Tribunal File No.: 2010-07633-1

HUMAN RIGHTS TRIBUNAL OF ONTARIO

MD/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: September 13, 2016

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

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

LLOYD TAPP --- for the Applicant

MIMI SINGH --- for the Respondent

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

Michael Jack

INDEX OF PROCEEDINGS

PAGE NUMBER

General Discussion ... 1 - 13

ROBERT FLINDALL, resumed

Continued Cross-Examination by Mr. Tapp ... 13 - 63

General Discussion ... 63 - 66

ROBERT FLINDALL, resumed

Continued Cross-Examination by Mr. Tapp ... 66 - 210

Re-Examination by Ms. Singh ... 210 - 216

Index of Exhibits ... 214 - 215

Certification ... 216

- 3 - General Discussion

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

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

3

4 GENERAL DISCUSSION:

5 THE VICE-CHAIR: Mr. Flindall, I would

6 just remind you that you continue to be bound by

7 your affirmation to tell the truth.

8 THE WITNESS: Yes, sir.

9 THE VICE-CHAIR: Thank you.

10 MS. SINGH: Good morning, Mr.

11 Vice-Chair. Before we continue with Mr. Flindall, I

12 want to raise an issue about scheduling, very, very

13 briefly. I'm concerned about four matters. First,

14 in view of the fact that you are unable to sit the

15 full day on Friday, there was a possibility that you

16 mentioned that we will not complete the evidence

17 this week.

18 Second, as a result of your very full

19 schedule we may not be able to find another date in

20 2016 to complete the evidence. Third, you have not

21 been prepared, so far, to set time limits. And,

22 fourth, you have advised us that you will be

23 retiring in 2017.

24 THE VICE-CHAIR: That is right.

25 MS. SINGH: I'm concerned about these

- 4 - General Discussion

1 four matters, because they raise the prospect that

2 this matter not be completed before you retire. If

3 that were to happen this proceeding, that has

4 continued for six years, and involves matters that

5 took place eight years ago, will have to be started

6 over before another member.

7 THE VICE-CHAIR: That is possible.

8 MS. SINGH: And this would not be in the

9 interest of the applicant. It would not be in the

10 interest of my client, the OPP. It would not be in

11 the interest of the proper administration of

12 justice. And it would reflect poorly in the eyes of

13 ordinary citizens of Ontario.

14 In view of this outcome, and in order to

15 avoid such an outcome, if we could take some or all

16 of the following actions, which are contemplated by

17 the tribunal's Rules, I don't need to remind you

18 that Rule 1.7 of the tribunal's Rules provides that

19 in order to provide for the fair, just and

20 expeditious resolution of any matter before the

21 tribunal, the tribunal has the discretion to make a

22 variety of different orders.

23 I would suggest that, one, we could sit

24 extended hours for the remainder of the week, in

25 which case I'm confident that we could finish. Two,

- 5 - General Discussion

1 we could revisit the question of time limits.

2 Three, we could find a bit more time, next week, to

3 complete the matter if extended hours turns out to

4 be too difficult or impossible due to your

5 scheduling.

6 And, fourth, if necessary, you might

7 canvass your schedule for the remainder of this

8 year, and adjourn some less pressing matter in order

9 to accommodate this matter, so that it can be

10 completed. I appreciate that if we do complete the

11 liability stage, and if you find liability, you

12 might not be able to hear the evidence in relation

13 to the remedy. But if that were to happen I see no

14 reason whatsoever why another member could not rely

15 on your findings, on the liability stage of the

16 first part of this hearing, to complete the matter

17 in terms of remedy.

18 So I'm in your, you know, hands, sir, but I

19 would ask that you, please, consider this request,

20 because it would be a terrible outcome for all that

21 we not complete the evidence soon, and certainly in

22 2016. Thank you.

23 THE VICE-CHAIR: Mr. Tapp?

24 MR. TAPP: I have heard all of the

25 comments counsel is saying. I agree with quite a

- 6 - General Discussion

1 few of them. What I take objection of, counsel's

2 interpretation of it being in the best interest of

3 the applicant. The applicant has been waiting to

4 this date since 2009, seven years to examine these

5 crucial witnesses. The applicant's memory will

6 never fade. This is being supported as with our

7 opening address.

8 We reminded this tribunal evidence will

9 reveal certain things, and that is coming to pass.

10 Documentary evidence will never fade. And because

11 of its impact on the applicant his memory will never

12 fade. Maybe times, maybe, but his notes will be

13 there. The documentary evidence will always jog the

14 memory. Secondly, counsel cannot say, "In the

15 interest of the applicant", because, no, we are

16 prepared.

17 The Rule 1 that counsel cited makes no

18 specific reference to timelines, because if the

19 public were...if the tribunal did address timelines

20 then it would be not in the interest of public to

21 even bring a matter that they contemplate long.

22 Anyways, so timelines should not be a concern.

23 Counsel addressed a very thorough examination of

24 this witness, and I watched her folder.

25 She went through each and every document

- 7 - General Discussion

1 that I saw disappearing in that folder and

2 tendering. She went through all of it. It is in

3 the interest of the applicant, and only fair to the

4 applicant that he be allowed the same, to go through

5 all the material that he has prepared for this

6 witness, and the rest to come. The tribunal is

7 aware, and cannot be firm that once vice-chair's

8 contract expires there is no chance for renewal.

9 I can't quote the specific authority, but

10 there is discretion allowed to the tribunal under

11 extreme circumstances, if need be, to extend a

12 contract. And I'm not going to go delve into that

13 because I'm not familiar with the actual authority

14 on it. So in the interest of the applicant we are

15 opposed to imposing specific timelines.

16 Granted, on the non-crucial witnesses, we

17 met the timeline, and we finished by 3:00 p.m. on

18 the last day, or 4:00 p.m., at least, on the last

19 day. We finished...2:00 p.m., pardon me, on the

20 last day. We kept within a timeline, but these are

21 the crucial witnesses. And those are the

22 applicant's respectful response to counsel's

23 request. Thank you.

24 THE VICE-CHAIR: I'm going to give this

25 some serious consideration. I have to find out what

- 8 - General Discussion

1 my position is once my term ends. It is not clear.

2 Historically, if I understand it, once you have put

3 in your ten years that is it, and you can't get

4 renewed...

5 MS. SINGH: Yes.

6 THE VICE-CHAIR: ...or you can't get

7 extended. There may be exceptions for dealing with

8 cases that a member is seized of, but I don't know.

9 I will have to make some inquiries. As for time

10 limits, Mr. Tapp, the court is always concerned

11 about time limits. That is the very reason for a

12 limitation period, which makes no sense in this

13 case, of course, but the reason we have timelines is

14 because memories do fade.

15 I suspect your client needs closure. This

16 seems to be monopolizing his life. There has to be

17 an end to it, sooner rather than later. One of the

18 problems is that your client is coming in from

19 Israel every time we sit. That makes it more

20 difficult. I would be prepared to put in additional

21 days, in the near future, but we have to have your

22 client come back, and that is an issue.

23 MR. TAPP: No, Mr. Vice-Chair, I must

24 say, with him this is a priority...

25 THE VICE-CHAIR: I know it is.

- 9 - General Discussion

1 MR. TAPP: ...and he has entitlement for

2 2017 vacation, two weeks, so at the most, even if

3 time is required, I can say I can't see it being no

4 more than two days, so he is...he has two weeks

5 allotted. He can take it any time in the

6 near...next year. He is telling me, even prior to

7 the end of this year, so...

8 MS. SINGH: Yes. And, Mr. Vice-Chair, I

9 know I don't want to repeat myself, and you did hear

10 me, and I'm grateful for that, but, again, we must

11 ensure that there is no abuse of the tribunal's

12 process. And in order to achieve a fair resolution

13 it is not a question of finding two days in 2017.

14 If we can sit late, if we can...because

15 certainly the afternoon of this Friday was

16 contemplated, and so I don't know what Mr. Jack's

17 scheduling is, but if he is still here on Monday,

18 Tuesday, we could find a time to complete the

19 evidence. This evidence, this case must come to a

20 close. It relates to matters going back to 2009. I

21 already have two witnesses who have retired.

22 THE VICE-CHAIR: Yes.

23 MS. SINGH: I already have two who have

24 retired. Their memories have faded. They don't

25 have the recollection. And regardless of whether

- 10 - General Discussion

1 the applicant will have a recollection for the rest

2 of his life, he has already given eight days of

3 evidence, or seven days of evidence to this

4 tribunal. His time, in terms of testifying, is

5 done. And it is now the OPP's case, and the

6 unfairness falls to the OPP. And, of course, you do

7 have the power, the specific power, to limit any

8 evidence and to direct.

9 THE VICE-CHAIR: I do.

10 MS. SINGH: And I would ask you, please,

11 sir, to consider, regardless of whether you can make

12 inquiries, you can't predict, with any certainty,

13 about, you know your contract come 2017...

14 THE VICE-CHAIR: Right.

15 MS. SINGH: ...because none of us can.

16 We are all in the hands of someone else, but we do

17 have control over our scheduling at the moment, and

18 so I would ask that we make best efforts to complete

19 the evidence this week, by sitting late, or Monday,

20 Tuesday? I can make myself available. Then I'm in

21 court, later in October, and I have my own other

22 commitments, as is not my only file. It is one of

23 many dozen files.

24 MR. TAPP: I just have to say, very

25 brief, in response to what counsel said. The

- 11 - General Discussion

1 applicant, like I said, when I said "two days", that

2 is not taking into account counsel. Certainly if

3 this tribunal wants to book another block of five

4 days, I can assure this tribunal that we will be

5 done, with the most...if five were given, at the

6 most five-and-a-half...

7 THE VICE-CHAIR: Well, five isn't going

8 to be given.

9 MR. TAPP: No. That is what I...

10 THE VICE-CHAIR: Leave it with me. I'm

11 going to see what I can't do in terms of my

12 schedule. I know I'm sitting for three days,

13 Monday, Tuesday and Wednesday of next week. I may

14 be able to do something about that, adjourn that

15 case, or have some other vice-chair sit on it, but

16 just leave it with me.

17 I don't think a half day was going to make

18 a difference in terms of getting all the evidence

19 in, but, in any event, leave it with me and I will

20 see what I can't do, which means Mr. Jack will have

21 to stay here and wait until I become free.

22 MR. TAPP: Certainly. I thank you, Mr.

23 Vice-Chair, and you are...counsel is already aware

24 that I do have an important engagement September

25 24th for which my wife is bearing all the

- 12 - General Discussion

1 preparation, my son's...for my children, and that is

2 no problem. I'm committed to this, this will.

3 Thank you.

4 He just asked that...Mr. Jack has just

5 addressed just a little concern. If we can know, as

6 soon as possible, from you, Mr. Vice-chair, so he

7 can make arrangements with his current employee

8 here, if possible, specific...pardon me, with the

9 flight arrangements to extend his stay.

10 THE VICE-CHAIR: Okay.

11 MR. TAPP: Okay. Yesterday, when we

12 closed for the day, counsel assured us that in the

13 morning, to continue our cross, I had requested for

14 WIPs, work improvement plans, for 6/7 and work

15 improvement plan for 8. Counsel, in particular Ms.

16 Blutstein, indicated she will have that ready for us

17 this morning.

18 MS. SINGH: These documents were

19 provided numerous times, I'm told, to the applicant,

20 so I'm curious...anyway, I only have eight. Ms.

21 Blutstein is not here today.

22 MR. TAPP: Thank you. We did have our

23 copy of 6/7, Mr. Vice-Chair, and when it was put

24 forth to the previous witness on Friday, we never

25 got it back. Work improvement plan 6/7 has been

- 13 - General Discussion

1 entered as an exhibit, or we are just verifying

2 that. Maybe Mr. Vice-Chair's copy will reveal it.

3 We don't have work improvement plan 6/7 entered as

4 an exhibit.

5 THE VICE-CHAIR: Well, my notes indicate

6 that we have entered at least six WIPs.

7 MR. TAPP: Yes. And that would include

8 number eight being the sixth, but, specifically, we

9 have not entered work improvement plans 6/7. Okay.

10 And that is why yesterday, at the close of the day,

11 I addressed this concern with counsel. Ms.

12 Blutstein responded, "That is no problem. I will

13 get it".

14 Now, this morning, and counsel was sitting

15 right beside her, when she made that comment,

16 counsel did not object. Now we are faced with

17 Blutstein not being here, and counsel saying, "Well,

18 it was provided in disclosure". This is not fair,

19 Mr. Vice-Chair, because...

20 THE VICE-CHAIR: Can we just get on with

21 it?

22 MR. TAPP: Okay.

23

24

25

- 14 - R. Flindall

Cr-Ex (L. TAPP)

1 ROBERT FLINDALL, resumed

2 CONTINUED CROSS-EXAMINATION BY MR. TAPP:

3 Q. You agree, Mr. Flindall, that work

4 improvement plans were mandatory for a performance

5 evaluation report that reflected negatives?

6 A. If there was a, "Does not meet",

7 yes.

8 Q. Yes. Can you show us, anywhere in

9 your notes, evidence of work improvement plan 6/7,

10 that is for performance evaluation reports 6/7 being

11 shared with Mr. Jack, please?

12 A. So I have six...

13 Q. You have it under your notes under

14 August 20th, which was...

15 A. I do. I do, yes, sorry. I found

16 it, sir.

17 Q. Thank you.

18 A. I am trying to be expeditious with

19 it.

20 Q. Okay.

21 A. Yes, it was served on him on the

22 20th of August, the PCS66 and two 233-10s were

23 served on PC Jack at that time, at 5:30 p.m.

24 Q. That is good. That is for the

25 performance evaluation report...

- 15 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Correct.

2 Q. ...and the two negative 233-10s.

3 A. Correct.

4 Q. But the question is specifically

5 relating to work improvement plans.

6 A. Yes. Those work improvement plans

7 were still being completed by Constable Filman, I

8 believe, from my recollection, so they weren't ready

9 at that time, is my recollection, sir.

10 Q. They weren't ready at the time the

11 PER was shared on August...

12 A. Yes, I don't believe so. That is

13 what I recall.

14 Q. Thank you. Now, counsel did

15 provide, in a disclosure, a copy of that work

16 improvement plan 6/7...no, correct. It was work

17 improvement plan 8, forget that. Okay. I direct

18 your attention to the following e-mail that you are

19 going to get, please? Okay.

20 While you look at that over, you would

21 agree that in preparation for that Monday 31st of

22 August conference call, with Staff Sergeant Kohen,

23 Mr. Campbell was requesting some outstanding

24 performance evaluation reports be submitted?

25 A. Yes.

- 16 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. And you already testified that

2 timelines, as per OPP orders, for submission of a

3 performance evaluation report, was that it:

4 "...Must be received by region no later

5 than 15 working days of the conclusion of

6 that report period..."

7 Correct?

8 A. Correct. In the case of these work

9 improvement plans there was a considerable amount of

10 back and forth between, I believe, Colleen Kohen and

11 Filman in relation to the work improvement plans, in

12 their preparation, so there was a delay.

13 Q. It has been the testimony of Mr.

14 Jack, all along, that he was never given a copy of

15 work improvement plan for 6/7. And if he was given

16 a copy of it there would have been an opportunity

17 for him to sign it; would you not agree?

18 A. I would believe so, yes.

19 Q. So in preparation for that

20 conference call you knew you had to get Mr. Jack's

21 work improvement plans done, which is why you sent

22 Staff Sergeant Campbell that e-mail, dated August

23 28th, on the top of that page?

24 A. Yes. So I can explain what happened

25 in relation to those, sir, because you may be

- 17 - R. Flindall

Cr-Ex (L. TAPP)

1 getting to this. The work...month seven was

2 submitted on the 20th of August. At that time the

3 work improvement plans were still being completed.

4 It was a lot of back and forth, in the completion of

5 it, because there were, at that point in time, for

6 months seven to be ten work improvement plan

7 categories.

8 Initially those work improvement plans were

9 done individually. Colleen Kohen, one of them

10 collapsed in together, and that was done. The delay

11 in that back and forth. And is including the

12 preparation of month eight's evaluation. Again,

13 month eight, Michael Jack only worked six days.

14 Constable Filman, when he completed month eight,

15 erroneously, had put in, "No basis for rating" on

16 those...on his evaluation. Okay.

17 And then some...a number of, "Does not

18 meets", I believe, on that evaluation. Colleen

19 Kohen then indicated that the month eight

20 evaluation, "There are to be no, 'Does not meets'",

21 or, sorry, "No basis for rating", and that month

22 seven categories will carry over to month eight;

23 okay? So what happened there, and this is, again,

24 what caused the delays, is Constable Filman had to

25 take month eight, where there was, "No basis for

- 18 - R. Flindall

Cr-Ex (L. TAPP)

1 rating".

2 He had to take over the previous month's

3 rating, and carry it over to month eight, so what

4 wound up happening is, and this is a confusion where

5 there was the...you had asked me yesterday in

6 reference to an e-mail with Rich Nie. The issue

7 then became 6/7 had ten categories on it. When

8 Constable Filman brought the categories over to

9 month eight, that were, "No basis for rating", then

10 it became, suddenly...it jumped to 17, I believe,

11 and that was the confusion between 17 and 10.

12 The issue became the...erroneously the

13 month seven WIP, with only ten categories, was the

14 one that was offered forward to move forward to

15 submit to Michael Jack. And that is when Rich Nie,

16 when he got that WIP, we thought the WIP was...that

17 WIP was fine to carry forward, to go along with

18 month eight. It was a carry over from seven to

19 eight. It was a merger of the two, because Michael

20 Jack was away and was going to be served month

21 eight.

22 So what happened is Constable Nie

23 recognized that there were 17 categories in month

24 eight. The WIP that went with it had ten, that is

25 because Constable Filman had, obviously, forgot that

- 19 - R. Flindall

Cr-Ex (L. TAPP)

1 there were additional, "Does not meets" in month

2 eight, and forgot to put them on that category, on

3 to the WIP; do you understand what I'm saying, sir?

4 Q. I do. I just find it hard that

5 Constable Filman would forget what he entered in

6 number eight.

7 A. I can't comment on what he forgot,

8 sir.

9 Q. Fair enough.

10 A. So, anyways, that made it through

11 the WIP, with the ten categories made it through,

12 Constable Filman, myself, region, and that was what

13 was to be prepared; okay? And that...that was the

14 delay. It was melding of months seven and eight,

15 and month eight was the WIP that, I believe, was

16 served on Mr. Jack. And I believe that is likely

17 why Mr. Jack didn't get a month 6/7 WIP, because it

18 was melded into the month eight.

19 Q. Thank you. Mr. Jack never got WIP

20 for 6/7. I must understand that correctly; right?

21 A. I don't know if he did or not, sir.

22 I don't recall.

23 MR. TAPP: We will enter that as the

24 next exhibit, please, that one sheet of

25 paper, e-mail, for the black number "56" on

- 20 - R. Flindall

Cr-Ex (L. TAPP)

1 the top.

2 THE WITNESS: Did you understand my

3 explanation, sir? I said it quite fast.

4 THE VICE-CHAIR: Let me just tell you

5 what my understanding is of what you have

6 said...

7 THE WITNESS: Sure.

8 THE VICE-CHAIR: ...because I think it

9 is important that I understand.

10 THE WITNESS: Yes.

11 THE VICE-CHAIR: The WIP that should

12 have been created for 6/7 was not, in fact,

13 created or given to the applicant. It was

14 rolled into the WIP for eight?

15 THE WITNESS: Correct.

16 THE VICE-CHAIR: So there was no WIP for

17 6/7?

18 THE WITNESS: One was created, but

19 because of the delays in getting the

20 evaluation...

21 THE VICE-CHAIR: It was never given to

22 TAPP, or to the applicant?

23 THE WITNESS: Not that I'm aware...

24 THE VICE-CHAIR: You don't know.

25 THE WITNESS: ...but I do know 6/7

- 21 - R. Flindall

Cr-Ex (L. TAPP)

1 melded into the eight, yes.

2 THE VICE-CHAIR: It melded into the

3 eight. Okay.

4 THE WITNESS: Yes.

5

6 BY MR. TAPP:

7 Q. But, Mr. Flindall, you would agree

8 that is contrary to the mandatory stipulations of

9 the guidelines and OPP orders; correct?

10 A. We were receiving direction from HR,

11 sir.

12 Q. Okay, but I'm questioning you about

13 your knowledge, or would you like a copy of those

14 specific orders?

15 A. In a perfect world, yes, there

16 should have been a WIP with six and seven served at

17 that time, sir.

18 Q. Thank you.

19 MR. TAPP: So that is Exhibit 196, Mr.

20 Vice-Chair?

21 THE VICE-CHAIR: Yes.

22

23 --- EXHIBIT NO. 196: E-mail exchange between Messrs.

24 Flindall, Campbell, et al.,

25 ending August 28th, 2009

- 22 - R. Flindall

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. You would agree that with the advent

3 of technology there are many ways of sharing a work

4 improvement plan, one would be, personally, another

5 can be by e-mail to the specific member?

6 A. Sure.

7 Q. Good. I'm showing you an e-mail

8 from you, Sergeant Flindall, dated September 13th.

9 Now, you would agree, looking over those four pages,

10 that Shaun Filman did prepare a work improvement

11 plan for month 6/7; correct?

12 A. Yes.

13 Q. Good. And he shared it with you,

14 electronically; correct?

15 A. Well, actually, hold on, sir.

16 Q. Flip over to the second page, it

17 says, "Number ten, radio communications".

18 A. Yes, I see that, but I can't say

19 that this is months 6/7 or if it is for number 8.

20 This is dated September 13th.

21 Q. But number eight had 13 negative

22 ratings, 17 negative ratings, whereas months 6/7 had

23 10 negative ratings.

24 A. Yes. I just explained that, sir,

25 yes.

- 23 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. So do you now agree that this work

2 improvement plan, shared to you electronically by

3 Mr. Filman, was for performance evaluation reports

4 6/7, because it has ten separate work improvement

5 plans noted on it?

6 A. No, I can't, because, like I said,

7 sir, the work improvement plan that was submitted to

8 be served on Mr. Jack, for month eight, also had

9 ten, and it was Rich and I that discovered it should

10 have had, I think it was the 17.

11 Q. But you agree Mr. Jack never got it,

12 and you corroborated that by your testimony. It

13 wasn't shared...

14 A. I suspect he didn't get it, but I

15 can't...I can't recall, sir, one way or the other.

16 Q. Take the time to peruse performance

17 evaluation report 6/7, please, and compare it with

18 those ten, you will see each of those ten ratings...

19 MS. SINGH: The question has been asked

20 and answered.

21 THE VICE-CHAIR: Yes.

22

23 BY MR. TAPP:

24 Q. So you would agree that this could

25 have been forwarded to Mr. Jack electronically, so

- 24 - R. Flindall

Cr-Ex (L. TAPP)

1 he would have had a copy?

2 A. This was coming to me, and I believe

3 this had to go up to Colleen Kohen to be reviewed

4 prior to it going to Mr. Jack. This is September

5 13th. I was...my recollection, at this time, we

6 were still on Shaun Filman to get this finished so

7 that we could get it served. The intent was to have

8 it served on Mr. Jack, personally.

9 Q. Number eight?

10 A. Correct.

11 Q. Good. So this e-mail was sent

12 September 13th, 2009, 3:24 p.m.; correct?

13 A. Yes.

14 Q. And it says:

15 "...You are a good man, sir. I was just

16 about to call you..."

17 A. Correct, because I was looking for

18 this WIP.

19 Q. Good. I want you to take a look at

20 this one, this e-mail?

21 A. Yes, sir.

22 Q. Good. Just two minutes afterwards

23 you sent Mr. Filman an e-mail regarding that

24 electronic version of the work improvement plan, and

25 you say:

- 25 - R. Flindall

Cr-Ex (L. TAPP)

1 "...Hey, I can't edit this. Send an

2 attachment instead of how you did it..."

3 Correct?

4 A. Yes, sir.

5 Q. Thank you.

6 A. The manner in which it appears on

7 this page, sir, is a preview. It wasn't a Word

8 document which it typically comes in.

9 Q. But the preview is exactly what you

10 were talking about that you could not enter your

11 comments...

12 A. Yes.

13 Q. ...and you could not edit it,

14 thereby work on it, so you were, specifically,

15 asking it be sent to you, I guess physically, a

16 physical copy...

17 A. No.

18 Q. ..."Send an attachment", electronic,

19 yes.

20 A. Yes, sir. The intent was for me

21 to...the intent was for me to open it so that I

22 could review it.

23 Q. Yes.

24 A. And if there were any grammatical

25 spelling changes, et cetera...

- 26 - R. Flindall

Cr-Ex (L. TAPP)

1 MR. TAPP: Yes. Okay. I get it. Thank

2 you very much. Okay. Maybe we can enter

3 those two? Okay. One at a time. Okay.

4

5 BY MR. TAPP:

6 Q. The next e-mail, please, you are

7 getting...

8 A. Thank you.

9 MS. SINGH: Mr. Vice-Chair, you know,

10 honestly, I don't know where this line of

11 questioning is going. The answer has

12 been...the question has been asked. The

13 answer has been given, repeatedly. No WIP

14 was provided, as far as he knows, for that

15 month, so...

16 MR. TAPP: Why don't you let us finish

17 and it will become very clear?

18 MS. SINGH: Can we just move on to the

19 next...

20 MR. TAPP: No.

21 MS. SINGH: ...area of questioning?

22 MR. TAPP: No.

23 THE VICE-CHAIR: Hold on. Hold on. You

24 address me.

25 MR. TAPP: I'm sorry, Mr. Vice-Chair,

- 27 - R. Flindall

Cr-Ex (L. TAPP)

1 you are right. Okay. So it will become

2 very clear over here.

3

4 BY MR. TAPP:

5 Q. Mr. Flindall...

6 THE VICE-CHAIR: When will it become

7 clear?

8 MR. TAPP: Hopefully right now. It all

9 depends on these answers.

10 THE VICE-CHAIR: Okay.

11

12 BY MR. TAPP:

13 Q. Mr. Flindall, you see the e-mail

14 before you? You authored it?

15 A. Yes.

16 Q. It is sent Sunday September, read

17 that date, 13th, I believe, 5:36 p.m.?

18 A. Yes.

19 Q. Read the whole e-mail and who you

20 sent it to, please?

21 A. I sent it to Staff Sergeant Campbell

22 and to Staff Sergeant Colleen Kohen:

23 "...Please...Ron and Colleen, please find a

24 revised WIP for PC Jack. PC Filman has

25 compiled the ten separate WIPs into one,

- 28 - R. Flindall

Cr-Ex (L. TAPP)

1 and I have tweaked them to their final

2 draft..."

3 Q. Thank you. Now, we realize the

4 objection counsel raised. So you would agree that

5 WIP, work improvement plan, for performance

6 evaluation report 6/7, has been officially been

7 shared with Colleen Kohen, by that e-mail of you;

8 right?

9 A. On this date, this appears to be

10 for...because it was a melding for month eight.

11 Report month eight was signed by myself and

12 completed on the 11th of September. Shaun Filman

13 was still working on the WIPs for that, and this is

14 now September 13th. And I can only assume that

15 those two go together, month eight and the WIP that

16 we are talking about.

17 And, again, because there was an error,

18 Constable Filman failed to realize the additional,

19 "Does not meets" on month eight, and he failed to

20 put them on that WIP.

21 Q. And you agree that it is your

22 responsibility to overlook that and pick up on these

23 errors; correct?

24 A. Yes. I didn't realize there were

25 additional ones as well.

- 29 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Thank you.

2 MR. TAPP: We will enter these three

3 series of e-mails as the next exhibit,

4 please? Should be six pages.

5 THE VICE-CHAIR: That will be 197. That

6 is six pages.

7

8 --- EXHIBIT NO. 197: E-mail exchange between Messrs.

9 Flindall, Campbell, et al, dated

10 September 13, 2009, six pages

11

12 BY MR. TAPP:

13 Q. Can you explain, how would you

14 expect Mr. Jack to sign his performance evaluation

15 report 6/7 where ten, "Does not meet requirement"

16 ratings, and without a proper work improvement plan

17 in place?

18 A. It was my recollection that he was

19 aware that they were forthcoming, that there were

20 delays, is what I recall.

21 Q. But they never did; right?

22 A. Never did what?

23 Q. But they never did go to him; right?

24 A. Six and seven? I don't know what

25 happened to six and seven in relation to Mr. Jack.

- 30 - R. Flindall

Cr-Ex (L. TAPP)

1 I don't recall.

2 Q. Thank you. Okay. You would agree

3 that his month eight performance evaluation report

4 had 17 negative ratings?

5 A. I believe that is what it is.

6 Q. Good. So blending in, as you say,

7 six, seven and eight, should also reflect 17 work

8 improvement plans?

9 A. Yes, because report month date is a

10 blend of six and seven and eight. The carry forward

11 of the previous evaluations carried forward, so,

12 yes.

13 Q. And you reviewed it when Mr. Filman

14 submitted it to you; right?

15 A. Likely, yes.

16 Q. Yes. And you forwarded it to, I

17 guess, Mr. Butorac, because by then Jack was going

18 to be on his shift?

19 A. Yes. After it was reviewed and

20 signed off it likely would have gone to the staff

21 sergeant through HR, approved, and went back down.

22 Michael Jack, at that point in time, was on

23 vacation, and returning back to Platoon D, so, yes.

24 Q. You keep saying, even yesterday,

25 "Michael Jack was on vacation". Are you certain he

- 31 - R. Flindall

Cr-Ex (L. TAPP)

1 took vacation during that time, after your platoon

2 and before his arrival, or did he take accumulated

3 time off? You know there is a difference between

4 the two?

5 A. It is semantics, sir. He was off.

6 Q. He was off. Thank you very much.

7 A. If I say "vacation" I'm just...I

8 mean, he had time off.

9 Q. Time off. Okay.

10 A. Yes...

11 Q. Thank you. I want to be clear of

12 that. Okay. Now, you would have a copy of work

13 improvement plan eight on your desk before you?

14 A. I do, sir.

15 Q. Thank you. And your testimony is

16 that you blended in six, seven and eight, so there

17 should be 17 work improvement plans over there?

18 A. I believe that is how many I have.

19 Q. Can you tell us how many are on that

20 document, please?

21 A. Seventeen, sir.

22 Q. I'm sorry. Maybe you are looking at

23 the wrong document, but the one that was given to

24 Mr. Jack, okay, we are going to show it to you, has

25 18 work improvement plans on it. Please show it to

- 32 - R. Flindall

Cr-Ex (L. TAPP)

1 him? And it has Constable Filman's signature. I'm

2 going to show it to you. I don't know what you are

3 looking at, but that is not the one Mr. Jack got.

4 You are looking at PER, pardon me. Look at the work

5 improvement plan, please?

6 A. Sorry, sir, I don't have the work

7 improvement plans here in front of me.

8 Q. We will show it to you. We don't

9 have a spare copy, but...

10 A. Okay.

11 Q. ...I think that has been entered as

12 an exhibit.

13 MR. JACK: No, I don't know.

14 MR. TAPP: Or we don't know. Okay.

15 THE WITNESS: I see where you are going,

16 sir. There is 18.

17 MR. TAPP: Eighteen.

18 THE WITNESS: And I have no explanation.

19

20 BY MR. TAPP:

21 Q. And if you had of reviewed it you

22 would have to agree that you would have picked on

23 that very obvious one, or all you have to do is your

24 eyes have to follow the numbers?

25 A. Not necessarily. I don't know if,

- 33 - R. Flindall

Cr-Ex (L. TAPP)

1 upon review of the month eight, if I had actually,

2 physically, counted the number of, "Does not meets".

3 I know now how many are on there. Back then, sir, I

4 have no recollection if I had actually counted...

5 Q. Would that mean your testimony is

6 changing; you never reviewed it?

7 A. No, no. I would have reviewed it.

8 I have no recollection if I had actually counted the

9 number of, "Does not meets"...

10 Q. Fair enough.

11 A. ...to make sure that I went, "Oh,

12 this is off". I don't recall.

13 Q. Thank you very much. Can you also

14 explain, or do you have a possible explanation of

15 why there is an absence of Mr. Jack's signature?

16 You can see, "Coach officer's signature".

17 A. I don't know, sir.

18 Q. Thank you. We will explore that

19 with the next witness that will come.

20 MR. TAPP: Now, I know, Mr. Vice-Chair,

21 I'm going to ask that this work improvement

22 plan be entered as the next exhibit, but we

23 don't have an extra copy. You are most

24 welcome to take this copy, Mr. Vice-Chair.

25 THE VICE-CHAIR: No, I have a copy here;

- 34 - R. Flindall

Cr-Ex (L. TAPP)

1 don't I?

2 MR. TAPP: You have? Okay then. We

3 will take that back. Thank you.

4 THE VICE-CHAIR: That would be...

5 MS. SINGH: Sir...

6 THE VICE-CHAIR: Yes.

7 MS. SINGH: ...the WIP month eight is

8 Exhibit 44.

9 THE VICE-CHAIR: Okay.

10 MR. TAPP: Thank you, Counsel. We are

11 going to strike that as an exhibit, Mr.

12 Vice-Chair?

13 THE VICE-CHAIR: Yes.

14 MR. TAPP: Thank you.

15

16 BY MR. TAPP:

17 Q. Now, August 19th and August 20th you

18 were working days; correct?

19 A. Appears I was working Wednesday

20 days, and 20th days, yes, sir.

21 Q. Thank you. That means Mr. Jack

22 would have been off at 18:00 hours on each day;

23 correct?

24 A. That was his schedule, yes.

25 Q. Yes. And yesterday your testimony

- 35 - R. Flindall

Cr-Ex (L. TAPP)

1 was that at 17:36 hours, which would be 5:36 p.m.,

2 you gave Mr. Jack a copy of performance evaluation

3 6/7 to go over?

4 A. Yes.

5 Q. Thank you. And that would have been

6 Wednesday, August 19th at 17:36 hours; correct?

7 A. No. I believe that was the 20th,

8 sir. The following...

9 Q. Pardon me, the 20th.

10 A. That was the following day. He was

11 aware that the...those were coming, from the meeting

12 on the 19th.

13 Q. Thank you. And he only had...he had

14 exactly 16 minutes to go before the end of the

15 shift?

16 A. Twenty-four minutes.

17 Q. Twenty-four minutes. Okay. My math

18 is bad. Okay. And you agree that where the

19 previous performance evaluation reports revealed no

20 negative ratings, with the exception of month one,

21 two?

22 A. Yes. That is my recollection.

23 Q. This one had a stark increase of ten

24 negative ratings?

25 A. It did, yes.

- 36 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. You would agree that upon looking at

2 that it may have been a shock for him?

3 A. Yes.

4 Q. Thank you, but you expected him to

5 review it, sign it and give it back to you by the

6 end of your shift?

7 A. I don't recall. Normally we provide

8 a copy to the individual, and we have a copy. The

9 signature, which is the same as 233-10s in the

10 PCS66, the signature is for receipt of being served

11 the copy. And he...and it was given to him, and

12 upon his return he refused to sign receipt of the

13 PCS66.

14 Q. Upon his return he refused to sign

15 performance evaluation 6/7?

16 A. Yes. And I have that marked at 6:18

17 p.m.

18 Q. 6:18 p.m., what date?

19 A. The 20th.

20 Q. The 20th?

21 A. Correct.

22 Q. He refused to sign it?

23 A. Yes. For receipt of his PCS66. Not

24 for dispute of it, not for...the signature is...

25 Q. Not disputing?

- 37 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Yes, that is correct.

2 Q. Refused?

3 A. It is just for receipt of the PCS66.

4 Q. And that information you gave Mr.

5 Campbell, and I believe that is why we have

6 Campbell's writing in place of Mr. Jack's signature;

7 right, "refused"?

8 MS. SINGH: This witness...

9

10 BY MR. TAPP:

11 Q. I think you said Campbell wrote

12 that?

13 MS. SINGH: This witness is in no

14 position to identify...

15 THE VICE-CHAIR: I agree.

16 MS. SINGH: ...another witness'

17 signature.

18

19 BY MR. TAPP:

20 Q. Okay. With all due respect, I

21 believe that is what you said yesterday.

22 A. It is not my signature, sir,

23 correct.

24 Q. Pardon me?

25 A. It is not my signature.

- 38 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Yes.

2 A. It is not my writing, as...

3 Q. Not your writing. Okay. Good.

4 MS. SINGH: And we have gone over this

5 whole area of questioning yesterday.

6 MR. TAPP: Counsel, this takes longer

7 every time she jumps up...

8 THE VICE-CHAIR: Okay.

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

10

11 BY MR. TAPP:

12 Q. So moving on. You agree that you

13 gave information to Staff Sergeant Campbell; right?

14 A. Yes.

15 Q. Thank you. I suggest to you that

16 when you gave it to Mr. Jack, that PER67, he told

17 you, and he did get on the phone to call the

18 association; do you recall that?

19 A. No, I do not.

20 Q. Do you see Constable Filman's

21 signature anywhere on that document, performance

22 evaluation report 6/7?

23 A. 6/7, no, I believe he was off.

24 Q. Thank you. So who prepared it?

25 A. Constable Filman did.

- 39 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Would you agree that if he prepared

2 it he could just as well have signed it?

3 A. No, not necessarily, sir, because on

4 preparation it still has to come back to me for

5 review, and if everything is satisfactory, without

6 it needing to go back, if Mr. Filman was off, he

7 wasn't present to come back to sign it prior to me

8 serving it on Constable Jack.

9 Q. Do you recall, just 34 hours...

10 MS. SINGH: Mr. Vice-Chair, really, I

11 don't understand where this line of

12 questioning is going. I think this witness

13 has answered, numerous times, in relation

14 to him being served, in relation to the

15 refused, in relation to what was served,

16 when it was served.

17 THE VICE-CHAIR: I agree.

18 MR. TAPP: Thank you, Counsel.

19

20 BY MR. TAPP:

21 Q. Was it fair for Mr. Jack to sign an

22 evaluation with ten, "Does not meet requirement"

23 ratings, without having sufficient time to study it

24 and provide his rebuttal?

25 MS. SINGH: Asked and answered.

- 40 - R. Flindall

Cr-Ex (L. TAPP)

1 THE VICE-CHAIR: No.

2 MS. SINGH: Asked and answered.

3 MR. TAPP: This is specific to this. He

4 says...his testimony was at 18:18 hours, on

5 the 20th, Mr. Jack told him he wasn't

6 signing it, so this is specific to that.

7 This is new information.

8

9 BY MR. TAPP:

10 Q. Was it fair for Mr. Jack to sign an

11 evaluation with ten, "Does not meet requirements",

12 without having sufficient time to read it, study it

13 and provide his comments?

14 A. I have already answered. The

15 signature is for receipt of the PCS66. He had all

16 the time in the world, at his leisure, to review it,

17 contact the OPPA, if that is what he did.

18 Q. So, "At his leisure" would be

19 between the 20th and September 9th, when he returned

20 on a new platoon; correct?

21 A. I can't comment on when he wants to

22 review it.

23 Q. But, yet, you have in your notes

24 18:18 hours he told you he is not signing it;

25 correct?

- 41 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Correct.

2 Q. Mr. Jack is just pulling out an

3 e-mail to be shown to you. It is Exhibit 195,

4 please? Do you have a copy of that on your desk?

5 A. It is not numbered, sir, sorry.

6 Q. Well, give it to him, because I'm

7 going to ask him to read it.

8 MR. JACK: We only have one copy. We have

9 already given out the rest, so we will need

10 it back.

11

12 BY MR. TAPP:

13 Q. We only have one copy, Mr. Flindall,

14 so I will take that back when you are done. You

15 agree that is an e-mail involving you, Constable Nie

16 and Sergeant Butorac?

17 A. This is the same one that we saw

18 yesterday, yes.

19 Q. But we are at a point in testimony

20 where this one has some specific questions for that.

21 Now, that e-mail was shared with you, or you had

22 involvement with that e-mail, September 25th, 2009;

23 correct?

24 A. Yes.

25 Q. Good. I direct your attention to

- 42 - R. Flindall

Cr-Ex (L. TAPP)

1 paragraph, the numbering beginning...the paragraph

2 beginning with number one.

3 A. Yes.

4 Q. Read it, please?

5 A. "...The category for federal

6 statutes needs to be changed on the actual

7 evaluation to, 'Does not meet', so it

8 matches with the WIP. I was going to

9 delete it off the WIP so it matched, but on

10 some examples you may see a number two and

11 number seven, so I couldn't do that.

12 Filman will also need to amend his

13 comments, as well, to support, 'Does not

14 meet'. He can probably copy what you wrote

15 in the WIP..."

16 Q. Okay. So you agree that as of

17 September 25th work improvement plan eight, which

18 was an amalgamation of six, seven and eight, was

19 still being worked on?

20 A. It would appear so, yes.

21 Q. Thank you. Correct me if I'm wrong,

22 but does it look like Mr. Jack's new coach officer,

23 on a new platoon, is trying to change a positive

24 rating in that performance evaluation report for

25 which he did not coach Mr. Jack, and he was trying

- 43 - R. Flindall

Cr-Ex (L. TAPP)

1 to change it to a, "Does not meet" rating?

2 MS. SINGH: Mr. Vice-Chair, this witness

3 is in no position to give evidence about

4 what another witness, who will be here to

5 give that evidence, was...

6 THE VICE-CHAIR: He is right.

7 MR. TAPP: Thank you.

8

9 BY MR. TAPP:

10 Q. As an accountable supervisor, what

11 Mr. Nie is suggesting, would that be in compliance

12 with the guidelines and OPP orders...

13 MS. SINGH: Mr. Vice-Chair...

14

15 BY MR. TAPP:

16 Q. ...as an accountable supervisor?

17 MS. SINGH: ...he is no position to give

18 evidence about whether...

19 MR. TAPP: He is...

20 MS. SINGH: ...it is in compliance.

21 MR. TAPP: Mr. Vice-Chair, the question

22 is very pertinent, because he is an

23 accountable supervisor. He has coach

24 officers under him. I'm not asking to

25 comment on why Mr. Nie did.

- 44 - R. Flindall

Cr-Ex (L. TAPP)

1 THE VICE-CHAIR: And the question.

2

3 BY MR. TAPP:

4 Q. Answer it, please.

5 A. Can you repeat it, sir?

6 Q. Would you agree, as an accountable

7 supervisor, with coach officers under you, that what

8 Mr. Nie was requesting of you, and had done, is not

9 in compliance with the guidelines and OPP orders?

10 A. I don't know what the outcome was,

11 if that was the actual outcome. I, honestly, can't

12 recall.

13 Q. I'm asking the question...

14 A. It should have gone back to

15 Constable Filman for review and whatnot, but right

16 now I have no recollection of what that outcome was.

17 Q. No. I'm asking you, by looking at

18 that e-mail...

19 A. Yes.

20 Q. ...would his involvement be in

21 compliance with OPP orders, and the guidelines?

22 A. As a coach officer I think he has

23 input into that evaluation.

24 Q. But he has no input in month...

25 A. It should have gone back to

- 45 - R. Flindall

Cr-Ex (L. TAPP)

1 Constable Filman.

2 Q. Thank you. Can you read the last

3 paragraph, please?

4 A. "...The originals are in your tray

5 for signing by everyone. I would expect

6 that Jack will refuse to sign again until

7 he drafts his response..."

8 I don't recall what happened after that, sir.

9 Q. You don't?

10 A. For the paper copy right now, no, I

11 have no recollection.

12 Q. Would you believe that the comments

13 there, in that last paragraph, to you, indicate that

14 Mr. Jack was, possibly, not going to sign it?

15 A. Again, this is an e-mail. That is

16 the indication it reads, but I can't comment...

17 MS. SINGH: Objection. Sir, this is,

18 you know, an e-mail written by another

19 witness.

20 THE VICE-CHAIR: I know. I know.

21

22 BY MR. TAPP:

23 Q. Would you agree, from the staff

24 meeting, and that conference call meeting, that Mr.

25 Jack's transfer to a new platoon was supposed to

- 46 - R. Flindall

Cr-Ex (L. TAPP)

1 give Mr. Jack a fresh start with a new coach

2 officer?

3 A. That was the intent, yes.

4 Q. Thank you. Do you have a copy of

5 the witness summary on your desk, your witness

6 summary, that counsel prepared?

7 A. Yes.

8 Q. Good. I direct your attention to

9 paragraph 3, please? Now, you read it to yourself.

10 Would you confirm that the information you provided

11 to counsel, to draft that paragraph, is or was

12 accurate?

13 A. Yes.

14 Q. And the information you gave counsel

15 substantiates that paragraph?

16 A. Yes.

17 Q. Thank you. You can see why the

18 question is now more pertinent. It does say, "Fresh

19 start with a new coach officer". You can see why

20 that question was...because of that paragraph the

21 question was asked:

22 "...It was supposed to be a fresh start

23 with a new coach officer..."

24 A. No, I don't, sir. I apologize. I

25 don't understand the connection.

- 47 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. The decision to transfer Mr. Jack to

2 a new platoon was so that he could have a fresh

3 start with a new coach officer; correct?

4 THE VICE-CHAIR: He has answered that.

5 MR. TAPP: All right.

6

7 BY MR. TAPP:

8 Q. Mr. Flindall, can you read your

9 notes of August 31st, 2009, conference call, please?

10 A. "...31st, 13:50 hours, detachment

11 for conference with Staff Sergeant Colleen

12 Kohen..."

13 Reference, "PC Jack". Inspector Lee also on the

14 line. Present is PC Filman, PC Nie, PC Postma,

15 Staff Sergeant Campbell:

16 "...At 2:00 p.m. call in progress. Call

17 completed. Discussions over WIPS. PC Jack

18 being coached by PC Nie. PC Jack going to

19 be afforded every opportunity to succeed.

20 The rest is up to him..."

21 And then "off duty".

22 Q. Thank you. I direction your

23 attention...we are going to get a copy to...you have

24 it on your desk, Exhibit 35, PER 8. Okay. I direct

25 your attention to page 12 of that PER.

- 48 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Yes.

2 Q. Mr. Flindall, your testimony

3 yesterday was that you recognized the printing of

4 that word "refused", it was yours.

5 A. Correct.

6 Q. Can you tell me when you received

7 information that Mr. Jack refused to sign that PER?

8 A. No, I cannot.

9 Q. Thank you. Can you read your notes?

10 I direct your attention, rather, to your notes on

11 August 20th, 2009.

12 A. Yes, sir.

13 Q. Now, you see where it begins, "17:36

14 hours"?

15 A. Yes.

16 Q. Up until "off duty".

17 A. Okay.

18 Q. Read those entries, please? They

19 are only a few lines.

20 A. Where it begins "PCS66"?

21 Q. "17:36 hours."

22 A. "...PCS66 and 233-10 served on PC

23 Jack. Advised him to read them over.

24 Advised him no surprises, and that it was

25 everything we spoke with him about the

- 49 - R. Flindall

Cr-Ex (L. TAPP)

1 previous day..."

2 Which is when we had the meeting with him and his

3 advisor:

4 "...6:18 PC Jack refused to sign any

5 documents. Says he disagrees with

6 everything in them and wants the OPP to

7 review..."

8 Oh, sorry, "OPPA".

9 Q. Thank you. You documented, in your

10 notes, your meeting with Mr. Jack where he refused

11 to sign any documents, including his PER 6/7,

12 because he wanted the OPPA to review them; correct?

13 A. Yes.

14 Q. Would you like to see Mr. Jack's

15 notes for August 20th, and see how thoroughly he

16 documented his meeting with you?

17 A. No, sir.

18 Q. Thank you. Would you agree that

19 there are no specific notes regarding his refusal to

20 sign PER 6/7?

21 MS. SINGH: Mr. Vice-Chair, Mr. Tapp is

22 asking the same question over and over and

23 over.

24 THE VICE-CHAIR: And over again.

25

- 50 - R. Flindall

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Yes. Mr. Jack just reminded me of

3 my...would you agree that there are no specific

4 notes with regards to Mr. Jack refusing to sign PER

5 8?

6 MS. SINGH: Asked and answered.

7 THE VICE-CHAIR: There are no notes.

8 MR. TAPP: Fair enough.

9

10 BY MR. TAPP:

11 Q. I direct your attention to your

12 witness summary prepared by counsel, wherein...what

13 page? And that will be page 2, second paragraph,

14 please?

15 A. Yes.

16 Q. Can you read that and confirm if it

17 accurately reflects the information you provided

18 counsel?

19 A. "...Sergeant Flindall approached PC

20 Payne in May 2009 to inquire if she would

21 be willing to mentor Mr. Jack. In July

22 2009 PC Payne was assigned to assist Mr.

23 Jack as a mentor. Sergeant Flindall will

24 address the reasons why he thought it was

25 necessary to assign a mentor to Mr. Jack in

- 51 - R. Flindall

Cr-Ex (L. TAPP)

1 addition to Mr. Jack's coach officer.

2 PC Payne did later raise concerns

3 about Mr. Jack's conduct towards her with

4 respect to a potential work place

5 harassment discrimination issue, and this

6 will be addressed by Sergeant Flindall..."

7 Q. Thank you. Given that you do not

8 recall Mr. Jack approaching you in May 2009, about

9 his concerns relating to Filman's coaching, and

10 given the absence of performance evaluation meetings

11 with you, why would you approach PC Payne in May

12 2009 to inquire if she would be willing to mentor

13 him?

14 A. In May 2009 we were starting to

15 identify some performance issues with Mr. Jack.

16 THE VICE-CHAIR: But haven't we gone

17 through all this?

18 MR. TAPP: Okay.

19 MS. SINGH: We have.

20

21 BY MR. TAPP:

22 Q. We will stop there. So would that

23 not denote Mr. Jack having addressed some concerns

24 to you?

25 A. No.

- 52 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Okay. Mr. Flindall, what kind of

2 relation did you have with Constable Payne in 2009?

3 A. She was one of my officers on shift.

4 Q. Was it a formal relation,

5 supervisor, subordinate or not so formal one?

6 A. Formal and informal. We were

7 friends.

8 Q. Thank you. I'm showing you a series

9 of e-mails, four pages, between you and Constable

10 Payne regarding Mr. Jack.

11 A. Yes.

12 Q. Can you acknowledge those e-mails,

13 please?

14 A. Yes.

15 Q. Good. Mr. Flindall, would you not

16 agree that in order for a male supervising sergeant

17 and a female subordinate, to attach smily faces

18 after their e-mails, you must have had a special

19 relationship?

20 THE VICE-CHAIR: I'm not going there.

21 You are not going there.

22 MR. TAPP: No. Okay.

23

24 BY MR. TAPP:

25 Q. Did you have the same faces, or

- 53 - R. Flindall

Cr-Ex (L. TAPP)

1 smily faces, with all of your other female

2 subordinates under your shift?

3 THE VICE-CHAIR: Mr. Tapp, I said, "We

4 are not going there".

5 MR. TAPP: We are not? Okay.

6 THE WITNESS: Excuse me, Chair, am I

7 allowed to...

8 THE VICE-CHAIR: Yes.

9 THE WITNESS: I don't know the protocol,

10 and I apologize.

11 MR. TAPP: Okay.

12 THE WITNESS: I don't know the protocol.

13 Am I allowed to say something in relation

14 to at least one of these e-mails, that has

15 nothing to do with the smily faces?

16

17 BY MR. TAPP:

18 Q. If you want to, that is fine, yes.

19 A. Only because you tendered it, sir.

20 And it was in reference to the change of block

21 training, which was at Constable Payne's request. I

22 just want to point out that it is important to note

23 her request was to change her block training in a

24 January time period, which is in keeping with

25 Constable Jack. That was post 12 month evaluation;

- 54 - R. Flindall

Cr-Ex (L. TAPP)

1 do you understand what I'm saying?

2 Q. Yes.

3 A. My expectation was that, yes,

4 Constable Jack would be on block training, which

5 would be the expectations that he would have passed

6 through his probationary period.

7 Q. So it is related to the testimony we

8 had earlier about him being on the block training

9 period; right?

10 A. That is the comment I'm saying about

11 that e-mail, because it was my expectation, come

12 January, which would have been past this 12 month

13 period, he would still be with us.

14 Q. All right. Thank you.

15 A. That is all I want to make comment

16 on, sir.

17 MR. TAPP: So maybe we can have that,

18 for the sake of Mr. Flindall's comments,

19 entered as the next exhibit, please?

20 THE WITNESS: And I apologize if that is

21 not protocol.

22 MR. TAPP: That is quite okay. I just

23 want to make sure we enter it as an

24 exhibit.

25

- 55 - R. Flindall

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. And did you attend block training

3 April 27 to 30th?

4 A. I don't know the dates it was

5 changed now, sir.

6 Q. Thank you very much.

7 THE VICE-CHAIR: And what are we

8 entering?

9 MR. TAPP: There are four pages that Mr.

10 Flindall, the witness, reviewed, and made

11 reference to to explain some of his...

12 THE WITNESS: Not page 2, sir.

13

14 BY MR. TAPP:

15 Q. Pardon me?

16 A. Sorry, not page 2. I was not

17 commenting on page 2. I was commenting on first,

18 third and fourth regarding the block training.

19 Q. Fair enough. Okay. I'm curious.

20 What is the "SP05112642"?

21 A. It is an occurrence number, sir.

22 Q. Occurrence number.

23 A. Yes.

24 Q. Was that in relation to a call that

25 Mr. Jack had been on by any chance?

- 56 - R. Flindall

Cr-Ex (L. TAPP)

1 A. No, sir, not as an officer.

2 MR. TAPP: No. Thank you. So that is

3 why we want the whole document entered,

4 please, all four pages? Thank you.

5 MS. SINGH: Mr. Vice-Chair, what number

6 is that? Would that be 198?

7 THE VICE-CHAIR: 198.

8 MS. SINGH: 198.

9 MR. TAPP: Thank you.

10

11 --- EXHIBIT NO. 198: E-mail exchange between Mr.

12 Flindall and Ms. Payne, ending

13 November 6, 2009

14

15 BY MR. TAPP:

16 Q. Some of the e-mails we just went

17 over, you agree that Mr. Jack's transfer to Sergeant

18 Butorac's shift was to be viewed as a clean slate

19 and a fresh start; correct?

20 A. Correct. Yes.

21 Q. And you agree, also, by your

22 testimony the previous day, that the photograph, or,

23 rather, he did not run that licence plate; correct?

24 A. Correct.

25 Q. Good. And you also agree that the

- 57 - R. Flindall

Cr-Ex (L. TAPP)

1 photograph was dated, meaning old?

2 A. That is what I was told. That is my

3 understanding.

4 Q. Good. Now, I'm going to show

5 you...do you recall, at some point in time, okay,

6 being shared another dated document, namely a

7 particular old occurrence involving Mr. Jack from

8 Burleigh Falls?

9 A. Yes.

10 Q. Yes. Do you recall it coming to

11 your attention through Constable Payne?

12 A. Correct.

13 Q. Good. Okay. So can you tell us

14 your recollection of that document or that

15 occurrence, and how it was shared to you?

16 A. My recollection it was shared via

17 e-mail from her. Constable Payne was...again, I

18 comment on her organization skills. She was

19 assigned the duties of merging on RMS. And

20 "merging" means when there are multiple addresses

21 added into the system...sorry, the same address

22 added multiple times, she would go into RMS and

23 merge addresses, persons, any entry that was

24 duplicate, and she would merge them down together.

25 It is my understanding that that occurrence was

- 58 - R. Flindall

Cr-Ex (L. TAPP)

1 found while she was doing those duties.

2 Q. Now, do you agree that that

3 occurrence was years before Mr. Jack became an

4 actual police officer?

5 A. Yes. In 2005.

6 Q. Good. And did that occurrence speak

7 to his character?

8 A. What it spoke to was we were having

9 issues with Constable Jack. That occurrence spoke

10 to what we were seeing in Mr. Jack and back in 2005.

11 Q. But you agree in 2005, it is several

12 years before 2009...

13 A. Four years, sir, yes.

14 Q. ...four years, one may not have even

15 had the idea they were going to be a police officer?

16 No, it is valid.

17 MS. SINGH: Is there a question?

18 MR. TAPP: Okay.

19 THE VICE-CHAIR: It is not valid.

20

21 BY MR. TAPP:

22 Q. Did you share in that same feeling

23 that it spoke about his character?

24 A. I don't know if I would use that

25 term, but if his...the behaviour in that occurrence

- 59 - R. Flindall

Cr-Ex (L. TAPP)

1 was similar to the behaviour that we had witnessed

2 while he was on shift. I'm not going to make

3 comments on his character, sir.

4 Q. Fair enough. You agree that Mr.

5 Jack was not even interviewed by police in that

6 occurrence? Look it over. Do you have a copy of

7 that occurrence?

8 A. Not...

9 Q. I would imagine Constable Payne

10 forwarded you a copy by e-mail, which she told you

11 about it...

12 MS. SINGH: Sorry, I really think this

13 whole line of questioning is not relevant.

14 The witness can only answer in relation to

15 the first e-mail on the second page at the

16 bottom. The rest are e-mail exchanges

17 between other people.

18 MR. TAPP: Mr. Vice-Chair, counsel is

19 constantly objecting to everything I try to

20 pick up. That is going to be damaging.

21 THE VICE-CHAIR: She is pretty well

22 constantly right.

23 MR. TAPP: Fair enough.

24

25 BY MR. TAPP:

- 60 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. But do you agree, by you sending

2 that e-mail to Inspector Johnston, with that SP

3 number in there, that you had...did you review that

4 occurrence?

5 A. Yes. I recall reviewing it, yes.

6 Q. Thank you. Then you would recall

7 that there is no indication, anywhere on it, or do

8 you recall there being any indication of Mr. Jack

9 being interviewed by the police officers?

10 A. Sorry, I do not know that.

11 Q. We are going to give you a copy of

12 that occurrence that you reviewed, that is already

13 entered an exhibit, and we will address that

14 particular question.

15 MS. SINGH: Sir, what is the question?

16 MR. TAPP: The question you just

17 heard...

18 MS. SINGH: The witness has responded

19 that he reviewed the occurrence. He has no

20 recollection.

21 MR. TAPP: No.

22 MS. SINGH: He has testified he has no

23 recollection of whether there was a police

24 interview with him. And so, I mean, I

25 would think that is the end of the

- 61 - R. Flindall

Cr-Ex (L. TAPP)

1 question.

2 MR. TAPP: With all due respect, here is

3 where counsel is wrong. His response was,

4 "Yes, I reviewed it". And then, when I

5 asked a question, "Do you recall there

6 being...do you recall that occurrence, in

7 that occurrence, that Mr. Jack was not

8 interviewed by police", and he is saying he

9 doesn't recall, which is why we are going

10 to now put it to him and let him look at

11 it.

12 MS. SINGH: But the witness has

13 testified that he does not recall.

14 THE VICE-CHAIR: Yes, that is the

15 answer.

16 MR. TAPP: Fair enough.

17 THE VICE-CHAIR: I think Mr. Jack's

18 testimony spoke to that very question that

19 you are...

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

21 THE VICE-CHAIR: That was a long time

22 ago.

23 MR. TAPP: You are recalling that, and

24 that was a long time ago. That is amazing.

25 THE VICE-CHAIR: He doesn't remember.

- 62 - R. Flindall

Cr-Ex (L. TAPP)

1 He had...

2 MR. TAPP: He does have...

3 THE VICE-CHAIR: ...provided evidence,

4 so that is the answer.

5 MR. TAPP: Thank you.

6

7 BY MR. TAPP:

8 Q. Mr. Flindall, can you read the last

9 e-mail on page 2 of that two page document, please,

10 from you to Inspector Johnston?

11 A. Dated September 22nd, 2009, at 9:18

12 p.m.:

13 "...Inspector, I'm not sure that this had

14 any bearing on PC Jack's current situation,

15 but please read the occurrence dated from

16 2005..."

17 And then the occurrence number:

18 "...Shaun was looking up a suspect who

19 happened to be involved in the occurrence.

20 Michael Jack was also involved, but never

21 linked to the occurrence as an involved

22 person. As a result I'm sure this never

23 made it into his background investigation.

24 It certainly seems to be concurrent with

25 the issues we are currently facing with him

- 63 - R. Flindall

Cr-Ex (L. TAPP)

1 now..."

2 Q. Thank you. Now, that was an old

3 occurrence. Did you bother to even speak to Jack

4 about it?

5 A. No.

6 MR. TAPP: Thank you. Can we enter this

7 as the next exhibit, please, two page

8 document?

9

10 --- EXHIBIT NO. 199: E-mail exchange between Ms.

11 Kohen, Mr. Johnston, et al,

12 ending September 24, 2009

13

14 THE VICE-CHAIR: I would like to take a

15 ten-minute break.

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

17 It is an appropriate time.

18 THE VICE-CHAIR: Ten minutes.

19

20 --- upon recessing at 11:00 a.m.

21 --- A BRIEF RECESS

22 --- upon resuming at 11:25 a.m.

23

24 GENERAL DISCUSSION:

25 THE VICE-CHAIR: Before you proceed,

- 64 - General Discussion

1 once we are through with this witness, I would like

2 to discuss the future. I'm going to put timelines

3 in place. I'm going to...but we will discuss it

4 further when we are finished. I'm going to try to

5 clear my calendar for Monday, and we are going to

6 discuss timelines for the witnesses so that we

7 complete the case by Monday.

8 MS. SINGH: Thank you, sir. Thank you

9 very much.

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

11 Mr. Vice-Chair, I know yesterday Mr. Court Reporter

12 tried to get counsel's assistant's name and I

13 asked...yes, it needs to be there, reflected on the

14 record, but he wasn't able to get her name.

15 MS. SINGH: Yes, Mr. Vice-Chair. I

16 don't have counsel with me. This is a student, and

17 she is not under the tribunal's Rules, a

18 representative...

19 THE VICE-CHAIR: No.

20 MS. SINGH: ...of a party, and she is

21 not a representative of a party. She is performing

22 an administrative role. And I also understand, and

23 I'm very concerned that the applicant is asking for

24 names for the purposes of adding them to websites

25 that accuse individuals that are representing the

- 65 - General Discussion

1 OPP of racism and discrimination.

2 And I'm told, I have not verified for

3 myself, that Ms. Blutstein's name is on that

4 chronology. Mr. Manuel's name. My name has been

5 added. And so it is very much an abuse of this

6 tribunal's procedures for Mr. Tapp to be asking for

7 names to add to websites that are accusing people of

8 such serious and damaging allegations under the

9 auspices of the Human Rights Tribunal.

10 MR. TAPP: Mr. Vice-Chair, I strenuously

11 object. Where does counsel come off making those

12 allegations that I am making those entries on

13 websites? Show me. Show this tribunal proof to

14 substantiate that? I have no affiliation

15 whatsoever, other than some of my comments are on

16 that.

17 Where do you come off saying that I am

18 putting that information on the website, where?

19 That is totally false and misleading and in

20 violation of her own oath to the Law Society.

21 THE VICE-CHAIR: I know, as a fact, that

22 there is material being posted.

23 MR. TAPP: Fair enough, I agree.

24 THE VICE-CHAIR: I don't know who is

25 posting it, but it has come to my attention, through

- 66 - General Discussion

1 the registrar.

2 MR. TAPP: Fair enough, but counsel is

3 attributing that to me, and that is very damaging

4 and defamatory, that comment.

5 THE VICE-CHAIR: I suggest we proceed

6 with...

7 MR. TAPP: Yes, we will proceed.

8 THE VICE-CHAIR: ...the merits.

9 MR. TAPP: I just had to address that.

10 THE VICE-CHAIR: Okay.

11

12 ROBERT FLINDALL, resumed

13 CONTINUED CROSS-EXAMINATION BY MR. TAPP:

14 Q. Moving on, Mr. Flindall, you just

15 testified that you never reviewed that dated

16 occurrence; am I right?

17 A. That I never reviewed it?

18 Q. Yes.

19 A. No, I did review that occurrence.

20 Q. Fair enough. What is your badge

21 number, Mr. Flindall?

22 A. 9740.

23 Q. Thank you.

24 THE VICE-CHAIR: 740 or 9...

25 THE WITNESS: 9740, yes.

- 67 - R. Flindall

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. At times you said, "I cannot

3 recall", so is that your badge number at the bottom

4 of that two page document I gave you?

5 A. It appears so, it is partially cut

6 off.

7 Q. Thank you. And would this be that

8 dated occurrence?

9 A. It appears so.

10 Q. Thank you. You can see the match on

11 the occurrence number and the e-mail you sent to

12 Inspector Johnston?

13 A. Yes.

14 Q. Thank you. And can you turn to page

15 2 of that document, please?

16 A. Yes.

17 Q. That being witness statements, what

18 does it say?

19 A. It says "nil".

20 Q. Thank you. Now, you will agree that

21 in order for you to say that a dated occurrence

22 seems to be congruent with issues of Mr. Jack, that

23 you did have knowledge about that occurrence?

24 A. Yes.

25 Q. Yes. Okay. Thank you.

- 68 - R. Flindall

Cr-Ex (L. TAPP)

1 MR. TAPP: We will enter that two page

2 document as the next exhibit, please, the

3 dated occurrence?

4 THE VICE-CHAIR: Isn't this an exhibit

5 already?

6 MR. TAPP: No. It hasn't been. And we

7 have reviewed it. Mr. Jack is going to

8 double-check again, Mr. Vice-Chair.

9 THE VICE-CHAIR: I don't know. It just

10 looks...

11 MR. TAPP: No. There was a general

12 occurrence regarding threats. That is...

13 THE VICE-CHAIR: Okay.

14 MR. TAPP: Yes.

15 MR. JACK: It might be 110 in the

16 exhibits. I will have to double-check, Mr.

17 Vice-Chair.

18 MR. TAPP: Mr. Vice-Chair, I believe you

19 might be right. We have an occurrence

20 number over here. We are just...it might

21 be 110.

22 MR. JACK: Yes, but it was printed by a

23 different page number, so it is similar,

24 but...the same contents, but different.

25 Entered as a separate exhibit.

- 69 - R. Flindall

Cr-Ex (L. TAPP)

1 THE VICE-CHAIR: Well, I have, as

2 Exhibit 110, occurrence summary, dated July

3 4th, 2005. This is an occurrence report

4 dated...

5 MS. SINGH: Yes. We are confirming that

6 that is our 110 as well.

7 MR. TAPP: Yes. Now, the one that you

8 have, and have entered in exhibit was

9 printed by Constable Payne, badge 9931.

10 This is the same occurrence that is

11 specific regarding what he printed. Thank

12 you.

13 THE VICE-CHAIR: Okay. Thank you. It

14 will be Exhibit 200.

15

16 --- EXHIBIT NO. 200: General Occurrence Report, dated

17 July 4th, 2005 (Printed by Mr.

18 Flindall)

19

20 BY MR. TAPP:

21 Q. While Mr. Vice-Chair is writing, Mr.

22 Flindall, I'm going to ask you to direct your

23 attention to the witness summary prepared by

24 counsel, specifically where you provided information

25 for a paragraph that states:

- 70 - R. Flindall

Cr-Ex (L. TAPP)

1 "...Sergeant Flindall will describe a

2 criminal harassment case..."

3 And I think there is only three lines to that

4 paragraph.

5 A. Page 2, sir.

6 Q. Okay.

7 A. Yes.

8 Q. So you have it before you? Okay.

9 Do you agree with that paragraph with respect to the

10 content it reveals?

11 A. Yes.

12 Q. Thank you. And it is reflective of

13 the information you provided counsel?

14 A. Yes.

15 Q. Thank you. Okay. I have some

16 questions regarding that.

17 THE VICE-CHAIR: Before you proceed...

18 MR. TAPP: Yes, Mr...

19 THE VICE-CHAIR: ...I'm still looking at

20 Exhibit 200.

21 MR. TAPP: Yes.

22 THE VICE-CHAIR: It appears to me it was

23 printed in 2011.

24 MR. TAPP: Yes, when it was disclosed.

25 THE VICE-CHAIR: No, I understand it was

- 71 - R. Flindall

Cr-Ex (L. TAPP)

1 disclosed.

2 MR. TAPP: Testimony was specific to...

3 in order for him to review that dated

4 occurrence he also printed it and reviewed

5 it, and that is what it was. We are not

6 concerned about...we can't. We cannot

7 really say, beyond a shadow of a doubt,

8 that he printed it on that day, but he

9 acknowledges printing it. It is his badge

10 number, and he did reference that

11 occurrence in his communication to

12 Inspector Johnston.

13 THE VICE-CHAIR: Well, it says "printed"

14 right on it, "2/11/02/03".

15 MR. TAPP: But you see all of our

16 disclosure...

17 THE VICE-CHAIR: At 12:40...

18 MR. TAPP: Yes.

19 THE VICE-CHAIR: ...by 974.

20 MR. TAPP: Yes, but all of our

21 disclosure says the same date at the

22 bottom. We have got seven volumes. I

23 mean, if Mr. Vice-Chair looks at it

24 three-quarters of those documents, in those

25 seven volumes, all say "January 2011".

- 72 - R. Flindall

Cr-Ex (L. TAPP)

1 That is a time stamp on it.

2 MS. SINGH: Yes, Mr. Vice-Chair, you are

3 right. And so the document...the witness

4 would not be in any position to confirm, or

5 you can ask the witness if he can confirm

6 whether this was, in fact, the document

7 that he looked at in 2009, on whatever

8 date, and forwarded it along.

9 And in terms of the other documents,

10 they do indicate that they were created and

11 exchanged. The e-mails were exchanged

12 during the relevant period of Mr. Jack's

13 probation with the OPP detachment in 2009,

14 and don't have that problem.

15 MR. TAPP: I will address that right

16 now.

17

18 BY MR. TAPP:

19 Q. Mr. Flindall, would that occurrence

20 be a copy of the occurrence that you would have

21 reviewed and referenced in your e-mail to Inspector

22 Johnston?

23 A. It looks, generally, correct, yes.

24 Q. Thank you.

25 MR. TAPP: So now, based on that

- 73 - R. Flindall

Cr-Ex (L. TAPP)

1 response, we will have it entered as the

2 next one.

3 THE VICE-CHAIR: 200.

4 MR. TAPP: And just for reference, Mr.

5 Vice-Chair, we had that welcome letter with

6 Mr. Jack. And even on top of that welcome

7 letter said, "January 28th, 2011", so I'm

8 saying...

9 THE VICE-CHAIR: Okay. I...

10 MR. TAPP: Yes. That is the reason.

11 THE VICE-CHAIR: Yes. I understand.

12 MR. TAPP: Thank you.

13

14 BY MR. TAPP:

15 Q. So you acknowledge providing

16 information for counsel to make that paragraph in

17 there; correct?

18 A. Correct.

19 Q. Mr. Jack was sick the day before

20 July 22nd, 2009; correct?

21 A. I don't know, sir.

22 Q. Okay. Do you recall Mr. Jack

23 reporting sick on a date before July 23rd, 2009?

24 A. Offhand, no, I don't, sir.

25 Q. While Mr. Jack is looking up that

- 74 - R. Flindall

Cr-Ex (L. TAPP)

1 exhibit...

2 MR. JACK: Exhibit 183.

3 MR. TAPP: 183.

4 MR. JACK: 183, I only have one copy.

5

6 BY MR. TAPP:

7 Q. It is Exhibit 183 that I'm showing

8 Sergeant Flindall.

9 A. Okay.

10 Q. Would that jog your memory that he

11 did have a sick day prior to July 23rd, 2009?

12 A. It appears so, yes.

13 Q. Thank you. And as his accountable

14 supervisor would you recall that it was the first

15 time Mr. Jack took a sick day?

16 A. I don't recall.

17 Q. Fair enough. And the very next day

18 you reported for duty July 23rd?

19 A. Yes.

20 Q. Thank you. Now, can you look at

21 your notes for July 23rd, please?

22 A. Yes, I am, sir.

23 Q. Can you confirm if around noon Mr.

24 Jack was called off the road to attend the

25 detachment to deal with a walk in complaint, the

- 75 - R. Flindall

Cr-Ex (L. TAPP)

1 criminal harassment case?

2 A. Yes.

3 Q. Thank you. And around 18:20 hours,

4 can you confirm if you had left him to work overtime

5 with explicit instructions to hold the accused for a

6 show-cause...

7 A. Correct.

8 Q. ...in a bail hearing?

9 A. Yes, at 6:25, yes.

10 Q. Thank you. Would you happen to know

11 that Mr. Jack had not eaten that day? I'm just

12 asking. Like will it be reflected if he took a

13 lunch earlier?

14 A. No idea, sir.

15 Q. As a supervisor you wouldn't know.

16 Thank you. Would you agree that your supervision of

17 Mr. Jack reveal that he had never handled a call of

18 that nature in the past, in complexity?

19 A. I don't recall, sir.

20 Q. Thank you. So you would not...did

21 Constable Brockley ever give you any information of

22 what he told Mr. Jack?

23 A. I don't recall, but he likely did.

24 Q. If I were to suggest to you that

25 when Jack asked him for help Brockley explicitly

- 76 - R. Flindall

Cr-Ex (L. TAPP)

1 told him, since the accused did not have a criminal

2 history, or record, and was not before the courts,

3 Mr. Jack could release him on a promise to appear

4 undertaking?

5 MS. SINGH: This witness would be in no

6 position...

7 MR. TAPP: He said he could not recall.

8 MS. SINGH: Mr. Vice-Chair...

9

10 BY MR. TAPP:

11 Q. I'm saying if you call?

12 MS. SINGH: ...he is no position to know

13 what another witness...

14 THE VICE-CHAIR: Person said to...

15 MS. SINGH: ...who had an opportunity

16 to...

17 MR. TAPP: Fair enough.

18 THE VICE-CHAIR: Unless he was present.

19

20 BY MR. TAPP:

21 Q. Now, didn't Mr. Jack tell you that,

22 when you got back from your vacation and talked to

23 him about that?

24 A. I don't recall, sir.

25 Q. Thank you.

- 77 - R. Flindall

Cr-Ex (L. TAPP)

1 MR. TAPP: Now, I know, Mr. Vice-Chair,

2 only because it may have appeared confusing

3 to you, I was cut short in my examination

4 of Mr. Filman over this incident. Now I'm

5 having to re-explore that only because I'm

6 dealing with a sergeant who knows his

7 authorities with respect to show-causes and

8 bail hearings, which is explicitly what he

9 said he directed Mr. Jack to do, so I ask

10 that I be afforded the time to explore it,

11 and I will try my best to get through it

12 fast.

13 THE VICE-CHAIR: I don't know where this

14 is going to.

15 MR. TAPP: Good.

16 THE VICE-CHAIR: No, it is not good.

17

18 BY MR. TAPP:

19 Q. Mr. Flindall, there is specific

20 authorities, in the Criminal Code...

21 THE VICE-CHAIR: Yes, and we went

22 through that.

23 MR. TAPP: I'm trying to establish that

24 Mr. Flindall gave Jack an unlawful order.

25 There was no lawful authority, by the code,

- 78 - R. Flindall

Cr-Ex (L. TAPP)

1 to justify the continued detention of a

2 person with no previous record and no

3 charges.

4 THE VICE-CHAIR: Okay.

5 MR. TAPP: Yet Mr. Flindall has given

6 his testimony that he told Mr. Jack to hold

7 him for a show-cause.

8 THE VICE-CHAIR: Right.

9 MR. TAPP: Right. We have got that.

10 Now, there are conditions available for a

11 judge to release on an undertaking, and an

12 officer in charge. The same conditions

13 that Mr. Flindall was seeking to have

14 imposed on the accused, before a judge, can

15 be imposed on an undertaking by the officer

16 in charge, Mr. Jack, so where is the legal

17 authority to hold him in custody and...that

18 is what I want to explore.

19 THE VICE-CHAIR: Well, how can he answer

20 that?

21 MR. TAPP: Yes, because he gave him

22 direction, told him to hold him on a

23 show-cause. And I want to question him on

24 his knowledge of the authority.

25 THE VICE-CHAIR: Well, he is not an

- 79 - R. Flindall

Cr-Ex (L. TAPP)

1 expert witness in this whole area.

2

3 BY MR. TAPP:

4 Q. Do you know, or your authority, in

5 regards to justifying the continued detention of a

6 person?

7 MS. SINGH: Mr. Vice-Chair, it is not

8 relevant. The question is did he give him

9 an instruction, did he follow the

10 instruction. If Mr. Tapp wants to make an

11 argument in his arguments about...

12 THE VICE-CHAIR: That is right.

13 MS. SINGH: ...you know, the legality of

14 the instruction, he can do that, but, you

15 know, this witness is not in a position to,

16 you know, provide evidence about whether it

17 was a lawful authority or not. He provided

18 him with an instruction. That is all that

19 is relevant.

20 THE VICE-CHAIR: I agree with you.

21 MS. SINGH: Thank you.

22 THE VICE-CHAIR: And counsel is right

23 that you can raise it in argument.

24 MR. TAPP: Okay.

25 THE VICE-CHAIR: Okay?

- 80 - R. Flindall

Cr-Ex (L. TAPP)

1 MR. TAPP: Mr. Vice-Chair, this was a

2 pivotal point in Jack's probationary

3 period. Okay. There has been lots of

4 exhibits tendered already that point to the

5 specific incident, a lot of testimony, and

6 a lot of testimony by Filman. And Mr.

7 Campbell refers to this incident...

8 THE VICE-CHAIR: I understand that. I

9 understand that, but the question you are

10 asking him is not proper. If you want to

11 argue that it was illegal then that is what

12 you do in argument.

13 MR. TAPP: Okay.

14

15 BY MR. TAPP:

16 Q. Mr. Flindall, you acknowledge

17 telling him to hold him for a show-cause hearing;

18 right?

19 A. Correct.

20 Q. Can you tell this tribunal, upon

21 reviewing the matter, was, at that time, your

22 knowledge...in reviewing the matter, was there

23 justification to hold him for a show-cause hearing?

24 A. Yes, there was.

25 Q. What was that, please?

- 81 - R. Flindall

Cr-Ex (L. TAPP)

1 A. In relation to the victim,

2 protection of the victim, sir.

3 Q. Protection. What were the

4 conditions you are seeking be; protection of the

5 victim?

6 MS. SINGH: Sir, again, this line of

7 questioning, we have gone through it.

8 THE VICE-CHAIR: We have.

9 MS. SINGH: We have. It has been asked

10 and answered, and it is not relevant to

11 anything that is in issue in this

12 proceeding. This proceeding is not about

13 that.

14

15 BY MR. TAPP:

16 Q. Would the protection of the victim

17 be no contact directly, or indirectly, and not to

18 attend within a radius of the victim's address?

19 A. That would be a typical condition,

20 yes.

21 Q. Thank you. And can an officer in

22 charge impose those two conditions?

23 A. In certain circumstances, yes.

24 Q. Thank you. And your testimony was

25 that you were upset that he disobeyed your

- 82 - R. Flindall

Cr-Ex (L. TAPP)

1 direction; correct? Yesterday...

2 MS. SINGH: Asked and answered.

3

4 BY MR. TAPP:

5 Q. ...you used the word "upset".

6 MR. TAPP: Don't speak for him, Counsel.

7 THE VICE-CHAIR: You direct your remarks

8 to me.

9 MR. TAPP: Pardon me, Mr. Vice-Chair.

10 Can you, please, tell counsel not to answer

11 for the thing?

12 THE VICE-CHAIR: We went through that

13 already.

14 MR. TAPP: Okay.

15

16 BY MR. TAPP:

17 Q. Correct me if I'm wrong, Mr.

18 Flindall, your testimony yesterday was you have,

19 "Never seen such blatant violation of direction";

20 correct?

21 A. Yes.

22 Q. Good. How is that you also say

23 that, in respect to Mr. Jack's recollection, you

24 deny making a statement, "I have never seen such

25 incompetence in a recruit before"?

- 83 - R. Flindall

Cr-Ex (L. TAPP)

1 A. I don't recall that.

2 Q. Would you agree that it appears to

3 be a contradiction to you not seeing any such

4 blatant violation of direction before?

5 A. I don't recall saying the comment,

6 so I can't compare it to...

7 Q. Fair enough. You agree that Mr.

8 Jack incurred 20 hours overtime, translated...which

9 time-and-a-half translates to 30 hours?

10 A. It was 30 hours yes.

11 Q. Good. You agree that you authorized

12 him for some of that overtime, on that night in

13 question?

14 A. Correct.

15 Q. Correct. You also agree that Staff

16 Sergeant Campbell authorized him for another portion

17 the following day?

18 MS. SINGH: This has all been asked and

19 answered.

20 THE VICE-CHAIR: I know.

21 MS. SINGH: It has all been gone

22 through.

23 MR. TAPP: All right.

24 THE VICE-CHAIR: We know all this.

25

- 84 - R. Flindall

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Did you review that investigation by

3 Mr. Jack, Mr. Flindall?

4 A. I recall reviewing it later on, yes.

5 Well after the fact.

6 Q. From your experience, as a

7 supervisor, seizing firearms can be a lengthy

8 process; would you agree, entering it and carding it

9 on the system?

10 A. No. Not necessarily, no.

11 Q. Did you know the number of firearms

12 Mr. Jack had seized when he arrested this

13 individual?

14 A. I don't recall. I don't recall.

15 Q. Would you be surprised to know that

16 there were 16 firearms that he seized?

17 A. I don't recall, sir.

18 Q. Thank you. Did you care to learn

19 that it was the first time Mr. Jack was doing this

20 type of work?

21 A. I'm sorry?

22 Q. That criminal harassment, complex in

23 nature, numerous firearms seized, did you care to

24 learn if it was the first time Mr. Jack was doing

25 this type of work?

- 85 - R. Flindall

Cr-Ex (L. TAPP)

1 A. You have referred to it as

2 "complex", I don't think it was complex, sir, but I

3 did not care to learn...I don't recall what his

4 prior was, involvement.

5 Q. For a probationary recruit you are

6 saying you don't think it is complex, but can you

7 rightfully say it may be...

8 THE VICE-CHAIR: He has given his

9 evidence.

10

11 BY MR. TAPP:

12 Q. If you had 16 firearms to register

13 would that be a time consuming process to you?

14 A. It would take some time, not time

15 consuming, but it would take some time.

16 Q. Thank you.

17 Q. Did you know that Mr. Jack was never

18 paid for the overtime he incurred?

19 MS. SINGH: This was asked and answered

20 yesterday.

21 THE VICE-CHAIR: It has been.

22

23 BY MR. TAPP:

24 Q. Did you know that the overtime that

25 you authorized he was not paid for?

- 86 - R. Flindall

Cr-Ex (L. TAPP)

1 A. I don't recall, sir.

2 Q. Thank you.

3 A. I don't recall.

4 Q. Thank you. As a supervisor you

5 would agree that for all your officers, at some

6 point in time, every month, you look at their

7 overtime?

8 MS. SINGH: Mr. Vice-Chair, I have never

9 seen this before, and I don't know who

10 prepared it.

11 MR. TAPP: No. That document was

12 provided by Corporate Services, from the

13 applicant disclosure, and we are relying on

14 that.

15 MS. SINGH: I have never seen it before.

16 I am in no position to say whether this

17 witness can...

18 MR. TAPP: Counsel provided it to us,

19 Mr. Vice-Chair. It is in their disclosure.

20 THE VICE-CHAIR: How is it relevant?

21 MR. TAPP: Okay. It is relevant to

22 substantiate and corroborate the number of

23 hours he is saying, and the question put to

24 him that the overtime that he authorizes,

25 six hours or seven hours, were not paid.

- 87 - R. Flindall

Cr-Ex (L. TAPP)

1 We are not talking about the 30 hours.

2 MS. SINGH: But that is for argument.

3 This witness...

4 THE VICE-CHAIR: That is right.

5 MS. SINGH: ...Mr. Vice-Chair, has

6 already said he doesn't have a

7 recollection, he does not know. He did not

8 prepare this document.

9 THE VICE-CHAIR: I don't know who

10 prepared it.

11 MS. SINGH: No. And the fact that it is

12 a document that has been provided by the

13 applicant doesn't make it relevant or

14 doesn't make it in any way within this

15 witness' knowledge to provide evidence in

16 relation to.

17 MR. TAPP: Mr. Vice-Chair, how can we

18 enter it? We have had numerous

19 documents...

20 THE VICE-CHAIR: The point is, Mr. Tapp,

21 the evidence is already in. He worked

22 these hours overtime, he didn't get paid.

23 That is the evidence; right?

24 MR. TAPP: Yes, Mr. Vice-Chair. Okay.

25

- 88 - R. Flindall

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Have you looked at your...I direct

3 your attention to your notes for August 31st, 2009,

4 Mr. Flindall. Okay. Pardon me. Can you look at

5 July 23rd, 2009, please?

6 A. Yes, sir.

7 Q. When I got a copy of your notes I

8 had difficulty reading from 18:25 hours on of page

9 97, so can you read from 18:25 hours, page 97, to

10 the fourth line on the second half of page 98?

11 Basically read in...

12 MS. SINGH: But is there a question? I

13 mean...

14 THE VICE-CHAIR: Yes.

15 MR. TAPP: There is. I want to

16 understand as clearly...I want him to read

17 his notes, because the next questions are

18 what I think...I might have to strike them

19 out. I prepared these questions, but I

20 don't know if I'm going to be allowed to

21 ask this, if I don't understand. I think I

22 can read those notes, but I'm not sure, so

23 I prepared some questions in anticipation,

24 that is why I want him to read it.

25 MS. SINGH: Mr. Vice-Chair...

- 89 - R. Flindall

Cr-Ex (L. TAPP)

1 MR. TAPP: Only he can read his notes.

2 THE VICE-CHAIR: Ask the questions. Ask

3 the questions; okay?

4 MR. TAPP: Okay.

5

6 BY MR. TAPP:

7 Q. I suggest to you that on July 23rd,

8 being that you were going on vacation, you did not

9 waste time completing your notes for that last

10 shift; correct?

11 A. No. I would have made them then.

12 Q. You were going on vacation after

13 that; right?

14 A. Correct.

15 Q. So you did not waste time completing

16 your notes for that last shift; correct?

17 A. Correct.

18 Q. Good. You did not waste time

19 because you were eager to leave as soon as possible

20 and go on your vacation; correct?

21 A. I can't recall my thought process at

22 the time.

23 Q. So you gave Mr. Jack those

24 instructions regarding that harassment; right?

25 A. I did.

- 90 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Good. You saw him jotting them down

2 on a yellow sticky note pad; right?

3 A. Yes.

4 Q. You also repeated those instructions

5 to the sergeant, or officer, in charge of that

6 evening shift, Constable Hanna; am I right?

7 A. Yes.

8 Q. Then you left; correct?

9 A. Yes.

10 Q. You also said that if he couldn't

11 arrest the suspect that night then to prepare a

12 warrant for his arrest and do a show-cause; correct?

13 A. I explained to him how that would

14 occur, yes.

15 Q. You wanted the accused held for

16 release before a judge; right?

17 A. Correct.

18 Q. Good.

19 THE VICE-CHAIR: Okay. Again, what is

20 the question?

21 MR. TAPP: All right. We are going

22 there.

23 THE VICE-CHAIR: We have heard all this

24 evidence.

25

- 91 - R. Flindall

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Now, my question is when did you

3 actually write those notes in your notebook, Mr.

4 Flindall? Was it July 23rd or when you came back,

5 after your vacation, August 2nd or 3rd?

6 A. Would have been before, July 23rd.

7 Q. Before July 23rd, for July 23rd,

8 that...

9 A. Well, on July 23rd.

10 Q. Thank you. Okay. You would agree

11 that your notes reveal detail instructions to Mr.

12 Jack?

13 A. Yes.

14 Q. Good. Would you agree that you seem

15 to know that Mr. Jack, by stating "general

16 occurrence" later, were you trying to imply

17 something?

18 A. Yes.

19 Q. What were you trying to imply?

20 A. I was implying for him to only

21 create the crown brief synopsis that would go in the

22 brief, and that he could create the general

23 occurrence report later.

24 Q. Yet you put the notation "GOR", is

25 that for general occurrence report?

- 92 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Yes.

2 Q. The abbreviation "GOR" means...

3 A. Correct. It is.

4 Q. And you put that in brackets; right?

5 A. Yes.

6 Q. Good. You also put in brackets,

7 "Don't type in"; correct?

8 A. Yes.

9 Q. Did you happen to know that Mr. Jack

10 was going to type it in?

11 A. I had previous occurrences with him,

12 or an occurrence, where I had already told him not

13 to transcribe items, and not to type things in.

14 Q. Fair enough. Now, your next

15 notation has, "Advise him not to transcribe video

16 statement"; correct?

17 A. Yes.

18 Q. Can you explain why you underscored

19 "not"? Did you happen to know that he would, which

20 is why...

21 A. I was concerned about that, yes,

22 sir.

23 Q. Pardon me?

24 A. I was concerned about that, yes,

25 sir.

- 93 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. You were suspicious that he was not

2 going to comply, so you underlined "not"?

3 A. Not suspicious, but I outlined it

4 because that was the direction given, yes.

5 Q. Would you agree that at that time,

6 okay, you were forming an opinion, beforehand,

7 without actual information?

8 MS. SINGH: Is there a question?

9 MR. TAPP: No, there is. It is

10 specific. This witness testified that he

11 is familiar with the definition of

12 "subjective". Opinions formed, beforehand,

13 without direct knowledge and without...

14 MS. SINGH: Mr. Vice-Chair...

15 THE VICE-CHAIR: But these are in his

16 notes; right?

17 MR. TAPP: Yes. Okay.

18

19 BY MR. TAPP:

20 Q. Did you have any full knowledge that

21 Mr. Jack was going to do each of those things as you

22 documented them?

23 A. I expected him to do them, yes.

24 Q. Did you expect him to disregard your

25 order beforehand?

- 94 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Absolutely not.

2 Q. Do you have a copy of your point

3 form chronology, Sergeant Flindall? It is a thick

4 document over there.

5 A. I do.

6 Q. Did Constable Payne speak to you

7 about her notations for July 25th? I am asking that

8 because Payne says, "I spoke with Sergeant Flindall

9 while on vacation". It may be I will direct your

10 attention to where it says, "25th of July, PC

11 Payne". And I'm not asking you to comment on what

12 she says, because it is her entry, but look at the

13 very third bullet entry, under her name.

14 A. I see, yes.

15 Q. Does it not say:

16 "...I spoke with Sergeant Flindall while on

17 vacation and updated him about the issue

18 with the investigation..."

19 A. Yes.

20 Q. "...And Mr. Jack's inability to

21 follow direction given to him by his

22 supervisor..."

23 A. Yes.

24 Q. So that is when you learned that he

25 violated your direction?

- 95 - R. Flindall

Cr-Ex (L. TAPP)

1 A. She had called me, yes.

2 Q. Thank you. And would you agree that

3 July 25 post dates your entries of July 23rd, in

4 your notes?

5 A. No.

6 Q. You made those notes, you said,

7 immediately after your shift?

8 A. Afterwards, yes.

9 Q. And your knowledge of him...

10 MS. SINGH: These questions have been

11 asked and answered.

12 MR. TAPP: Okay. We are filtering now.

13 We are eliminating a lot of questions, Mr.

14 Vice-Chair.

15 THE VICE-CHAIR: Good.

16 MR. TAPP: For the benefit of counsel

17 and this court my next questions are going

18 to be Exhibit 157. We are just digging up

19 a copy for the witness.

20 MS. SINGH: Yes, Mr. Vice-Chair, this

21 exhibit was prepared. This is a 233-10

22 form that was prepared by Mr. Campbell.

23 MR. TAPP: Yes, but he got it.

24

25 BY MR. TAPP:

- 96 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. So, anyways, you are getting a copy

2 of that exhibit. Do you recognize it and do you

3 recall getting it?

4 A. Yes, I do.

5 Q. Thank you. What was the outcome of

6 that criminal investigation occurrence, please?

7 A. My recollection...

8 Q. The final outcome from the...

9 A. I believe it went to a peace bond.

10 Q. Pardon me?

11 A. I believe it went to a peace bond.

12 Q. Piece bond. Thank you. Exhibit

13 157, that you have before you, is from Staff

14 Sergeant Campbell to you; correct?

15 A. Correct.

16 Q. And, now, it documents three

17 investigations and mentions the occurrence numbers;

18 correct?

19 A. Yes.

20 Q. The first occurrence number,

21 SP09164458, that was the criminal harassment one?

22 A. I don't recall. Very well could be,

23 yes, but I don't recall. I would have to confirm

24 that with the...

25 Q. Now, isn't it the same incident for

- 97 - R. Flindall

Cr-Ex (L. TAPP)

1 which you issued a negative 233-10 for Mr. Jack for

2 disobeying your direction?

3 A. The three incidents here, my

4 recollection, one is the criminal harassment,

5 correct. Another is another criminal harassment.

6 And I believe the third was...might have been an

7 assault. I could be wrong.

8 Q. Fair enough, but you acknowledge

9 that you were negatively rated by your supervisor,

10 Mr. Campbell, regarding that criminal harassment and

11 overseeing of it; correct?

12 A. The first portion of it, yes.

13 Q. Yes.

14 A. That is the first paragraph and the

15 first page, yes.

16 Q. Yes. And Mr. Campbell rates your

17 job knowledge and skills regarding your overseeing

18 of that investigation as a deficiency, by checking

19 off that box?

20 A. Yes.

21 Q. Thank you. And he also rates your

22 leadership skills with respect to overseeing that

23 criminal harassment investigation?

24 A. There is a mark there, yes.

25 Q. Thank you. And isn't that the same

- 98 - R. Flindall

Cr-Ex (L. TAPP)

1 occurrence that you gave Mr. Jack a negative 233-10

2 for?

3 A. I will explain the contents of the

4 document.

5 Q. Okay.

6 A. Yes, it is.

7 Q. Yes.

8 A. Okay. So I was in receipt of this

9 from Staff Sergeant Campbell, yes, I will agree to

10 that. I did take exception to the vast majority of

11 the content, except for the end, in relation to

12 this.

13 Q. Okay.

14 A. So I'm going to explain, because I

15 understand where you are going with this, sir.

16 Okay. So the issue is the criminal harassment

17 complaint you are talking about, I was off duty when

18 that was...

19 Q. Mr. Flindall, I am going to

20 interrupt you. The question was specific. Was it

21 in relation to this. If counsel has the opportunity

22 to re-examine you can provide it to her; okay?

23 A. Sure.

24 Q. You are entitled to do that.

25 A. Okay.

- 99 - R. Flindall

Cr-Ex (L. TAPP)

1 MS. SINGH: Mr. Vice-Chair, can I ask

2 that the witness complete his evidence on

3 this question so that the transcript

4 reflects...

5 MR. TAPP: I'm mindful of the time.

6 MS. SINGH: ...a full...

7 THE VICE-CHAIR: Pardon me?

8 MS. SINGH: His full answer.

9 MR. TAPP: Okay. If you want to allow

10 it, but I...

11 THE VICE-CHAIR: Yes, I will allow it.

12 It is his...you asked, and he...

13

14 BY MR. TAPP:

15 Q. Yes. Okay. Please, go on.

16 A. I will be quick. Okay. That

17 investigation, sir, was when I was away on

18 holidays, yes. The documentation, from my

19 recollection, for that crown brief, was created by

20 Constable Jack, okay, for that to go forward. That

21 is the first...that is the first portion of this,

22 advising:

23 "...Shortcomings into crown briefs,

24 submitted by the member..."

25 et cetera. I did not have an opportunity to review

- 100 - R. Flindall

Cr-Ex (L. TAPP)

1 that, from my recollection, prior to it going to the

2 crown attorney's office. When it arrived

3 deficiencies were noted in that brief, as a result

4 of the information Constable Jack had provided, so

5 that is that first one. The next one that is in

6 here, that is actually quite lengthy, is in relation

7 to a neighbour dispute.

8 Q. Okay.

9 A. A very long drawn out, and my

10 recollection, multi-year neighbour dispute.

11 Q. Would that be the, "Standby and keep

12 the peace" incident?

13 A. Oh, I don't recall. This is a

14 neighbour dispute.

15 Q. Standaert versus Anderson?

16 A. I believe that is the name, yes,

17 Standaert.

18 Q. Thank you. Standaert would be,

19 S-T-A-N-D-A-E-R-T, versus Anderson?

20 A. Might be the same, yes.

21 Q. Thank you. Good.

22 A. And that...

23 Q. Before we go we can read that

24 reference number, because there are three. Which

25 one are you referencing, "SP", the next...

- 101 - R. Flindall

Cr-Ex (L. TAPP)

1 A. I don't recall which number is

2 which, sir.

3 Q. Fair enough.

4 A. I'm sorry, I don't know. I'm just

5 referencing in general terms.

6 Q. Fair enough.

7 A. In that case that investigation was

8 investigated. Okay. My recollection is Filman was

9 involved in that somehow.

10 Q. Was involved?

11 A. Yes. That is my recollection in

12 relation in relation to this. I give credit to

13 Michael Jack. This is a multi-year long neighbour

14 dispute, with a lot of information to it, so it is

15 very convoluted, ongoing. The issue was we were

16 looking at whether or not it was a criminal

17 harassment complaint, if the criminal harassment

18 was...could be made out.

19 My experience, with crown attorney's in the

20 north, they have very open doors. You can go to

21 them and say, "I have a complex occurrence, can I

22 review this with you?" So that was the intent

23 behind this one, was not to put any pressure on

24 Constable Jack, but I said to him and Constable

25 Filman, "Let's prepare an advice brief. Let's put

- 102 - R. Flindall

Cr-Ex (L. TAPP)

1 together what we know, and we will present it to

2 Brian Gilkinson". And that is from my experience up

3 north. And, again, I'm probably a year...less than

4 a year into my new position.

5 Q. Okay.

6 A. So I had suggested that, "Let's put

7 it before the crown attorney, for him to review".

8 Okay. So what happened is that crown brief got

9 submitted directly into the court tray, without my

10 review.

11 Q. Okay.

12 A. It was submitted on the 15th of

13 August.

14 Q. Okay.

15 A. Okay. There is a sticky note on the

16 crown brief file, the document. So the issue with

17 that is that was also a very difficult day for

18 Constable Jack, which I will admit, the 15th. Okay.

19 And I don't know why that brief was submitted in the

20 form it was, to the crown attorney's office, without

21 my signature on it...

22 Q. Fair enough.

23 A. ...but it didn't go. So the

24 unfortunate part is a number of things. Unfortunate

25 the...it wasn't put together well, and I don't know

- 103 - R. Flindall

Cr-Ex (L. TAPP)

1 why it wasn't, and Brian Gilkinson outlines that.

2 The other difficulty is that Brian Gilkinson, when I

3 arrived there, had a very adversarial role with our

4 office. He did not have an open door policy with

5 our officers. We were seeking advice. Michael Jack

6 submitted the crown brief, without my knowledge.

7 There was no signature on it, and it went to Brian

8 Gilkinson.

9 So in the state that it was...and I don't

10 know if Shaun Filman reviewed it. In the state that

11 it was Brian Gilkinson wrote, "The e-mails contained

12 within". The staff sergeant got involved when I was

13 off in this, because there were calls into the

14 office, and he wound up getting himself involved in

15 that, and the inspector was involved, and there was

16 back and forth in relation to this investigation.

17 And ultimately what wound up happening is there was

18 reviews back and forth with the detective sergeant.

19 I had a review of it as well. And there

20 were suggestions, I believe, in here that criminal

21 harassment charges weren't warranted, "But let's get

22 some more information". And I think I directed him

23 to get some more statements. So the issue is Staff

24 Sergeant Campbell asked me to review the documents,

25 on the weekend, and I told him I would look at it on

- 104 - R. Flindall

Cr-Ex (L. TAPP)

1 the weekend of the August...

2 Q. Document or the investigation?

3 A. The investigation.

4 Q. Right.

5 A. And my recollection is I told him I

6 would. The problem is that was the long weekend, so

7 I was quite busy, and unfortunately I didn't get to

8 it. I was held accountable in the end of this. I

9 was held accountable to not getting to it, and

10 rightfully so.

11 I just...I didn't get to it, to review it

12 in a manner...in a time frame. What I did take

13 exception with the staff sergeant is these crown

14 briefs went in to the courts. I did not sign off on

15 them. I did not review them. I didn't...so I can't

16 make comment as to the content.

17 Q. You would agree that in your absence

18 you always, as any sergeant, leave somebody else as

19 officer in charge?

20 A. Yes.

21 Q. Right. And who would that officer

22 in charge be in your absence, please?

23 A. At that point in time it would have

24 been Constable Payne.

25 Q. Constable Payne.

- 105 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Oh, sorry, stand by. This is in

2 August. Sorry. No, that may have been Constable

3 D'Amico. Constable Payne didn't take 2IC

4 responsibility until later, so it would have been...

5 Q. So would you agree that it would be

6 up to the OIC of the shift, in your absence, to

7 review any submissions or the subordinates?

8 A. Yes.

9 Q. Thank you.

10 A. So what I'm saying here, sir...

11 Q. Yes.

12 A. ...is that I didn't take exception

13 to not looking at the documents, at the

14 investigation, and end of August. What I did take

15 exception to this, and as far as his...where he

16 talks about "leadership skills" and everything, he

17 was holding me accountable to the contents of the

18 two crown briefs...

19 Q. Yes.

20 A. ...which I never reviewed.

21 Q. Okay.

22 A. Okay. That is where I took

23 exception, so...

24 Q. And you addressed these exceptions

25 to him?

- 106 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Correct.

2 Q. You did. Okay, but nonetheless,

3 being your supervisor, he deemed it appropriate to

4 issue you with these?

5 A. He did.

6 Q. Thank you. Now, in reviewing the

7 performance evaluations of months six, seven and

8 eight, of Mr. Jack, you would see many references to

9 the Standaert versus Anderson incident being

10 referenced as specific examples in categories;

11 correct?

12 A. I would have to read through it

13 again, sir.

14 Q. Fair enough. We will explore that

15 later.

16 MS. SINGH: Well, is there a question?

17 I mean, we have spent so much time already

18 asking this witness, and the witness prior

19 to that, who prepared the document in part,

20 or initially, about performance number

21 eight, about performance number seven and

22 six, and if there is a question simply ask

23 the witness the question? He doesn't have

24 to review it. If you think that there is

25 something I would ask, Mr. Vice-Chair, that

- 107 - R. Flindall

Cr-Ex (L. TAPP)

1 the question be put or not asked again?

2 MR. TAPP: I can't account if counsel is

3 confused, Mr. Vice-Chair, but we will move

4 on.

5

6 BY MR. TAPP:

7 Q. Sergeant Flindall, Mr. Jack is

8 obtaining a copy for you, and I refer...I'm going to

9 direct your attention to Exhibit 149, dated August

10 11th. You are going to get a copy of that right

11 now, Mr. Flindall; okay? Now, we heard testimony

12 from Staff Sergeant Campbell, your supervisor. And

13 I was directed that I can canvass this with you.

14 This e-mail is from you to Staff Sergeant Campbell?

15 A. Yes.

16 Q. I had asked Staff Sergeant Campbell

17 a specific question, and he didn't know the answer

18 why, so I'm going to ask you. Read in what you have

19 typed to Staff Sergeant Campbell, please?

20 A. "...I have canvassed my shift and no

21 one wishes to attend. I already have quite

22 a few who have already attended. PC Jack

23 asked to go, but I am not supporting this

24 at this time..."

25 Q. Why did you...

- 108 - R. Flindall

Cr-Ex (L. TAPP)

1 MS. SINGH: Yes. And just for the

2 record, Mr. Vice-chair, my recollection is

3 that Mr. Campbell did, in fact, provide

4 evidence...

5 THE VICE-CHAIR: He did.

6 MS. SINGH: ...about this.

7 THE VICE-CHAIR: He did.

8 MS. SINGH: And specifically indicated

9 that he...

10 THE VICE-CHAIR: It was to do with costs

11 and...

12 MS. SINGH: Yes, and that he supported

13 Sergeant Flindall's recommendation that Mr.

14 Jack not be included on this driving

15 course.

16 MR. TAPP: This is not what I'm asking,

17 Mr. Vice-Chair. And I ask...

18 THE VICE-CHAIR: Well, then rephrase the

19 question.

20 MR. TAPP: Okay. I will rephrase.

21

22 BY MR. TAPP:

23 Q. Sergeant Flindall, why did you say

24 you weren't supporting this at this time?

25 A. The only thing I can think at the

- 109 - R. Flindall

Cr-Ex (L. TAPP)

1 time, we were trying to minimize the amount of extra

2 workload on Constable Jack. He needed to focus on

3 his front line policing, and the work he was

4 conducting. No extra overtime duties for other

5 officers, et cetera. And that would...that would be

6 my recollection.

7 Q. At Scenes Collision Investigation

8 Course is a valuable tool for front line officers

9 because they are the ones investigating accidents;

10 correct?

11 A. Yes. It is a next level from what

12 they would receive at the academy.

13 Q. And as a developing officer would

14 you not agree that this would be a valuable tool for

15 Mr. Jack?

16 A. Yes, if I thought he was prepared to

17 go on that course, at that time.

18 Q. So, obviously, by that response you

19 didn't believe he was prepared to go?

20 A. No, I did not.

21 Q. Now, correct me if I'm wrong, Mr.

22 Flindall, but doesn't your statement, "I have

23 canvassed my shift, and no one wishes to attend. PC

24 Jack has to go", sounds like you did not even regard

25 Mr. Jack as an officer on your shift.

- 110 - R. Flindall

Cr-Ex (L. TAPP)

1 A. They are contradictory, but, no,

2 "Constable Jack has to go" was contemplated, and I

3 did not support that.

4 Q. So on one side there were, "No one

5 wishes to attend", and on the other side there is

6 "PC Jack who has to go"; right?

7 A. Just the language of it, yes, sir.

8 Q. Thank you. Obviously you did not

9 even regard Mr. Jack as an officer on your shift;

10 correct?

11 MS. SINGH: I object. Sir...

12 THE VICE-CHAIR: Yes, I agree.

13

14 BY MR. TAPP:

15 Q. Would you not consider that

16 documentary evidence of Mr. Jack being segregated

17 from the rest?

18 MS. SINGH: Mr. Vice-Chair...

19 THE VICE-CHAIR: I don't know what

20 documentary evidence we are even talking

21 about.

22 MS. SINGH: You know, if Mr. Tapp wants

23 to make arguments he will have an

24 opportunity at the end of the evidence to

25 make his arguments.

- 111 - R. Flindall

Cr-Ex (L. TAPP)

1 THE VICE-CHAIR: I agree.

2 MR. TAPP: Fair enough.

3

4 BY MR. TAPP:

5 Q. The next one I have some questions

6 to you, Mr. Flindall, is going to be relating to

7 Exhibit 148, e-mails between you and Sergeant

8 Inspector Johnston.

9 THE VICE-CHAIR: What exhibit was this

10 one?

11 MR. TAPP: The previous one?

12 MR. JACK: 149. Is this 148?

13 MS. SINGH: I don't need it.

14

15 BY MR. TAPP:

16 Q. You acknowledge sending that e-mail

17 to Inspector Johnston previously; right?

18 A. Yes.

19 Q. So didn't Staff Sergeant Campbell

20 speak to you shortly after inspector getting that

21 e-mail?

22 A. Pardon me?

23 Q. Didn't Staff Sergeant Campbell speak

24 to you shortly after that e-mail was sent to

25 Inspector Johnston? Maybe you would like to look at

- 112 - R. Flindall

Cr-Ex (L. TAPP)

1 your notes for that date?

2 A. Yes.

3 Q. Didn't Staff Sergeant Campbell

4 remind you to be objective with Mr. Jack?

5 A. I don't recall, but I'm going to go

6 have a look at my notes, sir.

7 Q. Thank you.

8 A. And, sorry, August 6th. I don't

9 have any notes to that, sir.

10 Q. Okay. Didn't Staff Sergeant

11 Campbell tell you that you were there to mentor and

12 to assist, and not to leave Mr. Jack alone to work

13 on cases beyond his level of experience?

14 A. I don't recall that.

15 Q. Thank you. Didn't he tell you that

16 you have lost focus and objectivity with Mr. Jack?

17 A. I don't recall that, sir.

18 Q. Thank you. Didn't he tell you that

19 your supervision of Mr. Jack was an issue?

20 A. I don't recall that, sir.

21 Q. Thank you. Didn't he tell you about

22 the potential of a human rights complaint?

23 A. I don't recall, sir.

24 Q. Yet we are here; right?

25 A. Correct.

- 113 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Thank you. I direct your attention

2 to the point form chronology you have before you.

3 A. Okay.

4 Q. Maybe this will jog your memory.

5 August 17th, 2009, when you get to the page, the

6 entry, second from the bottom...

7 MS. SINGH: Yes. Mr. Vice-Chair, there

8 is no entry for August 17th for this

9 witness, so I don't see how his memory can

10 be refreshed by looking at an entry of

11 another person.

12 MR. TAPP: Yes. Mr. Vice-Chair, his

13 name is there, 13:30 hours:

14 "...Staff Sergeant Campbell spoke to

15 Sergeant Flindall concerning allegations of

16 sick time and importance of matters being

17 investigated prior to coming to a

18 conclusion..."

19 MS. SINGH: That is not this witness'

20 entry, Mr. Vice-Chair.

21 THE VICE-CHAIR: No. You can ask the

22 question.

23 MR. TAPP: Good.

24

25 BY MR. TAPP:

- 114 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. So do you have your notes for 17th

2 of August 2009, please?

3 A. I have notes, but there is no entry

4 in relation to this, sir.

5 Q. So I'm going to ask you, on or about

6 13:30 hours, on 17th of August 2009, did Staff

7 Sergeant Campbell speak to you concerning

8 allegations of sick time?

9 MS. SINGH: But it has been asked and

10 answered.

11 MR. TAPP: I have to address this

12 MS. SINGH: This witness has answered.

13

14 BY MR. TAPP:

15 Q. On that date, at 14:00, did Staff

16 Sergeant Campbell discuss with you potential of a

17 human rights complaint?

18 A. I don't remember.

19 THE VICE-CHAIR: He doesn't remember.

20

21 BY MR. TAPP:

22 Q. We have two lengthy e-mails from

23 Staff Sergeant Campbell to Inspector Johnston, that

24 documents him speaking to you regarding these very

25 questions I have spoke to you; will that change your

- 115 - R. Flindall

Cr-Ex (L. TAPP)

1 testimony any?

2 THE VICE-CHAIR: He doesn't remember.

3 You are talking eight years ago, or seven

4 years ago. I don't...

5 MR. TAPP: Your indulgence, please?

6 Just one moment.

7

8 BY MR. TAPP:

9 Q. Okay. I'm going to try to take your

10 memory back to what I believe is a Young's Point

11 break and enter investigation; would you happen to

12 recall that?

13 A. I do, yes.

14 Q. Thank you. Now, I direct your

15 attention to the witness summary provided by counsel

16 regarding that entry. And just for reference, I'm

17 going to tell you which page it is on, but it begins

18 with, "Sergeant Flindall will describe an incident"

19 and ends with "answer shopping".

20 A. Okay.

21 Q. It is page 2, fifth paragraph.

22 A. Yes.

23 Q. You agree with the contents of that

24 summary?

25 A. Yes.

- 116 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. And you agree that it is truly

2 reflective of the information you provided counsel?

3 A. Yes.

4 Q. Thank you. And the occurrence in

5 that paragraph is the Young's Point break and enter

6 occurrence?

7 A. Yes.

8 Q. Thank you. Okay. Next is going to

9 be Exhibit 115. So this...and correct me if I'm

10 wrong, this is the one you testified to earlier that

11 in an e-mail you indicated you were doing positive

12 233-10s for all those involved; correct?

13 A. That was my intent, yes.

14 Q. I think your testimony was that was

15 your intent, but that never did materialize; right?

16 A. Correct. Yes.

17 Q. You agree that Mr. Jack was the

18 investigating officer, at least as far as Niche RMS

19 indicates?

20 A. Correct.

21 Q. And as such would have played a more

22 crucial role than the other officers who assisted?

23 A. No. Not necessarily, no. He was

24 responsible for doing the paperwork on the matter.

25 Q. You agree that there were arrests

- 117 - R. Flindall

Cr-Ex (L. TAPP)

1 made, and this was complex in as much that it

2 involved charges against some youths under the Youth

3 Criminal Justice Act, and also an adult charge?

4 A. You keep using the word "complex",

5 and I wouldn't say this is complex. It is a break

6 and enter, but it was in relation to youths. I

7 can't recall an adult, but there may have been. I

8 don't recall that aspect.

9 Q. Fair enough. So as a probationary

10 officer there would have to be separate briefs for

11 the youths and a separate one for the adult;

12 correct?

13 A. Yes.

14 Q. Thank you. You state that:

15 "...Mr. Jack received a negative

16 documentation in relation to a specific

17 involvement in this incident..."

18 Right?

19 A. Correct.

20 Q. That was, is it answer shopping?

21 A. It was the manner in which...not the

22 fact that he was answer shopping, but what he did

23 while he was answer shopping, sir.

24 Q. At this time you are familiar with

25 the existence of extra judicial measures, especially

- 118 - R. Flindall

Cr-Ex (L. TAPP)

1 with respect to young offenders? Don't object right

2 away, because...

3 MS. SINGH: Mr. Vice-Chair...

4 MR. TAPP: ...there is a line of

5 questioning over here, Mr. Vice-Chair.

6 THE VICE-CHAIR: Well...

7

8 BY MR. TAPP:

9 Q. Okay. You are aware of restorative

10 justice?

11 A. Yes, I am.

12 Q. Good. First of all, did you review

13 the whole brief or was this another brief that you

14 didn't review of Mr. Jack?

15 A. This one I don't recall, sir.

16 Q. You don't recall?

17 A. Right now I don't recall, no.

18 Q. Did you not order Mr. Jack to

19 surrender the two briefs to you, personally?

20 A. I don't recall, sir.

21 Q. Rather, I'm being reminded, four

22 briefs, Mr. Flindall?

23 A. I don't recall if he submitted...I

24 suspect he would have. I don't recall. I don't

25 recall.

- 119 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Tell us what you recall of that

2 investigation, please?

3 A. It was a break and enter call at an

4 event in school up in Young's Point. We attended

5 the scene. There were a number of youths that were

6 caught. I recall one being caught on the roof.

7 Other officers gave foot pursuit of the other

8 individuals that took off from the scene.

9 One of the youths, I recall, was tracked

10 down to a trailer park where he was located and

11 arrested. I believe Constable Filman had arrested a

12 male, and he provided culpatory statements in

13 regards to the break and enter and mischief at the

14 school. And those individuals were charged and...

15 with the offences. That is very general speaking,

16 but that is my recollection of the event.

17 Q. Charged by whom, Sergeant Flindall?

18 A. It would have been Michael Jack.

19 Q. Thank you. You would agree that

20 though mischief had been done, that means...

21 "mischief" means damage; correct?

22 A. That is my recollection, yes.

23 Q. But nothing was stolen, because it

24 was abandoned; right?

25 MS. SINGH: Mr. Vice-Chair, I really

- 120 - R. Flindall

Cr-Ex (L. TAPP)

1 have trouble following this line of

2 questioning. Whether, you know, the

3 instruction was correct in law, according

4 to Mr. Tapp, or not, is not in issue in

5 these proceedings.

6 THE VICE-CHAIR: No. And I have heard

7 this story so many times from each witness.

8 MS. SINGH: Yes.

9

10 BY MR. TAPP:

11 Q. Did you happen to know of the

12 correspondence Mr. Jack had with Crown Attorney

13 Eberhard regarding this Young's Point break and

14 enter?

15 A. I don't recall any, no. No.

16 Q. Did you know the outcome of those

17 charges, please?

18 A. I think a number of the youths were

19 stayed. One of them...two of them, I thought,

20 were...went through extra, what is the word I'm

21 looking for?

22 Q. Restorative justice...

23 A. Extra judicial measures were taken

24 through the judge. That is my recollection.

25 Q. So restorative justice was applied?

- 121 - R. Flindall

Cr-Ex (L. TAPP)

1 And who would...who would have done the work for

2 that?

3 MS. SINGH: Mr. Vice-Chair, where is

4 this leading?

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

6

7 BY MR. TAPP:

8 Q. Did you do any of the work for that

9 restorative justice to be applied?

10 A. I don't recall, sir.

11 Q. When Mr. Jack was preparing the

12 brief for that incident do you recall him requesting

13 for a copy of your notes?

14 A. I don't recall, but it is...that is

15 something you provided me; wasn't it? Yes, there is

16 an e-mail from Constable Jack.

17 Q. Now, did you comply and give him a

18 copy of your notes?

19 A. I don't recall.

20 Q. Good. That would be important,

21 because of your involvement regarding that scene;

22 correct?

23 A. Correct. A motion had gone in, yes.

24 Q. And because there was a court case,

25 brief prepared, your notes were important; correct?

- 122 - R. Flindall

Cr-Ex (L. TAPP)

1 A. They would have been, yes.

2 Q. So why didn't you give him your

3 notes?

4 MS. SINGH: The witness...

5 THE VICE-CHAIR: He doesn't recall.

6 MR. TAPP: Mr. Vice-Chair, I don't know

7 if you have a copy of that. Everybody does

8 have a copy. We would like to have it

9 entered as the next exhibit, please, the

10 e-mail dated August 10, from Mr. Jack to

11 everybody involved in that investigation.

12

13 --- EXHIBIT NO. 201: E-mail from Mr. Jack to Mr.

14 Flindall, et al., dated August

15 10, 2009

16

17 BY MR. TAPP:

18 Q. I direct your attention to page 2,

19 paragraph 6 from the top, the witness summary,

20 please?

21 A. Page 2, paragraph which, sorry?

22 Q. Page 2, paragraph 6 from the top.

23 A. Yes.

24 Q. Do you concur with that summary as

25 provided by counsel?

- 123 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Yes.

2 Q. Does it reflect the information you

3 gave counsel?

4 A. Generally, yes.

5 Q. "Generally"?

6 A. Yes.

7 Q. Tell me what does not reflect,

8 please?

9 A. When I mean "generally", it is a

10 general overview so, yes.

11 Q. So give us your recollection of

12 that, please?

13 A. In relation to the Highway Traffic

14 Act?

15 Q. Yes.

16 THE VICE-CHAIR: Well, we are not going

17 to go through this again; are we?

18

19 BY MR. TAPP:

20 Q. Correct me if I'm wrong, but when

21 the matter...you testified at the provincial...

22 A. I did.

23 Q. ...court? Okay. So when the matter

24 went to the provincial court there were only two

25 witnesses, you and Constable Payne?

- 124 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Yes.

2 Q. Was the charge dismissed in court?

3 A. It was dismissed in court, yes.

4 Q. Thank you. Did it involve any

5 accident?

6 A. No collision, no.

7 Q. No. That charge that you gave Mr.

8 Jack, do you believe that it did any damage to Mr.

9 Jack?

10 A. I can't comment whether it did or

11 not, sir.

12 Q. Fair enough. I'm going to refer

13 this tribunal's attention to Exhibit 153 and 152,

14 please? Mr. Jack called in sick on August 16th,

15 2009; is that not so?

16 A. It appears so, yes.

17 Q. That is the day immediately

18 following the charge you issued to him?

19 A. Yes.

20 Q. Thank you. Looking at the e-mail,

21 specifically 152, Exhibit 152...

22 A. Yes, sir.

23 Q. ...would you agree that Mr. Banbury

24 wanted Mr. Jack charged with deceit for feigning

25 sickness?

- 125 - R. Flindall

Cr-Ex (L. TAPP)

1 MS. SINGH: Yes, objection.

2 MR. TAPP: Well, you got a copy of that

3 e-mail; did you not?

4 MS. SINGH: Mr. Vice-Chair, he cannot

5 speak about what another witness intended

6 by his e-mail. He is simply copied on the

7 e-mail. He can't...this witness can't

8 testify what Mr...

9 THE VICE-CHAIR: I agree.

10 MS. SINGH: Thank you.

11

12 BY MR. TAPP:

13 Q. Okay. Mr. Flindall, can you read

14 the bottom original e-mail that was given to you on

15 Exhibit 152, original message?

16 A. This is from Trevor Banbury to Ron

17 Campbell and Mike Johnston, and I was cc'd on it.

18 It says:

19 "...Staff sergeant, when we spoke tonight

20 about PC Jack's sick time for Sunday's

21 shift you mentioned speaking with him on

22 Wednesday. As I am the NCO he was

23 deceitful to do you need me present when

24 this discussion occurs, along with yourself

25 and Sergeant Flindall? If so I am unable

- 126 - R. Flindall

Cr-Ex (L. TAPP)

1 to come in early on Wednesday. I am on

2 nights. However, I am available to come in

3 early on Thursday, if you would like to

4 schedule a time. A copy of my notes are in

5 an envelope in the tray on your door..."

6 Q. So when you got that e-mail you

7 would agree that your are seeing a possible

8 allegation of deceit by the content of that e-mail?

9 A. Well, I see that the sergeant did

10 call him "deceitful", and wanted to know if there

11 was going to be a discussion about this.

12 Q. Thank you. Okay. Keep your witness

13 summary before you, and I direct your attention,

14 please, to the first paragraph at the top, two

15 lines. Sergeant Flindall, do you concur with

16 counsel's summary over there?

17 A. Sorry, page 2, the very first

18 paragraph?

19 Q. Yes.

20 A. At the top?

21 Q. Yes:

22 "...Sergeant Flindall will deny that at the

23 August 19th, 2009 meeting he said he was in

24 favour of the transfer, because Mr. Jack

25 had alienated the majority of officers on

- 127 - R. Flindall

Cr-Ex (L. TAPP)

1 is shift..."

2 A. Oh, sorry. Start at page 3, sorry.

3 Yes.

4 Q. So you provided information for

5 counsel to make that comment; right?

6 A. Yes.

7 Q. What do you mean by, "Mr. Jack had

8 alienated the majority of officers" on your shift?

9 A. If you read it it says I denied

10 saying that. I don't recall saying that at all,

11 sir.

12 Q. Or deny. Okay. Fair enough. Do

13 you have any notes for August 19th, 2009?

14 A. I believe I do, yes.

15 Q. That would be the meeting.

16 A. Yes. That is what I was trying to

17 find out. Yes, I have it here.

18 Q. You have it there?

19 A. I do, yes.

20 Q. Now, we have had testimony from

21 others that were present there. Read what you have

22 in your notes as to who all was present that you

23 wrote were present?

24 A. "...Meeting with Staff Sergeant

25 Campbell, PC Filman, PC Anderson and PC

- 128 - R. Flindall

Cr-Ex (L. TAPP)

1 Jack..."

2 And myself, obviously.

3 Q. So your notes reflect five people

4 being there; correct?

5 A. Correct.

6 Q. Are you certain Mr. Filman was

7 there?

8 A. It is in my notes. I would assume

9 he was there, if it is in my notes, yes.

10 Q. But you testified that Filman was on

11 vacation.

12 A. Yes, he was.

13 Q. Would that mean that he was called

14 in to attend that meeting? I'm not asking the

15 presence of your notes. It is puzzling to me.

16 MS. SINGH: This witness has...

17 THE VICE-CHAIR: No, he wouldn't know.

18 MS. SINGH: ...answered that his notes

19 indicate that Filman was there. He doesn't

20 have a recollection. He has testified that

21 Filman was on vacation.

22 MR. TAPP: Listen, we have seen...

23 MS. SINGH: The question has been asked

24 and answered.

25

- 129 - R. Flindall

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. How come the notes that we have of

3 Mr. Campbell and Mr. Jack all state only Staff

4 Sergeant Campbell, Anderson, you and Mr. Jack were

5 present?

6 THE VICE-CHAIR: How would he know that?

7 THE WITNESS: I don't know.

8 MR. TAPP: Okay.

9 THE WITNESS: I don't recall.

10 THE VICE-CHAIR: Well, you wouldn't know

11 anyway.

12

13 BY MR. TAPP:

14 Q. Yes. Okay. Could you have been

15 mistaken about the presence of Mr. Filman?

16 A. I don't recall, sir. I don't know.

17 Q. That is a conscious act; right,

18 writing down who all was present, with a probation

19 officer?

20 MS. SINGH: Asked and answered.

21 THE VICE-CHAIR: Yes.

22 MR. TAPP: All right. We are going to

23 be, obviously, filtering out a lot of

24 questions. I suggest, Mr. Vice-chair, we

25 have to review our material and we are

- 130 - R. Flindall

Cr-Ex (L. TAPP)

1 coming down towards the end, and it looks

2 like we are going to have to eliminate

3 more, so if I can suggest we break for

4 lunch.

5 THE VICE-CHAIR: Yes. We will break

6 until 2:00.

7

8 --- upon recessing at 12:58 p.m.

9 --- A LUNCHEON RECESS

10 --- upon resuming at 2:00 p.m.

11

12 THE VICE-CHAIR: Mr. Tapp.

13

14 ROBERT FLINDALL, resumed

15 CONTINUED CROSS-EXAMINATION BY MR. TAPP:

16 Q. I would like you to take a look at

17 Mr. Jack's month five PER for 9th of May to 9th of

18 June, please, Sergeant Flindall?

19 A. I don't believe I have a copy of

20 that.

21 Q. We will get you a copy. It is

22 Exhibit 25.

23 THE VICE-CHAIR: Twenty-five.

24

25 BY MR. TAPP:

- 131 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Flipping over to the disclosure

2 date, I believe it should be page 12 of that

3 document, or maybe you can refer to your notes. You

4 disclosed it to Mr. Jack August 19th, 17:30 hours;

5 correct? At least that is what your notes indicate.

6 A. Okay. At which time, sir?

7 Q. Around 17:30 hours, or seven...

8 A. No, that was the one at 6/7.

9 Q. No.

10 A. I believe, wasn't it?

11 Q. Can you look at your notes for

12 August 19th?

13 A. Yes.

14 Q. That is probably 7:30 hours, so it

15 would be 7:30 a.m.

16 A. Oh, 7:30 a.m., sorry. August 19th?

17 Q. Yes.

18 A. I don't see that here.

19 Q. Maybe it will jog your memory but,

20 nonetheless, look at the back of that PER.

21 A. Yes.

22 Q. You disclosed it August 19th;

23 correct?

24 A. Appears so, yes. That is when

25 Michael signed it.

- 132 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Thank you. Do you remember how

2 many, "Does not meet" categories in that PER?

3 A. Not offhand, no.

4 Q. If I were to suggest zero would I be

5 correct?

6 A. That is correct.

7 Q. Do you have a copy of PER 6/7 before

8 you?

9 A. I do.

10 Q. I think that is Exhibit 33. And PER

11 6/7, if you were to look through the pages quickly,

12 you will see that there are ten negative ratings?

13 A. Yes, there were.

14 Q. You disclosed that copy to Mr. Jack

15 August 20th, at around 17:40 hours; correct?

16 A. Approximately, yes.

17 Q. Yes. And 17:40 hours, August 20th,

18 would be, roughly, 34 hours from the previous one;

19 correct?

20 A. Yes, I...

21 Q. Okay. Is one to understand that in

22 34 hours, between the disclosure of the two, the

23 ratings were so bad that they jumped from zero to

24 ten?

25 MS. SINGH: Mr. Vice-Chair, we have

- 133 - R. Flindall

Cr-Ex (L. TAPP)

1 heard so much evidence on performance six

2 and seven and five and eight...

3 THE VICE-CHAIR: Yes.

4

5 BY MR. TAPP:

6 Q. Do you have a copy of Mr. Jack's PER

7 8 before you, Mr. Flindall?

8 A. I do, yes.

9 Q. I don't know what page it is on, but

10 can you flip over to personal accountability,

11 please? Okay. You make some general...or, rather,

12 can you see that Mr. Filman, or whoever prepared

13 that specific example, is making general comments

14 over there to support a, "Does not meet

15 requirements"?

16 A. Yes.

17 Q. Can you read the specific example

18 under "personal accountability", please?

19 A. "...PC Jack continues to struggle

20 with personal accountability. PC Jack was

21 issued a PON for a traffic infraction for

22 which he is not taking any responsibility

23 for his actions. As well, PC Jack has

24 complained, on a number of occasions, that

25 he felt abandoned or didn't have help with

- 134 - R. Flindall

Cr-Ex (L. TAPP)

1 calls for service. And on a number of

2 instances on which he has complained it was

3 found that he had not let it be known that

4 he required assistance and did not actively

5 seek out assistance..."

6 Q. Thank you. How is it possible,

7 Sergeant Flindall, that Mr. Jack is rated negatively

8 from merely exercising his constitutional right

9 under the charter, by pleading not guilty to the HTA

10 charge?

11 MS. SINGH: Objection.

12 THE VICE-CHAIR: Yes. That is enough.

13

14 BY MR. TAPP:

15 Q. You did review that performance

16 evaluation report; did you not?

17 A. I did.

18 Q. Did you not realize that Mr. Jack

19 was merely exercising his rights by what his

20 documented in that specific example?

21 A. I don't know how to answer that.

22 Q. Did you write that specific example?

23 A. I don't recall. Doesn't look like

24 my writing, but...

25 Q. Pardon me?

- 135 - R. Flindall

Cr-Ex (L. TAPP)

1 A. I don't recall. It doesn't look

2 like my writing. I believe Filman prepared all of

3 these.

4 Q. We are going to look at Exhibit 103.

5 Pardon me, it is Exhibit 147, please? It is an

6 e-mail, Sergeant Flindall, involving you, July 17th,

7 2009?

8 A. I was a recipient, yes.

9 Q. Can you read the content of that

10 e-mail, please?

11 A. "...Shaun, we got notice from region

12 that this report, month five, is overdue.

13 I just received a couple of other

14 probationary officers the other day. Yours

15 is the only one left. Please submit.

16 Thanks, Ron..."

17 Q. Thanks. And for 2009, January,

18 Michael Jack was one of four recruits that came to

19 the detachment?

20 A. He was.

21 Q. Thank you. So do you agree that you

22 failed to comply with OPP orders and ensure timely

23 submission...

24 THE VICE-CHAIR: We have gone through

25 all of that, and they agree they haven't

- 136 - R. Flindall

Cr-Ex (L. TAPP)

1 followed it.

2

3 BY MR. TAPP:

4 Q. Do you recall preparing an analysis

5 of Mr. Jack's case load and other officers for...

6 A. Yes.

7 Q. ...the report month? I believe it

8 would be PER 8 that involved...for PER 6/7, on 9th

9 of June to 9th of August.

10 A. I don't recall, but I did case load

11 analysis, but we specific...talking specific I'm

12 not...

13 Q. Yes. I'm going to show you a copy;

14 okay?

15 A. Sure.

16 Q. It will have your badge number,

17 bottom end, then you can identify it is the date

18 range; okay?

19 A. Okay.

20 Q. So you agree that you printed an

21 analysis of case work load; correct?

22 A. I did.

23 Q. What was the search period of that

24 analysis work load, please?

25 A. It was from 9th of June 2009 to the

- 137 - R. Flindall

Cr-Ex (L. TAPP)

1 9th of August 2009.

2 Q. That would be for PER 6/7; correct?

3 A. Yes.

4 Q. Thank you.

5 A. It appears so.

6 Q. Looking at the bottom, or the date

7 of the printing, would it be safe to say that it was

8 printed August 19th, 2009?

9 A. Appears so, yes.

10 Q. Would you happen to know if

11 Constable Filman was off duty between August 14th

12 and August 24th, 2009?

13 A. He was off on holidays for a period

14 of time over that, yes.

15 Q. Good. Why did you print the

16 analysis of Mr. Jack's case work load?

17 A. Well, I would assume it was for his

18 evaluation, if it was the...that is the time frame.

19 Q. So if Filman was off who prepared

20 it, the evaluation?

21 A. Filman did.

22 Q. You have a copy before you, also, of

23 Constable Filman's analysis of case work load? We

24 will get to that. Did you also do a printout of

25 other officer's case work load?

- 138 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Yes. It looks like I printed this

2 out, yes.

3 MR. TAPP: Good enough. Before we get

4 to this document we can enter the previous

5 one, analysis of work load, Michael Jack,

6 printed by Sergeant Flindall, as the next

7 exhibit.

8 THE WITNESS: Filman's I printed in

9 2012.

10 MR. TAPP: Yes. I'm going to get there.

11 Asking why you printed it. It should be

12 five pages, Mr. Vice-Chair, six page. Six

13 pages.

14

15 --- EXHIBIT NO. 202: Analysis of case load re:

16 Michael Jack

17

18 BY MR. TAPP:

19 Q. So looking at the second last page

20 of Mr. Jack's case analysis work load, there is some

21 handwriting over there; is that your handwriting?

22 A. Yes.

23 Q. How many calls for service was Mr.

24 Jack dispatched to?

25 A. 101.

- 139 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Thank you. I said how many calls he

2 was dispatched.

3 A. Oh, "dispatched". Sorry,

4 "dispatched". It would be 99 then. Well, no, I

5 have got here two assists, 43 reportables, 56

6 non-reportables, totally 101.

7 Q. Look at the top in the section...

8 A. The dispatch is 94.

9 Q. Thank you, 94. How could Constable

10 Filman have made this entry when he was off duty

11 between August 14th and August 24th, Sergeant

12 Flindall?

13 A. Make what entry, sir?

14 MS. SINGH: I don't know that this...

15

16 BY MR. TAPP:

17 Q. I direct your attention to the

18 written category in PER 6/7; okay, Sergeant

19 Flindall?

20 A. Which category, sir?

21 Q. Written. It would be page 5; right?

22 A. Yes. I see it.

23 Q. Okay. Can you read the specific

24 example over there, please?

25 A. "...Written. During this evaluation

- 140 - R. Flindall

Cr-Ex (L. TAPP)

1 period PC Jack has responded to

2 approximately 94 calls for service. He has

3 had many reportable occurrences..."

4 Q. Thank you. So now how could...if

5 Filman was off between August 14th and 24th, how

6 could he have known and made that entry?

7 MS. SINGH: Objection.

8

9 BY MR. TAPP:

10 Q. Ninety-four.

11 THE VICE-CHAIR: Yes, he wouldn't know.

12 MS. SINGH: Object.

13 THE VICE-CHAIR: He wouldn't know.

14 MS. SINGH: Thank you, Mr. Vice-Chair.

15

16 BY MR. TAPP:

17 Q. But wouldn't you agree, Sergeant

18 Flindall, that as for the date of your documentation

19 of Mr. Jack's case load, dated 19th of August 2009,

20 that it was you that determined Mr. Jack was

21 dispatched to 94 calls?

22 A. Just because I printed off an

23 analysis of a case load doesn't mean that I did the

24 entry in the PCS66. I merely just printed off the

25 analysis.

- 141 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. But you would agree that you printed

2 that on the 18th? You printed that on the 19th of

3 August.

4 A. It appears so, yes.

5 Q. And you gave that evaluation report

6 to Mr. Jack the next day, August 20th; correct?

7 MS. SINGH: I think the witness, Mr.

8 Vice-Chair, has answered this question.

9 THE VICE-CHAIR: I know. We have got to

10 move beyond these evaluations.

11

12 BY MR. TAPP:

13 Q. Mr. Flindall, it is written that Mr.

14 Jack had many reportable calls for service; correct?

15 A. Yes.

16 Q. How many reportable calls for

17 service did Mr. Jack have during that time period?

18 A. Forty-three is what I calculated.

19 Q. How many non-reportable calls?

20 A. Fifty-six.

21 Q. Is there a distinct difference

22 between reportable and non-reportable, Mr. Flindall?

23 A. There is, in the time frame it takes

24 to investigate those calls.

25 Q. Thank you. So whereas

- 142 - R. Flindall

Cr-Ex (L. TAPP)

1 non-reportable calls might take as much as a phone

2 all to several minutes, reportable will take much

3 longer?

4 A. No. I will clarify that. That is

5 slightly inaccurate. A reportable call required a

6 report to be generated.

7 Q. Okay.

8 A. A non-reportable did not. However,

9 a non-reportable call could take...typically they

10 were shorter in duration, but they could take some

11 time, so it depends. Like it is...

12 Q. So reportable calls are generally

13 much longer than non-reportable; correct?

14 A. They are longer.

15 Q. Longer. Fair enough.

16 A. Or can be.

17 Q. Mr. Flindall, who printed Mr.

18 Filman's analysis of case work load?

19 A. I did. February 16, 2012.

20 Q. Thank you. I would suggest to you

21 that the only reason you printed this on February

22 16th, 2012 was because at that time you were shared

23 a copy of, may not be the application, but certainly

24 Mr. Jack's statement wherein he makes specific

25 reference to the number of calls for service for

- 143 - R. Flindall

Cr-Ex (L. TAPP)

1 various officers; correct?

2 A. Correct.

3 Q. Thank you. Do you need to see this?

4 MS. SINGH: Mr. Vice-Chair, can I ask

5 why this is relevant and where this is

6 going?

7 MR. TAPP: There is, over here, Mr.

8 Vice-chair, and the question was very

9 indicative, had Mr. Flindall not been privy

10 to Mr. Jack's statement, and that is a

11 lengthy document, 67 pages. He certainly

12 would not have just gone through a specific

13 page. It is the applicant's position that

14 he read through the whole thing, was

15 familiar with its contents and decided to

16 verify certain information of Mr. Jack,

17 which is why we have this document printed

18 by him, albeit which he acknowledged, on...

19 THE VICE-CHAIR: Why don't you ask him

20 the questions?

21 MR. TAPP: Yes.

22

23 BY MR. TAPP:

24 Q. You printed this based on...

25 MS. SINGH: What was in his knowledge in

- 144 - R. Flindall

Cr-Ex (L. TAPP)

1 2012, in anticipation of litigation, was

2 not within his knowledge at the time, and

3 so this line of questioning, you know, I

4 don't see the relevance, Mr. Vice-Chair.

5 THE VICE-CHAIR: Frankly...

6 MS. SINGH: You know, something that

7 someone prints in 2012, in response to

8 allegations made in the context of this

9 litigation, have no bearing and, you know,

10 do not move us forward in terms of

11 determining the facts in this case in any

12 way.

13

14 BY MR. TAPP:

15 Q. Mr. Flindall, back in 2009 would you

16 have had any reason to print this case analysis load

17 for Mr. Filman, the coach officer?

18 A. In 2009?

19 Q. Yes.

20 A. No.

21 Q. No. So were it not for Mr. Jack's

22 statement this would not have been printed by you;

23 correct?

24 THE VICE-CHAIR: But how is that

25 relevant?

- 145 - R. Flindall

Cr-Ex (L. TAPP)

1 MR. TAPP: It is. Mr. Jack makes

2 reference in his statement to the number of

3 calls for service he had, the number of

4 calls for service each other officer had.

5 And this shows that his own supervisor is

6 verifying...it goes towards attesting to

7 the credibility of Mr. Jack's statement.

8 Mr. Flindall wanted to verify that and he

9 does that in 2012, and sees that, yes, Mr.

10 Jack is correct in his statement with

11 respect to the calls for service. That is

12 all, Mr. Vice-Chair.

13 THE VICE-CHAIR: Okay.

14 MR. TAPP: Yes.

15 THE VICE-CHAIR: If you would move on?

16

17 BY MR. TAPP:

18 Q. In preparing and printing the other

19 officers, did you not see that Mr. Jack had double

20 the case load?

21 A. I don't recall. I don't have

22 paperwork in front of me on that.

23 THE VICE-CHAIR: There is no evidence to

24 that effect.

25 MS. SINGH: Mr. Vice-Chair, there is no

- 146 - R. Flindall

Cr-Ex (L. TAPP)

1 evidence that that is an accurate measure

2 of case load. There is no measure of

3 anything, and so all of this is, in my

4 respectful submission, just not moving this

5 forward.

6 MR. TAPP: Anyways, he has already

7 testified regarding Shaun Filman's case

8 work load, and the reasons why he did it.

9 I would like that document entered as the

10 next exhibit, please? And it is one, two,

11 three...

12 MS. SINGH: Mr. Vice-Chair, I don't see

13 that this should be entered as an exhibit.

14 THE VICE-CHAIR: You know what I'm going

15 to enter it as an exhibit, and I will make

16 a determination as to the weight of it.

17

18 --- EXHIBIT NO. 203: Analysis of case load re: Shaun

19 Filman

20

21 MR. TAPP: And what I'm trying to do,

22 Mr. Vice-Chair, is expedite this, because

23 you will recall that there was a volume,

24 about eight inches thick about analysis of

25 case loads, so this certainly is condensing

- 147 - R. Flindall

Cr-Ex (L. TAPP)

1 all of that, and we are trying to minimize

2 time with it.

3

4 BY MR. TAPP:

5 Q. You also did a search on Constable

6 Payne's analysis case work load for that same time

7 period, 9th of June to 9th of August?

8 A. I'm assuming this is it.

9 Q. Yes. You recognize your badge

10 number and the same date at the bottom?

11 A. Yes.

12 Q. Thank you. And you recognize your

13 handwriting over there?

14 A. Yes, I do.

15 Q. On the last page?

16 A. Yes.

17 Q. And you were doing that for a

18 specific reason; right? The summaries that you have

19 written on the back.

20 MS. SINGH: Mr. Vice-Chair, I have a

21 problem with this again. I recognize, and

22 I completely understand why you want to

23 mark these for identification purposes, but

24 at the end of the day, again, I do not see

25 that these are relevant. These were not

- 148 - R. Flindall

Cr-Ex (L. TAPP)

1 part of the exchange of arguably relevant

2 documents, as far as I know.

3 I also know that I was served with

4 volumes of documents by Mr. Tapp in August

5 called, "Cause for service", which I have

6 in boxes that were not part of the arguably

7 relevant documents. And my concern, sir,

8 is that Mr. Tapp now thinks that he is

9 going to introduce all of these calls of

10 service and use these in some way, and we

11 won't come to an end. And the relevance of

12 them is not...is in issue. I object to

13 them. I don't see that they are relevant

14 at all.

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

16 Sergeant Flindall printed it and Mr.

17 Vice-chair can see on the top. This is

18 from counsel, documents to be relied upon

19 Volume 3 of 5. We did not get this. They

20 prepared it. They provided it. We are

21 relying upon it.

22 THE VICE-CHAIR: For what purpose?

23 MR. TAPP: For the purpose of Sergeant

24 Flindall verifying Mr. Jack's information

25 and checking up to make sure Mr. Jack was

- 149 - R. Flindall

Cr-Ex (L. TAPP)

1 being accurate in his statement that he

2 read, which is why he writes down his

3 handwriting at the back of the last page...

4 THE VICE-CHAIR: So what?

5 MR. TAPP: ...and summarizes it.

6 THE VICE-CHAIR: So what?

7 MS. SINGH: And, again, for the

8 record...

9 MR. TAPP: And, now...

10 MS. SINGH: ...Mr. Vice-Chair, they are

11 printed in 2012. They are not during...

12 they are not even printed during the

13 relevant period that is the focus of this

14 proceeding.

15 MR. TAPP: Mr. Jack's testimony, okay,

16 was that he handled double the amount of

17 calls.

18 MS. SINGH: That is what he testified

19 to.

20 MR. TAPP: Yes.

21 THE VICE-CHAIR: Yes.

22 MR. TAPP: This is just confirming that.

23 We understand counsel prepared this and

24 provided us with this document in 2012, but

25 this witness has testified, yes, he printed

- 150 - R. Flindall

Cr-Ex (L. TAPP)

1 this and forwarded on, and he printed it

2 for the sole reason of, or rather, as a

3 result of reviewing Mr. Jack's statement.

4 Now, that is why these questions are

5 being asked. And by entering this

6 document, also, it prevents us from having

7 to deal with that other stack of

8 occurrences we really don't need to. We

9 just disclosed it.

10 THE VICE-CHAIR: Well, I will indulge

11 you again. I will enter it, but I have no

12 idea what weight there is to it.

13

14 --- EXHIBIT NO. 204: Analysis of case load re:

15 Jennifer Payne

16

17 BY MR. TAPP:

18 Q. So now, looking at Exhibit 204 and

19 203, Mr. Flindall, just flip over to the last page

20 of your handwriting, please? And also have the last

21 page of Mr. Jack's case load, please, before you?

22 And just have the last pages. Just looking at the

23 numbers, would you agree that Mr. Jack had double

24 the reportable calls for service, combined, Filman

25 and Payne combined?

- 151 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Yes.

2 Q. Thank you.

3 A. However, those officers, from my

4 recollection, in relation to this, each worked nine

5 and seven days less than Constable Jack.

6 Q. Yes.

7 A. So in the same time period they

8 worked less, yet they did quite a bit of calls for

9 service in comparison, if you understand my

10 reasoning for that.

11 Q. They worked less than Mr. Jack?

12 A. Holidays, CTO, whatever they

13 happened to be, training.

14 Q. Fair enough.

15 A. So there was less time for them to

16 do...total calls for service 95 Filman, 80 Payne,

17 101 for Constable Jack. Those seem fairly congruent

18 with each other, yet these two officers worked less

19 days, so they worked...took more calls for service

20 and less amount of time than Constable Jack did.

21 Q. Thank you for that, Mr. Flindall.

22 What I'm trying to point out, by you summing that up

23 very well, is that it was very obvious that Mr. Jack

24 was handling, at least the same amount of work that

25 both of them were.

- 152 - R. Flindall

Cr-Ex (L. TAPP)

1 A. No.

2 Q. Okay. More maybe?

3 A. No. His was spread out over three

4 months and, again, theirs was as well.

5 Q. Two months, really.

6 A. They worked less days.

7 Q. Two months, really, not three.

8 A. Two, sorry.

9 Q. 9th of June to 9th of August.

10 A. Yes, sorry.

11 Q. Who had the highest number of calls?

12 A. Constable Jack did.

13 Q. Who had the highest number of

14 reportable calls?

15 A. Constable Jack.

16 Q. Thank you.

17 THE VICE-CHAIR: Let's move on.

18

19 BY MR. TAPP:

20 Q. You just acknowledged that, at least

21 Filman was on vacation then, for a period of time;

22 right, or days off?

23 A. At some point, yes.

24 Q. Can you recall if even Constable

25 Payne was on vacation during that summer months?

- 153 - R. Flindall

Cr-Ex (L. TAPP)

1 A. No, I can't recall.

2 Q. Fair enough. Do you recall Mr. Jack

3 approaching and asking you for two days off because

4 his brother was coming, for the first time, from

5 Israel to visit?

6 A. I recall something about that,

7 vaguely, but...

8 Q. Thank you. Thank you for that, Mr.

9 Flindall. I'm going to suggest that Mr. Jack's

10 brother arrived for the first time in Canada to

11 visit Mr. Jack, which is why Mr. Jack approached you

12 for two days off; would that seem to ring a bell

13 with you?

14 A. I can't remember how much time he

15 wanted off. I seem to recall something about his

16 brother.

17 Q. Thank you. Can you tell us if you

18 granted those two vacation days? I mean, it would

19 be reflected later on.

20 A. I can't recall offhand, and I don't

21 recall if he married that up with his vacation time

22 in August. I can't recall. I can't recall.

23 Q. I'm going to suggest that you denied

24 it, and that is truly reflected on the corporate

25 services document printout at the end of Mr. Jack's

- 154 - R. Flindall

Cr-Ex (L. TAPP)

1 accumulated and outstanding vacation time.

2 I'm going to show you a document that you

3 prepared, Mr. Flindall. It is dated December 23rd,

4 2009. Maybe that will help you jog your memory. Is

5 that your signature and that your printed name

6 underneath?

7 A. It is.

8 Q. At that time you were operations

9 manager filling in for Staff Sergeant Campbell who

10 had left?

11 A. December 23rd, yes.

12 Q. What does it say for Mr. Jack's

13 vacation balance, please?

14 A. I didn't prepare the document. It

15 was prepared for me, but...

16 Q. But you had knowledge. I mean...

17 A. Yes.

18 Q. ...it is your signature; right?

19 A. Yes.

20 Q. Good.

21 A. So, sorry, the question was?

22 Q. What does it say about Mr. Jack's

23 vacation balance?

24 A. "18.25."

25 Q. And you would know, by being an

- 155 - R. Flindall

Cr-Ex (L. TAPP)

1 acting staff sergeant, that that is truly reflective

2 from January to December 23rd, 2009, 18.25?

3 A. That seems accurate, eight hour

4 days, yes.

5 MR. TAPP: Thank you. Those are my

6 questions for that document. The next

7 exhibit, please.

8 THE VICE-CHAIR: That is 204.

9 MR. JACK: 205; right?

10 THE VICE-CHAIR: Yes, 204.

11 MR. JACK: 204 or 205?

12 THE VICE-CHAIR: What was 204? You are

13 correct, 205.

14

15 --- EXHIBIT NO. 205: Letter dated December 23, 2009

16 re: Mr. Jack's final credit

17 balances, signed by Mr. Flindall

18

19 BY MR. TAPP:

20 Q. Now, looking at the performance

21 evaluation report 6/7, on page 9, who wrote,

22 "Planning and organization" with a negative rating,

23 please? Was it you or Constable Filman?

24 A. I don't recall. I would assume this

25 is...Shaun Filman wrote all the evaluations. I

- 156 - R. Flindall

Cr-Ex (L. TAPP)

1 reviewed them. Like I said before, whether I...

2 whether I reviewed it, made edits, I don't know. I

3 don't recall.

4 Q. Can you read the specific example,

5 please?

6 A. "...PC Jack is a very organized

7 person. He usually comes to work with a

8 pre-written task list, however, it is

9 viewed that PC Jack cannot multi-task. He

10 has difficulty prioritizing what needs to

11 be done on his list..."

12 He gives an SP number, "SP09164458, criminal

13 harassment".

14 Q. Thank you. Assuming this comment is

15 true, and Mr. Jack could not multi-task, is it any

16 wonder why he couldn't do it considering his heavy

17 case work load?

18 A. The criminal harassment, sir?

19 Q. No, the heavy case work load that we

20 touched upon just a few minutes ago, that was at par

21 with experienced officers, the analysis of case work

22 load. Yes. Okay. Fair enough. Is it not true

23 that you often drummed home to your constables on

24 your platoon, "Stat, stat, stats"?

25 A. Like that?

- 157 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Yes.

2 A. No.

3 Q. Or, "It is important for you to go

4 out there and get stats, write tickets"?

5 A. It is important for the officers to

6 go out and do proactive enforcement, yes.

7 Q. Thank you. And with respect to Mr.

8 Jack, it would be important for him to write

9 provincial offence notices more than to have him

10 work on his dispatched calls for service?

11 A. No. The calls for service take

12 priority, and then afterwards the proactive

13 enforcement would fill in in-between.

14 Q. Now, this e-mail that you are

15 getting, it is from you, Robert Flindall, to Melynda

16 Moran, August 15th. Specifically, can you

17 acknowledge the body of that e-mail? Okay. And

18 would that be congruent with what you just said

19 earlier it is, because he needs to go out and write

20 tickets? On the first page, the e-mail from you

21 Melynda Moran?

22 A. Sorry, the e-mail? There is two

23 pages.

24 Q. Yes, I know.

25 A. Which one do you want me to look at?

- 158 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Page 1, please?

2 A. Yes.

3 Q. One, two, three, the third e-mail on

4 that page.

5 A. Okay.

6 Q. Can you read it, please?

7 A. Said it was:

8 "...Because he needs to go out and write

9 tickets. You still nice and comfortable up

10 there? Go into the Intranet site, search

11 form 7 and fill out what you can on the

12 form. Print it out and leave for Shelley.

13 You also need to generate an occurrence for

14 your lost magazine. Unless you want to go

15 out again and conduct another search for

16 it..."

17 Q. So the above sentence that says:

18 "...It is. Because he needs to go out and

19 write tickets..."

20 Was that in relation to Mr. Jack?

21 A. Yes, it was.

22 Q. Thank you. And, in fact, there are

23 four e-mails in that two page document; correct?

24 A. Five.

25 Q. Okay, but they are in successive

- 159 - R. Flindall

Cr-Ex (L. TAPP)

1 order; right?

2 A. They are.

3 Q. It is a chain of e-mails?

4 A. Correct.

5 Q. And they begin from the very last;

6 right?

7 A. Correct.

8 Q. What is your e-mail? Read it out,

9 please, the very last?

10 A. The last says:

11 "...Hey, Legs, do you want to switch up

12 cruisers still? Let's go do it now..."

13 Q. And then you follow it with an

14 e-mail to her in response, followed by your e-mail

15 to her?

16 A. Her complaint was that she wanted to

17 have a radar for the evening. It was a contention,

18 amongst officers, that some got radars more than

19 others, and that is what this was in reference to.

20 And I said it was important for Mr. Jack to have a

21 radar, which is that one where I said it is. Then

22 she responded. And then I respond at the top, yes.

23 Q. Top. Okay. Read your top e-mail,

24 please?

25 A. "...You get oh so warm and fuzzy

- 160 - R. Flindall

Cr-Ex (L. TAPP)

1 when you're grumpy..."

2 Q. Thank you. So that was specific

3 about, not that response, but these chain of e-mails

4 was your explanation and reason why Mr. Jack needed

5 to do radar, because he needs to write more tickets;

6 right?

7 A. He needed a cruiser with a radar so

8 he had access to it, yes.

9 MR. TAPP: Thank you. Next exhibit,

10 please.

11 THE VICE-CHAIR: It is 206.

12

13 --- EXHIBIT NO. 206: E-mail exchange between Mr.

14 Flindall and Ms. Moran, dated

15 August 15, 2009

16

17 BY MR. TAPP:

18 Q. I'm just going to get you a copy of

19 an August 11, 2009 e-mail that I'm going to direct

20 your attention to. It is between you and Constable

21 Wagar.

22 A. Okay.

23 Q. Okay. You are getting that now.

24 A. Thank you.

25 Q. Just read it, who it is from, sent

- 161 - R. Flindall

Cr-Ex (L. TAPP)

1 to and subject, please?

2 A. This is from Steven Wagar. He is

3 a...he was an officer on our detachment. He

4 transferred out, dated August 11th, 2009 at 5:13

5 p.m., to myself, and is dated Saturday, August 2009.

6 Q. So it was specific to a specific

7 date; correct?

8 A. I'm assuming, because...yes.

9 Q. Which platoon did Steve Wagar work

10 on, to the best of your recollection?

11 A. I can't recall. It wasn't my

12 platoon. I can't recall which one it was.

13 Q. And you would know he wasn't on

14 Banbury's platoon; right?

15 A. I can't recall which is the case,

16 sir.

17 Q. Fair enough.

18 A. Do you want me to read it?

19 Q. Yes, but, please, go ahead, Sergeant

20 Flindall?

21 A. "...Sergeant, on Saturday, August

22 8th, 2009, in the morning, I was sitting in

23 the constable's office, transcribing a KGB

24 interview from an unrelated occurrence. I

25 was sitting across from PC Pitts, who was

- 162 - R. Flindall

Cr-Ex (L. TAPP)

1 also working on another unrelated

2 occurrence. I observed PC Jack approach PC

3 Pitts several times, asking him questions

4 about a brief he was working on. Jack

5 stated that it was in regards for a break

6 and enter at Young's Point School.

7 I overhead Jack attempt to explain

8 the event as upon officers arrival they

9 found several persons on the roof of the

10 school, but no evidence that they had

11 actually broken into the school. Jack

12 stated that he was told to lay a

13 charge...to lay the charge by yourself,

14 Sergeant Flindall and PC D'Amico, and he

15 did not feel comfortable laying the charge,

16 as he felt they were only trespassing.

17 PC Pitts tried to explain, using the

18 information that PC Jack had provided of

19 possible charges. At the end of the

20 conversation PC Jack admitted that one of

21 the suspects had stated he had gone into

22 the school through an open doorway. PC

23 Pitts and myself explained to PC Jack about

24 the threshold rule in regards to breaking

25 and entering.

- 163 - R. Flindall

Cr-Ex (L. TAPP)

1 During the conversation it appeared

2 to me that PC Jack was trying to sell his

3 view of the events to PC Pitts, but PC

4 Pitts continuously told PC Jack to speak

5 with yourself and follow your direction, as

6 he was not at the event and could only give

7 him advice based on what he was being

8 told..."

9 Q. Thank you, Mr. Flindall. Now, isn't

10 that exactly what Mr. Wagar was doing wherein

11 earlier your testimony you said you did not recall

12 Mr. Campbell telling you that you had members of the

13 detachment watching Mr. Jack? And I put that out to

14 you, and you said, "I don't recall"?

15 A. No, I didn't. I didn't elicit that

16 from Steve Wagar, and I never spoke to Steve Wager.

17 Q. I wasn't saying that you elicited

18 it. I know, very well, that Steve Wagar sent this

19 on his own free volition to you; okay?

20 A. Okay.

21 Q. But he didn't work on your platoon.

22 He didn't work under you. He wasn't on your shift,

23 and he...

24 MS. SINGH: The question has been asked

25 and answered.

- 164 - R. Flindall

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. You agree that you were getting

3 information about Mr. Jack from another officer who

4 wasn't even on your platoon; correct?

5 A. I had received information, yes.

6 MR. TAPP: Thank you. Next exhibit,

7 please? Okay. It is true.

8

9 BY MR. TAPP:

10 Q. And wasn't this the type of

11 information that was used by you to give Mr. Jack a

12 negative 233-10 with respect to answer shopping...

13 A. No.

14 Q. ...with respect to the Young's Point

15 break and enter?

16 A. It was one of the pieces that was

17 used in it, yes.

18 MR. TAPP: Thank you. So there is a

19 very real connection. Next exhibit,

20 please?

21 THE VICE-CHAIR: 207.

22 MR. TAPP: Thank you.

23

24 --- EXHIBIT NO. 207: E-mail from Mr. Wagar to Mr.

25 Flindall, dated August 11, 2009

- 165 - R. Flindall

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. You are aware that two brothers work

3 at the detachment, the Gravelle brothers?

4 A. Yes.

5 Q. Was Mark Gravelle on your platoon at

6 any time in 2009?

7 A. No.

8 Q. Thank you. I'm showing you an

9 e-mail dated September 11th between Mr. Campbell and

10 you, and it also has a second e-mail between Mark

11 Gravelle and you. Okay. You are familiar with

12 that. Can you...they all follow successively,

13 looking at the times. So start off with the bottom

14 e-mail. You remember, or recognize it being

15 addressed to you?

16 A. Yes.

17 Q. Read out who it is from, date and

18 time and to who?

19 A. Mark Gravelle, September 9th, 2009:

20 "...I'm not sure of the date in which the

21 incident happened. It was sometime in

22 early..."

23 Q. No. Who is it addressed to?

24 A. Oh, sorry, Mark Gravelle, that date,

25 to myself and to Brad Rathbun.

- 166 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Who is Brad Rathbun?

2 A. I believe he was Mark Gravelle's

3 supervisor at the time.

4 Q. Thank you. And the subject is about

5 Mr. Jack?

6 A. It is.

7 Q. Read the e-mail.

8 A. "...I'm not sure of the date in

9 which the incident happened. It was

10 sometime in early to mid August 2009. Jack

11 was doing a paid duty, and my shift was

12 working nights. I received a call from Com

13 Centre requesting the 10-20 of Jack..."

14 "10-20" means his location:

15 "...They were advised they were unable to

16 reach him on the radio. I paged the office

17 over the phone system, then called him on

18 his cellphone. Both results were negative.

19 A short time later Jack arrived at the

20 office and was told, by myself, that Com

21 Centre was looking for him. Somehow Jack

22 took this as a personal attack by myself

23 and became irate towards me. I then told

24 him his responsibility is to answer the

25 radio..."

- 167 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Thank you. Now, I'm going to

2 suggest to you that this, like Mr. Wagar's e-mail to

3 you, is also indicative of Staff Sergeant Campbell

4 making and speaking to you about you having members

5 of the detachment watch Mr. Jack.

6 MS. SINGH: Objection.

7 MR. TAPP: Yes, I...

8 MS. SINGH: This witness...

9 THE VICE-CHAIR: I agree.

10

11 BY MR. TAPP:

12 Q. Did you have members of the

13 detachment watching Mr. Jack?

14 A. No.

15 Q. Thank you. Can you read the next

16 e-mail above it, please?

17 A. "...Here is Mark Gravelle's response

18 to the incident that happened between

19 himself and PC Jack..."

20 Q. Who are you sending it to?

21 A. From myself to Staff Sergeant

22 Campbell.

23 Q. What does Mr. Campbell say in

24 response to that?

25 A. "...Since this happened during your

- 168 - R. Flindall

Cr-Ex (L. TAPP)

1 supervision of the member, and the

2 completion of his PCS66, it is up to you

3 what you decide to do with the

4 documentation. Should you mention it in

5 the PCS66, this is your documentation, but

6 like any issue, and to be fair, the member

7 should have a chance to respond prior to

8 placing it in the file..."

9 Q. Who it is addressed to, from and

10 carbon copied to?

11 A. It is from Ron Campbell...

12 Q. No.

13 A. Sorry?

14 Q. In who those three e-mails are

15 addressed to, from and copied to? Do you see Shaun

16 Filman's name anywhere?

17 A. No.

18 Q. So I direct your attention to Mr.

19 Jack's PER 8, please, Exhibit 34, page 11, Mr.

20 Flindall, "deportment". Can you read the specific

21 example under "deportment", please?

22 A. "...PC Jack remains professional

23 when dealing with the public. PC Jack,

24 however, has issue when dealing with fellow

25 officers, as outlined in radio

- 169 - R. Flindall

Cr-Ex (L. TAPP)

1 communications above. PC Jack had occasion

2 to work a paid duty shift, during this

3 shift the PC..."

4 Sorry:

5 "...The Smith Falls PCC continued to make

6 contact with him, without success. A

7 senior officer, who was working at the

8 time, attempted to make contact over the

9 radio, and via PC Jack's cellphone, also

10 without success. When PC Jack returned to

11 the detachment the senior officer, who

12 attempted to assist the PCC, spoke with him

13 about not answering his radio and advised

14 him to contact PCC. PC Jack became irate

15 with the officer, and advised him that he

16 would call the PCC when he felt like it..."

17 Q. Thank you. And that has a rating

18 of?

19 A. "Does not meet."

20 Q. Thank you. Isn't it ironic that

21 there is documentation that is almost identical from

22 the information in those e-mails that you received?

23 A. No.

24 Q. Did you put in that specific

25 example?

- 170 - R. Flindall

Cr-Ex (L. TAPP)

1 A. No, I don't think so. I don't

2 recall.

3 MR. TAPP: Don't recall. Thank you.

4 That one page document, that has a black

5 number "22", we would like that as the next

6 exhibit, please?

7 THE VICE-CHAIR: Okay. 208.

8

9 --- EXHIBIT NO. 208: E-mail exchange between Messrs.

10 Campbell, Flindall, et al.,

11 ending September 11, 2009

12

13 BY MR. TAPP:

14 Q. Were you aware, or made aware, by

15 Staff Sergeant Campbell, your supervisor, that Mr.

16 Jack had contacted a senior officer in human

17 resources?

18 A. I was made aware, yes.

19 Q. Thank you. You were concerned about

20 Mr. Jack not following a chain of command, then

21 contacting the senior officer; were you?

22 A. For him contacting? No. I think,

23 in that instance, I was concerned about what

24 Constable Jack...how he provided the information to

25 the HR advisor, if I recall correctly.

- 171 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Can you read that e-mail, please,

2 that was just given to you?

3 A. Yes.

4 Q. From you to Ron Campbell?

5 A. So from myself, Thursday, August

6 20th, 2009, 12:02, to Ron Campbell:

7 "...A question for you when you are not

8 busy. What has been the view of region in

9 regards to PC Jack..."

10 Is his words:

11 "...Are they all with anything we have

12 done, not done, aka are we in any shit or

13 are they satisfied with everything that

14 has..."

15 I'm assuming, "...happened to date?" signed by

16 myself.

17 Q. Can you explain, Mr. Flindall, what

18 you meant by, "Are we in any shit"?

19 A. Up to, including the August 20th,

20 and post that, I have never received feedback from

21 anybody in relation to how Mr. Jack's probationary

22 period went from corporate HR or otherwise. So I

23 didn't...I wanted feedback from somebody above me to

24 find out if there were any issues, and how the

25 evaluations went for everything. That was the

- 172 - R. Flindall

Cr-Ex (L. TAPP)

1 intent of that e-mail.

2 Q. But you agree that as of August 20th

3 the region had not received PER 5, which was shared

4 on the 19th, six, seven and eight; correct?

5 A. This was done in relation to the

6 meeting that we were having in this transfer of

7 Constable Jack to the other platoon, in discussions

8 with Mr. Campbell.

9 Q. So I'm going to suggest to you that

10 during that meeting Staff Sergeant Kohen noticed

11 that you had a strong dislike for Mr. Jack, which is

12 why you are concerned...

13 MS. SINGH: Asked and answered.

14

15 BY MR. TAPP:

16 Q. ...and you asked that question...

17 THE VICE-CHAIR: You tried to ask that

18 before, and it wasn't allowed.

19 MR. TAPP: Okay.

20 THE VICE-CHAIR: That is what I mean. A

21 lot of this stuff is repetitive, Mr. Tapp.

22

23 BY MR. TAPP:

24 Q. Now, Mr. Flindall, are you

25 absolutely certain that Mr. Filman prepared all of

- 173 - R. Flindall

Cr-Ex (L. TAPP)

1 Mr. Jack's evaluations for this first eight months?

2 A. Yes. I have answered that.

3 Q. Thank you. Do you recall getting

4 this e-mail from Jennifer Payne August 15th?

5 A. Yes.

6 Q. Mr. Flindall, which evaluation...

7 which evaluation would that be for? I'm going to

8 suggest 6/7.

9 A. This Jack's last evaluation. I

10 don't know. It doesn't say.

11 Q. But you agree PER 5 had zero

12 negative ratings? That was your testimony?

13 A. Correct.

14 Q. Right. So read what it says,

15 please?

16 A. "...This is just a reminder e-mail

17 for tomorrow to send me Jack's evaluation.

18 Filman may have it labelled 'Jack four'..."

19 Q. Yes. So if one were to count, okay,

20 were to count the actual number of evaluations,

21 month one and two would be one, month three would be

22 number two. Month four would be number three

23 evaluation.

24 A. M'hm.

25 Q. And month five would be Jack four;

- 174 - R. Flindall

Cr-Ex (L. TAPP)

1 correct?

2 A. I don't know how it would be

3 labelled. I don't know.

4 Q. But you agree Constable Payne was

5 requesting that you send it to him so she can have

6 some input into it; correct?

7 A. Yes.

8 MR. TAPP: Good. Thank you. Next

9 exhibit, please? No. This is a single

10 page e-mail with the number "114" on the

11 top right.

12 THE VICE-CHAIR: I'm going to enter it.

13

14 --- EXHIBIT NO. 209: E-mail from Ms. Payne to Mr.

15 Flindall, dated August 15, 2009,

16 6:16 p.m.

17

18 BY MR. TAPP:

19 Q. Do you recall being directed by

20 Staff Sergeant Campbell to instruct Constable Payne

21 not to maintain two notebooks?

22 A. I don't recall anything about that,

23 no.

24 Q. As a supervisor you are duty bound

25 by OPP orders to inspect your officer's notebooks at

- 175 - R. Flindall

Cr-Ex (L. TAPP)

1 least once a month?

2 A. I don't know about once a month, no.

3 Q. But periodically to...

4 A. It is supposed to be periodically,

5 yes.

6 Q. When you inspect that you are duty

7 bound to, at least, place your signature in it and

8 date it?

9 A. Yes.

10 Q. Good. Can you explain why, in the

11 eight months of supervision of Mr. Jack you failed

12 to carry out this specific responsibility?

13 A. No, I have no explanation.

14 Q. Thank you. Now, without having to

15 go and dig up the actual order, you are familiar

16 with Provincial Communications Centre orientation

17 for probationary recruits when they arrive at a

18 detachment?

19 A. It is which order, sorry?

20 Q. PCC, Provincial Communications

21 Centre orientation. Maybe I will just put the

22 document...

23 A. No, I'm not familiar with that.

24 Q. Thank you. I'm showing you Exhibit

25 126. Okay. You will get a copy of it. This is a

- 176 - R. Flindall

Cr-Ex (L. TAPP)

1 tendered exhibit. And I'm going to direct your

2 attention to page 3 of that document.

3 A. Okay.

4 Q. Read what it says noted on PCS066,

5 please?

6 A. "...The coach officer shall

7 indicate, on the form PCS66P probationary

8 constable performance evaluation, that this

9 assignment has been completed..."

10 Q. Read the heading of the next one and

11 what it says?

12 A. "Once a probationary constable is

13 posted to"...

14 Q. No. What does the heading say,

15 beside it?

16 A. Oh:

17 "...Orientation to Provincial

18 Communications Centre. Once a probationary

19 constable is posted to a detachment the

20 detachment commander and coach officer

21 shall ensure that the probationary

22 constable attends an orientation day at

23 their respective Provincial Communications

24 Centre.

25 This will enable the probationary

- 177 - R. Flindall

Cr-Ex (L. TAPP)

1 constable to gain firsthand experience and

2 understanding of the operations of the PCC,

3 and enhance their awareness of the

4 complexity of the operator role and

5 responsibilities..."

6 Q. "Duration"?

7 A. "...The duration of this assignment

8 shall be one shift, and shall be completed

9 before the probationary constable is

10 recommended for pernancy..."

11 Q. What does it say under that, under

12 the heading, "Noted", on the performance evaluation

13 report?

14 A. "...The coach officer shall indicate

15 on form PCS66P probationary constable

16 performance evaluation that this assignment

17 has been completed..."

18 Q. So as detachment operations manager,

19 and as Mr. Jack's supervising officer, and as you

20 have been reviewing his performance evaluation

21 reports, how come you failed to address the notation

22 of this specific order that he has been given the

23 opportunity and has been provided with a tour...

24 A. I wasn't aware that it was a

25 requirement in this document.

- 178 - R. Flindall

Cr-Ex (L. TAPP)

1 MR. TAPP: I'm just being advised we

2 have got about, at least, just 40 minutes,

3 so I'm going suggest for the afternoon,

4 just a very brief one, and we should be

5 wrapping it up after.

6 THE VICE-CHAIR: Ten minutes?

7 MR. TAPP: Thank you.

8

9 --- upon recessing at 3:13 p.m.

10 --- A BRIEF RECESS

11 --- upon resuming at 3:26 p.m.

12

13 THE VICE-CHAIR: Mr. Tapp.

14

15 ROBERT FLINDALL, resumed

16 CONTINUED CROSS-EXAMINATION BY MR. TAPP:

17 Q. Sergeant Flindall, I just have a few

18 questions regarding your testimony to counsel during

19 your exam; okay? You testified that you provided

20 Mr. Jack with a negative 233-10, prepared by Staff

21 Sergeant Campbell, regarding that January incident

22 with a vehicle, putting the nose of the vehicle in

23 the ditch; correct?

24 A. Yes.

25 Q. Thank you. That is Exhibit 179.

- 179 - R. Flindall

Cr-Ex (L. TAPP)

1 And do you have that before you?

2 A. I don't recall, sir.

3 Q. I only have one copy, so I'm going

4 to give that to you and have you read a particular

5 portion...

6 A. Sure.

7 Q. ...that is on the back of that

8 exhibit.

9 A. Yes.

10 Q. On the back of the exhibit what does

11 it read?

12 A. Where it is highlighted?

13 Q. Yes.

14 A. "...I know a lot of vehicles get

15 damaged in Peterborough..."

16 Q. Thank you. So would you agree that

17 Mr. Jack wasn't the only one that had caused damage

18 to OPP vehicles there?

19 A. That is correct.

20 Q. Thank you. Yes, take it back. I'm

21 going to direct your attention to Exhibit 166,

22 please? Do you have a copy of that on your desk?

23 It is an e-mail from you to Staff Sergeant Kohen,

24 September 11th?

25 A. I don't know, sir.

- 180 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. I will just wait while you look at

2 it, look for it. I only have one copy.

3 A. I suspect I don't.

4 THE VICE-CHAIR: Why don't you use this

5 one?

6 THE WITNESS: Thank you, sir. Okay,

7 sir.

8

9 BY MR. TAPP:

10 Q. You agree that those chain of

11 e-mails are specific, "Subject, Mr. Jack A", so that

12 would be for performance evaluation report A?

13 A. Yes. Appears so.

14 Q. On page 2, at the very bottom,

15 "original message", it is directed to you from Staff

16 Sergeant Kohen, Colleen Kohen?

17 A. To myself and Staff Sergeant

18 Campbell, yes.

19 Q. Read what it says, please.

20 A. "Good afternoon. At this stage of

21 his pro", which means probation:

22 "...there should be no basis for ratings.

23 The rating, if you don't have a specific

24 example, goes back to what it was the

25 previous month..."

- 181 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. The next entry?

2 A. That is highlighted?

3 Q. Yes.

4 A. "...Thanks, Colleen, we are on this

5 as I write..."

6 Q. No. Doesn't it says "also can"?

7 A. Oh, sorry. I thought you only

8 wanted the highlighted:

9 "...Also, can you please ensure that there

10 are specific examples and not general

11 comments..."

12 Q. Thank you. You can give that back

13 to Mr. Vice-Chair.

14 A. Okay.

15 Q. Staff Sergeant Colleen Kohen is a

16 senior officer in human resources; correct?

17 A. Correct.

18 Q. And she was directing you to make

19 sure there are no general comments in performance

20 evaluation eight?

21 A. Yes. She is giving that direction.

22 Q. So how come three of the categories

23 reveal...okay. So how come nine categories reveal

24 general comments with no actual specific examples,

25 and of those nine categories four of them have,

- 182 - R. Flindall

Cr-Ex (L. TAPP)

1 "Does not meet requirements"? Is that in compliance

2 with Staff Sergeant Colleen Kohen's direction?

3 A. Reference the general comments?

4 Q. Yes.

5 A. It doesn't sound like it, but the

6 final WIP was sent to her for approval, and she...it

7 was approved.

8 Q. We are not talking about WIPs. We

9 are talking about the performance evaluation report.

10 A. Oh, sorry. Sorry, I thought we were

11 talking about WIPs.

12 Q. No. Colleen Kohen's direction to

13 you was to ensure, we will show it to you again,

14 that the performance evaluation report for eight has

15 no general comments and has specific examples;

16 correct?

17 A. Yes.

18 Q. She is not talking about work

19 improvement plans; is she?

20 A. No. That is the evaluations.

21 Q. Good. So, once again, of

22 performance evaluation report eight, of nine

23 categories, four of them, nine categories have

24 general comments and four of them...four of the nine

25 have, "Does not meet requirements". Now, the

- 183 - R. Flindall

Cr-Ex (L. TAPP)

1 question is, is that in compliance with Staff

2 Sergeant Colleen Kohen's direction?

3 MS. SINGH: Objection.

4 MR. TAPP: It is a valid question, Mr.

5 Vice...

6 THE VICE-CHAIR: Why don't you reword

7 it, "In your view", maybe?

8

9 BY MR. TAPP:

10 Q. Did you believe you complied with

11 her direction?

12 A. I thought the direction had been

13 complied with, yes.

14 Q. Thank you. The comment where she

15 says:

16 "...The rating, if you don't have a

17 specific example, goes back to what it was

18 in the previous month..."

19 Correct?

20 A. Correct.

21 Q. You have PER 6, 7 and 8 before you?

22 A. I believe so. Where has seven gone?

23 Q. Flip over to page 7 of both those

24 evaluations?

25 A. One moment, please? Apologize.

- 184 - R. Flindall

Cr-Ex (L. TAPP)

1 Sorry, again, sir?

2 Q. Can you read "analytical thinking"

3 in 6, 7, please, specific example and the SP number,

4 and what it says?

5 A. "...SP09087157, fraud, PC Jack has

6 been involved in likely credit card fraud

7 investigation in which a credit card was

8 used to obtain a merchandise, on two

9 occasions, from a Home Hardware store north

10 of Peterborough. A credit card fraud is

11 not, typically, an investigation. A

12 probationary would tackle and one not as

13 involved as this matter.

14 As a result of PC Jack's

15 investigation he has been able to determine

16 that the suspect in this investigation has

17 been involved in other criminal activity

18 elsewhere in the province. PC Jack

19 prepared documentation for these

20 jurisdictions and has provided them with

21 information concerning these frauds. PC

22 Jack has completed a crown brief package in

23 this matter, and a warrant has been sought

24 for this suspect's arrest..."

25 Q. And he is rated as what in that

- 185 - R. Flindall

Cr-Ex (L. TAPP)

1 month 6, 7 there?

2 A. "Meets."

3 Q. "Meets requirement"?

4 A. Yes, sir.

5 Q. Flip over the page and read

6 "resolution", please?

7 A. Oh, sorry, "resolution"?

8 Q. Yes. Flip over the page.

9 A. "...SP09133110, PC Jack attended as

10 a standby in keep the peace. PC Jack has

11 attended at these types of calls in the

12 past. This is a two-person call, and part

13 of issues stemming from this call are due

14 to the fact he did not request a second

15 unit to attend to assist. While on scene

16 at the incident one of the parties involved

17 contacted the PCC and requested another

18 officer attend as things were not

19 progressing.

20 One second officer attended and the

21 matter was quickly resolved. PC Jack

22 explained that he was unaware of the Act

23 that legislated over trailer parks, and

24 that was the main problem. PC Jack was

25 given advice, should this happen again in

- 186 - R. Flindall

Cr-Ex (L. TAPP)

1 the future..."

2 Q. What is his rating there?

3 A. "Does not meet."

4 Q. Thank you. Can I direct your

5 attention to page 7, performance evaluation report

6 8, please, "analytical thinking"?

7 A. Okay.

8 Q. Read the notation for "specific

9 example" and the occurrence number?

10 A. Okay. The analytical thinking on

11 eight appears to be the resolution one from 6/7.

12 Q. Exactly. And what is the rating in

13 6/7 under "resolution four" that is under

14 "analytical thinking"?

15 A. "Does not meet."

16 Q. No. For 6/7, under "analytical

17 thinking"?

18 A. Oh, 6/7, sorry, "Analytical thinking

19 meets".

20 Q. "Meets requirements." And if that

21 had been carried over do you see the problem we are

22 facing, it should reflect in PER 8?

23 A. Sorry, I'm going to backtrack there,

24 sir.

25 Q. Okay.

- 187 - R. Flindall

Cr-Ex (L. TAPP)

1 A. The "analytical thinking" in number

2 eight...

3 Q. Yes.

4 A. ...which is in reference to the,

5 "Stand by and keep the peace", shows, "Does not meet

6 requirements". In number seven the same example is

7 used under, "Resolution, stand by, keep the peace",

8 and also shows, "Does not meet requirements". There

9 is also, in the "resolution" section of number

10 eight, the same example, which matches the seven

11 that also says, "Does not meet requirements".

12 MS. SINGH: But, Mr. Vice-Chair, we have

13 heard evidence...

14 THE VICE-CHAIR: I know.

15 MS. SINGH: We have heard so much

16 evidence on this performance evaluation.

17 I'm not hearing a new question.

18 THE VICE-CHAIR: I agree with you.

19

20 BY MR. TAPP:

21 Q. Okay. I want to specifically...I'm

22 trying to show, okay, compliance with Staff Sergeant

23 Kohen's direction; got it?

24 A. Understood.

25 Q. Thank you. Look at "resolution"

- 188 - R. Flindall

Cr-Ex (L. TAPP)

1 category PER 5, please?

2 MS. SINGH: But asked and answered.

3 THE VICE-CHAIR: He said he has complied

4 with it. He thought he had complied with

5 it.

6 MR. TAPP: He thought.

7 THE VICE-CHAIR: You just keep digging

8 and digging until you get the answer you

9 want.

10

11 BY MR. TAPP:

12 Q. Your testimony was that in relation

13 to Mr. Jack's PER 6/7, which you gave to him August

14 20th, at 17:36 hours.

15 A. Okay.

16 Q. Your testimony was that after his

17 shift, 18:18 hours, he told you he wasn't signing

18 it; correct?

19 A. Correct.

20 Q. And you have a notation in your

21 notes for that?

22 A. I do.

23 Q. I direct your attention to Exhibit

24 107, please? I don't have an extra copy, but here,

25 Mr. Vice-Chair. Your counsel can put that out.

- 189 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Thank you, sir.

2 MR. TAPP: The cover page I direct your

3 attention to over here, I'm going to show

4 you. There is a cover page for Exhibit

5 164. Mr. Vice-Chair, it is just a single

6 page document. That is Exhibit 164.

7 THE VICE-CHAIR: Okay.

8

9 BY MR. TAPP:

10 Q. Looking at those two exhibits, is it

11 not clear that Mr. Jack is now willing...is offering

12 his willingness to sign PER 6/7?

13 A. That is what it says in the front,

14 yes, from Peter Butorac.

15 Q. And flip over the cover page of 164,

16 please? You will see his signature at the bottom,

17 date, "9th of September 2009", Mr. Jack's signature?

18 A. Oh, at the back.

19 Q. Yes.

20 A. "9th September 2009", yes.

21 Q. Thank you. Mr. Jack is willing to

22 sign his PER 6/7?

23 A. Okay.

24 Q. So how can you say he refused to

25 sign PER 6/7 when, after having reviewed it after

- 190 - R. Flindall

Cr-Ex (L. TAPP)

1 his days off, and coming back on the new platoon, he

2 is telling his new sergeant he is willing to sign

3 6/7? His first day on duty.

4 A. I don't know, sir. I didn't give

5 this to Mr. Jack, so I don't know how that played

6 out.

7 Q. Thank you, but you did have a

8 meeting with Inspector Campbell; right, regarding

9 this October 5th, 2009?

10 A. On October?

11 Q. Yes.

12 A. Yes. It would appear so, yes. I

13 don't recall, but, yes. I don't recall the meeting,

14 but it would appear so.

15 Q. Those are all the questions for

16 those two exhibits, please. Having discussed that

17 with Inspector Flindall, or, rather, Inspector

18 Johnston, did you ever approach or speak to, even

19 via e-mail, to address his rebuttal, with Mr. Jack?

20 A. I don't recall, no.

21 Q. Thank you. You testified about

22 certain issues Constable Payne spoke to you about,

23 in particular, that you felt was WDHP issues, and

24 you brought it to the attention of Campbell?

25 A. Potential issues, yes.

- 191 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Potential. Okay. You recall going

2 to a barbecue party at Constable D'Amico's

3 residence, or a horseshoe party?

4 A. Yes. She has a horseshoe party,

5 yes.

6 Q. You attended there with your wife;

7 did you not?

8 A. I have in the past, yes.

9 Q. Yes. Okay. You recall Mr. Jack was

10 taking pictures, and even took one of you; correct?

11 A. No, I don't recall that at all.

12 Q. Do you recall Constable Thompson

13 being at that party?

14 A. I don't recall, no.

15 Q. I'm going to show you some

16 photographs regarding that party. It will have a

17 time stamp on the photographs; okay?

18 MS. SINGH: Objection.

19 THE VICE-CHAIR: Okay. Yes. Let's hear

20 the objection.

21 MR. TAPP: Okay.

22 THE VICE-CHAIR: You have tried to enter

23 these before.

24 MR. TAPP: Yes, that is why we are

25 putting it specifically to this witness.

- 192 - R. Flindall

Cr-Ex (L. TAPP)

1 MS. SINGH: Yes. Thank you.

2 THE VICE-CHAIR: No.

3

4 BY MR. TAPP:

5 Q. Okay. Do you recall Mr. Jack was in

6 the company of a female over there?

7 A. I think so, yes. His girlfriend,

8 likely.

9 Q. Yes.

10 A. Yes.

11 Q. Good. So did it not strike you odd

12 that if he is there in the company of his girlfriend

13 that Melynda Moran would be sending her an e-mail,

14 or talking to you about what she heard about Mr.

15 Jack's apparent dislike of women?

16 A. How is that in relation to the

17 party? I recall the e-mail, yes, with Constable

18 Moran, yes.

19 Q. Yes. And she is quoting in the

20 e-mail, apparently Mr. Jack's dislike of women.

21 A. Yes. She was passing on information

22 she heard...

23 Q. Information.

24 A. ...from a, sorry, I don't know if it

25 was an academy officer or a OPC. I can't recall.

- 193 - R. Flindall

Cr-Ex (L. TAPP)

1 It was a training officer.

2 Q. The validity of that information,

3 did it not strike you odd, considering the fact that

4 you saw him at this barbecue party with what looked

5 to be his girlfriend?

6 A. I can't recall when the party was

7 and when the e-mail was sent, but...

8 MR. TAPP: Thank you very much. That is

9 why we wanted to show these pictures, Mr.

10 Vice-Chair.

11 THE VICE-CHAIR: I understand that. You

12 tried to show them before. And I can't

13 recall who gave the evidence, but there was

14 context around that statement that Mr. Jack

15 doesn't like women.

16 MS. SINGH: Sir, my recollection is that

17 Constable Filman gave evidence that that

18 was in relation to a woman in authority and

19 not simply...

20 THE VICE-CHAIR: Yes.

21 MS. SINGH: ...women in general.

22 THE VICE-CHAIR: That was Filman's

23 testimony.

24

25 BY MR. TAPP:

- 194 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Now, in your testimony, previously,

2 you said that when Moran approached you about the

3 video pen incident, or the recording pen...

4 A. Right.

5 Q. ...incident, you said that she told

6 you he was surreptitiously recording her.

7 A. That is what I recall, yes.

8 Q. I'm going to read out just a

9 question addressed to...and I'm going to put this

10 question to you. Constable Moran was asked,

11 specifically, "Was it done surreptitiously?" Her

12 response, "no". "In an open manner?" was the

13 question, and she said, "yes". Does that change

14 your testimony any?

15 A. No. My recollection was it was done

16 surreptitiously. That is my recollection.

17 Q. And that quote that I just read for

18 the benefit of this tribunal is Constable Moran's

19 testimony, page 181, line 4 to line 8. Okay. Good.

20 On that same page the question was put to Moran:

21 "...One time, okay. Any other evidence you

22 hare familiar with to suggest that I

23 recorded you more than once..."

24 Her response:

25 "...No, I have no idea if you recorded me

- 195 - R. Flindall

Cr-Ex (L. TAPP)

1 more than once..."

2 Thank you. And that is line 19 to 23 on page 181.

3 Thank you.

4 THE VICE-CHAIR: What is the question?

5

6 BY MR. TAPP:

7 Q. So with that, hearing that excerpt,

8 is it still your position that Moran told you...

9 MS. SINGH: Asked and answered.

10 THE VICE-CHAIR: Yes. Asked and

11 answered.

12 MR. TAPP: That was a question. That is

13 the reason why.

14

15 BY MR. TAPP:

16 Q. Is it your position that you were

17 not preparing PER 8?

18 A. No. Constable Filman...

19 Q. That is an e-mail from your staff

20 sergeant to you on September 9th, 9:09 a.m.;

21 correct?

22 A. Yes.

23 Q. It is directly to you and carbon

24 copied to others, including human resources;

25 correct?

- 196 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Yes. Mike Johnston, Dave Lee and

2 Colleen Kohen.

3 Q. Read the first line, please?

4 A. "...Rob, please review my comments

5 in read. I think you need to expand on

6 some areas, even though he only worked six

7 shifts with your platoon and took vacation.

8 I think you can expand on some areas..."

9 Q. Thank you. Would that cause you to

10 change your testimony any that you did, in fact,

11 make some notations on PER 8?

12 A. I think I have already answered

13 that, sir.

14 Q. It is still your position you made

15 no entries on PER 8?

16 A. That is slightly different.

17 Q. Did you make any entries on PER 8?

18 Put it that way.

19 A. I'm going to tell you I don't

20 recall. I did, typically, review, make editing

21 changes for grammar, et cetera, so...

22 Q. With respect to this e-mail...

23 A. Yes.

24 Q. ...did you address Staff Sergeant

25 Campbell's request and make entries?

- 197 - R. Flindall

Cr-Ex (L. TAPP)

1 A. Some of the editing would have been

2 done, yes.

3 MR. TAPP: Thank you. Next exhibit,

4 please?

5 THE VICE-CHAIR: Now, we are getting

6 towards the end of the day.

7 MR. TAPP: We have two more. We have

8 just got two more, Mr. Vice-Chair. These

9 are going over...it is three. Okay.

10 THE VICE-CHAIR: 210.

11

12 --- EXHIBIT NO. 210: E-mail from Mr. Campbell to Mr.

13 Flindall, et al., dated

14 September 9, 2009

15

16 BY MR. TAPP:

17 Q. You are going to be getting another

18 document, consisting of two pages, and they are

19 three e-mails that you are involved in.

20 THE VICE-CHAIR: Go ahead.

21

22 BY MR. TAPP:

23 Q. Okay. Sergeant Flindall, this is

24 not about performance evaluation reports. This is

25 about your chronology, subject, "Attachment Jack

- 198 - R. Flindall

Cr-Ex (L. TAPP)

1 Chronology 2009"; do you see that?

2 A. I do.

3 Q. Good. And it is from Richard Nie to

4 you and Colleen Kohen; correct?

5 A. Correct.

6 Q. And that is November 29th; correct?

7 A. Correct.

8 Q. Read the body of that e-mail,

9 please?

10 A. Starting at the top, "From Rich

11 Nie", dated November 29th, 2009 5:32 p.m. to Colleen

12 Kohen and myself, cc'd to Peter Butorac:

13 "...Rob, here is the completed and properly

14 formatted edited version of the chronology

15 pending your comments. Please forward to

16 Colleen once completed, and can you cc the

17 original back to me for my records as well?

18 As you can see below she needs it by Monday

19 morning.

20 Colleen, just to give you an update,

21 if you don't already have it, Staff

22 Sergeant Campbell has left our office for

23 another detachment. Acting Staff Sergeant

24 Flindall is taking his position. We will

25 have a new acting inspector since our

- 199 - R. Flindall

Cr-Ex (L. TAPP)

1 detachment commander left as well.

2 Sergeant Butorac is the platoon sergeant

3 for myself and PC Jack. Just so you are

4 not confused about who is getting e-mailed,

5 the final version will be on...will be the

6 one acting Staff Sergeant Flindall sends

7 you..."

8 Q. Good. So you had started a

9 document, I take it, and it was pending, I guess,

10 your final comments pending your comments?

11 A. It would appear so, yes.

12 Q. Thank you. So you would agree that

13 you did prepare a point form chronology as that

14 indicates; correct?

15 A. I created a chronology of sorts,

16 yes.

17 Q. Thank you.

18 MS. SINGH: Next exhibit, please?

19

20 --- EXHIBIT NO. 211: E-mail exchange between Messrs.

21 Nie, Flindall, et al., ending

22 November 29, 2009

23

24 BY MR. TAPP:

25 Q. It has also been your testimony that

- 200 - R. Flindall

Cr-Ex (L. TAPP)

1 you deny Mr. Campbell, or Staff Sergeant Campbell,

2 telling you that he had found out that you had

3 members watching Mr. Jack; correct? You deny him

4 telling you that?

5 A. Staff Sergeant Campbell telling me

6 that I had members watching him?

7 Q. Or making a determination and

8 finding that you had members watching Mr. Jack?

9 A. No, I don't recall that.

10 Q. Fair enough. I direct your

11 attention to Exhibit 186, please. It is,

12 specifically, a one page letter, e-mail. Contains

13 two e-mails, but I'm more concerned with the copy

14 from Sergeant Flindall to Inspector Johnston and Ron

15 Campbell, August 6th, 2009. Read the third

16 paragraph, the last two lines, please?

17 A. "...I have told my guys in the past

18 that if they ever screw up the best thing

19 for them to do is own up to it, say they

20 have learned from it, and that it will

21 never happen again. It is quite clear that

22 PC Jack hasn't done this, and he is now

23 making accusations about other officers to

24 divert attention away from him. I have had

25 an extensive conversation with Shaun about

- 201 - R. Flindall

Cr-Ex (L. TAPP)

1 Jack, which will bring you up to speed with

2 on Monday. I will also be speaking with

3 the platoon about PC Jack to ensure that

4 any difficulties, however small, are

5 properly addressed and documented..."

6 Q. Thank you. So in that document

7 alone you acknowledge giving directions to your

8 platoon to document...

9 MS. SINGH: Mr. Vice-Chair, this witness

10 was examined on this document with respect

11 to that very sentence yesterday. He gave

12 evidence in relation to it.

13 THE VICE-CHAIR: Yes, he was.

14 MR. TAPP: This is a cross, and this is

15 a document prepared by Sergeant Flindall...

16 MS. SINGH: He was cross-examined...

17 MR. TAPP: ...about specific direction

18 he gave his members.

19 MS. SINGH: Mr. Vice-Chair, those

20 questions were asked in cross-examination.

21 THE VICE-CHAIR: They were.

22 MR. TAPP: They were. Okay.

23

24 BY MR. TAPP:

25 Q. You are getting an e-mail, August

- 202 - R. Flindall

Cr-Ex (L. TAPP)

1 15th, 2009.

2 A. Thank you.

3 Q. And it is from you to Shaun Filman.

4 You acknowledge that probationary constables, from

5 time to time, slip up, make mistakes, and that is

6 expected as part of their learning and development;

7 correct?

8 A. Correct.

9 Q. Would you agree that there was no

10 formal complaint regarding this matter, yet you were

11 telling Shaun that this will need to be documented

12 even though there is no formal complaint?

13 A. Correct.

14 Q. Why is that so?

15 A. Does it have a date here? I

16 received this information in August. We had already

17 had driving issues with Constable Jack in the past,

18 so I wanted to make sure that that was documented.

19 Q. The driving issues, I would imagine

20 you are alluding to is the August 15, HTHR from the

21 January accident?

22 A. No, sir.

23 Q. Then which ones, please?

24 A. This was dated from August 15th at

25 7:22 a.m.

- 203 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. So what...

2 A. Prior to. Well, Mr. Jack was

3 already involved in a motor vehicle collision on the

4 30th of January.

5 Q. When was that?

6 A. On the 30th of January.

7 Q. And that is exactly what I said the

8 HTHR and the motor vehicle collision...

9 A. 30th of January.

10 Q. 30th of January.

11 A. When he nosed the cruiser in a ditch

12 and the collision committee gave him a 233-10.

13 Q. Yes. That was seven months apart

14 from August 15th; correct?

15 A. Correct, but he is still within his

16 probationary period.

17 Q. And you addressed that clearly...

18 A. Correct.

19 Q. ...by the negative 233-10?

20 A. Addressed which, sir?

21 Q. The 30th of January incident with a

22 negative...

23 A. Correct.

24 Q. Correct. And by virtue of his next

25 three performance evaluation reports revealing no

- 204 - R. Flindall

Cr-Ex (L. TAPP)

1 deficiencies, it was obvious that that apparent

2 slight has been addressed; correct?

3 A. Here we are, sometime in August,

4 with another driving issue, sir, so I wouldn't say

5 that it wasn't addressed. It was an ongoing

6 concern, reference his driving. That is why it was

7 documented.

8 MR. TAPP: Thank you. We will have this

9 one, with the two page document, marked

10 "71" on the upper right, as the next

11 exhibit, please?

12

13 --- EXHIBIT NO. 212: E-mail from Mr. Flindall to Mr.

14 Filman, dated August 15, 2009

15

16 BY MR. TAPP:

17 Q. Sergeant Flindall, during your

18 examination-in-chief you stated, and you probably

19 touched on this in cross too, that criminal

20 organizations have been trying, for a long time, to

21 infiltrate the policing world; correct?

22 A. Correct.

23 Q. And that was your concern in regards

24 to Mr. Jack; correct?

25 A. Correct.

- 205 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Can you, please, explain, why would

2 a person, who is trying to infiltrate policing

3 world, bring a photograph of himself with the bad

4 guys in it?

5 THE VICE-CHAIR: Well, I don't think he

6 can...

7

8 BY MR. TAPP:

9 Q. Okay. Does it seem to make sense

10 that Mr. Jack would be showing you a photograph, or

11 would be showing to other officers a photograph with

12 bad guys in it?

13 MS. SINGH: Objection.

14

15 BY MR. TAPP:

16 Q. Okay. Based on the information you

17 received it was your understanding that Mr. Jack

18 showed a photograph to a drug squad officer;

19 correct?

20 A. Yes.

21 THE VICE-CHAIR: Correct. I can answer

22 the question. We have heard them.

23

24 BY MR. TAPP:

25 Q. Was Mr. Jack part of any criminal

- 206 - R. Flindall

Cr-Ex (L. TAPP)

1 organization, as far as you knew, Mr...

2 A. I had no idea.

3 THE VICE-CHAIR: No.

4

5 BY MR. TAPP:

6 Q. You had no idea at that time; is

7 that your response?

8 A. Correct.

9 Q. But you would agree that OPP would

10 have done, obviously, a background check to

11 establish that, or rule that out; correct?

12 THE VICE-CHAIR: How would he know what

13 type of background check they did?

14 MR. TAPP: Okay.

15

16 BY MR. TAPP:

17 Q. You believed you had no information

18 of that, and it was a concern of yours that Mr. Jack

19 might be involved in organized crime. All right.

20 If Mr. Jack was involved in organized crime would

21 his actions make sense to you?

22 THE VICE-CHAIR: You know what, that is

23 all speculation.

24 MR. TAPP: Okay.

25 THE VICE-CHAIR: You have had more than

- 207 - R. Flindall

Cr-Ex (L. TAPP)

1 three questions. Mr. Jack, you indicated

2 three questions.

3 MR. JACK: That is really the last one.

4 I don't have anything else.

5

6 BY MR. TAPP:

7 Q. You are getting an e-mail...

8 MR. JACK: That is the last one.

9

10 BY MR. TAPP:

11 Q. Okay. The very top, it is a two

12 page document, says "number nine" at the right. It

13 is from Inspector Johnston to you.

14 A. Yes.

15 Q. And, although he doesn't retype the

16 whole thing, he is just telling you, "Rob, for your

17 information, extremely confidential", and that is in

18 relation to the e-mail below; correct?

19 A. Yes.

20 Q. Can you read out who all the people

21 were being...who are all the people that were being

22 advised of this allegation, "Associating with

23 undesirables"?

24 A. The original e-mail, sir, from

25 Martin Graham?

- 208 - R. Flindall

Cr-Ex (L. TAPP)

1 Q. Yes, originally from Martin Graham.

2 A. Was to Ken Smith.

3 Q. And he is, as far as you know?

4 A. Not sure, sir.

5 Q. That is okay, read.

6 A. Paul Beesley. These names I don't

7 know, sir. Paul Powers, Mike Armstrong, which would

8 have been the chief at the time. Hugh Stevenson was

9 the superintendent. Chuck Cox, I believe, was an

10 inspector and Mike Johnston was my inspector.

11 MS. SINGH: And, Mr. Vice-Chair, these

12 names were not...this witness did not send

13 this e-mail to those named individuals.

14 THE VICE-CHAIR: No, I understand it was

15 attached, though, to the...

16 MR. TAPP: Yes.

17 THE VICE-CHAIR: ...e-mail that he

18 received.

19 MS. SINGH: So he would have, you know,

20 no thinking in relation to who should be on

21 this distribution list.

22 THE VICE-CHAIR: Yes. I'm not...

23 MR. TAPP: Yes.

24 THE VICE-CHAIR: ...taking it...

25

- 209 - R. Flindall

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Sergeant Flindall...

3 MS. SINGH: I know.

4

5 BY MR. TAPP:

6 Q. Sergeant Flindall, look at the first

7 sentence. This is the e-mail that you would have

8 got forwarded to you from Inspector Johnston. What

9 does it say in the first paragraph, please, under,

10 "Chief Smith et al."?

11 A. "...I have made some inquiries on

12 this matter. The information from Sergeant

13 Flindall at Peterborough detachment has

14 been examined. It does not require an

15 urgent response at this time..."

16 Q. Second paragraph, the first two

17 sentence, or the first line, to the end?

18 A. "...I can confirm that the names

19 provided by Sergeant Flindall, that were

20 linked to PC Jack, were currently part of

21 an investigation that is being undertaken

22 by the RCMP..."

23 MR. TAPP: Thank you. If counsel wishes

24 to explore it further, she can. I will get

25 to that.

- 210 - R. Flindall

Re-Ex (M. SINGH)

1 THE VICE-CHAIR: You are not getting to

2 it. You said you had one more question.

3 MR. JACK: That is it. Then we just can

4 make this an exhibit. I am done.

5 MR. TAPP: Okay. Well, this will be the

6 last exhibit we are seeking to enter,

7 please.

8

9 --- EXHIBIT NO. 213: E-mail exchange between Messrs.

10 Johnston, Flindall, et al.,

11 dated September 11, 2009

12

13 MR. TAPP: Okay. Mr. Vice-Chair, that

14 is it for Mr. Jack and the applicant

15 regarding the cross of Sergeant Flindall.

16 THE VICE-CHAIR: Counsel?

17 MS. SINGH: Thank you, Mr. Vice-Chair.

18 I will be very brief.

19 THE VICE-CHAIR: Thank you.

20

21 RE-EXAMINATION BY MS. SINGH:

22 Q. Sergeant Flindall, could you,

23 please, look, again, at Exhibit 126, which is the

24 police order, 6.43, probationary constable?

25 A. Sorry, is this the document?

- 211 - R. Flindall

Re-Ex (M. SINGH)

1 THE VICE-CHAIR: No.

2 THE WITNESS: No?

3

4 BY MS. SINGH:

5 Q. It is...

6 A. Oh...

7 Q. ...yes, the police order, human

8 resources probationary...

9 A. Oh, sorry, sorry.

10 THE VICE-CHAIR: You have it?

11 THE WITNESS: Yes, yes.

12 MS. SINGH: Okay.

13 THE WITNESS: Thank you.

14

15 BY MS. SINGH:

16 Q. Now, you were asked a question about

17 the requirement for posting, once a person is

18 posted, a probationary is posted in a detachment, in

19 relation to diversity awareness. You will see that

20 on page 3.

21 A. Okay.

22 Q. If you could just look down under

23 "duration", Sergeant Flindall, would you agree with

24 me that the duration of that assignment, for

25 "diversity awareness", is to be completed before the

- 212 - R. Flindall

Re-Ex (M. SINGH)

1 probationary constable's ten month evaluation?

2 A. Correct.

3 Q. Did Mr. Jack complete ten months

4 under your supervision, sir?

5 A. No, he did not.

6 Q. Thank you. And just following on

7 that page, sir, there is another...you were asked

8 some questions about the orientation to the

9 Provincial Communications Centre.

10 A. Yes.

11 Q. And you will see under "duration",

12 you will agree with me that this requirement shall

13 be completed before the probationary constable is

14 recommended for permanency; is that correct?

15 A. Correct.

16 Q. Did Mr. Jack complete the time

17 period for being recommended for permanency under

18 your supervision...

19 A. No, he did not.

20 Q. ...Sergeant Flindall? Thank you.

21 MS. SINGH: I have no further questions,

22 Mr. Vice-Chair.

23 THE VICE-CHAIR: Thank you.

24 MS. SINGH: Thank you.

25 THE VICE-CHAIR: Okay. Mr. Flindall,

- 213 - R. Flindall

Re-Ex (M. SINGH)

1 you are released.. Thank you.

2 THE WITNESS: Thank you, sir.

3 THE VICE-CHAIR: So I think we can go

4 off the record now. We are going to do

5 some housekeeping.

6

7 --- upon adjourning at 4:14 p.m.

8

- 214 - R. Flindall

Re-Ex (M. SINGH)

INDEX OF EXHIBITS

EXHIBIT PAGE

NUMBER DESCRIPTION NUMBER

196 E-mail exchange between Messrs.

Flindall, Campbell, et al., ending

August 28th, 2009 21

197 E-mail exchange between Messrs.

Flindall, Campbell, et al, dated

September 13, 2009, six pages 29

198 E-mail exchange between Mr.

Flindall and Ms. Payne, ending

November 6, 2009 56

199 E-mail exchange between Ms. Kohen,

Mr. Johnston, et al, ending

September 24, 2009 63

200 General Occurrence Report, dated

July 4th, 2005 (Printed by Mr.

Flindall) 69

201 E-mail from Mr. Jack to Mr.

Flindall, et al., dated August 10,

2009 122

202 Analysis of case load re: Michael

Jack 138

203 Analysis of case load re: Shaun

Filman 146

204 Analysis of case load re: Jennifer

Payne 150

205 Letter dated December 23, 2009 re:

Mr. Jack's final credit balances,

signed by Mr. Flindall 155

206 E-mail exchange between Mr.

Flindall and Ms. Moran, dated

August 15, 2009 160

- 215 - R. Flindall

Re-Ex (M. SINGH)

INDEX OF EXHIBITS (Cont'd)

EXHIBIT PAGE

NUMBER DESCRIPTION NUMBER

207 E-mail from Mr. Wagar to Mr.

Flindall, dated August 11, 2009 164

208 E-mail exchange between Messrs.

Campbell, Flindall, et al., ending

September 11, 2009 170

209 E-mail from Ms. Payne to Mr.

Flindall, dated August 15, 2009,

6:16 p.m. 174

210 E-mail from Mr. Campbell to Mr.

Flindall, et al., dated September

9, 2009 197

211 E-mail exchange between Messrs.

Nie, Flindall, et al., ending

November 29, 2009 199

212 E-mail from Mr. Flindall to Mr.

Filman, dated August 15, 2009 204

213 E-mail exchange between Messrs.

Johnston, Flindall, et al., dated

September 11, 2009 210

- 216 - R. Flindall

Re-Ex (M. SINGH)

I hereby certify the foregoing to be a

true and accurate transcription of the

above-noted proceedings held before me on the

13th DAY OF SEPTEMBER, 2016, and taken to the

best of my skill, ability and understanding.

}

} Certified Correct:

}

}

}

}

}

} \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

} Matthew Dixon

} Certified Verbatim Reporter