**Introduction**

1. This Application alleges racial discrimination and racial harassment with respect to employment contrary to the *Human Rights Code* R.S.O. 1990, c. H. 19, as amended the ‘*Code*’. The applicant also alleges he experienced reprisals contrary to the *Code*. The respondent denied discrimination and harassment and sought dismissal of the application at its early stage. The *Human Rights Tribunal of Ontario*, amended ‘*HRTO*’, sought to hear from the applicant and then from the witnesses before making its decision.

**Legislative Framework governing the Hearing**

1. The *Code* states that every person has a right to equal treatment with respect to employment without discrimination and harassment because of race, ancestry, place of origin, colour, ethnic origin, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability. It also protects a person from reprisals for exercising their rights.[[1]](#footnote-1)
2. With respect to discrimination by association the *Code* states:

 A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 12.[[2]](#footnote-2)

1. There is almost inevitably a link between the language we speak or the accent with which we speak a particular language on the one hand, and our ancestry, ethnic origin or place of origin on the other. A person's accent is also often associated with her or his "mother tongue" or place of origin. Because a person's accent is usually related to her or his ancestry, ethnic origin or place of origin, the *Code* can be infringed when someone is otherwise discriminated against because of their accent. In these kinds of situations, the underlying discrimination is often actually based on ancestry, place of origin and/or ethnic origin.[[3]](#footnote-3)
2. In the interests of the public the *Ontario Human Rights Commission* (‘*OHRC’)* simplified the differences of racism & racial discrimination, in that racism is,

‘ … *a broader experience and practice than racial discrimination. It is an ideology that either directly or indirectly asserts that one group is inherently superior to others*.’[[4]](#footnote-4)

1. Whereas racial discrimination is, ‘ … *a legally prohibited expression of racism. It is any action based on a person’s race, intentional or not, that imposes burdens on a person or group and not on others …’*[[5]](#footnote-5)
2. ‘Racial harassment’ means that someone is bothering you, threatening you or treating you unfairly because of your race, colour or ancestry. Racial harassment may also be connected to where you were born, your religious belief, your ethnic background, citizenship, or even your language. Racial harassment can happen when someone: makes racial slurs or jokes, ridicules or insults you because of your racial identity, calls you names because of your race, colour, citizenship, place of origin, ancestry, ethnic background or creed.[[6]](#footnote-6)
3. Racial harassment can have a bad effect on or ‘poison’ a person’s work environment.[[7]](#footnote-7)

**Evidence relative to the Legislative Framework**

**The Applicant**

1. Mr. Michael Jack had an excellent educational and sport background with no problems in life in general prior to joining the Ontario Provincial Police (OPP).[[8]](#footnote-8) In August 2008 Jack joins the OPP.[[9]](#footnote-9)
2. During the training at the Ontario Police College (OPC) and the Provincial Police Academy (PPA) Jack continues to perform in the same fashion as he is accustomed to. He graduates from the Ontario Police College (OPC) with a 91.6 cumulative average (course average is 81.5; number of recruits ~ 470) and he receives a 100% Ontario Police Fitness Award (only 5 recruits receive the award).[[10]](#footnote-10)
3. Further to this, at the PPA Jack wins the “Top Dog” award for being the best in his class (110 recruits) in handgun use based on draw speed, shooting speed and accuracy.[[11]](#footnote-11)
4. In January 2009 Jack starts at the Peterborough County OPP detachment (‘detachment’). From day one at the detachment he feels something is not right. This was his testimony during examination-in-chief and it was unchallenged during the cross-examination.[[12]](#footnote-12)
5. Sometime prior to January 2009 Jack is secretly assigned a racially derogatory nickname ‘**Crazy Ivan**’[[13]](#footnote-13) of which he accidentally becomes aware only 10 months after the termination of his employment.[[14]](#footnote-14)
6. Unlike many Jack’s platoon members at the detachment Jack did not grow up in the area of Peterborough County.[[15]](#footnote-15) Moreover, Jack is an immigrant in Canada who speaks English with a thick Russian accent. This portion of his testimony was not challenged during his cross and hence remains factual.

**Racially biased email - August 5, 2008**

1. Cross-examination of Sgt. Rathbun and Cst. Gravelle revealed prejudices and racial discrimination towards the Jack. Being that Jack testified that he attended Peterborough detachment on three separate occasions, initially for the purpose of introducing himself and then for the two ride-alongs with the officers, it stands to reason that he ought to have been known and identified by ‘probationary recruit Michael Jack or Jack’. However, Rathbun specifically focuses on the applicant’s race, ancestry and place of origin by referring to him in paragraph two as,

‘**…** ***the Russian male who has spent time in the Israeli Army, with the name of Michael JACK (DOB: 16 Dec 1972).***’ [[16]](#footnote-16)

1. Had the subject of the email been a Canadian born person, e.g. Mike Johnston, Rathbun would not have referred to him in paragraph 2 as,

**‘… *the Canadian male who has spent time in the Canadian Army, with the name of Mike JOHNSTON (Date of Birth)*.’**

1. Based upon the last sentence in that email it is irrefutable that it was Gravelle that fed all the lies and exaggeration to Rathbun who in turn believed it and fed them to management at the detachment.[[17]](#footnote-17)
2. Gravelle confirms it in his cross.[[18]](#footnote-18) Furthermore, Gravelle knows and agrees with the definition of prejudice.[[19]](#footnote-19)
3. Gravelle explains that the concerns that he conveyed to Rathbun were based on what he saw. Jack showed him his gun collection, some photographs one of which depicted Jack holding an M-16 with a tactical knife in his mouth. He also saw that Jack locked all doors to the rooms they entered and left. All of this was foreign to Gravelle for he had never seen behavior like this before.[[20]](#footnote-20)
4. Jack’s testimony was that he invited each of the officers that took him out on those two ride alongs into his residence for refreshments and to show them his gun collection to impress upon them how safely they were stored in compliance with all applicable regulations. He naturally showed them photographs of his life, including his life in Israel and how normal it was for people to be seen walking around with guns.[[21]](#footnote-21)
5. Had Gravelle simply asked Jack why he was locking all the doors he would have found out that the landlord’s son had some unsavory characters in the house at times which is why Jack always kept all doors to the rooms he rented locked.
6. Rather than explore his observations further to see why Jack had invited him into his apartment, showed him his gun collection, showed him some photographs and was locking all doors Gravelle forms an unfavorable opinion of Jack beforehand and without knowledge, thought or reason.[[22]](#footnote-22)
7. In other words Gravelle irrefutably displays his prejudice towards Jack.
8. The respondent may try to explain that Jack was kept under surveillance for a concern of not following direction at the Provincial Police Academy (PPA). However, as Jack testified he was simply following his orders regarding head and body shots in the night time shooting scenario. He followed the same direction given to him for the day time shooting scenario and had a photograph taken of another recruit and himself following this direction.[[23]](#footnote-23)
9. Regardless of the position of the applicant or the position of the respondent ‘Exhibit 141’ on page two unequivocally states:

*‘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. … There is no concern as Jack understands the difference between stopping the threat and eliminating the threat.’[[24]](#footnote-24)*

1. In the words of *OHRC* brochure that email[[25]](#footnote-25) propounded an action based on Jack’s race, regardless of whether or not it was intentional. An action that did impose burdens on Jack in that it questioned his sanity and state of mind only because he was from the middle east, had supposedly been in the Israeli army and had killed many people. The burden it imposed on him was that he was subjected to a second background investigation, had his references interviewed again[[26]](#footnote-26) and then subjected to a second psychological interview with the respondent OPP’s psychologist.[[27]](#footnote-27)
2. Though ‘race’ only needs to be one factor in a situation for racial discrimination to have occurred this email violated Jack’s protected grounds of ‘race’, ‘ethnic origin’, ‘place of origin’.[[28]](#footnote-28)
3. That email stemmed from prejudice and went out from a sergeant who conveyed that prejudice to detachment management who in turn conveyed it to OPP command staff.[[29]](#footnote-29)
4. That email poisoned the minds of Regional Command towards Jack,

*‘… that members from Peterborough Detachment had concerns about Michael Jack, a candidate in our recruitment process.’[[30]](#footnote-30)*

It did cause Regional Command to issue a directive to detachment to have Jack closely monitored when he arrived there.[[31]](#footnote-31)

1. Upon receiving word of this direction and when notified that he is getting a new recruit named Mike Jack, Sgt. Flindall immediately seeks confirmation of that direction.[[32]](#footnote-32)
2. Rathbun testimony also shed evidence that he shared the concerns of Gravelle due to Jack’s ethnic background and his knowledge that Israel was often in the news as being in a war zone area. Hence, the information from Gravelle about Jack having killed many people during his time in the Israeli Army was synchronous with his knowledge.[[33]](#footnote-33)
3. Evidence revealed that Jack never served in the Israeli Army, but the Navy and that he had served as a technician and had never seen any combat duty.[[34]](#footnote-34)
4. That racially derogatory email ignited a flame of racism and racial discrimination at the detachment towards Jack. It was something Jack felt on his very first day at the detachment though he could not attribute this treatment to racial discrimination at the time.[[35]](#footnote-35)

**Racially derogatory nickname CRAZY IVAN**

1. That racially derogatory email was the key factor in a racially derogatory nickname of ‘**Crazy Ivan*’*** being assigned to Jack. In the words of witness Cst. Kevin Duignan,

*‘that nickname was given to him long before he got here* (Peterborough Detachment).*’[[36]](#footnote-36)*

1. The word Ivan is slang for a Russian and the word Crazy is self-explanatory. In nick naming Jack “**Crazy Ivan**” prior to arriving at the detachment the OPP was actually telling the detachment that a Crazy Russian was arriving.
2. Jack testified about the racially derogatory nickname ‘**Crazy Ivan*’***. His testimony was not shaken by cross. On re-examination Jack explained why he found such a nickname offensive and derogatory. His testimony during his re-examination was clear, candid and powerfully emotional about how derogatory such a nickname was.[[37]](#footnote-37)
3. On the stand Duignan was concerned about what he had said years earlier in an audio recording and so his testimony about who and when Jack was given that nickname is filled with a lot of pauses and deflections.[[38]](#footnote-38)
4. Mr. Greco testified that it was Cst. Gravelle that called Jack “**Crazy Ivan**” behind his back and also mocked his accent when they happened to bump into each other at the Peterborough courthouse or at the gym.[[39]](#footnote-39) Greco had no reason to lie or manipulate any facts for he was not at all related to the respondent OPP. His testimony was clear, candid and truthful. It had the very real ring of truth.
5. Gravelle’s own testimony revealed his racial prejudice towards Jack and so it is no surprise that he was displaying that racial prejudice outside of the work environment in the absence of Jack.
6. Gravelle actions here are racism in action.
7. That flame of racism and racial discrimination towards Jack was something that spread at the detachment.[[40]](#footnote-40)
8. Prior to Jack’s arrival at the detachment Jack’s future sergeant, Sgt. Flindall addressed his subordinates during a shift briefing regarding the use of that nickname.[[41]](#footnote-41)
9. Based on his treatment Jack believes that Flindall did not address the use of that nickname on his own volition but rather upon a duty imposed on him by his superiors. However, it was still being used by many at the detachment for its use was not something that could readily be controlled. It was this poisoned work environment that Jack walked into.

**Discrimination based on Jack’s accent**

1. Jack testified that he was singled out at the PPA due to his accent. He testified that there were 109 recruits in the auditorium. The orientation session was conducted by Sgt. Tozser and everyone had to stand up one by one and introduce themselves. When it was time for him, he stood up and briefly introduced himself to the class. When he finished Tozser addressed the audience in a clear and loud voice, ***‘Did anyone get that?’*** She then addressed him personally, ***‘You have a very thick accent. You have to speak very slowly.’*** Jack testified the whole class witnessed that.[[42]](#footnote-42)
2. Jack’s testimony and how those comments singled him out remained unshaken through cross. Counsel for the respondent had Jack acknowledge that he did speak with a noticeable accent and suggested that surely he knew people who found it hard to understand him at times and so there was nothing wrong about how the instructor addressed the class. However, Jack did not agree with her. He did not agree because he knew how he felt when those words were spoken.[[43]](#footnote-43)
3. His accent that made him stand out was often the subject of a conversation with his peers and his coach officer. The respondent OPP even noted it in his Performance Evaluation Reports (PER) that Jack is aware that he speaks with a thick accent. It is true that Jack grew more conscious of it and how much of a problem it was because it was being brought to his attention regularly.[[44]](#footnote-44)
4. Regularly to the point that Jack testified that he considered taking speech language classes to get rid of his accent. He communicated this to Filman and to Payne.[[45]](#footnote-45)
5. The fact that Jack was the only one in the detachment who spoke English with a thick foreign accent, born in Russia (place of birth), of Jewish heritage (is a Russian Jew), of Israeli background (Israeli citizen) and targeted is also evidence of a violation of his protected grounds by the respondent OPP.[[46]](#footnote-46)

**Discrimination by association with persons identified by prohibited grounds**

1. Jack was accused by Flindall of associating with members of organized crime, the so called **‘Undesirables**’.[[47]](#footnote-47)
2. The ‘**‘Undesirables**’ are identified in the PSB investigative report. They are human beings – specifically Albanian Canadians and such a term directed at them targets their race, ethnic origin and place of origin.[[48]](#footnote-48)
3. This term for a human being is actually steeped in the OPP culture and is something that needs to be addressed by this Tribunal.
4. Sgt. Butorac knew the OPP’s use of such terminology was not congruent with the *Code*.[[49]](#footnote-49)
5. Butorac ignorance of the law is apparent by his reference that the *Police Services Act* (*PSA*) states that **‘Undesirables**’ are people with criminal records.’[[50]](#footnote-50) However, he has been steeped in the OPP’s use of such a derogatory and humiliating term for Canadians with criminal backgrounds that he instinctively, calmly and without any reservation describes who the OPP refers to with such a term. Hence, he actually believes that the *PSA* states that ‘**Undesirables**’ are people with criminal records.’ It is clear that the OPP breeds this culture of disrespect and prejudice and even promotes some.[[51]](#footnote-51)
6. Sadly is the fact that Jack never associated with criminals other than work out at a gym where three of these individuals happened to also work out at. This all happened 6 years prior to him becoming a police officer and as his testimony he touched base with one of them via the telephone and at the gym for the purchase of a rifle scope for his gun collection. He clearly testified that he had no contact with two since summer 2003 and with one since summer 2008.[[52]](#footnote-52)
7. Hence, by testimony alone the OPP was alleging an association that simply was false.
8. D/Cst. Brockley testified that the phone calls were made in 2009 when being questioned about when Jack running that license plate. He lied and Jack’s testimony and the ensuing PSB investigation report that confirms Jack making calls in 2008 to one of them to purchase a scope proves it.[[53]](#footnote-53)
9. D/Cst. German, like Brockley was reluctant to use the word **‘Undesirables**’ and reluctant to identify who the OPP referred to with such terminology during her testimony. The word **‘Undesirables**’ was something that she simply could not utter due to how derogatory it was in relation to people.[[54]](#footnote-54)
10. The point is many officers would not use that term to refer to another human being and naturally are hesitant to speak it in the setting of a Human Rights hearing. However, not within the policing employment settings.[[55]](#footnote-55) Brockley’s exam in this area reveals how he readily used such a term in his working environment. Brockley’s exam was not cross-examined.[[56]](#footnote-56)
11. The effects of that allegation made Jack feel like an **UNDESIRABLE**[[57]](#footnote-57) and Butorac’s testimony about how concerned he would be to get such an allegation did not help any.[[58]](#footnote-58)

**Constable Shaun Filman and his lack of interest in coaching Jack**

1. Jack testified during his examination-in-chief that he had to fix Filman’s grammar and spelling mistakes in his PERs and even later showed Filman how to use a spell-checker.[[59]](#footnote-59)
2. Jack testified that Filman treated him like a leper. Jack testified that it was him who approached Flindall regarding his concerns about Filman’s coaching.[[60]](#footnote-60) Flindall did not recall that.[[61]](#footnote-61)
3. Filman’s testimony differs from his entry in Point Form Chronology (PFC)[[62]](#footnote-62) page 4, first paragraph, March 2009 entry, where he says he stopped 3 vehicles. In his testimony he says he stopped 7 or 8 vehicles.[[63]](#footnote-63)
4. Filman’s testimony differs from his entry in PFC page 4, second paragraph, 04 Mar 09 where he states that Jack told him about the video pen. His testimony reveals otherwise.[[64]](#footnote-64)
5. Filman neither attended nor was aware what the meeting on August 19, 2009 was about.[[65]](#footnote-65) If anything this attests to his entire lack of interest in coaching Jack.
6. Illuminating is Flindall’s notes that state Filman was present at the meeting.[[66]](#footnote-66) It is a lie but more importantly it is documentary evidence of how one can write in whatever they want in their notes, more accurately known as ‘doctoring of notes’.
7. Filman’s notebook for August 16, 2009, the date that Jack alleged Filman’s signature on Month 5 PER was forged is conveniently missing.[[67]](#footnote-67)
8. Filman could not explain why his signature on Jack’s Month 6&7 PER is missing.[[68]](#footnote-68)
9. Filman testified that in summer 2009 he also took vacation[[69]](#footnote-69) and that he worked on a special project as a result of which he was coming to work in plain clothes, his shifts were different, he did not even hear radio calls and had to rely on other people tell him about Jack’s performance which in essence means Jack had no coach officer.[[70]](#footnote-70)
10. Filman testified *inter alia* that Flindall made changes to Jack’s Month 6&7 PER, that in some parts of the evaluation it was not Filman’s verbiage, that he did not author it completely, that he did not have a recollection of some other entries in it, that there could be things that were augmented, that he could not provide a 100% answer, that Payne might have made input. Filman also could not explain why there was a difference in writing style of the occurrence number in PER 6&7 from his previous evaluations and that he was not sure that he wrote some specific examples.[[71]](#footnote-71)
11. Filman did not go on parental leave for the remaining time of Jack’s probationary term like the detachment commander’s comment in PER 6&7 claims.[[72]](#footnote-72)
12. Filman was very evasive in answering a simple straightforward question whether he authored in entirety Jack’s PER 8.[[73]](#footnote-73)
13. Filman neither knew when Jack refused to sign his PER 8 nor whether a performance evaluation meeting took place nor did he know who gave Jack his PER 8.[[74]](#footnote-74)
14. Filman admitted to making a number of errors with respect to Jack’s PERs.[[75]](#footnote-75)
15. Considering the totality of Filman’s evidence it only stands to reason that Filman was neither available nor interested in coaching Jack, which goes hand-in-hand with Campbell’s evidence that Jack was being left on his own to fully investigate matters beyond his experience level.[[76]](#footnote-76)
16. At the top of the first page of the PFC[[77]](#footnote-77) it states in bold print ‘**The author of the entry has placed their name adjacent to the date of the entry’**. While all other witnesses who made entries in that PFC were able to identifies their respective entries and admit which entries were theirs as in the case of all the other documentary evidence[[78]](#footnote-78), Filman was the only one who was nothing but evasive and contradictory about his contributions to the PFC[[79]](#footnote-79) but did admit making them after November 26, 2009.[[80]](#footnote-80)
17. Filman’s explanation about the stark difference between his contemporaneous entries in Jack’s PERs in early 2009[[81]](#footnote-81) versus his subsequent long-time-after-the-alleged-fact entries in PFC lacks any sense.[[82]](#footnote-82) His 3 entries which are dated March 7, 2009,[[83]](#footnote-83) refer to incidents which are purported to take place on a date when both Jack and Filman were off-duty on rest days.[[84]](#footnote-84)
18. Finally, Filman’s evidence ‘*Sergeant Flindall was advised*’ is contradicted by Flindall’s evidence.[[85]](#footnote-85) If anything, this attests to the lack of credibility of Filman’s entries in the PFC, one of the documents that were used to make a final decision to terminate Jack.

**Sergeant Robert Flindall and his strong dislike of Jack**

1. During his time at Peterborough OPP detachment,
* Jack is informally commended by Sgt. Postma for his dedication to his work and for very impressive neatness of his uniform.[[86]](#footnote-86)
* Jack is informally commended by Sgt. Butorac for having the best traffic reports at the detachment.[[87]](#footnote-87)
* Jack is informally commended by Mr. Greco for the quality of his evidence in regards to the charges Jack laid.[[88]](#footnote-88)
* Surprisingly, even Cst. D’Amico testifies that Jack was a nice person to work with.[[89]](#footnote-89)
1. During his entire time at Peterborough Detachment Jack is deprived of the mandatory tour to the Provincial Communication Center[[90]](#footnote-90) as required by the OPP Orders.[[91]](#footnote-91)
2. Flindall was unable to explain why this mandatory tour and its reflection on Jack’s PERs were never documented.[[92]](#footnote-92) However, this was just one of the many mandatory requirements of those coaching and supervising the coaching of Jack that were not applied to Jack.
3. During his time on Flindall’s platoon Jack is deprived of mandatory performance evaluation meetings[[93]](#footnote-93) as required by the OPP Orders.[[94]](#footnote-94) Yet all of Jack’s alleged screw-ups and misconduct are very formally and very thoroughly documented by Flindall in his notes and in other documents like his PFC, negative 233-10s, PSB duty report and personal notes.[[95]](#footnote-95) Interestingly, all 45 pages of Flindall’s notes from which his chronology of Jack was derived contained nothing but negativity of Jack. Nothing positive is documented.[[96]](#footnote-96)
4. During his testimony Flindall gave credit to Jack for his work on a multi-year long, convoluted, neighbour dispute, with a lot of information to it,[[97]](#footnote-97) but this credit is nowhere to be found in Jack’s evaluations. However, Flindall was negatively rated by Campbell for not overseeing the investigation of this case properly.[[98]](#footnote-98) Hence, Campbell mentions Jack being left alone to investigate matters beyond his experience level.[[99]](#footnote-99)
5. Jack’s Work Improvement Plan (WIP) for PER 6&7 was never shared with him.[[100]](#footnote-100)
6. Jack’s WIP for PER 8 was prepared by Flindall purposefully in such a way as to have Jack work outside of his comfort level.[[101]](#footnote-101)
7. In respect to WIP 8, an email from Flindall to Nie[[102]](#footnote-102) revealed that the WIP was prepared by him. Flindall deliberately wanted to put Jack outside of his comfort zone. It is a fact that Flindall admitted he was not proud of that email.[[103]](#footnote-103)
8. This fact simply corroborates S/Sgt. Kohen’s evidence that Flindall had a strong dislike of Jack.
9. Pursuant to the teleconference call held on August 31, 2009, Kohen’s writes in her notes, “*Sgt. Flindall (Fidle) has a strong dislike for Probationary Jack*”.[[104]](#footnote-104)
10. Pursuant to the teleconference call held on August 31, 2009, Flindall writes in his notes, “*PC Jack going to be afforded every opportunity to succeed. The rest is up to him...”.*[[105]](#footnote-105)
11. Jack’s WIP for PER 8 like the previous WIPs does not bear Jack’s signature and neither was there any explanation provided by Flindall as to why it was missing.[[106]](#footnote-106)
12. Jack testified that Flindall and Payne were very close.[[107]](#footnote-107) Flindall corroborated they were friends.[[108]](#footnote-108)
13. Campbell testified that the notation in his notes[[109]](#footnote-109) about advising an officer of not keeping two notebooks was directed to Jack.[[110]](#footnote-110) OPP orders clearly prohibit such a practice unless authorization is received.[[111]](#footnote-111) Campbell simply refused to agree when it was suggested that it was Payne who maintained a separate notebook exclusively on Jack.[[112]](#footnote-112) Payne was the one who had two separate notebooks, one for regular duties and one solely dedicated to Jack[[113]](#footnote-113) and according to her testimony she got permission to maintain a separate book on Jack from either Flindall or from Campbell or from both.[[114]](#footnote-114)
14. Although Campbell’s notes do not say that he told Flindall that Payne can’t have two notebooks they did state, ‘*can’t have two notebooks*.’ Again one must ask if it was about Jack not having two notebooks then why didn’t Flindall bring that to Jack’s attention? The only answer to that is because it concerned Payne and Flindall condoned it. Yet again why would Jack have a second notebook? How come there is not a single shred of evidence of its existence anywhere? And if there was one, where is it then?
15. Payne’s testimony during cross about keeping a separate notebook solely on Jack was that she had authorization to do so.[[115]](#footnote-115) She was not re-examined on this and so if her testimony is considered to be true then it does establishes that Jack was targeted by the respondent OPP. She was asked to check her duplicate notebook during the break and advise if they were anything positive about Jack that she documented. There was nothing positive documented in it.[[116]](#footnote-116)
16. However, Inspector Johnston was very candid and truthful about keeping two notebooks. He testified that outside of a specialized unit no patrol officer is allowed to maintain two notebooks and that is exactly what OPP Orders stipulate. He was the detachment command in 2009 and was Campbell’s supervisor.[[117]](#footnote-117)
17. Campbell’s emails to Johnston dated August 18 and 21, 2009, are evidence of discrimination of Jack’s protected grounds by targeting and proof of Flindall’s strong dislike of Jack.[[118]](#footnote-118)
18. Flindall’s cross-examination revealed that he had never seen such incompetence in a recruit before. He was extremely upset at Jack.[[119]](#footnote-119) Though Flindall did not want to admit his dislike of Jack his behaviour towards Jack and his communication to Career Development Bureau S/Sgt. Kohen was acutely noticed as per her uncontested testimony in this area. Despite not having any dealings with Flindall in the past, as is evident in Kohen’s inability to spell his name properly, her notes accurately reflect that which she noticed about Flindall.[[120]](#footnote-120)
19. Flindall threatens Jack by telling him his job is in serious jeopardy. Jack’s testimony was that Flindall was very angry and his voice was raised when he communicated that to Jack. Flindall seems to have difficulty admitting it yet does communicate to Johnston that Jack’s job is in serious jeopardy.[[121]](#footnote-121) Flindall was angry at Mr. Jack. His testimony reveals it and the language he used denotes it.

*‘… I have never had an officer like Michael Jack … that so blatantly disregarded directions that I would give him …’*

*‘I have never had an officer so blatantly disregard that to me. And, again, I was...you know, I'm now a year into my being a sergeant.’[[122]](#footnote-122)*

1. What started out to be a simple question from counsel that called for a ‘yes’ or ‘no’ answer turned into a three page answer filled with a lot of ‘I’ this and ‘I’ that. Even with the passage of 7 years this loss of objectivity towards Jack as observed by Campbell and captured in those two August 18 and 21, 2009 emails[[123]](#footnote-123) to Johnston was still evident in his testimony. Flindall’s loss of objectivity had caused him to constantly view Jack subjectively.[[124]](#footnote-124)
2. Flindall likened Jack to a child in saying that it takes a community or village to raise a child and in the case of Michael Jack it takes a platoon, it takes a detachment, it takes an organization to train an officer.[[125]](#footnote-125) Ironically, when Mr. Jack sought answers to questions from his platoon officers he was accused of answer shopping.[[126]](#footnote-126)
3. Flindall testified that one of the issues with Jack was his organization skills.[[127]](#footnote-127) Well, how is it possible that Jack succeeded to earn two Canadian University degrees in science in less than the allotted time (5.5 years) with A+ average and earn an OPC diploma with A+ average all of which was in a language that was foreign to him and while being alone in the country?
4. Furthermore, from the analysis of the case load of Jack[[128]](#footnote-128) it is evident that Jack’s workload was high, even higher[[129]](#footnote-129) than that of his experienced and knowledgeable zone partners Filman[[130]](#footnote-130) and Payne.[[131]](#footnote-131) There is naturally a limit to how much one can handle. Instead of ensuring Jack had a manageable case load or adequate help, Jack was assigned a very high workload for his experience level and in many cases left completely alone to investigate matters beyond his experience level. And then, chastised for not doing things fast enough and/or good enough.[[132]](#footnote-132)
5. In his testimony Flindall did not know why on August 15, 2009, the crown brief was submitted to the Crown Attorney without his signature on it.[[133]](#footnote-133)
6. On August 15, 2009, Flindall charged Jack under the HTA and was busy preparing a Briefing Note to his supervisors for the charge against Jack.[[134]](#footnote-134) This is the reason Flindall did not have time to review Jack’s work and to either sign Jack’s Crown Brief or vet it. Flindall focused on nailing Jack with all he could as opposed to supervising and mentoring him. That is synchronous with Campbell correspondence with Johnston that Jack was being targeted as opposed to being mentored by Flindall.[[135]](#footnote-135)
7. Further evidence of Flindall’s strong dislike of Jack can be gleaned from the following references introduced through this hearing:
* Flindall segregates Jack from his shift. Flindall says he canvassed his shift and no one wants to go. His next sentence says, ‘*PC Jack asked to go’*. In Jack’s testimony he states, ‘*there was them and there was Jack*.’[[136]](#footnote-136)
* Flindall orders his platoon members and his brother-in-law Banbury platoon members to keep Jack under surveillance and report their observations of Jack to him.[[137]](#footnote-137)
* Flindall disallows Jack to work overtime and to cover for other officers.[[138]](#footnote-138)
* Flindall falsely charges Jack under the HTA.[[139]](#footnote-139)
* Flindall’s brother-in-law Sgt. Banbury falsely accuses Jack of feigning sickness.[[140]](#footnote-140)
* Jack is the only recruit out of 4 at the detachment whose PERs are chronically overdue.[[141]](#footnote-141)
* Flindall negatively documents Jack for something that turns out to be unsubstantiated.[[142]](#footnote-142) Flindall alleges that the nature of the criminal harassment case that he assigned to Jack was quite serious[[143]](#footnote-143) yet in reality it was not even substantiated.[[144]](#footnote-144) There was no legal authority to hold the accused for a bail hearing. Hence, the order Flindall gave to Jack to hold the accused for a bail hearing was unlawful.[[145]](#footnote-145) The outcome of the criminal harassment investigation is a Peace Bond[[146]](#footnote-146) and Flindall is negatively documented by Campbell regarding overseeing that criminal harassment case.[[147]](#footnote-147)
* Flindall also contradicts himself with respect to when he made his notes regarding the criminal harassment case whether it was before his vacation or after he got back.[[148]](#footnote-148) However, as previously stated Flindall does know how to doctor his notes.
* Flindall denies Jack payment for his overtime work.[[149]](#footnote-149)
* On July 23, 2009, Jack was ordered to work overtime by Flindall.[[150]](#footnote-150) Subsequently Jack was ordered by Campbell to report on duty on July 24, 2009, his scheduled day off, to complete the work.[[151]](#footnote-151) Jack complied with the orders. Jack was denied overtime payment both for July 23, 2009, and for July 24, 2009. Jack worked a total of 20 hours for free at time and a half.
* In the negative 233-10 documentation[[152]](#footnote-152) issued to Flindall, Campbell states that he spent 12 hours of his time doing what should have been done by Flindall. If Campbell spent 12 hours on a criminal harassment case in which no one was even arrested, then how come Jack was expected to do it in shorter time frame when he did arrest the suspect, prepared all the paperwork, seized the accused’s 17 firearms and lodged them?
* During month 6&7 evaluation period (June 9, 2009, to August 9, 2009) Jack’s case load is higher than that of Filman and Payne.[[153]](#footnote-153)
* Both Filman and Payne were experienced officers native to the area.[[154]](#footnote-154)
* Both Filman and Payne had inputs in Jack’s PER 6&7, which saw an increase in negative ratings from 0 to 10 literally overnight.[[155]](#footnote-155)
* Jack’s rebuttal to PER 6&7 is never even discussed with him.[[156]](#footnote-156)
* Jack is maligned by Flindall in the eyes of Nie for being an organized person.[[157]](#footnote-157)
* Jack is maligned by Flindall for allegedly running an undercover surveillance vehicle license plate[[158]](#footnote-158), an allegation that turns out to be unsubstantiated.[[159]](#footnote-159)
* Jack is maligned by Flindall in the eyes of OPP officers for allegedly hanging out with criminals, an allegation that is formally found to be unsubstantiated.[[160]](#footnote-160)
* Jack is maligned in the eyes of OPP officers of rank for allegedly surreptitiously video recording officers,[[161]](#footnote-161) an allegation that is totally false.[[162]](#footnote-162)
* Jack is maligned by Flindall in the eyes of OPP officers of rank for Jack’s involvement in a 4 year old occurrence involving Jack as a security guard. The occurrence was dug up by Filman and Payne.[[163]](#footnote-163) Flindall promptly forwards it to the command staff.[[164]](#footnote-164) Jack is neither interviewed by the police nor ever questioned about it by anybody.[[165]](#footnote-165)
* Jack is maligned by Flindall in the eyes of OPP officers of rank for not being mentally right or mentally unstable.[[166]](#footnote-166)
* Jack is maligned in the eyes of OPP officers of rank for refusing to sign his PERs.[[167]](#footnote-167)
* Jack is denied vacation during his entire probationary year.[[168]](#footnote-168) The only permitted time off duty Jack took was between August 20 and September 9, 2009, which was at the expense of cumulative time off and statutory holidays.[[169]](#footnote-169)
1. Where does one stop? Flindall’s strong dislike of Jack will fill many more pages but the applicant’s closing submissions are restricted to 30 pages.
2. Jack’s testimony about his overall treatment is corroborated by testimony of Campbell that:
	* Flindall was not objective and lost focus with Jack.[[170]](#footnote-170)
	* That Jack was being watched by members of at least two entire shifts,[[171]](#footnote-171) Flindall’s shift and Flindall’s brother-in-law Banbury’s shift.[[172]](#footnote-172)
	* That Jack’s every move was being scrutinized and documented by Flindall.[[173]](#footnote-173)
	* That Jack was being left on his own to fully investigate matters beyond his experience level.[[174]](#footnote-174)
	* That Campbell and Johnston both felt Jack was being targeted.[[175]](#footnote-175)
	* That Flindall’s supervision of Jack was an issue.[[176]](#footnote-176)
3. Campbell communicates this to Johnston and also notes a potential Human Rights complaint.[[177]](#footnote-177)
4. However, due to the Jack’s poisoned work environment, surveillance of Jack spreads to other platoons as can be seen in an email from Gravelle (platoon ‘C’) to Flindall.[[178]](#footnote-178)
5. Moreover, Campbell explicitly instructs Flindall to be objective, to ensure Jack has a poison free work environment and proper supervision[[179]](#footnote-179) and subsequently warns Flindall that there is a danger of a Human Rights complaint as a result of Flindall’s treatment of Jack[[180]](#footnote-180) all of which Flindall conveniently has no recollection of.[[181]](#footnote-181)
6. Finally, when those verbal reprimands prove to be insufficient[[182]](#footnote-182) Campbell negatively documents Flindall in relation to his lack of proper supervision of Jack.[[183]](#footnote-183) Flindall immediately vents his anger on Jack. For upon being served his negative 233-10 documentation Flindall alleges that Jack is hanging out with members of organized crime yet does not even have all the details to make such an allegation.[[184]](#footnote-184) That allegation is determined to be unsubstantiated, just like the HTA charge, 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, the list goes on.
7. The ‘*Are we in any shit?*’ email[[185]](#footnote-185) speaks volumes about Flindall’s concern over his treatment of Jack.

**Constable Jennifer Payne and the winking accusations**

1. Facts:
* Payne heard the nick name ‘**Crazy Ivan**’.[[186]](#footnote-186)
* Payne’s opinion is that Jack shows off.[[187]](#footnote-187)
* Payne is in a common-law relationship with Cst. Brockley and they have two daughters together.[[188]](#footnote-188)
* In the summer 2009 Jack is dating a local girl.[[189]](#footnote-189)
* On July 1, 2009, Payne raises her voice on Jack and reprimands him verbally in front of others in the detachment.[[190]](#footnote-190)
* After July 1, 2009, Payne feels Jack is avoiding her.[[191]](#footnote-191)
* In an email on August 15, 2009, Moran mentions to Flindall she has heard that Jack has a dislike of women.[[192]](#footnote-192)
* According to Campbell’s interpretation Jack does not like women in authority.[[193]](#footnote-193)
* Payne advises Flindall that Jack winks at her prior to even speaking to Jack about it.[[194]](#footnote-194)
* On July 18, 2009, Payne accuses Jack face-to-face of winking at her.[[195]](#footnote-195)
* When Jack denies winking purposefully at Payne,[[196]](#footnote-196) explaining that it could have been his eye fluttering under stress Payne thinks Jack is lying.[[197]](#footnote-197)
* In her examination in chief Payne states about Jack, ‘*Well, I think he thinks he is better than everyone else*.’[[198]](#footnote-198)
1. Questions:
	* Why would Jack who is dating a local girl, whose entire future life depends upon getting through his probationary period, who according to the respondents has either a dislike of women in general or has a dislike of women in authority, wink at a female officer in authority who is in a long-term common-law relationship with another constable at the detachment, who had already reprimanded and raised voice on Jack in front of others and according to her own testimony is being avoided by Jack? The sheer facts of Jack avoiding Payne and Jack winking at Payne at the same time do not match. What sense does it make? Neither could Payne answer that.[[199]](#footnote-199)

**REFUSED**

1. Jack testified that he never refused to sign his PER 6&7 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) he simply asked Flindall for more time to review it prior to signing it.[[200]](#footnote-200) He was denied that.[[201]](#footnote-201)
2. Jack testified that his alleged refusal to sign his PER 8 is a fraud. He was never even offered an opportunity to sign his PER 8. It was given to him with the word ‘REFUSED’ in the place of his signature[[202]](#footnote-202). Flindall testified that he did not serve Jack with his PER 8[[203]](#footnote-203) yet the word ‘REFUSED’ in place of Jack’s signature is his handwriting.[[204]](#footnote-204) While both Flindall and Jack made plenty of notes in their respective officer’s journals about PER 6&7 and Jack’s refusal to sign it[[205]](#footnote-205), neither Jack nor Flindall made any notes at all about PER 8 and Jack’s alleged refusal to sign it. When questioned about the ‘Refusal’ Flindall could not explain it.[[206]](#footnote-206)
3. Butorac presented Jack with his PER 8 on September 24, 2009,[[207]](#footnote-207) and further testified that there was an evaluation that said “REFUSED” on it and that he neither recalls Jack refusing to sign it nor made any notes about it.[[208]](#footnote-208)

**Sergeant Peter Butorac and ‘*Is Jack’s Case Hopeless?*’**

1. Butorac was not privy to what transpired with Jack prior to his return to work on September 9, 2009, or the information therein as both Butorac and Jack started on the same day.[[209]](#footnote-209)
2. According to Butorac, as of September 19, 2009, they had not yet received Jack’s PER 8.[[210]](#footnote-210)
3. In cross Butorac acknowledged that the drug grow seizure that resulted from Jack’s information to the drug squad[[211]](#footnote-211) would have been proper for Nie to use in Jack’s month 10 PER.[[212]](#footnote-212) However, the reality is that even Butorac dropped the ball on Jack for that email[[213]](#footnote-213) was copied to him and as a supervisor he failed to ensure its reflection in that PER and to issue a positive 233-10 to Jack.
4. In light of everything Jack was experiencing is it any wonder why he asked Butorac if his case was hopeless.[[214]](#footnote-214)
5. During Butorac’s cross, which went unchallenged, he was asked if there was any conversation during the 45 minute drive from Peterborough detachment to Lindsay detachment on the night of December 13, 2009. He said he did not have any notes of any conversation and followed up with ‘*… but it wouldn’t be like me to be totally silent.*’ So when questions that would have been damaging to the respondent were put to him regarding what Jack testified Butorac told him during that 45 minute drive, Butorac conveniently responded with a ‘*I do not recall’*. However something that was not damaging to the respondent Butorac recall very clearly in the absence of any notes and after the lapse of 7 years.[[215]](#footnote-215)
6. Still Butorac’s ‘I do not recall responses’ do not mean they were not true. How could Jack have such exclusive knowledge?

**Constable Richard Nie and the clean slate hypocrisy**

1. Jack is told by the respondent OPP that his transfer to Butorac’s shift with Nie as his new coach officer is to be viewed as a clean slate. We respectfully ask this Tribunal to consider the following facts *ipso facto*:
* Nie is capable of terminating probationary constables.[[216]](#footnote-216)
* Nie and Flindall were next-door neighbours and friends.[[217]](#footnote-217)
* Nie denies hearing rumors about Jack before starting to coach him.[[218]](#footnote-218) However, when faced with documentary evidence authored by him, Nie admits hearing rumors about Jack.[[219]](#footnote-219)
* Nie is biased and prejudiced against Jack before even starting to coach Jack.[[220]](#footnote-220)
* When Nie starts coaching Jack, Jack already has 17 ‘Does Not Meet’ categories from Flindall’s shift.[[221]](#footnote-221)
* Nie testifies that given the number of negative ratings in PER 8 it was going to be a challenge.[[222]](#footnote-222)
* Jack follows Nie’s directions.[[223]](#footnote-223)
* Jack confides to Nie that he is scared of him.[[224]](#footnote-224)
* Jack tells Nie about how intimidating his coaching is and that he is unsure about Nie’s true motives.[[225]](#footnote-225)
* Nie assures Jack that he is helping him.[[226]](#footnote-226)
* Nie testifies that he neither coached nor treated Jack any differently than any other recruit he had,[[227]](#footnote-227) yet he starts preparing the PFC – the document that is required for termination of employment – on the first day of coaching Jack.[[228]](#footnote-228) Thus essentially marking Jack for termination on the first day of coaching him.[[229]](#footnote-229)
* Nie prepared PFC for 2 recruits that were terminated out of 7 that he coached[[230]](#footnote-230) and only in the case of Jack Nie starts preparing the PFC on the first day of coaching him![[231]](#footnote-231) How can this not be viewed as a differential treatment?
* Nie focuses on meticulously documenting just about anything negative he can come up about Jack and his performance[[232]](#footnote-232) of which Jack is unaware at the time.[[233]](#footnote-233)
* Nie documents Jack negatively in PFC[[234]](#footnote-234) and rates Jack negatively in PER 9 within the first hour of coaching Jack[[235]](#footnote-235). To add insult to injury Nie documents Jack for something that turned out to be unfounded.[[236]](#footnote-236)
* During the first 9 shifts of coaching Jack, Nie accuses Jack and documents in PFC 35 negative things about Jack and his performance.[[237]](#footnote-237)
* On one particular day, namely September 18, 2009, Nie makes 8 negative entries in his PFC about Jack in only 5.5 hours with him.[[238]](#footnote-238)
* For an officer who coached Jack for three months Nie’s entries in PFC account for more than half of the entire PFC, which is compiled by 5 different officers.[[239]](#footnote-239)
* Nie admits that his PFC entries are done from a subjective point of view.[[240]](#footnote-240)
* Though Nie testifies that he does not recall Jack telling him he is being harassed or discriminated against,[[241]](#footnote-241) Nie testifies extensively about how Jack spoke to him about discrimination in general.[[242]](#footnote-242)
* Butorac testified that Jack was overwhelmed when he started on his platoon.[[243]](#footnote-243)
* Butorac testified that he understood how Jack must have felt and that the number of the ‘Does Not Meets’ was a constant cloud that overshadowed the whole process of providing Jack with a clean slate.[[244]](#footnote-244)
* Butorac testified that their platoon was over-challenged by being tasked to address ‘deficiencies’ from Flindall's shift.[[245]](#footnote-245)
* Butorac testified that Jack overwhelmingly felt he was under the gun all the time with respect to his work abilities and that they were being scrutinized and that more negatives were being identified than positives.[[246]](#footnote-246)
* Despite the fact that Jack’s direct involvement in the initial investigation that led to a successful seizure of a two million dollar illegal drug grow operation,[[247]](#footnote-247) Jack’s involvement was never mentioned anywhere[[248]](#footnote-248) and to add insult to injury even this piece of documentary evidence[[249]](#footnote-249) was withheld by the respondent.[[250]](#footnote-250)
* Butorac served Jack with the internal complaint on September 23, 2009, and according to his testimony the wording **‘Undesirables**’ on it would have caused him some concern and was not congruent with Human Rights Code.[[251]](#footnote-251)

**Performance evaluation reports**

1. The analysis of Jack’s PERs deserves a submission on its own and it would require considerably more than 30 pages to explore them properly. However, the examination of Jack’s 9 PERs[[252]](#footnote-252) during the course of the hearing along with the entered rebuttals[[253]](#footnote-253) showed that some parts of the PERs are of questionable validity, some lacking objectivity while others are being plain targeting. Thus we heed to the Vice Chair’s direction that this case is not about wrongful dismissal but about Human Rights violations. If some parts of the PERs were malignantly wrong,[[254]](#footnote-254) how much credibility can one assign to the rest and to the true motives of the authors of those PERs?

**Tightly knit group of trusted associates having a controlling influence**

1. The officers who are responsible for Jack’s negative performance evaluation ratings, negative documentations, negative PFC entries, HTA charge, accusations such as winking at a female officer, feigning sickness, running an undercover vehicle plate, hanging out with criminals, internal PSB complaint and many other aforementioned fault-findings and who also failed to comply with basic mandatory OPP Orders with respect to their supervision of Jack are:
* Sgt. Robert Flindall, son of retired Inspector Bill Flindall who served as Peterborough OPP Detachment Commander.[[255]](#footnote-255)
* Sgt. Trevor Banbury, brother-in-law of Sgt. Robert Flindall.[[256]](#footnote-256)
* Cst. Shaun Filman, subordinate officer of Sgt. Robert Flindall and son of retired Cst. Brad Filman who served at Peterborough OPP Detachment his entire life.[[257]](#footnote-257)
* Cst. Jennifer Payne, subordinate officer and friend of Sgt. Robert Flindall.[[258]](#footnote-258)
* Cst. Jamie Brockley, husband of Cst. Jennifer Payne.[[259]](#footnote-259)
* Cst. Richard Nie, neighbour of Sgt. Robert Flindall.[[260]](#footnote-260)



**Conclusion**

1. Counsel questioned respondent witnesses repeatedly whether any of the prohibited grounds played a role in their treatment of Jack. Is one really to expect the respondent witnesses to respond to counsel’s questions whether any of the prohibited grounds played a role in their treatment of Jack truthfully? Something akin to, ‘*We did not like Jack because of his thick Russian accent, or because he is Russian, or because he is Jewish, or because he is a foreigner, or whatever.*’
2. Counsel questioned respondent witnesses repeatedly if Jack ever complained about the discrimination and harassment he was subjected to and whether he complained about his human rights violations. Jack’s correspondence with Karen German[[261]](#footnote-261) and his Memorandum on October 19, 2009,[[262]](#footnote-262) proves that he did raise his concerns to the respondent OPP. Jack testified about his ignorance of the *Code*. However, it is not about Jack’s ignorance of the law rather it is about the respondent’s deliberate violation of the law. Furthermore, Jack learned about the ‘**Crazy Ivan**’ nickname assigned to him after the termination of his employment.[[263]](#footnote-263) In light of these facts, how could Jack raise his human rights violations during his probationary term?
3. Mr. Jack’s resignation was extorted from him. He was threatened, ‘sign this resignation or be fired’[[264]](#footnote-264). This was what he was told by Chief Superintendent Armstrong on December 15, 2009 by the OPP – resign or be fired.[[265]](#footnote-265) Faced with this Jack chose the apparent lesser of the two evils and signed a respondent prepared resignation letter. He did not tender a resignation letter prepared by him.[[266]](#footnote-266) It was Jack’s testimony that he never resigned but was forced to resign, something that was not done willingly and freely but under the application of a threat, something that the *Supreme Court of Canada* calls ‘extortion’.[[267]](#footnote-267) [[268]](#footnote-268)
4. The racism in that original email of August 5, 2008, permeated the whole of Peterborough OPP Detachment to the point of officers feeling comfortable to falsely accuse Jack without the fear of reprisals.[[269]](#footnote-269) It culminated to the point whereby his performance evaluations were deliberately manipulated to portray negativity so that his Employment would be in jeopardy and he would be forced into signing a resignation.[[270]](#footnote-270)
5. Ample evidence has been revealed on how derogatory the term ‘Associating with Undesirables’ was for the applicant. It is a fact that the respondent referred to Albanian Canadians as **‘Undesirables**’. No Canadian deserves to be labelled as an undesirable. It is also a fact that the allegation was humiliating and degrading to the recipient, Mr. Jack which is why Sgt. Butorac in his testimony on the 14 of September 2016, stated ‘… *I would be embarrassed to receive such an allegation* …’ He knew how contrary to the *Code* it was.[[271]](#footnote-271) Cst. German stated, ‘… *whatever the name Sgt. Thompson used …* .’ It was so embarrassing that she simply could not say that word.[[272]](#footnote-272)
6. Ample evidence has been revealed on how racially derogatory a nick name ‘**Crazy Ivan**’ was to the Russian born applicant. Yet there is not a single shred of evidence of Jack ever being violent.[[273]](#footnote-273)
7. This Racism that Jack was subjected to shattered his goal of sponsoring his family from Israel.[[274]](#footnote-274) It ruined him physically, mentally, emotionally, psychologically and financially.[[275]](#footnote-275) As a result of the overall Racism that he experienced from the respondent OPP he left Canada.[[276]](#footnote-276)
8. Jack summarized how he was treated by the respondent OPP most succinctly: ‘*I was brought down onto my knees and then executed.*’[[277]](#footnote-277)
9. Coaching of a police recruit can be perfectly structured, but flounder due to tunnel vision or “noble cause corruption” or loss of objectivity or bad judgment. All of this was present in the case of Jack. Older techniques and thought processes are, at times, deeply ingrained and difficult to change. Bluntly put it is prejudice. Police culture is not easy to modify. The failings of the respondent OPP which have been identified are systemic and not confined to only those that testified. The challenge for the respondent OPP must be to enhance policing through an introspective examination of the OPP culture. Through the outcome of this hearing the Ontario Public Service and the OPP will then be tasked to commence such an examination.
10. Last but not least, 7 years after the events that led to this hearing Mr. Jack has neither lost his zeal regarding this application, nor given up, nor has he succumbed to numerous mediations. Convicted by his beliefs Jack’s representative also pursued a similar zeal to hold the respondent accountable for what all he has witnessed. Mr. Vice Chair was right when he stated that this hearing monopolized Mr. Jack’s life.[[278]](#footnote-278) Exacerbated by the fact that Mr. Jack does not even reside in Canada, is the fact that he reached the stage of final submissions. If anything it simply attests to the strength of Mr. Jack’s spirit and his unshaken belief in the Canadian justice system.
1. *Ontario Human Rights Code*, R.S.O. 1990, c. H. 19, s. 5(1), 5(2), 8, Relevant Statutes, Schedule A, 1 [↑](#footnote-ref-1)
2. Ibid, s. 12 [↑](#footnote-ref-2)
3. *Ontario Human Rights Commission* – Policy on Discrimination and Language, 2009, Schedule A, 2 [↑](#footnote-ref-3)
4. *OHRC* brochure on Racism & Racial Discrimination, 2009, Schedule A, 3; Exhibit 92 - Applicant’s statement, pgs. 67 & 68 [↑](#footnote-ref-4)
5. Ibid [↑](#footnote-ref-5)
6. Ontario’s Human Rights Commission - Racial Harassment Brochure, 2009, Schedule A, 4 [↑](#footnote-ref-6)
7. Ibid; Exhibit 92, Applicant’s statement, pgs. 67-68 [↑](#footnote-ref-7)
8. Exhibits 1, 2, 3, 4, 5, 6, 7, 9, 14, 15, 92 pg. 1, Jack’s exam, background investigation report showing skills, languages, education and other pertinent background information [↑](#footnote-ref-8)
9. Exhibits 10, 11 [↑](#footnote-ref-9)
10. Exhibits 12, 14, 15, 92 pg. 2 [↑](#footnote-ref-10)
11. Jack’s exam [↑](#footnote-ref-11)
12. Ibid, Exhibit 92 pg. 6 2nd last para. to pg. 7 top para. - Jack’s first day with Filman [↑](#footnote-ref-12)
13. Flindall 12-Sep-16 pgs. 19-20, 139-140 [↑](#footnote-ref-13)
14. Duignan 8-Feb-16 pgs. 159-163, Exhibit 92 pg. 58 2nd last para., Jack’s exam [↑](#footnote-ref-14)
15. Jack’s exam; Exhibit 92 pages 3 and 4 [↑](#footnote-ref-15)
16. Rathbun 8-Feb-16 pgs. 11, 12, 17-19, 24, 25, 39, 46, 50, 51, 54, 57, 58, 65, 72-73, Exhibit 93 [↑](#footnote-ref-16)
17. Exhibit 92, pg. 6, para. 2 [↑](#footnote-ref-17)
18. Gravelle 8-Feb-16 pg. 95, l. 7-11 [↑](#footnote-ref-18)
19. Ibid, pg. 105, l. 1-9 [↑](#footnote-ref-19)
20. Ibid, p. 99: 16-25, pgs. 100-104, 107-109, 111 [↑](#footnote-ref-20)
21. Exhibit 13, Jack’s exam [↑](#footnote-ref-21)
22. Gravelle 8-Feb-16 pg. 105 [↑](#footnote-ref-22)
23. Exhibit 14 [↑](#footnote-ref-23)
24. Exhibit 141 pg. 2 [↑](#footnote-ref-24)
25. Exhibit 93 [↑](#footnote-ref-25)
26. Exhibit 94 [↑](#footnote-ref-26)
27. Exhibit 95 [↑](#footnote-ref-27)
28. *OHRC* brochure on Racism & Racial Discrimination, Exhibits 92, 93, 94, 95, 136, 140, 141, Johnston 9-Feb-16 pg. 119 [↑](#footnote-ref-28)
29. Exhibit 93, 94, 95, 140, 175 [↑](#footnote-ref-29)
30. Exhibit 141, pg. 1 under the heading ISSUE [↑](#footnote-ref-30)
31. Johnston 9-Feb-16 pg. 119: 9-21 [↑](#footnote-ref-31)
32. Exhibit 140 [↑](#footnote-ref-32)
33. Rathbun 8-Feb-16 pg. 40 [↑](#footnote-ref-33)
34. Exhibit 4, Exhibit 92 pg. 1: 3rd last paragraph, Jack’s exam [↑](#footnote-ref-34)
35. Exhibit 92 pg. 6: 2nd last paragraph, Jack’s exam [↑](#footnote-ref-35)
36. Duignan’s audio recording, 8-Feb-16 pg. 175: 2-11 [↑](#footnote-ref-36)
37. Jack’s re-exam 22-Sep-15 pgs. 63-65, Exhibit 92, p. 68 [↑](#footnote-ref-37)
38. Duignan 8-Feb-16 pgs. 161-166, 175 [↑](#footnote-ref-38)
39. Greco 10-Feb-16 pgs. 66, 71, 87 [↑](#footnote-ref-39)
40. Duignan 8-Feb-16 pgs. 173-174, D’Amico 9-Feb-16 pgs. 145-146, Postma 10-Feb-16 pgs. 13-14, Payne 14-Sep-16 pgs. 84-85 [↑](#footnote-ref-40)
41. Flindall 12-Sep-16 pgs. 19-20, 139-140 [↑](#footnote-ref-41)
42. Jack’s exam and cross [↑](#footnote-ref-42)
43. Jack’s cross [↑](#footnote-ref-43)
44. German 11-Feb-16 pg. 68, PERs month 4 and 5, Radio Communications, Exhibit 92 page 10 para. 4 and last para., Jack’s exam [↑](#footnote-ref-44)
45. Filman 9-Sep-16 pg. 71, Payne 14-Sep-16 pg. 128 [↑](#footnote-ref-45)
46. Jack’s exam [↑](#footnote-ref-46)
47. Campbell 8-Sep-16 pg. 69, Exhibits 100, 187, 193 [↑](#footnote-ref-47)
48. Exhibit 135 pg. 1 [↑](#footnote-ref-48)
49. Butorac 14-Sep-16 pgs. 61-62 [↑](#footnote-ref-49)
50. Ibid [↑](#footnote-ref-50)
51. Ibid, Brockley 11-Feb-16 pg. 52 [↑](#footnote-ref-51)
52. Exhibits 135, 92 pgs. 48-50, Jack’s exam [↑](#footnote-ref-52)
53. Brockley 11-Feb-16 pgs. 16-18, Exhibit 135 pg. 4: para. 5 and 6, Jack’s exam [↑](#footnote-ref-53)
54. German 11-Feb-16 pgs. 73-74 [↑](#footnote-ref-54)
55. German 11-Feb-16 pg. 73, Brockley 11-Feb-16 pg. 51 [↑](#footnote-ref-55)
56. Brockley 11-Feb-16 pg. 52, Exhibit 135 pg. 1, witness - Jamie Brockley, last sentence [↑](#footnote-ref-56)
57. Nie 15-Sep-16 pg. 24, Exhibit 92 pg. 41, para. 5, Jack’s exam [↑](#footnote-ref-57)
58. Butorac 14-Sep-16 pgs. 61-62 [↑](#footnote-ref-58)
59. Flindall 12-Sep-16 pg. 30, Exhibit 92 pg. 6, Jack’s exam [↑](#footnote-ref-59)
60. Exhibit 92, pg. 11 [↑](#footnote-ref-60)
61. Flindall 13-Sep-16 pg. 51 [↑](#footnote-ref-61)
62. Exhibit 143 [↑](#footnote-ref-62)
63. Filman 9-Sep-16 pg. 26 [↑](#footnote-ref-63)
64. Filman 9-Sep-16 pg. 48 [↑](#footnote-ref-64)
65. Ibid pgs. 57-58 [↑](#footnote-ref-65)
66. Flindall 13-Sep-16 pgs. 127-128 [↑](#footnote-ref-66)
67. Ibid pgs. 54-55 [↑](#footnote-ref-67)
68. Ibid pgs. 92-93 [↑](#footnote-ref-68)
69. Ibid pgs. 83, 95, 130 [↑](#footnote-ref-69)
70. Ibid pgs. 44, 47, 48, 51, 94, 119 [↑](#footnote-ref-70)
71. Ibid pgs. 95, 98, 112, 113, 119, 197 [↑](#footnote-ref-71)
72. Ibid pgs. 128-129 [↑](#footnote-ref-72)
73. Filman 9-Sep-16 pgs. 101-102 [↑](#footnote-ref-73)
74. Ibid pgs. 103-105 [↑](#footnote-ref-74)
75. Ibid pgs. 199-203 [↑](#footnote-ref-75)
76. Campbell 8-Sep-16 pgs. 23, 45-47 [↑](#footnote-ref-76)
77. Exhibit 143 [↑](#footnote-ref-77)
78. Campbell 8-Sep-16 pgs. 167-170, Flindall 12-Sep-16 pgs. 11-12, Flindall 13-Sep-16 pgs. 197-199, Nie 15-Sep-16 pgs. 15-16, Exhibits 169, 174, 189, 211, 220, 227 [↑](#footnote-ref-78)
79. Filman 9-Sep-16 pgs. 8-9, 137-141, 154-155 [↑](#footnote-ref-79)
80. Ibid pages 144, 161, 163, 166, 167 [↑](#footnote-ref-80)
81. Exhibits 19, 22, 23, 25 [↑](#footnote-ref-81)
82. Filman 9-Sep-16 pgs. 171-181 [↑](#footnote-ref-82)
83. Exhibit 143 pgs. 4-5 [↑](#footnote-ref-83)
84. Filman 9-Sep-16 pgs. 182-187 [↑](#footnote-ref-84)
85. Ibid page 183, Flindall 12-Sep-16 pg. 58 [↑](#footnote-ref-85)
86. Postma 10-Feb-16 pgs. 15-16, Exhibit 92 pg. 13 last para. [↑](#footnote-ref-86)
87. Butorac 14-Sep-16 pgs. 79-80, Exhibit 92 pg. 51 top para. [↑](#footnote-ref-87)
88. Greco 10-Feb-16 pg. 82 [↑](#footnote-ref-88)
89. D’Amico 9-Feb-16 pg. 173 [↑](#footnote-ref-89)
90. Filman 9-Sep-16 pgs. 125-128, Nie 15-Sep-16 pgs. 123-125 [↑](#footnote-ref-90)
91. Exhibit 28 [↑](#footnote-ref-91)
92. Flindall 13-Sep-16 pgs. 176-177 [↑](#footnote-ref-92)
93. Flindall 12-Sep-16 pgs. 10, 23, 130-132, 180-181, 184, 186-192, 194-195 [↑](#footnote-ref-93)
94. Exhibits 24, 106, OPP orders on mandatory PERs meetings [↑](#footnote-ref-94)
95. Flindall 12-Sep-16, pgs. 146-147, 180, Exhibits 42, 55, 56, 87, 143, 155, 187, 191, 192 [↑](#footnote-ref-95)
96. Flindall 12-Sep-16 pg. 181 [↑](#footnote-ref-96)
97. Flindall 13-Sep-16 pg. 101 [↑](#footnote-ref-97)
98. Ibid pages 101-102 [↑](#footnote-ref-98)
99. Campbell 8-Sep-16 pgs. 23, 45-47 [↑](#footnote-ref-99)
100. Flindall 13-Sep-16 pgs. 20-21, Exhibits 196, 197 [↑](#footnote-ref-100)
101. Flindall 12-Sep-16 pgs. 197-201, Exhibit 194 [↑](#footnote-ref-101)
102. Exhibit 194 [↑](#footnote-ref-102)
103. Flindall 12-Sep-16 pg. 202 [↑](#footnote-ref-103)
104. Kohen 11-Feb-16 pg. 144, Exhibit 125 pg. 1 [↑](#footnote-ref-104)
105. Flindall 12-Sep-16 pgs. 201-202, Flindall 13-Sep-16 pg. 47 [↑](#footnote-ref-105)
106. Flindall 13-Sep-16 pg. 33, Exhibit 44, [↑](#footnote-ref-106)
107. Exhibit 92, page 3, last paragraph [↑](#footnote-ref-107)
108. Flindall 13-Sep-16 pg. 52, Exhibit 198 [↑](#footnote-ref-108)
109. Exhibit 156 [↑](#footnote-ref-109)
110. Campbell 8-Sep-16 pgs. 38-40, Exhibit 156 [↑](#footnote-ref-110)
111. Exhibit 112, OPP orders, Member note taking [↑](#footnote-ref-111)
112. Campbell 8-Sep-16 pgs. 38-40, Exhibit 156 [↑](#footnote-ref-112)
113. Payne 14-Sep-16 pg. 138, 140, 182, 184 [↑](#footnote-ref-113)
114. Ibid pgs. 133-136 [↑](#footnote-ref-114)
115. Ibid pgs. 133-136 [↑](#footnote-ref-115)
116. Ibid pgs. 138, 140, 182, 184 [↑](#footnote-ref-116)
117. Johnston 9-Sep-16 pgs. 134-138 [↑](#footnote-ref-117)
118. Campbell 8-Sep-16 pgs. 21-27, 30-35, 80-81, 133, Exhibits 99, 155 [↑](#footnote-ref-118)
119. Flindall 12-Sep-16 pg. 82 [↑](#footnote-ref-119)
120. Kohen 11-Feb-16, pg. 144 [↑](#footnote-ref-120)
121. Flindall 12-Sep-16 pgs. 81, 88-92, Exhibit 97, 92 pg. 19 para. 2, Jack’s exam [↑](#footnote-ref-121)
122. Ibid pg. 82, Exhibit 92 pg. 19 para. 2-3 [↑](#footnote-ref-122)
123. Exhibits 99, 155 [↑](#footnote-ref-123)
124. Ibid pgs. 88-92 [↑](#footnote-ref-124)
125. Ibid pgs. 93-94 [↑](#footnote-ref-125)
126. Ibid pg. 70, 13-Sep-16 pg. 117 [↑](#footnote-ref-126)
127. Flindall 12-Sep-16 pg. 71 [↑](#footnote-ref-127)
128. Exhibit 202 [↑](#footnote-ref-128)
129. Flindall 13-Sep-16 pg. 152 [↑](#footnote-ref-129)
130. Exhibit 203 [↑](#footnote-ref-130)
131. Exhibit 204 [↑](#footnote-ref-131)
132. Exhibit 92, pg. 10 para. 1, pg. 13 para. 3 [↑](#footnote-ref-132)
133. Flindall 13-Sep-16 pg. 102 [↑](#footnote-ref-133)
134. Exhibits 151, 162, 180 [↑](#footnote-ref-134)
135. Exhibits 99, 155 [↑](#footnote-ref-135)
136. Flindall 13-Sep-16 pgs. 107-110, Exhibit 149, Jack’s exam [↑](#footnote-ref-136)
137. Exhibits 96, 99, 155, 207 [↑](#footnote-ref-137)
138. Exhibit 150 [↑](#footnote-ref-138)
139. Exhibit 29 [↑](#footnote-ref-139)
140. Campbell 7-Sep-16 pgs. 170-171, Campbell 8-Sep-16 pgs. 11-13, Exhibit 152 [↑](#footnote-ref-140)
141. Campbell 7-Sep-16 pgs. 141, 145, 146, Flindall 12-Sep-16 pgs. 29, 183-184, Exhibits 146, 147 [↑](#footnote-ref-141)
142. Campbell 8-Sep-16 pgs. 65-66, Exhibit 42 [↑](#footnote-ref-142)
143. Flindall 12-Sep-16 pg. 60 [↑](#footnote-ref-143)
144. Campbell 8-Sep-16 pgs. 65-66 [↑](#footnote-ref-144)
145. Flindall 13-Sep-16 pgs. 77-81 [↑](#footnote-ref-145)
146. Ibid pg. 96 [↑](#footnote-ref-146)
147. Ibid pgs. 97-98 [↑](#footnote-ref-147)
148. Flindall 13-Sep-16 pgs. 89-95 [↑](#footnote-ref-148)
149. Campbell 8-Sep-16 pg. 53, Flindall 13-Sep-16 pgs. 83, 87, Payne 14-Sep-16 pg. 197 [↑](#footnote-ref-149)
150. Flindall 12-Sep-16 pg. 79 [↑](#footnote-ref-150)
151. Exhibit 185 [↑](#footnote-ref-151)
152. Flindall 12-Sep-16 pg. 55, Exhibit 157 [↑](#footnote-ref-152)
153. Flindall 13-Sep-16 pgs. 150-152, Exhibits 202, 203, 204 [↑](#footnote-ref-153)
154. Filman 9-Sep-16 pg. 5, Payne 14-Sep-16 pg. 81 [↑](#footnote-ref-154)
155. Ibid pg. 132, Payne 14-Sep-16 pgs. 177-179, Exhibit 198 [↑](#footnote-ref-155)
156. Campbell 8-Sep-16 pg. 140, Flindall 13-Sep-16 pg. 190, Exhibit 107 [↑](#footnote-ref-156)
157. Flindall 12-Sep-16 pgs. 197-202, Exhibit 194 [↑](#footnote-ref-157)
158. Exhibit 192 [↑](#footnote-ref-158)
159. Flindall 12-Sep-16 pgs. 157-160, 172-175, Exhibit 102, 192 [↑](#footnote-ref-159)
160. Campbell 8-Sep-16 pgs. 77-78, Flindall 13-Sep-16 pg. 209, Exhibits 158, 213 [↑](#footnote-ref-160)
161. Ibid pgs. 119-124; Flindall 13-Sep-16 pg. 194, Exhibit 163 [↑](#footnote-ref-161)
162. Moran 9-Feb-16 pgs. 180-182 [↑](#footnote-ref-162)
163. Exhibits 108, 109, 110, 133, 199, 200 [↑](#footnote-ref-163)
164. Flindall 13-Sep-16 pgs. 62-63, 67, 72-73 [↑](#footnote-ref-164)
165. Flindall 13-Sep-16 pgs. 62-63, 67, 72-73, Payne 14-Sep-16 pg. 158 [↑](#footnote-ref-165)
166. Campbell 8-Sep-16 pgs. 104-106 [↑](#footnote-ref-166)
167. Exhibit 124 [↑](#footnote-ref-167)
168. Flindall 12-Sep-16 pgs. 57-58, Flindall 13-Sep-16 pgs. 153-155, Exhibit 205 [↑](#footnote-ref-168)
169. Flindall 13-Sep-16 pgs. 30-31, Exhibit 92 pg. 23 para. 3 [↑](#footnote-ref-169)
170. Campbell 8-Sep-16 pgs. 27, 72, 80, 146 [↑](#footnote-ref-170)
171. Exhibit 207 [↑](#footnote-ref-171)
172. Flindall 12-Sep-16 pg. 125 [↑](#footnote-ref-172)
173. Campbell 8-Sep-16 pgs. 15, 19, 189-190 [↑](#footnote-ref-173)
174. Ibid pgs. 23, 45-47 [↑](#footnote-ref-174)
175. Ibid pgs. 21-25, 30-35, Exhibits 99, 155 [↑](#footnote-ref-175)
176. Campbell 8-Sep-16 pg. 29, Exhibits 116, 165 [↑](#footnote-ref-176)
177. Exhibits 99, 155 [↑](#footnote-ref-177)
178. Exhibit 96 [↑](#footnote-ref-178)
179. Campbell 8-Sep-16 pg. 38 [↑](#footnote-ref-179)
180. Ibid pg. 26-27, 72, 80, Exhibit 143 pg. 23 [↑](#footnote-ref-180)
181. Flindall 13-Sep-16 pg. 112 [↑](#footnote-ref-181)
182. Campbell 8-Sep-16 pgs. 44, 68-70 [↑](#footnote-ref-182)
183. Ibid 8-Sep-16 pgs. 42-43, Exhibit 157 [↑](#footnote-ref-183)
184. Ibid pgs. 68-71, Exhibit 100 [↑](#footnote-ref-184)
185. Exhibit 154 [↑](#footnote-ref-185)
186. Payne 14-Sep-16 pg. 84 [↑](#footnote-ref-186)
187. Ibid pg. 87-88 [↑](#footnote-ref-187)
188. Brockley 11-Feb-16 pg. 22, Campbell 8-Sep-16 pgs. 73-74 [↑](#footnote-ref-188)
189. Exhibit 92, pgs. 16-17 [↑](#footnote-ref-189)
190. Payne 14-Sep-16 pg. 193, Exhibit 92 pgs. 15-16 [↑](#footnote-ref-190)
191. Ibid pg. 108 [↑](#footnote-ref-191)
192. Exhibit 162 [↑](#footnote-ref-192)
193. Campbell 8-Sep-16 pgs. 114-115 [↑](#footnote-ref-193)
194. Payne 14-Sep-16 pg. 112 [↑](#footnote-ref-194)
195. Payne 14-Sep-16 pgs. 119-121, 207-208 [↑](#footnote-ref-195)
196. Ibid pg. 120 [↑](#footnote-ref-196)
197. Ibid pgs. 207-208 [↑](#footnote-ref-197)
198. Ibid pgs. 130, 185 [↑](#footnote-ref-198)
199. Ibid pg. 194 [↑](#footnote-ref-199)
200. Flindall 12-Sep-16 pgs. 102-103, Flindall 13-Sep-16 pgs. 34-38, 189-190, Exhibits 32, 164, Jack’s exam [↑](#footnote-ref-200)
201. Campbell 8-Sep-16 pg. 139, Exhibit 92 pg. 31, Jack’s exam [↑](#footnote-ref-201)
202. Exhibit 92 pg. 38 [↑](#footnote-ref-202)
203. Flindall 12-Sep-16 pg. 106 [↑](#footnote-ref-203)
204. Ibid pg. 107, Flindall 13-Sep-16 pg. 48 [↑](#footnote-ref-204)
205. Exhibit 32 [↑](#footnote-ref-205)
206. Flindall 13-Sep-16 pg. 48-50 [↑](#footnote-ref-206)
207. Butorac 14-Sep-16 pg. 63 [↑](#footnote-ref-207)
208. Ibid pgs. 67-68 [↑](#footnote-ref-208)
209. Butorac 14-Sep-16 pgs. 4-5, 28-31, 59, Exhibit 92 pgs. 21, 32 [↑](#footnote-ref-209)
210. Ibid pgs. 16-17 [↑](#footnote-ref-210)
211. Exhibit 59, Exhibit 92, pg. 43 [↑](#footnote-ref-211)
212. Butorac 14-Sep-16 pg. 53 [↑](#footnote-ref-212)
213. Exhibit 59 [↑](#footnote-ref-213)
214. Exhibit 53 [↑](#footnote-ref-214)
215. Butorac 14-Sep-16 pgs. 76, 78-80 [↑](#footnote-ref-215)
216. Postma 10-Feb-16 pgs. 29-33, Campbell 8-Sep-16 pgs. 96-101, Exhibits 116, 160 [↑](#footnote-ref-216)
217. Flindall 12-Sep-16 pgs. 196, 204, Butorac 14-Sep-16 pg. 59, Nie 15-Sep-16 pgs. 66-67 [↑](#footnote-ref-217)
218. Nie 15-Sep-16 pg. 11 [↑](#footnote-ref-218)
219. Ibid pgs. 71-72, 75, Exhibit 223 [↑](#footnote-ref-219)
220. Ibid pgs. 11, 71-78, Exhibits 223, 224 [↑](#footnote-ref-220)
221. Nie 15-Sep-16 pgs. 169-170 [↑](#footnote-ref-221)
222. Ibid pg. 12 [↑](#footnote-ref-222)
223. Ibid pg. 26 [↑](#footnote-ref-223)
224. Ibid pg. 127 [↑](#footnote-ref-224)
225. Ibid pgs. 47-48, 125-126 [↑](#footnote-ref-225)
226. Ibid pg. 20 [↑](#footnote-ref-226)
227. Ibid pg. 177 [↑](#footnote-ref-227)
228. Ibid pgs. 168-170 [↑](#footnote-ref-228)
229. Ibid pgs. 168-170 [↑](#footnote-ref-229)
230. Ibid pgs. 169-170 [↑](#footnote-ref-230)
231. Ibid pgs. 168-170 [↑](#footnote-ref-231)
232. Exhibit 143 pgs. 25-46, Exhibit 92 pgs. 32-38 [↑](#footnote-ref-232)
233. Nie 15-Sep-16 pg. 126 [↑](#footnote-ref-233)
234. Exhibit 143 [↑](#footnote-ref-234)
235. Exhibit 92 pgs. 33-34 [↑](#footnote-ref-235)
236. Nie 15-Sep-16 pgs. 106-110 [↑](#footnote-ref-236)
237. Ibid pg. 60 [↑](#footnote-ref-237)
238. Ibid 150-151, 154-155 [↑](#footnote-ref-238)
239. Ibid pg. 126 [↑](#footnote-ref-239)
240. Ibid pgs. 90-91 [↑](#footnote-ref-240)
241. Ibid pgs. 32, 53-54 [↑](#footnote-ref-241)
242. Ibid pg. 35 [↑](#footnote-ref-242)
243. Butorac 14-Sep-16 pg. 12 [↑](#footnote-ref-243)
244. Ibid pgs. 18-20 [↑](#footnote-ref-244)
245. Ibid pg. 33 [↑](#footnote-ref-245)
246. Ibid pgs. 26, 37, 40-41 [↑](#footnote-ref-246)
247. Exhibits 59, 92 pg. 43 [↑](#footnote-ref-247)
248. Butorac 14-Sep-16 pgs. 47-52 [↑](#footnote-ref-248)
249. Exhibit 59 [↑](#footnote-ref-249)
250. Butorac 14-Sep-16 pg. 53 [↑](#footnote-ref-250)
251. Ibid pgs. 60-62 [↑](#footnote-ref-251)
252. Exhibits 19, 22, 23, 25, 33, 35, 50, 61, 64 [↑](#footnote-ref-252)
253. Exhibits 34, 36, 40, 52, 63, 66 [↑](#footnote-ref-253)
254. Campbell 8-Sep-16 pgs. 147-154, 163 [↑](#footnote-ref-254)
255. Flindall 12-Sep-16 pgs. 125-126 [↑](#footnote-ref-255)
256. Ibid 12-Sep-16 pg. 125 [↑](#footnote-ref-256)
257. Jack’s exam [↑](#footnote-ref-257)
258. Flindall 12-Sep-16 pg. 52 [↑](#footnote-ref-258)
259. Brockley 11-Feb-16 pgs. 21-22, Payne 14-Sep-16 pgs. 123, 132, 163 [↑](#footnote-ref-259)
260. Flindall 12-Sep-16 pgs. 196, 204, Butorac 14-Sep-16 pg. 59, Nie 15-Sep-16 pg. 67 [↑](#footnote-ref-260)
261. Exhibit 120 [↑](#footnote-ref-261)
262. Exhibit 53 [↑](#footnote-ref-262)
263. Duignan 8-Feb-16 pgs. 159-163, Exhibit 92 pg. 58, Jack’s exam [↑](#footnote-ref-263)
264. German 11-Feb-16 pg. 87, Exhibit 228 [↑](#footnote-ref-264)
265. Armstrong 12-Feb-16, pgs. 101-103, 111-119 [↑](#footnote-ref-265)
266. Exhibit 92, pg. 56 para. 1, Jack’s exam [↑](#footnote-ref-266)
267. R. v. BARROS, 2011 SCC 51, [2011] 3 S.C.R. 368, para. 61, 62 and 63; Applicant’s Book of Authorities, Tab 1 [↑](#footnote-ref-267)
268. R. v. DAVIS, [1999] 3 SCR 759, 1999 CanLII 638 (SCC), para. 45 and 46; Applicant’s Book of Authorities, Tab 2 [↑](#footnote-ref-268)
269. Exhibit 92 pg. 31 para. 2, pg. 22 last para., Exhibits 162, 191, 199 [↑](#footnote-ref-269)
270. Exhibit 92 pg. 43 last para., pgs. 54-55, Jack’s exam [↑](#footnote-ref-270)
271. Butorac 14-Sep-16 pgs. 61-62 [↑](#footnote-ref-271)
272. German 11-Feb-16 pg. 73 [↑](#footnote-ref-272)
273. Johnston 9-Feb-16 pg. 119, D'Amico 9-Feb-16 pg. 162, Campbell 8-Sep-16 pg. 105, Jack’s exam [↑](#footnote-ref-273)
274. Exhibit 92 pg. 68, Jack’s exam [↑](#footnote-ref-274)
275. Ibid [↑](#footnote-ref-275)
276. Ibid [↑](#footnote-ref-276)
277. Exhibit 92 pg. 55 last para., Jack’s exam [↑](#footnote-ref-277)
278. Brennenstuhl 13-Sep-16 pg. 8 [↑](#footnote-ref-278)