Tribunal File No.: 2010-07633-I

HUMAN RIGHTS TRIBUNAL OF ONTARIO

AR/am

B E T W E E N:

MICHAEL JACK

Applicant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED

BY THE MINISTER OF COMMUNITY SAFETY AND CORRECTIONAL

SERVICES AND OPERATING AS THE ONTARIO PROVINCIAL POLICE

Respondent

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HELD BEFORE: Keith Brennenstuhl, Vice-Chair

HELD AT: HRTO - Human Rights Tribunal of Ontario

655 Bay Street, 14th Floor

Toronto, Ontario

HELD ON: February 11, 2016

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APPEARANCES:

LLOYD TAPP -- for the Applicant

DAVID TAPP

BILL MANUEL -- for the Respondent

HEIDI BLUTSTEIN

ALSO PRESENT:

Michael Jack

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1 --- upon convening at 10:00 a.m.

2 --- upon commencing at 10:10 a.m.

3

4 GENERAL DISCUSSION:

5 THE VICE-CHAIR: Okay, Mr. Tapp.

6 MR. TAPP: Thank you, Mr. Vice-Chair.

7 Before we call the first witness, Mr.

8 Brockley, Mr. Jack wishes to address this

9 Court regarding the last two days of my

10 absence.

11 MR. JACK: Okay, Mr. Vice-Chair, thank

12 you. Number one, you asked me yesterday to

13 come up, produce management hierarchy...

14 THE VICE-CHAIR: Yes, yes.

15 MR. JACK: ...and run by the counsel, but

16 I only have original copies which was given

17 to me when I was dealing with the officer.

18 I didn't have...I don't have a photocopier

19 at home. So, we can photocopy this...

20 THE VICE-CHAIR: I will photocopy it.

21 MR. JACK: ...and that is as of 2008 and

22 2009, as you can see on the dates.

23 THE VICE-CHAIR: Okay. Have you seen

24 these?

25 MR. MANUEL: Well not...they have been

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1 disclosed...

2 THE VICE-CHAIR: They have been

3 disclosed?

4 MR. JACK: No, because you asked me

5 yesterday.

6 THE VICE-CHAIR: Okay.

7 MR. MANUEL: I haven't seen them.

8 THE VICE-CHAIR: Okay, well, spend some

9 time with them at some point. Not right

10 now, necessarily.

11 MR. JACK: And the second issue, which

12 we dealt with yesterday, was, if you

13 recall, I was trying to tender as an

14 Exhibit 1 the e-mails, and the counsel

15 objected, saying that it was part of a

16 chain of e-mail.

17 THE VICE-CHAIR: Right.

18 MR. JACK: And I said that it wasn't.

19 The point being, and I can explain it from

20 a technological perspective, of the e-mails

21 that were printed out works, the point that

22 they provided us so much disclosure that

23 there are multiple copies of the same

24 e-mail. Sometimes it forms part of a chain

25 of e-mails. Other times, it just an

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1 independent e-mail. So, I followed the

2 independent one that I was using, and I

3 wanted just to show you that the one I use

4 was from their disclosure.

5 THE VICE-CHAIR: Okay.

6 MR. JACK: Just like that.

7 THE VICE-CHAIR: Yes.

8 MR. JACK: And I just copied the

9 relevant part. The bottom part is another

10 independent e-mail which you don't have any

11 bearing...

12 THE VICE-CHAIR: Did we enter...

13 MR. JACK: Yes, but I am just showing

14 you...

15 THE VICE-CHAIR: Okay, okay.

16 MR. JACK: ...because the counsel made

17 such a big fuss about it yesterday.

18 THE VICE-CHAIR: Okay.

19 MR. JACK: So, I am explaining the

20 reason for what I was doing. Thank you.

21 THE VICE-CHAIR: Okay.

22 MR. JACK: Okay, Mr. Tapp, you can

23 proceed.

24 MR. TAPP: Can you call Mr. Brockley,

25 please?

- 7 - J. Brockley

Ex-in-Chief (L. TAPP)

1

2 JAMIE BROCKLEY, affirmed

3 EXAMINATION-IN-CHIEF BY MR. TAPP:

4 Q. Good morning, Mr. Brockley.

5 A. Good morning.

6 Q. I take it you are here as a result

7 of being summoned to attend this today?

8 A. That is correct.

9 Q. Okay. Now, do you have your notes

10 in relation to Mr. Jack and the matter that is

11 before this Tribunal?

12 A. On some of the items I was notified

13 of, I didn't have notes on it. There is one section

14 where there was one small page, but on my summons,

15 the section about bringing notes was crossed out.

16 So, I didn't bring any notes with me, no.

17 Q. Oh...

18 A. So...

19 Q. It was crossed out?

20 A. It was, yes. I can show you, if you

21 wish to see.

22 Q. Actually, that is, because...it is,

23 and that is of a concern to me.

24 MR. MANUEL: Mr. Vice-Chair, we have

25 produced the relevant notes that Mr.

- 8 - J. Brockley

Ex-in-Chief (L. TAPP)

1 Brockley had been produced...Mr. Tapp has

2 them.

3 MR. TAPP: Okay, I will address that.

4 Well...

5 MR. MANUEL: That is what we rely upon.

6 We have already...as part of the disclosure

7 in the usual practice, we obtain...prior

8 counsel obtained the notebooks, identified

9 the relevant parts, and we have produced

10 them. So, Mr. Tapp has them.

11 THE VICE-CHAIR: Yes, so that should be

12 sufficient.

13 MR. TAPP: Okay. Fair enough, Mr.

14 Vice-Chair.

15

16 BY MR. TAPP:

17 Q. And I take it you also have the

18 witness summary that was prepared...

19 A. The one...

20 Q. ...in relation to this matter?

21 A. You just handed me this, yes.

22 Q. Yes, thank you. I ask that you

23 don't read it. They are just there for the purpose

24 of refreshing your memory. Is that clear?

25 A. Yes.

- 9 - J. Brockley

Ex-in-Chief (L. TAPP)

1 Q. Thank you. How long have you been

2 an OPP officer?

3 A. Sixteen years now.

4 Q. Okay. And where are you currently

5 attached? There is no need to mention if it is a

6 specific unit, but location-wise, what...

7 A. I work for the Organized Crime

8 Enforcement Bureau, the Drug Enforcement section out

9 of Central Region.

10 Q. Okay. Is there a particular

11 detachment you work out of?

12 A. No.

13 Q. Okay. How about in 2009?

14 A. Yes, in 2009 I was seconded to the

15 Drug Enforcement section, part of Peterborough

16 detachment.

17 Q. Okay. And you have your notes and

18 your witness summary here today, right? Have there

19 been any additions, depletions or changes in any of

20 your notes regarding this matter?

21 A. I don't believe I have any notes

22 with me, other than what you handed me. So, I

23 wouldn't have made any changes to them.

24 Q. Okay, fair enough. Now, going

25 specifically to...in your witness summary, you

- 10 - J. Brockley

Ex-in-Chief (L. TAPP)

1 indicate, in March 2009, you heard something. Can

2 you tell us what you heard, please, in March 2009?

3 A. In March 2009, I had an opportunity

4 to be working an extra shift in which I was on the

5 same shift as which Mr. Jack was on. I didn't

6 usually work on Mr. Jack's shift. While I was

7 working on that shift, I recall on the police radio,

8 I heard Mr. Jack running in a licence plate.

9 That licence plate came back to a specific

10 company and a specific address, which I immediately

11 recognized as how we mark our undercover police

12 vehicles, so that our undercover police vehicles, if

13 they are run, they are not known to be a police

14 vehicle. So, when I heard that, it just...it caught

15 my attention that that vehicle he was running was

16 the same company as how we mark our undercover

17 police cars.

18 Q. Prior to going into the specialized

19 unit, were you, at any time, a patrol officer?

20 A. Yes. In between, from 2004 until

21 current, I have been in specialized units pretty

22 much the entire time. On two different occasions, I

23 was back on the road working: One in 2005, and then

24 once in 2009. And then on this date of March 2009,

25 which you are asking, I was on the road, just on a

- 11 - J. Brockley

Ex-in-Chief (L. TAPP)

1 different shift.

2 Q. Okay, fair enough. Would it be

3 normal for an officer in the course of their shift

4 to run licence plates?

5 A. Absolutely.

6 Q. Okay. Would there be any indication

7 whatsoever, based on your experience, for a patrol

8 officer to know beforehand that a particular vehicle

9 was an undercover vehicle?

10 MR. MANUEL: That is speculation.

11 MR. TAPP: Pardon me, I will address

12 that. The whole allegation of associating

13 with undesirables was merely speculation,

14 and evidence has shed light on that, and we

15 know the disposition of that. So, the

16 question is very pertinent to that

17 which...speculation which gave rise to an

18 actual investigation.

19 MR. MANUEL: The objection is to the

20 form of the question. It is speculation

21 what an officer would or...what a

22 hypothetical officer might hypothetically

23 know or not know is not going to assist

24 this Tribunal, with respect, Mr.

25 Vice-Chair.

- 12 - J. Brockley

Ex-in-Chief (L. TAPP)

1 BY MR. TAPP:

2 Q. Okay, I will put it to you, Mr.

3 Brockley...

4 THE VICE-CHAIR: You will have to

5 rephrase it.

6 MR. TAPP: Okay. Certainly, Mr.

7 Vice-Chair.

8

9 BY MR. TAPP:

10 Q. If you had no prior policing

11 experience, okay? Would it be normal that you might

12 or could run the licence plate of a vehicle that

13 could come back to you an undercover vehicle?

14 MR. MANUEL: Really, Mr. Vice-Chair, how

15 is that possibly useful?

16 THE VICE-CHAIR: I don't know.

17 MR. TAPP: Okay.

18 MR. MANUEL: It is purely hypothetical.

19 THE VICE-CHAIR: Yes. It is

20 speculative. As soon as you put "if"...

21 MR. TAPP: Okay.

22 THE VICE-CHAIR: ...at the front of a

23 question, it is generally...

24 MR. TAPP: Okay, fair enough.

25

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Ex-in-Chief (L. TAPP)

1 BY MR. TAPP:

2 Q. But was there anything wrong in

3 running that plate?

4 MR. MANUEL: How does he know? Really,

5 Mr. Vice-Chair.

6 MR. TAPP: Fair enough.

7 THE VICE-CHAIR: Mr. Tapp, where is this

8 evidence leading to? I understand that

9 there were allegations that the applicant

10 associated with undesirables, and that this

11 association took place at the gym. That is

12 the allegations. So, how is this line of

13 questioning related to that allegation?

14 MR. TAPP: Because the allegation arose

15 as a result of Mr. Brockley suspecting that

16 Mr. Jack was conscious of the vehicle being

17 an undercover vehicle, and ran specifically

18 an undercover plate.

19 The photograph that shows the

20 so-called two undesirables, which has been

21 entered as an exhibit, was something that

22 was...Mr. Jack showed in the course of his

23 duties to Mr. Brockley, but in January

24 2009. That wasn't an issue then. However,

25 when Mr. Brockley, it is anticipated, based

- 14 - J. Brockley

Ex-in-Chief (L. TAPP)

1 on the witness summary, it is anticipated

2 that it didn't become an issue, the

3 photograph did not become an issue until

4 Mr. Brockley heard Mr. Jack running the

5 plate and linked the two.

6 THE VICE-CHAIR: Do I have a copy of

7 the...

8 MR. MANUEL: Yes.

9 THE VICE-CHAIR: ...witness statement?

10 MR. TAPP: Yes.

11 THE VICE-CHAIR: Maybe I will get a

12 sense of what this evidence is all about.

13 MR. MANUEL: Mr. Vice-Chair, perhaps Mr.

14 Tapp could be directed to ask Mr. Brockley,

15 what involvement did he have? What did he

16 do as a result of this...

17 THE VICE-CHAIR: Okay.

18 MR. MANUEL: ...so that we don't have

19 Counsel...Mr. Tapp's evidence of what...we

20 have it from the witness.

21 THE VICE-CHAIR: I agree with you.

22 MR. TAPP: Yes. And actually, that is a

23 very good question, so I will adopt it.

24

25 BY MR. TAPP:

- 15 - J. Brockley

Ex-in-Chief (L. TAPP)

1 Q. So, Mr. Brockley, can you tell us,

2 what did you learn as a result of hearing him run

3 the plate? What actions did you do? What did you

4 think?

5 A. Well, as a result of him running

6 that plate from a previous photo that he showed me,

7 I had knowledge, at the time, of an investigation

8 that was happening in regards to the individuals

9 that I saw in a photo with Mr. Jack. I knew that

10 there was an investigation going on on these

11 individuals in regards to drug trafficking. Nobody

12 else knew this, other than a very few select people.

13 So, when I heard that plate run, it tweaked my

14 interest because I knew that there were officers in

15 those vehicles in this area.

16 So, it made me inquire further on maybe,

17 why did he run that car? Was it in his notes? So,

18 I had...I can't remember who it was specifically. I

19 had...I checked with her, it was Constable Payne or

20 whether it was Sergeant Flindall, I just made

21 reference to, "Maybe just ask Mr. Jack about that

22 vehicle stop, or see if it is in his notes". And I

23 believe that it wasn't in his notes.

24 I didn't make anything further, complain

25 about it or anything like that. From what I

- 16 - J. Brockley

Ex-in-Chief (L. TAPP)

1 understand, there was a complaint laid about that

2 plate being run by Sergeant Flindall. And from what

3 I heard through...

4 MR. MANUEL: Well...

5 THE WITNESS: Sorry.

6 MR. TAPP: Yes, go on. Go on.

7 MR. MANUEL: No, I object. Let's not

8 get into hearsay.

9 MR. TAPP: No, no, no, whose witness is

10 this?

11 MR. MANUEL: I am objecting.

12 MR. TAPP: The question has been told.

13 THE VICE-CHAIR: He can object to

14 hearsay.

15 MR. TAPP: Okay. I hear the objection,

16 and the argument. I want to say that he is

17 answering the question, the rationale of

18 what caused him to link hearing that plate

19 being run to the photograph.

20 MR. MANUEL: He has given that evidence.

21 THE VICE-CHAIR: Continue.

22 MR. TAPP: Thank you.

23 THE WITNESS: So, I don't think that he

24 had anything...further involvement with

25 that. I believe that was it, and then in

- 17 - J. Brockley

Ex-in-Chief (L. TAPP)

1 my own interest, it made me wonder whether

2 if Mr. Jack was doing that on purpose, or

3 if it was merely an accident. And I was

4 aware that through this investigation that

5 they were doing... the officers who were

6 conducting the investigation were...one of

7 the individuals that was in the picture,

8 they obtained phone records for these

9 individuals. So, to further check to see

10 if there is any link to Mr. Jack purposely

11 running that licence plate, Mr. Jack's

12 phone number was given to my detective

13 sergeant to check through those records to

14 see if there was a match, with contact with

15 those high-level drug dealers.

16

17 BY MR. TAPP:

18 Q. And were there any?

19 A. Yes, there was.

20 Q. Okay.

21 A. Yes, there was 13 phone calls from

22 Mr. Jack to one of those high-level drug dealers,

23 who we spoke about before, myself and Mr. Jack spoke

24 about that individual before.

25 Q. And when was that phone call? In

- 18 - J. Brockley

Ex-in-Chief (L. TAPP)

1 and around that time or...tell us.

2 A. Which phone call? I am sorry.

3 Q. You said there was a link

4 between...a phone call from Mr. Jack to one of those

5 drug dealers, right?

6 A. Yes, it was during that time.

7 Q. Okay.

8 A. But I couldn't forward that

9 information. I couldn't forward that information at

10 the time to anybody at the Peterborough detachment

11 because it is an ongoing active investigation. That

12 was not my information to forward. I received the

13 information, and to maintain the integrity of their

14 high-level investigation, it was not produced at the

15 time, that information.

16 THE VICE-CHAIR: You said a phone call?

17 THE WITNESS: Thirteen.

18 THE VICE-CHAIR: Or thirteen, okay.

19

20 BY MR. TAPP:

21 Q. Okay. I am going to show you

22 Exhibit 54, which has already been entered, and this

23 is just a photocopy because it has already been

24 entered.

25 A. Okay.

- 19 - J. Brockley

Ex-in-Chief (L. TAPP)

1 Q. Specifically, I am not going to ask

2 you to identify the individual. But I just want you

3 to acknowledge that this is the photograph that you

4 observed.

5 A. There is three photographs here. I

6 am not sure which one specifically you are referring

7 to.

8 Q. The top one.

9 A. So, I am sorry, what is the question

10 about the photograph again?

11 Q. That is the photograph you were

12 shown. It is a photocopy of it.

13 A. Well, I certainly recognize Mr. Jack

14 in the photo, and the two individuals in the photo

15 who I know. Whether that was the exact photo he

16 showed me at the time, I can't say for sure, but I

17 certainly do recognize the two individuals that I

18 recall from a photo he showed me at the time with

19 Mr. Jack.

20 Q. Thank you. And when was that

21 photograph shown?

22 A. January 26, 2009, according to my

23 will-say that I have here.

24 Q. Okay.

25 A. It was voluntarily showed by Mr.

- 20 - J. Brockley

Ex-in-Chief (L. TAPP)

1 Jack.

2 Q. Fair enough. When it was shown to

3 you in January 2009, did Mr. Jack have a

4 conversation while showing it to you? Did he have a

5 conversation with you while showing you the

6 photograph?

7 A. Yes.

8 Q. Okay. And what is your recollection

9 of that conversation?

10 A. I know Mr. Jack had just come to

11 Peterborough detachment, and he was showing interest

12 in going into a different kind of line of work,

13 because apparently he had some high-level training

14 with regards to firearms and that type of stuff.

15 So, he would be a perfect candidate for working for

16 search warrants and that type of work in the drug

17 unit that we do. So, he was expressing an interest

18 in that.

19 And I am not sure why he brought this photo

20 in, if we had had a conversation about it before,

21 and he wanted to show who these gentlemen were,

22 because he knew who they were, because one of the

23 individuals had just been arrested with 300 pounds

24 of marijuana in relation to a vehicle stop that had

25 happened crossing the border.

- 21 - J. Brockley

Ex-in-Chief (L. TAPP)

1 So, I think that is what sparked our

2 conversation between myself and Mr. Jack to bring

3 this photo in to show the other individuals. And

4 then Mr. Jack and I spoke of the individual who was,

5 in fact, suspected of being caught with 300 pounds

6 of marijuana, and we had a conversation about him.

7 Q. Okay.

8 A. But nothing...

9 Q. I understand, based on your

10 testimony, there was a PSB investigation against Mr.

11 Jack?

12 A. I believe that it was forwarded to

13 the PSB, yes.

14 Q. Yes. And it was your testimony that

15 Sergeant Flindall initiated it?

16 A. I recall from my...from my memory, I

17 believe it would have been Sergeant Flindall.

18 Whether he passed it on to a higher-rank officer at

19 Peterborough detachment, and they formally did the

20 complaint, I am not sure. You would have to ask

21 them specifically, I suppose.

22 Q. Just so that I understand the chain

23 of communication, you communicated your suspicions

24 or concerns to...and you named a female officer,

25 Jennifer Payne?

- 22 - J. Brockley

Ex-in-Chief (L. TAPP)

1 A. Yes.

2 Q. Okay. Is she a constable at that

3 detachment?

4 A. Yes, she is.

5 Q. Okay. Do you know her?

6 A. Yes, she is my wife.

7 Q. Thank you. Can you say if she is a

8 member of Flindall's platoon, or was at that time?

9 A. Yes.

10 Q. Thank you. Did you have an

11 opportunity, or rather, were you contacted as a

12 result of the complaint filed against Mr. Jack?

13 Were you contacted to provide a statement of a duty

14 report?

15 A. Yes, that is the duty report that is

16 right here.

17 Q. So, you have the duty report before

18 you?

19 A. Yes.

20 Q. Now, you have already given

21 information about the second paragraph contained

22 there.

23 MR. MANUEL: Page 2?

24 MR. TAPP: Page 2, yes.

25

- 23 - J. Brockley

Ex-in-Chief (L. TAPP)

1 BY MR. TAPP:

2 Q. Can you read...the third paragraph,

3 the two lines immediately above "Constable Jack".

4 Can you read the last three lines, starting

5 with...there is a blacked out portion:

6 "...Constable Jack stated..."

7 Can you read that up to "illegal", please?

8 A. There is two spots in paragraph 3

9 where it starts...

10 Q. Okay.

11 A. "...Constable Jack stated..."

12 Q. Okay:

13 "...Constable Jack stated he worked..."

14 A. Okay.

15 Q. So, from then on to the word

16 "illegal".

17 A. Yes:

18 "...Constable Jack stated he worked out at

19 the gym with all of those guys, and that he

20 didn't know they were into anything

21 illegal..."

22 Thank you. I ask you to flip over to page 3 of that

23 document. Before I go on, I would ask you, in the

24 course of your duties, would it be natural for you

25 to note anything that is worth mentioning, or

- 24 - J. Brockley

Ex-in-Chief (L. TAPP)

1 something that you might need to refer to later on?

2 A. If I think it is relevant at the

3 time, certainly.

4 Q. Okay, fair enough. Can you read the

5 last paragraph, just above "respectfully submitted",

6 please?

7 A. This paragraph was drafted in

8 regards to not having any notes for the

9 conversations that we had. So, the paragraph says:

10 "...I did not make any notations in my

11 notebook at the time, and have no notations

12 in regards to this incident, because I

13 wasn't concerned at the time, nor did I see

14 it necessary at the time to make a notation

15 in my notebook on a photograph..."

16 Q. That is okay, you have already

17 explained it. I just want you to read what you have

18 stated. Continue on, after that period.

19 A. I just read the whole paragraph.

20 Q. Okay, fair enough. So, you had no

21 concerns at the time, and nor did you see it

22 necessary?

23 A. Certainly not. No, he is very

24 forthcoming with...

25 Q. So, would it be safe to say that

- 25 - J. Brockley

Ex-in-Chief (L. TAPP)

1 were it not for that photograph, you would not have

2 had the concerns?

3 MR. MANUEL: Mr. Vice-Chair...

4 MR. TAPP: Okay. Fair enough.

5

6 BY MR. TAPP:

7 Q. Did you link the running of the

8 plate with the photograph?

9 A. I think it was the totality of the

10 three incidents...

11 Q. Okay.

12 A. ...which I linked all together. It

13 was the photograph of him with the individuals, who

14 Mr. Jack freely brought forward himself, which I had

15 no concerns about at the time. And then it was...to

16 my knowledge, there was an investigation on these

17 individuals at the time. Hearing Mr. Jack run a

18 plate came back to an undercover police car, and

19 further on knowing that he made 13 phone calls to

20 one of the individuals. That is...in itself, that

21 is concerning at the time. Each incident on its own

22 might not necessarily be so.

23 Q. But you do acknowledge that the

24 running of licence plates is normal when officers

25 work?

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Ex-in-Chief (L. TAPP)

1 A. I certainly hope so.

2 Q. Okay, good. And do you know the

3 results of that plate, whether he actually ran the

4 plate, or what was the result of that?

5 A. From the information I received

6 back, apparently, after he ran the plate, he

7 advised, "No, that wasn't the plate I meant to run",

8 and then ran a different licence plate. That is the

9 information I received back, so...

10 Q. Who did you receive that information

11 from?

12 A. I don't know if it was from

13 Detective-Sergeant Mahoney, or if it would have been

14 from Sergeant Flindall. I am not sure. That is

15 just what I recall at the time, so...

16 Q. If evidence revealed that Sergeant

17 Flindall did do a check with the communication

18 centre, and reveal that the error was on the part of

19 the communication centre, would that clarify your

20 memory or shed any light?

21 A. No, it would not.

22 Q. You are still of the view, then,

23 that Mr. Jack did run that plate, and corrected

24 himself afterwards?

25 A. I am of the view that he mistakenly

- 27 - J. Brockley

Ex-in-Chief (L. TAPP)

1 ran the plate that came back to the undercover

2 police car. That is what I understand.

3 Q. So, if evidence revealed, by way of

4 a communications logger tape, that that was not the

5 plate he gave, and the dispatcher misunderstood him

6 and ran a different plate, would that shed any

7 light?

8 A. If the dispatcher had mistakenly ran

9 a plate, and ran the proper plate at the time, then

10 I wouldn't have heard the plate come back to the OPP

11 vehicle, which wouldn't have made me think anything.

12 So, certainly...

13 Q. Absolutely.

14 A. Yes.

15 Q. But it would also...if she

16 misunderstood what he said, and he ran a specific

17 plate that came back to an undercover vehicle, that

18 it does not mean that he gave that plate, right?

19 MR. MANUEL: Mr. Vice-Chair...

20 THE WITNESS: I am not sure what you are

21 asking on this one.

22

23 BY MR. TAPP:

24 Q. Well, if evidence revealed that the

25 dispatcher misunderstood him, ran a wrong plate that

- 28 - J. Brockley

Ex-in-Chief (L. TAPP)

1 came back to an undercover plate, then rightfully,

2 he didn't run that plate. He didn't ask that plate.

3 She misunderstood him. Correct?

4 MR. MANUEL: What does that have to do

5 with this witness?

6 THE VICE-CHAIR: Yes. I don't

7 understand.

8 MR. TAPP: Okay.

9

10 BY MR. TAPP:

11 Q. Are you aware that that was the

12 case, that the communication centre did run the

13 wrong plate?

14 A. No.

15 Q. Okay, fair enough, we won't go over

16 that. We will get that out of another witness.

17 Now, are you certain that you heard him run that

18 plate on March 2009, and not July 31st?

19 A. I believe it was March, but I can't

20 say for sure whether it would have been July or

21 March, but certainly that com centre tape you are

22 referring to would clearly indicate what the proper

23 date was.

24 Q. Okay, absolutely. And the

25 communication centre would be able to concretely

- 29 - J. Brockley

Ex-in-Chief (L. TAPP)

1 identify the date that plate was run, right?

2 A. Yes. I just have it in the will-say

3 that it is...I believed it was approximately March

4 2009.

5 Q. So, you could have been mistaken by

6 a few months?

7 A. In which part? Sorry.

8 Q. Running of the...hearing

9 specifically that he ran the plate in March 2009.

10 A. I think it was March, to my

11 recollection, because I remember linking it to the

12 motor vehicle collision that happened after, and

13 myself going back and saying this was the general

14 time frame, but I can't say for sure.

15 Q. You can't?

16 A. No.

17 Q. But you said you were...on that day,

18 you were working general patrol? March 2009, when

19 you ran the plate...

20 A. On the time when the plate was run,

21 yes, that is correct, yes.

22 Q. Yes.

23 A. Yes.

24 Q. And if evidence revealed that in

25 March 2009, you were still attached to the drug

- 30 - J. Brockley

Ex-in-Chief (L. TAPP)

1 unit, that would not change your testimony any?

2 A. Well, I know there was a period

3 during that time frame when the G8 summit might have

4 been happening, when we had to work extra shifts to

5 cover for extra shifts. And I don't know if it was

6 during that time frame, but I know, certainly, when

7 I heard that plate I was working an extra shift for

8 somebody. That is the reason why I was on Mr.

9 Jack's shift. Again, I don't know if that was the

10 time of the G8 or not. I just recall working an

11 extra shift for some reason that wasn't my regular

12 shift.

13 Q. If evidence revealed that the G8

14 took place in 2010...

15 A. Then it would be just what I just

16 finished saying, that...

17 Q. Pardon me?

18 A. Then it would just be what I

19 referred to just a second ago, that it would have

20 been another shift that I was working there, for

21 some reason I was on...

22 Q. Okay, fair enough. We will leave it

23 at that. The next paragraph in your will-say states

24 on October 24th, Sergeant Flindall requested

25 something of you. Can you read that, please? Two

- 31 - J. Brockley

Ex-in-Chief (L. TAPP)

1 lines.

2 A. "...On October 24th, 2009, Sergeant

3 Flindall requested that Detective-Constable

4 Brockley provide him with information

5 pertaining to Mr. Jack's association with

6 the two high-level drug dealers..."

7 Q. So, when did you approach and relay

8 your information to Constable Payne, as you say, and

9 she in turn relayed it to Flindall?

10 MR. MANUEL: Well, you can't...

11 MR. TAPP: Okay.

12

13 BY MR. TAPP:

14 Q. When did you approach Constable

15 Payne?

16 A. I can't recall when that would have

17 been.

18 Q. Okay, fair enough. When did you

19 approach Sergeant Flindall?

20 MR. MANUEL: That is not the evidence he

21 gave. The evidence is Sergeant Flindall

22 requested...he didn't...

23

24 BY MR. TAPP:

25 Q. When did Sergeant Flindall approach

- 32 - J. Brockley

Ex-in-Chief (L. TAPP)

1 you? Or are you able to say, when did Sergeant

2 Flindall...

3 A. Well, in my will-say it says:

4 "...On October 24th, 2009, he requested..."

5 I provide him with the information.

6 Q. Okay. What if evidence revealed

7 that it was you who approached Sergeant Flindall

8 with regards to the photograph, and not the other

9 way around as you say in your will-say, and you

10 state now?

11 MR. MANUEL: Whose evidence?

12 THE VICE-CHAIR: Yes, I am having

13 difficulty with...this is your witness.

14 MR. TAPP: Okay.

15 THE VICE-CHAIR: Remember that. You are

16 cross-examining your own witness.

17 MR. TAPP: Sometimes, when it is hard to

18 get the information out, you have got to

19 ask a lot of specific questions.

20 THE VICE-CHAIR: Well, you have his

21 evidence...

22 MR. TAPP: If evidence...

23

24 BY MR. TAPP:

25 Q. Could you have been mistaken about

- 33 - J. Brockley

Ex-in-Chief (L. TAPP)

1 the date Sergeant Flindall approached you about it?

2 Rather, could it have been September 3rd, as opposed

3 to October 24th?

4 A. If it was, I don't know why

5 specifically I would have October 24th in my

6 will-say, although...yes, it says October 24th on

7 this document you gave me, so it could have been. I

8 know I didn't make any formal complaint about that

9 situation. I was approached about it, so...

10 Q. It is your evidence that it was

11 Sergeant Flindall who initiated the PSB, or he or

12 somebody else that initiated the PSB investigation,

13 correct?

14 A. That is correct, yes.

15 Q. Okay. I am showing you Exhibit 103.

16 It is the memorandum...

17 THE VICE-CHAIR: Are we entering this?

18 MR. JACK: Yes, absolutely.

19 MR. TAPP: Yes, well, there were going

20 to be more questions, then I was going to

21 ask, but we can do it now.

22 MR. JACK: You can do it now.

23 MR. TAPP: I would like to enter the

24 witness summary of Mr. Brockley as the next

25 exhibit, please.

- 34 - J. Brockley

Ex-in-Chief (L. TAPP)

1 THE VICE-CHAIR: Okay.

2 MR. MANUEL: Well, which...what are we

3 talking about? The duty report?

4 THE VICE-CHAIR: No, we are talking

5 about the...

6 MR. TAPP: Yes. I am sorry...

7 THE VICE-CHAIR: ...duty report.

8 MR. TAPP: The duty report of Mr.

9 Brockley, prepared in relation to the PSB

10 investigation. It is a four-page document,

11 with a cover sheet. So, that would make a

12 total of five pages.

13 MR. MANUEL: I have six.

14 MR. TAPP: Six. Six pages.

15 THE VICE-CHAIR: This is 118.

16

17 --- EXHIBIT NO. 118: Duty report of Constable Brockley

18 related to PSB Investigation (6

19 pages)

20

21 BY MR. TAPP:

22 Q. Mr. Brockley, what does PSB stand

23 for, please?

24 A. Professional Standards Bureau.

25 Q. Can you read the date of that

- 35 - J. Brockley

Ex-in-Chief (L. TAPP)

1 memorandum that is before you, please?

2 A. There were two dates on here. One,

3 September 23rd, 2009. One is September 11th, 2009.

4 Q. Okay. So, the memorandum is dated

5 September 23rd, and signed at the bottom September

6 11th?

7 A. It is dated September 23rd, 2009,

8 and it says:

9 "...Date of complaint, September 11th,

10 2009..."

11 Q. Okay. Date of complaint, September

12 11th, 2009. But at the same time, in order to issue

13 Mr. Jack without notice, there would have had to

14 have been some prelim information forwarded to the

15 Professional Standard Bureau?

16 MR. MANUEL: That is Mr. Tapp's

17 evidence.

18 MR. TAPP: Okay.

19 THE VICE-CHAIR: Yes.

20

21 BY MR. TAPP:

22 Q. Now, how is it that you are able to

23 state in your statement that October 24th, Sergeant

24 Flindall had a conversation with you, and asked you

25 to provide details, and Professional Standards

- 36 - J. Brockley

Ex-in-Chief (L. TAPP)

1 Bureau receives the complaint September 11th?

2 MR. MANUEL: It doesn't say the

3 Professional Standards Bureau received it.

4 It says the date of the complaint...

5 MR. TAPP: Well, it says the Notice of

6 Memorandum, the date complaint received.

7 MR. MANUEL: This has nothing to do with

8 any of these documents that...

9 MR. TAPP: Yes, it is...

10 MR. MANUEL: It is not a proper

11 challenge of this witness' evidence.

12 MR. TAPP: It is a very proper question.

13 Read back the date the complaint was

14 received. Read that again, please.

15 THE WITNESS: It is September 11th,

16 2009.

17

18 BY MR. TAPP:

19 Q. Okay. And what is the date in

20 relation to?

21 MR. MANUEL: This isn't his document.

22 MR. TAPP: Fine, all right.

23

24 BY MR. TAPP:

25 Q. Now, yet you say in your witness

- 37 - J. Brockley

Ex-in-Chief (L. TAPP)

1 summary that you spoke to...or Sergeant Flindall

2 spoke to you about Mr. Jack's association on October

3 24th.

4 A. Yes, in regards to the two

5 high-level drug dealers which would have been from

6 the photograph from January 2009.

7 Q. Okay. How many communications did

8 you have with Sergeant Flindall? Put it that way.

9 MR. MANUEL: About what?

10

11 BY MR. TAPP:

12 Q. Regarding Mr. Jack's association

13 with, or supposed association with two high-level

14 drug dealers.

15 A. I can't recall specifically how many

16 there would have been. I know that on the 24th of

17 October, though, I was, like, formally requested for

18 the information pertaining to the photograph that

19 was shown from my recollection.

20 Q. Formally requested by Sergeant

21 Flindall? Would that be formal?

22 A. Sergeant Flindall requested that I

23 provide him with the information pertaining to Mr.

24 Jack's association with the two high-level drug

25 dealers.

- 38 - J. Brockley

Ex-in-Chief (L. TAPP)

1 Q. And you are certain it could not

2 have been September 3rd?

3 A. We could have had a conversation

4 about it September 3rd, but I clearly have noted in

5 my will-say that that is when he requested the

6 information from me, at that time, was on the 24th

7 of October, 2009.

8 Q. Fair enough.

9 MR. MANUEL: Perhaps the witness could

10 be directed to the date of his duty report.

11 THE VICE-CHAIR: Good point.

12 MR. TAPP: Okay.

13

14 BY MR. TAPP:

15 Q. And what does the allegation on that

16 notice plead before you? Can you just read it, the

17 allegation, and who it is against?

18 MR. MANUEL: How does this help...this

19 witness has got nothing to do with this

20 document.

21 MR. TAPP: It is. It is very relevant,

22 because...

23 THE VICE-CHAIR: The document is

24 relevant. I give you that. But I don't

25 see how it is linked to this particular

- 39 - J. Brockley

Ex-in-Chief (L. TAPP)

1 witness.

2

3 BY MR. TAPP:

4 Q. What do you know of the disposition

5 of that allegation?

6 A. Going back to what we talked about,

7 the licence plate being checked from what I believe

8 took place, that it was run in there, the licence

9 plate was run in there...

10 Q. Okay.

11 A. ...but I am not aware of any further

12 knowledge of what took place as a result of this,

13 nor did I ask.

14 Q. Well, did you at any time ever

15 become aware of the disposition of the PSB

16 investigation?

17 A. What the formal outcome was?

18 Q. Yes.

19 A. Of Mr. Jack's complaint?

20 Q. The complaint laid against Mr. Jack,

21 specifically, "associating with undesirables"?

22 A. No, other than what I mentioned

23 about the licence plate...

24 Q. Okay.

25 A. ...check.

- 40 - J. Brockley

Ex-in-Chief (L. TAPP)

1 Q. Thank you.

2 A. I am not aware...

3 Q. And I appreciate that.

4 A. ...of that.

5 Q. I will not go any further. Mr.

6 Brockley, did you have occasion, aside from that

7 incident that we just talked about, did you have

8 occasion to assist or deal with Mr. Jack at any time

9 later?

10 A. Yes, there is one incident. It is

11 noted here, July 23rd, 2009. I was on light duties

12 at the time due to a minor surgery that I had, and

13 the detachment...that was a night shift. Mr. Jack's

14 shift...I was the night shift. Mr. Jack's shift was

15 the day shift, and Mr. Jack was conducting an

16 investigation which required him further overtime in

17 regards to a criminal harassment case. Constable

18 Payne requested myself to assist him, Mr. Jack, in

19 preparing the brief for the individual, which I

20 believe still needed an arrest to have taken place,

21 but I can't recall that specifically, just the

22 assistance with the brief.

23 During that time, Mr. Jack, I recall, was

24 tired. He kept saying he was too tired to complete

25 his work, and he asked me to do his Crown brief

- 41 - J. Brockley

Ex-in-Chief (L. TAPP)

1 synopsis for him. So, the Crown brief synopsis is

2 basically what is read out in court in regards to

3 the evidence of Mr. Jack's investigation to charge

4 somebody.

5 I had no knowledge of what Mr. Jack had

6 done in his investigation to prepare somebody else's

7 Crown brief synopsis for them. I have never been

8 asked to do somebody else's Crown brief synopsis

9 before. I have never seen that happen before.

10 Usually, the officer who starts the investigation is

11 the individual who does the Crown brief synopsis.

12 So, Mr. Jack advised me to do that, and I

13 said, "I am not doing your Crown brief synopsis for

14 you". That is Mr. Jack's job. He advised he was

15 too tired to continue with that. I wasn't a

16 sergeant at the time or anything like that. I

17 wasn't in charge of Mr. Jack, or I probably would

18 have directed Mr. Jack to stay and finish that brief

19 that night, but I made a phone call to Staff

20 Sergeant Ron Campbell, because I realized Mr. Jack

21 was tired. He needed to go home and to come back

22 and finish that.

23 So, the sole purpose of my phone call to

24 Mr. Campbell was if Mr. Jack could do that, and if

25 he was allowed to come back in the next day on

- 42 - J. Brockley

Ex-in-Chief (L. TAPP)

1 overtime to complete what he needed to do. Mr.

2 Campbell was very specific with allowing Mr. Jack to

3 come in the next day, and it was specifically

4 for...I believe it was to locate and arrest the

5 individual. I believe that was what the purpose of

6 allowing him to come in on overtime was the next

7 day. And that was it.

8 Q. I am just handing out a copy of your

9 notes in relation to that incident that you have

10 noted.

11 THE VICE-CHAIR: So, let's enter the

12 handwritten note.

13 MR. TAPP: Yes.

14

15 --- EXHIBIT NO. 119: Handwritten Police Notes of Officer

16 Brockley dated July 23, 2009

17

18 MR. MANUEL: Perhaps the witness can

19 tell us what the date is. It looks

20 like...have you got a copy of your notice

21 in front of you?

22 THE WITNESS: Yes, July 23rd.

23 THE VICE-CHAIR: Yes.

24 MR. MANUEL: Pardon?

25 THE WITNESS: July 23rd.

- 43 - J. Brockley

Ex-in-Chief (L. TAPP)

1 THE VICE-CHAIR: Okay. So, this...

2 MR. TAPP: What has been handed out to

3 Counsel and Mr. Vice-Chair are the exact

4 same copy that you have with a transcribed

5 version beside it.

6 THE VICE-CHAIR: Yes. We are going to

7 use the handwritten notes for now.

8 MR. TAPP: Okay.

9

10 BY MR. TAPP:

11 Q. Just to authenticate those

12 transcribed versions they can follow along. Can you

13 read your notes for that day, please?

14 A. Sure:

15 "...The 23rd of July at midnight, I have

16 assisted PC Jack with bail brief on a

17 criminal harassment case. Jack requested

18 assistance with his brief, and asked me to

19 read over a statement from victim. I read

20 over the statement for Jack. Jack then

21 asked me to do his synopsis for him. I

22 advised I would not, and due to the nature

23 of the case, that a PTA OIC undertaking..."

24 Which is a document for release form,

25 "...would not be sufficient, or would make

- 44 - J. Brockley

Ex-in-Chief (L. TAPP)

1 do with conditions of non-association to

2 the victim of his investigation, and also

3 directed Mr. Jack, part of those conditions

4 could be to surrender firearms to the

5 officer, as well, if this individual is

6 located and arrested. So, I advised him to

7 send out an e-mail for reasonable grounds

8 to arrest the suspect of this case, and to

9 contact Officer Hanna..."

10 Who...I am not sure if he would have been the night

11 shift sergeant then,

12 "...to see if he would be able to locate

13 and arrest the subject, and also for Mr.

14 Jack to update the victim in the morning,

15 regardless of the situation whether the

16 person was arrested or not. I drafted Mr.

17 Jack's release documents, promise to appear

18 an OIC undertaking, and left a copy in his

19 diary slot..."

20 Q. Okay,...

21 A. He asked...

22 Q. ...pause right there, okay? Because

23 I have a specific question. You are familiar with

24 the show cause?

25 A. Yes.

- 45 - J. Brockley

Ex-in-Chief (L. TAPP)

1 Q. Okay. And for...you mentioned that

2 you gave him specific direction about releasing the

3 person on a promise to appear and an undertaking?

4 A. I don't believe the person had been

5 arrested yet, but I...

6 Q. That is true.

7 A. ...a promise to appear would have

8 sufficed...

9 Q. Would have sufficed.

10 A. ...with conditions for the victim,

11 yes.

12 Q. So, if...would a show cause also

13 suffice?

14 A. Certainly if the subject was

15 located, yes.

16 Q. Okay. But in order to do a show

17 cause, would an officer have to have...would you

18 have to have a specific reason to do that?

19 A. Yes. There is usually a reason why

20 you would keep somebody in custody, as opposed to

21 just being able to release them on conditions not to

22 associate to the individual. And in this case, I

23 believe I felt that an undertaking would have

24 sufficed in this case.

25 Q. And you would have felt that because

- 46 - J. Brockley

Ex-in-Chief (L. TAPP)

1 the show cause could give the same restrictions as

2 an undertaking? Or rather, if you requested a show

3 cause hearing for certain conditions, the same could

4 be accomplished by an undertaking?

5 A. Sometimes. Not all the time.

6 Q. So, this specific case...

7 A. I can't recall all the specifics.

8 It was Mr. Jack's investigation, but I just remember

9 looking at the totality of it with him, and him not

10 being able to complete what he needed to do for the

11 night, drafting the PTA OIC undertaking release

12 forms and hope somebody else did arrest him in the

13 meantime. Mr. Jack didn't have his brief done. So,

14 he could have been released with the proper

15 conditions, and given Mr. Jack proper time to finish

16 what he was doing.

17 Q. Absolutely. And that would mean

18 that there would be no need for a show cause?

19 A. If someone is released on a promise

20 to appear, then they are not show cause, that is

21 correct.

22 Q. Okay. Mr. Brockley, I am showing

23 you a document that is going to be handed out, that

24 specifically summarizes the direction followed by

25 Mr. Jack, and the direction you gave.

- 47 - J. Brockley

Ex-in-Chief (L. TAPP)

1 MR. MANUEL: Well, that is the question.

2 You are giving evidence.

3

4 BY MR. TAPP:

5 Q. The question over there, can you

6 look at where it says "Number 3"?

7 A. Yes.

8 Q. Okay. Specifically it says:

9 "...Adult promise to appear undertaking..."

10 A. Yes.

11 Q. And specifically going all the way

12 to the right is a specific occurrence number that

13 corresponds...that would be for the criminal

14 harassment incident?

15 A. Yes.

16 Q. Okay. So, would you say, looking at

17 that summary...first of all, would you agree

18 that...where would that summary come from, Mr.

19 Brockley?

20 MR. MANUEL: Who would create these

21 entries? So that we understand.

22 MR. TAPP: Okay.

23

24 BY MR. TAPP:

25 Q. Look at the very bottom, to address

- 48 - J. Brockley

Ex-in-Chief (L. TAPP)

1 Counsel's question. Who does it say "Printed by"?

2 A. That is Constable Jen Payne's badge

3 number.

4 Q. Good. You recognize that badge

5 number as being Constable Jen Payne's?

6 A. Yes.

7 Q. Right. And the date it was printed?

8 It says in the middle column, "Date", above

9 "Computer"?

10 A. There is a date there of the 25th of

11 July, 2009.

12 Q. In fact, I am going to ask that this

13 specific document be entered as the next exhibit,

14 because...

15 MR. MANUEL: How can this witness

16 identify it?

17 MR. TAPP: ...this is going to be

18 referred to when further witnesses come up.

19 MR. MANUEL: When an appropriate witness

20 is called, it can...

21 THE VICE-CHAIR: Somebody has to

22 identify it before we can enter it.

23 MR. TAPP: I am going to say that he

24 clearly identified it coming from who...

25 THE VICE-CHAIR: Well...

- 49 - J. Brockley

Ex-in-Chief (L. TAPP)

1 MR. TAPP: ...printed it.

2 THE VICE-CHAIR: That is not...

3 MR. TAPP: Okay.

4 MR. MANUEL: Anybody can read the...

5 MR. TAPP: I am going to...would this be

6 an occurrence summary from Niche?

7 THE WITNESS: It must be from Niche. I

8 just can't recall this format, how you

9 would get that. I am not...

10

11 BY MR. TAPP:

12 Q. Fair enough. And what does "Niche"

13 stand for?

14 A. It is the police computer system

15 that we use for completing Crown briefs and logging

16 incidents, and that type of thing.

17 Q. And read right after the very end of

18 the very top line. It gives the occurrence number,

19 and what the occurrence number is about?

20 MR. MANUEL: This witness cannot

21 validate this document. Let's wait until

22 we get a witness that can validate this...

23 MR. TAPP: Yes, he can, to the extent

24 that it comes from a Niche reporting

25 system.

- 50 - J. Brockley

Ex-in-Chief (L. TAPP)

1 THE VICE-CHAIR: Well, how do we know

2 that?

3 MR. TAPP: Okay.

4 MR. MANUEL: He is not familiar with

5 this. He has just told you.

6 MR. TAPP: He is familiar with this. He

7 had provided assistance to Mr. Jack

8 regarding this criminal harassment, and

9 this is just a summary from the Niche

10 report, coming short of tendering the whole

11 report, this is just a summary of it.

12 THE VICE-CHAIR: Mr. Tapp, somebody has

13 to identify this document.

14 MR. TAPP: Okay.

15 THE VICE-CHAIR: He is not able to.

16 MR. TAPP: Okay. We will leave that

17 aside. We will come back...we will revisit

18 that document. Thank you very much, Mr.

19 Brockley. We will revisit it for another

20 witness.

21

22 BY MR. TAPP:

23 Q. So, Mr. Brockley, going back to

24 that...this will probably be the end of the

25 questions. Going back to the photograph Mr. Jack

- 51 - J. Brockley

Ex-in-Chief (L. TAPP)

1 showed you, you agree that, at the time, it didn't

2 raise any concerns?

3 MR. MANUEL: He answered that question.

4 MR. TAPP: And...

5 THE VICE-CHAIR: He has.

6

7 BY MR. TAPP:

8 Q. ...that he expressed interest in

9 working in a unit?

10 MR. MANUEL: He has answered that

11 question.

12

13 BY MR. TAPP:

14 Q. Reading the Notice of Complaint,

15 okay? "Associating with undesirables". Who were

16 the undesirables? I am not asking you to name them,

17 but in relation to persons.

18 MR. MANUEL: I don't know...

19

20 BY MR. TAPP:

21 Q. Were the undesirables animals? Were

22 they cats, dogs, or were they people?

23 A. They would be people.

24 Q. People. People who are people with

25 no...people having...no one over there can...can

- 52 - J. Brockley

Ex-in-Chief (L. TAPP)

1 anybody here be referred to as an undesirable?

2 MR. MANUEL: How do we know? I mean,

3 really, Mr. Chair...

4

5 BY MR. TAPP:

6 Q. Would you refer to a citizen over

7 here as an undersirable?

8 MR. MANUEL: He didn't say that.

9 THE VICE-CHAIR: Come on.

10 MR. MANUEL: This witness is not...

11 THE VICE-CHAIR: That is ridiculous.

12 MR. TAPP: But, specifically, that is

13 alleging that Mr. Jack...there is an

14 allegation he is associating with people

15 that the OPP believes are undesirables.

16 Right or wrong?

17 THE WITNESS: They are undesirables,

18 yes.

19 MR. TAPP: Okay. Good. Thank you very

20 much. That is all the questions that I

21 have of Mr. Brockley.

22 MR. MANUEL: No cross-examination.

23 THE VICE-CHAIR: No cross-examination.

24 We are going to take a ten-minute break.

25

- 53 - J. Brockley

Ex-in-Chief (L. TAPP)

1 --- upon recessing at 11:13 a.m.

2 --- A BRIEF RECESS

3 --- upon resuming at 11:36 a.m.

4

5 THE VICE-CHAIR: Your next witness, Mr.

6 Tapp?

7 MR. TAPP: Yes, before I call in

8 Constable Karen German, Mr. Vice-Chair, I

9 realize I forgot to request that the

10 exhibit be entered, Mr. Brockley's notes be

11 entered as the next exhibit.

12 MR. MANUEL: It was entered.

13 THE VICE-CHAIR: Yes, 119.

14 MR. TAPP: It is already done, thank

15 you.

16 THE VICE-CHAIR: It has been entered,

17 yes.

18 MR. TAPP: I forgot to mark it. Okay,

19 Constable Karen German, please.

20

21 KAREN GERMAN, affirmed

22 EXAMINATION-IN-CHIEF BY MR. TAPP:

23 Q. Thank you, Constable German, for

24 attending. Did you bring your notes in relation to

25 Mr. Jack and the matter before this Tribunal?

- 54 - K. German

Ex-in-Ch (L. TAPP)

1 A. I don't have any notes, sir, no.

2 Q. Thank you. Do you have, at least, a

3 copy of your witness summary that you have provided

4 in relation to this matter?

5 A. I do.

6 Q. Okay. Back in 2009, Mrs. German,

7 Constable German, pardon me, what was your relation

8 to Peterborough OPP detachment?

9 A. I was the branch president for the

10 Ontario Provincial Police Association. That branch

11 includes Northumberland, Peterborough, Haliburton

12 Highlands, Lindsay, which is commonly known as CKL,

13 City of Kawartha Lakes, and two offender transport

14 units.

15 Q. Okay. Did you specifically work out

16 of Peterborough detachment?

17 A. No, sir.

18 Q. Which detachment did you work out of

19 in 2009?

20 A. I worked out of the Brighton office,

21 the Northumberland detachment.

22 Q. Thank you. How many years do you

23 have as an OPP constable, currently?

24 A. I am just starting my 23rd year.

25 Q. In 2009, you were branch president

- 55 - K. German

Ex-in-Ch (L. TAPP)

1 of the OPPA. I am not sure if you identified what

2 OPPA was.

3 A. Oh, the Ontario Provincial Police

4 Association.

5 Q. Thank you. And as a branch

6 president, what would your duties be?

7 A. It is a various role. To look after

8 member's issues with respect to management, to

9 ensure that the branch finances are in order, to

10 chair branch meetings throughout the year and any

11 other duties as assigned by the executive at head

12 office.

13 Q. Okay. And if a member of a

14 detachment had any issues to be addressed with the

15 OPPA, what was the mode of communication? How would

16 a member go about doing that?

17 A. Well, initially, they would make

18 contact with their respective detachment rep, and

19 then if it couldn't be resolved locally with the

20 detachment rep and the member, then it would come up

21 to my level. And then, if I couldn't resolve it

22 with a member or locally, it would then go to

23 regional command, and probably on to head office,

24 depending on the significance of the incident.

25 Q. Okay. At some point in time in

- 56 - K. German

Ex-in-Ch (L. TAPP)

1 2009, you became involved with Mr. Jack. Am I

2 right?

3 A. That is correct, yes.

4 Q. Okay. Can you tell us about how you

5 became involved with him?

6 A. Over a course of a period of time,

7 there were communications with respect to some

8 issues going on at the Peterborough detachment. Mr.

9 Jack had reached out to me for advice. I have

10 further documents here that I can refresh my memory,

11 that he was served a Notice of Termination, and he

12 requested me to attend to General Headquarters in

13 Orillia to speak with Chief Superintendent Mike

14 Armstrong.

15 Q. Okay. I am going to show you

16 something of what you referred to as communications

17 with Mr. Jack. I am going to show you some e-mails

18 specifically between you and Mr. Jack, and I am

19 going to ask you some questions, okay? They are in

20 applicant disclosure, Exhibit 26A...

21 A. Yes, I was provided a copy of that.

22 Q. You were given a copy?

23 A. Yes.

24 Q. Four pages?

25 MR. MANUEL: My copy of Exhibit 26A is

- 57 - K. German

Ex-in-Ch (L. TAPP)

1 eight pages.

2 MR. TAPP: Yes, but...

3 THE WITNESS: That is correct.

4 MR. TAPP: ...if you look at...four

5 pages deal with December 13, the

6 termination, and four pages specifically

7 when she first became involved with Mr.

8 Jack.

9 MR. MANUEL: Well, I wasn't giving any

10 evidence about that. I am simply saying my

11 Exhibit 26A has eight pages.

12 MR. TAPP: Okay.

13

14 BY MR. TAPP:

15 Q. So, now, we are showing you eight

16 pages. Now, I want you to look at those eight

17 pages, specifically confirm whether four pages deal

18 with a period of time, and the next four pages deal

19 with another period of time.

20 A. Okay. I guess for the purpose of

21 the record, page 1 reflects the date August 23rd,

22 2009. 1:05:48 p.m. Page 2 is 21 August, 2009,

23 13:21:10 to 04:00 response from...the first one was

24 from Mr. Jack to myself at my branch president

25 e-mail. It fills the full page.

- 58 - K. German

Ex-in-Ch (L. TAPP)

1 The second page is just my reply to him on

2 August 21st. Page 3 is a continuation from the

3 August 21st, second e-mail reply. He replied back

4 to me, thanking me for the answer, and that he was

5 going on training August 25th, and he graduated

6 January 2009, and attended to his detachment January

7 12th, 2009, and his return to vacation is September

8 9th, 2009.

9 On page 3, August 22nd...or, pardon me,

10 August 27, 2009, 4:45:53 p.m. from my branch

11 president, e-mail to Mr. Jack. Page 4 is a reply,

12 September 25th, 2009, 5:31:48 a.m...page 4. Page 5,

13 then, starts the communication from December to

14 Colleen Kohen, December 13, 2009, 10:05 p.m.

15 Page 6 is December 14th, 8:51 a.m., 2009.

16 Page 7, January 14, 2010, 11:19:14 a.m., and

17 February 8th on page 8, 2010, 9:41:40 p.m.

18 Q. Okay. You have just identified

19 those documents. The next set of questions based on

20 those documents. Can we enter them as an exhibit?

21 THE VICE-CHAIR: I thought they were

22 already...

23 MR. MANUEL: No...

24 MR. TAPP: For the purpose for

25 your...Mr. Vice-Chair, she is...Counsel

- 59 - K. German

Ex-in-Ch (L. TAPP)

1 has...

2 MR. MANUEL: Not in the hearing. They

3 are an exhibit in their...their relevant

4 documents?

5 MR. TAPP: These are, as the applicant

6 has indicated, documents that the applicant

7 intends to rely on. They have been

8 disclosed to counsel...

9 THE VICE-CHAIR: Okay, I thought...you

10 identified it as Exhibit 26A.

11 MR. TAPP: No, no. Yes, when the

12 applicant prepared his disclosure, in his,

13 that disclosure.

14 THE VICE-CHAIR: Okay.

15 MR. TAPP: But they are not relevant to

16 these proceedings that exhibit number...

17 THE VICE-CHAIR: And there is eight

18 pages here; is that correct?

19 MR. MANUEL: Yes, that is correct.

20 THE VICE-CHAIR: So, that is Exhibit...

21 MR. MANUEL: 120.

22 THE VICE-CHAIR: ...120.

23

24 --- EXHIBIT NO. 120: E-mail from Michael Jack to Karen

25 German dated August 21, 2009

- 60 - K. German

Ex-in-Ch (L. TAPP)

1 BY MR. TAPP:

2 Q. Okay. So, looking at those

3 communications, Constable German, it is obvious that

4 Mr. Jack communicated some concerns to you?

5 A. Yes.

6 Q. And what were those concerns,

7 please?

8 A. From my review of the documents on

9 page 1, it would appear that they were performance

10 issues.

11 Q. Okay. Look at the rest, and see

12 what other concerns he addressed?

13 A. You have to bear with me, I am

14 fighting a severe cold right now.

15 Q. Certainly.

16 A. Yes, the first e-mail on August 21st

17 is basically with respect to performance issues

18 relating to our internal forms, the PCS66's. He had

19 a meeting with Constable Mitch Anderson and the

20 Staff Sergeant and the Sergeant.

21 Mitch Anderson is the detachment rep at

22 Peterborough at the time. He has since retired. I

23 replied back to him that:

24 "...Leave this with me, and I will address

25 it when I return to work on Tuesday. I

- 61 - K. German

Ex-in-Ch (L. TAPP)

1 have an executive meeting on Monday

2 evening, and we could discuss the course of

3 action we take. Please advise a start

4 date, though, so I can have a time frame

5 reference. Enjoy your vacation. I will

6 call you if I need anything further..."

7 Page 3, he replied back with his dates, as I

8 indicated. August 27th, I replied back to him:

9 "...I left a voice message for you to call

10 me, but you can disregard it and I will

11 explain everything here..."

12 I did take the issue forward to regional command,

13 which was acting Staff Sergeant Borton.

14 Q. Okay, Staff Sergeant...

15 A. Pardon me, acting Superintendent

16 Doug Borton. He was my detachment commander at the

17 time. We have a good working relationship and is

18 approchable on these types of issues. So, I

19 discussed with him the issues, and he advised that

20 he is responsible for your shift change. So, acting

21 Superintendent Borton implemented that shift change,

22 that he was taken from one platoon and put on to

23 another platoon.

24 Q. Okay?

25 A. Okay, that was his doing. And that

- 62 - K. German

Ex-in-Ch (L. TAPP)

1 he should:

2 "...look at as it would be in his best

3 interests as a clean slate and a fresh

4 start with your new platoon and your coach

5 officer..."

6 He advised that:

7 "...You can dispute the last PCS66 [which

8 was in May, I believe, 2009. I didn't see

9 the documents] and put your dispute in

10 writing, and it will be attached to that

11 document for reference..."

12 The PCS66 wasn't going to go away. It had already

13 been entered.

14 "...However, you can make reference to

15 anything positive that you feel you have

16 done during that evaluation period..."

17 He also advised that:

18 "...There is one outstanding PCS66 that

19 needs to be completed, and it will be

20 completed by your current staff sergeant

21 and coach..."

22 I am assuming that this is Flindall and Filman:

23 "...It is beyond his control, because it

24 needs to be completed as you are switching

25 shifts..."

- 63 - K. German

Ex-in-Ch (L. TAPP)

1 The next four, PCS66 after he started on his new

2 platoon would be completed by that new coach officer

3 and supervisor.

4 "...If you do what you are told and show

5 your new platoon you are capable of doing

6 this job, then things should go smoothly.

7 Do not give your new platoon reason to find

8 fault with your performance. If you need

9 anything else, don't hesitate to ask. You

10 have four people at the detachment you can

11 act on. They have in relation to

12 association manners, Shaun Filman, Mitch

13 Anderson, Malcolm MacArthur and Kathy

14 Chapman. Please seek any of them out for

15 further information if you require..."

16 Q. Thank you.

17 A. So...

18 Q. And at that time of the

19 communication, August, if you read on. Who was the

20 detachment rep? Was it Shaun Filman or Mitch

21 Anderson, to the best of your recollection?

22 MR. MANUEL: I think she testified that

23 it was Mitch Anderson.

24 THE WITNESS: It could have been Shaun

25 Filman. Mitch Anderson and Kathy Chapman,

- 64 - K. German

Ex-in-Ch (L. TAPP)

1 I believe, were on the executive. Kathy

2 Chapman was the secretary of the branch. I

3 believe it was Shaun Filman, and Mitch

4 Anderson was the vice-president of the

5 branch at the time.

6 MR. TAPP: Thank you. Who was

7 vice-president?

8 THE WITNESS: Mitch Anderson. But Mitch

9 sat in on the meeting with him, so...

10

11 BY MR. TAPP:

12 Q. So, if one were to follow the

13 appropriate chain of command, one should approach

14 first the representative, am I right? And failing

15 that, move on? Am I right or wrong?

16 MR. MANUEL: Mr. Tapp is giving

17 evidence...

18 MR. TAPP: Okay.

19 MR. MANUEL: The chain of command is

20 appropriate to the...

21 THE WITNESS: I can explain the

22 structure of...

23 MR. TAPP: Okay, please.

24 THE WITNESS: ...the OPPA, if you would

25 like, for you, Vice-Chair.

- 65 - K. German

Ex-in-Ch (L. TAPP)

1 THE VICE-CHAIR: Please.

2 THE WITNESS: The way the Association is

3 set up, we have a board of directors at

4 head office in Barrie. There are seven

5 members there. We have a president and six

6 directors. And then down from that

7 is...the Province is broken into 20

8 branches for different, various locations,

9 like I explained for my branch, right? So,

10 I am number 8 branch within the 20. So,

11 within each branch, there is an executive,

12 a president, vice-president, secretary,

13 treasurer, and then detachment reps for

14 whichever...however many detachments that

15 you have. And there isn't really a chain

16 of command structure like the OPP where you

17 have to go to your sergeant, and then you

18 go to your staff sergeant. If I want to,

19 as a member of the OPPA, I pay dues, I can

20 go right to head office president if I so

21 choose. However, given the courtesy of the

22 structure that we have, we do start at the

23 lower level and work our way up. If that

24 makes sense.

25

- 66 - K. German

Ex-in-Ch (L. TAPP)

1 BY MR. TAPP:

2 Q. Thank you. So, Shaun Filman would

3 be the one at the lower level?

4 A. That is correct.

5 Q. Okay. But who was Constable...Mr.

6 Jack's coach officer at that time?

7 A. I don't know. Just reading the

8 e-mail, I would think it would be...he was going to

9 have Constable Filman, or he was finishing with

10 Constable Filman. I don't know. Those are

11 operational issues within Peterborough detachment.

12 Q. Fair enough. If evidence revealed

13 that Constable Filman was his coach officer, would

14 that suggest anything, and being an OPP rep, with

15 respect to Mr. Jack, that is?

16 A. I don't know. Nobody brought it

17 forward as an issue with the coaching versus the

18 OPPA.

19 Q. So, if Mr. Jack were...would there

20 be...would you view it as a conflict? If evidence

21 revealed Constable Filman was his coach officer...

22 A. That would be up to Constable Filman

23 to declare that interest, if he felt that there was

24 a conflict. That wouldn't be my responsibility.

25 That would be Constable Filman's role.

- 67 - K. German

Ex-in-Ch (L. TAPP)

1 Q. Okay. But nonetheless, you have

2 indicated there were issues that were brought to

3 your attention, and that you discussed with acting

4 Superintendent Doug Barton, correct?

5 MR. MANUEL: Performance issues?

6 THE WITNESS: Yes.

7 MR. TAPP: Performance issues.

8 THE WITNESS: Performance management

9 issues, yes.

10

11 BY MR. TAPP:

12 Q. Performance management issues.

13 A. Yes.

14 Q. Okay. Did you do any investigation

15 to validate any of those concerns that were brought

16 to your attention...

17 A. No.

18 Q. ...by Mr. Jack?

19 A. No. That is not my role. That

20 wasn't my role to do that. I don't have privy to

21 his PCS66's. That is not my role as an Association

22 member.

23 Q. Fair enough. Have you met...at any

24 time in 2009, did you meet or chat with Mr. Jack,

25 aside from the e-mail communication?

- 68 - K. German

Ex-in-Ch (L. TAPP)

1 A. Going back that far, probably. To

2 say what the content...probably by phone a couple of

3 times, yes. To say what the context of the

4 conversations were...

5 Q. I am not looking for that.

6 A. Yes, I can't recall.

7 Q. Thank you. Those phone

8 conversations you had with him, did you detect any

9 indication of what his heritage might be? Was there

10 anything that he...like, say, by an accent?

11 A. Yes, but it had no bearing on my

12 role as a branch president. I believe he may have

13 told me he was of Russian descent. I am not sure of

14 that. He did have a strong accent. And, yes, there

15 probably was a communication barrier sometimes over

16 the phone. I can't really recall offhand whether it

17 was specifically addressed.

18 Q. Okay. Good. Do you have any

19 recollection about the issues that you

20 discussed...oh, pardon me. You said performance

21 management issues. If evidence revealed that one of

22 those telephone conversations occurred shortly after

23 Mr. Jack was served a PCS66, would that ring a bell?

24 Would that...

25 A. It could. I don't know.

- 69 - K. German

Ex-in-Ch (L. TAPP)

1 Q. Okay. During that telephone

2 conversation that you said it might be, if evidence

3 revealed that you suggested that he has a right to

4 have a rep review it before signing it, would that

5 jog your memory?

6 A. Yes.

7 Q. Is that something you might have

8 said?

9 A. I would probably have said it to any

10 member, yes. Any documents that come from

11 management, if they feel that there is an issue with

12 it, they can take it forward to the OPPA, and it can

13 be addressed. We are telling our members all the

14 time that you do not go into any meetings without

15 representation, that is within our collective

16 agreement. With what you are specifically asking

17 though, I have no recall on it.

18 Q. So, if evidence revealed that Mr.

19 Jack had this conversation with you, to you, can

20 that suggest...okay, that is speculation. Okay. To

21 the best of your recollection, you gave Mr. Jack

22 certain advice on that phone call?

23 A. Probably.

24 Q. Okay. Now, you said that you didn't

25 do any investigation into the performance management

- 70 - K. German

Ex-in-Ch (L. TAPP)

1 issues he addressed to you, correct?

2 A. Right.

3 Q. Okay. Were you present during an

4 interview of Mr. Jack by the Professional Standards

5 Bureau?

6 A. I was.

7 Q. Okay. And what was your role

8 towards Mr. Jack during that interview?

9 A. To act as his OPP representative.

10 Q. Okay. While Mr. Jack gets a portion

11 of that audio recording, this is a copy of the audio

12 recording of that interview that has been disclosed

13 by counsel, and also documents to be relied upon.

14 While he prepares that, I am going to direct your

15 attention to the documents you have on your desk,

16 specifically the September 25th e-mail from Mr. Jack

17 to you.

18 A. Is that the one where it starts:

19 "...Sorry to bother you again..."

20 Q. Yes.

21 A. Okay.

22 Q. Can you read the top three lines,

23 please?

24 A. The top three lines of the e-mail,

25 or top...

- 71 - K. German

Ex-in-Ch (L. TAPP)

1 Q. The top three lines of the body of

2 the e-mail.

3 A. E-mail:

4 "...Hello, Karen. Sorry to bother you

5 again, but I just got into another

6 predicament on September 23rd, 2009. I

7 received a Notice of Internal Complaint..."

8 Q. Okay. And I guess the next sentence

9 right after that, please?

10 A. "...I have already spoken with our

11 OPPA rep, Mitch Anderson, and after

12 learning what it was about, he instructed

13 me to immediately contact you..."

14 Q. Good, thank you very much. Do you

15 recall the date you were present during that PSB

16 interview of Mr. Jack?

17 A. No.

18 Q. Okay. Regarding that September 25th

19 e-mail that you just read, did you make a response

20 to Mr. Jack?

21 A. Not in my exhibit information that I

22 have. So, I don't think I did.

23 Q. Thank you. Would you agree that it

24 was something of importance he was addressing to

25 you?

- 72 - K. German

Ex-in-Ch (L. TAPP)

1 A. To me, this reads fairly vague. It

2 was a Notice of Internal Complaint. He said he

3 spoke with the rep, and he was instructed to contact

4 me. He said he was going to the meeting that we

5 apparently were having that night, but he had a

6 collision to go to. He already had spoke with an

7 executive officer in Barrie, and he faxed the

8 complaint. He told me who his new supervisor was,

9 and his new coach office.

10 "...Can you please advise me if you need to

11 know more..."

12 I obviously didn't need to know more. If he had

13 spoken with executive officer Jim Styles at head

14 office, they are fairly versed on how to deal with

15 member issues. So, I thought it was pretty much

16 taken care of. It has gone to a higher level than

17 me.

18 Q. Okay.

19 A. At that point.

20 Q. Thank you. Okay. Do you have any

21 recollection of the date of the interview of the

22 PSB...the day PSB interviewed Mr. Jack?

23 A. No, but I remember it. We were at

24 the Peterborough detachment.

25 Q. And who all were present at that

- 73 - K. German

Ex-in-Ch (L. TAPP)

1 interview?

2 A. Myself and Mr. Jack, obviously, but

3 I am not aware as to who the PSB investigators were.

4 MR. TAPP: Okay. Subject to that, we

5 are all set up. Mr. Vice-Chair, we are

6 going to play a portion of that interview,

7 specifically the start that identifies who

8 is conducting it, the date and who all is

9 present, and we will go specifically to the

10 portion that I need to address some

11 questions to Ms. Constable German. Thank

12 you, go ahead.

13

14 --- DISCUSSION OFF THE RECORD

15

16 BY MR. TAPP:

17 Q. It was your belief at that time,

18 October 30th, during that interview, that the

19 complaint was frivolous, right?

20 A. That he was associating with

21 whatever term Mr. Thompson used, the members of the

22 public, I guess, yes. that one was...yes, because

23 it happened before he was a police officer. So,

24 they are bringing forward something that had

25 happened prior to him being employed by the OPP.

- 74 - K. German

Ex-in-Ch (L. TAPP)

1 Q. And I think you specifically said,

2 "bringing forward something"...you mentioned a year,

3 2003. Am I correct?

4 A. I believe I said that, yes.

5 Q. Yes.

6 A. Yes.

7 Q. And the term that they used for the

8 allegation, that you would have..."associating with

9 undesirables"? Is...

10 A. That is the word, yes.

11 Q. Okay, fair enough. Now, you said

12 that you were going to be looking into the matter

13 further, but you also, correct me if I am wrong,

14 determined that Mr. Jack and certain others were

15 being targeted. Right?

16 A. For performance issues.

17 Q. Performance management...

18 A. Yes. That was part of our

19 conversation with acting Superintendent Borton, and

20 there was one specific manager that was, I guess,

21 for the most part, picking on members, and that

22 manager has since moved on to another area.

23 Q. Now, it is very pertinent to this

24 hearing, who was that certain individual, please?

25 You just mentioned it was a certain manager.

- 75 - K. German

Ex-in-Ch (L. TAPP)

1 A. Yes, what is his name? I would

2 believe a Mr. Ron Campbell, maybe.

3 Q. Thank you.

4 MR. MANUEL: Ron Campbell?

5 THE WITNESS: Yes.

6

7 BY MR. TAPP:

8 Q. Did you, as an OPPA rep, for Mr.

9 Jack at that interview or shortly after that, try to

10 provide Mr. Jack with a copy of it?

11 A. Yes, in the one e-mail dated January

12 14th...no. February 8th, pardon me, on page 8 of

13 the exhibit. He e-mailed...yes, he e-mailed me

14 asking for it. And on February 9th, there was an

15 issue with the download for the software from IT

16 Services for our recorders, and I had to go through

17 the help desk. And then I was away on vacation and

18 other training. But I wasn't obligated to provide

19 it to him, because he was since, in the meantime,

20 terminated as an employee with the OPP.

21 Q. But...

22 A. There was an audio recording, yes,

23 made.

24 Q. ...isn't it true that he asked for

25 it long before that? In fact, after the interview?

- 76 - K. German

Ex-in-Ch (L. TAPP)

1 A. Yes, he could have. I am not sure

2 of the semantics between then and the e-mail.

3 Q. Can you read the January 29, 2010

4 e-mail, please?

5 A. On page 7?

6 Q. Yes, 11:19.

7 A. Yes:

8 "...Hi, Karen. I apologize for any

9 inconvenience I may be causing again but I

10 really need to speak with you. If you can

11 grant me a phone conversation at your

12 convenience, I will greatly appreciate it.

13 I am just looking for advice. Thank you.

14 Michael Jack. My cell number..."

15 And I replied to him on...no, I received a second

16 e-mail from him to my OPPA address. His address and

17 postal code.

18 Q. Specifically, the January 29, 2010

19 9:58 p.m. e-mail?

20 A. "...Copy of audio recorded

21 interview. Hi, Karen. I hate to bug you,

22 but I have not received a copy of my

23 interview yet. I can only imagine how busy

24 you must be. Can you please let me know

25 when you mail it to me? I appreciate it.

- 77 - K. German

Ex-in-Ch (L. TAPP)

1 Thank you. Michael..."

2 Q. Okay. Would you agree that he had

3 been asking you for that copy?

4 A. Yes, I would agree.

5 Q. Thank you. And to the best of your

6 recollection, did you ever provide him with a copy

7 of that interview?

8 A. No, I did not.

9 Q. Okay. And as of February 9th, 2010,

10 11:56 a.m. e-mail, from you to Mr. Jack, would you

11 agree that you definitely left him with an

12 impression that he will get a copy of the interview,

13 once the download is complete?

14 A. Yes, based on that e-mail, yes, I

15 did, and that was my actual intention. However, in

16 that time period, I was...I gave some context to the

17 vice-chair. I was a detective constable in our

18 crime unit at the time, and in November of 2009,

19 Marie France Comeau was killed in Brighton, who we

20 all know is a victim of Russell Williams. So, we

21 were quite busy with that. I was wearing two hats

22 as a detective in the crime unit and OPPA rep.

23 I apologize that he didn't get a copy of

24 the recording, but my priorities were, at that time,

25 and my mind, elsewhere.

- 78 - K. German

Ex-in-Ch (L. TAPP)

1 Q. Okay. And, of course, that would

2 explain your February 9th, 2010, 11:56 a.m. e-mail,

3 wherein you state:

4 "...I am not obligated to provide you this

5 information..."

6 Correct?

7 A. That is right.

8 Q. Okay. So, as of this date, did

9 you...over the passage of time, did you ever attempt

10 to get back or provide Mr. Jack with a copy of that

11 tape?

12 MR. MANUEL: Where are we going with

13 this, Mr. Vice-Chair? He has got a copy.

14 MR. TAPP: Okay.

15

16 BY MR. TAPP:

17 Q. Where would Mr. Jack have received

18 that copy, if you didn't provide it?

19 MR. MANUEL: Mr...

20 MR. TAPP: Okay.

21 MR. MANUEL: Mr...

22 MR. TAPP: Fair enough.

23 MR. MANUEL: What turns on this?

24 MR. TAPP: The relevance is to show that

25 you were the one that provided it, not Ms.

- 79 - K. German

Ex-in-Ch (L. TAPP)

1 German. Anyways. Okay, I have no further

2 questions, Ms. German.

3

4 BY MR. TAPP:

5 Q. Oh, yes, pardon me. No, I do

6 have...as a branch president, Ms. German, you were

7 present? You were present on the date Mr. Jack was

8 presented with his termination?

9 A. Yes, I was.

10 Q. Okay. Who were you present with?

11 A. I believe it was Chief

12 Superintendent Mike Armstrong at regional

13 headquarters.

14 Q. Based on your position on that date

15 with Mr. Jack, would it be correct that you would

16 have been privy to the notice of proposed release

17 from employment?

18 A. Probably.

19 Q. I am going to show you that notice.

20 Specifically, it has already been tendered as an

21 exhibit, Exhibit 68.

22 A. Where is the attached form for

23 performance and conduct requirements? Does it

24 accompany that?

25 Q. Well, we are specifically addressing

- 80 - K. German

Ex-in-Ch (L. TAPP)

1 the notice, but Mr. Jack will get that out.

2 A. Okay.

3 Q. I am going to ask you to read the

4 third paragraph in that Notice of Proposed Release

5 from Employment, please, for...

6 A. The document is dated December 9,

7 2009:

8 "...You have the opportunity to prepare a

9 written submission, or to meet with Chief

10 Superintendent Armstrong at Central

11 Headquarters at 13:30 hours on December

12 15th, 2009, before a decision is made. To

13 assist Chief Superintendent Armstrong in

14 his decision relating to your employment

15 status, I will provide him with a copy of

16 this memorandum and attached

17 documentation..."

18 Q. So, as the branch president, would

19 it be safe to say that you were there to ensure Mr.

20 Jack's rights under the...I don't know how to call

21 it, terms of the collective agreement or memorandum

22 of understanding between the OPP and OPPA?

23 A. I was, but I was also there in a

24 supportive role for my member.

25 THE VICE-CHAIR: Excuse me, Mr. Tapp,

- 81 - K. German

Ex-in-Ch (L. TAPP)

1 but Exhibit number is...

2 MR. TAPP: Oh, yes. That is Exhibit 68.

3 That has already been tendered that.

4 THE VICE-CHAIR: Yes, okay.

5 MR. TAPP: ...Mr. Vice-Chair.

6 THE VICE-CHAIR: Thank you.

7

8 BY MR. TAPP:

9 Q. If evidence revealed that you and

10 Mr. McNamara did meet with Mr. Jack briefly and took

11 him to Mr. Armstrong's office, would that be

12 correct?

13 A. Yes.

14 Q. Thank you. And if evidence revealed

15 that Mr. Jack did indicate to you that he had

16 prepared some submissions, and wished to address it,

17 would that also be correct?

18 A. I don't recall whether he had

19 submissions or not. He may have it. I don't have a

20 copy of it, and I don't believe he produced a copy

21 of it to me to review.

22 Q. But that would mean if evidence were

23 presented that he did have submissions, but wished

24 to address it, that would be why...

25 A. And that would be his choice, also.

- 82 - K. German

Ex-in-Ch (L. TAPP)

1 Q. Certainly. But as an OPPA rep,

2 would you have been in the position to at least tell

3 Mr. Armstrong that he does have some submissions?

4 A. I could yes, on behalf of the

5 member. It says that you have an opportunity to

6 prepare a written statement, or to meet with the

7 superintendent. So, he chose to meet with the

8 superintendent.

9 MR. MANUEL: Mr. Vice-Chair, this was, I

10 believe, produced to us last week. Yes, it

11 seems Mr. Jack...the only question I think

12 needs to be asked of this witness of this

13 document, had she ever seen this document?

14 Did she see this document at or about the

15 time Mr. Jack was...

16 MR. TAPP: Yes, I am prepared to address

17 that concern. It is a valid question, Mr.

18 Vice-Chair.

19 MR. MANUEL: Not until the witness

20 identifies it, because if she hasn't

21 identified it...

22 MR. TAPP: Yes.

23 MR. MANUEL: ...it is not going in.

24 THE VICE-CHAIR: Go ahead.

25 THE WITNESS: Do you want me to answer

- 83 - K. German

Ex-in-Ch (L. TAPP)

1 these...I don't recall seeing the

2 documents. However, there has been a quite

3 lengthy time period since the interview

4 with Chief Superintendent Armstrong. There

5 is no date on it. There is no signature on

6 it. It is written on graph paper, yellow.

7 I don't recall seeing this.

8 MR. MANUEL: Thank you.

9 THE WITNESS: Sorry.

10 MR. TAPP: Thank you.

11

12 BY MR. TAPP:

13 Q. And if evidence revealed that Mr.

14 Jack wrote down submissions during his drive to

15 Orillia that date, and was specifically waiting to

16 address Mr. Armstrong on it, which is why he did

17 talk to you, and would not have shown it to you...

18 MR. MANUEL: Where is the question?

19 MR. TAPP: It is long, but would that be

20 a reason why you would not have seen it?

21 MR. MANUEL: Speculation. I object.

22 THE WITNESS: No, I think I have fairly

23 average memory. I don't recall seeing

24 anything like this.

25

- 84 - K. German

Ex-in-Ch (L. TAPP)

1 BY MR. TAPP:

2 Q. I am not saying that you did.

3 A. No, I don't recall seeing anything

4 like this.

5 Q. Fair enough.

6 A. In many of our interviews.

7 Q. Okay. During that...you said you

8 have a pretty good memory of that day. During that

9 meeting, was Mr. Jack provided an opportunity to

10 make any submissions?

11 A. Probably.

12 Q. Okay. We are going to hear from Mr.

13 Armstrong specifically.

14 A. Okay.

15 Q. What makes you say "probably"?

16 A. Well, it wouldn't be in the document

17 if he wasn't...it wouldn't just say, "You are

18 allowed to have an opportunity". You know, if I am

19 going to ask somebody for an opportunity, or give

20 somebody an opportunity, I would let them speak.

21 Q. Certainly. That would make sense,

22 right?

23 A. For the most part, yes.

24 Q. Because that is exactly what the

25 notice of recommended relief states...

- 85 - K. German

Ex-in-Ch (L. TAPP)

1 A. Right.

2 Q. ...that he will have an opportunity.

3 A. Yes.

4 Q. But if evidence reveals that he was

5 never provided that opportunity, as an Association

6 rep, being present over there, would it not have

7 occurred to you to at least suggest, "Can we address

8 paragraph 3 in the notice?" At the least?

9 A. At the least?

10 Q. Yes.

11 A. I don't know. Probably.

12 Q. Thank you. Now, I am just going to

13 set it out here. Based on your correspondences with

14 Mr. Jack, and you have numerous...specifically,

15 eight pages, would you not agree that he is...or at

16 least appears to be a committed individual, focused

17 on...

18 MR. MANUEL: This is character evidence.

19

20 BY MR. TAPP:

21 Q. Specifically, pursuing at length a

22 request from you for a copy of that tape and not

23 being provided? He was focused on getting that?

24 MR. MANUEL: What is the relevance in

25 the first place? We have dealt with this.

- 86 - K. German

Ex-in-Ch (L. TAPP)

1 THE VICE-CHAIR: We have dealt with

2 this.

3 MR. TAPP: We have dealt...okay, all

4 right.

5 THE VICE-CHAIR: Ultimately, you got the

6 tape, and he got the tape.

7 MR. TAPP: I don't know...

8 THE WITNESS: I will admit, I dropped

9 the ball. That is fair enough.

10 MR. TAPP: Okay.

11 THE WITNESS: Is that fair enough, Mr.

12 Tapp?

13 MR. MANUEL: No, no, no, that is not

14 what I was getting at, Ms. German.

15 THE WITNESS: No, but...I understand

16 what you are saying, but I will take

17 ownership. Mr. Jack didn't get the tape

18 from me.

19 MR. TAPP: No, no, no, that is fine.

20

21 BY MR. TAPP:

22 Q. If evidence revealed that Mr. Jack

23 was specifically provided with two options by Mr.

24 Armstrong, what would you recall about those two

25 options?

- 87 - K. German

Ex-in-Ch (L. TAPP)

1 A. That it was a short, brief

2 interview. I don't really recall much, other than

3 the fact that there was myself, Mr. McNamara and the

4 chief there, and Mr. Jack. It was a termination

5 meeting. My understanding is that once the employer

6 has made their decision to terminate an employee,

7 there isn't really much recourse for them to turn

8 that decision around. So, it was, "Here is your

9 termination notice".

10 Q. But it was clear in your mind that

11 it was a termination meeting, right?

12 A. Yes.

13 Q. Good. So, it was clear in your

14 mind, based on that, that the final decision was

15 already made?

16 A. And that is beyond...

17 Q. Prior to entering that office?

18 A. Yes.

19 Q. Okay.

20 A. And that is beyond my control. I

21 had no control over that. I was there to support my

22 member, answer any questions that they had. He may

23 have asked questions. I may have answered them. I

24 don't recall. I don't walk and write at the same

25 time. I don't believe I was on duty at that day. I

- 88 - K. German

Ex-in-Ch (L. TAPP)

1 know I was given a company car to take him up there.

2 We rode together.

3 Q. Was it you that drove Mr. Jack from

4 the detachment to Orillia? I thought it was someone

5 else.

6 A. I don't know. I don't remember.

7 Q. But you said...

8 A. I was in a car with him at one

9 point.

10 Q. Okay, fair enough. But nonetheless,

11 you said the meeting was short?

12 A. Yes, probably.

13 Q. Okay.

14 A. You would have to take that up with

15 the Chief, why...

16 Q. I will. He is coming here tomorrow.

17 But you also said that the decision had been made?

18 A. Yes.

19 Q. Okay. So, what the purpose of the

20 notice? Was that merely a sideshow, because the

21 notice specifically stated the submissions and a

22 final decision?

23 A. It is a process. They would put it

24 in writing. I don't believe it has any bearing on

25 my role as the OPP Association rep.

- 89 - K. German

Ex-in-Ch (L. TAPP)

1 Q. I am not insinuating. This is...

2 A. No, no.

3 Q. Okay.

4 A. I am just saying that I am not

5 being, you know, rude or anything like that. I am

6 just outlining the points as I see them.

7 Q. I am going to show you that notice

8 once again, specifically paragraph 3, and you can

9 read from the word "to".

10 A. "...To assist Chief Superintendent

11 Armstrong in his decision relating to your

12 employment status, I will provide him with

13 a copy of this memorandum and attached

14 documentation..."

15 This memo comes from Mary Silverthorn, who is the

16 acting bureau commander of human resources.

17 Q. I am going to pause you. Pardon me.

18 I had you read from the wrong one. Read the second

19 line in the third paragraph again, please.

20 A. Second...

21 Q. Starting from "Chief Superintendent

22 Armstrong" to the end of that sentence.

23 A. "...You have the opportunity to

24 prepare a written submission, or to meet

25 with Chief Superintendent Armstrong at

- 90 - K. German

Ex-in-Ch (L. TAPP)

1 Central Region headquarters at 13:30 hours

2 on December 15, 2009, before a decision is

3 made..."

4 Q. Good. That is all.

5 A. "...To assist..."

6 Is it? Okay.

7 Q. "...Before a decision is made..."

8 Yet you knew the decision was final when you went in

9 the office. So, once again I ask, to the best,

10 seeing that notice, I know you probably wouldn't be

11 able to ask, and I will probably get an objection,

12 but was that a sideshow?

13 A. I wouldn't call anything the

14 employer does as a sideshow, sir. I would call it

15 due process. They are following what needs to be

16 done with respect to an employee and their

17 performance. This document has no bearing on the

18 Ontario Provincial Police Association's role or

19 works. It is on the company letterhead for their

20 100th year anniversary. It has no...and it says at

21 the bottom, the very last paragraph:

22 "...You have the right to a representative

23 of the Ontario Provincial Police

24 Association present at that meeting..."

25 It doesn't outline what I am required to do. It

- 91 - K. German

Ex-in-Ch (L. TAPP)

1 doesn't outline what expectations there are of me.

2 It doesn't say that it is a termination document. I

3 went there to represent my member, and to support

4 him. I got there, and it was a termination meeting.

5 It is what it is. I am sorry. I have nothing

6 further to add to this document.

7 Q. Fair enough, and I thank you very

8 much if I gave you the wrong impression. You are

9 here as a witness for the applicant, not as a

10 question about your work's...although there was a

11 question about that but would you agree that the

12 content of that notice simply...for instance, the

13 third paragraph...

14 MR. MANUEL: I object. Mr. Vice-Chair,

15 haven't we been over this enough? It is

16 not her document.

17 THE VICE-CHAIR: What is your...you

18 indicated that you had one question left,

19 and that was 20 minutes ago.

20

21 BY MR. TAPP:

22 Q. So, based on your knowledge that the

23 meeting was for his termination, now I ask you...so,

24 did he resign, or was he terminated from the

25 employment?

- 92 - K. German

Ex-in-Ch (L. TAPP)

1 A. I believe he was given opportunity

2 to resign.

3 Q. Given. So, if a person is given an

4 opportunity to resign, as opposed to being fired,

5 which one would be a termination? You were the one

6 that described the meeting as a termination meeting.

7 A. He was released from employment. I

8 would think termination, release from employment,

9 would have the same meaning.

10 Q. Thank you. So it can't...really,

11 how can it have the same meaning as resignation?

12 MR. MANUEL: In her view, it does.

13 MR. TAPP: In...

14 THE WITNESS: It is end of employment,

15 either way. Either you are being released

16 or you are being terminated. You are no

17 longer working for that company.

18

19 BY MR. TAPP:

20 Q. Okay. Thank you very much. Really,

21 he had no options, right?

22 A. He could resign or he could be

23 fired.

24 Q. Okay.

25 A. Those were his options.

- 93 - K. German

Ex-in-Ch (L. TAPP)

1 MR. TAPP: Thank you very much. I have

2 no further questions. Thank you very much.

3 THE VICE-CHAIR: Anything in cross?

4 MR. MANUEL: Very briefly.

5

6 CROSS-EXAMINATION BY MR. MANUEL:

7 Q. Officer, can you look at page 4 of

8 that exhibit which you have got?

9 A. Yes.

10 Q. It is the e-mail from Mr. Jack dated

11 September 25. You were read part of that e-mail. I

12 would like to direct you to another part of that

13 e-mail. At the second-last line, he identifies his

14 new supervisor as Sergeant Butorac.

15 A. Yes.

16 Q. And his new coach as PC Nie?

17 A. Yes.

18 Q. And that they know about this Notice

19 of Internal Complaint?

20 A. Okay.

21 Q. And how does he close the e-mail?

22 A. "...Could you please advise me if

23 you need to know more? Thank you..."

24 Q. Right. And then what about the

25 P.S.?

- 94 - K. German

Cr-Ex (B. MANUEL)

1 A. "...P.S.: The work on the new shift

2 is going fine. I do not feel like a leper

3 anymore. Thank you for your help..."

4 Q. At any time in your dealings with

5 Constable Jack, was there ever any suggestion that

6 he was discriminated on any prohibited ground of

7 discrimination?

8 A. Not that I am aware of, sir, no.

9 Q. And when you say that you were of

10 the view that there was a manager that was targeting

11 people, what do you mean by "targeting"?

12 A. There was quite a few internal

13 complaints coming from this manager with respect to

14 specific members. I can't name them off the top of

15 my head, but it just kind of seemed to be a

16 repetitive thing with this manager.

17 Q. And was there any indication, in

18 your experience with those internal complaints, that

19 any of them were based on a prohibited ground of

20 discrimination?

21 A. No, sir.

22 MR. MANUEL: Thank you, those are my

23 questions.

24 MR. TAPP: Okay.

25

- 95 - K. German

Re-Ex (L. TAPP)

1 RE-EXAMINATION BY MR. TAPP:

2 Q. As a matter of re-exam based on

3 those questions, Constable German, are you aware of

4 when Constable Jack started on the new platoon...

5 MR. MANUEL: Where does that arise out

6 of cross-examination?

7 MR. TAPP: Well, okay.

8

9 BY MR. TAPP:

10 Q. Looking at the date of that

11 communication, September 25th, 2009, would you agree

12 that is very close to when he started on the new

13 platoon?

14 MR. MANUEL: Okay, that does not arise

15 out of...

16 MR. TAPP: Okay.

17 THE VICE-CHAIR: At this point in time,

18 you are just going to ask questions arising

19 out of the cross-examination.

20 MR. TAPP: Cross-examination, okay. If

21 evidence revealed that the date of that

22 communication was very close or shortly

23 after he was put on the new platoon...we

24 will leave it at that. Thank you very

25 much, Constable German.

- 96 - K. German

Re-Ex (L. TAPP)

1 THE VICE-CHAIR: Thank you.

2 MR. TAPP: Okay. We can...at this

3 point, being mindful of the clock, we can

4 either start right on Constable...or, no I

5 don't know her title but...

6 THE VICE-CHAIR: Mrs. Kohen?

7 MR. TAPP: Start with an early lunch

8 after, but I don't mind. I can start any

9 time, Mr. Vice-Chair.

10 THE VICE-CHAIR: Well, how many

11 witnesses do we have for tomorrow?

12 MR. TAPP: Just two. I don't anticipate

13 it being long. We deliberately took the

14 week, and we didn't want it to be a burden

15 so we spread them out.

16 THE VICE-CHAIR: And how long do you

17 anticipate the next witness will go?

18 MR. TAPP: The next witness is going to

19 be, I anticipate, at least two hours.

20 THE VICE-CHAIR: And who is this

21 witness?

22 MR. TAPP: This is the officer in charge

23 of the recruiting/development department of

24 the OPP, and specifically oversees

25 probationary recruits, is responsible for

- 97 - K. German

Re-Ex (L. TAPP)

1 their performance evaluations, correlating

2 that, reviewing it, and making

3 recommendations.

4 THE VICE-CHAIR: Okay. Let's break for

5 lunch, an hour.

6 MR. TAPP: Thank you.

7

8 --- upon recessing at 12:45 p.m.

9 --- A LUNCHEON RECESS

10 --- upon resuming at 1:49 p.m.

11

12 COLLEEN KOHEN, affirmed

13 EXAMINATION-IN-CHIEF BY MR. TAPP:

14 Q. Good afternoon, Mrs. Kohen. Can you

15 tell us, are you still with the Ontario Provincial

16 Police right now?

17 A. I am.

18 Q. Okay. And what rank do you hold

19 now?

20 A. I am a staff sergeant.

21 Q. Okay. Back in 2009...well, in 2008,

22 what rank did you hold?

23 A. I was a staff sergeant.

24 Q. Okay. And where was your area of

25 work in the OPP in 2008?

- 98 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. 2008, I was a staffing advisor for

2 the Career Development Bureau, which is human

3 resources.

4 Q. And how many...being in such a

5 position, would you have any affiliation with the

6 Provincial Police Academy?

7 A. Yes.

8 Q. And what would your role be in

9 relation to the provincial academy? If I refer to

10 it as PPA...

11 A. Yes.

12 Q. ...that would be okay?

13 A. You certainly would.

14 Q. Thank you.

15 A. We use lots of acronyms.

16 Q. Okay. What was your relation

17 to...rather, your role with respect to the PPA?

18 A. I was considered the lead

19 facilitator for performance management relating to

20 the probationary constable program for the Province.

21 Q. Thank you. Would your job

22 requirements require any specific duties of you at

23 the PPA?

24 A. I would...

25 Q. For instance, doing any

- 99 - C. Kohen

Ex-in-Ch (L. TAPP)

1 presentations?

2 A. Yes. I would faciliate the coach

3 officer performance evaluation. I would also...so,

4 throughout the years. So, I would facilitate on the

5 performance management aspect. I would

6 also...affiliated with the academy would speak to

7 the probationary constables when they were at either

8 pre and/or post training to facilitate their

9 performance and conduct requirements when they, what

10 I will refer to, go to the field for their

11 probationary period.

12 Q. Now, taking...I want to take your

13 mind back specifically to a period of August 2008.

14 A. Yes.

15 Q. It has been a long time, but do you

16 recall doing a presentation at the PPA?

17 A. Specific date would not trigger my

18 mind, unless I refer to my notes. It is not

19 uncommon that I spent a great deal of time at the

20 academy facilitating on courses, relating to

21 performance management.

22 Q. I am going to pass out, for the

23 benefit of counsel and Mr. Vice-Chair and you, a

24 syllabus that would have been provided, and I will

25 just ask you with respect to your attendance. So,

- 100 - C. Kohen

Ex-in-Ch (L. TAPP)

1 the question is, looking at that syllabus...

2 A. Yes.

3 Q. ...for the purpose of jogging your

4 memory, can you identify which date you would have

5 attended at the PPA, and done a presentation?

6 A. So, as I mentioned, I would have had

7 discussions. What is defined in our organize as the

8 pre-class for our recruit classes, it would be the

9 discussion prior to them attending the Ontario

10 Police College. And I attended the general

11 headquarters in Orillia on the 25th of August, 2008,

12 to discuss performance management with the pre

13 recruits, "pre" meaning "pre-Ontario Provincial

14 Police".

15 Q. Perfect.

16 MR. MANUEL: Sorry, pre-Ontario

17 Provincial Police...

18 THE WITNESS: Sorry, pre-Ontario Police

19 College. Sorry, sir.

20 MR. MANUEL: Okay, thank you.

21

22 BY MR. TAPP:

23 Q. If I were to describe it as a

24 presentation at a recruit class, would I roughly be

25 correct?

- 101 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. Correct.

2 MR. TAPP: Okay. Can we have that

3 entered as the next exhibit, please?

4 THE VICE-CHAIR: Is it necessary?

5 MR. TAPP: Well, it was the purpose of

6 jogging the...okay.

7

8 BY MR. TAPP:

9 Q. Do you have any recollection of what

10 your presentation was on that day?

11 A. I do. With myself being as the

12 provincial coordinator for performance management

13 for probationaries, I would...not being from general

14 headquarters, which is situated in Orillia, I would

15 commute from my home base, which is out towards the

16 Burlington, Ontario area. And I would discuss

17 performance management of what the probationaries or

18 pre-recruits would expect when they arrive at the

19 detachment pertaining to performance management.

20 Q. Okay.

21 A. And, discuss their performance

22 criteria, what is expected of them.

23 Q. Okay. Is it your practice to advise

24 them of your name and location during that class?

25 A. Without...I would certainly. They

- 102 - C. Kohen

Ex-in-Ch (L. TAPP)

1 need to understand who I am, not only being a police

2 officer, understand my role in the process, and

3 understand my role that I have with coach officers,

4 detachment sergeants, detachment commanders. So, I

5 would facilitate my role, which has an impact on the

6 detachments that I help support during the probation

7 period.

8 Q. And if evidence reveals that...

9 MR. MANUEL: I object to this.

10 MR. TAPP: Okay.

11 MR. MANUEL: This form of...

12 MR. TAPP: We will...

13 MR. MANUEL: Just ask the question.

14 MR. TAPP: Thank you very much for that.

15

16 BY MR. TAPP:

17 Q. Mr. Jack...do you recall Mr. Jack?

18 A. I am going to say no, for the fact

19 that I would see over 300 probationaries a year, and

20 I can't tell you how many coach officers a year.

21 So, no, I am going to...

22 Q. And I would say you would have a

23 remarkable memory and ought to be in the Guinness

24 Book if you did remember him. But nonetheless, if

25 evidence revealed that he was in that class, would

- 103 - C. Kohen

Ex-in-Ch (L. TAPP)

1 he have been privy to your presentation?

2 A. Yes, if he was in that particular

3 class, I would agree.

4 MR. TAPP: Thank you. Thank you. Now,

5 based on those questions, I would like to

6 enter that item as the next exhibit,

7 please.

8 THE VICE-CHAIR: This?

9 MR. TAPP: Thank you.

10

11 --- EXHIBIT NO. 121: Syllabus for presentation at Ontario

12 Provincial Police Academy

13

14 BY MR. TAPP:

15 Q. By virtue of your role, if there was

16 performance management issues identified regarding a

17 probationary recruit, would it be your job to

18 correspond and/or give certain direction?

19 A. I would provide advice and guidance,

20 and that would occur...

21 Q. Okay.

22 A. ...throughout the Province of

23 Ontario, wherever our detachments are, correct.

24 Q. And, of course, would that also

25 include corresponding with detachment management, if

- 104 - C. Kohen

Ex-in-Ch (L. TAPP)

1 need be, and on occasion for...

2 A. Detachment management, regional

3 management, and including our provincial commanders,

4 also known as deputy commissioners, yes.

5 Q. Thank you. At some point in time,

6 you became involved in...was there a specific point

7 in time that you recall that you became involved

8 with Mr. Jack?

9 A. Yes, there was, actually.

10 Q. Okay. Can you tell us about how you

11 became involved with him, please?

12 A. I...referring to my notes...

13 Q. Please, go right ahead.

14 A. ...if I may have...

15 Q. Before you do...

16 A. Yes.

17 Q. ...when were those notes made?

18 A. Shortly thereafter, and during

19 conversations on teleconferences or...

20 Q. Good, but this is 2016. Who would

21 have had possession of those notes?

22 A. Myself.

23 Q. Okay. Have there been any

24 alterations, deletions or additions done to them?

25 A. No, sir.

- 105 - C. Kohen

Ex-in-Ch (L. TAPP)

1 Q. Okay. So...

2 MR. MANUEL: Do you have them in...

3 THE WITNESS: I don't actually have my

4 notes. I have a copy of my notes.

5 MR. MANUEL: Did you get that?

6 THE WITNESS: Yes.

7 MR. MANUEL: I believe that has been

8 disclosed.

9

10 BY MR. TAPP:

11 Q. So, you have a copy of your notes

12 before you?

13 A. Yes, I do.

14 Q. Were you at any time contacted and

15 asked to provide a transcription version of those

16 notes?

17 A. Transcription?

18 Q. Yes.

19 A. I...

20 Q. For the sake of somebody not being

21 able to read them.

22 A. It is quite possible, for the sake

23 of not being able to read them, but I don't recall

24 if I was asked for that.

25 Q. Okay.

- 106 - C. Kohen

Ex-in-Ch (L. TAPP)

1 MR. MANUEL: In the next tab.

2 THE WITNESS: Thank you. There, okay.

3

4 BY MR. TAPP:

5 Q. Would that refresh your memory?

6 A. Yes, it would. In fact, reading my

7 notes would actually refresh my memory, as well, for

8 the fact that I can...

9 Q. Okay.

10 A. I am fortunate enough to read my

11 scribble on my notebooks, if I may refer to either

12 or.

13 Q. Okay. So, now, having your notes

14 before you, to refresh your memory...

15 A. Yes.

16 Q. ...can you tell us at what point you

17 became involved with Mr. Jack?

18 A. My first involvement with Mr. Jack

19 was actually...and I distinctly remember it. I was

20 doing one of my famous trips driving from Burlington

21 up to Orillia for whatever reason. And I remember

22 receiving a call from Mr. Jack, also known at that

23 time as Probationary Jack.

24 Q. Okay. Can you tell us, using your

25 notes to refresh your memory, roughly when that

- 107 - C. Kohen

Ex-in-Ch (L. TAPP)

1 would have been?

2 A. That would have been approximately

3 9:00. But, again, I was travelling at the time, so

4 the notes were...

5 Q. Date?

6 A. Sorry, the 4th of August, 2009.

7 Q. Okay, thank you. Tell us about your

8 initial dealings with Mr. Jack and what you learned?

9 A. I remember having the conversation

10 with him in reference that he remembered me as a

11 result of one of the discussions that I presented,

12 either at the pre-recruit class or the post-recruit

13 class.

14 Q. Okay.

15 A. And he was talking to...he indicated

16 to me that his sergeant told him last night that he

17 could be charged under what I am going to refer, in

18 the full term, as the Public Service Act, but I

19 wrote the PSA Act in my notebook.

20 Recognizing my role as the provincial

21 coordinator for the probationary constable, my role

22 is to support detachment members.

23 Q. Certainly.

24 A. Such as the coach officers, the

25 sergeants and detachment members, that my best

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Ex-in-Ch (L. TAPP)

1 advice for then-Probationary Jack was to consult

2 with the OPPA. I was not in a position to assist

3 him. I felt our Association would have been his

4 best method to assist his concerns that he had that

5 day.

6 Q. Certainly. Did you...what can you

7 remember about any concerns that he may or may not

8 have addressed with you?

9 A. His concern was that the night

10 before...advised by a sergeant that...last night,

11 that he was going to be charged under the Police

12 Service Act for conduct and insubordination, is what

13 I have in my notes.

14 Q. Okay. Go on, please. Tell us, what

15 other dealings?

16 A. I...

17 Q. I am not sure if you mentioned...

18 A. No, I gave him advice to phone who

19 my...where I know many of the OPPA seconded members

20 to our Association, Jim Stiles. So, his name came

21 to my mind first, in order to help Mr. Jack. As

22 travelling, I didn't have his number on hand, but it

23 was quite easy to obtain. Mr. Jack phoned me back,

24 and unfortunately Jim was on annual leave that day

25 or that week. So, the next name that came to my

- 109 - C. Kohen

Ex-in-Ch (L. TAPP)

1 mind was Debbie MacKinnon, who is another

2 representative from our Association, and gave him

3 her name.

4 Mr. Jack phoned me back again, and advised

5 me that he was unable to speak with Debbie, but left

6 a message for now, Martin Bain. I don't know how he

7 got Martin Bain's name, who is a member of our

8 Association, as well, and left him a message.

9 So, my effort was to connect him with

10 someone supporting him with somebody who could

11 assist with his concerns.

12 Q. Did he have any discussion with you

13 about something specific, his sergeant...did you

14 know who his sergeant was at that time?

15 A. No, sir.

16 Q. Okay.

17 A. I didn't know Mr. Jack, either, at

18 the time.

19 Q. Okay, fair enough. Did he have any

20 discussion with you about something specific his

21 sergeant may have told him...

22 A. Yes.

23 Q. ...regarding his job?

24 A. At that...I have in my notes that he

25 was going to be charged under the PSA for conduct

- 110 - C. Kohen

Ex-in-Ch (L. TAPP)

1 insubordination. So, these notes were made when I

2 arrived at our general headquarters. So...

3 Q. Okay, that is fine. Thank you.

4 There are a lot of notes that you made. So, I don't

5 want you to just read over your notes. So, just

6 tell us more about your involvement with Mr. Jack.

7 And you can use your notes to refresh. I don't want

8 you reading them.

9 A. Okay.

10 Q. Go ahead.

11 A. My involvement with Mr. Jack...

12 Q. Yes?

13 A. ...was very little. My involvement

14 with the detachment members was far more

15 extensive...

16 Q. Okay.

17 A. ...as a result of my role as the

18 coordinator for the Province.

19 Q. Okay. So, that deals with Mr. Jack.

20 Can you deal...was it before the phone call from Mr.

21 Jack or after the phone call from Mr. Jack that you

22 became involved with the detachment?

23 A. It was after the phone call with Mr.

24 Jack. There is a process for detachments to notify

25 myself in efforts to assist them if there is

- 111 - C. Kohen

Ex-in-Ch (L. TAPP)

1 deficiencies with a probationary constable.

2 Q. Okay.

3 A. Mr. Jack's name was not on my...what

4 I am going to describe as a probationary, in the

5 province at that time, with any deficiencies. So,

6 my concern was, "Why hasn't this been raised?"

7 Which entertained myself to explore more, to say,

8 "How can I support detachment members if there is

9 even performance issues regarding Mr. Jack?"

10 Q. Okay. That is interesting, because

11 you said at that point you weren't aware of any

12 concerns.

13 A. No, sir.

14 Q. Correct? Good.

15 A. I initiated.

16 Q. What do you mean, "I initiated"?

17 A. I made a phone call to Central

18 Region headquarters to find out if there were

19 performance concerns with Probationary Jack.

20 Q. And that...

21 A. Which would not be out of the

22 ordinary.

23 Q. And that would have been as of

24 August 4?

25 A. Yes, that was the same day where in

- 112 - C. Kohen

Ex-in-Ch (L. TAPP)

1 my notes I referenced that I called Dave Lee...

2 Q. Yes?

3 A. ...who was an inspector at Central

4 Region headquarters, who is in charge of staff

5 development and training.

6 Q. Okay, thank you. As you became

7 related to...or as you started to work with the

8 detachment on issues regarding Mr. Jack, did you, at

9 some point, start to gather or review his

10 performance evaluations?

11 A. That would be a fair comment, yes.

12 Q. Okay. As of August 4, what did you

13 notice in these performance evaluations? As of

14 August 4th, what performance evaluations did you

15 have?

16 A. Nothing, sir. That is why I

17 initiated my phone call to the Region, to offer my

18 assistance to determine, if there were performance

19 issues, how in my role could I assist them?

20 Q. Okay. But you mentioned the name,

21 Inspector David Lee?

22 A. Correct.

23 Q. And what did you say was his role?

24 A. Inspector Dave Lee was the staff

25 development training officer for Central Region.

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Ex-in-Ch (L. TAPP)

1 So, if I could give a little context here...

2 Q. Yes, go ahead.

3 A. ...each region, we have six regions

4 in the Province. Each region has a regional

5 headquarters. In each regional headquarters, there

6 is an additional staff development training officer

7 who would work on areas throughout their region on

8 performance management, WDHP issues, workplace

9 harassment issues, return to work because of medical

10 leave. So, there was an officer assigned to assist

11 the detachments within the region. So, my contact

12 for Central Region, which Peterborough fell under,

13 would be Inspector Dave Lee.

14 Q. All right. Now, if performance

15 evaluations on Mr. Jack were done at the

16 detachment...

17 A. Yes?

18 Q. ...where would it go up? Which

19 region? North, West, East? Which region would it

20 go to?

21 A. Mr. Jack's would go to Central

22 Region.

23 Q. And would fall under whose?

24 A. It depends.

25 Q. Okay.

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Ex-in-Ch (L. TAPP)

1 A. Every region would assign or review

2 to...it depends on the size of the region. Some

3 regions, a single person would review. Some

4 regions, the regional commander would review. That

5 would fall under their selection of who should

6 review performance reviews. So, who in Central

7 offhand? I would have to look at a performance

8 review.

9 Q. Okay. I am just going to show you

10 two documents we have just talked about briefly. It

11 hasn't been entered an exhibit, but it is just

12 dating back eight or nine years to show the

13 breakdown in the regions, just to help us better

14 understand it.

15 A. Yes. There is two.

16 Q. Okay. Look at the dates on those

17 two documents at the bottom.

18 A. Yes, sir.

19 Q. And can you tell us if you have any

20 dispute regarding those documents?

21 A. Well, to be fair, sir, I wouldn't

22 actually see those on the particular dates. I am

23 aware of structure within each region...

24 Q. Yes?

25 A. ...and who sits in those positions

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Ex-in-Ch (L. TAPP)

1 would change, as a result of...

2 Q. Yes.

3 A. ...members moving on with their

4 careers. But when I look at the Central Region

5 document, Inspector Dave Lee was the regional staff

6 development training officer at that particular

7 time, hence why I called him.

8 Q. Yes. And which detachments would

9 fall under him?

10 A. Actually, the detachments, looking

11 at the arrow, all fall under the regional commander,

12 Mike Armstrong.

13 Q. Yes. Okay. So, any performance

14 evaluation of...specifically, I won't mention anyone

15 else...Mr. Jack...

16 A. Yes?

17 Q. ...would they come across Mr. Lee?

18 Mr. Lee...would that be why you contacted him?

19 A. I knew he was the staff development

20 training officer. Again, the performance

21 evaluations differ per regional headquarters, who

22 actually would sign them off.

23 Q. Okay, thank you, great.

24 A. And the second document, the

25 organizational one...

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Ex-in-Ch (L. TAPP)

1 Q. Yes?

2 A. ...or...

3 Q. The organizer specifically, do you

4 concur, not with respect to who is sitting there

5 now...

6 A. Yes.

7 Q. ...but with respect to the

8 organizational chart, the format?

9 A. Well, since then we have had a

10 reorganization.

11 Q. Yes?

12 A. So, at the time, I can't validate

13 it, sir. I can tell you what it is now.

14 Q. Okay.

15 A. I would have to validate the org

16 chart back in 2008.

17 Q. Okay, fair enough. So, you became

18 involved with Peterborough detachment regarding Mr.

19 Jack sometime around August 4th, 2009, correct?

20 Okay. What issues were addressed to your attention

21 regarding him?

22 A. There were...if I refer to my notes,

23 if I may?

24 Q. Yes.

25 A. So, I was able to connect with

- 117 - C. Kohen

Ex-in-Ch (L. TAPP)

1 Inspector Dave Lee on the Wednesday of the 5th of

2 August.

3 Q. Okay.

4 A. And he advised, as a result of my

5 phone call, that he was...he had contacted the

6 detachment commander. It was my information that

7 Inspector Dave Lee was not aware of any performance

8 issues, and not out of the ordinary, due to our

9 geographics of our province, we would consistently

10 arrange conference calls, due to the shift work of

11 the members, such as the coach or the sergeant, and

12 also pertaining to my whereabouts of a particular

13 day. So, a conference call was arranged, which I

14 would describe as normal process.

15 Q. Pardon me an indulgence, please, Mr.

16 Vice-Chair. I am going to show you a copy of what

17 has already been entered as an exhibit. Mr. Jack's

18 first four evaluations, from January to June, okay?

19 And they are exhibits...okay, just a second, please.

20 19 for month January/February. 22 for March...

21 A. My apologies, is the exhibit number

22 the top-right corner?

23 Q. No, no, no.

24 A. Okay.

25 Q. No. 23 for April. And 25 is for

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Ex-in-Ch (L. TAPP)

1 May.

2 A. Okay. I have put them in date

3 order.

4 Q. Certainly. Now, I want you to take

5 a look at month 1 and 2, PER, that is the

6 January/February.

7 A. Yes.

8 Q. Tell me if there were any

9 performance issues visible from that PER. Maybe

10 your notes do reflect a summary of...

11 A. When I look at the performance

12 review, what I am going to call month one and two,

13 there were deficiencies identified during this

14 performance review, and there was one category that

15 is a no basis for rating, which would articulate, in

16 my mind, was during those two months, it was not

17 observed by the coach officer to reflect a

18 demonstrated, specific example to place in a

19 performance review.

20 Q. Right, and that would make sense for

21 such a rating.

22 A. Yes.

23 Q. Correct. But specifically, were

24 there any, "Does not meet requirements in there"?

25 A. Yes, there was, sir. There was

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Ex-in-Ch (L. TAPP)

1 one...police vehicle operation, radio communications

2 and flexibility. And that is what I see on month 1

3 and 2, which is a combined.

4 Q. Okay. So, there were three. Next,

5 Correct? Negative three does not meet requirements?

6 A. Does not meet requirements is not

7 necessarily a negative. It is an area that a

8 deficiency has been identified in order to address

9 through their probation period.

10 Q. So, there were three deficiencies?

11 A. I call them deficiencies.

12 Q. Okay, perfect, and that is what I

13 want to use. Specifically, now, can you look to the

14 second-last page of that month PER, where there is

15 employee signature?

16 A. Yes, sir.

17 Q. Mr. Jack's. Are there any comments

18 in there?

19 A. From Mr. Jack?

20 Q. Yes.

21 A. Yes, there is.

22 Q. I imagine, as you were...did you

23 have an opportunity, during your dealings with the

24 detachment, to review these performance evaluations?

25 A. Yes.

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Ex-in-Ch (L. TAPP)

1 Q. Good. So, what were the comments in

2 there, please?

3 A. Do you want me to read them?

4 Q. Yes.

5 A. "...I only disagree on the

6 flexibility aspect of my evaluation.

7 Should had I been informed to be proactive

8 at answering the [I am sorry, I can't read

9 that] first..."

10 MR. MANUEL: "Phones".

11 THE WITNESS: Thank you.

12 "...I would have known better, and would

13 have done so..."

14 Correct me if I am wrong. I am having a

15 tough time reading that word.

16

17 BY MR. TAPP:

18 Q. Okay.

19 A. Yes.

20 Q. I want to draw your attention to the

21 dates of those signatures?

22 A. Yes.

23 Q. Looking at the dates of Mr. Jack's

24 signature...

25 A. Yes.

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Ex-in-Ch (L. TAPP)

1 Q. ...coach officer's signature...

2 A. Yes.

3 Q. ...and accountable supervisor's

4 signature.

5 A. Yes.

6 Q. Would they follow an expected

7 format, based on your position with probationary

8 recruits?

9 A. So, the...month 1 and 2, the end

10 date was the 9th of March, and the signature was the

11 26th of April. I am going to say that

12 it...depending on the shifts and depending on the

13 signatures, and depending on the discussion that

14 needs to occur, I think it could have been, in my

15 opinion, from being the coordinator, given to him

16 slightly earlier.

17 Q. Could have, okay, thank you. But

18 how about the order, the timing? 26th of April and

19 coach officer's signature, 18th of March, and

20 accountable supervisor's signature, 15th of April.

21 Do they follow a format in line with your knowledge?

22 MR. MANUEL: What are we talking about?

23 MR. TAPP: Probationary constable

24 guidelines.

25 THE WITNESS: The key with performance

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Ex-in-Ch (L. TAPP)

1 management is not necessarily the actual

2 paperwork of the document. It is the

3 ongoing discussion that a coach officer has

4 with his or her probationary as they...in

5 this situation they would have been riding

6 together consistently.

7

8 BY MR. TAPP:

9 Q. Okay.

10 A. So, the feedback of calls that

11 are...that they go to, if there is a deficiency

12 during that period of time, and an opportunity for

13 the probationary to learn, those members are

14 spending 12 hours in a car. They talk about

15 occurrences, or they talk about role-playing, as I

16 would describe. So, the paper is one aspect. The

17 coaching of a probationary goes on beyond the paper

18 aspect. It goes beyond...it goes into the

19 discussions of whatever occurs in the car that they

20 are spending those wonderful 12 hours with.

21 Q. All right. Now, looking at the

22 evaluation meeting section. Those three boxes...

23 A. Yes.

24 Q. ...correct me if I am wrong, they

25 are typewriter/computer-generated?

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Ex-in-Ch (L. TAPP)

1 A. Some do, some don't.

2 Q. Fair enough. Looking at those boxes

3 being marked up, what does that tell you had

4 occurred? What has occurred?

5 A. If I was reading this, that the

6 probationary had met and discussed the performance

7 review. The coach had discussed it with the

8 probationary, and the accountable supervisor, that

9 they discussed about the responsibility and the safe

10 storage of their firearm, which is key, and they

11 discussed and reviewed the professional workplace

12 discrimination/harassment prevention policies.

13 Q. Thank you. I direct your attention

14 to the second one, which you also...according to

15 what you say you would have reviewed, the second

16 would be month 3 performance evaluation.

17 A. Yes, sir?

18 Q. Okay. But I want you to keep the

19 second-last page open on that one, okay? The

20 previous one? I want to take your attention to the

21 last page or second-last page of month 3.

22 A. Yes, sir?

23 Q. Okay. Can you take a look at the

24 employee signature date, and compare it to the date

25 of the previous one? And tell me, what do you think

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Ex-in-Ch (L. TAPP)

1 of that?

2 A. What do I think? I would say that

3 in looking at the dates, both performance reviews

4 were signed by Mr. Jack.

5 Q. Okay. And what does it tell you

6 about the...okay. The boxes are checked off, so

7 that indicates those meetings...correct me. Would

8 it indicate something?

9 A. It would indicate to me that the

10 coach, or his accountable supervisor, they met and

11 discussed. They, again, talk about the safe storage

12 of their firearm, and, again, discuss and review the

13 professionalism and workplace

14 discrimination/harassment prevention policy.

15 Q. Now, take a look at the inside of

16 that document. Tell me if there were any

17 deficiencies identified, specifically any "does not

18 meet requirements".

19 A. There is no deficiencies. There was

20 a "no basis for rating" under "Analytical thinking".

21 Q. But that wouldn't necessarily mean a

22 deficiency such as, "Does not meet requirements",

23 right?

24 A. That would be my understanding.

25 There is no specific example, so the coach officer,

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Ex-in-Ch (L. TAPP)

1 in my view, did not observe Mr. Jack...specifically

2 observed a specific example to be able to document

3 it.

4 Q. Excellent. Now, you are familiar

5 with the probation constable evaluation report

6 guidelines?

7 A. Yes, sir.

8 Q. Okay. I am going to give you a

9 copy. It is already entered as an exhibit, but I

10 have a question.

11 A. Thank you.

12 THE VICE-CHAIR: What exhibit was this?

13 MR. TAPP: I will tell you, Mr.

14 Vice-Chair. Okay. I see, from looking at

15 our copy, Mr. Vice-Chair, unless we are

16 mistaken, our records indicate it is

17 Exhibit 27, but it only shows one page.

18 So, we are just checking. Okay. Maybe for

19 the purposes during Mr. Jack's testimony,

20 we were only allowed to enter one page.

21 But we will...it is from the respondent

22 disclosure, volume 4, tab 235.

23 MR. MANUEL: Exhibit 27, did you say?

24 THE VICE-CHAIR: 27.

25 MR. TAPP: Yes.

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Ex-in-Ch (L. TAPP)

1 MR. MANUEL: I have it here. Oh, that

2 is not the guidelines...

3 MR. TAPP: Okay. So, we will address

4 entering that as an exhibit. I would

5 imagine by your position that you are

6 familiar with that document.

7 THE WITNESS: Well, I can state that I

8 wrote it.

9

10 BY MR. TAPP:

11 Q. You wrote it. Excellent. Maybe you

12 don't need to have to even refer to it.

13 THE VICE-CHAIR: I guess we can enter

14 that one.

15 MR. MANUEL: Well, there we go.

16 THE WITNESS: I will need to refresh my

17 memory.

18

19 BY MR. TAPP:

20 Q. I am going to be referring

21 extensively to that document.

22 A. Absolutely.

23 Q. So...

24 THE VICE-CHAIR: Okay. I am going to

25 enter it. We don't know where the other

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Ex-in-Ch (L. TAPP)

1 one is. It may be a duplicate.

2 MR. TAPP: Please, thank you.

3 THE VICE-CHAIR: So...

4 MR. MANUEL: Can I have a copy, too?

5 MR. TAPP: Yes.

6

7 BY MR. TAPP:

8 Q. Just to make sure, how many pages in

9 that document, Mrs. Kohen? I want to make sure

10 everybody has the same number of pages.

11 THE VICE-CHAIR: It looks like ten. No,

12 nine.

13 THE WITNESS: Nine, I have.

14 MR. TAPP: Okay.

15

16 BY MR. TAPP:

17 Q. Comparing the date when that

18 evaluation month 1-2 and month 3 was shared with Mr.

19 Jack, compare it with the guidelines, and tell us

20 what you find, what you have noted in your

21 guidelines about it.

22 A. Well, recognizing this guideline is

23 used for every probationary constable in the

24 Province...

25 Q. Yes.

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Ex-in-Ch (L. TAPP)

1 A. ...and start date...

2 Q. Yes.

3 A. ...is different for every

4 probationary, depending on the class, if

5 Probationary Jack arrived at his detachment on the

6 9th of January 2009, his first performance review

7 was due on or about around the 9th of March, 2009.

8 Q. Okay. But according to that, what

9 date was that actually done, according to the month

10 1 and 2 PER?

11 MR. MANUEL: Done by who?

12

13 BY MR. TAPP:

14 Q. Who would that review be done? You

15 already said it would have been by his accountable

16 supervisor...

17 A. No.

18 Q. ...and coach officer?

19 A. The coach officer is responsible for

20 all performance reviews.

21 Q. Okay. All performance reviews?

22 A. All performance reviews, yes.

23 Q. But doesn't that first statement say

24 that:

25 "...I have met and discussed my performance

- 129 - C. Kohen

Ex-in-Ch (L. TAPP)

1 with my coach officer or my accountable

2 supervisor..."

3 A. Or.

4 Q. Or?

5 A. So, if I can explain that...

6 Q. Yes, please.

7 A. ...in order to assist, due to our

8 demographics in our Province, there are times where

9 a coach officer and a sergeant and a probationary do

10 not report to the same detachment. They could be,

11 in some remote areas, 200 kilometres from each

12 other. So, instead of trying to get the three of

13 them together, depending on the demographics, it is

14 important that either A) the coach officer discloses

15 it, or the supervisor discloses it, depending on the

16 geographics of the members involved. That is why we

17 wrote the "or". So, it is hard to get three people

18 together sometimes.

19 Q. But by the time you became

20 involved...

21 A. Yes.

22 Q. ...with Peterborough detachment,

23 would you have known that Peterborough detachment's

24 responsibility for policing, that policing is out of

25 one detachment, and not three detachments or

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Ex-in-Ch (L. TAPP)

1 multiple detachments?

2 A. I would not specifically know if

3 they had any small suboffices.

4 Q. Okay.

5 A. I can say, during my 29 years of

6 policing, I am aware of Peterborough detachment for

7 the fact of just where it is.

8 Q. Okay. Let's move on to the...can I

9 direct your attention to month 4, performance

10 evaluation, please? And that is Exhibit 23.

11 A. Yes, sir. Would you agree looking

12 in the valuation meeting area, employee signature,

13 that Mr. Jack had no issues with that?

14 Specifically, he says:

15 "...No comments..."

16 Second-last page?

17 A. Yes, sir.

18 Q. Okay. Looking at the date when that

19 evaluation was disclosed with him, and comparing it

20 to the probationary guidelines, would you say that

21 was in a timely manner or untimely manner it was

22 disclosed?

23 A. I would say that is on a timely

24 manner.

25 Q. Thank you.

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Ex-in-Ch (L. TAPP)

1 THE VICE-CHAIR: Did you say "untimely"?

2 THE WITNESS: Timely matter.

3 THE VICE-CHAIR: It was "timely", yes.

4 THE WITNESS: Timely manner, yes.

5

6 BY MR. TAPP:

7 Q. Now, taking a quick glance through,

8 were there any "does not meet requirements" in it?

9 A. No, sir.

10 Q. Okay. As the person in charge of

11 the probationary recruits, in the region, bearing in

12 mind that month 1 and 2 identified three "does not

13 meet requirements", and looking at those three

14 performance reports...

15 A. Yes?

16 Q. ...would you agree that progress is

17 being made?

18 A. I would refer to as month 4 as, yes,

19 progress were made, because there was no "does not

20 meets". I would also refer to it in my almost eight

21 years of experience with probationary constables, as

22 part of this role, that it is also the probationary

23 is adjusting to police work.

24 Q. Okay.

25 A. In the sense of the first couple of

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Ex-in-Ch (L. TAPP)

1 months a probationary arrives at a detachment, there

2 is a lot going on. And what occurs is they get

3 accustomed to going to calls, whatever those calls

4 may be, whether it is a domestic, a bank alarm, a

5 lost dog.

6 So, I would...it is not out of the

7 ordinary, from my experience, if I could say that a

8 probationary has some "does not meet"s at the

9 beginning of their career, and then we are now in

10 month 4, and there is "meets requirements". So, to

11 me, in my role, this is a good sign.

12 Q. In fact, that was...would also be a

13 similar sign, a good sign from the previous one,

14 month 3 PER, where it has no "does not meet

15 requirements"?

16 A. Correct. There was a "no basis for

17 rating" under "Analytical thinking"...

18 Q. Yes.

19 A. ...if I am correct. And when I look

20 at month 4, there is a specific example identifying

21 that the coach observed that particular subcategory,

22 as I would refer to it as.

23 Q. So, would I be right or wrong in

24 saying for all intents and purposes, he seems to be

25 progressing well?

- 133 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. Little early to tell in four

2 months...

3 Q. True, true.

4 A. ...of a policing career.

5 Q. But appears so?

6 A. By month 4...

7 Q. By month 4.

8 A. ...still a little early to tell.

9 Q. Still early, okay. Now, what do

10 your probationary constable guidelines specifically

11 state with respect to when a recruit is allowed to

12 go out alone and patrol alone?

13 A. It is eight weeks alone, during...

14 Q. What page are you referring to, for

15 us?

16 A. I just have to find it in here,

17 sorry. I just know it is eight weeks. There we go.

18 Page 3.

19 Q. Yes?

20 A. So, at eight weeks, at the

21 discretion of a coach officer and their supervisor,

22 if they feel that the officer, the probationary, can

23 go out during daylight hours...

24 Q. Okay.

25 A. ...what I am going to refer to as

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Ex-in-Ch (L. TAPP)

1 daylight hours.

2 Q. And if evidence revealed that that

3 is the case, and Mr. Jack was performing on his own

4 by March, that would be congruent with that area?

5 A. Yes, sorry, eight weeks.

6 Q. Thank you. Now, I direct your

7 attention to month 5 performance evaluation, 9th of

8 May to 9th of June.

9 A. Yes, sir.

10 Q. Okay. Specifically, look over the

11 pages. Tell me if there are any "does not meet

12 requirements".

13 A. No "does not meets", but there is

14 "no basis for rating".

15 Q. Fair enough, but that doesn't mean

16 there is a "does not meet requirements", right?

17 A. That is correct.

18 Q. Okay. And specifically, what does

19 it say on the second-last page of the employee's

20 comments area?

21 A. It says:

22 "...Evaluation is two months behind, was

23 advised..."

24 Sorry,

25 "...[something] will be meeting

- 135 - C. Kohen

Ex-in-Ch (L. TAPP)

1 assessments, ratings in the evaluations

2 that are still outstanding, changing

3 platoons..."

4 And I think it says:

5 "...And coach officers..."

6 Sorry. There was one word, I didn't know what it

7 was.

8 MR. MANUEL: "Negative".

9 MR. TAPP: Thank you.

10

11 BY MR. TAPP:

12 Q. And what was the date when that was

13 shared with Mr. Jack?

14 A. 19th of August, sir.

15 Q. Okay. And that is for the month of?

16 A. Five.

17 Q. How is that in line with the

18 probationary guidelines that you prepared?

19 A. In my opinion, it could have been

20 disclosed earlier.

21 Q. More than two months later, is there

22 anything noteworthy in there?

23 A. I feel it could have been disclosed

24 earlier.

25 Q. Okay, fair enough. I want you to

- 136 - C. Kohen

Ex-in-Ch (L. TAPP)

1 open up to the second-last pages of the previous

2 evaluations, okay? Just keep them open, because I

3 have a specific question for you. So, keep month 5

4 open to that area.

5 A. Yes.

6 Q. And the three previous ones.

7 A. Right, okay. I am just putting them

8 in order so I am...yes, sir.

9 Q. Okay. Do you have any formal

10 training in handwriting analysis, Mrs. Kohen?

11 A. No. Looking at my writing,

12 absolutely not.

13 Q. Okay. But would you not agree that

14 there can sometimes be some obvious visual signs

15 that doesn't necessarily need forensic analysis?

16 A. I have no experience in that side.

17 Q. Okay, no. But could there be any

18 obvious visual differences?

19 MR. MANUEL: She has answered. She had

20 no experience...

21 THE WITNESS: I don't...

22 MR. TAPP: Okay.

23 MR. MANUEL: ...in that.

24 MR. TAPP: Fair enough.

25

- 137 - C. Kohen

Ex-in-Ch (L. TAPP)

1 BY MR. TAPP:

2 Q. So, I am going to ask you to just

3 look at specifically the coach officer's signature

4 in month 5...

5 A. Yes?

6 Q. ...okay? And compare it to the

7 coach officer's signature of the previous three.

8 MR. MANUEL: She has no experience to do

9 so.

10 THE WITNESS: I...

11 MR. MANUEL: I object to that. She is

12 not going to be giving...

13 MR. TAPP: Okay, fair enough. We will

14 leave that out.

15 MR. MANUEL: Mr. Vice-Chair, Mr. Tapp

16 will have those witnesses.

17 THE VICE-CHAIR: He will have them as

18 witnesses.

19 MR. TAPP: Okay, that is fine. We have

20 addressed it. We will move on.

21 THE VICE-CHAIR: Yes, let's move on.

22 MR. TAPP: Okay. Let's move on to month

23 6-7 evaluation.

24 THE WITNESS: Should I keep these open?

25

- 138 - C. Kohen

Ex-in-Ch (L. TAPP)

1 BY MR. TAPP:

2 Q. Yes...no, no, no. There is no

3 need...

4 A. Okay.

5 Q. ...to keep them open. That is fine,

6 close them up.

7 A. Yes, sir.

8 MR. MANUEL: Sorry, which exhibit is

9 that?

10 THE VICE-CHAIR: 25, I guess. I

11 don't...does that make sense?

12 MR. TAPP: No. 6-7...

13 THE VICE-CHAIR: It is 23.

14 MR. MANUEL: 33, yes.

15 MR. TAPP: 33.

16 THE VICE-CHAIR: 33, okay, thank you.

17

18 BY MR. TAPP:

19 Q. What is the date on the second-last

20 page on that document? Date...

21 A. 20th of August.

22 Q. ...it was shared with Mr. Jack?

23 20th.

24 A. 20th of August, 2009.

25 Q. Okay. If evidence revealed that

- 139 - C. Kohen

Ex-in-Ch (L. TAPP)

1 from the 19th...from the time of service from the

2 last one to that one, 20th of August, was 34 hours,

3 would that be a cause of concern for you?

4 A. When the evaluation was due on the

5 9th of August and served on the 20th regarding these

6 members working shift work, absolutely not.

7 Q. Okay, fair enough.

8 A. This is within...what I would

9 perceive as...this is timely.

10 Q. Okay. But having reviewed those

11 evaluations to address the management issues, did

12 you not make specific reference, in your notes, to

13 the marked difference in ratings in that specific

14 one, compared to the previous ones? Specifically,

15 how many negative ratings or "does not meet

16 requirements" there?

17 A. I counted 11. I count 11.

18 Q. Eleven, okay. Did it not strike you

19 odd or peculiar, after so many months of good

20 progress, to a sudden escalation, and that...correct

21 me if I am wrong, that is a marked escalation

22 compared to the previous ones, where there is

23 repeatedly zero...

24 A. As I...

25 Q. ..."does not meet requirements"?

- 140 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. As I mentioned before, maybe I will

2 try to articulate it a little better to assist,

3 probationary constables are with the coach officer,

4 the first eight weeks, they stay with them a

5 minimum...

6 Q. Yes.

7 A. ...of 16 weeks during evening hours.

8 We find, or we did find...now, I can't say

9 currently, because I am not in the role, that

10 probationary constables...that it goes through that

11 cycle, where they are meeting requirements, they are

12 not meeting, they are meeting requirements, and then

13 when they get on their own, that that is when more

14 deficiencies are identified as a result of being out

15 on their own, the heavier workload, because they are

16 considered platoon members. So, having deficiencies

17 identified later on in their probation period, this

18 is not surprising to me.

19 Q. Okay. But I...he was working alone

20 since March, April, May, and there were zero

21 deficiencies in those evaluations.

22 A. And if I am not mistaken, at some

23 point during some of the conference calls that we

24 had, we did a coach officer change...

25 Q. Yes?

- 141 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. ...which is not out of the ordinary.

2 In fact, I, the majority of the time, recommend that

3 to bring in what I am going to describe as a fresh

4 set of eyes. So, in efforts to address any

5 deficiencies or observe any new deficiencies. So...

6 Q. Okay.

7 A. ...bringing in the new coach is a

8 good idea, in my opinion.

9 Q. Okay.

10 A. Which would be articulated in one of

11 these evaluations, when that did occur.

12 Q. Okay. Look at your...I address your

13 comments to your transcribed notes.

14 A. M'hmm.

15 Q. For August 31st, 2009?

16 A. Yes, sir.

17 Q. I take it you were preparing notes

18 based on a conference call that took place that day?

19 A. Yes, and that is as a result of our

20 initial discussion...sorry, I hit the mic there.

21 Our initial discussion around the 4th or 5th of

22 August, where it was recommended that we set up a

23 conference call with the detachment.

24 Q. So, would that have been the first

25 conference call? If your notes reflected that?

- 142 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. Yes. There were discussions on the

2 6th of August with Inspector Dave Lee, and then

3 there was a conference call on the 31st of

4 August...sorry, just referring to my notes, with

5 applicable members of Peterborough detachment.

6 Q. Okay. So, that would be the first

7 conference call, I take it?

8 A. That I was involved in, yes, sir.

9 Q. Okay. And you have a notation in

10 your notes regarding month 1, 2, 3, 4, 5?

11 A. Correct.

12 Q. And what do you say?

13 A. I say, at that point, there were no

14 concerns. Month 6 and 7 were a combined...

15 Q. Yes?

16 A. ...performance evaluation, as

17 reflected to our guidelines. An issue started to be

18 raised at that point.

19 Q. Okay. Read on from your notes,

20 please, over there? For those four...I think you

21 only have a very brief paragraph...

22 A. Yes.

23 Q. ...but read it, please?

24 "...The same probation..."

25 A. "...This is the same probationary

- 143 - C. Kohen

Ex-in-Ch (L. TAPP)

1 who called me when his sergeant told him he

2 would be losing his job, also a PSB

3 investigation against him..."

4 Q. Thank you.

5 MR. MANUEL: Did you say "would" or

6 "could"?

7 THE WITNESS: Sorry.

8 "...told him he could be losing his job..."

9 So, it was the probationary who called me

10 as I am driving, and putting the connection

11 of now Peterborough detachment is engaging

12 me as the coordinator...

13

14 BY MR. TAPP:

15 Q. Yes?

16 A. ...to assist and guide and provide

17 whatever advice I could regarding performance

18 management, to support the detachment.

19 Q. Yes. And your notations over here

20 were that in order for you to make the notations,

21 sergeant told him he could be losing his job, that

22 was a topic of discussion at that conference call,

23 right?

24 A. Yes, it was.

25 Q. Good. And, also, have a PSB

- 144 - C. Kohen

Ex-in-Ch (L. TAPP)

1 investigation against him, that also was a topic of

2 discussion, right?

3 A. It was, sir.

4 Q. Good. What do you state in your

5 next line that was a topic of discussion, starting

6 from Sergeant Fidell?

7 A. Yes:

8 "...He is to take a lead in the performance

9 issue, and has a strong dislike for

10 Probationary Jack, as he does not own up to

11 his errors..."

12 Q. Okay. Now, Sergeant Fidell, I now

13 know that, but I can introduce...would Sergeant

14 Fidell and Sergeant Flindall be one and the same?

15 A. Good question, sir. I don't know.

16 Q. Okay.

17 A. Could be my...

18 Q. Okay, that is fine.

19 A. I can't disagree.

20 Q. Okay. That is okay. We can clarify

21 that when...okay. Now, going back to the month 6-7

22 performance evaluation, second-last page, okay?

23 A. Yes, sir.

24 Q. What does...looking at the employee

25 signature area, to you in...would you be considered

- 145 - C. Kohen

Ex-in-Ch (L. TAPP)

1 a member of command staff? Put it that way.

2 A. At times, during that period in

3 time, yes.

4 Q. Okay.

5 A. Maybe if I was in an acting role,

6 but I wouldn't be considered command staff.

7 Q. Okay. When that evaluation makes

8 its way upstairs, so to speak...

9 A. Yes?

10 Q. ...what does that tell you, in the

11 employee's signature area?

12 A. I don't know what regional command

13 would think of it.

14 Q. Okay, what does that tell you,

15 looking at it?

16 A. That tells me, which is not the

17 first time I have seen a probationary refuse to sign

18 his or her performance review.

19 Q. Okay. If evidence revealed that

20 that performance evaluation was 34 hours apart from

21 the previous, and Probationary Jack asked time to

22 review it...if evidence revealed that, would that

23 constitute a refusal?

24 A. From my experience, I have indicated

25 to coach officers and detachment members that when a

- 146 - C. Kohen

Ex-in-Ch (L. TAPP)

1 member receives a...what I am going to say, not a

2 positive evaluation, that give them time to read it

3 alone so that they can really read the performance

4 review, instead of trying to skim through something

5 and not particularly read it.

6 Q. Okay. We expect to hear from

7 Sergeant Flindall, and if evidence revealed that...

8 MR. MANUEL: Does this witness need to

9 know what Sergeant Flindall may or may

10 not...

11 MR. TAPP: Okay.

12 MR. MANUEL: ...say? What is...

13

14 BY MR. TAPP:

15 Q. If it is revealed that that

16 evaluation was given to Mr. Jack 20 minutes before

17 the end of his shift, would there be a reasonable

18 expectation that he would be given time to review

19 it, and discuss it with someone else? Because of

20 the number of negative ratings, would there be a

21 reasonable expectation on the recruit?

22 A. Who the recruit chooses to disclose

23 his or her performance review is up to them.

24 Q. Yes.

25 A. This is a performance review that

- 147 - C. Kohen

Ex-in-Ch (L. TAPP)

1 was written by the coach and signed off by the

2 sergeant. So, is it possible that a recruit or a

3 probationary would want to do that? Individually, I

4 can't answer that. It has been a long time since I

5 was a probationary.

6 Q. Okay.

7 A. But, as I mentioned...and I

8 encouraged it throughout the province throughout the

9 years that receiving a document that is not

10 favourable, that they should have that opportunity.

11 Q. Thank you. Now, is there any

12 evidence there, looking at the second-last page, to

13 suggest any coach officer comments or involvement?

14 A. No, and this is why we have either

15 the coach or the accountable supervisor disclose it.

16 So, coach officers could be on annual leave. Coach

17 officers could be off on sick leave. So, having it

18 disclosed to the particular probationary is the key

19 aspect.

20 Q. Okay. Regardless of whether it is

21 by the coach or supervisor, right?

22 A. Correct, hence why we have put the

23 big "or" in the first bullet point.

24 Q. Okay. Moving on to the next

25 performance evaluation, which would be month 8. I

- 148 - C. Kohen

Ex-in-Ch (L. TAPP)

1 am going to give that to you, and that will be

2 Exhibit...

3 MR. MANUEL: I believe it is Exhibit 35.

4 MR. TAPP: Thank you.

5 THE WITNESS: Yes, sir.

6

7 BY MR. TAPP:

8 Q. Can you tell us, reviewing that

9 document, how many "does not meet requirements"

10 there are?

11 A. Seventeen, sir.

12 Q. Thank you.

13 A. And there are 28 subcategories.

14 Q. Well, if evidence revealed that Mr.

15 Jack only worked six shifts, that would be of

16 noteworthy interest, compared to the number of

17 negative ratings?

18 A. I would consider it noteworthy. I

19 would consider that 12-hour shifts, detachments are

20 very busy...

21 Q. Okay, fair enough.

22 A. ...and it is observing specific

23 examples of him. So...

24 Q. Okay. And looking at the

25 second-last page...

- 149 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. Yes, sir?

2 Q. Again, there are those

3 computer-generated X marks?

4 A. I don't know if they are or not,

5 sir.

6 Q. Okay, but...

7 A. They look pretty neat to me.

8 Q. Yes, they are not handwritten. They

9 are not...

10 A. They look neat to me.

11 Q. They look neat to you, okay. Do

12 they look any different from the previous ones?

13 A. I have to admit, sir, I am not an

14 expert of analyzing...

15 Q. Okay. Now, what does it say about

16 Mr. Jack being presented that evaluation?

17 A. Are you asking me what...

18 Q. Yes.

19 A. ...he wrote?

20 Q. What does it say about him...

21 A. It says...

22 Q. ...when he presented it?

23 A. It says here when it was presented,

24 he refused to sign his performance review.

25 Q. And if the other one had a date,

- 150 - C. Kohen

Ex-in-Ch (L. TAPP)

1 what does this one say about when he refused?

2 A. Mr. Jack, at the time, didn't put a

3 date in.

4 THE VICE-CHAIR: Is there a question

5 coming?

6

7 BY MR. TAPP:

8 Q. There is a...we are bringing it up.

9 I am just...okay, here it is.

10 MR. MANUEL: We have got to move this

11 along. This should have all been prepared.

12

13 BY MR. TAPP:

14 Q. If, in those performance evaluations

15 up to month 8...

16 A. Yes, sir.

17 Q. ...okay? If a specific example was

18 copy and pasted from the previous ones, okay? Would

19 you agree that it would have to have the same

20 rating?

21 A. The same rating?

22 Q. Yes.

23 A. So, you can...I will use your

24 terminology...

25 Q. Yes, please.

- 151 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. ...copy and paste a specific example

2 into the previous month...

3 Q. Yes.

4 A. ...which does occur...

5 Q. Yes?

6 A. ...if they are meeting the

7 requirements at that particular time for two

8 consecutive months, you can use the specific

9 example.

10 Q. Okay. So, with respect to month 5

11 PER...

12 A. Yes, sir.

13 Q. ...resolution, you can even go back

14 there and review it. And you compare it to month

15 6-7 and month 8 resolution.

16 A. Sorry, I am just trying to find it

17 here, month 6 and 7.

18 Q. You will notice that the same

19 specific example is copied on month 5, and it is the

20 same in month 4 even if you wish to look at it,

21 but...okay. I know, the same one from 5 is copied

22 into 6-7 and 8. There is no additional information

23 in there.

24 A. Well, I am no expert here, but I am

25 quickly reading between month 5 and 7, and I am

- 152 - C. Kohen

Ex-in-Ch (L. TAPP)

1 seeing different wordings.

2 Q. Yes, different wording than the

3 rating, right?

4 A. Okay. "Meets/does not meet", and

5 now you want me to refer to month 8?

6 Q. Month 8, look at the specific

7 example. See that it is the same as month 5.

8 A. So, when I look at what you are

9 indicating, sir, I am looking at month 5, and I am

10 quickly scanning here...

11 Q. Yes?

12 A. I am saying month 5 and month 7...

13 Q. Yes, are identical.

14 A. ...are identical, and both are "does

15 not meet"s. When I refer back to...

16 Q. Month 5.

17 A. ...month 5, I see different

18 wordings. It doesn't start with a specific...an RNS

19 number, which is our computer CAD system for

20 occurrences. And it starts off as:

21 "...To keep the peace, has attended..."

22 It is different wording after:

23 "...PC Jack attended to stand by keeping

24 the peace during this evaluation..."

25 Month 5, it reads:

- 153 - C. Kohen

Ex-in-Ch (L. TAPP)

1 "...Part of the problem in the incident was

2 that PC Jack did not request a second

3 officer..."

4 Month...

5 Q. Yes?

6 A. ...sorry, I want to make sure my

7 months are here. Month 7, it specifically

8 identifies an occurrence that:

9 "...PC Jack attended, and at standby..."

10 Which is a different wording,

11 "...and kept the peace. PC Jack was

12 attended at these type of occurrences in

13 the past..."

14 Which would refer to the previous month.

15 Q. Yes.

16 A. "...This is the second person call,

17 and part of an issue stemming from these

18 types of calls in the past..."

19 Which...I am seeing two different occurrences.

20 Q. Okay. Maybe we should probably

21 get...yes. I am not going to go there anymore,

22 okay, Ms. Kohen?

23 A. Okay.

24 Q. Because quite frankly, I will

25 address it...

- 154 - C. Kohen

Ex-in-Ch (L. TAPP)

1 MR. MANUEL: Mr. Vice-Chair, is this a

2 useful use of this witness? I mean...

3 THE VICE-CHAIR: Well...

4 MR. TAPP: Canvassing specific...

5 MR. MANUEL: Excuse me.

6 MR. TAPP: ...examples to be used in

7 other categories?

8 THE WITNESS: Yes, it can.

9

10 BY MR. TAPP:

11 Q. Okay, it can?

12 A. Yes.

13 Q. All right.

14 A. So, if you have a specific example,

15 if you attend a domestic...

16 Q. Yes?

17 A. ...and you could put the domestic

18 under a federal statute. You could also use it in

19 report writing. You could use it in communication

20 skills. So, you can use the same occurrence,

21 specific examples, subcategories, and articulate the

22 category which reflects your using it.

23 Q. From two months prior?

24 A. Sorry? Yes.

25 Q. You can use...

- 155 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. Okay.

2 Q. Yes.

3 A. Fair enough.

4 THE VICE-CHAIR: Counsel, just for your

5 information, I think before you came

6 aboard, we spent a great deal of time on

7 these documents.

8 MR. MANUEL: No, but I am just wondering

9 what this witness adds to the documents.

10 They are not her documents. She wasn't

11 involved in creating them.

12 THE VICE-CHAIR: Right.

13 MR. MANUEL: She just read them.

14 THE VICE-CHAIR: Right.

15 MR. MANUEL: That is all I am saying, is

16 this a useful use of this witness. I am

17 not suggesting that these documents aren't

18 relevant to the witnesses that created

19 them. That is not this witness.

20

21 BY MR. TAPP:

22 Q. Mrs. Kohen...

23 MR. MANUEL: Yes.

24 THE VICE-CHAIR: I find it relevant...

25 MR. MANUEL: Okay.

- 156 - C. Kohen

Ex-in-Ch (L. TAPP)

1 THE VICE-CHAIR: ...because of what

2 was...

3 MR. MANUEL: Thank you very much,

4 Vice-Chair.

5 THE WITNESS: Yes.

6

7 BY MR. TAPP:

8 Q. Mrs. Kohen, you made a

9 determination, and I want to question you about

10 that. What did you mean in the August...your

11 notation in your notes about the conference call on

12 August 31st, that Sergeant...the probationary

13 supervisor, I am going to say, seemed to take a lead

14 for...has a strong dislike. What made you make that

15 comment?

16 A. For the fact that part of the

17 conversation was Probationary Jack, at the time,

18 wasn't owning up to his own errors, as I wrote in my

19 notebook. So, instead of learning from the

20 deficiencies, and addressing the deficiencies, I got

21 the impression of...on that conference call, that

22 Probationary Jack wasn't owning up. Recognizing I

23 am not spending 12 hours a day with these

24 individuals, so, I am hearing from the coach and the

25 sergeant for the first time about the concerns they

- 157 - C. Kohen

Ex-in-Ch (L. TAPP)

1 have with this probationary.

2 Q. Fair enough. Your involvement with

3 the detachment was regarding the management issues

4 regarding Mr. Jack, right?

5 A. I don't want to call it performance

6 issues...

7 Q. Performance issues...

8 A. ...management. I...

9 Q. Performance...

10 A. Yes, it is performance concerns.

11 Q. Management, okay.

12 A. No, no management. Performance

13 concerns.

14 Q. Performance concern issues, okay,

15 fair enough. Were you, by any chance, through the

16 course of this conference call, or rather before

17 this conference call, you had to have discussions

18 with detachment management in order to set up the

19 call?

20 A. Absolutely...

21 Q. Okay.

22 A. ...when you coordinate myself, who

23 was off-site, we have other members involved,

24 wherever they are, to be off-site or wherever they

25 might be, yes.

- 158 - C. Kohen

Ex-in-Ch (L. TAPP)

1 Q. Would you have been privy to any

2 specific communication detachment management had,

3 specifically conducted by a staff sergeant and

4 inspector relating to August 18th and August 21st?

5 A. Not that I am...not that I can

6 recall, sir.

7 Q. Okay. Is it true that you sent an

8 e-mail indicating a specific performance evaluation

9 report was supposed to be disclose by then?

10 A. It is possible. Unfortunately, we

11 deal with e-mails all the time.

12 Q. Okay.

13 A. So...

14 Q. Fair enough.

15 A. ...I know they are...over my years,

16 there has been a number of e-mails relating to

17 probationaries.

18 Q. I am showing you an e-mail, and..

19 MR. JACK: September 11th e-mail from

20 Flindall, Robert to Colleen Kohen...

21 MR. MANUEL: Can I see it?

22 MR. TAPP: And it is volume 2 of 7, and

23 it will be in something from the

24 respondent's disclosure.

25 MR. MANUEL: Just give us a moment.

- 159 - C. Kohen

Ex-in-Ch (L. TAPP)

1 MR. TAPP: Certainly.

2 THE VICE-CHAIR: Do you have another

3 copy of that?

4 MR. TAPP: Yes, we do.

5 THE VICE-CHAIR: It hasn't been entered

6 as an exhibit?

7 MR. TAPP: No, it hasn't. I will be...

8 volume 2 of 7 and 9 in the respondent's

9 disclosure.

10 MR. MANUEL: Again, this is an extract

11 from our disclosure. It is not the

12 complete e-mail that was produced.

13 THE VICE-CHAIR: Well, we had better get

14 the complete e-mail that was produced.

15 MR. MANUEL: Again, it is a

16 cut-and-paste...

17 MR. TAPP: We are just addressing a

18 question to that one specific e-mail that

19 is in there.

20 THE VICE-CHAIR: Well...

21 MR. MANUEL: No, the...

22 THE VICE-CHAIR: ...there may be

23 context.

24 MR. MANUEL: The witness is entitled...

25 exactly.

- 160 - C. Kohen

Ex-in-Ch (L. TAPP)

1 THE VICE-CHAIR: Yes, I...

2 MR. MANUEL: It is incredible...

3 MR. JACK: That is what we got. This is

4 original from the respondent, so...

5 MR. MANUEL: No, this is the disclosure,

6 right here, sir. This is the disclosure

7 here.

8 MS. BLUTSTEIN: It is the second page.

9 You are missing the second page.

10 MR. JACK: Where is second page? That

11 other material is irrelevant.

12 MR. MANUEL: It may be irrelevant to

13 you, but it may be very useful to the

14 witness or us. Yes, that is the whole

15 thing.

16 MR. TAPP: Okay, then...

17 MR. MANUEL: That is all I am asking

18 for, and it is not...let me see...this is a

19 different e-mail. This is from Richard to

20 me. The one you showed us earlier had

21 Flindall, Robert, in between Robert

22 Flindall. So, this is not the same e-mail.

23 THE VICE-CHAIR: It is not the same

24 e-mail as...

25 MR. MANUEL: No, not the one that he

- 161 - C. Kohen

Ex-in-Ch (L. TAPP)

1 first showed us, no.

2 MR. JACK: Maybe there is only one

3 e-mail, that is it. From Colleen Kohen.

4 That is all there is. We don't care about

5 the rest.

6 THE VICE-CHAIR: Well...

7 MR. JACK: The one...

8 THE VICE-CHAIR: The...

9 MR. JACK: The date, from, one sentence,

10 That is all.

11 THE VICE-CHAIR: You can't just butcher

12 up the evidence.

13 MR. JACK: Well, then that is our...that

14 is what I mean.

15 THE VICE-CHAIR: I propose we take a

16 ten-minute break.

17

18 --- upon recessing at 3:14 p.m.

19 --- A BRIEF RECESS

20 --- upon resuming at 3:29 p.m.

21

22 GENERAL DISCUSSION:

23 MR. TAPP: Okay. That break was good.

24 We managed to locate the document, and I

25 can direct Counsel's attention to volume 1

- 162 - General Discussion

1 of 7, their disclosure.

2 MR. MANUEL: We don't have all of our

3 disclosure here.

4 MR. TAPP: Well, we were just

5 downstairs. Why didn't you bring it up?

6 MR. MANUEL: Mr. Vice-Chair...

7 THE VICE-CHAIR: Yes, I have got boxes

8 of material.

9 MR. TAPP: But anyways, that is why we

10 are showing you ours...

11 THE VICE-CHAIR: Okay, let's...

12 MR. TAPP: Okay. It is item I-52. And

13 they are the two pages that I am going to

14 show to Counsel, he will be able to verify

15 it later, and if you match one under the

16 other, you will specifically...

17 MR. MANUEL: There is a third page that

18 is missing.

19 MR. TAPP: Volume 1 of 7. I-52.

20 MR. MANUEL: Yes, there is a third page

21 that is missing.

22 MR. TAPP: No, there is only two pages

23 in there.

24 MR. MANUEL: No. There is a third page.

25 One, two, three.

- 163 - General Discussion

1 THE VICE-CHAIR: Okay.

2 MR. TAPP: And for the purposes of this

3 examination, Counsel will have to

4 acknowledge that these two pages reflect

5 the full conversation of the one e-mail we

6 want to address. On those two pages, or

7 three pages, there are e-mails pertaining

8 to others not relating to the witness on

9 the stand.

10 THE VICE-CHAIR: Okay, let's go...

11 MR. MANUEL: Yes.

12 MR. TAPP: Thank you.

13 THE VICE-CHAIR: Let's go forward. Do I

14 get a copy?

15 MR. TAPP: Yes, we will give you that

16 copy when she is done with it, Mr.

17 Vice-Chair.

18

19 COLLEEN KOHEN, resumed

20 CONTINUED EXAMINATION-IN-CHIEF BY MR. TAPP:

21 Q. Can you read who that e-mail is

22 from, Mrs. Kohen?

23 A. So, my apologies, where do you want

24 me to start? Because I have a conversation earlier

25 in the day at 1:39 p.m.

- 164 - C. Kohen

Ex-in-Ch (L. TAPP)

1 Q. Okay.

2 A. On the 9th of September. So, on the

3 11th of September, 2009...

4 Q. Yes?

5 A. ...at 8:58, I sent an e-mail to

6 Robert Finley, Mr. Ron Campbell, Mike Johnston and

7 Dave Lee re PCS66 Jack 8 document, I wrote:

8 "...Thanks, Rob. Once completed, can you

9 please send me the final version of his

10 PCS66P and WIP via e-mail for review, as I

11 want to set up a conference call with new

12 sergeant coach, and I am assuming this is

13 being disclosed to member today.

14 Colleen..."

15 Q. Okay. Now, do you see why I asked

16 you the question, specific question on the

17 second-last page of the month 8 PER, where there is

18 a notation under Mr. Jack's signature that says:

19 "...Refused..."

20 But there is no date? I will wait for you to get

21 back to that PER, month 8 PER.

22 A. Sir, I am on...yes, I am on the last

23 page.

24 Q. Look at "Employee signature". It

25 says:

- 165 - C. Kohen

Ex-in-Ch (L. TAPP)

1 "...Refused..."

2 A. Yes.

3 Q. And is there a date on it?

4 A. No, sir.

5 Q. Okay. That is why I wanted you to

6 address, and get that e-mail. Yes, go ahead, Mrs.

7 Kohen.

8 A. So, on the 11th of September, I sent

9 the e-mail, when I look at no signature signed by

10 Mr. Jack, and it was signed by the coach officer on

11 the 11th of September. So, the question of me

12 getting a final version of the copy of the

13 performance review because I am deployed is

14 important for me to help track the probationary who

15 was having a deficiency. So, I normally would ask

16 for an electronic version for me to keep in my file.

17 Q. Certainly, but...

18 A. When I say that, I will bring some

19 context.

20 Q. Yes?

21 A. During the period of time as the

22 coordinator, I would receive all the performance

23 reviews for all the probationaries across the

24 province. So, every single month I would receive a

25 stack full of performance reviews. So, in order for

- 166 - C. Kohen

Ex-in-Ch (L. TAPP)

1 me to get it electronically, it expedites it

2 arriving at my office. Eventually, the original

3 would line up with the copy that I already have on

4 file. So, to assist, it is normal for me to ask for

5 an electronic version, to bring some context to

6 asking why I would want it.

7 Q. And, specifically, the one at 9:02

8 a.m...

9 A. Yes, and that was...

10 Q. ...in the first paragraph, September

11 11th, Robert Flindall to you, Colleen Kohen?

12 A. So, that was...

13 Q. 9:02 a.m.?

14 A. ...9:02, as you mentioned:

15 "...Shaun has sent me the updated PCS66

16 already. I have to review it yet to see

17 how he had made out. He had left the

18 original PCS66 with Staff Sergeant Campbell

19 for disclosure over the last two days when

20 PC Jack was working. However, as there

21 were issues with it, it was not disclosed.

22 It will be disclosed on Monday, when PC

23 Jack is back on shift..."

24 Q. Thank you very much. That is all I

25 have with respect to that. And would you agree that

- 167 - C. Kohen

Ex-in-Ch (L. TAPP)

1 there is no missing information in those two pages

2 with respect to the two e-mails I directed your

3 attention to?

4 A. I can't say that, because I look at

5 the bottom of page 2, there is an e-mail from Robert

6 Finley to Ron Campbell, but there is no message.

7 So, I don't know if there was previous involvement

8 with me. So...

9 Q. Okay. But in the address section,

10 are you mentioned in that?

11 A. Further up I am, later in the day

12 and on a different date.

13 Q. But with respect to the questions I

14 asked you, they were restricted to those two

15 e-mails...

16 A. Yes.

17 Q. ...and all of the e-mail is in those

18 two pages?

19 A. I don't see a separation.

20 MR. TAPP: Okay, great. Then we will

21 have just that entered as the next exhibit.

22 Counsel has already...will have it on file

23 when he locate it, and give the document to

24 Vice-Chair.

25 THE VICE-CHAIR: Thank you.

- 168 - C. Kohen

Ex-in-Ch (L. TAPP)

1 MR. MANUEL: Actually, I think we may

2 have skipped over an exhibit. Were you

3 intending to mark this probation constable

4 evaluation guideline? Because I don't

5 think it was marked.

6 MR. TAPP: Yes. We intended to. We

7 might have. That should be first.

8 THE VICE-CHAIR: Did you have it marked,

9 Mr...

10 MR. MANUEL: No, I didn't mark it.

11 THE VICE-CHAIR: No, okay.

12 MR. TAPP: Okay. So, before you enter

13 that...

14 MR. MANUEL: No, I did mark it as 122.

15 THE VICE-CHAIR: Okay.

16 MR. MANUEL: So, this would be 123.

17 MR. TAPP: 123 should be Mrs. Kohen's

18 notes. Pardon me, we haven't got to that.

19 THE VICE-CHAIR: Okay, thank you.

20

21 --- EXHIBIT NO. 122: Probationary Constable Evaluation

22 Guideline

23

24 --- EXHIBIT NO. 123: E-mail chain between Ms. Kohen, Mr.

25 Flindall, and others, dated

- 169 - C. Kohen

Ex-in-Ch (L. TAPP)

1 September 9-11, 2009

2

3 BY MR. TAPP:

4 Q. Okay, we addressed those two

5 e-mails. Specifically that says it will be

6 disclosed to you on Monday.

7 A. Did it say Monday?

8 Q. Yes...

9 A. Sorry, okay.

10 Q. ...it says:

11 "...I will be..."

12 Second paragraph. We expect to hear testimony from

13 Sergeant Flindall, Mr. Jack's probationary

14 supervisor...

15 MR. MANUEL: Why does this witness need

16 to know what Sergeant Flindall will be

17 testifying to?

18 MR. TAPP: I never said what he is going

19 to be testifying. I never said that. Tell

20 me, what did I say? We expect to hear from

21 Sergeant Flindall.

22

23 BY MR. TAPP:

24 Q. Now, if evidence revealed that that

25 month 8 performance evaluation wasn't disclosed to

- 170 - C. Kohen

Ex-in-Ch (L. TAPP)

1 Mr. Jack until late September, with the word...first

2 time, if evidence revealed that the first time he

3 saw that evaluation was when it was shared with him

4 and it had the word "Refused" on it, would that be a

5 cause of concern for you?

6 A. I have to admit, that is

7 hypothetical, because I don't know when it was...Mr.

8 Jack didn't sign the performance review. So, I

9 wasn't present when it was disclosed.

10 Q. So, if evidence revealed that the

11 first time Mr. Jack saw that evaluation was when it

12 was given to him, okay?

13 A. M'hmm.

14 Q. And it already had the word

15 "Refused" on it when it was given to him, would that

16 be a cause of concern?

17 A. So, just so...and I apologize. So,

18 you are saying that the evaluation was given to him

19 with the word "Refused" on it already?

20 Q. Exactly. Exactly.

21 A. Okay. I would have questions why

22 that would have it on there.

23 Q. Good, thank you very much, and I am

24 not going to ask you any more questions because that

25 would, indeed, be speculation. Okay. Based on

- 171 - C. Kohen

Ex-in-Ch (L. TAPP)

1 those performance evaluations that you reviewed, did

2 you have authorship or prepare an internal briefing

3 report to be addressed to either Inspector Lee or

4 Superintendent Armstrong regarding Probationary

5 Jack?

6 A. I would have completed a briefing

7 note at some point, yes.

8 Q. Okay. Mr. Jack is going to locate

9 it on counsel's disclosure. I am going to show you

10 an internal briefing report, and I will ask you

11 questions on it, once we locate it.

12 MR. MANUEL: Could you give us the date

13 of that, Mr. Tapp? Mr. Tapp, the date?

14

15 BY MR. TAPP:

16 Q. So, you prepared this one, too?

17 A. Yes, sir, I did, which would be

18 normal practice for us if we were looking at

19 releasing a probationary constable.

20 MR. TAPP: Okay. I have got a few

21 questions on this. So, maybe we can just

22 enter it by way of the next exhibit.

23 THE VICE-CHAIR: Okay, that is Exhibit

24 124, three pages. Okay.

25 MR. TAPP: Thank you.

- 172 - C. Kohen

Ex-in-Ch (L. TAPP)

1 --- EXHIBIT NO. 124: Internal Briefing notes, 3 pages

2

3 BY MR. TAPP:

4 Q. I direct your attention to the first

5 page. It is the last bullet, starting with the word

6 "This"?

7 A. Yes.

8 Q. It is specific...first of all, was

9 it identified which month it was referring to which

10 evaluation period?

11 A. I break performance reviews down in

12 order for command staff to read what has occurred

13 during the member's probation period.

14 Q. Okay.

15 A. At a very high level.

16 Q. Yes, please. Could you read your

17 last bullet, please?

18 A. Sure, where you have highlighted?

19 Q. Yes, well, the whole thing.

20 A. The whole thing?

21 Q. Month 8.

22 A. "...Month 8 performance review,

23 which is from the 9th of August to the 9th

24 of September, Probationary Jack had 17

25 subcategories where he was not meeting the

- 173 - C. Kohen

Ex-in-Ch (L. TAPP)

1 requirements. Attitude towards learning,

2 Provincial statutes, police vehicle

3 operation, oral and written communication,

4 listening skills, radio communications,

5 analytical thinking, resolution, follow-up,

6 personal accountability, planning and

7 organizing, respectful relationships,

8 self-confidence, teamwork, self-awareness

9 and deportment. This performance review

10 was given to Probationary Jack on the 11th

11 of September, 2009. He refused to sign the

12 performance review, but later on the 25th

13 of September provided comments attached..."

14 Q. Now, I ask you, how could Mr. Jack

15 have been presented that when he was off on

16 September 11th?

17 MR. MANUEL: This is not for this

18 witness.

19 THE WITNESS: I don't know if he was

20 off, sir.

21

22 BY MR. TAPP:

23 Q. Okay. I am going to show you the

24 2009 duty schedule. It is in a chart that was

25 provided by counsel, but we just put it together in

- 174 - C. Kohen

Ex-in-Ch (L. TAPP)

1 a chart. It is going to show you Mr. Jack's

2 platoon.

3 THE VICE-CHAIR: Okay, okay, okay. It

4 has been established that he is off

5 September 11th.

6 MR. TAPP: Thank you.

7 THE VICE-CHAIR: Okay? You have

8 testified to that...

9 MR. TAPP: Thank you.

10 THE VICE-CHAIR: ...effect years ago.

11 MR. TAPP: Okay. Thank you, Mr.

12 Vice-Chair. But I wanted to address the

13 point. I didn't want to get objected if I

14 said the evidence.

15

16 BY MR. TAPP:

17 Q. So, now, you know, it has been

18 established that Mr. Jack was off on September

19 11th...

20 THE VICE-CHAIR: I don't know if it has

21 been established, but that is his

22 testimony.

23 MR. TAPP: Okay, that is his testimony.

24 THE VICE-CHAIR: On that point, we have

25 obtained Constable Jack's notebook for that

- 175 - C. Kohen

Ex-in-Ch (L. TAPP)

1 period. We can give it to you. His

2 notebooks indicate he was off duty on

3 September 10th and September the 11th.

4 MR. TAPP: Okay. Thank you very much.

5 Thank you very much.

6

7 BY MR. TAPP:

8 Q. So, now, Mrs. Kohen.

9 A. Yes?

10 Q. Are you certain beyond a degree of

11 doubt that he was, indeed, off on September 11th?

12 A. I...

13 THE VICE-CHAIR: She doesn't know.

14 MR. TAPP: Okay.

15 THE WITNESS: I don't know, but I am

16 hearing conversation.

17

18 BY MR. TAPP:

19 Q. Okay. You hear conversations. I am

20 showing you...you are not the author of the note. I

21 am showing you Constable Jack's notes for September

22 10 and 11.

23 THE VICE-CHAIR: But she doesn't know.

24 MR. TAPP: Okay, fair enough.

25 THE WITNESS: What I do know, sir, is I

- 176 - C. Kohen

Ex-in-Ch (L. TAPP)

1 wrote the 11th of September...

2

3 BY MR. TAPP:

4 Q. You would have wrote it, based on

5 information you received, correct?

6 A. Or information that...

7 Q. Quite frankly, that month 8, there

8 is no date beside the word "Refusal". You would

9 know.

10 A. And I look at when the coach officer

11 and the accountable supervisor dated it the 11th of

12 September.

13 Q. So, you naturally assumed it was

14 refused on September 11th?

15 A. I am going to use the word "assume",

16 as well.

17 Q. Okay.

18 A. Because I wrote in there that he

19 refused to sign, assuming the conversation took

20 place.

21 Q. Fair enough, thank you, Mrs. Kohen.

22 So, if you knew the actual truth, would it be a

23 concern?

24 A. The date he refused?

25 Q. If he was off, how can he refuse?

- 177 - C. Kohen

Ex-in-Ch (L. TAPP)

1 He would have to be on duty to be served such a

2 document.

3 A. My concern for the performance

4 review is that he refused, and I am going to say

5 that I gathered by the evaluation it was served by

6 that day, and I acknowledge that.

7 Q. Thank you. Thank you. Would you

8 also agree that you did review all his performance

9 evaluations, prepared the briefing report, and it is

10 this briefing report that assisted...I don't know if

11 he is Chief Superintendent Armstrong, or just

12 Superintendent, but assisted Superintendent

13 Armstrong in making that final decision?

14 A. And prior to that, this briefing

15 note would have gone to two Provincial commanders.

16 Q. Yes?

17 A. I am going to refer to them

18 as...also known as deputy commissioners...

19 Q. Okay.

20 A. ...prior to releasing or proposing

21 to release, I should say, proposing to release a

22 probationary constable.

23 Q. Yes.

24 A. So, arbitrarily, it is...the

25 delegation of authority did rest with Chief

- 178 - C. Kohen

Ex-in-Ch (L. TAPP)

1 Armstrong. We had a process where two provincial

2 commanders reviewed it before they...as a proposal

3 of action for Chief Armstrong. So, it went to that

4 level.

5 Q. I take it in providing your briefing

6 to management higher than you, the deputy and Mr.

7 Armstrong, you also took into account point form

8 chronology of various officers?

9 A. Yes, sir. Would one of the point

10 form chronologies be from Sergeant Robert Flindall?

11 MR. MANUEL: We have that.

12 MR. TAPP: Thank you.

13

14 BY MR. TAPP:

15 Q. Okay. I am showing you five pages

16 of a point form chronology, and quite frankly, to

17 save time, there are actually 44 pages. There are

18 numerous things that we pointed, and we are trying

19 to expedite and save time. So, I am only going to

20 show you five pages, the top pages. I will show

21 them first to counsel, so he can acknowledge them,

22 the point form chronology, and then I will put the

23 question to you.

24 MR. MANUEL: If we are going to put in

25 the chronology, we are going to put in the

- 179 - C. Kohen

Ex-in-Ch (L. TAPP)

1 whole chronology. If he only wants to

2 refer to five pages, that is fine, but if

3 it is a chronology...

4 THE VICE-CHAIR: Do we have the 45

5 pages? It is in a binder or something?

6 MR. TAPP: That is okay. We will make

7 reference to it, and we will introduce them

8 tomorrow though Mr. Armstrong.

9

10 BY MR. TAPP:

11 Q. The point form chronologies that you

12 used to compile your briefing notes to Mr.

13 Armstrong?

14 A. Yes.

15 Q. Okay. Would the point form

16 chronologies also have been provided to him to

17 review?

18 A. I am not too sure, sir. I provided

19 this briefing note to the Provincial commanders with

20 that. I don't recall sharing that chronological

21 with Chief Armstrong, unless there is an e-mail

22 relating to that. Because when I refer to...on page

23 2 of my briefing note, up to provincial command, on

24 the 30th of November 2009:

25 "...Detachment members have submitted to

- 180 - C. Kohen

Ex-in-Ch (L. TAPP)

1 myself, Staff Sergeant Kohen, a

2 chronological overview of the last ten

3 months of Probationary Jack at Peterborough

4 detachment attached..."

5 So, when I completed this high-level briefing note

6 for Provincial command staff, I would utilize the

7 probation performance reviews where the

8 chronological is in a far much more detailed report,

9 that I am giving bullet points from the performance

10 review of the subcategories where the probationary

11 is not meeting. So, I don't know if there is e-mail

12 trails that relate to that being shared with Chief

13 Armstrong. There could be. I am not too sure.

14 Q. Okay. I do have some questions for

15 this witness for the point form chronology, okay?

16 At most, it will take ten minutes to go down and get

17 them, the whole document. I am trying to expedite

18 this, and my question is going to be restricted to

19 just...Counsel has it in his...

20 THE VICE-CHAIR: Okay.

21 MR. TAPP: ...book. Just respect to the

22 first five pages.

23 MR. MANUEL: You are not going to go...

24 THE VICE-CHAIR: Yes, I am satisfied

25 that he ask his question, but we enter

- 181 - C. Kohen

Ex-in-Ch (L. TAPP)

1 tomorrow the entire book.

2 MR. TAPP: Thank you. Thank you. Okay.

3 THE VICE-CHAIR: Please remember that.

4 MR. TAPP: Okay.

5 THE VICE-CHAIR: Remember that. I will

6 forget.

7 THE WITNESS: Thank you.

8

9 BY MR. TAPP:

10 Q. I draw your attention specifically

11 to March 7th, 2009, and there are three entries for

12 that date.

13 A. Yes?

14 Q. And they are all from Constable

15 Shaun Filman, the coach officer of Mr. Jack, gauging

16 from the PER, that is.

17 THE VICE-CHAIR: What are you referring

18 to? Sorry.

19 MR. TAPP: The point form chronology.

20 THE VICE-CHAIR: Yes, but what section?

21 MR. TAPP: On March 7th, 2009. March

22 7th, 2009. Three entries, separate entries

23 by Constable Filman.

24 THE VICE-CHAIR: Can I have a copy of

25 that? I am not entering it...

- 182 - C. Kohen

Ex-in-Ch (L. TAPP)

1 MR. TAPP: As soon as she is done we

2 will just do that.

3

4 BY MR. TAPP:

5 Q. You have seen those dates?

6 A. I have seen the lengthy report

7 referring to those dates. I am assuming they are

8 all in the bigger document...

9 Q. Yes, they are. They will be.

10 A. So...

11 Q. They will be.

12 A. Sure.

13 THE VICE-CHAIR: Okay.

14 MR. TAPP: Okay?

15 THE VICE-CHAIR: You will give it to

16 me...well, I won't need it, I suppose,

17 because I am going to get the whole book.

18

19 BY MR. TAPP:

20 Q. Would you be surprised, Ms. Kohen,

21 if the whole Platoon A was off that day, and Mr.

22 Filman wasn't even working that day? And Mr. Jack

23 was not working? The whole platoon?

24 A. Would I be surprised?

25 Q. Well, it is a point form chronology.

- 183 - C. Kohen

Ex-in-Ch (L. TAPP)

1 Surely it is documented in the note, but we won't

2 get there because Mr. Filman is appearing at a later

3 date.

4 A. And I am going to say it is best for

5 him to...him? Sorry?

6 Q. Yes.

7 A. Him to answer if the date is

8 incorrect or not. I can't...

9 Q. Fair enough.

10 A. I can't answer that.

11 Q. Now, is it not true that during one

12 of your...how many case conference calls did you

13 have with the detachment?

14 A. I would have to count them.

15 Q. Yes, please, review your notes. I

16 do believe there is more than one, but...

17 A. It would not surprise me if there is

18 just one.

19 Q. Yes. Maybe I can help you pinpoint

20 it.

21 A. Sure.

22 Q. Specifically around the time when

23 the detachment decided which platoon was appropriate

24 for him to be switched to.

25 THE VICE-CHAIR: August...

- 184 - C. Kohen

Ex-in-Ch (L. TAPP)

1 MR. TAPP: Okay.

2 THE WITNESS: That would have been...

3 sorry, my apologies, the August 31st date?

4 THE VICE-CHAIR: August 2009.

5 THE WITNESS: Okay, that would have

6 been...

7 MR. MANUEL: Well, there is a call

8 August 31st.

9 THE WITNESS: Yes, which is this one

10 here. That was referring to the one you

11 had me read through my notes.

12

13 BY MR. TAPP:

14 Q. Read through your notes.

15 A. Earlier.

16 Q. So, his new coach officer was going

17 to be Constable Richard Nie?

18 A. Yes.

19 Q. And you are familiar with him, I

20 take it?

21 A. Familiar as a result of this.

22 Q. As a result of that?

23 A. Meaning working with him.

24 Q. Working with him. Was that the

25 first time you worked with him?

- 185 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. Yes. I don't know if our paths have

2 crossed at the coach officer course, or...so, I

3 worked with a lot of coach officers across the

4 Province, so...

5 Q. Fair enough. Would you have any

6 recollection of having detachment management issues

7 regarding someone else by Coach Officer Mr. Nie?

8 MR. MANUEL: I object.

9 MR. TAPP: Okay, fair enough. True, Mr.

10 Vice-Chair?

11 THE VICE-CHAIR: M'hmm.

12 MR. TAPP: Okay.

13

14 BY MR. TAPP:

15 Q. Your performance conduct guidelines,

16 I would imagine they are done in congruence with OPP

17 orders?

18 A. Performance conduct letter?

19 Q. No, the probationary performance

20 conduct guidelines, that...

21 A. Oh, that?

22 Q. ...document that you prepared?

23 A. There is...whether it is a link in

24 police orders still, or whether it was in police

25 orders at that time, I don't know. Police orders is

- 186 - C. Kohen

Ex-in-Ch (L. TAPP)

1 considered a guideline.

2 Q. Police orders? Okay. I am going to

3 give you excerpts from volume 7 of 7 from the

4 respondent's disclosure, specifically I am going to

5 count the number of pages...

6 MR. MANUEL: Mr. Vice-Chair, this is not

7 how we treat...

8 THE VICE-CHAIR: Mr. Tapp, it is almost

9 5 after 4:00.

10 MR. TAPP: Okay, well, we won't be long

11 with her.

12

13 BY MR. TAPP:

14 Q. I want you to look at those OPP

15 orders, please.

16 A. Yes, sir.

17 Q. Okay. Can you tell me if any of

18 those performance evaluation reports that were

19 disclosed to him, and the timeliness of disclosure,

20 if they were in line with those OPP orders?

21 A. So, I am...

22 MR. MANUEL: We don't have a copy. It

23 is volume...

24 THE VICE-CHAIR: Here...

25 MR. MANUEL: Okay.

- 187 - C. Kohen

Ex-in-Ch (L. TAPP)

1 THE VICE-CHAIR: ...give it to him, and

2 I will enter that one.

3 THE WITNESS: Is there a particular area

4 you would like me to look at? I am sorry,

5 I am trying to read all the police orders

6 that...

7

8 BY MR. TAPP:

9 Q. Yes, okay, there is no need to.

10 Read the area specifically as to who is allowed to

11 do...who is authorized by the OPP to create his

12 performance evaluation reports.

13 A. They were...where it is...

14 THE VICE-CHAIR: Do you know where it

15 is, Mr. Tapp?

16 THE WITNESS: There we go, sorry, I

17 found it on the...starting on page 3, which

18 would be reflected to the coach officer,

19 and then it turns into page 4:

20 "...The responsibility of the coach officer

21 is to develop a plan of training suited in

22 the probationary constable's needs and

23 detachment priorities in accordance with

24 the recruit field guide, recruit field

25 training program, completing a monthly

- 188 - C. Kohen

Ex-in-Ch (L. TAPP)

1 performance review form on form PCS66P,

2 probationary constable performance

3 evaluation, for submission to the

4 probationary constable, immediate

5 supervisor and detachment commander at the

6 end of each month, and ensuring the

7 probationary constable is familiar with the

8 OPP mission statement contained in police

9 orders..."

10

11 BY MR. TAPP:

12 Q. Okay. And what are the duties of

13 the responsible supervisor regarding probationary

14 officers?

15 A. The supervisor?

16 Q. Yes.

17 A. So, supervisor meaning what I am

18 going to refer as platoon supervisor...

19 Q. Yes.

20 A. ...or...

21 Q. Of the probationary officer.

22 A. So, that would be on page 2:

23 "...An immediate supervisor shall be

24 responsible for the supervision of the

25 recruit field training program and

- 189 - C. Kohen

Ex-in-Ch (L. TAPP)

1 monitoring the coach officer and

2 probationary constable as they progress

3 through the recruit field training manual,

4 ensure the probationary constable was

5 offered every opportunity to participate

6 actively with their coach officer in all

7 phases of detachment work, confer with the

8 respective coach officer when commenting on

9 the probationary constable form PCS66P,

10 which is the probationary constable

11 performance..."

12 Q. There is no need to go on, thank

13 you.

14 A. Okay.

15 Q. Thank you very much. Now, the

16 probationary constable guidelines report that you

17 prepared...no, no, no. The document...

18 A. Yes?

19 Q. ...that you prepared. It also

20 parallels specific responsibilities in the one you

21 prepared.

22 A. Yes.

23 Q. Okay. It parallels some of the

24 responsibilities for a supervising officer of a

25 probationary?

- 190 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. Yes, and that would be on page 4,

2 but more in a bullet point format compared to the

3 details of police orders.

4 Q. Does it make any specific comment

5 about regular performance meetings?

6 A. No, sir.

7 Q. Okay, perfect. But is that a

8 responsibility of probationary supervisors to have

9 regular performance meetings with their

10 probationary?

11 A. And/or with the coach.

12 Q. And/or with the coach?

13 A. Correct.

14 Q. But it is mandatory...is it

15 mandatory that they have regular meetings?

16 A. No. It is mandatory that one of

17 them disclose the performance evaluation.

18 Q. Okay. But I had some questions

19 earlier about those three boxes.

20 A. Yes?

21 Q. So, one of them is specifically that

22 "I met and discussed"?

23 A. "I have met and discussed..."

24 Q. So...

25 A. "...to correct my performance..."

- 191 - C. Kohen

Ex-in-Ch (L. TAPP)

1 Q. ...that is...

2 A. "...with my coach or my accountable

3 supervisor".

4 Q. Good. So, would it not be true that

5 either the coach officer or the supervisor, it is

6 mandatory on them that that be complied with? That

7 box, that meeting?

8 A. That one of them should...

9 Q. One of them?

10 A. You can't...they shouldn't

11 be...there needs to be a discussion when the

12 probationary constable reviews the performance...

13 Q. Exactly.

14 A. ...review, whether with the coach or

15 with the supervisor or, in a perfect world, all

16 three of them.

17 Q. Yes, but that is mandatory, correct?

18 A. Yes.

19 Q. Because if it is not mandatory, it

20 would not be mentioned on the PER, right?

21 A. Correct. That is...

22 Q. Now...

23 A. ...good performance management.

24 Q. ...I direct your attention to page 1

25 of those OPP orders that...

- 192 - C. Kohen

Ex-in-Ch (L. TAPP)

1 A. Yes.

2 Q. ...have been given to you. Okay?

3 Where it says, towards the middle:

4 "...Evaluation period..."

5 MR. MANUEL: I don't think we are

6 reading the same thing.

7 MR. JACK: No, no. We read it out as an

8 exhibit yesterday. It is an exhibit. It

9 is the performance management program. It

10 is an exhibit, we just need one single

11 paragraph.

12 THE VICE-CHAIR: What exhibit is that,

13 Mr. Jack?

14 MR. JACK: I have to look it up.

15 MR. TAPP: Okay, we will tell you

16 exactly what exhibit that is.

17 MR. JACK: It was entered...

18 MR. MANUEL: It is Exhibit 106.

19 MR. VICE-CHAIR: 106, okay.

20

21 BY MR. TAPP:

22 Q. Can you read that section dealing

23 with immediate supervisor, please? Disclosure of

24 evaluation, rather?

25 A. Yes:

- 193 - C. Kohen

Ex-in-Ch (L. TAPP)

1 "...Immediate supervisor shall meet the

2 probationary constable to review each

3 evaluation prior to submission to the

4 detachment commander. At the discretion of

5 the supervisor, the coach officer shall

6 also be present at the meeting..."

7 Q. Thank you. So, would you not agree,

8 what I said earlier, that such a performance

9 evaluation meeting is a mandatory requirement?

10 A. With one of them, yes.

11 Q. Yes, okay.

12 A. That is what I would faciliate on a

13 coach course.

14 Q. Thank you very much, Mrs. Kohen. I

15 have kept you long enough.

16 A. That is fine.

17 MR. TAPP: I don't have any more

18 questions, Mr. Kohen, unless you have

19 anything to add. Okay. Subject to any

20 questions from Counsel, then I have no

21 further questions. Before she goes, we did

22 refer to her notes, the transcribed

23 version. So, we have got a copy of it,

24 Counsel has a copy. She...

25 MR. MANUEL: It doesn't become

- 194 - C. Kohen

Ex-in-Ch (L. TAPP)

1 evidence.

2 MR. TAPP: We haven't entered it as an

3 exhibit.

4 THE VICE-CHAIR: Well, we have entered

5 the notes, haven't we?

6 MR. TAPP: No, well, no, we haven't,

7 because we couldn't make out the

8 handwriting. No offence to you, Mrs.

9 Kohen.

10 THE WITNESS: No, I have heard that

11 before.

12 MR. TAPP: No, we haven't, sir. I

13 specifically said we will wait until the

14 end, the transcribed version.

15 THE VICE-CHAIR: We haven't entered the

16 notes.

17 MR. TAPP: Yes, so...

18 THE VICE-CHAIR: Are we entering the

19 notes?

20 MR. TAPP: Yes, we are, please. Five

21 pages, and the other transcribed notes...

22 THE VICE-CHAIR: Where are the notes?

23 MR. TAPP: They are...

24 THE VICE-CHAIR: Well, that is

25 transcribed.

- 195 - C. Kohen

Ex-in-Ch (L. TAPP)

1 MR. TAPP: Okay. We will...okay, Mrs.

2 Kohen. These are your notes, and

3 underneath them, I believe, in your copy

4 you have the transcribed version. Am I

5 correct?

6 THE WITNESS: Yes.

7 MR. TAPP: Okay.

8 MR. MANUEL: Can I compare that to what

9 we have?

10 MR. TAPP: Yes, please.

11 THE VICE-CHAIR: Thank you.

12 MR. MANUEL: If I could just ask you one

13 question on return. Did you do this

14 transcript of your notes? Did you review

15 it for accuracy?

16 THE WITNESS: I don't recall, sir.

17 MR. MANUEL: Okay.

18 MR. TAPP: Well, subject to anything

19 Counsel has to say, if you take a quick

20 review of that, would you be able to concur

21 that that transcribed version from...you

22 can read your own notes?

23 THE WITNESS: Yes, I...

24 MR. TAPP: So, would you agree with that

25 transcript? And once you can authenticate

- 196 - C. Kohen

Ex-in-Ch (L. TAPP)

1 it...

2 MR. MANUEL: Can the witness do this on

3 her own time, and can we not subsequently

4 advise?

5 THE VICE-CHAIR: Sure, anything for

6 expedience.

7 MR. MANUEL: Is that agreeable to you?

8 THE WITNESS: Yes, it would...I am going

9 to be honest. It would take me...

10 THE VICE-CHAIR: Yes.

11 THE WITNESS: ...some time to...

12 MR. TAPP: Okay.

13 THE WITNESS: I can...

14 MR. MANUEL: Once you confirm the

15 transcript, make whatever edits you believe

16 are needed, then we will accept that as an

17 exhibit.

18 MR. TAPP: That is fair. And we also

19 referred to and showed, and she answered a

20 couple of questions regarding September 11

21 and 7, that Counsel gave us just a few

22 minutes ago. We would like that entered as

23 an exhibit, please, two pages of Mr. Jack's

24 notes.

25 MR. MANUEL: So, first of all, if we are

- 197 - C. Kohen

Ex-in-Ch (L. TAPP)

1 going to mark...we are going to leave

2 Exhibit 126 as the transcript of this

3 witness' notes...

4 MR. TAPP: Yes.

5 MR. MANUEL: ...to be supplied. That is

6 the number that I am on.

7 THE VICE-CHAIR: Okay. I have got 125,

8 the witness' notes.

9 MR. MANUEL: No, I didn't...

10 THE VICE-CHAIR: No transcription, just

11 her notes.

12 MR. MANUEL: I have got 125 as point

13 form chronology.

14 THE VICE-CHAIR: We haven't entered that

15 yet.

16 MR. TAPP: Yes, that was...

17 THE VICE-CHAIR: Remember, they used a

18 few pages of it.

19 MR. MANUEL: Okay, so we are not going

20 to mark that...

21 THE VICE-CHAIR: And I said, no, I won't

22 enter that. I want the whole book.

23 MR. TAPP: Yes.

24 THE VICE-CHAIR: They are going to give

25 us the book tomorrow, so...

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Ex-in-Ch (L. TAPP)

1 MR. TAPP: Tomorrow.

2 THE VICE-CHAIR: So, I will enter it

3 tomorrow.

4 MR. MANUEL: Okay.

5 THE VICE-CHAIR: I have asked everybody

6 to remember that I have asked for that book

7 and we have to enter it.

8 MR. TAPP: It is just that we have it

9 down...

10 THE VICE-CHAIR: I understand. So, 125

11 is the witness' notes...

12 THE WITNESS: Notes.

13 MR. TAPP: Original notes.

14 THE VICE-CHAIR: ...original notes, not

15 transcribed.

16 MR. TAPP: And we can make a separate

17 exhibit for the transcribed notes tomorrow,

18 that she will verify it, and when we give

19 you...

20 THE VICE-CHAIR: When we get

21 verification, we can enter it, yes.

22 MR. MANUEL: I am just suggesting that

23 we save an exhibit number for it, so that

24 it is in order.

25 THE VICE-CHAIR: We are at 125.

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Ex-in-Ch (L. TAPP)

1 MR. MANUEL: Okay.

2 MR. TAPP: What is 126?

3 THE VICE-CHAIR: Nothing.

4 MR. TAPP: No, but OPP orders...

5 THE VICE-CHAIR: Okay, the...126 is

6 going to be...

7 MR. TAPP: There were eight pages.

8 THE VICE-CHAIR: Of what? Oh, the

9 orders.

10 MR. TAPP: Yes, the OPP orders.

11 MR. MANUEL: We would like a copy of

12 that.

13 MR. TAPP: Yes, actually.

14 THE VICE-CHAIR: Yes, and I don't think

15 I have that, either.

16 MR. TAPP: Here. The witness is

17 finished with hers. Here are the eight

18 pages. That is from volume 7 of 7.

19 THE VICE-CHAIR: And then?

20 MR. TAPP: So, Mrs. Kohen, if you can

21 just take the time to compare the

22 transcribed notes...

23 THE WITNESS: Yes.

24 MR. TAPP: ...to your actual notes, and

25 give us an answer. You got these notes?

- 200 - C. Kohen

Ex-in-Ch (L. TAPP)

1 THE WITNESS: Yes, I did.

2 THE VICE-CHAIR: So, the OPP orders are

3 126, and we are going to enter...

4 MR. MANUEL: Two pages of Mr. Jack's

5 notes.

6 THE VICE-CHAIR: ...Mr. Jack's notes as

7 127, at two pages.

8

9 --- EXHIBIT NO. 125: Original notes of Colleen Kohen

10

11 --- EXHIBIT NO. 126: OPP orders, 8 pages

12

13 --- EXHIBIT NO. 127: 2 pages of Mr. Jack's police notes

14

15 MR. JACK: I would like to thank Counsel

16 for this. From the bottom of my heart, I

17 have been waiting for this for years. MR.

18 MR. MANUEL: Why?

19 MR. JACK: Because they were withheld.

20 MR. MANUEL: Well, you use these

21 pejorative words. You say, "Thank you",

22 and then use...

23 THE VICE-CHAIR: Okay. Until tomorrow,

24 you are excused...

25 THE WITNESS: Sir, I still have a couple

- 201 - C. Kohen

Ex-in-Ch (L. TAPP)

1 of documents. I don't know if they have

2 been entered.

3 THE VICE-CHAIR: Okay. Give them back

4 to Mr. Tapp.

5 MR. TAPP: Yes. The probationary

6 constable guideline, the complete one. I

7 believe previously we entered only one

8 page. So, this is a complete one that Ms.

9 Kohen compiled. What was the previous...

10 MR. JACK: I believe it is 122.

11 THE VICE-CHAIR: Yes, it is 122. I am

12 just checking that I have it.

13 MR. TAPP: Yes, you have it. Okay, he

14 has got it.

15 THE WITNESS: And then my internal

16 briefing note.

17 MR. TAPP: Yes.

18 THE VICE-CHAIR: Yes.

19 THE WITNESS: I just don't want...

20 THE VICE-CHAIR: Internal briefing

21 note...

22 THE WITNESS: Completed by myself.

23 THE VICE-CHAIR: Okay, that is 124.

24 MR. TAPP: Three-page document, I don't

25 know if you have it.

- 202 - C. Kohen

Ex-in-Ch (L. TAPP)

1 THE VICE-CHAIR: Internal briefing

2 notes, three-page document. No, it doesn't

3 look like it.

4 MR. MANUEL: 124, I have a copy of 124.

5 Mr. Vice-Chair will ignore the

6 highlighting.

7 THE VICE-CHAIR: Yes. Okay, Exhibit

8 124.

9 MR. TAPP: That is 124, that briefing

10 report.

11 THE VICE-CHAIR: Okay. I think that is

12 it for the day.

13 MR. TAPP: It is a long day.

14 THE VICE-CHAIR: So, tomorrow...

15 MR. TAPP: I don't anticipate tomorrow

16 being a whole day. I will be very, very

17 clear.

18 THE VICE-CHAIR: Good, because it is

19 Friday...

20 MR. TAPP: It is Friday.

21 THE VICE-CHAIR: ...before a long

22 weekend.

23 MR. TAPP: And that is why I only wanted

24 two witnesses on Friday.

25 THE VICE-CHAIR: Good thinking.

- 203 - C. Kohen

Ex-in-Ch (L. TAPP)

1 MR. MANUEL: So, can we just go off the

2 record?

3

4 --- upon adjourning at 4:20 p.m.

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2

3

4 REPORTER'S NOTE:

5

6 I hereby certify the foregoing to be a true and accurate

7 transcription of the above-noted proceedings held before me on the

8 11th DAY OF FEBRUARY, 2016, and taken to the best of my skill,

9 ability and understanding.

10

11 }

12 } Certified Correct:

13 }

14 }

15 }

16 }

17 }

18 } \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

19 } Arianna Rodriguez

20 } Verbatim Reporter

21