**Overview of Respondent’s Reply**

1. At the conclusion of the hearing Counsel suggested that the closing submissions be restricted to 20 pages and be double spaced. Mr. Vice Chair allowed restricted submissions to 30 pages, but reminded the Applicant that he was to adhere to the HRTO guidelines on the drafting of the documents. His comments were directed to the Applicant, but were also meant for Counsel for the Respondent as well.
2. Counsel has violated these simple protocols and directions. Where the Applicant complied, Counsel did not. Counsel’s submission are the equivalent of 50 pages and only by violating these protocols was Counsel able to get it reduced to 30 pages.
3. All through the rest of this reply the Applicant will refer to the manipulation of facts and truth by Counsel for the Respondent in a vain attempt to defend this application. The Respondent has provided no documentary evidence to support their defense for there is none.

**Factual Reply**

1. Under the first allegation the Respondent claims that because the Applicant acknowledges that the nickname did not come to his attention until several months after he was terminated is proof that it had no bearing on discrimination of the Applicant’s protected grounds.
2. The evidence revealed has been clear that the nickname was racial and was derogatory. The evidence revealed that it was used in reference to the Applicant and always behind his back.[[1]](#footnote-1)
3. That nickname arose sometime after the Applicant’s ride-alongs with Gravelle and Pollock and that racially biased email from Brad Rathbun, which was sent out after the first ride along and before the second ride along.[[2]](#footnote-2) The fact that it was in use and addressed in a shift briefing by Flindall to his platoon before the Applicant started working at the detachment is significant.[[3]](#footnote-3) It was no longer the sole use of one or two persons, but enough to be addressed by Flindall.
4. It is immaterial when the Applicant became aware of the nickname. What is materially relevant is that the Applicant was being referenced with such a nickname and the significance of such a nickname to the Applicant. It was a racially derogatory nickname and had everything to with his race, ancestry, place of origin and ethnic origin.[[4]](#footnote-4)
5. Any reasonable person would wonder that if such a nickname was not derogatory or offensive then why it was only used in the absence of the Applicant’s hearing and presence?
6. Item 33 of the response talks about ‘Tim Fish’, an outside police officer employed by Peterborough Lakefield Police Service as opposed to Peterborough OPP.[[5]](#footnote-5) Accordingly, Tim Fish is the one who categorized Jack as ‘the complainer’. The Respondent goes on the say that the Applicant did not call Tim Fish or anyone else in the locker room (where that audio recording took place) to the stand. However, the Applicant points out that he sought out further information from the Respondent, after he was disclosed that audio recording on a CD[[6]](#footnote-6) twice! The Applicant specifically requested to know when that recording was made.[[7]](#footnote-7) Counsel for the Respondent, Mr. Manuel undertook to furnish this information, but never did. [[8]](#footnote-8) After the second request Counsel for the Respondent, Mrs. Singh also failed to provide the requested information about the recording. To date we don’t know when this audio recording was made.
7. The Respondent refused to provide any answers to these questions and hence the Applicant was left to get the answers from Gravelle and from Duignan when they took the stand. It was the Applicant and his representative that recognized the voice of Respondent witness Gravelle. It was only on the day of Gravelle’s testimony and during his cross that the Applicant learned of the identity of Tim Fish. [[9]](#footnote-9)
8. Counsel for the Respondent, knows this to be true for the transcript clearly reveals the Applicant’s representative suggesting to Gravelle that it was Gravelle’s voice uttering, ‘the complainer’ and that Gravelle corrected him by revealing the name of Tim Fish.[[10]](#footnote-10)
9. Hence, Counsel is manipulating or attempting to mislead the Tribunal into believing otherwise by stating that the Applicant chose not to call Tim Fish or anyone else to the stand regarding that recording.
10. Contrary to what Counsel states in item 34, the unshaken testimony of the Applicant’s witness Greco was that it was Gravelle who was often the source of those comments. Gravelle called the Applicant ‘Crazy Ivan’, mocked his accent and described the Applicant as a ‘loose cannon’ and questioned why Greco was representing someone who is ‘crazy’ and a ‘loose cannon’.[[11]](#footnote-11)
11. Greco’s testimony corroborates the Applicant’s evidence and how that nickname was used in reference to him. It is a plain and simple observation that Gravelle ridiculed the Applicant and his references of the Applicant as ‘crazy’ and ‘loose cannon’, is not much different from him referencing the Applicant as ‘Crazy Ivan’.[[12]](#footnote-12)
12. This reference of the Applicant does portray him as a Crazy Russian.
13. Items 35 to 38 talk about Campbell’s view on the actual number of registered firearms in the Applicant’s collection, the Applicant’s complaint to the OPPA and his actions when he learned of the OPPA investigation. Item 38 states that the Applicant had significant performance issues and that it was Campbell who moved the Applicant to a different platoon.
14. First, the ‘significant performance issues’ Campbell was refering to in his testimony were not observed directly by Campbell, but were reported to him by Filman and Flindall. This hearsay testimony is questionable and simply cannot be relied upon considering who it was coming from (Filman and Flindall).
15. Second, by now we know too well how Filman[[13]](#footnote-13) and Flindall treated Jack[[14]](#footnote-14). We also know that Campbell was aware of it.[[15]](#footnote-15) Hence, were there significant performance issues or were there not? If there were performance issues, how significant were they? If Campbell himself made a determination that Jack was being poorly coached and poorly supervised and in fact was being targeted[[16]](#footnote-16), how can one state at the same time that Jack had significant performance issues which were reported by the same people who failed to properly coach and properly supervise Jack in the first place? These are very obvious contradictions.
16. Third, Counsel is geniualy mistaken here. It was regional Acting Superintendent Doug Borton, who orchestrated the move of the Applicant from one platoon to another and not Campbell.[[17]](#footnote-17) Campbell did not have the authorty to move a recruit from one platoon to another since a recruit is still attached to a region until succesfully pasing the probationary period and only then being attached permanently to a specific detachment. Hence, it was Borton’s decision when he learned of German’s investigation.[[18]](#footnote-18)
17. In the last sentence of item 38 Counsel is failing to take into account Kohen’s noted observations of Flindall – ‘*has a strong dislike for Probationary Jack’*.[[19]](#footnote-19) Counsel says Kohen’s testimony or evidence was trustworthy and reliable (item 81 of Respondent’s reply) and trustworthy and credible (item 101 of Respondent’s reply). Hence, according to Counsel this determination by Kohen of Flindall is trustworthy, credible and reliable. The fact that Kohen was able to make this determination based on telephone communications is of particular importance. Though we do not have a recording of each of the calls Kohen was engaged in with Flindall, it is clear that she made that observation based on what Flindall said of the Applicant and how he talked about the Applicant.
18. In item 40 Counsel writes that Filman was not aware of any concerns regarding Jack’s accent, yet recalls Jack asking him about speech therapy for his accent. However, in two PERs Filman writes ‘*Jack is conscious he speaks with an accent’*.[[20]](#footnote-20) The statement here contradicts itself. The Applicant is being formally documented about his noticeable accent in two formal documents.
19. Is it any wonder why the Applicant approached Filman and asked him about speech therapy for his accent? It is truly nothing but discrimination by race, ethnic origin, ancestry, place of origin when the Applicant was made acutely aware of his foreign accent time after time. The applicant testified that he was the only one in the detachment who spoke with an accent and it was a thick noticeable accent.
20. The aforementioned assertion is not something that the Applicant is imagining for another platoon member, namely Payne, acknowledges a conversation in which the Applicant said he wanted to see a speech therapist. This is accurately captured in Counsel’s response in item 41.
21. Hence, it is not just the Applicant’s coach officer who is talking to him about his accent and documenting it, but another platoon member and mentoring officer is also doing the same. What is common between them is also significant. They are both in positions of authority over the Applicant because he was just a probationary recruit. Hence the Applicant was seeking to rid himself of something that is part of his heritage and natural to him because he was constantly being reminded of it. This is sheer discrimination based on accent which is directly linked to the prohibited grounds.
22. And if the aforementioned wasn’t enough, a reasonable person has to contend with the lies of Moran in denying telling Jack to “speak with a Canadian accent” as reflected in item 44 of the Respondent’s response. Filman and Payne obviously had conversations with the Applicant about his accent, but Moran is attempting to portray herself as not having any issue or not having any discussions with him of his accent. [[21]](#footnote-21) What is plain and obvious is that for one to acknowledge saying that is to admit to one’s own prejudice.
23. Any reasonable person looking at Moran’s comment can see that it is negative and contrary to the prohibited grounds of the Ontario Human Rights Code (Code). Is it any wonder why Moran denies making such a comment?
24. In item 42, Counsel first focuses in on Jack never telling Nie that he felt he was discriminated against at the detachment. Though Nie testified that he did not recall Jack telling him he was being harassed or discriminated against, Nie testified at length about Jack speaking to him about discrimination in general and about Canadians being subconsciously biased against people from other countries.[[22]](#footnote-22) Why would such a discussion take place unless it was pertinent to the Applicant’s predicament? Nie did know that Jack was indirectly talking about him.[[23]](#footnote-23) How can Counsel state that Jack never told Nie that he felt he was discriminated against when this is exactly what Jack did?
25. Next, in item 42, Counsel focuses in on how Nie tried his best to help the Applicant succeed in ‘trying to get him hired as a police officer’. Counsel is genuinely mistaken here again. The Applicant was already hired as a police officer, but had the designation of ‘probationary constable’. A probationary constable is a police officer. However, a probationary constable cannot progress from such a designation to a ‘constable’ until he/she successfully completes his/her probationary period.
26. Counsel’s lack of insight does not diminish the fact that Counsel is still manipulating the truth. Kohen’s testimony was that a Point Form Chronology (PFC)[[24]](#footnote-24) document is used for one that is anticipated to be terminated as opposed to being hired as a constable.[[25]](#footnote-25) It is this PFC that Kohen took into account when compiling the Internal Briefing Report[[26]](#footnote-26) to the provincial commanders recommending the dismissal of the Applicant from employment, which Chief Superintendent Armstrong subsequently took into account.[[27]](#footnote-27) Nie’s testimony revealed that he coached 7 recruits including the Applicant. Nie only created and maintained PFCs on two recruits who were terminated from employment during their probationary period. Those two were Harry Allen Chase and the Applicant. Nie also acknowledged that he began his PFC on the Applicant from day one of his coaching of him.[[28]](#footnote-28)
27. Again a simple and glaring observation can be made by any person viewing these facts from the transcripts – the Applicant was marked for termination from day one of his probationary period under the coaching of Nie.
28. Nie also seems to have a very good memory of what things the Applicant told him (considering the lapse of 7 years), things that would not be damaging to the Respondent’s position. Yet things that were damaging like how the Applicant felt oppressed by the discrimination and targeting, how the Applicant cried in the cruiser and how he begged Nie to ease off his pressure around his throat, Nie conveniently had no recollection of. However, Nie did testify at length about how Jack felt he was documenting his every move, how Jack was intimidated by him, how Jack was under pressure with him.[[29]](#footnote-29) One can draw a conclusion that if all those things did take place it is only reasonable to deduce that Jack indeed begged Nie to ease off his pressure and Jack indeed cried in Nie’s presence.
29. With respect to the second half of item 44 there is not a single shred of evidence neither in Moran’s witness summary nor in her entire testimony[[30]](#footnote-30) that she advised Jack not use a recording device. There is also not a single shred of evidence neither in Moran’s witness summary nor in her entire testimony that she wanted Jack to succeed.[[31]](#footnote-31) Why is Counsel twisting the facts?
30. With respect to item 55, who were those other officers? Can Counsel be even vaguer? Is one realistically expecting the police witnesses to testify truthfully about what they did to the Applicant during his time with them at Peterborough Detachment? The only just course of action is to go by factual documentary evidence. He says, she says in this case do not amount to much. But a few well-established facts do, which are: baseless allegations of killing people, tardiness of PERs, copy-paste entries in PERs that are even out of time frame, fabrications in PERs, lack of mandatory PER meetings, false HTA charge, unsubstantiated internal complaint, lack of formal positive commendations when situations and deeds warranted so.
31. Filman’s testimony in item 56 was from his entries in the PFC.[[32]](#footnote-32) However, there is factual documentary evidence that both Filman and Jack were off duty on the day of this allegation – March 7, 2009. [[33]](#footnote-33) So how could Jack have possibly said anything to Filman when neither of them worked on that day? This statement is another manipulation of facts by the Respondent.
32. With respect to item 61, then if only Jack’s PERs were chronically overdue out of all the recruits at the detachment[[34]](#footnote-34) how is that not an indication of differential treatment?
33. With respect to item 67, Constable Payne can disagree all she wants. The documentary evidence states otherwise. Jack worked more shifts than other officers on his platoon[[35]](#footnote-35) and was assigned and handled more calls for service[[36]](#footnote-36) than his coach officer Constable Filman[[37]](#footnote-37) and his “go-to” person Constable Payne.[[38]](#footnote-38)
34. With respect to item 68, if Filman found the process of completing PERs onerous, then he should not have been selected to be Jack’s coach officer in the first place. It was Filman’s direct responsibility to complete Jack’s PER in a timely and professional manner. Why is Jack to suffer the consequences of Filman’s pure neglect of duty? While Filman denies directing Jack to lay unsubstantiated charges, it is a fact that the charges were dismissed. While both Flindall and Campbell testified that they never had concerns with Filman’s coaching of Jack, why was there a need to assign another officer to mentor Jack? Why did Campbell and Johnston feel Jack was being targeted? Why was there a need to move Jack to a shadow platoon as far away as possible from Flindall, Filman, Payne and Flindall’s brother-in-law Sgt. Banbury?
35. With respect to item 69, this ground is valid and it is the Applicant’s position that this ground is supported by documentary evidence and by witnesses’ testimony. As for Counsel’s assertion that ‘it must fail’, it is the Applicant position that it is Mr. Vice Chair who decides whether or not the ground fails. Counsel’s use of imperative modal ‘must’ is arrogant and inappropriate.
36. With respect to item 70, then again one can state anything one wants. Counsel is stating that the inference was drawn in 2010, which was when the trial took place. It has been the Applicant’s testimony all along that he knew the charge was false from the day he was given that ticket by Flindall. He testified about the satisfaction that he observed on Flindall’s face when he wrote the Applicant that ticket. This aspect of the Applicant’s testimony was never explored further during cross examination by Counsel.
37. The *HTA* transcripts were entered into evidence[[39]](#footnote-39) and it’s judgement by Justice of the Peace C. Young summed up that there simply wasn’t enough evidence to warrant a conviction.[[40]](#footnote-40) It simply warranted speaking to Jack and not charging him. It is this action of charging the Applicant that is referenced in the application as something stemming from contempt towards the Applicant. The fact that all possible evidence in existence was given and the charge was dismissed by courts is testament to the lack of any credible evidence to support the charge.
38. Seldom does one hear of why one is being subjected to differential treatment, for example, ‘*an employee is told by a manager that the manager does not like him because he is a crazy Russian who cannot speak English normally, but with a thick Russian accent that attracts attention.*’ However, that employee would only feel the effects of that manager’s feelings by the manager’s actions towards him.
39. Such actions always have results and the Applicant suffered harsh consequences as a result of the *HTA* charge. And to briefly reiterate what was already stated in the Applicant’s closing submissions, the charge was determined to be unsubstantiated, just like the internal complaint of associating with ‘Undesirables’, just like the allegation of feigning sickness, just like the allegation of surreptitiously recording officers, just like the allegations of refusing to sign his PERs, all of which were orchestrated by the same person – the Applicant’s direct supervisor Sgt. Robert Flindall, who never even bothered to hold mandatory PER meetings with the Applicant.[[41]](#footnote-41)
40. With respect to item 73, then the poisoning of the Applicant’s work environment was established and shown through the testimony of Flindall who testified that he addressed the use of the nickname ‘Crazy Ivan’ in a shift briefing before the Applicant started working at the detachment. [[42]](#footnote-42) He had to do this as per Ontario Public Service polices and OPP Orders on a discrimination free work environment. It is therefore a fact that his officers were referencing the pending arrival of a ‘Crazy Russian’. However, this action of Flindall did not diminish his disdain and contempt towards the Applicant. Flindall even wanted to find out as much as possible about the Applicant prior to him starting on his platoon.[[43]](#footnote-43)
41. He had the full support of the detachment management for that directive was coming down the channels of management.[[44]](#footnote-44)
42. Hence, for Counsel to say that the Applicant is alleging that the laying of the HTA charge was intended to poison the Applicant’s work environment is not true. That charge only added to the poisoning of the Applicant’s work environment. Nowhere in the Applicant’s testimony was it stated or inferred that the application of that charge was ‘intended’ to poison Jack’s workplace. Such an inference would have been nothing, but mere speculation and objected to.
43. The fact remains that the charge was dismissed in court. Had the crown attorney persecuting the charge found the court decision to be incorrect, they could have appealed the decision, but they never did. So to now state that Flindall and Payne observed Jack’s unsafe driving manoeuvre, that their testimony was credible and trustworthy is nothing, but a futile attempt to twist the plain and simple truth – the charge was unsubstantiated and it was rightfully dismissed. Whether it was racially motivated or not then it has to be looked upon collectively with all the other allegations and observations as opposed to as an isolated incident. Tribunal rules of racial discrimination and harassment unequivocally stipulate that racial discrimination does not have to be overt. It can be manifested, among other things, in being subjected to scrutiny and differential management standards, all of which are found in abundance in the Applicant’s case.
44. With respect to items 81 and 82, the notes of Kohen[[45]](#footnote-45), Campbell[[46]](#footnote-46), the PFC[[47]](#footnote-47) entries of Campbell[[48]](#footnote-48) and Nie[[49]](#footnote-49), along with the correspondence with German[[50]](#footnote-50) and the Applicant’s memorandum,[[51]](#footnote-51) all of which were entered into evidence as exhibits, document that the Applicant did advise numerous individuals of the actions of other officers towards him. The Applicant did provide testimony that he made management aware of his allegation. His examination in chief in 2012 revealed this and it was something that was not explored during cross examination. Consequently, those involved in teleconference meetings and the August 19, 2009, meeting do reflect those allegations in their respective notes.
45. Furthermore, the Applicant’s testimony and evidence also revealed that subsequent to his platoon change he made Butorac and Nie aware of his allegations in a subsequent meeting with them. In that meeting Nie was the only one to write down those allegations as reflected in his PFC entries. [[52]](#footnote-52)
46. The Applicant made Kohen, German, Campbell and Nie aware that he viewed what was being done to him as oppressive and just plain wrong. His ignorance of the Human Rights Code at the time of his discourse to these officers does not diminish the value or worth of bringing it to their attention. They clearly understood their value in their documentation of these comments. Campbell clearly acknowledged that these were potentially tantamount to a Human Rights complaint.[[53]](#footnote-53) It is unmistakably understood in all aspects of the judicial system that one only documents important information or observations and information that will help one jog their memory.
47. Butorac’s lack of such documentation further attests to the fact that aside from witness Greco[[54]](#footnote-54) everyone else who testified attempted to testify in favour of the Respondent. It is clear that Butorac was afraid or not willing to document anything in his notes that could be adverse to any position of the Respondent employer. Hence, Counsel appears to be seeking to mislead this Tribunal by her perspective, a perspective that any ordinary person when viewing the evidence cannot possibly see or agree with.
48. The Applicant candidly testified he did not believe naming those officers were ethical and so he didn’t. The Respondent on the other hand, did not hold back anything. What a shame!
49. With respect to item 91, the only thing Flindall did not agree with when cross examined on his threat to Jack losing his job was the use of the word ‘incompetence’. He denied saying, ‘*I have never seen such incompetence in a recruit before’*[[55]](#footnote-55) He said that he may have said ‘*Never seen such blatant violation of direction’* and explains why he may have said something like that. It is also full of anger. The word ‘incompetence’ is not a word the Applicant would use to describe himself and it is not normal for any person to use such a word to describe themselves. ‘*Never seen such blatant violation of direction*’ begets ‘incompetence’ and it was a word Flindall used based on his strong dislike of the Applicant and his explanation of why he may have said something like that.[[56]](#footnote-56)
50. Flindall negatively documented the Applicant for handling the criminal harassment case that was not even substantiated.[[57]](#footnote-57) Flindall alleged that the nature of the criminal harassment case that he assigned to the Applicant was quite serious,[[58]](#footnote-58) yet in reality it was not.[[59]](#footnote-59) Furthermore, there was no legal authority to hold the accused for a bail hearing. Hence, the order Flindall gave to the Applicant to hold the accused for a bail hearing was unlawful.[[60]](#footnote-60) The outcome of the criminal harassment investigation was a Peace Bond[[61]](#footnote-61) and Flindall was negatively documented by Campbell regarding overseeing that criminal harassment case.[[62]](#footnote-62)
51. With respect to item 92, *‘Jack refused to sign it on the basis that he disagreed with everything in it’* is simply not true. It has been the Applicant’s testimony all along that he never refused to sign his Month 6/7 PER upon being served it by Flindall. Due to its shocking content and artificially imposed time limit to review (sign and return it within 20 minutes)[[63]](#footnote-63) the Applicant contacted the president of the OPPA 8th branch D/Cst. Keren German and upon explicit and unequivocal direction from her he simply asked Flindall to exercise his lawful right to have more time to review it and to have it reviewed by an OPPA representative prior to signing it.[[64]](#footnote-64) He was denied that.[[65]](#footnote-65)
52. With respect to item 93, Flindall’s words are nothing but a pathetic excuse for neglecting his duty in mentoring and supervising the Applicant properly. Had Flindall fulfilled his mandated responsibilities towards the Applicant, none of what we have been dealing with to date over the past 7 years would have happened.
53. While basic mandatory responsibilities with respect to the Applicant were not fulfilled by Flindall, the amount of negative documentation issued by Flindall to the Applicant is simply overwhelming. All of Flindall’s PFC denotes nothing, but negativity.[[66]](#footnote-66) All of his notes denote nothing, but negativity. Butorac, on the other hand, complied with Probationary Recruit Guidelines and OPP Orders and had regular PER meetings with the Applicant for he does recall commending the Applicant on his accident reports during those meetings.[[67]](#footnote-67)
54. Butorac testified that mandatory PER meetings is something that needed to be documented and so he did just that. His notes do reflect those meetings.[[68]](#footnote-68) However, he was mindful to not document anything that would be adverse or negative towards his employer or reflect poorly on management of the Applicant.[[69]](#footnote-69)
55. With respect to item 94, Counsel’s assertion is false and misleading. The Applicant left Flindall’s platoon on August 20, 2009. There is an abundance of documentary evidence in the form of email correspondence involving Flindall working on Jack’s PER and WIP well after August 20, 2009, and even after September 9, 2009.[[70]](#footnote-70)
56. With respect to item 95, how can Counsel state that Constable Payne did not prepare Jack’s PERs when documentary evidence along with Payne’s testimony state exactly otherwise?[[71]](#footnote-71) Since Payne worked on Jack’s evaluation and had explicit inputs in them, how can it not be viewed as preparing them? Payne’s notes clearly show her working several hours on Jack’s PER while officially off duty and at home.[[72]](#footnote-72) Yet Counsel says that Payne did not prepare Jack’s PERs. Payne may not have prepared a complete one, but it is very clear even from her testimony that she did prepare portions or parts of them.[[73]](#footnote-73)
57. Payne’s notes regarding the Applicant as reflected in her official notebook and her duplicate (surreptitiously maintained notebook that was solely on the Applicant) revealed no positive things documented about the Applicant. She was specifically directed by Mr. Vice Chair to review her notes during recess to address that question. She confirmed that there were no positive documentations anywhere in her notes. [[74]](#footnote-74)
58. Though the court reporter failed to capture her response accurately[[75]](#footnote-75) the notes of the Applicant and Mr. Vice Chair do reflect her answer – *‘THE VICE-CHAIR: …and I noted, and the recording will...the transcript will agree that she testified that there is nothing positive in the notes’*[[76]](#footnote-76)
59. Payne testified that she had authorization from Campbell or Flindall to maintain a duplicate notebook on the Applicant.[[77]](#footnote-77) Campbell testified that it was his understanding based upon communication from Flindall that it was Jack who was keeping the duplicate notebook and that he told Flindall ‘*can’t have two notebooks.*’ Campbell testified he was NOT aware that Payne was maintaining a second notebook solely on Jack.[[78]](#footnote-78)
60. If it was about Jack maintaining two notebooks simultaneously then why didn’t anybody bring that to Jack’s attention? With so much negativity dumped on Jack, how come Jack was never reprimanded or at least advised not to keep a second notebook? How come there is not a single shred of evidence of its existence anywhere?
61. It is the position of the Applicant that Campbell did lie on the stand by testifying that his notation of *‘can’t have two notebooks’* was directed at Jack. The only possible person his notebook notation ‘*can’t have two notebooks*’ related to was Payne.
62. With respect to item 96, though Nie says he didn’t treat Jack any differently than any of his previous recruits[[79]](#footnote-79) his cross examination revealed otherwise. He started preparing the PFC – the document that is required for termination of employment – on the first day of coaching Jack.[[80]](#footnote-80) Thus essentially marking Jack for termination from day one.[[81]](#footnote-81) Not only did Nie document Jack negatively in PFC[[82]](#footnote-82) and rated Jack negatively in PER 9 within the first hour of coaching Jack,[[83]](#footnote-83) but to add insult to injury Nie documented Jack negatively for something that turned out to be unfounded.[[84]](#footnote-84) Nie even documented retroactively something that he observed of Jack dating back to June 2009.[[85]](#footnote-85) Nie did not have a PFC on 5 of his previous recruits, but did on a Harry Allen Chase who was also a minority. Unfortunately, this was not explored during the hearing due to objections from Counsel and cautions from Mr. Vice Chair.
63. Nie testified that he understood the definition of ‘constructive criticism’ and agreed with dictionary.com’s definition of those two words.[[86]](#footnote-86)
64. Nie demonstrated this ‘constructive criticism’ of the Applicant and Mr. Vice Chair got the point the Applicant’s representative was trying to address.[[87]](#footnote-87)
65. Nie understood and accepted dictionary.com’s definition of ‘subjective’ and ‘objective’.[[88]](#footnote-88)
66. It is clear Nie had a preconceived opinion of Jack before he even started coaching him.[[89]](#footnote-89)
67. Nie had a very subjective view of the Applicant and this view was dominant of any possible objective view that was in front of Nie. He says Jack lacked ‘common sense’. As an example he described a scenario of two people. A man with a black eye and a woman with a bloody knuckle. Nie implies that any ordinary person, even a person without any education would come to the realization that the lady socked the man on the eye. But in Jack’s case he says that ‘*Jack wouldn’t be able to pick up those obvious clues.*’[[90]](#footnote-90) Little did Nie know that he was describing his prejudice of Jack.
68. Prejudice means: *an unfavorable opinion or feeling formed beforehand or without knowledge, thought, or reason; any preconceived opinion or feeling, either favorable or unfavorable.*
69. Nie also agreed that all of his PFC chronology which was used in his three PERs of Jack and Jack’s termination of employment were done from a subjective point of view.[[91]](#footnote-91) PERs are supposed to be done objectively in order to be free of any biases or prejudice.
70. In his actions as described above Nie has demonstrated his prejudice towards the Applicant.[[92]](#footnote-92)
71. So on one hand we have Nie’s prejudicial, biased and subjective opinion that Jack lacks common sense, yet on another hand we have an objective professional opinion of the OPP psychologist, Dr. LaPalme who reviewed Jack’s file and interviewed him in person, that concluded in the following determination:

*‘We consulted with HR and Dr. LaPalme and after all observations have been reviewed it is the opinion of the force psychologist that recruit Jack is a very capable, highly intelligent recruit who will be an asset to the organization. …’[[93]](#footnote-93)*

1. With respect to item 99, not all the good is on the evaluation. Had it been true, the evaluations would not have contained the “Does Not Meet Requirements” ratings, but they did contain many. Second, putting all the bad on the chronology was a treacherous thing to do. The PFC was prepared solely for the management behind the Applicant’s back.[[94]](#footnote-94) Hence, the Applicant did not even have the slightest opportunity to provide his explanation of things written about him. That is nothing short of libel and defamation.
2. Third, it is a fact that Jack was given a commending email from Drug Unit officer Ernie Garbutt regarding a large drug seizure.[[95]](#footnote-95) This is something that Butorac testified would have been good to see on Jack’s PER and worthy of a positive 233-10. [[96]](#footnote-96) But it was not something Nie was willing to reflect on Jack’s PER. This hearing clearly identified this email as being a noteworthy entry on the related PER yet it was not done.[[97]](#footnote-97) It is a clear example of how all the good was NOT on the evaluations.
3. With respect to item 101, where exactly is the testimony of Constable Filman stating that he prepared the PERs at the time of the events? How can this be true if we explored during the course of the hearing that many entries in PERs prepared by Constable Filman were copy-pastes from previous PERs, that Constable Filman’s PERs were chronically overdue[[98]](#footnote-98) and that at least one entry was backfilled in PER5 even though it was from PER 6&7 time period[[99]](#footnote-99). Who is deciding whose testimony is trustworthy or credible and whose is not? Who is determining what is consistent and what is inconsistent? Is it Counsel for the Respondent or is it Mr. Vice Chair of the HRTO?
4. Flindall’s explanation of why he did not have notes on PER meetings with the Applicant is ludicrous. PER meetings are mandated by OPP Orders. As a shift supervisor Flindall is duty bound to carry out all OPP Orders and not callously disregard them. Nowhere does one see discretion being given to a supervisor to carry out these duties. Nowhere does one see ‘except when foreseeing a possible litigation’ resulting from an action whether that be civil or via this Tribunal. Rather one sees that OPP Orders state that the immediate supervisor **shall** meet with the probationary officer to review each evaluation prior to its submission to the detachment commander.[[100]](#footnote-100)
5. The Probationary Constables Evaluation Report Guidelines which is missing from tab 24 of the book of exhibits prepared by Counsel has this same directive. This document summarizes one of the key roles and responsibilities of the accountable supervisor: **conducts regular meetings with the recruit.**[[101]](#footnote-101) It is appended to this reply under Appendix ‘A’.
6. Based on the comment by Counsel, is one supposed to believe that if Flindall knew beforehand that there would be litigation involving Jack then and only then he would have carried out mandatory performance evaluation meetings with the Applicant? Ludicrous, isn’t it?
7. With respect to item 102, the wrongful dismissal (as Counsel termed the termination of employment) stemmed from differential treatment and violations of the Applicant’s protected grounds. It is as simple as that. How many more arguments do we have to bring forth to establish that? It is not a criminal case where the onus of proof lies with the crown that has the burden of proving beyond reasonable doubt. It is a civil case where the Applicant must prove his case by balance of probabilities.
8. Foreign-born mature individual of Russian-Jewish ancestry who speaks with a thick accent, who had no problems in life in general, an assistant professor and one who succeeded and in fact excelled in numerous areas of life before, who the OPP’s own psychologist believes is a very capable, highly intelligent recruit who would be an asset to the organization, all of a sudden becomes so incompetent and bad to the point of not being able to interact with people and perform his duties. He is even deemed to have no common sense by his coach officer. On a balance of probabilities what sense does it make? We ask the Vice Chair to ask a very simple question: “Based upon all the evidence explored and all the parties heard from and keeping in mind all the false and unsubstantiated accusations made about the Applicant by his peers, did the Applicant work in a supportive work environment or not?”
9. Counsel’s comments in 102 only shows that the Respondent is simply grabbing at straws.
10. With respect to item 104, and with all due respect to Counsel’s argument that Mr. Johnston did not recall a discussion with Campbell, the documentary evidence created at the time of the events suggests exactly otherwise. It is reasonable to suppose that Mr. Johnston might truly not remember or might conveniently pretend not to remember this discussion 7 years after the fact. However, documentary evidence in the form of written communication from the Operations Manager (Campbell) to the Detachment Commander (Johnston) where it is explicitly stated that Campbell and Johnston **discussed** and **felt** Jack was being targeted, '*I think we are headed to an issue, as Mike is basically an immigrant of Jewish background. You and I discussed we felt he was being targeted...'*,[[102]](#footnote-102) should be more than sufficient proof that this discussion did take place.[[103]](#footnote-103)
11. With respect to item 107, though Nie testified that Jack improved in 8 categories from the previous month it is a fact that Nie saw that Jack improved only in 4 categories from the previous month. There are 17 ‘Does Not Meet Requirements’ ratings in PER 8[[104]](#footnote-104) and 13 ‘Does Not Meet Requirements’ ratings in PER 9.[[105]](#footnote-105) Basic arithmetic is: 17 – 13 = 4. Either Counsel is trying to deceive the Tribunal or Counsel did not bother to count the ratings and simply relies on Nie’s verbal testimony, which could be just about anything, instead of relying on the actual, factual and irrefutable documentary evidence on file and on basic math. As pointed out throughout this document it would appear that one felt free to say anything on the stand regardless of an oath. And these are police officers?
12. Had Counsel presided over the entire matter, then Counsel would have been in a position to decide whose evidence is trustworthy and reliable and whose is not. However, Counsel is representing the Respondent and to state that their witnesses’ evidence is reliable and trustworthy is nothing short of a blasphemy. How can the Counsel even state such a thing? Counsel or (as the hearing revealed) someone else in Counsel’s ministry drafted up the Will-says of each of the police witnesses, active and retired. Counsel was then supposed to have the witnesses acknowledge them before submitting them for disclosure. This Tribunal had to deal with the Counsel’s lack thereof. Ms. Singh stated the following,

*‘Mr. Vice-Chair, again, these witness summaries are not evidence. They are not in evidence. They don't set out any evidence or testimony. They are simply prepared for the benefit, and under the Tribunal's rules, by Counsel in anticipation of litigation. I don't even know, sir, whether these witnesses...what they provided, if they were interviewed or anything of the kind.’[[106]](#footnote-106)*

So, in light of these so-called will-says one must ask who is lying? Did Counsel attempt to mislead this Tribunal by having these will-says drafted contrary to the testimony of the witnesses or did the witnesses lie in their original will-says to Counsel (which the Applicant was never shared a copy of) and thereby caused Counsel to innocently draft those will-says? Constable Moran testified very sharply that she did not write the witness summary that had her name on it, that she did not know who wrote it and that it was simply was provided to her.[[107]](#footnote-107) Regardless of the truth, the lack of credibility and reliability of those will-says were summed up by Mr. Vice Chair:

*‘I have had difficulty with these witness statements since day one. Typically they're prepared, or at least agreed to by the witness before they are even tendered. The purpose of these statements is not only for the Respondent to understand what the witness is going to...it's for me as well. It is not unusual for a vice-chair to put the witness statement in front of the witness and ask the witness if this is true... which then becomes evidence. I'm precluded from doing that with this. So its value, in my view, is minimal. It poses problems for the Respondent.*’[[108]](#footnote-108)

1. Throughout this hearing the Applicant has been deprived of a truthful version of those will-says (witness summaries). Is this something that would bring the administration of justice into disrepute? The Applicant is in no position to state this, but only asks it due to the fact that he and his representative are ordinary citizens with no legal qualifications – ordinary citizens seeking justice.
2. Noteworthy is the rise in negative ratings to the point where the Applicant realized that it was pointless to object or provide any rebuttals. Applicant’s testimony revealed that when he first voiced his objections, his PERs went from 0 negative ratings in PERs for months 3-5 to 10 negative ratings in PER for months 6/7. Applicant asks for time to read through PER 6/7 carefully, consult with an OPPA representative and provide a rebuttal to it prior to signing it and when he does so, his subsequent PER for month 8 has 17 negative ratings. By then the Applicant is on a new platoon and under Nie as a coach officer and he senses that he is marked for termination. Upon receiving a Notice of Internal Complaint[[109]](#footnote-109) the Applicant fully realizes that somebody wants him terminated by all means possible.[[110]](#footnote-110) During PER 10 evaluation period the Applicant writes in desperation and submits a letter to Butorac titled ‘**Is my case hopeless’**.[[111]](#footnote-111)
3. With respect to item 114, Brockley’s testimony and cross took place on February 11, 2016. On Wednesday, February 10, 2016, Counsel for the Respondent sent the Applicant’s representative an email[[112]](#footnote-112) containing further disclosure of the Applicant’s witness, Constable Jamie Brockley who was due to testify the following day. The disclosure consisted of an added will-say of Brockley.[[113]](#footnote-113) Since the Applicant’s representative was staying with a relative in Aurora and had no access to his computer, Brockley’s second will-say, which was sent less than 24 hours before Brockley’s testimony, did not reach the intended recipient until a day after Brockley’s testimony was over.
4. This second and last-minute will-say is one page in length and consists of when Brockley had learned of 13 phone calls that the Applicant had allegedly made to one of the so called ‘Undesirables.’ It further indicated that this information came to Brockley on January 13, 2013.
5. The testimony of Brockley on Thursday, February 11, 2016, was that (concerning Mr. Jack's termination of employment September 2008 to December 15, 2009) Mr. Jack ran an undercover vehicle plate in March 2009, showed a 6 year old photograph in January 2009 and other things that caused suspicion that he was associating with organized crime. Mr. Brockley specifically stated that he heard this while working a night shift on Sergeant Robert Flindall’s shift. When questioned further he advised that the others things were the 13 telephone calls made by Mr. Jack from his cell phone to one of the Undesirables[[114]](#footnote-114). So according to Brockley’s testimony the alleged running of the undercover plate, the record of these alleged 13 phone calls to one of the ‘Undesirables’ and the act of showing of an old photograph in January 2009, when viewed cumulatively did cause suspicion that Jack was associating with Albanian organized crime. Hence, the internal complaint alleging associating with ‘Undesirables’ and the subsequent investigation by the PSB.
6. Documentary evidence in the Respondent’s disclosure, namely an email sent by Flindall to Johnston on September 11, 2009, at 4:41 pm points to the date of July 31, 2009, when Brockley worked on Flindall’s platoon and overheard Jack run an undercover vehicle plate.[[115]](#footnote-115)



1. However, despite being specifically questioned about the correctness of the date of the incident, Brockley couldn’t get right what date he worked on the Applicant’s platoon because he did not have any notebooks with him during his testimony.[[116]](#footnote-116)
2. Brockley’s testimony was that there were 13 phone calls from Jack to one of those ‘Undesirables’ and the calls were made in and around that time of March 2009.[[117]](#footnote-117) However, in and around that time is not June or July 2008.[[118]](#footnote-118)
3. Brockley perjured himself on the stand when he stated: *‘’and further on knowing that he made 13 phone calls to one of the individuals. That is...in itself, that is concerning at the time.”[[119]](#footnote-119)*
4. There is not a single mentioning of those alleged 13 phone calls in the Confidential Duty Report authored by Flindall on November 11, 2009.[[120]](#footnote-120)
5. There is not a single mentioning of those alleged 13 phone calls in the Confidential Duty Report authored by Brockley.[[121]](#footnote-121)
6. There is not a single mentioning of those alleged 13 phone calls in the PSB Investigation report prepared by D/Sgt. Tym Thompson.[[122]](#footnote-122)
7. Furthermore, the Charter makes it very clear that a citizen is protected from unreasonable search and seizure. For police to obtain telephone records of a citizen they need judicial authorization unless the citizen provides consent. Aside from this section 8 violation what is also alarming is that according to Brockley’s testimony this judicial authorization was in existence in 2009 and yet the Respondent failed to disclose a copy of it. Obviously, because it never existed in the first place.
8. Hence, when Brockley states in his second will-say that was so underhandedly shared with the Applicant on February 10, 2016, that he learned of the 13 phone calls in January 2013 then the portion of his verbal testimony relating to the 13 phone calls is nothing but perjury for Brockley would have had no knowledge of the 13 phone calls in the year 2009.
9. The only plausible explanation for Brockley providing his second will-say is that because the Applicant testified extensively in his anticipated evidence[[123]](#footnote-123) and in his verbal testimony about the maliciousness of that internal complaint during his examination-in-chief in November 2012. The information from the Applicant’s testimony was forwarded to the potential witnesses, one of them being Constable Brockley. Brockley then tried to retrospectively justify his actions and potentially extricate himself from the liability of initiating a false and unsubstantiated complaint. Hence, in his Will-say Brockley states that ONLY on January 9, 2013, he attempted to check if the Applicant’s phone was ever used to contact the so called ‘Undesirables’ possibly believing that if a hit or match does come up then he could testify that it wasn’t just the alleged running of the license plate and the six year old photograph, but also the phone calls.
10. Last but not least, assuming those alleged 13 phone calls were indeed made, then according to Brockley’s will-say they were made between June 23, 2008, and July 16, 2008. Hence, they were made before the Applicant joined the OPP since the Applicant commenced his employment with the OPP on August 24th, 2008.[[124]](#footnote-124)
11. This act of manipulation and perjury on the part of police witness Brockley was something that the Applicant views as blasphemy.
12. The Applicant attempted to bring this blasphemy to the attention of the Tribunal via an email shortly after the conclusion of the hearing in February 2016,[[125]](#footnote-125) but during the teleconference call he was literally yelled at by Counsel, Mr. Bill Manuel, “*the Applicant accuses his own witness of perjury*” and advised that the teleconference call was scheduled to address other matters. The Applicant was subsequently advised by Mr. Vice Chair that this issue would be dealt with at the beginning of the next hearing dates. The Applicant yet again tried to address this issue at the beginning of the last set of hearing days, but was advised that it was something to be addressed in submissions. Then due to the imposed limit on the number of pages of the closing submissions the Applicant was forced to abandon it.
13. However, were it not for Counsel’s statement in their reply to the Applicant’s closing submissions that, ‘*Constable Brockley was also aware that Jack had made thirteen phone calls to one of the individuals who was being investigated’* this Pandora box would not have been opened. Counsel has left the Applicant with no choice, but to address this manipulation of facts and perjury at last.
14. The truth is that the internal complaint was solely based on the Applicant allegedly running an undercover vehicle license plate (that he did not run as established[[126]](#footnote-126)) and on a 6 year old photograph[[127]](#footnote-127) which the Applicant brought to the detachment and showed voluntarily some 7 months earlier for the sole purpose of identifying some of the people he believed to be ‘bad’ guys and bring them to justice.



1. As for the maliciousness of the complaint, then we ask the Tribunal to take into account that Flindall alleged that the Applicant was hanging out with organized crime immediately after being served with negative documentation with respect to his conduct towards the Applicant[[128]](#footnote-128) and prior to having all the details in place.[[129]](#footnote-129) It was nothing but a swift and callous act of targeting and revenge against the Applicant in which Flindall succeeded.
2. With respect to item 115, who actually filed the internal complaint is immaterial since it is a procedural matter. What is relevant is who started it. It was not Cst. Jamie Brockley. It was not S/Sgt. Ron Campbell. It was Sgt. Robert Flindall.[[130]](#footnote-130) The very person whom S/Sgt. Coleen Kohen noted to have a strong dislike of the Applicant.[[131]](#footnote-131)
3. Flindall was even informally commended for doing that,

*‘At 5:17 p.m. Chief Smith advised via e-mail that PSB is working on the file. Told me to pass on appreciation to Sergeant Flindall. Staff Sergeant Martin Graham will be in touch. He was the professional standards senior investigator or manager.’[[132]](#footnote-132)*

1. With respect to item 117, the Applicant testified that upon being served with the notice of internal complaint Butorac advised him, ‘*You have clouds over your head’* and further added that it was embarrassing for the Applicant to receive such a notice. [[133]](#footnote-133) Butorac also testified that the term **‘Undesirables**’ would have caused him some concern and was derogatory and was not congruent with Human Rights Code.[[134]](#footnote-134)
2. Butorac explained whom the OPP refers to as ‘Undesirables’. They are people with criminal records. He went on the say that it is what the act says.[[135]](#footnote-135) He is so steeped in the OPP culture and common jargon exclusive to the OPP that he could not see the truth. Butorac naturally believes the term ‘Undesirables’ is a legal expression used by an Act of parliament to reference people with criminal records. This is what the Applicant referred to in his opening address when this hearing began several years ago:

‘*The evidence that you are about to hear will shock you to the core. You will hear how an organization of the Ontario Public Service violates the Human Rights Code by referring to certain Canadian citizens as ‘Undesirables’.[[136]](#footnote-136)*

1. The Applicant does not know how this Tribunal is going to address this abuse of the Human Rights Code by a ministry of the government of Ontario for it is something that is steeped in OPP culture to the point that it is used without any ill conscious. But he firmly believes that it is something that has to be addressed.
2. The traffic accident reports completed by the Applicant must have indeed been done superbly well in order for Butorac to remember them 7 years later. At least this piece of Butorac’s testimony[[137]](#footnote-137) supports the Applicant’s testimony that this verbal commendation did take place.[[138]](#footnote-138) Just like in other cases, neither formal positive documentation nor even a simple positive entry in a PER ever reflected it.
3. It was also Butorac who, in serving the Applicant with his copy of month 8 PER was advised by the Applicant that he is willing to sign his month 6/7 PER. Butorac looked for it, but realized that it had already been forwarded to the region. This bit of testimony corroborates the Applicant’s testimony that he never refused to sign PER 6/7, but merely asked for time to peruse it and speak to the OPP Association about it. Though Butorac was originally confused about the two PERs he finally acknowledged that it was month 8 PER that he served on the Applicant. He also recalled that there was one evaluation with the word ‘REFUSED’ in place of the Applicant’s signature. Butorac could not remember if it was 6/7 or 8 PER, but it is obvious it was 8 for Butorac never took part in the service of 6/7, but only forwarded the Applicant’s rebuttal to it with a cover page that the Applicant wished to sign it but it was already gone.[[139]](#footnote-139)
4. Butorac’s testimony here also reveals more obstruction of justice on the part of the Respondent. The Respondent has deliberately masked out information from certain documents that would provide material evidence to the issues at hand in his application and this hearing. The Respondent blackened out September 11 and 12 notes of the Applicant and the word ‘Albanians’ in exhibit 190. Only when repeatedly asked, did the Respondent provide two pages of the Applicant’s notes for those two dates and it clearly revealed without any blackened portions what had been masked out: **Sep. 11 – 12 scheduled days off**. As for the word ‘**Albanians**’ it would have been prejudicial to the position of the Respondent to not mask out who the OPP were referring to as ‘Undesirables’.
5. After putting to rest that it was PER 8 that Butorac served on Jack he interrupts the Applicant’s representative by stating, ‘*My notes continue though, that …*’. The Applicant tells him that their copy is blackened out and asks him to read that blackened out portion. Butorac reads,

‘*He was asked to sign it and wanted to attach a rebuttal. … but the evaluation was already gone or I couldn’t find it.’[[140]](#footnote-140)*

1. Though the court reporter mistakenly adds the word ‘was’ it is clear that Butorac did not ask him to sign it or anything because the Applicant was merely handing in his rebuttal to PER 6/7 and asking to sign that PER. This error is more clearly exposed in the cover page that Butorac writes and attaches to Jack’s rebuttal,

‘*Attached is P/C Jack’s response to his 6 month evaluation. He is willing to sign it but when I checked the file has already moved ahead.*’[[141]](#footnote-141)

1. Blackening out this portion of Butorac’s notes had no impact on the release of confidential information, but every bit of an impact on the Respondent’s defense to this application.

L

1. With respect to item 119, first let us reexamine the facts whether the internal complaint and the ensuing PSB investigation was warranted or not:

* In January 2009 the Applicant voluntarily introduces a 6 year old photograph with individuals he knew from the GYM with the sole purpose to identify some of them the Applicant himself deemed to be the ‘bad’ guys,[[142]](#footnote-142)
* In July 2009 Brockley hears the Applicant run the surveillance vehicle plate, which the Applicant in fact did not run,
* These two things according to Counsel formed a reasonable basis for investigating Jack’s alleged association with organized crime.

With all due respect to Counsel’s arguments this sounds more like a witch hunt.

1. Second, since both Superintendent Hugh Stevenson[[143]](#footnote-143) and Chief Superintendent Mike Armstrong[[144]](#footnote-144) were promptly informed about the internal complaint and the PSB investigation, and since both were involved in the termination of the Applicant’s employment[[145]](#footnote-145), how can Counsel says that there was no evidence that the PSB investigation had an adverse effect on the Applicant’s employment? What effect did it have then? A positive one?
2. Third, *‘You were cleared, everything is good’[[146]](#footnote-146)* is sheer hypocrisy for before the Applicant was cleared (November 19, 2009)[[147]](#footnote-147) the decision to proceed with his termination process had already been made (November 12, 2009).[[148]](#footnote-148) How can one possibly state ‘*everything is good’*?
3. Campbell’s comments in his portion of the PFC on September 3, 2009 and Nie’s comments on September 23, 2009 regarding what Jack told him about the internal complaint were never removed from the PFC that was forwarded to Kohen[[149]](#footnote-149). Kohen used PERs and PFC to make her recommendation to Armstrong in the form of Internal Briefing Report[[150]](#footnote-150) to release from employment Probationary Constable Michael Jack based on Jack’s failure to meet the requirements of the Performance and Conduct Guidelines of a Probationary Constable.
4. As pointed out earlier the actual decision to terminate was made on November 12, 2009,[[151]](#footnote-151) much earlier than the actual termination date, December 15, 2009. Mr. Armstrong was only used to facilitate that decision.[[152]](#footnote-152)
5. The failure to remove those comments from the PFC and its influence is more accurately reflected by Johnston’s opinion of the final disposition of that investigation regardless of what it said. He felt it important to add this bit of information after the line of questioning was cleared and an exhibit was being entered regarding the line of questioning.

*THE WITNESS: Let me...if I could just add a comment here.*

*BY MR. JACK:*

*Q. Please.*

*A. You said you were cleared. Like, I am just referring to the information that you received from the memorandum. It says:*

*"...I reviewed the report and agree with its findings that the complaint is unsubstantiated..."*

*It doesn't say you were cleared. It says it was unsubstantiated. I don't know if they are both the same or...*

*Q. Well, okay.[[153]](#footnote-153)*

1. It would appear that in Johnston’s mind that ‘unsubstantiated’ only means that there wasn’t enough evidence and hence the Applicant could very well still be associating with the so called ‘Undesirables’. That would explain his continued apprehension or concerns after the Applicant was cleared by PSB.[[154]](#footnote-154)
2. Hence, why should the PSB investigation, regardless of its disposition, not have an adverse effect on the decision to terminate the Applicant’s employment? Any reasonable person would conclude that if it had an effect on a ranking officer why would it not have a similar effect on another ranking officer?
3. With respect to item 120, the Applicant does not know what transpired in the General Motors Johnston case. It is irrelevant for the Applicant. Each case is unique. Each case has its own merits. What the Applicant does know is what he endured at Peterborough Detachment and afterwards as a result of the internal complaint. The Applicant testified and the Applicant reaffirms again, that it was nothing short of an evil. Plain evil!
4. The Applicant reiterates that Johnston had lingering concerns even though the Applicant was cleared of any wrong doing. In others words Johnston’s mind was poisoned towards the Applicant by the PSB investigation and it was a lingering poison. If he could have that lingering poison in his mind it is not hard to imagine that others had it as well. That is something the Applicant felt. It is something Butorac was ashamed of. It is something that the Applicant testified about, that the he felt like an ‘Undesirable’.
5. Johnston’s rank and position at that detachment is synonymous with the saying, ‘everything flows downhill.’ Is it any wonder why the Applicant was viewed and treated like an ‘Undesirable’ around others at the detachment?
6. With respect to item 128, it is the position of the Applicant that he provided more than enough clear and convincing evidence to satisfy the balance of probabilities that he was subjected to differential and oppressive treatment that stemmed from the violation of his fundamental human rights. This differential and derogatory treatment resulted in a poisoned work environment, scrutiny, targeting, fabrications, all of which ultimately led to his dismissal from employment.
7. The Applicant actually thanks Counsel for providing an opinion of the Applicant that is simply not true but useful, ‘*It is well settled that subjective views no matter how sincerely held cannot be relied upon …*’.
8. Nie did admit that all his observations and PFC of the Applicant was from a subjective point of view. It was shown that the ‘Does Not Meet Requirements’ categories in his evaluations of the Applicant were extracted from his PFC, thus rendering them mute, *ipso facto.[[155]](#footnote-155)*
9. Contrary to the Respondent’s position in item 128, the Applicant’s so called ‘subjective’ view is supported by numerous pieces of documentary evidence that makes his view and the allegations real. Hence, his allegations are not just vain inferences for they are supported by evidence that has been tendered as exhibits.[[156]](#footnote-156) One clear example of this is mentioned in items 15 to 33 of the Applicant’s closing submissions dealing with that racially biased email from Rathbun. Then there is the racially derogatory nick name ‘Crazy Ivan’ (items 34 to 43 of the Applicant’s closing submissions) and yet again the inhumanely, derogatory and demeaning allegation of ‘associating with Undesirables’ that painted the Applicant as an ‘Undesirable’. The ‘Undesirables’ were Canadian citizens just like the Applicant.

**Legal implication of the actions of Counsel**

1. Where Counsel makes false or erroneous submissions in the address to a jury, the judge must give corrections in the jury instruction.[[157]](#footnote-157)

*Prejudicial Remarks by Crown Counsel*

*There are two basic questions which must be addressed in order to resolve this issue. The first question is whether the trial judge erred in not commenting on the prejudicial remarks of Crown Counsel in his charge to the jury…*

*[T]he remarks of Crown Counsel were prejudicial to a degree sufficient to impose a legal duty on the trial judge to comment and thus ensure that the position of the defense, in this case the appellant's alleged insanity at the time that Officer Aucoin was killed, was fairly put to the jury. The failure of the trial judge to comment on Crown Counsel's improper remarks constituted an incorrect decision on a question of law.*

*I also share his view that no case has been made out for the application of s. 686(1)(b)(iii) of the Criminal Code. I would therefore allow the appeal and order a new trial.*

1. The Applicant on the other hand has drafted his closing submissions and reply solely on the evidence adduced at the hearing.

**Conclusion**

1. Though this hearing was not about Performance Evaluations, the decision to terminate the Applicant’s employment was based on his failure to meet the performance conduct guidelines of a probationary recruit. It was also supported by the Point Form Chronology of five key officers. It was further supported by the *Highway Traffic Act* charge against the Applicant. Influencing all of this was the Professional Standards Bureau investigation regardless of its final disposition.
2. The *HTA* charge and the PSB investigation were dismissed and what was left was the PERs.
3. Testimony from the witnesses did reveal that PERs 6/7, 8 and 9 to 11 were done from a subjective point of view.
4. Ample documentary evidence has been introduced to establish discrimination of the Applicants protected grounds of race, ancestry, place of origin, place of ethnic origin, association, all of which were in the area of employment.
5. Most heinous is the use of a humanly derogatory term ‘Undesirables’ by the corporate Respondent towards Canadian citizens.
6. Many of those who testified acknowledged their own prejudices albeit unconsciously.
7. Acts of prejudice are acts of racism.
8. The only witness who did not appear to write evaluations from a subjective point of view was Filman. Though his name appears as the author of PER 6/7 and 8 evidence revealed it to be otherwise. Those prejudiced towards the Applicant contributed in those two evaluations. Filman’s testimony revealed that the terminology used in the negative ratings areas of those two evaluations is not something that he would have used.[[158]](#footnote-158)
9. If Filman, who truly authored PER 1 to 5, would have only continued to coach the Applicant, he would have passed his probationary period and be well into a meaningful and fulling career as a police officer. This position can be gleaned from the fact that the Applicant had two negative ratings in his first PER and one in his second PER, but none in the successive three PERs. Any reasonable person would conclude that the rest would have been the same without any significant issues.
10. However, the Applicant was targeted from the very first day he arrived at Peterborough Detachment. Management directed that he be monitored.[[159]](#footnote-159)
11. The racial prejudice of Gravelle, Rathbun (racially derogatory email) and Flindall very early on in the Applicant’s employment had a compounding effect that poisoned the Applicant’s work environment. This prejudice increased in intensity as others felt it easy to violate the Applicant’s protected grounds.
12. Flindall’s strong dislike of the Applicant progressed to utter contempt and disdain towards him where he, rather than simply speaking to the Applicant about a driving matter that he observed saw an opportunity to tarnish his record and severely inhibit him from passing his probationary period.
13. But that was not all. Having received a negative 233-10 from his supervisor regarding his deficiencies towards the Applicant he lashed out with a final blow, the PSB complaint and subsequent investigation that commenced in August, though it turned out to be unsubstantiated, was sufficient enough to seal his fate and turn the Applicant over to the terminator.
14. The terminator being, Richard Nie (Flindall’s next-door neighbor) who began a very thorough detailed documentation of the Applicant from his very first hour with the Applicant and throughout the remaining three months of probation. Nie began this documentation in a Point Form Chronology that is only complied for one who is deemed to not pass probation or facing a possible termination of employment.
15. Conspiracy? Is there one? Well, keeping in mind paragraph 125 titled ‘**Tightly knit group of trusted associates having a controlling influence**’ in his closing submissions, the Applicant will leave that assessment up to this Tribunal. What he knows is that he was mixed with dirt and robbed of a career in policing because he was an outsider at a detachment that did not welcome or take too kindly to outsiders, did not fit in and spoke English with a thick foreign accent that made others embarrassed to the point of asking him to speak with a Canadian accent.
16. Much of what was heard and corroborated by documentary evidence was also heard with interest by his worship, Justice of the Peace C. Young during the HTA trial of the applicant.[[160]](#footnote-160)
17. The Ontario Provincial Police treated him like trash, snuffed him out like one grinding out a cigarette butt in the dirt, brought him down to his knees and executed him.
18. He came to the OPP a very healthy and highly educated individual and left with Post Traumatic Stress Disorder (PTSD) and feeling like a basket case. The effects of this PTSD left him contemplating suicide.
19. The OPP did blackball him to the point he was unable to get gainful employment with any other police service due to his termination prior to completing his probationary period.
20. Seven months after his termination and still being unable to find an employment and totally devastated he turned to alcohol, antidepressants, sleeping pills and cigarettes to quell his feelings.
21. He started to frequently think of loading one of his handguns from his collection, putting it to his head and pulling the trigger.
22. He documented his feelings in a diary.
23. He came to Canada with literally a suitcase in hand and left Canada with a suitcase.
24. But prior to leaving he met a friend who gave him inspiration and stuck with him till the end. Together, these two ordinary people and without any legal qualifications pursued justice on their own.

Respectfully submitted this 6th day of March, 2017

Lloyd Tapp for Michael Jack

1. Jack’s re-exam 22-Sep-15 pgs. 63-65, Exhibit 92, p. 68 [↑](#footnote-ref-1)
2. Exhibit 93 [↑](#footnote-ref-2)
3. Flindall 12-Sep-16 pg. 20 [↑](#footnote-ref-3)
4. Jack’s re-exam 22-Sep-15 pgs. 63-65, Exhibit 92, p. 68 [↑](#footnote-ref-4)
5. Gravelle 8-Feb-16 pgs. 136-138 [↑](#footnote-ref-5)
6. Exhibit 139 [↑](#footnote-ref-6)
7. Gravelle 8-Feb-16 pg. 139 [↑](#footnote-ref-7)
8. General discussion 7-Sep-16 pgs. 11-12 [↑](#footnote-ref-8)
9. Gravelle 8-Feb-16 pgs. 136-138 [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. Greco 10-Feb-16 pgs. 66, 71, 87 [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. Filman 9-Sep-16 pgs. 95, 98, 112, 113, 119, 197 [↑](#footnote-ref-13)
14. Kohen 11-Feb-16 pg. 144, Exhibit 125 pg. 1 [↑](#footnote-ref-14)
15. Campbell 8-Sep-16 pgs. 21-25, 30-35, Exhibits 99, 165, 155 [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. German 11-Feb-16, pg. 61, Exhibit 92 pg. 23, Exhibit 26 pg. 3 [↑](#footnote-ref-17)
18. Exhibit 26 pg. 3, Exhibit 92 pg. 23 [↑](#footnote-ref-18)
19. Kohen 11-Feb-16 pg. 144, Exhibit 125 pg. 1 [↑](#footnote-ref-19)
20. Filman 9-Sep-16 pgs. 70-71, 192, Exhibit 92 pg. 10, Exhibits 23, 25 pg. 5 (Radio Communications) [↑](#footnote-ref-20)
21. Moran 9-Feb-16 pgs. 179-180 [↑](#footnote-ref-21)
22. Nie 15-Sep-16 pgs. 32, 35, 53-54 [↑](#footnote-ref-22)
23. Nie 15-Sep-16 pg. 35 [↑](#footnote-ref-23)
24. Exhibit 143 [↑](#footnote-ref-24)
25. Kohen 11-Feb-16 pgs. 178-180 [↑](#footnote-ref-25)
26. Exhibit 124 [↑](#footnote-ref-26)
27. Armstrong 12-Feb-16 pgs. 97-98 [↑](#footnote-ref-27)
28. Nie 15-Sep-16 pgs. 168-170 [↑](#footnote-ref-28)
29. Ibid. pgs. 47-50, 125, Exhibit 53 [↑](#footnote-ref-29)
30. Moran 9-Feb-16 pgs. 174-194 [↑](#footnote-ref-30)
31. Ibid. pgs. 174-194 [↑](#footnote-ref-31)
32. Exhibit 143 pgs. 4-5 [↑](#footnote-ref-32)
33. Filman 9-Sep-16 pgs. 182-187, [↑](#footnote-ref-33)
34. Campbell 7-Sep-16 pgs. 141, 145, 146, Flindall 12-Sep-16 pgs. 29, 183-184, Exhibits 146, 147 [↑](#footnote-ref-34)
35. Exhibit 92 pg. 12 [↑](#footnote-ref-35)
36. Exhibit 202 [↑](#footnote-ref-36)
37. Exhibit 203 [↑](#footnote-ref-37)
38. Exhibit 204 [↑](#footnote-ref-38)
39. Exhibit 29 [↑](#footnote-ref-39)
40. Exhibit 29, ‘Judgement’ pgs. 1 - 10 [↑](#footnote-ref-40)
41. Flindall 12-Sep-16 pgs. 10, 23, 130-132, 180-181, 184, 186-192, 194-195 [↑](#footnote-ref-41)
42. Flindall 12-Sep-16 pgs. 19-20, 139-140 [↑](#footnote-ref-42)
43. Exhibits 140, 175 [↑](#footnote-ref-43)
44. Ibid. [↑](#footnote-ref-44)
45. Exhibit 125 [↑](#footnote-ref-45)
46. Exhibit 156 [↑](#footnote-ref-46)
47. Exhibit 143 [↑](#footnote-ref-47)
48. Campbell 8-Sep-16 pgs. 26, 27, 72, 80 [↑](#footnote-ref-48)
49. Nie 15-Sep-16 pg. 47, Exhibit 215, Exhibit 143, 19Nov09 PC Nie [↑](#footnote-ref-49)
50. Exhibit 120 [↑](#footnote-ref-50)
51. Exhibit 53 [↑](#footnote-ref-51)
52. Nie 15-Sep-16 pgs. 161-163, Exhibit 143 pgs. 19Nov09 PC Nie [↑](#footnote-ref-52)
53. Campbell 8-Sep-16 pgs. 26, 27, 72, 80, Exhibits 99, 155 [↑](#footnote-ref-53)
54. Exhibit 90 [↑](#footnote-ref-54)
55. Flindall 13-Sep-16 pgs. 82-83 [↑](#footnote-ref-55)
56. Exhibit 92 pgs. 17-19 [↑](#footnote-ref-56)
57. Campbell 8-Sep-16 pgs. 65-66, Exhibit 42 [↑](#footnote-ref-57)
58. Flindall 12-Sep-16 pg. 60 [↑](#footnote-ref-58)
59. Campbell 8-Sep-16 pgs. 65-66 [↑](#footnote-ref-59)
60. Flindall 13-Sep-16 pgs. 77-81 [↑](#footnote-ref-60)
61. Ibid pg. 96 [↑](#footnote-ref-61)
62. Ibid pgs. 97-98 [↑](#footnote-ref-62)
63. Exhibit 32 [↑](#footnote-ref-63)
64. Flindall 12-Sep-16 pgs. 102-103, Flindall 13-Sep-16 pgs. 34-38, 189-190, Exhibits 32, 164, Jack’s exam [↑](#footnote-ref-64)
65. Campbell 8-Sep-16 pg. 139, Exhibit 92 pg. 31, Jack’s exam [↑](#footnote-ref-65)
66. Exhibit 143 [↑](#footnote-ref-66)
67. Butorac 14-Sep-16 pgs. 55-56, 79 [↑](#footnote-ref-67)
68. Butorac 14-Sep-16 pg. 32, 79. [↑](#footnote-ref-68)
69. Butorac 14-Sep-16 pgs. 39-41, Exhibit 53 [↑](#footnote-ref-69)
70. Exhibits 166, 173, 190, 194, 195, 208, 210, 213, 216 [↑](#footnote-ref-70)
71. Payne 14-Sep-16 pgs. 177-179, Exhibit 198 [↑](#footnote-ref-71)
72. Payne 14-Sep-16 pg. 179 [↑](#footnote-ref-72)
73. Ibid. [↑](#footnote-ref-73)
74. Payne 14-Sep-16 pgs. 138, 140, 182, 184 [↑](#footnote-ref-74)
75. Ibid. pg. 182 [↑](#footnote-ref-75)
76. Payne 14-Sep-16 pg. 184 [↑](#footnote-ref-76)
77. Payne 14-Sep-16 pgs. 136-137 [↑](#footnote-ref-77)
78. Campbell 8-Sep-16 pgs. 39-40, Exhibit 156 [↑](#footnote-ref-78)
79. Nie 15-Sep-16 pg. 177 [↑](#footnote-ref-79)
80. Ibid pgs. 168-170 [↑](#footnote-ref-80)
81. Ibid pgs. 168-170 [↑](#footnote-ref-81)
82. Exhibit 143 [↑](#footnote-ref-82)
83. Exhibit 92 pgs. 33-34 [↑](#footnote-ref-83)
84. Nie 15-Sep-16 pgs. 106-110 [↑](#footnote-ref-84)
85. Ibid. pgs. 166, 176 [↑](#footnote-ref-85)
86. Nie 15-Sep-16 pgs. 75-76 [↑](#footnote-ref-86)
87. Ibid. pgs. 109-110 [↑](#footnote-ref-87)
88. Ibid. pgs. 87-89 [↑](#footnote-ref-88)
89. Ibid. pgs. 76-79, Exhibits 223, 224 [↑](#footnote-ref-89)
90. Ibid. pgs. 115-117 [↑](#footnote-ref-90)
91. Nie 15-Sep-16 pg. 90 [↑](#footnote-ref-91)
92. Applicant’s closing submissions para. 123 [↑](#footnote-ref-92)
93. Exhibit 141 pg. 2 [↑](#footnote-ref-93)
94. Nie 15-Sep-16 pg. 126 [↑](#footnote-ref-94)
95. Exhibit 59 [↑](#footnote-ref-95)
96. Butorac 13-Sep-16 pgs. 48-52 [↑](#footnote-ref-96)
97. Ibid. [↑](#footnote-ref-97)
98. Campbell 7-Sep-16 pgs. 141, 145, 146; Flindall 12 Sep. 2016 pgs. 29, 183 – 184; Exhibits 146, 147 [↑](#footnote-ref-98)
99. Filman 9-Sep-16 p. 199 [↑](#footnote-ref-99)
100. Exhibits 24 (Appendix A) Tab 1, Exhibits 27, 106 [↑](#footnote-ref-100)
101. Exhibit 24, pgs. 3 and 4 (Appendix A), Tab 1 [↑](#footnote-ref-101)
102. Johnston 9-Feb-16 pg. 41, Campbell 8-Sep-16 pg. 32 [↑](#footnote-ref-102)
103. Campbell 8-Sep-16 pgs. 21-25, 30-35, Exhibits 99, 155 [↑](#footnote-ref-103)
104. Exhibit 35 [↑](#footnote-ref-104)
105. Exhibit 50 [↑](#footnote-ref-105)
106. Butorac 14-Sep-16 pg. 44 [↑](#footnote-ref-106)
107. Moran 9-Feb-16 pgs. 175-176 [↑](#footnote-ref-107)
108. Butorac 14-Sep-16 pgs. 44-45 [↑](#footnote-ref-108)
109. Exhibit 46 [↑](#footnote-ref-109)
110. Exhibit 92, pg. 41 para. 5 [↑](#footnote-ref-110)
111. Exhibit 53 [↑](#footnote-ref-111)
112. Email from Blutstein Re Brockley Will-say sent on February 10, 2016 (Appendix A), Tab 2 [↑](#footnote-ref-112)
113. Brockley's second Will-say sent on February 10, 2016 (Appendix A), Tab 3 [↑](#footnote-ref-113)
114. Brockley 11-Feb-16 pgs. 17-18, 25 [↑](#footnote-ref-114)
115. Exhibit 190 [↑](#footnote-ref-115)
116. Brockley 11-Feb-16 pgs. 28-29 [↑](#footnote-ref-116)
117. Ibid pgs. 17-18 [↑](#footnote-ref-117)
118. Brockley's second Will-say sent on February 10, 2016 (Appendix A), Tab 3 [↑](#footnote-ref-118)
119. Brockley 11-Feb-16 pg. 25 [↑](#footnote-ref-119)
120. Exhibit 187 [↑](#footnote-ref-120)
121. Exhibit 118 [↑](#footnote-ref-121)
122. Exhibit 135 [↑](#footnote-ref-122)
123. Exhibit 92 pgs. 48-50 [↑](#footnote-ref-123)
124. Exhibit 11 [↑](#footnote-ref-124)
125. Email with Issues to be addressed at February 25, 2016, CMTC (Appendix A), Tab 4 [↑](#footnote-ref-125)
126. Flindall 12-Sep-16 pgs. 157-160, 172-175, Exhibit 102, 192 [↑](#footnote-ref-126)
127. Exhibit 54 [↑](#footnote-ref-127)
128. Campbell 8-Sep-16 pgs. 68-71, Exhibit 100 [↑](#footnote-ref-128)
129. Flindall 12-Sep-16 pgs. 161-170, Exhibit 191 [↑](#footnote-ref-129)
130. Brockley 11-Feb-16 pg. 21, Campbell 8-Sep-16 pgs. 77-78, Flindall 13-Sep-16 pg. 209, Exhibits 158, 213 [↑](#footnote-ref-130)
131. Kohen 11-Feb-16 pg. 144, Exhibit 125 pg. 1 [↑](#footnote-ref-131)
132. Stevenson 12-Feb-16 pg. 25 [↑](#footnote-ref-132)
133. Exhibit 92 pg. 41 para. 5 [↑](#footnote-ref-133)
134. Butorac 14-Sep-16 pgs. 60-62 [↑](#footnote-ref-134)
135. Ibid p. 62 l. 1 - 12 [↑](#footnote-ref-135)
136. Applicant’s opening address [↑](#footnote-ref-136)
137. Ibid. pgs. 79-80 [↑](#footnote-ref-137)
138. Exhibit 92 pg. 51 para. 1 [↑](#footnote-ref-138)
139. Butorac 14-Sep-16 pgs. 63-68 [↑](#footnote-ref-139)
140. Ibid pg. 64 [↑](#footnote-ref-140)
141. Exhibit 164 [↑](#footnote-ref-141)
142. Brockley 11-Feb-16 pgs. 19-21 [↑](#footnote-ref-142)
143. Stevenson 12-Feb-16 pgs. 25, 30-32, 37, Armstrong 12-Feb-16 pg. 95-97 [↑](#footnote-ref-143)
144. Armstrong 12-Feb-16 pg. 95 [↑](#footnote-ref-144)
145. Stevenson 12-Feb-16 pgs. 30-32, 66, 68 [↑](#footnote-ref-145)
146. Johnston 9-Feb-16 pg. 141 [↑](#footnote-ref-146)
147. Exhibit 92 pg. 51 para. 2, Exhibit 46 pgs. 3-4 [↑](#footnote-ref-147)
148. Campbell 8-Sep-16 pg. 102 [↑](#footnote-ref-148)
149. Exhibit 220 [↑](#footnote-ref-149)
150. Exhibit 124 [↑](#footnote-ref-150)
151. Campbell 8-Sep-16 pg. 102 [↑](#footnote-ref-151)
152. Exhibit 228 [↑](#footnote-ref-152)
153. Johnston 9-Feb-16 pgs. 61-63 [↑](#footnote-ref-153)
154. Johnston 9-Feb-16 pgs. 54-55, Exhibit 102 [↑](#footnote-ref-154)
155. Nie 15-Sep-16 pg. 90 [↑](#footnote-ref-155)
156. *Beldjehem v. University of Ottawa (Tefler School of Management)* at para. 37, Applicant’s replying Book of Authorities [↑](#footnote-ref-156)
157. [10] - *R. v. Romeo*, [1991] 1 SCR 86, 1991 (SCC), p. 8, Applicant’s replying Book of Authorities [↑](#footnote-ref-157)
158. Filman 9-Sep-16 p. 95, 98, 112, 113, 119, 197 [↑](#footnote-ref-158)
159. Exhibit 140 [↑](#footnote-ref-159)
160. Exhibit 29, ‘Proceedings at Trial Continuation’ (last transcript in exhibit 29) pgs. 2 to 7 [↑](#footnote-ref-160)