Tribunal File No. 2010-07633-I

HUMAN RIGHTS Tribunal OF ONTARIO

GV/vk

B E T W E E N:

MICHAEL JACK

Applicant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED

BY THE MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL

SERVICES 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

Hearing Room 20

Toronto, Ontario

HELD ON: September 22, 2015

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

LLOYD TAPP } --- for the Applicant

DAVID TAPP }

W.J. (Bill) MANUEL } --- for the Respondent

HEIDI BLUTSTEIN }

AISHA AMODE }

(Articling Student) }

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

Michael Jack

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- 3 - General Discussion

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

2 --- upon commencing at 10:07 a.m.

3

4 GENERAL DISCUSSION:

5 THE VICE-CHAIR: Good morning

6 MR. MANUEL: Good morning.

7 THE WITNESS: Good morning.

8 THE VICE-CHAIR: This is September the

9 22nd, 2015. It is the continuation of a hearing,

10 Tribunal File No.: 07633. The applicant is Michael

11 Jack and the respondent is the OPP, for short.

12 Yesterday respondent counsel completed his cross-

13 examination of Mr. Jack, and we return today to

14 continue the examination of Mr. Jack, but his re-

15 examination at this point in time. Are you

16 prepared?

17 MR. TAPP: Yes. I will go. Thank you.

18 THE VICE-CHAIR: You will go. Okay.

19 MR. TAPP: I'm mindful that the court

20 reporter's device is also recording, so it is

21 picking up.

22 THE VICE-CHAIR: Good point, yes. This

23 proceeding is being, at this point in time,

24 recorded. I think we have established that

25 submissions won't be recorded; is that correct?

- 4 - M. Jack

Re-Ex (L. TAPP)

1 MICHAEL JACK, resumed

2 CONTINUED RE-EXAMINATION BY MR. TAPP:

3 Q. Michael, I ask that for the purposes

4 and the benefit of the court reporter, I know at

5 times you tend to speak fast, and it can make it a

6 little difficult for the court reporter who doesn't

7 know you. He is new to this yesterday, so please

8 speak a little slower and...

9 A. Okay.

10 Q. ...so he can accurately get what you

11 are saying. Michael, I draw your attention to

12 performance evaluation 67 and, specifically, Exhibit

13 33/34, 34 being your rebuttal to the performance

14 evaluation.

15 A. Okay. I need to get them.

16 Q. Okay. Please, can you come here and

17 retrieve them?

18 A. All right. I'm sorry, this exhibit

19 has been tendered when?

20 Q. It was tendered an exhibit as 33 and

21 34, and counsel referred to them yesterday. He

22 began his cross-examination...

23 A. Okay. I'm sorry, Mr. Vice-Chair.

24 The evaluation performance, yes, but the rebuttal is

25 over there.

- 5 - M. Jack

Re-Ex (L. TAPP)

1 Q. Rebuttal, okay. I will take it out

2 over here. And just help me identify it over here,

3 please?

4 A. Sorry. This folder is falling

5 apart.

6 Q. Now that you have those two

7 documents, Mr. Jack...

8 A. I apologize. I deeply apologize. I

9 think I have got the wrong one. I think the other

10 one is correct. No, no, no, sorry, it is correct.

11 That one. Yes.

12 Q. You have the two documents?

13 A. That is correct.

14 Q. Counsel directed your attention to

15 page 12 of PER67, and questioned you about the order

16 of signatures?

17 A. Yes, he did.

18 Q. Who had signed off on the PER when

19 it was disclosed to you?

20 A. At the time, no one.

21 Q. Thank you. Did you notice anyone's

22 signature on the signature page of that document,

23 when it was disclosed to you?

24 A. No.

25 Q. I suggest to you...

- 6 - M. Jack

Re-Ex (L. TAPP)

1 MR. MANUEL: Excuse me, I object.

2 Suggestions are not appropriate in re-

3 examination, or examination-in-chief.

4 MR. TAPP: Okay.

5 MR. MANUEL: Okay.

6 MR. TAPP: Thank you.

7

8 BY MR. TAPP:

9 Q. Can you look at page 1 of that

10 document, please, Mr. Jack?

11 A. Yes.

12 Q. Who does it say as being the author

13 of that document?

14 A. Constable Filman.

15 Q. To the best of your knowledge was

16 Constable Filman's signature on that document?

17 A. No.

18 Q. Was Constable Filman's comments, in

19 the comment area, on that document?

20 A. No.

21 Q. Who was supposed to be preparing

22 your evaluations, Mr. Jack?

23 A. My coach officer, according to the

24 Ontario Provincial Police orders.

25 Q. Now, you say, "According to Ontario

- 7 - M. Jack

Re-Ex (L. TAPP)

1 Provincial Police orders"?

2 A. That is correct, and guidelines,

3 which are part of the Ontario Provincial Police

4 orders, guidelines for assessing the performance of

5 probation constables.

6 MR. MANUEL: How does this arise out of

7 cross-examination, Mr. Vice-Chair?

8 THE VICE-CHAIR: I'm not sure.

9 MR. MANUEL: Well, I object.

10 THE WITNESS: It was tendered as an

11 exhibit.

12 MR. TAPP: I didn't hear counsel.

13 THE VICE-CHAIR: No, I agree. You have

14 to...at this point in time you only deal

15 with new material that was brought up in

16 cross-examination. You can't go back...

17 MR. TAPP: Fair enough.

18 THE VICE-CHAIR: ...and re-examine on

19 areas that have been dealt with.

20 MR. TAPP: Okay.

21 THE VICE-CHAIR: You have to stick with

22 new things that arose out of the cross-

23 examination.

24 MR. TAPP: Yes. Fair enough.

25 THE VICE-CHAIR: It is not a carte

- 8 - M. Jack

Re-Ex (L. TAPP)

1 blanche to re-examine. I think we have

2 already heard this evidence, in any event.

3

4 BY MR. TAPP:

5 Q. When you saw the absence, you just

6 testified, your coach officer's comments wasn't

7 there, and there was no signature from your coach

8 officer?

9 A. That is correct.

10 Q. Why would that be, Mr. Jack?

11 MR. MANUEL: Speculation.

12 THE VICE-CHAIR: Yes.

13

14 BY MR. TAPP:

15 Q. Okay. Yesterday you started to,

16 well, counsel questioned you...when counsel

17 questioned you you started to mention who had

18 actually prepared the document, when you were cut

19 off by counsel?

20 A. Yes, that is correct. I wasn't

21 allowed to explain. I was advised that I will be

22 able to explain during the exam, on numerous

23 occasions.

24 Q. Okay. Please do so.

25 MR. MANUEL: Perhaps we can lay the

- 9 - M. Jack

Re-Ex (L. TAPP)

1 foundation that this witness would have any

2 knowledge as to who prepare it, other

3 than...

4 MR. TAPP: Well, it is right there, on

5 the face of the document. It purports to

6 be prepared by Filman. The applicant says

7 absence of a signature. And maybe he has

8 got some information arising from your

9 cross.

10 MR. MANUEL: With respect, Mr. Vice-

11 Chair.

12 THE VICE-CHAIR: That was dealt with

13 exactly in-chief.

14 MR. MANUEL: I have got the pages open

15 of the notes. This was gone over. You had

16 an opportunity to examine on this document.

17

18 BY MR. TAPP:

19 Q. Mr. Jack, what was the date it was

20 tendered to you?

21 A. August 20th.

22 Q. Was there any PER meeting that

23 actually took place...

24 A. No.

25 Q. ...at that performance evaluation?

- 10 - M. Jack

Re-Ex (L. TAPP)

1 A. No.

2 Q. Now, your response yesterday, and

3 you can correct me if I'm wrong, that counsel

4 questioned you, and either portrayed...alleged there

5 was a meeting that took place, can you please

6 explain that?

7 A. No, no performance evaluation

8 meeting took place. What, in fact, did take place,

9 Sergeant Flindall ordered me to come into the

10 Sergeant's office, where he stood by the desk,

11 flipped over the pages of this performance

12 evaluation, repeatedly saying, "It is not all doom

13 and gloom. It is not all doom and gloom". Told me

14 to find a quiet spot to review it, sign it, and

15 return to him, hopefully, by 6:00 p.m. It was

16 quarter to six at the time.

17 Q. Why 6:00 p.m.?

18 A. He wanted to go home.

19 Q. Okay.

20 THE VICE-CHAIR: Again, Mr. Tapp, we

21 have had this evidence.

22 MR. MANUEL: Exactly.

23 THE VICE-CHAIR: We have heard this

24 already in your examination-in-chief.

25 MR. TAPP: Okay. It has been a long

- 11 - M. Jack

Re-Ex (L. TAPP)

1 while...

2 THE VICE-CHAIR: I agree, it has been a

3 long while.

4 MR. TAPP: I thank you for your

5 correction. I thank you...

6 THE VICE-CHAIR: I reviewed my notes

7 before we came back here, and that evidence

8 was already given.

9

10 BY MR. TAPP:

11 Q. Were there any other signatures that

12 you recognized?

13 MR. MANUEL: That is...

14 MR. TAPP: Is that the same thing?

15 Okay. We will move on.

16

17 BY MR. TAPP:

18 Q. Mr. Jack, I direct your attention to

19 the "Provincial Statute" Section on that PER.

20 A. Yes.

21 Q. You were questioned about your lack

22 of knowledge of the Mental Health Act, under the

23 category of "Provincial Statutes"?

24 A. That is correct.

25 Q. You were specifically asked why you

- 12 - M. Jack

Re-Ex (L. TAPP)

1 needed to ask another officer what to do. Who did

2 you ask this question to?

3 A. Provincial Constable Crowder.

4 Q. Thank you. Was anyone else present

5 when you asked him this question?

6 A. No.

7 Q. Now, I ask you, based on that

8 question counsel raised, how is it that your

9 question to Crowder made its way to PER67?

10 MR. MANUEL: Speculation.

11 THE VICE-CHAIR: How would he know?

12 MR. TAPP: Well, let's see what he has

13 to say...

14 THE VICE-CHAIR: Well, no. How would he

15 know?

16 MR. TAPP: Because he was documented

17 negatively for asking other officers, and

18 specifically about this question, so it

19 stands to reason if nobody else was present

20 this officer had to have some information

21 or reason to go to go his sergeant and tell

22 him, "Bring it to their attention", because

23 it has made its way in his evaluation.

24 MR. MANUEL: That is argument, with

25 respect, Mr. Vice-Chair. It is not a

- 13 - M. Jack

Re-Ex (L. TAPP)

1 matter that can be dealt with by the

2 evidence of this witness.

3 THE VICE-CHAIR: You are correct, it is

4 argument.

5

6 BY MR. TAPP:

7 Q. Okay. Nonetheless, by asking PC

8 Crowder, were you documented about seeking input

9 from other officers?

10 THE VICE-CHAIR: Well, we know that.

11 THE WITNESS: Later.

12 THE VICE-CHAIR: We know that.

13 MR. TAPP: Fair enough.

14

15 BY MR. TAPP:

16 Q. As a result of you getting that

17 evaluation, did you spend time to read it over?

18 A. Not in the allotted time slot that

19 was...that I was advised by Sergeant Flindall. It

20 was insufficient time.

21 Q. Why?

22 A. Because he, basically, told me to

23 read it over before six.

24 MR. MANUEL: We have been over this.

25 THE VICE-CHAIR: We have.

- 14 - M. Jack

Re-Ex (L. TAPP)

1 MR. TAPP: Okay.

2 THE VICE-CHAIR: I have heard all this

3 evidence. Remember, Mr. Tapp, you had a

4 very thorough and detailed...

5 MR. TAPP: Examination-in-chief.

6 THE VICE-CHAIR: ...examination-in-

7 chief, and this all came out then.

8 MR. TAPP: Okay.

9 THE VICE-CHAIR: And I would remind you

10 that, in terms of your examination now, you

11 should not only be dealing with the new

12 material that came out in the cross-

13 examination of counsel, but remember, there

14 was cross-examination before counsel.

15 MR. TAPP: Yes, I'm aware.

16 THE VICE-CHAIR: Okay.

17 MR. TAPP: I'm aware of that. There is.

18 And I want to deal with what...my intention

19 is to deal with what came up most recently,

20 while it is still fresh with everyone.

21 THE VICE-CHAIR: Well, that is fine...

22 MR. TAPP: There has already been a year

23 that has lapsed with...two-and-a-half years

24 that has lapsed with the other, so another

25 day or so is not going to make much

- 15 - M. Jack

Re-Ex (L. TAPP)

1 difference.

2 MR. MANUEL: That may be your view. It

3 may not be shared by all.

4 THE VICE-CHAIR: So why don't you

5 continue then?

6 MR. TAPP: Okay. Thank you.

7

8 BY MR. TAPP:

9 Q. Mr. Jack, counsel questioned you

10 about speaking to other officers at the Police

11 College and the Provincial Police Academy. Were you

12 ever told by your instructors, or by the OPP orders,

13 that you could not question other officer's

14 directions, if you felt it was contrary to what you

15 know?

16 A. No. As a matter of fact, we were

17 advised to seek input from senior officers, one...

18 otherwise, how would you learn the job?

19 Q. Thank you.

20 THE VICE-CHAIR: That is...

21 MR. TAPP: How can that be new? He is

22 justifying why he sought input. He was

23 trying to explain it yesterday, but he was

24 cut off by counsel, "Just answer the

25 question", so I'm explaining to the...

- 16 - M. Jack

Re-Ex (L. TAPP)

1 bringing out to the Tribunal why he

2 believed he was able to ask another

3 officer. Counsel brought this up.

4

5 BY MR. TAPP:

6 Q. Let's go to "Federal Statutes", Mr.

7 Jack.

8 A. Okay. I'm there.

9 Q. This is PER67.

10 A. That is correct.

11 Q. What month frame is it about?

12 A. June 9th, 2009 until August 9th,

13 2009.

14 Q. Thank you. You were questioned

15 about "Federal Statutes", and specifically about the

16 break and enter to a school.

17 A. Yes.

18 Q. You were questioned about you having

19 to ask, after given direction by Sergeant Flindall,

20 about laying a particular charge?

21 A. Yes, I was.

22 Q. Did you have reasonable grounds to

23 lay such a charge on the youth?

24 A. I did not.

25 Q. Thank you.

- 17 - M. Jack

Re-Ex (L. TAPP)

1 THE VICE-CHAIR: Again, this is

2 repetitive. We heard this already.

3 MR. TAPP: Okay.

4 MR. MANUEL: With respect, Mr. Vice-

5 Chair, repeating the evidence that he has

6 given, and having him confirm that he has

7 given that evidence, is not re-examination.

8 THE VICE-CHAIR: I agree with you.

9 MR. TAPP: Counsel, you have got 38

10 years experience. I now have the fortune

11 of being with you. We are trying the best

12 we can. And, yes, there are going to be

13 times, and probably numerous times, you are

14 going to get flustered as to me not

15 obeying, or perceiving it that I'm not

16 obeying the rules.

17 We are trying our best. We don't

18 have the good fortune of having your

19 learned experience, so bear with us. I am

20 listening to Mr. Vice-Chair, and I am

21 taking his direction.

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

23 evidence repeated. We will be here

24 forever, and it is unnecessary, and it is

25 not proper in this examination.

- 18 - M. Jack

Re-Ex (L. TAPP)

1 MR. TAPP: Fair enough. We are trying

2 our best to expedite it. We are under a

3 lot of pressure, Mr. Vice-Chair.

4 THE VICE-CHAIR: Point to new issues

5 that arose in the cross-examination, and

6 deal with those.

7

8 BY MR. TAPP:

9 Q. So you were questioned about asking

10 other officers. Why did you ask other officers?

11 MR. MANUEL: This has been dealt with.

12 This has been dealt with.

13

14 BY MR. TAPP:

15 Q. Counsel made reference to why you

16 were rated negatively here in your "Federal

17 Statutes". Were you the only officer that attended

18 this call?

19 A. No.

20 MR. MANUEL: What is the relevance of

21 that?

22 MR. TAPP: All right.

23 MR. MANUEL: How does that arise out of

24 cross-examination?

25

- 19 - M. Jack

Re-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Counsel brought up the fact that you

3 were given a negative documentation about this call.

4 A. That is correct.

5 Q. If you were given a negative

6 documentation of this call...

7 MR. MANUEL: There is no "if" about it,

8 with respect. He was given a negative

9 documentation. We have dealt with that.

10

11 BY MR. TAPP:

12 Q. Your application alleges

13 "differential treatment".

14 A. That is correct. It does allege.

15 Q. How can this be differential

16 treatment?

17 A. That was a differential treatment

18 because when other officers were documented

19 positively, for the same incident, I was documented

20 negatively.

21 MR. MANUEL: What is the point about

22 that? So what?

23 THE VICE-CHAIR: Anyway, we have heard

24 that evidence. You have given that

25 evidence already in examination-in-chief.

- 20 - M. Jack

Re-Ex (L. TAPP)

1 MR. TAPP: Maybe I needed to hear it,

2 Mr. Vice-Chair. After all, you have said

3 your memory is not the best at the best of

4 times, so I'm sorry.

5

6 BY MR. TAPP:

7 Q. Mr. Jack, I direct your attention to

8 Exhibit 31 and 33.

9 A. What are those?

10 Q. I will tell you them. It is already

11 tendered. Correspondence with Crown Attorney, Kelly

12 Eberhardt...

13 MR. MANUEL: How does that arise out of

14 cross-examination?

15 THE VICE-CHAIR: Yes, that was...

16 MR. MANUEL: I never referred to that.

17 THE VICE-CHAIR: That was never referred

18 to.

19 MR. TAPP: Never referred. Okay. 31...

20 THE VICE-CHAIR: It was referred to in

21 examination-in-chief.

22 MR. TAPP: You are absolutely right.

23

24 BY MR. TAPP:

25 Q. Mr. Jack, we move on to the fraud

- 21 - M. Jack

Re-Ex (L. TAPP)

1 investigation.

2 A. What...

3 Q. That is in the PER. You were...it

4 is referenced in...

5 A. I found.

6 Q. ...the PER. Tell me what page that

7 it is that you found it on?

8 A. Six, "Listening Skills". There you

9 go. And...yes. That is correct.

10 Q. Now, you were questioned about the

11 fact that you did not meet requirements here, that

12 is "Listening Skills"?

13 A. That is correct.

14 Q. When did that incident take place,

15 Mr. Jack?

16 A. In April 2009.

17 Q. I do remember this was addressed in

18 examination-in-chief, and when it was reflected in

19 performance evaluation four, but for the sake of

20 counsel, how were you rated in performance

21 evaluation four for this incident, "Listening

22 Skills"? I will direct your attention to the

23 exhibit.

24 MR. MANUEL: Has this been dealt with in

25 evidence? Then it is in evidence.

- 22 - M. Jack

Re-Ex (L. TAPP)

1 THE VICE-CHAIR: Which is that?

2 MR. MANUEL: His evidence as to how he

3 was rated in Exhibit 4.

4 THE VICE-CHAIR: Well, it is on the

5 paper; isn't it?

6 MR. TAPP: It is on paper, yes. Well,

7 yes, six and seven, negative, but in

8 incident four, for the same category...

9 THE VICE-CHAIR: That is argument.

10 MR. MANUEL: Exactly.

11 MR. TAPP: Okay. All right.

12 THE VICE-CHAIR: That is argument.

13 MR. TAPP: All right.

14 THE VICE-CHAIR: You save that for your

15 argument.

16

17 BY MR. TAPP:

18 Q. Do you recall if this rating as,

19 "Did not meet requirements", in this category,

20 referencing this fraud, is different?

21 A. Yes.

22 Q. Thank you.

23 A. And in other categories as well.

24 Q. Maybe there was new information in

25 this performance evaluation, six and seven,

- 23 - M. Jack

Re-Ex (L. TAPP)

1 "Listening Skills", for this specific incident that

2 made it justify that it does not meet requirements.

3 What do you say; "no"?

4 THE VICE-CHAIR: No, that is not a

5 proper question.

6

7 BY MR. TAPP:

8 Q. Yesterday, while answering, you

9 indicated who did the evaluation, aside from what is

10 mentioned on page 1. Counsel asked many questions

11 about the handling of that investigation.

12 A. Yes.

13 Q. So I ask you again, once again, who

14 did that evaluation?

15 MR. MANUEL: That is speculation on this

16 witness' part.

17 THE WITNESS: That is not speculation.

18 MR. MANUEL: He was given it. The

19 evidence is he was given it by Sergeant

20 Flindall. That is the evidence.

21 Sergeant's Flindall's signature is there.

22 Now, unless you have got some evidence that

23 that is a fraud, that is what it is, and

24 you can deal with Sergeant Flindall. This

25 witness is not...this is not new.

- 24 - M. Jack

Re-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Twenty-three, okay. Good, good. On

3 day eight of your cross-examination by counsel,

4 Lynette D'Souza, okay, I will direct your attention

5 to Exhibit 23 for the next question, which is PER4.

6 MR. MANUEL: What day is that?

7 MR. TAPP: PER4, that is for the month

8 of April.

9 MR. MANUEL: No, the day of the cross-

10 examination.

11 MR. TAPP: Day eight. There was only

12 one day of cross-examination.

13 THE WITNESS: I need...I don't have an

14 exhibit. I'm sorry, what...which exhibit

15 and what is it?

16

17 BY MR. TAPP:

18 Q. It is Exhibit 23.

19 A. All right. That has been tendered?

20 Q. That has been tendered.

21 A. What is that? What is it?

22 Q. That is performance evaluation four.

23 A. I need to get it.

24 Q. Okay. I will ask that you read

25 that.

- 25 - M. Jack

Re-Ex (L. TAPP)

1 A. Okay.

2 Q. You were questioned by counsel,

3 Lynette D'Souza, about your "Does not meet

4 requirements" in that performance evaluation four.

5 A. There were no "Does not meet

6 requirements". I met requirements in all

7 categories.

8 Q. Okay. That is truly my apology, but

9 you were questioned about...yes, the questions posed

10 raise a fact that, in fact, you did pass, "meet

11 requirements". Not all your evaluations were "Does

12 not meet requirements", but, in fact, you did meet

13 requirements in some of your evaluations.

14 MR. MANUEL: How does that arise out of

15 cross-examination?

16 MR. TAPP: I'm getting to the question.

17 MR. MANUEL: No. It is covered. You

18 are simply repeating evidence that has been

19 dealt with. It has to...

20

21 BY MR. TAPP:

22 Q. I want you to read what is in the

23 "Analytical Thinking" of that performance

24 evaluation?

25 MR. MANUEL: I object. It has got

- 26 - M. Jack

Re-Ex (L. TAPP)

1 nothing to do with my cross-examination, or

2 Ms. D'Souza's cross-examination.

3 MR. TAPP: How do you know that?

4 MR. MANUEL: I have got notes of it,

5 actually, and I'm looking at them.

6 THE VICE-CHAIR: It is true.

7 MR. TAPP: She asked you questions about

8 the fact that Shaun Filman showed interest

9 when we tried to portray that he showed no

10 interest, and she specifically made

11 references to these evaluations, and said,

12 "That is not entirely true. How can he

13 rate you as 'meet requirements' if he did

14 not show interest?"

15 So, yes, that was...the fact that it

16 was referenced over there, in her cross-

17 examination, I do believe I have the

18 opportunity to just ask him about a

19 particular rating.

20 MR. MANUEL: But it doesn't arise out of

21 the cross-examination. She didn't cross-

22 examine on that particular rating,

23 according to my notes.

24 MR. TAPP: She cross-examined on the

25 contents of that evaluation, and that is

- 27 - M. Jack

Re-Ex (L. TAPP)

1 the basis of what my...

2 MR. MANUEL: My understanding of her

3 cross-examination is:

4 "...You met all requirements for this

5 PER?..."

6 Witness says:

7 "...Yes..."

8 "...And despite receiving the rating, or

9 meeting all...you did a rebuttal?..."

10 "...Yes..."

11 "...And that has been marked as

12 exhibit?..."

13 "...Yes..."

14 "...And this rebuttal was drafted after you

15 resigned from the OPP?..."

16 "...Yes..."

17 MR. TAPP: Those are your notes, but my

18 notes don't indicate that. They are notes.

19 Do you have a transcript?

20 MR. MANUEL: Here we go.

21 MR. TAPP: Let's go.

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

23 MR. TAPP: Yes. We have the benefit of

24 a court reporter here today, so we can

25 rely, accurately, on a transcript. Do you

- 28 - M. Jack

Re-Ex (L. TAPP)

1 have a transcript?

2 MR. MANUEL: This doesn't arise out of

3 cross-examination, apart from anything

4 else.

5 MR. TAPP: And I'm saying it does,

6 because she questioned him about that PER,

7 meeting all requirements. And you are

8 basing your argument on your notes.

9 THE VICE-CHAIR: Let me look at my

10 notes, and that will be determinative. So,

11 my notes indicate evaluation four, Exhibit

12 23, all categories meet requirements; okay?

13 This is based on cross-examination. Then I

14 tell myself to see "Analytical Thinking",

15 so that, obviously, was raised.

16 Your earlier evidence was that you

17 never handed it over to Intelligence,

18 Dawson.

19 "...Did you tell Filman you needed help on

20 this investigation?..."

21 "...Yes. He will say he can't remember..."

22 "...Did you tell Filman..."

23 or whatever his name is, I just have an

24 "F". What is his name?

25 MR. TAPP: It is Dawson, Eric Dawson.

- 29 - M. Jack

Re-Ex (L. TAPP)

1 THE VICE-CHAIR: No.

2 MR. MANUEL: Filman, Shaun Filman.

3 THE VICE-CHAIR: Filman. Okay.

4 "...Did you tell Filman intelligence will

5 be making arrest?..."

6 "...I don't know..."

7 MR. TAPP: So that is in, what do you

8 say, Mr. Vice-Chair?

9 THE VICE-CHAIR: That is my notes.

10 MR. TAPP: In cross and exam?

11 THE VICE-CHAIR: In cross-examination.

12 MR. TAPP: Good. So there you go. It

13 is not entirely accurate, as you have, Mr.

14 Manuel. In fact, Mr. Vice-Chair's

15 recollection of what was said, as in his

16 notes, is different and not the same as

17 yours.

18 MR. MANUEL: And the Vice-Chair's notes

19 are determinative, but I still don't see

20 any question arising out of that...

21 MR. TAPP: She specifically questioned

22 on "Analytic Thinking". Now, I stand by

23 what I say. She made reference to

24 "Analytical Thinking", so I have the right

25 to question him, re-examine in-chief, on

- 30 - M. Jack

Re-Ex (L. TAPP)

1 his response to her about the "Analytical

2 Thinking".

3 MR. MANUEL: But not if he has already

4 given the evidence.

5 MR. TAPP: He is going to read what is

6 in there, come on.

7 THE VICE-CHAIR: Go ahead.

8 MR. TAPP: Thank you.

9

10 BY MR. TAPP:

11 Q. Please read the "Analytical

12 Thinking" section of PER4, and first begin by what

13 it is about.

14 A. It is about the credit card fraud:

15 "...SP09087157. PC Jack attended to a

16 fraud complaint involving a fraudulent

17 credit card, SP09087157. PC Jack completed

18 a detailed investigation, including a photo

19 lineup. The investigation will likely

20 result in several charges over multiple

21 jurisdictions. PC Jack as since turned the

22 investigation over to the Regional

23 Intelligence Office..."

24 Q. How were you rated there?

25 A. "Meets requirements".

- 31 - M. Jack

Re-Ex (L. TAPP)

1 Q. Thank you. End of that. Counsel

2 questioned you...going back to PER67 now.

3 A. Okay.

4 Q. Counsel questioned you about your,

5 "Does not meet requirements" in "Listening Skills"

6 and "Follow-Up Orientation", and made reference to

7 the same fraud occurrence.

8 A. That is correct.

9 Q. Did that strike you as odd, the

10 rating over there?

11 MR. MANUEL: That is argument, with

12 respect.

13 MR. TAPP: We can bring up the same

14 submission over here of PER4 that I made

15 earlier. I'm asking...you asked a pointed

16 question, so I'm clarifying that.

17 MR. MANUEL: Whether he found it odd is

18 irrelevant.

19

20 BY MR. TAPP:

21 Q. When you saw that, "Does not meet

22 requirements", counsel questioned you about that

23 and, unless I'm mistaken, implied that you,

24 literally, failed to follow direction and orders,

25 which is why in "Listening Skills" and "Follow-Up

- 32 - M. Jack

Re-Ex (L. TAPP)

1 Orientation", regarding that fraud, you were rated

2 as, "Does not meet requirements".

3 A. Yes.

4 Q. What do you have to say?

5 A. I have to say that, first, I was

6 rated with "meets requirements" with respect to this

7 investigation, and then all of a sudden I was rated

8 with, "Does not meet requirements" across multiple

9 categories with respect to the same investigation,

10 months later.

11 Q. Thank you.

12 THE VICE-CHAIR: Mr. Jack...

13 THE WITNESS: Yes.

14 THE VICE-CHAIR: ...you have given that

15 evidence already. You have indicated that

16 you have a photographic memory, so I would

17 assume you would be able to recall that you

18 already gave that evidence. This is what

19 we are trying to avoid. I have got that

20 evidence. I knew what you were going to

21 say.

22 THE WITNESS: I'm just answering.

23 THE VICE-CHAIR: I appreciate that. Mr.

24 Tapp?

25 MR. TAPP: Okay. I'm educating myself,

- 33 - M. Jack

Re-Ex (L. TAPP)

1 actually, Mr. Vice-Chair, as we go through

2 this with my corrections that you are

3 giving me, and though I prepared a list of

4 questions, I can see now how these

5 questions I have prepared, are going to

6 become part of my submissions, so I'm just

7 taking time to read them again, and mark

8 them accordingly.

9 THE VICE-CHAIR: Which is fine. Mr.

10 Tapp, how many days did you have in-chief?

11 MR. TAPP: I had seven days in-chief.

12 THE VICE-CHAIR: There you go. I think

13 you covered a lot of ground in-chief.

14 MR. TAPP: Fair enough. Then I should

15 zero in just on what Mr. Manuel questioned

16 him about, and Lynette D'Souza questioned

17 him about?

18 THE VICE-CHAIR: Right. And the cross

19 has only been two days.

20 MR. TAPP: Two days, true.

21 THE VICE-CHAIR: Okay. So...

22

23 BY MR. TAPP:

24 Q. Counsel questioned you at length

25 about the, "Failing to follow direction", and the

- 34 - M. Jack

Re-Ex (L. TAPP)

1 fact that you, to put it bluntly, disobeyed

2 direction given about not transcribing the

3 interview.

4 A. Yes.

5 Q. And, if I remember correctly, you

6 acknowledge him, "Yes", but you wanted to explain,

7 "But..."

8 A. Yes.

9 Q. And you were cut off?

10 A. Yes.

11 Q. Counsel said, "Just answer the

12 question", so now I ask you, what were you trying to

13 say?

14 THE VICE-CHAIR: Haven't you given that

15 evidence already?

16 MR. TAPP: No, he hasn't. He was cut

17 off.

18 THE WITNESS: Yesterday I was cut off.

19 THE VICE-CHAIR: Yes, you were cut off

20 in cross-examination, but that evidence was

21 given in-chief.

22 THE WITNESS: I'm not...

23 MR. TAPP: Just a minute. No, I believe

24 there was one portion of it, from my notes

25 over here, that wasn't given in-chief, and

- 35 - M. Jack

Re-Ex (L. TAPP)

1 specifically relates to the numerous

2 questions that counsel asked about you

3 were...you failed to get the simple thing

4 of the particulars of the two witnesses, so

5 that portion wasn't covered over there, and

6 that is what I want to try and get out from

7 Mr. Jack.

8 MR. MANUEL: Well, that wasn't your

9 question. You question was to have him

10 explain...

11 MR. TAPP: And I believe he was trying

12 to answer that.

13 MR. MANUEL: No. Your question was

14 asking him to explain why he deliberately

15 ignored the order and followed in his own

16 devices, which is not what you are now

17 dealing with. Now you...

18 MR. TAPP: My question was he was trying

19 to explain something, and you cut him off.

20 THE WITNESS: That is correct.

21 MR. TAPP: And I want to ask him what he

22 wanted to explain. And I believe what he

23 wanted to do was this, what I just brought

24 up.

25

- 36 - M. Jack

Re-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. If we can disregard anything, you do

3 have a good memory; okay?

4 A. Yes.

5 Q. Take your mind back to your

6 examination-in-chief. This is about the re-

7 examination, okay, which was brought up on the

8 questions of cross-examination. So if you can

9 extract what you didn't bring out, maybe that will

10 appease Mr. Vice-Chair.

11 A. I would love to. It is 30 seconds

12 long.

13 THE VICE-CHAIR: Go ahead.

14 THE WITNESS: Thank you. The fraud

15 investigation that I...

16

17 BY MR. TAPP:

18 Q. And I will interrupt. We are

19 dealing with why you felt you wanted to explain...

20 A. Yes.

21 Q. ...or why you did not get their

22 particulars.

23 A. Yes.

24 Q. Thank you.

25 A. The interview of the witness in

- 37 - M. Jack

Re-Ex (L. TAPP)

1 regards to this fraud investigation was conducted by

2 Detective Constable Eric Dawson, not by me. I only

3 arranged for the witness to come, hence, later, when

4 Filman...no, according to Filman documentation, I

5 turn it over, and there were e-mails exchanged

6 between Eric Dawson and actually did turn all the

7 materials I had on file to him.

8 A month-and-a-half later Sergeant Filman

9 told me, "No, you have to investigate this". That

10 is why I had to go back, get the witness statement

11 of the interview that he did, and transcribe it to

12 understand what actually transpired.

13 Q. And that was because you did or

14 didn't do the interview?

15 A. I didn't do the interview.

16 Q. Thank you. No more questions on

17 that.

18 MR. MANUEL: Good.

19 THE VICE-CHAIR: By the way, that is not

20 new evidence. We heard that already.

21 MR. MANUEL: My co-counsel advised me,

22 and I would make the point, that she is

23 reading the notes and...

24

25 BY MR. TAPP:

- 38 - M. Jack

Re-Ex (L. TAPP)

1 Q. Okay. Counsel harped on the word

2 "refused"...

3 MR. MANUEL: Excuse me.

4

5 BY MR. TAPP:

6 Q. Counsel questioned you on the word

7 "refused", in place of your signature, on the month

8 of PER. Did you refuse to sign it?

9 A. I did not.

10 Q. Thank you.

11 THE VICE-CHAIR: It is not new evidence.

12 MR. TAPP: Okay.

13 THE VICE-CHAIR: You are asking

14 questions that were asked in-chief.

15 MR. TAPP: Well, he questioned on his

16 refusal.

17 THE VICE-CHAIR: Well, he is entitled to

18 question on his refusal.

19 MR. TAPP: That is fine. So I'm

20 entitled to re-examine him on the question.

21 THE VICE-CHAIR: You can only ask

22 questions related to new information that

23 was extracted in the cross-examination.

24 MR. TAPP: Okay. Perfect.

25

- 39 - M. Jack

Re-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Your response, okay, to counsel

3 yesterday, was, "I declined to sign it immediately.

4 I wanted time to review it".

5 A. That is correct.

6 Q. "Declined" was new. Okay. That is

7 new. You used the word "declined".

8 MR. MANUEL: I think that was in-chief.

9

10 BY MR. TAPP:

11 Q. So I ask you, is that why "refused"

12 is there instead of "declined"?

13 THE VICE-CHAIR: I don't understand the

14 question. "Refused" is there.

15 MR. TAPP: "Refused" is there.

16 THE VICE-CHAIR: We have no idea why

17 "refused" is there as opposed to "decline"

18 or as opposed to any other statement to

19 that effect.

20

21 BY MR. TAPP:

22 Q. Okay. You have already said you

23 didn't sign it. Did you give any other indication,

24 aside from declining to have that notation in place

25 of your signature?

- 40 - M. Jack

Re-Ex (L. TAPP)

1 A. No. I simply asked. I contacted

2 Ontario Provincial Police Association, eighth

3 branch, representative Karen German, and I asked

4 her, "What should I do?" She said, "You don't have

5 to sign it. It is only fair that you take it and

6 review it, and you have...it is your right to have

7 an OPPA representative to go over it with you".

8 Q. Thank you, Mr. Jack. We will move

9 to "Radio Communications".

10 A. Okay.

11 Q. Counsel questioned you about this

12 negative rating here. I would like you, for the

13 purpose of this re-exam...counsel specifically drew

14 your attention to what was written about that in the

15 incident here, about you...

16 A. Okay.

17 Q. ...justifying the "Does not meet

18 requirements", but counsel did omit to have you read

19 what is contained immediately above that and

20 directly relational to what he had you read. Please

21 read those two lines in there, please, all three

22 lines? Tell us what it is and read it out, please?

23 A. "...Radio Communications: Uses

24 appropriate and respectful language when

25 utilizing the communications system,

- 41 - M. Jack

Re-Ex (L. TAPP)

1 communicates effectively, uses 10 codes..."

2 Q. Thank you. Based on that

3 explanation of "Radio Communications", did you see a

4 need to provide a rebuttal on that?

5 A. Yes, I did.

6 Q. And counsel referred to that, I

7 believe...

8 A. Yes.

9 Q. ...in his cross-examination of you.

10 A. I believe he did.

11 Q. Yes. I direct your attention to

12 Exhibit 36, which is...no, Exhibit 34, 11 pages,

13 already tendered from the applicant's tab 57.

14 A. What is that?

15 Q. That is your rebuttal to PER67.

16 A. Okay. I have got it in front of me.

17 Q. Now, quite frankly, I don't know

18 what counsel referred to, because I could see that

19 you were confused on the stand, and you were trying

20 to answer the questions, so I want you to read what

21 it says, what you have to say in "Radio

22 Communications", on that rebuttal, that was tendered

23 in evidence, but much different from the rebuttal

24 counsel questioned you about, that he had?

25 A. Okay.

- 42 - M. Jack

Re-Ex (L. TAPP)

1 Q. Give it some time for Mr. Vice-Chair

2 to find that.

3 THE VICE-CHAIR: No, please go ahead.

4

5 BY MR. TAPP:

6 Q. Okay. Go ahead, Mr. Jack.

7 A. "...By definition the 'Radio

8 Communication' section rates 'the use of

9 appropriate and respectful language when

10 utilizing the communications system,

11 effective communication and the usage of 10

12 codes...'

13 I, therefore, do not understand how

14 the provided example feeds into the

15 definition of '"Radio Communications. My

16 language was appropriate and respectful,

17 and communication was effective, and I did

18 use a 10 code system.

19 However, the fact that my accent

20 would have been very noticeable, it would

21 have probably caused some to have a degree

22 of difficulty..."

23 Q. Can you just speak a little slow for

24 the benefit of the reporter?

25 A. "...However, the fact that my accent

- 43 - M. Jack

Re-Ex (L. TAPP)

1 would have been very noticeable, it would

2 have probably caused some to have a degree

3 of difficulty discerning what was being

4 communicated. If anything, this writing

5 further attests to the differential

6 treatment that I was experiencing..."

7 MR. MANUEL: Sorry, Mr....

8 MR. TAPP: Thank you.

9 MR. MANUEL: ...Vice-Chair, that is not

10 on my document. Can you show me what you

11 are reading from? You are reading from

12 Exhibit 57. You are not reading from...

13 MR. TAPP: No. That is when the

14 applicant...

15 MR. MANUEL: Sir...

16 THE VICE-CHAIR: Hold on.

17 MR. MANUEL: ...you are reading from

18 Exhibit 57. You are not reading from the

19 document that I cross-examined you on.

20 This is not the document I cross-examined

21 you on. I cross-examined you on the

22 rebuttal that you gave at the time, not one

23 that you developed some months later.

24 That is very unfair of Mr. Tapp to

25 do that, and suggest that I have done

- 44 - M. Jack

Re-Ex (L. TAPP)

1 exactly what he is doing.

2 THE VICE-CHAIR: Yes, you are right.

3 MR. TAPP: Okay. I have a chance to

4 respond to that. Counsel acknowledges that

5 he came in on day 9. Okay. Counsel ought

6 to have familiarized himself, after all he

7 has assistants over there, with what was

8 tendered. There were 11 pages tendered,

9 and if counsel chooses to mention different

10 ones than...

11 THE VICE-CHAIR: When were they

12 tendered?

13 MR. TAPP: ...what has been tendered,

14 and refers to a different document, this,

15 in essence...let's question.

16

17 BY MR. TAPP:

18 Q. When did you prepare that document?

19 THE VICE-CHAIR: We know when he

20 prepared that.

21 MR. MANUEL: Exactly. It was all dealt

22 with.

23 THE VICE-CHAIR: That was all dealt

24 with.

25 MR. MANUEL: I'm not obliged to cross-

- 45 - M. Jack

Re-Ex (L. TAPP)

1 examine on things that I'm not interested

2 in.

3 THE VICE-CHAIR: You are absolutely

4 right.

5 MR. TAPP: That is tendered.

6 THE VICE-CHAIR: Mr. Tapp, you have had

7 your opportunity to make your case. You

8 have indicated that you had, what, eight

9 days?

10 MR. TAPP: Seven days.

11 THE VICE-CHAIR: Seven days. You are

12 just repeating the evidence that has

13 already been given by Mr. Jack. And

14 counsel is right, if he chooses not to

15 cross-examine on certain areas, that is

16 fine. I mean, that may or may not work to

17 his advantage. It is up to him.

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

19 THE WITNESS: Sorry. May I just go to

20 the washroom for one minute?

21 THE VICE-CHAIR: Let's take a ten minute

22 break.

23 THE WITNESS: Thank you.

24

25 --- upon recessing at 11:06 a.m.

- 46 - M. Jack

Re-Ex (L. TAPP)

1 --- A BRIEF RECESS

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

3

4 MICHAEL JACK, resumed

5 CONTINUED RE-EXAMINATION BY MR. TAPP:

6 THE VICE-CHAIR: I think I would like to

7 deal with this issue of re-examination in

8 maybe an unorthodox way, but I think it can

9 be effective. What I'm proposing is that

10 we exclude the witness. And, Mr. Tapp, I

11 would hear from you the questions that you

12 intend to ask in re-examination.

13 I understand that you have a bunch

14 of them there. And we will identify the

15 questions that are appropriate under the

16 circumstances that you can ask. And once

17 that is done, we would have the witness

18 return, and you would ask the questions.

19 MR. TAPP: That will certainly expedite

20 it, Mr. Vice-Chair. I'm in agreement to

21 that.

22 THE VICE-CHAIR: Okay. Counsel?

23 MR. MANUEL: Absolutely.

24 THE VICE-CHAIR: It is a question now of

25 recording this sidebar. I don't think it

- 47 - M. Jack

Re-Ex (L. TAPP)

1 is necessary, but...

2 MR. MANUEL: Nor do I. It is a

3 discussion between counsel.

4 THE VICE-CHAIR: Yes.

5 MR. TAPP: For all intents and purposes

6 this is going to be a mini direction from

7 you. You are going to be directing me...

8 based on, after hearing the questions I

9 intended on asking, I had written down, you

10 are going to give me direction on what is

11 going to be allowed or not allowed, so I

12 think that ought to be recorded, because a

13 court reporter is here for the proceedings

14 of this day, and to agree to something

15 where I had to stop in the midst of a

16 proceeding, I think, in the Rules of

17 Procedure clearly indicate what is

18 admissible and what is inadmissable.

19 If it is allowed in a court, then it

20 should be allowed over here. I mean,

21 ultimately it does grant you the authority,

22 but in a court of law I can't see how a

23 judge is going to say...and I can't quote

24 the specific authority, because I'm not a

25 lawyer, but I can't see how a judge is

- 48 - M. Jack

Re-Ex (L. TAPP)

1 going to say, "Let's stop recording now and

2 we will deal with this argument of law

3 now", or, "This argument now, and then

4 let's continue".

5 MR. MANUEL: Many motions are dealt with

6 in argument, if it is argument. And the

7 point about this is that we are paying for

8 this. We are paying for it for the

9 purposes of having a record of the

10 evidence, not the argument.

11 Now, you know, it will just...it is

12 easy for my friend, he objected, but now it

13 is easy for my friend to say, "have it",

14 when it is not on his at any cost. It is

15 not going to advance anything...the

16 questions that are going to be deemed to

17 have been proper. Do you have any

18 questions typewritten out that we can all

19 see them?

20 MR. TAPP: I do have them typed out over

21 here, and I have typed out what I am

22 expecting to hear. And I'm making

23 notations at the side. I'm being educated

24 to the process. And now Mr. Vice-Chair has

25 indicated on more than one occasion, that

- 49 - M. Jack

Re-Ex (L. TAPP)

1 is something that I can make in my

2 submissions, so it is my...they are

3 notations in the margin of my notes, but I

4 see Mr. Vice-Chair's point over here, to

5 expedite it, because time is being wasted

6 on making these rulings, so...

7 THE VICE-CHAIR: Well, my alternative,

8 frankly, was to close down your re-

9 examination, but I gave it a second

10 thought, and I think this may be a better

11 way to go, so I'm going to ask that the

12 recording be stopped, we deal with this

13 matter, we take a look at your questions

14 and determine what questions are

15 appropriate for re-examination. And, as we

16 do that, I'm going to exclude the witness;

17 okay?

18 THE WITNESS: Okay.

19 THE VICE-CHAIR: So you can sit out in

20 the...

21 THE WITNESS: I would like to go, maybe,

22 outside to get some fresh air. How long do

23 you think it will take?

24 THE VICE-CHAIR: I have no idea how

25 long, but I anticipate...

- 50 - M. Jack

Re-Ex (L. TAPP)

1 THE WITNESS: Fifteen minutes?

2 THE VICE-CHAIR: Well, it may be longer

3 than 15 minutes. It may be half-an-hour,

4 so...

5 THE WITNESS: Okay. Then I will step

6 out.

7 MR. TAPP: I can add something about

8 that. Quite frankly, what I prepared, I

9 mean, eight pages or so, with what I

10 expected to hear, a lot of it I couldn't

11 ask, and I was not allowed, for the reasons

12 you have explained, so that I only dealt

13 with...I anticipated this carrying the

14 whole day, so I don't have what you are

15 expecting to accomplish over here, will

16 deal with the questions that I have

17 prepared, but I haven't prepared a list of

18 questions regarding Lynette D'Souza's

19 cross-examination.

20 And I'm going to have to...so those

21 questions, we will have to play it by the

22 ear, and I will respect your ruling on

23 that.

24 THE VICE-CHAIR: Well, I'm not quite

25 sure why you haven't established questions

- 51 - M. Jack

Re-Ex (L. TAPP)

1 for the cross-examination by the former

2 counsel.

3 MR. MANUEL: That was done in November

4 of 2012. I mean, to say now...

5 MR. TAPP: Just wait a minute.

6 Counsellor, Mr. Vice-Chair...

7 THE VICE-CHAIR: Direct your remarks to

8 me; okay?

9 MR. TAPP: Okay. So Lynette D'Souza, we

10 had no knowledge and no prior warning that

11 she was removing herself or was being

12 excused from here. For all intents and

13 purposes she appeared to be the one

14 assigned and seized with this matter, in

15 representing the Ministry on this matter.

16 So, being that her questions only

17 dealt with the first few PERs that were

18 entered, and she spent considerable time on

19 the fact that the applicant testified about

20 the lack of interest from Mr. Filman, and

21 she went, very maliciously on incident by

22 incident, where the applicant actually had

23 Shaun Filman assisting him on an

24 investigation, or sitting beside him, and

25 that whole thing took a day, it was

- 52 - M. Jack

Re-Ex (L. TAPP)

1 reasonable for the applicant, or for me, to

2 surmise that, "Okay. There is no way, if

3 she spent so long on just the top

4 portion...the top first 30 percent of the

5 applicant's examination-in-chief, if she

6 spent all day on that, how can she possibly

7 finish in all the five days?"

8 I mean, that is the rationale. And

9 then we were faced with the fact, in 2013,

10 we get she is removed and the Ministry has

11 new counsel, so we didn't know how...

12 THE VICE-CHAIR: I still don't

13 understand why your questions, with respect

14 to that cross-examination...but, anyway,

15 that is the way it is.

16 MR. TAPP: No, Mr. Vice-Chair, clearly

17 counsel, or any learned person of the Bar

18 might prepare well in advance.

19 THE VICE-CHAIR: Let's take a look at

20 the questions you have.

21 MR. TAPP: Certainly.

22 THE VICE-CHAIR: Do you want to excuse

23 yourself for half-an-hour?

24 THE WITNESS: Half-an-hour.

25 THE VICE-CHAIR: And we will stop the

- 53 - M. Jack

Re-Ex (L. TAPP)

1 recording.

2

3 --- upon recessing at 11:32 a.m.

4 --- A LUNCHEON RECESS

5 --- upon resuming at 1:32 p.m.

6

7 MICHAEL JACK, resumed

8 CONTINUED RE-EXAMINATION BY MR. TAPP:

9 THE VICE-CHAIR: So, Mr. Tapp, have you

10 had an opportunity to prepare your

11 questions?

12 MR. TAPP: I am almost done, Mr. Vice-

13 Chair. I have gone over Lynette D'Souza

14 and Mr. Manuel's, and I am almost there. I

15 would say I need another 15 minutes, at

16 least. I have been writing non-stop for

17 the whole duration. And I am prepared...

18 grant me just a few more minutes, and I

19 will finish it off. And then I will just

20 read it all. I will just read out whatever

21 I wrote, and you can give me your decision.

22 THE VICE-CHAIR: Fifteen more minutes.

23 MR. TAPP: Thank you.

24

25 --- upon recessing at 1:34 p.m.

- 54 - M. Jack

Re-Ex (L. TAPP)

1 --- A BRIEF RECESS

2 --- upon resuming at 1:54 p.m.

3

4 MICHAEL JACK, resumed

5 CONTINUED RE-EXAMINATION BY MR. TAPP:

6 THE VICE-CHAIR: Are you set?

7 MR. TAPP: I am finished.

8 THE VICE-CHAIR: Good.

9 MR. TAPP: And I thank you for the extra

10 time, and I will wait for your direction

11 now.

12 THE VICE-CHAIR: Mr. Jack, if you could

13 sit outside for this exercise?

14 THE WITNESS: Okay.

15 THE VICE-CHAIR: And we will not require

16 a recording.

17

18 --- DISCUSSION OFF THE RECORD

19

20 THE VICE-CHAIR: Mr. Jack, your

21 representative has some questions, re-

22 examination questions for you, there are a

23 handful, and I ask that you answer them.

24 THE WITNESS: Okay.

25

- 55 - M. Jack

Re-Ex (L. TAPP)

1 BY MR. TAPP:

2 Q. Of all the questions I have written

3 out, there is only a few, Mr. Jack. And I take your

4 attention to your cross-examination by Mr. Manuel

5 regarding what Flindall and Payne saw that resulted

6 in your HDA charge. So I ask you the question,

7 how...

8 MR. MANUEL: I thought this one was

9 disallowed?

10 THE VICE-CHAIR: Yes, I did too.

11 MR. TAPP: Was this?

12 THE VICE-CHAIR: Yes. No, that was

13 disallowed. The...

14 MR. TAPP: I'm sorry.

15 THE VICE-CHAIR: That is the...

16 MR. TAPP: No, no, no.

17 THE VICE-CHAIR: Yes. Okay. Yes, that

18 was disallowed.

19 MR. TAPP: All right.

20

21 BY MR. TAPP:

22 Q. I take your attention to performance

23 evaluation 9. Okay. I have it. That is Exhibit...

24 my question is going to be very brief. You probably

25 wouldn't need it, but I will tell you, PER9 is

- 56 - M. Jack

Re-Ex (L. TAPP)

1 Exhibit 50, and it is 12 pages, and the related

2 question is, work improvement plan number nine. I

3 will locate it for you. Can you come here, please?

4 A. Mr. Vice-Chair, can I come and get

5 it from him?

6 THE VICE-CHAIR: Right. Do you recall

7 it?

8 THE WITNESS: I recall the evalulation.

9 I'm not sure what he is talking about...the

10 point he is referring to, no.

11 MR. MANUEL: Perhaps you can ask the

12 question.

13 THE VICE-CHAIR: Yes. Ask the question.

14 I don't think he will need it.

15 MR. MANUEL: He shouldn't. Sorry.

16

17 BY MR. TAPP:

18 Q. Question were raised by Mr. Manuel

19 regarding performance evaluation nine, and the

20 "Comments" area and the signature, okay? You were

21 asked that, "You did not provide any comments in the

22 'Comment' section?" You acknowledged with a one

23 word answer, "Yes", and you didn't...or agreed that

24 you didn't provide a comment. I want to know; why?

25 A. You want to know why I did not

- 57 - M. Jack

Re-Ex (L. TAPP)

1 provide my comments?

2 Q. Yes.

3 A. Because it was pointless at the

4 time.

5 Q. Why do you say it was pointless?

6 A. I have to go slightly back, and

7 explain how events unfolded. When Sergeant Flindall

8 berated me for mishandling the female harassment

9 case, he told me that my job was in jeopardy and

10 that he had never had such an incompetent recruit

11 before, I knew this information to be false.

12 I advised him I was going to be contacting

13 Ontario Provincial Police Association, as I was

14 advising the Provincial Police Academy, and that is

15 what I did.

16 MR. MANUEL: This is evidence we have

17 heard.

18 THE WITNESS: No. I'm explaining why it

19 was pointless. Please, at least, let me

20 answer just his question.

21 THE VICE-CHAIR: Hold on. This is

22 touching on evidence.

23

24 BY MR. TAPP:

25 Q. As a result of what you advised,

- 58 - M. Jack

Re-Ex (L. TAPP)

1 what happened that caused you to not comment?

2 A. Well, when the investigation was

3 conducted, it was determined by them that I was

4 being targeted, and I was switched to a different

5 platoon, so not to be under the constant

6 surveillance by Sergeant Flindall and his brother-

7 in-law, Banbury, and their platoon members.

8 That is what caused me. But, what happened

9 during this time, before I was switched platoons,

10 they gave me, months six and seven, the performance

11 evaluation, which was clearly fraudulent.

12 Q. So, no, we don't want to hear about

13 that.

14 A. Okay. So from zero, "Does not meet

15 requirements", my performance evaluation went to

16 ten, "Does meet requirements".

17 Q. How does that relate to you not

18 making any comment?

19 A. Okay. It relates in such a way that

20 I contacted, again, Ontario Provincial Police

21 Association and sought advice, and I was advised to

22 do the rebuttal and submit it, which I did. And

23 after that I went from ten, "Does meet

24 requirements", to seven, "Does not meet

25 requirements", so I realized every time there was

- 59 - M. Jack

Re-Ex (L. TAPP)

1 any objection, or just explained my side of the

2 story, I was smashed with more and more negative

3 stuff, so it was pointless.

4 Q. Thank you very much. Counsel

5 states, regarding your PER11, that you did not take

6 any issue with it. Why did you not take any issue

7 with it?

8 A. At that time I knew it was just...

9 let me try to recall the proper term. It is not a

10 side show. That they were terminating me no matter

11 what. I just, pretty much, lived my life in fear.

12 I was waiting for the moment they were going to tell

13 me, "You are out", that is it.

14 Again, there was really no point to

15 disagree with everything at the time. Actually, it

16 is interesting how we had a conversation with

17 Constable Nie, which was, I believe, documented in

18 there, and he said that only my interests...there

19 are hands to help me pass my probationary period,

20 yet he wrote this comment after he had not

21 recommended me for permanent, so that doesn't make

22 sense.

23 Q. I know you are pausing a lot over

24 there...

25 A. Because I'm tired.

- 60 - M. Jack

Re-Ex (L. TAPP)

1 Q. You say he wrote that comment at

2 only your interest he has at heart after he

3 recommended that you not be...

4 A. Yes, that is totally contradictory.

5 Q. ...recommended for permanent?

6 A. Yes. That is the whole

7 contradiction, yes.

8 Q. Do you have any recollection of when

9 that comment about not being recommended was or

10 where it was reflected?

11 A. Well, yes. Actually, a number

12 of...in my performance evaluation on November 18...

13 Q. For which performance evaluation?

14 A. Eleven.

15 MR. MANUEL: Number ten.

16 THE WITNESS: Number ten?

17 MR. TAPP: Number ten, I stand

18 corrected.

19 THE WITNESS: Thank you very much.

20 Number ten. Number ten on November 18th,

21 yes.

22

23 BY MS. JOLLEY:

24 Q. So ten he says you are not being

25 recommended for...

- 61 - M. Jack

Re-Ex (L. TAPP)

1 A. No. November 18th he says, "Not to

2 be recommended", yes.

3 Q. But that was in November...in PER10;

4 am I right?

5 A. That is correct.

6 Q. Yet in PER11 he says your interests

7 are in his heart?

8 A. Yes, which is dated November 19th.

9 MR. MANUEL: Sorry. Did he state it or

10 did he write it?

11 THE WITNESS: Write it.

12 MR. MANUEL: He wrote it?

13 THE WITNESS: Yes.

14 MR. MANUEL: Where?

15 THE WITNESS: "Respectful relations",

16 PER11, November 19th.

17 MR. TAPP: I don't think I need to alert

18 Mr. Vice-Chair, but it is at Exhibit 64.

19 THE WITNESS: And...

20

21 BY MR. TAPP:

22 Q. And do you need a copy of...

23 A. No, no, no.

24 Q. Maybe, because counsel asked you the

25 question, can you read that comment?

- 62 - M. Jack

Re-Ex (L. TAPP)

1 A. Yes, I would love to read the

2 comment.

3 Q. Okay.

4 THE VICE-CHAIR: I think we have gone

5 through this in-chief, haven't we?

6 MS. BLUTSTEIN: We did go over it in-

7 chief.

8 MR. TAPP: That is quite okay.

9 MR. MANUEL: Thank you.

10

11 BY MR. TAPP:

12 Q. Did you make any rebuttal to that

13 one?

14 A. No. No, not at the time.

15 Q. Why did you not provide your

16 rebuttal to work improvement plan 11?

17 A. You mean PER11?

18 Q. At PER11, I'm going to ask them both

19 in one question. Your rebuttal to PER11 and your

20 rebuttal to your work improvement...

21 A. It was given to me on the same day

22 that the notice of proposed release from employment

23 was given, so what is the point?

24 Q. Are you saying that PER11, with the

25 wording:

- 63 - M. Jack

Re-Ex (L. TAPP)

1 "...You were given every opportunity to

2 pass..."

3 Is the same day you were given the notice of

4 proposed release from employment?

5 A. Yes.

6 Q. Thank you. Counsel Manuel

7 questioned you about the nicknames, "Crazy Ivan",

8 "Big Brother" and "Big Kahouna". Counsel alleges

9 "Crazy Ivan" was no different than the other two

10 nicknames. So, I ask you, why is "Crazy Ivan"

11 derogatory or different to you, or not the same as

12 those other two nicknames?

13 A. Could you please repeat, "Crazy

14 Ivan", "Big Kahouna", and what was the third one?

15 Q. "Big Brother".

16 A. Okay. Well, like I said "Big

17 Brother", is a person who is in position of

18 authority, who actually exercises ultimate authority

19 over you. That is what Constable Nie was to me.

20 "Big Kahouna", to date, I don't really know what it

21 means.

22 You have...I believe it was in reference to

23 you. You can explain it, what it means, but, again,

24 I don't know. And "Crazy Ivan", well, Ivan is

25 a...Ivan is Russian. It has been traditionally,

- 64 - M. Jack

Re-Ex (L. TAPP)

1 like for centuries, Russians were referred as

2 "Ivans". The Germans, in Second World War, called

3 "Ivans", "Ivans"...referred to Russians as "Ivans".

4 "Ivan" is also associated with, "Ivan The Terrible",

5 the Tzar, our Russian ruler back in, I believe, 16th

6 century who was...like, by definition, he was crazy.

7 He had...he was called, "Ivan The Terrible"

8 for the number of atrocities, for the amount of

9 atrocities he committed against people, so "crazy",

10 to date I don't know what is so crazy about me, but

11 "Crazy Ivan", actually implies that you are a crazy

12 Russian, and that implies to me that you are...it is

13 a Russian derogatory name. And I don't understand,

14 if it was not derogatory, why was it then so

15 secretive? Why didn't...why he denied everything

16 that he later exposed that this nickname was used.

17 THE VICE-CHAIR: You are here to answer

18 questions, not ask them.

19 THE WITNESS: Yes. Okay. Okay. Sorry,

20 but it is my opinion.

21 THE VICE-CHAIR: Yes, but you are

22 starting your sentence with "why", and that

23 is a question.

24

25 BY MR. TAPP:

- 65 - M. Jack

Re-Ex (L. TAPP)

1 Q. Just give your response, Michael.

2 A. Yes, I'm giving my response, that I,

3 personally, associate "Crazy Ivan" with "Ivan The

4 Terrible", who committed a lot of atrocities. And

5 everybody knows "Ivan" is Russian, so "Crazy

6 Russian". That is what they were, basically,

7 telling everyone, "There is a crazy Russian in the

8 detachment".

9 Q. Please, remember Mr. Reporter is

10 writing.

11 A. Okay. "Big Kahouna", again, I don't

12 know what it means. I don't recall.

13 THE VICE-CHAIR: Well, it is okay. You

14 have already given evidence about the "Big

15 Kahouna" and "Big Brother".

16 MR. TAPP: I think those are all the

17 questions that we filtered through, Mr.

18 Vice-Chair, and I was allowed to ask. So,

19 subject to anything you now have I have no

20 choice but to close the re-exam.

21 THE VICE-CHAIR: Okay. Thank you. Mr.

22 Jack you can step down at this point.

23 THE WITNESS: Should I go outside?

24 THE VICE-CHAIR: No.

25 THE WITNESS: No. Okay. Can I remain

- 66 - M. Jack

Re-Ex (L. TAPP)

1 seated or should I go back to my friend?

2 THE VICE-CHAIR: You can sit with your

3 representative.

4 THE WITNESS: Thank you.

5 MR. MANUEL: Can we release the court

6 reporter?

7 THE VICE-CHAIR: Yes.

8

9 --- upon adjourning at 2:49 p.m.

- 67 - M. Jack

Re-Ex (L. TAPP)

1

2

3

4 REPORTER'S NOTE:

5

6

7 I hereby certify the foregoing to be a

8 true and accurate transcription of the

9 above-noted proceedings held before me on the

10 22nd DAY OF SEPTEMBER, 2015, and taken to the

11 best of my skill, ability and understanding.

12

13 }

14 } Certified Correct:

15 }

16 }

17 }

18 }

19 }

20 } \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

21 } Greg Vaughan

22 } Verbatim Reporter

23