Trubunal File No. 2010-0763-I

HUMAN RIGHTS TRIBUNAL OF ONTARIO

AMR/vk

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

HELD BEFORE: Keith Brennenstuhl, Vice-Chair

HELD AT: Human Rights Tribunal of Ontario

655 Bay Street, 14th Floor

Toronto, Ontario

HELD ON: February 8, 2016

---------------------------

A P P E A R A N C E S:

LLOYD TAPP --- for the Applicant

BILL MANUEL } --- for the Respondents

HEIDI BLUTSTEIN }

AISHA AMADE }

(Student-at-Law) }

A L S O P R E S E N T:

Michael Jack

- 2 -

INDEX OF PROCEEDINGS

PAGE NUMBER

BRADLEY RATHBUN, affirmed

Examination by Mr. Tapp .................. 1 - 74

General Discussion ....................... 74 - 76

MARC GRAVELLE, affirmed

Examination by Mr. Tapp .................. 76 - 151

General Discussion ....................... 151 - 154

KEVIN DUIGNAN, affirmed

Examination by Mr. Tapp .................. 154 - 175

General Discussion ....................... 176 - 180

Index of Exhibits ........................ 179

- 3 - B. Rathbun

Ex (L. TAPP)

1 --- upon convening at 9:30 a.m.

2 --- upon commencing at 9:35 a.m.

3

4 THE VICE-CHAIR: Sir, would you, please,

5 state your full name?

6 THE WITNESS: My full name is Bradley

7 Scott Rathbun. Surname is spelled, R-A-T-H-B-U-N.

8 THE VICE-CHAIR: Now, Mr. Rathbun, you

9 are about to give evidence before the Human Rights

10 Tribunal, and the tribunal is dependent on you

11 telling the truth. Do you solemnly affirm to tell

12 the truth?

13 THE WITNESS: I do, yes.

14 THE VICE-CHAIR: And, of course, you

15 appreciate that it is an offence at law if you break

16 that promise?

17 THE WITNESS: Yes, I understand.

18 THE VICE-CHAIR: Mr. Tapp.

19

20 BRADLEY RATHBUN, affirmed

21 EXAMINATION BY MR. TAPP:

22 Q. Mr. Rathbun, do you know Michael

23 Jack?

24 A. I do.

25 Q. Okay. Was Mr. Jack ever a constable

- 4 - B. Rathbun

Ex (L. TAPP)

1 at the Peterborough detachment of the OPP?

2 A. He was. He was a probationary

3 constable at that detachment, yes.

4 Q. Thank you. Were there other

5 recruits from his graduating class that were posted

6 at the detachment?

7 MR. MANUEL: I object. What is the

8 relevance of that?

9 THE VICE-CHAIR: Okay.

10 MR. TAPP: The applicant has testified,

11 and each...it is the applicant's position,

12 through based on his testimony, that there

13 were four officers that came to the

14 detachment. And this tribunal will recall

15 that towards the end there was an analogy

16 drawn, that was put forth very clearly, the

17 applicant was the only one to not be

18 granted permanent status.

19 So in light of amplifying and

20 stressing that point it is true that each

21 of the platoons received one of the four

22 recruits. Mr. Rathbun is in charge of one

23 such platoon, so...

24 THE VICE-CHAIR: Well, I don't know

25 that. I don't even know who this gentleman

- 5 - B. Rathbun

Ex (L. TAPP)

1 is at this point in time.

2 MR. TAPP: Okay.

3 THE VICE-CHAIR: Okay.

4

5 BY MR. TAPP:

6 Q. What is your rank at Peterborough

7 detachment, Mr. Rathbun?

8 A. At Peterborough detachment I'm a

9 shift supervisor and my rank is sergeant.

10 Q. Sergeant. Would you have been a

11 sergeant in 2009, when Mr. Jack was there?

12 A. I was, yes.

13 Q. Were you in charge of a platoon?

14 A. Yes, I was.

15 Q. Are you in charge of the same

16 platoon?

17 A. No.

18 Q. In 2009, when Mr. Jack was there,

19 what platoon were you in charge of?

20 A. To the best of my recollection, I

21 believe I was in charge of C platoon.

22 Q. Thank you. So what would be your

23 duties as a supervisor in C platoon?

24 A. My duties were many. My job is to

25 supervise the constables that are on the platoon.

- 6 - B. Rathbun

Ex (L. TAPP)

1 There is a massive amount of administrative duties

2 that I have to do as far as scheduling, assigning

3 particular details, perhaps, approving overtime. It

4 is a multitude of assignments.

5 It is, essentially, supervising the

6 constables that are on the road. The constables are

7 the first officers in answering calls for service.

8 My job is to be their supervisor, perhaps back them

9 up at calls, go to specific calls that require the

10 attendance of a supervisor, and perform my duties in

11 that fashion, and then all of the administrative

12 stuff that goes along with it.

13 Q. To the best of your recollection was

14 Mr. Jack the only recruit to come to Peterborough

15 detachment in that year?

16 MR. MANUEL: I object. It is my

17 submission it is irrelevant. It would be a

18 travesty to turn this into an examination

19 of what happened to all other recruits.

20 This is about Mr. Jack, and whether Mr.

21 Jack was discriminated against.

22 We haven't produced...I mean, we

23 would get into why those other ones were

24 all...I mean, it is irrelevant. The fact

25 that he identifies himself as the only one

- 7 - B. Rathbun

Ex (L. TAPP)

1 who was let go, the issue is, was he

2 discriminated against?

3 It is irrelevant. I can't let this

4 hearing...this hearing will just morph

5 into...uncontrollable. It is irrelevant,

6 in my respectful submission.

7 THE VICE-CHAIR: I agree with...

8 MR. TAPP: The only point we are trying

9 to make of you, Mr. Vice-Chair, is to

10 acknowledge that his platoon got a

11 probationary recruit as well, like Mr.

12 Jack.

13 THE VICE-CHAIR: Say that again?

14 MR. TAPP: We are only trying to

15 ascertain whether his platoon also got a

16 probationary recruit.

17 THE VICE-CHAIR: Well, ask the question.

18 MR. TAPP: Thank you. We are not

19 concerned about the other platoons.

20 THE VICE-CHAIR: Okay.

21

22 BY MR. TAPP:

23 Q. Specifically Mr. Rathbun. So, Mr.

24 Rathbun, could you tell us if your platoon got a

25 probationary recruit?

- 8 - B. Rathbun

Ex (L. TAPP)

1 A. I fully believe that it did. I may

2 not have had that answer a few days ago, but upon

3 reading the documentation that you issued as

4 reference to what I was going to be questioned

5 about, I saw a reference to which platoon certain

6 recruits went to, and that triggered my memory to

7 the fact that, yes, I did get one, so on this date I

8 believe, I am quite certain that recruit came to my

9 shift as well.

10 Q. Thank you. So was Mr. Jack ever a

11 constable on your platoon?

12 A. No.

13 Q. Are you able to recall what platoon

14 he would have been on?

15 A. I believe he went to A platoon.

16 Q. Thank you. As a position of a

17 sergeant would there be management meetings that

18 would involve sergeants?

19 MR. MANUEL: What is the relevance of

20 that? Let's relate it to Mr. Jack, with

21 respect.

22 MR. TAPP: Yes, it is.

23 MR. MANUEL: That is what this hearing

24 is about.

25 MR. TAPP: It is, because we are leading

- 9 - B. Rathbun

Ex (L. TAPP)

1 up to the document that Mr. Rathbun

2 tendered on August 5th, 2008.

3 THE VICE-CHAIR: Why don't we get to it?

4 Show him the document.

5 MR. TAPP: Okay. I'm getting there.

6

7 BY MR. TAPP:

8 Q. Was Mr. Gravelle on your platoon,

9 Mr. Rathbun?

10 A. I know two Mr. Gravelles that work

11 out of our detachment.

12 Q. Marc Gravelle specifically.

13 A. Yes. I believe he was on my

14 detachment at that time.

15 Q. How about in 2008, was Marc Gravelle

16 on your platoon, specifically in the summer of 2008?

17 A. I believe he was. And I believe

18 that was the time period that I answered the

19 previous question about. Perhaps...maybe I should

20 get you to refer, what time period was that first

21 question about? I indicated to Mr. Gravelle...

22 Q. I will show you.

23 A. ...I thought it meant 2008. Now you

24 are asking specifically 2008, so I'm not sure...

25 Q. Well, when Mr. Jack came to the

- 10 - B. Rathbun

Ex (L. TAPP)

1 platoon, Mr. Jack arrived...

2 A. What date was that?

3 MS. BLUTSTEIN: 2009.

4

5 BY MR. TAPP:

6 Q. I can't give you the answer, but you

7 agree that you got a new recruit in 2009?

8 A. To the best of my knowledge, yes.

9 Q. Yes. You agree that Mr. Jack came

10 to the detachment in 2009?

11 A. To the best of my knowledge, yes.

12 Q. Could you recall, not the specific

13 date, but the month that your recruit came to the

14 detachment in 2009?

15 A. I would have to look up some notes.

16 Q. Fair enough.

17 A. I'm sorry.

18 Q. Do you recall a specific meeting

19 with Mr. Jack sometime prior to 2009?

20 A. A meeting with Mr. Jack and myself?

21 Q. Yes.

22 A. I met Mr. Jack before he was

23 assigned to Peterborough detachment. If...that,

24 very well, could have been prior to 2009.

25 MR. TAPP: Excellent, but now I can show

- 11 - B. Rathbun

Ex (L. TAPP)

1 you. Rather than have counsel and you, Mr.

2 Vice-Chair, leaf through your documents,

3 Mr. Jack is handing out copies.

4 THE VICE-CHAIR: Thank you.

5 MR. TAPP: We have had them disclosed.

6 THE VICE-CHAIR: Just give me a moment.

7 I do have, in this mass of material...

8 MR. TAPP: We will wait.

9 THE VICE-CHAIR: We have the exhibit

10 list. Do you know what number we are at in

11 terms of exhibits?

12 MR. MANUEL: As I have it. it is the

13 last one that was marked as Exhibit 92.

14 THE VICE-CHAIR: Ninety-two, okay.

15 Okay, Mr. Tapp.

16

17 BY MR. TAPP:

18 Q. Mr. Rathbun, I'm going to direct

19 your attention to an e-mail on the top of that page,

20 August 5th, 2008, 12:01 a.m. Now, rather than have

21 you read the contents of the e-mail, if you can just

22 put it down and just tell us your recollection of

23 that, having glanced it over?

24 A. Mr. Jack was slated to be assigned

25 to Peterborough detachment as a new recruit. After

- 12 - B. Rathbun

Ex (L. TAPP)

1 my meeting with Mr. Jack, and more so after comments

2 made to me by officers, or specifically an officer

3 that did ride along with him, there were some

4 concerns that were brought to my attention.

5 It would have been neglectful on my part

6 not to bring those concerns to command staff, and as

7 such I authored an e-mail to bring those attentions

8 forward, those concerns forward.

9 Q. And, of course, what you just said

10 is, basically, the summary of what is contained in

11 that e-mail?

12 A. I would agree with that, yes.

13 Q. You said one officer brought some

14 concerns to your attention, who was that officer?

15 A. The main officer that I can recall

16 was Constable Marc Gravelle.

17 Q. Thank you. Would it be safe to say

18 that he was the source of your information for the

19 August 5th, 2008 e-mail?

20 A. My recollection, from writing this

21 e-mail, was that I had heard the same concerns from

22 two different officers, but I don't recall who the

23 second one was. I know that Constable Pollock was

24 another officer that was slated to ride with Mr.

25 Jack, expressed the same concerns to me, but I

- 13 - B. Rathbun

Ex (L. TAPP)

1 believe it was after I authored this e-mail, so who

2 a second officer was I...my recollection is upon

3 authoring this e-mail I had heard that concern by

4 two different...two separate officers.

5 Q. Am I correct in understanding that

6 you based that e-mail based on the concerns from two

7 officers?

8 A. Two other officers and myself.

9 Q. One of whom was Marc Gravelle, you

10 indicated.

11 A. Correct.

12 Q. And the other...the other officer?

13 A. I have indicated I don't recall.

14 Q. I thought you mentioned a name.

15 "Pollock"?

16 A. Constable Pollock I had also heard

17 concerns about, but I indicated that his concerns

18 may have come to me after I authored this e-mail, so

19 the time frame of that I can't entirely recall with

20 100 percent accuracy whether I had heard from him

21 before this e-mail or after the fact. So I just

22 want that, kind of, caution out there as to...not to

23 mislead.

24 Q. Would you not agree that you, just a

25 few seconds ago, indicated that your concerns were

- 14 - B. Rathbun

Ex (L. TAPP)

1 based...this e-mail, your concerns were based on the

2 information relayed by two officers?

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

4 has got to listen to the witness, and

5 understand the evidence, or we are not

6 going to get anywhere here. It is very

7 clear that this officer said he heard from

8 two officers before the e-mail. He knows

9 one was Gravelle...

10 THE VICE-CHAIR: But he can't remember.

11 Yes, and the other one...

12 MR. MANUEL: ...and the other one he

13 can't remember. He heard from Officer

14 Pollock, but he thinks he heard from

15 Officer Pollock after the e-mail.

16 THE VICE-CHAIR: After he authored the

17 letter...

18 MR. MANUEL: You have to listen to the

19 evidence, sir.

20 MR. TAPP: Okay. That is very nice of

21 Counsel to clear up that issue.

22

23 BY MR. TAPP:

24 Q. I direct your attention to the very

25 last sentence of that e-mail. Can you read it out

- 15 - B. Rathbun

Ex (L. TAPP)

1 loud to this tribunal, please?

2 A. Are you referring to the first

3 e-mail?

4 Q. The first e-mail, August 5th, 12:01

5 a.m., the last sentence.

6 A. The last sentence reads:

7 "...I understand this recruit may be riding

8 with PC Pollock today (05 August 2008)..."

9 Q. Would you not agree then that your

10 concerns that were relayed in that e-mail have to

11 only come from Marc Gravelle and not Pollock?

12 MR. MANUEL: It is cross-examination.

13 He has got the...the witness has answered

14 this question. This is not a proper

15 question.

16 MR. TAPP: We will reword it.

17

18 BY MR. TAPP:

19 Q. Well, then, Mr. Rathbun, how can you

20 say that e-mail was based on concerns from two

21 officers?

22 MR. MANUEL: That is his evidence, sir.

23 With respect, Mr. Vice-Chair, that is his

24 evidence.

25 THE VICE-CHAIR: Yes, that is his

- 16 - B. Rathbun

Ex (L. TAPP)

1 evidence.

2 MR. TAPP: Fair enough.

3 THE VICE-CHAIR: Two officers, one

4 Gravelle, the other one he can't recall.

5 MR. TAPP: Okay.

6

7 BY MR. TAPP:

8 Q. Based on that last sentence would

9 you agree that it is...what does it suggest? Put it

10 that way. What does the last sentence suggest, Mr.

11 Rathbun?

12 MR. MANUEL: Doesn't suggest anything,

13 with respect.

14 THE WITNESS: Yes. I...

15

16 BY MR. TAPP:

17 Q. Can you explain the last sentence?

18 Put it that way.

19 A. The last sentence suggests, or

20 explains that my understanding was that the recruit

21 may be riding with Constable Pollock later that day.

22 Q. And based on the time of your e-mail

23 what shift would you have been working on that day?

24 A. I would have been working a night

25 shift.

- 17 - B. Rathbun

Ex (L. TAPP)

1 Q. Pollock would have been on your

2 platoon?

3 A. I don't recall. Constable Pollock

4 is a member of the Emergency Response Team. At this

5 stage and time they work different shifts than the

6 four basic platoons. And back at this time I don't

7 recall what their shifts were in comparison to ours.

8 So I would suggest, if I'm saying that

9 Pollock...he might be riding with Constable Pollock

10 on that day, then Mr. Pollock is not working the

11 same shift I'm working the night shift. I expect my

12 only assumption could be that Pollock will be

13 working a day shift, perhaps later that same day.

14 Q. Later that day. And later that day

15 he would be, according to that sentence, taking Mr.

16 Jack on a ride-along?

17 A. Correct.

18 Q. Thank you. So you said you sent

19 that e-mail to, correct me if I'm wrong, detachment

20 management?

21 A. That is correct.

22 Q. Detachment management where?

23 A. At Peterborough detachment, of the

24 Ontario Provincial Police.

25 Q. Who would comprise detachment

- 18 - B. Rathbun

Ex (L. TAPP)

1 management?

2 A. That was Staff Sergeant Ron Campbell

3 and Inspector Mike Johnston.

4 Q. Would you be considered a member of

5 detachment management?

6 A. I believe I would, yes.

7 Q. Okay. So that is your e-mail; am I

8 correct?

9 A. To the best of my recollection I

10 would not have any problem agreeing that this is my

11 e-mail. I do recall authoring the e-mail, that

12 sounds like the way I would have constructed it.

13 And it looks like it certainly would have been mine,

14 yes. I don't have any disputes on that.

15 Q. Mr. Rathbun, I'm going to ask you

16 two questions, and they are very pertinent to the

17 rest of the questions that I have; okay? Are you

18 aware...can you tell me the definition, your

19 definition of the word "prejudice"?

20 A. My definition of the word

21 "prejudice" would be to have a preconceived opinion

22 or mindset against something or someone based on a

23 basic or general set of facts.

24 Q. Would you agree with the following

25 definition of "prejudice" taken from dictionary.com:

- 19 - B. Rathbun

Ex (L. TAPP)

1 "...An unfavourable opinion or feeling

2 formed beforehand or without knowledge,

3 thought or reason..."

4 A. Can you read that to me again,

5 please?

6 Q. Yes:

7 "...An unfavourable opinion or feeling

8 formed beforehand or without knowledge,

9 thought or reason..."

10 A. For the most part I would agree with

11 that, except the word "unfavourable". I don't think

12 prejudice has to necessary be unfavourable, but the

13 rest of it, I would say for the most part I agree

14 with.

15 Q. Would you agree with the following

16 definition of "prejudice" taken from Google

17 dictionary?

18 MR. MANUEL: Really, Mr. Vice-Chair,

19 this is getting...

20 THE VICE-CHAIR: Yes. This is too much.

21 Move on.

22

23 BY MR. TAPP:

24 Q. Would "preconceived opinion" be

25 another word for "unfavourable opinion"?

- 20 - B. Rathbun

Ex (L. TAPP)

1 A. No.

2 Q. Who was the source of your

3 information in that e-mail?

4 MR. MANUEL: It has been asked and

5 answered.

6 THE VICE-CHAIR: It has been.

7 MR. TAPP: Fair enough.

8

9 BY MR. TAPP:

10 Q. Mr. Rathbun, as a sergeant are you

11 familiar with an acronym CFRO?

12 A. Yes.

13 Q. Can you tell this tribunal what that

14 acronym stands for?

15 A. Canadian Firearms Registry Office.

16 Q. Can you explain to this tribunal

17 when an officer, or even you, might want to access

18 that registry?

19 A. An officer might want to access that

20 registry if you are going to a call, and you want to

21 determine if the people that you are dealing with

22 have any firearms registered to themselves. You

23 would want to access that registry if someone is

24 applying for a firearms licence of any sort, any

25 class of licence to deal with acquiring or

- 21 - B. Rathbun

Ex (L. TAPP)

1 possessing firearms.

2 You would deal with that registry to find

3 the owner of a firearm that is located, in one

4 fashion or another, to see if that registry has

5 information that would help you find the owner of

6 that registered firearm. And you would probably

7 access that registry to confirm someone's ownership

8 or possession of firearms, and perhaps even in the

9 recruiting process with officers applying for

10 employment with the police service.

11 Q. Fair enough, but you did indicate

12 you could access it to confirm firearms to a person?

13 A. To a certain degree, yes.

14 Q. At the detachment did you have your

15 own office or share it with anyone or can you tell

16 us a little bit about that?

17 A. I'm sorry, I don't understand the

18 question.

19 Q. At the detachment, when you were a

20 supervisor of your C platoon did you have your own

21 office or did you have it with another supervisor?

22 A. Yes, for my entire time at

23 Peterborough detachment the shift sergeants have all

24 shared one office.

25 Q. And from that, it would stand to

- 22 - B. Rathbun

Ex (L. TAPP)

1 reason, that, on occasion, sharing one office, you

2 would run into each other?

3 A. Yes.

4 Q. Did you have an OPP computer at your

5 desk?

6 A. Yes.

7 Q. You have access to CFRO checks as

8 well from that computer?

9 A. I'm not sure. I have never accessed

10 it, so I...I, honestly, don't know that answer.

11 Q. You have access to CPIC from that

12 computer?

13 A. Yes.

14 Q. Tell this tribunal what "CPIC"

15 stands for, please?

16 A. I believe it is Canadian Police

17 Information Centre. It is the RCMP database for

18 people that are charged, got criminal records,

19 stolen items, missing persons.

20 Q. So if you had access to one police

21 database would you not have access to another...

22 MR. MANUEL: Asked and answered, sir.

23 THE VICE-CHAIR: Yes, he has answered

24 that.

25

- 23 - B. Rathbun

Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Then would you agree from that

3 computer, or at least from another computer at the

4 detachment, you would have had access to the CFRO

5 database?

6 A. I would believe I would.

7 Q. But you did say that, in your

8 description of when an officer might want to access

9 it, you did indicate to verify a number of firearms?

10 A. To verify ownership...

11 Q. Of a firearm.

12 A. ...of firearms, yes.

13 Q. That would mean verifying any

14 firearms of a particular individual?

15 A. That is no longer the case, because

16 there are...

17 Q. But at that time, 2009?

18 A. At that time I'm not sure the status

19 of the firearms registry back in 2009. There was a

20 time when it was up and running, and you could

21 access information on verifying possession, or

22 people that owned firearms, if they had them

23 registered.

24 There was an amnesty period. There were

25 people that weren't registering firearms, so the

- 24 - B. Rathbun

Ex (L. TAPP)

1 system was not 100 percent, and it wasn't

2 completely...it wasn't completed yet either. There

3 was still a long time that it was going to take to

4 get all the firearms registered.

5 They have since changed the firearms

6 registry, taking out the requirement for long guns.

7 So it has never been a foolproof or a totalitary

8 system of being able to find out all the information

9 you want.

10 Q. Thank you for that. Where did you

11 get the information of the number of firearms in

12 that e-mail? Would it have been Mr. Gravelle?

13 A. My best guess would be that that is

14 where that information came from, yes, but I can't

15 say with 100 percent certainty.

16 Q. Mr. Rathbun, did you do a CFRO check

17 to confirm what Mr. Gravelle was telling you?

18 A. Not to my knowledge, no.

19 Q. Would you agree that you could have?

20 MR. MANUEL: Hasn't he answered that?

21 MR. TAPP: No. That question was never

22 posed to him.

23 THE WITNESS: I believe I could have if

24 I couldn't have...doing it myself. I

25 certainly could have called our dispatch

- 25 - B. Rathbun

Ex (L. TAPP)

1 and had them do it, so I could have

2 accessed that information in one fashion or

3 another, yes, I certainly could have.

4

5 BY MR. TAPP:

6 Q. That would explain if an officer can

7 do it, and you are supervising officers, that you

8 are to, or you could have done it?

9 MR. MANUEL: He has answered that.

10 THE VICE-CHAIR: Yes, he has answered

11 that.

12 MR. TAPP: Thank you. I'm doing my

13 best. I don't have your education, but it

14 is coming. I am waiting for Mr. Jack to

15 hand out another document. In counsel's

16 disclosure regarding Mr. Rathbun's intended

17 questions, I will direct counsel's

18 attention to an August 8th, 2008 e-mail.

19 THE VICE-CHAIR: Before we move on, did

20 you want to enter...

21 MR. TAPP: Pardon me. Absolutely. Mr.

22 Vice-Chair, could we enter the last one

23 that we based questions on, August 5th?

24 THE VICE-CHAIR: So that is Exhibit 93.

25 Good. Thank you. So Exhibit 93 is an

- 26 - B. Rathbun

Ex (L. TAPP)

1 e-mail.

2

3 --- EXHIBIT NO. 93: E-mail dated August 5, 2008

4

5 MR. TAPP: I mean, there are two e-mails

6 on the page. We will get back to the

7 second one.

8 THE VICE-CHAIR: Mr. Tapp?

9

10 BY MR. TAPP:

11 Q. Before we get to that e-mail,

12 looking at the August 5th, Mr. Rathbun, in that big

13 paragraph, in the middle, which will be the fourth

14 from the bottom...

15 A. Yes.

16 Q. ...over the second line, can you

17 read the second line up to the period? There are

18 five words.

19 A. It starts with "apparently", is that

20 the line you are referring to?

21 Q. Yes.

22 A. "Apparently has 32 registered guns."

23 Q. What would that suggest to you?

24 MR. MANUEL: I don't understand that

25 question, what does it suggest.

- 27 - B. Rathbun

Ex (L. TAPP)

1 THE VICE-CHAIR: Where...

2 MR. TAPP: August 5th.

3 THE VICE-CHAIR: Where is the witness

4 reading from?

5 MR. TAPP: August 5th, 2008, 12:01,

6 Exhibit 97, we just entered.

7 MR. MANUEL: Ninety-three.

8 THE VICE-CHAIR: Ninety-three?

9 MR. TAPP: Ninety-three, pardon me.

10 Fourth paragraph, second line.

11 THE VICE-CHAIR: Okay.

12 MR. MANUEL: "Apparently has 32

13 registered guns."

14 THE VICE-CHAIR: "Guns."

15

16 BY MR. TAPP:

17 Q. And what does that mean to you?

18 A. It means to me that somebody

19 believed he has 32 registered guns.

20 Q. Thank you. Now, going to the August

21 8, 2008 e-mail that we just handed out...

22 THE VICE-CHAIR: I must be obtuse. I

23 don't see that. We are dealing with the

24 August 5th, e-mail, "32 registered guns", I

25 don't see that.

- 28 - B. Rathbun

Ex (L. TAPP)

1 MR. TAPP: It is in the fourth paragraph

2 in that August 5th, 12:01 a.m.

3 THE VICE-CHAIR: Okay. Perfect. Okay.

4

5 BY MR. TAPP:

6 Q. Now, that August 8th e-mail, that is

7 timed at 4:38 p.m., can you tell us who it is from

8 and addressed to who, please?

9 A. It is from Joanne Whitney, addressed

10 to myself and Steve Haennel.

11 Q. Well, we know who Joanne Whitney is,

12 based on the bottom of that e-mail, but who would

13 Steve Haennel be?

14 A. Steve Haennel is also a sergeant

15 with the Ontario Provincial Police. I believe in

16 that time he was working in the recruiting section.

17 Q. He was working the recruiting

18 section?

19 A. Recruiting or human resources. I'm

20 not sure which.

21 Q. Fair enough.

22 A. He was not a road supervisor.

23 Q. Can you read the second last line of

24 that e-mail, please?

25 A. The line that says "thanks"?

- 29 - B. Rathbun

Ex (L. TAPP)

1 Q. August 8th.

2 A. The line that starts, "Thanks for

3 taking"?

4 Q. August 8th, 2008, 4:38 p.m. Second

5 line, it starts with the word "A CPIC".

6 A. "...A CPIC check was conducted in

7 regards to CFRO and found that he has 22

8 firearms registered to him at this time..."

9 Q. Thank you. And that would be a CPIC

10 check that you also would have had access to at the

11 detachment?

12 MR. MANUEL: Asked and answered.

13 THE VICE-CHAIR: It has been asked and

14 answered.

15 MR. TAPP: Okay.

16

17 BY MR. TAPP:

18 Q. So comparing that statement to the

19 information in your August 5th e-mail of what Mr.

20 Gravelle told you, which of the two would appear to

21 be more accurate?

22 A. Well, in clarification to what Mr.

23 Gravelle told me, again, that was...I don't know if

24 I specifically indicated that Mr. Gravelle gave me

25 the information on the number of guns. That was

- 30 - B. Rathbun

Ex (L. TAPP)

1 somebody believed that he had...apparently he had 32

2 registered firearms, so I wouldn't specifically say

3 that information came from Gravelle.

4 I don't recall that, but to answer your

5 question, the information from CPIC, on a CFRO

6 check, tells you exactly what it says here, that he

7 has 22 firearms registered to him at this time. So

8 at that time, on August the 8th, I would certainly

9 believe that Mr. Jack had 22 firearms registered to

10 him at that time. If he owned or possessed any more

11 I would not have that information.

12 MR. TAPP: Based on that response, Mr.

13 Vice-Chair, Mr. Rathbun has opened up the

14 question of the source of his August 5th

15 e-mail again, because he specifically said,

16 "Well, someone gave me that information. I

17 don't know if it was Marc Gravelle".

18 MR. MANUEL: This has been dealt with.

19 This has been dealt...

20 THE VICE-CHAIR: What is the point of

21 this?

22 MR. TAPP: Well, clearly the point is

23 all of that information contained in August

24 5th, 2008 came, specifically, from Marc

25 Gravelle, because Mr. Jack only had two

- 31 - B. Rathbun

Ex (L. TAPP)

1 ride-alongs. And being that he hadn't gone

2 on the second ride-along, so it had to come

3 from one person.

4 MR. MANUEL: That is argumentative.

5 With respect, that is simply argument. He

6 can save that. The witness' evidence is he

7 got information from two officers before he

8 sent this e-mail, one of which was Mr.

9 Gravelle, the other one which he cannot

10 recall, so we have dealt with that. And

11 you have the evidence. He has given it.

12 MR. TAPP: How convenient. Okay.

13

14 BY MR. TAPP:

15 Q. But would you agree that the

16 information you got to put in that original e-mail,

17 August 5th, clearly contradicts the results of an

18 actual check done August 8th?

19 A. I wouldn't use the word

20 "contradicts", because I said in my e-mail that

21 apparently he has 32 registered guns, so it is not a

22 statement of fact. It is just information I had

23 there was apparently...the August 8th e-mail is a

24 little more concise and precise, stating that he has

25 22, so, yes, the numbers do conflict, but not in the

- 32 - B. Rathbun

Ex (L. TAPP)

1 fashion that this was a certain piece of information

2 given, this is a certain piece of information given,

3 and they conflict with each other.

4 They do conflict with each other, but the

5 first piece was just an apparent number that was

6 provided to myself. Does that answer your question?

7 Q. Well, we will leave it at that. I

8 can accept that, because it has been some time.

9 Now, going back again to the August 5th e-mail, you

10 have it on your desk, my first questions were

11 regarding the number of firearms.

12 In that e-mail where did you get the

13 information, or rather, were the information about

14 his being in the army and the number of officers he

15 killed have come from Marc Gravelle or someone else?

16 MR. MANUEL: Officers he killed?

17 MR. TAPP: People, people. Not

18 officers, people. Pardon me. Did I say

19 "officers"?

20 THE VICE-CHAIR: You did.

21 MR. TAPP: My apologies.

22

23 BY MR. TAPP:

24 Q. In the e-mail, specifically, you

25 state something about something being "disturbing",

- 33 - B. Rathbun

Ex (L. TAPP)

1 and could you read the fourth paragraph from the

2 word "he apparently"? Can you read that whole

3 paragraph?

4 A. "...He, apparently, has 32

5 registered guns. His obsession with guns

6 was quite disturbing. He also mentioned

7 the persons he killed (shot) during his

8 time in the army. The officer he wrote

9 with will make notes with all concerns

10 should this be required..."

11 Q. Thank you. The comment about the

12 CPIC check revealing 22 firearms, would it be safe

13 to say that that is information that would also have

14 surfaced in a recruit's background check done by the

15 OPP?

16 A. You would have to ask the people

17 that are doing the background checks.

18 Q. Fair enough. Can you tell us who,

19 specifically, you got the information about Mr. Jack

20 having shot and killed people?

21 A. No. I don't recall that.

22 Q. You make a comment in that e-mail,

23 August 5th, 2008, specifically stating:

24 "...Some of the stuff he was telling me is

25 a bit hair raising..."

- 34 - B. Rathbun

Ex (L. TAPP)

1 That will be in the third paragraph, third from the

2 bottom that is.

3 MR. MANUEL: Is there a question?

4 MR. TAPP: I'm just directing his

5 attention first.

6

7 BY MR. TAPP:

8 Q. Are you there?

9 A. I am, sorry, yes.

10 Q. Good. Would you agree that the

11 word, "He was telling me" is specific to either Marc

12 Gravelle or, as you have put the "someone"?

13 A. "He"?

14 Q. Yes.

15 A. I don't see the word "he" in that.

16 Q. "Some of the stuff he was telling

17 me."

18 MR. MANUEL: I don't know what you are

19 reading from.

20 THE VICE-CHAIR: I don't either.

21 THE WITNESS: I don't either.

22

23 BY MR. TAPP:

24 Q. I'm sorry. Rather, you state:

25 "...A concern by the officer was what the

- 35 - B. Rathbun

Ex (L. TAPP)

1 result would be in making command staff

2 aware of an officer's instincts that were a

3 bit hair raising..."

4 Right?

5 A. That is the way I read that

6 paragraph, yes.

7 Q. By that comment your intention was

8 to make command staff aware of it?

9 A. Aware of which?

10 Q. The officer's instincts that were a

11 bit hair raising?

12 A. Okay. Yes. Yes, I would say that

13 is, probably, the intent. The main intent with that

14 line, or that paragraph, is that oftentimes police

15 officers have to rely on their instincts, and what

16 was often referred to, and other catch phrases, but

17 things that just don't feel right. And if something

18 doesn't feel right to anybody, and it doesn't have

19 to be limited to officers, you should pay attention

20 to that, and I often say that to people.

21 So when an officer comes to me with

22 instincts that they gain over time and experience,

23 and those instincts are, because I put the word

24 "instincts" in quotations, those instincts are "hair

25 raising", and I put "hair raising" in quotation

- 36 - B. Rathbun

Ex (L. TAPP)

1 marks as well, then they should be looked into.

2 That is the intent of that line in that e-mail.

3 Q. So the words that are in quotation

4 marks, if someone was reading it, ought to get the

5 same impression or get answers to what it is that

6 was "hair raising" instincts, based on the content

7 of that e-mail? Maybe that is too confusing.

8 A. It is, sorry.

9 Q. "Instincts" and "hair raising" are

10 in quotation marks. And addressing that e-mail to

11 detachment management with the intention of getting

12 it to command staff, was that should they read the

13 information in that e-mail, that is what you are

14 referring to as "hair raising" and the "instincts"

15 that are in quotation marks?

16 A. Well, there is that, and, like a bit

17 more. It is these are the...these are some of the

18 things I have heard. These are specifics I have

19 heard. Numbers of guns, impressions about...that is

20 made to the officers, but I'm trying to add that

21 there is this information which should be looked

22 into, but how do you highlight that and show that I

23 believe this information important?

24 I say it in that fashion. I believe the

25 information is important because it is taking

- 37 - B. Rathbun

Ex (L. TAPP)

1 officer's instincts that should mean something, and

2 should mean quite a bit, you know, in a lot of

3 cases, and if those instincts don't say much to them

4 that is fine, but when the instincts are hair

5 raising, that is my way of saying, "I believe this

6 is important, and it should be taken seriously. It

7 should be looked into".

8 Q. So if we got your e-mails regarding

9 this, "Hair raising instincts", would you agree that

10 this August 5th e-mail was the only one you

11 communicated to detachment management?

12 A. I know there are some e-mails that

13 went back and forth, likely as a result of this

14 initial August 5th e-mail. I don't think I authored

15 any e-mails with any new information.

16 Q. Aside from this one?

17 A. Aside from the first one, no. It

18 was just a back and forth, and maybe some

19 clarifications to that initial e-mail.

20 Q. Now, I direct your attention to the

21 one that you have before you, August 8th, 2008, that

22 has been handed out.

23 A. Yes.

24 Q. Can you read the three paragraphs

25 after the first sentence, just to update the three

- 38 - B. Rathbun

Ex (L. TAPP)

1 paragraphs after that, please?

2 MR. MANUEL: Well, really, is that

3 necessary, Mr. Vice-Chair?

4 THE VICE-CHAIR: Yes. I can read it.

5 MR. MANUEL: Just ask...

6 THE VICE-CHAIR: Just give me a moment

7 to read it and then you can ask the

8 questions.

9 MR. TAPP: Okay. We will give Mr.

10 Vice-Chair some time.

11 THE VICE-CHAIR: Okay. Ask your

12 question.

13

14 BY MR. TAPP:

15 Q. Would you agree that as a result of

16 that August 5th e-mail that some form of an

17 investigation was done, when that e-mail made its

18 way to command staff?

19 A. I would agree, yes.

20 Q. And the results of that

21 investigation were summed up in the second

22 paragraph?

23 A. I would say the results of the

24 investigation concerning one specific part of it...

25 Q. Fair enough.

- 39 - B. Rathbun

Ex (L. TAPP)

1 A. ...were summed up, and, yes.

2 Q. Certainly. And the results of that

3 investigation was also summed up in the third

4 paragraph?

5 A. The third paragraph I read more as a

6 summation as opposed to a result.

7 Q. Would you agree that as a result of

8 that e-mail that there were no concerns regarding

9 Mr. Jack?

10 A. I interpret this e-mail that

11 concerns had been looked into and satisfied. I

12 don't say...I can't say...

13 Q. Who was satisfied?

14 A. I can't say that there were no

15 concerns. I would say the concerns were satisfied.

16 Q. Satisfied by who?

17 A. By the recruiting department. This

18 is authored by Sergeant Joanne Whitney of the Career

19 Development Bureau, so I would say her bureau, her

20 unit, were satisfied that the concerns had been

21 looked into.

22 Q. Thank you. Now, did the heritage of

23 Mr. Jack have anything to do with your preconceived

24 opinion, as you mentioned?

25 MR. MANUEL: What preconceived opinion?

- 40 - B. Rathbun

Ex (L. TAPP)

1 I object.

2 MR. TAPP: He described "prejudice".

3 MR. MANUEL: He didn't say he had any.

4 THE VICE-CHAIR: He didn't say he was

5 prejudiced.

6 MR. TAPP: He didn't, that is true.

7

8 BY MR. TAPP:

9 Q. Did the heritage of Mr. Jack have

10 anything to do with your opinion that...were "hair

11 raising" or, "Hair raising instincts", that you

12 conveyed in your e-mail?

13 A. Absolutely not.

14 Q. Would you agree that Israel is often

15 depicted in world news as being in a war zone area,

16 so to speak?

17 MR. MANUEL: I object. What is the

18 relevance?

19 MR. TAPP: Very pertinent. You will

20 see.

21 THE WITNESS: I would agree.

22

23 BY MR. TAPP:

24 Q. I also suggest to you that someone

25 serving in the Israeli Army would have inevitably

- 41 - B. Rathbun

Ex (L. TAPP)

1 seen combat and, hence, may have had to kill or

2 shoot people; true or false?

3 MR. MANUEL: I don't know where this is

4 going to.

5 MR. TAPP: It is directly related. I'm

6 just lining it up for the point. I can't

7 just jump there because...

8 THE VICE-CHAIR: I will bet you can.

9 MR. TAPP: All right.

10 THE VICE-CHAIR: Jump to where, but I

11 don't know, anyway...

12 MR. TAPP: I'm just waiting for Mr. Jack

13 to get out. The next question I'm

14 directing the tribunal's attention to, the

15 applicant's list of exhibits to be

16 tendered. And it is in the applicant's

17 disclosure, number 101...

18 MR. MANUEL: I would like to see this

19 before the witness...

20 THE VICE-CHAIR: Well, I think the

21 witness...

22 MR. MANUEL: I don't care if it is has

23 been disclosed to Mr. Jack. It doesn't

24 make it relevant, with respect, Mr.

25 Vice-Chair. This is totally irrelevant.

- 42 - B. Rathbun

Ex (L. TAPP)

1 This witness has got nothing to do with

2 this, nothing. I object to it being put to

3 the witness.

4 THE VICE-CHAIR: Yes. How is this

5 relevant?

6 MR. TAPP: These photographs that are in

7 the applicant's list of exhibits to be

8 tendered are pictures of day-to-day life in

9 Israel, something that Mr. Rathbun has also

10 acknowledged that Israel is often in the

11 news for. Now, the August 5th e-mail

12 specifically states, "He has a fascination

13 for guns"; okay?

14 MR. MANUEL: Where is that? I see it

15 says, "Has an obsession".

16 MR. TAPP: "Obsession", pardon me. I

17 say "fascination", and that word actually

18 uses, "Obsession for guns". These are the

19 photographs that the ride-along would have

20 seen the officer that took him for a

21 ride-along would have seen.

22 MR. MANUEL: You can deal with that

23 officer with it. This witness, with

24 respect, has nothing to do with these

25 pictures, and can't validate them, and

- 43 - B. Rathbun

Ex (L. TAPP)

1 nothing to do with him.

2 MR. TAPP: Actually, Mr. Manual is

3 right. This is something more for Mr. Marc

4 Gravelle.

5 MR. MANUEL: If anybody, we will see

6 when Mr. Gravelle testifies.

7

8 BY MR. TAPP:

9 Q. Would you be aware that the majority

10 of Israeli military personnel are directed to carry

11 the issued firearms at all times, on or off duty?

12 MR. MANUEL: What is the relevance of

13 that, Mr. Vice-Chair?

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

15 MR. MANUEL: I object.

16

17 BY MR. TAPP:

18 Q. I will put it to you, Mr. Rathbun,

19 if you were the ride-along, and this is if, if you

20 were the officer that took Mr. Jack on a

21 ride-along...

22 THE VICE-CHAIR: But this is all

23 speculation.

24 MR. MANUEL: Exactly.

25 MR. TAPP: Well, this is why I made the

- 44 - B. Rathbun

Ex (L. TAPP)

1 comment earlier that examining the police

2 witnesses on a direct exam is going to be

3 very difficult, because they are going to

4 be very guarded about what they say.

5 MR. MANUEL: I object to this, Mr.

6 Vice-Chair. I object.

7 MR. TAPP: And there is some...

8 MR. MANUEL: I object.

9 THE VICE-CHAIR: Okay.

10 MR. MANUEL: I object.

11 THE VICE-CHAIR: I don't get the point

12 you are making. This witness has been, as

13 far as I'm concerned, forthright. I don't

14 see any...

15 MR. TAPP: Need to address that issue?

16 THE VICE-CHAIR: What issue?

17 MR. TAPP: Well...

18 MR. MANUEL: And I would like the record

19 to show, Mr. Vice-Chair, that I have

20 permitted cross-examination.

21 THE VICE-CHAIR: I appreciate that.

22 MR. MANUEL: I have permitted it.

23 THE VICE-CHAIR: I appreciate that.

24 MR. MANUEL: But it has got to have a

25 limit. And it is not going to go to the

- 45 - B. Rathbun

Ex (L. TAPP)

1 extent of abusing the witnesses. And when

2 Mr. Tapp starts to impugn the witness, and

3 without basis, then that is when you cross

4 the line. You have asked nothing but

5 cross-examination questions. I suggest

6 that is all, so you have been permitted to

7 cross-examine.

8

9 BY MR. TAPP:

10 Q. I asked you a question earlier

11 regarding if the heritage of Mr. Jack had any impact

12 on the content of your e-mail, August 5th, and you

13 said, no. I suggest to you that because Mr. Jack

14 was a Russian Jew, his thick Russian accent, and the

15 fact that you were hearing he had spent time in the

16 army, shot and killed people, hearing that he had a

17 so-called obsession with guns, did cause you to form

18 an opinion of concern, specifically hair raising

19 concern; true or false?

20 MR. MANUEL: I object to one part of

21 that question. There is no evidence that

22 this officer was aware of any thick Russian

23 accent. It is not mentioned in the e-mail.

24

25 BY MR. TAPP:

- 46 - B. Rathbun

Ex (L. TAPP)

1 Q. Well, okay. You indicated you met

2 with Mr. Jack briefly, before the ride-along.

3 A. Yes.

4 Q. Was it a silent meeting or did you

5 all engage in conversation?

6 A. We had conversation.

7 Q. Would it not have been apparent to

8 you that he spoke English with a definite accent?

9 A. Yes.

10 Q. Now, would it not be apparent to you

11 that he spoke it with a thick Russian accent, or may

12 not be thick, but with a Russian accent?

13 A. I would describe it as "thick", and

14 to the best of my knowledge it was a Russian accent.

15 Q. Thank you. Yet you say content of

16 that August 5th e-mail had nothing to do with his

17 heritage; right?

18 MR. MANUEL: He has answered that.

19

20 BY MR. TAPP:

21 Q. Okay. So if it was not because of

22 his heritage why did you bother to write in the e-

23 mail:

24 "...Apparently he is a Russian male who

25 spent time in the Israeli Army with the

- 47 - B. Rathbun

Ex (L. TAPP)

1 name of Michael Jack, date of birth..."

2 A. It is just a descriptor with a

3 clarification of who it is I'm referring to, who it

4 is I'm talking about.

5 Q. Thank you. The descriptors were who

6 it is I'm talking about and who it is I'm talking

7 to. Wouldn't his full name and date of birth been

8 sufficient, Michael Jack, date of birth?

9 A. Possibly.

10 Q. Yet you go beyond that, or you say,

11 "Apparently he is a Russian male"; right?

12 MR. MANUEL: He has answered that.

13

14 BY MR. TAPP:

15 Q. Let's face it, Mr. Rathbun, the only

16 rational explanation for why you included the date

17 of birth of Mr. Jack, right after his name, was to

18 make it easier for the recipients of your e-mail to

19 do a quick check of him on the police databases,

20 without having to spend time searching for it?

21 A. Could you repeat the first part of

22 the question?

23 Q. Yes.

24 A. You are saying that is the only

25 reason the date of birth was there?

- 48 - B. Rathbun

Ex (L. TAPP)

1 Q. No. Let's face it, Mr. Jack...

2 MR. MANUEL: Mr. Rathbun.

3

4 BY MR. TAPP:

5 Q. ...Mr. Rathbun, pardon me, the only

6 rational explanation for why you included the date

7 of birth of Mr. Jack, right after his name, was to

8 make it easier for the recipients of your e-mail to

9 do a quick check of him on the police databases,

10 without having to spend time searching for it, or

11 being mistaken of exactly what his date of birth

12 was?

13 A. That is incorrect. It is not the

14 only rational explanation for it. It is a

15 possibility. And if having the date of birth in the

16 e-mail does expedite that search for them, so be it.

17 In my world we talk about people, and refer to

18 people, and the more detail you can give to simplify

19 or to clarify, who it is you are talking about, that

20 provides assistance.

21 So if I want to talk about the people in

22 this room, and I refer to a gentleman who has a

23 thick Russian accent, and there is only one person

24 in the room that fits that descriptor, it very

25 quickly narrows down who I'm talking about, so it is

- 49 - B. Rathbun

Ex (L. TAPP)

1 just a way of clarifying and giving more information

2 to just expedite someone trying to think, "Now, just

3 who might this be we are talking about? Is this the

4 guy that so and so, such and such? No, it is very

5 clear."

6 There is a few descriptors in there that

7 just help pinpoint that. A date of birth is another

8 one of them. It is just the way we talk in our

9 world of policing, so that would be my intent. The

10 additional benefit of expediting someone to do a

11 search on him, who has a date of birth right in an

12 e-mail, that is just a bonus that may assist

13 somebody, so it is not the only rational

14 explanation, was with my intent to expedite somebody

15 so they could run him on a system.

16 That is not the rationale of why I put that

17 information in there that I did.

18 Q. Regardless, would you not agree that

19 there is a difference if one were to say "Canadian

20 male" as opposed to "Russian male"? You are making

21 specific reference to the person's heritage?

22 A. It is a descriptor that helps you

23 realize who I'm talking about. If I say "Canadian

24 male", in a room full of Canadian males, it doesn't

25 really help pinpoint who I'm talking about. If

- 50 - B. Rathbun

Ex (L. TAPP)

1 there is one male in the room who is Russian, and I

2 say, "The Russian male", it is just a descriptor.

3 It is neither positive nor negative. It is

4 a descriptor to help someone understand just who I'm

5 talking about, just to expedite them getting to that

6 understanding.

7 Q. So such a descriptor would be the

8 person's heritage?

9 A. "Such a descriptor", I'm not...

10 Q. Russian. They are not Canadian.

11 They are Russian. Russian...

12 A. No, if the term "Russian male", I

13 figure is a descriptor that helps someone understand

14 who I'm talking about, then I would put that in

15 there as that assistance.

16 Q. Good. Thank you. If that recruit

17 that Mr. Gravelle took on a ride-along was a

18 Canadian male, who served in the Canadian armed

19 forces, and perhaps even did a tour of duty in

20 Afghanistan, and happened to have a collection of

21 registered firearms, by what you are saying would it

22 mean that an e-mail about him would read, "The

23 Canadian male who has spent time in the Canadian

24 Army with the name of Michael Davidson, date of

25 birth"?

- 51 - B. Rathbun

Ex (L. TAPP)

1 MR. MANUEL: I object. It is pure

2 speculation.

3 THE VICE-CHAIR: It is pure speculation.

4

5 BY MR. TAPP:

6 Q. But, in any event, you do agree that

7 Russian, you are singling the person out? You are

8 specifically drawing attention to the fact that he

9 is Russian, and not Canadian...

10 MR. MANUEL: He has answered that.

11 THE VICE-CHAIR: I get the point you are

12 making.

13 MR. TAPP: Thank you.

14 THE VICE-CHAIR: Do you want to move on?

15 How much longer are you going to be with

16 this witness?

17 MR. TAPP: I have got a lot of

18 questions, Mr. Vice-Chair. And I'm having

19 to omit a lot of questions that I have

20 prepared, so I am doing the best, and I am

21 moving along.

22 THE VICE-CHAIR: I think we should have

23 a break at this point in time. I'm sure

24 the court reporter would appreciate it.

25 Ten minutes?

- 52 - B. Rathbun

Ex (L. TAPP)

1 MR. TAPP: Sure. Thank you, Mr.

2 Vice-Chair.

3

4 --- upon recessing at 10:54 a.m.

5 --- A BRIEF RECESS

6 --- upon resuming at 11:15 a.m.

7

8 BRADLEY RATHBURN, resumed

9 CONTINUED EXAMINATION BY MR. TAPP:

10 MR. TAPP: Mr. Vice-Chair, before we

11 continue, perhaps, because we have

12 referenced August 8th, 2008 e-mail...

13 THE VICE-CHAIR: Yes.

14 MR. TAPP: ...and perhaps we can enter

15 that as the next exhibit, please?

16 THE VICE-CHAIR: That would be Exhibit

17 94.

18

19 --- EXHIBIT NO. 94: E-mail dated August 8, 2008

20

21 THE VICE-CHAIR: Okay. Mr. Tapp?

22

23 BY MR. TAPP:

24 Q. Mr. Rathbun, what if evidence

25 revealed that Mr. Jack never served in the Israeli

- 53 - B. Rathbun

Ex (L. TAPP)

1 Army, but the Israeli Navy, would the information

2 that you got stand out, or would it raise a concern

3 about the information you got?

4 A. I don't see how that would have

5 changed, really, anything.

6 Q. Well, your e-mail August 5th says

7 that he served in the Israeli Army. And if evidence

8 revealed that he never served in the Israeli Army,

9 but Israeli Navy, would that be different?

10 A. Well, I guess it would be different,

11 but it would...that was just information I provided,

12 to the best of my knowledge, of what had been told

13 to me. And I pre-emphasized it, or pre-empted it, I

14 should say, with the word "apparently", because I'm

15 not stating that as fact that I know.

16 It is...apparently, he, so on and so forth,

17 and spent time in the Israeli Army. If it had been

18 Israeli Navy the word would have been "navy" instead

19 of "army", but that is the only difference or

20 anything that would have changed from my

21 perspective.

22 Q. The reason I ask that, because it

23 looked like "apparently" was in reference to the 32

24 registered firearms, and there is no mention of

25 "apparently" being served in the army. That is why

- 54 - B. Rathbun

Ex (L. TAPP)

1 I asked.

2 MR. MANUEL: Well, with respect, that is

3 not a fair comment, and it is not a proper

4 comment, in any event, and it is

5 inaccurate, so...

6

7 BY MR. TAPP:

8 Q. What if evidence revealed that Mr.

9 Jack never saw any combat duty in his entire three

10 years in the Israeli Navy, would that raise an issue

11 about the information you received?

12 A. It would. If he had never seen any

13 combat I would wonder why comments are being made,

14 that are being made about combat, if he has never

15 experienced any of it. That would cause me a

16 concern.

17 Q. Thank you. Thank you. I am showing

18 you Exhibit 4, that has already been tendered. And

19 for the purpose and the benefit of counsel, and Mr.

20 Vice-Chair, we have copies, rather than dig through

21 and retrieve the...

22 MR. MANUEL: No, no. Mr. Vice-Chair,

23 Exhibit 4 has got nothing to do with this

24 witness. I object to it being put to this

25 witness.

- 55 - B. Rathbun

Ex (L. TAPP)

1 MR. TAPP: Well, it does. It goes

2 specifically towards what he just answered.

3 He would have concerns. So how else can we

4 point out his concerns is truthful and

5 valid if we don't show him the results of

6 his application?

7 Something has to show that Mr.

8 Rathbun's answer would be valid if evidence

9 revealed. Now, we have already tendered as

10 an exhibit documents that clearly state he

11 has never been in combat service.

12 THE VICE-CHAIR: But that evidence is

13 already in.

14 MR. TAPP: Okay. Thank you.

15 THE VICE-CHAIR: That was Mr. Jack's

16 testimony, I don't know, years ago now, I

17 guess.

18 MR. TAPP: Well, see that is the issue I

19 have. It is years ago, and we don't have

20 the benefit of a transcript those years

21 ago.

22 THE VICE-CHAIR: Well, we don't need

23 one.

24 MR. TAPP: Yes, take that back.

25

- 56 - B. Rathbun

Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. So just to sum up what you have said

3 so far, Mr. Rathbun...

4 MR. MANUEL: Why is that necessary, Mr.

5 Vice-Chair? Let's...

6 THE VICE-CHAIR: It is not necessary.

7 We don't...

8 MR. TAPP: Okay.

9 THE VICE-CHAIR: I don't want to hear

10 your summary.

11

12 BY MR. TAPP:

13 Q. Would you agree that that August 5th

14 e-mail generated a flurry of e-mails in relation to

15 that?

16 A. I would not use the term "flurry".

17 Q. But generated an investigation,

18 nonetheless, as a result of that?

19 MR. MANUEL: He has answered. He has

20 answered that.

21 THE VICE-CHAIR: He has answered that.

22 Okay.

23

24 BY MR. TAPP:

25 Q. And being that you were the person

- 57 - B. Rathbun

Ex (L. TAPP)

1 that brought it to command staff's attention, would

2 it be safe to say that you would naturally have been

3 shared a copy or been made aware of the final

4 report?

5 A. No. I didn't see any final report.

6 Essentially the e-mail you have presented as...you

7 have submitted as a document or evidence of August

8 8th is, kind of, the summation that I received. I

9 did not see any other report.

10 Q. Maybe if I show you the next

11 document it might help you refresh your memory.

12 MR. MANUEL: May I see that before you

13 put it to the witness?

14 MR. TAPP: Yes. Absolutely. It is

15 September 4th, 2008, Volume 6...

16 THE VICE-CHAIR: Well, hold on. Has it

17 been entered as an exhibit?

18 MR. TAPP: No. It has been tendered as

19 arguably relevant document that the

20 applicant intends to rely upon.

21 MR. MANUEL: It is an e-mail,

22 apparently, to this witness. Why...

23 THE VICE-CHAIR: It is an e-mail to him?

24 THE WITNESS: Yes.

25

- 58 - B. Rathbun

Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Drawing your attention to that e-

3 mail, it is addressed, specifically, to you, I take

4 it?

5 A. Appears to be, yes.

6 Q. Can you read the second sentence,

7 please, "FYI"?

8 A. "...FYI, Dr. Lapalme says Jack,

9 during his..."

10 I'm sorry, I will start again:

11 "...FYI, Dr. Lapalme say Jack, during his

12 first pre-week at the OPP academy, he

13 indicates that he does not have any

14 concerns at this time..."

15 Q. And it ends with a question; right?

16 A. It does, yes. Right after that the

17 question says:

18 "...Have any other concerns come up from

19 your side..."

20 Q. So did you communicate any other

21 concerns with him?

22 A. I don't recall.

23 Q. Fair enough.

24 A. I would have to see my notes or e-

25 mails.

- 59 - B. Rathbun

Ex (L. TAPP)

1 Q. So does that help you refresh your

2 memory that you may or may not have been privy to

3 the disposition of their first e-mail?

4 MR. MANUEL: Pardon me? I missed...

5

6 BY MR. TAPP:

7 Q. The first e-mail generated an

8 investigation, and this e-mail tends to allude, at

9 least, at the minimum, the results of that. He

10 indicates that he did not have any concerns.

11 A. Fair enough. Your previous question

12 asked if I had seen a final report, so I don't

13 consider this a final report, any of this to be a

14 final report.

15 Q. True.

16 A. That is why I answered the way I

17 did.

18 Q. How about a briefing report?

19 A. No. I don't have any recollection

20 of receiving any more than what you are presenting

21 in front of me, which are simply quick informative

22 e-mails.

23 Q. Would you agree that Sergeant

24 Whitney, based on his credentials, at the bottom of

25 that e-mail...

- 60 - B. Rathbun

Ex (L. TAPP)

1 A. Sergeant Whitney is a female, if I

2 may just...

3 MR. MANUEL: Which e-mail?

4

5 BY MR. TAPP:

6 Q. It says, "Steve Haennel", pardon me.

7 Based on his...no, you already said he is a

8 sergeant. I'm going to suggest to you that on or

9 about the 15th of August Sergeant Haennel did

10 discuss or, at least, share a copy of that briefing

11 report with you; what would you say?

12 A. I don't recall that.

13 Q. If I show you the briefing report

14 that makes specific notation of this, would that

15 help you refresh your memory?

16 A. I would say it would, yes.

17 MR. MANUEL: May I see what you are

18 putting to the witness?

19 MR. JACK: I'm sorry. Just give me a

20 second, please?

21 MR. TAPP: So we have got four copies of

22 that report...

23 MR. MANUEL: Just give me a minute.

24 MR. TAPP: ...that has also been

25 disclosed to...

- 61 - B. Rathbun

Ex (L. TAPP)

1 MR. MANUEL: Just give me a minute.

2 MR. TAPP: ...counsel, and he can

3 compare it to what he received.

4 MR. MANUEL: No, I object to this. Mr.

5 Vice-Chair, perhaps you need to see it.

6 THE VICE-CHAIR: Yes.

7 MR. TAPP: Okay. I draw Mr. Vice-Chair

8 specifically to the second page of that

9 document.

10 MR. MANUEL: Page 11; correct?

11 THE VICE-CHAIR: I'm on page 11.

12 MR. MANUEL: What page?

13 MR. TAPP: And more specifically to the

14 last page of that document.

15 MR. MANUEL: And you are drawing his

16 attention to the top two entries?

17 MR. TAPP: 4th of September, 2008.

18 MR. MANUEL: Right. And that refers to

19 the e-mail that you have just put to the

20 witness, so...

21 MR. TAPP: Well, you are assuming that.

22 Let's put it to the witness.

23 MR. MANUEL: Well...

24 THE VICE-CHAIR: I don't understand.

25 What are we putting to the witness?

- 62 - B. Rathbun

Ex (L. TAPP)

1 MR. TAPP: August 15th, 2008, the

2 notation.

3 MR. MANUEL: Where? Where is that?

4 MR. TAPP: On page 2 of that document,

5 the very bottom:

6 "...Sergeant Haennel notified Sergeant

7 Rathbun of [redacted] of same..."

8 So whatever he told Dr. Lapalme, he told

9 Mr. Rathbun. That is why the use of "same"

10 is there.

11 THE VICE-CHAIR: But you were putting

12 this to suggest to the witness that he saw

13 the final report. That is all I'm saying.

14 MR. TAPP: Yes. You can't assume that.

15 It is in the 4th of September. I have a

16 right to put it to him.

17 MR. MANUEL: Go ahead.

18 MR. TAPP: Thank you.

19 MR. MANUEL: With respect, it doesn't

20 become an exhibit. We can put to the

21 witness to help him refresh his memory as

22 to whether he had a conversation with

23 Sergeant Haennel on or about the 15th of

24 August, fine.

25

- 63 - B. Rathbun

Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. That is the briefing report in the

3 previous question I asked you about, that is now

4 shared with Mr. Vice-Chair and counsel and you.

5 MR. MANUEL: That is your evidence, sir,

6 not the witness' evidence.

7

8 BY MR. TAPP:

9 Q. Okay, but that is the briefing

10 report I'm talking about; okay?

11 A. Yes, sir.

12 Q. I draw your attention to second

13 page, 15th August 2008.

14 A. Yes, sir.

15 Q. Read what it says concerning...

16 MR. MANUEL: No, don't. I object. Ask

17 the witness...

18

19 BY MR. TAPP:

20 Q. Having read that, and having it

21 before you, would you agree that Sergeant Haennel

22 did contact you about that report?

23 A. Are you asking for my interpretation

24 of that line in reference to me?

25 Q. No. Did Sergeant Haennel contact

- 64 - B. Rathbun

Ex (L. TAPP)

1 you, and discuss the situation, specifically the

2 situation that he discussed with Dr. Lapalme he also

3 discussed with you?

4 A. No.

5 Q. You see the last sentence?

6 A. Yes, I do.

7 Q. The wording "of same"?

8 MR. MANUEL: This witness is not

9 responsible for these words.

10 MR. TAPP: No.

11 MR. MANUEL: You have his evidence.

12 THE WITNESS: No. I know.

13 MR. TAPP: No. It is suggestive.

14 THE WITNESS: I'm more than happy to

15 give my interpretation.

16

17 BY MR. TAPP:

18 Q. Go ahead.

19 A. "Sergeant Haennel notified Sergeant

20 Rathbun." Yes, Sergeant Haennel did notify Sergeant

21 Rathbun in the September 4th e-mail that you have

22 presented. That is how he notified me, so that is

23 the information I had.

24 Q. So is it your testimony that you

25 don't remember anything about the 15th of August

- 65 - B. Rathbun

Ex (L. TAPP)

1 2008? Now, I might be saying too much over there,

2 but just looking at that document, Mr. Rathbun, page

3 2, 15th of August 2008?

4 A. I do not recall anything specific to

5 the 15th of August 2008. I would have to look at a

6 notebook of mine, if there was a separate contact

7 from Sergeant Haennel to that of the 4th of

8 September e-mail.

9 Q. Do you think you would have your

10 notes for that?

11 A. I do not, no.

12 Q. You got a summons to appear today?

13 A. Yes, I did.

14 Q. That summons had an explicit

15 statement regarding any direction, what to bring

16 with you?

17 A. I would have to read the summons.

18 My directions were that I was not required to bring

19 notebooks.

20 Q. I have got the summons over here.

21 If I were to...

22 THE VICE-CHAIR: Okay. He hasn't got

23 his notes. Let's move on. Are we entering

24 the...

25 MR. TAPP: Yes.

- 66 - B. Rathbun

Ex (L. TAPP)

1 MR. MANUEL: I object to that.

2 THE VICE-CHAIR: ...September 4th

3 e-mail?

4 MR. MANUEL: The September 4th e-mail,

5 yes.

6 MR. TAPP: September 4th we will enter

7 as the next exhibit, please?

8 THE VICE-CHAIR: That will be Exhibit

9 95. Yes, not the other thing.

10

11 --- EXHIBIT NO. 95: September 4, 2008 e-mail

12

13 MR. MANUEL: Well, Mr. Vice-Chair, I see

14 that there are three e-mails here. This

15 witness...

16 MR. TAPP: The bigger one, August 15th.

17 MR. MANUEL: I understand that, but the

18 top one doesn't seem to have been a

19 communication to or from this witness, so..

20 THE VICE-CHAIR: Right.

21 MR. MANUEL: ...I don't know what it is

22 doing there.

23 THE VICE-CHAIR: It doesn't tell me

24 much.

25 MR. MANUEL: No.

- 67 - B. Rathbun

Ex (L. TAPP)

1 MR. TAPP: So it is only specific to the

2 middle e-mail. And we can indicate that if

3 it is entered as an exhibit.

4 THE VICE-CHAIR: I don't object to the

5 other two. That is fine.

6 MR. TAPP: The bottom two.

7 THE VICE-CHAIR: Do you have a question?

8 MR. TAPP: Yes.

9

10 BY MR. TAPP:

11 Q. So looking at that document would

12 you agree that the bottom two e-mails would be

13 related to the 15th of August 2008 notation in that

14 briefing report?

15 A. I do. Yes, I do entirely agree.

16 Q. Would you also agree that the August

17 15th, 2008 now does, or may suggest that the

18 discussion with you did take place?

19 A. When you ask a question about a

20 discussion taking place, I consider it a voice to

21 voice discussion. I don't consider an exchange of

22 e-mails to be a discussion. That is why I have

23 answered that I don't recall discussions with

24 Sergeant Haennel.

25 With a reference, to refresh my memory, of

- 68 - B. Rathbun

Ex (L. TAPP)

1 a copy of an e-mail, yes, that I now agree, and see

2 that there is an exchange of e-mails, so if that

3 helps clarify why I denied or don't recall

4 discussions, I don't refer to exchange of e-mails as

5 a discussion.

6 MR. TAPP: In light of that, Mr.

7 Vice-Chair, I can't see the need of

8 entering that, other than for its weight.

9 Other than just for reference to address

10 this point with him.

11 THE VICE-CHAIR: So I won't enter it.

12 MR. TAPP: Wait a minute. I'm having to

13 revisit that, Mr. Vice-Chair. Subject to

14 what counsel has to say, I would like to

15 have the opportunity to enter the

16 conclusion that the conclusion is directly

17 related to the 4th of September e-mail that

18 states to Sergeant Rathbun, "No other

19 concerns at this time". I would like to

20 enter that conclusion.

21 MR. MANUEL: I object.

22 MR. TAPP: It relates to that comment.

23 MR. MANUEL: This witness has nothing to

24 do with that report.

25 THE VICE-CHAIR: Yes, he does not have

- 69 - B. Rathbun

Ex (L. TAPP)

1 anything to do with the report.

2 MR. TAPP: See, that does present a

3 problem, Mr. Vice-Chair. We would like to

4 enter it. And through the case management

5 conferences we were repeatedly told to keep

6 our witnesses down, and Mr. Manuel

7 strenuously objected to the number of...

8 MR. MANUEL: We can talk about entering

9 it apart from this witness. Mr. Tapp, we

10 can talk about entering it as an exhibit,

11 apart from this witness, for whatever it is

12 worth, but what I'm objecting to is you

13 putting it in through this witness, so

14 let's just finish with this witness.

15 MR. TAPP: Okay. Thank you.

16 MR. MANUEL: I didn't say we...

17 MR. TAPP: That is good.

18 MR. MANUEL: We hadn't talked about it.

19 MR. TAPP: I will address that. I like

20 that. I was having difficulty of trying to

21 enter it now through this witness, but if

22 I'm going to be allowed to enter it after

23 this witness...

24 MR. MANUEL: We can talk about it. This

25 witness cannot identify that.

- 70 - B. Rathbun

Ex (L. TAPP)

1 MR. TAPP: Okay. Then why can't we

2 enter it now as an exhibit and not question

3 this witness any further on this report?

4 THE VICE-CHAIR: Because he knows

5 nothing about the report. He hasn't seen

6 the report. It is not his report. He

7 might have another witness that can

8 properly identify it.

9

10 BY MR. TAPP:

11 Q. Now that you know what we were

12 talking about, that briefing report, Mr. Rathbun,

13 you have indicated that someone, or acknowledged

14 that some investigation was done as a result of your

15 August 5th e-mail?

16 MR. MANUEL: That has been asked and

17 answered.

18 MR. TAPP: I haven't asked the question

19 yet.

20 MR. MANUEL: Well, then...

21

22 BY MR. TAPP:

23 Q. As a result of that...and detachment

24 management would be someone that might have been

25 privy to that report?

- 71 - B. Rathbun

Ex (L. TAPP)

1 MR. MANUEL: Speculation.

2 MR. TAPP: Your indulgence, please, Mr.

3 Vice-Chair? We are flipping through pages,

4 because a lot of this has been taken out.

5 And it looks like we are going to be

6 finishing before this afternoon with this

7 witness.

8 THE VICE-CHAIR: Mr. Tapp, I'm being

9 indulgent, but we really have to move on.

10 You have five days for your witnesses.

11 MR. MANUEL: With respect, Mr.

12 Vice-Chair, all of this preparation should

13 have been done ahead of time.

14 THE VICE-CHAIR: I agree with you.

15 MR. MANUEL: We can't be sitting here

16 while they prepare to ask proper questions.

17 Like this is never going to end.

18 MR. TAPP: Well, quite frankly, we did,

19 Mr. Manual, but there are a lot of

20 objections.

21 MR. MANUEL: Just ask your questions,

22 please.

23

24 BY MR. TAPP:

25 Q. Based on what you have learned

- 72 - B. Rathbun

Ex (L. TAPP)

1 today, and what you have testified so far, okay, it

2 is a lot for you to go over in your mind, would you

3 be able to say now that you have concerns, or would

4 you have any concerns now about the truthfulness of

5 some of the information you received, or was

6 provided to you?

7 A. The information that I received back

8 in 2008, that initiated the first e-mail from you

9 that we referred to, as of this date I have no

10 concerns about the truthfulness of that information,

11 or that anything has changed about it.

12 Whether or not Mr. Jack's behaviour, or the

13 way he comes across to people has changed, that may

14 have over the years, but the way it was back in

15 2008, I believe came to me truthfully, and it was

16 expressed to me as truthful as I knew it to be.

17 Q. Even learning that he actually had

18 22 CFRO...

19 MR. MANUEL: He has answered...

20

21 BY MR. TAPP:

22 Q. ...CPIC, CFRO...22?

23 MR. MANUEL: He has answered the

24 questions.

25 THE WITNESS: Well, my e-mail indicates

- 73 - B. Rathbun

Ex (L. TAPP)

1 that I was told he apparently had 32. An

2 actual CFRO check came back with, what was

3 it; 22? I trust the number 22. The

4 information that came to me is 32.

5 It was a belief that didn't line up

6 with the numbers that came from the CFRO.

7 That is about the only way I could answer

8 that.

9

10 BY MR. TAPP:

11 Q. Were you shared a copy of the

12 application, being that you were identified as a

13 witness?

14 A. What application?

15 Q. The application that is subject of

16 these proceedings, Mr. Jack's application?

17 MR. MANUEL: The only relevant time

18 period would be back then, not now.

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

20 Those are all of my questions, Mr.

21 Vice-Chair.

22 MR. MANUEL: We have no questions.

23 Thank you.

24 THE VICE-CHAIR: Sir, you are excused.

25 THE WITNESS: Thank you, sir.

- 74 - General Discussion

1 MR. MANUEL: Thank you.

2

3 GENERAL DISCUSSION:

4 THE VICE-CHAIR: Your next witness?

5 MR. TAPP: Mr. Vice-Chair, we are asking

6 for a recess of five minutes? We have got a lot of

7 documents, so we need to bring out our documents

8 relating to the next witness.

9 THE VICE-CHAIR: Okay. I'm hoping you

10 are prepared for this witness.

11 MR. TAPP: Well, we prepared, Mr.

12 Vice-Chair, and we prepared, and we thought we had

13 prepared extensively. Now, I anticipate Mr. Manual

14 doing a lot of objections again, but we are doing

15 our best.

16 We did prepare. In fact, we had to flip

17 through and omit a lot of questions as this went on.

18 THE VICE-CHAIR: Let's get back here

19 then at...how long will the next witness be?

20 MR. TAPP: If Mr. Rathbun is any

21 indication then at the most a couple of hours.

22 THE VICE-CHAIR: Let's come back at

23 noon, and you have, what, ten minutes to get

24 through...

25 MR. TAPP: Thank you.

- 75 - General Discussion

1 THE VICE-CHAIR: ...get everything in

2 order.

3

4 --- upon recessing at 11:49 a.m.

5 --- A BRIEF RECESS

6 --- upon resuming at 12:00 p.m.

7

8 GENERAL DISCUSSION:

9 MR. TAPP: It is Marc Gravelle.

10 THE VICE-CHAIR: Would you, please,

11 state your full name?

12 THE WITNESS: Marc Howard Gravelle.

13 THE VICE-CHAIR: How would you spell...

14 well, Marc and Howard I can manage, Gravelle?

15 THE WITNESS: Marc is with a "C",

16 actually, so just to be clear.

17 THE VICE-CHAIR: Then I...

18 THE WITNESS: It is the awkward

19 spelling. Gravelle is, G-R-A-V-E-L-L-E.

20 THE VICE-CHAIR: Mr. Gravelle, you are

21 about to give evidence before the Human Rights

22 Tribunal, and the tribunal is dependent on you

23 telling the truth. Do you solemnly affirm to tell

24 the truth?

25 THE WITNESS: Yes, I do.

- 76 - M. Gravelle

Ex (L. TAPP)

1 THE VICE-CHAIR: And do you appreciate

2 it is an offence at law to break that promise?

3 THE WITNESS: Yes, I do.

4 THE VICE-CHAIR: Thank you very much.

5 Mr. Tapp?

6

7 MARC GRAVELLE, affirmed

8 EXAMINATION BY MR. TAPP:

9 Q. Thank you, Mr. Gravelle. Are you

10 familiar with the matter that is before this

11 tribunal?

12 A. Yes, I am.

13 Q. That is I understand you provided a

14 statement, or what is also known as a "will-say"

15 regarding your involvement with this matter?

16 A. Yes, I did.

17 Q. How long have you been with the OPP,

18 Mr. Gravelle?

19 A. Since 2005.

20 Q. Do you speak any other languages,

21 Mr. Gravelle?

22 A. No, I do not.

23 Q. Can you tell us the highest level of

24 formal education you have achieved?

25 A. College.

- 77 - M. Gravelle

Ex (L. TAPP)

1 Q. Thank you. In what field of study?

2 A. Police foundations.

3 Q. What did you do before becoming an

4 OPP officer?

5 A. I did a multitude of things.

6 Specifically I worked in youth care, so group homes,

7 youth correctional facility in Millbrook. I worked

8 as a bartender. I worked in security. I worked in

9 grocery stores. I worked in labour.

10 Q. Prior to the year 2009 did you have

11 any formal training in human psychology?

12 A. I believe I took a course in

13 college, but that was...that was it.

14 Q. Would you like a copy of your

15 will-say, not for you to read over or testify to,

16 just in case you have to refer to it to refresh your

17 memory?

18 MR. MANUEL: I don't think that is a

19 good idea.

20

21 BY MR. TAPP:

22 Q. Mr. Gravelle, how long were you an

23 officer before you met...rather, how long were you

24 an OPP officer before you met Mr. Jack at the

25 detachment?

- 78 - M. Gravelle

Ex (L. TAPP)

1 A. I was a special constable from 2005

2 to 2007, and I was a provincial constable from 2007

3 to, I guess it would be 2009.

4 Q. That would be three years?

5 A. Approximately.

6 Q. Thank you. What platoon were you on

7 in the summer of 2008?

8 A. C platoon.

9 Q. Who would have been your platoon

10 sergeant?

11 A. I believe it to be Sergeant Brad

12 Rathbun.

13 Q. You received a summons to come here

14 today?

15 A. Yes, I did.

16 Q. Did you make note of what the

17 summons indicated that you were to bring with you?

18 A. No, I did not receive a copy. I

19 just received notification via e-mail.

20 Q. Did you bring notebooks regarding

21 this matter?

22 A. No, I did not.

23 MR. MANUEL: Can we see the summons that

24 you sent for this witness?

25 MR. TAPP: Yes. The summons that were

- 79 - M. Gravelle

Ex (L. TAPP)

1 sent to your office, Mr. Manuel, to be

2 served on this witness, I don't have a hard

3 copy, but I have the e-mail that has all

4 the summons on it, and I will just...they

5 are the same. Just the names have been

6 changed, so I will just show it to you...

7 Mr. Vice-Chair.

8 MR. MANUEL: Where? Mr. Vice-Chair, the

9 notebooks of all of the officers that were

10 involved, the relevant parts were produced,

11 so my friend wants to put the relevant

12 parts of the notebooks...they are there for

13 him to find.

14 This witness did not bring his

15 personal notebooks, that is correct, but we

16 have produced, as part of the disclosure,

17 the relevant parts of the notebooks, so...

18 MR. TAPP: This is going to be an

19 argument, Mr. Vice-Chair. It has been the

20 applicant's position, all along, and

21 specifically addressed in the previous case

22 management calls, that upon careful

23 examination of each and every document

24 provided by counsel it was very clear that

25 all the involved officers never produced a

- 80 - M. Gravelle

Ex (L. TAPP)

1 copy of their notes.

2 An example was specifically related

3 to, for example, September 11th and 12th,

4 that clearly shows the applicant off on

5 those days. His copy of his notes were not

6 included. Mr. Gravelle's notes relating to

7 August 5th, 2008 were never produced.

8 MR. MANUEL: Well, how do you know there

9 is anything relevant there? You have to

10 question this witness and establish an

11 evidentiary basis for challenging the

12 redactions and the productions that we have

13 made, not simply allegations not found in

14 evidence.

15 MR. TAPP: So based on that, and the

16 fact that these issues, specifically notes,

17 was brought to your attention during the

18 case conference calls, and that the

19 application specifically requested for all,

20 not some, all your notes pertaining to

21 that.

22 And the applicant received a

23 communication from counsel that...

24 specifically alleging that we are on a

25 fishing expedition, and must show

- 81 - M. Gravelle

Ex (L. TAPP)

1 relevance. So the application specifically

2 makes a demand for a production of those

3 notes. We are provided some. Upon

4 examination the some are clearly not

5 detrimental to a defence's position.

6 We have been deprived of all the

7 officer's notes, hence the specific request

8 wording in the summons to bring with you

9 copies of your notes pertaining to this

10 application. Mr. Manual acknowledges his

11 office receiving a copy of those summons

12 for deliverance, and that...

13 THE VICE-CHAIR: So what do you want me

14 to do?

15 MR. MANUEL: Well, with respect, Mr.

16 Vice-Chair...

17 MR. TAPP: Just to make a comment...

18 MR. MANUEL: Mr. Vice-Chair, with

19 respect, perhaps we can ask the witness

20 some questions, find out whether he has any

21 notebook entry, made any notebook entries

22 at the relevant time, because the

23 obligation is not to produce everything

24 that is demanded. It is to produce

25 whatever is relevant.

- 82 - M. Gravelle

Ex (L. TAPP)

1 We don't even know that the officer

2 made any notes relevant to his interactions

3 with Mr. Jack.

4 MR. TAPP: Again, my response is there

5 is a very real relevance with respect to

6 August 5th, for example. Mr. Rathbun

7 clearly testified about that. He made a

8 communication, and has already alluded

9 to...

10 THE VICE-CHAIR: Why don't we start with

11 your questioning?

12

13 BY MR. TAPP:

14 Q. Where did you first meet Mr. Jack,

15 Mr. Gravelle?

16 A. At the Peterborough County OPP

17 Detachment.

18 Q. What was the purpose of that

19 meeting, Mr. Gravelle?

20 A. Mr. Jack attended the Peterborough

21 Detachment to purchase a criminal code.

22 Q. To?

23 A. Purchase a criminal code.

24 Q. Is this something the Peterborough

25 Detachment sells?

- 83 - M. Gravelle

Ex (L. TAPP)

1 A. No, it does not, and Mr. Jack was

2 informed of that.

3 Q. Is that contained anywhere in your

4 statement?

5 A. I don't believe so.

6 Q. When did you make your statement,

7 Mr. Gravelle?

8 A. I'm sorry, I can't tell you off the

9 top of my head.

10 Q. Would it be safe to say upon being

11 advised of the application before the OPP that you

12 were notified to provide a statement?

13 MR. MANUEL: With the application? What

14 application?

15

16 BY MR. TAPP:

17 Q. The application that is before this

18 tribunal, the Human Rights application?

19 A. I believe there was two separate

20 applications. I can't discern which one you would

21 be referring to, I'm sorry.

22 Q. But nonetheless it would be as a

23 result of those two that you were notified to

24 provide a statement?

25 A. I can't tell you when I was asked to

- 84 - M. Gravelle

Ex (L. TAPP)

1 do it.

2 Q. No, I'm not asking that. It would

3 be as a result of those two applications, per se,

4 that you were notified to provide a statement?

5 A. I would suspect so.

6 Q. Would you agree that if this Human

7 Rights application was shared with the OPP in

8 January of 2011, that you would have been notified

9 at some date afterwards to provide a statement?

10 A. I don't want to say yes or no,

11 because I don't know the timeline. I don't want

12 to...I don't want to tie myself down to a timeline

13 that I'm unsure of. This has been going on for some

14 time. I'm unsure of the timeline.

15 Q. But you already acknowledged that it

16 was sometime after the application was shared with

17 the OPP?

18 MR. MANUEL: He has answered that. He

19 believes so.

20 THE VICE-CHAIR: Do you have a copy of

21 this statement?

22 MR. TAPP: Yes, I do.

23 THE VICE-CHAIR: Can you share it with

24 me?

25 MR. TAPP: Yes, let's provide it.

- 85 - M. Gravelle

Ex (L. TAPP)

1 THE VICE-CHAIR: I'm sure I have a copy

2 somewhere. Well, they should have a

3 copy...

4 MR. MANUEL: Can I see what you are

5 doing, what you are giving the Vice-Chair?

6 THE VICE-CHAIR: Has this been provided

7 to...

8 MR. TAPP: Yes. Well, counsel provided

9 it.

10 MR. MANUEL: Prepared by former counsel.

11 MR. TAPP: It doesn't matter. Counsel

12 for the respondent.

13 THE VICE-CHAIR: Okay. I seem to recall

14 this.

15 MR. TAPP: You have got that, Mr...

16 MR. MANUEL: I just want to make sure we

17 are on the same page.

18 MR. TAPP: Thank you.

19

20 BY MR. TAPP:

21 Q. Mr. Gravelle, you said you first met

22 Mr. Jack at the Peterborough OPP Detachment;

23 correct?

24 A. That is correct.

25 Q. If I were to suggest that you met

- 86 - M. Gravelle

Ex (L. TAPP)

1 him outside of the police environment, at a time

2 predating, prior to 2008, would I be correct?

3 A. I don't believe so.

4 Q. Were you a member of any fitness

5 gym?

6 A. Yes, I was.

7 Q. Can you tell us which ones?

8 A. Goodlife, Goodlife Fitness. It used

9 to be Gold's Gym prior to that, north end of

10 Peterborough on Chemong Road.

11 Q. How long were you a member there?

12 A. I have been a member since,

13 approximately, 2007, approximately.

14 Q. How often would you frequent that

15 gym?

16 A. It depends on the week. It depends

17 on my work schedule.

18 Q. Fair enough. I got a copy of some

19 memberships of Mr. Jack. These have already been

20 tendered as documents that you have relied upon, and

21 Mr. Jack has testified in his testimony. For the

22 purpose of putting forward the next question I would

23 like to show him this membership.

24 MR. MANUEL: Why don't you ask the

25 question?

- 87 - M. Gravelle

Ex (L. TAPP)

1 THE VICE-CHAIR: Exactly.

2 MR. MANUEL: He doesn't need the

3 document, with respect. It has got nothing

4 to do with that document.

5

6 BY MR. TAPP:

7 Q. If I was to suggest to you that Mr.

8 Jack was also a member of that Goodlife Fitness gym,

9 and that you did have occasion to run into him then,

10 would that jog your memory?

11 A. He may have been there, but I didn't

12 know him, so you and I may go to the same gym, but I

13 don't know you.

14 Q. Fair enough.

15 A. So I can't say that I know somebody,

16 or I have an acquaintance with somebody if I don't

17 know who they are. I first met Michael Jack at the

18 Peterborough Detachment, first knew who he was, met

19 him, knew of him, at that location.

20 Q. Okay. Regardless of if you had met

21 him previously, that was an occasion you

22 specifically acknowledge meeting him first time?

23 A. I have never met him prior to

24 meeting him at the Peterborough Detachment. That

25 was the first time I met him.

- 88 - M. Gravelle

Ex (L. TAPP)

1 Q. Is it true that you told Mr. Jack,

2 when he attended Peterborough Detachment that first

3 time, that you recognized him from the Goodlife

4 Fitness gym?

5 A. It is quite possible. I can't say,

6 yes or no, but it is possible.

7 Q. What was the meeting with Mr. Jack,

8 at the Peterborough Detachment, in 2008, about, or,

9 pardon me, you said he came there to buy a copy of

10 the criminal code; right?

11 A. That is correct.

12 Q. Was there anything else that the

13 meeting was about?

14 A. I wouldn't classify it as a

15 "meeting" as I would Mr. Jack attended the

16 Peterborough Detachment to purchase a Criminal Code

17 of Canada, to which I responded to him, "We do not

18 sell them there".

19 A short conversation was had after that, so

20 I would not say, classify it as a "meeting", as I

21 would. He just dropped in. I happened to be

22 working the desk that day, whether...it was a

23 weekend. I'm not sure which day, or it was a

24 holiday, one or the other, and I happened to be the

25 one in the office that day.

- 89 - M. Gravelle

Ex (L. TAPP)

1 Q. Was there a discussion about any

2 ride-alongs?

3 A. I believe so, yes.

4 Q. So that would have taken place on

5 that day as well or a different day?

6 A. I would assume that it is that day.

7 I don't believe I had any other meetings with him

8 leading up to the ride-along, from which the first

9 time I met him at the detachment.

10 Q. So the discussion for the criminal

11 code and the ride-along?

12 A. Yes.

13 Q. Do you know if Mr. Jack had the

14 opportunity to meet with your sergeant?

15 A. That day? The first time I met Mr.

16 Jack?

17 Q. Okay. Let's say that day.

18 A. I'm sorry, I don't recall that.

19 Q. Did you take Mr. Jack on a

20 ride-along?

21 A. Yes, I did.

22 Q. If you were going to take a citizen

23 on a ride-along would you have to get permission

24 from someone to do so?

25 A. At this point in time Mr. Jack had

- 90 - M. Gravelle

Ex (L. TAPP)

1 informed me, at my first meet with him, that he had

2 recently been hired, so as a...I would assume it to

3 be a courtesy, or I would offer a courtesy to a

4 newly membered...a newly hired member to give them a

5 ride-along so they could get to know the area, if

6 they want.

7 Q. But that would not warrant seeking

8 your sergeant's authority to take him out on a

9 ride-along?

10 A. Not at that point in time, no.

11 Q. Was there another point in time that

12 you took him on a ride-along?

13 A. We have now a policy in which you

14 have to have...you have to be granted the ability to

15 do that, but at that point in time it was officer

16 discretion.

17 Q. So if anyone were to attend the

18 detachment it would be an officer's discretion and

19 that officer...

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

21 said as having been recently hired. Not

22 anyone.

23

24 BY MR. TAPP:

25 Q. If evidence reveal that Mr. Jack

- 91 - M. Gravelle

Ex (L. TAPP)

1 signed the offer of employment on July 24th would it

2 be safe to say that in order for him to say, "I have

3 just been offered employment", that that ride-along

4 was sometime after that date?

5 MR. MANUEL: Speculation. Let's just

6 get to the point, with respect.

7 THE VICE-CHAIR: Ask him when the

8 ride-along was.

9

10 BY MR. TAPP:

11 Q. When was that ride-along?

12 A. I don't remember the date.

13 Q. But if you had your notes you would?

14 A. Quite possibly. Depending if that

15 date was brought up, yes.

16 Q. Because to be in a cruiser, for a

17 whole shift, with someone would be something to note

18 in your notebook?

19 A. As well as Mr. Jack would have

20 signed a liability form.

21 Q. If evidence reveal that you never

22 provided a copy of your notebooks for that

23 ride-along would that be correct?

24 A. I can't speak to that, I'm sorry.

25 Q. How many times did Mr. Jack attend

- 92 - M. Gravelle

Ex (L. TAPP)

1 the detachment before you took him on a ride-along?

2 MR. MANUEL: How would he know that?

3

4 BY MR. TAPP:

5 Q. How many times did he attend and see

6 you before he took the ride-along with you?

7 A. I believe only once, that I'm aware

8 of.

9 Q. Mr. Gravelle, I would like to see a

10 copy of your notebook for Saturday July 26th, 2008,

11 July 27th, 2008, July 30th, 2008 and July 31st,

12 2008?

13 MR. MANUEL: There has to be an

14 evidentiary basis for that request. What

15 is the evidentiary basis? What does Mr.

16 Jack say the date was?

17

18 BY MR. TAPP:

19 Q. Mr. Gravelle, I draw your attention

20 to the third paragraph in your statement. You

21 indicate that you took him on a ride-along two weeks

22 later; am I correct?

23 A. I don't have a copy of that right

24 now, beyond what I have in front of me, which I have

25 not referred to, because I...

- 93 - M. Gravelle

Ex (L. TAPP)

1 Q. Well, please, look at it?

2 A. Can I see what you are looking at so

3 we are referring to the same thing?

4 Q. Yes.

5 A. Thank you. The third paragraph?

6 Q. Yes.

7 A. Okay.

8 Q. Just read the first sentence of that

9 paragraph.

10 A. "...Two weeks later PC Gravelle took

11 Mr. Jack on a ride-along during which PC

12 Gravelle conducted regular duties and

13 engaged in conversation with Mr. Jack..."

14 Q. Thank you. After that ride-along

15 did you have any discussions with Sergeant Rathbun

16 about that ride-along?

17 A. Yes, I did. Actually, correct that.

18 I'm not sure if it was directly after that

19 ride-along or days later. I'm not sure which one.

20 Q. But nonetheless, if evidence reveal

21 that Mr. Rathbun, as a result of that first

22 ride-along with Mr. Jack, drafted an e-mail and sent

23 it to detachment management, that the content of

24 that e-mail could refer to you giving him the

25 information?

- 94 - M. Gravelle

Ex (L. TAPP)

1 MR. MANUEL: Why don't you show him the

2 e-mail?

3 MR. TAPP: Okay.

4

5 BY MR. TAPP:

6 Q. I'm going to show you the August 5th

7 e-mail that is already submitted, Exhibit 93. I'm

8 just showing this.

9 MR. MANUEL: I'm just showing the

10 witness what has been marked as Exhibit 93.

11

12 BY MR. TAPP:

13 Q. So the question is, if evidence

14 reveal that Mr. Jack only went on two ride-alongs

15 then, as for the information in that e-mail,

16 addressed by Sergeant Rathbun, that information

17 would be based on which ride-along and from who the

18 officer was?

19 MR. MANUEL: Mr. Vice-Chair, why don't

20 we do a convoluted question? Just ask him,

21 is the...

22

23 BY MR. TAPP:

24 Q. Who did Sergeant Rathbun base that

25 information on?

- 95 - M. Gravelle

Ex (L. TAPP)

1 MR. MANUEL: No. No, that is not a fair

2 question. He is not responsible for

3 Sergeant Rathbun. Is the information in

4 this e-mail, did that come from you? That

5 is the question.

6

7 BY MR. TAPP:

8 Q. Did that information come from you,

9 Mr. Rathbun, I mean Mr. Gravelle? Sorry. I'm

10 getting...

11 A. Yes.

12 Q. Thank you. Could it have come from

13 some stranger?

14 MR. MANUEL: Speculation.

15

16 BY MR. TAPP:

17 Q. Could it have come from Mr. Pollock?

18 MR. MANUEL: Speculation. This witness

19 has said it came from him.

20

21 BY MR. TAPP:

22 Q. And what is the date of that e-mail,

23 Mr. Gravelle?

24 A. Sent Tuesday, August 5th, 2008,

25 12:01 a.m.

- 96 - M. Gravelle

Ex (L. TAPP)

1 Q. Would you not agree that as of

2 August 5th you had done the ride-along with Mr.

3 Jack?

4 MR. MANUEL: He has answered that. The

5 information came from him. It had to have.

6 THE WITNESS: I would say so, yes.

7

8 BY MR. TAPP:

9 Q. I'm going to give you a copy of a

10 shift schedule for your platoon for July 8th,

11 specifically from July 21st to the 31st.

12 MR. MANUEL: Well, what is the point of

13 this, Mr. Vice-Chair?

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

15 MR. MANUEL: What are we doing here?

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

17 MR. TAPP: He doesn't have his notebook.

18 If he had his notebook...

19 MR. MANUEL: Why are you bringing this

20 up?

21

22 BY MR. TAPP:

23 Q. Because, would you not agree that if

24 he signed the offer of employment on July 24th, and

25 he met with you on one occasion, and on the second

- 97 - M. Gravelle

Ex (L. TAPP)

1 occasion he went on the ride-along, and the

2 ride-along had to have been before that e-mail from

3 sergeant, how could you say in your statement that

4 two weeks later...

5 MR. MANUEL: What turns on what...

6 MR. TAPP: Well, it is significant. We

7 are going to the truthfulness of the

8 will-say, so bear with me.

9

10 BY MR. TAPP:

11 Q. Two weeks later is 14 days after

12 July 24th, would place it well beyond August 4;

13 right or wrong?

14 MR. MANUEL: But it is all premised on

15 speculation that...

16 MR. TAPP: No, the statement...

17 MR. MANUEL: No.

18

19 BY MR. TAPP:

20 Q. Will you agree...

21 MR. MANUEL: Mr. Vice-Chair, please.

22 THE VICE-CHAIR: Yes, I'm getting tired

23 here. You have got to ask the question...I

24 don't see the point of this.

25

- 98 - M. Gravelle

Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Okay. Will you agree that your

3 memory of when you provided that statement would

4 have been clearer then as opposed to now, several

5 years later?

6 MR. MANUEL: The premise on that is that

7 that statement wasn't done several years

8 later. Our understanding is that that

9 statement was done several years later, in

10 the context of counsel preparing for this

11 hearing, so this statement and his evidence

12 are all several years later.

13 THE VICE-CHAIR: They are.

14 MR. TAPP: No. That statement, looking

15 at the time date at the bottom of that

16 statement, 2011, in the disclosure. It may

17 not be what is before you here.

18

19 BY MR. TAPP:

20 Q. Okay. Let's deal with that

21 ride-along, Mr. Gravelle. How did the fact that Mr.

22 Jack spoke English, with a thick accent, make you

23 feel?

24 A. I used to live in Toronto, so I

25 can't say I was used to it, but I have lived in

- 99 - M. Gravelle

Ex (L. TAPP)

1 Toronto, so I was used to diversity.

2 Q. Mr. Gravelle, I would imagine that

3 for the period of time that you all were in the

4 cruiser, on this ride-along, conversations of Mr.

5 Jack would have been somewhat uncomfortable to

6 understand until one got a little familiar with his

7 accent; would you agree or disagree with that?

8 A. I think it depends on the person.

9 If you have never experienced, or you have never

10 spoken to someone with a Russian background, then it

11 may be uncomfortable.

12 Q. So would you acknowledge that he had

13 a thick Russian accent?

14 A. I would just describe it as a

15 Russian accent.

16 Q. Do you remember that ride-along?

17 A. I do, but vaguely, given the time.

18 Q. Any recollection of what you might

19 have talked about?

20 A. Loosely.

21 Q. But enough for information to be

22 relayed to your sergeant?

23 A. Enough concerns, yes.

24 Q. What concerns?

25 A. The summary of my statement is right

- 100 - M. Gravelle

Ex (L. TAPP)

1 here. Do you want to ask me specifics about that

2 and I can answer, because beyond that...

3 Q. Okay. Yes. Your statement

4 indicated you had some concerns about Mr. Jack.

5 A. That is correct.

6 Q. Your statement also indicates you

7 observed some photos of Mr. Jack?

8 A. That is correct.

9 Q. I'm going to show you some

10 photographs, and I'm going to ask you clearly, were

11 these photographs that you would have seen of Mr.

12 Jack; okay?

13 A. Okay.

14 Q. You know the question beforehand.

15 Flip through those pages, look at the photographs.

16 A. Do you want me to describe which

17 ones I have seen or haven't seen?

18 Q. Yes. If you recall ones that you

19 have seen or not seen feel free to, but as you flip

20 through the pages so we have a copy of those

21 photographs, so we can flip along and identify.

22 A. The first page, bottom right corner,

23 Mr. Jack behind a cinder block/concrete wall, with a

24 beach scenery in the background, I remember that

25 one. Page 2, very top of the page, Mr. Jack with

- 101 - M. Gravelle

Ex (L. TAPP)

1 another male, I recall that one.

2 Q. You can just say "top photograph" or

3 "bottom". Thank you.

4 A. Bottom of the page, page number 3,

5 dated 27th of October 2005. Nothing on page 4.

6 Nothing on page 5. Nothing on page 6. Nothing on

7 page 7. Nothing on page 8. Nothing on page 9.

8 Nothing on 10. Nothing on 11. Nothing on 12.

9 Nothing 13. Nothing on 14. Nothing on 15. Nothing

10 on 16. Nothing of 17. Nothing of 18, that I can

11 recall.

12 Q. So that comment there, in your

13 statement on page 1, regarding your concerns, "He

14 observed some photos of Mr. Jack", would be three

15 photographs; am I correct?

16 A. There is one photograph that I

17 specifically remember that I do not see in this list

18 of photographs, so beyond these three, there is a

19 photograph, as I have described once before, with

20 Mr. Jack holding what I described as an, "M16 style

21 rifle in the air", with a tactical style knife in

22 his mouth. That is one picture I remember that I

23 did not view in this collage of photos.

24 Q. Would it be strange for you that if

25 evidence revealed that Mr. Jack never had any such

- 102 - M. Gravelle

Ex (L. TAPP)

1 photograph in his possession would that be odd or

2 would that be strange...

3 MR. MANUEL: I object.

4

5 BY MR. TAPP:

6 Q. ...that you observed...

7 MR. MANUEL: I object.

8 THE VICE-CHAIR: I object myself.

9

10 BY MR. TAPP:

11 Q. But you agree that if these were all

12 the...if these were all the photographs he had...

13 MR. MANUEL: I object. You have his

14 evidence.

15 MR. TAPP: Fair enough.

16 THE VICE-CHAIR: So he was holding an

17 M16, and what was in his mouth; some sort

18 of knife?

19 THE WITNESS: I referred to it as, it is

20 like a combat style knife. I guess it

21 would be best described as from the movie

22 Rambo. There was a long...I wouldn't want

23 to speculate how long it would be, but it

24 has, like edgings, and a sharp edge and

25 then edgings on the opposite side of the

- 103 - M. Gravelle

Ex (L. TAPP)

1 dagger. I most recall it from the movie

2 Rambo, as a kid, a combat style knife.

3 THE VICE-CHAIR: Okay. Thank you.

4

5 BY MR. TAPP:

6 Q. Okay. So let's take that photograph

7 also into account. Those four photographs were of

8 concern to you, for you to mention that in your

9 statement?

10 A. They were in the forefront of my

11 mind, yes.

12 Q. Why would they be in the forefront

13 of your mind?

14 A. I have never seen that before.

15 Q. So if you have never seen that

16 before does that mean that that would be a concern?

17 A. It was a concern to me as a police

18 officer.

19 Q. Would you agree that Israel is often

20 the topic of news and often in the news of being in

21 conflict with its neighbours?

22 MR. MANUEL: I object. This is

23 irrelevant.

24

25 BY MR. TAPP:

- 104 - M. Gravelle

Ex (L. TAPP)

1 Q. What will you know of Israeli...

2 MR. MANUEL: It is irrelevant. I

3 object.

4 MR. TAPP: It is the same question we

5 posed Mr. Rathbun.

6 MR. MANUEL: Yes. It was irrelevant

7 then. It has gotten more irrelevant.

8 MR. TAPP: Fair enough.

9

10 BY MR. TAPP:

11 Q. So the photographs were of a concern

12 to you because you have never seen, or you have

13 never seen such depictions, let's say?

14 A. Now that I'm thinking about it, I

15 think it is also concerning to me, because I don't

16 know this person very well. And upon meeting

17 someone, or spending some time with someone for the

18 first time, that is probably not something I would

19 be showing them right off the bat.

20 That is also what raised my concern. And,

21 as I stated, being a police officer it was strange

22 for me to experience seeing that when I don't know

23 the person that is showing me the pictures. I would

24 have expected, maybe, a closer relationship with

25 that person before that was exposed to me.

- 105 - M. Gravelle

Ex (L. TAPP)

1 Q. Mr. Gravelle, would you agree or

2 disagree about the following definition of

3 "prejudice", taken out of dictionary.com? Hear it

4 out and tell me if you would agree or disagree:

5 "...An unfavourable opinion or feeling

6 found beforehand or without knowledge,

7 thought or reason..."

8 Agree or disagree?

9 A. I agree.

10 Q. Would you agree or disagree about

11 the following definition of "prejudice" taken from

12 Google dictionary?

13 MR. MANUEL: I object. We have a

14 definition. Let's move on.

15 MR. TAPP: Okay. Yes.

16

17 BY MR. TAPP:

18 Q. Based on your testimony about those

19 photographs would you agree that your concern was

20 without knowledge...

21 MR. MANUEL: I disagree. He has told

22 you what his concern is. He has answered

23 the question.

24 MR. TAPP: No. He said...

25 THE VICE-CHAIR: Without knowledge of

- 106 - M. Gravelle

Ex (L. TAPP)

1 what?

2

3 BY MR. TAPP:

4 Q. You said you did not know Mr. Jack.

5 You met him. You are taking out on a ride-along.

6 He shows you some photographs, and based on what you

7 know of him, and showing you those photographs, you

8 had a concern?

9 MR. MANUEL: He has answered that. He

10 wouldn't have expected to be shown those

11 types of photographs from someone he didn't

12 know well. We have the evidence.

13

14 BY MR. TAPP:

15 Q. Did you know why he was showing you

16 those photographs?

17 MR. MANUEL: Speculation.

18 MR. TAPP: Well, no. I'm asking him.

19 MR. MANUEL: No.

20

21 BY MR. TAPP:

22 Q. Did he explain to you the

23 photographs when he showed them to you, or did he

24 just...

25 MR. MANUEL: Let's go to the next

- 107 - M. Gravelle

Ex (L. TAPP)

1 question...that is fine.

2

3 BY MR. TAPP:

4 Q. ...show the photographs and stay

5 quiet?

6 A. Like, as I already stated, my

7 recollection of the day, I have one, but it is

8 vague. I can't speak to the conversation we had,

9 but I will-say that we spoke regular during that

10 time. There was never a time where we had a

11 shortness of conversation or awkward moment, so I

12 would assume that we were talking. What he was

13 saying to me, during that time of the photographs, I

14 can't speak to, though. I don't remember.

15 Q. Fair enough.

16 MR. MANUEL: Move on. Let's move on.

17

18 BY MR. TAPP:

19 Q. I understand you have observed

20 certain actions of Mr. Jack within his residence;

21 true or not true?

22 A. I believe so.

23 Q. And that observations were reflected

24 in the second bullet of your concerns?

25 A. Correct.

- 108 - M. Gravelle

Ex (L. TAPP)

1 Q. Just because you observed Mr. Jack

2 locking the doors to his residence, that was a

3 concern to you?

4 A. More specifically, as we exited and

5 entered new doors within his residence, and there

6 was more than just one, each door was locked and

7 unlocked, by which a key he had on his person, or

8 several keys he had on his person.

9 I can understand a singular room where his

10 firearms are being stored to be locked, that makes

11 perfect sense to me, but to move into a room that

12 seemed to be a kitchen with multiple entrances and

13 exits, to unlock and lock that, okay, but that was

14 the next thing I saw being unlocked, besides the gun

15 room and the entrance from the outside to his

16 apartment.

17 And then, as well, as we went upstairs,

18 there was another room that was locked, which I

19 believe was his office. And each room within

20 that...his housing was locked and unlocked with

21 keys.

22 I know, from my own experience, and from

23 being in people's houses, through means of my

24 employment, I have never seen that before. I can

25 understand a gun room, where you keep your firearms

- 109 - M. Gravelle

Ex (L. TAPP)

1 for safety purposes, even though he did have a safe

2 in there, I can understand that. That seems

3 reasonable to me, but the subsequent doors within

4 the house, that were all locked and unlocked, with

5 different keys, that didn't...that, at the very

6 least, caused me some concerns.

7 That is not...I have never seen that within

8 the course of my employment or in my personal life.

9 Q. Was it a house, apartment or

10 condominium?

11 A. I believe it was an apartment,

12 attached to a regular, I'm not sure if it is a

13 bungalow or a two-storey, but it is a house located

14 in, I believe it was Selwyn Township.

15 Q. If evidence reveals that Mr. Jack

16 rented an apartment, consisting of three rooms

17 within a house, would that explain why he was

18 locking the doors to his residence?

19 MR. MANUEL: I object. How would he

20 know?

21

22 BY MR. TAPP:

23 Q. Would that explain the actions of

24 Mr. Jack?

25 MR. MANUEL: I object.

- 110 - M. Gravelle

Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Would you, if you rented three rooms

3 within a house, would you lock the doors?

4 A. This was a separate entrance to the

5 main house.

6 Q. Fair enough. I'm talking if you

7 rented three rooms in a house, would you lock the

8 doors?

9 MR. MANUEL: It is speculation. And

10 that is not the evidence. He has given you

11 the evidence.

12

13 BY MR. TAPP:

14 Q. Now, if you rented a portion of a

15 house...

16 MR. MANUEL: I object. It is

17 speculation.

18 THE VICE-CHAIR: As soon as you start a

19 question with "if"...

20

21 BY MR. TAPP:

22 Q. But if you knew the landlord of that

23 house, the owner of the house never locked their

24 doors, and you...

25 MR. MANUEL: I object. It is

- 111 - M. Gravelle

Ex (L. TAPP)

1 speculation. He is not obliged to

2 speculate. He is here to give evidence as

3 to fact.

4

5 BY MR. TAPP:

6 Q. If you rented an apartment...

7 MR. MANUEL: I object.

8 THE VICE-CHAIR: There is the "if"

9 again.

10

11 BY MR. TAPP:

12 Q. You observed him doing the action of

13 locking the doors, and you felt it to be a concern,

14 yet you never asked him why he was locking the

15 doors; correct?

16 MR. MANUEL: Ask him...

17

18 BY MR. TAPP:

19 Q. Did you ask him? Did you ask him

20 why he was looking the doors, put it that way?

21 A. No.

22 THE VICE-CHAIR: We are going to break

23 for lunch at one or so?

24 MR. TAPP: One. I will tell you then, I

25 will give a definite indication, at the

- 112 - M. Gravelle

Ex (L. TAPP)

1 most I will be, probably, an hour, at the

2 most, after lunch, and I will be done with

3 this witness, and we can move on to the

4 next.

5 MR. MANUEL: We have another witness

6 too?

7 THE VICE-CHAIR: We do?

8 MR. TAPP: Yes. Mr. Duignan is here.

9 MR. MANUEL: I'm just...

10 THE VICE-CHAIR: Yes, so...

11 MR. MANUEL: So we won't get through him

12 today, Mr. Duignan.

13 MR. TAPP: If I am done with Mr.

14 Gravelle, at the latest 3:00...if I'm done

15 with Mr. Gravelle by well before 3:00 then

16 I don't see why we can't get through Mr.

17 Duignan.

18 MR. MANUEL: I understand Mr. Duignan

19 has some issues about testifying so...

20 THE VICE-CHAIR: Yes, I understand.

21 MR. MANUEL: ...it is going to have to

22 be...

23 THE VICE-CHAIR: I understand that as

24 well.

25 MR. MANUEL: So I think it would be...we

- 113 - M. Gravelle

Ex (L. TAPP)

1 would like to deal with that, you know,

2 have that dealt with, so that we know where

3 we are going.

4 MR. TAPP: Okay. So what is the plan?

5 We deal with Duignan right after lunch?

6 MR. MANUEL: No. Let's finish Mr.

7 Gravelle.

8 THE VICE-CHAIR: Yes, we have to finish

9 this.

10 MR. TAPP: Let's finish with Mr.

11 Gravelle. Okay.

12 THE VICE-CHAIR: We may as well stop.

13 Let's take lunch, an hour.

14 MR. MANUEL: That is fine.

15

16 --- upon recessing at 12:57 p.m.

17 --- A LUNCHEON RECESS

18 --- upon resuming at 2:10 p.m.

19

20 THE VICE-CHAIR: Mr. Tapp?

21

22 MARC GRAVELLE, resumed

23 CONTINUED EXAMINATION BY MR. TAPP:

24 Q. So, Mr. Gravelle, rather than go

25 through the questions I have prepared I'm just going

- 114 - M. Gravelle

Ex (L. TAPP)

1 to specifically question you on your statement;

2 okay...

3 A. Okay.

4 Q. ...that you provided? You had some

5 concerns about Mr. Jack because you observed some

6 photos of him regarding firearms, yet you never

7 questioned him about it; right?

8 A. No, I don't believe so.

9 Q. You observed him locking the doors

10 in his residence, yet you never questioned him about

11 that; right?

12 A. That is correct.

13 Q. Another concern mentioned in your

14 statement, you had concerns about him showing his

15 gun collection to someone he had never known for a

16 short period of time; right?

17 A. Correct.

18 Q. But weren't you in uniform, and you

19 were a police officer, when he showed it to you?

20 A. Yes, I was.

21 Q. Good. So, so what if he showed you

22 his gun collection?

23 A. Is there a question?

24 Q. That is. Yes. Just because he

25 showed a police officer his gun collection how can

- 115 - M. Gravelle

Ex (L. TAPP)

1 that be a concern?

2 A. I think, to explain that, I'm not a

3 gun enthusiast myself. And at that point in time I

4 didn't own any guns, so to someone who is not a gun

5 enthusiast, seeing a gun collection, when you

6 haven't asked to see a gun collection, it is out of

7 the norm. Had I been a gun collector, or a gun

8 enthusiast, that would make complete sense, but I

9 was neither of that.

10 Q. But you did not ask him questions

11 about that?

12 A. When I'm in someone's residence, and

13 there is firearms displayed to me, and I'm there by

14 myself, as you said, in a police situation, I'm not

15 going to get in a confrontational situation about

16 someone's firearms collection, or start questioning

17 someone's, for lack of better terminology, mental

18 stability or their state of mind.

19 If something were to happen there is a very

20 capable person there that could very well have

21 disarmed me, and it is an officer safety issue.

22 That is the first and foremost. I'm not going to

23 question somebody, and get into a conflict with

24 somebody, in their own home, who I may fear for my

25 safety if things go sideways, so to speak.

- 116 - M. Gravelle

Ex (L. TAPP)

1 Q. So you take him on a ride-along, he

2 invites you into his house, he shows you certain

3 things. You don't question him about it, but you go

4 and report it to your sergeant; is that right?

5 A. He invites me into his house to show

6 me his guns. That was the purpose of the visit.

7 Q. Okay. So you know, beforehand, that

8 you were going to his house to see a gun collection?

9 A. I have never been asked before in my

10 life to go to somebody's house, who I don't know, to

11 see their gun collection.

12 Q. Fair enough.

13 A. And as a police officer I have

14 learned over my years that you tend to investigate

15 things that come before you. And curiosity is part

16 of our job. And part of why seasoned police

17 officers are seasoned. They investigate things.

18 They look into things. When someone asks you

19 something you look into it.

20 Q. So what investigation, or what did

21 you do to look into your concern about him locking

22 the doors?

23 A. This was after the viewing his

24 firearms. This was not something that...there was

25 no plan to view it. It just happened. The whole

- 117 - M. Gravelle

Ex (L. TAPP)

1 thing just unfolded before my eyes.

2 Q. But didn't you just say that he told

3 you he was going to show you his gun collection, and

4 he showed it to you, so there was a discussion about

5 the gun collection? There had to have been one.

6 A. I don't see what you are asking, the

7 reference to locking of the doors.

8 Q. Let's say we have dealt with the

9 locking of the doors; okay? All right. You said

10 there was a discussion about the firearms. He

11 wanted to show you his firearms, so you knew

12 beforehand he is going to be inviting you into his

13 house, showing you his firearms, so, so what?

14 He shows you his firearms. You knew,

15 beforehand, that you would see his gun collection.

16 At that point, if you had any concerns would you not

17 have asked him, "Why do you want to show me your gun

18 collection"?

19 A. This goes back to what I just

20 explained about being a police officer, and

21 following leads. My curiosity took over at that

22 point, where I'm being asked a question, do I want

23 to go and see someone's gun collection, and part of

24 me was thinking, "Why is he asking me?" But, number

25 two, why wouldn't I? So I did. And that is what

- 118 - M. Gravelle

Ex (L. TAPP)

1 put me in that situation.

2 Q. So now it becomes very clear. You

3 know he has been offered employment. He is going to

4 be working as an OPP officer, so what is so strange

5 about, or concerning about an OPP officer going to

6 show you his gun collection?

7 MR. MANUEL: He has answered that, Mr.

8 Vice-Chair. We are going around and

9 around.

10 THE VICE-CHAIR: Yes. I think we are

11 going around, and...

12 MR. TAPP: Okay. I will go on.

13

14 BY MR. TAPP:

15 Q. Well, likewise, you noted in the

16 next that he inquired if there were bullets in your

17 firearm, and that was of concern?

18 A. More so, was there one in the

19 chamber? And given that this is a summary, it

20 doesn't outline that the question was directed, was

21 there one in the chamber? And at this particular

22 time, when the question was asked, myself and

23 another officer were responding to a 911 call, on an

24 island, on a boat, and we were engaged in, I would

25 suspect to be general conversation, when Mr. Jack

- 119 - M. Gravelle

Ex (L. TAPP)

1 posed a question similar to, "Is there a gun?" or,

2 "Is there a bullet in your chamber?"

3 So to me that is an awkward question to ask

4 a police officer. I have never been asked that

5 before by anybody. And being a police officer, when

6 someone starts asking you questions about your gun,

7 you have to discern what their motives are at that

8 point in time.

9 Q. Fair enough, but you knew he was

10 given an offer of employment?

11 MR. MANUEL: We have had this evidence.

12 MR. TAPP: Hang on a second. It is

13 pertinent to this; okay?

14

15 BY MR. TAPP:

16 Q. You knew he was given an offer of

17 employment, and your training does tell you,

18 specifically, to make sure, when on duty, one is in

19 the chamber; right?

20 A. That is my training, yes.

21 Q. Yes. Well, that is the same for

22 every officer; right, on the job, on patrol?

23 A. That is my training, yes.

24 Q. Good. So would his question not be

25 in line with OPP directives concerning one in the

- 120 - M. Gravelle

Ex (L. TAPP)

1 chamber?

2 A. He is not a police officer.

3 Q. Would you not agree, if he has

4 signed an offer of employment, that the only thing

5 left is his commencement of duty at the detachment,

6 which is why there were these ride-alongs?

7 A. No.

8 MR. MANUEL: He was still at police

9 college. The premise of this is

10 inaccurate.

11

12 BY MR. TAPP:

13 Q. So are you saying, at that point, he

14 was not an OPP officer?

15 A. I don't believe so, no.

16 Q. Would you agree that your testimony

17 so far was he told you that he was given an offer of

18 employment; right?

19 A. I believe so. I can't substantiate

20 it, but I believe so.

21 Q. But if evidence reveal that he

22 signed such an offer of employment on July 24th,

23 then he would have been telling you the truth;

24 right?

25 A. I can't substantiate that. I didn't

- 121 - M. Gravelle

Ex (L. TAPP)

1 see an offer of employment. I didn't see his

2 signature. I can't substantiate that.

3 Q. The next item in your statement says

4 that you discussed Mr. Jack's ride-along with you.

5 You discussed it with Constable Pollock; right?

6 A. That is correct.

7 Q. And, specifically, your statement

8 says you discussed with Pollock their respective

9 ride-alongs; right?

10 A. That is correct.

11 Q. That meant Pollock already did a

12 ride-along with Mr. Jack?

13 A. I would assume so, yes.

14 Q. Fair enough. So the next statement

15 would have to be true, that at some point after your

16 conversation with Pollock, you addressed your

17 concerns about Mr. Jack with Rathbun?

18 A. That is fair to say.

19 Q. And if evidence revealed that,

20 according to the August 5th e-mail that you have

21 before you, that PC Pollock had not gone on the

22 ride-along yet, how can that statement, in your

23 will-say, be true?

24 A. Without the timelines I can't

25 confirm or deny any of it.

- 122 - M. Gravelle

Ex (L. TAPP)

1 Q. Good.

2 A. I can't tell you when it took place,

3 how it took place. I don't recall. It was...it was

4 11 years ago.

5 Q. Fair enough.

6 A. Or, sorry, not 11 years ago. It was

7 eight years ago.

8 Q. Eight years ago, but your

9 information to Sergeant Rathbun, on August 5th, was

10 just a few days after that ride-along, so it had to

11 be genuine.

12 MR. MANUEL: This is a different

13 question.

14 THE VICE-CHAIR: Yes. What you are

15 driving at?

16 MR. TAPP: That his memory on August 5th

17 was much better than his memory when he

18 prepared this statement.

19 THE VICE-CHAIR: August 5th of?

20 MR. TAPP: 2008, was more clear than

21 when he prepared this statement.

22 MR. MANUEL: So what are you challenging

23 him about?

24 THE VICE-CHAIR: I would expect that to

25 be the case.

- 123 - M. Gravelle

Ex (L. TAPP)

1 MR. TAPP: All right. Good.

2 THE VICE-CHAIR: Certainly would be the

3 case.

4

5 BY MR. TAPP:

6 Q. So how is it that your e-mail says

7 one thing, specifically that he told you he shot and

8 killed people during his time in the army, and you

9 make no mention of that in your will-say? Show me

10 where, in your will-say, you made mention of that?

11 A. This is not my e-mail. I didn't

12 send that e-mail, so I can't speak to the e-mail. I

13 can speak to the will-say that I have given to, or

14 as part of this process.

15 Q. But your testimony earlier was that

16 Sergeant Rathburn's e-mail was based on your

17 information to him.

18 A. I would say that is true.

19 Q. Good. So now you see how I'm

20 perplexed. You tell him that Jack told you he shot

21 and killed people, yet nowhere in your statement

22 that is mentioned.

23 A. I can recall Mr. Jack mentioning the

24 fact that he...I believe he mentioned that he was

25 a...he worked on a boat, a military boat of some

- 124 - M. Gravelle

Ex (L. TAPP)

1 sort, and that he used weapons to fire on people

2 that were attempting to plant devices on that boat.

3 I recall that conversation, but, yes, you are

4 correct, it is not in my will-say.

5 And I would...I would subject that to the

6 fact that this was...this was written three to four

7 years after this was documented. It is also not

8 included on my will-say that the reason for Mr. Jack

9 attending the Peterborough Detachment in the first

10 place, and that was to purchase a criminal code.

11 That is not mentioned there either.

12 Q. But if evidence revealed that that

13 was not the case, that is your position it was, he

14 did attend there to buy a criminal code?

15 MR. MANUEL: This is speculative, and

16 you have his evidence.

17 MR. TAPP: Fair enough.

18

19 BY MR. TAPP:

20 Q. You talked about four particular

21 pictures, and you testified that he showed you four

22 pictures, one of which was not in that compilation

23 of pictures that you saw?

24 A. I believe so, yes.

25 Q. You identified three, and what was

- 125 - M. Gravelle

Ex (L. TAPP)

1 missing was him holding an M16, with a knife in his

2 mouth?

3 A. I believe so, yes.

4 Q. Yes. Yet you say in your statement:

5 "...Posing in pictures with guns and knives

6 in his mouth..."

7 Can you explain that?

8 A. I think that is what I said. Has an

9 M16 rifle in his hand and a knife in his mouth.

10 Q. Look at your statement, please,

11 third last paragraph?

12 A. Okay.

13 Q. Second last line, read it.

14 A. Which word would you like me to

15 start with? There is...

16 Q. "Posing", ending with "mouth"?

17 A. "...Posing in pictures with guns and

18 knives in his mouth..."

19 Q. So that would mean posing in

20 pictures with guns in his mouth?

21 A. You are asking me semantics, and I

22 have already told you that what I recall is a gun in

23 his hand and a knife in his mouth. What I see in

24 these pictures is also...there is one with a gun in

25 his hand, but there is no...there is no picture of

- 126 - M. Gravelle

Ex (L. TAPP)

1 him with a knife in his mouth. That is just what I

2 recall, and that is what I told you.

3 Q. True. And that is what you have

4 testified, there were four pictures, one which is

5 missing from there. Fair enough, but your

6 terminology is that is semantics when, in essence,

7 this is direct examination about the truthfulness of

8 the content of your statement.

9 MR. MANUEL: Is there a question?

10 THE VICE-CHAIR: Okay. I'm going to

11 stop. It says, "Picture with guns and

12 knives". Are you implying that he had guns

13 in his mouth?

14 MR. TAPP: Yes, specifically. According

15 to this statement that is what it says.

16 THE VICE-CHAIR: Let's move on.

17

18 BY MR. TAPP:

19 Q. The next comment in your statement,

20 you reported to Mr. Jack, to Sergeant Flindall, in

21 relation to an incident involving radio

22 communication; right?

23 A. I believe I had a part in it.

24 Q. I'm going to show you a specific

25 e-mail from you to Sergeant Flindall, that would

- 127 - M. Gravelle

Ex (L. TAPP)

1 seem to fit your comment here in your statement;

2 okay?

3 A. Yes.

4 Q. Okay. Specific questions to this, I

5 take it that is from you. And who is it addressed

6 to?

7 A. Robert Flindall and Brad Rathbun.

8 Q. The date of that communication,

9 please?

10 A. September 9th, 2009, 7:52 p.m.

11 Q. Have you had a chance to read that

12 e-mail?

13 A. Yes, I have.

14 Q. Would that be related to the comment

15 on your page 1, the second last comment on your page

16 1 statement?

17 A. Yes.

18 Q. So by September 9, 2009 Mr. Jack was

19 an OPP officer; right?

20 A. That is correct.

21 Q. Working at the detachment?

22 MR. MANUEL: Probationary constable.

23 MR. TAPP: Pardon me?

24 MR. MANUEL: Probationary constable.

25

- 128 - M. Gravelle

Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Yes. Correction, probationary

3 constable; right?

4 A. Correct.

5 Q. Good. Not on your platoon, but

6 someone else's platoon; right?

7 A. Correct.

8 Q. You would have had occasion to

9 observe him?

10 A. From time to time, yes.

11 Q. Good. Were you his coach officer?

12 A. No.

13 Q. Was Sergeant Rathbun his supervisor?

14 A. I can't speak to that.

15 Q. No. You were under Sergeant

16 Rathbun's supervision?

17 A. Sergeant Rathbun has switched

18 platoons...

19 Q. Now.

20 A. ...on numerous occasions. I can't

21 speak to who was a supervisor at the time.

22 Q. But Sergeant Rathbun was your

23 supervisor?

24 A. He was my supervisor in 2008. I

25 can't speak to who Michael Jack's supervisor was in

- 129 - M. Gravelle

Ex (L. TAPP)

1 2009, sorry.

2 Q. No, your supervisor, Mr. Gravelle,

3 in 2009; you don't know?

4 A. I can't tell you at that point in

5 time, no.

6 Q. Fair enough. You can't remember who

7 your supervisor was in 2009, yet you remember a

8 specific incident involving Mr. Jack dating to 2009?

9 A. I did not want to make assumptions

10 as to who my supervisor was, because I feel that if

11 I make the wrong assumption as to who it was then I

12 will be criticized as to who it was, so that is why

13 I don't recall right off the bat, I'm sorry.

14 Q. That is fair. Okay. Why was it

15 important to you to bring a specific incident to

16 Sergeant Flindall in 2009?

17 A. I was questioned about it.

18 Q. By who?

19 A. I don't recall. I was questioned

20 about it, and I was asked to rely the information

21 that I had in relation to it.

22 Q. You remember being questioned about

23 it and being asked, specifically, to relay it;

24 right?

25 A. Correct.

- 130 - M. Gravelle

Ex (L. TAPP)

1 Q. So who asked you to relay it?

2 MR. MANUEL: He has answered that.

3 Doesn't know.

4 MR. TAPP: Let's move on. It is okay.

5 In light of the series of questions, Mr.

6 Vice-Chair, can we have this entered as the

7 next exhibit, please?

8 MR. MANUEL: No objection.

9 THE VICE-CHAIR: That would be Exhibit

10 96.

11

12 --- EXHIBIT NO. 96: September 9, 2008 e-mail

13

14 BY MR. TAPP:

15 Q. Mr. Gravelle, have you heard or used

16 the term "Crazy Ivan" at the detachment?

17 A. I have heard it since all this has

18 come to light.

19 Q. Pardon me?

20 A. I have heard of it since all of this

21 has come to light.

22 Q. But according to your statement, is

23 it true that you never heard it being used at the

24 detachment in 2009?

25 A. I did not hear of it, no.

- 131 - M. Gravelle

Ex (L. TAPP)

1 Q. If evidence revealed, specifically

2 through testimonies of others that are due to

3 appear, if evidence revealed that, in fact, it was

4 being used at the detachment, would that change your

5 testimony any?

6 MR. MANUEL: I object. How could it

7 change his testimony? He didn't hear it.

8 THE VICE-CHAIR: Yes.

9 MR. TAPP: Fine. We will strike that.

10

11 BY MR. TAPP:

12 Q. Mr. Gravelle, do you remember doing

13 an audio recording, with another officer, concerning

14 Mr. Jack that you forwarded to counsel?

15 A. Yes, I did.

16 Q. Good.

17 MR. MANUEL: Sorry, what officer?

18 MR. TAPP: Pardon me?

19 MR. MANUEL: What officer?

20 MR. TAPP: Constable Duignan.

21 MR. MANUEL: Thank you. And what time

22 frame?

23 MR. TAPP: Well, we don't know. That is

24 what we are going to address. You

25 disclosed it to us in August 2015.

- 132 - M. Gravelle

Ex (L. TAPP)

1 MR. MANUEL: Disclosure is one thing.

2 Relevance is another.

3 MR. TAPP: Yes. It is very relevant to

4 this "Crazy Ivan", very relevant, because

5 we hear it on the tape that you disclosed,

6 and he has acknowledged doing it.

7 MR. MANUEL: With respect, Mr.

8 Vice-Chair, this is a recording that

9 Constable Gravelle made with Constable

10 Duignan. If there is something that

11 Constable Gravelle said on that recording,

12 that Mr. Tapp wants to contradict him with,

13 let him do it.

14 If there is something that Mr.

15 Duignan said, that is hearsay from this

16 witness. We will hear Mr. Duignan or not,

17 not the tape, and not this officer.

18 THE VICE-CHAIR: You are absolutely

19 right.

20 MR. MANUEL: And it doesn't contradict

21 his evidence. In any event, he said after

22 the fact he heard about it. It confirms

23 his evidence.

24 MR. TAPP: True, but he is able to

25 confirm what he said.

- 133 - M. Gravelle

Ex (L. TAPP)

1 MR. MANUEL: Yes.

2

3 BY MR. TAPP:

4 Q. So I will question you about that

5 recording, specifically with respect to what you

6 state over here.

7 MR. MANUEL: Well, we are waiting for

8 the question.

9

10 BY MR. TAPP:

11 Q. Well, hold on. In that recording

12 you do acknowledge nicknames. In fact, you gave him

13 a nickname as a "complainer" and laughed.

14 A. No, I can't confirm that, because

15 there was three or four, maybe five or six, other

16 members in that dressing room, and I believe that

17 that was a member of another police service that did

18 that.

19 Q. So if we were to play just that

20 specific portion, with your voice, and you saying

21 that he was a complainer, right, and laughing about

22 it, at least you should ought to be able to

23 acknowledge that is your voice, not everything else

24 in there, just that portion?

25 A. I don't recall saying that.

- 134 - M. Gravelle

Ex (L. TAPP)

1 MR. TAPP: Well now, Mr. Vice-Chair, it

2 becomes very relevant for us to play that

3 portion.

4 THE VICE-CHAIR: Well, I don't have the

5 facility to play it.

6 MR. TAPP: We do. We came here

7 prepared.

8 THE VICE-CHAIR: Do you have a

9 transcript of it?

10 MR. TAPP: No. It is just, at the most,

11 five seconds.

12 MR. JACK: It is 30 seconds.

13 MR. TAPP: Thirty seconds. And for all

14 it is worth you can make notes of it.

15 THE VICE-CHAIR: Well, I don't think you

16 should be telling me to make notes.

17 MR. TAPP: No, I'm sorry. That is not

18 intended for you to make notes, but for the

19 content of what it says, and for the

20 question being put to Mr. Gravelle, that is

21 all we want to play. It is only 30 seconds

22 long, and we will hear his voice on it

23 about this issue.

24 THE VICE-CHAIR: And how do we know it

25 is his voice?

- 135 - M. Gravelle

Ex (L. TAPP)

1 MR. TAPP: Well, he is going to be

2 asked, clearly, "Do you recognize...is that

3 not your voice?" Period.

4 THE VICE-CHAIR: It is 30 seconds?

5 MR. TAPP: Yes.

6 THE VICE-CHAIR: I would like you to

7 provide us with a transcript of that tape.

8 MR. TAPP: The whole thing or that

9 portion?

10 THE VICE-CHAIR: Just the portion you

11 are...

12 MR. TAPP: We will. The 30 seconds,

13 absolutely.

14 MR. MANUEL: Assuming the witness adopts

15 it.

16 THE VICE-CHAIR: Pardon me?

17 MR. MANUEL: Assuming the witness adopts

18 it.

19 MR. TAPP: Yes. Yes, absolutely.

20

21 --- AUDIO RECORDING PLAYED

22

23 MR. TAPP: We will stop it right there.

24 MR. MANUEL: The evidence is, "It is not

25 me".

- 136 - M. Gravelle

Ex (L. TAPP)

1 THE WITNESS: It is not me.

2

3 BY MR. TAPP:

4 Q. And a new nickname and the laughter,

5 is that yours?

6 A. That is not me speaking.

7 MR. MANUEL: What is the relevance of it

8 if it is not him?

9

10 BY MR. TAPP:

11 Q. Did you do that recording?

12 A. Yes, I did.

13 Q. So you would know who that was?

14 A. That was speaking, yes, I would.

15 Q. Who was it?

16 A. It was a member of the Peterborough

17 Police Service.

18 Q. Who was that person?

19 A. His name is Constable Tim Fish.

20 Q. Tim Fish. Okay. That is revealing.

21 When did Mr. Tim Fish come on, to the best of your

22 recollection, come on the service?

23 A. I'm sorry, I couldn't tell you.

24 Q. You couldn't. Was Mr. Tim Fish at

25 Peterborough Detachment in 2009?

- 137 - M. Gravelle

Ex (L. TAPP)

1 A. Peterborough OPP?

2 Q. Peterborough OPP Detachment.

3 A. He is not a member of the OPP. He

4 is a member of the Peterborough Police Service.

5 Q. Peterborough Police Service?

6 A. Yes.

7 Q. Mr. Tim Fish was making a comment of

8 Mr. Jack being a "complainer"?

9 A. You have to hear the whole context

10 of the recording. Again, it is not me that made the

11 comment, so I can't speak to what he was thinking or

12 saying...

13 MR. MANUEL: And that is not...

14

15 BY MR. TAPP:

16 Q. We are not going to ask you that...

17 A. Yes.

18 Q. ...truly, but he wasn't with the

19 OPP. He was with another police service.

20 A. No.

21 Q. Thank you.

22 THE VICE-CHAIR: I'm just going to ask a

23 quetion for clarification. Peterborough

24 Police Service, what is that?

25 THE WITNESS: It polices the City of

- 138 - M. Gravelle

Ex (L. TAPP)

1 Peterborough, approximately 80,000 people.

2 THE VICE-CHAIR: So it is...

3 THE WITNESS: It polices the county.

4 THE VICE-CHAIR: Okay. Yes. So the OPP

5 doesn't service Peterborough?

6 THE WITNESS: No.

7

8 BY MR. TAPP:

9 Q. Mr. Gravelle, is your voice in the

10 audio recording? You would know. You recorded it.

11 Is your voice there at any time, aside from what we

12 just played?

13 A. Maybe. It has been quite a while

14 since I have listened to it, but, yes, it could be

15 in there.

16 Q. Mr. Gravelle, was it recorded with

17 all those involved, their full knowledge?

18 A. No. Some, who were present at the

19 time, were notified after it was recorded, but the

20 reason for the recording was it was alleged, or I

21 was informed that I was alleged that I had created

22 the nickname "Crazy Ivan". And this was a means of

23 putting that argument to rest, because that is not

24 the nickname, or anything that I came up with for

25 Mr. Jack.

- 139 - M. Gravelle

Ex (L. TAPP)

1 And I think the purpose of that recording,

2 if it is listened to, would show that that nickname

3 did not come from me, or maybe it wasn't even used

4 by anybody, other than the person that mentioned it.

5 Q. Fair enough.

6 THE VICE-CHAIR: Did we learn when this

7 recording was made?

8

9 BY MR. TAPP:

10 Q. Can you tell us when that recording

11 was, because we didn't get it from counsel?

12 A. It would be on threads through e-

13 mail to counsel. I don't know at this time.

14 MR. TAPP: Well, maybe counsel can give

15 us that information, Mr. Vice-Chair. We do

16 not have that.

17 MR. MANUEL: We will look into that.

18 THE VICE-CHAIR: I just...

19 MR. MANUEL: Yes. No, I agree. That

20 was going to be one of my questions.

21

22 BY MR. TAPP:

23 Q. Mr. Gravelle, so you would agree

24 that it was recorded surreptitiously among

25 colleagues that you worked with?

- 140 - M. Gravelle

Ex (L. TAPP)

1 A. One colleague that I worked with,

2 two colleagues that I work with, yes.

3 Q. And you have indicated the reason of

4 that recording; right?

5 A. Correct.

6 Q. Good. Having heard that portion,

7 and being part of that conversation, who did you

8 understand "complainer" to be?

9 MR. MANUEL: I object.

10 MR. TAPP: No. He is part of that

11 conversation.

12 MR. MANUEL: It doesn't matter, with

13 respect. It is not his words, and he is

14 not obliged to.

15 MR. TAPP: Okay.

16 THE VICE-CHAIR: Are we entering this?

17 MR. TAPP: Yes, please, very important.

18 Please enter September 9th e-mail, 2009 as

19 the next exhibit, please?

20 MR. MANUEL: I thought we had it as

21 Exhibit 6.

22 MS. BLUTSTEIN: It is 96.

23 THE VICE-CHAIR: Ninety-six. Okay.

24 Yes, I have it already.

25 MR. TAPP: The audio recording?

- 141 - M. Gravelle

Ex (L. TAPP)

1 MR. MANUEL: No, we are not going to let

2 you enter the audio recording.

3 THE VICE-CHAIR: We have entered...

4 MR. TAPP: A portion that...

5 THE VICE-CHAIR: Yes. Hopefully the

6 court reporter picked it up. It will be in

7 the transcript.

8 MR. MANUEL: Well, with respect, Mr.

9 Vice-Chair, it hasn't been authenticated as

10 coming from this witness.

11 THE VICE-CHAIR: Well, I know, but it

12 will be in the transcript.

13 MR. MANUEL: That is fine.

14 MR. TAPP: The whole recording is only

15 three to four minutes, at the most, and he

16 has already authenticated it as being his

17 recording, so...

18 MR. MANUEL: Doesn't make it relevant.

19 THE VICE-CHAIR: Yes. Okay.

20 MR. TAPP: Okay. Mr. Vice-Chair, as you

21 are writing, the whole recording is, at the

22 most, three-and-a-half minutes. The

23 relevance will make it very clear, if we

24 were to just listen to the three-and-a-half

25 minutes.

- 142 - M. Gravelle

Ex (L. TAPP)

1 THE VICE-CHAIR: I would suggest, if you

2 give us a transcript of it, and I can

3 determine whether it is relevant.

4 MR. TAPP: Okay. Thank you very much.

5 We will.

6 THE VICE-CHAIR: And, of course, we

7 would have to know who recorded it and when

8 it was recorded.

9

10 BY MR. TAPP:

11 Q. Mr. Gravelle, would you agree that

12 you told Sergeant Rathbun that Mr. Jack, being a

13 Russian male, serving in Israeli Army, and having 32

14 registered guns?

15 A. I couldn't tell you. I didn't know

16 until I read today that he had 32 registered

17 firearms.

18 Q. That information came from you;

19 right?

20 A. Which portion?

21 Q. Well, the whole e-mail. You said

22 the whole thing came from you, so those portions

23 came from you.

24 A. I disclosed information to Sergeant

25 Rathbun, he, in turn, sent this e-mail.

- 143 - M. Gravelle

Ex (L. TAPP)

1 Q. So if it didn't come from you then

2 are you saying Sergeant Rathbun exaggerated it?

3 MR. MANUEL: Objection. In all

4 fairness, there were two people involved in

5 conveying information to the former

6 witness, this witness and another person he

7 couldn't recall.

8 MR. TAPP: Well, you see, that is the

9 whole thing, what we are trying to show,

10 Mr. Vice-Chair. There is a deflection of

11 blame over here, because according to Mr.

12 Rathbun's testimony this other person is a

13 someone else, not Pollock and not Gravelle,

14 so...

15 MR. MANUEL: There is no blame going on

16 here, with respect. That is a pejorative

17 word. It is information.

18 THE VICE-CHAIR: I have no idea.

19 MR. TAPP: So the "someone"...has to be

20 a phantom witness. That is what we are

21 trying to say. And we don't have any

22 disclosure of that anywhere.

23 MR. MANUEL: Phantom witness?

24 MR. TAPP: Well, it is the "someone

25 else".

- 144 - M. Gravelle

Ex (L. TAPP)

1 MR. MANUEL: Well, the evidence was that

2 he didn't know who it was. He couldn't

3 recall.

4

5 BY MR. TAPP:

6 Q. Mr. Gravelle, can you look at page 2

7 of your statement?

8 A. Yes.

9 Q. The very last sentence. You say you

10 do not recall describing Mr. Jack as "crazy" or a

11 "loose canon"?

12 A. No, I do not.

13 Q. Or advising Mr. Greco to distance

14 himself from you...from Mr. Jack?

15 A. I don't recall saying that to Mr.

16 Greco.

17 Q. Now, does "not recall" mean it did

18 not occur or it could have occurred, but you don't

19 recall?

20 A. At one point in time I had a

21 personal relationship with Mr. Greco, so I don't

22 know what I have said to him over the years, over

23 the time that we had a relationship, but what is

24 mentioned in this document, I don't recall saying to

25 him at any point in time.

- 145 - M. Gravelle

Ex (L. TAPP)

1 Q. Being a member of Goodlife Fitness,

2 you attended there? And would you not agree that

3 Mr. Jack also appeared to be a physically fit

4 individual?

5 A. Are you asking if Mr. Jack is

6 physically fit?

7 Q. I'm asking you, when you saw him,

8 that he appeared to be a physically fit individual?

9 A. Yes.

10 Q. Yes. Was there ever an occasion

11 that you ran into him at Gold's Gym?

12 MR. MANUEL: I think we have gone

13 through that.

14 THE VICE-CHAIR: We have been over this.

15 MR. TAPP: No, that is Goodlife Fitness.

16 MR. MANUEL: Which turned into...

17 THE VICE-CHAIR: Same thing. Well, the

18 evidence is the same thing.

19 MR. MANUEL: In any event, what is the

20 relevance of this?

21 MR. TAPP: If you allowed me to ask the

22 question you would see the relevance.

23

24 BY MR. TAPP:

25 Q. Did Mr. Jack ever confront you about

- 146 - M. Gravelle

Ex (L. TAPP)

1 the ride-along that he had with you?

2 A. No.

3 Q. If evidence revealed that it was his

4 testimony that he did run into you at Gold's gym,

5 and it was uncontested, would that have a bearing on

6 your testimony today?

7 MR. MANUEL: I object. What does he

8 mean it is "uncontested"? If there is

9 evidence Mr. Jack...

10 MR. TAPP: Meaning it wasn't brought up

11 in cross-examination.

12 MR. MANUEL: So what. So you have this

13 witness' evidence.

14

15 BY MR. TAPP:

16 Q. Your next comment over there, the

17 next bullet, you talk about a conversation between

18 Payne and Mr. Jack, about notebooks, but you

19 understood that to be a conversation, to be a

20 teaching point; right?

21 A. Correct. That is what I have in my

22 summary. This is what is in the summary.

23 Q. Do you remember that incident?

24 A. Which portion?

25 Q. Well, the bullet, what it says over

- 147 - M. Gravelle

Ex (L. TAPP)

1 there; do you recall that incident?

2 A. I'm not sure whether it was spoken

3 to many times, but I recall PC Payne and Mr. Jack

4 speaking about an incident in front of what we refer

5 to as the "sergeant's office". And I think it had

6 something to do with notebooks, but this is during a

7 time of the day in which it is change over of

8 shifts, so I believe our shift was either working

9 days or nights, and we were transitioning, so the

10 conversation was not meant for me, I don't believe,

11 but I was there for a portion of it, yes.

12 Q. No. It is very clear that it wasn't

13 involving you.

14 A. Yes.

15 Q. You overheard it. And, of course,

16 that would be why you note you don't remember the

17 specifics of the conversation; correct?

18 A. I try not to listen to conversations

19 that don't involve me. Sometimes it is unavoidable.

20 Q. But you would agree that you don't

21 remember the specifics of the conversation, and that

22 is why you made note of it?

23 A. I can see it happening in my mind,

24 but I can't recall the words or the...any of the

25 arguments back and forth, if there was any. I can

- 148 - M. Gravelle

Ex (L. TAPP)

1 picture it happening, but I don't know what they are

2 saying.

3 Q. Can you describe it?

4 A. I believe I just did. Outside of

5 the sergeant's office in the Peterborough County

6 Detachment, I was sitting at the nearest computer to

7 the sergeant's office, and both Mr. Jack and PC

8 Payne were in front of the sergeant's office.

9 Q. Now, I want you to look at the next

10 bulletin under that, and you say you:

11 "...Would not have reprimanded Mr. Jack..."

12 So that meant that you knew the conversation was

13 negative in nature for you to say...

14 MR. MANUEL: No, I object.

15

16 BY MR. TAPP:

17 Q. ...what you heard?

18 MR. MANUEL: Wait a minute.

19 MR. TAPP: All right.

20 MR. MANUEL: Constable Gravelle is

21 replying to allegations made by Mr. Jack.

22

23 BY MR. TAPP:

24 Q. Mr. Gravelle, why would you make

25 that statement:

- 149 - M. Gravelle

Ex (L. TAPP)

1 "...PC Gravelle would not have reprimanded

2 Mr. Jack..."

3 MR. MANUEL: Because Mr. Jack alleges

4 that he did in his will-say. Really, Mr.

5 Tapp, this is unfair. He is responding to

6 an allegation.

7

8 BY MR. TAPP:

9 Q. Were you aware of a time when Mr.

10 Jack was charged under the Highway Traffic Act?

11 A. I believe he was charged at some

12 point, correct. Yes.

13 Q. Can you tell us your recollection of

14 that?

15 MR. MANUEL: Well, wait a minute. What

16 does his recollection got to do with...did

17 he have any involvement in it?

18 MR. TAPP: Well...

19 MR. MANUEL: Let's go to the facts.

20 MR. TAPP: ...he is specifically saying,

21 in his statement, that he was aware that he

22 received an offence notice. Okay. So

23 let's ask him about his memory of what he

24 is aware about that.

25 MR. MANUEL: The fact that it is in this

- 150 - M. Gravelle

Ex (L. TAPP)

1 will-say doesn't make it relevant. What he

2 is aware of is irrelevant.

3 MR. TAPP: Well, according to you, Mr.

4 Manual, nothing is relevant, but if someone

5 is charged it is supposed to be a

6 confidential matter between the charged

7 person and the person that issued the

8 charge, yet he is saying he is aware of it.

9 MR. MANUEL: Mr. Vice-Chair, really...

10 MR. TAPP: It does have some...

11 THE VICE-CHAIR: I haven't seen what

12 turns on it.

13 MR. TAPP: It shows that, clearly,

14 things that were supposed to be

15 confidential, involving Mr. Jack, were not,

16 because Mr. Gravelle became aware of this

17 confidential matter.

18 MR. MANUEL: Really, he is responding to

19 allegations and Mr. Jack's will-say.

20 MR. TAPP: I don't want to ask him what

21 the allegations were. I want to know about

22 what he remembers and what he is being

23 aware. He says he was aware.

24 THE VICE-CHAIR: Ask him how he became

25 aware.

- 151 - M. Gravelle

Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Okay. How did you become aware of

3 that?

4 A. I don't recall, but keep in mind

5 that officers who are charged with Highway Traffic

6 Act offences are published in our local newspaper.

7 There was one as of two weeks ago that was

8 published, so I don't know whether it was published,

9 but that is how it becomes public domain as well.

10 Q. Good. So now you see how relevant

11 this was. We didn't know that. And that is a

12 good...that is relevant. It shows that how he

13 became aware of it. Did you describe Mr. Jack as a

14 "loose cannon"?

15 MR. MANUEL: He has answered that.

16 MR. TAPP: That is it. Thank you very

17 much, Mr. Gravelle. I am done.

18 MR. MANUEL: Sorry, Mr. Vice-Chair.

19 Thank you. No questions.

20 MR. TAPP: Thank you, Mr. Gravelle.

21 THE VICE-CHAIR: Thank you.

22

23 GENERAL DISCUSSION:

24 MR. TAPP: The next witness we are

25 calling, Kevin Duignan. Mr. Duignan, please.

- 152 - General Discussion

1 THE VICE-CHAIR: Is this the witness

2 that had medical...

3 MR. TAPP: Yes. This is the witness.

4 THE VICE-CHAIR: So where are we at on

5 that? You are here to testify?

6 THE WITNESS: I'm here. If I'm not here

7 I get charged.

8 THE VICE-CHAIR: Well, that is not true.

9 THE WITNESS: I have a note. Sir, I

10 don't know...I have never been in a tribunal. I

11 don't know how to address you, I'm sorry.

12 THE VICE-CHAIR: Try to just say "sir"

13 or something like that.

14 THE WITNESS: Sir. That is the

15 original.

16 THE VICE-CHAIR: The medical note. I

17 recall it. You are here. You are going to testify,

18 and that is good. Future reference, this type of

19 medical note is not at all helpful to the tribunal.

20 I'm not interested in what your underlying

21 medical condition is, but we need to know, as the

22 tribunal, your limitations, so that in a case like

23 this we can see if there is some way of

24 accommodating you, but that is water under the

25 bridge in this instance, but for future do you

- 153 - General Discussion

1 understand what I'm saying?

2 THE WITNESS: Yes, I understand, sir.

3 It is just that I received notice on January 18th,

4 and I just had very limited time to get a doctor's

5 note, and get something arranged through the

6 tribunal...

7 THE VICE-CHAIR: Well, next time you get

8 a doctor's note talk to your doctor about the type

9 of information we need at the tribunal so that we

10 can look at accommodating your medical condition.

11 THE WITNESS: Okay. Thank you, sir.

12 THE VICE-CHAIR: Let me swear in the

13 witness first. Would you, please, state your full

14 name?

15 THE WITNESS: Kevin Patrick Duignan?

16 THE VICE-CHAIR: How do you spell your

17 surname?

18 THE WITNESS: "D" as in delta, "U" as in

19 uniform, "I" as in India, "G" as in golf, "N" as in

20 November, "A" as in alpha, "N" as in November.

21 THE VICE-CHAIR: Sir, you are about to

22 give evidence for the Human Rights Tribunal, and the

23 tribunal is dependent on you telling the truth. Do

24 you solemnly affirm to tell the truth?

25 THE WITNESS: I do.

- 154 - K. Duignan

Ex (L. TAPP)

1 THE VICE-CHAIR: And do you appreciate

2 that it is an offence at law if you break that

3 promise?

4 THE WITNESS: Yes, I do.

5 THE VICE-CHAIR: I would expect so.

6 Thank you.

7

8 KEVIN DUIGNAN, affirmed

9 EXAMINATION BY MR. TAPP:

10 Q. Thank you, Mr. Duignan, for coming

11 here today.

12 A. Excuse me. Could I be addressed as

13 "Constable Duignan"?

14 Q. Yes. Thank you, Constable Duignan,

15 for attending here today. I'm going to make sure

16 that my questions to you are very brief, and no way

17 near as long as the other two witnesses for which

18 you have been waiting outside for.

19 MR. TAPP: I will outlay, in advance,

20 that there is a recording that has been

21 disclosed to counsel of a telephone

22 conversation with Mr. Duignan. There is

23 only two people involved. And due to the

24 content of that recording I'm going to ask

25 that Mr. Manual please make sure that the

- 155 - K. Duignan

Ex (L. TAPP)

1 other two witnesses, having closed their

2 testimony, don't come into the court.

3 MR. MANUEL: They are entitled to come

4 in. First of all, they have gone.

5 THE VICE-CHAIR: They have gone.

6 MR. TAPP: Thank you.

7 MR. MANUEL: And the order excluding

8 witnesses does not apply after they have

9 testified. Thirdly, I would like Mr. Tapp

10 to put on the record who was the other

11 person on the tape recording that he is

12 referring to.

13 MR. TAPP: Yes. When we get to that I

14 will address it.

15 THE VICE-CHAIR: Has this been

16 disclosed?

17 MR. TAPP: Yes, it has been,

18 specifically on the first day of the last

19 continuance.

20 THE VICE-CHAIR: Okay.

21 MR. TAPP: And specifically approached

22 you. I gave counsel a copy of that

23 recording.

24

25 BY MR. TAPP:

- 156 - K. Duignan

Ex (L. TAPP)

1 Q. Okay. How long have you been a

2 police office, Constable Duignan?

3 A. Twenty-six years.

4 Q. What is your current rank?

5 A. Provincial Constable, First Class.

6 Q. You must be coming close to

7 retirement; is that correct?

8 MR. MANUEL: Is that relevant?

9

10 BY MR. TAPP:

11 Q. Where did you work during mid 2008

12 to December 2009?

13 A. The OPP, Peterborough County

14 Detachment.

15 Q. Were you attached to any specific

16 platoon...

17 A. No.

18 Q. ...at that time?

19 A. No.

20 Q. Would your work schedule have

21 occasion to cover the work schedules of all four

22 platoons in a given week?

23 A. Yes.

24 Q. Good. Do you know Mr. Jack?

25 A. Yes, I do.

- 157 - K. Duignan

Ex (L. TAPP)

1 Q. Did you observe Mr. Jack to have any

2 special skills that may be useful in the course of

3 his employment with the OPP?

4 A. No.

5 Q. Were you aware of any languages that

6 he spoke, other than English?

7 A. He told me he spoke Russian.

8 Hebrew.

9 Q. Thank you. Now, were you, in any

10 way, involved in any of Mr. Jack's performance

11 evaluations?

12 A. No.

13 Q. Did you have any input in that?

14 A. No.

15 Q. Did you have any occasion to view

16 any of them?

17 A. To view them?

18 MR. MANUEL: It is irrelevant, with

19 respect.

20

21 BY MR. TAPP:

22 Q. Based on the number of years you are

23 an OPP officer, as an OPP officer are you allowed to

24 maintain two notebooks simultaneously?

25 A. There are exceptions. If you are in

- 158 - K. Duignan

Ex (L. TAPP)

1 a speciality group, a specialty unit, that is all

2 I'm aware of, so you would put in one notebook that

3 everything is kept in another notebook, but I'm not

4 even clear on that anymore, so you can't really ask

5 me that, but I have heard there are special

6 occasions where they keep special...a second

7 notebook for special assignments.

8 Q. But as a general patrol officer

9 would a general patrol officer, as when you were a

10 general patrol officer, were you allowed to keep a

11 duplicate notebook?

12 A. As a general patrol officer, it is

13 not clear. It is really not clear. No, you

14 shouldn't be, but sometimes in the OPP, we didn't

15 have speciality groups. And sometimes you would get

16 involved in an investigation that would tie you up

17 in between doing your regular calls for duty, so,

18 yes, you may have a special notebook, if you had

19 permission to have a special notebook.

20 Q. But you would have to have

21 authorization?

22 A. I'm not even clear on that. Look, I

23 just know that if you do get yourself involved in a

24 special investigation that requires...I just recall

25 somewhere hearing that, so I have never done it

- 159 - K. Duignan

Ex (L. TAPP)

1 myself, so I'm not the expert on that, so...

2 Q. I'm going to show you a sheet of

3 paper which is an exhibit, that has already been

4 tendered in evidence. It has some handwriting on

5 it. It is a photocopy of a napkin. And what

6 exhibit is that?

7 THE VICE-CHAIR: Exhibit 69?

8 MR. TAPP: It is 72.

9 THE VICE-CHAIR: Seventy-two?

10 MR. TAPP: Seventy-two, as tendered.

11 MS. BLUTSTEIN: Yes, it is 72.

12 THE WITNESS: Okay. Yes. This is my

13 writing. This isn't my writing at the

14 bottom.

15

16 BY MR. TAPP:

17 Q. Fair enough. We will get to that.

18 A. The bottom is not my writing.

19 Q. We will get to that, Constable

20 Duignan. So now that we are on page with that, what

21 portions of that sheet of paper are your

22 handwriting?

23 A. Well, the top is mine. I gave

24 Michael my phone number to use as reference, because

25 he came and...he approached me in a donut shop, at a

- 160 - K. Duignan

Ex (L. TAPP)

1 Tim Horton's donut shop in Peterborough, and told me

2 I was a witness in his civil rights hearing, and I

3 told him, "It is new to me that I'm a witness in

4 your civil rights hearing".

5 And I tried to explain to him that, "Look,

6 you are a good person. Call me. Use me as

7 reference if you go apply for"...he told me that he

8 couldn't get another job. I said, "Use me as a

9 reference. I know you are an okay person. Go apply

10 for some other job and use me as reference, and I

11 will explain to people that things didn't work out

12 for you". That is about the extent of that note.

13 Q. Before you go on, the writing "Lloyd

14 Tapp" and an e-mail address, whose writing would

15 that be?

16 A. I don't know who the e-mail address

17 writing is, and I don't even know if the "Lloyd

18 Tapp" is my writing. Could be. I don't know. If

19 you notice I use capitals.

20 Q. Fair enough. Good. Next, the

21 writing of "nickname" and "Crazy Ivan" in

22 parenthesis, and "Big Kahuna" in parenthesis, whose

23 writing is that?

24 A. That could be mine. I don't recall,

25 though. It could be mine. It looks like mine,

- 161 - K. Duignan

Ex (L. TAPP)

1 could be.

2 Q. Was anybody else at this meeting, at

3 Tim Horton's, besides you and Mr. Jack?

4 A. His girlfriend, at least he told me

5 it was his girlfriend.

6 Q. Do you recall giving him a napkin?

7 A. No. He told me to write it down so

8 I wrote it down, because I just wanted him...I

9 wanted him to keep my phone numbers, that is what it

10 was for.

11 Q. Prior to that meeting at the Tim

12 Horton's coffee shop was there a meeting that,

13 unknown to you, just happened to run into him?

14 A. Who?

15 Q. Mr. Jack.

16 A. Not that I recall.

17 Q. But you do remember giving him a

18 napkin with some writing on it?

19 A. I remember meeting him in a donut

20 shop. I remember giving him my phone number, and

21 that is what I remember. And I remember trying to

22 talk him into moving on in life. That is what I

23 remember, things to that matter.

24 Q. So would you agree that, if evidence

25 reveals that in January 2009, you happened to run

- 162 - K. Duignan

Ex (L. TAPP)

1 into Mr. Jack at a donut shop would that cause you

2 to recall something of that meeting?

3 A. You know, I don't even remember the

4 exact date. All I remember is meeting at a donut

5 shop. I remember him coming over and saying, "Hi,

6 how are you. Hey, come on and have a coffee with

7 us". And I don't remember the date, the time.

8 I remember it was a donut shop. I remember

9 meeting his girlfriend. I remember him explaining

10 his situation to me. I remember feeling sorry for

11 him. I remember writing my name down and saying,

12 "You know, look it, call me if you need a reference

13 for future jobs". That is what I remember. I don't

14 even remember the dates. Whether I met him before

15 or after, I don't even know that.

16 Q. Looking at that copy that is on your

17 desk, under the notation "Big Kahuna", if I were to

18 say the last line read, "Mutiny against Payne and

19 Flindall", would you agree?

20 A. I don't know. I guess it would say

21 something like that.

22 Q. So if Mr. Jack was with his

23 girlfriend, and happened to run into you...

24 MR. MANUEL: There is no "if" about it.

25 That is the witness' evidence.

- 163 - K. Duignan

Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. And this was in 2010; correct, this

3 meeting?

4 A. You said "2009" earlier in this

5 hearing.

6 Q. No. Pardon me.

7 A. I mean...

8 Q. My apologies. I did say "2009", but

9 the meeting in Tim Horton's, am I correct, in

10 suggesting that it was in October 2010?

11 A. I don't recall the exact date. I

12 don't recall when it was. It could have been any

13 time...

14 Q. After his employment?

15 A. Yes. He said he was dismissed. He

16 told me...

17 Q. Thank you.

18 A. ...he was dismissed. I think he

19 told me he was dismissed, or...it was after his

20 employment, though, pretty sure about that. It

21 wasn't while he was employed.

22 Q. If evidence reveals that due to

23 management problems at Peterborough Detachment there

24 was a management review done by somebody from

25 Orillia would you agree with that?

- 164 - K. Duignan

Ex (L. TAPP)

1 A. There were lots of management

2 reviews done by Orillia. I can't remember which one

3 was which now.

4 Q. Thank you, but you would agree with

5 that?

6 A. I don't know what it was. I don't

7 know what...they officially come out with a

8 management review. I don't know. I was interviewed

9 sometimes. I don't know quite what it was. I don't

10 know whether it was a management review or whether

11 somebody was just trying to understand what was

12 happening at the detachment or whether there were

13 complaints at the detachment, or complaints against

14 officers or against managers.

15 I was interviewed once, and I just

16 explained some better ways of making the detachment

17 more efficient, and I don't remember what year that

18 one was in. I can't recall. I don't even know

19 whether there was two or one or if there was any.

20 As I say, like they don't make a large

21 announcement that we are having a management review

22 and then interview people. You just get called in

23 sometimes and you are interviewed. You don't know

24 what it is for.

25 Q. In fact, you did have a

- 165 - K. Duignan

Ex (L. TAPP)

1 conversation. I suggest that, in fact, Mr. Jack was

2 made aware of this, which was why there is such a

3 notation:

4 "...Management, Kevin, Staff Sergeant,

5 Orillia..."

6 Or, rather:

7 "...Management review, Staff Sergeant,

8 Orillia..."

9 MR. MANUEL: What is the question, Mr.

10 Vice-Chair? I'm lost here.

11

12 BY MR. TAPP:

13 Q. In fact, if evidence revealed that

14 you, at this donut shop, did talk to Mr. Jack about

15 Orillia doing a management review...

16 A. Maybe I did.

17 Q. ...management...

18 A. Maybe I did, yes. I could have

19 been. I don't recall, you know.

20 Q. Of course that will explain such a

21 notation:

22 "...Management review, Staff Sergeant,

23 Orillia..."

24 A. Could. It could explain it. It

25 could also explain maybe there was buzz, rumours

- 166 - K. Duignan

Ex (L. TAPP)

1 floating around that there was going to be a

2 management review. I don't even know that too,

3 because you are always hearing rumours of management

4 reviews.

5 Q. Isn't it true that you also told Mr.

6 Jack that you advised the staff sergeant of Orillia

7 about his treatment?

8 A. I didn't advise staff sergeant from

9 Orillia about his treatment. I don't recall that.

10 Q. But you did have an interview with

11 them?

12 A. I had an interview with a staff

13 sergeant, and I think her name...I can't recall her

14 name. I knew her very well at one time, because my

15 mind is going on me. And, essentially, at that

16 review, all I discussed was matters of cutting back

17 on overtime, matters of, you know, rather than

18 holding prisoners and doing bails on them, releasing

19 them on promises to appear, ways of cutting back

20 such as that.

21 And at the time I had a whole...I could

22 rhyme them off without looking at any notes, but

23 there was...I, kind of, felt that there was a

24 problem with the budgets, and they wanted to cut

25 back on budgets. That is all I recall from that

- 167 - K. Duignan

Ex (L. TAPP)

1 staff sergeant.

2 It was a female staff sergeant. She came

3 down from Orillia. And I just talked about her

4 about how to make the place more efficient.

5 Q. Okay, but I'm suggesting that you

6 did tell the staff sergeant about his treatment,

7 which is why you made specific mention in a

8 recording of a telephone conversation with you

9 regarding Mr. Jack. You, specifically, say, "It was

10 obvious he was being fucked around". Those are your

11 words.

12 A. Oh, are they?

13 Q. Yes.

14 A. My phone conversations are tapped?

15 Q. Yes.

16 A. Where are they?

17 Q. We have a copy of that recording

18 that has been disclosed.

19 A. Okay.

20 MR. MANUEL: Yes. And who made that

21 recording, Mr. Tapp?

22 MR. TAPP: Constable Duignan has just

23 indicated it was in a conversation with

24 myself and Constable Duignan. Now, it is

25 not to words what I asked him. You can

- 168 - K. Duignan

Ex (L. TAPP)

1 hear the question that I asked him, but it

2 is for the content of what Mr. Duignan

3 says.

4 MR. MANUEL: Mr. Duignan? We have

5 got...

6 MR. TAPP: Constable Duignan.

7 MR. MANUEL: You and Mr. Duignan?

8 MR. TAPP: Yes.

9 MR. MANUEL: Right. And do you tell him

10 that he was being taped?

11 MR. TAPP: No. No, it was a

12 surreptitious recording, like Mr. Gravelle.

13 MR. MANUEL: Really?

14 MR. TAPP: Like Mr. Gravelle never

15 advised his officers. And you are fully

16 aware of it. You have got disclosure of

17 it. And at the most it lasts how long? So

18 we will play, like the last recording, Mr.

19 Duignan's voice with respect to that

20 statement. And like in the last audio

21 recording we played the applicant will

22 provide a transcript of that. Okay. Mr.

23 Jack.

24

25 --- AUDIO RECORDING PLAYED

- 169 - K. Duignan

Ex (L. TAPP)

1 MR. MANUEL: Is there a question?

2 MR. TAPP: Yes.

3

4 BY MR. TAPP:

5 Q. Mr. Duignan, you clearly state that

6 there was a target on your back...

7 A. Yes, sir...

8 Q. ...what do you mean by that,

9 Constable Duignan, rather?

10 MR. MANUEL: What is the relevance of

11 that? What is relevant about it?

12

13 BY MR. TAPP:

14 Q. Relevant? Okay. Constable Duignan,

15 and I'm sorry, it has just been so long that I have

16 been with the OPP. Constable Duignan, you make a

17 specific comment about Mr. Jack's treatment. You

18 say, "It was obvious he was being fucked around".

19 A. Sir, there is some background to a

20 lot of this. And somewhere in 2003 to 2005, around

21 there, I was involved in an incident in which a

22 person was killed, and I was investigated, and I was

23 cleared by special investigations units.

24 And I didn't realize at the time I was

25 suffering from post traumatic stress, and it was

- 170 - K. Duignan

Ex (L. TAPP)

1 carried on, that and other incidents that have gone

2 back 15, 20 years. And as a result, when I got

3 involved in this incident, I was taken away from my

4 regular employment, my regular front line duties in

5 the community, the small community I policed, and

6 moved to a specialty unit in which was kind of like

7 to sit around and wait until everything is cleared

8 up.

9 And, of course, at that time I wasn't being

10 treated for anything. I didn't know I suffered from

11 anything. Subsequently I was sent back to the road,

12 which I wanted to be back on the road, and I was

13 sent to a very small community up north, and worked

14 by myself, often night shifts by myself, patrolling

15 the community by myself, and as a result of which I

16 got drinking one night, and it is a long story, but

17 I got...I got involved in a cruiser accident, and I

18 was charged and convicted of impaired driving.

19 And it was at that point that I sought

20 medical advice, and I had some issues I had to deal

21 with. During that whole process I was dragged

22 through the mud. And at the time I knew that what

23 was happening was proper, that I was charged

24 criminally, and that I was charged under the Police

25 Services Act, that that is what happens to officers

- 171 - K. Duignan

Ex (L. TAPP)

1 when they get involved in incidents like this.

2 When I say, "There is a target on my back",

3 once you get involved in an incident like that in

4 the Ontario Provincial Police, they kind of give you

5 one chance, but they don't give you a second chance,

6 so you are under close scrutiny. And that is what I

7 mean by the, "Target on my back", and that is what I

8 mean about, "I do not want any involvement in any

9 stressful matters".

10 And there is more. I can talk all day, if

11 you wish, I mean, but that is what I meant by the,

12 "Target on my back". And about him being "fucked

13 around", yes, at that particular point I believed

14 everybody was getting fucked around on the OPP,

15 okay.

16 That was my perspective at the time,

17 because that was what happened to me. And, of

18 course, when you are in trouble, and you are

19 isolated and marginalized in the OPP, and you have

20 nobody to talk to, and what happens is many people

21 that are also isolated and in trouble, they talk to

22 you, so it is seems to me that it is, like a

23 perpetual cycle of you being in trouble, because you

24 don't...the people that are not in trouble don't

25 want to associate with you, and I can understand

- 172 - K. Duignan

Ex (L. TAPP)

1 why.

2 And just, basically, you know, some, you

3 know, people that are also going through similar

4 type times of their career, trying times in their

5 career, you kind of talk to each other. You think

6 you can trust these people, you know. Lloyd was

7 having a troubled time. I was having a troubled

8 time. Many constables have troubled times.

9 It takes a lot to get over these troubles.

10 The best solution, probably, is in the OPP we have

11 the luxury of transferring to some other city or

12 some other town. In the large municipal forces I

13 don't think they have that luxury, but you wear that

14 target for the rest of your career, and so it should

15 be.

16 Q. Thank you, Constable Duignan. And

17 even if you were to transfer to another detachment,

18 based on your experience, it tends to follow you?

19 MR. MANUEL: What is the relevance of

20 that?

21 MR. TAPP: Okay.

22 THE WITNESS: I can answer that, if you

23 want me to.

24

25 BY MR. TAPP:

- 173 - K. Duignan

Ex (L. TAPP)

1 Q. Okay. Yes.

2 A. Yes. I told you, when you

3 transferred, when you left Peterborough to Lindsay,

4 I told you that, "The OPP gives you one chance,

5 Lloyd. Don't go over to Lindsay and do the same

6 stuff over there as you did in Peterborough", and

7 you did. You went over to Lindsay and you did the

8 same stuff.

9 MR. MANUEL: This is like washing dirty

10 linen.

11

12 BY MR. TAPP:

13 Q. I want to address, specifically, the

14 portion where we heard on what you say regarding

15 "Crazy Ivan". You were aware that it was being

16 used?

17 A. I heard it, but I don't...

18 Q. I'm not asking you who said it. I'm

19 not here to ask you that, but would you acknowledge

20 that it was being used during Mr. Jack's employment

21 at the detachment? Who was saying it I'm not

22 interested.

23 A. I heard it. I have also heard

24 myself being called "potato head" to my head, to my

25 face, I mean, because I'm Irish, you know, so, yes,

- 174 - K. Duignan

Ex (L. TAPP)

1 I heard it, but I don't recall who, but I just heard

2 it somewhere. Someone said it jokingly.

3 Actually, I don't even know who they were

4 referring to, when I think...I don't even really

5 recall it too much, but, you know...

6 Q. Mr. Duignan, do you know the history

7 of Crazy Ivan?

8 A. No.

9 Q. But "Ivan" is symbolic of who; a

10 Canadian or oriental individual?

11 A. Okay. I have been called a "paddy".

12 I'm Irish Catholic.

13 Q. So "paddy" is related to the fact

14 that you are Irish?

15 A. Yes, my middle name is Patrick, eh.

16 Q. Patrick.

17 A. Every Irishman has a Patrick in

18 their family, so they called the "Paddy".

19 Q. So what does "Crazy Ivan" have to do

20 with a Russian recruit?

21 A. My understanding of old term, as I

22 said, "Irish" are called "Paddy's", and what do they

23 call...Germans are called "Gerrys", Russians are

24 called "Ivan". I mean, this is World War II stuff.

25 Q. Why "crazy"? Why not "Ivan"?

- 175 - K. Duignan

Ex (L. TAPP)

1 A. I don't know. I don't know.

2 Q. Fair enough. Now, if we were to

3 play the balance of that recording, which, I think,

4 is 30 seconds, you do state that that nickname was

5 given to him by Shipley at the academy.

6 A. Okay. I may have stated that, but

7 I'm not sure. Okay. I don't know where...I don't

8 know. I don't know where it came from. I may have

9 said it, but I don't...I really cannot stand by

10 that. I could have said that. It may be Shipley.

11 I don't know, but I'm not too certain on that.

12 Q. Would you agree or not agree that

13 "Crazy Ivan" is not the same as the nickname of "Big

14 Kahuna"?

15 MR. MANUEL: Really, Mr. Vice-Chair,

16 what is the relevance to that?

17 MR. TAPP: Okay. We won't. Thank you

18 for that. Thank you, Constable Duignan. I

19 do not have any more questions, subject to

20 Mr. Manual.

21 MR. MANUEL: We have no questions at

22 this time. Thank you.

23 THE VICE-CHAIR: Thank you very much. I

24 understand that is the witnesses for today.

25

- 176 - General Discussion

1

2 GENERAL DISCUSSION:

3 MR. TAPP: Okay. Mr. Vice-Chair, just

4 wait. For the purposes of what has been

5 communicated with our order of witnesses, for the 11

6 witnesses, actually, we anticipated using the whole

7 day with just three witnesses, but because we had

8 that communication from Mr. Duignan on Thursday of

9 last week, and it wasn't in line with the

10 requirements of the tribunal, we really didn't want

11 to cause another witness to appear to day, if Mr.

12 Duignan showed up.

13 And, anyway, so now we are at the

14 situation, we are closing a little early than

15 anticipated. And, yes, I anticipated there being

16 some cross-examination, but it is nice Mr. Manual

17 had no cross-examination, therefore I have no

18 re-examine, so that puts us at finishing today. And

19 tomorrow is a full day with three witnesses, one of

20 whom has dedicated as coming in the afternoon.

21 MR. MANUEL: It is the witnesses that

22 you have given us notice of. It is D'Amico, Moran

23 and Johnston.

24 MR. TAPP: Yes, those three witnesses.

25 THE VICE-CHAIR: Okay. I would like to

- 177 - General Discussion

1 start a bit later, 10:00 tomorrow?

2 MR. TAPP: I would suggest, Mr.

3 Vice-Chair, only because all the subpoenas that I

4 got from your office, I put "10:00 a.m.", and that

5 is going by the previous dates.

6 MR. MANUEL: Well, we were advised that

7 they would all come at 9:30, so...

8 MS. BLUTSTEIN: Because of this morning

9 I sent them a message, because he wanted them...

10 THE VICE-CHAIR: Your people?

11 MS. BLUTSTEIN: Yes. Well...

12 MR. MANUEL: Well, not our people.

13 MS. BLUTSTEIN: ...their witnesses.

14 MR. MANUEL: They are all OPP officers.

15 THE VICE-CHAIR: Of course.

16 MS. BLUTSTEIN: But this morning...

17 MR. MANUEL: Right. So we are making

18 sure they are here at ten.

19 THE VICE-CHAIR: They are here at 9:30.

20 MR. MANUEL: Yes.

21 THE VICE-CHAIR: You can be here at

22 9:30. I don't think I will get here until shortly

23 before ten. And I do that because I can't trust...I

24 try to be a good citizen. I take the TTC. I walk

25 to the corner and I can get on the street car, hop

- 178 - General Discussion

1 the subway.

2 MR. MANUEL: I think we can go off the

3 record for this.

4

5 --- upon adjourning at 3:40 p.m.

6

- 179 - General Discussion

1 INDEX OF EXHIBITS

2

3

4 EXHIBIT PAGE

5 NUMBER DESCRIPTION NUMBER

6

7

8 93 E-mail dated August 5, 2008 26

9

10 94 E-mail dated August 8, 2008 52

11

12 95 September 4, 2008 e-mail 66

13

14 96 September 9, 2008 e-mail 130

15

- 180 - General Discussion

1

2

3

4 REPORTER'S NOTE:

5

6 I hereby certify the foregoing to be a

7 true and accurate transcription of the

8 above-noted proceedings held before me on the

9 8th DAY OF FEBRUARY, 2016, and taken to the

10 best of my skill, ability and understanding.

11

12 }

13 } Certified Correct:

14 }

15 }

16 }

17 }

18 }

19 } \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

20 } Arianna M. Rodriguez

21 } Verbatim Reporter

22