Constable Todd's conduct is raised as a defence.

BACKGROUND

These proceedings have their origin in events that took place in Oak Bay in December 2001. On December 11, 2001, Owen Padmore died under somewhat mysterious circumstances from a head injury suffered in a residence that was occupied by his mother Jeanne Padmore, his sister Christabel Padmore and Rob Ander. Owen Padmore did not live at the residence. He lived some blocks away but was a frequent visitor to the house. Apparently, Mr. Padmore had been having problems with alcohol and depression. On the night in question, Jeanne Padmore testified that she had been asleep when she heard a bump or a thump that caused her to awaken. She said she went downstairs and saw her son in an apparent dazed condition with a head wound. She called 911. Mr. Padmore was taken to the Royal Jubilee Hospital in Victoria where he died after being in a coma for 36 hours. It is not in dispute that Mr. Padmore suffered a serious head injury that resulted in his death. What is in serious dispute is whether he received the injury as a result of an accidental fall or whether he was the victim of an assault by Rob Ander.

The Oak Bay Police attended and conducted an investigation during which they interviewed all three occupants of the house. Their statements were of little use as no information was forthcoming that would suggest any wrongdoing. Apparently, no one saw Mr. Padmore sustain the injuries that resulted in his death. The medical evidence is of some significance. Mr. Padmore was initially treated by Dr. Porakyo, an emergency physician. Dr. Porakyo made note of injuries on Mr. Padmore's hands, arms and legs, which may have been an indication that he was involved in an altercation. There was no evidence as to the age of those bruises. Dr. Porakyo reported these findings to the police. An autopsy was performed by Dr. Laurel Grey, a forensic

pathologist, who stated that, "Death is attributed to a closed head injury and its complications due to a fall." Based on that information, the Oak Bay Police concluded that the cause of death was an accidental fall. For all intents and purposes, the file was closed.

The Re-Investigation

The file remained closed until 2008 when Pat Madsen who had been a friend of Owen Padmore, contacted the RCMP in Alberta where he was residing. He expressed concern about the events relating to Mr. Padmore's death. Mr. Madsen said there was animosity between Mr. Ander and Mr. Padmore. He told the police that he spoke to Mr. Padmore shortly before his death and that Mr. Padmore had told him that he had had a physical altercation with his sister Christabel and he was upset that Rob Ander was living in the family home with his mother and sister. In particular, he told Mr. Madsen that he was going to go to the house in order to finish a physical fight and that he was going to remove Mr. Ander from the house. The evidence relating to animosity involving the deceased Mr. Padmore, his sister and Mr. Ander is of course, particularly relevant as it relates to the cause of death.

As a result of this new information, the Oak Bay Police re-opened the investigation. The police retained Dr. Bannach, a pathologist in order to get a second opinion. He reported that, "The surface that caused the injury to the vertex of the skull was something flat." He was asked whether a hockey stick could have caused the injury and he said it was possible. He went on to say that the injury to the skull was caused by some broad surface object, not a narrow object such as a crowbar or pipe. As a result of that opinion in April 2010, Dr. Grey was asked to reconsider her earlier opinion in light of the

new evidence relating to bodily injuries. She again stated that, "There is no evidence to suggest that a weapon was used." She went on to say that, "She could not say conclusively if the fall was a result of an assault or accidental in nature."

The police then went to the Padmore residence and advised Jeanne and Christabel Padmore that they would be re-opening the investigation. That was obviously done for strategic purposes because shortly thereafter in June 2010, the Oak Bay Police obtained an authorization to intercept the private communications of Christabel, Jeanne and Ander. As well, room bugs were installed in the home and the police conducted surveillance of the parties.

July 18th, 2010

The events of July 18th are important because they form the basis of the allegations of deceit, neglect of duty, corrupt practice and improper disclosure of information. It is alleged that on that day, Ander confessed to Todd that he was involved in a physical altercation with Owen Padmore that caused his death. It is further alleged that Todd withheld that information from the police. These matters are in issue.

I will examine these events in more detail. On that date, there was a family gathering at Kitsilano Beach where Todd's wife was involved in a competitive swim. Members of his family and Ander were there. Todd was on duty in his police vehicle. According to Todd, members of his family were curious about the police car. It is not in dispute that Todd ran Ander's name on the police computer. Todd said he also ran the names of other persons who were there that afternoon. In fact, he specifically ran the name of Helen Gould, a family friend who was in attendance. He also testified that he had a habit of running names of friends and relatives and in so doing, there was no improper

motive. He said he did this in order to pass the time while we was on surveillance duties. It is argued that at that time, Todd had no knowledge that the investigation had been re-opened. When Todd ran Ander's name on the computer database, he learned that the file was privatized and no information was available.

These events of July 18th came to light as the result of an interception of a call on August 9, 2010 between Ander and Christabel. On the call Ander is heard telling Christabel that while the parties were at Kitsilano beach, Todd told Ander that he would run his name (Ander) on the police computer database. The police then searched their database and found that Todd had indeed accessed it. The police also learned through searches on PRIME-CPIC police databases that there were three occasions on which Todd had accessed it; once in 2006, once in 2007 and the last time being on July 18, 2010. Thus the police became aware for the first time of Todd's involvement with the family and possibly the events that led to Owen Padmore's death. The search of the police database led the police to conclude that Todd may have relevant evidence to give.

There has been some dispute in this hearing as to whose idea it was to run Ander's name in the computer database. Ander testified that he did not ask Todd to run his name. I do not think the dispute is relevant.

More importantly it is alleged that at that time while both were in the police car, Ander admitted to Todd that he had been involved in the death of Owen Padmore. He said that he (Ander) was not sleeping, he heard an argument between Jeanne Padmore and Owen. He then interceded on behalf of Jeanne. There was a brief confrontation which resulted in Ander striking Padmore with a hockey stick or other blunt instrument that

caused the fatal injury. The evidence relating to Ander's involvement in Padmore's death is not altogether clear because much of it came as a result of police suggestions to Todd during subsequent interviews. What is clear however, is that Todd told the investigators that Ander admitted being in an altercation with Owen. As well, Todd later recanted his evidence relating to Ander's admission.

In the fall of 2010, the police had a number of strategic meetings regarding the Padmore case. By then, Todd had become a person of interest. The next move for the police was to interview Todd. Todd's evidence was essential to build a case against Ander. Surveillance and wiretaps had yielded no new information. Since Todd was a police officer, considerable planning went into preparation for interviewing him. Sgt Hull of the Oak Bay Police had conduct of the investigation. He sought the assistance of two senior RCMP officers, Sgt Joaquin who had an expertise in undercover operations and Staff Sgt Tewfik who was an experienced interviewer.

Evidence of the Occupants of the House

It is important to examine the evidence the police had available to them prior to their interviews with Todd. The police had interviewed the occupants of the house. They all testified in this hearing. Their evidence was essentially the same as the statements they gave to the police. All professed to have no knowledge of any altercation or wrongdoing that would support the theory that Ander committed an assault that led to Owen Padmore's death. All were represented by lawyers at this hearing. Jeanne Padmore testified by video. Jeanne Padmore said that her son Owen came over to spend the evening. She said she had taken a sleeping pill. Apparently Owen was making some noise. She yelled to Owen to go to bed. She agreed that she had a verbal altercation with Owen that may have resulted in the two yelling at each other. She later heard two

bumps or thumps that caused her to get up from her bed. She went downstairs and found her son sitting on a sofa holding his head saying, "I hurt my head." She saw blood in his hair. He became groggy and unresponsive. She then called 911. The paramedics attended the residence. She went back to bed. Her son was taken to Royal Jubilee Hospital where he died after being in a coma.

Christabel Padmore testified that she was sleeping in her basement bedroom and was wearing ear plugs. She awoke after hearing some verbal noise being made by Owen. She remained awake and heard the sounds of the ambulance arriving but did not get out of bed in order to see what was happening. Similarly, Ander said that he arrived at the house sometime in the late evening of December 9th, spoke to Christabel and then went upstairs and retired for the evening. He said that he was asleep and did not hear any noises. He knew nothing of Owen's injuries that resulted in his death. He said he first learned that Owen Padmore was taken to hospital the following morning.

The Vancouver Interviews

On March 3, 2011, the three officers went to Vancouver in order to interview Constable Todd. It is common ground that the purpose in interviewing Todd was to secure his assistance to provide evidence against his cousin Ander. The police also had been thinking of using him as an agent. For the next 26 hours, Todd was in the custody of the investigators. There were essentially four interviews that took place between Vancouver and Victoria. There was obviously a concern on the part of the officers that Constable Todd was in a somewhat precarious position because while he was related to Ander, he probably had relevant evidence and information to give relating to the death of Owen Padmore.

The three officers went to the traffic section of the VPD where Constable Todd was on duty. It was there that Staff Sgt Newman, Constable Todd's supervisor directed Constable Todd to a room where he was interviewed by the three officers. There was no suggestion that his attendance was voluntary. Inspector Cumberworth testified that Todd was being required to attend the interview as a part of his police duties. The interview commenced with an officer telling Todd that they had arrested his cousin Ander for murder. They had also arrested Jeanne Padmore as an accessory after the fact. As well, Owen Padmore's sister Christabel was taken into custody. It is important to note that there was no evidence to implicate any of the 3 of any crimes. The police then told Todd that, "You're up for potential Criminal Code charges of obstruction of justice and breach of trust." They told him that the criminal charges of obstructing justice were, "Ready to go against him." That was false. There was no evidence against Todd of obstruction or breach of trust. The officers told Constable Todd that there was a three year long investigation that involved a number of police agencies. The police went so far as to prepare a report to Crown Counsel recommending the charges. The Crown summarily rejected them. They also told him that his private communications had been intercepted pursuant to the lawful authorization given by a judge. Again, this was false. They also provided Todd with a "letter" under the letterhead of the Deputy Attorney General of British Columbia which named him as a target of part VI intercept. The letter was a complete fabrication. While his calls had been intercepted, he was clearly not a target. There is of course an important distinction between being a target of an authorization and being named in what is called a basket clause. Staff Sgt Tewfik told Todd that if he cooperated, they would not pursue

the charges. The police in this hearing have not denied that that was both a threat and an inducement.

Todd testified in this hearing that he trusted the three senior officers who were interviewing him. He thought that there would be, "A sort of honesty and truthfulness when dealing with one another." He testified that he believed the police when they told him that he had been subject of wiretap intercepts and that his calls were being investigated. The police also told him that they knew he had been in Victoria in September 2010 in order to play golf with Ander. He asked for a union representative to be present. That request was ignored. The police took the position that they were questioning Todd in order to elicit evidence against Ander in the hopes that he would be a witness against Ander. They steadfastly maintained in this hearing that they were conducting an investigation under the *Criminal Code* and not the *Police Act*. Therefore, Todd was not entitled to a union representative. The police acknowledged that the evidence which was being elicited in the criminal investigation could be used against Todd under the *Police Act*. In fact, that is exactly what happened. On the question of a union representative being present, Sgt Hull gave the following evidence, "Ultimately it was determined through a series of discussions, that they would not be involved at the time of our approach. We did discuss during our strategy meetings how we would respond to Todd's request for a union agent and in a general term, this is a criminal process, a union agent is not the appropriate person for you, a lawyer may be, not necessarily a union agent and in a nutshell, that was how we were going to address it." The first part of the interview was not recorded notwithstanding that there was a recording machine present. In describing the first part of the interview, Todd testified that he was upset emotionally and felt, "horribly guilty." He then gave the police an

explanation that was exculpatory of Anders. He told the investigators that Ander told him that he had gone to sleep and essentially knew nothing about the incident.

After the first part of the interview it was clear that the police were not satisfied with Todd's answers as they related to the July 18th conversation he had with Ander. It was during the second part of the interview after being vigorously questioned by the police officers that Todd told the police that Ander admitted his involvement in Owen Padmore's death by stating that he has been in an altercation with Mr. Padmore. It is not in dispute that threats, inducements and coercion were used during the interviews. The police clearly felt that Todd was not being open and frank with them when he exonerated Ander during the first part of the interview.

It is important to note that the officers throughout the interview made suggestions to Todd particularly when the latter said he would not recall the specifics of what Ander had told him. The transcript is replete with responses that he could not recall. He said he could not recall Ander saying anything about a confrontation with Owen. There is no doubt that during the questioning of Todd, they were asking him to speculate. It appears from the transcript of the interview, that Todd was speculating as to what Ander told him regarding a possible weapon being used on Owen Padmore. However, he agreed with many of the suggestions given to him by the police. The transcript of the police interview of Todd reads in part as follows:

J So it's not a vase. You know for a fact it's something like sport thing right? Okay, so.

S Sport related.

J Sport related, so it is a tennis racquet.

S Hockey stick, tennis racquet.

J Okay, so it's a hockey stick, it could be a hockey stick.

S No, I don't think it's, yeah.

J It's not a hockey stick?

S No, no sorry I said I don't think it's a tennis racquet.

J Okay it's not a tennis racquet. But it's a golf club, a baseball bat, or a hockey stick. Big difference between all those man.

Victoria

At the conclusion of the second part of the statement, the investigators told Constable Todd that they were taking him to Victoria, primarily so he could confront Ander with the last explanation he gave to the police of his involvement in the death. Todd testified that he was extremely upset. Inspector Cumberworth agreed that Todd was, "emotionally broken." Todd did not object to going to Victoria. He was not permitted to call his wife in order to tell her that he was being taken to Victoria. He went to the airport wearing only his police uniform pants and another shirt that was provided for him. At the airport he was not permitted to use the washroom in private, as an investigator followed him. When he was finally permitted to speak to his wife, Sgt Hull sat beside him during the conversation because he wanted to make sure that Todd did not, "say anything inappropriate." He testified that when he finally was permitted to call his wife he was crying. He stayed overnight in a hotel with a police guard outside the door. While Todd was in Victoria, he gave two separate statements to the police. He reiterated the earlier accounts that involved Ander in the death of Owen. The following day he was permitted to return to Vancouver however, he was still in the custody of the police.

Once released, he immediately went to see Tom Stamatakis the President of the Vancouver Police Union. He told Constable Stamatakis that the events that made up

his confessions did not happen. In other words, the confessions that he made to the officers were made under immense emotional pressure and in response to the suggestions made by the officers. Constable Stamatakis testified in this hearing and on March 7th after Todd had arrived back from Victoria, sent the following email to the VPD which reads as follows:

But what Stephen has described to me after Staff Sergeant Newman facilitated the initial meeting between Stephen and the investigators is unbelievable. First of all, Stephen was not informed of what was occurring until he arrived to work and was escorted to the meeting. Then, he was provided with a bunch of information that it appears was completely misleading and intended to overwhelm him. This included threats that he would be charged criminally and would lose his job as a police officer. At this point in the interview he actually advises the investigators that he would like to speak to a Union Representative or a lawyer and they deny him this request.

This is a fundamental breach of his rights not only as a citizen but as an employee of this organization. Moreover, this action is completely inconsistent with the stated values of the VPD and every process that we have established for dealing with these issues. I find it ironic that these investigators have provided information to you that has now placed Stephen in this difficult situation when their actions, based on what has been described to me, appear to demonstrate a clear abuse of their statutory authority and clearly violate well established principles of fairness, due process, and natural justice. After that they proceed to interrogate this member to point where I don't even think he knew that was happening. Furthermore, it appears they either bullied him or intimidated him into saying whatever it was they wanted to hear.

Then, after completely breaking him down and without any opportunity to consult with anyone or consider his situation more carefully, they force him to leave his wife and two young children so that he can accompany them to Vancouver Island. He is deprived of any reasonable opportunity to explain what is happening to his wife, he is not given any opportunity to pack even essential clothing and toiletries, I don't know what arrangements were made for him to even have access to food, and the final humiliation occurs when he is lodged in a motel effectively under guard. This to me is a reprehensible way to treat anyone let alone a police officer with a family who is an employee of this organization. As far as I am aware, his service at the VPD is exemplary and his conduct in the community is the same. I recall guarding criminal witness myself some years ago and we treated them better than Stephen was treated in this case.

Then sometime later, with no opportunity to rest, seek advice, refresh himself, communicate with his wife, he is again forced to participate in a videotaped interrogation. After that he tells me he was compelled to make some type of video message to the family of the deceased person because as it turns out, his cousin, the suspect, has a relationship with the deceased person's family. He is then compelled to participate in some type of interview/interrogation with his cousin on the basis that if he does not, he will be fired and he will be charged criminally.

The cousin on the other hand, who is actually the suspect, is afforded all of his rights including by the sounds of it, the right to counsel and apparently doesn't even come close to having to endure a process similar to the one I have described and that Stephen was dragged through. Not only ironic I guess but also unbelievable.

The email fairly sets out the position taken by Todd and the Vancouver Police Union.

Recantations

Between April 29th and June 13th, 2011, Constable Todd gave four statements to the professional standards section of the VPD in which he recanted the earlier statements that inculpated Ander. He said that the officers applied pressure to him and that statements were not accurate and in fact, he adopted the suggestions that were made to him by the aggressive questioning. He was accompanied by either counsel or a union representative. The recantations form the basis of the deceit alleged in the second complaint.

Todd's Position

I have made reference to the explanations that have been given by Todd in response to the various allegations throughout these reasons. The circumstances relating to the interviews that Todd gave to the police form a major part of his defence. His basic position is that he was coerced into giving statements to the investigating officers without the benefit of advice from the police union or from counsel. He said that at no time did Ander confess to him. He went on to say that as a result of the relentless questioning by the police, he merely adopted what they suggested. His evidence is that he was overwhelmed by the three senior police officers. He also testified that he had no ill intentions when he accessed the computer database. Sergeant Hull admitted that

since the file had been privatized, there would have been no information relating to the investigation available to Todd.

Analysis and Conclusion

Mr. Woodall, counsel for Todd, has made two preliminary objections all be it at the conclusion of the hearing. He seeks to have the evidence relating to Todd's statements made to the investigators on March 3rd declared inadmissible. As well and in the alternative, he seeks to have these proceedings stayed. Regrettably, these arguments were made at the conclusion of the evidentiary part of the hearing. I am in agreement with Mr. Tammen that objections relating to the admissibility of evidence ought to have been made at the time they were proffered and not as a part of the closing argument. It is of course unfair to Mr. Tammen to have been forced to deal with them so late in the day. In any event, there is no authority under the Act to exclude evidence that is otherwise admissible. In other words, all evidence that is relevant and probative of an issue in question must be admitted. In fact, the Act gives an adjudicator a liberal discretion to admit evidence that otherwise would not be available in court. This is an administrative proceeding.

Section 143(6) reads as follows:

- (6) The adjudicator may
 - (a) receive and accept information that the adjudicator considers relevant, necessary and appropriate, whether or not the information would be admissible in any court (emphasis added), and
 - (b) without limiting section 145 [*powers respecting participants*], exclude anything unduly repetitious.

Unlike criminal proceedings, there is no discretion conferred upon an adjudicator to exclude statements that otherwise may be tainted. An adjudicator has the discretion to

exclude evidence that is, "unduly repetitious." In my view, the real issue relating to the statements made by Todd is one of reliability. For these reasons the application to have the statements declared inadmissible is dismissed. Similarly there is no authority for granting of a Stay of Proceedings. This is a hearing held under section 137(1) of the *Police Act*. The duties of an adjudicator are mandated under section 143(9) of the Act. That section reads as follows:

The adjudicator must do the following (emphasis added):

- (a) decide whether any misconduct has been proven;
- (b) determine the appropriate disciplinary or corrective measures to be taken in relation to the member or former member in accordance with section 126 [*imposition of disciplinary or corrective measures*] or 127 [*proposed disciplinary or corrective measures*];
- (c) recommend to the chief constable or the board of the municipal police department concerned any changes in policy or practice that the adjudicator considers advisable in respect of the matter.

Both Counsel have agreed that if Public Hearing Counsel cannot establish that Ander assaulted Owen Padmore and thereby caused his death, then it cannot be established that he confessed to Constable Todd. Thus a confession to Todd is meaningless unless there was a basis for that confession. Public Hearing Counsel's case is predicated on the assumption that there is evidence from which it can be inferred that Ander caused the death of Owen Padmore. It is therefore necessary to examine the evidence that may go to Ander's involvement in Owen Padmore's death. There is of course no direct evidence implicating anyone in the death of Mr. Padmore. The evidence is entirely circumstantial. Mr. Tammen, has forcefully argued that Mr. Padmore's death was caused by an unlawful assault committed by Ander, most likely by a hockey stick or any other blunt instrument. He has argued that, "It defies belief that

Rob Ander could have slept through all of the various noises and commotions which are described by Christabel and Jeanne Padmore. Rob Ander's assertion that he was sleeping at all material times is simply a convenient lie to keep him from having to answer any questions about what occurred in the home that evening." Mr. Tammen then points to a "more likely scenario" that involves Ander interfering in a verbal dispute between Jeanne Padmore and her son Owen. He states that, "Perhaps Ander was woken up by a verbal altercation or perhaps a shouting match between Owen and Jeanne Padmore. He got out of bed and in some fashion, participated in that altercation or confrontation."

I agree with Mr. Tammen that the evidence of Jeanne Padmore, Christabel Padmore and Rob Anders was characterized by collective amnesia. Ander's evidence was particularly wanting. He had little recollection of the events that took place at the house. One would have thought that an extraordinary event such as a man dying violently in the house, would have left a lasting impression on Ander. The real issue to be determined is whether a trier of fact can draw an inference from evidence that is negative or at best neutral to prove a positive that Mr. Tammen promotes.

The evidence of the occupants of the house is not at all helpful in concluding that Ander was responsible for Owen Padmore's death. The evidence raises many serious questions that are left unanswered. Throughout his argument, Mr. Tammen has used words such as, "Most likely", "A more likely scenario", "Perhaps Ander was woken by a verbal altercation or perhaps a shouting match." One would have to speculate in order to conclude that Ander caused the death of Owen Padmore. Moreover, there was no direct evidence relating to measurements at the scene of the incident or any evidence of observations by paramedics who attended at the residence, that would assist in

concluding that a crime had been committed. As well, the medical evidence is at best, inconclusive. Accordingly, I cannot conclude that based upon the whole of the evidence that Ander committed an assault that caused the death of Owen Padmore. Thus the evidence falls short even on a balance of probabilities of proving that Ander caused the death of Owen Padmore.

For the sake of convenience, I will refer to each of the allegations by counts. As stated earlier, count one has not been proved. Similarly on count 2 that relates to the allegations of false or misleading statements made in the recantations, has not been proved. Count number 3 alleges discreditable conduct. The particulars of that allegation are that during Todd's golfing trip to Victoria in September 2010, that he revealed information relating to police wiretap and surveillance techniques to his cousin. There is no evidence to support the allegations contained in that count. Accordingly, that allegation has not been proved. Count 4 alleging neglect of duty is again predicated on a finding that Ander committed the assault on Owen Padmore. For reasons given, count 4 is not proved. Count 5 alleges corrupt practice in using the police database for purposes unrelated to the performance of his duties. As an experienced police officer he clearly knew that his conduct in accessing the computer database was improper. He has admitted to that default. Count 6 alleges an improper disclosure of information to his cousin. I find that count to have been proved. It is clear that he told his cousin that the information was privatized. The fact that he accessed a database on three different occasions, confirms my view that he wilfully disclosed the information to his cousin.

Police Conduct

At times the conduct of the police was flagrant. I am fully aware of the fact that they were investigating a homicide and I am aware of the difficulties that police often encounter in their investigations. As well, I am aware of the often quoted words of Lamer J (as he then was), in *R. v. Rothman*, [1981] 1 S.C.R. 640 at paragraph 127 wherein he stated:

"It must also be borne in mind that the investigation of crime and detection of criminals is not again to be governed by the Marquess of Queensbury rules. The authority's in dealing with shroud and often sophisticated criminals, must sometimes of necessity resort to tricks or other forms of deceit, and should not through the rule be hampered in their work. What should be repressed vigorously is conduct on their part that shocks the community."

It is well recognized that deception by the police in the investigation of crimes is often acceptable. In this case however, the actions of the police were well beyond the pale. There were of course, a number of blatant untruths that were conveyed to Todd. I make particular reference to the preparation of a report to Crown Counsel that was clearly false. Fortunately, the Crown rejected it. Perhaps the most egregious act was the fabricated letter under the letterhead of the Deputy Attorney General that purported to advise Todd that his private communications had been intercepted by the order of a judge.

Much has been said about the denial of Todd's request for a union representative to be present at the time he was being questioned. To that extent, I agree with the comments of Constable Stamatakis. He makes reference of, "A fundamental breach of his rights, not only as a citizen but as an employee of this organization." The question of whether a police officer should be compelled to cooperate in any investigation under the *Police Act* was the subject of much debate in the 1990s. In 2010, the Act was

amended. The Act now makes it compulsory for a member to cooperate fully in an investigation. Clearly any form of civilian oversight that deals with alleged police misconduct, must have the cooperation of an officer whose conduct is being investigated. However, concomitant with that duty to cooperate is the right to advice either from counsel or a union representative. This is a fundamental right based on the principles of fairness. In fact, the Act allows an officer 5 days in which to seek advice. That right was flagrantly denied to Todd. It has been established practice to permit officers who are being questioned under the *Police Act* to have the right to counsel or a union representative. The VPD knew as earlier as October 2010 of Todd's activities in accessing the computer database and that would inevitably lead to a complaint under the *Police Act*. The VPD did not inform the Office of the Public Complaint Commissioner of that until March 8th, 2011.

In summary, counts 1,2,3 and 4 have not been proved. Counts 5 and 6 are proved.

The question then arises as to what consequences if any, flow from the breach of Todd's rights under the Act. To that extent, I wish to hear from counsel as to what the appropriate remedy ought to be under section 143(9) of the Act.


The Honourable Wally T. Oppal, Q.C.

This 12 day of March, 2015