Tribunal File No. 2010-07633-I

 HUMAN RIGHTS TRIBUNAL OF ONTARIO

MD/sp

 B E T W E E N:

 MICHAEL JACK

 Applicant

 - and -

 HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED

 BY THE MINISTER OF COMMUNITY SAFETY AND CORRECTIONAL

 SERVICES AND OPERATING AS THE ONTARIO PROVINCIAL POLICE

 Respondent

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 HELD BEFORE: Keith Brennenstuhl, Vice-Chair

 HELD AT: Human Rights Tribunal of Ontario

 655 Bay Street, 14th Floor

 Toronto, Ontario

 HELD ON: September 14, 2016

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

 LLOYD TAPP --- for the Applicant

 MIMI SINGH } --- for the Respondent

 HEIDI BLUTSTEIN}

 ALSO PRESENT:

 Michael Jack

 - 2 -

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 - 3 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

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

 2 --- upon commencing at 9:38 a.m.

 3

 4 THE VICE-CHAIR: Sir, would you please

 5 state your full name?

 6 MR. BUTORAC: Peter James Butorac.

 7 THE VICE-CHAIR: Sir, you are about to

 8 give testimony before the Human Rights Tribunal, and

 9 the tribunal is dependent on you telling the truth.

10 Do you solemnly affirm to tell the truth?

11 MR. BUTORAC: I do so swear.

12 THE VICE-CHAIR: And do you appreciate

13 that it's at offence at law if you break that

14 understanding?

15 MR. BUTORAC: I do understand that.

16 THE VICE-CHAIR: Okay, Counsel

17 MS. SINGH: Thank you, Mr. Vice-Chair.

18

19 EXAMINATION-IN CHIEF BY MS. SINGH:

20

21 Q. Good morning, Mr. Butorac.

22 A. Good morning.

23 A. Are you presently employed by the

24 OPP?

25 A. I am not.

 - 4 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 Q. Were you employed by the OPP?

 2 A. I was. I retired.

 3 Q. When did you retire, sir?

 4 A. On September 8th, September 8th of

 5 this year, 2016.

 6 Q. Of this year. What rank did you

 7 hold when you retired, sir?

 8 A. Sergeant.

 9 Q. How long were you a sergeant?

10 A. Sixteen years.

11 Q. When were you assigned to the

12 Peterborough detachment of the OPP?

13 A. I can't recall exactly, but it would

14 have been 2006, approximately.

15 Q. You were there in 2009?

16 A. I was, yes.

17 Q. And what was your rank in 2009, sir?

18 A. Sergeant.

19 Q. What were your responsibilities as a

20 sergeant in 2009 at the Peterborough detachment?

21 A. I was a platoon sergeant at the

22 time. I had just returned from a bereavement leave

23 and I was in charge of a platoon of a number of

24 members, responsible for their supervision.

25 Q. How many officers were on your

 - 5 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 platoon, sir?

 2 A. I think at the time 10.

 3 Q. Do you recall who you reported to

 4 back then?

 5 A. I believe at the time it was Ron

 6 Campbell, staff sergeant, which was one rank above

 7 mine.

 8 Q. And did you say that it was

 9 platoon...did you identify it as a number or a

10 letter?

11 A. I believe it was D at the time. I'm

12 not certain of that, though.

13 Q. Was Jack assigned to your platoon?

14 A. He was actually on the day I

15 returned to work.

16 Q. Do you recall when that was?

17 A. Yes, can I refer to my notes?

18 Q. Yes, please.

19 A. The only changes to my notebook has

20 been the highlighting of today's hearing.

21 Q. The events that we are talking about

22 occurred eight years ago, and as a police officer

23 did you make notes of the events as they occurred?

24 A. I did.

25 Q. All right. Did you do your best to

 - 6 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 make sure that your notes are accurate?

 2 A. Yes.

 3 Q. And did you record matters that

 4 seemed important to you at the time, sir?

 5 A. I did.

 6 Q. And was your memory of the events

 7 better when you made your notes than it is now, sir?

 8 A. Definitely.

 9 MS. SINGH: Mr. Vice-Chair, I would ask

10 for your permission to allow the witness to

11 refer to his notes when giving his

12 testimony to refresh his recollection as

13 required.

14 THE VICE-CHAIR: Of course.

15 THE WITNESS: Thank you. Sorry, but

16 you're going to have to repeat the question

17 now.

18

19 BY MS. SINGH:

20 Q. Do you recall when Mr. Jack joined

21 your Platoon D, sir?

22 A. I have got a note here on September

23 9th, '09, Wednesday, September 9th.

24 Q. Do you recall who was his assigned

25 coach officer?

 - 7 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 A. Constable Nie at that time. I stand

 2 corrected on one statement I made. The note here

 3 that I have for September 9th is that I sat down and

 4 discussed Constable Jack with Constable Nie. It may

 5 have been a few days proceeding his actual

 6 attendance on the platoon. I'm not sure.

 7 Q. Did you have a discussion with Staff

 8 Sergeant Campbell about Jack joining your platoon,

 9 that you recall?

10 A. Not that I recall, and I don't have

11 that noted in here.

12 Q. Well, perhaps then you could tell us

13 about speaking with Constable Nie on September the

14 9th, your conversation with him about Jack joining

15 the platoon.

16 A. The conversation was that Constable

17 Nie was going to be assigned to be Constable Jack's

18 coach officer. We had reviewed PCS66 and...in which

19 there were some deficiencies identified from his

20 previous platoon, and at that point, we were still

21 awaiting one of the evaluations from Constable

22 Filman, who was his previous coach officer, was my

23 understanding, because that officer was to do a

24 learning plan for him.

25 Q. Constable Filman was to do the

 - 8 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 learning plan?

 2 A. Yes.

 3 Q. And what is a PCS66?

 4 A. I'm sorry. It's a personal

 5 evaluation form. It's the annual evaluation form

 6 that we use in the OPP.

 7 Q. And so do you recall which

 8 evaluation you reviewed? Did you review the

 9 evaluation with Constable Nie?

10 A. I did. I don't have noted which

11 sequential number it was or which month. We title

12 them by months of service.

13 Q. And at the time a work improvement

14 plan had not been prepared for that particular

15 evaluation?

16 A. We did not see it.

17 Q. Did you hear any rumours about Jack

18 before he joined your platoon?

19 A. Except for the fact that he was

20 having some issues and that is why he was being sent

21 to another platoon, that was all.

22 Q. Did you hear the nickname Crazy Ivan

23 before he joined your platoon?

24 A. I didn't, no.

25 MS. SINGH: I'm showing the witness

 - 9 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 Exhibit 24, which is the...apologies.

 2 Exhibit 24 are the probationary constable

 3 evaluation report guideline. Would you

 4 like another copy? I can grab one for you?

 5 THE VICE-CHAIR: I am sure I have a

 6 number of them. I think this is one.

 7 MS. SINGH: Yes, that is.

 8 THE VICE-CHAIR: And that was exhibit?

 9 MS. SINGH: Twenty-four, sir.

10

11 BY MS. SINGH:

12 Q. Can you identify the document,

13 please?

14 A. Yes, it is part of police orders and

15 a subsection of them requiring the evaluation of

16 members as well as probationary constables.

17 Q. Thank you. You are familiar with

18 that document?

19 A. I am.

20 Q. Was it in effect in 2009?

21 A. Yes.

22 Q. Does the document set out the

23 responsibilities of a sergeant?

24 A. It does.

25 Q. What are those responsibilities, ir?

 - 10 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 A. Are you suggesting I refer to the

 2 document or my memory?

 3 Q. Of course, please feel free to refer

 4 to the document. Just generally speaking.

 5 A. Well, generally speaking, the

 6 responsibilities of the supervising NCO, or non-

 7 commissioned officer, is to ensure that a member who

 8 is being trained is trained by a competent

 9 individual, by an individual who is welcoming to the

10 coaching process for which they have obtained their

11 relevant training.

12 Q. Yes?

13 A. And to ensure that any issues that

14 come up during their training period is

15 satisfactorily dealt with by that coach officer. If

16 they aren't satisfactorily dealt with, then that's

17 where the sergeant would step in and assist the two

18 in achieving some sort of plan, and also to adhere

19 to all the provincial, federal legislations, not the

20 least of which is the WDHP, but every other

21 legislation that we have.

22 Q. And were you confident that

23 Constable Nie was an appropriate, suitable coach

24 officer for Jack?

25 A. Constable Nie was not only

 - 11 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 appropriate for Mr. Jack at the time, but he was one

 2 of the best coach officers in the detachment and a

 3 well respected officer, as well, knowledgeable.

 4 MS. SINGH: Were performance

 5 evaluations...Mr. Vice-Chair, I want to

 6 assure you that I heard your ruling

 7 yesterday about the performance appraisals.

 8 THE VICE-CHAIR: Yes.

 9 MS. SINGH: And I will only establish

10 that this witness inputted into Jack's

11 appraisals under his...which were prepared

12 under his supervision and nothing else.

13 THE VICE-CHAIR: Okay, well, that's fine

14 then. Thank you. I have heard plenty

15 about those evaluations.

16 MS. SINGH: Thank you.

17

18 BY MS. SINGH:

19 Q. Were performance evaluations

20 prepared for Jack while he was under your

21 supervision?

22 A. Yes.

23 Q. Do you recall how many?

24 A. I don't, but I am thinking two, at

25 least I believe there were two that I commenced on.

 - 12 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 Q. And were work improvement plans

 2 prepared as well?

 3 A. I don't recall.

 4 Q. You don't recall. Who prepared

 5 those performance appraisals, to the best of your

 6 recollection?

 7 A. They were prepared by Constable Nie.

 8 Q. And you inputted into them

 9 eventually?

10 A. To the extent of making comment at

11 the end where there is a supervisory space to do so,

12 but with constant conversation throughout the

13 period.

14 Q. And the conversations were with who,

15 sir?

16 A. With Constable Nie and on occasion

17 Constable Jack as well.

18 Q. Do you recall those conversations,

19 any of those conversations?

20 A. In specific, no. In general, they

21 were with respect to his feeling of overwhelmingness

22 and what to do about that.

23 Q. Did he express being overwhelmed

24 from the beginning?

25 A. From the time...I would say shortly

 - 13 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 after coming on to our platoon, yes.

 2 Q. And were you and Constable Nie

 3 confident that you would be able to help Jack become

 4 successful?

 5 A. Well, confident that we would be

 6 able to help, but progressively not so at having him

 7 succeed, and that was because of the number of

 8 issues that were identified.

 9 Q. So to begin with, you were more

10 confident that he could succeed, and as time went

11 on, you became less confident?

12 A. Yes. When he came to our platoon,

13 it was paramount for me...as a matter of fact, I do

14 recall saying to Rich that it was a clean slate. I

15 mean, you can't erase previous months. I think Mr.

16 Jack came to us at month seven or eight. We only

17 have 10 months in a probationary period.

18 So from that point, it was a clean slate

19 insofar as any issues that he had were

20 taken...noted...

21 Q. Yes.

22 A. ...but worked with from there on

23 unsuccessfully, obviously.

24 Q. You mentioned that you only have 10

25 months for a probationary period. Is that set out

 - 14 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 somewhere, sir?

 2 A. It is in police orders and it is

 3 extendable, I believe, to 11 months.

 4 Q. And what happens after the eleventh

 5 month?

 6 A. A decision has to be rendered as to

 7 whether or not the member is going to be a permanent

 8 employee or not. I believe that's actually an OPS

 9 thing, not an OPP thing.

10 Q. Yes, yes. We...I'm going to show

11 you a copy of an exhibit.

12 A. Yes, that's what I'm referring to.

13 Q. Can you identify that, please?

14 A. This is also an excerpt from police

15 orders, section 6.4.8, probationary constable.

16 Q. Yes.

17 A. And it describes the evaluation

18 process, how long the probation period, and it says

19 "Pursuant to the Public Service Act". So the

20 probationary periods are province-wide for all

21 ministries.

22 Q. And the probationary period, does it

23 confirm what you told us, that it's a 10-month

24 period?

25 A. Yes, it does.

 - 15 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 Q. And what happened then? So if a

 2 person is not recommended for permanency, that's it?

 3 It's just they are not recommended for permanency?

 4 A. That's right. So all the...any

 5 plans of improvement and that would expire if they

 6 didn't meet the requirements within their

 7 performance evaluation.

 8 Q. Do you know, sir, if they need to

 9 meet all of the requirements or some of the

10 requirements or how is it?

11 A. It would be all of...they would have

12 to get a meets expectation in all categories.

13 Q. And that applies equally to

14 everyone, every probationary counstable?

15 A. Yes.

16 THE VICE-CHAIR: Could you tell me what

17 exhibit that is?

18 MS. SINGH: Yes, we're just looking for

19 that. Twenty-eight, sir?

20 THE VICE-CHAIR: Exhibit 126 on our

21 record, maybe.

22

23 BY MS. SINGH:

24 Q. You mentioned that you met with Jack

25 early on to discuss his performance issues with

 - 16 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 Constable Nie. Do you have a recollection of

 2 meeting with him or a note perhaps?

 3 A. I do have a general recollection

 4 that I would meet with every new recruit that comes

 5 to our platoon, and most especially someone that

 6 would have had some concerns with previous coach

 7 officers and their abilities. I do not have a note.

 8 Q. And did you Constable Nie any

 9 direction with respect to the supervision of Mr.

10 Jack?

11 A. Well, the conversation that I would

12 have had with Constable Nie was to ensure that he

13 does what he does with every officer.

14 I don't recall, because of my extended

15 leave, that I ever observed Constable Nie coach

16 anybody before. So I would have to treat him with a

17 clean slate insofar as I would have described my

18 expectations to him.

19 I do have a note here. However, I'm not

20 sure that it is a result of our first meeting

21 together, but it's Saturday the 19th of September,

22 '09...

23 Q. Yes.

24 A. ...at 6:10 p.m., at which time after

25 a shift briefing, I noted here that I spoke to Mr.

 - 17 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 Jack and Mr. Nie, and I wanted to have Mr. Jack

 2 write down what his concerns and issues were coming

 3 to our shift so that we could make sure that we

 4 identified them independent of anything that was

 5 forthcoming from the previous shift, and I'm not so

 6 sure that by that date we had even received Filman's

 7 evaluation yet. So that might have been part of why

 8 I did this.

 9 Q. Do you recall what Mr. Jack told

10 you, sir?

11 A. I don't.

12 THE VICE-CHAIR: Sorry, what was the

13 question?

14 MS. SINGH: Do you recall what Jack told

15 you in terms of his concerns when he was

16 asked to voice his concerns coming to your

17 shift?

18

19 BY MS. SINGH:

20 Q. Exhibit 34. I'm showing you a copy

21 of a document. Can you identify it, please?

22 A. This was a response that I wrote

23 to...well, the covering memo anyways to forward

24 Constable Jack's rebuttal to some of his evaluations

25 to the staff sergeant to make sure that it would be

 - 18 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 added to his evaluation because I could not find his

 2 evaluation to add it to, which would mean that it

 3 was in transit somewhere or not yet submitted. So

 4 that's what this document is.

 5 Q. Do you recall whether Jack gave it

 6 to you personally or...

 7 A. I believe he gave it to me

 8 personally, to me and Constable Nie personally.

 9 Q. Did you review it?

10 A. I did in general.

11 Q. And did Jack say anything in that

12 rebuttal that concerned you in terms of

13 discrimination or harassment?

14 A. No, not as far as that goes, but

15 what did concern me was the absolutely

16 overwhelmingness of this document and what this

17 member must have felt like.

18 Q. So perhaps we could just get a

19 better understanding. "The overwhelmingness of the

20 document", what do you mean by that, sir?

21 A. Well, specifically, the document

22 goes through almost incident by incident the member,

23 Constable Jack's perspective, on how the events of

24 these occurrences unfolded, and granted, we have to

25 appreciate perspectives, but it seemed as though he

 - 19 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 couldn't do anything right from this document.

 2 He had an overwhelming feeling of not

 3 performing, but a person who did perform outside of

 4 policing realm.

 5 Q. Did you do anything to address this,

 6 these kinds of concerns or your response that it

 7 was...he appeared to be overwhelmed?

 8 A. The actual incidents that occurred

 9 previous, without actually reading this document

10 verbatim at the present time, I don't recall that

11 any, certainly not the majority, of these incidents

12 were from our platoon. They were from previous.

13 So to speak to those independently and

14 individually would have been the responsibility of

15 the previous supervisor, Sergeant Flindall, I

16 believe, and that is why we started our relationship

17 with concerns from Mr. Jack in lieu of any other

18 documentation I presume to get started on his plan.

19 Q. Did the document cause you a concern

20 or Constable Nie...did you discuss a concern with

21 him about your ability to provide him with a clean

22 slate?

23 A. Except as previously stated, with

24 respect to the overwhelmingness of the number of

25 issues, I believe we would have been able to, but

 - 20 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 that was a constant cloud and overshadowing of the

 2 whole process, was the number of identified "Does

 3 not meets".

 4 Q. Did you form any opinion about this

 5 document in terms of discrimination or harassment?

 6 A. Not in terms of that at all, no.

 7 This, to me, appeared strictly as incidents

 8 that...again, perspective from other officers, peer

 9 officers, supervising officers, how events and

10 occurrences unfolded. Again, I would not have been

11 present personally for any of these incidents, and

12 so I can't speak to that, but it doesn't look like

13 it from this document.

14 Q. Did you have a conversation with

15 Sergeant Campbell about this document?

16 A. About this one in specific, no.

17 Again, it would have been outside of my realm of

18 responsibility insofar as specifically dealing with

19 these claims.

20 Q. And were you unhappy about having

21 Jack assigned to your platoon in light of this

22 document?

23 A. I was disappointed that we were

24 being assigned a young man who had identified this

25 many shortcomings, deficiencies, whatever you want

 - 21 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 to call them, because it was very difficult to be

 2 confronted with this and then try to overcome it...

 3 Q. Yes.

 4 A. ...perhaps let alone what Mr. Jack

 5 must have felt like. So it was a difficult task,

 6 but again, clean slate, and that's where we started.

 7 Q. Thank you. Do you recall Jack's

 8 driving being assessed while on your platoon?

 9 A. It was, yes.

10 Q. I'm showing you a document. Can you

11 identify it, please?

12 A. It's an e-mail that Constable Nie

13 received from a Kent Taylor, who I believe was one

14 of our driving instructions, and I am c.c.'d on it.

15 Q. What is the date of that document?

16 A. The 10th of November, 2009.

17 Q. Do you recall receiving that

18 document?

19 A. Only by the fact of this paper being

20 here.

21 Q. And was Jack's driving assessed?

22 A. It was.

23 Q. What was the assessment? What was

24 the finding?

25 A. The finding from here was that

 - 22 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 although this was...he was assessed, that there was

 2 still at least one more incident...or one more

 3 lesson or what have you to be undertaken to address

 4 cognitive abilities with relation to multi-tasking

 5 and driving.

 6 Q. I'm just going to direct your

 7 attention to the second-last paragraph of that

 8 letter.

 9 A. That...based on this date, that he

10 does not feel this is...Kent Tayler, that Constable

11 Jack meets the requirements required for police

12 vehicle operations.

13 Q. Who is Kent Taylor, sir?

14 A. Driving training coordinator of the

15 police academy in Orillia.

16 Q. Would his opinion or his assessment

17 of Jack's driving then find its way into a

18 performance evaluation?

19 A. I would expect that it should, yes.

20 Q. Was additional driving recommended

21 for Jack?

22 A. Yes, it was.

23 Q. Do you know whether he, in fact, he

24 did take additional driving?

25 A. I know of at least one more

 - 23 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 occurrence where he did.

 2 Q. I'm showing the witness Exhibit 171.

 3 THE VICE-CHAIR: Are we entering this or

 4 have we already entered it?

 5 MS. SINGH: Could we enter it, please,

 6 sir?

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

 8 That will be Exhibit 214.

 9 MS. SINGH: Thank you.

10

11 --- EXHIBIT NO. 214: E-mail dated November 10, 2009 from

12 Mr. Taylor to Mr. Nie, et al.

13

14 BY MS. SINGH:

15 Q. Can you identify the document,

16 please?

17 A. This is an excerpt from police

18 orders, again, section 610, titled "Professionalism

19 in the OPP". It covers professionalism in the OPP,

20 which includes WGHP, public complaint processes,

21 internal complaint processes.

22 Q. Are you familiar with the OPP's

23 policy on discrimination and human rights?

24 A. I am.

25 Q. Were you familiar with that policy

 - 24 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 in 2009?

 2 A. I was.

 3 Q. Under the policy were you

 4 responsible to ensure that there was no

 5 discrimination or harassment on your platoon, sir?

 6 A. That I was aware of, yes.

 7 Q. Did you observe Jack being the

 8 subject of any discrimination or harassment on your

 9 platoon?

10 A. I did not.

11 THE VICE-CHAIR: I'm sorry, what was

12 that exhibit?

13 MS. SINGH: That was Exhibit 171.

14 THE VICE-CHAIR: Okay, thank you.

15

16 BY MS. SINGH:

17 Q. I'm showing you a document. Can you

18 identify it for me, please?

19 A. It's an e-mail from Rich Nie to

20 Colleen Koehn, and it outlines Constable Nie's

21 outline to her as to some concerns that Constable

22 Jack had.

23 Q. Do you recall receiving a copy of

24 that e-mail?

25 A. I am c.c.'d on it, yes.

 - 25 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 Q. And what is the date of that e-mail?

 2 A. The 19th of November, '09.

 3 Q. Who is Colleen Kohen?

 4 A. I don't know but I believe she was

 5 in human resources.

 6 Q. And what were the concerns

 7 identified by Constable Nie in relation to Constable

 8 Jack?

 9 A. That Constable Jack was worried

10 about the feeling of he had of...to use the phrase

11 in the e-mail "an axe hanging over his head" while

12 he was with Constable Nie, that despite

13 feeling...whether to use the word comfortable, he

14 felt good being with him as far as learning and

15 everything goes. He was...he had this feeling of

16 making mistakes all the time and that Constable Nie

17 would catch those mistakes, which Constable Nie

18 would and I would expect him to.

19 So the rest is what Constable Nie said in

20 the e-mail.

21 Q. Did Jack complain to you about

22 Constable Nie's, for lack of better words, coaching

23 style?

24 A. I know that we had a few meetings,

25 the three of us. I don't know that that was

 - 26 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 specifically expressed. I think the overwhelming

 2 message was that he felt he was under the gun all

 3 the time with respect to his work abilities and that

 4 they were being scrutinized, and that more negatives

 5 were being identified than positives. That was

 6 basically in totality what the feeling was.

 7 Q. Did you approve of Constable Nie's

 8 coaching yes?

 9 A. Yes, I had absolutely no issues with

10 it, and he was keeping me...although not necessarily

11 daily informed, concern advised, so any time there

12 was an issue, because we would have to confer with

13 it as far as what we were going to do to help

14 Constable Jack so far as making a learning plan.

15 Q. Can you tell us what Constable Nie

16 was observing in terms of Constable Jack's

17 progression?

18 A. I can't really from memory, I'm

19 sorry, except what is stated in this e-mail, which

20 was the last exhibit you gave me.

21 MS. SINGH: If we could have that marked

22 as an exhibit, please, sir.

23 THE VICE-CHAIR: Could you just give me

24 a moment? I want to read this. It's

25 Exhibit 215.

 - 27 - P.J. Butorac

 Ex-in-Ch (M. SINGH)

 1 MS. SINGH: Thank you.

 2

 3 --- EXHIBIT NO. 215: E-mail dated November 19, 2009 from

 4 Constable Nie to Ms. Kohen, et al.

 5

 6 BY MS. SINGH:

 7 Q. Did you participate in the decision

 8 not to recommend Jack for permanency?

 9 A. I footnoted the evaluation based on

10 the number of failed to meets or does not meet

11 requirements. It wasn't a...that decision is made

12 at higher levels, the ultimate decision. The local

13 decision is simply confined to our comments based on

14 his evaluation.

15 Q. And did you recommend that Jack not

16 be recommended for permanency?

17 A. I recommended that he should not be,

18 correct.

19 Q. Thank you. Did Jack's race,

20 ancestry, ethnic origin, citizenship, place of

21 origin factor in any way into why he was unable to

22 meet the requirements of a probationary counsel?

23 A. Not at all. In fact, some of his

24 attributes, I stated to him, would be an asset to

25 him in the OPP.

 - 28 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Q. Did those considerations have

 2 anything at all, in your mind, to do with his not

 3 being recommended for permanency?

 4 A. None whatsoever.

 5 MS. SINGH: Thank you, Mr. Butorac.

 6 THE WITNESS: Thank you.

 7 MS. SINGH: Those are my questions.

 8 THE VICE-CHAIR: Mr. Tapp.

 9 MR. TAPP: Yes.

10

11 CROSS-EXAMINATION BY MR. TAPP:

12

13 Q. Good day, Mr. Butorac.

14 A. Hello.

15 Q. Thank you. You remember me, don't

16 you?

17 A. I do.

18 Q. Is it true that for the bulk of

19 2009, up until you returned to work, you were off

20 for an extended period of time, right?

21 A. Yes, that's correct.

22 Q. Good. So you would not...is it safe

23 to say that you would not have been privy to Mr.

24 Jack's dealings from the previous months from

25 January to...up until the time he came to your

 - 29 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 platoon?

 2 A. Yes.

 3 Q. Thank you. Mr. Butorac, you said

 4 that you do not recall with respect to when you

 5 started at Peterborough, and you believed it was in

 6 2007 or thereabouts, correct?

 7 A. I would have to do some mental math.

 8 Q. Okay. Do you recall me starting

 9 under your platoon in 203?

10 A. I do remember you starting on my

11 platoon. If that was 2003, my apologies. My math

12 obviously isn't as good as I think.

13 Q. And do you recall making me, along

14 with Mitch Anderson, OIC in your absence?

15 A. At times, yes.

16 Q. Thank you.

17 MS. SINGH: Mr. Vice-Chair, I'm not sure

18 where this line of questioning is going.

19

20 BY MR. TAPP:

21 Q. Okay, so the question is just to

22 clarify your memory with respect to when you said

23 when you started at Peterborough. So now are you

24 certain beyond a reasonable doubt that it was some

25 time when I started there in 2003?

 - 30 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. Whether it was when you started

 2 there, or whether you were on my platoon, because

 3 you weren't on my platoon immediately, I don't

 4 think.

 5 Q. No, that is correct, but you would

 6 have been at Peterborough...by virtue of that

 7 statement, you would have been there when I started,

 8 correct?

 9 A. Yes.

10 Q. Okay, thank you, in 2003. That's

11 all I want clarification of. Thank you, okay. Now,

12 you mentioned earlier that you reviewed, upon

13 returning to the platoon, that Mr. Jack was already

14 present. You did meet with Jack and Nie and had a

15 meeting, and I think you said it was September 19th,

16 thereabouts?

17 A. Yes, the one I referred to earlier

18 was on the 19th of September, yes.

19 Q. Thank you. Now, in all fairness,

20 would you have been privy to anything Mr. Jack had

21 done under Mr. Nie prior to your arrival?

22 A. Prior to my arrival...well, my first

23 date of...was the 9th of September. That was my

24 first day back to work, and that is the day that I

25 met with Constable Nie initially about Constable

 - 31 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Jack coming or being coached by Nie, and as I stated

 2 to the tribunal earlier on, I'm not sure that

 3 Constable Jack was actually with us on that day

 4 because I don't have another note about Constable

 5 Jack until the 19th of September. So a couple of

 6 weeks later is when I think he came on to the

 7 platoon, and we just had...I must have been advised

 8 by Staff Sergeant Campbell, by e-mail, voice or

 9 otherwise, that he was coming to our platoon the

10 first day I came back.

11 Q. So just so that I understand it

12 correctly, in all fairness, because you don't have

13 any note does not necessarily mean that Mr. Jack did

14 not start September 9th under Mr. Nie, correct?

15 A. Correct.

16 Q. Thank you. Now, you mentioned also

17 that something stood out in your mind about the

18 information Mr. Jack provided, the documented

19 information he provided to you regarding the

20 previous evaluation, right? You said, "It seemed as

21 though he could not get anything right"?

22 A. Right.

23 Q. Right?

24 A. Yes.

25 Q. And I think your comments were "for

 - 32 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 a person who did very well before"?

 2 A. Right.

 3 Q. Right?

 4 A. Or reportedly so. I didn't know

 5 Constable Jack before, but I was aware of his

 6 education in general and some of his history and

 7 would expect that, from his own words, he said he

 8 had no issues with life in general before.

 9 Q. Thank you. Now, counsel did ask you

10 a question, if you formed an opinion with respect to

11 your brief time with Mr. Jack, if you formed an

12 opinion about any discrimination or harassment, I

13 just want to make sure that I understood your

14 response.

15 You said, "No, but does look like

16 something." Can you clarify that?

17 A. No, I can't. We would have to go

18 into the record for that statement, because...

19 Q. Okay.

20 A. ...I do recall saying, "No." I

21 don't know if anything was said after that.

22 Q. Okay, fair enough then. I'll strike

23 that out my notes there, but you did have some

24 meetings with Mr. Jack and Mr. Nie, correct?

25 A. Correct.

 - 33 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Q. Okay. You felt unhappy as your

 2 platoon was being tasked to address some

 3 deficiencies from Mr. Flindall's shift?

 4 A. I don't know that I would use the

 5 term "unhappy", but I would say over-challenged.

 6 Let's put it that way...

 7 Q. Over-challenged.

 8 A. ...because it was quite the platter.

 9 Q. I believe you did say "unhappy", but

10 that's fine. Now, counsel questioned you about that

11 one-page document from Kent Taylor to Richard Nie.

12 A. The driving?

13 Q. Yes, and of which you received a

14 carbon copy. It says your name as "c.c.'d Peter

15 Butorac".

16 A. Yes, I have that. That's the 10th

17 of November one?

18 Q. Yes. But you are aware Mr. Jack did

19 go for additional remedial driver training from that

20 same office of Kent Taylor?

21 A. I'm not sure that any other e-mails

22 were from Kent Taylor, but they were about driving.

23 Q. Thank you. As his current

24 supervisor, you would have received an indication

25 that he did pass then?

 - 34 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. I would have got an indication that

 2 either he passed or didn't, yes.

 3 Q. Thank you. Okay, can you read the

 4 last...do you have that document before you...

 5 A. Referring to the driving...

 6 Q. ...214?

 7 A. The driving?

 8 Q. Yes, the one November 10th, 2009.

 9 A. Yes.

10 Q. Now, when you came and you reviewed

11 some of...you said you knew some of his history or

12 some of his background, his education. You

13 also...I'm going to suggest you were aware of his

14 Professional Standards Bureau allegation against

15 him?

16 A. Against who?

17 Q. Mr. Jack.

18 A. When he actually came to our

19 platoon?

20 Q. At some point in time in September

21 you had served a document, or did you serve a

22 document on Mr. Jack?

23 A. I did serve a document, but I don't

24 think it was that early on. If I can just refer to

25 my notes here...it was on the 23rd of September...

 - 35 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Q. Fair enough.

 2 A. ...'09 that I served Constable Jack

 3 with an internal complaint, number 173. I don't

 4 remember what it was about.

 5 Q. Thank you. Granted you...correct me

 6 if I am wrong, you would not have known what that

 7 was about, would you?

 8 A. I don't recall whether the issuance

 9 of the complaints say anything about the complaint

10 on them or not. If they do, I would have, but I

11 don't think I did.

12 Q. Granted. So by November 10th you

13 would agree that that was an investigation still

14 hanging over Mr. Jack?

15 A. By November 10th...I don't know by

16 what date, but it would have been at the time

17 served.

18 Q. Thank you. Now, read the last two

19 lines of the November 10th e-mail from Kent Taylor

20 of which you got a carbon copy, please.

21 A. Starting with:

22 "...Although P.C. Jack has made vast

23 improvements in his driving, as of today I

24 do not feel that he meets requirements

25 required in the police vehicle

 - 36 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 operations..."

 2 Q. And you did testify that Mr. Jack

 3 felt he was under the gun and under a lot of stress,

 4 correct?

 5 A. As put forth by Constable Nie in his

 6 e-mail, yes.

 7 Q. Thank you. Did you have a meeting

 8 on or about November 19th with Richard Nie of which

 9 you received an e-mail, Exhibit 215, please? Do you

10 have a copy of that e-mail before you?

11 A. I'm sorry, what was the date?

12 Q. November 19th, 2009.

13 A. 19th?

14 Q. Yes.

15 A. I do, if you're referring to the

16 Colleen Kohen.

17 Q. Yes.

18 A. Okay.

19 Q. November 19th e-mail from Richard

20 Nie, November 19th, 6:02 a.m., to Colleen Kohen.

21 A. Yes.

22 Q. Carbon copied to the rest. Can you

23 read that e-mail, please?

24 A. "...Hi Colleen. After a two-hour

25 meeting with Sergeant Butorac, myself and

 - 37 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 P.C. Jack, here are the main points of the

 2 discussion. P.C. Jack explained that he

 3 feels that when he is with me there is an

 4 axe above his head the entire time. He

 5 said it is a love/hate relationship. He

 6 loves my teaching, but hates how

 7 intimidating it is to be in the car with

 8 me. He said that what I am seeing is not

 9 representative of how he would perform if

10 he was alone.

11 He said that he feels so much

12 pressure to do things right with me that he

13 screws up all the time. He then went on to

14 explain the psychology of this, and how,

15 when I point out the mistakes that he is

16 making, that everything is always negative.

17 He said he does not have 100 percent trust

18 in me for my motives.

19 He said he feels that maybe I am

20 documenting everything to cover my ass in

21 case he is fired and there is a lawsuit

22 that happens. He said that there were

23 things written about him in the evaluation

24 that were not true. When asked what

25 motivation I had to lie, he just nodded his

 - 38 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 head, when I stated I had no reason to lie.

 2 He said that his biggest problem is me, as

 3 I am watching over his every move. He was

 4 assured by both of us [I am referring to

 5 Nie and myself] that we only had his

 6 interest at hand..."

 7 Q. Okay, I can stop you there, rather

 8 than read the whole thing.

 9 MS. SINGH: Mr. Vice-Chair, just before

10 Mr. Tapp starts asking questions about this

11 e-mail, you'll note, of course, that the

12 author of the e-mail is Richard Nie, and he

13 will be here...

14 THE VICE-CHAIR: Right.

15 MS. SINGH: ...to provide evidence

16 tomorrow, and so he can only...this witness

17 can only answer as to what he thought, but

18 not about the contents of the e-mail.

19 THE VICE-CHAIR: Fair enough.

20 MR. TAPP: And Mr. Vice-Chair, I

21 understand that.

22 THE VICE-CHAIR: Very good.

23 MR. TAPP: Counsel's objection is

24 premature. Why doesn't she see if I have

25 any questions?

 - 39 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. Now, you recall reading that?

 3 A. At present, yes.

 4 Q. Yes, at the time. So I'm going to

 5 show you Exhibit...

 6 A. I stand corrected. I recall reading

 7 it now. I don't recall reading it in the past.

 8 Q. Okay, fair enough. I'm going to

 9 show you tendered Exhibit 53, please. You indicated

10 that you did have meetings with Mr. Jack and Mr. Nie

11 in the past?

12 A. Yes.

13 Q. Okay. Isn't it true that in one of

14 these meetings Mr. Nie, in fact, poured his heart

15 out in the form of a letter and showed you that

16 letter?

17 A. You must mean Mr. Jack.

18 Q. Mr. Jack, I'm sorry.

19 A. I don't recall reading this, but I'm

20 not saying that he didn't present it.

21 Q. Thank you, okay. Now, can you read

22 that, please?

23 A. "...Is my case hopeless or can I

24 still climb the mountain?..."

25 Q. Okay.

 - 40 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. Michael Jack, 19th of October, '09:

 2 "...If you want to help me, then in order

 3 for me to regain my confidence back and

 4 ability to function, I'm asking you..."

 5 MS. SINGH: Mr. Vice-Chair, we're under

 6 tight timelines. I'm just wondering what

 7 the purpose is of having this document read

 8 in. It's already an exhibit. If there is

 9 a question, Mr. Tapp could put the question

10 to the witness.

11 Certainly Mr. Jack gave testimony,

12 I assume, in relation to this document.

13 THE VICE-CHAIR: Well, yes, he has, and

14 it is entered as an exhibit.

15 MR. TAPP: Yes, it is.

16

17 BY MR. TAPP:

18 Q. But this, Mr. Butorac, can you read

19 that, please, not read it out loud, just peruse

20 that? I'm going to suggest it is congruent with a

21 lot of concerns Mr. Jack shared with you and Mr.

22 Nie, some of which is in...alluded to in that e-mail

23 between Nie and Cohen of which you were carbon

24 copied.

25 A. Well, just reading the first

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 Cr-Ex (L. TAPP)

 1 paragraph, yes, there would be some similarities, or

 2 some similar contents.

 3 Q. Good, all right. Now, "climb the

 4 mountain", were those your words to Mr. Jack?

 5 A. I don't recall.

 6 Q. Okay, thank you. You would agree,

 7 by looking at this document, you indicated you don't

 8 have a clear recollection whether he gave it to you

 9 or not...

10 A. That's correct.

11 Q. ...but you...correct me if I am

12 wrong. That means if he did, you may not have read

13 it, correct?

14 A. No, if he gave it to me, I would

15 have read it.

16 Q. Can you refer to your notes for

17 October 19th, please?

18 A. Okay.

19 Q. Okay, thank you. At some point in

20 time were you asked to prepare a statement regarding

21 Mr. Jack that you forwarded to the OPP?

22 A. I may have been.

23 Q. Yes?

24 A. That by the way, is a week I was

25 away from the office.

 - 42 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Q. Okay, fair enough. At some point in

 2 time did you get a copy of a witness summary based

 3 on the information you provided?

 4 MS. SINGH: This witness would be in no

 5 position to know if he, you know, was

 6 provided with it or asked to confirm that

 7 this witness statement does, in fact,

 8 represent his evidence.

 9 MR. TAPP: Yes, I know.

10 MS. SINGH: You can ask him...we have

11 gone through this, Mr. Vice-Chair with

12 every witness, and I think it's important

13 to point out again that these witness

14 statements were prepared by counsel in the

15 context of litigation.

16 MR. TAPP: Okay, and like the previous

17 witness, Mr. Vice-Chair, I am mindful of

18 that, and that Mr. Butorac did not prepare

19 this witness summary, but he furnished

20 information.

21

22 BY MR. TAPP:

23 Q. Mr. Butorac, looking at that witness

24 summary before you, I direct your attention to page

25 1, the last paragraph, please. Now, granted you

 - 43 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 didn't prepare that document, but do you agree that

 2 information you provided is summarized in that

 3 paragraph there?

 4 A. Well, I have no note that on or

 5 about October 19th I had a conversation with

 6 Constable Jack.

 7 Q. How would counsel know that, please?

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

 9 MR. TAPP: It's a valid question. You

10 have no note.

11 MS. SINGH: Mr. Vice-Chair, you know, I

12 object to that question. Obviously it's

13 privileged information. I was not counsel

14 on the case...

15 THE VICE-CHAIR: I know.

16 MS. SINGH: ...and it's not a matter in

17 issue in this proceeding. Mr. Tapp can ask

18 questions of this witness about his

19 recollection.

20 THE VICE-CHAIR: Anyway, how would he

21 know?

22 MR. TAPP: There is a letter he says he

23 doesn't recall. Doesn't recall does not

24 mean that he never was given a letter.

25 THE VICE-CHAIR: Well, that's a

 - 44 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 determination I have to make.

 2 MR. TAPP: Yes, certainly. So we have a

 3 witness summary prepared by the respondent

 4 regarding information this witness

 5 provided, okay. We don't have that, and

 6 we're not requesting that, but the summary

 7 was derived from the information provided,

 8 and there is specific reference to a

 9 conversation with Mr. Jack on or about

10 October 19th. That's what I want to

11 question...

12 MS. SINGH: Mr. Vice-Chair, again, these

13 witness summaries are not evidence. They

14 are not in evidence. They don't set out

15 any evidence or testimony. They are simply

16 prepared for the benefit, and under the

17 tribunal's rules, by counsel in

18 anticipation of litigation.

19 I don't even know, sir, whether

20 these witnesses...what they provided, if

21 they were interviewed or anything of the

22 kind.

23 MR. TAPP: Well...

24 THE VICE-CHAIR: Hold on, hold on. I

25 have had difficultly with these witness

 - 45 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 statements since day one. Typically

 2 they're prepared, or at least agreed to by

 3 the witness before they are even tendered.

 4 The purpose of these statements is

 5 not only for the respondent to understand

 6 what the witness is going to...it's for me

 7 as well.

 8 It is not unusual for a vice-chair

 9 to put the witness statement in front of

10 the witness and ask the witness if this is

11 true...

12 MS. SINGH: Yes.

13 THE VICE-CHAIR: ...which then becomes

14 evidence.

15 MS. SINGH: Yes.

16 THE VICE-CHAIR: I'm precluded from

17 doing that with this.

18 MS. SINGH: Yes.

19 THE VICE-CHAIR: So its value, in my

20 view, is minimal.

21 MS. SINGH: Yes.

22 THE VICE-CHAIR: It poses problems for

23 the respondent.

24 MR. TAPP: I mean, we have the right to

25 cross-examine a witness. So all...

 - 46 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: Of course you do, Mr.

 2 Jack...Mr. Tapp.

 3 MR. TAPP: So all we are trying to do is

 4 trying to jog what could be in his memory

 5 by having him direct his attention to this

 6 paragraph.

 7 THE VICE-CHAIR: He doesn't recall the

 8 meeting. There is...

 9 MR. TAPP: Thank you. I have to

10 state...

11

12 BY MR. TAPP:

13 Q. Okay, just looking at that document,

14 Mr. Butorac, that is before you, the last

15 paragraph...

16 A. Of the first page?

17 Q. Of the first page. Would you agree

18 that there is a coincidence or it's coincidental

19 you...this letter that was put before you, October

20 19th, and this paragraph also bears a similar date,

21 October 19th?

22 A. Well, I can't draw any conclusions,

23 but I can...

24 Q. No, I'm not asking you to.

25 A. ...I don't have the notes on that

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 Cr-Ex (L. TAPP)

 1 date.

 2 Q. Okay. I'm going to suggest to you

 3 that that meeting did occur, and that Mr. Jack was

 4 raising issues that he felt were discriminatory,

 5 correct?

 6 A. Well, I don't know the question that

 7 you are asking me, about a meeting that occurred.

 8 Q. Okay, I'm going to suggest that a

 9 meeting...

10 MS. SINGH: Asked and answered, sir.

11 THE VICE-CHAIR: Yes. He doesn't know,

12 and by suggesting doesn't make it so, okay.

13

14 BY MR. TAPP:

15 Q. Sergeant Butorac, at the time you

16 were the sergeant in charge of Mr. Jack's last three

17 and a half months, or last three months when he came

18 on your shift. Now, as such, you wanted to also

19 view him with a clean slate and a fresh start,

20 correct?

21 A. Yes.

22 Q. Okay. Did you...that would mean

23 that if the situation...correct me if I am wrong, if

24 situations that arose that could have warranted some

25 form of positive documentation, you would be aware

 - 48 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 of it?

 2 A. Not necessarily true that I would be

 3 aware of the incident that would merit it. That

 4 would be under the performance evaluation system

 5 something that the coach officer could do...should.

 6 Could and should.

 7 Q. Sure, but if a situation did arise,

 8 okay, that clearly presented the possibility of

 9 something good, it ought to have been captured or

10 reflected on a performance evaluation report?

11 A. If the situation arose, it should

12 be, yes.

13 Q. Okay, I'm giving you a copy

14 of...you're getting a copy of tendered Exhibit 59.

15 First of all, do you see your name on that document

16 on who it is being addressed to?

17 A. Yes.

18 Q. Can you identify it, please?

19 A. It's an e-mail sent by Constable

20 Jack to...

21 Q. From Jack or from...

22 A. Sorry, yes, it was sent from

23 Constable Garbutt to myself being one of the c.c.'d

24 individuals.

25 Q. And the date of that e-mail, please?

 - 49 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. The 16th of October.

 2 Q. Thank you, and read what it says,

 3 please?

 4 A. "...I just want to thank you for the

 5 information provided the other day about a

 6 drug grow at [a particular address]. I

 7 executed a warrant on Tuesday and got over

 8 2,000 large marijuana plants behind the

 9 house. This was an organized Asian crime

10 house. They had been in the house

11 trimming, but were gone when we showed up.

12 We had no idea there was a setup at the

13 house and your info put us on to it.

14 Thanks for your help and observations.

15 Ernie Garbutt..."

16 Q. Thank you. You recall that e-mail,

17 Mr. Butorac?

18 A. I don't, sorry.

19 Q. Okay, but you recall...you would

20 have to acknowledge getting it, right?

21 A. Yes.

22 Q. And isn't it one of your duties,

23 when you come in in the morning, you check your e-

24 mail daily, or at least when you're working?

25 A. Promptly, reasonable promptly, yes.

 - 50 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Q. Thank you. To the best of your

 2 recollection, and you are retired now, what is the

 3 street value of 2,000 large marijuana plants, Mr.

 4 Butorac?

 5 A. You're outside my area of expertise.

 6 Q. Fair enough, fair enough. Would you

 7 agree from that e-mail it was Mr. Jack's initial

 8 investigation that led to the illegal drug seizure?

 9 A. Well, it's his information provided

10 to Constable Garbutt, from the sounds of this e-

11 mail.

12 Q. Thank you. If that drug seizure

13 turned out to be the largest in Peterborough

14 County's history, you would agree that it would have

15 been notable?

16 A. Yes.

17 Q. Thank you. Now, and if that was so,

18 and looking at the e-mail, would you agree that a

19 positive documentation ought to have been given or

20 at least noted somewhere for Mr. Jack?

21 A. It would be reasonable.

22 Q. Thank you very much. As his

23 accountable supervisor for September, October,

24 November and up until he was dismissed, do you have

25 any indication of your notes of providing Mr. Jack

 - 51 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 with a positive documentation or a reflection on his

 2 evaluation report?

 3 A. In my notes, no. In the

 4 evaluations, I don't know.

 5 Q. We will address them, but those

 6 evaluations were done by Nie, correct?

 7 A. Correct.

 8 Q. And according to your duties of the

 9 performance and conducts guidelines report you're

10 familiar with...

11 A. I am.

12 Q. ...that one of your duties are to

13 review the performance evaluations, right?

14 A. Correct.

15 Q. And that is because you are his

16 accountable supervisor, right?

17 A. Correct.

18 Q. Jack's. I'm going to show you a

19 copy of tendered Exhibit 61, which is performance

20 evaluation 10 for that period, October 16, 2009.

21 MS. SINGH: Mr. Vice-Chair, I'm just

22 mindful of your ruling about...

23 THE VICE-CHAIR: I understand that, but

24 I'm going to...

25 MR. TAPP: Yes, yes, it's particular.

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 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: ...just for this

 2 particular point.

 3 MR. TAPP: Yes, yes.

 4

 5 BY MR. TAPP:

 6 Q. Okay. Would you agree...first

 7 before you leaf through that, Mr. Butorac, can you

 8 identify the report period for that month

 9 evaluation, please?

10 A. It's a four-month for month 10,

11 starting on the 9th of October, ending on the 9th of

12 November.

13 Q. So October 16th e-mail ought to at

14 least be in there, if it is, correct?

15 A. It would fall between that time

16 period, yes.

17 Q. Thank you. Can you leaf through

18 that document, look at it, and see if you find any

19 documentation reflecting this e-mail?

20 A. I do not see it in the document.

21 Q. Thank you, Mr. Butorac. Now, and

22 for the record, this e-mail was withheld by the

23 respondent. That's why on the top of that e-mail

24 you see in bold print "Jack, Michael" because it was

25 printed by Mr. Jack, and kept on his personal drive.

 - 53 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 MS. SINGH: Mr. Vice-Chair, I have no

 2 knowledge about this, and that is of

 3 concern. Mr. Jack is supposed to...

 4 THE VICE-CHAIR: I am disregarding that.

 5 First of all, you're not a witness.

 6 MR. TAPP: Okay.

 7

 8 BY MR. TAPP:

 9 Q. You're familiar with how things are

10 printed, correct, by printing documents and working

11 at the detachment, Mr. Butorac?

12 A. Yes.

13 Q. Seeing Mr. Jack's name on top of

14 that e-mail in bold print, is it not indicative of

15 him preparing and printing that document?

16 A. Yes.

17 Q. Thank you. That was a substantial

18 drug seizure, correct, in your honest opinion?

19 A. Two thousand is a larger number.

20 Q. Very good. Mr. Jack was on

21 probation, and you would agree that...I'm not asking

22 you what Mr. Nie did, but you would agree that would

23 have been nice to see in that evaluation report?

24 A. It certainly would have.

25 Q. Thank you. Would you agree that Mr.

 - 54 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Jack is a person that has certain protected grounds

 2 under the Ontario Human Rights Code?

 3 A. That every person does, yes.

 4 Q. Every person, but would you agree

 5 that Mr. Jack, from the way he speaks and knowing

 6 his background, is...

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

 8

 9 BY MR. TAPP:

10 Q. Would you agree that Mr. Jack is a

11 marginalized individual?

12 MS. SINGH: Mr. Vice-Chair, we have had

13 your ruling before on the same question

14 that was put to a prior witness.

15 MR. TAPP: Okay, okay.

16

17 BY MR. TAPP:

18 Q. Is Mr. Jack a minority in your eyes?

19 A. No.

20 Q. No. What makes you say he is not a

21 minority?

22 THE VICE-CHAIR: I don't understand what

23 significance that has, that he is a

24 minority.

25

 - 55 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. All right. Now, you testified that

 3 when counsel asked you of the term "Crazy Ivan",

 4 your response was no, you have no knowledge of it?

 5 A. Yes.

 6 Q. Correct, but by virtue of your

 7 absence for the entire year and coming back in

 8 September, you cannot truly say that it may or may

 9 not have been used in your absence?

10 A. That's not the question I responded

11 to, I believe.

12 Q. No, no, you don't...I'm asking you

13 that.

14 MS. SINGH: Mr. Vice-Chair, he can only

15 answer...the witness can only answer as to

16 his recollection and his observations.

17 THE VICE-CHAIR: Okay, fair enough.

18

19 BY MR. TAPP:

20 Q. You have had other probationers on

21 your shift in the past, haven't you, Mr. Butorac?

22 A. Yes.

23 Q. Thank you. Have you had monthly PR

24 meetings with them every month?

25 A. I'm sorry, monthly?

 - 56 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Q. Monthly performance evaluation

 2 report meetings with them.

 3 A. No, not out of regularity.

 4 Q. Okay, but you have had performance

 5 evaluation report meetings with those recruits?

 6 A. Yes.

 7 Q. Okay. We have seen and tendered

 8 exhibits for the first eight evaluations before.

 9 Now, what strikes me is this performance evaluation

10 report 10, okay, if you flip over to page 11, you

11 see an evaluation meeting section at the very top.

12 A. Yes.

13 Q. It calls for employee's signature?

14 A. Yes.

15 Q. Okay, and the date of that is 18th

16 of November, 2009?

17 A. Yes.

18 Q. I'm going to suggest that that date

19 and when was disclosed is within the guidelines of

20 the performance conduct evaluation report

21 guidelines.

22 A. Are you telling me that or asking...

23 Q. The disclosure of that, I'm going to

24 suggest, it is congruent with those guidelines?

25 MS. SINGH: Is there a question?

 - 57 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: What is the question?

 2

 3 BY MR. TAPP:

 4 Q. Okay. Can you look at those three

 5 printed statements? I want to direct your attention

 6 to those three boxes over there.

 7 THE VICE-CHAIR: Is there an extra copy

 8 of that around?

 9 MR. TAPP: Yes.

10 THE VICE-CHAIR: I'm sure I have it

11 somewhere in these papers.

12 MR. TAPP: I don't need this.

13 THE VICE-CHAIR: I just need it for...

14 MR. TAPP: We haven't had the chance to

15 enter it as an exhibit. Here is one.

16

17 BY MR. TAPP:

18 Q. Okay. Now, what strikes me odd, Mr.

19 Butorac...I mean, and what stands out in my mind,

20 that this one, as in number 9, has hand stroke X

21 marks in those boxes. Would that have been you, Mr.

22 Butorac, having the meeting, concurring that you

23 addressed those three points with him?

24 A. You mean versus computer generated?

25 Q. Yes, yes.

 - 58 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. Yes, it does.

 2 Q. Thank you, okay. So by hand marking

 3 those boxes, are you trying to suggest that you did

 4 meet the requirements of each of those statements?

 5 A. I don't know that I presented this

 6 evaluation to him.

 7 Q. That's fine, but looking at those

 8 boxes, and seeing hand checkmarks...

 9 A. X marks.

10 Q. ...those X marks in those boxes, as

11 opposed to computer generated?

12 A. I'm sorry, I lost the question.

13 Q. Seeing those three boxes and seeing

14 handwritten X marks, okay, and as his accountable

15 supervisor, aware that you are responsible for

16 regular performance evaluation meetings with him,

17 would that be...those hand marked Xs, would that be

18 suggestive that those three statements have been

19 complied with?

20 A. Usually I would do it with a

21 computer if I was creating the evaluation, but

22 sometimes they are preprinted on by the member, in

23 this case, a coach officer printing it.

24 Q. Okay. Do you know who was running

25 your platoon prior to your return in September?

 - 59 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. I don't recall.

 2 Q. Thank you. Is Constable Jason

 3 Postma on your platoon, or was he on your platoon in

 4 2009?

 5 A. I don't recall. He may have been.

 6 Q. Maybe you can check your notes if

 7 you have an indication.

 8 A. Do you have a time period?

 9 Q. Yes, September, 2009. Somebody was

10 acting in your place as acting sergeant, correct?

11 A. Right. However, as I stated, I

12 returned to work in...Wednesday the 9th of

13 September. So prior to that, I don't recall.

14 Postma doesn't sound incorrect, but I wouldn't swear

15 to that.

16 Q. Fair enough, thank you.

17 A. I just don't recall who it was, but

18 I do know he spent time acting.

19 Q. Thank you. Were you aware that

20 Constable Nie and Mr. Flindall were next door

21 neighbours?

22 A. Yes.

23 Q. Thank you. Were you aware that your

24 platoon was the laughingstock of the detachment

25 because of Mr. Jack's transfer?

 - 60 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. No.

 2 Q. Thank you. Now, you are going to

 3 get a copy of Exhibit 46. It's a notice of internal

 4 complaint that I believe you served on Mr. Jack.

 5 Refer to your notes of September 23rd, please.

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

 7 has already given evidence that he does not

 8 have an understanding or a recollection of

 9 anything about this complaint. So...

10 MR. TAPP: Once again, Mr. Vice-Chair,

11 counsel's objection is premature because

12 she does not know what I'm going to ask.

13 Thank you.

14 THE VICE-CHAIR: Let's keep moving

15 along.

16 MR. TAPP: Yes, I want to, and every

17 time she jumps up, I'm getting stalled.

18

19 BY MR. TAPP:

20 Q. Do you recall serving that document

21 on Mr. Jack? Maybe your notes reflect it.

22 A. I'm sorry, but this document here, I

23 cannot see where it actually says the number of the

24 complaint. Oh, yes, I do now. It's smaller than I

25 can really see, but it's in the top right corner, I

 - 61 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 believe 173. My note does...my notebook does

 2 indicate that at 6:10 p.m. on September 23rd I did

 3 serve him with this notice of complaint.

 4 Q. Okay, thank you. I want you to read

 5 where it says...direct your attention...you

 6 certainly didn't get that document and not look at

 7 it, and go, "Here." No, you had to look at that

 8 document, right?

 9 A. Right.

10 Q. Good. Read what it says "Summary of

11 complaint", please.

12 A. "...It is alleged you have been

13 associating with undesirables..."

14 Q. Thank you. I want your honest

15 opinion now. What opinion did you form when you saw

16 that word "associating with undesirables", Mr.

17 Butorac?

18 A. I immediately wondered what the

19 incident was about.

20 Q. Thank you very much. Did seeing the

21 word "undesirables" cause you some concern, please?

22 A. My opinion would be yes, it would

23 be.

24 Q. Thank you. It would be because of

25 what, Mr. Butorac?

 - 62 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. Well, one of the requirements of

 2 police officers is that we do not associate with

 3 undesirables. However, the expectation is that

 4 undesirables are people with criminal records.

 5 That's what the Act actually states.

 6 Q. Don't you think the term

 7 "undesirables" is derogatory?

 8 A. I would say so, yes.

 9 Q. Thank you very much. Would the

10 term, in your opinion, the term "undesirables" be

11 congruent with the Human Rights Code?

12 A. No, I do not.

13 Q. Thank you very much. Did you tell

14 Mr. Jack when you served it on him now, it's

15 embarrassing to get this document? You may or may

16 not recall, but do you recall telling Mr. Jack that?

17 A. I don't, no.

18 Q. You don't know?

19 A. I don't recall.

20 Q. You don't recall, okay. Upon

21 serving him that notice of internal complaint, did

22 you not tell Mr. Jack, "You have clouds over your

23 head," Mr. Butorac?

24 A. We may have had that conversation,

25 but the words used, I don't know.

 - 63 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Q. Thank you very much.

 2 A. It has been eight years.

 3 Q. Now, you also have...do you recall

 4 sharing a copy of Mr. Jack's PER, performance

 5 evaluation report, 8 with him?

 6 A. Would that have been one written by

 7 the previous platoon?

 8 Q. Yes.

 9 A. I don't know that I have a note of

10 that.

11 Q. Well, I'm going to suggest that,

12 looking at your copy of your notes that we have...

13 A. Yes, I...

14 Q. ...I don't see any indication.

15 A. Oh, you don't? Okay.

16 Q. Okay, I direct your attention...

17 A. I have...excuse me. I have a note

18 on the 24th of September that I met with Constable

19 Jack and Nie and Constable Jack was presented his

20 last evaluation from Flindall...

21 Q. Thank you.

22 A. ...from Flindall's shift, Filman,

23 Constable Filman.

24 Q. Okay, so do you have it. Does that

25 help refresh your memory, those notes?

 - 64 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. Only insofar as I served...he was

 2 served that document.

 3 Q. Okay. How...do you recall how you

 4 gave it to him, like, was it in the...for instance,

 5 like in an envelope to give it to him?

 6 A. I honestly don't recall.

 7 Q. Okay.

 8 A. My notes continue, though, that...

 9 Q. Yes, we have them blacked out. So

10 go ahead.

11 A. He was asked to sign it, and wanted

12 to attach a rebuttal.

13 Q. But?

14 A. But the evaluation was already gone

15 or I couldn't find it. That's what I referred to

16 earlier on in the tribunal this morning, and so I

17 told him to get the rebuttal and we would attach it,

18 and that is, I believe, the e-mail from earlier on

19 from staff sergeant...yes, the first document the

20 tribunal presented me with here, 25th September.

21 No, I'm sorry, that's not the one. There was a

22 rebuttal that was attached.

23 Q. Yes, but I'm going to suggest that

24 rebuttal was for months six, seven evaluation, and

25 not month eight.

 - 65 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. Okay. I don't know.

 2 Q. You don't know?

 3 A. I don't know.

 4 Q. Thank you. I'm going to show you an

 5 e-mail you're going to be getting from you to Kathy

 6 Chapman, okay. First of all, on the very top in

 7 bold print it says "Peter Butorac"?

 8 A. Yes.

 9 Q. Okay. So that would be involving

10 you, correct?

11 A. Yes.

12 Q. Okay, good. So I direct your

13 attention to page 1, the bottom e-mail, from Peter

14 Butorac.

15 A. No, that's from Constable Nie to me.

16 Q. Yes, but you are making...you are

17 then forwarding it by adding your comments, and that

18 forms that e-mail.

19 A. Right, so my comments are the first

20 five lines at the top.

21 Q. Yes, yes, that's right, okay. So

22 read out who is it from, those first five lines, and

23 who it is being sent to, and the date. It says

24 "From".

25 A. Yes, this is a little confusing.

 - 66 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Just bear with me for a minute.

 2 Q. Not at the very top, with respect to

 3 your five lines above Nie's e-mail.

 4 A. "...Rich, thanks for advising. Rob,

 5 you can review, please, prior to being

 6 presented to Jack..."

 7 So this is the inspector, Mike Johnston, replying to

 8 Rich.

 9 Q. And read your e-mail immediately

10 below that, please.

11 A. "...Inspector [This is referring to

12 Mike Johnston.] I spoke to Ron yesterday

13 about the issues in this evaluation. He

14 suggested I send back to you to give Rob

15 and Colleen. If she already has approved

16 as such, we will serve. I just wanted to

17 ensure that everything was as it should be.

18 Rich did bring up good points..."

19 Q. Okay. Now, you see that you

20 forwarded him making...appending your comments to

21 Nie's e-mails. You are making Kathy Chapman and

22 Inspector Johnston aware of Nie's e-mail below

23 yours?

24 A. Yes.

25 Q. Good, okay. You see specifically

 - 67 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 what report month and what performance evaluation is

 2 being addressed here? Look at:

 3 "...Pete - I was just reviewing the eighth

 4 month report..."

 5 Read the report month?

 6 A. Yes, eighth month, 9th August to

 7 September 9th.

 8 Q. So there is no question it was in

 9 reference to performance evaluation 8?

10 A. Yes.

11 Q. Correct?

12 A. Yes.

13 Q. Now, I ask you is it not true that

14 one of the issues you were referencing about the

15 issues in this evaluation was the fact that when Mr.

16 Jack opened it up he saw the word "refused" in place

17 of his signature?

18 A. I don't recall that.

19 Q. Thank you.

20 A. I don't recall that. I know there

21 was an evaluation that said "refused" on it. I just

22 don't recall his response.

23 Q. Okay. You made notes about this.

24 Do you recall Mr. Jack refusing to sign his month 8

25 evaluation?

 - 68 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. No, I don't have a note that he

 2 refused.

 3 Q. Thank you. If he did, you would

 4 agree that it would be noteworthy to mention, or at

 5 least make a one-line entry in your notes?

 6 A. It would be reasonable. Whether I

 7 would write it down, I don't know.

 8 MR. TAPP: I ask that this two-page

 9 document be marked as the next exhibit,

10 please.

11 THE VICE-CHAIR: Just give me a moment

12 please.

13 MR. TAPP: Yes, certainly. Mr. Vice-

14 Chair, I'm mindful of the time. We are

15 condensing our questions greatly in light

16 of the restrictions. I'm going to suggest

17 this be an appropriate time for a very

18 brief recess before we close.

19 THE VICE-CHAIR: Well, we need to take a

20 break. So that's Exhibit 216.

21

22 --- EXHIBIT NO. 216: E-mail exchange between Messrs.

23 Johnston, Butorac, et al., dated

24 September 20, 2009

25

 - 69 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: So we'll take a 10

 2 minute break.

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

 4

 5 --- upon recessing at 11:15 a.m.

 6 --- A BRIEF RECESS

 7 --- upon resuming at 11:28 a.m.

 8

 9 PETER JAMES BUTORAC, resumed

10 CONTINUED CROSS-EXAMINATION BY MR. TAPP:

11

12 Q. I think we were in the area of the

13 Professional Standards Bureau complaint against Mr.

14 Jack, correct?

15 A. Yes.

16 Q. Now, are you aware or do you recall

17 the outcome of that investigation, Mr. Butorac?

18 A. No.

19 Q. Thank you. Do you recall Mr. Jack

20 telling you the outcome of that investigation?

21 A. I'm sorry, I don't recall.

22 Q. Thank you. Now, were you aware that

23 Mr. Jack was charged by Sergeant Flindall under the

24 Highway Traffic Act?

25 A. I am not.

 - 70 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Q. You're not?

 2 A. I don't recall.

 3 Q. You don't recall. Thank you. From

 4 your time as a supervisor and from your time as a

 5 police officer, do you recall incidents of officers

 6 executing their duties even while they were off

 7 duty?

 8 A. Yes.

 9 Q. Thank you. Do you recall that often

10 police officers when off duty even make arrests?

11 A. I wouldn't say often, but on

12 occasion.

13 Q. On occasion, correct. Sometimes

14 those arrests do make public news?

15 A. I imagine they could.

16 Q. Okay. Can I ask you to refer to

17 your notes of November 5th, 2009, please?

18 A. 5th you said or 15?

19 Q. You may or may not have any

20 documentation there.

21 A. Neither for the 5th nor the 15th my

22 notes are very clear.

23 Q. Thank you. So around that time do

24 you recall having a meeting or discussing something

25 with Staff Sergeant Campbell regarding Mr. Jack's

 - 71 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 stopping a vehicle off duty?

 2 A. I may have, but I don't recall.

 3 Q. Would you have had a meeting with

 4 Staff Sergeant Campbell about Mr. Jack stopping a

 5 vehicle while in an unmarked cruiser returning from

 6 driver training?

 7 A. I'm sorry, I don't recall.

 8 Q. Thank you. Do you recall talking to

 9 Mr. Jack extensively about his stopping of a...

10 MS. SINGH: Asked and answered, sir.

11 MR. TAPP: Okay.

12

13 BY MR. TAPP:

14 Q. Now, do you have a copy of a witness

15 summary that was prepared for you? It's in shaded

16 print. I'm not going to ask you questions about it,

17 don't worry.

18 A. Are you referring to what was

19 already presented earlier?

20 Q. Yes, there is a notation, at least

21 in the documentation we have. Do you have any notes

22 for December 14, 2009, Mr. Butorac? I'm going to

23 show you this two-page document. I asked you

24 earlier...this was not prepared by you. This was

25 prepared by the respondent...

 - 72 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. Yes, I have that.

 2 Q. ...regarding information you

 3 provided, okay. Page 2 at the very bottom.

 4 MS. SINGH: Can I have a copy of

 5 whatever you are showing...

 6 MR. TAPP: Witness summary. You

 7 provided it to us.

 8 MS. SINGH: Are we talking about this

 9 witness summary document?

10 MR. TAPP: Yes, it's not an exhibit,

11 but...we're going to see if we have another

12 copy.

13 MS. SINGH: Oh, I have a copy.

14 MR. TAPP: Okay, good.

15

16 BY MR. TAPP:

17 Q. Just page 2 of that document,

18 please, at the very last. The questions I have are

19 in relation to that last comment. Can you read that

20 last line, please?

21 A. "...Sergeant Butorac presented Mr.

22 Jack with an evaluation of December 14th

23 '09..."

24 Q. So could you refer to your book for

25 that date, please?

 - 73 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. December 14th was a rest day.

 2 Q. Rest day, thank you, all right.

 3 That's enough. Do you have a copy of evaluation

 4 report 11 before you?

 5 A. No, I believe just 10.

 6 Q. Just 10, okay, we're going to give

 7 you our copy. I believe it has been entered as an

 8 exhibit, Mr. Vice-Chair. We're looking it up.

 9 Exhibit 64, please.

10 A. Yes.

11 THE VICE-CHAIR: It is 64.

12

13 BY MR. TAPP:

14 Q. So can you identify performance

15 evaluation report before you, what period does it

16 cover, please?

17 A. It's report eleventh month, from 9th

18 of November to the 9th of December.

19 Q. Thank you. Can you read your

20 comments on page, I think, 11 or 12, please?

21 A. "...Accountable supervisor's

22 comments..."

23 Q. Yes.

24 A. "...I am disappointed to see the

25 limited improvement, despite Constable

 - 74 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Jack's willingness and eagerness to

 2 succeed. Despite his efforts, he seems

 3 unable to defeat these hurdles..."

 4 Q. Your signature and date, please?

 5 A. My signature and 14th of December.

 6 Q. Thank you, but you said you were off

 7 duty. Your notes reflect that, correct?

 8 A. That's right. It was the 13th of

 9 December in my notebook.

10 Q. 13th, but were you working on the

11 14th?

12 A. No.

13 Q. Thank you. On December 13th do you

14 recall driving Mr. Jack to City of Kawartha Lakes

15 detachment in Lindsay?

16 A. Yes, I have noted that.

17 Q. You have noted that. That would

18 have been...according to your notes, you were off

19 duty, but you were asked to perform a specific

20 function. Would it...would you have been on duty to

21 drive him to the...

22 A. Yes, I was.

23 Q. Thank you.

24 A. I was working on the 13th.

25 Q. The 13th, okay, but not the 14th,

 - 75 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 right?

 2 A. According to my notes, no.

 3 Q. Thank you. Did you know beforehand,

 4 while driving him to the detachment, Lindsay

 5 detachment...I say Lindsay detachment, but it's City

 6 of Kawartha Lakes. Where is that detachment?

 7 A. One and the same.

 8 Q. Thank you.

 9 A. In Lindsay.

10 Q. Now, while you were driving him,

11 that drive must have been...how long would it have

12 been, put it that way?

13 A. It's about a 45-minute drive.

14 Q. Thank you. You would agree 45

15 minutes...oh, did you drive him in a cruiser or an

16 unmarked car?

17 A. I don't have note of that. I have a

18 vehicle listed. I don't recall what it was, what

19 characteristics it is.

20 Q. Would Mr. Jack have been in uniform?

21 A. I don't recall that either, but I

22 would...no, I would be speculating. I don't

23 remember.

24 Q. But you said you were on duty on the

25 13th?

 - 76 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 A. I was, yes.

 2 Q. So if he was working he would have

 3 to be in uniform, correct?

 4 A. That's normal protocol, yes.

 5 Q. Thank you. So in the 45-minute

 6 drive, were you all entirely silent or was there

 7 conversation?

 8 A. I have no notes of any conversation,

 9 but it wouldn't be like me to be totally silent for

10 45 minutes.

11 Q. Thank you. On the drive over there,

12 were you aware what was going to happen?

13 A. Yes.

14 Q. Thank you. Did you try to inform

15 Mr. Jack beforehand?

16 A. I do not believe I did, no.

17 Q. Thank you. Do you believe that you

18 would have had a duty to disclose some concerns to

19 him beforehand?

20 A. Concerns about?

21 Q. He was going...you knew he was going

22 to be served a notice of a proposed termination of

23 his employment, correct?

24 A. Yes.

25 Q. Yes, and that would be concerning to

 - 77 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Mr. Jack, correct?

 2 A. Yes, it would be.

 3 Q. Okay. Do you believe you had a duty

 4 to at least discuss any concern?

 5 A. Well, sometimes with rank structure,

 6 it may be my feeling that I should, but if you are

 7 directed otherwise, then you don't. I don't recall

 8 the...

 9 Q. So were you directed otherwise not

10 to discuss it with him?

11 A. That's what I don't recall.

12 Q. Were you present...who did you

13 present Mr. Jack to over there?

14 A. It was Acting Inspector Reynolds.

15 Q. Okay. Were you present during a

16 discussion between Inspector Reynolds and Mr. Jack?

17 A. I don't recall if I was.

18 Q. Okay. Do you know the outcome of

19 that meeting?

20 A. I don't know the outcome of that

21 meeting.

22 Q. Well, was Mr. Jack given a sheet of

23 paper?

24 A. He was given a sheet of paper, yes.

25 Q. And do you know what that sheet of

 - 78 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 paper was?

 2 A. I think he shared that with me. I

 3 don't recall though.

 4 Q. Thank you. I'm going to suggest he

 5 did talk to you about that sheet of paper in that

 6 45-minute drive back. Am I correct?

 7 A. It's possible, yes.

 8 Q. Thank you. I'm going to suggest

 9 that during this drive back you did share with Mr.

10 Jack words to the effect that if he had kept quiet

11 during his probationary time with his first coach

12 officer, things would have been different. Would I

13 be right in saying that or wrong, Mr. Butorac?

14 A. I cannot say either way. I don't

15 recall.

16 Q. Thank you. Did you understand

17 December 13th, 2009 that the decision had already

18 been made, and that Mr. Jack was going to be

19 terminated?

20 MS. SINGH: Asked and answered.

21 MR. TAPP: Okay.

22

23 BY MR. TAPP:

24 Q. You would agree that during that 45-

25 minute drive Mr. Jack displayed considerable

 - 79 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 emotional stress to the extent that you allowed him

 2 to take time off?

 3 A. I have a note here that he opted to

 4 remain at the detachment and start doing his

 5 rebuttal letter. I do remember that he was upset

 6 and that I offered him to go homes, yes.

 7 Q. Thank you, Mr. Butorac. Now, I'm

 8 also going to suggest that you did tell Mr. Jack at

 9 that time words to the effect that the OPP could

10 only do this so long until somebody took them to

11 task.

12 A. I don't recall. I'm sorry.

13 Q. Thank you, or somebody with a lot of

14 money took them to court?

15 A. Similarly, I don't recall.

16 Q. Okay. Now, last of all, and while

17 looking at the time, Mr. Butorac, during your

18 performance evaluation report meetings with Mr.

19 Jack, specifically 9, 10, 11, do you recall...when

20 Mr. Nie was present, do you recall commending Mr.

21 Jack on his extreme detail, thoroughness and

22 neatness of his accident reports?

23 A. I do recall that, yes.

24 Q. Thank you very much, Mr. Butorac.

25 Now, do you recall at least at that time, looking at

 - 80 - P.J. Butorac

 Cr-Ex (L. TAPP)

 1 Mr. Nie, and saying, "Sorry, Mr. Nie, these are the

 2 best at the detachment"?

 3 A. I don't recall that being the

 4 comment verbatim.

 5 Q. At least these are the best you have

 6 seen at the detachment?

 7 A. Yes, it's likely I said that, yes.

 8 MR. TAPP: Thank you very much, Mr.

 9 Butorac. Mr. Vice-Chair, thank you. Those

10 are all the questions for cross.

11 THE VICE-CHAIR: Thank you very much.

12 Counsel?

13 MS. SINGH: No questions in re-

14 examination.

15 THE VICE-CHAIR: Thank you, sir.

16 THE WITNESS: Thank you.

17 MR. TAPP: Can we just go off the record

18 for a second?

19 THE VICE-CHAIR: Yes, let's go off.

20

21 --- DISCUSSION OFF THE RECORD

22

23 THE VICE-CHAIR: Would you please state

24 your name for the record?

25 MS. PAYNE: Yes, Jennifer Payne.

 - 81 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 THE VICE-CHAIR: Ms. Payne, you are

 2 about to give evidence before the Human Rights

 3 Tribunal, and the tribunal is dependent on you

 4 telling the truth. Do you solemnly affirm to tell

 5 the truth?

 6 MS. PAYNE: Yes, I do.

 7 THE VICE-CHAIR: And do you appreciate

 8 it's an offence at law if you break that promise?

 9 MS. PAYNE: Yes, I do.

10 THE VICE-CHAIR: Thank you very much.

11 Counsel?

12

13 EXAMINATION-IN-CHIEF BY MS. SINGH:

14

15 Q. Constable Payne, how long have you

16 been employed with the OPP?

17 A. Since December of '98, so roughly 17

18 years.

19 Q. What rank do you presently hold?

20 A. Constable.

21 Q. What rank did you hold in 2009?

22 A. Constable.

23 Q. When did you join the Peterborough

24 detachment?

25 A. October of 2002.

 - 82 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 Q. Where were you assigned before 2002?

 2 A. I was in the Owen Sound cluster.

 3 It's called North Grey detachment.

 4 Q. Did you start there?

 5 A. Yes, I did.

 6 Q. Do you recall what platoon you were

 7 assigned to in 2009?

 8 A. A platoon.

 9 Q. Platoon A?

10 A. Yes.

11 Q. And who was the supervising

12 sergeant?

13 A. Sergeant Flindall.

14 Q. The events that we're talking about

15 occurred almost...or you know, eight years ago. As

16 a police officer you would have made notes of the

17 events as they happened?

18 A. That's correct.

19 Q. And did you do your best to make

20 sure that your notes were accurate?

21 A. Yes, I did.

22 Q. And did you record in your notes

23 anything that seemed important or things that seemed

24 important to you at the time?

25 A. Yes, I did.

 - 83 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 Q. And is your memory of the events

 2 better or worse at the time of making your notes?

 3 A. I'm sorry?

 4 Q. Is your memory better or worse at

 5 the time of making your notes than it is today?

 6 A. Better at the time making my notes.

 7 MS. SINGH: Mr. Vice-Chair, I would ask

 8 that this witness be permitted to refresh

 9 her memory through use of her notes while

10 giving her evidence.

11 THE VICE-CHAIR: Of course.

12

13 BY MS. SINGH:

14 Q. Constable Payne, when did you first

15 hear about Jack?

16 A. Before January of 2009. I'm not

17 sure what month.

18 Q. Do you recall what you heard?

19 A. I had heard that he had gone on a

20 ride-along with another member at the detachment and

21 that when the...that member showed up to pick him up

22 he had no shirt on, and that he asked the officer to

23 come in and see his collection of firearms.

24 Q. Do you recall who told you that?

25 A. I know the officer was Mark

 - 84 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 Gravelle...

 2 Q. Yes.

 3 A. ...that he went on the ride-along

 4 with, but I'm not sure if that came from him or

 5 another person.

 6 Q. And what did you make of this rumour

 7 about his ride-along?

 8 A. I kind of thought it odd in the

 9 sense that, you know, we have numerous people in

10 our...numerous civilians that come for ride-alongs

11 in our organization, and I had never heard of that

12 before, that type of behaviour with, you know, the

13 officer arriving on scene, and he is shirtless, and

14 asking him to see the gun collection. It was odd.

15 Q. Did you hear the nickname "Crazy

16 Ivan"?

17 A. I did.

18 Q. Do you recall where you heard it or

19 who...

20 A. No, I do not.

21 Q. Did you hear it more than once?

22 A. I don't think so, no. I'm not sure

23 if it was at...there was a briefing that Sergeant

24 Flindall held, and I'm not sure if I was there, and

25 if I heard it there, or if I heard it before he even

 - 85 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 came to the detachment. I don't recall. It has

 2 been so long.

 3 Q. Did people refer to Jack as Crazy

 4 Ivan at the detachment?

 5 A. Not that I recall.

 6 Q. Were you assigned to become Jack's

 7 first coach officer?

 8 A. Yes, I was.

 9 Q. Are you qualified to be a coach

10 officer?

11 A. Yes, I am.

12 Q. Do you have experience as a coach

13 officer?

14 A. Yes, I do.

15 Q. Did you become Jack's first coach

16 officer?

17 A. No, I did not.

18 Q. What happened?

19 A. I had an opportunity to...for a

20 secondment into the crime unit at the detachment,

21 and I applied and was accepted. So starting in

22 January I went into the crime unit.

23 Q. When did you first meet Jack?

24 A. I met Jack on January 12th of 2009.

25 Myself, Staff Sergeant Campbell and Michael Jack

 - 86 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 were going up for annual block training in

 2 Gravenhurst, and that is a four-day period of time

 3 that is a refresher and requalification for all

 4 members that are on the road. So every year you go

 5 for this training.

 6 Q. And was it unusual that a

 7 probationary constable would be going for block

 8 training?

 9 A. Yes.

10 Q. Did you know why he was going to

11 block training with you? It's a refresher you

12 mentioned.

13 A. It is a refresher for senior members

14 or members that aren't on probation. It was odd

15 that he was on probation and going, yes. I don't

16 think I knew too much about why, but just that there

17 were some issues that needed to get sorted out, and

18 they were trying to get rectified at the block

19 training.

20 Q. What was your impression of Jack at

21 block training?

22 A. He was very nice, personable. We

23 had conversations. I was interested in his

24 background and where he came from. We...the

25 training took place in Gravenhurst at the...by our

 - 87 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 college, and I remember having conversations with

 2 him down in the lunchroom, cafeteria, and I don't

 3 recall the details of those conversations now, but I

 4 remember hearing about his background and where he

 5 came from. Based on that, I thought, "Wow, this guy

 6 is going to be a good asset for the OPP," and then,

 7 you know, training continued.

 8 There was one time that night...I don't

 9 know if it was that night or one of the nights we

10 were, there was an incident that...I don't know how

11 I felt about it then, but I made different

12 assumptions later on.

13 I don't know how we came on the topic of

14 it, and I am not even sure if Staff Sergeant

15 Campbell was there, but...and I'm sure I asked him

16 to do it, but he got up on the table and did

17 handstand pushups.

18 So...it's just not something that someone

19 would normally do, but I don't know if I asked him

20 or I don't know if he said, "Yes, I can do this,"

21 and...but it was just something that I observed.

22 Q. What did you think of him doing

23 this?

24 A. Well, for one, I was worried about

25 his safety on the table, but I...at first I didn't

 - 88 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 think anything of it really. It wasn't until other

 2 things happened that I kind of went back to that,

 3 and then assimilated other feelings or thoughts to

 4 it later on.

 5 Q. Okay. We'll get back to that. What

 6 would you like to tell us now, later on, what you

 7 made of it upon reflection?

 8 A. Well, just an accumulation of

 9 everything else that I had seen with him, I found it

10 like he was showing off, and you know, while wanting

11 to impress but showing off, and that's about it.

12 Q. Okay. After block training when did

13 you next meet Jack?

14 A. After block training I was in

15 uniform those four days. I went back into the crime

16 unit and I would have seen him in passing at the

17 office, but I don't recall a specific, you know,

18 meeting with him.

19 I was back in a back office. He was on

20 the road in patrol, and so I don't recall seeing or

21 having any interaction with him until later.

22 Q. When did you return to the

23 detachment from your secondment to the crime unit?

24 A. That was...the beginning of June.

25 I'm not sure of the exact date. Do you want the

 - 89 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 exact date?

 2 Q. No, that's fine. So June, 2009?

 3 A. Yes.

 4 Q. And did you have a conversation with

 5 your...who was your supervising sergeant when you

 6 returned to the detachment?

 7 A. Rob Flindall.

 8 Q. And did you have a conversation with

 9 your supervising sergeant about Jack when you

10 returned?

11 A. Yes, I did, before my return

12 actually.

13 Q. Before your return?

14 A. Yes.

15 Q. Can you tell us what that

16 conversation was?

17 A. I believe Shaun Filman was there as

18 well, and...but I'm not sure, but it's quite

19 possible that he was there. They asked me if I

20 would be willing to be a mentor for Jack, someone

21 else that he could go to to ask questions, you know,

22 advice, get direction from.

23 I know that, you know, that he had...Rob,

24 the sergeant, had felt he was being inundated with

25 calls from...not calls, but questions from Michael,

 - 90 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 and they just wanted to give him somebody else on

 2 shift besides Shaun and Rob to go to.

 3 Q. Did you see that as a positive thing

 4 for Jack?

 5 A. Absolutely, absolutely, yes.

 6 Q. And were you happy to take that role

 7 on?

 8 A. I had enough stuff going on in my

 9 life, and I was switching, you know, from crime unit

10 to the road again, and I was happy to do it. There

11 was a little bit of hesitation at first, but I

12 wasn't going to not do it, and I was not going to do

13 it without my full ability.

14 Q. And what exactly were your

15 responsibilities as a second mentor to Jack? Was

16 there a discussion about that?

17 A. Basically, just I knew that he

18 needed help with his task list and organizing his

19 to-do list with things that prioritize his list of

20 things that needed to get done. I know there was a

21 couple of investigations that he was working on that

22 he needed help with, and that is part of the task

23 list and giving him some direction in those

24 investigations as to the next steps to take, and be

25 there for him if he ever came to me with any

 - 91 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 questions to help him.

 2 Q. And how would it work? Did Sergeant

 3 Flindall explain how it would work between you and

 4 Coach Filman?

 5 A. Shaun was still the coach, and I was

 6 just someone else there as a second person.

 7 Q. Okay. Was there any conversation

 8 about how you would play into the performance

 9 evaluations?

10 A. There would obviously be input. I

11 don't know about an exact conversation at the very

12 beginning about that, but there was

13 obviously...because I had direct contact with him

14 and was helping him with certain things, that I was

15 going to have input into those evaluations.

16 Q. Did Jack have his day and night

17 wings at the time that you became his go-to mentor?

18 A. Yes.

19 Q. And did he patrol with you from the

20 time that you started on the shift?

21 A. Yes and no. We...so we have four

22 zones in the county, and in the month of June, I

23 think the first...my first weekend with...back at

24 the platoon was, like, the June 3rd, 4th, 5th

25 weekend, and it was a very busy weekend. I know I

 - 92 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 was in the same zone as Michael Jack and we were

 2 busy with calls.

 3 I know I didn't...I don't even think I got

 4 to speak with him about his task list or anything

 5 like that that weekend. I had some court coming up

 6 in the next week, and I had some leftover follow-up

 7 from the crime unit. So there were days that pulled

 8 me out of there, out of the zone that he was in.

 9 I was assigned to other zones, and I was

10 officer in charge a few times during that month

11 because there was no one else...you know, a sergeant

12 had called in sick and the 2IC was not there. So I

13 was the officer in charge.

14 So I put myself in a zone that was closer

15 to the detachment to be able to handle the stuff

16 that comes in that a supervisor would deal with.

17 Q. Yes.

18 A. But there was somebody in the zone

19 with him. So the first month there wasn't a lot of

20 contact between Michael and I, for the first month.

21 Q. Okay. After that, was there more

22 contact between you and Jack?

23 A. Yes.

24 Q. Could Jack reach you if he needed

25 help with anything?

 - 93 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 A. Yes.

 2 Q. Were you available to him?

 3 A. Yes, he had my cell number and he

 4 did call me.

 5 Q. Was that your personal cellphone?

 6 A. Yes.

 7 Q. And did he use it? Did he call you?

 8 A. He called me, yes, initially.

 9 Q. I'm showing you a document. It's

10 Exhibit 143. Can you identify it?

11 A. It appears to be a chronology with

12 entries involving Sergeant Campbell...sorry, Staff

13 Sergeant Campbell, Constable Filman, myself. It

14 looks like a summary of our input.

15 Q. Did you provide information for the

16 entries beside your name?

17 A. I did.

18 Q. And was the information that you

19 provided contemporaneous with the events?

20 A. Yes.

21 Q. Were the entries or the information

22 that you provided intended to be accurate?

23 A. Yes.

24 Q. Was your memory of the better or

25 worse than it is now at the time that you provided

 - 94 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 that?

 2 A. Better then.

 3 Q. Would the chronology assist you in

 4 giving your evidence to refresh your recollection as

 5 required?

 6 A. Yes.

 7 MS. SINGH: Mr. Vice-Chair, I would ask

 8 that this witness be permitted to refer to

 9 the chronology in giving her evidence, as

10 required.

11 THE VICE-CHAIR: That would be fine.

12

13 BY MS. SINGH:

14 Q. Do you recall, Constable Payne,

15 having an initial discussion with Jack about the

16 skills he would need to improve? I'm just directing

17 you to the chronology, July 13th.

18 A. Yes.

19 Q. And can you elaborate on what your

20 discussion was about which skills he would need to

21 improve?

22 A. So we had gone over his task list.

23 Q. Yes?

24 A. I am not...I can't quite...I'm not

25 certain at this point in time what actually was on

 - 95 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 his...the complete details of what was on his task

 2 list.

 3 I knew that Sergeant Flindall had wanted

 4 him working from...not from our office, but wanting

 5 him to work out of the satellite offices that we

 6 have in the county. So I made a list of some of the

 7 things that I wanted to deal with, to speak with him

 8 about.

 9 Those were time management skills, what I

10 called making mountains out of molehills for calls

11 for service. So smaller calls that were

12 investigated much bigger than they needed to be.

13 Q. Yes.

14 A. We needed to get him more vehicle

15 stops and more tickets. I noticed that there was an

16 issue with him getting his general occurrence

17 reports on in a timely fashion. I still wanted him

18 to come...I wanted to be clear again that he was to

19 come to me with questions and not to Sergeant

20 Flindall.

21 Then I noticed that he was shopping for

22 answers, discussing a case so many other people,

23 than just keeping it with...and sometimes that

24 becomes confusing, when you answer shop, because

25 people give differing opinions, and we kind of want

 - 96 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 to keep it...we don't want to confuse him too much.

 2 Like, if he gets direction from one person, and

 3 these are the steps he is to take, it's easier and

 4 more clear. Then again, the...out in the zone.

 5 Q. How did you know what skills Jack

 6 needed to improve?

 7 A. I knew from an initial...when I was

 8 asked to be his mentor, I was given some general

 9 ideas as to what some of the issues were, but I was

10 not given full disclosure as to what any of the

11 major issues were.

12 Q. Yes.

13 A. And in a sense for me to figure them

14 out my own, and if it was just...if it was something

15 that was actually going to continue to happen or it

16 was just an isolated thing or...so I knew that there

17 was issues with the time management with being in

18 the zone and not following the steps of...you know,

19 the direction that someone had given him, and

20 sometimes not stepping up to take responsibility for

21 something that was done. So...

22 Q. What does it mean to "be in the

23 zone"?

24 A. So the Peterborough County

25 detachment is divided into four zones.

 - 97 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 Q. Yes.

 2 A. For policing we would have officers

 3 in each zone, and they are responsible for the calls

 4 in their zones.

 5 Q. And was there an issue about not

 6 responding to calls within a zone that Jack had had?

 7 A. I think there had been in the past,

 8 yes.

 9 Q. Can you describe in a general way

10 what kind of coaching you provided Jack over the

11 next couple of months? Please feel free to look at

12 your note or the chronology if that is of

13 assistance.

14 A. Michael Jack and I had had a

15 conversation where, you know, he had come to me. He

16 wanted help with his task list. He wanted help with

17 a couple of investigations, and I said, "Absolutely.

18 We'll sit down and we'll do that."

19 Like I said, it didn't come first off,

20 because we were busy, and...but I caught up to it

21 and got into his list, and I gave him a list of

22 things to do.

23 Q. Yes.

24 A. And out of that list of things to

25 do, that one morning...and I'm just trying to figure

 - 98 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 out what morning that was.

 2 Q. Was that June 16th or 30th?

 3 A. I'm just going to...it's the on

 4 Bridgenorth where he didn't bring his documents.

 5 Q. Please take your time.

 6 A. Yes. So it was July 13th. So that

 7 morning I had given him a task list.

 8 Q. Yes.

 9 A. I believe it was a handwritten one

10 on a piece of paper, saying, "These are your

11 priorities. You have got to do this, this and this

12 for this occurrence," and so on and so forth.

13 I had asked him to bring this fraud brief

14 up to the Bridgenorth ESO. That's the extended

15 service office, community service office, and so I

16 gave him space to do the stuff that he needed to do.

17 We were to meet up later, and when I got there, he

18 didn't bring the brief with him, and the time that I

19 had set aside to sit down with him, we didn't...we

20 couldn't work on it because he didn't have the

21 documents with him.

22 Q. Did you think that he deliberately

23 forgot to bring the documents?

24 A. I don't know.

25 Q. Did you say anything to him about

 - 99 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 that?

 2 A. I did. I asked him why he didn't

 3 have the stuff with him if he knew we were going to

 4 be working on it, but I don't recall any other

 5 response or...

 6 Q. You don't recall his reaction?

 7 A. No.

 8 Q. Okay. In addition to that incident,

 9 how was Jack generally? What was your observation

10 of how he followed instructions?

11 A. It seemed that he would start off

12 good. You would give him the list of instructions,

13 and then it would fall apart. I know that there

14 were times that I told him to summarize a statement

15 and he went ahead and dictated it or typed it out

16 verbatim, which took up a lot of time which wasn't

17 required.

18 There were, you know, a few issues over

19 that. I want to think that happened on two

20 occasions. Did you want the dates for those?

21 Q. I think that's okay. In addition to

22 that, was there an incident in terms of staying...an

23 incident in terms of you asking Jack to stay with a

24 suspect in a vehicle?

25 A. Yes.

 - 100 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 Q. Can you describe that, please?

 2 A. That happened on the night of June

 3 30th into the morning of July 1st.

 4 Q. Yes.

 5 A. And myself and another officer,

 6 Constable Briscoe, had doubled up to head up to

 7 Michael Jack's area. He was...I think there

 8 was...he was investigating some damages to mailbox,

 9 and then another call came in. So we headed up that

10 way, and another call came in about a gentleman on a

11 lawnmower going over a causeway between...so across

12 the canal or the lake between two communities.

13 He was on a lawn tractor. I'm not sure of

14 the time, in the late hours, early morning, and he

15 was wearing a housecoat. So there had been some

16 calls come in.

17 So we went and met up with...we went and

18 found the guy on the tractor and we dealt with that

19 call.

20 Q. You and Constable...

21 A. Constable Briscoe were in one car,

22 and Michael Jack assisted us. He was in his own

23 car.

24 Q. All right.

25 A. And we leave the lawn tractor at the

 - 101 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 restaurant that we...in the parking lot, and we

 2 drive the gentleman back to the...it's just outside

 3 of our area, but to a residence just on the

 4 outskirts of our area, on our boundary line.

 5 When we get there, fire trucks are there

 6 and it's in the City of Kawartha Lakes area, and I

 7 believe officers are on scene or they arrive shortly

 8 thereafter, and they are investigating an arson.

 9 So the accused, the person that we have in

10 the back of our car, is stating he lives up the

11 road. To our immediate left when we pull in is a

12 house that is on fire, and we later learned that the

13 lawn tractor was stolen from the place across the

14 road.

15 So now we have...our position on this

16 person has changed, because instead of him just

17 having a lawn tractor, he now could be involved in

18 an arson. So we have him in the back of the car, in

19 our car, and...

20 Q. Whose car?

21 A. Myself and Constable Briscoe.

22 Q. Okay.

23 A. He is in the back of our cruiser,

24 and his property...I think he had some bags in the

25 back of our...in our trunk.

 - 102 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 Q. Yes.

 2 A. And Michael Jack, I think, was

 3 pulled in behind us or beside us or...when we pulled

 4 up on scene. I asked Michael Jack to stay with him

 5 because we were going to walk up to the house of the

 6 people that owned the lawn tractor to get more

 7 details with them.

 8 I wanted him to stay with the prisoner,

 9 because A, I don't know what state of mind this

10 prisoner is in. I don't want anything medical to

11 happen to him. There should always be somebody with

12 him. We shouldn't walk away from the prisoner, and

13 so we walked up to the house.

14 When I came back I noticed that Michael

15 was sitting in the driver's seat of my car, and he

16 was talking to the accused in the back, and

17 immediately I was upset, upset, but I was worried

18 because...and I asked him, "Did you supplementary

19 caution him?" and he said, "No," and I'm like,

20 "Well, you have to supplementary caution this

21 gentleman because he is a...you are a second officer

22 coming in on investigation. You haven't spoke to

23 this person before. We have already cautioned him,

24 and you haven't even cautioned him to...and anything

25 he is telling you may not be admissible," so...and

 - 103 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 it can interfere with this greater investigation

 2 that may be going on. So...

 3 Q. What was his reaction to what you

 4 said, Jack's?

 5 A. He apologized and said he didn't

 6 know, and said he was just talking about the fan in

 7 the back, but I think he was a little irritated at

 8 me for telling him that, and then we moved on to the

 9 notes issue that night.

10 Q. Did your relationship with him

11 change? Did he communicate with you after that?

12 A. Yes, he was a little short. We were

13 making notes in the car, and at that time, I had

14 only had some dash pad notes with some times and

15 names. It wasn't my full notes. So we were, you

16 know, still working on our notes and still speaking

17 with, you know, other investigators that are coming

18 to our car and talking to us, and you know, waiting

19 for someone to take care of the prisoner, take him

20 away from us so that we could leave.

21 When we got back to the detachment we

22 needed to get our notes completed and we needed to

23 get them faxed over to the City of Kawartha Lakes

24 OPP office, so that they had them for their

25 investigation. They may be doing warrants and so on

 - 104 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 and so forth, and our information was going to be

 2 valuable.

 3 Q. Yes.

 4 A. Our notes. So Michael, like I said,

 5 at this point, had asked me a few times for notes,

 6 and I said, "I can give you...I don't have my notes,

 7 but I can give you, like, the name, the scratch

 8 pad," I said, "but these people in here, you didn't

 9 speak to them. So you don't need their names, in

10 the house," and we're in the constable's office.

11 Q. Yes.

12 A. At the office, and it's separated

13 by...it's an open room with...at that time there

14 were four computers set up with walls...shorter

15 walls at either end and a long wall in the middle

16 with glass.

17 I was sitting at this computer, let's say,

18 at the front, and he was on the other side of the

19 partition.

20 Q. Yes.

21 A. And you know, we were talking

22 through the glass, and he had asked me again for his

23 notes, and I...there was got into a bit of an

24 argument over the notes, and I said, "You can't have

25 my notes. Like, they're my notes, you know. I can

 - 105 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 give you times, but get working on your notes."

 2 He became upset, and he came over. Let's

 3 say I was sitting at a desk like this. He came

 4 over, and he stood over my shoulder, and he said to

 5 me in a tone that I'll never...and I don't know the

 6 exact words, but the tone I'll never forget.

 7 Q. Yes.

 8 A. And he is like, "You know, I can get

 9 your notes any time I want from your diary slot,"

10 and it was kind of like to be threatening and trying

11 to intimidate me. I was kind of in shock as to what

12 was going on, and I'm thinking the whole point is

13 you don't copy someone's notes verbatim. I don't

14 just give you my notes.

15 Q. Right.

16 A. And I don't mind giving you details

17 to help you. So I did the notes. I completed my

18 notes and I photocopied them, because I started

19 feeling bad for him.

20 Q. Yes.

21 A. And...or intimidated into doing it.

22 So I gave him my notes, and I handed them to him.

23 Q. The photocopy?

24 A. The photocopy of my notes.

25 Q. Yes.

 - 106 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 A. I handed it to him and I made it

 2 clear that he can't be writing them word for word,

 3 and he said, "Well, no. You know, I have trouble

 4 with the English language, and that, you know, what

 5 you say for 'housecoat' is not what I would write,"

 6 and I said, "But Michael, you should write for what

 7 you would write for what you would call a housecoat

 8 in whatever language you need to because

 9 that's...they're your notes. You can articulate

10 that later on the stand," right.

11 Q. Yes.

12 A. I just didn't want my notes copied

13 verbatim. That's not the habit I want to get him

14 into doing. That's not appropriate. That's not how

15 it works in making notes.

16 So he looked at them briefly, and I told

17 him he needs to get his done and then fax them off.

18 He went and he threw them in my diary slot, which is

19 my mailbox, and everyone has a mailbox in the

20 constable's office that's open. We usually keep our

21 notebooks in there, and you know, and some papers

22 and so on and so forth. He threw them in there.

23 Q. By "threw them"...

24 A. Like, well, just kind of went and

25 stuffed them in the...

 - 107 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 Q. Right.

 2 A. ...diary slot. He just made all

 3 this...you know, all this up, all this stink up is

 4 what I call it. Like, he just made a big fuss about

 5 my notes, and now he doesn't want them. I didn't

 6 get it.

 7 So I confronted him on it, and I said, you

 8 know...and there were other people in the office,

 9 just as there were other people when he came over

10 me. He was a little bit quieter when he said it

11 over my shoulder into my ear.

12 Q. Yes.

13 A. And I just said, "I don't

14 understand," and he said, "Well, I don't

15 understand." I'm like, "That's not true. I have

16 your report." He said he doesn't understand the

17 English language very well and he needs help with

18 that, and I said, "I read your reports. Your

19 reports are very good. They are very clear. I have

20 listened to you speak."

21 I said, "I don't want you using that as a

22 crutch, because I think you're very articulate, and

23 you know, I don't want you using that as a crutch

24 for any inefficiencies or whatever," and we...there

25 was an argument. There were people around, and he

 - 108 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 kept trying to cut me off, and I kept wanting to

 2 explain to him further, and I think that's how it

 3 ended, and we left it at that.

 4 Q. Following that incident, did Jack

 5 continue to come to you for coaching?

 6 A. I did...that was the 30th, 1st of

 7 July. No, the next set of shifts, he did not. He

 8 wouldn't speak to me much, nor did he make a point

 9 of contacting me for guidance or assistance, and

10 then I went on vacation.

11 Q. So was he...do you know if he was

12 avoiding you or...

13 A. It felt like I was being avoided or

14 that he didn't want to come to me based on what had

15 transpired, you know, the last time.

16 Q. Okay. Did Jack behave appropriately

17 towards you, Constable Payne?

18 A. No, he did not.

19 Q. Can you explain what you mean by

20 that?

21 A. When I...when he...or when I was

22 asked to be his mentor, he was advised, and he found

23 me, and we met up in the lunchroom, and I can back

24 it up after as well.

25 When we were on our block training...and

 - 109 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 this is...it's not so much...it was a situation we

 2 were kind of put in, but when were at block

 3 training, that was the first year that they

 4 introduced grounding techniques, where you're

 5 actually rolling on the floor with your partner.

 6 Q. Yes.

 7 A. And you're on top of each other,

 8 straddled on them, laying on them, you know, trying

 9 to flip them over and things like that. It was

10 uncomfortable. I don't know. It might have been

11 uncomfortable for him, too. It was uncomfortable,

12 but that's just...everyone was doing it. You kind

13 of have to just push through it.

14 So that happened, and it's not a big deal.

15 We move on. When he found out that I was going to

16 be his coach, I was in my suit or slacks and

17 shirt...

18 Q. Yes.

19 A. ...civilian attire. We were in the

20 lunchroom and he was excited and I was, too. I was,

21 like, "Yes, we're...I'll help you, and I'm here for

22 you, and let's...you know, we will...when I get on

23 shift then we'll look at where you're at."

24 He...he did one of these things where he

25 looked me up and down and did a tch, tch, with his

 - 110 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 face and his eyes. I don't know what you would call

 2 it, kind of gesture.

 3 Q. Ogle?

 4 A. Pardon me.

 5 Q. Ogle?

 6 A. Ogle, yes. There was a look up and

 7 down, and a definite clicking of...and the winking

 8 of the eye to...you know, and I felt uncomfortable,

 9 but I just put it past...it's like, okay, maybe

10 I'm...maybe he is just over excited. I don't know,

11 but I felt uncomfortable, and I didn't say anything

12 to him.

13 Then my first day on shift, which was

14 probably a couple of weeks later, I'm in uniform,

15 and his comment to me...I walked in the constables'

16 office, and he says, "Oh, Constable Payne, you look

17 good in your uniform," and I'm like...I probably had

18 a delayed response, but I said something to the

19 effect of, "You have seen me in my uniform before."

20 I didn't say that wasn't an unwelcome comment

21 because I'm shocked.

22 Q. Yes.

23 A. Right, I don't get other coworkers

24 telling me that. So those two things happened, and

25 then in July...

 - 111 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 Q. Yes.

 2 A. ...July 17th, I was in...were in the

 3 constables' office. I was sitting at the computer.

 4 Michael Jack was getting a radio battery. I don't

 5 know how...I don't know if we were standing at that

 6 point or we were talking about something, but he

 7 winked at me, and I'm like am I imagining things or

 8 is this happening.

 9 You know, there is a couple of things now

10 going on, and I haven't really said anything to

11 anyone up to that point, because I don't know

12 whether I am imagining it or if it's real, and I

13 don't know how to respond to it, right. I'm

14 uncomfortable.

15 Q. Yes.

16 A. So we go about our day and then I

17 believe I had spoken to...I think after that

18 incident is when I started speaking to a few people,

19 and like, notified the sergeant that this was

20 happening and saying, "I need to do something about

21 it and I don't know what to do," and I ended up

22 coming up with the, you know, the idea that I didn't

23 want it to go to a full WDHP complaint.

24 I didn't want to do that to him. I need

25 to set him straight.

 - 112 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 Q. What would have happened if you had

 2 gone to a WDHP complaint?

 3 A. Well, there would have been a

 4 lengthy hearing and I'm sure he would have lost his

 5 job. So I didn't want to do that. That's not where

 6 I wanted this to go, but I wanted him to be very

 7 clear on the position that...the uncomfortable

 8 position he was putting me in.

 9 Q. Yes.

10 A. And that I wanted it to stop. I'm

11 supposed to be here to help him, and if I feel

12 uncomfortable with him, how am I to help him right.

13 Q. And did you speak...you mentioned

14 that you spoke to your sergeant?

15 A. I spoke to the sergeant, and I

16 believe...

17 Q. Would that have been Sergeant

18 Flindall or...

19 A. That was Sergeant Flindall, yes.

20 Q. Okay.

21 A. And I don't know if I had a specific

22 conversation with the staff sergeant, Ron Campbell,

23 at the time, or whether Rob just notified Ron

24 Campbell. I'm not sure. I don't recall. So that

25 was on the 17th, and then on the 18th...

 - 113 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 Q. How did you deal with it? How did

 2 you address it?

 3 A. I just want to make sure that I have

 4 the date right. Yes, the 18th of July I asked him

 5 for a meeting in the boardroom to go over a few

 6 issues.

 7 Q. You asked who?

 8 A. Michael Jack...

 9 Q. Yes.

10 A. ...to come into the boardroom in the

11 morning. It was after our shift briefing, and I had

12 mustered up the courage to confront him.

13 Q. Yes.

14 A. And then I wanted to talk to him,

15 too, about other issues, not just that. So I went

16 in to...I started it off with work, the work-based

17 stuff.

18 Q. What were the issues in terms of

19 performance? Were there issues?

20 A. There were. One was a call that he

21 had gone to he was not dispatched to and I briefly

22 spoke to him over the air about it. He hadn't

23 responded to a call, and I talked to him on the

24 phone and asked him, you know, "Where were you?" and

25 he says, "Oh, I was up at this...I was up at this

 - 114 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 camp." I just want to make sure I'm saying it

 2 right. I think it was a Jewish camp. If I can just

 3 look at my notes for the 18th?

 4 Q. Please.

 5 A. I'm just trying to find the date

 6 that he attended. Is that important, the actual

 7 date that he attended the camp?

 8 Q. If you want to look at your

 9 chronology for July 18th...

10 A. Yes, that's the date that I met with

11 him, but he had gone back...he had gone...he had

12 done that call in, you know, the days or weeks

13 prior.

14 Q. Yes.

15 A. So I just don't know what day that

16 was, and I wanted to make sure that I had the right

17 name of the camp that he had stopped at.

18 Q. That's okay.

19 THE VICE-CHAIR: Actually, I would like

20 to know the name of the camp.

21

22 BY MS. SINGH:

23 Q. Okay. I see something in the

24 chronology about this on July 17th, if that's of

25 assistance.

 - 115 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 A. Yes. You know, I don't know if my

 2 notes actually say the camp that he was at. It

 3 might be on the 17th here.

 4 Q. Do you recall what the concern was

 5 in terms of his attendance at this youth camp?

 6 A. Yes. He...there was a call that had

 7 come in for service, and Michael Jack wasn't on the

 8 air answering the radio. So I become concerned as

 9 to where he is because the com. centre doesn't know

10 his last location.

11 When we finally get to him, I wait to see

12 if he is going to respond. He doesn't response on

13 the air, and I finally...I took the details and then

14 I spoke with Jack. I'm assuming I phoned him on the

15 phone.

16 I had a conversation with him, and I said,

17 "Well, where are you?" and he explained that he was

18 at a youth camp, and there was a swastika on

19 the...there had been a previous mischief call. It

20 came out later on that there has been a previous

21 mischief call there, and it wasn't his

22 investigation.

23 Another officer had investigated it, but

24 he had made it upon himself to go up on his...while

25 he was working, to go see if he could help, or you

 - 116 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 know...and talk to the people there about the

 2 incident.

 3 Q. Yes.

 4 A. It wasn't a call that he was

 5 dispatched to that day. It wasn't a call he was

 6 ever dispatched to.

 7 Q. Yes. What was the concern about him

 8 attending to a call that he was not dispatched to?

 9 What was your concern?

10 A. There are a couple of concerns, and

11 the first one is the fact that...there is probably

12 three. The first one is he has gone somewhere and

13 has not told the com. centre where he is, our

14 communications centre.

15 So if something were ever to happen to

16 him...at that point we didn't have GPS in the car.

17 So if he hit his 10-78, which is an emergency

18 button, and he is there, no one knows where he is

19 at.

20 Q. Would he have been trained to know

21 to tell the com. centre where he is going?

22 A. Yes. When we go to calls and we

23 stop somewhere and we get out of the car, we

24 say...you know, "We're off at this address, and

25 we'll advise when we're..." Then you tell them when

 - 117 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 you're back in the car and you're leaving.

 2 So the first point would be that he is

 3 there. No one knows that he is there off of his

 4 shift or the dispatchers, and then that creates some

 5 concerns if there is ever an emergency for him,

 6 because he is there on his own.

 7 Secondly, there is a concern about going

 8 to somebody else's call, in my view, and that is

 9 because another officer has already been dispatched

10 and investigated this on another platoon at our

11 detachment. They have already provided advice.

12 They have already looked into and are starting an

13 investigation. Possibly...I don't know, but that

14 could be where they are at, and they are doing an

15 investigation or they have managed the call and it

16 is completed.

17 By Michael Jack going in, I found out

18 later that he hadn't actually talked to the officer

19 that... the initial officer that was dispatched. So

20 by Michael Jack going in, he interferes with and can

21 provide conflicting advice to those complainants

22 about, you know, about the call.

23 Q. Yes.

24 A. And I appreciate that he may have a

25 concern for it based on the nature of what was

 - 118 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 there, but the proper steps would have been to,

 2 first off, come to me or Shaun or Rob.

 3 Q. Yes.

 4 A. Or that investigating officer and

 5 say, "I have some...I feel like I can help in this

 6 occurrence. Can I help you?" before going there on

 7 his own.

 8 Q. Did you have a discussion with Jack

 9 about that?

10 A. I did, and that was on the...that

11 meeting in the boardroom. So that was one of the

12 first things that we talked about.

13 Q. You mentioned that there were three

14 concerns. I think you have just mentioned two. Was

15 there a third?

16 A. So being there on his own and not

17 telling anybody, interfering with the investigation.

18 I think that's it. Like, that's the general...yes.

19 Q. And what was his response to your

20 criticism about interfering with this investigation?

21 A. Well, when I told him that he...I

22 said, "I get you're angry about this type of call,"

23 and he says, "I was irritated." He corrected me

24 there, and he was kind of short with me. He didn't

25 say too much in this meeting at all. So we then

 - 119 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 went on to other topics. So...

 2 Q. Other performance issues?

 3 A. There are other performance issues.

 4 I don't think they're fully listed in the summary.

 5 There wasn't any other performance issue stuff in

 6 that meeting. There was other WDHP stuff in that

 7 meeting and then I helped him...after the meeting I

 8 went out and helped him with fraud. So we turned

 9 into the work stuff outside of the meeting.

10 Q. Can you tell us about the WDHP?

11 A. So now at this meeting wanted to

12 confront him. I had spoken to Sergeant Flindall,

13 telling him that this is how I wanted to resolve

14 this, because I had been asked if I wanted to

15 lay...file a complaint, and I said, "No, not at this

16 time. I want to try and resolve this on our own,

17 without having to go down that road, and if it

18 continues, then I'll consider that option."

19 So I called him on the wink. That

20 happened that morning, and he just said he didn't

21 wink. His eye does that, and that was his response,

22 and I'm like, "Well, okay, but there has been other

23 things, and this is why...I'm not just talking about

24 this wink today. There has been other things that

25 have happened that I want to tell you about that I

 - 120 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 feel you need to know and I want it to stop."

 2 So I explained to him about the incident

 3 in the lunchroom, when he found that I was going to

 4 be his coach, and he had looked me up and down and

 5 winked and made the noise with his mouth, the

 6 clicking noise with his mouth, and about the

 7 incident when he told me I looked good in my

 8 uniform.

 9 He goes, "I'll admit to saying that." He

10 wouldn't admit to the lunchroom thing. He said,

11 "I'll admit to saying that," and I said, "But it's

12 inappropriate because you're a recruit, and you

13 know, I don't know you, and it may be different

14 coming from somebody else who I know and in a

15 different context," but when this has just happened

16 in the lunchroom, and then he tells...like, within

17 two weeks he tells me I look good in my uniform, and

18 then the wink happens, you know, a few weeks later

19 after that, then I start to get concerned.

20 He basically said that his eye did that,

21 and...that morning, and that he didn't...he denied

22 it and I told him that either way it was

23 inappropriate and unprofessional.

24 Then I have gave him the opportunity to

25 talk to me, and I said, you know, "What...do you

 - 121 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 have anything you want to ask me or do you have

 2 anything you want to say? Like, I'm here to

 3 listen."

 4 You know, I felt great, because I felt

 5 like I had a whole, you know, load off my shoulders

 6 of stuff that had been going on, and he said yes,

 7 but he didn't want to talk about it right now, and I

 8 said, "That's fine." I get that...I felt like maybe

 9 he felt...I get that, "You can come to me later.

10 I'm here if you need me. That's fine, if you want

11 to talk later."

12 Then I went right...that was about an hour

13 later. I was then assisting him with his brief. So

14 we were sitting working side by side. I am helping

15 him with his fraud brief, giving him direction on

16 what to do.

17 Q. Did he apologize to you, Constable

18 Payne?

19 A. Not that I recall, no.

20 Q. So you went on mentoring him after

21 that...

22 A. Yes.

23 Q. ...confronting him?

24 A. Yes, but it kind of changed things

25 then in that I don't...you know, there were times

 - 122 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 where I tried to help him, but I don't think he was

 2 as receptive to coming back to me for questions, or

 3 you know, to help him.

 4 Q. But you continued to make yourself

 5 available?

 6 A. Yes.

 7 Q. Did Jack show a willingness to

 8 follow your directions after the meeting of July

 9 18th?

10 A. No. There were a few calls

11 that...or investigations that he was working on that

12 he had been given directions from the sergeant and

13 then from myself, and then still continued to

14 disobey those instructions or orders...not orders

15 per se, but you know, instructions on how to

16 complete...steps to complete the investigations.

17 Q. Do you recall the nature of those

18 directions that were not followed?

19 A. It was...I think it was a criminal

20 harassment investigation, and he was going to be

21 staying later after work. I think we were on day

22 shift, and he was going to be staying beyond

23 his...beyond the day shift to complete a few things

24 that were left for him, and that was, you know, the

25 GOR. He had to summarize the statement.

 - 123 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 So the statement is actually taken by

 2 video or audio...

 3 Q. Yes.

 4 A. ...and he needed to put it in point

 5 form bullets, very brief, a summary of what the

 6 victim or witness had said. He needed to prepare

 7 his release documents in the anticipation of

 8 arresting the accused.

 9 Q. Yes.

10 A. And you know, try to compile the

11 brief together. I left that night, and I know I had

12 a conversation with him when he left about making

13 sure that those are the things he needed to do, and

14 I believe that I told him and I told Constable Jamie

15 Brockley that if there was any...need help, like go

16 to each other type thing, Jamie to check on him and

17 for Michael Jack to go check with Jamie, because

18 Jamie was going to be sitting in the office.

19 Q. Yes.

20 A. And I learned...I was off duty at

21 home, and I learned from Constable Brockley that he

22 had gone to Staples, purchased headphones to listen

23 to the tape, and he is basically transcribing it

24 word for word.

25 We have headphones in the office,

 - 124 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 and...but it was like he was wasting time doing

 2 something he wasn't supposed to be doing. So you

 3 know, my concern is that if he was...if he didn't

 4 know what to do...I'm sure it was very clear to him

 5 what he had to do, and if he had any questions, at

 6 that point, he didn't seem to have gone to another

 7 officer to ask for help who was there and available

 8 for him.

 9 Q. So the direction was not to

10 transcribe. Was that the...

11 A. That was one of the directions, yes.

12 Q. One of the directions. Were there

13 other directions that you recall that he did not

14 follow?

15 A. I know he...I know that he asked

16 Constable Brockley to finish the brief because he

17 was too tired and he wanted to go home. So he spent

18 all of his time and energy transcribing it, instead

19 of doing some of the other stuff to get the brief

20 completed, and I know that Jamie worked on those

21 release documents for him as well, helped him with

22 those, so that they were ready the next day.

23 I think the next day was the plan, that he

24 was going to go arrest the accused.

25 Q. Did you witness Jack make an unsafe

 - 125 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 driving manoeuvre?

 2 A. Yes.

 3 Q. Can you describe that incident?

 4 A. It was August 15th, 2009. There was

 5 a report of a family dispute or a disturbance in

 6 Selwyn Township, probably 15, 20 minutes from our

 7 office. Three units were responding initially.

 8 That was Constable D'Amico, Constable Moran and

 9 Constable Jack. I think they were all travelling

10 together.

11 Then we were in...I was in a different

12 location, and so myself and Constable Filman, I

13 believe, arrived later...or sorry, Flindall,

14 Sergeant Flindall arrived later. We did the call

15 for service, spoke to the parties there, and were

16 leaving.

17 We are heading down a...like, a concession

18 road. It was Fifteen Line...Fourteenth Line of

19 Smith, I believe, and coming up to a country road,

20 and Sergeant Flindall was first, I was second and

21 Constable Jack was behind me. The other two

22 officers, Moran, D'Amico, weren't in the vicinity.

23 They were still back at the house or back on the

24 road. They weren't at our location.

25 Sergeant Flindall came to the stop sign

 - 126 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 and made a left-hand turn and I got up to the stop

 2 sign. There was southbound traffic coming. I was

 3 cutting it close, but I was able to make my turn to

 4 the south.

 5 Q. Yes.

 6 A. There was no northbound traffic

 7 coming, and I knew, because I knew that I was

 8 cutting it close, that there was no way that Michael

 9 Jack would be making the turn, that he would be

10 stopped there waiting, and I looked up in my

11 rearview mirror, and I see him in...he had come out

12 into the intersection and he was now in the

13 northbound lane, southbound, and the cars that were

14 coming had to brake to get...to let him merge in.

15 Q. Yes.

16 A. So...

17 Q. To your knowledge, was Jack charged

18 with a Highway Traffic Act offence for that

19 manouevre?

20 A. Yes, he was.

21 Q. Did you testify at the trial?

22 A. I did.

23 Q. Do you know if Jack was given a

24 heavier caseload than you were, Constable Payne?

25 A. I don't believe so, no.

 - 127 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 THE VICE-CHAIR: Sorry?

 2 THE WITNESS: I don't believe so, no.

 3

 4 BY MS. SINGH:

 5 Q. Did you make your best efforts to be

 6 Jack's go-to mentor?

 7 A. I did.

 8 Q. Including after the meeting of July

 9 18th?

10 A. Yes.

11 Q. I'm showing the witness a copy of

12 the exhibit, the discrimination policy. Can you

13 identify that document, please?

14 A. It is an excerpt from police orders

15 on...it's chapter six, and it talks about

16 professionalism in the OPP.

17 Q. Are you familiar with that policy?

18 A. A little bit, not overly.

19 Q. Do you know if the OPP's policy on

20 discrimination, that policy, would apply to you as

21 Jack's go-to mentor?

22 A. I believe it would.

23 Q. Did Jack ever tell you that he felt

24 targeted because of his accent or background?

25 A. No, I don't remember a conversation

 - 128 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 of him saying he was targeted. We had a

 2 conversation, and I very clearly remember, and we

 3 were in a car together, and he asked me about my

 4 thoughts on him going to a speech therapist.

 5 Q. Yes.

 6 A. And I said, "For what?" and he says,

 7 "Well, because of my accent, you guys don't

 8 understand me very well, and I thought it would be

 9 better if I go get rid of my accent," and I said,

10 "Michael," I said, "you don't need to do that for

11 this organization."

12 I said, "As long as you speak clearly and

13 slowly on the air, dispatch can hear you. It's when

14 you're too fast and talking, you know, they are

15 going to ask you to repeat. The rest of us on the

16 road can't hear you," but I made it very clear to

17 him that he did not have to do that for this

18 organization. That was not a requirement, and that

19 if he felt that was something he needed to do, by

20 all means...that's up to him. That's his

21 prerogative, but no, we...the organization would

22 not...and I would not think that he needed to go

23 change his accent.

24 Q. Any other discussions with him about

25 him feeling harassed or discriminated against that

 - 129 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 you recall?

 2 A. No.

 3 Q. Did you observe any discrimination

 4 or harassment of Jack on the platoon at the

 5 detachment?

 6 A. No, I did not.

 7 Q. As his go-to mentor, what was your

 8 view or what is your view about why Jack did not

 9 succeed as a probationary constable?

10 A. He lacked time management skills and

11 organization and keeping, you know, his to-do list

12 current and clean and up to date and work through

13 things. He had a hard time accepting responsibility

14 for any of his mistakes that he had made, and would

15 defer blame.

16 With him and I, I felt that it was very

17 difficult for him to take constructive criticism.

18 So you know, you're telling somebody they're doing

19 something wrong and you're trying to tell them how

20 to do it better, but he didn't like that, and after

21 a time he just stopped coming to me for, you know,

22 questions or...with questions or help or for

23 guidance.

24 Q. Why do you think he didn't like

25 being told how to do things better?

 - 130 - J. Payne

 Ex-in-Ch (M. SINGH)

 1 A. Well, I think he thinks he is better

 2 than everyone else.

 3 Q. Did you know that Jack was not

 4 recommended for permanent employment?

 5 A. Yes.

 6 Q. And how did you feel when he was

 7 released?

 8 A. I was...there was mixed feelings. I

 9 felt bad for him. I really did. You know, here is

10 a gentleman who has come, you know, to Canada, who

11 has gone to school, got a great...you know, he had

12 his career overseas. He was in the military. He

13 has come here to Canada. He has every opportunity

14 to succeed. He has got, you know, a great job. He

15 has got great qualifications, you know, on the

16 package, looking at it, that he would be an asset to

17 the OPP.

18 The simple probationary period of the time

19 management and the...it's a hard time, but there

20 is...it's sad that at that period he couldn't make

21 it through there. Like, it was overwhelming for

22 him.

23 Q. In your view, did Jack's place of

24 origin, ancestry, cultural background, language,

25 contribute to his being unable to succeed as a

 - 131 - J. Payne

 Cr-Ex (L. TAPP)

 1 probationary constable?

 2 A. Absolutely not.

 3 MS. SINGH: Those are my questions.

 4 THE WITNESS: Thank you.

 5 THE VICE-CHAIR: Thank you. Just give

 6 me a few moments, please. I think this

 7 would be an appropriate time to break for

 8 lunch. Then Mr. Tapp, you will have the

 9 afternoon with the witness.

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

11 THE VICE-CHAIR: An hour okay?

12 MS. SINGH: Thank you, Mr. Vice-Chair.

13 MR. TAPP: Thank you.

14

15 --- upon recessing at 12:58 p.m.

16 --- A LUNCHEON RECESS

17 --- upon resuming at 2:08 p.m.

18

19 JENNIFER PAYNE, resumed

20 CROSS-EXAMINATION BY MR. TAPP:

21

22 THE VICE-CHAIR: Mr. Tapp?

23 MR. TAPP: Thank you.

24

25 BY MR. TAPP:

 - 132 - J. Payne

 Cr-Ex (L. TAPP)

 1 Q. Good afternoon, Constable Brockley.

 2 Can I address you as Constable Payne or Constable

 3 Brockley?

 4 A. Payne.

 5 Q. Payne, okay.

 6 A. Please.

 7 Q. Do you have a copy of a witness

 8 summary before you prepared by counsel? I

 9 understand you would not have prepared it.

10 A. Yes. The one I was referring to

11 earlier?

12 Q. Yes...no, the matter before this

13 tribunal today, you had an opportunity at some point

14 in time to provide information from which a summary

15 was drafted?

16 A. Yes.

17 Q. Thank you. I am going to make sure

18 you get a copy of that just to verify some

19 information that was summarized, okay?

20 A. Yes.

21 MR. TAPP: Would you like to have a

22 copy, Mr. Vice-Chair?

23 THE VICE-CHAIR: I would. I'm sure I

24 have one some place, but it's not...thank

25 you.

 - 133 - J. Payne

 Cr-Ex (L. TAPP)

 1 THE WITNESS: Thank you.

 2

 3 BY MR. TAPP:

 4 Q. I can see you reviewing that

 5 document, Constable Payne.

 6 A. Yes, it doesn't look familiar to any

 7 other summary I have seen before.

 8 Q. Okay, fair enough. So I guess

 9 you're not able to attest to whether or not that

10 summary is derived from information you provided?

11 A. Yes, I have never seen this document

12 before in this form.

13 Q. Okay, fair enough. That's

14 understandable, because like I said, it wasn't

15 prepared by you.

16 A. It wasn't, yes, that's correct.

17 Q. But just keep it handy, okay?

18 A. Yes.

19 Q. Thank you. Constable

20 Brockley...Constable Payne, I'm sorry, I have got

21 Brockley in my mind. I'm sorry, because we dealt

22 with the witness last period.

23 Constable Payne, you're familiar with

24 police orders with respect to notebooks?

25 A. Yes, I am.

 - 134 - J. Payne

 Cr-Ex (L. TAPP)

 1 Q. Thank you. We have a copy of your

 2 notes provided by counsel...

 3 A. Yes.

 4 Q. ...regarding your involvement with

 5 Mr. Jack.

 6 A. Yes.

 7 Q. And of course, it does reflect pages

 8 with redacted portions and that would be, correct me

 9 if I'm wrong, redacting information that are not

10 pertinent to this matter, right?

11 A. I did not redact them.

12 Q. Okay, fair enough. Now, does OPP

13 orders...you're going to get a copy of Exhibit 112

14 that was entered previously, okay. Can you flip

15 over the first page, and I direct your attention

16 order 2.50.3?

17 A. Yes.

18 Q. Daily journal?

19 A. Yes.

20 Q. It stipulates the matter in which a

21 journal is to be maintained, filling out the journal

22 number, date and time, start date and completion

23 date, et cetera?

24 A. Yes.

25 Q. Good. Now, can you read what it

 - 135 - J. Payne

 Cr-Ex (L. TAPP)

 1 says just in the opening paragraph of content,

 2 please?

 3 A. "...Except as otherwise provided in

 4 this policy, a uniform member shall

 5 maintain a Form CAT 1-22 - Daily Journal in

 6 accordance with procedures taught to police

 7 officers attending the Provincial Police

 8 Academy (PPA) and Ontario Police College

 9 (OPC). Before putting Form CAT-122 - Daily

10 Journal into use, a uniform member

11 shall..."

12 Q. Okay. Flip over that page, please,

13 and where it addresses review, can you read that

14 portion, please?

15 A. "...A supervisor shall review a

16 uniform member's Form CAT-122 - Daily

17 Journal on a regular basis to ensure it is

18 complete, accurate and in compliance with

19 OPP policy..."

20 Q. Thank you. Can you read towards the

21 bottom of that page "Current Use", please?

22 A. "...Except otherwise provided in

23 this policy, only one Form CAT 1-22 daily

24 journal shall be in current use..."

25 Q. Thank you. Now, were you instructed

 - 136 - J. Payne

 Cr-Ex (L. TAPP)

 1 or given permission to maintain two notebooks?

 2 A. Yes, I was.

 3 Q. Okay, what instruction was that?

 4 A. I'm not sure of the exact wording,

 5 but the instruction...I asked permission to keep a

 6 second notebook to write down my dealings with Jack,

 7 because of the comment that he had made about going

 8 through my notebooks in my diary slot, because of

 9 the WDHP, and I didn't want that into all my regular

10 investigative work.

11 Q. And that was authorized by who?

12 A. I'm not sure if it was both Sergeant

13 Flindall and Staff Sergeant Campbell. I'm not sure.

14 I don't recall.

15 Q. We have a copy of this second book.

16 A. Yes.

17 Q. I'm going to show it to you. You

18 start off that book on the cover page, "Daily

19 journal number, re P.C. Jack." Would that be a copy

20 of the second book?

21 A. On the first page, sorry?

22 Q. Yes, where it fills out daily

23 journal number, name, rank, badge number, first

24 entry date. Daily journal number says "Re P.C.

25 Jack".

 - 137 - J. Payne

 Cr-Ex (L. TAPP)

 1 A. That's correct.

 2 Q. Thank you. Is there any

 3 significance to the date of the first entry?

 4 A. That was the time I started writing

 5 into the journal.

 6 Q. Okay. Though you can't recall who

 7 gave you that direction, Flindall or Campbell, you

 8 would agree that you got that direction from OPP

 9 management?

10 A. Yes.

11 Q. Because Flindall was your

12 supervisor, correct?

13 A. That's right.

14 Q. And Campbell was the detachment

15 manager?

16 A. Correct.

17 Q. Thank you. Now, we have heard

18 testimony and specifically from Mr. Campbell, who is

19 retired now. I'm going to suggest to you, because

20 the testimony does reveal, I'm going to suggest to

21 you that you were told can't have two notebooks.

22 Does that change your testimony any?

23 MS. SINGH: Mr. Vice-Chair, I don't

24 recall that testimony, and I don't know

25 that it was in the context of, you know,

 - 138 - J. Payne

 Cr-Ex (L. TAPP)

 1 what this witness is saying, which is that

 2 she does not recollect who gave her

 3 direction. I think it's unfair to the

 4 witness to put to her as though she is

 5 being inconsistent.

 6 THE VICE-CHAIR: Yes, okay. I mean, you

 7 can ask the question, but do it...

 8 MR. TAPP: Okay.

 9

10 BY MR. TAPP:

11 Q. I'm going to suggest that at some

12 point in time you were advised by someone you can't

13 have two notebooks. How is that?

14 A. No, not in relation to this.

15 Q. Thank you, but you the second

16 notebook that you maintained was solely on Mr. Jack,

17 correct?

18 A. That is correct.

19 Q. How is it that in examining all

20 those documentations, there is nothing positive in

21 there? There is only negatively that is documented,

22 Constable Payne?

23 A. Yes, I was documenting the issues

24 that I had with him, and it was more for me, for

25 keeping track mentally of what was going on with him

 - 139 - J. Payne

 Cr-Ex (L. TAPP)

 1 and I at the office.

 2 Especially when it came down to a possible

 3 WDHB complaint in the future, I needed something...I

 4 wanted something in my hands to have evidence and my

 5 recollection.

 6 Q. Fair enough, but you do admit it

 7 wasn't solely for the WDHB, correct?

 8 A. No, it was for his performance, as

 9 well.

10 Q. Yes. How many pages documents did

11 you document of observations, please? First of all,

12 how many books did you have solely on Mr. Jack?

13 A. Just one.

14 Q. One. How many pages?

15 A. Thirty-five.

16 Q. Thirty-five pages over the course of

17 how many days?

18 A. Well, I started it on the 30th, but

19 I did make entries that went back to...back in June

20 as I was...it was my thoughts basically being put

21 down, and it ends on the 24th of July.

22 Q. July. So that's 24 days plus some

23 thoughts that you wrote down about Mr. Jack prior to

24 the 30th of July...of June, 30th of June, correct.

25 Correct me if I am wrong, in all of them...you can

 - 140 - J. Payne

 Cr-Ex (L. TAPP)

 1 review them...we have a copy. All of them are

 2 negative observations?

 3 A. I would have to take some time. I

 4 can't answer that question without actually taking

 5 time to go through them all.

 6 Q. Okay, show me something that is

 7 positive. Flip through those pages. Tell us

 8 something that's positive that you have written

 9 about Mr. Jack.

10 MS. SINGH: Mr. Vice-Chair, the witness

11 can be asked whether she has recollection a

12 positive things that she included. The

13 fact that they are not...that she can't

14 find a particular thing in a notebook

15 doesn't mean that she didn't have positive

16 information to relay to the supervising

17 sergeant, to the coach officer or directly

18 to Mr. Jack.

19 So the question is somewhat unfair

20 because it suggests that that is the only

21 opportunity and way that she was able to

22 communicate anything neutral or positive

23 about Jack.

24 MR. TAPP: Thank you, Ms. Payne, take

25 your time. Mr. Vice-Chair, in response to

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 Cr-Ex (L. TAPP)

 1 that, I deliberately did not object when

 2 counsel told Payne to review. Take your

 3 time, and she spent...I was watching the

 4 clock, considerable time flipping through

 5 pages, looking, and then came up with an

 6 answer.

 7 We waited patiently. Now, when I

 8 do the same, ask her to flip, I'm getting

 9 an objection from counsel. How is that not

10 fair to the applicant?

11 THE VICE-CHAIR: I will let her continue

12 flipping through if she wants.

13 MR. TAPP: Thank you.

14 THE WITNESS: Well, there is an entry

15 here on page 9 where it shows I sat down

16 with him to go over his assignment list.

17 We're working together. None of it is

18 negative. I'm explaining that I'm going

19 through his list, telling him he needs to

20 be out in the...out of the office, in the

21 other offices, and in his zone.

22 I told Jack my intentions are to

23 double up with him and get his assignment

24 list cleaned up and start playing, doing

25 vehicle stops, and then I went into needing

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 Cr-Ex (L. TAPP)

 1 to discuss some following things, the time

 2 management, and there is a list of things

 3 that I needed to discuss with him.

 4 It's not negative. It's a to-do

 5 list, but...

 6

 7 BY MR. TAPP:

 8 Q. Yes, yes, that's correct. There is

 9 nothing in there that is positive. At the most,

10 that is neutral. It's something you are documenting

11 about instructions you're giving him, correct?

12 A. If I could have more time to review?

13 Q. Yes. While you are looking through

14 that, Constable Payne, you're acknowledging by

15 flipping through all those pages, they are all about

16 Mr. Jack as the...

17 A. They are neutral or I am making

18 comments about working on his to-do list and what he

19 needs to do.

20 Q. Thank you.

21 THE VICE-CHAIR: Why don't you keep that

22 question in abeyance? We're going to be

23 taking a break this afternoon.

24 MR. TAPP: Okay, that's perfect. Just

25 to expedite this matter, I will come back.

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 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: You can look at it on

 2 the break.

 3 THE WITNESS: Okay.

 4 MR. TAPP: Okay, thank you very much.

 5 So we will go on.

 6

 7 BY MR. TAPP:

 8 Q. Okay, keep that book, but I'm going

 9 to direct your attention to page 21, okay, of that

10 notebook, that is, Mr. Jack.

11 A. Yes.

12 Q. Top page under the fifth line,

13 starts off, "P.C. Jack." Can you read that, please?

14 A. "...P.C. Jack said he heard people

15 speaking Jewish at a Tim Hortons, and heard

16 from Duignan there was a Jewish camp in the

17 area..."

18 Q. Thank you. Now, I had you

19 specifically read that because it was a question Mr.

20 Vice-Chair asked you during your exam...

21 A. Right.

22 Q. ...if you recall what kind of camp.

23 A. That's correct.

24 Q. And you specifically looked through

25 your chronology. Do you now recall it being a

 - 144 - J. Payne

 Cr-Ex (L. TAPP)

 1 Jewish camp?

 2 THE VICE-CHAIR: No, no, the evidence

 3 was a Jewish camp. I wanted the name of

 4 the Jewish camp.

 5 MR. TAPP: The language.

 6 THE VICE-CHAIR: The name.

 7

 8 BY MR. TAPP:

 9 Q. Now, what language...is there such a

10 language, Jewish language, Constable Payne?

11 A. No, I don't think so. I'm not sure.

12 Q. Okay. You make a note:

13 "...heard people speaking Jewish..."

14 What language would that be?

15 A. I don't know. What that entry is

16 saying is saying, that P.C. Jack said he heard

17 people speaking Jewish at Tim Hortons. I'm writing

18 what I was told from him.

19 Q. Okay. Did you know Mr. Jack is

20 Jewish?

21 A. Yes.

22 Q. I'm going to suggest that Mr. Jack

23 told you he heard people speaking Hebrew, and you

24 wrote down "Jewish".

25 MS. SINGH: Asked and answered, sir,

 - 145 - J. Payne

 Cr-Ex (L. TAPP)

 1 asked and answered.

 2 THE VICE-CHAIR: Yes.

 3

 4 BY MR. TAPP:

 5 Q. Okay. Do you believe people in

 6 Israel, Jewish people, speak Jewish?

 7 MS. SINGH: It is not relevant, sir.

 8 THE VICE-CHAIR: It isn't really

 9 relevant.

10 MR. TAPP: Okay, all right.

11

12 BY MR. TAPP:

13 Q. Constable Payne, earlier you

14 testified that your caseload was higher than Mr.

15 Jack's, correct?

16 THE VICE-CHAIR: I don't think she said

17 higher than Mr. Jack's.

18 MR. TAPP: Oh, pardon me, yes.

19

20 BY MR. TAPP:

21 Q. Mr. Jack's workload was not higher

22 than yours. Am I correct?

23 A. I'm not sure what my exact wording

24 is, but...

25 Q. Okay.

 - 146 - J. Payne

 Cr-Ex (L. TAPP)

 1 A. ...mine was either higher or the

 2 same as his.

 3 Q. Okay. I'm going to show you Exhibit

 4 202. That was tendered in prior to your attendance

 5 here today, and Exhibit 204. If you flip open to

 6 the last pages of those documents, there is some

 7 handwriting there.

 8 A. M'hm.

 9 Q. And there is also a summary that is

10 printed "Officer totals", correct?

11 A. Yes.

12 Q. Good. Now, on the front of one of

13 the documents would you agree that one is an

14 analysis of caseload of you, Constable Payne?

15 A. Yes.

16 Q. And the other is an analysis of

17 Michael Jack's case workload?

18 A. Yes.

19 Q. Can you read page 5 of Mr. Jack

20 occurrences total, officer totals occurrences?

21 A. One hundred and one.

22 Q. And yours, occurrences total,

23 please?

24 A. Eighty.

25 Q. Pardon me?

 - 147 - J. Payne

 Cr-Ex (L. TAPP)

 1 A. Eighty, eight zero.

 2 Q. And Mr. Jack's total for reportables

 3 is handwritten?

 4 MS. SINGH: Mr. Vice-Chair, we had a

 5 discussion about this document yesterday,

 6 and the value of this document from a

 7 probative perspective about, you know, who

 8 is doing what and how much, and the

 9 evidence was that this document, which was

10 printed, doesn't give us any indication of

11 the difficultly of particular reportables

12 or not, a person's vacation time or

13 anything else.

14 So again I'm dumbfounded as to

15 understanding the relevance of these

16 questions.

17 MR. TAPP: Mr. Vice-Chair, I thought it

18 was very clear by the question I put to

19 her, and it is how come everything...every

20 time I try to assert a point, Counsel is

21 always objecting.

22 Granted, you instruct me, "Well,

23 put it another way," and I do, try my best,

24 and I do. I get it, but the question was

25 put to her, "It was your testimony that..."

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 Cr-Ex (L. TAPP)

 1 and I corrected myself upon being pointed

 2 out by you that Mr. Jack's workload was not

 3 higher than hers. Now, I'm trying to show

 4 that by documentary evidence, the summary

 5 that is over here, to show whether there

 6 was any truth to that statement that she

 7 made.

 8 THE VICE-CHAIR: Well, it was her point

 9 of view. I don't know...

10 MR. TAPP: Yes, okay. Thank you.

11 THE VICE-CHAIR: Give her the numbers

12 and then...

13

14 BY MR. TAPP:

15 Q. Okay. Do you agree, looking at the

16 summary over there of those two documents, does that

17 cause you to change your testimony about Mr. Jack's

18 workload not being higher than yours?

19 A. No, and I have a reason for that.

20 Q. Okay, please explain that.

21 A. So during that time...

22 Q. Yes.

23 A. ...I had three weeks holidays over

24 that period of time. I was assigned to...I still

25 had a crime unit case that I was working on, that I

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 Cr-Ex (L. TAPP)

 1 had time where I was being pulled off the road to

 2 work on that case. I still...so I had outstanding

 3 cases that wouldn't be included in here, and

 4 vacation time.

 5 Had I worked the vacation time and been

 6 there during those periods of time, my calls for

 7 service probably would have been higher.

 8 Q. But we're not talking about what you

 9 had been doing. We're talking about a specific

10 period, and if you look at the front it is for

11 period 9th of June to 9th of August, right, and that

12 would be performance evaluation report 6/7 of Mr.

13 Jack, correct?

14 MS. SINGH: The question has been asked

15 and answered.

16 THE VICE-CHAIR: Now, you're going...

17 MR. TAPP: Okay.

18 THE VICE-CHAIR: I mean, she has said

19 no, and the explanation was that she was on

20 vacation for three weeks, that she had

21 other tasks she was involved with.

22 MR. TAPP: Fair enough, Mr. Vice-Chair.

23 Thank you.

24 THE WITNESS: I can also add...

25

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 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. We'll get that back from you,

 3 Constable Payne. Yes?

 4 A. I can also add that it may be that

 5 there was a call that I have done, and the same with

 6 Mr. Jack, a call that I have done that my name is

 7 not assigned to on Niche.

 8 Q. Well, I'm surprised Counsel is not

 9 objecting to this. I'm sorry.

10 A. That could be...I could be doing all

11 that that is not on there.

12 Q. Okay, I expected to hear an

13 objection from Counsel. I'm surprised I didn't,

14 okay. Let's go on.

15 Do you recall testifying that at the

16 termination of Mr. Jack, and you were asked a very

17 pointed question, how did you feel?

18 A. M'hm.

19 Q. You indicated, correct me if I am

20 wrong, that yes, you felt sorry. Am I right?

21 A. Absolutely.

22 Q. Thank you. I'm showing you an e-

23 mail that is dated September 26th, 2009, okay. Can

24 you identify that e-mail, please?

25 A. Yes. It is an e-mail that I sent to

 - 151 - J. Payne

 Cr-Ex (L. TAPP)

 1 Robert Flindall.

 2 Q. And the subject says?

 3 A. "Read this occurrence tonight."

 4 Q. Is there a reason you said, "Read it

 5 tonight," as opposed to read this occurrence or

 6 anything?

 7 A. No.

 8 Q. Okay, all right.

 9 A. There is no reference to...

10 Q. It just seemed to me like you're

11 trying to impress urgency.

12 A. No.

13 Q. That's why I wanted to clarify.

14 A. No.

15 Q. Okay, but you do write in

16 "Importance is high", correct?

17 A. Yes.

18 Q. Is that because there was something

19 significant about it or you felt it was high, or

20 rather, can you explain its significance, how high

21 it was?

22 A. Just that it was important. I

23 wanted him to read it.

24 Q. And what is the occurrence number?

25 Read what you have written.

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 Cr-Ex (L. TAPP)

 1 A. SP05112642, and it says:

 2 "...And yes, it is who you are thinking it

 3 is. He worked there, but he was never

 4 linked to the occurrence. So when doing

 5 his background this never would have come

 6 up or been found..."

 7 Q. You felt that was important?

 8 A. Yes.

 9 Q. Okay, why did you feel that was

10 important?

11 A. Because when I read the police

12 report under that occurrence, Michael Jack was a

13 security guard at the Burleigh Island Lodge, and he

14 mimicked...I don't have the report in front of me to

15 be specific, but he...it was his attitude towards a

16 crime that had happened, and how he didn't really

17 care, and he mocked it up in his report to the

18 management at the Burleigh Island Lodge.

19 Q. Who mocked it, Constable Payne? Who

20 mocked the report up?

21 A. I don't know. It says...it

22 indicated that he did in the report.

23 Q. Okay. I'm going to show you a copy

24 of the report that you indicated you looked over,

25 SP05112542.

 - 153 - J. Payne

 Cr-Ex (L. TAPP)

 1 Before you comment, we have got to look up

 2 what exhibit that is, okay. Do you acknowledge that

 3 this is the occurrence, the Burleigh Island Lodge

 4 incident?

 5 A. Yes, it looks like it.

 6 MS. SINGH: Do you have a copy for

 7 counsel?

 8 MR. TAPP: We'll give you the exhibit

 9 number.

10 THE VICE-CHAIR: Was it looked at

11 yesterday?

12 MR. TAPP: Yes, it was. Exhibit 110.

13 MS. SINGH: It's the e-mail of September

14 22nd. Is that...

15 MR. TAPP: Yes, why it's linked to this

16 one. Pardon me, Mr. Vice-Chair, look at

17 Exhibit 200, please. That's why we're

18 really looking forward and anticipating the

19 binder of exhibits coming our way. Maybe

20 it's our mistake, Counsel. Exhibit 200,

21 would that be correct?

22 MS. SINGH: There is a 200. That's a

23 general occurrence report, but there is

24 also, as you say, a different occurrence

25 that's 110.

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 Cr-Ex (L. TAPP)

 1 MR. TAPP: One ten.

 2 MS. SINGH: But I think yesterday you

 3 advised the tribunal that there was a

 4 difference between those two documents.

 5 MR. TAPP: Yes, we advised the

 6 difference because one was printed by one

 7 person and one was printed by the other.

 8 One was printed by the witness Flindall and

 9 the other was printed by Constable Payne.

10 So we're showing her...

11 MS. SINGH: But if it's the same

12 report...

13 MR. TAPP: The one she reported.

14 MS. SINGH: If it's the same report,

15 then I'm unclear about why you wanted it

16 made an exhibit twice.

17 MR. TAPP: Because one was outside of a

18 time frame and one was inside of a time

19 frame of when it was printed. We just

20 wanted to show the evidence was that we

21 wanted to show it was printed by two

22 different people with respect to the same

23 occurrence. That's all, and that's why

24 it's entered twice.

25 THE VICE-CHAIR: Well, they are

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 Cr-Ex (L. TAPP)

 1 different reports.

 2 MR. TAPP: If you look at the SP

 3 number...

 4 THE VICE-CHAIR: Exhibit number 200 is

 5 not the same as this.

 6 MR. JACK: Well, it's an extra copy I

 7 gave you.

 8 THE VICE-CHAIR: They're not the same.

 9 MR. JACK: Yes, that's fine. That's not

10 an exhibit. It's just something that I had

11 on file. So Exhibit 200 should be...

12 THE VICE-CHAIR: But if she is looking

13 at this one...she is looking at this one

14 here, Exhibit 200? That's not the same

15 as...they are slightly different. They

16 have been redacted differently.

17 MR. TAPP: And that's why we have the

18 two over there, because

19 one...because...anyways, the applicant can

20 only speculate about who...

21 THE VICE-CHAIR: Okay. Take a look at

22 this. I mean, the gist of it is the same,

23 I think.

24 MR. TAPP: They are the identical

25 occurrence, the same incident.

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 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: Well, okay, I won't

 2 argue.

 3 MR. TAPP: Granted that the redaction

 4 portions might be different.

 5

 6 BY MR. TAPP:

 7 Q. Constable Payne, who was the

 8 investigating officer of that incident, looking at

 9 that occurrence report?

10 A. M. McDermott.

11 Q. Thank you, and can you tell us who

12 he interviewed where it says on the second page

13 "Interviews"?

14 A. I don't see "Interviews" on the

15 second page.

16 Q. You see in bold print "Witness

17 statements"? Yes, I'm alluding to interviews, but

18 look beside "Witness statements". That would infer

19 that somebody was interviewed. So witness

20 statement.

21 A. "Witness statements, nil," and I

22 would...

23 Q. Thank you.

24 MS. SINGH: But Mr. Vice-Chair, again,

25 this witness is not the author of this

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 Cr-Ex (L. TAPP)

 1 general occurrence report. So beyond being

 2 able to say what she reads on a page, it's

 3 unfair to put to the witness, you know,

 4 questions about what is there in order to

 5 suggest that the report is deficient in

 6 some way or whatever the case.

 7 THE VICE-CHAIR: I thought she printed

 8 it.

 9 MS. SINGH: She printed it. That's all

10 she did, if, in fact, she did.

11 THE WITNESS: On this copy here.

12 MS. SINGH: And the date of printing it,

13 again, is that was in the time period of,

14 you know, 2009 or is it outside of that

15 time?

16 THE VICE-CHAIR: Well, it's

17 outside...when it was printed was outside.

18 MR. TAPP: Yes, yes. Now...

19 THE VICE-CHAIR: Mine says it was

20 printed by badge 9931.

21

22 BY MR. TAPP:

23 Q. And who is 9931?

24 A. That's me.

25 Q. Thank you. So this is the

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 Cr-Ex (L. TAPP)

 1 occurrence you referenced and forwarded, drew

 2 attention to Sergeant Flindall to look at?

 3 A. In 2009, yes.

 4 Q. Yes, thank you. So it's very

 5 relevant. Now, your testimony was that it spoke

 6 about Mr. Jack and the issues you were currently

 7 facing with him, correct?

 8 A. Yes.

 9 Q. Thank you. But looking at that

10 occurrence report, would you agree that Mr. Jack

11 wasn't even interviewed or wasn't even provided a

12 statement?

13 A. I can't answer that. I didn't

14 investigate. It was my interpretation of the

15 report.

16 Q. When you enter a general occurrence

17 on reports you have entered, beside the bold print,

18 that is a pretty standard format for OPP general

19 occurrence reporting, correct?

20 A. That is correct.

21 Q. And it is a called a nine-step

22 procedure?

23 A. Nine or 10, yes.

24 Q. Yes, nine or 10, yes, I am glad you

25 recall that. There you have...an officer has to

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 Cr-Ex (L. TAPP)

 1 address each of those steps, correct?

 2 A. Correct.

 3 Q. Correct. Now, one of the steps was

 4 witness statements, correct?

 5 A. That's correct.

 6 Q. And if an officer had interviewed

 7 anybody, it's not a requirement to enter the whole

 8 statement, but just at least name the people that

 9 were interviewed or statements obtained, correct?

10 A. Not necessarily.

11 Q. How would you address that?

12 A. I would interpret that as some

13 officers could put...under "Witness statements" they

14 could say, "Nil, that I didn't actually take a

15 formal written statement," but that they actually

16 talked to the person and took a statement.

17 So witness statements to me could be a

18 formal thing that was actually taken, and if that

19 wasn't done, then they would put "Nil".

20 Q. Okay, thank you.

21 A. Just because you talk to somebody...

22 THE VICE-CHAIR: Yes, okay.

23 MR. TAPP: Okay, thank you, we get the

24 picture.

25 THE VICE-CHAIR: Yes, if you're trying

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 Cr-Ex (L. TAPP)

 1 to discredit this occurrence summary,

 2 you're talking to the wrong witness.

 3 MR. TAPP: No, I'm not trying to

 4 discredit this, absolutely not. I'm just

 5 trying to question what she stated in her

 6 testimony, that it speaks about Mr. Jack.

 7

 8 BY MR. TAPP:

 9 Q. To the best of your knowledge, do

10 you know or did you try to take any steps to find

11 out if Mr. Jack was ever interviewed?

12 A. No, I did not.

13 Q. Thank you. Knowing it was about Mr.

14 Jack and knowing that it was high to you...you would

15 not have put in "High", correct? It was high to

16 you. That's why you said "Importance high",

17 correct?

18 A. Yes.

19 Q. Good. So knowing it was important

20 to you and you were drawing attention to it, and you

21 were trying to draw Flindall's attention to it, did

22 you ever speak to Mr. Jack about it?

23 A. No, I did not.

24 Q. Thank you. Now, would you agree is

25 that how you felt sorry about Mr. Jack, digging up

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 Cr-Ex (L. TAPP)

 1 an old occurrence or forwarding an old occurrence...

 2 MS. SINGH: Asked and answered.

 3 MR. TAPP: No.

 4 THE VICE-CHAIR: No, just a minute.

 5 You're taking it out of context.

 6 MR. TAPP: Okay, all right.

 7 THE VICE-CHAIR: She felt sorry when he

 8 was terminated.

 9

10 BY MR. TAPP:

11 Q. Okay. You made a

12 determination...okay, when you looked at this

13 occurrence, did you feel sorry for Mr. Jack?

14 A. No, when I looked at that occurrence

15 I made a decision about his work ethic and how I saw

16 him work and his attitude, and it correlated and

17 matched, and it was the same.

18 Q. So you compared it to how you would

19 have acted, correct?

20 A. No, I didn't say that.

21 Q. Okay. Would you agree that you

22 formed an opinion of Mr. Jack, just looking at this

23 occurrence?

24 A. No, I already had an opinion formed

25 of Michael Jack. That just supported it.

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 Cr-Ex (L. TAPP)

 1 Q. And what was that opinion, please?

 2 A. That he had inability to...you know,

 3 inability to do his tasks list, to concentrate on

 4 what he was doing, to his work performance, and then

 5 just this kind of added to an attitude of not

 6 caring.

 7 Q. You would agree that that incident

 8 was at least four years before he became a police

 9 officer?

10 A. Yes.

11 Q. And how a person...and you said

12 during block training you learned more about his

13 background, his education?

14 A. M'hm.

15 Q. You learned that how he came to

16 Canada and furthered his education, okay. Okay.

17 Would you agree that based on your knowledge of him,

18 he had no prior police experience?

19 A. Yes.

20 Q. Thank you. Now, do you have any

21 police experience, like, background, any relatives

22 on the police or anything?

23 A. No, I do not.

24 Q. Pardon me?

25 A. No.

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 Cr-Ex (L. TAPP)

 1 Q. Now, we have heard some

 2 evidence...Constable Brockley is your husband,

 3 correct?

 4 A. Yes.

 5 Q. Okay. Was he a police officer

 6 before you became a police officer?

 7 A. No.

 8 Q. No, okay. Now, you would agree that

 9 if he didn't have any policing experience, he was

10 just working as a security guard...a person entering

11 into a policing role is totally different from that

12 of a security guard. Would you agree with that?

13 A. There are some similarities. I was

14 a security guard before I became a police officer.

15 There are some similarities depending on what role

16 of security you are doing.

17 Q. But you would agree nobody

18 questioned the circumstances of that report,

19 correct?

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

21 question.

22 Q. That nobody questioned the

23 circumstances...

24 THE VICE-CHAIR: How would she know

25 that?

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 Cr-Ex (L. TAPP)

 1 MR. TAPP: Exactly, and that's the

 2 point.

 3

 4 BY MR. TAPP:

 5 Q. If nobody cared to delve into the

 6 circumstances of why Mr...from that report, Mr. Jack

 7 was a security officer, right?

 8 A. Yes.

 9 Q. Okay. So if nobody questioned the

10 circumstances of the report...the circumstances of

11 the information he was giving, how could you form an

12 opinion that this may be related to the issues we're

13 facing?

14 A. I don't understand the question.

15 Q. Okay. Do you recall attending a

16 horseshoe party at Mary D'Amico's?

17 A. Yes.

18 Q. Thank you, and that was in 2009?

19 A. I attended several. So I'm not sure

20 if in '09 I did or not. A few things might have to

21 trigger my memory.

22 Q. That's fine, but that's a yearly

23 thing she does hold, isn't it?

24 A. She does.

25 Q. She does, thank you. Do you recall

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 Cr-Ex (L. TAPP)

 1 seeing Mr. Jack there with his girlfriend, or with a

 2 girl, put it that way?

 3 A. I don't know. Like, possibly. I

 4 don't know. I don't have a recollection of that

 5 year and that barbecue. They all kind of meld

 6 together.

 7 Q. Do you recall Mr. Thompson being

 8 there with his girlfriend?

 9 A. Which Mr. Thompson?

10 Q. Kurt Thompson. Kurt Thompson.

11 Okay, I'm going to just show you some pictures of

12 that horseshow tournament.

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

14 THE VICE-CHAIR: We have gone through

15 this.

16 MR. TAPP: Gone through this, okay.

17

18 BY MR. TAPP:

19 Q. Is it your testimony that you can't

20 recall him being there with a lady or a girl?

21 THE VICE-CHAIR: That is what she

22 testified to.

23

24 BY MR. TAPP:

25 Q. Okay, fine. You talked during your

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 Cr-Ex (L. TAPP)

 1 testimony about a possible WDHB and you confronted

 2 Mr. Jack about winking at you.

 3 A. M'hm.

 4 Q. Good, and you documented that. You

 5 discussed it with him, that he winked at you, and it

 6 was July 18th, correct?

 7 A. July 18th was the day I spoke with

 8 him.

 9 MS. SINGH: Right. Mr. Vice-Chair, once

10 again I'm going to say that is why it's

11 very relevant to show these pictures

12 to...just to jog this witness' memory to

13 show that...because she doesn't recall, to

14 show and then by looking at the picture,

15 "Oh, yes, yes, now, I recall. He was there

16 with a girl." That's all, not to even

17 enter it as an exhibit, just to jog her

18 memory. That's all, Mr. Vice-Chair.

19 THE VICE-CHAIR: And what does it

20 establish if she were to testify, "I saw

21 him there with a girl"?

22

23 BY MR. TAPP:

24 Q. I suggest that you knew the girl he

25 was with because you took that girl out previously

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 Cr-Ex (L. TAPP)

 1 on a ride-along. That's why if you see the picture

 2 you will recognize her.

 3 MS. SINGH: Asked and answered.

 4 MR. TAPP: No, it's...

 5 MS. SINGH: Asked and answered.

 6 MR. TAPP: He took this girl on a...she

 7 took this girl on a...

 8 THE VICE-CHAIR: But how is that

 9 relevant? I'm sure she has taken many

10 people on ride-alongs.

11 MR. TAPP: See this picture, three days

12 later she accuses Mr. Jack of winking at

13 her, and how is this possible if he is

14 already dating a girl, seeing a girl?

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

16 Chair, I would ask that we move on to a

17 different line of questioning.

18 THE VICE-CHAIR: Yes, let's move on.

19 MR. TAPP: Thank you. We're going to

20 move on, Mr. Vice-Chair.

21 THE VICE-CHAIR: Thank you.

22

23 BY MR. TAPP:

24 Q. Your testimony was that in January,

25 2009 you were curious, being that Mr. Jack had just

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 Cr-Ex (L. TAPP)

 1 graduated from the college and provincial academy,

 2 that he was going on block training again, correct?

 3 A. Yes.

 4 Q. And your testimony was that he went

 5 to block training with you and Staff Sergeant

 6 Campbell?

 7 A. Yes.

 8 Q. Thank you. Your testimony was that

 9 at this time you sat down, or he was talking about

10 his background. You got to know him a little more

11 and you knew his educational background and how he

12 came from Israel here?

13 A. Yes.

14 Q. Thank you. So you remember having a

15 conversation at a table over there at the fire

16 academy in Gravenhurst?

17 A. I remember having a conversation. I

18 don't remember full details.

19 Q. No, that's fine.

20 A. It's a long time ago.

21 Q. Yes, that's true, okay. Do you

22 remember Staff Sergeant Campbell talking about an

23 officer or problems at the detachment?

24 A. An...sorry?

25 Q. An officer and problems at the

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 Cr-Ex (L. TAPP)

 1 detachment.

 2 A. We did, yes.

 3 Q. Thank you. You recall that Staff

 4 Sergeant Campbell was reluctant to name the officer,

 5 at which point...

 6 A. No...

 7 Q. Yes, go on.

 8 A. I'm lost now.

 9 Q. Okay, fair enough, at which point

10 you interjected and said, "Well, I will name him.

11 It was Lloyd Tapp." Do you remember saying that?

12 A. No.

13 MS. SINGH: Is there a point?

14 MR. TAPP: Fair enough.

15 THE VICE-CHAIR: Well, he just asked if

16 you remember that. I suppose that's a

17 question, but the answer is no.

18 MR. TAPP: Okay, we'll move on.

19

20 BY MR. TAPP:

21 Q. At that table in the conversation do

22 you remember holding Mr. Jack's shirt, like I

23 demonstrated with two fingers, "If you tell Lloyd

24 that's white, he'll say it's black"?

25 A. No.

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 Cr-Ex (L. TAPP)

 1 Q. Thank you. You testified earlier

 2 that you had enough stuff going on "in my life", and

 3 I think it was around the question put by counsel,

 4 "Anything positive for Mr. Jack?" but your comments

 5 were, "I had enough stuff going on in my life,"

 6 correct?

 7 A. M'hm.

 8 Q. Okay. Staff Sergeant Campbell was

 9 forced at one time to address this issue with you,

10 correct?

11 A. I'm not sure which issue you're

12 talking about.

13 Q. Okay. Staff Sergeant Campbell

14 specifically gave you, Constable Brockley and

15 Constable Mackaracher time off to sort out issues,

16 correct?

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

18 don't see the relevance of going down that

19 line of inquiry about this witness' issues.

20 MR. TAPP: It's very pertinent. It's

21 relative to the question that she asked and

22 the statement she made, "I had enough going

23 on in my life."

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

25 relevant to anything in these proceedings.

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 Cr-Ex (L. TAPP)

 1 MR. TAPP: How does she know? Now, if

 2 you had enough stuff going on in your

 3 life...

 4 THE VICE-CHAIR: Go ahead.

 5

 6 BY MR. TAPP:

 7 Q. If you had enough stuff going on in

 8 your life, okay, I'm going to suggest that yes,

 9 having somebody winking at you...

10 THE VICE-CHAIR: Okay.

11

12 BY MR. TAPP:

13 Q. ...that you viewed winking at you

14 was practically the straw that broke the camel's

15 back, let's say?

16 THE VICE-CHAIR: This is...

17

18 BY MR. TAPP:

19 Q. Okay, you had enough stuff going on

20 in your life, and to top it off you have now a

21 potential...you are assigned to be a mentoring

22 officer to Mr. Jack and you're finding that Mr. Jack

23 is winking at you, correct?

24 MS. SINGH: Mr. Vice-Chair, where is

25 this leading?

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 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: I have no idea.

 2 MS. SINGH: And it's not relevant. You

 3 know, we have limited time...

 4 THE VICE-CHAIR: It's like blaming the

 5 victim.

 6 MS. SINGH: Yes.

 7 MR. TAPP: Okay.

 8 MS. SINGH: It's blaming the victim, and

 9 you know, we can focus on what is at issue

10 in this proceeding, and not on all of these

11 tangential issues that Mr. Tapp seems to

12 think are somehow relevant.

13

14 BY MR. TAPP:

15 Q. Would you agree that Mr. Jack is a

16 person of an ethnic background, specifically a

17 Russian Jew?

18 A. Yes.

19 Q. Thank you.

20 A. That is what he has told me.

21 Q. Yes. You would agree that he speaks

22 English with a very thick Russian accent?

23 A. I guess the level of thickness

24 is...he has an accent, yes.

25 Q. Okay, he has an accent, yes.

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 Cr-Ex (L. TAPP)

 1 A. Yes.

 2 Q. And you recall speaking to him about

 3 that, or he speaking to you about that, and wanting

 4 to consider speech therapy sessions, right?

 5 A. Yes, that's correct.

 6 Q. Good, but do you know why he spoke

 7 to you and told you his desires of wanting to seek

 8 speech therapy lessons?

 9 A. No.

10 Q. No, okay. Did you happen to review

11 any of his evaluations prior to...or at least upon

12 being told that you were going to be his mentoring

13 officer?

14 A. I don't think so, no.

15 Q. No, okay. Would you happen to know

16 that many of his early evaluations make specific

17 reference that he speaks with a thick accent?

18 A. I don't know that.

19 Q. Okay. So time after time...I'm

20 going to say time after time being reminded very

21 formally...

22 MS. SINGH: Yes, Mr. Vice-Chair, the

23 evidence does not indicate that at all.

24 There are not performance evaluations, and

25 I would ask that that be corrected.

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 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: I think there is

 2 reference to his accent in one of the

 3 performance evaluations.

 4 MS. SINGH: In one. I think there is in

 5 one, in terms of radio communications.

 6 THE VICE-CHAIR: In terms of radio

 7 communications.

 8 MS. SINGH: In radio communications it

 9 does say that he does speak clearly. There

10 is never an issue in this proceeding about

11 him not being hired given his

12 circumstances, his accent or whatever.

13 In fact, the evidence, if anything,

14 is the exact opposite, that he was

15 considered to be an asset, and that he was

16 invited to join with his accent.

17 THE VICE-CHAIR: Okay.

18 MR. TAPP: Counsel is totally wrong. He

19 is constantly being reminded in his

20 reports, performance evaluation reports, at

21 least three of them, that he speaks with a

22 thick accent, which is why he tells you...

23 MS. SINGH: This witness has answered

24 that she has not seen those performance

25 evaluations.

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 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. You saw performance evaluation

 3 report 6/7, did you not?

 4 A. I have no idea.

 5 Q. Okay, I direct your attention

 6 to...did you not work on performance evaluation

 7 report 6/7 of Mr. Jack?

 8 A. I don't know which performance

 9 evaluation I worked on.

10 Q. Okay, I will show it to you. I

11 direct your attention...

12 THE VICE-CHAIR: Where is this going,

13 please?

14 MS. SINGH: Yes.

15 MR. TAPP: This is to show that there is

16 a very real reason why he approached her

17 and told her he is thinking of getting

18 speech therapy or speech languages to try

19 and rid himself of this accent that he is

20 constantly being reminded of in his

21 reports.

22 THE VICE-CHAIR: Well, is there any

23 controversy over that?

24 MR. TAPP: Yes, there is. There is.

25 THE VICE-CHAIR: What?

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 Cr-Ex (L. TAPP)

 1 MR. TAPP: This application is all about

 2 human rights violations. Accent is

 3 indicative of a person's background, ethnic

 4 background.

 5 THE VICE-CHAIR: Okay, but that's

 6 argument.

 7 MR. TAPP: Okay, but it's...

 8 THE VICE-CHAIR: She has indicated he

 9 has an accent.

10 MR. TAPP: Yes.

11 THE VICE-CHAIR: She has testified to

12 that effect.

13 MR. TAPP: True, Mr. Vice-Chair.

14 THE VICE-CHAIR: And she has even been

15 detailed that his accent is stronger when

16 he speaks quickly.

17 MR. TAPP: Okay. So the question over

18 there I asked her, did you know why...what

19 prompted...

20 THE VICE-CHAIR: She said no.

21 MR. TAPP: ...him to seek that. I'm

22 trying to show her that simply cannot be

23 true because her notes reveal she spent

24 five hours working on 6/7 evaluation. So

25 she would be aware of this 6/7. It's noted

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 Cr-Ex (L. TAPP)

 1 in 6/7 of the evaluation.

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

 3 THE VICE-CHAIR: And she has...hold on.

 4 She has testified as well that she told him

 5 he didn't have to go, that he spoke fine,

 6 that his English was good.

 7 MR. TAPP: Okay.

 8

 9 BY MR. TAPP:

10 Q. Constable Payne, did you work on Mr.

11 Jack's evaluation 6/7?

12 A. I don't know which one I worked on,

13 but I put input into an evaluation. I don't recall

14 which one it was.

15 Q. When you say "input", did...

16 A. Input.

17 Q. Yes, did you actually write anything

18 in there?

19 A. I believe that I did, but it

20 wasn't...it was to be reviewed and...

21 Q. Yes, true.

22 A. Right, it was just my input, and

23 then sent on for review by...

24 Q. Sergeant Flindall, as the

25 constable's supervisor?

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 Cr-Ex (L. TAPP)

 1 A. And Filman.

 2 Q. Thank you.

 3 A. Yes.

 4 Q. You're getting an e-mail, and I'll

 5 ask you the question before. The e-mail is from you

 6 to Sergeant Flindall. Would this e-mail be

 7 congruent with your testimony right now?

 8 So I will ask the question again after you

 9 first identify this document. It's from you to who?

10 A. Bob Flindall.

11 Q. Sent what date, please?

12 A. August 15th, 2009.

13 Q. Okay.

14 THE VICE-CHAIR: What exhibit is this?

15 MR. JACK: It formed part of a

16 communication. We entered four e-mails

17 yesterday, and it was one of them, and I'll

18 tell you exactly e-mails...just give me a

19 moment.

20 MR. TAPP: I think it was yesterday, Mr.

21 Vice-Chair.

22 MR. JACK: It's 198, four e-mails have

23 been...

24 THE VICE-CHAIR: Okay, thank you.

25 MR. TAPP: Just to understand, we

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 Cr-Ex (L. TAPP)

 1 entered in the exhibit, how we got it from

 2 counsel.

 3 THE VICE-CHAIR: Yes, I recall. I just

 4 wanted the number.

 5 MR. TAPP: Thank you.

 6

 7 BY MR. TAPP:

 8 Q. Now, with respect to this specific

 9 e-mail, can you just read what you wrote, please, to

10 Sergeant Flindall?

11 A. "...This is just a reminder e-mail

12 for tomorrow to send me Jack's evaluation.

13 Filman may have it labelled 'Jack 4'..."

14 Q. Okay, thank you, all right. So this

15 would be congruent with what you said earlier, "I

16 may have entered some, but I forwarded it on to be

17 reviewed"?

18 A. Yes.

19 Q. Thank you. Did you also work on

20 that evaluation regarding that e-mail, that

21 evaluation, from your home?

22 A. I don't know. I worked on an

23 evaluation from home, but I don't know if I worked

24 on one evaluation, if I worked on two evaluations in

25 that period. I don't know.

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 Cr-Ex (L. TAPP)

 1 Q. Okay, fair enough. Now, Counsel

 2 questioned you if you witnessed or observed any of

 3 Mr. Jack's...I'm going to refer to them as

 4 prohibited grounds were violated or you have any

 5 knowledge of that.

 6 A. I'm not sure what you mean by

 7 "prohibited grounds".

 8 Q. Okay. The Human Rights Code

 9 identifies certain grounds all individuals have, and

10 it makes it an offence to violate those protected

11 grounds.

12 A. Right.

13 Q. Namely ancestry, place of origin.

14 A. Yes.

15 Q. All of that, okay. Now, Counsel

16 worded it different, and I don't know exactly, but I

17 think your answer was, "Absolutely not"?

18 A. M'hm.

19 Q. Correct?

20 A. Correct.

21 Q. Okay. Yet you agree you kept a

22 specific book, a whole book, dedicated solely to Mr.

23 Jack's observations, right?

24 A. Yes.

25 Q. Thank you. Now, I think Mr. Vice-

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 Cr-Ex (L. TAPP)

 1 Chair said that during break you'll have a chance to

 2 review it.

 3 A. Yes.

 4 Q. Did you happen to review it?

 5 THE VICE-CHAIR: No, we haven't had

 6 break yet.

 7 MR. TAPP: I'm sorry. I'm getting lost

 8 in the question and I'm getting lost in

 9 trying... my apologies.

10 THE VICE-CHAIR: We will take a break, a

11 10-minute break. We'll come back. You

12 will have an hour.

13 MR. TAPP: Yes, yes.

14 THE VICE-CHAIR: You probably don't have

15 an hour's work of questions.

16 MR. TAPP: I really don't, Mr. Vice-

17 Chair.

18 THE VICE-CHAIR: So we'll come back and

19 you can explore after she has reviewed it.

20 MR. TAPP: Please review the balance. I

21 know I saw you flipping through. It looked

22 like you had flipped through a number of

23 pages.

24 THE WITNESS: Yes.

25 THE VICE-CHAIR: Ten minutes should be

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 Cr-Ex (L. TAPP)

 1 enough?

 2 THE WITNESS: Yes.

 3

 4 --- upon recessing at 3:14 p.m.

 5 --- A BRIEF RECESS

 6 --- upon resuming at 3:25 p.m.

 7

 8 JENNIFER PAYNE, resumed

 9 CONTINUED CROSS-EXAMINATION BY MR. TAPP:

10

11 MR. TAPP: Thank you.

12 THE VICE-CHAIR: You have reviewed?

13 THE WITNESS: I have.

14 THE VICE-CHAIR: Okay, good.

15

16 BY MR. TAPP:

17 Q. Now, were you able to find anything

18 positive in there, other than the neutral comments

19 about the directions you gave Mr. Jack?

20 A. Thank you.

21 Q. Now, I'm going to show you a copy of

22 all those notes that we have been disclosed to us.

23 It's from the applicant disclosure. I'm just going

24 to show you the copy from your notebook that we were

25 given. Just flip through those pages. You can

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 Cr-Ex (L. TAPP)

 1 probably...I'll simplify it, and just for expediting

 2 this, look at page 1. You can concur that it is

 3 from that book. Look at page 2, and then flip to

 4 the last. It has number of pages, 27 of whatever

 5 pages. They all have your business card name on it.

 6 A. Yes.

 7 Q. Thank you.

 8 MS. SINGH: I have a copy of the notes

 9 that were produced, and it's a 40-page

10 document.

11 MR. TAPP: That's true. There are two

12 books she maintained, one dedicated solely

13 to Mr. Jack. That's the one I and Mr.

14 Vice-Chair asked her to review.

15 So I'm going to ask that this be

16 marked as the next exhibit, please. How

17 many pages do you say, Constable Payne?

18 THE WITNESS: Thirty-five, with the

19 front page is 36.

20 MR. TAPP: Thirty-six pages. The

21 question was relative to she reviewed it

22 during a recess, and yes, there is nothing

23 positive in there, other than the one

24 neutral comment of directions she gave Mr.

25 Jack.

 - 184 - J. Payne

 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: But do I really have to

 2 enter that?

 3 MS. SINGH: I would ask that notebooks

 4 and notes not be entered, sir.

 5 THE VICE-CHAIR: They're typically not

 6 evidence, and I noted, and the recording

 7 will...the transcript will agree that she

 8 testified that there is nothing positive in

 9 the notes.

10 MR. TAPP: Okay, all right.

11 MS. SINGH: And also that this is simply

12 an indication of what is in her notes, what

13 else she may have done or said or thought.

14

15 BY MR. TAPP:

16 Q. Now, Constable Payne, you were asked

17 what you thought of when Mr. Jack did those

18 handstand push-ups. You testified that you

19 thought...that you felt Jacks thinks he is better

20 than everybody else, correct?

21 A. I don't think I said that statement

22 then.

23 THE VICE-CHAIR: Yes, there was no

24 linkage between the two. She testified

25 that she subsequently thought that he was

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 Cr-Ex (L. TAPP)

 1 showing off.

 2

 3 BY MR. TAPP:

 4 Q. At some point in time, Constable

 5 Payne, did you testify that Mr. Jack thinks he is

 6 better than everybody else?

 7 A. Yes, at the end, my final opinion.

 8 Q. Overview of him?

 9 A. Overview, yes.

10 Q. Okay. Would you call that overview

11 an objective overview or a subjective overview in

12 your opinion?

13 A. I would have to actually sit and

14 look at the definition of objective and

15 subjective...

16 Q. Okay, good.

17 A. ...to be honest.

18 Q. Give us a moment. You're familiar

19 with the definition of subjective?

20 A. No.

21 Q. Okay.

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

23 don't see the relevance of this question.

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

25 MR. TAPP: There is.

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 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: I don't think it helps

 2 you whether it's subjective or objective,

 3 in terms of what you have to establish.

 4 MR. TAPP: Okay, thank you, Mr. Vice-

 5 Chair. Let's move on.

 6

 7 BY MR. TAPP:

 8 Q. Would you agree that that

 9 view...would you call it a positive view of him or a

10 negative view of him?

11 A. It depends on who is receiving it.

12 Q. Well, you're the one speaking it.

13 It's your view of him. Did you view it positively

14 or did you view that negatively? You're the one

15 making that opinion of him.

16 A. Not completely negatively, but it's

17 not...you know, it's not...it's obviously not a

18 positive on, but it's not...it could be worse.

19 Q. Thank you. Based on that response,

20 would your inputs into Mr. Jack's performance

21 evaluation reports, at least the ones you had input

22 on, be objective?

23 A. I would submit my information to the

24 evaluation, and some of it may not have ever gotten

25 there or not. I just provided my stuff and I didn't

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 Cr-Ex (L. TAPP)

 1 do the final evaluation. So I don't know what

 2 information I provided and what stayed and what got

 3 deleted. I don't know.

 4 Q. Thank you. Supposedly Mr. Jack did

 5 wink at you, and you were uncomfortable and upset

 6 about it, correct?

 7 A. M'hm.

 8 Q. At least enough to address it with

 9 him?

10 A. Yes.

11 Q. Now, would you not consider that a

12 conflict of interest, then, to have your input into

13 his performance evaluation reports?

14 A. No, because I thought after we

15 addressed the issue that it would not happen again,

16 and it didn't happen after that. After we spoke in

17 the boardroom and I cleared the air on those issues,

18 it didn't happen again.

19 Q. But you agree that he limited his

20 time or involvement...

21 A. With me.

22 Q. ...with you?

23 A. Yes.

24 Q. Good. Now, you talked a bit about

25 him not notifying the dispatcher of his attendance

 - 188 - J. Payne

 Cr-Ex (L. TAPP)

 1 to a particular camp?

 2 A. M'hm.

 3 Q. Good. Do you know which patrol zone

 4 that camp was in? Put it this way...

 5 A. No.

 6 Q. ...would that have been in Mr.

 7 Jack's patrol zone?

 8 A. I'm not sure actually.

 9 Q. Okay.

10 A. I'm not sure of the address of it.

11 Q. Now, there are zones, are there not,

12 at Peterborough detachment?

13 A. That's correct.

14 Q. And there are officers assigned to

15 be in their particular zone, correct?

16 A. Yes.

17 Q. Granted, at times, a particular call

18 might carry them out of that assigned zone, correct?

19 A. Correct.

20 Q. Right. So would it surprise you to

21 find out that Mr. Jack...the camp was in Mr. Jack's

22 zone?

23 A. It was irrelevant to the issue.

24 Q. True, but would it surprise you to

25 find out that the camp was in Mr. Jack's zone?

 - 189 - J. Payne

 Cr-Ex (L. TAPP)

 1 A. No, it wouldn't be an...that's not

 2 the issue.

 3 Q. Fair enough. Did you know the

 4 circumstances surrounding why he went to that camp?

 5 A. Just what he had told me.

 6 Q. Okay. Would you agree that being

 7 acting sergeant and officer in charge that

 8 occasionally, when an officer on another platoon

 9 investigates an incident where there is a potential

10 of a recurrence, a detachment-wide e-mail would go

11 out from that officer for other shifts to pay

12 particular attention to such and such, a location

13 "in case we get a call"?

14 A. Could that happen?

15 Q. Yes.

16 A. Yes.

17 Q. Thank you. From your knowledge and

18 your experience that if such a call was received or

19 if an officer put out a detachment-wide e-mail,

20 highlighting a specific address, that during shift

21 briefing there could be discussions that if you

22 happen to attend to document any attendance? Would

23 that be expected or normal?

24 A. If the e-mail said for someone to

25 attend there.

 - 190 - J. Payne

 Cr-Ex (L. TAPP)

 1 Q. Okay. Now, would it also be normal

 2 that extra patrols might be required if a particular

 3 location was identified as a problem area

 4 A. Yes.

 5 Q. Thank you, and that would be

 6 congruent, right, with OPP orders of community-based

 7 policing?

 8 A. It would be similar, yes...

 9 Q. Thank you.

10 A. ...along the lines.

11 Q. So if I were to suggest that the

12 reason Mr. Jack was there, because extra patrols

13 were requested by camp management, would that change

14 your testimony about Mr. Jack or why he attended?

15 A. No, because my point of him

16 attending there is, first off, not telling

17 communications that he is there. Second of all, is

18 it may have a bit of bearing with respect to

19 interfering with other people's investigations, but

20 one of the bigger issues, one of these big issues,

21 is the fact that he has gone somewhere. He has not

22 told anyone where he is.

23 He has a task list that he is supposed to

24 be working on, and he is doing other work. So his

25 time management is not...is being affected. He has

 - 191 - J. Payne

 Cr-Ex (L. TAPP)

 1 got other things he is supposed to be doing, yet he

 2 has gone to a call that he is not required to be at,

 3 doesn't need to be there, because of a personal

 4 issue of...and I get...I understand. I sympathize

 5 with him that he feels that he could help them, but

 6 he should...there should have been other avenues and

 7 other steps that he took in order to become involved

 8 in that occurrence.

 9 Q. So the bottom line is he failed to

10 notify the dispatcher, correct?

11 A. First off.

12 Q. Good, because we have already

13 addressed that yes, there could have been a

14 detachment-wide e-mail for extra patrols for that

15 particular camp, correct?

16 A. I don't know whether there was.

17 Q. Thank you.

18 A. It would be hypothetical.

19 Q. Thank you. Now, you testified that

20 when you spoke to him privately in the constables'

21 office, and you addressed the matter of the winking

22 with him...

23 A. In the boardroom.

24 Q. In the boardroom, in the boardroom,

25 you were satisfied with that, right?

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 Cr-Ex (L. TAPP)

 1 A. Yes.

 2 Q. Okay, good. You also testified when

 3 the issue about him requesting about...requesting

 4 your notes so he can prepare his book, you finally

 5 gave him a copy of your notes?

 6 A. M'hm.

 7 Q. He looked over and gave them...he

 8 didn't give them to you. He put them...he threw

 9 them, I think your words...

10 A. In the diary slot.

11 Q. ...or he flung them in, in your

12 diary slot, okay. You were upset at him, weren't

13 you?

14 A. M'hm.

15 THE VICE-CHAIR: Mr. Tapp, where are the

16 questions? We know all this. You have

17 just repeated everything we know.

18

19 BY MR. TAPP:

20 Q. Now, you were upset, and how did you

21 display your anger towards him? You berated him in

22 the presence of others, didn't you?

23 A. We had words in front of other

24 people, yes.

25 Q. Describe your interpretation of

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 Cr-Ex (L. TAPP)

 1 words? You already indicated you were angry at him?

 2 A. My voice was raised.

 3 Q. Thank you.

 4 A. And I called him on why he had asked

 5 repeatedly and repeatedly and repeatedly for my

 6 notes, and when I finally gave them to him, that he

 7 looked at them and threw them in the diary slot.

 8 Q. Good.

 9 A. Yes.

10 Q. Now, you know every cruiser has a

11 dash pad on it?

12 A. Yes.

13 Q. Good. He saw you writing notes and

14 writing on your dash pad, correct?

15 A. M'hm.

16 Q. All right. He is a probationary

17 officer, been assigned you as his mentoring officer.

18 Did it not occur to you that he might have just

19 wanted to see the manner in which you document your

20 notes as opposed to how he has been shown by Mr.

21 Filman?

22 A. No.

23 Q. No, it didn't. Okay, thank you.

24 Let's move on. You had strong words with him. You

25 both had words?

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 Cr-Ex (L. TAPP)

 1 A. We both had.

 2 Q. Okay. Mr. Jack's position is

 3 otherwise, but nonetheless, why would he then wink

 4 with you, because the winking occurred after the

 5 date of that incident?

 6 A. I can't answer that.

 7 Q. Thank you. Now, you said you have

 8 given ride-alongs to people in the past?

 9 A. Yes.

10 Q. Is it normal practice for officers

11 to attend their ride-along residences to pick them

12 up?

13 A. Sometimes.

14 Q. Okay. Is it your understanding or

15 belief from speaking to Mark Gravelle that he

16 attended his residence to pick him up?

17 A. I don't know who I heard that

18 information from, but yes, my understanding is that

19 they attended his residence to pick him up.

20 Q. Are you certain of that? I'm going

21 to suggest that on both occasions Mr. Jack attended

22 the detachment. Would that change your testimony?

23 MS. SINGH: Asked and answered.

24 MR. TAPP: Okay.

25

 - 195 - J. Payne

 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. I'm going to suggest that

 3 you...suggest to you that Mr. Jack attended the

 4 detachment for his ride-along with Mark Gravelle.

 5 How is that?

 6 MS. SINGH: But the witness has

 7 answered.

 8 THE VICE-CHAIR: This is what she was

 9 told.

10 MR. TAPP: Okay.

11

12 BY MR. TAPP:

13 Q. You're getting a document here.

14 A. Thank you.

15 Q. First of all, is that your

16 name...badge number at the bottom "Printed by"?

17 A. Yes.

18 Q. And read the date it was printed,

19 please?

20 A. The 25th of July, 2009.

21 Q. Is that pertinent to this

22 application and the time frame of Mr. Jack? 2009?

23 A. 2009.

24 Q. Thank you. Now, can you explain

25 that document, SP...

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 Cr-Ex (L. TAPP)

 1 A. The SP is the occurrence number.

 2 Harassment is the type of the call that it was CAD'd

 3 in by the dispatcher, the date of the occurrence,

 4 23rd of July, 2009. I think 12:53 is the time of

 5 the dispatch or the time the call was created.

 6 Q. Now, you came in on your off duty

 7 day to print that, right? I think your testimony

 8 was that you were off from...rather, can you look at

 9 your notes for the 25th of July?

10 A. It was a Saturday.

11 Q. Thank you. Were you on duty or off

12 duty?

13 A. I was off duty.

14 Q. Thank you. So why would you come to

15 the detachment and print out an occurrence about Mr.

16 Jack's harassment during your day off?

17 A. I don't recall.

18 Q. Thank you. Isn't it indicative of

19 somebody keeping Mr. Jack under surveillance at all

20 times, for you to come in on your day off to print

21 out an occurrence regarding Mr. Jack?

22 A. No. I know that this occurrence was

23 one that we had several...myself and several other

24 officers had dealings with him on, and trying

25 to...his time management on this was out of control,

 - 197 - J. Payne

 Cr-Ex (L. TAPP)

 1 and I don't believe he got overtime approved, and I

 2 think this is the period of time when Sergeant

 3 Flindall was away.

 4 Q. Did you say "overtime approved"?

 5 A. I don't think his overtime was

 6 approved.

 7 Q. Okay, fair enough.

 8 A. I'm not sure. So I don't know why I

 9 came in off duty to print that off. I can't give

10 you an explanation for that.

11 Q. Thank you. Who were the other

12 officers, please?

13 A. I'm sorry?

14 Q. You said you and other officers.

15 You used...your testimony was you and other officers

16 had dealings with it or had issue.

17 A. This harassment call...

18 Q. Yes.

19 A. ...you know, I think this is the one

20 where he came in, or he stayed late when Constable

21 Brockley was working, and he had stayed late that

22 night, and I know that Sergeant Flindall was on

23 holidays. So that...I'm just trying to formulate in

24 my head who was around and why I would have printed

25 this.

 - 198 - J. Payne

 Cr-Ex (L. TAPP)

 1 Q. Okay, and I was trying to ascertain

 2 when you used the words "other officers". That's

 3 what I was trying...

 4 A. Yes, yes. No, I was trying to

 5 formulate the occurrence and put myself into why I

 6 would have come in and printed this, and I really

 7 don't know.

 8 Q. Okay, fair enough. So had it not

 9 been for Constable Brockley, you would not have

10 known about this criminal harassment or come in on

11 your day off to print that?

12 A. Pardon?

13 Q. You said that's the day Constable

14 Brockley was working?

15 A. Let me go back to my notes, because

16 I want to be sure that that is...there are a couple

17 of calls that he had where...that kind of blend for

18 me. So I just want to make sure that that's the

19 one. 23rd of July. Yes, because on the 23rd I had

20 asked Constable Brockley to...that's something else.

21 Q. Maybe if counsel wants to explore it

22 further...Constable Payne, I'll simplify it. You

23 got the information from your husband, Constable

24 Brockley, and then you came to the detachment on

25 your day off and printed that occurrence, correct?

 - 199 - J. Payne

 Cr-Ex (L. TAPP)

 1 A. I can't say why I printed it or how

 2 I printed it. I don't know.

 3 Q. But there had to be a reason for you

 4 to attend and print a particular occurrence

 5 involving Mr. Jack, correct, on a day off?

 6 A. I'm thinking I printed it because it

 7 was not showing...it was showing what he...the time

 8 it took him to do stuff and what...the stuff he was

 9 doing and what was he specifically told to do and

10 other things that he was doing.

11 Q. Where does it show the time that he

12 was doing stuff?

13 A. Well, there would be the times that

14 the reports were added and started.

15 Q. Anyways, you agree that it does seem

16 odd, and you don't have a reason why...

17 A. No, I don't agree to that.

18 MS. SINGH: Objection.

19

20 BY MR. TAPP:

21 Q. Does it seem odd to you that you

22 would come in on a day off and print this summary?

23 A. There had to be a reason for it. I

24 just...I don't remember, and I can't explain it.

25 MR. TAPP: Good enough, thank you very

 - 200 - J. Payne

 Cr-Ex (L. TAPP)

 1 much. We won't explore it any further.

 2 That's enough, enough questions on this.

 3 Next exhibit, please, Mr. Vice-Chair.

 4 THE VICE-CHAIR: That's 217.

 5

 6 --- EXHIBIT NO. 217: Occurrence report printed July 25,

 7 2009

 8

 9 BY MR. TAPP:

10 Q. You're getting another e-mail. Mr.

11 Jack is going to hand it to you. Were you on duty

12 on December 15th, Constable Payne?

13 A. December?

14 Q. December 15th, 2009.

15 A. I don't know. I don't have my

16 notebook here for December, 2009.

17 Q. You are getting a document before

18 you. It's an e-mail. Do you recognize that e-mail?

19 A. Yes, I do.

20 Q. It's sent from you...

21 A. Yes.

22 Q. ...and the date, please?

23 A. December 15th, 2009.

24 Q. 10:44 p.m.?

25 A. Yes, sorry.

 - 201 - J. Payne

 Cr-Ex (L. TAPP)

 1 Q. Now, would you have been working

 2 that day?

 3 A. Yes.

 4 Q. Thank you. Who was it sent to?

 5 A. It is sent to Sergeant Gerry Smith,

 6 Sergeant...sorry, our acting inspector at the time,

 7 Mike Reynolds, Sergeant Flindall, Sergeant Banbury

 8 and Jason Folz, who I believe was an acting sergeant

 9 at the time.

10 Q. And why would you send that e-mail

11 out, please?

12 A. I was instructed to send the e-mail

13 out from Sergeant Banbury to everyone, to

14 advise...because Sergeant Banbury had come back with

15 Michael Jack to the detachment after his dismissal,

16 and with garbage bags full of his gear, and I was

17 advised to send the e-mail out to everyone, so they

18 are aware that is where his items were. You see at

19 the bottom it's sent at the request of Sergeant

20 Banbury.

21 Q. Thank you. Did you witness Mr. Jack

22 surrender his issued equipment on December 15th?

23 A. I did not see them gather it. I saw

24 bags come into the office. I don't know what was in

25 there.

 - 202 - J. Payne

 Cr-Ex (L. TAPP)

 1 Q. You were in the sergeant's office at

 2 that time?

 3 A. Yes, I was.

 4 Q. Thank you. Did you approach Mr.

 5 Jack to say anything at all?

 6 A. No, I did not.

 7 Q. So if you felt sorry for him, would

 8 you not want to approach him and let him know?

 9 MS. SINGH: Asked and answered, sir.

10 MR. TAPP: That's a question to her.

11 MS. SINGH: Asked and answered.

12

13 BY MR. TAPP:

14 Q. You indicated you felt sorry for

15 him. Did you try to convey your sorrow to him in

16 any manner? Did you? You felt sorry. Did you try

17 to convey how you felt to him in any way?

18 A. No, I did not.

19 Q. Okay, thank you. Did you smirk at

20 him?

21 A. No, I did not.

22 MR. TAPP: Next exhibit, please.

23 THE VICE-CHAIR: Has this been entered

24 as an exhibit?

25 MR. TAPP: No, it has not.

 - 203 - J. Payne

 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: Do you want it?

 2 MR. TAPP: Yes, I do. Okay, Mr. Vice-

 3 Chair, I'm at the point, and I'm mindful of

 4 the time, okay, and I'm mindful of the time

 5 restraints.

 6 This basically has been going back

 7 and forth into a he says/she says kind of

 8 thing. We have substantial documentary

 9 evidence to identify and put for to this

10 witness regarding six case scenarios. All

11 we ask is just to be afforded the time for

12 one of them. That's all.

13 THE VICE-CHAIR: And the purpose of

14 this? What are you trying to establish?

15 MR. TAPP: To show that Mr. Jack,

16 contrary to how the witnesses testified,

17 that he was following direction, and his

18 version does...the documentary evidence

19 goes to support his version.

20 THE VICE-CHAIR: Does she have any

21 connection with those documents?

22 MR. TAPP: Yes, very much.

23 THE VICE-CHAIR: Go ahead.

24 MR. TAPP: Okay.

25

 - 204 - J. Payne

 Cr-Ex (L. TAPP)

 1 --- EXHIBIT NO. 218: E-mail from Constable Payne to

 2 Constable Smith et al., dated

 3 December 15, 2009

 4

 5 BY MR. TAPP:

 6 Q. For instance, let's take, for

 7 example, the break and enter scenario that you were

 8 involved in with Mr. Jack on June 16th, 2009.

 9 MS. SINGH: Mr. Vice-Chair, again, the

10 performance evaluations...

11 THE VICE-CHAIR: Is this a performance

12 evaluation?

13 MR. TAPP: No, it has nothing to do...

14 MS. SINGH: But it's the same sort of

15 line of questioning that, you know, that

16 the witness' opinions are incorrect because

17 the applicant is now going to show that

18 clearly he was following directions or he

19 was right or he was better or he was

20 whatever, and it doesn't change the

21 evidence.

22 The evidence is that the witness

23 has an opinion and formed an opinion in

24 good faith in relation to this applicant,

25 and whether he was able to meet, you know,

 - 205 - J. Payne

 Cr-Ex (L. TAPP)

 1 the performance requirements, or whether

 2 there was any animus that was inappropriate

 3 that entered into that opinion, and so

 4 right, wrong or indifferent in terms of the

 5 opinion, the opinion is the opinion, and so

 6 for the tribunal to be asked to go into

 7 this other excursion in relation to his

 8 reports is a divergence that is not about

 9 matters that are in issue.

10 MR. TAPP: Okay, I hear Counsel's

11 position. This...the reason we're delving

12 into this was this officer, Constable

13 Payne, did exemplify by her direction how

14 to address the attendance of a particular

15 call.

16 So when Mr. Jack responded as per

17 the direction given by her, he is chastized

18 by her. So yes, we wanted to.

19 THE VICE-CHAIR: I mean, all that

20 evidence I probably heard a couple of years

21 ago, right. I recall hearing all sorts of

22 evidence about Mr. Jack going out on...

23 MR. TAPP: From the detachment,

24 travelling all the way...

25 THE VICE-CHAIR: ...these calls.

 - 206 - J. Payne

 Cr-Ex (L. TAPP)

 1 MR. TAPP: And she was closer to the

 2 call.

 3 THE VICE-CHAIR: I mean, Counsel is

 4 correct. She has formed her opinion, and

 5 that may or may not have informed her

 6 relationship with Mr. Jack. I don't know,

 7 but I don't want to go there. It's not

 8 helpful to your cause.

 9 MR. TAPP: Okay.

10

11 BY MR. TAPP:

12 Q. Constable Payne, okay, regarding all

13 your entries about Mr. Jack in your notebook that is

14 dedicated solely to him, you have indicated that

15 they are negative observations, one exception about

16 the neutral documentations about the direction

17 given, correct?

18 A. Yes.

19 Q. Good. They are observations of a

20 particular officer that is of an ethnic background,

21 correct?

22 A. That wasn't...

23 Q. No, I'm asking...

24 THE VICE-CHAIR: What was the question?

25

 - 207 - J. Payne

 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. Those observations are of Mr. Jack.

 3 Looking at the cover of your book, it says

 4 "Constable Jack", the whole book, correct?

 5 THE VICE-CHAIR: Yes, we have

 6 established that.

 7

 8 BY MR. TAPP:

 9 Q. Okay, we discussed that. Those

10 observations are of Mr. Jack and Mr. Jack, you know,

11 is an ethnic officer, correct?

12 THE VICE-CHAIR: We know that, too.

13 MR. TAPP: Okay, all right.

14 THE VICE-CHAIR: She knows that.

15

16 BY MR. TAPP:

17 Q. When you confronted Mr. Jack about

18 the winking, Mr. Jack told you his eye did that?

19 A. Yes.

20 Q. Okay. Did you know that...why he

21 said that?

22 A. I thought he was lying.

23 Q. Okay, fair enough. You thought he

24 was lying.

25 A. I had never seen it happen before.

 - 208 - J. Payne

 Cr-Ex (L. TAPP)

 1 Q. You know from experience...do you

 2 know that people react differently under stress?

 3 A. Sure, they do.

 4 Q. Certainly. Did you happen to know

 5 that when Mr. Jack is under stress his nose bleeds

 6 profusely and his eye does flutter?

 7 A. I knew about his nosebleeds.

 8 Q. Pardon me?

 9 A. I did know about his nosebleeds. He

10 had frequent nosebleeds.

11 Q. Okay, thank you, but you didn't

12 know...

13 A. I didn't know the cause of them.

14 Q. You didn't know about the other, the

15 fluttering of the eye?

16 A. No, I was never told that.

17 Q. Fair enough. That's understandable,

18 then, why you believed he was lying to you, right?

19 In the absence of that knowledge, you believed he

20 was lying to you?

21 A. He didn't give me an explanation.

22 Q. Would you agree that when he was

23 confronted with that allegation, that if somebody

24 were to confront a male person with a matter that

25 can be shocking...to be confronted by such an

 - 209 - J. Payne

 Cr-Ex (L. TAPP)

 1 allegation, your winking accusation, rather, that

 2 your winking at me can be shocking?

 3 MS. SINGH: Mr. Vice-Chair, the witness

 4 has given her...

 5 THE VICE-CHAIR: I agree, I agree.

 6 MR. TAPP: Mr. Vice-Chair, I'm being

 7 instructed we have prepared a lot of

 8 evidence. We're mindful of the time

 9 restraints and apparently we're not being

10 allowed to introduce them, and we would

11 like to cross on that.

12 We have these volumes of

13 information, documentary evidence, and we

14 would like that opportunity and it seems

15 like we're being prevented, Mr. Vice-Chair.

16 THE VICE-CHAIR: Mr. Tapp, I know Mr.

17 Jack is pressing you to introduce this

18 evidence. He has been doing that all

19 along. He has been smirking. He has been

20 over talking the witnesses when they are

21 providing evidence, which forces you to

22 listen to him, and I don't think you hear

23 what the witness is saying.

24 The answer is no. You have hit it

25 on the head. It's he said/she said at this

 - 210 - J. Payne

 Cr-Ex (L. TAPP)

 1 point in time. I have to make the

 2 determination. I don't even know if I have

 3 to make the determination, given the issue

 4 that is before me. It's a code violation.

 5 MR. TAPP: Okay, I understand you, Mr.

 6 Vice-Chair. Thank you very much. Subject

 7 to that, those are all the cross of this

 8 witness.

 9 THE VICE-CHAIR: Okay, thank you. Thank

10 you. You can step down.

11 THE WITNESS: Thank you.

12 MS. SINGH: No questions on re-exam.

13 Thank you. Thank you, Mr. Vice-Chair.

14 MR. TAPP: While the court reporter is

15 on...okay, you want the court reporter off

16 while we address this other witness and the

17 remaining days?

18 THE VICE-CHAIR: Yes, we don't need it

19 on the record. Thank you.

20

21 --- upon adjourning at 4:06 p.m.

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 4 EXHIBIT NO. DESCRIPTION PAGE NO.

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 7 214. E-mail dated November 10, 2009

 8 from Mr. Taylor to Mr. Nie, et al. 23

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10 215. E-mail dated November 19, 2009

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12 et al. 27

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15 Johnston, Butorac, et al., dated

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22 Constable Smith et al., dated

23 December 15, 2009 204

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 4

 5 I hereby certify the foregoing to be a true and

 6 accurate transcription of the above noted

 7 proceedings held before me on the 14th DAY OF

 8 SEPTEMBER, 2016 and taken to the best of my skill,

 9 ability and understanding.

10

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12 } Certified Correct:

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21 } Matthew Dixon

22 } Certified Verbatim

23 Reporter

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