Tribunal File No.: 2010-07633-I

HUMAN RIGHTS TRIBUNAL OF ONTARIO

MD/sr

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 15, 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

R. Nie - 2

Ex-in-Ch (M. SINGH)

INDEX OF PROCEEDINGS

PAGE NUMBER

RICHARD NIE, affirmed

Examination-in-Chief by MS. SINGH 3 - 58

Cross-Examination by MR. TAPP 58 - 173

Re-Examination by MS. SINGH 173 - 178

Exhibits 179

Certification 180

R. Nie - 3

Ex-in-Ch (M. SINGH)

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

2 --- upon commencing at 9:34 a.m.

3

4 THE VICE-CHAIR: Counsel.

5 MS. SINGH: Good morning, sir. I have

6 our next witness ready.

7 THE VICE-CHAIR: Would you please state

8 your full name for the record?

9 MR. NIE: Provincial Constable Richard

10 Nie. N-I-E is the spelling of the last name.

11 THE VICE-CHAIR: Mr. Nie, you are about

12 to give evidence before the Human Rights Tribunal

13 and the Tribunal is dependent on you telling the

14 truth. Do you solemnly affirm to tell the truth?

15 MR. NIE: Yes, I do.

16 THE VICE-CHAIR: And do you appreciate

17 that it is an offence at law if you break that

18 promise?

19 MR. NIE: Yes.

20 THE VICE-CHAIR: Thank you very much.

21 Counsel?

22 MS. SINGH: Thank you, sir.

23

24 RICHARD NIE, affirmed

25 EXAMINATION-IN-CHIEF BY MS. SINGH:

R. Nie - 4

Ex-in-Ch (M. SINGH)

1 Q. Constable Nie, are you currently

2 employed by the OPP?

3 A. Yes, I am.

4 Q. What rank do you presently hold?

5 A. I have the rank of constable.

6 Q. When did you join the OPP?

7 A. On September 13th in the year 2000.

8 Q. When were you assigned to the

9 Peterborough detachment, sir?

10 A. I transferred to Peterborough in

11 September of 2003.

12 Q. Where were you before?

13 A. I was stationed at the...originally

14 called Downsview detachment of the OPP. Since

15 renamed Toronto or GTR. It is the traffic

16 detachment at Keele Street and the 401.

17 Q. Do you recall what rank you held in

18 2009?

19 A. Constable.

20 Q. What platoon were you assigned to in

21 2009?

22 A. I was on D Platoon at the

23 Peterborough detachment.

24 Q. And who was your supervising

25 sergeant, sir?

R. Nie - 5

Ex-in-Ch (M. SINGH)

1 A. At one point of that year, it was

2 Acting Sergeant Postma. At another point, it was

3 Sergeant Butorac.

4 Q. Do you recall when Sergeant Butorac

5 was the sergeant for your platoon in 2009?

6 A. Not without referring to notes or

7 looking something up.

8 Q. And who was the staff sergeant,

9 operations manager in 2009? The inspector.

10 A. Staff Sergeant Ron Campbell.

11 Q. And who was the detachment commander

12 in 2009?

13 A. That, I am not a...I think Inspector

14 Mike Johnston was there at the time but I know there

15 is an acting inspector in there at some point too.

16 Q. The events that we are talking about

17 occurred eight years ago.

18 A. Yes.

19 Q. And as a police officer, did you

20 make notes of the events at the time?

21 A. I do have notes, yes.

22 Q. And did you do your best to make

23 sure that your notes are accurate?

24 A. Yes.

25 Q. And did you seek to record the

R. Nie - 6

Ex-in-Ch (M. SINGH)

1 events that seemed important to you at the time?

2 A. That is correct.

3 Q. And was your memory of the events

4 better or worse at the time of making your notes

5 than it is now?

6 A. Probably better at the time.

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

8 that the witness be allowed to refer to his

9 notes to refresh his memory to the extent

10 required in giving his evidence.

11 THE VICE-CHAIR: Indeed.

12 MS. SINGH: Thank you.

13

14 BY MS. SINGH:

15 Q. Were you Jack's second coach

16 officer, Mr. Nie?

17 A. I believe, yes.

18 Q. Do you recall when you became his

19 second coach officer?

20 A. I think it was in September of that

21 year. Late August, early September.

22 Q. Do you recall who selected you to do

23 this?

24 A. Off the top of my head, no, but I

25 remember being approached by the superiors at the

R. Nie - 7

Ex-in-Ch (M. SINGH)

1 time. I don't know if it was specifically Sergeant

2 Butorac or Acting Sergeant Postma. I do remember

3 being asked if I would help out.

4 Q. I am showing the witness Exhibit 28.

5 Can you identify that document, please, sir?

6 A. This is an excerpt out of the

7 Ontario Provincial Police's police orders, which is

8 an online internal file that we have that basically

9 provides the steps and procedures and rules for how

10 we conduct business within the OPP. And this

11 section is specific to human resources and

12 probationary constables.

13 Q. Are you familiar with that police

14 order?

15 A. Yes.

16 Q. What training is required to be an

17 OPP coach officer?

18 A. In order to be a coach officer, as

19 part of the OPP's provincial police academy there is

20 a course that you have to go and take, what they

21 call the coach officer course. And once you

22 complete that course, then you are able to be a

23 coach officer back at your own detachment.

24 Q. Did you complete the required

25 training to be Jack's second coach officer by the

R. Nie - 8

Ex-in-Ch (M. SINGH)

1 time you became his second coach officer?

2 A. Yes, I did.

3 Q. And did you have any experience

4 coaching other recruits prior to Jack?

5 A. Yes, I did.

6 Q. How many recruits, sir?

7 A. Five specifically for myself as well

8 as helping out with several others. And by helping

9 out, I mean if they were assigned a coach officer on

10 a shift and their coach was away for a period of

11 time, I would always be looked at to step in and

12 help them.

13 Q. Thank you. I am showing the witness

14 a copy of Exhibit 24. Do you recognize that

15 document?

16 A. I have seen this document before.

17 Q. Can you identify it, please?

18 A. It is the probationary constable

19 evaluation report guidelines and this version was

20 developed in November of 2008.

21 Q. Are you familiar with the document?

22 A. Yes.

23 Q. What are the roles and

24 responsibilities of a coach officer, Mr. Nie? I am

25 just directing your attention, if that is of

R. Nie - 9

Ex-in-Ch (M. SINGH)

1 assistance, to page 4. You don't have to read them

2 out, but if you could just describe them.

3 A. I should comment when I took the

4 coach officer's course, this document was not in

5 place. So, what I was trained on was a different

6 version of this. However, process improvements over

7 time, you know, they make modifications to it. So I

8 am aware of this document. Basically, in my view,

9 the role of the coach officer is to train and assist

10 new recruits that are being hired by the police

11 service in order to have them successfully complete

12 their probationary period and become a first class

13 constable.

14 Q. And would there be any difference in

15 terms of training if you are a second coach officer,

16 a first coach officer or a third coach officer?

17 A. Well, I would say that if you are

18 the second coach officer, you would, you know, see

19 what the first coach officer has done or what wasn't

20 working or what was working and those kind of things

21 and look at the situation from there. As far as,

22 you know, specific training points, each coach would

23 have their own way of handling, you know, a call or

24 something and putting their input on that. But as

25 far as following the police order rules of when

R. Nie - 10

Ex-in-Ch (M. SINGH)

1 evaluations are done and timing, all of that stuff

2 would be the same.

3 Q. And just looking at that page 4,

4 there are a number of different positions that are

5 listed there.

6 A. Yes.

7 Q. Would the role of a second coach

8 officer again be the same in relation to the

9 responsibilities of others involved in preparing the

10 evaluations...the performance evaluations for a

11 recruit?

12 A. Essentially, yes. Some parts

13 of...where it talks about develop a plan of

14 training, if we use this example of this instance,

15 if Constable Jack's or Mr. Jack's first coach

16 officer had taken him to the drug unit and met them,

17 I wouldn't do that all over again if it had already

18 been done, those type of things, so...

19 Q. Okay. But you would...would you

20 actually...would you, for example, when you prepare

21 a performance evaluation send that up the chain to

22 your supervisor for input and approval?

23 A. Yes.

24 Q. When you were asked, Constable Nie,

25 to become Jack's second coach, were you provided

R. Nie - 11

Ex-in-Ch (M. SINGH)

1 with any reasons for becoming his second coach?

2 A. I was...I am going from memory here

3 but I...I believe I was told that there was a

4 recruit on another shift that was having some

5 difficulties and they wanted me to have a look to

6 see if I could help this person get through their

7 probationary period. Just a different set of eyes.

8 Q. Did you hear any rumours about Jack?

9 A. I don't have any specific

10 information about rumours that...you know, people

11 talk around the detachment about, you know, officers

12 and recruits or people struggling. So, I was aware

13 that there may have been some struggles but for

14 specifics on...to say did I hear a rumour about him,

15 I would have to say no because I don't...I don't

16 have anything to say on that.

17 Q. Okay. Did you hear Jack being

18 referred to by the nickname "Crazy Ivan"?

19 A. No.

20 Q. You heard about his performance

21 management issues?

22 A. I was aware of performance

23 management issues once I was asked to take over and

24 look at the information that had been done

25 previously.

R. Nie - 12

Ex-in-Ch (M. SINGH)

1 Q. Did you have confidence once you

2 took over and looked at his performance management,

3 did you have confidence that you could provide Jack

4 with a fresh start?

5 A. Yes. I had every confidence in my

6 abilities as coach officer. I will be honest that

7 when I saw how many categories had been rated

8 negatively, I...and I was quite frank with him that

9 it was going to be a challenge.

10 Q. Did your supervising sergeant...and

11 I think it is Butorac, did he give you any

12 directions about how to coach Jack?

13 A. I do recall that as part of coaching

14 a probationary constable, normally you have a time

15 period when you are with your coach every day. Then

16 you have a time period where you are allowed to go

17 by yourself during the daytime and you go back with

18 your coach at night and then if things keep

19 progressing well, then you go by yourself even at

20 night. I do recall having conversations with

21 Sergeant Butorac about the fact that I would need to

22 be with Michael all the time because we were in such

23 a short time frame to get this completed that I

24 would need to see the whole picture. So, I don't

25 even recall whether he was able to go by himself in

R. Nie - 13

Ex-in-Ch (M. SINGH)

1 daytime or nighttime or not but the conversation

2 that I had with Sergeant Butorac was that

3 we...whether it was his idea or mine, the decision

4 was he would...we would be together all the time.

5 Q. And was the intent of that to assist

6 Jack in terms of his coaching and becoming

7 successful?

8 A. Of course. The reality is with...I

9 am going from memory. I think it was something like

10 17 categories that didn't meet requirements. You

11 know, I wouldn't be able to get somebody to that

12 point without spending a lot of time with them.

13 Q. I am showing you a document,

14 Constable Nie. Do you recognize that document?

15 A. Yes, it is an e-mail sent from

16 myself to Sergeant Butorac on September 20th, 2009.

17 Q. And can you please describe the e-

18 mail that you were sending to your sergeant?

19 A. It is an e-mail about Mr. Jack's

20 eight-month evaluation. It is commencing on that I

21 was reviewing the evaluation that I noticed a

22 problem that I would say with the work improvement

23 plan not matching the evaluation and so forth and I

24 suggested that that get rectified.

25 Q. And did you serve this eight-month

R. Nie - 14

Ex-in-Ch (M. SINGH)

1 evaluation on Jack?

2 A. I don't recall.

3 Q. Did you input into Jack's eight-

4 month evaluation?

5 A. Without some other reference, I am

6 not sure. Is the eight-month...I see here eight

7 months says August 9th to September 9th, so I don't

8 believe I started coaching Michael until September

9 9th so I don't believe I had any input in that

10 evaluation.

11 Q. So the input would only be to have

12 noticed, as you mention in this e-mail, that there

13 is a discrepancy between the numbers?

14 A. Right, there is a format and a set

15 of rules that need to be followed with how a work

16 improvement plan matches an evaluation. And this

17 evaluation that had been put in place didn't match

18 up to what those rules were.

19 MS. SINGH: If I could have this marked

20 as an exhibit, please.

21 THE VICE-CHAIR: Okay. Just give me a

22 moment. So, this is Exhibit 219.

23 MS. SINGH: Thank you.

24

25

R. Nie - 15

Ex-in-Ch (M. SINGH)

1 --- EXHIBIT NO. 219: E-mail dated September 20, 2009 from

2 Mr. Nie to Mr. Butorac

3

4 BY MS. SINGH:

5 Q. I am showing you a document. Do you

6 recognize that document?

7 A. Yes, I do.

8 Q. Can you identify it, please?

9 A. This document on the surface has a

10 couple of...an e-mail chain and then the rest of it

11 is a point form chronology of Mr. Jack's performance

12 at the Peterborough detachment with comments from

13 all of the officers that were involved in his

14 evaluation, coaching and performance.

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

16 please?

17 A. The e-mail on the top is November

18 29th. It is from myself to Colleen Kohen and Rob

19 Flindall, cc'd to Sergeant Butorac.

20 Q. And who is Colleen Kohen?

21 A. I am not sure her rank right now,

22 but at that time I believe she was a staff sergeant

23 in the human resources department of the OPP.

24 Q. Did you prepare the entries beside

25 your name in the attached chronology, sir?

R. Nie - 16

Ex-in-Ch (M. SINGH)

1 A. Yes, I did. So if it has a date and

2 then a hyphen and "PC Nie", those are entries from

3 myself.

4 Q. And did you prepare those entries

5 closer to the time that is indicated by those

6 entries?

7 A. That is correct. Almost always on

8 the date that it actually happened.

9 Q. Contemporaneous? And are the

10 entries based on your recollection of the events at

11 the time?

12 A. Yes.

13 Q. And do the entries accurately record

14 your recollection of the events?

15 A. That's right, yes.

16 Q. Would it be of assistance to you to

17 refer to the chronology in giving your evidence as

18 required?

19 A. Yes.

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

21 that the witness be permitted to refer to

22 the chronology, to his entries in the

23 chronology for purposes of refreshing his

24 memory as required.

25 THE VICE-CHAIR: That would be fine.

R. Nie - 17

Ex-in-Ch (M. SINGH)

1 THE WITNESS: Thank you.

2

3 BY MS. SINGH:

4 Q. Did you and Jack meet with your

5 supervising sergeant to discuss Jack's performance

6 and how you would supervise him on Platoon D?

7 Initially. Have an initial meeting.

8 A. I believe there was an initial

9 meeting. I don't recall the date.

10 Q. And I am just going to direct your

11 attention to September 19th in your chronology.

12 A. Okay.

13 Q. Does that appear to be your first

14 meeting with your supervising sergeant and Jack?

15 A. Yes, it says here:

16 "...Met with Sergeant Butorac and PC Jack

17 to discuss issues to date..."

18 I am sure, given that he was with me on September

19 9th, I am sure there was probably a starting meeting

20 before that. But this one...this one I see as a

21 summary of what Mr. Jack felt were his problems that

22 he was dealing with to date.

23 Q. And what problems did he express at

24 that meeting of September 9th with you and Sergeant

25 Butorac?

R. Nie - 18

Ex-in-Ch (M. SINGH)

1 A. He expressed nine separate problems

2 here that he was having or he felt were his

3 concerns. Number one was his paperwork.

4 Q. Yes?

5 A. That he was having trouble learning

6 the police lingo, as he described it. The second

7 one was that he said his mind was structured as

8 independent after working eight years in an office

9 environment and that he didn't see things as a team.

10 If I am going too fast, let me...

11 THE VICE-CHAIR: I will tell you, thank

12 you.

13 THE WITNESS: The third thing was he was

14 struggling with a foreign language. That

15 he had never worked in the real world; only

16 in an academic environment in the past. He

17 expressed concerns that he was not using

18 his prior computer skills. He thought he

19 had been hired by the OPP for his computer

20 skills but wasn't getting to use them at

21 this point. The fifth thing, he said that

22 he was indecisive with senior officers

23 around him. The sixth thing was that he

24 felt he was under pressure. That he was

25 alone in this country, being Canada. He

R. Nie - 19

Ex-in-Ch (M. SINGH)

1 was under stress for being closely watched,

2 presumably by myself. Living...he was

3 living alone and he had bills to pay. The

4 seventh thing was he had trouble looking at

5 things from helping people versus charging

6 people perspective. When he was growing

7 up, police were bad and he has to adjust

8 his mindset to thinking of helping people

9 as opposed to just charging people. The

10 eighth thing was that never in his life

11 before has he ever failed in anything.

12 What was common sense for him...or for

13 others was not common for him. And the

14 last thing was that he had low self

15 confidence as he was afraid of losing his

16 job with the OPP.

17

18 BY MS. SINGH:

19 Q. Do you recall if he mentioned

20 anything else beyond those nine concerns or

21 problems?

22 A. At that meeting, no.

23 Q. Do you recall what was said? Did

24 you say anything to Jack in relation to those

25 concerns?

R. Nie - 20

Ex-in-Ch (M. SINGH)

1 A. I don't have any notes beyond

2 listing what that was. I am sure, given the person

3 that I am, we would have talked about it in the car

4 after that. I would have been reassuring him that

5 we are doing whatever we can to help him through

6 these things.

7 Q. Do you recall whether Sergeant

8 Butorac said anything to him in terms of those

9 concerns?

10 A. I don't.

11 Q. Did Jack express any concern to you

12 about...at that time about you being his coach?

13 A. On that meeting?

14 Q. On that meeting.

15 A. Not that I recall.

16 Q. Do you recall a meeting with

17 Constable Jack and Sergeant Butorac later that month

18 to discuss Jack's last evaluation?

19 A. I know we always had meetings about

20 the evaluations. If you have a date for me that I

21 could look at.

22 Q. If you would like to direct your

23 attention to September 24th.

24 A. Okay.

25 Q. Does the chronology assist in terms

R. Nie - 21

Ex-in-Ch (M. SINGH)

1 of a meeting in and around that time?

2 A. On the September 24th entry, it just

3 looks like me reviewing a couple calls that we had

4 been at that night and then there is a discussion

5 over some recording equipment. I do make a comment

6 about that the sergeant was aware that I was talking

7 to him about this.

8 Q. Did you serve...I may have asked you

9 this question already. Did you serve Jack's eight-

10 month performance evaluation on him?

11 A. Yes, I don't recall that. You did

12 ask but I don't recall.

13 Q. Were you aware that Jack prepared a

14 detailed rebuttal to his six-month evaluation?

15 A. I do recall at some point that there

16 was a rebuttal but I am not sure which evaluation it

17 was for.

18 Q. Did you have any concerns learning

19 that he had prepared a detailed rebuttal in terms of

20 your coaching?

21 A. No.

22 Q. Did you have frequent or not so

23 frequent meetings with your sergeant and Jack to

24 discuss his performance?

25 A. I don't recall whether...I would say

R. Nie - 22

Ex-in-Ch (M. SINGH)

1 we kept a close tab on what was going on. I

2 don't...I don't know if that was weekly or daily

3 or...well, it wasn't daily. But I think if there

4 was issues coming up or things that were...or

5 somebody changing or new, I obviously would tell my

6 sergeant about it kind of thing. So I don't have a

7 recollection of how frequent or infrequent the

8 meetings were.

9 Q. Did you provide Jack with ongoing

10 feedback?

11 A. Every day when we were in the police

12 car together or working on reports or...that is

13 my...that is the job of the coach officer, is to

14 provide the feedback.

15 Q. Do you recall that Jack was served

16 with a police services internal complaint shortly

17 after becoming your recruit?

18 A. He did tell me that, yes.

19 Q. Do you know what allegation was

20 being investigated?

21 A. If I can refer to that chronology.

22 I see it is just on the page before, September 23rd.

23 He told me he was served with this internal

24 complaint about associating with undesirable people.

25 He asked me what I should do or what he should do

R. Nie - 23

Ex-in-Ch (M. SINGH)

1 and I told him to call our association, but I didn't

2 want to know any details about it because I didn't

3 want to be involved in it. So, just on that note,

4 that is the role of the coach or the supervisor at

5 that time when those things happen. You don't get

6 involved. You just recommend where the person can

7 go to get their help, which is our association.

8 Q. And did that affect you in any way

9 in terms of your coaching of Jack, knowing about

10 this internal complaint?

11 A. No. There was a call one night that

12 happened after that that I guess maybe my senses

13 were a little more aware to, you know, who we might

14 be dealing with if information came up. But it

15 didn't affect how I coached him.

16 Q. Okay. Who is an undesirable? Is

17 that a defined term, Constable Nie?

18 A. I am not sure. That was the wording

19 that he used from his complaint, so I would have to

20 assume from a policing standpoint that an

21 undesirable person would be someone with a criminal

22 record.

23 Q. And if we can just go back, you

24 mentioned that there was an incident later on that

25 caused you to have a little bit more concern.

R. Nie - 24

Ex-in-Ch (M. SINGH)

1 A. M'hmm.

2 Q. Could you elaborate upon that,

3 please?

4 A. Well, obviously it was weighing on

5 his mind. So sort of the night...and I am just

6 refreshing from my notes here...he would bring up

7 about not being associated to the bad guys at the

8 gym anymore and these kind of things. You know, I

9 would try and tell him I didn't want to know about

10 the information because I didn't want to be involved

11 in the complaint. But because it was stressful to

12 him, he would keep talking about it was past people

13 he knew from working out at the gym years ago. And

14 coincidentally, later that night, we attended a call

15 and when we arrived at the house, the gentleman at

16 the house right off the bat said, "You don't

17 remember me, do you?" to Mr. Jack. So, right away,

18 here, my senses are alert, thinking, well, how do

19 they know each other?

20 So, Mr. Jack told him that he remembered

21 him from the gym and about doing handstand push-ups

22 together and the complainant was very vague and I

23 had a very uneasy feeling about the whole call

24 because it was very apparent that they did know each

25 other and I was on the outside. And I explained to

R. Nie - 25

Ex-in-Ch (M. SINGH)

1 Mr. Jack afterwards how when we are a team and

2 partners going into a call and we are both wearing

3 the same uniform, we are the team that should be

4 together that knows everything. It shouldn't be one

5 officer and one complainant knowing information that

6 another officer who is your partner doesn't know.

7 And it made me very uneasy and we had a...you know,

8 a discussion about how that is not a proper way to

9 treat your partner and those kind of things.

10 Q. How did he respond...how did Jack

11 respond to your concern?

12 A. If I may have a moment just to read

13 through here. I unfortunately don't see a note at

14 this point on the conclusion to that conversation,

15 so I don't want to speculate on how...what his

16 reaction was.

17 Q. Were there any other incidents of

18 that kind where you felt like he was not being your

19 partner?

20 A. I see another note here on the same

21 night. We were at the gas station. He goes in to

22 buy gas and he comes back with a name on a piece of

23 paper and asks me if I know the Russian guy that

24 owns the Pioneer gas station. And he showed me a

25 piece of paper with the name on it and he asked me

R. Nie - 26

Ex-in-Ch (M. SINGH)

1 to pronounce it and wanted me to know what the

2 Canadian version of the Russian name was. And I

3 found it odd. I wasn't...you know, I kind of just

4 dismissed it. There was other times where we would

5 be driving around and he may bring up...he would ask

6 questions about other recruits that I coached and

7 those kind of things. It made me somewhat, I would

8 say, concerned as to what his intentions were, if he

9 is asking about prior recruits that I have coached.

10 I don't know what that has to do with his coaching.

11 But that is all I can remember. Unless there is

12 something, like, written that you have seen.

13 Q. Did Jack appear, Constable Nie, to

14 be willing to follow your directions as his coach

15 officer?

16 A. Yes. I would say yes.

17 Q. What was Jack's attitude towards

18 learning from you?

19 A. Well, I remember the very first time

20 that we got together in the police car and we went

21 out on the road. I remember him describing how he

22 felt refreshed and renewed and that he was...he felt

23 so relaxed to have a new coach officer...you know,

24 he said a lot of things to build me up, so he must

25 have heard some things about me in the past and

R. Nie - 27

Ex-in-Ch (M. SINGH)

1 coaching because, you know, it was very...it was a

2 very good start that we were...he was happy to be

3 with me and happy to learn from me and my experience

4 and my knowledge and those kind of things. So, I

5 would say that at the start he seemed very excited.

6 When we got into issues of, you know, him struggling

7 with multitasking and sorting through calls and

8 those kind of things, I think it started to...there

9 would be times where I would give him advice or

10 instructions and he just wouldn't respond.

11 Q. What do you mean, he wouldn't

12 respond?

13 A. Well, the silent treatment, that

14 kind of...you know, where if someone is mad, they

15 just don't want to talk about it kind of thing.

16 So...

17 Q. Would he be silent on patrol?

18 A. Yes, in the cruiser kind of thing.

19 If we had an issue over something...if it got to the

20 point where he just got too frustrated, he would

21 choose not to talk about it as opposed to, you

22 know...and we would stop for a bit and then, you

23 know...I don't know whether we would come back to it

24 or not. It may or may not happen. There were times

25 where he would just, you know, be quiet. I took it

R. Nie - 28

Ex-in-Ch (M. SINGH)

1 more of that he didn't want to get upset at me or

2 with me. So he just chose not to talk about it.

3 Q. Did he subsequently apologize for

4 his behaviour?

5 A. There are times that I do recall

6 from the chronology where...where there were

7 instants where he may have said he was sorry for

8 something, but it wasn't a regular...I will say it

9 wasn't a regular occurrence that he apologized for

10 things but I also don't think there was a regular

11 opportunity for him to apologize for things, if that

12 makes sense.

13 Q. You mentioned multitasking. Can you

14 elaborate on that, please?

15 A. Well, one of the key roles of being

16 a police officer is being able to handle a large

17 amount of tasks all at the same time. And while you

18 are working on one task, you may get thrown a new

19 one that you weren't expecting. So, one of the key

20 components of being a successful police officer is

21 that, you know, while you are doing one thing,

22 something else can come in and change. You also

23 have to be able to, when you are given a set of

24 tasks, if it is three, four, five or six, you also

25 have to be able to decide, well, which one is most

R. Nie - 29

Ex-in-Ch (M. SINGH)

1 urgent to be dealt with. So you need to be able to

2 not only handle volumes of tasks, but prioritize

3 them as well and sort through them.

4 Q. And how was Jack in terms of

5 multitasking?

6 A. He couldn't do it at all. If I was

7 able to give Michael a list of instructions or, you

8 know, a recipe or...on how to do a call, he would be

9 perfect at it. But as soon as something came in

10 extra, then the wheels would fall off and things

11 would start to deteriorate. So, I found Michael to

12 be incredibly book smart. That he could read

13 manuals and chapters of books and study them and

14 learn them inside out. But that he had difficulty

15 applying that to a real life situation.

16 I found that when coaching him, he

17 would...if I used a call of...say a break and enter

18 call, if he had gone to a break and enter call with

19 his previous coach or someone on his previous

20 platoon, what he did on that last call is exactly

21 what he would do on the next call with me. But if

22 there was a different, you know...if in one a window

23 was broken and there was blood on the glass but in

24 the second one there isn't, well, you don't need to

25 do a DNA swab and those kind of things. He would

R. Nie - 30

Ex-in-Ch (M. SINGH)

1 want to follow the same procedures that he was

2 taught and apply it to every single call. And I

3 think that is just how his mind was structured. And

4 he even admitted that in one of our meetings too

5 with the sergeant that I already talked about. So,

6 excellent, excellent person on wanting to be

7 studious and complete and accurate work. But it

8 would fall apart as soon as there was three, four,

9 five, six tasks assigned at the same time. He would

10 struggle with where to start. If I could give him

11 one task a day, he would probably be one of the best

12 recruits that I had at doing that specific task.

13 Q. And is it possible to teach

14 multitasking to someone?

15 A. I would like to think that I could

16 try and teach anything to anyone. And we made

17 strong efforts at it, which is why we worked

18 together for 12 hours a shift. But, you know, each

19 day I would give him the opportunity to, you know,

20 say, phone in and find out what is going on. "We

21 have three calls". "Okay, tell me the three calls.

22 Which one are we going to do first?" You know?

23 Like, that kind of thing. So, I would constantly

24 give him the opportunities to do it. Can I teach

25 it? I would hope that by learning from the examples

R. Nie - 31

Ex-in-Ch (M. SINGH)

1 that I am showing him on how we sort those out, that

2 that is the way to teach it. You know, was I

3 successful? No.

4 Q. You mentioned that you were on 12-

5 hour shifts with Constable Jack.

6 A. Yes.

7 Q. How much time would you speculate or

8 how much time would you think that you spent

9 coaching Jack? Do you have a rough idea?

10 A. Well, you know, outside of...if we

11 start the 12-hour shift, outside of using the

12 washroom, I would say we were together the whole

13 time or close by. If he had an arrest and was

14 working on a report, I might be at the computer

15 beside him. He often, actually, would go to a

16 separate room because he liked to work quietly by

17 himself. So, I may be up in the constable's room

18 working on the computer but I would go back and

19 check. So, there could be 15, 20 half hour, hour

20 periods of time where he may be alone but when we

21 were in the car we are together. And then when it

22 is paperwork time, you know, I would give him his

23 space to work on it alone because he found that that

24 was more effective for him. But then we would get

25 back together so I could review it and have a look

R. Nie - 32

Ex-in-Ch (M. SINGH)

1 at it and see if any changes needed to be made or if

2 it was okay the way it was.

3 Q. Did Jack during all that time ever

4 open up to you other than the September 19th meeting

5 with Sergeant Butorac, just the two of you?

6 A. On a personal level?

7 Q. Yes.

8 A. Sure. At those times when you are

9 in the cruiser and it is quiet or...I would always

10 talk to my partners about things. For Michael, with

11 his background and I knew he had a background from

12 Russia and from Israel, I was very curious and we

13 talked about his previous employment and all of

14 those things because I wanted to learn what his life

15 was like before he came to Canada and those kind of

16 things. I knew that he was, you know, a student at

17 Trent and that he was, you know...that is how I got

18 to know that he was very book smart.

19 Q. Did Jack ever tell you that he felt

20 discriminated against at the detachment?

21 A. I don't recall a conversation about

22 that. I don't recall him saying those words to me.

23 Q. Did he ever accuse you of being

24 racist against him?

25 A. Nothing to my face.

R. Nie - 33

Ex-in-Ch (M. SINGH)

1 Q. I just want to take you...do you

2 recall him talking to you about his first coming to

3 Canada and how he felt about that?

4 A. I do remember having conversations

5 with him about his past, but...to give you

6 specifics, I am not comfortable saying that.

7 Q. And I am just going to refer you,

8 sir, to your entry of November 14 on the second page

9 of that entry. About halfway down the page, if you

10 could just refresh your recollection about that

11 conversation with Jack.

12 A. Okay.

13 Q. About halfway down the page.

14 A. Okay. Yes. I do recall this.

15 Q. Could you please...

16 A. This whole...

17 Q. ...describe that conversation?

18 A. Sure. This conversation arose

19 because Mr. Jack had had a conversation with another

20 constable at our office about his performance and

21 what was going on. Am I allowed to give names,

22 or...

23 Q. Yes, please.

24 A. So, Constable Duignan. And this

25 officer had suggested that Mr. Jack talk to a

R. Nie - 34

Ex-in-Ch (M. SINGH)

1 Constable Read, one of my prior probationary

2 constables, who was still currently on our shift, to

3 talk to him about what had happened when I was

4 coaching him because he had heard that there was

5 problems when I was coaching Constable Read. I

6 guess what Mr. Jack wasn't aware of was that Officer

7 Read came and told me that information. So, this

8 conversation stems from me asking Mr. Jack why he is

9 going to other people to find out stuff about

10 previous recruits that I have coached and what he is

11 doing that for. At that point in time, the Officer

12 Duignan was in a fair bit of trouble with the OPP

13 and Michael talked...he didn't want to get in

14 trouble and he didn't want to talk about it too

15 much, so...he talked about how Constable Duignan was

16 the only one that gave him emotional support and

17 that is what he needed right now. I told him that I

18 was tired of playing games and that I didn't like it

19 when people were lying to me. He said that he was

20 being honest and that he wasn't trying to play games

21 and that ultimately he admits that he was lying

22 because he didn't want to get other people involved

23 and that I had put him on the spot and he was trying

24 to think of a response.

25 So then he goes on to suggest that I am

R. Nie - 35

Ex-in-Ch (M. SINGH)

1 sick and tired of him and I clarify what I mean

2 that, you know, saying I am sick and tired of

3 playing games doesn't mean I am sick and tired of

4 Mr. Jack as an individual.

5 And then he makes comments about how people

6 in their own countries are subconsciously biased

7 towards people from other countries. He says that

8 we like to protect our own home and land from

9 visitors. That when he first came to America, he

10 hated Americans because they treated him poorly.

11 And he said that the longer he stayed here, he grew

12 to like people but others do not like his accent and

13 behaviours. That we are all like that in our own

14 countries. And I told him that I was extremely

15 upset that he could even suggest that about me. And

16 that I said if I ever heard that come up again, I

17 would lose my mind. And I said I wouldn't tolerate

18 him accusing me of being biased towards him or his

19 accent and then he backed down, saying it wasn't him

20 specifically; he was just talking about...or it

21 wasn't me specifically. He was just talking about

22 people in general. Do you want me to keep going?

23 Q. Please.

24 A. I talk about how...that I had been

25 down a situation like this before with a previous

R. Nie - 36

Ex-in-Ch (M. SINGH)

1 recruit that I had coached that wasn't successful in

2 employment. And by that, I mean I had been at that

3 time with that officer been accused of other things

4 that weren't true. I gave him a little account of

5 that history with that...that other recruit. And

6 Mr. Jack said to me that he didn't want to put me or

7 my family in a position. We talked about him

8 twisting my words and he confirmed that he

9 understood it was other officers, not the recruit,

10 that had caused the problem in that instant. So, it

11 was a touchy subject for me just because the

12 officers involved in that were coming up again in

13 this circumstance.

14 Q. How did that make you feel in terms

15 of continuing as his coach officer?

16 A. You know what? When I have been

17 given a task or a job from my superiors, the other

18 stuff, it doesn't matter. My job was still to try

19 and help Michael to get hired. So, for me, I

20 can...I can have a discussion with somebody and be

21 firm with somebody and keep it as an isolated

22 incident and I am not going to hold that against

23 somebody. So, my job was not to look at Michael's

24 personal life and my personal life and our families

25 and all that. My job was to try and get him hired

R. Nie - 37

Ex-in-Ch (M. SINGH)

1 as a police officer.

2 Q. Did you think that Jack had a

3 predisposition to think that people from different

4 countries only protect their own people?

5 A. I didn't like hearing it because I

6 don't like when people that don't even invest the

7 time in trying to know somebody make assumptions

8 about them. So, that wasn't...I guess that is

9 probably why I reacted so passionately with him, is

10 I felt like I was being accused of something that,

11 not only did he not take the time to learn me or my

12 family, but he just made a sweeping generalization

13 about people in a country.

14 Q. Did you prepare performance

15 evaluations for Jack?

16 A. Yes, I did.

17 Q. Do you recall how many?

18 A. No. I am going to suggest three,

19 maybe. Just from seeing that month-eight evaluation

20 we had already talked about, so I think from memory

21 I did 9, 10 and 11.

22 Q. Did you prepare those in accordance

23 with the probationary constable evaluation

24 guidelines?

25 A. Yes, I did.

R. Nie - 38

Ex-in-Ch (M. SINGH)

1 Q. And did you prepare work improvement

2 plans that corresponded to those performance

3 evaluations...

4 A. Yes, I did.

5 Q. ...as far as you recall?

6 A. Yes.

7 Q. And were those drafted with the

8 intention, the work improvement plans, of assisting

9 Jack to know what standards he would be required to

10 meet?

11 A. Exactly. And even to the point

12 that...to be fair with Michael for that whole

13 process, I think going from the evaluation of the

14 first coach officer to mine, I had a different set

15 of categories that I felt he was doing well at. But

16 other ones that he wasn't doing well at. So they

17 were different. So I think, you know, it shows that

18 I gave him as much help as I could. That

19 I...although I saw the previous evaluation, I

20 started fresh for myself to see what I felt.

21 Q. So you didn't follow in the heels or

22 in the shoes of the previous coach officer in terms

23 of a finding in relation to each of those

24 categories?

25 A. Well, I have to follow the work

R. Nie - 39

Ex-in-Ch (M. SINGH)

1 improvement plan that is put in place. So, if...I

2 can't change something off that but if something

3 improves, then I can improve it on my next

4 evaluation. So, if it didn't meet requirements,

5 say, in...for the previous coach officer but I felt

6 it did, then I can show that it has improved and

7 then it can come off the work improvement plan or in

8 each work improvement plan there is a section for

9 how to help get the results achieved.

10 Q. Generally speaking, did you agree

11 with the findings...if you can tell us...of the

12 first coach officer in terms of his evaluation?

13 A. Like I said, I...I would say yes, in

14 general, I did. It was just that the month that I

15 started with Michael, there may have been a few

16 categories that he was okay in that the other

17 officer didn't. You know, a perfect example to that

18 might be provincial statutes. If he didn't write

19 any tickets with his previous coach officer and he

20 wrote a whole bunch with me, then I am not going to

21 have an issue with that category. So, something

22 like that. Without having the two side by side to

23 compare them, I just don't recollect.

24 THE VICE-CHAIR: Did you want this

25 entered?

R. Nie - 40

Ex-in-Ch (M. SINGH)

1 MS. SINGH: Yes, please. I think the

2 chronology is...

3 THE VICE-CHAIR: The chronology is...

4 MS. SINGH: ...already but that covering

5 is not, so we might as well make it an

6 exhibit.

7 MR. TAPP: Mr. Vice-Chair, the original

8 chronology that was entered at 143 was

9 original one that was provided prior to Ms.

10 Counsel taking the bench. Now, this one

11 that counsel addressed her questions from

12 is a newer one that is condensed into less

13 pages. So, we are really relying on the

14 original one that was prepared and tendered

15 as an exhibit. In essence, when...in all

16 fairness, and counsel can address it, in

17 essence this witness can compare it. They

18 are identical. But by changing the fonts,

19 you reduce the number of pages.

20 THE VICE-CHAIR: Okay...

21 MR. TAPP: But we can enter this and I

22 would suggest it as a sub-one to the

23 original.

24 THE VICE-CHAIR: Okay, let's enter

25 it...I will give it a new number, but...

R. Nie - 41

Ex-in-Ch (M. SINGH)

1 MR. TAPP: Thank you.

2 THE VICE-CHAIR: So this will be 220.

3 MS. SINGH: Thank you, sir.

4 THE VICE-CHAIR: And there is 22 pages.

5

6 --- EXHIBIT NO. 220: E-mail exchange between Mr. Nie, Ms.

7 Kohen, et al. ending November 29,

8 2009

9

10 BY MS. SINGH:

11 Q. I am showing you a document. Do you

12 recognize that document?

13 A. Yes. It is the nine-month

14 evaluation for Mr. Jack.

15 Q. And is there a cover e-mail?

16 A. I'm sorry, yes, there is an e-mail

17 in the front from myself to several of the

18 supervisors involved at that time.

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

20 A. October 7th, 2009.

21 Q. Do you recall sending that document?

22 A. Yes.

23 Q. How many deficiencies did you

24 identify for Jack's nine-month performance plan? Or

25 in that nine-month performance plan?

R. Nie - 42

Ex-in-Ch (M. SINGH)

1 A. I would have to count.

2 Q. Does it correspond to...

3 A. Thirteen.

4 Q. Thirteen?

5 A. Yes. It corresponds to that work

6 improvement plan.

7 Q. And the work improvement plan, did

8 that go at the same time?

9 A. That is correct. It is part of the

10 evaluation.

11 Q. And do you recall how many

12 deficiencies improved from month 8?

13 A. So, on the last...well, second last

14 page, it shows results achieved and has four

15 categories in there. Results achieved. So, without

16 having the eight-month in front of me, I would

17 suggest that on the eight month evaluation you would

18 see those four categories listed as "does not meet

19 requirements". And then on this one, they are now

20 showing "does meet".

21 Q. Are there four, Constable Nie, or

22 are there eight...

23 A. I'm sorry, eight. I didn't turn the

24 paper. Eight.

25 Q. So, eight. Under your supervision

R. Nie - 43

Ex-in-Ch (M. SINGH)

1 in month 9, there were eight results achieved; is

2 that correct?

3 A. Yes.

4 Q. And that would be improvements from

5 the earlier one?

6 A. From the month before, yes.

7 Q. And if we could just turn to your e-

8 mail.

9 A. Yes.

10 Q. Did you have an opinion on October

11 7th of Jack's performance?

12 A. Yes, I did.

13 Q. And can you tell us what that was,

14 please?

15 A. Sure. I expressed to my superiors

16 that my gut feeling was that I could fix some of the

17 categories but that other ones fell under...and I

18 put quotes around "you can't teach common sense"

19 umbrella. And I suggested that Mr. Jack needed to

20 step up and accept some responsibility himself. And

21 those were the comments that I made at that time.

22 Q. Was it your opinion on October 7th

23 that you could continue to coach him?

24 A. Yes.

25 Q. And that he could still potentially

R. Nie - 44

Ex-in-Ch (M. SINGH)

1 become successful?

2 A. Yes, potentially. I wasn't going to

3 quit on my assignment.

4 MS. SINGH: If we could have that marked

5 as an exhibit, please.

6 THE VICE-CHAIR: 221.

7 MS. SINGH: Thank you.

8 THE VICE-CHAIR: Nine pages.

9 MS. SINGH: Thank you.

10

11 --- EXHIBIT NO. 221: E-mail dated October 7, 2009

12 attaching 9-month evaluation from

13 Mr. Nie to various supervisors

14

15 BY MS. SINGH:

16 Q. I am showing you a document. Do you

17 recognize the document?

18 A. Yes, I do. It is an e-mail...the

19 cover page is an e-mail from myself to the superiors

20 involved again on November 10th, 2009. A chain of

21 e-mails, but the most recent is the date I just

22 said. And then it is attached to the 10-month

23 evaluation for Mr. Jack.

24 Q. And what was your finding in terms

25 of Jack's improvements for month 10?

R. Nie - 45

Ex-in-Ch (M. SINGH)

1 A. I was letting them know that I had

2 one category that had improved and met requirements

3 for the month before.

4 Q. And what was that category, sir?

5 A. Traffic enforcement.

6 Q. Did you have an opinion on November

7 10th about Jack's ability to meet requirements?

8 A. Yes, I did make a comment in this e-

9 mail as to what my opinion was.

10 Q. And can you tell us what that

11 opinion was?

12 A. Sure. I said that one category

13 improved but I still had 12 that did not meet

14 requirements. I was not going to be recommending

15 him for permanency at that point and that, to be

16 honest, I didn't see things changing here by the

17 12th month. And what that is in reference to is an

18 option to have a probationary period go from 10

19 months to 12 months. I stated that I felt we had

20 flatlined and that I already had two examples for

21 month 11 that were taking us backwards and not

22 forwards.

23 Q. And was it your decision exclusively

24 in relation to whether it would be...his

25 probationary period would be extended to 12 months?

R. Nie - 46

Ex-in-Ch (M. SINGH)

1 A. It has nothing to do with me at all.

2 Q. The decision would be made by

3 others?

4 A. Correct.

5 Q. Were you prepared if others had made

6 the recommendation to extend his probation to

7 continue coaching him?

8 A. Yes.

9 MS. SINGH: If I could have that marked

10 as an exhibit.

11 THE VICE-CHAIR: Okay.

12

13 --- EXHIBIT NO. 222: E-mail exchange between Mr. Nie and

14 various supervisors, ending November

15 10, 2009 attaching 10-month

16 evaluation

17

18 BY MS. SINGH:

19 Q. I am showing the witness a copy of

20 Exhibit 215. Do you recognize that document, sir?

21 A. Yes, I do. It is an e-mail from

22 myself to Staff Sergeant Colleen Kohen and it is

23 copied to Staff Sergeant Ron Campbell and Sergeant

24 Peter Butorac on November 19th.

25 Q. And can you describe that e-mail,

R. Nie - 47

Ex-in-Ch (M. SINGH)

1 please?

2 A. Sure. It is a summary e-mail with

3 the results of a 2-hour meeting between myself, Mr.

4 Jack and Sergeant Butorac outlining the main points

5 of the discussion that we had over those...that 2-

6 hour period. Do you want me to go through...

7 Q. Please.

8 A. I explained how...I explained to

9 Colleen how Mr. Jack felt that when he was with me,

10 that there was an axe above his head the entire

11 time. He felt it was a love/hate relationship. He

12 loved my teaching, but he hated how intimidating it

13 is to be in the car with me. That what I saw of him

14 was not representative of how he could perform if he

15 was alone. He feels that there is so much pressure

16 to do things right with me, that that makes him

17 screw things up all the time. He talked to the

18 sergeant and I about the psychology of this and how

19 that if I point out mistakes to him that he is

20 making, that everything is always negative.

21 He explained that he didn't have 100

22 percent trust in my motives. He felt I was

23 documenting everything to cover my ass in case he

24 was fired and that a lawsuit happened. He felt that

25 there was things written in the evaluation about him

R. Nie - 48

Ex-in-Ch (M. SINGH)

1 that were untrue. When asked what motivation I

2 would have to lie in this circumstance, he just

3 nodded his head and didn't respond, although...when

4 I said I had no reason to lie, he just nodded his

5 head. He felt the biggest problem was that I was

6 watching over his every move.

7 Then it goes on to talk about how myself

8 and the sergeant assured him that we have his best

9 interests at hand and we were trying to get him to

10 pass to be an officer. He said he knew that but he

11 couldn't change how he felt. He was offered the

12 option of having...if he felt working with somebody

13 else would make it better. And he said that there

14 was no point as a new person would just have to

15 learn everything about him all over again and it

16 would be like starting fresh.

17 He felt if I was his coach officer from the

18 very beginning, that he would not be in this

19 position that he was in right now. And he felt that

20 I expected too much from him. And I told him I only

21 expected what I expected from a recruit at their

22 11th month. He felt, like I said, that he would be

23 at the standards necessary if I had been coaching

24 him from the beginning and that is why he was

25 behind.

R. Nie - 49

Ex-in-Ch (M. SINGH)

1 Sergeant Butorac then tells him he doesn't

2 have any choice but to work in the situation he is

3 in. He is being watched by his coach. He still

4 thinks he would be fine if he was by himself and not

5 under so much pressure. It was explained that

6 stress and pressure are parts of the job and he has

7 to be able to perform under those types of

8 situations as well.

9 He let us know that he forwards e-mails and

10 work documents to his house so that he can work on

11 them without distraction. That there is always so

12 much or too much going on around him at the office

13 and that there is pressure to be out on the road.

14 Which is a fair statement. You have to be able to

15 balance. The public wants to see police out on the

16 road but there is a balance with getting your

17 paperwork done too.

18 We talked about how that was exactly one of

19 the points that we were making, that he is able to

20 work...or he has to be able to work effectively

21 amongst all the distractions and changes that this

22 job brings. And then I just finished by saying that

23 I hoped it clarified things for human resources.

24 That I was stunned to hear him say at this stage of

25 the game that his issues were my fault. Or, better

R. Nie - 50

Ex-in-Ch (M. SINGH)

1 put, as a result of being in the car with me. And

2 then I finished...I say, at any rate, we will keep

3 plugging away. So, that is just my language of

4 saying we are going to keep trying here.

5 Q. Had human resources asked you to

6 sort of keep them up to date on Jack's progress or

7 how did this e-mail come about? Why did you feel it

8 important to provide this to Colleen Kohen?

9 A. Okay, if I can refer to one previous

10 document for one second.

11 THE VICE-CHAIR: Is this Exhibit 215?

12 MS. SINGH: Yes, it is. Exhibit 215.

13 THE VICE-CHAIR: Thank you.

14 THE WITNESS: So, I don't know if you

15 made this an exhibit or not, but if I can

16 refer back to the probationary constable

17 evaluation report guidelines.

18

19 BY MS. SINGH:

20 Q. Yes. That is Exhibit 24.

21 A. Okay. On page 9 of that document

22 under the heading "Work Improvement Plan", the

23 second to last paragraph says that regional command

24 staff and CDB, which is an acronym for career

25 development bureau, shall be notified as soon as a

R. Nie - 51

Ex-in-Ch (M. SINGH)

1 WIP, work improvement plan, has been initiated. So,

2 once a work improvement plan is put in place, there

3 has to be contact made with the career development

4 bureau, which is Colleen Kohen. So, they want to be

5 in tune and in touch with everything all the way

6 along once that procedure starts. So that is why

7 there is e-mails between myself and career

8 development bureau. Because they want to be kept in

9 the loop and involved with what is going on. Plus,

10 they provide a large amount of advice on how to, you

11 know...say you have a category that doesn't meet

12 requirements and you are struggling with how to find

13 a way to get a recruit to pass the category, they

14 can help give you suggestions on what you can do.

15 Q. Thank you. I am showing the witness

16 a copy of Exhibit 64. Would you like a copy, sir?

17 I am just looking for another copy. Do you have a

18 copy of the 11 month?

19 THE VICE-CHAIR: Thank you. I don't

20 have these with me.

21

22 BY MS. SINGH:

23 Q. Do you recognize that document?

24 A. It is part of the 11-month

25 evaluation. I don't see any work improvement plan

R. Nie - 52

Ex-in-Ch (M. SINGH)

1 here. It is the beginning part of the evaluation

2 but it doesn't have the second half.

3 Q. We are just looking for a copy of

4 the work improvement plan. Can you identify that

5 document?

6 A. Yes, the two that you have given me

7 here are identical. They are both the evaluation

8 for month number 11.

9 Q. Okay. And they don't have the work

10 improvement plan attached?

11 A. Neither one of these has that

12 attached to it.

13 Q. Okay. And the work improvement plan

14 is Exhibit 45. Exhibit 65, sorry. I apologize,

15 sir, I will make a copy of Exhibit 65 if you need

16 another copy. Do you have both in front of you,

17 sir? Did you prepare that?

18 A. Yes.

19 Q. And what is the date of that

20 performance evaluation for month 11 and the

21 work...the corresponding work improvement plan?

22 A. The date is the period of November

23 9th, 2009 to December 9th, 2009. And then on...my

24 signature is here on December 14th, 2009 on both the

25 evaluation and the work improvement plan. Along

R. Nie - 53

Ex-in-Ch (M. SINGH)

1 with Mr. Jack's and Sergeant Butorac's.

2 Q. Did you discuss that performance

3 evaluation with Jack?

4 A. Can I look in the chronology? Well,

5 all three of us have signed right on it that we did.

6 So, I will have to say yes.

7 Q. Did Jack have any comments?

8 A. Let me just look on the chronology

9 here and see if there is something on it for

10 December 14th. I don't recall. May I look at my

11 notebook and see if there is an entry? All I have

12 is at 3:05 a.m. that I met with Mr. Jack and

13 Sergeant Butorac to discuss the evaluation, but I

14 didn't put comments of what the discussion was.

15 Q. Do you recall if Jack told you that

16 he felt harassed or discriminated against?

17 A. I don't recall.

18 Q. I am showing you a document. Do you

19 recognize that document?

20 A. Yes, it is another excerpt from our

21 Ontario Provincial Police orders. It is a chapter

22 on professionalism in the OPP.

23 Q. Is that the OPP's discrimination

24 policy?

25 A. I will say yes to the

R. Nie - 54

Ex-in-Ch (M. SINGH)

1 extent...unless there is something separate they

2 keep somewhere else, but as far as the police orders

3 portion goes, yes.

4 Q. And are you familiar with the OPP

5 policy on discrimination and human rights?

6 A. Yes.

7 Q. As a coach officer, would you have a

8 responsibility under that policy to report any

9 suspected discrimination or harassment?

10 A. Yes. Even outside of coaching.

11 Q. And do you recall whether any

12 complaint was made to you by Jack about feeling

13 harassed or discriminated against?

14 A. No. I mean, I do recall that there

15 wasn't one made.

16 Q. Thank you. As his second coach

17 officer, do you have an opinion about why Jack was

18 not able to meet the requirements of the

19 probationary constable?

20 A. Yes.

21 Q. Can you share that with us, please?

22 A. I think that for Michael's case,

23 he...a lot of it is a reiteration or summary of what

24 I have said in previous testimony, but Michael is

25 extremely intelligent. He is very book smart. He

R. Nie - 55

Ex-in-Ch (M. SINGH)

1 had very high marks, from what he told me, in all

2 his university classes and police college; those

3 type of things. So there is no question that

4 Michael is a very smart man. But he couldn't

5 translate book smart knowledge into real life,

6 actual knowledge out on the road or the street and

7 applying some common sense to those things as well,

8 as opposed to just seeing something in front of him

9 in one certain way. So, if I gave him a set of

10 directions or a list on how to do every single call,

11 he would be fine with that. The problem is, every

12 single call is different. Every single break and

13 enter, mischief, suicide; they are all different.

14 They are not the same. There is similar procedures

15 that you go with at a call. But every time

16 something changes, that changes how you handle it.

17 And Michael didn't have the ability to adapt to

18 those changes.

19 He struggled with the stress and the

20 pressure of multitasking or having too many things

21 to do at the same time. He would get flustered in

22 front of either myself, coworkers, the public when

23 having to adapt to a change in environment. I think

24 that if I could...if we had a policing world where

25 we had a partner with us every single day for the

R. Nie - 56

Ex-in-Ch (M. SINGH)

1 rest of our career, Michael could be a great partner

2 for somebody. Because I think if he had somebody

3 there with him to coach him all the time, he would

4 be fine. When he cites examples of how...feeling

5 that when he was without me he was fine, there is

6 lots of times in lots of reports from other officers

7 that he worked with and was involved with that there

8 was struggles when he was alone as well and doing

9 things. So, I don't feel that, you know, someone

10 saying, "If you weren't watching me, everything

11 would be okay". Well, the world is watching us.

12 This morning, when I drove down here, people were

13 shocked that I was coming in uniform. Because of

14 what may happen when I am walking down Bay Street or

15 something. Because, yes, I may have to get involved

16 and I may be late for the hearing if something

17 happened. But those are those things that would

18 throw Michael off. Just the spontaneous nature of

19 our job and our work. It was not...it is okay to

20 keep going?

21 Q. Yes, please.

22 THE VICE-CHAIR: Yes.

23 THE WITNESS: It was not advantageous

24 for him to always go off by himself into an

25 office to work. I understand why he did

R. Nie - 57

Ex-in-Ch (M. SINGH)

1 it, but it would have probably helped him

2 learn to adapt to situations and have noise

3 in the background and those kind of things

4 if he had let himself get used to those

5 circumstances. So I think that hurt him as

6 well. I don't know if there is anything

7 else I can add there as far as why it

8 didn't work. I think it is...it is just a

9 struggle adapting from being extremely

10 book-wise and applying that to real life

11 circumstances out on the road as we do our

12 jobs.

13

14 BY MS. SINGH:

15 Q. Did Jack's cultural background

16 factor at all into his failure to succeed as a

17 probationary constable, in your view, Constable Nie?

18 A. In my view? No. In his eyes,

19 feeling the way he described...you know, how people

20 are treated coming to other countries, you know,

21 maybe that was something that, you know, if he felt

22 that way, I can't change it, but I didn't see...I

23 never had an issue...you know, he would talk about a

24 language barrier. I never had trouble understanding

25 what Michael was saying. So there was nothing about

R. Nie - 58

Ex-in-Ch (M. SINGH)

1 Michael's background or where he was from that

2 caused me any concerns in having a chance to coach

3 him effectively.

4 MS. SINGH: Thank you, Constable Nie.

5 Those are my questions.

6 THE VICE-CHAIR: This would be an

7 appropriate time to have a break. Ten

8 minutes.

9

10 --- upon recessing at 11:08 a.m.

11 --- A BRIEF RECESS

12 --- upon resuming at 11:26 a.m.

13

14 RICHARD NIE, resumed

15 CROSS-EXAMINATION BY MR. TAPP:

16 Q. Mr. Nie, Mr. Jack worked at

17 Peterborough County detachment for 11 months;

18 correct?

19 A. Yes.

20 Q. Thank you. He was with you for

21 three months; correct?

22 A. Yes.

23 Q. Thank you. And you already

24 acknowledged preparing the point form chronology you

25 have before you for your...where it says your name;

R. Nie - 59

Cr-Ex (L. TAPP)

1 correct?

2 A. That's right.

3 Q. Okay. Would you agree that your

4 chronology in the document that you have before you

5 accounts for 18 pages? That is two-sided, if you

6 count both sides.

7 A. Do you want me to count every one,

8 where I seen an entry, or...

9 Q. No, if you count, like, looking at

10 the face, one, and flip it over on the back, two.

11 It comes out to 18.

12 A. If you want me to count, I will

13 verify it...

14 Q. No, I can tell you it comes out

15 roughly...it doesn't matter.

16 A. There is a few separate entries in

17 between earlier. I don't know if you count those or

18 not.

19 Q. We are not dealing with that.

20 A. Okay.

21 Q. That document also contains Sergeant

22 Flindall's, Staff Sergeant Campbell's, Constable

23 Filman's and Constable Payne's entries as well;

24 correct?

25 A. Yes, correct.

R. Nie - 60

Cr-Ex (L. TAPP)

1 Q. Okay. I would like you to take the

2 time to review your entries in that point form

3 chronology and tell us how many positive entries you

4 made about Mr. Jack's performance or about Mr. Jack

5 in general, please. Positive, that is. Go ahead.

6 A. Okay. Without taking the time to

7 read through every single entry, I am going to be

8 fairly confident in saying none.

9 Q. Thank you. Did you know that during

10 Mr. Jack's first nine shifts with you, you accused

11 him of at least 35 negative things?

12 A. No.

13 Q. Thank you. Okay. Listen to me

14 carefully. I am going to suggest to you, Mr. Nie,

15 that between September 9th, his first day with you,

16 and September 24th, during those first nine shifts

17 of coaching Mr. Jack, you accused him of the

18 following. Wrongdoings, 13 times. Blaming others,

19 11 times. Lying, four times. Offering excuses,

20 three times. Playing mind games, three times.

21 Recording conversations, one time. Now, if you wish

22 to take the time, we will go through, it is right

23 from that point form chronology. Would that sound

24 right to you?

25 A. Yes.

R. Nie - 61

Cr-Ex (L. TAPP)

1 Q. Thank you. Do you have the

2 September 25th, 2009 e-mail from you to Robert

3 Flindall and Peter Butorac with you on that desk?

4 A. September 29th?

5 Q. 25th. If you don't, we are just

6 getting you a copy.

7 A. I don't.

8 Q. Okay. You already testified at

9 length that you are familiar with the performance

10 conduct guidelines report; right?

11 A. Yes.

12 Q. Correct. And having coached

13 officers in the past, you are cognizant of who is

14 responsible for making entries to specific

15 performance evaluations; correct?

16 A. Yes.

17 Q. Thank you. Now, in that e-mail, is

18 it true you are talking about performance evaluation

19 report 8 and work improvement plan 8?

20 A. Can I have a moment to read the e-

21 mail?

22 Q. Please.

23 THE VICE-CHAIR: What exhibit number is

24 this one?

25 MR. JACK: 195.

R. Nie - 62

Cr-Ex (L. TAPP)

1 MR. TAPP: Pardon me, I should have said

2 that.

3

4 BY MR. TAPP:

5 Q. You are familiar?

6 A. I am aware of the document. To

7 answer your question, it doesn't specifically

8 describe an evaluation. I am going to have to

9 assume it is the last evaluation that was done by

10 Sergeant Flindall's shift prior to me having

11 Constable Jack.

12 Q. Yes. The one that...

13 A. If that is 8, then, yes, I agree

14 with that.

15 Q. Thank you. Can you read out loud

16 paragraph 1, please?

17 A. Certainly.

18 "...Rob, I approve..."

19 Q. No, I should address that. Beside

20 number 1.

21 A. Okay.

22 "...The category for federal statutes needs

23 to be changed on the actual evaluation to

24 'does not meet' so it matches with the WIP.

25 I was going to delete it off the WIP so it

R. Nie - 63

Cr-Ex (L. TAPP)

1 matched but on some examples you say see

2 number 2 and number 7 so I couldn't do

3 that. Filman will also need to amend his

4 comments as well to support the 'does not

5 meet'. He can probably copy what you wrote

6 in the WIP..."

7 Q. Okay. Read the second...read the

8 paragraph beside number 2, please.

9 A. "...The category for deportment

10 was rated 'does not meet' but it was not on

11 the WIP. I decided to just go ahead and

12 write it in myself on the WIP (this is

13 where the Leaf tickets come in) so we could

14 give it all to Jack tonight..."

15 Q. So, you state in that e-mail you did

16 the work improvement plan for deportment regarding

17 Mr. Jack's PER-8; correct?

18 A. No. What I will agree to, Lloyd, is

19 that I made sure that the work improvement plans

20 matched the evaluation that they had prepared. What

21 I am referring to to Sergeant Flindall is that the

22 document they gave me didn't match up, so I was

23 giving him the information on how he needs to

24 correct it. I am saying in point 2 that I corrected

25 the one category because it is just a tick box.

R. Nie - 64

Cr-Ex (L. TAPP)

1 Q. A tick box? Correct me if I am

2 wrong, there is no tick boxes on the performance

3 evaluation report save alone and except that which

4 is on page 11 in the probationer section there are

5 three pre-printed statements with three boxes that

6 need to be checked.

7 A. That is what I meant, drop-down.

8 Sorry, I said tick box.

9 Q. So, you put a tick mark in the

10 probationer section of page 11 in one of those three

11 boxes?

12 A. No, sorry, on the work improvement

13 plan there is no tick boxes.

14 Q. Right.

15 A. If you read what I wrote, it says I

16 wrote it in myself.

17 Q. That is what I am getting at. So

18 you wrote it.

19 A. Yes.

20 Q. Thank you. Now, would that be

21 in...would that be congruent with the guidelines

22 document? Probationary constable guidelines?

23 A. On who is preparing the evaluation?

24 The coach officer does.

25 Q. Yes.

R. Nie - 65

Cr-Ex (L. TAPP)

1 A. Yes.

2 Q. But your involvement and writing in

3 something, would that be congruent with the

4 probationary constable evaluation report guidelines?

5 A. In the respect that it wasn't my

6 evaluation, no. Is something funny?

7 Q. No, no. I am asking, unless I am

8 mistaken, doesn't that...to your memory, doesn't

9 that document say only the coach officer is supposed

10 to prepare?

11 A. I believe so, yes.

12 Q. Thank you. That is my question.

13 A. Okay.

14 Q. So would your comments over there be

15 and the work you did over there be congruent with

16 those guidelines?

17 A. I would say no, but I have an

18 explanation for it.

19 Q. Okay. We are in cross. I will let

20 counsel...

21 A. So, no.

22 Q. Okay. Thank you. Did you know that

23 Staff Sergeant Kohen regarded you as one of the best

24 coach officers?

25 A. No, I did not.

R. Nie - 66

Cr-Ex (L. TAPP)

1 Q. Thank you. Did you know that Staff

2 Sergeant Kohen was the author of that guidelines

3 report?

4 A. No, I did not.

5 Q. Thank you. Did you have a

6 friendship relationship also with Sergeant Flindall?

7 A. Yes.

8 Q. Thank you. And that would be

9 obviously because you are also neighbors; correct?

10 A. We were at the time, yes.

11 Q. Thank you. Did you have

12 considerable input in that eighth month work

13 improvement plan, Mr. Nie?

14 A. Not beyond what you see in this e-

15 mail, no.

16 Q. Tell me, did you do that for all of

17 Mr. Filman's or Mr. Flindall's probationary

18 recruits?

19 A. I had never been asked...no.

20 Q. Thank you. Mr. Jack was the

21 exception; right?

22 A. He was the only one I was asked to

23 coach for after Mr. Filman.

24 Q. So, Mr. Jack was someone that

25 started on your shift September 9th. And hence his

R. Nie - 67

Cr-Ex (L. TAPP)

1 previous evaluation report and work improvement plan

2 had to be completed by his previous platoon;

3 correct?

4 A. Yes.

5 Q. Thank you. And because of

6 that...rather, can you explain "this is where the

7 Leaf tickets come in"? What does that mean, please?

8 A. It means that I was aware that

9 Sergeant Flindall was a Toronto Maple Leafs fan and

10 as his neighbour, he would often taunt me and tease

11 me with the fact that he had tickets to go to Leaf

12 games because he has a friend that goes to lots of

13 Leaf games and gives him tickets. Knowing that I

14 was a Leafs fan as well, he felt it funny that I

15 never got to go to the games, yet he did. So I was

16 making a comment to him as...you know, as his

17 neighbour, as a joke, that by me filling in a "does

18 not meet requirements" category where I didn't have

19 to write something in, I am just cutting and pasting

20 a document to have it make...an error corrected,

21 that that is what he now could give me in turn for

22 doing that work.

23 Q. Okay. And did you get Leaf tickets

24 from him?

25 A. Of course not.

R. Nie - 68

Cr-Ex (L. TAPP)

1 Q. Okay. At some point in time, you

2 were requested by I would imagine the OPP, and you

3 can correct me if I am wrong, to provide a statement

4 regarding your involvement with Mr. Jack; correct?

5 A. To who, though?

6 Q. Well, back to the OPP or maybe the

7 respondent...the counsel representing the OPP.

8 A. I was in constant touch with the

9 career development bureau and Colleen. You know,

10 they asked me to comment on his performance...

11 Q. I am going to show you a copy of the

12 witness summary of you. I am going to make it clear

13 it was not prepared by you.

14 A. Okay.

15 Q. But this is a witness summary

16 prepared by counsel for the respondent.

17 A. Okay.

18 Q. The OPP. Okay? I mean, just

19 looking at that paragraph 1 over there...and, once

20 again, I am saying you did not prepare this. This

21 is prepared...we had already heard this was prepared

22 by counsel.

23 A. Okay.

24 Q. So, looking at paragraph, would you

25 agree with that summary, that you have to provide

R. Nie - 69

Cr-Ex (L. TAPP)

1 some information in order for that to be summarized

2 like that?

3 A. Yes.

4 Q. Okay. And do you agree with that

5 first paragraph summary?

6 A. Yes.

7 Q. Thank you. Look at the second

8 paragraph, please. Do you agree with that also,

9 that you did provide information to substantiate or

10 support that summary?

11 A. Yes.

12 Q. So, you would agree that you all do

13 socialize but not much, correct?

14 A. Yes. We don't go out together or we

15 don't drink together...

16 Q. No, I am not...

17 A. I see him at work and when he is

18 cutting the grass when he was my neighbour.

19 Q. Thank you. You are going to be

20 getting an e-mail, Mr. Nie. And I have some

21 questions regarding your involvement on that.

22 A. Okay.

23 Q. Okay? It is a single page chain of

24 e-mails with a black number "6" on the top right

25 corner. I direct your attention to the very bottom

R. Nie - 70

Cr-Ex (L. TAPP)

1 e-mail from you to...I think you identified him as

2 Acting Sergeant Jason Postma.

3 A. Yes.

4 Q. Okay. Do you recall sending out

5 that e-mail?

6 A. Yes.

7 Q. Thank you. The date of that e-mail

8 you sent, please?

9 A. It says August 27th, 2009. 4:43

10 a.m.

11 Q. Thank you. You would agree that as

12 of August 27, 2009 Mr. Jack was not on your platoon,

13 being that his first day was September 9; correct?

14 A. That's right.

15 Q. Thank you.

16 A. He had worked some other shifts but

17 it was on an overtime basis.

18 Q. We are talking when he was assigned

19 and officially under you as coach officer.

20 A. September 9th.

21 Q. Thank you. So, would you agree that

22 as of August 27th you had a preconceived opinion of

23 Mr. Jack refusing to sign his performance evaluation

24 report?

25 A. Can I read...

R. Nie - 71

Cr-Ex (L. TAPP)

1 Q. Please, read it. Yes.

2 A. Okay, yes. To answer your question.

3 Q. Right. So, would you agree that you

4 had a preconceived opinion of Mr. Jack refusing to

5 sign his performance evaluation report?

6 A. No.

7 Q. Okay. He is not yet under your

8 coaching, not yet started with you, and this is

9 August 27th. Read paragraph 2, please.

10 A. "...Once we have a starting point,

11 then we, inspector and both staff

12 sergeants, sit down with PC Jack to discuss

13 the plan with him and where he stands.

14 Rumours that I have heard is that he has

15 refused to sign some evaluations and has

16 called the OPPA for advice. If this is

17 true, then I want it documented with him

18 and HR [human resources] and our detachment

19 command staff present so that we are all in

20 agreement..."

21 Q. Okay. And read the very last

22 paragraph, beginning with, "I am not trying".

23 A. "...I am not trying to be

24 difficult here, just prudent. All of the

25 rumours going around are that PC Jack calls

R. Nie - 72

Cr-Ex (L. TAPP)

1 the OPPA, human resources or whoever else

2 the minute he doesn't like what is

3 happening. I want it made clear to him

4 (which I will do) that I am not about to

5 waste my time on someone that doesn't want

6 to learn or accept constructive criticism.

7 I want to give him a fair chance but he

8 needs to do the same for us..."

9 Q. Okay. It was your testimony during

10 exam that you heard there was issues but

11 specifically you did not hear any rumours.

12 A. That is correct.

13 Q. So, would you agree that the

14 testimony you gave earlier was and is seven years

15 after 2009?

16 A. Yes.

17 Q. So, your memory as of August 27th

18 would have been...2009 would have been more accurate

19 then?

20 A. Yes.

21 Q. Thank you. So, which version is

22 true? In this e-mail, you do indicate hearing

23 rumours and all the rumours. And in your testimony,

24 you say otherwise. Which one is true?

25 A. The written version is true.

R. Nie - 73

Cr-Ex (L. TAPP)

1 Q. Thank you. Would you agree that it

2 was not favourable for you to say that you did hear

3 rumours when the question was put to you...

4 MS. SINGH: Objection, sir.

5 MR. TAPP: Okay, fair enough.

6 MS. SINGH: And also for the record,

7 when the witness was being asked about

8 rumours, he was not being asked about

9 performance issue/management issues. He

10 was being asked about rumours concerning,

11 you know, racism, discrimination, and...and

12 nicknames.

13 MR. TAPP: That is certainly, as counsel

14 has told me earlier and Mr. Vice-Chair you

15 have reminded me, that is something counsel

16 can put in her submissions.

17 THE VICE-CHAIR: Fair enough.

18

19 BY MR. TAPP:

20 Q. Now, I direct your attention to the

21 very top of that page. Okay? You received a carbon

22 copy of that communication between Staff Sergeant

23 Campbell and your Acting Sergeant Jason Postma.

24 A. Yes.

25 Q. And by the original e-mails being

R. Nie - 74

Cr-Ex (L. TAPP)

1 appended below that, they are all tied in; correct?

2 A. Yes.

3 Q. Thank you. Read the...yes, read the

4 second paragraph beginning with, "Yes".

5 A. Okay. So, this is from Ron to Jason

6 copied to me.

7 "...Yes, he refused to sign his PCS066. I

8 sent it in anyways. No one is required to

9 send in 233-10. I don't see an issue with

10 sitting down with him for his plan. The 2

11 percent coach pay has been transferred to

12 you. What will you do with all that cash?

13 [laugh out loud] Ron..."

14 Q. Thank you. And the date of that e-

15 mail was?

16 A. August 28th, 2009.

17 MR. TAPP: Those are my questions for

18 that. Can we have this as the next

19 exhibit, please?

20 THE VICE-CHAIR: Exhibit 223.

21

22 --- EXHIBIT NO. 223: E-mail exchange ending August 28,

23 2009 between Messrs. Campbell, Nie,

24 et al.

25

R. Nie - 75

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. So, you acknowledge there were

3 rumours going around concerning Mr. Jack; correct?

4 A. Yes.

5 Q. Good. And it was only August 27,

6 2009. And that would have been 14 days before his

7 commencement on your platoon, September 9th?

8 A. Yes.

9 Q. Thank you. And would you not agree

10 that you...in those e-mails, you were accusing him

11 of not wanting to learn or take constructive

12 criticism? Those were your words, "constructive

13 criticism".

14 A. Yes, I would agree that I wrote

15 them. No, I would not agree that I accused him of

16 anything. I was stating facts.

17 Q. Mr. Nie, do you know the definition

18 of "constructive criticism"? I don't need you to

19 explain it. Do you know the definition?

20 A. I have what I believe to be a

21 definition, yes.

22 Q. Thank you. Would you agree with

23 dictionary.com's definition of constructive

24 criticism? Hear me...

25 MS. SINGH: Is there a question, sir?

R. Nie - 76

Cr-Ex (L. TAPP)

1 MR. TAPP: Yes. This is directly

2 relational to the August 27th/28th e-

3 mail...

4 MS. SINGH: I direct my comments to the

5 vice-chair.

6 MR. TAPP: And I am directing my

7 comments to Mr. Vice-Chair. It is relevant

8 to that, Mr. Vice-Chair, and I have to

9 explore. He says, "I have my definition",

10 but...so I have to ask him if he agrees

11 with this definition. Because he hasn't

12 explained it.

13

14 BY MR. TAPP:

15 Q. Would you agree with

16 dictionary.com's definition of it?

17 "...Serving to build or improve; positive:

18 constructive criticism..."

19 Would you agree with that definition?

20 A. Is that the entire definition?

21 Q. With respect to constructive

22 criticism as a noun and verb, yes.

23 A. I will agree with that part of what

24 you have read.

25 Q. Thank you. So, again, I am going to

R. Nie - 77

Cr-Ex (L. TAPP)

1 ask you, your comment there on August 27th with

2 respect to Mr. Jack not wanting to learn or take

3 constructive criticism, would that be something

4 negative that you viewed or positive that you viewed

5 of Mr. Jack?

6 A. It would be a negative view of Mr.

7 Jack if he was unable to accept constructive

8 criticism.

9 Q. If he was. If he was. And you will

10 agree you had not started coaching him; right?

11 A. Correct.

12 Q. Correct. And you also agree that

13 the transfer was supposed to be viewed as a clean

14 slate and fresh start; correct?

15 A. Yes.

16 Q. Good. So, now, would you agree that

17 you had, as of August 27th, a preconceived opinion

18 of Mr. Jack?

19 A. No.

20 Q. Okay. Your accusation of him not

21 wanting to learn or take constructive criticism, in

22 your view, would that be...okay, I am going to read

23 it out. The bottom of August 27th e-mail that you

24 sent to Acting Sergeant Postma:

25 "...All the rumours going around are that

R. Nie - 78

Cr-Ex (L. TAPP)

1 Jack calls the OPPA, human resources, or

2 whoever else the minute he doesn't like

3 what is happening. I want to make clear to

4 him (which I will do) that I am not about

5 to waste my time on someone like that..."

6 That comment is based on rumours and others' view of

7 him; correct?

8 A. Correct.

9 Q. Good. And it cannot be said that as

10 of August 19th or, rather, September 9th that you

11 were affording him a clean slate and fresh start?

12 Well, by virtue of the date...

13 A. I didn't hear the question, I'm

14 sorry.

15 Q. Okay. August 27th, did you make

16 those comments?

17 A. Yes.

18 Q. Good. So, how can that be viewed as

19 a clean state and fresh start?

20 A. Because I stated, further, if you

21 read down, "I want to give him a fair chance".

22 Other people's opinions don't have to impact what my

23 job is to do.

24 Q. Okay. So, by that token, the last

25 sentence:

R. Nie - 79

Cr-Ex (L. TAPP)

1 "...But he needs to do the same for us..."

2 That would be including you and your shift; right?

3 A. It is about the OPP.

4 MR. TAPP: OPP? Thank you. We will

5 have that entered as the next exhibit,

6 please.

7 THE VICE-CHAIR: That will be 224.

8 MS. SINGH: Might that be Exhibit 223

9 and not 224?

10 MR. TAPP: Yes, we don't...I will take

11 back...

12 THE VICE-CHAIR: I have as 223 the

13 chain...e-mail chain starting August 27th.

14 MS. SINGH: Yes. That is 223.

15 THE VICE-CHAIR: Yes. And so this one

16 will be 224. I could be wrong.

17 MS. SINGH: I don't seem to have a copy

18 of 224.

19 THE VICE-CHAIR: Actually, I think this

20 has been entered already. The one I have

21 just labelled 224 has been entered already.

22 MR. TAPP: Okay, Mr. Vice-Chair, your

23 this is cross so I will...oh yes. Mr.

24 Vice-Chair?

25 THE VICE-CHAIR: Yes?

R. Nie - 80

Cr-Ex (L. TAPP)

1 MR. TAPP: There was a chain of e-mails

2 and we were...Mr. Jack has reminded me we

3 were prevented from entering a specific

4 one. So if you even compare those two, 223

5 to 224, that one, there is one that is not

6 reflected on 223.

7 THE VICE-CHAIR: No, I am saying 224 has

8 been entered. Just give me a moment. What

9 about Exhibit 195?

10 MR. JACK: 195 is just one e-mail. This

11 is a chain.

12 THE VICE-CHAIR: No, no, no, I have just

13 identified the e-mail dated September 25th

14 as Exhibit 224. I am saying that...what is

15 195?

16 MR. JACK: That's exactly...224, we

17 don't need 224.

18 THE VICE-CHAIR: So let me get rid of

19 this before I confuse myself. No 224, but

20 there is a 223. Presumably there will be a

21 224.

22 MR. TAPP: I will accept the

23 responsibility for that, Mr. Vice-Chair.

24 My apologies.

25

R. Nie - 81

Cr-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Mr. Nie, you have just received a

3 two page document.

4 A. Yes.

5 Q. With a black number 3 on the top

6 right corner.

7 A. Yes.

8 Q. Okay. The very first e-mail on page

9 1 is from your acting sergeant Jason Postma to you;

10 correct?

11 A. At the very top of the page? Yes.

12 Q. Yes. On the very top of page 1.

13 Yes. And it is regarding Probationary Constable

14 Jack?

15 A. Yes.

16 Q. And it is sent August 26th, 2009?

17 A. Yes.

18 Q. And under it, it says "sensitivity:

19 confidential"; correct?

20 A. Yes.

21 Q. So, that was your acting sergeant

22 telling you to keep that confidential; correct?

23 A. Yes.

24 Q. Okay. And by the wording "FYI", it

25 is for your information and he is forwarding

R. Nie - 82

Cr-Ex (L. TAPP)

1 everything that is below; right?

2 A. Yes.

3 Q. Thank you. So, you acknowledge

4 getting everything that is below and seeing all of

5 that...those, I think, one, two, three, four e-

6 mails; correct?

7 A. Yes.

8 Q. Thank you. Read the first line in

9 the second e-mail on page 1, please, starting with,

10 "No problem".

11 A. "...No problem. This is a problem

12 of the original sergeant and coach not

13 properly supervising..."

14 Q. And read on, please.

15 A. "...I don't look at platoon D as

16 a laughing stock whatsoever. I think that

17 four months will tell the tale with Mike

18 Jack..."

19 Q. Okay, thank you. Read the very last

20 line, please.

21 A. Of that same e-mail?

22 Q. Yes.

23 A. "...I am addressing the

24 shortcomings of platoon A that platoon D

25 was required to clean up what they could

R. Nie - 83

Cr-Ex (L. TAPP)

1 not finish..."

2 Q. Thank you. So, you are aware

3 that...at least...I got to find out from you. You

4 are aware that your platoon was the laughing stock

5 upon being advised or becoming aware that Mr. Jack

6 was coming there?

7 A. No.

8 Q. Okay.

9 A. There is another reason for why we

10 are the laughing stock.

11 Q. Okay. Please.

12 A. Platoon D has always been

13 called...in reference to...I forget the...the...I

14 can't think of the name of the movie. We have been

15 referred to as a platoon where no one wants to go

16 work in that platoon. That we are all different

17 people. That is what that is referring to.

18 Q. Read "moral" under that e-mail,

19 please, from Jason Postma. In bold print, "moral",

20 read that.

21 A. "Moral"?

22 Q. Yes.

23 A. Okay.

24 "...D platoon is the laughing stock of this

25 office because of these developments.

R. Nie - 84

Cr-Ex (L. TAPP)

1 People are not viewing [something]..."

2 Q. Go on.

3 A. My copy is not...it is blanked out.

4 "...[they] are not viewing [blank] second

5 chance or refocus. They look at this as it

6 is not our problem anymore. Our shift is

7 not happy but will G [blank] Mike every

8 chance to succeed. It is surprising how

9 many people knew about this before I did

10 and before Rich..."

11 Q. So, would you not agree that your

12 explanation that you wanted to just provide...

13 A. Yes.

14 Q. ...to explain what it is...

15 A. Yes.

16 Q. ...about laughing stock cannot

17 simply be true based on that...

18 MS. SINGH: Objection.

19 MR. TAPP: ...comment?

20 MS. SINGH: This is an e-mail from Jason

21 Postma to Ron Campbell.

22 THE VICE-CHAIR: You are right, I

23 mean...

24 MS. SINGH: This witness did not author

25 those words. This witness did not write

R. Nie - 85

Cr-Ex (L. TAPP)

1 that e-mail. And so this witness is in no

2 position, sir, to provide evidence about

3 what was in someone else's mind writing

4 those words.

5 THE VICE-CHAIR: I agree.

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

7

8 BY MR. TAPP:

9 Q. But you would agree that, according

10 to this e-mail, your acting sergeant viewed it

11 different; correct?

12 A. Yes.

13 Q. Thank you.

14 A. You're welcome.

15 Q. Next exhibit, please, Mr. Vice-

16 Chair.

17 THE VICE-CHAIR: 224.

18

19 --- EXHIBIT NO. 224: E-mail exchange ending August 26,

20 2009 between Messrs. Postma, Nie, et

21 al.

22

23 BY MR. TAPP:

24 Q. Can you read, before we go on, what

25 your acting sergeant is saying about you under

R. Nie - 86

Cr-Ex (L. TAPP)

1 "coaching", please?

2 A. Okay.

3 "...Rich is a good officer but he has been

4 in this coaching role way too long. He

5 needs a few years of..."

6 It says "N" on my copy;

7 "...'N' recruits to get that front line

8 groove back (my opinion). I don't want him

9 to burn out if Mike requires [there is a

10 missing word] documentation and process.

11 He will do the job and will do it right but

12 I am sensing the negative side of him..."

13 And then there is an "L".

14 Q. And now read the very bottom

15 paragraph, please.

16 A. Starting with the word, "Another"?

17 Q. Yes.

18 A. Okay.

19 "...Another note from experience. Problem

20 officers or the rising stars define which

21 coaches are successful in terminating

22 probationarys or making positive

23 recommendations. Everyone wants the good

24 one but very few are equipped to document

25 and terminate employment if they don't meet

R. Nie - 87

Cr-Ex (L. TAPP)

1 the standards. We need to examine [I am

2 assuming the word is 'potential'] coaches

3 more thoroughly in the future..."

4 Q. Thank you. You would agree by those

5 comments of your acting sergeant that he was sensing

6 a negative side of you?

7 MS. SINGH: Objection.

8 MR. TAPP: Well, that is what he states,

9 right?

10 THE VICE-CHAIR: That is what he states.

11 MR. TAPP: Thank you.

12

13 BY MR. TAPP:

14 Q. Now, like constructive criticism,

15 Mr. Nie, you know the difference between subjective

16 and objective?

17 A. Yes.

18 Q. Thank you. So, would you agree with

19 the following definition from dictionary.com of

20 subjective?

21 "...Belonging to, proceeding from, or

22 relating to the mind of the thinking

23 subject and not the nature of the object

24 being considered..."

25 Second:

R. Nie - 88

Cr-Ex (L. TAPP)

1 "...of, relating to, or emanating from a

2 person's emotions, prejudices, etc:

3 subjective views..."

4 Do you agree with that definition?

5 MS. SINGH: Mr. Vice-Chair, again, you

6 know, this same line of questioning was put

7 to other witnesses and it...it is not

8 relevant whether he agrees with a

9 dictionary definition or not. It is not an

10 issue in this proceeding.

11 MR. TAPP: Okay, it is a very big issue,

12 Mr. Vice-Chair, because much of the cross-

13 examination counsel has put forth a view

14 that they are basing their defence of their

15 application. So, Counsel cannot object to

16 the applicant's view which forms the basis

17 of this hearing. So, you have a definition

18 of subjective in your mind. Would you

19 agree that this definition from

20 dictionary.com conforms to the definition

21 of subjective?

22 THE VICE-CHAIR: Go ahead and answer it.

23

24 BY MR. TAPP:

25 Q. Answer it.

R. Nie - 89

Cr-Ex (L. TAPP)

1 A. If I will agree with

2 dictionary.com's version, what you are reading, I

3 have no idea because I haven't seen it.

4 Q. Thank you. Now regarding objective,

5 would you agree from dictionary.com you have...you

6 know the definition of "objective", I trust?

7 A. Yes, I will agree with all the

8 definitions from dictionary.com.

9 Q. Okay, thank you. But I will just

10 read one of the excerpts. You tell me if you agree

11 with it or not. "Objective"...

12 MS. SINGH: Asked and answered. The

13 witness has said that he will agree what

14 whatever definitions from the

15 dictionary.com.

16 MR. TAPP: I got to remind, Counsel is

17 very sharp.

18 THE VICE-CHAIR: Mr. Tapp and Mr. Jack,

19 we have to...you have to establish that

20 there has been a breach of the code.

21 MR. TAPP: Yes. And that is what we are

22 trying to do.

23 THE VICE-CHAIR: Being a lousy

24 supervisor, being a misinformed supervisor

25 is not a breach under the code.

R. Nie - 90

Cr-Ex (L. TAPP)

1 MR. TAPP: Absolutely right, Mr. Vice-

2 Chair. I agree with that.

3 THE VICE-CHAIR: So, what if I were to

4 accept that there was poor supervision?

5 MR. TAPP: That is not what I am trying

6 to make over here.

7 THE VICE-CHAIR: Well, that is what I am

8 hearing.

9 MR. TAPP: Okay, fair enough.

10

11 BY MR. TAPP:

12 Q. Would you agree, Mr. Nie...you have

13 testified earlier that all your point form

14 chronology, the number of pages with reference to

15 what you entered, was from a subjective view rather

16 than an objective view?

17 A. Yes.

18 Q. Thank you. Now, you also testified

19 that you are cognizant of the Ontario Human Rights

20 Code?

21 A. Yes.

22 Q. And especially where it relates to

23 professionalism in the OPP?

24 A. Yes.

25 Q. And, in fact, OPP orders does have a

R. Nie - 91

Cr-Ex (L. TAPP)

1 good portion of the Human Rights Code with respect

2 to treating others equally?

3 A. Yes.

4 Q. Okay, thank you. So, in your

5 opinion as a coach officer, which would be...which

6 of the two would be congruent with the Ontario Human

7 Rights Code; subjective or objective? I am asking

8 you, Mr. Nie.

9 A. I will say both. Because it depends

10 on what is happening. When I am writing a

11 chronology or an evaluation, it is subjective

12 because I am there at the time. I was with my

13 recruit. Maintaining objectivity over how you write

14 things is the second part of that equation. So, it

15 covers both.

16 Q. Okay. Thank you. So, you have your

17 point form chronology before you.

18 A. Yes.

19 Q. I would direct your attention to

20 September 9th, please.

21 A. Okay.

22 Q. Now, we have already confirmed that

23 those are your entries and you agree those are your

24 comments in that chronology; right?

25 A. Under September 9th for PC Nie, yes.

R. Nie - 92

Cr-Ex (L. TAPP)

1 Q. Yes. Not others. September 9th was

2 Mr. Jack's first day on a new platoon and you as a

3 new coach officer; correct?

4 A. Correct.

5 Q. Thank you. First day of him being

6 given a clean slate and fresh start; correct?

7 A. Yes.

8 Q. Thank you. Did Mr. Jack call you

9 prior to September 9th to ask if you wanted to meet

10 with him?

11 A. I think yes, but I don't recall a

12 hundred percent.

13 Q. Fair enough. Did you tell him that

14 you do not do any police-related work on your days

15 off?

16 A. Yes.

17 Q. Thank you. Were you upset when Mr.

18 Jack called you on your days off?

19 A. No.

20 Q. Thank you. You were aware that his

21 transfer was...I think we addressed that. On

22 September 9th, you all were working day shift;

23 correct?

24 A. Yes.

25 Q. Thank you. You and Mr. Jack started

R. Nie - 93

Cr-Ex (L. TAPP)

1 at 0500 hours or 5:00 a.m.; correct?

2 A. Yes.

3 Q. You were advised of the outstanding

4 calls by the sergeant you had relieved; correct?

5 A. Yes.

6 Q. Would that sergeant have been

7 Sergeant Trevor Banbury? Maybe you can refresh your

8 memory from your notes.

9 A. It is not in my chronology but

10 perhaps in my notebook it will say.

11 Q. Thank you.

12 A. It doesn't say in my notes who was

13 the previous sergeant.

14 Q. Okay, fair enough. But you do agree

15 you were advised by the sergeant you relieved of the

16 outstanding calls; correct?

17 A. Yes.

18 Q. Good. Now, you have also done the

19 same when you were acting OIC of your platoon and

20 being relieved the following shift, correct, if

21 there were any outstanding calls?

22 A. Informed other shifts?

23 Q. Yes.

24 A. Yes.

25 Q. So, that is pretty standard; right?

R. Nie - 94

Cr-Ex (L. TAPP)

1 A. Yes.

2 Q. Okay. Now, also, in being advised

3 by the relieving sergeant of the outstanding calls,

4 would you agree that an assessment had already been

5 made and that the calls were deemed appropriate to

6 be held for the relieving shift, meaning your shift?

7 A. Yes.

8 Q. Thank you. So, you relieved night

9 shift. That means left over calls that they

10 couldn't attend could be addressed by your shift?

11 A. I will agree that there is two

12 different types. My verbiage says "pending threats

13 call". So if it came in at 4:55 a.m. while I was in

14 the changeroom, then I would not say that that was

15 left over from another shift because it is a call

16 that...it didn't make sense to send the night shift

17 out on overtime when the day shift is right there.

18 A leftover call is what I would term as a call that

19 perhaps came in at ten o'clock at night but because

20 the complainant was going to bed, they felt it

21 necessary to leave it until the day shift to call.

22 So there is two different kinds that can be left

23 over.

24 Q. But at least something coming in 13

25 minutes...I mean, the night shift...correct me if I

R. Nie - 95

Cr-Ex (L. TAPP)

1 am wrong, night shift would have finished at 0600

2 hours; 6:00 a.m.?

3 A. The majority of them, yes.

4 Q. Yes. With the exception of two

5 officers that would have finished at 5:00 a.m.;

6 right?

7 A. At that time, yes.

8 Q. Yes. Okay. So, something coming in

9 13 minutes before 5:00 a.m. would really mean an

10 hour and 13 minutes before the end of night shift?

11 A. For the officers working until 6:00

12 a.m., yes.

13 Q. Yes. Thank you. You are going to

14 be getting a document and, for the sake of counsel,

15 I would refer to applicant's Exhibit 47. It hasn't

16 been tendered yet but it is already provided by the

17 applicant in the documents to be relied upon.

18 MS. SINGH: I have not seen this

19 document before. It does not appear to be

20 an exhibit. And I don't know if this was

21 authored or in any way authored by this

22 witness.

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

24 if I can respond. With all due respect,

25 counsel took carriage of this case in March

R. Nie - 96

Cr-Ex (L. TAPP)

1 or April of this year. Nonetheless, this

2 year. These documents were provided

3 subject to the tribunal's ruling of

4 complete disclosure to be made as of April,

5 2012. So, counsel is fully aware of this

6 document. These are from the applicant's

7 documents to be relied upon. Hence, you

8 see the applicant's notation on top,

9 applicant Exhibit 47. So, counsel cannot

10 take the position that she hasn't seen this

11 document because that is true. She hasn't,

12 but...

13 THE VICE-CHAIR: What is it?

14 MR. TAPP: Okay, this is a summary...

15 this is a call...these are one of the few

16 calls that were left over from this night

17 shift. That Mr. Nie has just testified to.

18 THE VICE-CHAIR: What point are you

19 trying to make? Maybe we can get to the

20 point and move on.

21 MR. TAPP: The example, Mr. Nie said if

22 it came in...if it came in five minutes

23 towards the end of a shift, yes, it would

24 be appropriate and hold it over. But this

25 call came in an hour and 13 minutes prior

R. Nie - 97

Cr-Ex (L. TAPP)

1 to the end of night shift. So, that is

2 exactly the point we are trying to make.

3 The explanation he gave is not valid over

4 here and we want to show this summary

5 because starting and getting this

6 information from the relieving sergeant, he

7 had to look over the summary, the

8 information the communication centre

9 entered into the call.

10 THE VICE-CHAIR: Point made. Let's move

11 on.

12

13 BY. MR. TAPP:

14 Q. In that summary, Mr. Nie, it also

15 states "hold for days as per Sergeant Banbury",

16 correct?

17 A. Yes.

18 Q. And that is on page 2?

19 MS. SINGH: Mr. Vice-Chair, I am unclear

20 about this document. I don't know what it

21 is. I don't know who authored it...

22 THE VICE-CHAIR: I think we are back to

23 the chronology, aren't we?

24 MS. SINGH: Are we back to the

25 chronology?

R. Nie - 98

Cr-Ex (L. TAPP)

1 MR. TAPP: No, no.

2 MS. SINGH: Because there is a problem

3 about putting in documents that were not

4 authored by a witness and asking the

5 witness to testify about the document as

6 though it is in evidence and he has

7 authored it and has something to say about

8 it. And, you know, just to address Mr.

9 Tapp, the fact that there is an exchange of

10 arguably relevant documents does not

11 establish that the document was authored by

12 the witness and that this witness can

13 provide any reliable evidence about the

14 document.

15 MR. TAPP: Okay, we will address that.

16

17 BY. MR. TAPP:

18 Q. You are familiar with occurrence

19 summaries and CAD printouts, Mr. Nie?

20 A. Yes, I am.

21 Q. Okay. And one does a CAD printout,

22 that means information entered by the dispatcher,

23 right, regarding the call?

24 A. A summary of calls, yes.

25 Q. A summary. This is a threats

R. Nie - 99

Cr-Ex (L. TAPP)

1 call...outstanding threats call that Sergeant

2 Banbury was talking to you and gave you an account

3 of outstanding?

4 A. I will agree that this appears to be

5 a CAD summary. However, when we print them off of

6 the Niche RMS system, it will show at the bottom who

7 printed it and where it was from, which this

8 document doesn't say. So I can't...I will not agree

9 that this is a Niche RMS document because it is all

10 blank.

11 Q. Okay. Do you have any notation in

12 your notes of the occurrence number of that

13 outstanding threats call, Mr. Nie?

14 A. Just give me one moment.

15 THE VICE-CHAIR: Again, what point are

16 you trying to make?

17 MR. TAPP: That this call was an hour

18 and 13...

19 THE VICE-CHAIR: I understand that.

20 MR. TAPP: Fair enough. And I am

21 getting to. But I have to establish that

22 this call was old, had been assessed and

23 Mr. Nie later on within the first hour

24 chastises Mr. Jack. So I can't jump to

25 that without establishing that.

R. Nie - 100

Cr-Ex (L. TAPP)

1 THE VICE-CHAIR: Well, you have

2 explained it quite clearly and articulately

3 in a few seconds.

4 MR. TAPP: Okay.

5

6 BY. MR. TAPP:

7 Q. Okay, Mr. Nie...

8 THE VICE-CHAIR: We are going to have

9 lunch at 1:00.

10 MR. TAPP: Okay.

11 THE VICE-CHAIR: And then I want this

12 done today.

13 MR. TAPP: Okay, Mr. Vice-Chair.

14

15 BY. MR. TAPP:

16 Q. Mr. Nie?

17 A. I don't have the SP number, to

18 answer your last question.

19 Q. Okay, that's fine. Is it not true,

20 according to your point form chronology, September

21 9th, that you accused Mr. Jack of not getting back

22 to the complainant by 5:42 a.m.?

23 A. Yes, it says at 5:42 hours he still

24 hadn't called the complainant.

25 Q. Can you tell us where you got that

R. Nie - 101

Cr-Ex (L. TAPP)

1 number, 5:42, as opposed to, like, 45 minutes, by a

2 round off number of 5:45 a.m.?

3 A. Probably from looking at my watch

4 when I talked to him.

5 Q. Okay. But as his coach officer, you

6 documented what you noted in September 9th under

7 performance evaluation report 9 in flexibility;

8 correct? Do you have performance evaluation report

9 9, first? I shouldn't ask that yet...

10 A. It's okay. I think I do. Yes.

11 Q. Okay.

12 A. Which category are you referring to?

13 Q. Flexibility, page 9, please.

14 A. Thank you. Okay, I am with you.

15 Q. Would you agree that you used the

16 outstanding threats call that you documented in your

17 point form chronology, September 9th, as the

18 specific example to support a "does not meet

19 requirements" rating in this category?

20 A. Sorry, can you repeat the question?

21 Q. Okay, I will. Would you agree that

22 your documentation in your point form chronology,

23 September 9th, regarding the outstanding threats

24 call is the same specific example that you use in

25 the flexibility category PER-9 to support the "does

R. Nie - 102

Cr-Ex (L. TAPP)

1 not meet requirements"?

2 A. Yes.

3 Q. Thank you. So, obviously in

4 preparing that performance evaluation report 9, you

5 had to establish something. Were you able to look

6 at the disposition of that call at least? Whether

7 it was founded or unfounded?

8 A. Yes.

9 Q. Okay. And what was it, please?

10 A. On this sheet that you have put

11 before me, it says the word "unfounded".

12 Q. Thank you. Now...

13 A. It also says the call was at 4:47,

14 which was only 13 minutes prior to our 5:00 a.m.

15 shift.

16 Q. Yes.

17 A. When we started.

18 Q. Yes, that's true. But an hour and

19 13 minutes before the rest of the officers reported

20 off duty, right?

21 A. The night shift officers, yes.

22 Q. Yes. Okay. Now, I direct your

23 attention...keep that open for you.

24 A. The evaluation?

25 Q. Yes. And your notes, your point

R. Nie - 103

Cr-Ex (L. TAPP)

1 form chronology for that point. I direct your

2 attention to page 2 of your witness summary prepared

3 by counsel. Paragraph 3, please.

4 A. Are we on the chronology? I'm

5 sorry.

6 Q. Yes. No, no, no, the witness

7 summary. That copy that I asked you some

8 questions...

9 A. The CAD report?

10 Q. No, no, it is a four page document.

11 I don't know if you have this. I said earlier...

12 THE VICE-CHAIR: You have it.

13 MR. TAPP: You have it.

14 THE WITNESS: Yes, sorry.

15

16 BY. MR. TAPP:

17 Q. It says on top "Witness Summary

18 Constable Nie"...

19 A. Yes.

20 Q. ...or PC Nie? Okay. So I direct

21 your attention to page 3, please.

22 A. Okay. Page 3.

23 Q. Before you read out, I direct your

24 attention to the third paragraph there.

25 A. Yes.

R. Nie - 104

Cr-Ex (L. TAPP)

1 Q. Read it to yourself and would you

2 confirm that it is accurate as per the information

3 you provided?

4 A. Is this the one about him asking

5 questions behind my back?

6 Q. My apologies. I directed you to the

7 wrong page.

8 A. Okay.

9 Q. Yes, page 2, please.

10 A. Okay.

11 Q. Paragraph 3. Do you agree with that

12 summary...

13 A. Yes.

14 Q. ...as per the information you have

15 provided?

16 A. Yes.

17 Q. Thank you. You agree that it is in

18 relation to the threats call on September 9th, 2009?

19 A. Yes.

20 Q. Thank you. Now, what does it say,

21 "PC Nie"?

22 A. At the start?

23 Q. Yes.

24 A. The very first sentence?

25 Q. Yes.

R. Nie - 105

Cr-Ex (L. TAPP)

1 A. "...PC Nie was not..."

2 Sorry.

3 "...PC Nie was not informed by PC Jack that

4 on September 9th, 2009 PC Jack had made an

5 initial call to the complainant, in a

6 pending threats call, and there was no

7 answer. He will indicate that he

8 prioritized the call for Mr. Jack and gave

9 him direction. PC Nie will describe the

10 basis for his rating of Mr. Jack in

11 relation to this incident..."

12 THE VICE-CHAIR: Is there a question?

13 MR. TAPP: Yes.

14

15 BY. MR. TAPP:

16 Q. Would you agree that there was a

17 quick jump to conclusions on your part?

18 A. No, I don't do that.

19 Q. Did you happen to ask Mr. Jack what

20 attempts he had made to address that threats call?

21 A. No.

22 Q. No. Now, if you had, would you have

23 been surprised to know that he already did establish

24 contact and the complainant...on three times he

25 established contact but actually spoke to the

R. Nie - 106

Cr-Ex (L. TAPP)

1 complainant once where the complainant told him in

2 polite language where to go?

3 A. I need to change my answer...

4 Q. Yes.

5 A. ...because I see in my chronology it

6 says that I asked him about the threats call. So I

7 did ask him about it.

8 Q. All right.

9 A. I'm sorry.

10 Q. So you would agree if Mr. Jack's

11 notes reflect telling you that he did make

12 contact...

13 MS. SINGH: Objection.

14 MR. TAPP: Okay.

15 MS. SINGH: This witness does not have

16 any knowledge, sir, about Mr. Jack's notes.

17 And he has answered the question.

18 THE VICE-CHAIR: Yes.

19

20 BY. MR. TAPP:

21 Q. So can you explain, in your first

22 hour with Mr. Jack, why did you document him

23 negatively for something that turned out to be

24 unfounded?

25 A. I think the way you are painting the

R. Nie - 107

Cr-Ex (L. TAPP)

1 picture is not appropriate because...

2 Q. Okay.

3 A. ...it is not the fact that it was my

4 first hour with Michael that I documented him

5 negatively. It is when I come to a month after

6 working with somebody to do an evaluation and I need

7 an example for a category, that just happened to be

8 the example that I found to use. So if I hadn't

9 used that example and used one that was 15 days into

10 it, it really wouldn't have made a difference for

11 the category. So it is not...it has nothing to do

12 with that it was within the first hour that I

13 negatively documented him because at that time he

14 wouldn't have even known that I had that example to

15 use for his evaluation.

16 Q. But you had to look for an example.

17 So, I want to say how come...how did you come to the

18 determination by 5:42 a.m.? Please, explain that.

19 You make this as a specific example. You had to

20 come to a determination. What checking did you do

21 to utilize 5:42 a.m.?

22 MS. SINGH: Asked and answered, Mr.

23 Vice-Chair.

24 THE VICE-CHAIR: We are just going

25 around in circles here.

R. Nie - 108

Cr-Ex (L. TAPP)

1 MR. TAPP: It is.

2

3 BY. MR. TAPP:

4 Q. You, as a coach officer, if you

5 had...would you agree that you had the authority to

6 check your probationer's notebooks regarding that

7 call?

8 A. Yes.

9 Q. Thank you. And if you had have

10 checked it, you would have seen what contact Mr.

11 Jack had actually made; correct?

12 A. If I had checked it and it was

13 written there, yes, I would see that.

14 Q. Yes. And if you had checked, okay,

15 and what information he had written, I am going to

16 suggest that your documentation there on flexibility

17 would have been impacted.

18 MS. SINGH: Mr. Vice-Chair, again, this

19 is speculation. The witness has no

20 knowledge about Mr. Jack's notes and the

21 witness has answered this question more

22 than once.

23 THE VICE-CHAIR: Can we move on, Mr.

24 Tapp?

25 MR. TAPP: Thank you.

R. Nie - 109

Cr-Ex (L. TAPP)

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

2 trying to make.

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

4

5 BY. MR. TAPP:

6 Q. You agree that point form chronology

7 for September 9th is very detailed, Mr. Nie?

8 A. Yes.

9 Q. Thank you. Doesn't it appear

10 overzealous of you to time Mr. Jack with such minute

11 precision in that first hour together, Mr. Nie?

12 A. No.

13 Q. Okay. Was that your...would that

14 have been constructive criticism, Mr. Nie?

15 A. I am not sure which part you are

16 talking about.

17 Q. You spoke to him in order to make

18 that determination by 5:42 he hadn't called the

19 complainant?

20 A. Yes.

21 Q. And the way you documented, you

22 agree it is negative? It is not positive?

23 A. Yes.

24 Q. Yes.

25 THE VICE-CHAIR: Can we please move on?

R. Nie - 110

Cr-Ex (L. TAPP)

1 I get the point. You are just...you need

2 to move on.

3 MR. TAPP: Okay.

4

5 BY. MR. TAPP:

6 Q. You are going to be getting a copy

7 of e-mails between you, Sergeant Butorac and the

8 inspector. I direct your attention initially to

9 Exhibit 219, please. So, you have a copy of this

10 exhibit on your desk.

11 A. I don't know which...

12 Q. It is from Sergeant Butorac...it is

13 from you to Sergeant Butorac, September 20th, 2009.

14 Exhibit 219. It is an e-mail, single page document.

15 A. Yes.

16 Q. Okay. Can you explain your comments

17 in the very last paragraph?

18 "...I have no problems giving him the

19 evaluation but I thought it would be better

20 to have everything done properly given the

21 circumstances..."

22 Can you explain that, please?

23 A. I believe, as best as I can remember

24 from seven years ago, that the evaluation was given

25 to our platoon to serve onto Mr. Jack. I didn't

R. Nie - 111

Cr-Ex (L. TAPP)

1 want to serve it to him with the work improvement

2 plan not matching the evaluation. So what I am

3 saying to him is, given the circumstances that we

4 have a recruit that is having major struggles, that

5 is now going to a second coach officer, it is

6 probably best to make sure that when we are giving

7 him documentation of his evaluations, that it is

8 done properly the way it is supposed to be done as

9 opposed to having mistakes on it. Because then

10 mistakes just need to be corrected later on.

11 Q. Thank you. Did you ever communicate

12 with Sergeant Flindall on his Blue Sky Gear account,

13 Mr. Nie?

14 A. Not that I recall.

15 Q. Okay, fair enough. I am showing you

16 an e-mail...

17 A. Actually, I think he did send me

18 work improvement plans from his home work e-mail at

19 one point.

20 MR. JACK: Exhibit 194.

21

22 BY MR. TAPP:

23 Q. This would be congruent with what

24 you said. You got the work improvement plan, right?

25 A. Yes.

R. Nie - 112

Cr-Ex (L. TAPP)

1 Q. Thank you. And you indicate...no,

2 you haven't indicated, but I direct your attention

3 to the body of that paragraph, Mr. Nie. Correct me

4 if I am wrong, but it looks like...can you read from

5 "Before" , please?

6 A. Sure.

7 "...Before you bitch about the fact that

8 there is no rhyme or reason to the order of

9 the WIP categories, there is. PC Jack

10 always wants things presented to him in

11 nice, neat little organized package with a

12 bow on it as you may have already found

13 out. I have done [I am assuming] this on

14 purpose [mine is blanked out] to have him

15 work outside his comfort level. Policing

16 and investigations never present themselves

17 wrapped with a little bow..."

18 Q. So the reason why I asked you to

19 read that was now look at Exhibit 219, that single

20 e-mail you have.

21 A. Okay.

22 Q. Would that now explain why you made

23 that...would that give a clearer explanation of that

24 very last paragraph? Done properly, given the

25 circumstances?

R. Nie - 113

Cr-Ex (L. TAPP)

1 A. I don't think they are related at

2 all.

3 Q. Okay. Were you advised of Mr.

4 Jack's driving problems at any time?

5 A. Yes.

6 Q. Yes. And who advised you of that?

7 A. I don't recall. I know I made

8 arrangements for him to have a driving test done, I

9 believe with a sergeant. But I am not sure if that

10 stemmed from my observing his driving or someone

11 else prior to me.

12 Q. Fair enough. Thank you. Do you

13 remember getting correspondence from the staff

14 sergeant, Staff Sergeant Campbell, regarding the

15 driving assessment?

16 A. Yes, I see my name copied on this e-

17 mail.

18 Q. Okay. And the date of that, please?

19 A. It is September 29th.

20 Q. Good. Mr. Campbell is regarding

21 that as important...as high importance, correct?

22 A. Yes.

23 Q. Good. Read those two lines, please.

24 A. Below the word, "Hi"?

25 Q. Yes.

R. Nie - 114

Cr-Ex (L. TAPP)

1 A. "...We will need to make Mike

2 available for this. In my conversation

3 with Dave McNeely, he feels he is

4 correctable and he nor the public are in

5 danger. Ron..."

6 MR. TAPP: Thank you. "He nor the

7 public are in danger". So, anyways, can we

8 have this entered as the next exhibit,

9 please?

10 THE VICE-CHAIR: That is 225.

11

12 --- EXHIBIT NO. 225: E-mail exchange between Messrs.

13 Campbell, Nie, et al. dated

14 September 29, 2009

15

16 BY. MR. TAPP:

17 Q. Did you have correspondence or,

18 rather, can you recall disclosing your performance

19 evaluation 9 document with Staff Sergeant Kohen?

20 A. I am sure that I did. I don't have

21 the e-mail in front of me. Or maybe I do.

22 Q. Okay, Mr. Jack is just looking up

23 which exhibit rather than...Exhibit 221, please. Do

24 you have that on your desk?

25 A. Is this month 10?

R. Nie - 115

Cr-Ex (L. TAPP)

1 Q. It is October 7th, 2009, an e-mail

2 from you to Staff Sergeant Ron Campbell.

3 A. I have it.

4 Q. Okay, thank you. Sometimes it is

5 better to have the copy before you than try to...

6 A. I'm sorry, my numbers aren't

7 labelled.

8 Q. Fair enough. Read the...in the last

9 paragraph, read from where you document, "My gut

10 feeling". Read from there, please.

11 A. I already read this in chief.

12 Should I read it again?

13 Q. You read it in entirety?

14 A. Yes.

15 Q. Okay, fair enough. Can you explain

16 that, please? Your gut feeling is you can't teach

17 Mr. Jack "common sense umbrella". Explain that,

18 please.

19 A. I felt that I was having to

20 be...trying to teach somebody how to...are we

21 okay...can we accept common sense? Would that be...

22 Q. Yes. No, no, no. Yes. Go on.

23 A. So, I felt that...I think it is a

24 fairly common or regular term that people say, you

25 can't teach common sense. But common sense is if I

R. Nie - 116

Cr-Ex (L. TAPP)

1 walk into a room and there is a man with a black eye

2 and a lady with a bloody knuckle, that that lady

3 probably hit that guy even though I didn't see it.

4 The reason I said that is because, for Michael, I

5 would have to tell him all that stuff happened in a

6 format to make sure...he wouldn't be able to pick up

7 on those obvious clues on his own. That is what I

8 meant about can't teach common sense.

9 Q. But you would agree that where your

10 common sense...you would agree that an individual's

11 common sense is different from another person's

12 common sense?

13 A. There could be slight variants, but

14 for the most part I think what is common sense is

15 common...

16 Q. And would you agree that a person

17 develops common sense from various sources in their

18 upbringing and in their stages of life?

19 A. No, I don't think you can study

20 common sense.

21 Q. No, no, no. Common sense, in many

22 cases, is directly related to a person's life

23 experiences and what they learn?

24 A. I think it helps...

25 Q. Through life?

R. Nie - 117

Cr-Ex (L. TAPP)

1 A. I think your life experiences help

2 establish common sense, yes.

3 Q. Thank you. So, you believe Mr. Jack

4 lacked common sense; correct?

5 A. Yes.

6 Q. So, how could he study three foreign

7 languages...or know three foreign languages, have so

8 much life experience you said he talked about with

9 you?

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

11 THE VICE-CHAIR: How would he know?

12 MR. TAPP: Okay.

13

14 BY. MR. TAPP:

15 Q. You agree that he studied at Trent

16 University?

17 A. Yes. He told me that.

18 Q. And you would know that he also

19 taught over there?

20 A. Yes.

21 Q. Right. You would agree teaching at

22 a university...I am asking you. Would you agree

23 that teaching at a university would mean that a

24 person has to have at least some modium (phon) of

25 common sense?

R. Nie - 118

Cr-Ex (L. TAPP)

1 A. Hundred percent no.

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

3

4 BY. MR. TAPP:

5 Q. Hundred percent no?

6 A. No.

7 MR. TAPP: Okay. Fair enough. I am at

8 the juncture I am just filtering out a lot

9 of questions, Mr. Vice-Chair. And to

10 condense it down even more, I am going to

11 ask that if we can at least break for lunch

12 now.

13 THE VICE-CHAIR: Yes.

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

15 Vice-Chair.

16 THE VICE-CHAIR: An hour.

17 MR. TAPP: Thank you.

18

19 --- upon recessing at 12:56 p.m.

20 --- A LUNCHEON RECESS

21 --- upon resuming at 2:02 p.m.

22

23 RICHARD NIE, resumed

24 CONTINUED CROSS-EXAMINATION BY MR. TAPP:

25 Q. Constable Nie, during your three

R. Nie - 119

Cr-Ex (L. TAPP)

1 months of coaching Mr. Jack, did you take Mr. Jack

2 to the mandatory orientation to the provincial

3 communications centre?

4 A. I don't believe I took him there. I

5 thought it had already been completed.

6 Q. Thank you. You testified that you

7 reviewed the previous evaluation reports on Mr.

8 Jack?

9 A. Yes.

10 Q. Right. Then you would have known

11 that Mr. Jack was never taken to that mandatory

12 orientation; correct?

13 A. Incorrect, because it is not

14 documented on the evaluation.

15 Q. It is not documented?

16 A. Not anywhere that I am aware of.

17 Q. Thank you. Exhibit 28, please.

18 MR. JACK: It is either 28 or 126. They

19 have been tendered twice.

20

21 BY MR. TAPP:

22 Q. I direct your attention to probably

23 two pages...if you flip over to page 3 of 4. It

24 says:

25 "...Noted on performance evaluation

R. Nie - 120

Cr-Ex (L. TAPP)

1 reports..."

2 A. Yes.

3 Q. And can you read that, please?

4 A. "...The coach officer shall indicate

5 on form PCS066P probationary constable

6 performance evaluation that this assignment

7 has been completed..."

8 Q. Good. So, you agree that you and

9 Constable Nie were...

10 A. I am Constable Nie.

11 Q. Pardon me. You and Constable Filman

12 were Mr. Jack's coach officers?

13 A. Yes.

14 Q. Great. And you agree that, in

15 reviewing it, I think you said your memory was

16 pretty good on that, you didn't see that it had been

17 complied with; right? You didn't see any notation

18 of that?

19 A. I didn't see any.

20 Q. You didn't. So would it be...so, by

21 not seeing a notation, you would...rather, would you

22 agree that there has to be a notation in compliance

23 with that order?

24 A. That is what it says, yes.

25 Q. Right. So, did you care to inquire

R. Nie - 121

Cr-Ex (L. TAPP)

1 if the OPP order was complied with with respect to

2 Mr. Jack?

3 A. No.

4 Q. Thank you. You documented several

5 pages of negativity in your point form chronology of

6 Mr. Jack? Yet you failed to address this mandatory

7 requirement of a coach officer. Can you explain

8 that, please?

9 THE VICE-CHAIR: Mr. Tapp, maybe you can

10 get him to read the paragraph above.

11 MR. TAPP: Okay. Yes. Mr Vice-Chair is

12 right.

13

14 BY. MR. TAPP:

15 Q. Just in case you are not familiar

16 with the order, can you read the paragraph above it,

17 please? "Duration".

18 A. Starting with, "Duration"?

19 Q. Yes.

20 A. "...The duration of this assignment

21 shall be one shift and shall be completed

22 before the probationary constable is

23 recommended for permanency..."

24 Q. Thank you. And you were the one

25 responsible for recommending him for permanency?

R. Nie - 122

Cr-Ex (L. TAPP)

1 A. I did not recommend...

2 Q. No, no, no. Not his termination. I

3 am not referring to termination. You were the one

4 that was responsible as per your comments in the

5 coach officer's comments of month 10...

6 A. Yes.

7 Q. ...that you were not recommending

8 him for permanency; correct?

9 A. Yes.

10 Q. Good. So, as per the comments of

11 the OPP orders beside "duration", you would agree

12 that there was a responsibility on you to ensure

13 compliance with this directive?

14 A. Yes. Can I comment further?

15 Q. Certainly. Go ahead.

16 A. When I became a coach officer

17 back...I think it was 2004 or 2005, I can't remember

18 the date...this requirement was to take place by the

19 coach officer. Further into...is it okay?

20 Q. Yes, please, go on.

21 A. I just don't know why you are

22 laughing.

23 Q. No, go on. Go on. I am...I am

24 waiting to hear everything.

25 A. Okay.

R. Nie - 123

Cr-Ex (L. TAPP)

1 Q. Go on.

2 A. It just makes me feel awkward when

3 you laugh.

4 MS. SINGH: Mr. Vice-Chair, if you could

5 please direct Mr. Tapp to not laugh while

6 this witness gives evidence.

7 MR. TAPP: I am not laughing. I am just

8 smiling and waiting.

9 THE VICE-CHAIR: Okay, try not to smile.

10 MR. TAPP: Okay.

11

12 BY. MR. TAPP:

13 Q. Go ahead, Mr. Nie. Give your

14 explanation.

15 A. I am not sure at which point in time

16 this took place, but my understanding is that

17 recruits received the mandatory training at the

18 provincial communications centre while during their

19 time at the OPP academy. I am not sure if that was

20 the case when Mr. Jack was hired or not. But I do

21 agree with you that I did not fulfil that obligation

22 for him.

23 Q. Can you read the paragraph with the

24 bold print:

25 "...Orientation to provincial

R. Nie - 124

Cr-Ex (L. TAPP)

1 communications centre..."

2 Please.

3 A. Right above, "Duration"?

4 Q. Yes.

5 A. "...Once a probationary constable is

6 posted to a detachment, the detachment

7 commander and coach officer shall ensure

8 that the probationary constable attends an

9 orientation day at their respective

10 provincial communications centre. This

11 will enable the probationary constable to

12 gain firsthand experience in understanding

13 the operations of the PCC and enhance their

14 awareness of the complexity of the operator

15 role and responsibilities..."

16 Q. So, you would agree it has nothing

17 to do with the probationary constable's time at the

18 academy and neither does it have to do anything with

19 his time at the Ontario Police College; correct?

20 A. Well, I will try and say it again.

21 I am not sure at which point in time the change was

22 made. But they give them this training while during

23 their time post-Aylmer at the OPP academy. So I

24 don't know whether they haven't updated their own

25 police orders or not, but that is my understanding

R. Nie - 125

Cr-Ex (L. TAPP)

1 of the recruit now, that that is what they get. But

2 I fully acknowledge I didn't take him to the

3 communication centre, so I didn't check if Mr.

4 Filman did either.

5 Q. Thank you, fair enough. And just so

6 that I understand that you are clear on this, can

7 you flip to the first page of those orders and read

8 the very top? January to...

9 A. January to December, 2009?

10 Q. Thank you. Now, you read through

11 your e-mail. Now, Exhibit 215, you might still have

12 it on your desk. November 19, 2009 e-mail.

13 A. Yes.

14 Q. Okay.

15 A. From myself to Colleen Kohen?

16 Q. Yes. Yes. In that e-mail, you note

17 that Jack confided to you that when he was with you,

18 there is an axe above his head the entire time;

19 correct?

20 A. Yes.

21 Q. In the same e-mail, Jack confided to

22 you that he was intimidated to be in the car with

23 you; correct?

24 A. Yes.

25 Q. Thank you. In that same e-mail,

R. Nie - 126

Cr-Ex (L. TAPP)

1 Jack tells you that his biggest problem is you

2 watching over his every move; correct?

3 A. Yes.

4 Q. And you agree that your point form

5 chronologies account for at least...it does account

6 for half of the entire chronology prepared by five

7 officers including yourself; correct?

8 A. I will take your word for it, yes.

9 Q. Okay. And you agree that, upon

10 examining your point form chronologies, that they

11 were negative; correct?

12 A. Yes.

13 Q. Thank you. Now, based on those

14 point form chronologies, does it not support the

15 comment that you have in that e-mail, Mr. Jack's

16 feeling of an axe above his head the entire time he

17 was with you?

18 A. I would have to say no, given that

19 Mr. Jack didn't have access to my chronology during

20 the time that he made the comment about the axe. So

21 I don't see how they relate.

22 Q. No, I am not saying that. That Mr.

23 Jack's feeling...

24 A. I don't know what his feelings were.

25 Q. But you documented that on an e-mail

R. Nie - 127

Cr-Ex (L. TAPP)

1 of November 19th, did you not?

2 A. Yes. But, Mr. Tapp, you asked me

3 what his feelings were in relation to the chronology

4 and how this applied.

5 Q. Do you have the November 19th e-mail

6 there?

7 A. I am looking at it.

8 Q. Read the second sentence under the

9 first...on the first paragraph beginning with, "PC

10 Jack explained".

11 A. "...[He] explained that he feels

12 that when he is with me, there is an axe

13 above his head the entire time..."

14 Q. So now you know that he communicated

15 this feeling to you?

16 A. That is correct.

17 Q. Thank you.

18 A. But that is not what you asked me.

19 Q. Okay. You knew that Mr. Jack was

20 under the Professional Standards Bureau

21 investigation; correct?

22 A. After he told me, yes.

23 Q. Okay. But weren't you told by your

24 supervising sergeant, Mr. Jack's accountable

25 supervisor, that Mr. Jack has been served a

R. Nie - 128

Cr-Ex (L. TAPP)

1 memorandum regarding the PSB investigation?

2 A. I am not sure. I think Michael was

3 the first one to tell me.

4 Q. Okay, fair enough.

5 THE VICE-CHAIR: Mr. Tapp, I might be

6 able to get you to move faster. You are

7 just repeating what we already know.

8 MR. TAPP: Okay. Fair enough.

9 THE VICE-CHAIR: He has provided all

10 that evidence.

11

12 BY. MR. TAPP:

13 Q. You knew that Mr. Jack was charged

14 by Sergeant Flindall; correct?

15 A. Yes.

16 Q. Okay. You knew that when Mr. Jack

17 started on your platoon, he had 17 "does not meet

18 requirements" for month 8; correct?

19 A. Yes.

20 THE VICE-CHAIR: We know that. That

21 testimony has been given.

22

23 BY. MR. TAPP:

24 Q. Can you explain how any normal

25 person could function in those given circumstances?

R. Nie - 129

Cr-Ex (L. TAPP)

1 MS. SINGH: Objection.

2 THE VICE-CHAIR: Yes, I object to the

3 question.

4

5 BY. MR. TAPP:

6 Q. Can I direct your attention...do you

7 have a copy of month 9 performance evaluation report

8 there, Mr. Nie?

9 A. I do.

10 Q. Thank you.

11 THE VICE-CHAIR: What exhibit is that?

12 MR. TAPP: That is month 9.

13 THE VICE-CHAIR: So I can just...

14 MR. JACK: 50.

15 MR. TAPP: Yes. Five-zero.

16 THE VICE-CHAIR: No, I don't have it.

17 But that's okay.

18 MR. TAPP: Okay.

19

20 BY. MR. TAPP:

21 Q. Do you have a copy of that over

22 there?

23 A. Yes.

24 Q. Okay. Can I get you to direct your

25 attention to personal accountability, please?

R. Nie - 130

Cr-Ex (L. TAPP)

1 A. Sure.

2 MR. JACK: Mr. Vice-Chair, I do have an

3 extra copy.

4 THE VICE-CHAIR: It is okay.

5 MR. TAPP: It is okay.

6 THE VICE-CHAIR: I have looked at those

7 things.

8 THE WITNESS: Page 9?

9

10 BY. MR. TAPP:

11 Q. I don't have it on my notes but it

12 is personal accountability nonetheless.

13 A. Okay.

14 Q. Okay. You agree personal evaluation

15 reports are a very formal and serious document;

16 correct? Especially to a probationary recruit.

17 A. Yes.

18 Q. And considering Mr. Jack's demise,

19 it was...it is extremely crucial; correct? He

20 failed to meet the performance conduct guidelines

21 of...

22 A. I am just trying to sort through

23 your...the way you are commenting on it. His demise

24 wasn't known at the time of this evaluation being

25 written so I won't agree to that.

R. Nie - 131

Cr-Ex (L. TAPP)

1 Q. Okay, fair enough.

2 A. I will agree it is a personal

3 document.

4 Q. Yes.

5 A. It impacts his...

6 Q. But his termination was based on his

7 failure to meet the requirements of the evaluation

8 guidelines; correct? Passing...meeting all

9 positive...having all positive ratings in the 27

10 categories by month 10; correct?

11 A. Month 10 or sometimes month 12, but,

12 yes.

13 Q. But in Mr. Jack's case, month 10;

14 right?

15 A. Yes.

16 Q. Okay. So, you say in that over

17 there as a second example:

18 "...Since that day it has been daily that

19 something will come up where PC Jack

20 attempts to ask questions that he already

21 knows the answer..."

22 Okay?

23 A. Yes.

24 Q. So, that evaluation period was from

25 September 9th to October 9th; correct? And that

R. Nie - 132

Cr-Ex (L. TAPP)

1 involves 32 days?

2 A. Yes.

3 Q. Mr. Jack worked 14 shifts in those

4 32 days?

5 A. I don't know.

6 Q. Okay, that's fine. But because in a

7 2-week cycle you work 7, you are off 7, 32 would

8 translate to 16 working days; correct?

9 A. If no one called in sick or...

10 Q. If no one did.

11 A. Yes.

12 Q. Okay.

13 A. I just have no way of verifying what

14 you are asking.

15 Q. Okay, fair enough. So, but you

16 would agree in 32 working days if nobody called in

17 sick, one would be working 16; half of that?

18 A. I will say yes. I don't remember

19 the schedule at the time...

20 Q. If nobody called in sick. Okay.

21 So, do you have at least 16 or, at minimum, 14

22 examples documented in your notes? You say up top

23 in the evaluation report:

24 "...Since that day it has been daily that

25 something will come up..."

R. Nie - 133

Cr-Ex (L. TAPP)

1 So, please refer to your notes and give us at least

2 14.

3 A. What I am referring to is, I

4 think...I haven't read this, but the paragraph above

5 when it says, "From the first day with his new coach

6 officer", so then the second paragraph says, "Since

7 that day", that is what I am talking about. So,

8 September 9th until...

9 Q. Yes. Yes. September 9th was your

10 first day. There was no need for me to go to the

11 previous paragraph because it identifies what that

12 first day is. His very first day with you. So

13 since that day, okay, can you give us at least 14

14 examples? You say since that day it had been daily

15 that something will come up. So give us examples.

16 A. Correct. I didn't write down every

17 occurrence that took place.

18 Q. You didn't.

19 A. I did not.

20 Q. But you kept detailed notations in

21 your point form chronology, did you not?

22 A. Correct.

23 MS. SINGH: Mr. Vice-Chair, I am mindful

24 of your ruling of yesterday about these

25 performance evaluations.

R. Nie - 134

Cr-Ex (L. TAPP)

1 THE VICE-CHAIR: Yes, I have heard so

2 much evidence with respect to the

3 performance evaluations. I myself could

4 write a book on them. So, try and stay

5 away from those. I get the point.

6 MR. TAPP: Thank you.

7

8 BY. MR. TAPP:

9 Q. Mr. Nie, you indicated in your

10 testimony that you met regularly with Mr. Jack and

11 also your accountable supervisor regarding Mr.

12 Jack's performance; right?

13 A. Yes, I was with him every day.

14 Q. Yes. And you also met specifically

15 with Sergeant Butorac also regarding Mr. Jack's

16 performance; correct?

17 A. Yes, there were meetings.

18 Q. So, you would have been aware...you

19 were aware of the large drug grow operation that

20 made Peterborough detachment history, the largest

21 one ever seized?

22 A. Not off the top of my head, no.

23 Q. Okay. Were you aware of a very

24 large drug grow operation that Mr. Jack was involved

25 in?

R. Nie - 135

Cr-Ex (L. TAPP)

1 A. Not off the top fo my head.

2 Q. Not off the top? Okay. I am going

3 to show you an e-mail. You are not involved in it.

4 Maybe it will refresh your memory, okay? It is only

5 to refresh your memory; okay?

6 A. Okay.

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

8 THE VICE-CHAIR: If he is not part of

9 that, there is no point giving it to him.

10 MR. TAPP: Okay. I am going to...

11 THE VICE-CHAIR: There was the drug

12 operation.

13 MR. TAPP: Yes.

14 THE VICE-CHAIR: Okay. He doesn't know.

15 He can't recall. No one is denying that

16 that operation didn't occur.

17 MR. TAPP: The position...

18 THE VICE-CHAIR: He can't recall.

19 MR. TAPP: Okay, fair enough. The

20 position the applicant is trying to

21 establish is that here was something that

22 his own accountable supervisor acknowledges

23 seeing, okay? We have heard testimony of

24 the accountable supervisor. So this is

25 something that his coach officer ought to

R. Nie - 136

Cr-Ex (L. TAPP)

1 have noted...

2 THE VICE-CHAIR: Yes, and we have gone

3 through that. You have made that point.

4 And it wasn't noted.

5 MR. TAPP: Fair enough.

6 THE VICE-CHAIR: Right? I think we have

7 had all that evidence.

8 MR. TAPP: Thank you. We are moving on.

9

10 BY. MR. TAPP:

11 Q. You are going to be getting a two-

12 page document that is a chain of e-mails between you

13 and Staff Sergeant Colleen Kohen, November 19th,

14 2009. You are familiar with that document, Mr. Nie?

15 A. Yes.

16 Q. It is authored by you November

17 13...November 19, my eyes fail me.

18 A. Yes.

19 Q. Okay. Read the first paragraph,

20 please.

21 A. "...Hi, Colleen. I have attached

22 the report as you requested. Just in case

23 you find it confusing, I have documented

24 everything in this report including

25 comments made to me by him in relation to

R. Nie - 137

Cr-Ex (L. TAPP)

1 his PSB case in the event that I am a

2 witness. It is not as formal a document as

3 I prepared for PC Chase as I do not have

4 all of the information that took place

5 prior to him coming to me in month 9. This

6 will just be used as a guideline if that

7 document is required again..."

8 Q. Thank you. Now, you also in your

9 examination-in-chief, when questioned about how many

10 recruits you coached prior to Mr. Jack, I believe

11 you said five; correct?

12 A. I think that is what I said, yes.

13 Q. Yes. And one of them did not make

14 it through their coach...

15 A. Yes.

16 Q. ...probationary period? Now,

17 according to this e-mail, would Constable PC Chase

18 be that one recruit?

19 A. Yes.

20 Q. Thank you. What is his full name,

21 please?

22 A. It was PC Harry Chase but I think he

23 had another first name that was formal but he went

24 by Harry. Or Al. Al. I think it was Al Chase but

25 I think his given name was Harry or something like

R. Nie - 138

Cr-Ex (L. TAPP)

1 that.

2 Q. Okay. Now, I am not going to delve

3 into the circumstances surrounding him but just tell

4 us, very briefly, what you know about him.

5 MS. SINGH: I fail to see the relevance.

6 THE VICE-CHAIR: Yes, I am...I am

7 wondering what is relevant about that.

8 MR. TAPP: Okay.

9

10 BY. MR. TAPP:

11 Q. Can you tell us, was he an African-

12 Canadian, Mr. Chase?

13 THE VICE-CHAIR: We are not going there.

14 MR. TAPP: Okay.

15

16 BY. MR. TAPP:

17 Q. Can you tell us why he didn't make

18 it there, through the probation...no?

19 THE VICE-CHAIR: Not relevant. We

20 discussed this years ago.

21 MR. TAPP: Okay, fair enough. I

22 thought...

23 THE VICE-CHAIR: This very point about

24 these other...

25 MR. TAPP: Character...no, evidence of

R. Nie - 139

Cr-Ex (L. TAPP)

1 similar fact evidence. Right. There was a

2 ruling, Mr. Vice-Chair. I am very aware of

3 it. But were it not for this witness

4 bringing in his name that we anticipated

5 getting in testimony, this would not be

6 addressed or even explored. But I am...I

7 will take your direction on that.

8 The last document I had Mr. Nie

9 refer to, Mr. Vice-Chair, I am not sure if

10 I had that entered as...no, it hasn't been

11 entered as an exhibit. So I ask that we

12 enter it as the next exhibit, please, the

13 two page document.

14 THE VICE-CHAIR: That will be 226.

15

16 --- EXHIBIT NO. 226: E-mail exchange between Mr. Nie and

17 Ms. Kohen, et al. dated November 9,

18 2009

19

20 BY. MR. TAPP:

21 Q. You are going to be getting another

22 e-mail from you to Staff Sergeant Kohen, November

23 25th, 2009. And I direct your attention to the very

24 first e-mail on the top of that page, Mr. Nie. You

25 are copying that e-mail to Staff Sergeant Campbell?

R. Nie - 140

Cr-Ex (L. TAPP)

1 A. Yes.

2 Q. Can you read the body of that e-

3 mail, please?

4 A. "...Hi, Colleen. I only have a few

5 more things to add. However, I just meant

6 whether you wanted it in the format that I

7 had done for PC Chase. It is a much more

8 formal document than the one I sent you for

9 PC Jack. My plan was to use what I have as

10 the basis to prepare the formal document.

11 I have attached PC Chase's for a reminder

12 of how detailed it was. If you don't need

13 this, then I will leave it the way it is

14 right now..."

15 Q. Thank you, Mr. Nie. I am not going

16 to go any further than that in light of this

17 tribunal's direction. Would you agree that these

18 two e-mails, even due to the proximity of the date,

19 they pretty well go hand-in-hand, Mr. Nie?

20 A. Are you referring back to November

21 19th?

22 Q. Yes. The one that we entered into

23 the...

24 A. Yes.

25 Q. Yes. Thank you.

R. Nie - 141

Cr-Ex (L. TAPP)

1 A. They are referencing the same thing.

2 MR. TAPP: They are referencing, yes.

3 that's all. So, can we have this document,

4 two pages entered as the next exhibit,

5 please?

6 THE VICE-CHAIR: That will be 227.

7

8 --- EXHIBIT NO. 227: E-mail exchange between Mr. Nie and

9 Ms. Kohen, et al. ending November

10 25, 2009

11

12 MS. SINGH: Could counsel be provided

13 with a copy of that?

14 MR. TAPP: I think Mr. Jack left it

15 there.

16

17 BY. MR. TAPP:

18 Q. Do you recall in your point form

19 chronology...I want to get this testimony from your

20 memory first. Do you recall in your point form

21 chronology at some point in time Mr. Jack asking you

22 specifically how to...asking you how to sign a

23 ticket or a township or enter a date...

24 A. Yes.

25 Q. ...in the notebook?

R. Nie - 142

Cr-Ex (L. TAPP)

1 A. I recall him asking me how to do

2 something with a Provincial Offence Notice, yes.

3 Q. Yes. Can you just flip over in your

4 point form chronology? I am not going to ask you to

5 read it, but just to keep it open to that area?

6 A. Do you remember the date? Do you

7 have it in front of you?

8 Q. Yes. I'm going to quickly look.

9 You can do the same while I am looking.

10 A. I'm sorry, I thought you had a

11 reference. I found it. September 19th.

12 Q. Okay.

13 A. From the second page, halfway down.

14 Q. Okay.

15 A. Just above September 20th, where it

16 says...

17 Q. Fair enough. We will make sure

18 everybody is on that page.

19 THE VICE-CHAIR: What exhibit number was

20 that?

21 MS. SINGH: 220, sir.

22

23 BY. MR. TAPP:

24 Q. And if you flip those pages, what

25 page are you on, Mr. Nie? September 19th?

R. Nie - 143

Cr-Ex (L. TAPP)

1 A. I'm sorry, they are not numbered.

2 If you find the date of September 19th, it is the

3 third bullet point down under September 19th. It

4 starts with the word, "Shortly".

5 MS. SINGH: Would you like my copy?

6 THE VICE-CHAIR: It's okay. I am just

7 anxious in terms of where I put it. We

8 have had it out this morning.

9 MS. SINGH: It has an e-mail on the top

10 of it which is...

11 THE VICE-CHAIR: Right, I do recall

12 that.

13 MS. SINGH: ...dated November 29th.

14

15 BY. MR. TAPP:

16 Q. Just so that we are all on the same

17 bullet, it is September 19, 2009 and you have four

18 bullet entries under that date?

19 A. Yes.

20 Q. Mr. Nie?

21 A. It is the one starting with the

22 word, "Shortly".

23 Q. Okay. So we are on the third bullet

24 entry. "Shortly after we stopped a speeder".

25 Right?

R. Nie - 144

Cr-Ex (L. TAPP)

1 A. I think that is the one you are

2 talking about.

3 Q. Okay. You talked to Mr. Jack about

4 how he ought to have known by now, meaning then as

5 of September 19th, how to sign in a township and

6 sign the ticket; correct?

7 A. I felt that at eight months on the

8 job he would know how to do that, yes.

9 Q. And you would agree from perusing

10 his previous performance evaluation reports, that he

11 has written many tickets?

12 A. Yes.

13 Q. And even gone to court regarding

14 some of them?

15 A. I don't know if he went to court or

16 not.

17 Q. Okay. That he...and is it not true

18 that when a ticket goes to court, an officer has to

19 prepare a little brief for it? Some documentation

20 for the courts for it?

21 A. Not for all tickets, no. A regular

22 Provincial Offence Notice? No, there is no

23 paperwork required.

24 Q. Let's say a Compulsory Automobile

25 Insurance Act under Part III.

R. Nie - 145

Cr-Ex (L. TAPP)

1 A. If it was a Part III offence, yes.

2 Q. Yes? Okay. And you would agree

3 that it...and is it not standard for any matter,

4 especially if it is a Part III that goes to court,

5 even if it is also an offence notice, a ticket, that

6 the officer do a driver's record search to see the

7 record of convictions of the defendant?

8 A. Yes, that would be included in the

9 brief.

10 Q. Yes. It is. In fact, you are aware

11 that officers do do that for just tickets that are

12 taken to court, correct, Mr. Nie?

13 A. Yes.

14 Q. Thank you. You have done that

15 yourself; correct?

16 A. Yes.

17 Q. Now, you know from experience that

18 there are many ways of signing a township on a

19 ticket; correct?

20 A. No.

21 Q. Some officers...in the township,

22 let's say Peterborough County where it says

23 "township" on a ticket, some officers place...if it

24 is in Havelock, they put "Havelock-Belmont-Methuen

25 township"; correct?

R. Nie - 146

Cr-Ex (L. TAPP)

1 MS. SINGH: Mr. Vice-Chair, this

2 witness' understanding of how to complete a

3 ticket is not an issue in this proceeding.

4 MR. TAPP: Okay.

5

6 BY. MR. TAPP:

7 Q. Would you agree that writing in the

8 area of township, if it was an offence in Havelock

9 that writing in "Havelock-Belmont-Methuen" over a

10 township is an acceptable way?

11 A. I was always taught and I teach my

12 recruits to write it the formal way. So, the formal

13 way is if you are in Havelock, you are going to

14 write the Township of Havelock-Belmont-Methuen.

15 Q. On an offence notice?

16 A. Yes.

17 Q. Okay.

18 A. Not "HBM township", not "Havelock

19 township".

20 Q. I never mentioned abbreviation. Mr.

21 Jack's question was simple, was it not?

22 A. I didn't hear his question.

23 Q. On that date, September 19th, Mr.

24 Jack's question for you...to you was a simple one,

25 was it not?

R. Nie - 147

Cr-Ex (L. TAPP)

1 A. From my notes, I said he told me he

2 didn't know how to fill in the township or where to

3 sign the ticket.

4 Q. Yes. Okay.

5 A. So, I didn't believe at eight months

6 at the job he didn't know where to sign the ticket.

7 Q. But you know that he has already

8 written several tickets by then, right?

9 A. That is the point of this comment.

10 Q. So did it not occur to you that he

11 could have been asking...may not be in those exact

12 words, but he could have been meaning or asking you

13 how would you like him to sign it?

14 A. No.

15 Q. Okay. Fair enough.

16 A. Because there is only one right way

17 to do it.

18 Q. Okay. Mr. Nie, would you not agree

19 that you could sign a ticket with your signature but

20 you could also sign it with your signature and, in

21 brackets, put "PC" and your badge number?

22 A. I am not going to agree to any of

23 that, Lloyd, because in court if it is not done

24 properly it will get withdrawn. So you can sign it

25 however you want on the road and it will get pulled

R. Nie - 148

Cr-Ex (L. TAPP)

1 in court if it is not done correctly. So each

2 individual justice of the peace can rule what they

3 accept and what they don't and I am not going to

4 debate that today.

5 Q. Okay, we won't. We will go with

6 your knowledge. You will agree that...

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

8 THE VICE-CHAIR: I know, he has

9 testified that there is only one acceptable

10 way to do it.

11 MR. TAPP: Okay.

12 THE VICE-CHAIR: That is his testimony.

13 I know you don't like that...

14 MR. TAPP: No, no, no...

15 THE VICE-CHAIR: ...but that is what he

16 is saying.

17 MR. TAPP: That is fine.

18

19 BY. MR. TAPP:

20 Q. What is the acceptable way of

21 signing the ticket?

22 A. Tearing out the inside portion and

23 signing it in ink on the top and handing it to the

24 person that you are giving the ticket to.

25 Q. I am just reviewing my notes to see

R. Nie - 149

Cr-Ex (L. TAPP)

1 what other questions I have. I direct your

2 attention to point form chronology 24th September,

3 2009, Mr. Nie.

4 A. Okay.

5 Q. You have three bullet entries for

6 that date?

7 A. Yes.

8 Q. Thank you. Can you read your second

9 bullet, please?

10 A. Starting with the word, "Upon"?

11 Q. Yes.

12 A. "...Upon entering EMS base in

13 Norwood, PC Jack spoke with paramedic and

14 had a short conversation which I was not

15 present for all of it. When he left to go

16 to the washroom, paramedic made symbol of a

17 square and stated that 'That guy can't

18 think outside the box, eh?' Something he

19 picked up on within a short time frame.

20 Also kept rolling his eyes at me, listening

21 to PC Jack attempt to clear a call with

22 someone on the phone and get details..."

23 Q. What did you mean by your words,

24 "something he picked up within a short time frame"?

25 A. Something that the paramedic could

R. Nie - 150

Cr-Ex (L. TAPP)

1 see, only having a short interaction with Mr. Jack.

2 That he couldn't think outside the box.

3 Q. And did you agree with the

4 paramedic's comment; "He can't think out of the box,

5 eh?"

6 A. I don't know if I gave him a verbal

7 response or not. I don't recall. But that is what

8 he said to me.

9 Q. Did you...

10 A. I would agree with it.

11 Q. Pardon me?

12 A. I would agree with it.

13 Q. You would agree?

14 A. I don't know if I said that to him.

15 Q. Okay. So you would agree that Mr.

16 Jack can't think outside of the box, eh?

17 A. Yes.

18 Q. Yes? Thank you very much, Mr. Nie.

19 Can I direct your attention to the point form

20 chronology you have for September 18th, please. On

21 that date, can you count the number of negative

22 observations you made of Mr. Jack?

23 A. I think we already said they were

24 all negative.

25 Q. Okay. Well, on that date.

R. Nie - 151

Cr-Ex (L. TAPP)

1 September 18th, please.

2 A. I have eight bullet points.

3 Q. Thank you. Do you have your notes

4 for that date, Mr. Nie?

5 A. I have my notebooks, yes.

6 Q. Yes. I would like you to review

7 your notes for that date and with this question in

8 mind: Would you agree that Mr. Jack did a driver

9 assessment on that date in Kingston? Just look at

10 your notes. It might reflect something to that.

11 A. No, this was a Friday night...I

12 shouldn't say Friday. This was a night shift

13 according to my notebook and I have started at 18:00

14 hours and I was working with Constable Jack.

15 Q. Correct. Exactly. Were you aware

16 that Mr. Jack worked also that day during the day

17 and was directed to go to Kingston for a driver

18 assessment?

19 A. No. Well, I don't...it is not in my

20 notes. I don't recall that.

21 Q. But you would agree...

22 A. He may have told me.

23 Q. ...he may have told you. Okay. I

24 direct your attention to...you were aware of the

25 requirement for further remedial driver training of

R. Nie - 152

Cr-Ex (L. TAPP)

1 Mr. Jack; right?

2 A. Yes.

3 Q. Okay. Now, are you aware that the

4 initial one had already take place? One had taken

5 place already by September?

6 A. Are we talking about September 18th

7 or when he came to me or...

8 Q. Yes. Were you aware that one took

9 place on September 18th?

10 A. No.

11 Q. And he is your probationer, right?

12 A. Yes.

13 Q. Okay. And you were not aware that

14 he had to go on September 18th to driver training?

15 A. I am not aware in 2016. I might

16 have been in 2009, but...

17 Q. Okay.

18 A. ...I don't have a way to prove that

19 to you in writing. I am sure if he started his

20 shift that night, he probably would have mentioned

21 that he had an assessment during the day.

22 Q. Yes. Look at your notes.

23 A. Notebook?

24 Q. Yes, please look at your notes for

25 that day. Does it reflect on how many hours he

R. Nie - 153

Cr-Ex (L. TAPP)

1 worked with you that date?

2 A. No, because my notebook doesn't

3 record what officers work. They are when I work,

4 not when other officers work.

5 Q. But you said...

6 A. I have that he was...I have that he

7 was with me from 1800 hours.

8 Q. Okay, so you worked with him that

9 day?

10 A. Yes.

11 Q. So how many hours did you work with

12 him? He was with you in the car. So, how many

13 hours did you work with him?

14 A. It shows that we finished at eight

15 o'clock the next morning if he was still with me at

16 that time. I don't...I worked until eight o'clock

17 a.m.

18 Q. Okay. So, that would be 14 hours;

19 correct?

20 A. Well...

21 Q. If he started at 1800 hours?

22 A. But I don't think he worked with me

23 the whole shift because at...I just notice here at

24 three o'clock in the morning I was working with a

25 different officer, which would suggest that either

R. Nie - 154

Cr-Ex (L. TAPP)

1 he went home or was doing something else.

2 Q. All right. I am going to suggest

3 that Mr. Jack did go home early and you just

4 corroborated that.

5 A. Okay.

6 Q. Only because he had to work...start

7 at a different time that morning to go to his driver

8 assessment in Kingston.

9 A. Okay.

10 Q. Would that seem reasonable?

11 A. Yes.

12 Q. Thank you.

13 A. Actually, I can confirm to you at

14 23:40 hours I dropped him off at the detachment that

15 night, in my notes.

16 Q. Thank you very much. So, would you

17 agree that he worked only...at least five hours or

18 five and a half hours at the most with you?

19 A. From 1800 until that time, yes,

20 2340.

21 Q. At the most, right?

22 A. Yes.

23 Q. Thank you. So, correct me if I am

24 wrong, at the most five and a half hours with him

25 you document eight observations; correct?

R. Nie - 155

Cr-Ex (L. TAPP)

1 A. Yes.

2 Q. Thank you. I'm done with that. You

3 are going to be getting a document, Mr. Nie. It has

4 your name at the very top, "Richard Nie", and a

5 black number on the far right, number 36. It is a

6 two page document. Now, just in advance, and for

7 the record, the second half of this document which

8 is page 2 has already been entered as an exhibit but

9 not the first, only because of the directions in the

10 previous days of these proceedings it could be put

11 forward to the witness when they take the stand.

12 A. M'hmm.

13 Q. Okay, Mr. Nie, you are familiar with

14 that e-mail, are you?

15 A. Yes.

16 Q. Getting a carbon copy of it?

17 A. Yes.

18 Q. Can you review the attachment which

19 is on page 2, please?

20 A. Yes.

21 Q. Are you familiar with that?

22 A. The release from employment?

23 Q. Yes.

24 A. Yes.

25 Q. Okay. What did you make out of that

R. Nie - 156

Cr-Ex (L. TAPP)

1 document, please?

2 A. That it is a letter of release from

3 employment for Mr. Jack. December 15th, 2009.

4 Q. Okay. Did Mr. Jack do any

5 submissions or tell you about any submissions, Mr.

6 Nie?

7 A. I don't recall.

8 Q. Okay. Can you read the second

9 sentence and the third sentence in the first

10 paragraph, please?

11 A. "...My review has included your

12 submission on the matter..."

13 MR. TAPP: Thank you. We can enter

14 these two pages as the next exhibit,

15 please.

16

17 --- EXHIBIT NO. 228: E-mail exchange between Mr. Nie and

18 Ms. Kohen et al dated December 14,

19 2009

20

21 BY. MR. TAPP:

22 Q. Now, while that is being entered,

23 you see under the face of the e-mail the very first

24 one, Mr. Nie, on page 1?

25 A. Yes.

R. Nie - 157

Cr-Ex (L. TAPP)

1 Q. What does it say under "Dave"? Read

2 that, please, those two lines.

3 A. "...Here is the letter in chief

4 superintendent Armstrong will use if

5 termination is required. This letter

6 requires central region letterhead placed

7 on it. OPPA is aware of notice being

8 served on probationary Jack. I am just

9 waiting for them to call me back this

10 morning as Jim is in a meeting..."

11 Q. Thank you very much, Mr. Nie. We

12 will enter this as the next exhibit, please. I

13 direct your attention to your notes of November

14 12th, please.

15 A. Okay.

16 Q. Maybe even...yes, I think you have

17 more notes regarding in your point form chronology.

18 A. I don't have an entry for November

19 12th.

20 Q. Okay. Do you remember having a

21 conference call November 12th with Staff Sergeant

22 Kohen and others present for it?

23 A. I remember teleconferences. I can't

24 tell you the date. I am just looking at my

25 notebook. Perhaps I made an entry. Yes, November

R. Nie - 158

Cr-Ex (L. TAPP)

1 12th, 2009.

2 Q. Okay...

3 A. I found an entry that I was involved

4 in a teleconference at 15:15 hours on November 12,

5 2009.

6 Q. Thank you. Can you read your notes

7 of that teleconference, please?

8 A. It says:

9 "...12th November, 2009 - 15:15.

10 Teleconference [arrow] PC Jack from

11 residence..."

12 A. I was at home on a day off.

13 Q. Okay.

14 A. Which would mean I didn't have my

15 notebook with me.

16 Q. Okay. Do you recall the discussions

17 that...involving the termination of Mr. Jack from

18 his employment in that conference call?

19 A. I don't recall one thing about the

20 phone call. But if you have some e-mails that say

21 things I said, I would be happy to verify that for

22 you.

23 Q. Well, we do have it in Kohen's notes

24 but I am not sure...do you need it maybe to refresh

25 your memory if you looked at it?

R. Nie - 159

Cr-Ex (L. TAPP)

1 A. I have no recollection of what I

2 said in the telephone...

3 Q. Okay, fair enough. Fair enough.

4 A. But, like I say, if it is in writing

5 somewhere and you want me to read it, I can...

6 Q. No, no, it wouldn't be appropriate.

7 A. Okay.

8 Q. Okay. I am going to suggest, okay,

9 that on November 12th there was discussions about

10 the termination of Mr. Jack as early as November

11 12th. And I am going to suggest it would be

12 congruent with month 10 evaluation report only

13 because month 10 ended November 9th; correct?

14 A. Yes.

15 Q. And you note in your comments

16 section that you were not recommending him permanent

17 status; correct? Maybe you want to look at month

18 10, go ahead. Page 11.

19 A. Unfortunately, my page 11 copy is

20 blank.

21 Q. Okay, we will get you another copy

22 of month...what exhibit would that be?

23 A. If I wrote in I wasn't recommending

24 for permanency, I am happy with that.

25 Q. Okay. You recall writing that,

R. Nie - 160

Cr-Ex (L. TAPP)

1 though?

2 A. Well...

3 Q. I want to get it before...

4 A. I would love to see it to totally

5 verify it for you, but my copy is blank.

6 THE VICE-CHAIR: Haven't we had that

7 evidence?

8 MR. TAPP: Yes, it has already been

9 entered into exhibit, Exhibit 91, but it is

10 pertinent to the November 12th conference

11 call.

12 THE WITNESS: That is my signature.

13

14 BY. MR. TAPP:

15 Q. Pardon me?

16 A. That is my signature.

17 Q. Yes, I am not questioning you about

18 the signature. Now, that report period ended

19 November 9th; right?

20 A. Yes.

21 Q. Okay. And you recall making those

22 comments, you are not recommending him permanent

23 status?

24 A. Yes.

25 Q. So, by November 12th, that

R. Nie - 161

Cr-Ex (L. TAPP)

1 November...that conference call, it would only stand

2 to reason that at least an electronic copy of that

3 had to have been shared for discussion about

4 permanency...permanent status to be occurring?

5 A. Yes, like, on November 10th...we

6 have already had this e-mail before but I sent her

7 the copy of the e-mail with the evaluation.

8 Q. Yes. Good. So, now, do you have

9 your Exhibit 215 over there, that single page e-

10 mail, November 19th from you to Kohen?

11 A. Yes. November 19th? Yes.

12 Q. Yes. What is the date of your

13 signature of the coach officer's comments on

14 performance 10?

15 A. November 10.

16 Q. Thank you. Okay. So, you

17 weren't...as of November 19th, it is clear that you

18 weren't recommending permanent status; correct?

19 A. Right.

20 Q. Right. And discussions were made

21 during the conference call with Kohen; correct?

22 A. I would have to say yes.

23 Q. Fair enough. Can you explain, then,

24 your opening statement in paragraph 2 of the

25 November 19th e-mail, please? And I will say it:

R. Nie - 162

Cr-Ex (L. TAPP)

1 "...He was assured by both of us that we

2 only had his interests at hand in

3 attempting to help him pass..."

4 A. That is not my e-mail, unless I am

5 missing something.

6 Q. Okay, maybe you are not looking

7 correct. Exhibit 215. I am just going to show it

8 to you so you can pull it from your desk.

9 A. There is more than one e-mail on the

10 19th. This one?

11 Q. Yes. The second paragraph, first

12 line.

13 A. "...He was assured by both of us

14 that we only had his interests at hand in

15 attempting to help him pass..."

16 Q. Okay, can you explain that, please?

17 Do you see the contradiction?

18 A. No.

19 Q. November 10th, you made comments in

20 the coach officer's section of PER-10...

21 A. I know what you are saying. I am

22 just saying, I don't see the contradiction because

23 me saying he was assured, both of us, that we only

24 had his best interests at hand is both past and

25 future. It is not stop and start at a certain time.

R. Nie - 163

Cr-Ex (L. TAPP)

1 It is not like November 10th, I just said I am not

2 recommending him so now I don't care about him.

3 Q. But you agree that you also

4 indicated in a previous e-mail that you believed he

5 has flatlined...

6 A. Correct.

7 Q. ...and can't see him changing to

8 grant him the benefit of extending the probation to

9 the 12th month; correct?

10 A. True. And that is my opinion, but I

11 am only a small part of the wheel.

12 Q. Yes, that's true. So, now again I

13 am going to say you didn't...as of November 10th,

14 you did not see any point in recommending it being

15 extended to the 12th month; correct?

16 A. Correct.

17 Q. So, how can you say that you only

18 had his best interests at hand?

19 A. I don't know how to answer it for

20 you. That is all I ever did. I am not trying to,

21 you know, do anything other than my job was to try

22 and get him past his probation.

23 Q. You say "in attempting him to pass",

24 but November 19th it is clear that you weren't

25 intending on extending that probation; right?

R. Nie - 164

Cr-Ex (L. TAPP)

1 A. Okay, so maybe this will help

2 clarify it for you. When I don't recommend somebody

3 at month 10, career development bureau has the

4 option to say, "That is nice, Officer Nie, but we

5 don't agree with you and you are still going to keep

6 coaching him for a further amount of time". So, I

7 get to say my input. And then they get to make a

8 decision as to whether they agree with me or not.

9 So, that is why I am saying I always wanted to help

10 Michael get past, regardless of whether it was

11 before or after I made a decision not to recommend

12 him, because if after I said, "I am not

13 recommending", and they say, "Actually, we are going

14 to go a little further ahead here to see what

15 happens for, say, month 11", which obviously they

16 must have or I don't know how month 11 got done,

17 then that situation applies. Where I am still

18 trying to do everything I can to help him.

19 Q. You agree November 12th Colleen

20 Kohen is a senior officer?

21 A. Yes.

22 Q. A branch of career development?

23 A. Yes.

24 Q. Thank you. I direct your attention

25 to your point form chronology 13th of June, 2009, PC

R. Nie - 165

Cr-Ex (L. TAPP)

1 Nie, please.

2 A. Okay.

3 Q. Do you acknowledge making that

4 entry?

5 A. Yes.

6 THE VICE-CHAIR: Which one is this,

7 sorry?

8 MR. TAPP: 13th of June, 2009.

9 Constable Nie.

10

11 BY. MR. TAPP:

12 Q. Though you only had three months

13 involvement with Mr. Jack, September 9th to December

14 15th?

15 A. Correct.

16 Q. Do you agree that your point form

17 chronology goes back to something long before he

18 started under you; correct?

19 A. Correct.

20 Q. Now, you use the words:

21 "...He needed to abuse the power of his

22 uniform to obtain a phone number..."

23 How can you make that assessment?

24 A. You need to read the first part of

25 the sentence after that.

R. Nie - 166

Cr-Ex (L. TAPP)

1 Q. Okay, then, please read the whole

2 thing.

3 A. "...I teased him about not being

4 able to find a girl the traditional way off

5 duty; that he needed to abuse the power of

6 his uniform to obtain a phone number and he

7 just laughed at me..."

8 I wasn't making an assessment alone of that he was

9 abusing power of the uniform. It puts context to it

10 when you see that I am teasing him, which I would do

11 again today if I saw him do it today.

12 Q. You saw him getting her phone

13 number, right?

14 A. Correct.

15 Q. But you weren't privy to the

16 conversation; correct?

17 A. Correct.

18 Q. Good. Did you know that Mr. Jack

19 was getting her phone number because she was

20 interested in policing and wanted to go for a ride

21 along?

22 A. No.

23 Q. Thank you. So, by that very entry,

24 you saw something and was quick to jump to a

25 conclusion of what you believed; correct?

R. Nie - 167

Cr-Ex (L. TAPP)

1 A. No.

2 MR. TAPP: No? At this point, Mr. Vice-

3 Chair, it is 3:09. I can suggest if we can

4 just take a very brief break. I think that

5 is it for me but I just want to be able to

6 review my notes and make sure there is

7 nothing else before I close.

8 THE VICE-CHAIR: Okay.

9 MR. TAPP: Thank you.

10 THE VICE-CHAIR: Ten minutes.

11

12 --- upon recessing at 3:09 p.m.

13 --- A BRIEF RECESS

14 --- upon resuming at 3:21 p.m.

15

16 RICHARD NIE, resumed

17 CONTINUED CROSS-EXAMINATION BY MR. TAPP:

18 Q. Mr. Nie, do you agree that your

19 actual notes from your daily officer notebook are

20 few; correct? Regarding Mr. Jack.

21 A. I have a lot more information in my

22 chronology than in my notebook, yes.

23 Q. In fact, all your observations of

24 Mr. Jack were on your point chronology with

25 highlights in your notebooks; correct?

R. Nie - 168

Cr-Ex (L. TAPP)

1 A. Yes, there is a balance between the

2 two.

3 Q. And your testimony was that you were

4 making these documentation in your chronology as

5 they occurred or soon thereafter; correct?

6 A. That's right.

7 Q. Thank you. So, soon thereafter,

8 correct me if I am wrong, would be that...it could

9 mean that you were making them at the end of shift

10 or the start of the next shift; correct?

11 A. I tried to complete it all on the

12 day we were working.

13 Q. Okay.

14 A. Sometimes if we were out...if

15 Michael was working on a brief or paperwork, I could

16 do it then when I had time to myself if that was in

17 the middle of a shift.

18 Q. That means you started a chronology

19 for Mr. Jack as early as 13th of June, 2009 but made

20 more regular entries when he came to your platoon

21 9th of September; correct?

22 A. No. I started the chronology

23 document once he came to me. The June 13th date was

24 something that I remembered that happened once I had

25 to do the chronology.

R. Nie - 169

Cr-Ex (L. TAPP)

1 Q. Thank you.

2 A. You are welcome.

3 Q. You testified that of your five

4 recruits in the past, prior to Mr. Jack, only one

5 didn't make it and that was Mr. Chase; correct?

6 A. That's right. I also noticed an

7 error when I was reading one of these documents.

8 There was actually seven in total.

9 Q. Seven?

10 A. I testified five but I see I wrote

11 on something else here there was seven and I just

12 counted in my head on the break, it was seven.

13 Q. But does that seven include Mr.

14 Jack?

15 A. Yes, including the two that did not

16 make it, yes.

17 Q. So, out of the seven, two didn't

18 make it?

19 A. Correct.

20 Q. And that is Mr. Jack and Mr. Chase,

21 right?

22 A. That's correct.

23 Q. Thank you.

24 A. I forgot about the First Nations

25 constable that I coached and he was successful.

R. Nie - 170

Cr-Ex (L. TAPP)

1 Q. Fair enough. And you would agree

2 that the OPP only requests a point form chronology

3 when a probationary is not being recommended for

4 permanent status; correct?

5 A. I can't agree with that only because

6 I didn't know in the case of Constable Chase, I

7 wasn't aware they needed a chronology until I was

8 asked to prepare one for his termination. So I

9 don't know if that is a standard or not.

10 Q. Did you have to prepare one for the

11 other five recruits that did make it?

12 A. No.

13 Q. Thank you. Yet you agree that you

14 prepared or started preparing one for Mr. Jack from

15 the very first day he was reviewed; right?

16 A. A hundred percent. Because when I

17 knew he had 17 categories that didn't meet, I had a

18 suspicion that there was some problems that may or

19 may not get resolved. So I wanted to prepare myself

20 ahead of time to be more effective.

21 Q. Thank you. Do you have an

22 independent recollection of an incident where Mr.

23 Jack blew his nose at a crime scene?

24 A. Yes.

25 Q. Thank you. Can you tell us your

R. Nie - 171

Cr-Ex (L. TAPP)

1 recollection of that, please?

2 A. I believe...and I can verify it if

3 you like...

4 Q. Maybe...yes, please, look in your

5 notes or point form chronology and maybe you have

6 something. Just direct your attention if you find

7 it to what date.

8 A. Unfortunately, it is listed on the

9 one document that doesn't have dates on it, so...do

10 you want me to go through it and find it? I can

11 give you what I remember...

12 Q. Just give me what you remember.

13 A. I believe we were at a crime scene

14 sent there to do scene security.

15 Q. Yes?

16 A. And at some point during the time, I

17 believed Mr. Jack got out of the car and did what

18 people refer to as a farmer's blow; just put his

19 fingers over his nostrils and blew snot out of his

20 nose onto the ground.

21 Q. Thank you. You found that

22 disgusting, didn't you?

23 A. Yes.

24 Q. Thank you. But you would agree that

25 you were guarding the crime scene outside the

R. Nie - 172

Cr-Ex (L. TAPP)

1 cordoned off area, correct?

2 A. No, I wouldn't agree with that. I

3 don't know where the crime scene tape was or if

4 there was any or not.

5 Q. Maybe your notes reflect that.

6 A. Okay. I will try and find the date.

7 Q. As you are flipping through, can I

8 ask you a question as you are flipping through?

9 A. Yes.

10 Q. Okay, that's great. You agree that

11 he did not blow it in the car but got out of the car

12 and did that?

13 A. Yes.

14 Q. Thank you. That is not something

15 you would have done, right?

16 A. Not in or out of the car, no.

17 Q. Thank you. But you found it

18 disgusting what he did, correct?

19 MS. SINGH: Asked and answered.

20 THE VICE-CHAIR: Yes, it has been asked.

21

22 BY. MR. TAPP:

23 Q. All right, Mr. Nie, there is no need

24 to go any further on that.

25 A. Okay.

R. Nie - 173

Cr-Ex (L. TAPP)

1 MR. TAPP: I think that is all the

2 questions, Mr. Vice-Chair. I thank you for

3 your indulgence and time.

4 THE VICE-CHAIR: Thank you. Counsel?

5 MS. SINGH: Thank you.

6

7 RE-EXAMINATION BY MS. SINGH:

8 Q. Constable Nie, in cross-examination

9 you were asked about rumours.

10 A. Yes.

11 Q. The rumours that you heard in

12 relation to Mr. Jack prior to his joining Platoon D.

13 Did you hear any rumours about his place of origin,

14 his background, his language, his accent?

15 A. I don't like using the word "rumour"

16 in that was there casual conversation around the

17 constables room? Probably. I don't have any

18 recollection of what it was or anything negative or

19 positive about what was said, so I don't...I don't

20 want to comment on something that I don't remember.

21 If there was something, maybe, but...

22 THE VICE-CHAIR: Fair enough.

23

24 BY. MS. SINGH:

25 Q. Did you prepare the chronology or

R. Nie - 174

Re-Ex (M. SINGH)

1 the entries for the chronology, because I...you did

2 not prepare that chronology. But the entries for

3 that chronology, with a view to supporting a "does

4 not meet" recommendation, sir?

5 A. Yes. The reason why the chronology

6 contains all negative comments is because if you

7 have an evaluation being completed, it is more work

8 to fill in categories that do not meet requirements

9 than it is to fill in ones that meet requirements.

10 So, all of the positive requirements about Mr. Jack

11 are in the evaluation under the meets requirements

12 categories. I didn't need to put them in my

13 chronology because it muddies the water when I am

14 trying to sort out the good from the bad. All the

15 good is on the evaluation and all the bad is on the

16 chronology. And I only know that from going through

17 with Constable Chase where in a short time period I

18 had to go through 10 months of my life with

19 Constable Chase and prepare a chronology. I didn't

20 want to have to do that again with Mr. Jack if that

21 is where things were going. Common sense would tell

22 me that when I have him coming to me with 17

23 categories that don't meet requirements, that we may

24 end up there, unfortunately. The challenge for me

25 was to try and get him past. I wanted to prepare

R. Nie - 175

Re-Ex (M. SINGH)

1 myself so that if it didn't work out for him, that

2 when they asked me for that chronology I would have

3 already had it done instead of scrambling to prepare

4 a document that would take a week to do. So it was

5 only for my personal time management skills that I

6 did that.

7 Q. Thank you. And you were asked a

8 question about your entry for September 24th in the

9 chronology. And I just want to ask you, sir, is it

10 important for a police officer to be able to think

11 outside of the box?

12 A. Yes.

13 Q. Can you please explain why?

14 A. I kind of feel, just to reiterate

15 all of those things I have said so far about why he

16 wasn't successful, it is part of using common sense.

17 It is part of seeing the bigger picture. It is part

18 of understanding what is going on around you. Being

19 able to...if you look at your life and your world in

20 one little box, you are going to miss all these

21 other things that are happening around you. There

22 is, you know, certain things right in this room

23 alone that I may pick up on that you folks may not

24 because you are not a police officer and that is not

25 your job to do. So, the way I view and see people

R. Nie - 176

Re-Ex (M. SINGH)

1 is different than other people. So, a police

2 officer needs to think outside of the box. Needs to

3 prepare for unknown circumstances. If someone comes

4 barging through that door with a gun, you need to

5 think, "What am I going to do right now?" So you

6 need to be able to think outside of just, "I am here

7 testifying and everything is fine". But what if?

8 That is what that means.

9 Q. Thank you. And also, there was an

10 entry for June 13th, you were asked about that entry

11 and, in particular, teasing. You teased Mr. Jack in

12 relation to his speaking to a female member...

13 A. Right.

14 Q. ...and getting her phone number.

15 A. Yes.

16 Q. When you teased him, did Jack tell

17 you that she was interested in a career in policing?

18 A. No. I actually...from my

19 independent recollection, I actually think she was a

20 girl that he told me he used to date at one point,

21 is what I think actually was the way that story

22 went. Though that didn't come out.

23 Q. And, finally, Constable Nie, were

24 your evaluations of Jack based on your honest

25 appraisal of his skills and his abilities and his

R. Nie - 177

Re-Ex (M. SINGH)

1 judgment?

2 A. A hundred percent. Having gone

3 through the scenario where a recruit didn't make it,

4 it is the worst thing in the world to have to do.

5 Especially when you know that someone has devoted

6 their whole life to a career. So, I wanted to do

7 everything that I could to help Mr. Jack pass this.

8 So, everything I have said about him and everything

9 I did for him was the complete honest truth and my

10 best way to try and get something done for him. I

11 didn't coach him any differently than any other

12 recruit that I had. I didn't treat him any

13 differently. I teased former recruits. I tease

14 current ones. My personality, my behaviour, is

15 always consistent. It is always the same. So, I

16 didn't do anything different with Michael that I did

17 with anybody else.

18 MS. SINGH: Thank you very much,

19 Constable Nie. Those are my questions,

20 sir.

21 THE VICE-CHAIR: Thank you. I don't

22 think we need to be on the record for our

23 discussion.

24

25 --- upon adjourning at 3:45 p.m.

R. Nie - 178

Re-Ex (M. SINGH)

1 INDEX OF EXHIBITS

2

3

4 EXHIBIT PAGE

5 NUMBER DESCRIPTION NUMBER

6

7

8 219 E-mail dated September 20, 2009

9 from Mr. Nie to Mr. Butorac 15

10

11 220 E-mail exchange between Mr. Nie,

12 Ms. Kohen, et al. ending November

13 29, 2009 41

14

15 221 E-mail dated October 7, 2009

16 attaching 9-month evaluation from

17 Mr. Nie to various supervisors 44

18

19 222 E-mail exchange between Mr. Nie and

20 various supervisors, ending

21 November 10, 2009 attaching 10-

22 month evaluation 46

23

24 223 E-mail exchange ending August 28,

25 2009 between Messrs. Campbell, Nie,

26 et al. 74

27

28 224 E-mail exchange ending August 26,

29 2009 between Messrs. Postma, Nie,

30 et al. 85

31

32 225 E-mail exchange between Messrs.

33 Campbell, Nie, et al. dated

34 September 29, 2009 114

35

36 226 E-mail exchange between Mr. Nie and

37 Ms. Kohen, et al. dated November 9,

38 2009 139

39

40 227 E-mail exchange between Mr. Nie and

41 Ms. Kohen, et al. ending November

42 25, 2009 141

43

44 228 E-mail exchange between Mr. Nie and

45 Ms. Kohen et al dated December 14,

46 2009 156

47

R. Nie - 179

Re-Ex (M. SINGH)

1

2

3

4 REPORTER'S NOTE:

5

6 I hereby certify the foregoing to be a true and accurate

7 transcription of the above-noted proceedings held before me on

8 the 15TH DAY OF SEPTEMBER, 2016, and taken to the best of

9 my skill, ability and understanding.

10

11 }

12 } Certified Correct:

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19 } Matthew Dixon

20 } Certified Verbatim Reporter

21

22