IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Thandi v. The Police Complaint Commissioner of British Columbia,* 2022 BCSC 77

Date: 20220117
Docket: S185144
Registry: Vancouver

Between:

Ravinder (Rob) Thandi

Petitioner

And

The Police Complaint Commissioner of British Columbia and Ronald A. McKinnon

Respondents

Before: The Honourable Mr. Justice Giaschi

On judicial review from: An order of the adjudicator appointed pursuant to s. 141 of the *Police Act*, dated May 10, 2017

Reasons for Judgment

Counsel for Petitioner:	D.C. Creighton
Counsel for Respondents:	D.K. Lovett, Q.C.
Place and Date of Hearing: (via videoconference)	Vancouver, B.C. June 28-30, 2021
Place and Date of Judgment:	Vancouver, B.C. January 17, 2022

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Introduction

[1] This petition relates to discipline proceedings conducted under the *Police Act*, R.S.B.C. 1996, c. 367 [*Police Act*], against the petitioner that ultimately resulted in the termination of his employment as a police constable with the Abbotsford Police Department. In 2014, an investigation into the conduct of the petitioner was ordered after a complaint was filed. The investigator determined that fourteen acts of misconduct were substantiated. Subsequently, Chief Constable Robert Rich (the "Discipline Authority") conducted a discipline hearing under the *Police Act*. He determined that the petitioner had committed 13 of the alleged acts of misconduct. Ronald McKinnon (the "Adjudicator"), a retired Justice of this Court, was subsequently appointed as an Adjudicator pursuant to s. 142 of the *Police Act*, to conduct a review on the record of the decision of the Discipline Authority. In reasons dated May 10, 2017, the Adjudicator upheld the decision of the Discipline Authority.

[2] In the petition filed on April 26, 2018, the petitioner sought to quash the decision of the Adjudicator pursuant to s. 3 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*], and sought various other orders and relief including reinstatement of the petitioner. However, at the hearing of the petition, I was advised that reinstatement is no longer sought and that the petitioner now seeks an order referring the matter back to a different Adjudicator.

[3] The petitioner does not dispute that acts of misconduct were committed by him. The petitioner submits, however, that those acts were committed while his judgment was impaired by two mental illnesses; obsessive-compulsive disorder ("OCD") and Bipolar II disorder. He submits his mental disability was not properly taken into account by the Adjudicator. In particular, he submits that:

a) The Adjudicator irrationally and arbitrarily rejected the evidence of Dr. Ancill, the only expert who gave evidence, that the acts of misconduct were a result of the petitioner's mental disabilities;

b) The Adjudicator erred at law in failing to properly take into account the provisions of the *Human Rights Code,* R.S.B.C. 1996, c. 210 [*HRC*]; and

c) There was a breach of procedural fairness in that the investigation was not fair, neutral and thorough.

[4] The respondent, The Police Complaint Commissioner, submits that the petition should be dismissed for delay. Alternatively, it is submitted that the decision of the Adjudicator is to be reviewed using the standard of reasonableness and that when so reviewed it is not subject to being quashed. In particular, the respondent says the Adjudicator's treatment of the *HRC* was reasonable, if not correct.

[5] The respondent further submits that the issue of procedural fairness was not pleaded in the petition and is, therefore, not properly before this Court.

[6] Before proceeding to a brief review of the relevant facts and the relevant decisions, I note that I agree with the respondent that the issue of procedural fairness is not pleaded in the petition and is not properly before me. I therefore do not intend to address issues of procedural fairness.

Facts

Chronology

[7] In or about 2012, the petitioner began a relationship with R.S., a much younger female he met in the course of his duties.

[8] In January 2013, the petitioner requested that R.S. and her child be added to his medical benefits plan. In doing so, he misrepresented that R.S. and her child had been living with him since 2011.

[9] Between February 2012 and April 2014, the petitioner queried R.S.'s name on police databases several times. He also accessed a Combined Forces Special Enforcement Unit gang file, that he was not authorized to access, in April 2014 and provided confidential information from that file to R.S.

[10] On April 22, 2014, a complaint was made about the conduct of the petitioner.

[11] On April 25, 2014, the Police Complaint Commissioner received a request from the Abbotsford Police Department for an investigation into the petitioner's conduct. The allegations of misconduct included that the petitioner committed acts of fraud by adding R.S. and her child to his extended health benefits and had inappropriately accessed police databases and disclosed information to R.S.

[12] On April 29, 2014, pursuant to the provisions of s. 93 of the *Police Act*, an investigation was ordered to be conducted into 17 alleged incidents of misconduct by the petitioner. On the same day, the petitioner was ordered to have no contact with R.S. or her child.

[13] On May 23, 2014, the petitioner acknowledged having contact with R.S. despite the no contact order.

[14] On June 13, 2014, a Recognizance of Bail was issued by the Provincial Court which included conditions that the petitioner was to have no contract with R.S. or her family and was not to attend at her place of work.

[15] On various dates in June and July 2014, in breach of the no contact order and the bail conditions, the petitioner sent text messages to R.S. On two occasions in July and September 2014, the petitioner attended at R.S.'s place of work

[16] On September 4, 2014, the petitioner was charged criminally on three counts. Counts one and two were for defrauding the Medical Services Plan and the Pacific Blue Cross Medical Society contrary to s.380(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 [*CC*]. Count three was for failing to comply with a bail condition.

[17] On October 16, 2014, the investigation into the conduct of the petitioner was expanded to include additional acts of alleged misconduct and the time for concluding the investigation was extended.

[18] On October 30, 2014, the investigation was suspended because of the criminal charges against the petitioner.

[19] On February 27, 2015, the petitioner was suspended without pay after a hearing.

[20] On April 25, 2015, the petitioner pleaded guilty to the criminal charges. His sentence was a 12-months conditional discharge.

[21] On May 15, 2015, the investigation was recommenced.

[22] On September 23, 2015, the Final Investigation Report into the alleged misconduct was released. The report concluded that fourteen of the seventeen allegations of misconduct were substantiated.

[23] A Discipline Proceeding was subsequently conducted under the *Police Act* from November 2015 to May 2016. The petitioner was permitted to call his psychiatrist, Dr. Ancill, as a witness at the hearing.

[24] On June 14, 2016, the Findings of the Discipline Authority were released. The Discipline Authority concluded that the petitioner had committed 13 of the alleged acts of misconduct. The reasons addressed and rejected the petitioner's argument that he should not be found guilty of misconduct because he suffered from a mental disability at the material times. I address this decision in detail below.

[25] On August 14, 2016, the Disciplinary Authority issued a Disciplinary Disposition Record in which it was determined the appropriate penalties for the misconduct were suspension and dismissal. I address this decision in detail below.

[26] The petitioner subsequently requested a public hearing pursuant to s. 133 of the *Police Act*. On September 21, 2016, a review on the record was ordered pursuant to ss. 137(2) and 141 of the *Police Act*. Ronald A. McKinnon, a retired Justice, was appointed as Adjudicator to conduct the review on the record.

[27] On May 10, 2017, the Adjudicator released his decision, which I will address in detail below.

[28] On May 17, 2017 the petitioner's employment was terminated.

[29] On April 26, 2018, almost one year after the release of the Adjudicators decision, this petition for judicial review of that decision was filed.

The Discipline Authority Decision

[30] The Findings of the Discipline Authority, Form 3, dated June 14, 2016, addressed 13 alleged acts of misconduct. At paras. 2-3, it is expressly noted that the petitioner admitted the alleged acts of misconduct and that the main submission of the petitioner was that he should not be found guilty of professional misconduct because he suffered from OCD and Bipolar II disorders which were a complete defence to the charges.

Identification of Issues

[31] At para. 4, the Discipline Authority identified the issues as:

> 4. The primary issues that I have to decide are:
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> a) can mental illness be a defence to a *Police Act* charge?
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> b) if mental illness is a defence,
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> i) what test must be applied to assess whether the evidence is sufficient to establish the defence; and
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> ii) who bears the burden of proving a mental illness defence?
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> c) does the evidence in this case meet that test?

The Allegations of Misconduct

[32] At para. 6, the various allegations of misconduct are set out.

a) Allegations 1 and 2 related to the petitioner's conduct in defrauding the Medical Services Plan and the Pacific Blue Cross Health Benefits Society between January 30, 2013 and April 14, 2014, which conduct was alleged to be commission of public trust offences within the meaning of s. 77(2) of the *Police Act*;

b) Allegations 3 through 7 related to five breaches of the no contact orders on various dates from April 29, 2014 to June 1, 2014, and to failure to report the

breaches, which conduct was alleged to be neglect of duty contrary to s.77(3)(m) of the *Police Act*;

c) Allegation 8 related to the petitioner making a false or misleading statement to a supervisor on May 23, 2014 about whether he had contact with R.S., which conduct was alleged to be deceit contrary to s.77(3)(f)(i)(A) of the *Police Act*;

d) Allegations 9 and 10 related to the petitioner's breach of bail conditions by texting R.S. between June 8 and July 8, 2014 and by attending at her place of employment between July 9 and September 19, 2014, which conduct was alleged to be discreditable conduct contrary to s.77(3)(h) of the *Police Act*;

e) Allegations 11 and 12 related to the petitioner accessing police databases including a Combined Forces Special Enforcement Unit gang file and providing the information to R.S. on April 11, 2014, which conduct was alleged to be contrary to s.77(3)(c)(iv) and s.77(3)(i)(i) of the *Police Act;* and

f) Allegation 15 related to the petitioner accessing police databases for extraneous purposes on February 20, 2012 and April, 11, 2014, which conduct was alleged to be unauthorized use of police resources as defined in s. 77(3)(c)(iv) of the *Police Act*.

[33] At paras. 7 through 21, the Discipline Authority reviewed the facts related to the various allegations, including an Agreed Statement of Facts in which the petitioner admitted to having committed the conduct elements of the alleged acts of misconduct.

[34] At paras. 22 through 24, the Discipline Authority addressed burden of proof and credibility. He noted that, although the burden of proof was on the Discipline Representative, it was agreed that the petitioner had the burden of proving a mental illness defence on a balance of probabilities.

The Elements of the Allegations

[35] The Discipline Authority then noted, at para. 25, that, given the petitioner had admitted the conduct elements of the acts of the misconduct, the primary task was to assess whether the fault element was present for each of the allegations. He noted, at para. 28, citing *Lowe v. Diebolt,* 2013 BCSC 1092 at paras. 42-46 (aff'd. on other grounds, 2014 BCCA 280) [*Lowe*], that all allegations of professional misconduct contain both a conduct component and a fault component. He then analyzed the various counts to determine the fault elements required.

[36] Concerning allegations 1 and 2 (the fraud or commission of public trust offences as defined in s.77(2) of the *Police Act*), he determined that the requisite fault element was that set out in the underlying offence of fraud under s. 380 of the *CC*. He further held that the guilty plea of the petitioner to the fraud offences was sufficient to establish the requisite *mens rea* for the offences.

[37] Concerning allegations 3 through 7 (the Neglect of Duty allegations in relation to breaches of the no contact orders and failure to report such breaches), he determined the fault component required an element of wilfulness or a degree of neglect that crossed the line from a mere performance considerations to a matter of misconduct, citing *P.G. v. Ontario (Attorney General)* (1996), 90 O.A.C. 103, [1996] O.J. No. 1298 (Div. Ct.), at para. 83.

[38] Concerning allegation 8 (deceit or the making of false statements), he noted that the fault component required actual knowledge that the statement made was false.

[39] Concerning allegations 9 and 10 (Discreditable Conduct), he determined that there were two disjunctive elements to the fault component under s.77(3)(h) of the *Police Act,* namely: conducting oneself in a manner "with actual knowledge" the conduct would likely discredit the department; or, conducting oneself without actual knowledge but in circumstances where a reasonable officer fully informed would know the conduct is likely to discredit the department. He identified that the first was a subjective test and the second an objective test.

[40] Concerning allegations 11 and 15 (unauthorized use of police resources), he determined that the fault component required deliberate conduct amounting to bad faith and that an inquiry was necessary into the state of mind of the member to determine the purpose or motive for accessing the information and whether it was duty-related.

[41] Concerning allegation 12 (improper disclosure of information), he noted that s. 77(3)(i)(i) of the *Police Act* prescribed a fault component of "intentionally or recklessly".

The Test for Mental Illness as a Defence

[42] Having determined the fault components of the various allegations, the Discipline Authority then proceeded to address the central question of whether a mental illness can constitute a defence to allegations of misconduct under the *Police Act*. He commenced this part of his analysis by referring to the defence of automatism in the criminal law as well as s. 16 of the *CC* which provides that persons are not criminally responsible for acts committed while suffering from a mental disorder "that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong". He then addressed various tort cases to which he had been referred but concluded that these cases were not particularly helpful in police discipline cases where the fault element is in issue. He then addressed various discipline cases from other professions and various police discipline cases from other jurisdictions. He concluded, at para. 68, that the appropriate test to apply was to determine if the petitioner was irresistibly compelled by his mental illness to commit the acts of misconduct because he was in a state irresistible compulsion as follows:

> 68. I consider that the proper approach in this case is to consider whether the evidence of Cst. Thandi and Dr. Ancill 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.

Application of Human Rights Code

[43] Before applying the aforesaid test to the various alleged acts of misconduct, the Discipline Authority briefly addressed the question of the application of the *HRC* to the proceedings. After noting the petitioner's allegations that his rights had been violated, the Discipline Authority determined that any *HRC* considerations were not triggered at that stage of the proceedings.

> 73. I find that any *Human Rights Code* considerations are not triggered at this stage for several reasons. Issues of culpability and non-culpability have not been determined. The decision to proceed with a criminal prosecution was ultimately made by Crown Counsel, and not the Department. The decision to order the *Police Act* investigation was made by the Police Complaint Commissioner, not the Department. Cst. Thandi has not been discriminated against because of his mental illness; he has been charged criminally and now faces *Police Act* allegations because of his conduct: *British Columbia (Public Service Agency) v. British Columbia Government and Service Employees Union*, 2008 BCCA 357 at paras. 2, 15-16.

Evidence Review

[44] Commencing at para. 74, the Discipline Authority reviewed the evidence of the petitioner's mental illnesses. The more relevant facts and evidence reviewed included:

a) The petitioner was diagnosed with OCD in 2005 and with Bipolar II in 2009;

b) Dr. Ancill's evidence was that Bipolar II includes episodes of hypomania where a person's mood is elevated and they may make choices that are foolish or unwise. (para. 78);

c) Based on the PharmaNet records, the petitioner stopped taking his medications in May 2012, without advising his doctors or the department, and did not resume his medications until April 2014 (para. 82);

d) On January 18, 2013 (the month of the fraud), the petitioner saw Dr. Ancill. Dr. Ancill's contemporaneous report for that session records the petitioner had entered a sustained period of remission and was coping with work well;

e) In March 13, 2013, the petitioner again saw Dr. Ancill whose report for that session again indicates he was in sustained remission and was coping with work well;

f) Dr. Ancill's evidence was, if he had known what the petitioner was doing at the time, that would have been evidence of an elevated mood that would have led him to go back and have another look (para. 87);

g) On April 17, 2013, the petitioner was sent for an independent medical examination with Dr. Buchanan because a note had been found on his computer that might have been a suicide note. Dr. Buchanan's report to the employer opined that the petitioner was not depressed or anxious and that his OCD had been asymptomatic for five years. The Discipline Authority found this assessment corroborated Dr. Ancill's contemporaneous reports of the petitioner's condition in the period January to April 2013 and noted that no evidence was provided that contradicted Dr. Buchanan's opinion (para. 88);

h) On April 14, 2014, the petitioner advised Dr. Ancill he had gone off his medications. Dr. Ancill found the petitioner to be anxious and depressed, that his OCD had increased and that he had relapsed (para. 91);

i) Subsequent to the April 14, 2014 appointment, Dr. Ancill wrote a report to Dr. Chan in which he stated: "Psychiatrically, he had been doing well and had managed to reduce and come off his psychiatric medications" (para. 94);

j) Dr. Ancill advised the department that the petitioner would not be able to abide by the no contact orders because of his OCD (para. 94); and

k) On June 24, 2014 Dr. Ancill stated that the petitioner was showing significant and sustained improvement (para. 97);

[45] The Discipline Authority found Dr. Ancill's opinions to be "very informed and helpful" but he also found that Dr. Ancill's evidence was "naturally influenced by his experience of working with [the petitioner] through all the ups and downs of the past decade (para. 101). The Discipline Authority reviewed the evidence of Dr. Ancill, at paras. 102-110, and extracted the most important parts of his testimony. In that evidence, Dr. Ancill offered a speculative but informed opinion that the petitioner's judgment was impaired when he added R.S. and her child to his benefits plan. He testified "this was probably related to elevated mood". He also testified that it could have been something else and but this was his "informed speculation".

[46] At para. 108, the Discipline Authority essentially rejected this "informed speculation", preferring instead the opinions expressed by Dr. Ancill in his contemporaneous reports.

> 108. I place more weight on Dr. Ancill's comments made contemporaneously in his reports, referenced above, than his somewhat speculative, retrospective view expressed in his evidence. He clearly was seeing Cst. Thandi at the time that the frauds were being committed, and opined that he was well at the time.

Findings

[47] The Discipline Authority then turned to specific findings in relation to the various allegations.

[48] Concerning allegations 1 and 2 (the fraud and commission of public trust offences), the Discipline Authority determined that the petitioner had failed to discharge the onus on him of proving on a balance of probabilities that he was in a hypomanic state and/or was driven by OCD to commit the fraud (para.124). In reaching this conclusion, he expressly noted that he preferred the opinions

expressed in the contemporaneous reports of Dr. Ancill over Dr. Ancill's evidence at the hearing:

> 118. Cst. Thandi had stopped taking medication long prior to submitting the papers needed to commit fraud. He did so because he was feeling well. He was seeing Dr. Ancill during the time that he put in place the fraudulent paperwork (January to May of 2013) and Dr. Ancill provided opinions in his notes after each session, in January and March, that he was in remission in relation to his Bipolar II and in relation to his OCD. He also saw Cst. Thandi in July and September of 2013 and found throughout this time period that Cst. Thandi was doing well. When it was put to Cst. Thandi if he agreed with Dr. Ancill 's assessment of him during this time, he agreed with Dr. Ancill that he was doing well.
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> 119. Dr. Buchanan assessed Cst. Thandi during this time period for an employer-ordered IME. His opinion confirms that Cst. Thandi was in a period of remission.
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> …
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> 121. Dr. Ancill also said that it was possible he was in a hypomanic state in 2013 and that if he had known about all the circumstances, he might have been able to detect that was the state Cst. Thandi was in. On the other hand, he did see him several times and found him stable, in remission and fit in the appointments he had with him during 2013. Dr. Ancill said it should be borne in mind these were 15 to 20 minute appointments. I understand the limitations of that, but I also find that Dr. Ancill's opinion about Cst. Thandi's mental state from notes he made at the time is likely to be the most accurate assessment of Cst. Thandi. I also note that Dr. Buchanan saw Cst. Thandi for four hours and provided a similar assessment of his current mental condition during this same period of time.

[49] Concerning allegations 3 through 7 (the Neglect of Duty allegations in relation to breaches of the no contact orders), the Discipline Authority found that the breaches of the no contact order were due to "irresistible compulsion" but not the failure to report those breaches.

> 134. It is my view that, even though Cst. Thandi knew he was not to contact these people, his anxiety and his OCD were overpowering him. The test, as I have stated, is an irresistible compulsion. In these unique circumstances, I find that he knowingly disobeyed these lawful orders because he was acting on a compulsion that his willpower was unable to counteract. By comparison, you cannot tell a person severely addicted to drugs to stop. Such an order without providing support would fail, because a person with an addiction cannot control their own behavior, even when they know what they are doing, and know that it is wrong. They have an irresistible compulsion.
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> …

> 136. 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. He did not do so because he realized that doing so would place him in more trouble with the employer. That is not an excuse. In managing his mental illness, Cst. Thandi had a very significant role to play in telling his psychiatrist and his employer what is happening. He did not do that. I find that Cst. Thandi has not rebutted the presumption that he knew he had a positive duty to tell Staff Sergeant Dhillon that he was making contact with these witnesses and that, due to his mental illness, could not comply. This misconduct is connected to the allegation of deceit in allegation 8, where he was confronted by Staff Sergeant Dhillon on the fact he made contact and he initially denied doing that. I find that not only did Cst. Thandi not report making contact, but that he later lied in an effort to cover up his actions. I find this action supports my conclusion that he failed to report his contacts to avoid taking responsibility for making contact.

[50] Concerning allegation 8 (deceit or the making of false statements), the Discipline Authority found that this allegation had been proven and not rebutted.

> 140. In Mr. Creighton's submission, lying is part of Cst. Thandi's mental illness. He submitted that during this entire period, Cst. Thandi was off his medication and was not able to take responsibility for his actions. Lying was a manifestation of the disorders he was dealing with. There was no evidence from Dr. Ancill about lying being part of the behaviours to be expected from a person with Bipolar II. I understand that this submission might be logical if a person was in a hypomanic phase of Bipolar II. Cst. Thandi was not in such a state. He had broken up with his girlfriend. He was being investigated for fraud. He had relapsed, had strong OCD compulsions, and, if anything, was dealing with depression in relation to his Bipolar II disorder. I do not find that there is any significant evidence of a compulsion to not tell the truth. He tried to deceive Staff Sergeant Dhillon for the reason he gave. He didn't want to get into trouble. I find this deceit is substantiated.

[51] Concerning allegation 9 (Discreditable Conduct), the Discipline Authority found that the breach of recognizance was compelled by the petitioner's mental state but not the failure to report the breach.

> 142. Between June 8 and July 8, 2014, Cst. Thandi breached his recognizance. The criminal investigator on this file, fearing that Cst. Thandi, through all his contact with witnesses, might be influencing them in relation to the investigation, arrested Cst. Thandi, in order to obtain court-ordered no contact conditions. This tactic did not work, because even after being confronted by Staff Sergeant Dhillon about breaching the order, and even after being arrested and given court ordered conditions, he continued to breach both the employer's order and the court order. Cst. Thandi by this time had been on medication for about two months. I am not convinced that whether he is on medication or not tells me that much about his mental state. Although it could be argued that the OCD should have been more controlled

> by this time, that is speculative. I find that the breach of the order was driven by compulsion and I therefore do not find that part of his conduct to be substantiated. I again find, however, that he breached the employer's order by not reporting the contact he was having to Staff Sergeant Dhillon. Such a failure to obey a court order clearly causes discredit to the Department. I therefore substantiate this allegation.

[52] Concerning allegation 10 (Discreditable Conduct), the Discipline Authority found that the petitioner was not "compelled" by his mental illnesses to attend at R.S.'s place of work.

> 144. On three occasions between July 9 and September 19, 2014, Cst. Thandi went to [R.S.'s] place of work, the Greek Islands Restaurant. This was Cst. Thandi's favourite restaurant. He is friends with the owners. He wanted to take his son there for his birthday. I recognize that Cst. Thandi did not attend the restaurant when [R.S.] was working. It was submitted that he was driven by his OCD to go to the restaurant on these three occasions. He had to do this to relieve his anxiety. By this time, he had been taking his medication for three months. He gave evidence that he was not doing well and was in a very poor state and was not thinking clearly. I did not find the evidence that he gave that he was compelled to attend this restaurant convincing. I understand that he wanted to go there very much, but I do not find that he has established that he was unable to control himself. He chose to make a plan and have his son's birthday dinner there. I do not find that he was driven by compulsion. It is discreditable conduct to have a police officer breach an order of the court. If the public were to find out that occurred, it would bring discredit to a police department. I therefore substantiate this misconduct.

[53] Concerning allegations 11 and 12 (unauthorized use of police resources and improper disclosure of information), the Discipline Authority determined these allegations were substantiated.

> 146. Cst. Thandi accessed a file that had been generated by CFSEU on a check they did on a person of interest to them. [R.S.] was in the company of this person of interest. Cst. Thandi then disclosed the existence of this file to R.S. He took both actions on April 11, 2014. By this point Cst. Thandi knew the relationship was over. Two days earlier, on April 9, Cst. Thandi texted [R.S.] with these words: "If u need any dental work do it soon I have to remove u guys from my plan. Also I only paid for 1 parking ticket. The other one I was going to pay this week. Do u still want me to pay it??? It is at collections. I can give u the info." Ten minutes later he texted: "I am not trying to be mean. I can get in trouble for having u on my plan especially now that u have a boyfriend." I understand that Cst. Thandi was upset at this point, and it is possible that he was using police computer systems to see if he could find out what [R.S.] was doing away from him. The question for me is whether there is evidence to rebut the presumption that Cst. Thandi acted voluntarily,

> as opposed to acting on an irresistible compulsion. The burden of proof is on Cst. Thandi to show that he was acting on a compulsion and he failed to do that. I find that he committed both misconducts: the unauthorized use of police resources and improper disclosure of police information.

[54] Concerning allegation 15 (unauthorized use of police resources), the Discipline Authority determined this allegation was also substantiated.

> 148. Cst. Thandi ran [R.S.] on police databases ten times between February 20, 2012 and April 11, 2014. I note that Cst. Thandi was engaged in his relationship with [R.S.] by February of 2012. He stopped taking his medications in approximately May of 2012. In 2014, as his relationship with her came to an end and he had relapsed, as described by Dr. Ancill, he ran [R.S.] one last time. Counsel for Cst. Thandi states that doing this so many times is an example of how his OCD functioned. He couldn't help himself. I suppose the theory is that he was obsessed by her and wanted to make sure there wasn't something going on that he did not know about. It was suggested at one point that when, during this time, Cst. Thandi was required to work off the road he would get bored and that his OCD would kick in. In fact, Cst. Thandi ran [R.S.] when he was nonoperational and when he was operational. His work status had no bearing on his conduct. He ran her when their relationship was going well and he was feeling well, and he ran her when it was not and he was relapsing and experiencing depression.
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> 149. Again, it is for Cst. Thandi to establish that his illness created an irresistible compulsion on the balance of probabilities. He has not done so. I find that allegation 15 is substantiated.

The Disciplinary Disposition Record

[55] On August 4, 2016, the Discipline Authority rendered the Disciplinary Discipline Record, Form 4, pursuant to s. 128(1)(b) of the *Police Act*. According to the reasons, the main thrusts of the petitioner's submissions were: (1) that the misconduct should be excused or minimized because his psychiatric disorders which made his conduct non-culpable; and, (2) that the Department's handling of the case and the failure to accommodate his mental illness were in breach of the *HRC*. (para. 2)

[56] At para. 17, the Discipline Authority rejected the submission that the petitioner's conduct was non-culpable.

> 17. 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.

[57] The submissions concerning the *HRC* were addressed at paras. 18-20, as follows:

> 18. Second, counsel has repeatedly submitted that the APD has discriminated against Cst. Thandi because of his mental illness. I do not accept that argument. As noted above, he has been given absences and modified work assignments to accommodate his disability. While it is clear that the *Human Rights Code* does apply to the APD work environment, and to matters arising out of the Collective Agreement, I find that it has no application to the criminal or public trust disciplinary process under the *Police Act*.
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> 19. The *Police Act* provides a complete guide for the reporting, investigation and adjudication of police misconduct: *Regina Police Assn. Inc v. Regina (City) Board of Police Commissioners*, 2000 SCC 14 at para. 31. While the API) retains presumptive responsibility for the investigation and adjudication of *Police Act* matters, it is the Police Complaint Commissioner who ordered this investigation, which triggers the statutorily mandated investigation and adjudication process. It is the Police Complaint Commissioner who will ultimately approve or disapprove the outcome in this, and every other case. I therefore find that the culpable/non-culpable analysis described *in Kemess Mines Ltd. v. International Union of Operating Engineers*, Local 115, 2006 BCCA 58 does not apply in this process.
>
> 20. I must also note that Cst Thandi has not been discriminated against in any way in the conduct of the investigation. A complaint of criminal misconduct was received and Investigated. A Report to Crown Counsel was forwarded to the Crown who approved and prosecuted two charges. Cst. Thandi pleaded guilty. Cst Thandi was treated no differently than anyone else in that process. Many, many people who are investigated and prosecuted for criminal offences have mental illnesses. The *Human Rights Code* does not have any role in that process. As noted, the *Police Act* process was followed in exactly the same way. That all said, it is my view that Cst. Thandi's mental illnesses have to be sympathetically considered as potential "other mitigating factors" under s. 126(2)(h) of the *Act*.

[58] The Discipline Authority then considered the relevant aggravating and mitigating circumstances. Among the circumstances considered was the petitioner's mental illness.

> 43. Cst. Thandi's mental Illness "waxes and wanes" according to Dr. Ancill. I accept that is the case. The Impact of having these disorders is really

> impossible to ascertain at any given moment in time. I accept that his illness played a part in his lack of judgment displayed in commencing the relationship, and during the relationship. I expect that he will continue to have periods of time when he will be unable to exercise good judgment. This is a non-culpable factor, but is very relevant to whether he can continue to be a police officer.

[59] At para. 45, the Discipline Authority addressed the requirement in s. 126(3) of the *Police Act* that he consider corrective measures unless such measures are "unworkable or would bring the administration of police discipline into disrepute".

> 45. The key phrase for me in subsection (3) is 'unless it is unworkable". I have found that his actions are culpable and serious. This is mitigated by the fact that his illnesses do make it more difficult for him to exercise good judgment than other members. However, this very same mitigating factor is also an aggravating factor. I find that continuing to employ Cst. Thandi as a police officer is not workable. I simply cannot have confidence in his judgment. If he were to continue on as a police officer, I would be very concerned that he will continue to make choices that place himself and the Department in jeopardy.

[60] The Discipline Authority ultimately concluded that allegations 1, 2, 3-7, 9 and 10 justified a dismissal of the petitioner. Allegations 8, 11, 12 and 15 justified a suspension of between 2 days and 15 days.

The Adjudicator's Decision

[61] The Adjudicator commenced his review by noting that the standard he was to apply was one of correctness as mandated by s.141(9) of the *Police Act*.

[62] The Adjudicator then briefly summarized the relevant background facts. He specifically addressed the petitioner's mental health issues. At para. 4, he noted the petitioner was diagnosed by Dr. Ancill with OCD and Bipolar II disorders. He also noted Dr. Ancill's evidence of the nature of these disorders and that during periods of hypomania a patient experiences elevated mood and may make foolish or unwise choices. At para. 5, he noted the petitioner stopped taking his medications for a period of approximately two years.

[63] The Adjudicator then listed the issues before him. He prefaced his list of issues with a summary of the petitioner's overriding submission that his mental

illnesses provided a complete defence to the misconduct allegations. The Adjudicator then addressed each of the listed issues.

[64] The first issue addressed was whether the Discipline Authority had "misunderstood" Dr. Ancill's evidence in relation to the connection between the petitioner's mental illnesses and his alleged misconduct in adding R.S. and her son to his benefits package. The Adjudicator reviewed and excerpted portions of Dr. Ancill's evidence on this issue, both from his examination-in-chief and his cross-examination. The Adjudicator concluded that there was "ample evidence" to support the Discipline Authority's conclusion that Dr. Ancill's opinion was speculative and retrospective. He noted that the Discipline Authority was influenced more by Dr. Ancill's contemporaneous reports that indicated the petitioner was doing well and there was no indication of an elevated mood.

[65] The Adjudicator next addressed whether the Discipline Authority had failed to understand that Bipolar II can interact with and exacerbate the symptoms of OCD. He noted that this issue was raised in relation to whether the petitioner appreciated his actions were wrong. He also again noted that the Discipline Authority preferred the contemporaneous reports of Dr. Ancill made at the time the frauds were being committed and which indicated the petitioner was "well" at the time. At paras. 19 and 21, the adjudicator noted the lack of evidence that the petitioner was hypomanic or, if he was, that he would not be able to appreciate his actions were culpable. The Adjudicator concluded that the expert evidence did not refute the findings of the Discipline Authority.

[66] The Adjudicator next addressed the "no contact" breaches and specifically whether the Discipline Authority erred when he found the evidence failed to establish, on a balance of probabilities, that the petitioner's OCD had compelled him to fail to report his "no contact" breaches. He reviewed the petitioner's evidence on the reasons why he failed to report the breaches and concluded that there was nothing in the evidence that could have led the Discipline Authority to conclude the petitioner's OCD had compelled him.

[67] The Adjudicator next addressed whether the Discipline Authority erred when he found the evidence failed to establish, on a balance of probabilities, that the petitioner's OCD had compelled him to search R.S.'s name on police databases. He reviewed the petitioner's evidence in cross-examination where he said he did not turn his mind to the issue. He concluded that there was no evidence of "irresistible compulsion" and that the Discipline Authority was correct to reject the claim.

[68] He then addressed the question of the application of the *HRC*. He noted the petitioner's submissions that the *HRC* was an overarching code that applied to proceedings under the *Police Act* and that the petitioner's rights under the code had been violated by failing to take into account his mental illnesses. He also noted that the Discipline Authority concluded that the *HRC* did not apply to police discipline which was "conceptually and jurisdictionally distinct from labour law". The Adjudicator then accepted the submission of the respondent that the *HRC* is stand alone legislation that is triggered with the filing of a complaint with the Human Rights Tribunal and that it has no application to discipline proceedings under the *Police Act*.

[69] The Adjudicator next addressed whether the Discipline Authority erred when he found that the guilty pleas of the petitioner had determined the mental fault requirement for allegations arising from the same conduct at the Discipline Proceedings. The Adjudicator noted that the petitioner was not prevented from advancing a defence of mental illness in the discipline process and further noted that the Discipline Authority had, in fact, addressed just such a defence. He noted the Discipline Authority concluded the petitioner had not established that his mental illness compelled him to commit the misconduct. The Adjudicator held that having reached that conclusion, it was open to the Discipline Authority to then rely on the guilty pleas.

[70] The next issue addressed by the Adjudicator was whether the Discipline Authority erred by failing to take proper account of the petitioner's mental illnesses and medications in assessing his credibility. The Adjudicator noted that the issue assumed the petitioner was in a hypomanic state, which the Discipline Authority had

rejected. He concluded that it was open to the Discipline Authority to reach the conclusions he did on credibility.

[71] The Adjudicator next rejected the petitioner's submissions that the Discipline Authority erred in failing to appreciate the limited probative value of "after the fact" admissions of wrongdoing made by the petitioner. The Adjudicator accepted that an acknowledgement of a mentally ill individual in remission that his previous conduct was wrong does not establish culpability for that conduct. However, the Adjudicator held this had no application to the petitioner who acknowledged at the relevant time that his conduct was wrong.

[72] Finally, the Adjudicator addressed whether the Discipline Authority erred in failing to appreciate or take proper account of the Police Department's failure to accommodate the petitioner's mental illness, and the role its members played in the arrest and criminal prosecution of the petitioner. The Adjudicator held that these were not issues in the proceedings which were limited to whether there was misconduct on the part of the petitioner.

[73] The Adjudicator concluded that the Discipline Authority was correct in his findings and also agreed with the penalties imposed, including dismissal, which he said was appropriate given the serious nature of the misconduct.

Issues

[74] The issues for determination and the order in which I will address them are:

a) Should the petition be dismissed for delay?

b) What is the standard of review?

c) Was Adjudicator's treatment of the evidence of Dr. Ancill in error or unreasonable?

d) Was the Adjudicator's treatment of the *HRC* in error or unreasonable?

Should the petition be dismissed for delay?

[75] Before addressing the arguments related to delay, I wish to note that the issue of delay was expressly raised at paras. 9-11 of Part 3 of the petition as follows:

> 9. Section 11 of the *Judicial Review Procedure Act* states:
>
> [s. 11 of *JRPA* omitted]
>
> 10. There is no enactment applicable to the *Police Act* barring the herein application due to passage of time.
>
> 11. There has been no unreasonable delay on the part of the Petitioner given that the delay which occurred was a result of his medical conditions and the severe stress and psychological injury occasioned by the way the respondents handled the investigations and prosecution of the Petitioner. The Respondent has suffered no prejudice. (*Carpenter v. Vancouver Police Board*, [1986] B.C.J. No. 1216)

[76] The response to the petition did not raise delay in Part 5 (Legal Basis). The only mention of delay in the response to the petition is at para. 31 of Part 4 (Factual Basis) which reads:

> 31. A petition seeking judicial review was filed on April 26, 2018, almost one year later. The PCC received notice of the petition as an interested party.

[77] In my view, the response to petition could have contained a more fulsome pleading of unreasonable delay as a defence, particularly in Part 5. However, the adequacy of the delay pleading in the response to petition was not raised by the petitioner in argument before me.

Positions of the Parties

[78] The respondents submit that the petition should be dismissed for unreasonable delay.

[79] The petitioner appears to submit that a judicial review application cannot be barred by passage of time unless the specific requirements of s.11 of the *JRPA* are met. The petitioner further submits that, in any event, there has been no unreasonable delay on his part and that there has been no prejudice to the respondents.

Discussion

[80] Section 11 of the *JRPA* addresses delay as follows:

> **11** An application for judicial review is not barred by passage of time unless
>
> (a) an enactment otherwise provides, and
>
> (b) the court considers that substantial prejudice or hardship will result to any other person affected by reason of delay.

[81] Section 8 of the *JRPA* also provides:

> **8**(1) If, in a proceeding referred to in section 2 the court had, before February 1, 1977, a discretion to refuse to grant relief on any ground, the court has the same discretion to refuse to grant relief on the same ground.

[82] The effects of these provisions were addressed in *Lowe*. As with the present matter, *Lowe* concerned disciplinary proceedings under the *Police Act*. However, unlike the present matter, in *Lowe* the application for judicial review was brought by the Police Complaint Commissioner rather than the police officer. An issue in *Lowe* was whether the judicial review application, which was filed six months after the decision of the Adjudicator, ought to be dismissed for delay. At first instance, the chambers Judge did not address this issue but found the six-month delay "troubling". Before the Court of Appeal, the parties were requested to address the issue of delay as a preliminary matter.

[83] Justice Groberman addressed s. 8 of the *JRPA*, at paras. 38-40, stating, in essence, that it preserved the court's discretion to dismiss an application for judicial review on the grounds of delay.

> [38] The common law has always recognized that there is a discretionary element to prerogative relief. Where a party is guilty of delay in seeking judicial review, a court has discretion to deny the relief, even if the relief would, apart from the delay, have been granted: see *Jones & de Villars, Principles of Administrative Law* (5th ed.) (Toronto: Carswell Division of Thomson Reuters Canada Limited, 2009) at 657 and the cases cited therein.
>
> [39] The discretion to refuse prerogative relief on the basis of delay was not diminished by the bringing into force, in 1977, of the *JRPA*. The *JRPA* includes the following provision:
>
> [s.8 of the *JRPA* omitted]

> [40] Section 2 of the *JRPA* refers to all proceedings that are predecessors to judicial review, including proceedings for certiorari. This Court has recognized that "undue delay has long been a discretionary bar to the granting of judicial review remedies": see *Speckling v. British Columbia (Labour Relations Board)*, 2008 BCCA 155 at para. 15.

[84] Justice Groberman then addressed s. 11 of the *JRPA*, at paras. 43-45. He noted that s.11 presented interpretive difficulties but, regardless of those difficulties, did not eliminate the discretionary bars to judicial review preserved by s. 8, including the discretion to bar relief for unreasonable delay.

> [43] The section presents a number of interpretive difficulties. Read literally, and in isolation from other legislative provisions, it might be interpreted to mean that even in the face of an express statutory limitation period on judicial review (such as s. 57 of the *Administrative Tribunals Act*), the passage of time will not defeat a judicial review application unless the court is also satisfied that someone will suffer "substantial prejudice or hardship" by reason of the delay. It is not obvious who need suffer prejudice – it is an "other person" but whether that means someone other than the applicant, someone other than the decision maker, or someone other than a party to the proceeding is unclear.
>
> [44] While s. 11 has been cited occasionally by courts, I am not aware of any case that attempts to interpret it comprehensively. Generally, when courts have referred to the section at all, they have cited only s. 11(b), ignoring entirely clause (a) and the presence of the conjunction "and" between clause (a) and clause (b).
>
> [45] Fortunately, it is unnecessary, for the purposes of the case before us, to fully decipher the intent of s. 11. As I read the section, it is an attempt to place an absolute bar on judicial review proceedings in certain limited situations. That absolute bar, whatever its breadth, does not serve to eliminate the discretionary bars to judicial review that are preserved by s. 8 of the *JRPA*. As McLachlin J.A. (as she then was) put it in *Re Carpenter and Vancouver Police Board* (1986), 1986 CanLII 841 (BC CA), 34 D.L.R. (4th) 50 at 75, "[d]elay alone is insufficient to permit the court to refuse a remedy under the *Judicial Review Procedure Act*. What must be shown is 'unreasonable delay.'"

[85] At para. 46, Groberman J. noted some of the factors to be considered when assessing whether delay is unreasonable.

> [46] What is "unreasonable" will depend on a constellation of factors. The court must consider the underlying administrative scheme – how does it operate and what are its objectives? To what extent might those objectives be undermined by delay? The court must also consider the interests of the parties – is the issue brought forward on the judicial review of critical importance to one or the other party? On the other hand, will the delay result

> in hardship, prejudice, or injustice? Because judicial review is concerned with matters of public law, the effect of proceeding with the judicial review or of terminating it on the proper functioning of an administrative regime must also be considered.

[86] At paras. 59-60, Groberman J. expanded upon the underlying administrative scheme as a factor.

> [59] It has been noted that good public administration requires that administrative decisions be made quickly, and that they have finality: *R. v. Monopolies and Mergers Commission ex p. Argyll Group PLC*, [1986] 2 All ER 257, [1986] EWCA Civ. 8; *O'Reilly v. Mackman*, [1983] UKHL 1, [1983] 2 A.C. 237.
>
> [60] This general concern over delay in administrative law is merely a starting point for analysis. A court considering whether it is appropriate for a judicial review application to proceed despite delay must consider the administrative process that is under review. The statutory scheme will be of importance; where the provisions of the statute emphasize the need for decisions to be made quickly, it will be an indication that there should be very limited tolerance for delay. The subject matter of the administrative regime is also of importance; a court must assess whether, from a public administrative standpoint, there will be serious negative consequences if delay is allowed.

[87] The effect of delay in judicial review applications was more recently addressed in *Day v. Organization of Chartered Professional Accountants of British Columbia*, 2018 BCCA 495, at paras.9-13, where Willcock J.A. again confirmed the court has a discretion to dismiss a judicial review application for unreasonable delay.

[88] Even more recently, in *Kawakami v. Brayer*, 2021 BCSC 267, aff'd. 2021 BCCA 413 [*Kawakami*], Justice Ahmad dismissed an application for judicial review of a Small Claims Court settlement conference order on the basis of unreasonable delay. In that case the delay was approximately eight months, which Ahmad J. held was unreasonable and unexplained in the circumstances. She noted in particular that the eight-month delay was inconsistent with the purpose of the *Small Claims Act* being to provide a just, speedy, inexpensive and simple determination of disputes.

[89] Justice Ahmad's decision was upheld on appeal. Groberman J. wrote:

> [41] The judge was not, however, prepared to be so lenient with respect to the timing of the petition. Citing *Lowe v. Diebolt*, 2014 BCCA 280, she noted that delay is a discretionary bar to judicial review. She also referred to *Housewise Construction Ltd. v. Whitgift Holdings Ltd.*, 2016 BCSC 2245, and

> *Green v. Bentz*, 2019 BCSC 1603, two decisions that noted that appeals under the *Small Claims Act* must be commenced within 40 days of the judgment appealed from, and suggested that it would be anomalous to allow significantly longer delays for judicial review applications.
>
> [42] While the proceeding in this case was commenced within weeks of the judge's order, it was, as I have indicated, properly characterized as a nullity. The judge, charitably, treated the filing of the amended petition some eight months later as if it commenced a proper judicial review application. As I have indicated, even that document was seriously deficient as an application for judicial review.
>
> [43] The judge found that the delay in bringing the application to the court was not satisfactorily explained, and was prejudicial and antithetical to the purposes of the *Small Claims Act*. I note that many of the critical facts at issue in the litigation date back to 2012 and before, a factor that compounded the seriousness of the delay.

[90] From the foregoing case authorities, it is beyond dispute that I have a discretion to dismiss this application for unreasonable delay. Whether I should exercise that discretion depends on the various factors that have been identified in the authorities as relevant considerations.

The length of the delay

[91] The time elapsed from the date of the Adjudicator's decision, May 10, 2017, to the filing of the petition for judicial review, April 26, 2018, is slightly in excess of 11 months. I note that delays of less than 11 months have been considered unreasonable in some circumstances, such as in *Lowe* and *Kawakami*. On the other hand, there are many other authorities that have excused delays of much longer duration. The length of the delay is but one of the factors to consider.

The objectives of the underlying administrative scheme

[92] An important factor in this matter is the underlying administrative scheme. Part 11 of the *Police Act* contains an extremely detailed and comprehensive administrative scheme for addressing misconduct and complaints related to police officers. It imposes several time limits, including:

a) That a complaint must be made within 12 months (s.79);

b) That a complaint must be immediately acknowledged and the officer concerned notified (ss. 80 and 81);

c) The investigating officer must file an initial report within 30 days of the initiation of an investigation and subsequent reports every 20 days (s. 98);

d) The final report of an investigation must be completed within 6 months, although the time limit can be extended for prescribed reasons (s. 99);

e) Within 10 business days of receipt of a final report of an investigation, the discipline authority must review the report and give notification of the next steps, including whether there will be a discipline proceeding (s. 112);

f) A discipline proceeding must be convened within 40 days, although the time limit can be extended for prescribed reasons (s. 118);

g) Within 10 business days of hearing the evidence and submissions, the discipline authority must render its findings and invite submissions as to disciplinary and corrective measures, which must be delivered within 10 business days of notification (s. 125);

h) Within 10 business days of receiving submissions, the discipline authority must render its findings on the proposed disciplinary or corrective measures in a “disposition record”, although the time limit can be extended for good reasons if not contrary to the public interest (s.128);

i) Within 10 business days of the disposition record, the discipline authority must provide a report that includes the findings and reasons (s. 133);

j) A party requesting a public hearing or a review on the record of the discipline authority’s report must make a written request within 20 business days of receipt of the report (s. 136);

k) A decision on whether to arrange a public hearing or a review on the record must be made within twenty days and notification of the decision must be given within 10 business days (s. 138);

l) An adjudicator appointed to conduct a public hearing or review on the record must arrange, and set the earliest practicable date or dates for, the public hearing or review on the record (s. 142); and

m) Within 10 business days of reaching a decision, an adjudicator must provide written reasons for the decision (ss. 141 and 143).

[93] It is apparent from the foregoing that Part 11 of the *Police Act* imposes multiple time limits for addressing allegations of police misconduct and many of those time limits are of very short duration. This illustrates that an important objective of Part 11 of the *Police Act* is that allegations of misconduct be addressed expeditiously with minimal delays. There is good reason for this. Police officers hold positions of authority and trust. It is imperative that allegations of misconduct by a police officer be addressed in a thorough, decisive and timely manner. Delays in the process can erode public trust and confidence.

[94] In *Lowe*, at paras. 61-63, Groberman J. specifically noted that the administrative scheme in the *Police Act* emphasized a need for decisions to be made quickly and signalled a limited tolerance for delay.

> [61] The statutory scheme of the *Police Act* emphasizes the need for decisions to be made quickly. There are limitation periods at all phases of the complex complaint procedure, and limited provisions allowing for extensions. Where extensions are granted, they must be justified, and specific grounds for extension are set out. The statute contains a strong privative clause purporting to oust all review of decisions of a retired judge appointed as a disciplinary authority. It would be ironic if such a provision were interpreted as sanctioning lengthier delays than are allowed by provisions that allow for review or appeal, but provide short limitation periods.
>
> [62] The subject matter of the complaint process also argues in favour of limited tolerance for delay. The disciplinary process is designed primarily to discourage inappropriate conduct and to provide corrective measures to ensure that misconduct is not repeated. It is not a punitive regime. In order to be effective, it is essential that corrective and disciplinary measures be implemented within a reasonable period.

> [63] Indeed, the need for the disciplinary process to be speedy appears to be uncontroversial…

[95] Given the objective of the administrative scheme in the *Police Act* for misconduct allegations to be addressed swiftly, the 11-month delay by the petitioner is, *prima facie*, unreasonable. The administrative scheme in the *Police Act* weighs heavily in favour of dismissal of the petition for delay.

The importance of the matter to the parties

[96] The matter is unquestionably of considerable importance to both parties. The Commissioner's interest is in ensuring qualified, reputable and ethical persons are police officers and in ensuring public trust and confidence in the disciplinary process. The petitioner's interest is in the continuation of his employment, although the petitioner has now withdrawn his request for reinstatement.

Prejudice and Hardship

[97] Neither of the parties filed affidavits attesting to any particular prejudice or hardship. Similarly, in their submissions, they did not address prejudice to any significant degree except that the petitioner argued that there was no prejudice to the respondent from any delay.

[98] Notwithstanding the absence of any evidence or significant submissions on the prejudice occasioned by the delay, it is clear that the petitioner will suffer prejudice if his application for judicial review is dismissed. However, this prejudice is mitigated somewhat by the fact that the petitioner has abandoned his request for reinstatement as a police officer. There is no evidence of prejudice to the Commissioner, although erosion of public trust and confidence in the disciplinary process might arguably be prejudicial to the respondent.

Reasons for the Delay

[99] In para. 11 of Part 3 of the petition, as set out above, the petitioner pleads that the delay was a result of his medical conditions and the stress and psychological injury occasioned by the respondents handling of the investigation and

prosecution. Notwithstanding this assertion in the petition, there is no affidavit evidence before me attesting to these being the reasons for the delay or to any other reasons for the delay in the filing of the petition.

[100] In submissions before me Mr. Creighton, the petitioner's counsel, sought to explain the delay. He said: that the petitioner was in "very difficult shape" for many months after the hearing; that the petitioner came to him seven or eight months after the decision; and that the petitioner was told he, Mr. Creighton, could only handle the matter on a *pro bono* basis when the time was available as he is a busy trial lawyer.

[101] I am unable to accept any of the purported reasons put forward by Mr. Creighton for the delay. First, it was apparent from the outset that delay was an issue in this matter, as indicated by paras. 9-11 of Part 3 of the petition. The petitioner should have filed proper affidavit evidence fully explaining the delay. The statements of counsel on such an important matter are no substitute for proper evidence.

[102] Second, the reasons put forward by Mr. Creighton are different from those pleaded in the petition. Whereas the petitioner's anxiety, stress and psychiatric injuries were pleaded as the reasons for the delay, Mr. Creighton put forward additional reasons, namely, the petitioner's financial circumstances and his own busy schedule. The inconsistency does not engender confidence in the professed reasons for delay.

[103] Third, it is not apparent to me how Mr. Creighton could know the petitioner was in "very difficult shape" for many months after the hearing when he also said that the petitioner did not come to see him until seven or eight months after the adjudicator's decision was rendered.

[104] Fourth, I am also unclear on what is meant by the phrase "very difficult shape". That could be a reference to the petitioner's mental health or to his financial circumstances or to both or to neither. If it was intended to be a reference to the

petitioner's mental health, then a proper opinion from a medical expert should have been tendered by way of an affidavit.

[105] Finally, I am not satisfied that the fact this matter is being handled by Mr. Creighton on a *pro bono* basis ought to be a relevant consideration and neither is the fact that Mr. Creighton is a busy trial lawyer.

[106] In my view, the 11-month delay in the filing of the petition for judicial review is wholly unexplained.

Conclusions on Delay

[107] Considering all of the various factors above, I am satisfied that the petition should be dismissed for unreasonable delay. The scheme of the *Police Act* and the nature of the allegations are significant considerations leading to this result. There is a strong public interest in ensuring that police misconduct is addressed in a decisive and timely manner. The other significant consideration leading to the dismissal of the petition is the fact that the 11-month delay is unexplained.

[108] Notwithstanding that the petition is to be dismissed for unreasonable delay, I intend to briefly address the merits of the petition.

What is the standard of review?

[109] The petitioner, in his written submissions, did not address the standard of review except in relation to procedural fairness, which is an issue that was not pleaded and that I have therefore refused to consider. At the hearing before me, when specifically asked to address the standard of review, the petitioner's counsel advised that the standard was correctness except in relation to the assessment of Dr. Ancill's evidence which was to be reviewed to a standard of reasonableness.

[110] The respondent submits that the appropriate standard of review is reasonableness.

[111] I am of the opinion that the respondent is correct and the standard of review is reasonableness.

[112] Section 154(2) of the *Police Act* provides that the decision of an adjudicator is final and conclusive and not open to question or review.

> **154**(1) An adjudicator has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined in respect of a public hearing or review on the record, and to make any order the adjudicator is permitted under this Division to make.
>
> (2) A decision of an adjudicator in a review proceeding under section 141 [*review on the record*] is final and conclusive and is not open to question or review in any court.
>
> …

[113] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 S.C.C. 65 [*Vavilov*], the Supreme Court of Canada established a new framework for judicial review. Under that framework it is presumed that the standard of review of an administrative decision is one of reasonableness. (paras. 23-25) There are five exceptions to this presumption, namely:

a) Where the legislature has expressly provided a different standard of review (paras. 34-35);

b) Where the legislature has provided a statutory right of appeal (paras. 36-52);

c) Where the legal question in issue concerns constitutional questions (paras. 53-57),

d) Where the issue concerns general questions of law of central importance to the legal system as a whole (paras. 58-62), or

e) Where the issue concerns questions regarding the jurisdictional boundaries between two or more administrative bodies (paras. 63-64).

[114] In my view, none of the exceptions in *Vavilov* apply. It follows that the decision of the adjudicator is to be reviewed to a standard of reasonableness, not correctness.

[115] The standard of reasonableness requires the court to focus on whether the applicant has demonstrated the decision is unreasonable. The court is not to determine how it would have decided the matter at first instance or to substitute its decision for that of the administrative decision maker. The court is to respect administrative decision makers and their specialized expertise: *Vavilov*, para. 75.

[116] The reasonableness review begins with the reasons of the administrative decision maker. Those reasons are not to be assessed against a standard of perfection: *Vavilov*, para. 91. A reasonable decision is one that is justified, transparent and intelligible. Put differently, a reasonable decision is internally coherent, based on a rational chain of analysis and is justified in relation to the facts and law: *Vavilov*, paras. 84-85. The court is to consider both the reasoning process and the outcome of the decision: *Vavilov*, para. 87. The outcome must be justified by the reasons: *Vavilov*, para. 86.

[117] A reviewing court is not to interfere with the factual findings of an administrative decision maker by reweighing or reassessing the evidence, except in exceptional circumstances. The reasonableness of a decision may, however, be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it: *Vavilov*, paras. 125-126.

Was the Adjudicator's treatment of the evidence of Dr. Ancill in error or unreasonable?

[118] The keystone of the petitioner's submissions before the discipline authority, before the adjudicator and before this court is that there was a nexus between the acts of misconduct and the petitioner's mental illnesses. The petitioner submits that the evidence of Dr. Ancill was to the effect that the various acts of misconduct were all as a result of his mental disabilities. This is reflected in the following paragraph taken from the petitioner's written argument.

> The evidence given by the Petitioner's psychiatrist, whose expertise was endorsed by the Discipline Authority, was that his actions in the benefit fraud, the breaking of the no-contact order, the searching of the police database and the charges of deceit that came with that were all as a result of his mental disabilities. Further the Petitioner's psychiatrist gave evidence that the

> Petitioner also suffers from OCD and that the OCD and Bipolar II Disorder are comorbid, making each worse.

[119] In essence, the petitioner submits that the Discipline Authority and the Adjudicator fundamentally misapprehended or failed to account for the evidence of Dr. Ancill. At para. 143 of his written submissions, the petitioner lists the various errors that are alleged to have been made by the Adjudicator.

> 143. In making the above determinations the Adjudicator erred in discretion by basing his decision on erroneous findings of fact, made contrary to and unsupported by the following evidence:
>
> > a. The uncontradicted evidence of Dr. Ancill, a psychiatrist who has qualified as an expert in numerous court proceedings, was that the Plaintiff was suffering from a hypomanic episode at the time of the fraud.
> >
> > b. The uncontradicted evidence provided by the expert psychiatrist and the definition of Bipolar II in the DSM V that people who are in a hypomanic state have impaired judgment due to frontal lobe dysfunction.
> >
> > c. Dr. Ancill's uncontradicted evidence that it was his opinion that the Plaintiff never intended to commit the fraud but that his judgment was impaired at the time he made to decision to put the woman on his benefit plan and this would have been related to an 'abnormal mood'.
> >
> > d. Dr. Ancill's evidence that without the 'behaviour consequences' of Bipolar II it can be difficult to detect a hypomanic episode and as he was not aware of these consequences, his 'contemporaneous records' are not reliable.
> >
> > e. Dr. Ancill's evidence that had he been aware of the circumstances of the Petitioner's behaviour during 2013 he would have concluded that [t]his was evidence of an elated mood caused by his Bipolar II mood disorder.
> >
> > f. Dr. Ancill's evidence as to the comorbidity of the Bipolar II and the OCD was that with a relapse of the mood disorder symptoms and "then you would expect to find a worsening of the OCD". At the time the fraud was committed the Petitioner's judgment was impaired due to the Bipolar II, then his OCD became worse and created the compulsion that lead to his breaking the no contact orders. Dr. Ancill gave evidence, that he had warned the Discipline Authority prior to the issuance of the 'no contact orders' that the Petitioner would not be able to keep them due to the 'irresistible compulsion' of his OCD.
>
> 144. The Adjudicator ignored the clear and uncontradicted expert evidence that the Petitioner was acting with impaired judgment as a result of his mental illness when he committed the fraud. In so doing, the Adjudicator made a determination that contracted the expert evidence resulting in a patently unreasonable result which was improper and discriminatory.

[120] I note that the petitioner, at times, tends to conflate the acts of misconduct and overgeneralizes the impacts of the petitioner's mental illness. I intend to address the alleged errors of the Adjudicator in the treatment of Dr. Ancill's evidence under the rubric of the various acts of misconduct, as the Adjudicator did.

In Relation to the Fraud

[121] The petitioner submits that Dr. Ancill opined that the Petitioner was suffering from a hypomanic episode at the time of the fraud that impaired his judgment. Both the Discipline Authority and the Adjudicator rejected this submission on the basis that Dr. Ancill's evidence was speculative and inconsistent with his contemporary reports.

[122] The Discipline Authority addressed Dr. Ancill's evidence of the petitioner's state of mind at the time of the fraud and quoted from the most relevant parts of that evidence at paras. 106-107, as follows:

> 106. Counsel for Cst. Thandi asked Dr. Ancill for his observations about Cst. Thandi putting [R.S.] on his benefits: his OCD would have kicked in and driven him to think he must do this. However, his records show that he did see him several times during this period and provided consistent opinions that he was in remission and was fit for duty (lines 1598 to 1625):
>
> > DC: Umm, now, Dr. Ancill, umm, the, umm, issue which lead to, umm, Constable Thandi's suspension, umm, was, ah, his decision to put, umm, [R.S.], ah, on his benefits package, umm, have you, umm, have you reviewed, ah, ah, that issue and do you have observations in relation to, umm, what if any part his conditions played ah, in, ah. making that decision?
> >
> > RA: I, I don't think I saw him at the time he did this so --
> >
> > DC: Right.
> >
> > RA: -- I'm, I'm going to speculate but hopefully in a least informed way.
> >
> > DC: Right.
> >
> > RA: Given the fact that he stopped his meds and even without that --
> >
> > DC: Mm-hmm.
> >
> > RA: - umm, and sorry, from talking to Rob and so I'm trying to piece together it's likely he went into a period of an 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 it I think I

> would even, some kind of 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 and it seemed like a good a good idea at the time. I have never felt and in talking to Rob on many occasions I have never felt, umm, that he was trying to defraud anybody he's never explained it in that way and it's 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, ah, this was probably related to abnormal mood.

107. He gave the following answer during cross-examination on his opinion (lines 2149 to 2159):

> JW: You've provided a an opinion that, umm, Constable Thandi's judgment was impaired at the time that he placed [R.S.] on his benefits package'!
>
> RA: I've said that's my that's a speculation an informed speculation I wasn't there I didn't speak to him that day, ah, with great respect neither did you, I mean we're all kind of speculating to some extent, umm, but it's certainly again taking a longitudinal view of things it it's consistent with, ah, what I believe has been going on in his mental state over the last ten years. Could it be something else sure it could be something else but I'm sitting here as his psychiatrist and you're asking me to make an comment I can give you my best I would like to say it's better than guess but my informed speculation that's the phrase I'm choosing to use. But that is certainly, umm, a (U/I) explanation.

(Emphasis added.)

[123] At paras. 85-87 and 90-100, the Discipline Authority also addressed, in detail, Dr. Ancill's reports to Dr. Chan which were prepared after various sessions with the petitioner. In these reports Dr. Ancill recorded his observations of the petitioner and his mental state. Critically, on January 18, 2013, the month that the petitioner applied to add R.S. to his medical benefits plans, Dr. Ancill wrote:

> I saw Rob again today after quite a break but he is doing well and has clearly entered a sustained remission and is coping with work well."

[124] In his March 21, 2013 letter to Dr. Chan, Dr. Ancill reported that the petitioner had been involved in a motor vehicle accident on February 25 and injured his neck and back. Concerning the petitioner's psychological state, Dr. Ancill wrote:

> His mental state is good and he is psychiatrically fit but did feel a bit depressed after the accident but that quickly resolved.

[125] The Discipline Authority, at para. 108, placed greater weight on Dr. Ancill's contemporary reports to Dr. Chan than on his evidence at trial, which evidence was characterized as "somewhat speculative" and "retrospective".

> 108. I place more weight on Dr. Ancill's comments made contemporaneously in his reports, referenced above, than his somewhat speculative, retrospective view expressed in his evidence. He clearly was seeing Cst. Thandi at the time that the frauds were being committed, and opined that he was well at the time.

[126] An additional factor leading the Discipline Authority to place more weight on Dr. Ancill's contemporary reports was the report of Dr. Buchanan dated April 17, 2013 which was determined to be confirmatory of Dr. Ancill's contemporaneous assessments.

> 88. On April 17, 2013, Cst. Thandi was sent for an IME with Dr. Buchanan (Exhibit #9). This occurred after staff at the Department found a flashdrive in Cst. Thandi 's work computer, which contained notes which some members thought was a suicide note. Cst. Thandi 's evidence was that the document was merely ruminations written in 2011. Dr. Ancill had encouraged him to write down these ruminations to help him deal with them. Cst. Thandi said this incident made him feel depressed. Dr. Buchanan spent four hours with Cst. Thandi. Dr. Buchanan's report to the employer included these findings:
>
> > **Clinometrics**
> >
> > The HDL-32 was administered with a score of 15/32. There was no need to administer any depressive scales as he is asymptomatic. He is not describing any other anxiety disorders. His performance on the YBOCS Scale for OCD is nonclinical at this time.
> >
> > **Mental Status Examination**
> >
> > On the Mental Status Examination Constable Rob Thandi is a very approachable man who looks like he has been lifting weights for many years. He has a fine tremor in his right hand at times. He does not appear depressed or anxious. He is friendly, talkative, articulate. Thought form is normal. Thought content did not reveal any phobias, anxiety disorders such as PTSD, SAD, panic attacks or GAD. There is a strong history of Obsessive Compulsive Disorder in the past. He has been asymptomatic for the last five years.
> >
> > **Opinion**
> >
> > As an employer requested IME no diagnostic information is provided.
> >
> > There is no evidence that medical condition #1 has been active since 2008.
> >
> > There is no evidence that condition #2 has been active since 2011.

> There has been no change in the treatment for these conditions since 2008.
>
> There is no need for any current changes in the treatment at this time.
>
> Ongoing follow-up with Dr. Ancell is recommended at every 4-6 months.
>
> There is no evidence of any suicidal risk at this time.
>
> There are no medical restrictions or limitations, but a patient with these two conditions may need occasional (3-4 times a year) one day off to deal with fatigue and the beginning of depressed mood.
>
> The current leave from work following an accident is not due to mental disorders. Should the condition #2 reappear despite good treatment, the employer may note mistakes, problems focusing on work and more absenteeism. I do not believe that condition #1 will reappear in the future as long as treatment continues.

[127] The Adjudicator reviewed the above evidence and also quoted from portions of it. At para. 14, the Adjudicator noted that Dr. Ancill concluded "in a 'speculative' way" that the petitioner's judgment was impaired.

> 14. Dr. Ancill, when responding to this, said he was "speculating" though in an "informed way". He did not concede or agree that T was "compelled". What he concluded in a "speculative" way was that T's "judgment was impaired".

[128] At para. 16, the Adjudicator wrote that there was ample evidence supporting the conclusions of the Discipline Authority.

> 16. There is ample evidence to support the DA's conclusion that this exchange amounted to little more than a "speculative, retrospective view." The DA was more persuaded by Dr. Ancill's contemporaneous notes of meetings with T at the relevant times, which suggested T was doing well with no mention of an elevated mood. The DA also noted a report by Dr. Allan Buchanan, an occupational psychiatrist employed by the APD, that at the relevant times, T was employable as a police officer with certain accommodations. Dr. Ancill agreed with this conclusion.

[129] At para. 17, the Adjudicator further noted that the petitioner's alleged poor choices were not limited to the times he was off his medications.

> 17. It is clear from the evidence and submissions that [the petitioner's] decision to pursue [R.S.] was made at a time when he was on his medications (early 2012), and equally clear that he was not taking them when he applied to add her to his benefits (2013). His "poor choices" were not confined to periods of non-medication.

[130] In my view, the decision of the Adjudicator, confirming the decision of the Discipline Authority, was reasonable.

[131] Dr. Ancill's evidence was not particularly compelling. He himself qualified the opinion. He characterized it as "speculative" and later as "informed speculation". He acknowledged that it may not have been the mental illnesses at work when he said "sure it could have been something else". He even suggested that his opinion was little more than a guess when he said "I would like to say it's better than a guess". Given the ambiguous expression of Dr. Ancill's opinion it was not unreasonable for the Adjudicator to consider, and to prefer, other evidence, including the contemporaneous reports of Dr. Ancill and the report of Dr. Buchanan.

In Relation to Failure to Report No Contact Breaches and Deceit

[132] As set out above, the Discipline Authority determined that the petitioner's breaches of the no contact orders were due to "irresistible compulsion" but not the failure to report those breaches. The Adjudicator addressed the failures to report at paras. 23-24 and determined that there was no evidence that could have led the Discipline Authority to decide otherwise.

> 23. T was questioned on this issue by the DA, by his lawyer and by the presenting lawyer, excusing his failure to report on the basis that he "didn't know what to do". He said he "wasn't sure what to do so I just didn't do anything… I felt bad about doing it, I felt horrible about doing it… in crisis at the time". When questioned by the DA as to why he did not report breaches, he did say his mind was "taking a blender", that rational decisions were difficult for him, but then said that he did not want to get into trouble which would occur if he reported the breaches.
>
> 24. There was nothing proffered on this issue that could have led the DA to conclude that his OCD compelled him to act the way he did.

[133] I was not referred to any part of the evidence of Dr. Ancill where he addressed the petitioner's failure to report the breaches of the no contact orders. My own review of the transcript of Dr. Ancill's evidence, also failed to disclose any evidence from him of a nexus between the petitioner's mental illnesses and his failure to report the breaches. Dr. Ancill testified that the petitioner's mental illnesses would prevent him from complying with the no contact orders, which evidence was

accepted, but he never opined that the mental illnesses would prevent or impede the petitioner from reporting such breaches.

[134] The same can be said about allegation 8 which relates to the petitioner lying to a supervisor about his contacts with R.S. There is no specific evidence from Dr. Ancill of a nexus between the petitioner's mental illnesses and this deceit.

[135] Accordingly, in my view, the Adjudicator's decision that there was no evidence that could have led the Discipline Authority to decide other than he did is reasonable.

In Relation to Improperly Accessing Databases

[136] The Discipline Authority determined that the petitioner had failed to establish that his improperly accessing police databases was due to irresistible compulsion. The Adjudicator agreed at para. 26 holding that there was no evidence of irresistible compulsion.

[137] Again, the petitioner has not directed me to any part of Dr. Ancill's testimony where he addressed a nexus between the petitioner's mental illnesses and his improperly accessing police databases. Further, my own review of Dr. Ancill's evidence indicates that he did not address the existence of any such nexus.

[138] In the absence of any evidence that the petitioner's mental illnesses compelled him or otherwise caused him to commit these breaches, the Adjudicator's decision was reasonable.

[139] I would add that the petitioner is essentially asking me to reweigh and reassess the evidence in this matter. This is precisely what I am not to do on an application for judicial review. Although the petitioner submits that the Adjudicator irrationally and arbitrarily rejected the evidence of Dr. Ancill, that is clearly not the case. The Adjudicator carefully considered the evidence. He determined, in intelligible, rational and justifiable reasons, that the evidence did not establish the necessary nexus between the petitioner's mental illnesses and the acts of

misconduct. I am not in the least persuaded that the Adjudicator fundamentally misapprehended the evidence. Nor am I persuaded that there was relevant evidence the Adjudicator failed to consider.

Was the Adjudicator's treatment of the *Human Rights Code* in error or unreasonable?

[140] The Discipline Authority, at para. 73 of the Findings, Form 3, held that the *HRC* was irrelevant to whether the petitioner had committed the various acts of misconduct but, he also said the *HRC* could be taken under consideration in addressing the appropriate disciplinary measures. In the Disciplinary Discipline Record, Form 4, at para. 20, the Discipline Authority determined the petitioner had not been discriminated against in the conduct of the investigation and that the *HRC* had no application except that the petitioner's mental illness was to be considered as a mitigating factor. The Discipline Authority, in fact, addressed the mental illnesses as a mitigating factor but ultimately determined that measures less than termination were unworkable pursuant to s. 126(3) of the *Police Act.*

[141] The Adjudicator likewise found that the *HRC* had no application to discipline proceedings under the *Police Act* and that dismissal was an appropriate measure, given the serious nature of the misconduct.

[142] The petitioner submits that the Adjudicator was in error in his determination that the *HRC* had no application to discipline proceedings under the *Police Act* and has referred me to multiple authorities in support of this submission. I do not intend to refer to these many decisions as, in my view, the decision of the Court of Appeal in *British Columbia (Public Service Agency) v. British Columbia Government and Service Employees Union*, 2008 B.C.C.A. 357, leave refused, [2008] S.C.C.A. No. 460, is decisive on this issue. This case concerned an employee who was terminated for theft even though the theft was influenced by the employee's alcoholism disease. Justice Huddart, at paras. 15-16, held that the *HRC* was not intended to prevent an employer from terminating an employee for misconduct that rose to the level of commission of a crime.

> [15] I can find no suggestion in the evidence that Mr. Gooding's termination was arbitrary and based on preconceived ideas concerning his alcohol dependency. It was based on misconduct that rose to the level of crime. That his conduct may have been influenced by his alcohol dependency is irrelevant if that admitted dependency played no part in the employer's decision to terminate his employment and he suffered no impact for his misconduct greater than that another employee would have suffered for the same misconduct.
>
> [16] The *Human Rights Code* was not designed to prevent employers from dismissing an employee who has committed a crime related to his or her employment. This is evident in the careful wording of s. 13 which prohibits employers from refusing to employ or continue to employ persons convicted of offences "unrelated" to that employment or intended employment. As stated by the chambers judge in *B.C. Human Rights Commission v. B.C. Human Rights Tribunal* (1999), 1999 CanLII 6347 (BC SC), 178 D.L.R. (4th) 546, 35 C.H.R.R. D/333 at § 31 and adopted by this Court in 2000 BCCA 584, 38 C.H.R.R. D/390, 81 B.C.L.R. (3d) 195 at § 24:
>
> > . . . The policy grounding protection of individuals convicted of criminal offences is not protection against the penalty flowing from their conduct. It is protection ". . . from being stigmatized indefinitely by the fact of their convictions". . .
> >
> > Although charges were never pursued against Mr. Gooding, Mr. Gooding admitted the facts that would have been necessary to obtain a criminal conviction against him.

[143] The petitioner does not allege that he was terminated due to his mental illnesses nor does he allege that the penalty imposed for his misconduct was greater than it would have been for other employees guilty of the same misconduct. Rather, he submits that his misconduct, which rose to the level of a crime, should be excused because of his mental illnesses or that the penalty should be less than for others. This is contrary to the above quoted reasons of Huddart J.

[144] I would add that the Adjudicator's decision that the *HRC* has no application to discipline proceedings under the *Police Act* is also supported by the decision of the Supreme Court of Canada in *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners, 2000 SCC 14,* at para. 31, where it was recognized that legislated disciplinary schemes such as are contained in the *Police Act* are a complete code and there is no discretion to select another legal mechanism to resolve discipline issues.

> 31 As Vancise J.A. outlined extensively in his dissent, both *The Police Act* and the Regulations specifically address the procedural issues at the investigative, adjudicative and appeal stages of a disciplinary process. The detailed provisions in the legislative scheme governing disciplinary matters are a clear indication that the legislature intended to provide a complete code within *The Police Act* and Regulations for the resolution of disciplinary matters involving members of the police force. This is reflective of a well-founded public policy that police boards shall have the exclusive responsibility for maintaining an efficient police force in the community. The ability to discipline members of the force is integral to this role. Accordingly, no discretion exists to select another legal mechanism, such as arbitration, to proceed against a police officer in respect of a disciplinary matter: see, e.g., *Re Proctor and Sarnia Board of Commissioners of Police* (1979), 1979 CanLII 69 (ON CA), 99 D.L.R. (3d) 356 (Ont. C.A.), at p. 371 (*per* Wilson J.A. in dissent), majority reversed, 1980 CanLII 48 (SCC), [1980] 2 S.C.R. 727; P. Ceyssens, *Legal Aspects of Policing* (loose-leaf), at p. 5-2...
>
> [Emphasis added.]

[145] Accordingly, the Adjudicator's decision upholding the decision of the Discipline Authority is not unreasonable.

Order

[146] In view of the foregoing, the petition is dismissed.

[147] The parties have leave to speak to me on the issue of costs, should that be necessary.

"Giaschi J."