



June 18, 2018

Sandhar Trucking Ltd.  
8391 No. 5 Road  
Richmond, BC V6Y 2V5

## **Commissioner's Decision**

### **Sandhar Trucking Ltd. (CTC Decision No. 18/2018)**

#### **Introduction**

1. Sandhar Trucking Ltd. ("Sandhar Trucking") is a licence holder within the meaning of the *Container Trucking Act* (the "Act"). Under sections 22 and 23 of the Act, minimum rates that licensees must pay to truckers who provide container trucking services are established by Regulation, and a licensee must comply with those statutorily established rates. In particular, section 23(2) states:

A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

2. Under section 31 of the Act, the Commissioner may initiate an audit or investigation to ensure compliance with the "Act, the regulations and a licence" whether or not a complaint has been received by the Commissioner.
3. In April of 2017, the Commissioner directed an auditor to audit Sandhar Trucking's records to determine if its company drivers and independent owner operators ("I/Os") were being paid the minimum rates required under the *Container Trucking Regulation* (the "Regulation"). The auditor was directed to audit the periods June 1-30, 2014 and October 1-31, 2016 (together the "Initial Audit Period").

#### **Initial Audit Period**

4. The auditor requested, obtained, and reviewed relevant records and determined that during the Initial Audit Period, Sandhar Trucking paid its I/Os the minimum trip rates required under the *Regulation* but did not pay its I/Os a fuel surcharge in October 2016. As a result, the auditor determined that Sandhar Trucking owed its I/Os collectively the total amount of \$403.76 during the Initial Audit Period.
5. The auditor also determined that Sandhar Trucking did not pay its company drivers the hourly rate required under the *Regulation* in June 2014 but did pay the required hourly rate in October 2016. Sandhar Trucking was found to be owing \$3,233.25 in total to its company drivers during the Initial Audit Period.

### **Expanded Audit Period**

6. Having established that Sandhar Trucking did not pay its I/Os a fuel surcharge in October 2016 and did not pay the correct hourly rate to its company drivers in June 2014, the auditor expanded the scope of the audit to cover the period April 3, 2014 to February 28, 2018 (the “Expanded Audit Period”).
7. Prior to the Acting Commissioner’s January 22, 2016 deadline (to pay all money owing to drivers), Sandhar Trucking had conducted its own review and calculated that it did not owe any drivers money between April 3, 2014 and January 22, 2016. The auditor reviewed Sandhar Trucking’s calculations and found that during the period between April 3, 2014 and April 6, 2017 (which includes the Initial Audit Period and the period reviewed independently by Sandhar Trucking), Sandhar Trucking owed four I/Os \$7,889.02 in fuel surcharge payments and six company drivers \$32,221.18 as a result of incorrect hourly rate payments.
8. Sandhar Trucking accepted the auditor’s calculations and the auditor reports that Sandhar Trucking provided the auditor with copies of cheque images, pay stubs and proof of payment forms as well as a registered mail receipt demonstrating that Sandhar Trucking paid out the required adjustment amounts for the period April 3, 2014 to April 6, 2017 to eight of the ten drivers owed. One driver cannot be located and the details regarding money owed to the tenth driver is addressed in the next section.
9. In order to determine that Sandhar Trucking was compliant for the remainder of the Expanded Audit Period (April 6, 2017 to February 28, 2018), the auditor reviewed the hourly rates Sandhar Trucking paid to its company drivers and confirmed that Sandhar Trucking paid the required hourly rate to its company drivers. However, a review by the auditor of Sandhar Trucking’s fuel surcharge payments to its I/Os revealed that Sandhar Trucking owed an additional \$5,106.19 to three I/Os for the period between April 6, 2017 and February 28, 2018. The auditor confirms that Sandhar Trucking paid the additional \$5,106.19 owed to its three I/Os and concludes that during the Expanded Audit Period, Sandhar Trucking was found to be owing at total of \$45,216.39 to its drivers.

### **Investigation of Driver Complaint**

#### **Nature of Compliant**

10. The Complainant, a former company driver for Sandhar Trucking, alleges that Mr. Paramjit Sandhar (“Sandhar”) required him to sign a proof of payment form indicating that he had received a cheque for money found to be owing to the Complainant under the audit, then accompanied the Complainant to a bank and required the Complainant to cash the cheque and return the full amount of the cheque to Sandhar.
11. The Complaint seeks an order from the Commissioner that he receive the money he is allegedly owed as a result of the Office of the BC Container Trucking Commissioner (“OBCCTC”) audit.

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### Conduct of Investigation

12. Having received a complaint from the Complainant, the OBCCTC undertook the following investigation activities:
1. Documents reviewed:
    - a. OBCCTC Audit Report
    - b. Emails from Complainant to OBCCTC auditor
    - c. Emails from Complainant replying to Commissioner questions
    - d. Copies of cheques and proof of payment forms for 10 Sandhar Trucking drivers
    - e. Copy of front and back of cheque number 6224 payable to Complainant and dated 2018-04-26
    - f. Proof of payment for cheque 6224 signed by Complainant dated 2018-05-07
  2. Interviews:
    - a. Complainant – 2018-05-15
    - b. Two follow up phone calls with Complainant – 2018-05-23
    - c. Cousin of complainant – 2018-05-15
    - d. Owner of Sandhar Trucking Ltd– 2018-05-23
    - e. Friend of Complainant
    - f. Former driver for Sandhar Trucking
  3. Sandhar opportunity to respond provided - 2018-06-04
  4. Sandhar response – 2018-06-11

### Background

13. On April 23, 2018, the auditor sent Sandhar Trucking calculations of amounts outstanding to drivers as well as detailed instructions on how to pay the drivers. As noted, Sandhar Trucking was in agreement with the auditor's calculations and, on April 28, 2018, Sandhar Trucking provided the auditor with evidence that the money found to be owing was paid. Specifically, Sandhar Trucking demonstrated that six of the drivers owed money signed a form stating they had picked up their cheques. These were all current drivers of Sandhar and the auditor confirmed that the cheques were received by the drivers. Sandhar Trucking also provided a post office till receipt intended to demonstrate that the other four drivers owed money were sent cheques by registered mail.
14. A post office till receipt is not satisfactory evidence that cheques have been sent to last known addresses, and so the auditor attempted to contact the four remaining drivers to confirm receipt of payment. The auditor had email addresses for two of the drivers and was able to secure the phone number for one other. The whereabouts of the fourth driver is unknown. The auditor spoke with three of the four drivers and ascertained that they had not received their cheques by registered mail. Sandhar Trucking was then instructed to re-issue three of the four cheques. The auditor arranged for one cheque to be re-mailed and for the other two cheques to be picked up by the drivers from Sandhar Trucking's office location which is also the residence of Sandhar, the owner of Sandhar Trucking. One of the drivers who was instructed by the auditor to pick up a cheque from Sandhar was the Complainant.

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The Complainant's Version of Events

15. At approximately 6:00 pm on May 7, 2018 (less than one hour after the cheque at issue was cashed) the auditor received an email from the Complainant, alleging that when he and his cousin attempted to pick up his cheque from Sandhar Trucking's office, Sandhar told him that he didn't owe him the money. It is alleged that Sandhar then offered to make a deal to give the Complainant \$1,000.00 and told the Complainant to sign a proof of payment form which the Complainant claims he refused to do. The Complainant says that Sandhar then put the cheque on the table beside the proof of payment form and the Complainant completed the information on the proof of payment form (cheque number, amount, and date) and signed it, at which time Sandhar took the cheque off the table and put it in his pocket. The Complainant then states that Sandhar said "you have to cash me my amount" and instructed him to go with him to the bank to cash the cheque.
16. The Complainant states that he then went outside with Sandhar and told Sandhar to follow him to the bank in his own car but that instead Sandhar got into the back seat of his cousin's truck and when the Complainant told Sandhar to take his own car, Sandhar refused and gave them directions to go to the bank. On the way to the bank, the Complainant claims that Sandhar asked him for his identification (presumably to confirm that the Complainant could cash the cheque at a bank) and, in reply, the Complainant lied to Sandhar and told him he did not have any identification on his person. Sandhar then phoned his son and retrieved the Complainant's drivers licence number and social insurance number from his old work file. These details are written on the back of the cheque in what was agreed by Sandhar to be Sandhar's hand writing.
17. The Complainant then alleges that he and Sandhar attempted to cash the cheque at a Royal Bank at 1011 No. 3 Road, Richmond but were not able to do so because the Complainant was not a client of the bank and the cheque amount exceeded the amount the bank would provide in cash for a non-client. The Complainant alleges that at this time Sandhar demanded to know where the Complainant's identification was. The Complainant told Sandhar that his identification was in his truck at his work so Sandhar instructed the Complainant and his cousin to drive there, and, after the Complainant pretended to retrieve his identification, Sandhar and the Complainant departed in the Complainant's truck and the Complainant's cousin left separately.
18. The Complainant and Sandhar then went to two Coast Capital Savings, both closed, before they drove to the Royal Bank at 7157 120 Street, Delta. At the Royal Bank, the Complainant and Sandhar, using Sandhar's bank card, cashed the cheque (\$6,306.40). The Complainant alleges that as they were leaving the bank, Sandhar offered the Complainant \$1,000.00. The Compliant accepted the money then called his friend for advice. His friend advised the Complainant to return the \$1,000.00 which the Complainant states was done immediately and before the Complainant drove away, leaving Sandhar at the bank.
19. The Complainant further says that after the events of May 7, 2018, the Complainant phoned the other former driver, who was also found by the auditor to be owed money from Sandhar Trucking, and advised him of his experience picking up a cheque from Sandhar. As a result, the former driver took four friends with him to Sandhar Trucking on May 10, 2018 to pick up his cheque and was able to secure the cheque.

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### Sandhar's Version of Events

20. Sandhar disagrees with the Complainant's version of events. Sandhar states that the Complainant voluntarily gave Sandhar approximately \$4,300.00 from the cashed cheque in order to pay for damage that the Complainant did to a Sandhar Trucking chassis in 2014. The Complainant, Sandhar alleges, kept approximately \$2,000.00 from the cashed cheque.
21. Sandhar states that the Compliant was an unreliable employee who had an accident in a Sandhar Trucking truck at Burn Road and Marine Drive in 2014 which caused approximately \$8,000.00 in damage and other costs. After the accident, Sandhar states that the Complainant left the company and wouldn't answer the phone. Sandhar says that the Complainant has since applied several times to work at Sandhar Trucking as a forklift operator, most recently this year.
22. Sandhar confirms that on May 7, 2018, the Compliant went to Sandhar Trucking to pick up the cheque but upon his arrival he apologized to Sandhar for damaging the chassis and, after filling out the proof of payment form, offered to reimburse Sandhar for the chassis damage immediately upon cashing the cheque.
23. Sandhar denies that the Complainant asked Sandhar to take his own vehicle to the bank; rather Sandhar states that the Complainant offered him a ride to the bank and to a truck Sandhar needed to pick up in Surrey. Sandhar says that he, the Complainant and his cousin drove to the Royal Bank at 1011 No. 3 Road, Richmond and while in the Complainant's cousin's truck called his son to get the Complainant's identification information. Sandhar confirms that the Royal Bank in Richmond would not cash the cheque and that the three then drove to the Complainant's truck to pick up his identification before travelling to two Coast Capital Savings that were both closed as noted.
24. Sandhar agrees that they then went to the Royal Bank at 7157 120 Street, Delta. Sandhar's version of events suggests that he received the money from the teller (as it was his bank and he confirmed the Complainant's identity) and was then told by the Complainant to give him \$2,000.00 and keep the rest.

### Decision

25. As described above, the findings of the auditor are that:
  - a. The Commissioner ordered an audit of Sandhar Trucking's I/Os and company drivers;
  - b. Sandhar Trucking failed to pay its I/Os the fuel surcharge and adjustments totaling \$12,995.21 were found to be owing to four I/Os between April 3, 2014 to February 28, 2018;
  - c. Sandhar Trucking failed to pay its company drivers the regulated hourly rate and adjustments totaling \$32,221.18 were found to be owing to six company drivers between April 3, 2014 to February 28, 2018;
  - d. Sandhar Trucking accepted the audit results and paid the amounts determined to be owing to nine of ten drivers;
  - e. Sandhar was co-operative and helpful during the audit process; and
  - f. Sandhar is now paying its drivers compliant rates.

26. As also described above, the auditor also reports that on May 7, 2018, one driver owed money under the audit complained that Sandhar had required the driver to sign for and cash a cheque and immediately return the money, in cash, back to Sandhar. As a result of this complaint, the OBCCTC conducted an investigation which included interviews of the Complainant, Sandhar, the Complainant's cousin, the Complainant's friend and a former Sandhar Trucking driver also owed money under the audit. The Complainant and Sandhar's statements are detailed above.
27. In this case, the Complainant is seeking to be made whole for the money allegedly owed to him by Sandhar as a result of the OBCCTC audit and the transaction alleged to have occurred on May 7, 2018. To rule in favour of the Complainant, the Commissioner must be satisfied that Sandhar Trucking has failed to comply with section 24 of the Act which states that "a licensee must not solicit or receive, directly or indirectly, a financial set-off, commission or rate deduction or rebate from a trucker" or section 1(h) of Appendix A to Schedule 1 of the Container Trucking Services Licence which states that a licensee must not threaten, harass, coerce or attempt to influence a trucker in any way, either directly or indirectly, regarding a trucker's right to retain his or her compensation.
28. The Complainant states that he was required to complete a proof of payment form and sign the back of the cheque at Sandhar Trucking, and that once the cheque was cashed, Sandhar offered him \$1,000.00 which he initially accepted but immediately returned and that Sandhar therefore kept the entire amount of the cashed cheque.
29. Sandhar stated to the OBCCTC investigator that that the Complainant voluntarily gave him approximately \$4,300.00 of the money owed in recompense for damage done to a Sandhar Trucking chassis in 2014 and kept \$2,000.00.
30. The Complainant's version of events was corroborated in part by the Complainant's cousin and friend as well as the other former driver owed money under the audit. However, the Complainant's friend did not corroborate the Complainant's claim that Sandhar initially gave him \$1,000.00 which he returned on the friend's advice. Further, the Complainant, Sandhar and the Complainant's cousin's recollection of the exact sequence of some of the locations visited by the three conflicts. Nevertheless, there is no dispute that, following a visit to Sandhar Trucking on May 7, 2018 to pick up his cheque, the Complainant, Sandhar and the Complainant's cousin travelled to four banks in order to cash the Complainant's cheque.
31. The Complainant's friend and the former driver were contacted by the OBCCTC investigator after Sandhar provided a statement responsive to the statement the Complainant had given the investigator. As such, on June 4, 2018, Sandhar was provided an opportunity to respond to a summary of the evidence of these two witnesses, along with a summary of the investigator's findings. Sandhar denies that Sandhar Trucking violated section 24 of the Act or section 1(h) of Appendix A to Schedule 1 of the Container Trucking Services Licence. Sandhar's response is as follows:
  - a. The Complainant received all money owed to him under the audit (\$6,306.40) then voluntarily offered to pay Sandhar \$4,300.00. Sandhar argues that the Complainant has, since his departure from Sandhar Trucking, applied for a job as a forklift operator on several occasions and surmises that perhaps the

- Complainant's desire to pay back money from his cheque to Sandhar for damage to a Sandhar Trucking chassis was driven by his hope that Sandhar would hire him in the future as a forklift operator.
- b. The Complainant's complaint was motivated by a desire to get back the \$4,300.00 he gave to Sandhar.  
Sandhar argues that the Complainant has previously demonstrated "dishonest traits" and therefore he lodged a complaint with the OBCCTC in order to get back the \$4,300.00 he gave to Sandhar.
  - c. The \$4,300.00 received by Sandhar should not be viewed as Sandhar soliciting or receiving, directly or indirectly, a financial set-off, commission or rate reduction or rebate from the Complainant in violation of section 24 of the Act. Further, Sandhar did not violate section 1(h) of Appendix A to Schedule 1 of the Container Trucking Services Licence.  
Sandhar argues that it was, at all times, his intention to pay the Complainant the full amount found to be owing by the OBCCTC auditor and denies ever offering the Complainant \$1,000.00 or taking \$6,300.00 after the cheque was cashed. The \$4,300.00 was voluntarily offered to Sandhar by the Complainant.
  - d. The Complainant made a false statement.  
Sandhar argues that the Complainant's statement that he and the other former driver stopped working for Sandhar Trucking at the same time because Sandhar refused to pay them the regulated rate is false.
  - e. Sandhar Trucking refutes the findings of the auditor in regards to the Complainant.  
Sandhar argues that when working for Sandhar Trucking the Complainant performed container trucking services and non-container trucking services; therefore, the auditor should not have calculated all the Complainant's hours of service at the regulated rate.
  - f. The supplemental statements provided by the Complainant's cousin, friend and the former driver (the "witnesses") should carry little weight when considering this case.  
Sandhar argues that much of the witnesses' statements are hearsay and should be inadmissible.

#### Consideration of Sandhar's Response

- 32. Sandhar speculates about the Complainant's motives and seeks to discredit the Complainant in support of Sandhar's version of events. The Complainant, when questioned about Sandhar's response to his allegations, denies that he ever had an accident in one of Sandhar Trucking's trucks which led to damage of a chassis and denies that he voluntarily offered money to Sandhar to pay for an accident. Further, the Complainant states that he has not applied for work at Sandhar Trucking in the last three years and denies that he has any money from the cashed cheque.
- 33. Sandhar claims that the Complainant stopped working for Sandhar Trucking after an accident occurred in 2014. Sandhar says the Complainant just left and wouldn't answer the phone following the accident and that this was the last time the Complainant worked for Sandhar Trucking.

However, the audit records demonstrate that the Complainant's last pay period at Sandhar Trucking was in September 2015.

34. It is also clear from Sandhar's interview and written submission that he was not happy with the OBCCTC audit and its outcome. Sandhar has admitted that he may have told his drivers that it wasn't fair that new drivers should get paid the same amount as drivers that had been working for him for a long time (reflecting the auditor's direction that if Sandhar couldn't demonstrate hours of service then each driver would be audited at the higher regulated hourly rate). The Complainant's cousin confirms that, when driving Sandhar to the banks, he heard Sandhar say to the Complainant that he was not the rightful owner of the money and that the "port" people were not being fair. Sandhar's other former driver has also stated that when he went to pick up his cheque, Sandhar used rude language and told him that he didn't deserve the cheque.
35. In his written submission, Sandhar has also challenged the findings of the auditor. Sandhar suggests that the OBCCTC auditor calculated the regulated hourly rate on all work performed by company drivers rather than applying the regulated work to container trucking services only. However, the auditor confirms that the audit records separated the Complainant and the other former driver's container trucking services work from non-container trucking services work. Specifically, the auditor calculated that the Complainant performed 169 hours of non-container trucking services work the other driver performed 17 hours of non-container trucking services work during the audit period. The regulated rate was not applied to these hours of service and the audit results were confirmed by Sandhar Trucking prior to the conclusion of the audit.
36. Sandhar's feelings about the audit may have motivated him to reclaim the money owed to the Complainant. That the other former driver was able to pick up his cheque may only reflect the fact that he took three other witnesses with him to Sandhar Trucking following the alleged incident with the Complainant.
37. As to the admissibility of the witnesses' statements, the decision processes of the OBCCTC are not tantamount to those of a court of law. In this case, I give some weight to the witness statements and note that they corroborate the Complainant's version of events.

### Conclusion

38. Based on the balance of probabilities, I conclude that it is more likely than not that the Complainant did not receive the money found to be owing to him under the audit.
39. Sandhar asserts that the Complainant took \$2,000.00 after the cheque was cashed and voluntarily gave the balance to Sandhar in compensation for damage done to a Sandhar Trucking chassis in 2014. However, this does not explain why the Complainant would only give Sandhar approximately half of the cost of the stated damage, nor does it explain the inconsistencies in Sandhar's version of events, specifically that the Complainant left Sandhar Trucking following the accident in 2014 when, in fact, he left in September 2015. Sandhar has not offered any documentary proof of the alleged accident or of the Complainant's alleged attempts to secure work with Sandhar Trucking.



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40. Further, the Complainant has stated that Sandhar called him three times from different phones on May 22, 2018 in order to ascertain what the Complainant said to the OBCCTC investigator and demand a copy of the Complainant's email to the OBCCTC auditor. At best, this demonstrates poor judgement on the part of Sandhar, whose judgement is already suspect because of his decision to travel to a series of banks with the Complainant in order to complete some type of cash transaction. At worst, Sandhar's contact with the Complainant during an OBCCTC investigation raises doubts about the veracity of Sandhar's statements to the OBCCTC.
  41. Finally I note that a licensee who receives a financial set-off, commission, rate reduction, or rebate from a trucker, whether voluntarily offered or otherwise, is in violation of section 24 of the *Act*. For these reasons, I find that Sandhar Trucking owes the Compliant \$6,306.40 and that Sandhar Trucking is in violation of section 24 of the *Act*.
  42. As Sandhar Trucking has not paid all the amounts owing to its drivers under the audit, I hereby order Sandhar Trucking, pursuant to section 9 of the *Act*, to deliver to the OBCCTC, by no later than June 25, 2018 a money order (not cheque) made out to the Complainant in the amount of \$6,306.40.
  43. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, the Commissioner may impose a penalty or penalties on the licensee. Available penalties include suspending or cancelling the licensee's licence or imposing an administrative fine. Under section 28 of the *Regulation*, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to \$500,000.
  44. In this case it has been determined that between April 3, 2014 to February 28, 2018, Sandhar Trucking failed to comply with the minimum rates and fuel surcharge required under the *Act* and *Regulation*. The audit findings indicated that over this period Sandhar Trucking owed ten company drivers and I/Os adjustments totaling \$45,216.39. The adjustment payments were required because Sandhar Trucking did not pay its I/Os the fuel surcharge and paid its company drivers incorrect hourly rates.
  45. It has been determined that Sandhar Trucking did not pay all the amounts owing to its drivers under the audit. It has also been determined that Sandhar Trucking is in violation of section 24 of the *Act* and section 1(h) of Appendix A to Schedule 1 of the Container Trucking Services Licence Therefore, I have concluded that an administrative fine is appropriate in this case.
  46. Regarding the size of the proposed fine I have decided that an administrative penalty of \$60,000.00 is appropriate. The penalty reflects Sandhar Trucking's failure to pay the legislated rates as well as its violation of section 24 of the *Act*. Ten thousand dollars of this proposed fine reflects Sandhar Trucking's failure to pay the regulated rates and fuel surcharge and also accounts for Sandhar Trucking's efforts to correct its non-compliance prior to the former Commissioner's January 22, 2016 industry compliance deadline. The balance of the penalty accounts for Sandhar Trucking's violation of section 24 of the *Act* and section 1(h) of Appendix A to Schedule 1 of the Container Trucking Services Licence reflects the seriousness of the violation. The purpose of section 24 of the *Act* and section 1(h) of Appendix A to Schedule 1 of the Container Trucking Services Licence is to deter

licensees from engaging in activity intended to circumvent the rate paying requirements of the legislation. Any licensee that receives cash-back following the payment of monies owed to a driver for the undertaking of container trucking services, or as the result of an OBCCTC audit, will be penalized.

47. In the result and in accordance with section 34(2) of the Act, I hereby give notice as follows:

- a. I propose to impose an administrative fine against Sandhar Trucking Ltd. in the amount of \$60,000.00;
  - b. Should it wish to do so, Sandhar Trucking Ltd. has 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed;
  - c. If Sandhar Trucking Ltd. provides a written response in accordance with the above I will consider its response and I will provide notice to Sandhar Trucking Ltd. of my decision to either:
    - i. Refrain from imposing any or all of the penalty; or
    - ii. Impose any or all of the proposed penalty.
1. This decision will be delivered to Sandhar Trucking Ltd. and published on the Commissioner's website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 18<sup>th</sup> day of June, 2018.



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Michael Crawford, Commissioner