

FORM 14A  
*Courts of Justice Act*

(Court file No.)

STATEMENT OF CLAIM (GENERAL)

(Court seal)

Michael Jack

B E T W E E N

Plaintiff

- and -

Her Majesty the Queen in Right of Ontario  
as represented by the Ministry of Community  
Safety and Correctional Services operating as the  
Ontario Provincial Police and its employees Marc  
Gravelle, John Pollock, Shaun Filman, Jennifer Payne,  
Jamie Brockley, Melynda Moran, Mary D'Amico, Richard Nie,  
Brad Rathbun, Robert Flindall, Peter Butorac, Ronald  
Campbell, Mike Johnston, Chris Newton, Colleen Kohen,  
Hugh Stevenson and Mike Armstrong

Ontario Provincial Police Association  
and its representatives Shaun Filman, Karen German,  
Jim Styles and Marty McNamara

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$ 0.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

Date: Friday, December 21, 2012

Issued by: .....

Local registrar

Address of court office:  
393 University Avenue  
10<sup>th</sup> Floor  
Toronto, ON. M5G 1E6

TO: Her Majesty the Queen in Right of Ontario  
as represented by the Ministry of Community  
Safety and Correctional Services and operating  
as the Ontario Provincial Police

c/o Denise Dwyer  
Director of Legal Branch  
655 Bay Street  
5<sup>th</sup> Floor  
Toronto, ON M7A-0A8

Tel: 416-326-1237  
Fax: 416-314-3518

AND TO: Marc Gravelle, John Pollock, Shaun Filman, Jennifer Payne,  
Jamie Brockley, Melynda Moran, Mary D'Amico, Richard Nie,  
Brad Rathbun, Robert Flindall, Peter Butorac

c/o Timothy Tachel  
Staff Sergeant, Peterborough Detachment  
453 Lansdowne Street East  
Peterborough, ON K9J 6Z6  
Ph: 705-742-0401

AND TO: Ronald Campbell, Mike Johnston, Chris Newton,  
Colleen Kohen, Hugh Stevenson, Mike Armstrong

c/o Chris Lewis  
Commissioner, Ontario Provincial Police  
777 Memorial Avenue  
Orillia, ON L3V 7V3

Ph: 705-329-6725  
Fax: 705-329-6600

AND TO: Ontario Provincial Police Association

c/o Jim Christie  
President, Ontario Provincial Police Association  
119 Ferris Lane  
Barrie, ON L4M 2Y1

Ph: 705728-6161  
Fax: 705-721-4867  
Email: oppa@oppa.ca

AND TO: Shaun Filman, Karen German, Jim Styles, Marty McNamara

c/o Jim Christie  
President, Ontario Provincial Police Association  
119 Ferris Lane  
Barrie, ON L4M 2Y1

Ph: 705728-6161  
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Email: oppa@oppa.ca

## CLAIM

1. As elaborated in detail on pages 66 to 101 of this claim the Plaintiff claims:
  - (a) General damages (compensation for losses that can readily be proven to have occurred and for which the injured party has the right to be compensated) for defamation relating to economic loss \$3,395,135.00;
  - (b) Punitive damages: damages awarded to a Plaintiff in excess of Compensatory damages in order to punish the Defendant for a reckless or wilful act. Special and highly exceptional damages ordered by a court against a defendant where the act or omission which caused the suit, was of a particularly heinous, malicious or high-handed nature. For personal injury in Tort the Plaintiff claims \$500,000;
  - (c) Aggravated damages: damages awarded by a court to reflect the exceptional harm done to a plaintiff of a tort action. The Plaintiff claims \$250,000.00;
  - (d) Costs of this action on a full indemnity basis, together with applicable Goods and Services Tax therein in accordance with the *Excise Tax Act*, R.S.C. 1985, c. E – 15, as amended.

## **The Plaintiff**

2. The Plaintiff, Michael Jack, (hereafter referred to as the 'Plaintiff') is a member of a racialized minority group being that he is a Canadian of Russian-Jewish heritage and speak English with a heavy Russian accent.
3. The Plaintiff immigrated to Canada from Israel in June of 2000 and lived in Peterborough since September 30, 2000.
4. From January 2001, until August 2006, the Plaintiff studied and worked at Trent University in Peterborough, during which time he earned two degrees – Bachelor of Science in the Honours Program in Computer Sciences and Master of Science in the Applications of Modelling in the Natural & Social Sciences. He graduated from Trent University with a 92.6% cumulative average and during his schooling was the recipient of multiple awards and prestigious scholarships for his academic achievements, teaching assistance, interpersonal and leadership abilities, and research accomplishments.
5. From January 2007 to July 2008, the Plaintiff worked as a course instructor in the Computer Science department at Trent University.

## The Defendants

6. The Ministry of Community Safety and Correctional Services operating as the Ontario Provincial Police under the command of, then Commissioner Julian Fantino and now Commissioner Chris Lewis. The following officers mentioned in this Statement of Claim (hereinafter 'Claim'), by virtue of their positions and their actions towards the Plaintiff during the course of their duties are reflective of the actions of the Ontario Provincial Police: Constable Marc Gravelle, Constable John Pollock, Constable Shaun Filman, Constable Jennifer Payne, Constable Jamie Brockley, Constable Melynda Moran, Constable Mary D'Amico, Constable Richard Nie, Sergeant Brad Rathbun, Sergeant Robert Flindall, Sergeant Peter Butorac, Staff Sergeant Ronald Campbell, Inspector Mike Johnston, Staff Sergeant Chris Newton, Staff Sergeant Coleen Kohen, Superintendent Hugh Stevenson, Chief Superintendent Mike Armstrong.
  
7. The Ontario Provincial Police Association (hereinafter 'OPPA') under the direction of, then President Karl Walsh and now President Jim Christie. The actions of Constable Shaun Filman, Detective Constable Karen German, Sergeant Jim Styles and Constable Marty McNamara as mentioned in this claim, by virtue of their positions within the OPPA are reflective of the position of the OPPA.

## **Recruitment to the Ontario Provincial Police**

8. In August 2007, after several discussions with the Chief of York Regional Police in the Trent University weight-lifting room, during which the Chief advised the Plaintiff that his computer skills, multilingual skills and his military background constituted great assets in modern policing, the Plaintiff decided to pursue a career in policing.
9. In March of 2008, the Plaintiff obtained the Ontario Association of Chiefs of Police (hereinafter 'O.A.C.P.') Certificate of Results (hereinafter 'C.O.R.') as part of the mandatory set of requirements for an application with the Ontario Police Services.
10. On or about March 31, 2008, the Plaintiff applied to the York Regional Police Service and the Ontario Provincial Police (hereinafter 'OPP').
11. The Plaintiff was interviewed by the OPP on May 29, 2008, during which the two interviewing Sergeants, namely Sergeant (hereinafter 'Sgt.') Joanne Whitney and Sgt. Steve Haennel, were impressed with his level of intelligence and his level of computer skills and following the interview his application was expedited for hiring purposes.
12. The Plaintiff signed an offer of employment on or about July 25, 2008, with the OPP at which time he was informed that he would be posted at the Peterborough Detachment of the OPP.

13. It is noteworthy that on July 27, 2008, the Plaintiff was invited for an interview by the York Regional Police which he turned down in view of having accepted the position with the OPP.
14. The Plaintiff attended the Ontario Police College (hereinafter the 'OPC') in Aylmer from September 1, 2008, until November 28, 2008, and graduated with a 91.6 % cumulative average.
15. The Plaintiff was recognized by the OPC as being one of the top recruits in physical fitness by receiving a 100% on the Ontario Police Fitness Award.
16. From December 1, 2008, until January 9, 2009, the Plaintiff was trained at the Provincial Police Academy (hereinafter the 'PPA').
17. The Plaintiff was recognized by the PPA as being the top recruit in his class of 110 recruits in handgun use by receiving the 'Top Dog' award.

### **Placement with the Peterborough Detachment**

18. The Plaintiff was posted at the Peterborough Detachment of the OPP (hereinafter the 'Detachment') as a Probationary Constable beginning January 12, 2009.
19. Once placed at the Detachment, it became readily apparent that outsiders were not welcome. The Plaintiff was immediately subjected to numerous



acts of harassment and discrimination due to his status as a foreign borne individual and further due to his educational background and heavy Russian accent.

20. The Plaintiff later learned that prior to even arriving at the Detachment, some of the officers had already assigned him the racially derogatory nickname of 'Crazy Ivan' as they had learned in advance of his arrival that he was from Russia. He first learned of the nick name in October, 2010, from a meeting with Constable Duignan while at a Tim Horton's coffee shop in Peterborough. Cst. Duignan wrote the nick name on a paper napkin. Later on the Plaintiff got further corroboration of the existence of this nick name from another officer who is willing to provide testimony about it.

Sent: Wed 1/04/12 1:37 AM  
To: Diane Tapp (dmclaugh@bell.net)

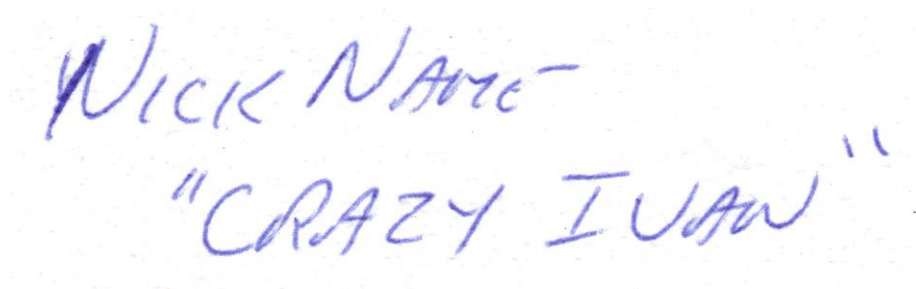
Mr. Tapp,

This is in response to a meeting with you concerning Mr. Jack. You ask me to address a couple of points and they are in addition to disclosure made earlier to the OPP. They are made in short point form to give the reader the basic understanding of the message.

- Mr. Jack had a nickname of Crazy Ivan. He was called this by members. I came to understand the nickname was associated to Mr. Jack because of his large gun collection.
- It was my observation that Mr. Jack often stayed after his shift to complete work assigned. He was consciences about completing his work on time.
- Mr. Jack was concerned about his appearance in uniform and it was always in good order.

Sincerely,

21. The napkin with Cst. Duignan's handwriting is copied as follows:



WICK NAME -  
"CRAZY IUAN"

22. It was upon this backdrop that throughout the duration of his employment with the detachment, as described herein, the Plaintiff was subjected to differential treatment, contrived negative performance reviews, overt discrimination and harassment, artificial and unsubstantiated complaints against him, unsubstantiated charge under the Highway Traffic Act filed by his supervising officer, reprisals for asserting his rights or voicing any objection whatsoever to the unequal treatment he received.
23. Between January 12, 2009, and August 20, 2009, the Plaintiff was assigned to the Platoon 'A' shift. The Plaintiff's shift supervisor was Sgt. Robert Flindall and his coach officer was Constable (hereinafter 'Cst.')
- Shaun Filman.
24. The Plaintiff was transferred to the Platoon D shift on or about August 21, 2009, based upon the investigation of OPPA, Detective Constable Karen German (hereinafter D/Cst. German) that revealed that he had been specifically targeted by members of his shift. As a result of his transfer to

the Platoon D shift, his new shift supervisor was Sgt. Peter Butorac and his new coach officer was Cst. Richard Nie.

25. Unfortunately, the transfer did little to alleviate the treatment to which the Plaintiff was subjected to at the Peterborough Detachment of the OPP, and as a matter of fact made it even worse, particularly given that Cst. Nie and Sgt. Flindall were next door neighbours and, as was the case among many of the officers of the Detachment, close friends. The Plaintiff's work environment was poisoned regardless of which shift he was transferred to.
26. Ironically, though the move was to give the Plaintiff a so called "fresh start", Sgt. Flindall became the Acting Staff Sergeant of the Detachment and thereby oversaw the entire detachment, even the Plaintiff's new platoon.

### **Overt Discrimination and Harassment**

27. During The Plaintiff's probationary period he was subjected to unwanted comments, jokes and harassment that in turn poisoned his workplace environment.
  - (a) Before even meeting his colleagues at the Detachment he had been nicknamed 'Crazy Ivan' due to his Russian heritage.

- (b) Over the first few months of his work at the Peterborough Detachment on multiple occasions he was reminded that he had a thick accent.
- (c) In yet another incident sometime during the spring of 2009, he was confronted by Cst. Melinda Moran who asked him if he could speak with a Canadian accent. It was Cst. Moran who also went to the extent of advising Sgt. Flindall that the Plaintiff had a dislike of women and that he was surreptitiously videotaping her. Both of the accusations were blatant lies.
- (d) As a cumulative effect of comments such as these, the Plaintiff became very self-conscious of his accent. He reduced his radio communications to a bare minimum and in a multitude of instances resorted to using his personal cell phone instead of the radio for the fear of being reminded of his accent again.
- (e) Towards the end of the Plaintiff's probationary period this poisoned work environment also spread to the civilian employees with whom he had little contact. Few of these employees would have had any exposure to the Plaintiff in his daily activities, yet he was progressively treated with increased disdain by some of the civilian employees. The rumours that circulated among them included statements that *'He could not be trusted'*, *'He was not altogether there'* and that *'He had problems.'*

## Differential Treatment and Derogatory Treatment

28. During The Plaintiff's eleven months probationary period he was also subjected to differential treatment by his supervisor(s) and colleagues.
29. The following are but a few examples of the differential treatment that the Plaintiff received while at the Detachment:
- (a) The Plaintiff observed that other rookies, who were not minorities and did not speak with an accent, were welcomed and supported by their respective coach officers within the Detachment. Whereas, from the very beginning the Plaintiff's coach officer, Cst. Filman displayed a very noticeable lack of interest in his training and development as an officer.
  - (b) For example, when they were on the road, most of the time Cst. Filman would be operating the cruiser while the Plaintiff was sitting in the front passenger seat observing Cst. Filman constantly either text messaging or talking on his mobile phone. The Plaintiff truly felt like a burden to Cst. Filman.
  - (c) In another example, the Plaintiff can assuredly state that from the date he arrived at the Detachment to the date he was placed on another platoon, Cst. Filman rarely sat beside him when he did any reports at the computer. In fact the Plaintiff recalls it to be only a handful of times and even those times that he had Cst. Filman

beside him were times he had to ask for his assistance. The Plaintiff quickly realized that there was no willingness on Cst. Filman's part to want to sit beside him to teach and assist him in the preparation of his reports. This realization was further confirmed when the Plaintiff once asked Cst. Filman, after being on his own for a month if Cst. Filman wanted to see what the Plaintiff was doing with respect to his task list to which Cst. Filman responded '*No, I can get all that off Niche.*' Niche was the OPP's Record Management System.

- (d) At times when the Plaintiff would attend the Detachment on his days off just to access the computer and read up on other officers' reports about various occurrences or just to work on his task list so as to allow himself maximum time on the road he would notice on many occasions other rookie officers seated at the computer with their respective coach officers beside them with conversations flowing freely between them. The Plaintiff envied that.
- (e) Despite the fact that the role of a coach officer is to ensure that the new recruits under their supervision are properly prepared to handle the situations with which they are presented, the Plaintiff was almost wholly left to his own devices to figure out how to do arrests, how to complete reports, how to handle complex investigations, and how an investigation unfolds from a walk-in complaint to the arrest and preparation of the crown brief stages, etc.

- (f) Though there were instances where Cst. Filman did show some assistance to the Plaintiff in the preparation of reports and crown briefs these were very few instances with the majority of these few instances being times that the Plaintiff had to advise Cst. Filman that he should be showing him how such reports, crown briefs and/or investigations were to be prepared and conducted.
- (g) Cst. Filman exhibited a noticeable lack of desire and or an unwillingness to train the Plaintiff or share his knowledge with the Plaintiff, which was his duty. This is clearly evident from the first five Performance Evaluation Reports (hereinafter 'PER') that Cst. Filman prepared. The PERs were filled with copy/pastes from previous PERs, had specific examples which were clearly out of the time period for which the PER was prepared and had numerous spelling mistakes. Cst. Filman's persistent refusal to properly train the Plaintiff made the Plaintiff feel that he was not welcome and actually a burden to Cst. Filman.
- (h) The Plaintiff was the only one reprimanded in incidents involving other officers.
- (i) An example of this involved an incident that took place on January 30th, 2009, only a few weeks after being placed at the Detachment. While working a day shift and accompanied by Cst. Jeff Gilliam, in an attempt to stop a speeding motorist the Plaintiff misread the U-turn

and put the nose of the cruiser in the ditch with no resulting damage to the cruiser.

- (j) A passing motorist stopped to render assistance by offering to pull the cruiser out of the ditch. The motorist used his own personal rope to tie to the rear axle of the cruiser which was still up on the shoulder of the road. Cst. Gilliam, being the senior officer present concurred with the decision to use the motorist for assistance. Cst. Gilliam and the Plaintiff got back into the cruiser before the motorist began pulling the cruiser out. In the process of removing the cruiser from the ditch, the cruiser struck a metal cautionary sign and sustained damage.
- (k) Sgt. Flindall attended at the scene of the accident. Due to the failure to follow OPP policy to call a tow truck in a circumstance such as this, Staff Sergeant Ron Campbell (hereinafter 'S/Sgt.') issued a negative 233-10 (an internal documentation) against the Plaintiff. The document rebuked the Plaintiff for 'inadequate operation of a police vehicle.' As a result, the Plaintiff was also negatively rated in the Police Vehicle Operations section of his Month 2 PER.
- (l) Despite the fact that the Plaintiff was accompanied by a more senior officer (2 years of experience) who was familiar with the OPP policy, the Plaintiff was the only one to be reprimanded and negatively documented for the incident. The Plaintiff knew this was wrong for he ought to have only been held accountable for the improper U-turn



which placed the nose of the cruiser in the ditch. The damage to the cruiser on the other hand should have also rightfully fallen on the senior officer who ought to have called for the supervisor and a tow truck immediately. The Plaintiff can assuredly state that he was the only one issued a negative 233-10 based on S/Sgt. Campbell's comments to him. S/Sgt. Campbell told the Plaintiff that the negative documentation should have been shared by both officers, yet for some reason it was not.

- (m) Furthermore, the Plaintiff's coach officer, Cst. Filman never discussed the accident with the Plaintiff apart from uttering something to the effect that it was not his coaching, in the presence of other officers thereby further poisoning the Plaintiff's work environment.
- (n) There were also occasions where the Plaintiff handled investigations but his work and any commendations were credited to other officers as though he had no involvement in the investigation.
- (o) An example of this was the investigation the Plaintiff conducted with respect to a Break and Enter on August 6, 2009. Constable D'Amico was named as the investigating officer even though the Niche indicated that the occurrence was assigned to the Plaintiff and it was him that conducted all aspects of the investigation. Sgt. Flindall recognized the efforts of all involved officers of the Platoon with the exception of the Plaintiff. He indicated in an e-mail to the involved

officers including the Plaintiff that positive documentation was forthcoming to all. He gave all of the involved officers positive 233-10s but gave the Plaintiff a negative 233-10.

- (p) The Plaintiff was scorned by senior officers for offering assistance. Once during a morning briefing in the spring of 2009, the Plaintiff offered his assistance in developing a digitized system to prepare Crown Briefs. Having a solid background in the Computer Science field and recollecting that his interviewing officer, during the initial stages of his application for employment commented about how useful his knowledge in computer applications would be the Plaintiff saw an opportunity to put his skills to use and be recognized as a team player.
- (q) However, not only were the Plaintiff's efforts not appreciated, following the shift briefing he was told by Cst. D'Amico who was second-in-command at the time in a vexatious manner and in presence of other Platoon 'A' officers, *'You should keep quiet when a senior officer speaks. You might come across as knowing too much and it is not good for your career.'* Cst. D'Amico further told the Plaintiff that there had been another officer who 'knew too much' and that he no longer worked at the Peterborough Detachment.
- (r) The Plaintiff viewed Cst. D'Amico's comments as a threat, especially given her seniority and level of influence in the Detachment. As a

result of her comments, the Plaintiff feared expressing his opinions or offering his assistance.

- (s) The Plaintiff was singled out for his accent. The Plaintiff was the only one in the Detachment who suffered ridicule for merely speaking. As a matter of fact the Plaintiff was the only one at the Detachment that spoke English with a thick accent.
- (t) The Plaintiff was also singled out by Sgt. Flindall by being assigned calls for service that was beyond his level of knowledge and expertise at the time. Later, in a most derogatory and vexatious manner the Plaintiff was chastised by Sgt. Flindall who told him, '*I have never had such an incompetent recruit before.*' His disgust of the Plaintiff was expressed very vividly.
- (u) In what appeared to be a contradiction to the Plaintiff previous assertion, having voiced some objections to how he was being treated, Sgt. Flindall also singled the Plaintiff out as being incapable of handling a simple call like a single motor vehicle collision.
- (v) For example, on December 8, 2009, while working a night shift the Plaintiff was dispatched to a motor vehicle collision in which a truck had struck a deer. The Plaintiff had attended and dealt with a dozen of those on his own before. However, when the Plaintiff asked Cst. Postma, the officer in charge of the shift, what his orders were with respect to handling the call, he advised the Plaintiff that he had

spoken with Acting Staff Sergeant Robert Flindall and that the Plaintiff was not allowed to attend the accident on his own.

- (w) Cst. Postma further added that he knew the Plaintiff could handle a simple motor vehicle collision 'car vs. deer' by himself and that it was embarrassing for the Plaintiff to be accompanied by another officer for such a simple call, but that he had to comply with the Acting Staff Sergeant's orders.
- (x) Throughout the Plaintiff's tenure at the Detachment, he worked more shifts and took less vacation time than any other officer in the Detachment. Further, as a result of this fact and despite being a new recruit, the Plaintiff was often left on his own in violation of the training protocols advocated by the Ontario Provincial Police Association.
- (y) During the first eight months of the Plaintiff's probationary period he only received two progress meetings despite that these meetings were supposed to take place on a monthly basis. With the exception of the last three PERs all previous ones falsely alleged that progress meetings were held with him and that his PERs were reviewed with him by his supervisor and or coach officer.
- (z) As a result of being criticized by senior officers in the hearing and presence of other officers as well as being sternly berated by Cst. Jennifer Payne in the Constables' office where other officers were

present, fellow officers would often openly reprimand and belittle the Plaintiff.

- (aa) On one occasion the Plaintiff was ordered by Cst. Filman to lay a charge that was not properly substantiated by the evidence at the time. Once the matter was thrown out of court the Plaintiff was left to then suffer the humiliation and shame of having laid the unsubstantiated charge.
- (bb) Finally, on one occasion on July 23, 2009, the Plaintiff's supervising officer, Sgt. Flindall, having directed him to have an individual arrested and charged with Criminal Harassment also ordered him to continue the detention by having the individual held for a 'show cause' hearing the next day before a Judge or Justice so as to get the individual released on certain conditions. This was contrary to everything that the Plaintiff was taught since there was legally no statutory authority to justify the continued detention of such an individual especially since the Plaintiff, as the officer in charge of the investigation, could impose the same conditions that a Judge or Justice would.
- (cc) Upon advice of another senior officer the Plaintiff released the prisoner on a Promise to Appear and Undertaking before an officer in charge with certain conditions. However, having been alerted while he was on vacation of what the Plaintiff had done Sgt. Flindall, upon his return reprimanded him sternly stating, *'I have never had such an*

*incompetent recruit yet.*' Sgt. Flindall went on to tell him that his job was in jeopardy for mishandling the investigation and taking too long to complete his investigation.

- (dd) As a result of the overall treatment thus far, the Plaintiff contacted the Ontario Provincial Police Association (hereinafter OPPA) on August 4, 2009, and conveyed his concerns to them. However, it was not long after doing so that the Plaintiff started experiencing severe reprisals.

### **Unsubstantiated Charges under the Highway Traffic Act**

30. The Plaintiff was charged by his supervising officer Sgt. Robert Flindall under the Highway Traffic Act for 'Failing to Yield to Traffic on Through Highway'. The conduct complained of would have been more efficiently and appropriately dealt with by way of a conversation with the Plaintiff. As the Plaintiff was later advised, the charge was harsh, uncalled for and normally ought to be used as a result of an accident.
31. The specifics of the incident are as follows:
- (i) On August 15, 2009, the Plaintiff was working a day shift. At approximately 10:30 am Sgt. Flindall, Cst. Payne, Cst. D'Amico, Cst. Moran and the Plaintiff attended a family dispute call. They drove to

the call with lights and sirens on. The call turned out to be nothing and was cleared as non-reportable to the Plaintiff's badge.

- (ii) While en route from the call to the Detachment the Plaintiff was charged by Sgt. Flindall under the Highway Traffic Act for 'Failing to Yield to Traffic on Through Highway'. Sgt. Flindall also issued the Plaintiff a negative 233-10 which accused the Plaintiff of 'inadequate operation of police vehicle'. Knowing that the Plaintiff had done nothing wrong to deserve this he felt utterly helpless and his career was literally at Sgt. Flindall's mercy.
- (iii) Due to the nature of the charge the Plaintiff requested and promptly obtained OPPA approval to cover the costs of the legal assistance to contest the allegation. The legal fees were approved by the Vice President of the 8th Branch of the OPPA, Sgt. Paul Zeggil, from Northumberland Detachment.
- (iv) Upon discussing the incident with Sgt. Zeggil, he indicated that his reason for approving the Plaintiff's request for coverage of his legal fees was that after reviewing the synopsis he believed the matter could have been handled differently by Sgt. Flindall.
- (v) As a result of the compulsory disclosure obligations the Plaintiff later learned that it was Cst. Payne who orchestrated the laying of the charge.

- (vi) The Plaintiff was exonerated of the charge by Justice of the Peace Carl Young on August 12, 2010. Nevertheless, the effect of the charge on the Plaintiff's career was evidenced in Month 8 PER, wherein Sgt. Flindall negatively rated the Plaintiff in two separate sections, namely, the Police Vehicle Operations and Personal Accountability.
- (vii) In the Personal Accountability section Sgt. Flindall accused the Plaintiff of not taking any responsibility for his actions with respect to receiving the Provincial Offence Notice. This accusation was based on the fact that the Plaintiff refused to simply plead guilty to the charge and instead sought to clear his name through the judicial system as he was entitled to do.
- (viii) It is the Plaintiff's belief that these kinds of negative reviews in his PERs demonstrate the amount of animosity that he experienced and was subjected to by his supervisor(s) and peers at the Peterborough Detachment.
- (ix) PERs such as these re-enforced the Plaintiff's feeling of hopelessness and despair as a result of his status as an immigrant and a minority who spoke with a thick accent and also one that few officers wanted to associate with. Further, the Plaintiff is of the belief that this charge was nothing less than a reprisal action for contacting the OPPA and seeking their assistance from the ongoing harassment and that the charge was specifically orchestrated for the



purpose of poisoning the Plaintiff's workplace environment and building up a file to justify the termination of his employment.

### **Failure to Address the Conduct at Issue**

32. The Plaintiff was having a tough time adjusting to the unwelcome and unsupportive environment created by some officers on his shift. Several of the key officers at the Peterborough Detachment, primarily on the Platoon 'A' shift made the Plaintiff's life very stressful. The Plaintiff was constantly made to feel as though he was not welcome at the Detachment.

33. The Plaintiff attempted to address his concerns with the OPPA and with the senior and supervising officers on numerous occasions, but unfortunately the discriminatory conduct itself was never addressed by the OPPA and the management of the OPP, even though they knew it was occurring. The following are some instances wherein the Plaintiff sought the assistance of those in positions of authority:

- (a) Being that Cst. Filman was also the Detachment's OPPA representative, the Plaintiff advised him of his concerns with respect to the derogatory remarks that were being made by other officers. However, the OPPA and/or Cst. Filman did nothing to intervene or put an end to the conduct.

- (b) In early May 2009, the Plaintiff advised Sgt. Flindall he did not feel he was getting the proper coaching and he had no one to seek help from. The Plaintiff also advised Sgt. Flindall of the derogatory comments being made by Cst. D'Amico. Despite acknowledging the Plaintiff's concerns, the discriminatory conduct on the part of his peers continued.
- (c) On another occasion sometime in June of 2009 in an attempt to seek an understanding and assistance from Cst. Payne who had been assigned as the Plaintiff's mentoring officer the Plaintiff divulged to her that he felt he was a nuisance to Cst. Filman and that he was not receiving the proper guidance and training as required. Though Cst. Payne did assist the Plaintiff on occasion it was through his specific requests for assistance that she did so. The Plaintiff soon came to realize that she was not willing to voluntarily assist him. This realization, along with her openly chastising the Plaintiff and false accusations of winking at her caused the Plaintiff to fear asking her for assistance.
- (d) On August 4, 2009, the Plaintiff called Staff Sgt. Colleen Kohen addressing his concerns and seeking advice. S/Sgt. Kohen was the Staffing Officer in the Human resources in the OPP Headquarters in Orillia. Despite having been instructed at the PPA to contact her if, as Probationary Constables, they were experiencing problems, the Plaintiff was advised by S/Sgt. Kohen that she worked with coach officers, not probationary officers. Instead, the Plaintiff was advised to contact the OPPA.

- (e) Upon contacting the OPPA, the Plaintiff was put in contact with Detective Constable (hereinafter D/Cst.) Karen German, the President of the 8th Branch of the OPPA. On August 4, 2009, D/Cst. German advised the Plaintiff that she was going to look into his case.

### **Reprisals for Asserting the Plaintiff's Rights through Negative Performance Evaluation Reports**

34. The Plaintiff was having a tough time adjusting to the unwelcome and unsupportive environment created by some officers on his shift. Several of the key officers at the Peterborough Detachment, primarily on the Platoon 'A' shift made the Plaintiff's life very stressful. The Plaintiff was constantly made to feel as though he was not welcome at the Detachment.
35. The probationary period of the Plaintiff's employment lasted a period of approximately 11 months during which time he was evaluated monthly over a spectrum of 27 core competencies. The Plaintiff's first few monthly PERs were mixed with mainly positive and some negative ratings. However, not long after the Plaintiff contacted the Association seeking help from the ongoing harassment and false accusations, he was subjected to an unusual amount of negative documentation in comparison to his cohorts whose performance was the same as his own.

36. On August 20, 2009, at approximately 5:40 pm, the Plaintiff was presented with his Month 6 & 7 PER by Sgt. Flindall. There were 10 'Does Not Meet Requirements' ratings. Ironically, just the day before the Plaintiff was handed his Month 5 PER by Sgt. Flindall which had no 'Does Not Meet Requirements' ratings, and which was overdue by two-and-a-half months.
37. The evaluator's name on the Month 6 & 7 PER was Cst. Filman (who was on vacation at the time) yet the evaluation was prepared by Sgt. Flindall and by Cst. Payne and all the negative comments were thoroughly documented by Sgt. Flindall. The Plaintiff witnessed Sgt. Flindall working on it and in comparison with the previous PERs this one was almost devoid of spelling and grammatical errors aside from not having the coach officer's signature at the end of it.
38. The majority of the comments in the Month 6 & 7 PER in addition to being false, frivolous, vexatious and made in bad faith, dealt with the information which the Plaintiff had divulged in confidence with other colleagues. The Plaintiff was the only police officer at the Peterborough Detachment at that time being subjected to this type of treatment and unusual and extraordinary demands for his level of police experience by his supervisor(s).
39. Sgt. Flindall also handed the Plaintiff two in-house negative 233-10s which accused him of 'inadequate conduct.' It was at that time that the Plaintiff realized that he was being severely reprimed for standing up for his rights.

The Plaintiff realized that he had been under the constant surveillance by several of his colleagues. Immediately following his conversation with Sgt. Flindall he told his sergeant that he was going to contact the Association for assistance.

40. Sgt. Flindall told the Plaintiff to find a quiet spot, review the negative documentation and his Month 6 & 7 PER and sign them hopefully before 6:00 pm which was the end of their shift.
41. The Plaintiff was shocked that he was being slammed with so much negativity all at once and promptly contacted D/Cst. German on her cellular phone. Based on the advice of the D/Cst. German the Plaintiff declined to sign the two negative 233-10s and told Sgt. Flindall that he would like to have time to study his Month 6 & 7 PER, have it reviewed by an OPPA representative and respond to it accordingly before signing it. However, the Plaintiff soon found out that there was the word 'REFUSED' in the area of his signature even though he had merely requested for some time to review it. The Plaintiff had never told Sgt. Flindall that he was refusing to sign the evaluation.
42. The number of negative ratings in the Plaintiff's monthly PERs increased contemporaneously with his assertion to the OPPA that he was not being properly coached and that he was being harassed by his peers.

## **Transfer to Platoon 'D' and Continuation of the Discriminatory Treatment**

43. D/Cst. German investigated the Plaintiff's concerns and concluded that he had been targeted by some of his platoon members and by Sgt. Flindall. The Plaintiff's fears that he was specifically targeted and reprimed as a result of having voiced his concerns was substantiated by D/Cst. German who advised the Plaintiff that Sgt. Flindall had requested that his colleagues keep the Plaintiff under surveillance and report to him about his performance. Some officers even went to the extent of maintaining a separate notebook solely about the Plaintiff which in itself was in direct contravention of the Ontario Provincial Police Orders (hereinafter 'Police Orders').

44. As a member, the OPPA had an obligation imposed by law to protect the Plaintiff and ensure that the appropriate action was taken should any preliminary investigations reveal violations of the Code. D/Cst. German's conclusion as President of the 8th Branch of the OPPA did reveal such violations not to mention violations of Police Orders as well. However, she did not include this information in her e-mail to the Plaintiff other than state in the e-mail that she had spoken with the Acting Superintendent Doug Borton about the Plaintiff's issues at length and it was the Acting Superintendent Doug Borton's decision to move the Plaintiff to another platoon. To wilfully omit to mention the existence of such violations ultimately reflects the OPPA's willingness and desire to just cover it up and not do anything about it.

45. As a result of the findings of D/Cst. German, the Plaintiff was re-assigned from the Platoon 'A' shift to the Platoon 'D' shift. The Plaintiff was also assigned a new Coach Officer, Cst. Richard Nie, who unbeknownst to the Plaintiff was Sgt. Flindall's next-door neighbour, under the command of Sgt. Butorac. This information was formally communicated to the Plaintiff in a meeting that was held on August 19, 2009, between the Plaintiff, S/Sgt. Ron Campbell and Sgt. Flindall in the presence of an OPPA representative, Cst. Mitch Anderson.
46. S/Sgt. Campbell re-assured the Plaintiff a few times during the meeting that the transfer was not to be viewed as a punishment. However, Sgt. Flindall felt it necessary to inform the Plaintiff that he was in favour of the transfer on the basis that the Plaintiff had alienated the majority of the officers on his shift.
47. During the Plaintiff's time off duty in late August 2009, the Plaintiff was eagerly looking forward to a meeting with his new coach officer so that they could converse and get to know each other. Despite the Plaintiff calling Cst. Nie's home and asking for such a meeting, it never took place.
48. On September 9, 2009, the Plaintiff returned to work on Platoon 'D'. It was on this date that the Plaintiff submitted a rebuttal to his Month 6 & 7 PER signing and dating the last page. However, the PER had already been forwarded to the Human Resources in GHQ in Orillia with the word 'REFUSED' in place of the Plaintiff's signature. Ironically upon preparing

his rebuttal to the Month 6 & 7 PER the Plaintiff found himself facing a marked increase in the number of negative ratings in his Month 8 PER.

49. It was on or about this first day on his new platoon that the Plaintiff, fearing that he might be accused of something or be reprimanded for leaving the presence of his new coach officer, asked Cst. Nie for permission to go to the washroom. Upon reflection much later the Plaintiff realized how much control his superiors exercised over him, for him to, by that time think it necessary to ask such a silly question.
  
50. The Plaintiff was assigned a new patrol zone – Zone 2 (the Plaintiff worked in Zone 3 for the first 8 months. It is noteworthy to mention that it takes a few months to adequately learn zone geography, which the Plaintiff did). The Plaintiff was forbidden to work on his own. The Plaintiff was forbidden to work paid duties. The Plaintiff was forbidden to work over time. From the first hour on the new platoon Cst. Nie started constantly finding ‘faults’ with the Plaintiff and meticulously documenting them in his notebook and in the Plaintiff’s PERs. Later on and in reflection the Plaintiff realized why he was doing this. The targeting did not stop and the neighbourly relationship between Cst. Nie and Sgt. Flindall meant that the plan to terminate the Plaintiff’s employment was being actively carried on.
  
51. Sometime in the middle of September 2009, the Plaintiff was given a copy of his Month 8 PER with 17 negative ratings. It was this evaluation that re-enforced the belief that the Plaintiff’s days with the OPP were numbered



and that he had been marked for termination for the PER that was given to him already had the boxes checked off indicating that a meeting had taken place and that the Plaintiff had an opportunity to review and sign the PER. The most important re-enforcement of this belief was the word 'REFUSED' printed in the place of the Plaintiff's signature.

52. From the beginning, Cst. Nie treated the Plaintiff inadequately and at times inappropriately. He frequently belittled and humiliated the Plaintiff. For example after the Plaintiff had bought a few cream puffs and éclairs on occasions at a local Coffee Time shop, Cst. Nie nicknamed the Plaintiff 'Cream Puff' and advertised his new nickname to other officers on the shift. The Plaintiff's self-esteem was constantly being eroded by this kind of treatment.
53. The Plaintiff recalls having been advised by a fellow officer to be very careful and to always remember that 'the pen is mightier than the sword.' Following the Plaintiff's assignment to Cst. Nie, this advice proved to be accurate. The Plaintiff received repeated negative performance reviews for illegitimate reasons under Cst. Nie's supervision.
54. No matter what the Plaintiff did or how he did it, Cst. Nie almost always found a problem with him. The Plaintiff grew fearful of his presence next to him. The Plaintiff was afraid of asking Cst. Nie questions. Every time the Plaintiff asked Cst. Nie a question he anticipated that Cst. Nie would find something wrong with either the question or with the Plaintiff.

55. The Plaintiff knew that if he disputed the negative comments in his performance evaluation reports he would have been targeted even more ruthlessly. This was evidenced when the Plaintiff had prepared a detailed rebuttal to his Month 6 & 7 PER and handed it in to his new supervisor in September 2009. In the Plaintiff's Month 8 PER he subsequently got 17 negative ratings which was seven more than the previous one. The Plaintiff had learned the hard way. The Plaintiff must re-iterate that by that time, his confidence, inspiration, decisive insight and belief in what he was doing were severely eroded.
56. Some of these PERs were wrought with fraudulence and had an alarming amount of specific examples that were carried over from previous evaluations where there was a rating of 'Meets Requirements' with new ratings of 'Does Not Meet Requirements' without any new information being added.
57. The Plaintiff had come to Canada to create a life for himself and he had great respect for this country that advocates Human Rights. However, in light of what the Plaintiff experienced he was simply shocked at how blatant the OPP was in violating the Code.
58. The Plaintiff's health was deteriorating. He lived his life in fear and absolutely hated coming to work. Also, due to the Professional Standards Bureau investigation launched against him, and further detailed below, the Plaintiff felt he was isolated with no rights.

59. Towards the end of October, 2009, the Plaintiff again raised some of his concerns over the discriminatory treatment he continued to experience – this time to his new sergeant. After reviewing the memorandum that the Plaintiff had prepared detailing his concerns, Sgt. Butorac stated that while he was sympathetic to the Plaintiff's plight *'They did not like whiners.'*
60. The memorandum the Plaintiff gave to Sgt. Butorac:

### **Is my case hopeless or can I still climb the mountain?**

By Michael Jack

19-Oct-09

If you want to help me then in order for me to regain my confidence back and ability to function I am asking you to loosen the grip on me and give me some independence. While being doubled up with Cst. Rich Nie appears to be good from the educational perspective, I feel that it has deprived me of the psychological air and drove me further to believe that I am a failure.

When I am being closely watched I cannot be myself. I become very hesitant at everything I do and continuously expect to be given directions and permissions. My mental and emotional focuses are directed on trying to stay out of trouble. In other words, instead of looking forward and doing my job with passion I get very tense and nervous about everything I do and go forward while looking backward in anticipation of being reprimanded again. I therefore continue "walking into the trees" over and over again.

It has been my life experience that when I knew what I wanted to get I always got it. I have also proven to myself that consciousness creates. We can literally create our lives with guided imagery and deliberate intention. In my current predicament the constant presence of a "Big Brother" next to me takes my will away and I remain blind and unable to be active, let alone proactive.

If you truly want to help me, I am therefore asking you to provide me with an opportunity to do my job without being scared. I am asking you to give me back the psychological air that I so desperately need. I am tired of being constantly stressed out. I got sick twice recently literally back to back. I know for the fact that as the result of my fear of losing the job and because I live my life in a constant state of stress my immune system is down. There is no way I can even be remotely productive or do any better under these conditions. No matter what development plans we put in writing on paper, they won't work. I have to see and feel my success through first and it can only happen when I get my will back.

I am not sure what you are ultimately trying to do with me. It is either you are trying to help me out so I can continue working on this platoon or you are protecting yourself from liability when the time comes to recommend me for dismissal from the employment with the O.P.P. I want to believe it is the former, rather than the latter, but I honestly do not know.

I want to continue working here and while I do need support and guidance at times, I feel that the constant presence of the "Big Brother" impedes my progress more than promotes it. I feel that I would be in a better position to help myself, the public, and the platoon if the "grip on my throat" was loosened a bit.

61. Sgt. Butorac failed to address the Plaintiff's concerns surrounding the discriminatory treatment and specific targeting that he was enduring from Cst. Nie. The conduct was allowed to continue and the Plaintiff's PERs were among the tools used to malign the Plaintiff's reputation.
62. On November 19, 2009, during his Month 10 PER meeting with Sgt. Butorac and Cst. Nie, the Plaintiff in a frank manner voiced his concerns regarding the PER. The Plaintiff was subsequently negatively rated for speaking out in the Respectful Relations section in his Month 11 PER.

#### **Artificial and Unsubstantiated Internal Complaint**

63. On September 23, 2009, following the Plaintiff's transfer to the Platoon 'D' shift, he was served with a Notice of Internal Complaint regarding an internal complaint that had been filed against him on or about September 11, 2009. The complaint alleged that the Plaintiff was associating with Undesirables and indicated that as a result he was under the investigation by the OPP's Professional Standards Bureau (hereinafter 'PSB'). The memorandum with the allegation was from Chris Newton, manager of the PSB and was assigned for investigation by D/Sgt. Tym Thompson.
64. The complaint was filed in contravention of section (1) (a) (vi) of the *Police Services Act* R.S.O. 1990, c. P. 15.

65. The complaint in itself was completely vexatious and discriminatory for the OPP was alleging that the Plaintiff was associating with Albanians who had Criminal Records and whom the OPP believed to be involved in Albanian organized crime. It was vexatious and discriminatory, for the OPP was referencing Canadian Albanians who had a criminal record as Undesirables. No Canadian citizen deserves to be referred to as an undesirable especially by a Ministry of the Government of Ontario.
66. In early December 2009, the Plaintiff received a formal memorandum (dated November 25, 2009) from the PSB Commander, Chief Superintendent Ken C. Smith that the file was closed as the complaint that the Plaintiff was associating with undesirables was unsubstantiated due to insufficient evidence. Though the Plaintiff would have liked to have seen the wording that 'the complaint was simply not true' the complaint served a purpose of alienating the Plaintiff further from the rest of the Detachment. The wording used clearly implied that though there was some evidence, there was not enough evidence to substantiate the allegation.
67. The Plaintiff is of the firm belief that the complaint was filed with the sole purpose of further poisoning his workplace environment, poisoning the minds of the upper echelon and management of the OPP who worked in the General Headquarters in Orillia, maligning the Plaintiff's reputation, and building up a file to justify the termination of the Plaintiff's employment. The Plaintiff believes this based on a simple question that can be asked: How can a six-year old photograph be deemed as articulable cause for an

allegation of associating with undesirables especially when the photograph was shown by the Plaintiff to a member of the Crime Unit, Constable Brockley to see if anyone is recognized as being involved in drug activity?

### **Termination of Employment**

68. On the evening of December 13, 2009, the Plaintiff was served with a Notice of Proposed Release from Employment (hereinafter the Notice) together with the Performance and Conduct Requirements of a Recruit Constable by Acting Detachment Commander S/Sgt. Mike Reynolds. The recommendation that the Plaintiff be released from the employment with the OPP was made based on his alleged failure to meet the requirements of the position as a Probationary Constable. The Notice stipulated that the Plaintiff had until December 15, 2009, to make a written submission or to meet with the Chief Superintendent Mike Armstrong in person on December 15th, 2009, and address his concerns before a decision to terminate his employment was made. There appeared to be a faint ray of hope.

69. That did not turn out to be the case as, immediately upon being ushered into the presence of Chief Superintendent Mike Armstrong on December 15, 2009, he proceeded to very bluntly state that the Plaintiff had two options: either to sign the resignation letter that he had already prepared or be fired. Chief Superintendent Mike Armstrong then requested the

Plaintiff's phone number which he wrote down on a pre-printed sheet of the Plaintiff's resignation letter.

70. Of the four recruits that the Plaintiff started with at the Peterborough Detachment, the Plaintiff was the only one who was the minority, only one (in the whole detachment) who spoke English with an accent, only one who was not originally from the Peterborough area, only one who had a racially derogatory nickname 'Crazy Ivan' secretly assigned to him and the only one not to secure permanent employment with the OPP.
71. Following the termination of the Plaintiff's employment, D/Cst. German advised the Plaintiff that he had started at a very bad detachment within the OPP. Unfortunately, she was unwilling to put this down in writing and unfortunately this did little to ease the emotional trauma that the Plaintiff suffered as a result of his experience with the OPP. The Plaintiff's job was not just a paycheck; it was an essential component of his sense of identity, self-worth and emotional well-being.
72. The Plaintiff is also of the firm belief that his dismissal from employment with the OPP was orchestrated by a few officers from the Peterborough Detachment who were biased against the Plaintiff and who targeted him as a result of his status as an immigrant and his ethnic differences. The majority of the officers in the Detachment were locals from the Peterborough area. Moreover, blood relationships and nepotism flourished at the detachment.

73. The Plaintiff's belief is based on information passed on to him from his Paralegal friend, Marc Greco whom he retained to represent him with his *Highway Traffic Act* matter. Though Mr. Greco had someone else who was unknown to the Plaintiff act in his place in order to preserve the integrity of the justice system he is able to provide testimony as to what was said to him or passed on to him while working out Gold's Gym, a fitness facility wherein some members of the Detachment exercised, namely:

*"... I heard other officers make unfavourable comments regarding Michael Jack. OPP officer Marc Gravelle was a primary source with respect to these types of comments. He criticized me for representing Michael for his POA matter. He told me that Michael Jack was crazy, a loose cannon and suggested that I distance myself from him. The comments were made or passed to me while at Gold's Gym. Obviously, I did not heed Marc's warning as I did continue in my representation of Michael Jack."*

### **Systemic Discrimination**

74. It is noteworthy that, as previously mentioned, the majority of the officers at the Detachment were individuals who were born and raised in the Peterborough area.

75. The Plaintiff is not the only individual in the Detachment to have suffered discrimination on the basis of a protected ground. To the best of the



Plaintiff's knowledge and belief other officers including Constable Lloyd Tapp and Constable Harry Allen Chase both of whom were minority officers and not from the local area were all subjected to similar targeted discriminatory treatment at the Peterborough Detachment.

76. Based on the information the Plaintiff has collected, it would appear that minorities are treated differently at the Peterborough Detachment and have difficulties in successfully completing the probationary period.

#### **Similar Fact Evidence**

77. As mentioned earlier Cst. Nie was also the coach officer of former probationary officer, Mr. Harry Allen Chase, who was terminated from his employment through repeated negative performance evaluation reports. Mr. Chase was a visible minority being that he was an African Canadian with a Native American heritage.
78. Though Mr. Chase had served with the Canadian Armed Forces for over twenty years and been in charge of a squadron and personnel and though he was held in high regard at the Ontario Police College and the Provincial Police Academy, the Detachment claimed that he had a learning disability with regards to his communication. Ironically, John Dawson, a white Canadian probationary recruit who arrived at the Detachment around the

same time as he did and spoke with a severe stutter managed to pass his probationary period.

79. After Mr. Chase's dismissal from employment with the OPP, he filed a grievance with the Association for wrongful dismissal and a complaint with the Human Rights Commission of Ontario for dismissal based upon the alleged disability and failure of the OPP to accommodate. The OHRC forwarded his complaint to the OPP and since he had filed a grievance with the Association, the Association stepped in. The OHRC subsequently received a correspondence from the OPP that the Association was looking into this. Hence, the OHRC corresponded with him that they would no longer be handling his matter since it appeared that the Association was looking into it.

80. However, as alluded to earlier and now stated, the Association appears to have loyalty ties with the OPP and tends to protect the Image of the OPP, because approximately a year after the OHRC removed themselves from the matter, thus effectively curtailing Mr. Chase's option of re-filing a complaint with the ORHC, the Association communicated with him that there were no grounds to go any further with his matter and that the OPP would be reimbursing him for his tuition fees that he paid to the Ontario Police College.

81. Furthermore, the Plaintiff is aware that Cst. Lloyd Tapp, having served almost fifteen years with Toronto Police Service (hereinafter 'TPS') without

having the need to file any complaints with the Tribunal found himself having to do so shortly after arriving at the Detachment. His five applications outlining numerous violations were set for a five day hearing and on day three the OPP and his Counsel negotiated a settlement.

82. The Plaintiff is aware that Constable Tapp was targeted, treated differently than others, had his work environment poisoned, had false complaints laid against him, was subjected to an unusual amount of charges under the PSA and even falsely charged under the Highway Traffic Act. The latter being an incident that wrought havoc on his family until the charges were dismissed after an ensuing trial. However, the damage had already taken its toll on him. He was diagnosed with Post Traumatic Stress Disorder. The OPP subsequently transferred him to the City of Kawartha Lakes Detachment in April of 2009, where he was the only visible minority officer there at that time. It was not long afterwards that the OPP managed to coerce him into a Medical leave of absence and he is currently on disability benefits with the OPP's insurance company.

83. The Plaintiff is aware that there are other minority officers within the OPP who have been discriminated against but are reluctant to come forward due to fear of reprisals.

84. Based on the aforementioned the Plaintiff is of the firm view that the OPP does discriminate against minorities that attempt to assert their constitutional rights. What is common in the three individuals mentioned

above is that they are all minorities, they were not locals to Peterborough County, they were educated with considerable life and work experience and they were not liked at the Detachment. The Plaintiff firmly believes that within a year of this Claim being publicized more victims within the OPP will get the courage to come forward.

### **Effects of Discrimination**

85. Prior to starting his employment the Plaintiff was enjoying a successful career as a Computer Science instructor at Trent University. As mentioned in the section entitled 'background', he was rated as one possessing strong interpersonal skills and a very high degree of leadership attributes. He was found to be a focused and goal oriented academic.

86. The Plaintiff genuinely believed he was going to have a very successful career in policing based on his progress at the OPC. However, he did not know that he was going to a Detachment that already had a very racially derogatory nickname for him and a Detachment that was not open to recruits who were not local to the area especially a minority recruit that stood out like a sore thumb with a thick Russian accent.

87. The experiences that the Plaintiff was subjected to by the OPP caused severe stress in the Plaintiff's life to the extent that in August, 2010, the Plaintiff was diagnosed with Post Traumatic stress Disorder by his family

physician and prescribed various medications. Referenced here are some of his medical records, all of which will be made available should the need arise:

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Visit Date: May, 7 2010, Seen by: Dr. V. Lokanathan  
Michael Jack DOB: Dec, 16 1972,  
Visit For: phys for work with forms                      Diagnosis:

**\*\*\* Signed Off By: Vanita Lokanathan May 7, 2010 12:49 PM \*\*\***

Applying for nuclear security officer  
Just Had Physical fitness test and passed  
Forced to resign from Police - he alleges discrimination based on ethnicity and has file but is unable to afford a lawyer at this time  
Physically well and coped with stress of resignation  
No concerns on exam

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Visit Date: Jun, 28 2010, Seen by: Dr. V. Lokanathan  
Michael Jack DOB: Dec, 16 1972,  
Visit For: TB test    Diagnosis:

**\*\*\* Signed Off By: Vanita Lokanathan Jun 28, 2010 9:57 AM \*\*\***

1. TB step 2 right arm  
2. Sleep disruption, constantly thinking about events leading to dismissal, stress over lack of work  
Still planning on filing discrimination suit  
Some PTSD sx

P: Trial Zopiclone - if not settling consider SSRI  
zopiclone 7.5 mg tablet 1 TAB QHS 1 MO30 30 TAB No Refills

Zopiclone 1/2 tab helping with sleep - aware of sx depression - will return prn for rx if needed

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Visit Date: Jul, 14 2010, Seen by: Dr. V. Lokanathan  
Michael Jack DOB: Dec, 16 1972,  
Visit For: bp check, and sign paper                      Diagnosis:

**\*\*\* Signed Off By: Vanita Lokanathan Jul 14, 2010 12:18 PM \*\*\***

Check up and form for repeat physical activity testing  
Feels well - sleep ok with zopiclone  
No exertional problems  
ROS: poison ivy dermatitis limbs and trunk  
BP tru 101/74

A/P: 1. BP ok - no contraindications to PAR testing  
2. Renew Zopiclone  
3. Pred 50mg od x 3-5 days for poison ivy

zopiclone 7.5 mg tablet: 1 TAB QHS 1 MO30  
predniSONE 50 mg tablet 1 TAB QD 5 Day 5 TAB No Refills

Visit Date: Aug, 30 2010, Seen by: Dr. V. Lokanathan  
Michael Jack DOB: Dec, 16 1972,  
Visit For: depression Diagnosis:

**\*\*\* Signed Off By: Vanita Lokanathan Sep, 27 2010, 12:53 PM \*\*\***

Mood Sequelae from loss job as police officer  
Feels they ruined his life, unjust  
Lawyer advised to keep journal  
Presents documents with school marks and police training marks  
Came across article re: ecstasy for PTSD  
Sx PTSD nightmares, anxiety, all sx other than suicidal tendencies  
Came in to extended hours - Rx for Cipralext - got rash all over - quit and disappeared  
Was also stressed + + at the time  
Going to Israel tomorrow - would rather not be on any meds  
O: Anxious affect

A/P: adjustment disorder post alleged discrimination and dismissal - indeed many sx consistent with PTSD  
Resistant to med Rx as he does not want to be on meds and adverse effects  
Reasonable to have trial off while visiting his family in Israel, but if sx flare when back may need temporizing  
Refer Dr. Anderson consider counselling

88. Long after his termination from employment he struggled to get his health back but found that his concentration on even the simplest of tasks was extremely difficult. His list of medications that he was placed on did little to alleviate the psychological trauma he suffered from.
89. He experienced and continues to suffer from, among other things, anxiety, depression, sleeping disorders, poor concentration and deteriorating health.
90. In mid-2010, he started to document some of his sufferings in a diary. The following is a copy of some of his entries from his diary which consists of a total of 38 pages. The Plaintiff's depression was so strong that he thought of committing suicide and fearing that he would go crazy he decided to leave Canada and return to his parents in Israel:

31-JUL-10

WOKED UP AT 6:00 AM. COULD NOT  
SLEEP ANY LONGER. THOUGH NOT WELL  
SLEPT COULD NOT FALL ASLEEP AGAIN.  
LIED IN THE BED FOR 1.5 HOURS,  
NOT WANTING TO GET UP.

DOCTOR SAID THAT IT WOULD TAKE  
2-3 WEEKS FOR ANTIDEPRESSANTS  
TO TAKE EFFECT. I HAVE BEEN ON  
MEDICATION FOR JUST OVER A WEEK.  
HOPE THINGS WILL GET BETTER SOON.

STILL HAVE NIGHTMARES ABOUT MY  
TIME AT THE PETERBOROUGH  
DETACHMENT OF THE OPP. NOTHING  
ABOUT THE INTERACTION WITH THE  
PUBLIC, JUST ABOUT THE ATTITUDE  
~~AND~~ TOWARDS ME AND HARASSMENT  
BY SOME OFFICERS. SGT. FLINDALL,  
CST. PAYNE AND CST. NIE ARE THE  
MOST FREQUENT VISITORS IN MY  
NIGHTMARES. THE NIGHTMARES ARE  
GIBBERISH, NO SENSE AT ALL, BUT  
THE VISITORS ARE VERY VIVID AND  
REAL. THEY OFTEN ACCUSE ME OF  
SOMETHING OR CHARGE ME WITH  
SOMETHING. I WONDER WHEN THE  
TORTURE WILL STOP.



1-AUG-10 10:44 AM

WOKE UP AT AROUND 10:00AM. AS USUAL,  
DID NOT WANT TO GET UP. WISHED I  
COULD JUST SLEEP FOREVER. TOOK 2  
SLEEPING PILLS LAST NIGHT TO KNOCK  
ME OUT. FEELING AWFUL. FEELING  
ABANDONED AND BEING UNEMPLOYED IS  
KILLING ME. NO APPETITE AGAIN. SHOWED  
SOME STALE FOOD INTO MYSELF AND TOOK  
AN ANTI DEPRESSANT PILL. WILL SPEND  
THE DAY CLEANING THE HOUSE. HOPE  
IT WILL CHEER ME UP. HAVE BEEN  
NOTICING OCCASIONAL CHEST PAIN IN  
THE AREA OF THE HEART. PROBABLY  
STRESS RELATED.

19:00 1-AUG-10

MY ROOMMATE AND I CLEANED THE  
ENTIRE HOUSE AND WENT OUTSIDE  
FOR A CANOE RIDE. IT WAS A GOOD  
EXERCISE TO PADDLE UP THE RIVER.  
NOW I HAVE A BIT OF APPETITE.

2-AUG-10 9:07 AM

WOKE UP AT APPROXIMATELY 6:30 AM BUT STAYED IN BED UNTIL 9:00 AM. NO DESIRE TO DO ANYTHING. FEELING VERY DEPRESSED. HAD A NIGHTMARE AGAIN IN WHICH SGT. FLINDALL CHARGED ME WITH SOMETHING. THOUGHT IT WAS REAL UNTILL WOKE UP COVERED IN SWEAT. NOW I DO NOT REMEMBER WHAT IT WAS ABOUT. THAT IS GOOD. WHILE LYING IN THE BED FOR 2.5 HOURS I HAD FLASHBACKS, MANY FLASHBACKS FROM MY LIFE. I WONDER IF YOU REGRET WHEN YOU WAKE UP THAT YOU WOKE UP AND WISH YOU NEVER WOKE UP, IS IT JUST BEING DEPRESSED OR ALSO BEING...? I HAVE NO DESIRE TO DO ANYTHING. LIFE WENT DEAD ON MY HANDS. HOW DO I RECOVER?

11:25 WENT FOR A WALK OUTSIDE.

STILL NO APPETITE. NEED TO EAT, BUT CANNOT. I FEEL LIKE A ZOMBIE.

15:00 LIED DOWN AND TRIED TO SLEEP BUT COULD NOT BECAUSE OF ENDLESS FLASHBACKS. NO APPETITE. NO DESIRE TO DO ANYTHING. LIFE IS A TORTURE.

3-AUG-10 02:36 AM

I THINK I JUST EXPERIENCED THE SO CALLED EMOTIONAL BREAKDOWN.

A RELENTLESS WHIRLPOOL OF THOUGHTS, NO SENSE. I PUT MYSELF TOGETHER SOMEHOW.

08:30 AM

WENT OUTSIDE AND BURNT SOME OF MY OLD CLOTHES IN A BONFIRE, NOT ENTIRELY SURE WHY. PERHAPS TRIED TO GET RID OF THE OLD. BURNT SOME OF MY PAST. QUASTITY BY FII TIME TO TAKE MEDICINE AND HIT THE WA

09:20 AM

JUST GOT UP. LIED IN BED FOR AN HOUR OR SO AFTER WAKING UP. FEELING PRETTY BAD, AS USUALLY. WHAT A LAME LIFE. NEVERTHELESS, GOT TO MOVE ON. MUST MOVE ON.

4-AUG-10

YESTERDAY EVENING A FRIEND CAME OVER  
WE HAD A NICE CHAT. I FEEL FELT CHEERED  
UP. IT WAS HELPFULL TO TALK. STILL  
HAD TO TAKE A SLEEPING PILL AND  
DID NOT WANT TO GET OUT OF THE BED  
THIS MORNING. PRAYING AND WAITING FOR  
THINGS TO TAKE A POSITIVE TURN IN  
MY LIFE. WHEN?

APPLIED FOR A COUPLE JOBS TODAY. ALSO  
~~WENT~~ DROVE TO A FARM OF THE WOMAN  
THAT SELLS EGGS AND OFFERED MY HELP  
AROUND THE FARM. I DO NOT CARE  
WHAT TO DO. I JUST FEEL THAT  
WORKING OUTSIDE IN THE NATURE CAN  
HELP ME CURE MY DEPRESSION. WE  
AGREED TO BE IN TOUCH AS IT WAS A  
SURPRISE FOR HER.

1:00 AM ON 5-AUG-10

SWOLLED SLEEPING PILL. OFF TO BED  
SOON.

26-AN5- 18:50

MAD A FEW UPS AND DOWNS OVER THE PAST 3 DAYS. ON THE POSITIVE SIDE, I HAD A SEMI-FORMAL JOB INTERVIEW ON TUESDAY IN MISSISSAUGA. THE PERSON WHO INTERVIEWED ME IS A TREAT UNIVERSITY GRADUATE. I WAS HIGHLY RECOMMENDED TO HIM BY ONE OF OUR PROFESSORS. HE SAID HE WAS GOING TO HELP ME. THAT GIVES ME HOPE.

TUESDAY WAS A VERY HAPPY DAY FOR ME, FOR A CHANGE. MAKES ONE WONDER WHAT A BIT OF HOPE OR JUST A SENSE OF MAKING PROGRESS CAN DO TO INSPIRE, MOTIVATE, ALLEVIATE MENTAL SUFFERING, RELIEVE THE NEED FOR BEING ON MEDS, ETC. YESTERDAY, I WAS OK. NOTHING TOO EXCITED BUT MORE OR LESS STABLE MOODWISE.

TODAY I PLUNGED DOWN AGAIN. DID NOT SLEEP WELL, COULD NOT GET OUT OF THE BED TILL NOON, WAS JUST LYING THERE FEELING MISERABLE AGAIN, AND WHEN I FINALLY GOT UP I HAD NO DESIRE TO DO ANYTHING. COMPLETE LACK OF APPETITE.

I THOUGHT OF GETTING DRUNK FIRST BUT THEN SAW MY LANDROLD OUTSIDE PIMMING THE PRIVACY PORTION OF THE DECK AND

STEPPED OUTSIDE TO HELP HIM, SO I  
PAINTED AND THEN CLEANED THE  
PROPERTY AROUND THE HOUSE AND  
BURNED GRASS AND SOME CARTON GARBAGE  
IN THE FIRE PLACE. BY THE TIME I  
FINISHED IT WAS ALREADY 17:00 AND  
MY LANDLORD MADE ME A DINNER.  
I DEVELOPED APPETITE AND HAD MY  
BREAKFAST, LUNCH, AND DINNER ALL  
AT THE SAME TIME. WORKING OUTSIDE  
WAS BENEFICIAL.

11:45 AM SLEEPING PILL → BED.

27-AUG-10 10:30 AM  
FINALLY GOT UP. NOT SURE WHAT  
I AM GOING TO DO TODAY YET.

I AM FUCKED. I CANNOT TAKE THIS  
MISERY ANYMORE. NOTHING TO LOOK  
FORWARD TO.

28-AUG-10 5:00 AM  
ERIC AND I HAVE BEEN DRINKING ALL  
NIGHTS. I BOOKED TICKETS TO ISRAEL  
FOR 6 WEEKS. WANT TO SEE MY

PARENTS. IF I DO NOT, I DO NOT FEEL  
I WILL SURVIVE MUCH LONGER.

31-AUG-10 18:55

JUST BOARDED EL AL PLANE IN  
NEW YORK BOUND FOR ISRAEL.  
SENT MY FRIEND/MOONMATE ERIC TEXT  
MESSAGE THANKING HIM FOR DRIVING  
ME TO THE AIRPORT AND HELPING ME  
IN GENERAL. HE REPLIED: "DO BE PROUD,  
LEARN HAPPINESS, JOY, AND HOPE, EVEN IF  
THEY DON'T APPEAR OBVIOUS. AND CLEAR  
YOUR FREAKING MIND OF NIGHTMARES!!;)"  
I RESPONDED THANKING HIM AGAIN.

10:10 PM

HAVE BEEN UP IN THE AIR FOR THE PAST  
3 HOURS. I FEEL NOW SICK MY MIND IS. I  
AM NOT ACTING IN A RATIONAL MANNER,  
BUT RATIONAL ENOUGH TO UNDERSTAND THAT  
SOMETHING IS VERY WRONG. I TOLD MYSELF: "NO  
MORE ALCOHOL" I KNOW I WILL WANT TO DRINK  
WHEN I MEET WITH MY PARENTS AND FRIENDS  
AND I WILL BE ASKED TO DRINK, BUT I MUST  
AND I WILL SAY NO TO ALCOHOL.  
I MUST SEIZE THIS "GOING HOME" OPPORTUNITY  
TO GET OUT OF DEPRESSION → NO BOOZE.

I CANNOT FORGIVE MYSELF FOR NOT TIPPING THE SHUTTLE SERVICE DRIVER THAT DROVE ME FROM LA GUARDIA TO JFK AIRPORT. I APOLOGIZED TO HIM FOR NOT HAVING ANY MONEY. I LIED. I HAD MONEY, BUT ONLY CANADIAN CURRENCY IN \$20 BILLS. I WISHED I HAD SOME US CURRENCY, IN SMALLER BILLS, BUT I HAD NONE. I SHOULD HAVE GIVEN HIM A \$20 BILL BUT I WAS GREEDY. NOW I FEEL AWFULL ABOUT IT. THE MONEY SAVED IS NOT WORTH THE PRICE OF CONSCIOUSNESS. I AM ASHAMED OF MYSELF. I FEEL VERY COMPASSIONATE TOWARDS LIVING BEINGS. I RECENTLY HIT THE BRAKES WHEN I WAS DRIVING TO AVOID ~~SMASHING~~ <sup>DRIVING</sup> OVER A FROG. I WANT TO HELP PEOPLE. I DO NOT WANT TO KILL ANIMALS. I USED TO HUNT. I DO NOT THINK I WILL HUNT ANYMORE. ~~IT IS SO~~ IF I DID NOT EMBARK ON THIS SUDDEN AND UNEXPECTED JOURNEY TO ISRAEL I DO NOT KNOW WHAT WOULD HAVE HAPPENED TO ME. PETERBOROUGH COUNTY OPP RUINED MY LIFE. WILL I BE ABLE TO REBUILD IT? I AM SO CONFUSED AND LACKING



STRENGTH. I AM TIRED OF LIVING. I AM GOING TO SEE MY FAMILY IN ONLY A FEW HOURS BUT I AM NOT TRULLY HAPPY. I FEEL I AM A LOSER. WHAT HAVE I ACCOMPLISHED IN 10 YEARS IN CANADA? EARNED 2 <sup>UNIVERSITY</sup> ~~SCIENCE~~ DEGREES AND A COLLEGE DIPLOMA? STILL DRIVING THE SAME OLD CAR THAT I BOUGHT IN YEAR 2000 WHEN I JUST CAME TO CANADA, STILL OWE MONEY FOR MY COLLEGE EDUCATION. AT AGE OR ALMOST 38 YEARS OLD I AM IN DEBT, LACKING STRENGTH, NO DESIRE TO LIVE, NO PURPOSE IN LIFE, WHILE I SPEAK 3 LANGUAGES AND HAVE DEGREES AND DIPLOMAS UP THE ASS, WHAT WAS THE PURPOSE OF IT ALL? WHY THE FUCK DID I JOIN OPP? TO RUIN MY LIFE IN SUCH A WAY? I BETRAYED MY PARENTS, I LOST MYSELF, EVEN BRUNAS WOULD NOT <sup>WIFE</sup> TALK TO ME. EVERY TIME I MENTION I WAS A POLICE OFFICER I GET ALMOST IMMEDIATELY ASKED WHY I QUIT. I FEEL EMBARRASSED EVERY TIME. THE MOST DEPRESSING ASPECT OF IT ALL IS THAT I FEEL I HAVE NOTHING TO LOOK FORWARD TO.

1-SEP-10 11:18AM (ISRAELI TIME)

WE'LL BE LANDING SOON, IN 1.5 HOUR  
IN A DIFFERENT CONTINENT → CHANGED  
LIFE. NO POISONING MYSELF WITH  
PILLS, ALCOHOL, TOBACCO. I NEED  
TO RECOVER. I HAVE AN OBLIGATION  
TO DO JUSTICE.

6-SEP-10 15:40 (ISRAELI TIME)

SO FAR SO GOOD. 5 DAYS OF NOT  
SMOKING, DRINKING, TAKING PILLS.  
I AM ALL NATURAL NOW, POISON FREE.  
I STILL SLEEP ONLY INTERMITTENTLY,  
USUALLY WAKING UP AROUND 2-3 AM,  
UNABLE TO FALL ASLEEP AGAIN. STILL  
THINKING ABOUT MY PREDICAMENT  
WITH THE OPP. BEING WITH MY  
FAMILY HELPS A LOT, THOUGH I SEE  
THEY NOTICE MY INTERMITTENT  
ABSENCE-MINDEDNESS AND LOSS OF  
CONCENTRATION. HOWEVER, I FEEL  
MUCH BETTER NOW AND I WILL IMPROVE.  
HERE IS AN INTERESTING POINT:  
AFTER I GOT KICKED OUT FROM THE  
OPP I COULD NOT FIND A FULL-TIME  
JOB. EVERY TIME I MENTIONED THAT

I WAS AN OPP OFFICER, I WAS IMMEDIATELY ASKED WHY I LEFT; I WAS LOOKED AT DIFFERENTLY, I SAW IT, I FELT IT. THE ONLY PLACE I GOT A PART-TIME JOB WAS TRENT UNIVERSITY IN THE COMPUTING & INFORMATION SYSTEMS DEPARTMENT WHERE I HAVE BEEN ALWAYS HELD IN HIGH-REGARD. ANYWAY, I COME TO ISRAEL, CALL MY OLD ~~FOO~~ COLLEAGUES AT INTEL ELECTRONICS LTD. AND ONE OF THEM IMMEDIATELY INVITES ME OVER FOR AN INFORMAL JOB INTERVIEW → ON 8-SEP-10. FOR 8 MONTHS AFTER BEING FIRED FROM THE OPP I LOOK FOR JOBS AND CANNOT GET ANY REAL/DECENT/FULL-TIME, ~~I COME TO ISRAEL~~ OVER THIS TIME I SINK DEEPER AND DEEPER INTO DEPRESSION THINKING OF ENDING MY MERE MISERABLE EXISTENCE. I GATHER UP MY STRENGTH AND TAKE OFF FOR ISRAEL AND WITHIN A WEEK I HAVE A JOB INTERVIEW ~~THAT~~ LINED UP AT AN INTERNATIONALLY REKNOWNED AND RESPECTABLE COMPANY. I AM LOOKING FORWARD TO THE INTERVIEW. I FINALLY START FEELING PURPOSE IN MY LIFE.

I WAS AN OPP OFFICER, I WAS IMMEDIATELY ASKED WHY I LEFT; I WAS LOOKED AT DIFFERENTLY, I SAW IT, I FELT IT. THE ONLY PLACE I GOT A PART-TIME JOB WAS TRENT UNIVERSITY IN THE COMPUTING & INFORMATION SYSTEMS DEPARTMENT WHERE I HAVE BEEN ALWAYS HELD IN HIGH-REGARD. ANYWAY, I CAME TO ISRAEL, CALL MY OLD FRIENDS AT INTEL ELECTRONICS LTD. AND ONE OF THEM IMMEDIATELY INVITES ME OVER FOR AN INFORMAL JOB INTERVIEW → ON 8-SEP-10. FOR 8 MONTHS AFTER BEING FIRED FROM THE OPP I LOOK FOR JOBS AND CANNOT GET ANY REAL/DECENT/FULL-TIME, ~~I CAME TO ISRAEL~~ OVER THIS TIME I SINK DEEPER AND DEEPER INTO DEPRESSION THINKING OF ENDING MY MISERABLE EXISTENCE. I GATHER UP MY STRENGTH AND TAKE OFF FOR ISRAEL AND WITHIN A WEEK I HAVE A JOB INTERVIEW ~~THAT~~ LINED UP AT AN INTERNATIONALLY RECOGNIZED AND RESPECTABLE COMPANY. I AM LOOKING FORWARD TO THE INTERVIEW. I FINALLY START FEELING PURPOSE IN MY LIFE.

10-SEP-10 06:30 AM

WOKE UP AT AROUND 5:00 AM IN FEAR. PETERBOROUGH DETACHMENT IS STILL HARASSING ME. DO NOT REMEMBER WHAT THE DREAM WAS ABOUT BUT IT SCARED ME, MET WITH A BUNCH OF OLD FRIENDS YESTERDAY. IT WAS VERY GOOD. DID NOT TELL THEM THE TRUTH ABOUT LEAVING POLICE. JUST COULD NOT TELL THEM I WAS KICKED OUT. CAN'T BEAR THE SHAME OF IT. I FEEL A LOSER.

THOUGH I AM FEELING BETTER PSYCHOLOGICALLY, I AM NOT HAPPY IN MY LIFE. THE WONDERFUL THING ABOUT COMING TO ISRAEL IS THAT I AM NOW 10 DAYS POISON FREE. NO CHEMICALS IN ANY SHAPE OR FORM, NO DRUGS, NO SMOKE, NO BOOZE. I AM ALL NATURAL NOW.

14-SEP-10 7:00 PM

I REGAINED NORMAL SLEEP. I GO TO BED AT AROUND MIDNIGHT AND GET UP AT 6:00 AM. YESTERDAY, HOWEVER, I EXPERIENCED AN ANXIETY ATTACK. I HOPED I WOULD HAVE NO MORE OF THOSE. I WAS WRONG. I CHAINED SMOKED 3 CIGARETTES TO QUIETEN IT. I AM DISGUSTED OF MYSELF. I FEEL LOST. I AM BROKE.

91. Returning to Israel he managed to get temporary employment. However, even upon gaining employment in Israel he continues to struggle to maintain objectivity with whatever he is working on at work due to bouts of depression. Furthermore, severe anxiety always seizes him if he is called in to his employer's presence to explain anything.

## **Conclusion**

92. The discriminatory and the differential treatment that the Plaintiff endured during his probationary period at the Peterborough Detachment surpassed everything that the Plaintiff had experienced in his lifetime.

93. The Plaintiff was discriminated against, harassed, bullied, humiliated, belittled, subjected to unreasonable demands and unsubstantiated criticism, oppressed and retaliated against for standing up for his rights or otherwise mistreated at work.

94. All of the above negatively affected the Plaintiff's mental and physical health, feelings and self-respect and further resulted in the loss of dignity. The Plaintiff experienced Post-Traumatic Stress Disorder, severe anxiety, depression, loss of concentration, stress, sleeping disorders and muscle pain in a variety of areas. All of which were provoked by the actions of the defendants and the poisoned work environment.

95. The amount of stress the Plaintiff experienced also brought on chronic fatigue syndrome towards the end of his employment with the OPP. The Plaintiff's emotional health continues to be affected to this day for what happened to the Plaintiff was simply wrong and evil. Furthermore, the ever present realization that the Plaintiff could have had a successful career at Trent University as a Professor had he not have pursued a career in policing with the OPP is forever depressing. Yet again, the ever present realization that the Plaintiff could have had a successful career in policing had he followed through with the application stages with the Halton Regional Police and York Regional Police Services is also depressing. Then again, had the OPP have just treated the Plaintiff like a human being the Plaintiff is certain that he would have been a great asset to them for his trilingual and computer skills would have certainly been put to use in some of the OPP's Specialized Provincial Units. The overall effects of these realizations continue to play havoc with the Plaintiff's emotional and mental health.
96. It was the duty of the OPP and particularly those officers in positions of authority to ensure that the Plaintiff worked in a harassment-free environment and to foster his abilities as an officer. Instead, they did just the opposite. In doing so they did not uphold the Ontario Public Service pledge to provide a workplace environment free of violation under Ontario's Human Rights Code.

97. To this date the Plaintiff has difficulty focusing on tasks. He does not sleep well. His mind is crowded with memories of discrimination, harassment, belittling, and accusations of incompetence and wrongdoing that he was subjected to at the Peterborough Detachment of the OPP. Ever since the day of the Plaintiff's forced resignation from the OPP his life has been a living nightmare as he has been unable to gain related employment due to his experiences with the OPP.
98. The Plaintiff believes that he was targeted and discriminated against by the members of the detachment due to his place of origin, ethnic origin, racial status, strong Russian accent and the fact that he voiced his concerns regarding the differential and discriminatory treatment that he was being subjected to.
99. Based on the Plaintiff's knowledge of the make-up of the officers at the Detachment when he was there and how closely knit and organized they were in building up a file to justify the Plaintiff's forced termination, the Plaintiff is mindful of the current definition of the word 'Mafia':
- (a) Any tightly knit group of trusted associates.
  - (b) A closed group of people in a particular field, having a controlling influence.
  - (c) Any small powerful or influential group in an organization or field; clique.



100. Specifically, the Plaintiff's key personal respondents: Sgt. Robert Flindall, Cst. Jennifer Payne, Cst. Shaun Filman, and Cst. Richard Nie were all local to Peterborough area with a scope of view limited to their county only. All four of them had good working relationships that in all probability extended beyond the confinement of police work. Sgt. Robert Flindall and Cst. Jennifer Payne were very close friends. Sgt. Robert Flindall and Cst. Richard Nie were next-door neighbours. Sgt. Flindall's father (Inspector Bill Flindall) used to be a Peterborough County OPP Detachment Commander. Cst. Shaun Filman's father (Cst. Brad Filman) used to be a senior Constable at the Peterborough County OPP Detachment. Moreover, Sgt. Robert Flindall's wife, Cst. Tanya Flindall, was a Constable with the City of Kawartha Lakes Detachment, which is a neighbouring detachment, and later on transferred to Peterborough Detachment. Cst. Tanya Flindall is a sister of Sgt. Trevor Banbury who in turn was a shift supervisor at Peterborough Detachment. Thus, Sgt. Robert Flindall and Sgt. Trevor Banbury are brothers-in-law (and good friends too). Moreover, Sgt. Trevor Banbury's father was a Sergeant at Peterborough Detachment. Cst. Jennifer Payne and Cst. Jamie Brockley were common-law spouses. Cst. Mike Gravelle and Cst. Marc Gravelle are brothers at the Detachment. Cst. Jeff Knier and Cst. Amanda Knier are husband and wife. In short, without naming anymore names at this point, there were many more officers at Peterborough Detachment who are originally from Peterborough County, residents of the county and are probably related in some way.

101. The Plaintiff believes that, being that the OPP falls under the Ministry of Community Safety and Correctional Services, which in turn is part of the Ontario Public Service, the failure of the OPP to comply with the mandate of the Ontario Human Rights Code and with the training and direction to all Ministries via computer training modules on 'Valuing Diversity' is reflective of the Government of Ontario's failure to prevent such violations as mentioned in this Claim from occurring.

### **Lost Opportunities**

102. The termination of the Plaintiff's employment under the circumstances orchestrated by the OPP has made it impossible for the Plaintiff to gain employment as a Constable with any other police service.

103. On January 13, 2010, despite having had a very successful ride along experience with the York Regional Police Service in December 2009 where the Plaintiff's policing and multi-lingual skills were put to use and despite the fact that the Plaintiff had already been offered an interview in the past prior to his experience with the OPP, the Plaintiff was denied the opportunity to apply for a position of Constable with the York regional Police Service on the basis of his file with the OPP.

104. Between January of 2010 and July of 2010, the Plaintiff corresponded with the Toronto Police Service, Peel Regional Police Service, Durham

Regional Police Service and Halton Regional Police Service. Though the Toronto Police Service and Halton Regional Police Service allowed the Plaintiff to apply for a position of Constable as a new applicant they both turned the Plaintiff down almost immediately after he submitted his applications.

### **Wrongful Dismissal**

105. Section 72 of the *Labour Relations Act (1995)* addresses employers with respect to how they are to deal with employees:

Employers not to interfere with employees' rights

72. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

(a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;

(b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a

person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or

(c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act. 1995, c. 1, Sched. A, s. 72.

106. As mentioned earlier in this claim the Plaintiff's demise started to quicken downhill rapidly after he chose to exercise his rights to complain to the OPPA.

107. The decision to terminate the employment of the Plaintiff was made in November, 2009. This is supported by PER 11 wherein the coach officer comments that he does not support permanent employment status for the Plaintiff.

108. The OPP used the following three criteria to support the termination of the Plaintiff's employment:

(a) Failure to meet the requirements of his Performance Evaluation Reports;

- (b) The charge under the Highway Traffic Act (HTA);
- (c) The internal investigation by the OPP's Professional Standards Bureau in the allegation of Associating with Undesirables.

109. However, as mentioned earlier in this claim the PERs were wrought with wilful neglect and fraudulence.

110. As further mentioned earlier in this claim under the sub heading, 'Unsubstantiated Charges under the Highway Traffic Act' the charge was false, made in bad faith, malicious and used to further negatively rate him in his future PERs. Although he was exonerated in the ensuing trial the following year the charge was instrumental in the termination of his employment.

111. The internal investigation was also deemed to be lacking merit. As referenced under the sub heading entitled, 'Artificial and Unsubstantiated Internal Complaint' in this claim, though it concluded with a final determination of 'Unsubstantiated,' once again the damage had already been done as it had a negative influence on Command Staff in the OPP's general headquarters in Orillia.

112. It is in light of this information and the information mentioned under the heading 'Reprisals for Asserting the Plaintiff's Rights through Negative Performance Evaluation Reports' of this claim that the Plaintiff believes

that he has met the elements of the offence under subsection 72(2) of the *Labour Relations Act* thereby justifying this claim for wrongful dismissal.

### **Failure to Accommodate**

113. As a member, the Association had an obligation imposed by law to protect the Plaintiff and ensure that the appropriate action was taken should any preliminary investigations reveal violations of the Code.

114. Furthermore, the *Labour Relations Act* in section 12 states:

‘A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employees in an appropriate bargaining unit....’

Rule 1.2.3 of the OPPAs *Policy and Procedures* state:

‘As a member of the Association’s Board of Directors, a Board member represents the membership of the Association not simply their individual component. In all decision-making processes of the Association, Board members shall always put the interests of the membership ahead of any personal or group-specific interests.’

115. The conclusions of D/Cst. German as President of the 8th Branch of the OPPA, which spoke for the Association as a whole, did reveal violations of

the Ontario Human Rights Code not to mention violations of Police Orders as well.

116. The OPPA under rule 4.7.1 of its *Policy and Procedures* relating to Legal Assistance states:

‘4.7.1 The intent of the program is to provide legal assistance to members in situations where the OPP refuses or where the Ministry's legal counsel is unable to represent the interests of the members. In such situations the OPP Association will normally provide the services of legal counsel to members who may be subject to legal inquiries, civil actions, provincial offences or criminal charges, including appeals, arising out of the legal performance of their duties.’

117. Despite the Plaintiff contacting the OPPA in the fall of 2009 and faxing his PERs for their review and despite the findings of D/Cst. German, as evidenced above, the OPPA chose not to intervene and put an end to the treatment the Plaintiff was experiencing at Peterborough Detachment.

118. As a cumulative effect the OPPA did fail in its duty to accommodate the Plaintiff when such conclusions were brought to their attention.

119. The Plaintiff believes that the OPPA is vicariously responsible for the actions of its representatives under section 107 of the *Labour Relations Act*:

Vicarious responsibility

107 (1) A prosecution for an offence under this Act may be instituted against a trade union or council of trade unions or employers' organization in the name of the union, council or organization.

(2) Any act or thing done or omitted by an officer, official or agent of a trade union or council of trade unions or employers' organization within the scope of the officer, official or agent's authority to act on behalf of the union, council or organization shall be deemed to be an act or thing done or omitted by the union, council or organization. 1995, c. 1, Sched. A, s. 107.

120. Furthermore, the Plaintiff asserts that the OPP did fail to accommodate him in providing him with a workplace free of harassment and discrimination especially in light of their acknowledgment via e-mails that the plaintiff rights were being violated under the Ontario Human Rights Code.

### **Defamation by Libel and Slander**

121. The *Criminal Code of Canada* defines what a defamatory libel is in section:

298 (1) A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published.



(2) A defamatory libel may be expressed directly or by insinuation or irony

(a) in words legibly marked on any substance;  
or

(b) by any object signifying a defamatory libel otherwise than by words.

122. The *Criminal Code* is very clear in defining 'publishes' wherein it states in section:

299. A person publishes a libel when he

(a) exhibits it in public;

(b) causes it to be read or seen; or

(c) shows or delivers it, or causes it to be shown or delivered, with intent that it should be read or seen by the person whom it defames or by any other person.

123. The *Criminal Code* makes the publication of a defamatory libel an indictable offence and creates a higher penalty when the defamatory libel is known to be false in section:

300. Everyone who publishes a defamatory libel that he knows is false is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

124. Whereas in the absence of knowing the libel to be false the *Criminal Code* provides a lesser penalty in section:

301. Everyone who publishes a defamatory libel is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

125. In light of these sections of the Criminal Code the Plaintiff claims that:

a (i) It was in and around the time of his two ride-alongs in the fall of 2008 with Constable Marc Gravelle and Constable John Pollock, both of whom are members of the Peterborough Detachment of the OPP that he was given the racial nick name of 'Crazy Ivan.'

a (ii) Though he did not become aware of this nick name until several months after the termination of his employment, the fact that it was used to reference him in his absence and behind his back is clear to an ordinary person that to reference the Plaintiff with such a nick name in his hearing and presence would be derogatory, offensive and hence slanderous.

a (iii) It would be derogatory and offensive since the Plaintiff is Russian by birth and the name Crazy Ivan is synonymous of 'Ivan the Terrible' of Russia who was known for his butchering of human beings and other atrocities towards humans in the late 1500s in Russia. By giving reference to the Plaintiff by such a name one was in essence referencing him as a 'CRAZY RUSSIAN.'

a (iv) The Plaintiff is of the belief that section 298(1) of the *Criminal Code of Canada* imposes the same elements for defamation by slander for the nick name did injure the reputation of the Plaintiff at the Detachment by exposing him to hatred, contempt and ridicule. In doing so the nick name was slanderously defamatory.

b (i) It was in and around the time of his two ride-alongs in the summer of 2008 that these two officers, Cst. Gravelle and Cst. Pollock lied to Sgt. Brad Rathbun in stating that the Plaintiff talked about the many people he had shot and killed during his time with the Israeli Army. These two officers even lied about the number of guns the Plaintiff had in his possession. The Plaintiff was a member in the local gun club, namely the Peterborough Fish and Game Association, and was a collector of vintage firearms some of which he showed to these two officers when they dropped him off at his residence at the end of each ride along. The Plaintiff showed them his collection in an attempt to impress them about how safely they were stored (each of the firearms with individual trigger locking mechanisms and all stored in an extremely heavy and secure fireproof gun vault). All Sgt. Rathbun had to do was access the Canadian Firearms Registry Online via the computer on his desk and he would have seen that the Plaintiff had 22 registered firearms and not 32. This simple verification, if done, ought to have caused him to question the credibility of the information from those two officers.

b (ii) The Plaintiff believes that the manner in which they talked about him to Sgt. Rathbun along with the lies was defamatory for it did create in the

mind of this sergeant an impious perception about the Plaintiff that was utterly false. The Plaintiff had to serve three years mandatory time in the Israeli Navy and not the Israeli Army. His 3 years of service in the Israeli Navy consisted of providing technical support within the confines of Israel without any exposure to actual war. Aside from firing his firearm during routine military firearms training he never had to use it in any actual defensive or offensive operation. He was demobilized with honour upon the completion of his mandatory three year term of service. It was easy for one to fabricate a story (of the Plaintiff seeing action and killing people) and exaggerate the actual number of firearms the Plaintiff had. By then refer to him as a crazy Russian ('Crazy Ivan') they were able to convince their supervisor that the information was true and hence the supervisor sent out that e-mail to show that Command Staff should be equally concerned. After all, the Plaintiff was from the Middle East and the Middle East is always in the news as being at war. The Plaintiff is a Russian Jew and Israel is full of Jews so he must be a trigger happy or gun happy Russian (Ivan) Jew.

b(iii) The sergeant's documentation of this perception ('concerns that were hair raising') in an e-mail and then disseminating it so that it can be read and seen by management at the Detachment was libelously defamatory. This e-mail then gets circulated within management at the OPP's General Headquarters thereby raising a false alarm that the OPP may have made a mistake in granting employment to the Plaintiff. The publication of this defamatory libel did cause the OPP to have the Plaintiff

undergo a second interview with the OPP's Psychologist, Dr. Denise Lapalme.

126. The Plaintiff is in the possession of documentary evidence that attests to the defamatory libel from Sgt. Rathbun that is referred to above.

127. For all of the aforementioned, the Plaintiff truly believes that, in light of section 299 of the *Criminal Code* the offence of sections 300 and 301 have been committed by the defendant OPP.

128. The Plaintiff further believes the dissemination of the e-mail from Sgt. Rathbun was not done in a manner whereby one could claim it to be a private communication since it was circulated to various departments within the general headquarters of the OPP thereby making it public albeit within police personnel.

129. The *Criminal Code* creates a dual procedure offence for anyone who communicates statements other than in a private conversation that wilfully promotes hatred against any identifiable group:

319. (2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

(3) No person shall be convicted of an offence under subsection(2)

(a) if he establishes that the statements communicated were true;

(b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;

(c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

(d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

(6) No proceeding for an offence under subsection (2) shall be instituted without the consent of the Attorney General

130. Being that the Plaintiff is a member of an identifiable group in Canada the slanderous nick name '*Crazy Ivan*' and the publication of the defamatory libel by Sgt. Rathbun as mentioned in item 120 did promote hatred in so much that it did produce an atmosphere of intolerance towards the Plaintiff that in turn developed into contempt and hatred with acts of racial discrimination being perpetrated towards the Plaintiff.

131. Aside from Sgt. Rathbun's defamatory libel not being true, it was made in bad faith for it presumed that the OPP command staff ought to have some concerns about him, concerns that would be '*hair raising.*'
132. An example of this defamatory libel producing an atmosphere of intolerance is when, upon Sgt. Rathbun's e-mail in getting disseminated amongst management in general headquarters of the OPP, caused the Plaintiff to be subjected to another psychological assessment to see if there was anything wrong with him. The Plaintiff was singled out by being taken out of a physical fitness test by Mr. Peter Shipley, the Chief Instructor of the PPA, and walked to the OPP psychologist's office for this second examination. Sensing the formality of the escort made the Plaintiff scared and it caused him to ask Mr. Shipley what this was all about. What he was told by Mr. Shipley caused him alarm and re-enforced the fear that he felt. Mr. Shipley told the Plaintiff, '*If you have anything to tell me. You'd better tell me now.*'
133. That defamatory libel from Sgt. Rathbun caused the OPP to order management at the Detachment to keep an eye on the Plaintiff. This is confirmed by the Plaintiff's future sergeant, Sgt. Flindall communicating an e-mail to management at the Detachment in September 2008 (more than three months before the Plaintiff was scheduled to commence working at the Detachment) asking them if the Plaintiff was the recruit that they needed to keep an eye on, reference his love for guns, etc.

134. That defamatory e-mail from Sgt. Rathbun produced an atmosphere of intolerance that was felt by the Plaintiff on his very first day at the Detachment.
135. An example and clear indication of Sgt. Rathbun's defamatory libel producing an atmosphere of intolerance that developed into contempt and hatred towards the Plaintiff can be referenced from item 29 sub clause (cc) of this claim wherein his sergeant (Flindall) tells him in a firm and authoritative voice and in a tone that was raised and filled with disgust that he has never had such an incompetent recruit before.
136. As mentioned earlier in this claim the Plaintiff was openly chastised and ridiculed by officers senior to him as well as his supervisor. The Plaintiff believes that officers chastised and ridiculed him in such an open manner because he was not one worthy of any respect.
137. In another example of contempt and hatred towards the Plaintiff, Constable Jennifer Payne, just a few days after the Plaintiff's internal investigation complaint becoming public knowledge uses an old occurrence report that documents the Plaintiff's involvement in a call that members of the Detachment attended in 2005 when the Plaintiff was employed as a security guard. The Plaintiff had investigated a disturbance and minor theft during the course of one shift as a security guard. However, Cst. Payne's contempt and hatred towards the Plaintiff causes her to forward something old that she believes the OPP missed in their



background investigation of the Plaintiff. She forwards a private e-mail to Sgt. Flindall who in turn believing it should be looked into further sends it to Inspector Johnston. Ins. Johnston then forwards a private e-mail to Superintendent Hugh Stevenson with his concerns. However, Sup. Stevenson is then libellously defamatory when he speaks badly about the Plaintiff in his e-mail that he disseminates to various departments of the OPP's headquarters in Orillia with a copy to management of the Detachment. By virtue of his position the comments he makes about the Plaintiff adds fuel to the flames of hatred, contempt and disdain that the Plaintiff was already sensing from various personnel at the Detachment. In the e-mail about an old occurrence Superintendent. Stevenson defames the character of the Plaintiff by stating,

*“This information speaks to the character of this member – prior to his OPP involvement and missed in his OPP background check.”*

138. The fact that it did develop into hatred and disdain towards the Plaintiff is proof that the elements of the offence in subsection 319 (2) of the *Criminal Code* were met.
139. The OPP was further libellous in their false accusation of the Plaintiff provided by way of a written memorandum accusing him of associating with Undesirables. The Undesirables were the picture of two Albanian persons in a six year old photograph standing alongside the Plaintiff along with three other individuals in a fitness facility. The OPP alleged that the

Albanians in the photograph were drug dealers and that the Plaintiff was still associating with them based on the six year old photograph.

140. The memorandum:

Ontario  
Provincial  
Police

Police  
provinciale  
de l'Ontario



Professional Standards Bureau  
Bureau des normes professionnelles

777 Memorial Avenue 777, avenue Memorial  
Orillia ON L3V 7V3 Orillia ON L3V 7V3

Tel: (705) 329-6051 Fax: (705) 329-6050

File reference: 2545009-0173

September 23, 2009

**MEMORANDUM TO:**

Provincial Constable Michael JACK #12690  
1100 - PETERBOROUGH COUNTY (CENTRAL REGION)

The memorandum continued:

Re: Notice of Internal Complaint

Date of Incident: Unknown

Date of Complaint: September 11, 2009

Summary of Complaint: It is alleged you have been associating with undesirables.

This is your notification pursuant to subsection 56(7) of the Police Services Act that an internal complaint has been commenced against you. You will be contacted in regard to this matter.

If you have any questions about this matter or the complaint process, please contact this Bureau.



Chris Newton  
Staff Sergeant  
Manager  
Classification & Analysis Unit

/amc

c: Detachment Commander, H100 - PETERBOROUGH COUNTY

141. This allegation was particularly offensive to the Plaintiff since he had never taken any illicit drugs in his life. Furthermore as a Canadian citizen he knew that no Canadian deserves to be labelled as an undesirable even if they have a criminal record. As referenced under the heading 'Artificial and Unsubstantiated Internal Complaint', being accused of associating with an Albanian organized crime under the defamatory libel of 'Associating with Undesirables' is another example of how the original defamatory libel from Sgt. Rathbun developed into contempt and hatred towards the Plaintiff.
142. The publication of this new defamatory libel by way of official memorandums to the Inspector and other supervisors of the Detachment

did make the Plaintiff feel like an undesirable. It soon became common knowledge amongst the employees at the Detachment that he was under investigation for associating with undesirables. The Plaintiff literally felt the contempt and disdain personnel had towards him at the Detachment.

- (i) Had the OPP have used the wording of 'You are being investigated for Discreditable Conduct under the Police Services Act in so much that it is alleged that you are associating with persons involved with criminal activity' there would no grounds for any offence under the *Criminal Code* relating to a defamatory libel for the allegation.
- (ii) The Plaintiff however believes that it is in light of the aforementioned information that defendant OPP have committed the offences of sections 300, 301 and 319(2) of the *Criminal Code*.

143. The outcome of the investigation by the Professional Standards Bureau is reflected on the next two pages:

**Jack, Michael (JUS)**

---

**From:** Thompson, Tym (JUS)  
**Sent:** November 19, 2009 5:13 PM  
**To:** Jack, Michael (JUS)  
**Subject:** RE: Internal Complaint 2545009-0173

Constable Jack,

I submitted my final report today on your investigation. The allegation of you associating with undesirables was not substantiated. I am not sure how long it will take to work through the chains of command, but thought you would like to know as soon as I was able to tell you.

If you have any questions, don't hesitate to contact me.

Tym

**Tym Thompson**

Detective Sergeant  
Professional Standards Bureau  
Ontario Provincial Police  
desk-(705) 329-6473  
cell-(705) 238-7107  
fax-(705) 329-6050  
vnet-518-6473

Ontario  
Provincial  
Police

Police  
provinciale  
de l'Ontario



Professional Standards Bureau  
Bureau des normes professionnelles

777 Memorial Avenue 777, avenue Memorial  
Orillia ON L3V 7V3 Orillia ON L3V 7V3

Tel: (705) 329-6051 Fax: (705) 329-8050

File reference: 2545009-0173

November 25, 2009

**MEMORANDUM TO:**

Provincial Constable Michael JACK #12690  
1100 - PETERBOROUGH COUNTY

**Re: Internal Complaint 2545009-0173**

The investigation into this matter has been completed.

I have reviewed the report and agree with its findings that the complaint is unsubstantiated on the basis of insufficient evidence.

Therefore, on behalf of Commissioner Julian Fantino, it is my decision to take no further action in this matter and our file is closed.


Ken C. Smith  
Chief Superintendent  
Bureau Commander  
Professional Standards Bureau

/gp

c: Detachment Commander, 1100 - PETERBOROUGH COUNTY  
Sergeant Major, Professional Standards Bureau, CENTRAL REGION  
Regional Commander, CENTRAL REGION

144. In yet another libellously defamatory act the Plaintiff was served his copy of his month 8 PER with the wording 'REFUSED' printed in capital letters in the place of his signature and with the box beside each of the three pre-printed statements in the section containing the location of his signature checked off purporting among other things that a meeting was held with him and the evaluation was reviewed with him. The marking of these boxes also purported that at the evaluation meeting the workplace harassment policy was discussed with the Plaintiff. The Plaintiff was served this copy sometime after mid-September, 2009. It was the first time the Plaintiff was shown and shared a copy of the evaluation. The Plaintiff was never given an opportunity to review and sign the PER. Moreover, on September 11, 2009, when the evaluation meeting purportedly took place the Plaintiff was off duty, in particular his scheduled day off. The Plaintiff also noticed that the Detachment Commander had signed off and added his comments on the PER. The fraudulence of that PER sent a clear message to management in the OPP's headquarters in Orillia that, amongst other things, the Plaintiff was not accepting responsibility for his deficiencies in the PER.

145. The last two pages of the Month 8 PER relating to the Plaintiff, his coach officer and his supervisor's comments and signatures, the Detachment Commander's comments and signature:

COMMENTS AND SIGNATURES		
<b>Evaluation Meeting</b>		
<input checked="" type="checkbox"/> I have met and discussed my performance with my coach officer or my accountable supervisor. <input checked="" type="checkbox"/> I have reviewed and discussed with my coach officer or my supervisor, my responsibilities under the policy on Safe Storage and Handling of Firearms. <input checked="" type="checkbox"/> I have reviewed and discussed with my coach officer, or my supervisor, my performance in relation to my responsibilities under the Professionalism, and Workplace Discrimination and Harassment Prevention policies.		
Employee's Comments:		
Employee's Signature:	REFUSED	Date:
Coach Officer Comments: During this evaluation period PC JACK was off on rest days for the majority of the evaluation period. This has resulted in a lack of content for this evaluation period. As well sue to the fact that the previous evaluation had a number of Work improvement plans and PC JACK was off he has not had a significant opportunity to rectify the identified performance deficiencies.		
Coach Officer's Signature (Performance has been observed that supports the rating assigned for each category):		Date: 11 Sep 09
Accountable Supervisor's Comments (Mandatory): PC JACK has only worked 6 shifts during this last evaluation period due to his vacation leave. A number of the sections in this evaluation have been carried over from his last evaluation. It is expected upon his return to work, that he will actively meet the objectives of his Work Improvement Plans as he continues his probationary period with Platoon D.		
Accountable Supervisor:	Accountable Supervisor's Signature:	Date: 11 Sep 09
SGT. R. FLINDALL		

Detachment Commander
<p>Comments (Mandatory): During this evaluation period, PC JACK, his Supervisor and an OPPA Rep met with S/Sgt. R. CAMPBELL to discuss various issues he has experienced recently with his progress. PC JACK insists he has not had the assistance to meet the goals outlined in the evaluation. PC JACK's Supervisor outlined steps that had been taken to assist but were not utilized by the member.</p> <p>It also became apparent that PC JACK has created some animosity amongst his fellow officers by "answer shopping" with Detachment members. The other members were not provided with full disclosure of the entire situation and then provided opinions based on partial information. This answer shopping continued until PC JACK found someone who would agree with his own opinion based on partial information.</p> <p>PC JACK has been offered a fresh perspective with his move to Platoon D. He will be getting closer direct supervision from a new coach officer in an effort to ensure he has the proper tools to succeed.</p>



Continued:

Detachment Commander: <i>Ron Campbell</i>	Detachment Commander's Signature: <i>[Signature]</i>	Date: 11Sep09
<b>Instructions:</b> At the conclusion of each evaluation period: <ul style="list-style-type: none"><li>• Forward the completed and signed ORIGINAL document to Region/Bureau for signatures and tracking purposes.</li></ul>		

146. The Plaintiff believes that the cumulative effects of the libellous acts did incite hatred in the form of disdain and contempt towards him and is prepared to testify as to how these libellous acts poisoned his work environment.

### **Tort Damages in Civil Liability**

147. The Rules of Civil Procedure in section 57.01 (1) indicate that the presiding Judge has certain Factors in Discretion in deciding costs:

57.01 (1) In exercising its discretion under section 131 of the Courts of Justice Act to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

(a) the amount claimed and the amount recovered in the proceeding;

(b) the apportionment of liability;

(c) the complexity of the proceeding;

(d) the importance of the issues;

(e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;

(f) whether any step in the proceeding was,

(i) improper, vexatious or unnecessary, or

(ii) taken through negligence, mistake or excessive caution;

(g) a party's denial of or refusal to admit anything that should have been admitted;

- (h) whether it is appropriate to award any costs or more than one set of costs where a party,
  - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
  - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer; and
- (i) any other matter relevant to the question of costs. R.R.O. 1990, Reg. 194, r. 57.01 (1); O. Reg. 627/98, s. 6; O. Reg. 42/05, s. 4 (1); O. Reg. 575/07, s. 1.

### **Causation-in-fact**

148. In *Snell v. Farrell*, Canada's Supreme Court greatly simplified things by saying (1) scientific evidence is not required and that (2) that causation can be inferred from the facts '*in the absence of evidence to the contrary adduced by the defendant.*'

149. The Plaintiff firmly believes that, had he not been racially discriminated against but rather treated like any other member of that Detachment he would have certainly passed his probation period and would have been well on his way into a promising career. He further believes that due to his

personal attributes, skills and qualifications that he would have had a lengthy career within the OPP with the definite possibility of promotion and continued promotions. He can state this most assuredly based on his strong work ethics and self-driving desire to excel at every given task which had been proven with his time at Trent University, his previous employment history and his military service in the Israeli Navy.

150. The Plaintiff further believes that had he not have been given a racially derogatory nickname, let alone any nickname, and not treated in the manner he was treated in as mentioned in this Claim, namely but not limited to: not being treated differently, not being criticized about his accent, not being referred to as an incompetent recruit (by his supervisor), not being charged falsely under the Highway Traffic Act, not being investigated by the PSB for associating with Undesirables, not being stigmatized as being an undesirable because of the fabricated allegation of him associating with Albania organized crime, not being belittled and reprimanded for exercising his rights as a Canadian citizen, his health would not have deteriorated to the extent where he was diagnosed with PTSD, sleeping disorders, severe anxiety and other ailments as referenced under the heading Effects of Discrimination of this claim.

## **General Damages – Economic Loss**

151. The OPP's denial of or refusal to admit that the Plaintiff was Racially Discriminated against even though documentary evidence was shared among the managers of the Peterborough Detachment acknowledging Human Rights violations are viewed by the Plaintiff as being extremely atrocious and akin to culpable negligence. The Plaintiff asserts that aside from the actions of the defendants at the Peterborough Detachment (that were racially motivated), the only factors barring him from passing his probationary period were the Performance Evaluation Reports, the false charge under the Highway Traffic Act and the false internal complaint of Associating with the so called Undesirables. Through documentary evidence he is able to show that the PERs were wrought with fraudulence, the charge under the HTA was indeed found to be lacking credibility and the internal investigation was unsubstantiated. That being said, the Plaintiff firmly believes he has been deprived of a complete career as a police officer with the OPP and robbed of the wages of an OPP officer.

152. The General Damages being claimed by the Plaintiff are from January, 2010, to December, 2010, as a third class Constable where he would have earned his base salary of \$61,790.00. From January, 2011, to December, 2011, he would have been a second class Constable with a base salary of \$69,304.00. From January, 2012, he would have earned the base salary of a first class Constable of \$83,483.00 at minimum without taking into account future wage increases:

- (a) Hence the Plaintiff has been deprived of wages, between January, 2010, to December, 2011, totalling \$131,094.00;
- (b) Hence the Plaintiff has been deprived of wages, between January, 2012, to December, 2039, through which time he would have earned at minimum a total salary of \$2,254,041.00,

153. The Plaintiff firmly believes that he would have been able to retire with a rank of, at minimum, an Inspector for he had all of the academic accreditations based on his previous work history and his time at Trent University, the Ontario Police College and the Provincial Police Academy in Orillia. An Inspector makes at minimum \$30,000.00 more than a Constable. If one was to reach that level after twenty years then it could be reasonably stated that the Plaintiff has been deprived of that added income for ten years until retirement at 30 years of service for a total amount of: \$300,000.00.

154. The Plaintiff's firmly believes that he would have attained the rank of Sergeant after eleven years of service and then the rank of Staff Sergeant which precedes the rank of Inspector. A sergeant earns \$10,000 more than a first class Constable and a Staff Sergeant earns about \$8,000 to \$10,000 more than a Sergeant. Hence, if one were to average the excess salary for nine years (based upon the Plaintiff becoming an Inspector after twenty years of service) at a minimum of \$10,000 then the Plaintiff has been deprived of an added income of \$90,000.00,

155. The Plaintiff has also been deprived of an accrued pension that would have been, at minimum, \$600,000.00,
156. For the expenses anticipated in travelling back and forth to Canada to keep this claim before the judicial system the Plaintiff claims, at minimum: \$20,000.00.

### **Punitive Damages – Personal Injury Loss**

157. The actions of the defendant OPP as referenced in this claim were malicious (giving the Plaintiff a racially derogatory nickname of 'Crazy Ivan' or in other words 'Crazy Russian', falsely stating that the Plaintiff had killed by shooting many people during his time with the Israeli Army, falsely charging him under the Highway Traffic Act, fabricating false accusations against him and further investigating him for allegedly associating with an Albanian organized crime group, etc.). These acts were also highhanded and heinous and were it not for these acts the Plaintiff's health would not have deteriorated to the extent referenced in items 84 to 90 under the heading effects of discrimination of this Claim. These acts were exacerbated by the OPP's denial of and/or refusal to admit anything that should have been admitted and as such the Plaintiff claims a total amount of: \$250,000.00 from the OPP.

158. The OPPA's denial of or refusal to admit anything that should have been admitted and their refusal to accommodate the Plaintiff by way of fair and impartial representation was particularly injurious to the Plaintiff in so much that it added to his feelings of despair and hopeless that to try to argue what was being done to him would bring on further reprisals. The OPPA's neglect to prevent the discriminatory treatment of the Plaintiff by the OPP was wilful and deliberate and these acts further exacerbated his injuries. Their negligence is further evidenced by their closure of Harry Allen Chase's case wherein they concluded that there was no evidence of any violations of the Ontario Human Rights Code by the OPP.

159. The *Ontario Labour Relations Act* (1995) in section 70 directs:

Employers, etc., not to interfere with unions

'70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence. 1995, c. 1, Sched. A, s. 70.'

160. Section 71 addresses any relationships with unions and employers:

Unions not to interfere with employers' organizations



'71. No trade union and no person acting on behalf of a trade union shall participate in or interfere with the formation or administration of an employers' organization or contribute financial or other support to an employers' organization. 1995, c. 1, Sched. A, s. 71.'

161. Elsewhere in section 74 it is stated:

Duty of fair representation by trade union, etc.

'74. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be. 1995, c. 1, Sched. A, s. 74.'

162. It is with reference to how the OPPA dealt with Harry Allen Chase's application and how they failed to deal with the conduct at issue as mentioned in this claim that the Plaintiff is of the belief that the actions of the OPPA were wilful and deliberate thereby exacerbating his injuries. As such the Plaintiff further believes that the defendant OPPA:

- (a) is in violation of sections 71 and 74 of the *Ontario Labour relations Act*, and
- (b) that there is a relationship between the OPPA and the OPP that is arbitrary, discriminatory and a relationship in which the OPPA does

act in bad faith in the representation of any of the employees in the unit.

163. Hence for all of the aforementioned (items 157 to 162) the Plaintiff claims punitive damages from the defendant OPPA in the amount of \$250,000.00.
164. These amounts are consistent with the amount awarded to Nancy Shultz of the Royal Canadian Mounted Police (hereinafter the RCMP) as a result of her successful action against the RCMP in the British Columbia Superior Court of Justice, albeit, her experiences pale in comparison to those of the Plaintiff (*Sulz v. Attorney General et al*, 2006 BCSC 99). Being that this is a precedent setting case against the OPP this amount is viewed by the Plaintiff as most apropos.

### **Aggravated Damages**

165. The OPP has a duty imposed on them by law and by the Ontario Public Service to treat each of its employees with dignity and respect having regard to the Human Rights Code. The Plaintiff asserts that the actions of the Defendants, especially the OPP and the OPPA were egregious and malicious especially in light of the e-mails between management at the Peterborough Detachment that the OPP were aware of Human Rights violations being committed against the Plaintiff and callously chose to

ignore the violations. Furthermore, the prevention of such violations is of paramount concern to the Government of Ontario which is why every member of the Provincial Government in all of its various ministries has to take mandatory e-training modules with respect to valuing diversity in the workplace and preventing workplace harassment. The OPP is in dire violations of these training modules. The cumulative effect of these violations by the defendants upon the Plaintiff, aside from being injurious to his health, left him with the genuine feeling that he was treated like trash. It also made him believe that Canada let him down.

166. The Plaintiff believes that this action has the potential of being a precedent setting action that could become class action should more victims like him come forward. Public interest needs cannot be addressed by treating the actions of the defendants lightly.
167. Furthermore, his injuries are lasting. He was literally ground into the dirt much like one does to a cigarette butt by the defendants. The actions of the defendant OPP turned a well-respected Trent University Computer Science instructor into a worthless and self-conscious nervous wreck.
168. The pain from the actions of the defendant caused severe emotional pain, anguish and grief to the point that at the time it was happening he would suffer from nosebleeds. It was so severe on one occasion in August 2009 that he had to stop at a community police office on his way to a call to attempt to stop the bleeding and had to call in sick the next day.

169. Recently the office of the Ontario Ombudsman released a report detailing and criticizing the OPP's negligence in dealing with PTSD amongst its employee's and the OPP's wanton disregard for not acknowledging its existence amongst employees that did suffer from it.
170. To the date of the filing of this claim the Plaintiff suffers from the effects of PTSD brought on by the discrimination he experienced. The humiliation, wounded pride, damaged self-confidence or self-esteem continues to affect his daily life and his well-being. As such he finds himself being forced to constantly take antidepressant medication.
171. The unconstitutional actions of these government servants were oppressive and criminally wrong for they were actions committed contrary to sections 300, 301 and/or 319(2) of the *Criminal Code*.
172. For all of the aforementioned (items 165 to 171), the Plaintiff claims aggravated damages in the sum of \$250,000.00 from the OPP and OPPA jointly.
173. All other costs incurred in the pursuit of this claim and evidenced with receipts and/or other documentary evidence.

## Crown Liability

174. The Plaintiff believes that he does have the right to hold the Crown defendant accountable in this claim under authority of *Proceedings Against the Crown Act*, R.S.O. 1990 wherein it is stated:

### Liability in tort

5.(1) Except as otherwise provided in this Act, and despite section 71 of Part VI (Interpretation) of the Legislation Act, 2006, the Crown is subject to all liabilities in tort to which, if it were a person of full age and capacity, it would be subject,

- (a) in respect of a tort committed by any of its servants or agents;
- (b) in respect of a breach of the duties that one owes to one's servants or agents by reason of being their employer;
- (c) in respect of any breach of the duties attaching to the ownership, occupation, possession or control of property; and
- (d) under any statute, or under any regulation or by-law made or passed under the authority of any statute. R.S.O. 1990, c. P.27, s. 5 (1); 2006, c. 21, Sched. F, s. 124.

(2) No proceeding shall be brought against the Crown under clause (1) (a) in respect of an act or omission of a servant or agent of the Crown unless a proceeding in tort in respect of such act or

omission may be brought against that servant or agent or the personal representative of the servant or agent. R.S.O. 1990, c. P.27, s. 5 (2).

175. The *Proceedings Against the Crown Act* further states that the Crown has to be served notice prior to initiating an action:

‘7.(1) Subject to subsection (3), except in the case of a counterclaim or claim by way of set-off, no action for a claim shall be commenced against the Crown unless the claimant has, at least sixty days before the commencement of the action, served on the Crown a notice of the claim containing sufficient particulars to identify the occasion out of which the claim arose, and the Attorney General may require such additional particulars as in his or her opinion are necessary to enable the claim to be investigated.’

176. For the reasons mentioned above Plaintiff is holding the Crown accountable in this claim and will be filing an amendment to this claim sixty days from the date it is filed with the Superior Court to include the Crown in this claim. Notice of this pending claim will be served on the Crown the same day the claim is served on the OPP and the OPPA. The plaintiff will provide the Crown with the benefit of having a copy of this claim as an appendix to the Notice that will clearly state when the amendment will be made and formerly served on the Crown thereby binding the Crown to this claim.

## **Reason for Requesting another Jurisdiction to hear this Claim**

177. The Plaintiff believes that the Ontario Provincial Police has influence over the administration of justice in Peterborough County and other small counties under the OPP's jurisdiction which is why he is seeking to have this claim adjudicated in the City of Toronto. The Plaintiff cites his case that was tried in the Provincial Courts in the City of Peterborough and is prepared provide the disclosure provided to him which was used by the Ministry of the Attorney General's office in determining reasonable prospect of conviction and the decision to proceed with a hearing.
178. Aside from the fact that the charge was completely false and fabricated, the Plaintiff believes that there simply was no basis for a conviction. For the Ministry of the Attorney General to proceed with a trial was a violation of the Plaintiff's constitutional rights as a Canadian citizen and a decision that was influenced by the OPP. A close friend of the Plaintiff who is a paralegal and had one of his colleagues represent the Plaintiff and who was subsequently falsely charged with criminal offences, while at the Peterborough courthouse one day was told by a senior officer from the Peterborough Detachment, *'That's what you get for helping Michael Jack.'*
179. It is in light of the aforementioned that the Plaintiff is seeking to have this claim adjudicated in the City of Toronto.

## Reason for Delay

180. The *Limitations Act* sets a time period for the commencement of a claim:

Section 4: 'Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered. 2002, c. 24, Sched. B, s. 4.'

Section 5(1) defines when a claim is discovered:

5.(1) A claim is discovered on the earlier of,

(a) the day on which the person with the claim first knew,

(i) that the injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim



first ought to have known of the matters referred to in clause (a). 2002, c. 24, Sched. B, s. 5 (1).

The presumption in section 5 (2) states:

‘A person with a claim shall be presumed to have known of the matters referred to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the *contrary is proved*. 2002, c. 24, Sched. B, s. 5 (2)’

181. The Plaintiff believes that, though he is under the burden of the demands that are placed on him under section 5(1) (a) there is sufficient evidence, as alluded to in this claim that, due to the nature of the injury, loss and damage, all of which were committed by the defendants in this claim a proceeding would be an appropriate means to seek to remedy it.
  
182. With respect to sections 5(1)(b) and 5(2) the Plaintiff can only state that , as alluded to earlier in this claim he was an immigrant from Israel who came Canada to pursue a higher education in the city of Peterborough, Ontario. Prior to setting his goal to be a police officer in Ontario he had no exposure to policing and had no knowledge of the laws of Canada. Even when he became a police officer his knowledge of the law was limited to what was taught at the Ontario Police College. He had no knowledge of

the Limitations Act and its authority over the various processes of the administration of justice.

183. Prior to joining the OPP he was employed as a part-time professor at Trent University where he never experienced any acts of discrimination. However, he was shocked at the blatant acts of discrimination being committed by the defendants to the point of his health deteriorating to the extent as mentioned elsewhere in this claim. The Plaintiff was terminated from his employment on December the 15th, 2009.
184. After the termination of his employment he struggled to get his health back and though he knew that what happened to him over the course of his brief employment at the Peterborough Detachment of the OPP he felt helpless due to the effects of Post-Traumatic Stress Disorder that eroded his self-esteem and self-confidence.
185. The Plaintiff spent the next year trying to get a job, but soon realized he had been blackballed by the OPP. His very limited funds was soon consumed when he enlisted the services of a reputable Law Firm, Feltmate, Delibato, Heagle LLP namely Kimberley Wolfe (hereafter referred to as Mrs. Wolfe), a former member of the firm and member of the Law Society of Upper Canada to pursue action against the defendant for the racial discrimination he endured and his wrongful dismissal from employment.

186. Being that the Plaintiff was ignorant of the appropriate administration of law to pursue he relied on the advice of his counsel and filed an Application before the Human Rights Tribunal of Ontario (HRTO) on December 14th, 2010.
187. Mrs. Wolfe shared a copy of this confidential application via e-mail to Counsel for the Respondent on or about December 16th, 2010.
188. Mrs. Wolfe subsequently removed herself from the representation of the Plaintiff due to an unexpected pregnancy. This action left the Plaintiff without any funds to retain another lawyer and he spent the next few months trying to get a lawyer to represent him either pro-bono or on a contingency basis but was unsuccessful. His friend, Lloyd Tapp, subsequently agreed to act as his representative under rule 2 of the Tribunal's Rules of Procedure.
189. Through his friend, Mr. Tapp the Plaintiff realized that he should have filed a Statement of Claim with the Superior Court of Justice where an appropriate remedy could actually be sought. However, neither he nor his friend could be certain of their belief. The Plaintiff could not even get a lawyer to look at his application without having to pay a retainer fee which he could not afford. Once again, due to his limited knowledge, he and Mr. Tapp believed that since a course of action had already been commenced via a reputable law firm through the Ontario Human Rights Tribunal they had to follow it through with the hopes of having a judgement rendered

against the OPP and then launch a civil action. Though his previous counsel had placed a sum of one hundred thousand dollars as relief being sought, this amount was not something that was canvassed by the Plaintiff. His desire at the time his application was filed was to expose the truth about the OPP by a successful application.

190. A formal disclosure of the application was made via the Tribunal on March the 27th, 2011.
191. The HRTO set the application for a hearing after the Plaintiff declined an initial request by the Respondent for mediation.
192. The Plaintiff was unable to function properly in Canada for all attempts at seeking suitable employment after his termination from the OPP failed.
193. The Plaintiff, having returned to Israel to live with his parents with the intentions of returning however number of times if necessary, sought employment but could not find a steady job due to depression from PTSD. He maintained part time jobs and gave private English tutorial lessons.
194. The hearing commenced on May the 22nd, 2012, and ran until May 24th, 2012, with another block of dates set for November 1 to 7, 2012.
195. On November 1st, 2012, the hearing continued before the seized Vice Chair, Mr. Keith Brennenstuhl, (hereinafter Vice Chair).

196. The Vice Chair suggested that mediation be looked into before proceeding that day and so the Plaintiff acquiesced.
197. The Plaintiff acquiesced based on the very strong recommendations of the Vice Chair that he had an enormous amount of material to go through and that he had not done so as of yet.
198. Based on this and other recommendations of the Vice Chair, the Plaintiff entertained mediation.
199. It was during this mediation that the Plaintiff learned from the Vice Chair that the amount of settlement that was mentioned on the second page of the application, that being One Hundred Thousand dollars was an amount that was unreasonable and never before been awarded in the Tribunal history.
200. It was during that mediation that the Plaintiff made it known to the Vice Chair that it was not him that came up with that amount mentioned on page two of the application but his previous Counsel.
201. The Plaintiff had clearly told his Counsel at that time that he did not know what would be appropriate and to put down what she felt was appropriate. The effects of PTSD still prevented him from seeing anything objectively at that time. The Plaintiff, ignorant of the proceedings of the law at that time did not even know about filing an amendment to the application.

202. Hence, when the Vice Chair made the comments about the amount of settlement mentioned on page two of the application being extraordinary, the Plaintiff advised that since the process was already commenced at the Tribunal by his previous counsel he was hoping to get a finding registered against the Defendant and use that finding to launch a Civil Action at the Ontario Superior Court of Justice for liability damages in Tort.
203. When asked why he had not done so, he and his representative, Lloyd Tapp advised that they are ordinary citizens with no legal expertise and were of the genuine belief that because of the application having already initiated a hearing, they would have to wait and hope to have a successful outcome of the application before the Tribunal before launching the Civil Action.
204. It was at this mediation (November 1st, 2012) that the Plaintiff and his Representative got educated through the comments of the Vice Chair that, should the Plaintiff have filed the Civil Action the application before the Tribunal would have been frozen until the disposition of the Civil Action.
205. Furthermore, the Plaintiff believes that sub clause (b) of section 5 (1) of the *Limitations Act* is met and that the information as contained in items 182 to 204 provides evidence to the contrary which is a requirement for section 5 (2).
206. In light of this information the Plaintiff had this Statement of Claim drafted against the defendants as identified. Though the Defendants might very

well argue that the Statute of Limitations has expired, the Plaintiff prays that consideration be given due his lack of knowledge, his vulnerability status (termination of employment, deterioration of his health, feelings of being worthless, hopelessness and despair at all the failed attempts in seeking employment as a police officer with other police services and feelings of being all alone in a foreign country that let him down) and the fact that he was led astray by his counsel with respect to which judicial process to initiate and then basically dumping him. The Plaintiff further prays that consideration be given in light of the offences under the *Criminal Code of Canada* that were committed against him.

207. Due to the nature of this claim, the bold allegations being made of an organization (the OPP) that repeatedly professes that they are second to none in all of Canada, the clear and convincing evidence that will expose the truth about the Ontario Provincial Police in their continued violations of the Code and their failure to address the conduct at issue minority members are at risk by OPP's wilful non-compliance with the Ontario Human Rights Code. There is a need to protect current victims within the organization that are afraid to come forward for fear of reprisals.

208. Furthermore, being that he has lost all sense of dignity and self-worth he has nothing to lose. As such, he has created two websites that are loaded with information to expose the truth about the OPP. These websites have additional documents that were gleaned from the disclosure provided by

way of the Tribunal process that he is prepared to release to the world should he feel pressured to do so.

209. In light of the aforementioned, should the claim not be allowed to proceed the Plaintiff believes that the administration of justice would be brought into disrepute because of the strong evidence that the Plaintiff has gained through the two years of work by himself and Mr. Tapp - evidence that is just waiting to be presented through this claim.

210. The Plaintiff will withdraw his application before the Tribunal should this claim be allowed to proceed. Furthermore, he is willing to return all disclosure as provided via the Tribunal's judicial process and await it again via the process of this claim.

211. Finally but not least, it is only through the exertion of the authority of the Superior Courts of Justice that the Plaintiff can hope to effect change and provide an appropriate remedy to give him closure for the racial discrimination he endured.

### **Addressing the Concern of Double Jeopardy**

212. The Plaintiff's ignorance of the law and vulnerability after his termination left him relying completely on the knowledge of a law firm that professed to be a reputable one. As mentioned earlier in this claim the Plaintiff was not



in the right state of mind even when his counsel filed it in December of 2009 for he left the remedy being sought in her hands. Later after she vacated herself he spent several months trying to find another lawyer to take on a pro-bono (for the reputation that could be gleaned from holding the OPP accountable) basis or a contingency basis. However, he had no success.

213. Hence, he was left helpless and was left with no alternative other than to continue through with a process already initiated by a learned counsel. He and his representative genuinely believed that they had to follow through with the process initiated and then launch a civil action. On November the 1<sup>st</sup>, 2012, when the Plaintiff learned that the civil action should have been initiated at which time the Tribunal process would be frozen, he had his representative start drafting this claim.

214. This claim is literally all the Plaintiff has to live for and coupled with his strong desire to expose the truth about the OPP and how its minority employees who speak with a thick accent are treated, he is extremely concerned of prematurely filing a withdrawal of his application before the Tribunal in the event that his claim is barred from proceeding for whatever reason. The barring reason that is of primary concern to the Plaintiff is that of over-coming a perceived breach of the Limitations Act.

215. For that reason he is prepared to put forth a motion before the Tribunal requesting that his proceedings before the presiding Vice Chair be frozen

on the grounds that this claim has been filed and that a motion for withdrawal will be forthcoming should the claim be allowed to proceed.

### **Addressing the claim filed in error**

216. Though the Plaintiff worked with Mr. Tapp in drafting this claim, it was filed in haste on Monday, December 17, 2012. Shortly after filling it Mr. Tapp discovered that there were several grammatical errors and that reference was made to a statute of law in the United Kingdom – the Crown Liability Act. In Canada and in particular in Ontario it is known as the *Proceedings Against the Crown Act* or otherwise commonly referred to as the *Crown Proceedings Act*. The need to remove the paragraph referencing this act caused the numbering of the entire claim to change. Furthermore, Mr. Tapp noticed that the name of one of the defendants was misspelled. Aside from that Mr. Tapp discovered that he used the wrong form (4A instead of 14F) for the information. Hence, the most expeditious route seemed to be the withdrawal of the claim filed on December 17, 2012 under court file number CV-12-470261 and the refiling of this claim which addresses the errors.

## **Request for Special Representation**

217. The Plaintiff's life was ruined by the actions of the Defendants.
218. To the date of this claim the Plaintiff merely possesses a suitcase full of clothes that he can readily travel with back and forth to Canada for the hearings before the HRTO and ultimately via this claim. He maintains odd jobs just to gather enough money for his next air fare. That is why he cannot get meaningful and long term employment.
219. The Plaintiff does not have the luxury of a fixed income to afford the high legal fees that lawyers set for handling such cases.
220. He has sought assistance of many lawyers but has always been advised that he has to provide retainer fees of five to fifteen thousand dollars just to have them look at the case.
221. Under the Rules of Representation with the HRTO, the Plaintiff is able to get his friend, Lloyd Tapp to represent him.
222. Mr. Tapp, through his years of service as a police officer, especially in Toronto where he was exposed to several specialized units was able to accumulate a vast amount of knowledge regarding the administration of justice at various levels. His knowledge is gleaned from his work experience including and not limited to:

- (a) Mr. Tapp has been involved as 'Officer in Charge' of numerous cases before Judges at the Provincial Level;
- (b) Involved in pre-trials;
- (c) Involved in trials at the Superior Courts of Justice (361 University Avenue, Toronto);
- (d) Involved in Judicial pre-trial conferences at both levels;
- (e) Involved in trials before a judge alone and trials before a judge and jury at the Superior Courts of Justice;
- (f) Mr. Tapp has a thorough working knowledge of the Rules of Evidence and courtroom decorum;
- (g) Mr. Tapp has a thorough knowledge of the various documentations required for a case going through the judicial system;
- (h) Though Mr. Tapp is not a licenced lawyer under the Law Society of Upper Canada the Plaintiff believes Mr. Tapp is knowledgeable to locate specific documents as required no matter where or in which level a judicial process is being held. The Plaintiff also believes that though Mr. Tapp did make an error as mentioned in item 216 the error was identified and rectified by Mr. Tapp. Furthermore, Mr. Tapp has been getting

more experience with the current judicial process that started at the Tribunal;

- (i) Though Mr. Tapp has never represented anyone at a civil trial he has had experience having gone through one himself.

223. The Plaintiff believes that it is a Judge's discretion to grant representation of the Plaintiff by a person other than one that is recognized by the Law Society of Upper Canada upon taking the following factors into consideration:

- (a) That said, the Plaintiff believes that the court, may permit someone to act as an agent and/or representative so long as there is no evidence that the person is dishonest or unethical. This is a discretionary decision by a Judge and so is not being taken by the Plaintiff as an automatic right. In deciding whether to permit someone to act as an agent and/or representative the court must consider a number of factors, including whether the proposed agent and/or representative: has been shown to be incompetent, would damage the fairness of the hearing or trial, is facing criminal charges involving dishonesty or the administration of justice, has been convicted of crimes of dishonesty, has otherwise demonstrated a lack of good character that would bring the administration of justice into disrepute.

- (b) Mr. Tapp does meet all of the factors that are to be taken into consideration: he has, by virtue of his experience and his position towards the Plaintiff regarding the Plaintiff's Human Rights Application shown to be competent; his professionalism during his exposure to the judicial system at various levels through his years of being a police officer have never resulted in any criticism regarding any trial and/or hearing; he has never and is not facing any charges involving dishonesty or the administration of justice and in fact never faced any criminal charge whatsoever; he has never been accused of or demonstrated a lack of good character that would bring the administration of justice into disrepute.
- (c) In *R. v. Dick* dated January 17, 2002, BCCA 27 docket: CA029122, in paragraph 16 the judge states, 'We use the word 'privilege' advisedly, there being clear authority for the proposition that, subject to statutory provisions otherwise, it lies within a court's discretion to permit or not to permit a person who is not a lawyer, to represent a litigant in court. In particular we note the judgment of Lord Denning in *Engineers' and Managers' Association v. Advisory, Conciliation and Arbitration Service et al.* (No. 1), [1979] 3 All E.R. 223 (C.A.) at 225, the decision of the Privy Council in *O'Toole v. Scott et al.*, [1965] 2 All E.R. 240 at 247; the comments of this Court in *Venrose Holdings Ltd. v. Pacific Press Ltd.* 1978 CanLII 378 (BC CA), (1978), 7 B.C.L.R.

298 at 304, where it was said that the discretionary power to grant a privilege of audience to other persons should be exercised 'rarely and with caution'; and the decision of Esson J. (as he then was) in *B.C. Telephone Co. v. Rueben*, 1982 CanLII 588 (BC SC), [1982] 5 W.W.R. 428 (B.C.S.C.), at 434.'

224. The Plaintiff believes that no lawyer could know the minute of details about his case than Mr. Tapp. Furthermore, he believes that Mr. Tapp's knowledge about this claim is predicated upon his experiences with the OPP and because of that belief no lawyer could possibly represent him with a passionate desire to pursue it to the end and hold the defendants accountable for their actions.
225. Mr. Tapp is willing to represent the Plaintiff without any costs whatsoever. As stated in earlier in this claim, the Plaintiff cannot afford the exorbitant fees of any counsel and to not allow him to utilize the knowledge of his friend, Mr. Tapp would only serve to permanently bar him from seeking justice.
226. The Plaintiff believes that the administration of justice would actually be brought into disrepute if he is not allowed to utilize Mr. Tapp as his agent and/or representative who is willing to do so freely and voluntarily.
227. In light of the aforementioned the Plaintiff is seeking authority from a Judge to have Mr. Lloyd Tapp act as his agent and/or representative for this Statement of Claim.

228. Further details about the case are available on the following websites:

[www.racisminopp.org](http://www.racisminopp.org) and [www.discriminationopp.org](http://www.discriminationopp.org)

Dated: Friday, December 21, 2012

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