HRTO File No.: 2010-07633-I

 HUMAN RIGHTS TRIBUNAL OF ONTARIO

MD/tj

 B E T W E E N:

 MICHAEL JACK

 Applicant

 - and -

 HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,

 AS REPRESENTED BY THE MINISTER OF COMMUNITY SAFETY

 AND CORRECTIONAL SERVICES AND OPERATING AS

 THE ONTARIO PROVINCIAL POLICE

 Respondent

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

 HELD BEFORE: Keith Brennenstuhl, Vice-Chair

 HELD AT: Human Rights Tribunal of Ontario

 655 Bay Street, 14th floor

 Toronto, Ontario

 HELD ON: September 9, 2016

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

LLOYD TAPP -- the Applicant

MIMI SINGH -- for the Respondent

HEIDI BLUTSTEIN

Also Present:

Michael Jack

 - 3 - S. Filman

 Ex-in-Ch (M. SINGH)

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 Ex-in-Ch (M. SINGH)

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

 2 --- Upon commencing at 9:39 a.m.

 3

 4 THE VICE-CHAIR: Okay, why don't we get

 5 down to business? If you will call your

 6 witness? Would you state your name for the

 7 record?

 8 MR. FILMAN: Yeah, it's Shaun Filman.

 9 It's S-H-A-U-N, and Filman is F-I-L-M-A-N.

10 THE VICE-CHAIR: Mr. Filman, you're

11 about to testify before the Human Rights

12 Tribunal and the Tribunal is dependent on

13 you telling the truth. Do you solemnly

14 affirm to tell the truth?

15 MR. FILMAN: Yes, I do.

16 THE VICE-CHAIR: And do you appreciate

17 it's an offence at law if you break that

18 promise?

19 MR. FILMAN: I do.

20 THE VICE-CHAIR: Okay, thank you very

21 much. Counsel?

22 MS. SINGH: Thank you.

23

24 SHAUN FILMAN, affirmed

25 EXAMINATION-IN-CHIEF BY MS. SINGH:

 - 5 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. Good morning, Mr. Filman, again.

 2 You are currently a police officer with the OPP

 3 Peterborough detachment?

 4 A. Yes.

 5 Q. What rank do you presently hold, Mr.

 6 Filman?

 7 A. Currently I'm acting as Detective

 8 Sergeant for Peterborough detachment.

 9 Q. How long have you been employed by

10 the OPP?

11 A. I was a cadet in September 2001 and

12 constable September 2002.

13 Q. And have you been with the

14 Peterborough detachment since 2002?

15 A. No, I started with the City of

16 Kawartha Lakes and in 2004 transferred over to

17 Peterborough County.

18 Q. What rank did you hold in 2009, Mr.

19 Filman?

20 A. Constable.

21 Q. What platoon were you assigned to in

22 2009?

23 A. A Platoon.

24 Q. How many officers were assigned to

25 Platoon A, if you recall?

 - 6 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 A. I don't recall in 2009.

 2 Q. Do you recall how many officers

 3 would be on a shift?

 4 A. It's...currently there's around 12,

 5 I think back then there was nine or 10, but I can't

 6 be certain.

 7 Q. Who was the supervising Sergeant for

 8 your Platoon A in 2012?

 9 A. Sergeant Rob Flindall.

10 Q. And who was the Staff Sergeant

11 operations manager?

12 A. Staff Sergeant Ron Campbell.

13 Q. And who was the detachment commander

14 in 2009?

15 A. Inspector Mike Johnston.

16 Q. Could you briefly summarize or

17 describe the chain of command there in 2009?

18 A. At detachment? So, you would have

19 the inspector as the detachment commander,

20 operations manager is the Staff Sergeant, and each

21 platoon has its own shift supervisor.

22 Q. And you would report to your Staff

23 Sergeant?

24 A. I would report to the shift

25 supervisor.

 - 7 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. And that was Mr. Flindall?

 2 A. Yes.

 3 Q. The events in issue at this Tribunal

 4 occurred almost eight years ago. As a police

 5 officer, were you trained to take notes?

 6 A. I was.

 7 Q. And did you make notes at the time

 8 of the events?

 9 A. I was keeping a notebook at the

10 time, yes.

11 Q. Did you try to make sure that your

12 notes were accurate?

13 A. I mean, anything that's in my

14 notebook is accurate, yes.

15 Q. Would your notes assist you in

16 refreshing your recollection as you give evidence

17 here today?

18 A. Yes, they would.

19 Q. Do you have a copy of your notes

20 with you, your notebooks?

21 A. I do, and as well I have a

22 photocopy.

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

24 that the witness be permitted to refresh

25 his memory by referring to his notebooks.

 - 8 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 THE VICE-CHAIR: Of course.

 2 MS. SINGH: Thank you. I have copies of

 3 his notes if anyone needs a copy.

 4 THE VICE-CHAIR: I've got one.

 5 THE WITNESS: Sir, I have notebooks, but

 6 I also have those copies and I made those

 7 copies. It would be easier if you want me

 8 to use those copies sometimes, is that...

 9 THE VICE-CHAIR: That's fine by me.

10

11 BY MS. SINGH:

12 Q. I'm showing you a copy of the

13 chronology, which is an exhibit in this hearing,

14 Exhibit 143. Do you have a copy of that with you by

15 any chance, Mr. Filman?

16 A. I don't have it with me today.

17 Q. My copy is marked and it appears

18 that extra copies were not made for me. We will

19 just be a second. You wouldn't have a copy of

20 Exhibit 143?

21 MR. TAPP: Yes, we do.

22 MS. SINGH: We'll just be a minute.

23

24 BY MS. SINGH:

25 Q. Can you identify that chronology,

 - 9 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 sir?

 2 A. Can I...sorry, I don't...it is a

 3 chronology and there are portions that I have

 4 written.

 5 Q. So, did you prepare the entries

 6 beside your name or under your name?

 7 A. It appears I prepared just the

 8 entries with my name.

 9 Q. What were they based on? What were

10 your entries based on?

11 A. Sometimes notes and sometimes just

12 recollection.

13 Q. Were the events still fresh in your

14 mind at the time that you made those entries,

15 Constable Filman?

16 A. Yes.

17 Q. Were the entries accurate?

18 A. Yes.

19 Q. Would it assist you in giving your

20 evidence to refer to the entries in that chronology?

21 A. It would.

22 MS. SINGH: I would ask that in addition

23 the witness be permitted to refer to the

24 chronology to refresh his memory in giving

25 evidence before this Tribunal.

 - 10 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 THE VICE-CHAIR: Okay, perfect, yes.

 2

 3 BY MS. SINGH:

 4 Q. I'm showing you another document,

 5 Constable Filman, can you identify it, please?

 6 A. Probationary Constable Evaluation

 7 Report Guidelines.

 8 Q. And it has been marked as Exhibit

 9 24. Are you familiar with the guidelines?

10 A. Currently I am.

11 Q. Under the guidelines, Constable

12 Filman, can you tell us who selects the coach

13 officer for a particular recruit?

14 A. I think it just comes down through

15 the chain of command.

16 Q. Can you tell the Tribunal what kind

17 of training a police officer needs to take in order

18 to become a coach officer?

19 A. I completed a coach officer's course

20 at headquarters. I think it's a one week course,

21 five days.

22 Q. If I can just direct your attention

23 to page four of those guidelines? Are the

24 requirements set out there?

25 A. Yes, they are.

 - 11 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. Did you qualify? Did you complete

 2 those requirements? Perhaps you could read them

 3 out?

 4 A. Is it the rules and responsibilities

 5 or the...

 6 Q. The Ontario Police College Constable

 7 Training Program. Perhaps it's set out in the next

 8 document. Can you identify the document that I just

 9 showed you, please?

10 A. I think these are Police Orders and

11 it's the Human Resources section.

12 Q. All right, and that is Exhibit 28,

13 Police Orders 6.4, Human Resources Probationary

14 Constable. Are the requirements for being selected

15 to be a coach officer contained in that document,

16 sir?

17 A. Yes, they are.

18 Q. Can you describe what those

19 requirements are?

20 A. "A regional detachment commander

21 shall, when recommending a member to perform a role

22 of coach officer, consider whether that member

23 demonstrates the desire, willingness and ability to

24 accept the responsibilities of a coach officer

25 listed in the recruit field training program and

 - 12 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 meets the required level for coach officer in the

 2 competency model, possesses the desire and ability

 3 to transmit their knowledge to others, has awareness

 4 of detachment objectives, understands OPP policy and

 5 relevant statute law, has a good reputation with

 6 other detachment members within the community, and

 7 displays loyalty to the OPP and superior officers."

 8 Q. Did you meet those requirements,

 9 sir?

10 A. I...I think so.

11 Q. In 2009?

12 A. Yes.

13 Q. Thank you. Who assigned you to be

14 Michael Jack's coach officer?

15 A. I was asked by Staff Sergeant

16 Campbell and Rob Flindall, Sergeant Flindall, if I

17 would undertake that responsibility.

18 Q. And did you hear any rumours about

19 Jack before you became...at the detachment before

20 you became his coach officer?

21 A. No.

22 Q. You didn't hear anything at all?

23 A. I was aware that there had been an

24 identified issue at training.

25 Q. Yes?

 - 13 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 A. And I was just made aware of those

 2 issues.

 3 Q. Do you recall what that...what the

 4 issue was?

 5 A. There was an issue with driving, I

 6 can't specifically recall what that issue was. It

 7 might have been night driving. And there was an

 8 issue with failing to observe direction in that

 9 during a scenario the direction had been made and he

10 had taken head shots, I guess, when the direction

11 had been made not to do so.

12 Q. Do you recall who made you aware of

13 those concerns?

14 A. I think it was Staff Sergeant

15 Campbell. It was in the meeting when I was asked if

16 I would undertake having a second recruit.

17 Q. A second recruit?

18 A. Yes.

19 Q. You had a current recruit at the

20 time?

21 A. I did.

22 Q. How long into his one year

23 probationary period had he been under your watch, so

24 to speak?

25 A. I believe that recruit arrived in

 - 14 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 August and I think he was just at that point at the

 2 ability where he was patrolling out on his own.

 3 Q. Did you feel that you were capable

 4 of managing Jack as a second recruit, with the first

 5 recruit patrolling on his own?

 6 A. Yeah, I mean, I felt that the other

 7 recruit, Constable Rusaw, he was comfortable with

 8 reaching out to me if he needed me. He was

 9 comfortable with reaching out to other officers if

10 he needed, and he was aware of what I required in

11 order to continue to complete his evaluations,

12 without being directly with him at all times. And

13 at that point that's the most important part. So,

14 having a second recruit I didn't think would really

15 cause me any issue.

16 Q. When you heard those two rumours

17 about Jack, so to speak rumours, were you at all

18 concerned about coaching Jack?

19 A. No, I mean, I probably would...I

20 would have voiced if I had a concern at that point

21 about those two things. At that point he's still in

22 the training. I don't know the circumstances...I

23 didn't know the circumstances of why that happened.

24 It was good to know, but it was something that can

25 be observed for and worked on.

 - 15 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. Thank you. Did you hear anyone

 2 refer to Jack by the nickname "Crazy Ivan"?

 3 A. No, I did not.

 4 Q. When did you first meet Jack?

 5 A. It would have been in January 2009.

 6 Q. Did he say anything to you, did Jack

 7 say anything to you about you being his coach

 8 officer?

 9 A. At that time?

10 Q. Yes.

11 A. No.

12 Q. Did he seem pleased to have you as

13 his coach officer?

14 A. I...

15 Q. If you would like to look at your

16 notes...

17 A. No, I don't need...I don't know,

18 like I don't really have an answer for that. It

19 didn't...I mean, he was excited to be at work and I

20 don't...I don't think I was looking for that when he

21 first arrived.

22 Q. Apart from Constable Rusaw, had you

23 coached other recruits prior to Mr. Rusaw?

24 A. I coached three recruits prior to

25 Michael Jack. I coached, including Ken Rusaw,

 - 16 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 there's three others.

 2 Q. Did they all go on to become

 3 successful...meet the requirements and become

 4 constables?

 5 A. They did.

 6 Q. They did. Going back to Exhibit 24,

 7 the guidelines, can you describe the key roles and

 8 responsibilities, please, for the Tribunal of a

 9 coach officer?

10 A. In here it says, "Develops a plan of

11 training, completes all evaluations in a timely

12 manner following the submission schedule, forwards

13 completed PCSO66P to supervisor for review and

14 signature, provides ongoing feedback to the

15 probationary constable, identifies deficiencies in

16 performance, works with supervisor and Career

17 Development Bureau to create a work improvement

18 plan, if required, for performance deficiencies,

19 recommends permanency or release from employment."

20 Q. Okay, and just looking at page four,

21 I see that there are a number of different positions

22 listed. Who are those positions in addition to

23 coach officer?

24 A. Accountable supervisor would be the

25 shift supervisor, so at that point it was Sergeant

 - 17 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Flindall.

 2 Q. Yes?

 3 A. Detachment commander was the

 4 Inspector, which was Mike Johnston at that point.

 5 Regional commander would be the Superintendent and

 6 they work out of Orillia.

 7 Q. Yes?

 8 A. And Career Development Bureau, and

 9 I'm not sure who would fill that role.

10 Q. Looking at all of those positions

11 and roles, do they all have some varying degrees of

12 responsibility for coaching a recruit?

13 A. Yes.

14 Q. The coach officer I see is at the

15 very top of the list. Can you tell me why the coach

16 officer is at the top?

17 A. I would say that it's likely either

18 this is done by rank or this is done by who has the

19 closest contact to the recruit.

20 Q. So, the closest contact, the person

21 who has sort of hands-on, it would appear. Career

22 Development Bureau, for example, at the bottom of

23 the list, would they have any contact, so to speak,

24 with a recruit?

25 A. I would think not.

 - 18 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. Not. And the Superintendent, second

 2 up from the bottom, would they have any contact with

 3 the recruit?

 4 A. Little, if any.

 5 Q. Little, if any. And the detachment

 6 commander again?

 7 A. I mean, they're in the same office,

 8 so there would be contact, some communication.

 9 Q. Some communication. And the

10 accountable supervisor?

11 A. That would be fairly regular

12 communication.

13 Q. And the coach officer reports to the

14 Staff Sergeant accountable supervisor?

15 A. The Sergeant, I think.

16 Q. The Sergeant?

17 A. Yeah.

18 Q. Does each of those positions have

19 responsibility in terms of reviewing the performance

20 evaluations of the recruit?

21 A. Yes.

22 Q. Is it the coach officer that starts

23 with the performance...the first draft, so to speak,

24 of the performance evaluation?

25 A. Yes.

 - 19 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. And the draft is what, you would

 2 send that up the chain once and then each person up

 3 the chain would receive a copy?

 4 A. Yeah, it would go to the supervisor

 5 and then...I think it goes up to the supervisor and

 6 then the detachment commander and then to Region,

 7 and then once everything is...then it comes back to

 8 the recruit and then goes to Career Development

 9 Bureau. And then Career Development Bureau would be

10 ...they have a consulting side of it as well, I

11 guess.

12 Q. Can you tell me, would each role and

13 responsibility have a reviewing role? In terms of

14 the performance evaluation?

15 A. I believe up until Career

16 Development Bureau, I don't know what their role is

17 really, but the others would.

18 Q. And would they have a role to input?

19 Would each of these have a role to input as well?

20 A. From regional commander down has a

21 comments section on each PCS66.

22 Q. So, the coach officer...the coach

23 officer prepares the draft, correct?

24 A. Yes.

25 Q. And then the Sergeant would review

 - 20 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 it and potentially comment?

 2 A. Yes.

 3 Q. And the detachment commander, again

 4 would he review it and potentially comment?

 5 A. They all...I don't think I've ever

 6 seen one where they don't comment.

 7 Q. Okay, and is that set out in the

 8 performance evaluation? So, does it contemplate

 9 that each would have a role in terms of the

10 evaluation?

11 A. It does, there's a section for each

12 of them.

13 Q. And I'll be showing you the

14 evaluations later and perhaps you could point out

15 exactly where on the document.

16 Constable Filman, you mentioned that the

17 coach officer has a hands-on role with the recruit?

18 A. Yes.

19 Q. How much time would you estimate

20 that you spent coaching Jack in his first three

21 months?

22 A. In the first three months, other

23 than time when, like if I had vacation or if I had

24 days off, you're with the recruit for every shift.

25 So, any time you're in the vehicle you're with the

 - 21 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 recruit.

 2 Q. So, would we say hundreds of hours

 3 in three months?

 4 A. Yes.

 5 Q. What specific coaching did you

 6 provide to Jack? And please feel free to consult

 7 your notes, the chronology, and sort of perhaps just

 8 listing, if you can, the coaching that you provided

 9 to him, please?

10 A. I mean, so in policing, especially

11 in a rural area, you can't really determine what's

12 going to come your way or what you're going to

13 encounter, other than if you're doing traffic. So,

14 what my vision of the role of coach officer is you

15 go out and try to stop vehicles and give them...show

16 them, the recruit, how a traffic stop is done, how

17 to write a ticket, how to do a traffic report if you

18 get a motor vehicle collision. If you deal with an

19 impaired driver, how you deal with an impaired

20 driver and what the steps are. And then any other

21 call that comes your way, so if you deal with a

22 break and enter you show them how to deal with a

23 break and enter. If you arrest somebody, then the

24 process of how to prepare the documents for court,

25 what is required for the Crown brief. As well, the

 - 22 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 detachment has resource binders, so to show here's

 2 the steps, here's what's required, here's the order.

 3 So, it's really...it's really dictated by

 4 what comes your way and what you encounter. You

 5 can't really set out on a day and then, "Well, today

 6 I'm going to show you how to arrest somebody,"

 7 because I don't know if that's going to happen. But

 8 when those things happen, then I showed him how to

 9 do those things.

10 Q. How would you describe your coaching

11 style, Constable Filman?

12 A. Well, and I mean, if you...when I

13 look at the Exhibit 28 and the Police Orders and it

14 talks about ability to understand policy and

15 relevant statute law and have a good reputation.

16 Like it's with the public and with detachment

17 members, it's...to me, it's an example, you're there

18 to be an example. I've never looked at it as a

19 direct teacher, you're not there to teach. They've

20 been to school and they've been to the Police

21 College. They've shown that they have the ability

22 to retain the knowledge, they've passed the tests.

23 You're there to make sure that they didn't...or that

24 they don't make mistakes. That's why you're there

25 with them for the first three months all the time,

 - 23 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 and then at night it's more of a safety thing for

 2 the following few months, but it...it's a lead by

 3 example.

 4 So, when a recruit first arrives I will

 5 continue to do what I was doing before they got

 6 there, so I will take the lead on all the calls and

 7 slowly transition it to where I want them to take

 8 the lead to...like, the first vehicle stop we do,

 9 I'm probably going to do the stop. Although they do

10 vehicle stops at Police College, I'm probably going

11 to do the stop and the approach and transition it to

12 them doing it, and make sure that they're doing that

13 correctly.

14 Q. So, it's not a top down kind of

15 coaching, it's more of a...what did you mention,

16 lead by example?

17 A. Yeah, and I mean, you're not...by

18 the time they get to you they've done most of the

19 things. They've been at the Police College, they've

20 done scenarios, they've done practice vehicle stops.

21 But there's nerves involved in real life, and

22 there's a lot to remember. So, you're more there as

23 a guide and leading by example than you are as an

24 authority or even a teacher, you're there to guide.

25 Q. To guide. And would they have...did

 - 24 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Mr. Jack have opportunities to ask questions?

 2 A. Sure, I mean, you're on a 12 hour

 3 shift, so other than times at the beginning of shift

 4 to prep and at the end of the shift when you're

 5 unloading, you're together all the time.

 6 Q. What was that like patrolling with

 7 Mr. Jack for 12 hours?

 8 A. It was fine. I didn't think we had

 9 any issues. I mean, we, you know, we seemed to get

10 along well. I mean, there's circumstances, right?

11 So, if...I know I can get...I can get into those,

12 but there were times where he wouldn't talk to me,

13 so...

14 Q. Yes.

15 A. It was more like if he was

16 frustrated, I guess, like part of my coaching, the

17 way I would do things is there's a certain point

18 where I believe they should be at a certain

19 standard, and that standard is that you've been

20 shown how to do things, you should be able to have

21 the task list and get that task list done in a

22 certain amount of time, so...and Michael was good at

23 creating a task list. But if I was to give a

24 specific example of any issue it would be when there

25 was a day where he had specific tasks, and I

 - 25 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 remember there was three, and I said okay, well,

 2 this one...there was a certain amount of time, I

 3 said, "That should take about this long, this should

 4 take this long, so if I give you three hours that

 5 would be fine." "Yeah, okay."

 6 And actually I remember I gave him an extra

 7 hour before I came back. When I came back I asked

 8 how it was going he hadn't done any of those tasks.

 9 But as a coach I need him to be out doing this with

10 me, so I asked...I said, "Well, you're going to have

11 to come out with me. Like, I can't leave you here,

12 I can't keep coming back. We'll try that again

13 another day, but come out," and he was obviously

14 upset by that, but he hadn't got it done and he just

15 chose not to...to speak to me.

16 Q. So, for how long would he not speak

17 to you? Is this in your chronology? Just direct me

18 to the March time frame.

19 A. Yeah, there is...it just says March,

20 there's no specific date, but...

21 Q. How did you feel when he wouldn't

22 speak to you, as his coach?

23 A. Well, it was...it was frustrating

24 and I mean, if I look at this, like...this was more

25 the one I was speaking of, but there was one

 - 26 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 occurrence where I realized he wasn't speaking to me

 2 and I began to stop vehicles. He wasn't even

 3 getting out of the car, so for me, you're in a rural

 4 police service, your back-up, if you're by yourself,

 5 is quite a distance, so...but vehicle approaches can

 6 be probably one of the most dangerous things we do.

 7 You don't know what you're going to encounter.

 8 So, he wasn't getting out of the car and he

 9 wasn't speaking to me, and I noted that he was doing

10 that. And when I was coming back I would do up my

11 notes and I could see that he was just trying to see

12 the driver's licence of the person that I had

13 stopped, so he could make notes about it, even

14 though he wasn't participating in the work. So, I

15 think I made...it was seven or eight vehicle stops

16 before I finally confronted him on the fact that he

17 wasn't speaking to me, and I asked if he was sick or

18 if he was tired or if he just didn't want to be

19 there, and I'm happy to take him home.

20 That's based on the fact that the

21 dispatcher thinks we're a two unit car, so they

22 expect that to be my back-up. He's not acting as my

23 back-up. Not that we ran into a problem, but I

24 mean, if I'm 25 feet away he should be out on the

25 other side of the car, not sitting in a cruiser.

 - 27 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. Did you tell him this?

 2 A. Yeah.

 3 Q. And what was his response? Did he

 4 communicate at all or...

 5 A. Well, he gave a...he just said he

 6 wasn't tired and that, and then it was kind of left

 7 at that and then he went back to work, like he

 8 started acting properly.

 9 Q. Do you recall, by any chance, a

10 discussion with him about his upcoming first

11 evaluation? Do you recall that discussion? I just

12 want to...you might want to refresh your memory

13 if...

14 A. Yeah, no, I do, I remember...

15 Q. Do you?

16 A. ...telling him that it was...that I

17 would be giving him his first evaluation and telling

18 him that there was going to be areas where there is

19 room for improvement. Which is understandable, you

20 have to...you can't start...you can't show up on day

21 one and just be able to do everything perfectly.

22 So, I told him there would be issues and he just

23 told me he wouldn't be taking any crap.

24 Q. How did you feel when he...when he

25 said that to you as his coach?

 - 28 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 A. Well, I told him, "Like, I'm not

 2 giving you crap, I'm giving you examples of where

 3 things need to be improved." I've never experienced

 4 that, it was just...like to me it's constructive

 5 criticism. You have to be made aware of things that

 6 you're not doing properly. That's my job, it's just

 7 as a guide, this is how you need to improve that. I

 8 didn't...honestly, I didn't know how to take that.

 9 Q. Did you have an opinion about why he

10 would say that?

11 A. No, not at all. I mean, like I

12 said, prior to that we got along completely fine.

13 So, there's no reason for him to react that way.

14 Q. Was there anything that would have

15 made Jack think that you would have been unfair to

16 him in his performance evaluations?

17 A. I don't think so.

18 MR. TAPP: Objection, that is...she's

19 questioning the mind of Mr. Jack by that

20 question.

21 THE VICE-CHAIR: Okay, continue.

22

23 BY MS. SINGH:

24 Q. I'm just going to show you Exhibit

25 19, which is the performance evaluation for the

 - 29 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 report month two. Sorry to keep giving you more

 2 paper, sir. It's already an exhibit.

 3 THE VICE-CHAIR: What exhibit is it? Do

 4 you know?

 5 MS. SINGH: Yes, I do, it is Exhibit 19,

 6 sir.

 7 THE VICE-CHAIR: Okay, thank you.

 8 MR. JACK: What exhibit was that?

 9 MS. SINGH: 19.

10 MR. JACK: Thank you.

11

12 BY MS. SINGH:

13 Q. Can you identify that document,

14 please?

15 A. It's a PCS66, or a performance

16 evaluation. It's a probationary one.

17 Q. Did you prepare that document,

18 Constable Filman?

19 A. I did.

20 Q. Did you discuss it with Jack?

21 A. Yeah.

22 Q. Did Jack have any comments?

23 A. So, the way...like I said, I had

24 told him prior to it being completed and given to

25 him that it would be coming, and that was that other

 - 30 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 conversation. The way these work is I would prepare

 2 it, I would give it to the Sergeant, he reviews it,

 3 it comes back down and then it's given to the

 4 recruit, and he did make comments.

 5 Q. And what were his comments,

 6 Constable Filman, please?

 7 A. He wrote, "I only disagree on the

 8 flexibility aspect of my evaluation. I should have

 9 been more informed to be proactive to answering the

10 phone first, I would have known better and would

11 have done so."

12 Q. Were you surprised by Jack's

13 comment?

14 A. Sorry, I just want to look at the

15 flexibility and see what...I mean, it's a...I don't

16 know if I'm surprised. Like, it's...the comment

17 that I make isn't specifically to the phone, it's

18 that if you're in the office and there's times where

19 you're doing paperwork, but if anybody is in there

20 they're probably doing paperwork. And you have to

21 be flexible in if the door buzzer is buzzing you

22 have to go up and answer the door. If the phone is

23 ringing you need to answer the phone, if the radio

24 calls and there's another call to do, you might have

25 to jump on and do that. So, it's about being

 - 31 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 flexible in that although you're on one task, you

 2 have to be able to stop doing that. And whether

 3 it's more important or less important than what

 4 you're doing, you have to be able to go do that, you

 5 know, just answering the door or answering the

 6 phone.

 7 Q. Were you surprised that he would put

 8 ...that he would dispute your rating on that

 9 particular category?

10 A. I don't know if...like, I don't know

11 if I'm surprised, it's something that...I mean, it's

12 more that it's something that you should know what

13 to do. Like, it's when you're in that role as a

14 front line constable, you have to be willing to stop

15 what you're doing and move on, whether it's in the

16 office or out on the road. So, you know, I'm

17 surprised that...I guess if I was surprised about

18 anything it's that he would dispute that for...only

19 on the fact that it's probably one of the most

20 common things that you have to be, you have to be

21 flexible.

22 Q. Yes. Did you explain to Jack what

23 he needed to improve in relation to the categories

24 that he was unsuccessful in?

25 A. Well, yeah, every time you do a

 - 32 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 PCS66 and something has a "Does not meet

 2 requirements" it has the example of what the issue

 3 is and then it comes with a work improvement plan.

 4 So, the work improvement plan is, "Here's what you

 5 need to do to correct that issue."

 6 Q. And in each case that a deficiency

 7 was found by yourself, would you create a work

 8 improvement plan for Mr. Jack?

 9 A. Yeah, you have to.

10 Q. And are the work improvement plans

11 also, like the performance evaluations, sent through

12 that chain of command set out in the guidelines?

13 A. Yeah, they go together, so if you do

14 ...when you prepare this document, you have to

15 prepare the work improvement plan and attach it to

16 the back and they go up together.

17 Q. They go up together for a review and

18 comments?

19 A. Yeah, and I mean, you might end up

20 where...like it's a situation where I write it, but

21 if they say...like they looked at the work

22 improvement plan and said, you know, "We would also

23 like you to say, you know, this" then you would do

24 that. I can't think if that actually happened, but

25 they might add to it or take away from it.

 - 33 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. Did Jack ever tell you that he did

 2 not understand what you set out in the work

 3 improvement plan or ask you for more explanation?

 4 A. No.

 5 Q. Who decides, Constable Filman, when

 6 a probationary is ready to patrol on their own?

 7 A. Well, there is a set time frame, so

 8 there is a set time when they're allowed to. And

 9 usually I would say that when that time frame is met

10 that would be the time that it happens and I think

11 in my opinion it's important that they do do that.

12 So, usually if it's three months, I try to make sure

13 it is the three months. And the reason being is

14 that if they're doing well, but you're right beside

15 them, that doesn't really tell you what they're

16 going to do when you're not there. So, you have to

17 give them the ability to go and do it without you

18 present, like stop...even just a vehicle stop. You

19 have to know that they're going to be able to do

20 that without you there. So, there's three months on

21 day shift, so after three months an officer is

22 allowed on days to go out by themselves and...

23 Q. Just directing you again to Exhibit

24 28, Human Resources 6.4, the Police Orders

25 assignment in the middle of the page.

 - 34 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 A. Oh, yes. And then...oh, sorry, so I

 2 guess it's eight weeks.

 3 Q. So, even earlier than three months?

 4 A. Yeah, and it's four months on

 5 nights. Now, the thing is with this and...this

 6 guidelines, this was different for me with Michael

 7 than it was with the other recruits. It changed

 8 after Ken Rusaw was hired.

 9 Q. Yes?

10 A. This one is actually dated 2008, so

11 things were a little bit...it was three months, I

12 believe, before that, but...but for me, so it's

13 important that they be allowed to do that, to show

14 that they are able to be out on their own, and they

15 are able to complete their tasks without somebody

16 right there beside them.

17 Q. Do you recall talking with Jack

18 about patrolling on his own?

19 A. I don't have a specific recollection

20 of it. I think I do recall just asking him if he

21 was comfortable with it, but I wouldn't say that I

22 have a clear memory of that.

23 Q. Do you have a recollection of

24 whether he expressed any concern about patrolling on

25 his own?

 - 35 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 A. No, I don't. I don't remember him

 2 giving any concern.

 3 Q. Do you recall when Jack got his

 4 night wings?

 5 A. Again, I think it was right at the

 6 four months. And I mean, it's just the ability, it

 7 doesn't mean you have to. And it doesn't mean that

 8 he always did it. People do double up and if they

 9 ...if they want to and if they don't, so...and

10 currently after 10 p.m. you mandatorily do double up

11 no matter what, so...but I don't remember back then

12 specifically when he was.

13 Q. Did you recommend that Jack get his

14 night wings, Constable Filman?

15 A. I don't like recommend, I guess,

16 it's just he was allowed to be on his own and I had

17 no issue with that. I think it's important.

18 Q. Would the decision to grant him his

19 day wings and his night wings need to be approved by

20 the supervising Sergeant?

21 A. I don't know that there's any red

22 stamp on it. I don't recall that happening and I

23 don't remember there being anything to say I don't

24 think this should happen.

25 Q. Do you recall your supervising

 - 36 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Sergeant talking to you about signing Constable

 2 Payne to be Jack's go-to mentor at the end of May

 3 2009?

 4 A. I don't remember when it happened.

 5 I do remember having a conversation about having Jen

 6 help, but I don't remember exactly when it happened.

 7 Q. Who is Jen?

 8 A. Sorry, Jen, Constable Payne.

 9 Q. In your view, did Jack need

10 Constable Payne as a go-to mentor, in addition to

11 yourself?

12 A. At the beginning I think it was more

13 in March, as you can see in the chronology, there

14 were those times where, like I say, he wouldn't talk

15 to me or we would have those issues. And I think

16 that's what brought us to that point is that I was

17 ...I was voicing my concern with that and...

18 Q. Who were you voicing the concern to?

19 A. Sergeant Flindall.

20 Q. Yes?

21 A. And I don't know if that...and I

22 didn't ask and it really didn't matter if it was...

23 if they thought well, maybe he didn't really like me

24 as a coach or maybe a new face would help him. I

25 don't know why, but I thought...I mean, in my

 - 37 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 opinion, if that helps him, then it helps him and

 2 sure, why not have a second person do that?

 3 Q. Did Sergeant Flindall give you any

 4 advice about how to deal with Jack when he refused

 5 to speak to you?

 6 A. I don't remember specific advice. I

 7 mean, I remember talking about it and just saying

 8 I'm having these issues where...and it's concerning.

 9 But he just, you know, it would be just, "Continue

10 on with what you're doing and address them." And

11 really, I think that's all that I could do at that

12 point is point out the issue and continue on and try

13 to correct the issue.

14 Q. Was there a concern about liability

15 if he wouldn't speak to you?

16 A. No, I mean, it wasn't all the time,

17 right? So, it was just focused on a certain event

18 and then it would go back to normal. So, we didn't

19 speak...

20 Q. Without...without a conversation

21 about why?

22 A. Well, we would talk about it. Like

23 him and I in the car, you're in the car for 10

24 hours, like we would just resolve it. Like, you

25 know, it's not...I'm not an argumentative person, so

 - 38 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 I'm not going to argue with him, but I know I

 2 pointed it out and then we would move back to where

 3 things are working properly, where there's

 4 communication again.

 5 Q. But you continued to feel concerned

 6 about these events?

 7 A. Yeah.

 8 Q. Yes, okay. When Constable Payne was

 9 assigned to be a go-to mentor, was it your

10 understanding that you would continue to play a role

11 in coaching?

12 A. Yeah. No, absolutely.

13 Q. How did you feel about continuing to

14 be his coach from that point forward?

15 A. Oh, I had no problem with that. If

16 anything it's a good thing, it's good for him and

17 it's good for me. It gives me...like probably the

18 most onerous thing is trying to get the evaluations

19 done, and I had two to do at the same time. Plus I

20 was doing other things, I still had my

21 responsibilities, I still was doing calls, so when

22 the recruit has their day or night wings, then I'm

23 answering calls. Either I'm backing them up or I'm

24 attending with them or I'm doing my vehicle stops or

25 I'm attending calls on my own.

 - 39 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. So, with Constable Payne as a go-to

 2 mentor, that took some pressure off, is that...

 3 A. Well, at least then if I had...if I

 4 needed time to do something, I had time to do it. I

 5 could...I could rely on the fact that she's going to

 6 be there too.

 7 Q. Did you speak to Jack about

 8 Constable Payne having this role?

 9 A. I...I don't remember if I had a

10 conversation with him or not, or if they did. I

11 honestly don't remember.

12 Q. Do you recall Jack expressing any

13 concerns to you about Constable Payne being his go-

14 to mentor?

15 A. No, I don't remember any concerns.

16 Q. I'm just showing you a document,

17 it's Exhibit...sorry Exhibit 25.

18 MR. JACK: I'm sorry, what exhibit?

19 MS. SINGH: Exhibit 25. Did you get

20 that?

21 MR. JACK: Yeah, it's a report...

22 MS. SINGH: It's the wrong one? Here

23 you go.

24 MR. JACK: ...for month two, right?

25 MS. SINGH: Okay, so if you want to give

 - 40 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 me back that...that's the wrong one?

 2 MR. JACK: Yeah, it's the wrong one.

 3 MS. SINGH: Okay. Sorry about that.

 4

 5 BY MS. SINGH:

 6 Q. Can you identify that document,

 7 please?

 8 A. Yeah, it's a PCS66 probationary, so

 9 it's a performance evaluation.

10 Q. Did you prepare the document?

11 A. I did.

12 Q. For what period of time was that

13 document for?

14 A. May the 9th to June 9th.

15 Q. Is it signed by you?

16 A. It is.

17 Q. What is the date?

18 A. It's August 16th.

19 Q. Did you discuss this evaluation with

20 Jack?

21 A. I don't recall if I discussed it

22 with him specifically or not.

23 Q. Did Jack have any comments?

24 A. He did.

25 Q. What were his comments, please?

 - 41 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 A. That, "The evaluation is two months

 2 behind, was advised there will be negative

 3 assessments/ratings in the evaluation that are still

 4 outstanding, changing platoons and coach officers."

 5 Q. Was Jack's fifth month evaluation

 6 behind?

 7 A. It was.

 8 Q. It was. Why was it late?

 9 A. So, this was my error, and like I

10 said, between Ken Rusaw and Michael Jack being hired

11 and becoming recruits, the standard and the

12 procedures changed. So, with Ken Rusaw I was

13 required to do a PCS66 monthly. In Michael's

14 recruit class they were compressed, where two months

15 would be as one and I got confused at the time that

16 this one was due and thought it was a joint one, and

17 it wasn't. So, that threw off the numbering and it

18 was noted that there was one missing.

19 Q. Did your supervising Sergeant follow

20 up with you about it being late?

21 A. Yeah, and that's why they come out

22 at almost the same time, because I thought it was

23 the next one. It was just...it was confusing having

24 so many to do at that time. So, he point...they

25 made me aware that one was missing, and so I had to

 - 42 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 do one back at that time frame, to make sure that he

 2 had like numbers one, two, three, four, five or

 3 whatever.

 4 Q. These are quite detailed documents.

 5 Are they...do they take a long time to do?

 6 A. Well, they do, and most of it is

 7 just if you have to look up what the person has

 8 done, then...or you have to chase, like it makes it

 9 difficult. So, it's very easy in the first couple

10 of months, because you're there all the time. So,

11 you know exactly what they've done, you're going to

12 be there, you've seen what they've seen, you've done

13 what they've done. But as time goes on and they're

14 on their own, it becomes more difficult and either

15 you've got to search out what they've done or you

16 rely on them to present you with what they've done.

17 Q. And did you do one or the other or

18 both with Jack?

19 A. I would have done both. That's what

20 made it easy, see with...that's why I had no problem

21 when I was undertaking it. Ken Rusaw was very...he

22 was very good at giving me an e-mail with everything

23 that he had done, and specifics on Highway Traffic

24 Act and things like that, where I had a harder time

25 ...it was harder with Michael to get him to give me

 - 43 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 all that, I kind of chased a bit more.

 2 Q. Did Constable Jack ever provide you

 3 with his what he had accomplished in a particular

 4 period of time?

 5 A. I think he did, but it...it wasn't

 6 ...I know it wasn't as easy as it was, it wasn't as

 7 specific or it wasn't...it didn't include everything

 8 that I needed to have it include.

 9 Q. In addition to what Jack provided

10 you or told you, where else would you get

11 information that you needed to have included in

12 these performance evaluations?

13 A. Mostly from RMS. So, the report...

14 Q. What is RMS?

15 A. The report managing system.

16 Q. Can you describe that please?

17 A. So, other than vehicle stops or

18 encountering somebody on...if you give a ticket,

19 you're not generally going to have an incident on

20 report managing system, but any call that you're

21 dispatched to or any call that you create yourself

22 or are assigned to is going to generate an incident

23 number, and associate to your badge number. You can

24 typically search somebody's badge number to see

25 which calls they're assigned to. Or what calls in a

 - 44 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 certain time period they have been assigned to.

 2 Q. So, is RMS a secure system?

 3 A. It is.

 4 Q. Would those calls, RMS, be all that

 5 you would look at in addition to what the recruit

 6 would provide you?

 7 A. No, and I mean, so if...at a certain

 8 point it became necessary for Constable Payne to

 9 tell me things. Like there was a...I think it was

10 either a month or six week period where I was

11 assigned to a bit of a project, so I wasn't coming

12 in in uniform, I was coming in in plainclothes, my

13 shift was different. So, I wouldn't be there, I

14 wouldn't even hear the radio calls, so I would rely

15 on other people to tell me okay, this happened or

16 there were these incidents, right?

17 Q. So that you would also speak to

18 other people on the platoon...

19 A. Yes.

20 Q. ...to get their input?

21 A. Yes.

22 Q. Going back to that Exhibit 25, for

23 report month five, did Jack tell you that there

24 would be or...that there will be negative

25 evaluations, why did Jack think that there were

 - 45 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 going to be negative evaluations?

 2 A. What he...what I take from his

 3 comments, I guess, are that he's aware that...and

 4 he's put a hyphen or slash with ratings, is he means

 5 that where there is...there's going to be "Does not

 6 meet requirements," which means there's going to be

 7 work improvement plans. So, he was made aware that

 8 there would be work improvement plans, which go with

 9 the "Does not meet requirements."

10 Q. Did you speak to Jack about changing

11 platoons and coach officers?

12 A. At some point, but not prior to

13 this.

14 Q. So, it's not on the basis of your

15 conversation that he put that comment into Exhibit

16 25?

17 A. I don't think so.

18 Q. Once you knew that Jack was changing

19 platoons and coach officers, how did you feel about

20 continuing to prepare his performance evaluations

21 for months six, seven and eight?

22 A. Well, I didn't have any problem with

23 it, it's work product and it's necessary for him to

24 be aware where there's improvements needed, so that

25 when he is on the new platoon he knows where those

 - 46 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 things are needed and have to occur.

 2 Q. And did you also prepare work

 3 improvement plans for Jack for those two months?

 4 A. I did.

 5 Q. I'm showing you a document, can you

 6 identify that document, Constable Filman?

 7 A. It's another PCS66 for probationary

 8 performance evaluation report.

 9 Q. And for what month is it, report

10 month?

11 A. June 9th to August 9th.

12 Q. Did you prepare that document?

13 A. I did.

14 Q. If you could turn up the...if you

15 could turn to the portion on criticism, please?

16 Sorry, to self-confidence, please?

17 A. Yeah.

18 Q. What were your comments in relation

19 to self-confidence?

20 A. "During the evaluation period Jack

21 has been involved in numerous situations where he's

22 required disciplinary action or instruction on how

23 to complete tasks properly. It has been found that

24 PC Jack did not take the criticism well and will

25 avoid that person for a period of time."

 - 47 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. In addition to the experiences that

 2 you told us about in terms of Jack not communicating

 3 with you, did others mention that Jack would not

 4 communicate with them to you?

 5 A. Yeah, I mean, from what I recall

 6 there was issues in shift briefing or something and

 7 then they told me that afterwards they hadn't...

 8 well, "He's not talking to me now."

 9 Q. Do you recall who told you, if you

10 want to look at your chronology...

11 A. I think I believe it was either

12 Constable Moran or Constable D'Amico.

13 Q. That Jack would not talk to them?

14 A. That he had stopped talking to them.

15 Q. Was that...do you know whether that

16 was in relation to perceived criticism?

17 A. Or criticism, yeah, I think it...

18 Q. Or real criticism?

19 A. Yeah, it was something...I think I

20 was on the project at the time, but it was something

21 to do with they were unhappy with something he had

22 done. I think it was in regards to the pen that had

23 the capability of recording, and they confronted him

24 on it and voiced their displeasure.

25 Q. Sorry, if you could just tell us

 - 48 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 what you're talking about? A pen...

 2 A. He had a pen in his uniform that was

 3 capable of audio and video recording, and...

 4 Q. Is that part of the uniform?

 5 A. No, it's not. And he had made them

 6 aware that he had it, and they were...they didn't

 7 like that he had that. They were concerned, I mean,

 8 I guess, why somebody would have that or what you

 9 would be using it for. It's not...I mean, there's

10 lots of reasons not to have it.

11 Q. Had Jack shown you this recording

12 pen before?

13 A. I don't remember seeing it before

14 they had mentioned it to me, but again, I think I

15 was on that project. I don't...I don't remember

16 when I became aware of it, I did become aware of it

17 at some time, but I don't recall when.

18 Q. Did you have a conversation with

19 Jack about that recording pen?

20 A. I don't remember specifically me

21 having the conversation, or I don't remember...I

22 remember them telling me they had talked to him and

23 Mary D'Amico, Constable D'Amico had said that she

24 had told him that she didn't like him having it on

25 him. I mean, at the end of the day if she's done

 - 49 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 that, I don't think it's my role to then continue

 2 with that. That's been said, it's been done.

 3 Q. Can a police officer use a recording

 4 pen when they're doing an investigation?

 5 A. I don't...I don't know specifically

 6 if there's anything that says you can't. I would

 7 say that you probably shouldn't when there's mainly

 8 ...I mean, Toronto police, current police officers,

 9 their forces have body cameras that they're testing

10 out, but there's a lot that goes behind that.

11 There's policy, there's how it's used, when it's

12 used and how to present it as evidence. If you're

13 using it and you have that and it's not got that to

14 support it, there's a lot of things that can come as

15 a...that can generate problems from that.

16 And I mean, it's like with you keeping

17 notes. You keep notes, if you do a...if you submit

18 your notes to a specific investigation, it's clear

19 and cut what part's for that investigation and

20 what's not. But if you record it on a 12 hour

21 shift, it creates privacy concerns for people. I

22 think people need to be aware that you're doing it.

23 There's a lot of concerns that revolve around that.

24 Q. So, there are privacy concerns and

25 can you record someone without their knowledge? As

 - 50 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 far as you know?

 2 A. If you're going to do it for police

 3 purposes, there's times when you would need specific

 4 types of warrants to do that, intercept

 5 communications or first party consent. And for a

 6 police officer on general patrol, I don't think

 7 you're really supposed to be doing that without

 8 letting them know.

 9 Q. Did Jack ask you if he could have

10 this recording pen at the detachment?

11 A. I don't remember that happening.

12 Q. You don't recall him asking you for

13 advice, "I've got this pen, can I use it in my

14 performance of my duties?"

15 A. There may have been where he talked

16 about it and I said you can't...like, even if you're

17 ...you can't use it in the performance of your

18 duties daily. You have to tell people that you're

19 doing it. If he did ask me about it, if he asked me

20 before he got it I would have told him not to do it,

21 it just creates too many issues. And if he asked me

22 after I would be like...but I don't specifically

23 remember that.

24 Q. Do you recall any incidents of Jack

25 setting his own rules?

 - 51 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 A. One, I guess, there was a day shift

 2 that I came in for and night shift officers told me

 3 that he had been in since midnight. So, when I

 4 found him in the detachment I asked him and he

 5 confirmed that he had been in since midnight. I

 6 asked him what his plan was. Again, that's a

 7 concern for me, because now he's going to be...I

 8 think he was still with me then. Either that or he

 9 was on days, but it's a concern if somebody has been

10 up all night and they're going to try to work a day

11 shift. Fatigue, truck drivers wouldn't be allowed

12 to do it and now you're going to be operating police

13 vehicles, which could have stressful situations, you

14 could end up in a stressful situation. He told me

15 that his plan was to go home at noon, and at that

16 point I said, "Well, you'll have to do that today,

17 but you can't do that in the future."

18 Then when I was working on the project, I

19 guess, where I had my shifts changed and I was in

20 plain...not in uniform, I was going home at two or

21 three and when I was getting changed to go home he

22 came in to go get changed. And then I asked him

23 what he was doing he said he had come in at three,

24 and I asked if it was approved. He said it hadn't

25 been and I said, "Well, then you can't go home, you

 - 52 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 have to go back out, you're here until six."

 2 There's less of a...it's a night shift, so

 3 you've been...he had come in at three, you've got

 4 other people out there working, he's got to be with

 5 them. He went back out and then he came back in and

 6 said, well, the 2IC, and I don't remember who it

 7 was, told him he could go home. I said well, you

 8 can't...I remember telling them you can't let him go

 9 home, we've had this conversation, he has to come in

10 for a specific shift and the reason, the biggest

11 reason for that is that if a platoon was short and

12 he came in at midnight thinking, "Well, I can go

13 home at noon," you could end up with less police

14 officers on the road when the public and the

15 supervisors expect a certain amount of police

16 officers.

17 Q. So, does there have to be a certain

18 number of police officers on every shift available

19 to answer calls?

20 A. Well, each township...well, back

21 then the contract was each township had its

22 contracted number of police officers working at a

23 certain time and that was what was expected. And

24 then, with that being said, especially in the summer

25 months you're going to have people on vacation,

 - 53 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 you're going to have people unexpectedly call in

 2 sick. So, the platoons have a set number, I think

 3 currently, I can't really speak...I haven't been on

 4 a platoon in seven years, but the Sergeants will

 5 say, "I can't have anybody off on other time, like

 6 stat time or accrued time, below a certain number."

 7 And at that number that's when...so, if it's eight

 8 let's say, somebody could call in sick, but you

 9 can't give another person a stat day or a floater

10 day.

11 Q. So, Sergeant Flindall would have

12 expected that people on a shift would show up for

13 their shift?

14 A. Unless they're going to call in

15 sick.

16 Q. Okay, and so was it a problem then

17 for Jack to set his own schedule in terms of his

18 shift?

19 A. It is, it's...I mean, it's...

20 especially if you come in at midnight and to leave

21 at noon, like between noon and five p.m., I mean, if

22 the...if the sort of perceived limit was eight and

23 one or two people call in sick, now you're down to

24 six and if he goes in at five, now you're down to

25 five people. It just, it can...it can create issue.

 - 54 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 I don't know if it was an issue that day, but it

 2 can't be allowed to continue, because it could be an

 3 issue one day.

 4 Q. Did he speak to you in advance

 5 about, you know, are you okay with me, Coach Officer

 6 Filman if I...

 7 MR. TAPP: Objection.

 8 MS. SINGH: ...if I leave at...

 9 MR. TAPP: Leading questions.

10 MS. SINGH: ...3:00 p.m. or 12:00?

11 THE VICE-CHAIR: It was a fair question,

12 it wasn't leading.

13 THE WITNESS: No, he didn't speak to me

14 about that.

15

16 BY MS. SINGH:

17 Q. Did Jack have any comments, just

18 again looking at Exhibit 33, in relation to this

19 performance appraisal for month six and seven?

20 A. No, he didn't make any comments.

21 Q. I see under signature, employee's

22 signature, what does that say?

23 A. It just says, "Refused."

24 Q. Do you know whose signature...you

25 don't know? Do you want to check your notebooks?

 - 55 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 A. Yes.

 2 Q. Sometime around August 20th.

 3 A. Yeah, I'm sorry, I'm just...

 4 Q. That's okay, take your time.

 5 A. I'm missing that notebook. They

 6 come down from Orillia and I didn't...didn't get

 7 that one provided to me.

 8 Q. Do you have a recollection or...

 9 A. I do recall that he didn't sign it.

10 Like I don't...I do recall there being a note about

11 it, but he did not sign it.

12 Q. Okay.

13 A. Sorry, I don't...

14 Q. You can't find it?

15 A. No.

16 Q. What were the comments of the

17 supervising Sergeant in relation to Jack's six month

18 evaluation?

19 A. So, from Rob Flindall?

20 Q. Yes.

21 A. "PC Jack had been progressing

22 positively during this early evaluations, but it is

23 apparent from his current evaluation that he

24 requires continued direct supervision. PC Jack has

25 been spoken to about the deficiencies noted in his

 - 56 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 evaluation and a series of work improvement plans

 2 are being created to best assist PC Jack in

 3 successfully completing his probationary period.

 4 Q. Did you identify the skills that

 5 Jack needed to improve based on his performance in

 6 months six and seven?

 7 A. Yeah, like so I created the rating

 8 and then gave the example, and then there was a work

 9 improvement plan created for each.

10 Q. Do you recall what those were?

11 A. In the last evaluation?

12 Q. No, it would have been six and

13 seven.

14 A. Is that this current one? Sorry...

15 Q. Yes.

16 A. So, it was Provincial Offenses,

17 Federal Statutes, listening skills, radio

18 communications, resolution, follow-up orientation,

19 personal accountability, planning and organization,

20 respectful relations and self-confidence.

21 Q. Thank you. I'm showing you a

22 document. Can you identify that document, Constable

23 Filman?

24 A. Yeah, it's a PCS66 probationary

25 performance evaluation for month eight, which is the

 - 57 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 9th of August until the 9th of September.

 2 Q. And that's been marked as Exhibit

 3 35. Did you prepare this document?

 4 A. I did.

 5 Q. If you would turn, please, to page

 6 12 of the document? It references a meeting with

 7 down in the comments, I don't know if you see that,

 8 of the detachment commander...

 9 A. M'hm.

10 Q. ...with a meeting with OPPA

11 representative.

12 A. Yeah.

13 Q. Are you aware that such a meeting

14 took place?

15 A. I knew that it took place, yeah.

16 Q. Were you at that meeting?

17 A. No, I was not.

18 Q. Did you know what that meeting was

19 about?

20 A. I don't know if...I knew it was

21 happening. I don't know if I knew specifically what

22 it was about.

23 Q. That was a meeting with the OPPA

24 representative?

25 A. Yes. I knew that it happened. I

 - 58 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 don't know when I knew or how I knew, and I don't

 2 know if I knew the specific content, I just knew

 3 that it was happening.

 4 Q. Did you know that Jack had

 5 complained about your coaching to the OPPA

 6 representative or to the OPPA?

 7 A. No.

 8 Q. Did you ever learn that he had made

 9 a complaint about your coaching or inadequate

10 coaching?

11 A. No, this is the first time I've

12 heard that.

13 Q. I'm showing you another document,

14 can you identify it, please?

15 A. Yeah, it's a work improvement plan.

16 Q. And what is the date of that work

17 improvement plan?

18 A. It's the 27th of September, 2009.

19 Q. Did you prepare the document?

20 A. I did.

21 Q. What month was it in relation to?

22 A. I think it's for the eighth month or

23 report month eight.

24 Q. And it's Exhibit 44. Did that work

25 improvement plan go with the performance appraisal

 - 59 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 that we just looked at, Exhibit 35?

 2 A. It did. Sorry, I just want to...

 3 yeah, I mean, that's the month and that's the work

 4 improvement...

 5 Q. Right.

 6 A. ...for month eight.

 7 Q. Okay. How many deficiencies were

 8 you seeking to address in this work improvement

 9 plan, Constable Filman?

10 A. Sorry, there's two here, maybe

11 that's what...so in the top one there's 18.

12 Q. Did you have any help in preparing

13 that document?

14 A. I don't recall that I did. I mean,

15 like I said, if anybody up the chain didn't like

16 something that was written in it or wanted something

17 added they might have suggested that, but I don't

18 specifically recall that.

19 THE VICE-CHAIR: Counsel, at the

20 appropriate moment, I would like to take a

21 10 minute break. If this is appropriate

22 then...

23 MS. SINGH: Yes, it is.

24 THE VICE-CHAIR: Okay. 10 minute break.

25

 - 60 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 --- Upon recessing at 11:00 a.m.

 2 --- A BRIEF RECESS

 3 --- Upon resuming at 11:15 a.m.

 4

 5 THE VICE-CHAIR: Counsel?

 6 MS. SINGH: Thank you.

 7

 8 SHAUN FILMAN, resumed

 9 CONTINUED EXAMINATION-IN-CHIEF BY MS. SINGH:

10 Q. Just before we broke I showed...I

11 provided you with a document. Can you identify that

12 document, please?

13 A. I'm sorry, I've lost which...it was

14 the work improvement plan, so there they are. And I

15 think there's two there, so I think one is for seven

16 and one's for eight.

17 Q. I think it was an e-mail, sir.

18 A. Oh, sorry, the e-mail, yeah. Yes,

19 there is an e-mail. There's a bit of an e-mail

20 chronology, but the last e-mail is from Staff

21 Sergeant Ron Campbell to Sergeant Flindall, myself,

22 Jason Postma, who was a constable at the office at

23 that time, and Richard Nie, a constable at the

24 office, and CC'd to Colleen Kohen and Inspector Mike

25 Johnston.

 - 61 - S. Filman

 Ex-in-Ch (M. SINGH)

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

 2 A. It's August 27, 2009.

 3 Q. Do you recall receiving it?

 4 A. I don't specifically recall

 5 receiving it. I'm attached to it, so I did.

 6 Q. Can you tell us what the document

 7 says, please?

 8 A. It says, "Rob, Please read the below

 9 e-mails. Staff Sergeant Kohen requires electronic

10 copies of Constable Jack's evaluations e-mailed to

11 her. We will have a phone meeting 2:00 p.m. on

12 Monday 31st of August '09. I think we will call

13 from the boardroom phone," and "Ron" and then it

14 has, "You sure can," with a "505-4030. Are you

15 sending the PCS66P via e-mail as my office is in

16 Burlington detachment. I only go to GHQ once a week

17 to pick up the originals, Colleen."

18 Q. Who is Colleen?

19 A. I...she's a Staff Sergeant. I think

20 she's in Human Resources or she's Career

21 Development.

22 Q. Is it usual, just going back to the

23 Probationary Evaluation Guidelines, for someone from

24 Career Development to be involved in a recruit's

25 evaluations?

 - 62 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 A. I've never had it before.

 2 Q. And what about in the work

 3 improvement plans?

 4 A. For them to be involved in the work

 5 improvement plans?

 6 Q. In preparing those or reviewing

 7 those?

 8 A. I don't know, I don't...not that I

 9 know of. I know it goes to them eventually, but I

10 don't really think they have any real involvement in

11 it.

12 Q. So, were you surprised then to see

13 the Career Development Bureau being enlisted to help

14 with the work improvement plans?

15 A. I wasn't surprised. I think it...I

16 mean, it's probably the way they work and it's

17 probably a good thing.

18 Q. If we look back at Exhibit 33, for

19 example, which is report month seven...

20 A. M'hm.

21 Q. ...if you would turn with me,

22 please, to page 13, which is the last page? Do you

23 see a box there headed "Instructions"?

24 A. Yes.

25 Q. Can you tell us what that says

 - 63 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 underneath "instructions"?

 2 A. "At the conclusion of the evaluation

 3 period return a signed copy of the completed

 4 original document to the member, or the completed

 5 and signed original document to Career Development

 6 Bureau for tracking purposes."

 7 Q. Okay, and then going back to the

 8 guidelines, the document, the probationary

 9 guidelines document that I showed you before, in

10 terms of roles and responsibilities, which just to

11 assist is on page four of that document...

12 THE VICE-CHAIR: Sorry, what document

13 are we looking at?

14 MS. SINGH: We are just going back to

15 Exhibit 24, sir. Sorry, that's the

16 Probationary Evaluation Report Guidelines.

17 It looks like this.

18 THE VICE-CHAIR: Yes, I do have it, of

19 course.

20

21 BY MS. SINGH:

22 Q. That's it, and on page four,

23 Constable Filman, do you see Career Development

24 Bureau on that page?

25 A. Yeah, at the bottom.

 - 64 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. And what are their roles and

 2 responsibilities?

 3 A. "Tracks and reviews completed

 4 PCS066P submissions, provides assistance in

 5 performance management, works with Region/Bureau

 6 during the release of probationary constables,

 7 processes permanent status letter, forwards

 8 documentation to Shared Services Bureau for

 9 inclusion in Staff Personal 291 file."

10 Q. So, do they have a role then in

11 terms of reviewing a performance evaluation or a

12 work improvement plan?

13 A. In reviewing, yes.

14 THE VICE-CHAIR: Pardon me?

15 THE WITNESS: In reviewing. I mean,

16 they review.

17 MS. SINGH: I'm just going to show you

18 another document then. If I could have the

19 last document marked as an exhibit, please?

20 That was the e-mail of August 27th, 2009

21 will be exhibit...

22 THE VICE-CHAIR: That will be 170.

23 MS. SINGH: Thank you.

24 THE VICE-CHAIR: Okay, I have it as 171.

25 MS. SINGH: That's correct.

 - 65 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 THE VICE-CHAIR: Okay, so we are at 172.

 2

 3 --- EXHIBIT NO. 172: E-mail exchange between Messrs.

 4 Campbell, Flindall, et al., dated

 5 August 27, 2009

 6

 7 BY MS. SINGH:

 8 Q. I'm showing you a document,

 9 Constable Filman, do you have that document in front

10 of you?

11 A. Yes, I do.

12 Q. Can you identify it, please?

13 A. It's an e-mail from Staff Sergeant

14 Kohen to Sergeant Flindall, Staff Sergeant Campbell

15 and I'm carbon copied on September 14th, 2009.

16 Q. Do you recall receiving a copy of

17 that e-mail?

18 THE VICE-CHAIR: I beg your pardon, we

19 don't have a copy of that.

20 MS. SINGH: Did I not give you a copy?

21 THE VICE-CHAIR: No.

22 MS. SINGH: Sorry about that.

23

24 BY MS. SINGH:

25 Q. Can you identify the document,

 - 66 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 please?

 2 A. Yes, so it's that e-mail on the 14th

 3 of September, 2009 from Staff Sergeant Colleen Kohen

 4 to Sergeant Rob Flindall and Staff Sergeant Ron

 5 Campbell with me carbon copied, and it just...she's

 6 acknowledging that she's received the WIP, which is

 7 work improvement plan, and it looks good. She

 8 suggests that a comment be removed over the next few

 9 months to help him with these areas, and we should

10 not expect to resolve all of these immediately.

11 Also the PCS66P, it should read month

12 eight. "Once discussed, let's look at another

13 conference call maybe next week," and "If that works

14 with the new platoon," and it's from Colleen and

15 then it says, "Jack is expected to resolve the 10

16 items listed above by a second evaluation with the

17 new coach officer. This will ensure the proper

18 amount of time to work with his coach in achieving

19 these goals."

20 MS. SINGH: Can I have this marked as an

21 exhibit, please? That will be Exhibit 173,

22 sir?

23 THE VICE-CHAIR: Correct.

24

25 --- EXHIBIT NO. 173: E-mail from Colleen Kohen to Robert

 - 67 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Flindall, et al, dated September 14,

 2 2009

 3

 4 BY MS. SINGH:

 5 Q. Constable Filman, do you recall that

 6 Jack was charged with a Highway Traffic Act

 7 violation in August of...approximately August 2009?

 8 A. I do.

 9 Q. How did you learn of this?

10 A. I believe Sergeant Flindall told me

11 about it.

12 Q. Did Constable Jack contact you to

13 speak with you about this?

14 A. Yeah, I talked to him a bit.

15 Q. Did you talk to him at the office?

16 A. No, he...I recall he called me on my

17 cell phone. I was at home at the time.

18 Q. Had you given him your cell phone

19 number?

20 A. Yes, I had.

21 Q. Your personal cell phone number?

22 A. Yes.

23 Q. And what did you tell him to do?

24 A. I think I told him to contact the

25 OPPA. I mean, I was finished being the rep or I was

 - 68 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 still the rep for a bit at that time, but...

 2 Q. You were the rep of the, sorry, what

 3 was the acronym?

 4 A. So, the OPPA detachment rep.

 5 Q. Okay.

 6 A. In and around that time period, but

 7 I gave him advice on contacting them to proceed and

 8 no other real advice.

 9 Q. Why did you give Jack your personal

10 cell phone number?

11 A. Well, it was important that he have

12 it. I mean, especially when we're working, if he

13 needed to call me for something or if he needed

14 advice or if he had something that he needed some

15 direction on, I guess.

16 Q. Had he called you at your home prior

17 to this?

18 A. He had called my cell phone before,

19 yes.

20 Q. And you were available to speak to

21 him?

22 A. Yes.

23 Q. Had there been previous driving

24 incidents that you're aware of involving Jack?

25 A. Yes, there were.

 - 69 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. Can you describe those?

 2 A. I wasn't present for them, but he

 3 had put a vehicle into the ditch with Constable

 4 Gilliam, and then they allowed...they had a civilian

 5 attempt to pull them out of the ditch causing damage

 6 to the cruiser which wasn't damaged prior to that.

 7 A civilian had made a complaint that during the

 8 courses of his duties he had driven over her yard

 9 and caused damage. She hadn't made the complaint

10 directly to the OPP, but she was a court staff and

11 made the complaint at court, and I became aware of

12 it. She didn't want to make a big deal of it, being

13 that there is a close working relationship between

14 the OPP and court staff.

15 Q. Is there a policy about OPP vehicles

16 that you're aware of?

17 A. Yeah, I don't know the policy on

18 that.

19 Q. The policy, okay. Constable Filman,

20 did you ever observe any conduct towards Jack that

21 caused you concern that he was being subjected to

22 discrimination or harassment?

23 A. The only time that I saw that was

24 from a complainant, a person did call to...I can't

25 remember what it was, it was Sumcot Drive. That

 - 70 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 person was...a civilian had contacted OPP, they were

 2 a witness or a complainant to something. They

 3 didn't like something about their contact with

 4 Constable Jack over the phone. We were at the

 5 Bridge North Community Policing Office at the time,

 6 and that person called him a derogatory name.

 7 Q. Okay, anyone at the detachment, did

 8 you observe anyone at the detachment...

 9 A. No.

10 Q. ...call him names or anything of

11 that kind?

12 A. No, I didn't.

13 Q. Did you ever hear anyone call Jack

14 by the nickname, "Crazy Ivan"?

15 A. No, I didn't.

16 Q. Did Jack ever tell you that he felt

17 harassed or discriminated against?

18 A. No.

19 Q. Did you observe Jack behave

20 appropriately with other officers on the shift?

21 A. Yeah, I mean, he got the...he had

22 conversations with people and got along with them.

23 Q. Did Jack ever speak to you about his

24 accent?

25 A. He did.

 - 71 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 Q. What did he say?

 2 A. He asked me about speech therapy.

 3 He felt that he wanted to take speech therapy. Just

 4 he had concern over his accent and asked me how he

 5 could do that. So, again, I just...I told him that

 6 there's...the OPPA has the ability to help with that

 7 and he can contact them to do that.

 8 Q. Did you think there was a problem

 9 with his accent?

10 A. I didn't have a problem with it.

11 Q. Did anyone have a problem with his

12 accent?

13 A. Not that I know of.

14 Q. He was able to meet or to perform as

15 a probationary constable with his accent?

16 A. Yes.

17 Q. As an experienced coach officer, can

18 you tell us what is your opinion about why Jack did

19 not succeed?

20 A. I mean, a lot of it comes from

21 there's some task orientation to it and there's some

22 with taking the criticism and there's some with

23 just, I guess, wanting to communicate with me on it.

24 Like, he...I had no problems doing that, but there's

25 things that he would go and do without talking about

 - 72 - S. Filman

 Ex-in-Ch (M. SINGH)

 1 it first, or I would find that one time I do recall

 2 he called me on my cell phone and asked me for

 3 advice on something and then within minutes I got

 4 another phone call from another officer saying, "Did

 5 you just talk to Michael about this?" And I did,

 6 and he said, "Well, he just called me and asked me

 7 for advice on it as well."

 8 So I mean, in policing you're probably

 9 going to get different perspectives based on what

10 you tell people about what you're seeing. And if

11 you're not there it's one side of the story, I

12 guess, but that creates issues with coaching. If

13 you're going to ask me for the advice, then that's

14 what you need to do, and if you take the advice you

15 need to run with that.

16 I think probably that's maybe the biggest

17 hurdle, but then just taking the criticism and

18 acting on it. If you have a work improvement plan

19 and it has a specific thing to try to accomplish it

20 to work on that, and I think that's more where it

21 fell short. Obviously Mike's a very intelligent

22 person, he's got a degree, he speaks many languages,

23 has great personal history. It just didn't

24 communicate well to front line policing.

25 It could have communicated well into other

 - 73 - S. Filman

 Cr-Ex (L. TAPP)

 1 parts of the OPP, it just...patrolling was the

 2 issue, and that specific job, which is the job that

 3 I was asked to do the coaching at that time, he just

 4 didn't have the ability to change his tasks quickly,

 5 be flexible, things along those lines really.

 6 Q. Did you make your best efforts to

 7 help him?

 8 A. I hope I did, I think I did. That's

 9 all I can really say.

10 MS. SINGH: Thank you, Constable Filman.

11 Those are my questions, sir, thank you.

12 THE VICE-CHAIR: Thank you.

13 MS. SINGH: Sorry, before I...did we

14 make the last document an exhibit? I think

15 we did.

16 THE VICE-CHAIR: September 14th e-mail?

17 MS. SINGH: Yes.

18 THE VICE-CHAIR: Yes, Exhibit 173.

19 MS. SINGH: 173?

20 THE VICE-CHAIR: Yes.

21 MS. SINGH: Thank you.

22 THE VICE-CHAIR: Mr. Tapp?

23 MR. TAPP: Yes.

24

25 CROSS-EXAMINATION BY MR. TAPP:

 - 74 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Good day, Mr. Filman. Mr. Jack is

 2 going to hand you out a copy of a month one/two

 3 performance evaluation report. It is Exhibit 15.

 4 MR. JACK: No, no, no, it's not that

 5 exhibit.

 6 MR. TAPP: I might be mistaken on the

 7 actual exhibit, but...

 8 MR. JACK: Exhibit 19.

 9 MR. TAPP: It's Exhibit 19, okay.

10 MR. JACK: Tendered exhibit.

11 MR. TAPP: Tendered.

12 MR. JACK: We just have a better copy.

13 Their copy is very illegible, ours is much

14 better.

15

16 BY MR. TAPP:

17 Q. So, Mr. Filman, you recognize this

18 document, don't you?

19 A. I do.

20 Q. Okay, it bears your name as the

21 evaluator?

22 A. It does.

23 Q. And for the month period of...?

24 A. The 9th of January until the 9th of

25 March.

 - 75 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Thank you. This would be your very

 2 first evaluation of Mr. Jack?

 3 A. Yeah.

 4 Q. So, I would imagine you would have a

 5 good recollection of it? Maybe not all the

 6 contents, but you would recollect your first

 7 evaluation of Mr. Jack?

 8 A. I prepared this. I don't...like, I

 9 don't have a recollection of it.

10 Q. Okay, fair enough. Can you flip to

11 page nine of that document, please?

12 A. Yeah.

13 Q. Are those your comments under "Coach

14 officer comments"?

15 A. Yes.

16 Q. Okay, and the date of that signature

17 in there?

18 A. The 18th of March, 2009.

19 Q. Now, you specifically recognize that

20 signature as being yours?

21 A. It is.

22 Q. Okay. Correct me if I'm wrong,

23 there are a number of loops in that signature of

24 yours?

25 A. Yes.

 - 76 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Good. Mr. Jack is going to pass you

 2 what has been tendered as Exhibit 19.

 3 THE VICE-CHAIR: This isn't Exhibit 19.

 4 MR. JACK: No, sorry, Exhibit 22.

 5 MR. TAPP: Pardon me, Exhibit 22?

 6 MR. JACK: Yes, Exhibit 22.

 7

 8 BY MR. TAPP:

 9 Q. Who is the evaluator stipulated on

10 the cover?

11 A. That is me.

12 Q. And it's for what period?

13 A. The 9th of March until the 9th of

14 April, 2009.

15 Q. By then you would have had a

16 template of Mr. Jack's evaluation on your computer

17 or on your personal drive, based on the first

18 evaluation?

19 A. A template? So, I would keep all of

20 them and I just continued to work on them, if that's

21 what you mean by a template.

22 Q. Thank you. I direct your attention

23 to page nine of that evaluation, please. Are those

24 your coach officer comments entered there?

25 A. Yes, they are.

 - 77 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. And the date of your signature,

 2 please?

 3 A. It's the 15th of April, 2009.

 4 Q. Would that be when you made those

 5 comments and signed it?

 6 A. I would say it's when I made the

 7 comments for sure. I can't for sure say that's when

 8 I signed it.

 9 Q. Thank you. Keep that page open and

10 keep the same page in the previous evaluation one

11 and two, please, open before you. On month three

12 evaluation, and on month one and two, that is your

13 signature?

14 A. Yes, it is.

15 MS. SINGH: Asked and answered.

16

17 BY MR. TAPP:

18 Q. Okay, month three was not asked.

19 Specifically month three also, do you see the number

20 of loops in month three evaluation of your

21 signature, please?

22 A. I see my signature, yeah.

23 Q. Good. If I were to suggest it looks

24 like at least three loops, would I be correct or

25 would I be mistaken?

 - 78 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. Yeah, I mean, there's at least

 2 three, yeah, sure.

 3 Q. It's pretty consistent?

 4 A. Yeah, they're consistent.

 5 Q. Thank you.

 6 MR. JACK: I seem to be unable to locate

 7 two other copies of month four. Do you

 8 have month four?

 9 MS. SINGH: Yes, I have one.

10 MR. JACK: Good, so I'm going to give

11 one, it's tendered Exhibit 23...

12 THE VICE-CHAIR: Exhibit which?

13 MR. JACK: Tendered Exhibit 23.

14

15 BY MR. TAPP:

16 Q. The document you were just given is

17 month four performance evaluation report, is that

18 so, Mr. Filman?

19 A. Yes, it is.

20 Q. Thank you. And whose name do we see

21 as the evaluator?

22 A. I'm the evaluator and the evaluation

23 period is the 9th of April to the 9th of May, 2009.

24 Q. Thank you. Again, can you turn to

25 page nine of that document, please?

 - 79 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. Yeah.

 2 Q. And keep the other documents to the

 3 same page, please. Are those your coach officer

 4 comments in that document?

 5 A. Yes, they are.

 6 Q. And the date of those comments or

 7 the date beside your signature, please?

 8 A. The 15th of May, 2009.

 9 Q. The stroked out month and year,

10 would that be because you were referring to the

11 previous one and you had to...when you printed it

12 you had to write in the date?

13 A. Yeah, or at least when I sent it on

14 I didn't change the date.

15 Q. Thank you. So, when you printed it

16 you realized...correct me if I'm wrong. When you

17 printed it you realized you had the old date on it,

18 so you wrote in the date and signed it?

19 A. When I...I'm assuming when I signed

20 it I noticed that the month was wrong and changed

21 that.

22 Q. Okay. Again, look at your

23 signature. The number of loops in general compared

24 to the previous signatures on the previous

25 evaluations, please?

 - 80 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. Yeah, I mean, there's...there's

 2 loops, it's a similar signature. It's my signature.

 3 Q. Would you agree there's at least

 4 three loops?

 5 A. Yeah.

 6 Q. Thank you.

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

 8 where this line of questioning is going,

 9 please?

10 THE VICE-CHAIR: I have a feeling I know

11 where it's going.

12 MR. TAPP: Yes, she doesn't have to

13 know, it will come abundantly clear. Just

14 be patient.

15 THE VICE-CHAIR: Well, we want to get

16 through with this witness today.

17 MR. TAPP: Well, if I were to jump and

18 insinuate something there's going to be a

19 natural objection, speculation. So, I have

20 to identify it.

21 THE VICE-CHAIR: Okay, okay.

22 MR. TAPP: Thank you.

23 MR. JACK: Tendered Exhibit 25.

24 THE VICE-CHAIR: I gather you don't have

25 a handwriting expert?

 - 81 - S. Filman

 Cr-Ex (L. TAPP)

 1 MR. TAPP: No, we don't. Oh, it's being

 2 authenticated by this own witness, surely

 3 he knows his own signature.

 4 THE VICE-CHAIR: Okay, go ahead.

 5

 6 BY MR. TAPP:

 7 Q. Mr. Filman, I'm showing you a copy

 8 of month five performance evaluation report.

 9 A. Yeah, and it's evaluated by me, the

10 evaluation period is the 9th of May until the 9th of

11 June, 2009.

12 Q. Thank you. What's the date of your

13 signature, please?

14 A. It's the 16th of August, 2009.

15 Q. Thank you. And can you, please, is

16 that...rather is that the date you signed that

17 evaluation report?

18 A. I believe so.

19 Q. Thank you. Do you have any...no,

20 before we go there. Now, comparing your signature,

21 do you recognize that to be your signature?

22 A. That's my signature.

23 Q. Specifically how many loops do you

24 see, if one were to count the little one in the F?

25 A. Probably two.

 - 82 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Pardon me?

 2 A. Like probably two, I don't know.

 3 There's a small one between the S and the F that

 4 just didn't pop up, I guess.

 5 Q. So, would that be two or three

 6 loops?

 7 A. I honestly don't know, like

 8 there's...

 9 Q. There's a big one under the F?

10 A. Yeah, so I guess the way I usually

11 do my signature is there's a big one with the S and

12 then I loop up with the F, and sometimes I will come

13 up and around and in this one I didn't.

14 Q. Okay, thank you. Now, do you have

15 any documentary notes or any notes to reflect you

16 signing that document on the 16th of August?

17 A. Other than the document...

18 Q. Yes.

19 A. ...itself? I have the document

20 itself, I don't make notes of...

21 Q. Do you have any notes? Please refer

22 to your notes for the 16th of August, please.

23 A. I don't...that notebook, I don't

24 have that notebook, and I saw from the photocopies

25 it's not in there.

 - 83 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Okay.

 2 A. But I can say that I don't make

 3 notes about this kind of stuff. Like, I don't...if

 4 I did anything, I might write preparing or spending

 5 time making this document, but I...

 6 Q. Thank you. Are you sure you were

 7 working on the 16th of August?

 8 A. No.

 9 Q. Pardon me?

10 A. No, I'm not.

11 Q. No, okay. I'm going to show you...

12 is it possible you were on vacation on the 16th of

13 August?

14 A. Sure, it is.

15 Q. Certainly. When you signed that

16 document?

17 A. Yes.

18 Q. Okay. Now, comparing the evaluation

19 meeting section on all those documents that you have

20 before you, the first four PERs, okay?

21 A. The first four, I'm sorry?

22 Q. Performance month one/two.

23 A. The PCS66.

24 Q. Okay, PCS66 for three/four and this

25 one being five, right?

 - 84 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. M'hm.

 2 Q. Those are computer generated marks

 3 in the boxes under the comments and signatures?

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

 5 Q. There are three statements in the

 6 employee's comments area, three specific statements.

 7 A. Oh, the X'd out parts?

 8 Q. Yes.

 9 A. Yes.

10 Q. Okay, and you would agree that in

11 compliance with the guidelines and OPP Orders, that

12 either you or your supervisor in checking off that

13 box have met and discussed the performance with Mr.

14 Jack?

15 A. Sorry, this is...so, those are

16 checked off and that's in his section, right?

17 Q. Yes, in Jack's section.

18 A. Okay, so I prepare the form and send

19 it off and then he put in his comments underneath of

20 those things.

21 Q. Fair enough, but did Jack put in the

22 X marks there?

23 A. No, they're from the computer.

24 Q. From the computer?

25 A. Right.

 - 85 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Who would have to enter it?

 2 A. It's already entered. That's

 3 already on the thing, that's the way I send it off.

 4 Q. Oh, they're automatically entered?

 5 A. It could have been from...like these

 6 were the same PCS66 forms that I've always used, so

 7 yeah, all along they've been checked out.

 8 Q. I would have...pardon me, I would

 9 imagine that those boxes would have to be blank and

10 if each of those statements actually took place,

11 then and only then you checked them off.

12 A. All I can...all I can really tell

13 you is that they are X'd out, that is a computer X,

14 and I can't say who X'd them out.

15 Q. But is it your testimony today that

16 each of those meetings, those discussions respective

17 to each of those statements were conducted with Mr.

18 Jack?

19 A. So, I guess it's in his section,

20 those are above there, those are checked out, I

21 don't know...I don't recall if...if each one

22 happened every month or if it was at the beginning,

23 but it's in his section and signed. Whether he

24 chose to check them off or just acknowledge that

25 it's a computer X or not.

 - 86 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. An evaluation report for a

 2 probationer is an important document, correct?

 3 A. Sure.

 4 Q. They form the basis of the OPP

 5 granting him continued employment or not, right?

 6 A. They have...they contribute to it,

 7 yes.

 8 Q. Yes, and we've heard your testimony

 9 that it was...these documents were pivotal regarding

10 Mr. Jack's continued employment or his dismissal,

11 correct?

12 A. I don't know.

13 Q. Okay, fair enough. Each of those

14 statements...would you agree that each of those

15 statements infer a specific meeting or combined

16 together?

17 A. So, they...I mean, I guess, to be...

18 Q. Let's take the first statement for

19 example.

20 A. Yeah.

21 Q. "I have met and discussed my

22 performance with my coach officer or my accountable

23 supervisor." So, let's talk about the very first

24 month at one and two. Did you specifically meet

25 with Mr. Jack and talk about the performance with

 - 87 - S. Filman

 Cr-Ex (L. TAPP)

 1 him?

 2 A. Yeah, I told him that I'll have it

 3 ready...I remember having that conversation, "This

 4 will be ready next week. There's some areas of

 5 improvement that will be noted," and that was when I

 6 was...in the first line of questioning, I told him

 7 about that and he said, "I'm not taking any crap."

 8 Q. The very first time, his first

 9 evaluation and he told you he's not taking any crap?

10 A. Yes.

11 Q. And do you have any notation of

12 that, please? That's your very first evaluation

13 with him and meeting with him, so do you have any

14 notation in your notes about that?

15 A. That's not a correct statement.

16 That wasn't the first time I met him and spoke with

17 him...

18 Q. No, no, no, the evaluation report,

19 that's the first one you were doing with him, month

20 one/two, correct?

21 A. Yeah, so when I do my notes and as a

22 coach officer, if I'm going to do my notes, I don't

23 think...like, I use my notes for criminal or Highway

24 Traffic Act to refresh my memory if I'm going to be

25 on the stand. I couldn't have foreseen this and I

 - 88 - S. Filman

 Cr-Ex (L. TAPP)

 1 don't make notes about other officers in my notebook

 2 unless I absolutely feel it's necessary. Especially

 3 I've never done it with a recruit and there's many

 4 reasons not to do that, but your notebook is not for

 5 personal things.

 6 I'm there as...like I said, as a guide, so

 7 when I'm doing that I'm not going to make notes

 8 about every little thing that I do with a...

 9 Q. But you would agree this is not a

10 personal thing? This is a specific thing...

11 A. But if I'm having...

12 Q. ...a meeting with your probationer

13 to discuss the evaluation?

14 A. Yeah, so if my...if I'm having a

15 conversation with him, I'm not going to make notes

16 of it. That is a personal thing.

17 Q. That is, and not a specific duty

18 direct...in which you are directed to do by the

19 probationary constable guidelines and OPP Orders?

20 A. So, my notes are to refresh my

21 memory of things that I think I need to refresh my

22 memory on, and what I put in them I guess is my

23 preference. In conversations with the recruit about

24 that, I probably won't make notes about it, no,

25 because I don't really know why I would have to

 - 89 - S. Filman

 Cr-Ex (L. TAPP)

 1 refresh my memory about it.

 2 Q. Well, clearly, I mean, if I were

 3 looking at this document, PER, for the first time,

 4 seeing that check mark in the box it very clearly

 5 tells me that oh, this probationer met with his

 6 coach officer, his accountable supervisor and

 7 discussed this, right?

 8 A. And my part of this evaluation is

 9 completed and signed to meet my requirements. That

10 is not my requirement.

11 Q. Mr. Filman, I would suggest that you

12 did not discuss that evaluation report with Mr.

13 Jack, but by virtue of that statement it was either

14 your...it could possibly have been your accountable

15 supervisor Flindall that could have done that?

16 A. See, I guess the point of that

17 section there is that he has been given the

18 evaluation. So, he's had time to review it and he

19 could talk to his coach, then he signs it. He isn't

20 given it and required to sign it immediately. So,

21 that portion of that is his portion, that's his

22 responsibility. If he had said, "I have a problem

23 with these being X'd out, then...or he could write

24 something, like that box is his responsibility, not

25 mine.

 - 90 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. But isn't there a requirement for

 2 him to sign it immediately?

 3 A. I don't think so. That would be...

 4 anyway.

 5 Q. Thank you, and by virtue of the

 6 second statement under that, "I have reviewed and

 7 discussed with my coach officer or my supervisor my

 8 responsibilities under the policy of safe storage

 9 and handling of firearms," do you recall having that

10 discussion with Mr. Jack?

11 A. I don't recall it.

12 Q. Thank you. Yet that box is checked

13 off...

14 A. But again...

15 Q. ...implying that it has been

16 complied with, correct? I'm not saying that you

17 didn't do it, but...

18 A. I'm sure that you...I mean, there's

19 ...it would be speculative for me to answer that

20 question. That's not my responsibility and when you

21 take training in firearms you do go through those

22 things, and a supervisor is in charge of that.

23 Q. Okay, I beg your pardon, doesn't

24 that statement say, "With my coach officer or my

25 supervisor"? Does that...by virtue of that

 - 91 - S. Filman

 Cr-Ex (L. TAPP)

 1 statement, does it not make it a responsibility?

 2 A. But your supervisor changes.

 3 Q. Fair enough, but did it change in

 4 that month for Mr. Jack?

 5 A. No, but...

 6 Q. Okay.

 7 A. ...that box is in every evaluation.

 8 Q. True it is, I'm not disputing that.

 9 I'm talking about the implication of it being

10 discussed with Mr. Jack.

11 A. Yeah, that box is not my

12 responsibility.

13 Q. Okay, thank you. The next

14 statement, "I have reviewed and discussed with my

15 coach officer or my supervisor regarding workplace

16 discrimination and harassment policies," you met and

17 discussed that with Jack?

18 A. I don't recall, but again that's not

19 ...that box is not my responsibility.

20 Q. Thank you. Would you agree that all

21 of those PERs from PER month one/two to month five

22 all have the same check marks in the boxes?

23 A. The ones in front of me do, yes.

24 Q. From you, thank you.

25 MR. JACK: You do have six and seven in

 - 92 - S. Filman

 Cr-Ex (L. TAPP)

 1 front of you, I believe, right? Just month

 2 seven, right?

 3 MR. TAPP: Now, Mr. Jack has his copy of

 4 month...report month seven, so performance

 5 evaluation six/seven.

 6 MR. JACK: Mr. Vice-Chair, do you have a

 7 copy?

 8 THE VICE-CHAIR: It's already been

 9 entered as an exhibit...

10 MR. JACK: Yes, but...

11 THE VICE-CHAIR: ...I don't have a...

12 MR. JACK: Please, there you go, sir,

13 and everybody.

14

15 BY MR. TAPP:

16 Q. So, you've got a copy of that? The

17 front page says you were the evaluator?

18 A. Yes.

19 Q. And it's for the month period 9th of

20 June to 9th of August, 2009?

21 A. Yeah.

22 Q. Good. Are you sure you were the

23 evaluator of this document?

24 A. Yes.

25 Q. Again in the evaluation meeting area

 - 93 - S. Filman

 Cr-Ex (L. TAPP)

 1 on page 12 they are computer marked boxes?

 2 A. Yes, they are.

 3 Q. Okay. Did you give this document, a

 4 copy of this evaluation report to Mr. Jack?

 5 A. I don't know who gave it to him.

 6 Q. Maybe you have some indication in

 7 your notes, if you did?

 8 A. I wouldn't, no.

 9 Q. Okay. And you say in your exam that

10 you prepared all the performance evaluation reports

11 attributed to you, correct?

12 A. Yeah.

13 Q. So, whereas where you have signed

14 all the previous performance evaluation reports for

15 month one/two to month five, how come you did not

16 sign or make any comments on this one?

17 A. I don't know.

18 Q. Thank you. Is there a date in

19 there?

20 A. No, there's not.

21 Q. Thank you, and looking at the copy

22 you have, you would agree that if Mr. Jack refused

23 to sign it you would have some notation in your

24 notes? It would be worthwhile mentioning it or

25 documenting it?

 - 94 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. If I was present.

 2 Q. Well, let's face it, this is your...

 3 you have handed him or you have disclosed to him or

 4 been involved in the disclosure of the previous

 5 evaluation reports, and all of a sudden this is the

 6 first one he's refusing to sign. Certainly that's

 7 an important and noteworthy incident or...

 8 A. I don't...I don't think that I...I

 9 don't recall at the time that I actually was the one

10 that handed Mike the evaluation. Usually that's not

11 my practice though, my practice is usually that

12 because I do it electronically, it's done

13 electronically and then it's e-mailed to the

14 Sergeant and the Sergeant reviews it and he may or

15 may not make changes and he may or may not tell me

16 to make changes, but he's usually the one to present

17 it.

18 So, and I mean, it would depend...I know in

19 August there was a lot of time where I was on that

20 other project, so I wasn't on shift, and also had

21 some vacation in there. So, and although I would

22 make myself available, I definitely...there were

23 times when I wasn't on shift, so I may not have been

24 present for that.

25 Q. Thank you, Mr. Filman. And you're

 - 95 - S. Filman

 Cr-Ex (L. TAPP)

 1 certain you prepared that document?

 2 A. Yeah, from what I recall there was

 3 ...and this would probably be it. I think it

 4 probably speaks to the font in some of them where I

 5 had gone on vacation and I had sent the electronic

 6 copy to the Sergeant, and he did make some changes.

 7 And I think the ones where the font is different are

 8 the ones where he made the changes, but the one font

 9 is me for sure, and then the other font is him. And

10 there's also...

11 Q. When you say font, I'm missing that.

12 What...

13 A. Yeah, you can...some of the...some

14 of it appears smaller to me and it's not really my

15 verbiage. I think specifically under "Attitude

16 towards learning," that one....

17 Q. So, you acknowledge differences in

18 the type of language used by saying verbiage and

19 fonts, correct?

20 A. Right, but the vast majority of it

21 is things that I wrote.

22 Q. Okay, so tell us which ones, looking

23 at the document, which ones you did write?

24 A. Oh, that would take some time.

25 Like, I know...

 - 96 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Take the time, there are numerous

 2 categories. Review it, tell us which ones you wrote

 3 and which ones you did not. Let's start with the

 4 very first category. I will help you through it.

 5 A. That doesn't really help me. If I

 6 can just look at them, I'll just read...

 7 Q. Okay, you can review it.

 8 A. ...you read it to me.

 9 Q. When you are ready I am going to

10 begin with page three, okay? I'm just letting you

11 know.

12 A. I think...

13 Q. Having scrutinized it, can I ask you

14 some questions?

15 A. Yeah, I might be able to help you.

16 I think just under "Listening skills" the...

17 Q. Well, let's...we'll get to that and

18 you can provide your objection, okay?

19 A. Okay, I think that's the only one I

20 didn't do.

21 MS. SINGH: The witness has answered

22 that he...the only one that he didn't do

23 was in relation to listening skills.

24 MR. TAPP: Okay, well, we'll get to

25 that.

 - 97 - S. Filman

 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. Okay, so look at page three of that

 3 document. "Attitude towards learning," you

 4 recognize your, to use your words, fonts and

 5 language?

 6 A. Yeah.

 7 Q. And verbiage? Okay. "Provincial

 8 Statutes"...

 9 A. Yes, I...

10 Q. ...do you recognize that and

11 acknowledge your entry, "Does not meet

12 requirements"?

13 A. I do.

14 Q. Okay. Same in "Federal Statutes,"

15 do you recognize it being your language and

16 verbiage?

17 A. The first two for sure, I'm not a

18 hundred percent sure on the third one. I don't

19 really remember that.

20 THE VICE-CHAIR: I think he has given

21 his answer.

22

23 BY MR. TAPP:

24 Q. Okay. "Police Orders Technical

25 Skills"?

 - 98 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. Yeah.

 2 Q. That's your entry?

 3 A. I believe so. It's hard to go back.

 4 This seems familiar...

 5 Q. Well, you said earlier, I mean,

 6 which...

 7 A. There's a couple that I don't

 8 remember, but like I said, these aren't...they go up

 9 electronically and then they're reviewed and changes

10 might be made, and I'm the evaluator, yes. They

11 would probably come back and I would look at them,

12 but at the same time every single one of those, I

13 can't say that I authored it completely.

14 Q. Okay, so...

15 A. I don't want to lead anybody astray.

16 Some of these...that one, I don't have any

17 recollection of that. The other two things I do.

18 Q. Perhaps this will help you refresh

19 your memory as to who else authored this. I'm

20 showing you an e-mail dated August 15th.

21 A. Yes.

22 Q. Okay? Does that refresh your

23 memory?

24 MS. SINGH: Excuse me, Vice-Chair?

25 THE VICE-CHAIR: M'hm.

 - 99 - S. Filman

 Cr-Ex (L. TAPP)

 1 MS. SINGH: This is not an e-mail that

 2 this witness is in a position to speak to.

 3 THE VICE-CHAIR: Right.

 4 MR. TAPP: Excuse me, but this is...

 5 MS. SINGH: And I would ask...

 6 MR. TAPP: ...cross-examination...

 7 MS. SINGH: I would ask that it not be

 8 put to this witness.

 9 MR. TAPP: This is cross-examination and

10 under the Rules I am allowed to ask leading

11 questions to determine and verify

12 information that was adduced during the

13 exam, and to see if the witness is telling

14 the truth. Okay? So...

15 THE VICE-CHAIR: But he can't comment on

16 this.

17 MR. TAPP: I don't want him to comment.

18 I don't want him...

19 THE VICE-CHAIR: Then why do we have it?

20 MR. TAPP: Because it clearly...he said

21 in an exam that all performance evaluations

22 attributed to him he prepared. He is now

23 giving evidence that he may not have made

24 some of those entries, and now...

25 MS. SINGH: Objection.

 - 100 - S. Filman

 Cr-Ex (L. TAPP)

 1 MR. TAPP: ...that means it's either him

 2 or his accountable supervisor, but clearly

 3 this document reveals a third person.

 4 MS. SINGH: Objection.

 5 THE VICE-CHAIR: Yes, I don't know...

 6 MS. SINGH: Objection.

 7 THE VICE-CHAIR: Yes.

 8 MR. TAPP: Okay.

 9 MS. SINGH: The witness' evidence was

10 not that he prepared this solely, he

11 prepared it on the basis of other people's

12 input and so on and so forth, and on the

13 basis of RMS entries and...

14 MR. TAPP: I object, that's not right

15 what Counsel...

16 THE VICE-CHAIR: Okay.

17 MR. TAPP: ...is saying.

18 THE VICE-CHAIR: You have your theory of

19 the case, you can argue that at the...in

20 argument.

21 MR. TAPP: Okay.

22 THE VICE-CHAIR: Okay?

23 MR. TAPP: Fair enough.

24 THE VICE-CHAIR: We're just taking

25 evidence now.

 - 101 - S. Filman

 Cr-Ex (L. TAPP)

 1 MR. TAPP: Okay.

 2 THE VICE-CHAIR: You're going to have

 3 to...

 4 MR. TAPP: All right, I'll move on.

 5 THE VICE-CHAIR: ...put it all together

 6 in your argument.

 7

 8 BY MR. TAPP:

 9 Q. Okay, I'm showing you performance

10 evaluation month eight. I'll just wait until you

11 get a copy of it. This document also, Mr. Filman,

12 it says the evaluator was you, but was it authored

13 by you in entirety?

14 A. See, now...

15 Q. No?

16 A. I didn't...I didn't say that. I

17 said see, so...

18 Q. I didn't say you did. I'm asking

19 you was it authored by you in entirety?

20 A. Well, none...like there's comments

21 and stuff that aren't me. There's lots of stuff, so

22 the thing is with these is although I'm the

23 evaluator, and this might help, I guess, is that...

24 and it's like I...in the...in the guidelines, where

25 it talks about it going up through the supervisor

 - 102 - S. Filman

 Cr-Ex (L. TAPP)

 1 and then through the...

 2 Q. It's a straightforward answer, Mr.

 3 Filman. Was it authored by you in entirety or not?

 4 A. Well, but to answer that, the way it

 5 goes is that they go up through the chain for

 6 review, and this is what I said originally, is that

 7 they will tell me if they want things taken out or

 8 things added, and then it comes back down and then

 9 it...those are bounced around. So, I don't...it's

10 hard for me to go back eight years and look at each

11 individual thing. Some of these things I remember

12 and some of them I don't.

13 Q. Okay, thank you. I think that

14 pretty well answers the question.

15 Now, this document also has on page 12 the

16 same type of computer generated X marks beside those

17 three statements?

18 A. Yes, it does.

19 Q. Thank you. What does it purport to

20 say just looking at that first section regarding Mr.

21 Jack's disclosure of this document?

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

23 question.

24

25 BY MR. TAPP:

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 Cr-Ex (L. TAPP)

 1 Q. Okay, looking at the word "refused"

 2 in Mr. Jack's area...

 3 A. Yeah?

 4 Q. ...what does it convey?

 5 A. That he didn't sign it.

 6 Q. Thank you. When didn't he sign it?

 7 Does it say?

 8 A. No, I have no idea.

 9 Q. Thank you. But when did you sign

10 that documentation and make your comments?

11 A. At least when I sent it off was

12 September 11th. I don't know if that's when I

13 signed it.

14 Q. Is that your handwriting, the

15 printed word "Refused"?

16 A. No.

17 Q. Thank you. Would you have any idea

18 who, or recognize it to be someone?

19 A. No, I think by this time he was on

20 the other platoon.

21 Q. Thank you. You don't recognize it?

22 Is that your response?

23 A. I don't recognize it, no.

24 Q. And you don't recognize whose

25 writing it may be?

 - 104 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. Are you just speaking of where it is

 2 written...

 3 Q. Yes, the word "Refused."

 4 A. No, I have no idea.

 5 Q. Thank you. Does that mean was a

 6 performance...did you ever have a performance

 7 evaluation meeting with Mr. Jack regarding this

 8 document?

 9 A. Well...

10 Q. Because it says he has met with his

11 coach officer, accountable supervisor and refused to

12 sign it.

13 A. I don't recall. I don't...by this

14 time I don't think I was on his shift.

15 Q. It is your performance evaluation,

16 is it not?

17 A. Yeah.

18 Q. Oh, granted, I understand by your

19 response, that you may not have entered everything

20 right?

21 A. I'm not a hundred percent sure.

22 Like I said, that box is not my responsibility.

23 That whole employee's box is not my responsibility.

24 Q. Yet, would you not be curious that

25 if you didn't meet with Jack or share this with him,

 - 105 - S. Filman

 Cr-Ex (L. TAPP)

 1 how can he refuse?

 2 A. I don't...it's just a refusal to

 3 sign.

 4 Q. Yes. If no meeting took place, how

 5 can he refuse?

 6 A. I don't know who would have, if

 7 somebody gave it to him. Like I said, it wasn't my

 8 practice.

 9 MR. TAPP: Fair enough. We are going to

10 continue, Mr. Vice-Chair, but I just need

11 to...when are you planning on breaking for

12 lunch?

13 THE VICE-CHAIR: Around one o'clock.

14 MR. TAPP: Thank you.

15 THE VICE-CHAIR: I mean, Mr. Tapp, if it

16 suits you, you can break now?

17 MR. TAPP: I would like that, because we

18 have just gone through one section dealing

19 with the exam...

20 THE VICE-CHAIR: Yes, okay.

21 MR. TAPP: ...that's the performance

22 evaluations, so I need to structure my...

23 the next.

24 THE VICE-CHAIR: Let's take a break,

25 return at 1:30, I guess.

 - 106 - S. Filman

 Cr-Ex (L. TAPP)

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

 2 THE VICE-CHAIR: You're going to be

 3 finished today?

 4 MR. TAPP: I'm making a lot of

 5 progress...

 6 THE VICE-CHAIR: Good, good.

 7 MR. TAPP: ...we've already gone through

 8 numerous evaluations.

 9 THE VICE-CHAIR: Good.

10 MS. SINGH: This witness is not

11 available after today, that's my

12 understanding.

13

14 BY MR. TAPP:

15 Q. Oh, Mr. Vice-Chair, that's... Mr.

16 Filman, you received the subpoena to come here,

17 right?

18 A. I was previously subpoenaed to

19 attend Superior Court on Monday.

20 Q. Yes, you've got Superior Court

21 Monday, yes, that takes precedence. Okay, and that

22 trial is expected to last the duration, I guess?

23 A. It's five days and then I have a

24 subpoena...

25 Q. Fair enough, that's all I wanted to

 - 107 - S. Filman

 Cr-Ex (L. TAPP)

 1 know and...

 2 THE VICE-CHAIR: We are going to finish

 3 today, so it's not going to matter.

 4 MR. TAPP: Yes.

 5

 6 --- Upon recessing at 12:25 p.m.

 7 --- A LUNCHEON RECESS

 8 --- Upon resuming at 1:35 p.m.

 9

10 THE VICE-CHAIR: Mr. Tapp?

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

12

13 SHAUN FILMAN, resumed

14 CONTINUED CROSS-EXAMINATION BY MR. TAPP:

15 Q. Mr. Filman, looking at...can you

16 explain what you meant when you made the following

17 entry in Mr. Jack's month four PER under "Analytical

18 thinking" please? This specific example, that is,

19 and you gave him a positive rating. I would like

20 you to read that specific example, please.

21 THE VICE-CHAIR: What page is that on?

22 THE WITNESS: Six.

23 THE VICE-CHAIR: Analytical thinking?

24

25 BY MR. TAPP:

 - 108 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. What page is that on, Mr. Filman?

 2 We have given you our copy.

 3 A. Page six.

 4 THE VICE-CHAIR: Page six, oh, I've

 5 missed it.

 6 THE WITNESS: So, it says...

 7

 8 BY MR. TAPP:

 9 Q. Read out the specific example.

10 A. "PC Jack attended to a fraud

11 complaint involving a fraudulent credit card," and

12 then I list the incident number. "PC Jack completed

13 a detailed investigation including a photo line-up.

14 This investigation will likely result in several

15 charges over multiple jurisdictions. PC Jack has

16 since turned the investigation over to the regional

17 intelligence officer."

18 Q. And I know you said the SP number,

19 but you didn't read that out. Read that out,

20 please.

21 A. SP09087157.

22 Q. Can you explain why that, despite

23 you documenting it as a detailed investigation of

24 this call, it is not mentioned in your point form

25 chronology?

 - 109 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. Well, I don't know, there's lots of

 2 calls that we went to that we didn't mention in the

 3 point form chronology.

 4 Q. Fair enough. Can you explain why

 5 your rating of him positively in analytical thinking

 6 of PER4, which is your month four...

 7 A. Right?

 8 Q. ...turned...you turn it over and you

 9 comment that it's a detailed investigation and

10 turned it over to a regional intelligence officer,

11 yet in PER6/7 and PER8 in sections...PER6 and 7 in

12 sections listening skills, analytical thinking,

13 follow-up orientation and in PER8 follow-up

14 orientation section you bring up this old

15 investigation again with negative ratings?

16 I'll break it up again. I direct your

17 attention to PER6/7 sections listening skills,

18 analytical thinking and follow-up orientation.

19 A. Yeah, so I mean, I'm going by what I

20 see here, but the regional intelligence officer at

21 that point I'm looking at an officer...this is until

22 May. So, he's just able to go on his own at that

23 point. He's gotten that to a point where it can go

24 to the regional intelligence officer. It looks like

25 in regard to that investigation which these do come

 - 110 - S. Filman

 Cr-Ex (L. TAPP)

 1 back, maybe not to be a primary investigator, but to

 2 have some follow-up done. For instance follow-up

 3 orientation, he was asked post report month four on

 4 July 18th to do something and there's criticism

 5 about the fact that it wasn't done. So, while in

 6 report month four it was to a point where it went to

 7 regional intelligence and it was at a point where, I

 8 guess, in talking with him it seemed enough was done

 9 appropriately.

10 Something must have come back, either

11 follow-up...it looks like he's asked to gather

12 information, complete reports, and those things

13 weren't done, but they're post that report. So,

14 while in number four he is meeting the requirement

15 based on giving it to regional intelligence, it

16 appears that things came back and things weren't

17 done to keep it up to that standard.

18 Q. But your statement in the specific

19 example of month four says, "Jack has since turned

20 the investigation over to regional intelligence

21 officer." So, at the time you prepared and

22 documented that comment it was no longer in Jack's

23 hands?

24 A. No, I...I wrote that he turned it

25 over to him, but that doesn't mean that it doesn't

 - 111 - S. Filman

 Cr-Ex (L. TAPP)

 1 come back and that doesn't...and whether or not it

 2 comes back to him and he has carriage is a totally

 3 different thing. He could have been asked to do

 4 follow-up for something that he primarily did, which

 5 wouldn't be unusual, rather than have somebody else.

 6 And I quite often do that in Crime where we get

 7 people give us calls and then we have them go back

 8 and do follow-up on it, even though we have taken

 9 carriage.

10 Q. Do you have any notations in your

11 notes anywhere of things he did not do for that

12 fraud investigation?

13 A. As you can see, the requests and

14 that were not made by me, so these are just things,

15 like you said where I would review Niche or I would

16 speak to other officers and then comment in this

17 document. But that's not something from my notes,

18 it's not my investigation, it's not something for my

19 notes. I shouldn't be making notes of that.

20 Q. But you did make those

21 documentations in PER6/7, listening skills,

22 analytical thinking, follow-up orientation, did you

23 not?

24 A. I recall this, I don't know...

25 because like I said, I prepare the document, the

 - 112 - S. Filman

 Cr-Ex (L. TAPP)

 1 document is reviewed, there might be changes and I

 2 can't say if I did every word verbatim. It's not an

 3 answer I can really give you a hundred percent that

 4 I said each and every line...

 5 Q. So, if you didn't do every word

 6 there verbatim, that means someone else also did it?

 7 A. Well, that's what...that's the

 8 purpose of having that training, for other people to

 9 review and people who are involved in the coaching

10 review and make changes. And if they...it's like

11 Staff Sergeant Kohen's e-mail where she asked me to

12 take something out. That's a prime example of it.

13 She didn't feel that something was fair and she

14 asked me...asked to have it removed and it...

15 Q. But Staff Sergeant Kohen's

16 involvement we know.

17 A. Okay, I'm just saying that yeah,

18 there could be things in here that I was asked to

19 change or there could be things that have been

20 augmented, I don't know. I can't give you a hundred

21 percent answer on that.

22 Q. So, who were the other people that

23 made changes?

24 A. I don't know. I would forward it on

25 and if it came back with changes or if they made

 - 113 - S. Filman

 Cr-Ex (L. TAPP)

 1 changes I might not know. I would do the initial,

 2 that's the way it's set up.

 3 Q. You can understand the puzzlement

 4 I'm having. I'm trying to establish, you made some

 5 detailed documentations in those three categories of

 6 months six/seven, yet you can't seem to provide any

 7 documentary evidence to substantiate that.

 8 A. Unless it's speaking with Constable

 9 Payne or if she provided input or if it came from

10 Niche, these things come from...

11 Q. Okay, thank you. Based on that, I'm

12 going to give you a copy of...you're going to be

13 getting a copy of that detailed investigative report

14 that Mr. Jack copied...prepared. This is in the

15 applicant's disclosure and has been disclosed...

16 THE VICE-CHAIR: Is it...

17 MR. TAPP: ...but not yet entered.

18 MS. SINGH: Mr. Vice-Chair, again, this

19 witness did not prepare this document...

20 THE VICE-CHAIR: Okay, let's hear the

21 question.

22 MR. TAPP: Thank you.

23

24 BY MR. TAPP:

25 Q. Okay, you prepared month five...

 - 114 - S. Filman

 Cr-Ex (L. TAPP)

 1 month four PER analytical thinking and said that

 2 Jack completed a detailed investigation into this,

 3 did you not?

 4 A. On...

 5 Q. Okay.

 6 A. ...as up to that date, yes.

 7 Q. Right. So, you would have had to

 8 review, you're his coach officer, as one of your

 9 responsibilities you would have reviewed his

10 occurrence for that investigation, right?

11 A. I don't...this one it appears that I

12 did review that one, yeah.

13 Q. Yes, okay, good. So, good,

14 otherwise it would have been very hard for you to

15 say "Detailed investigation," had you not reviewed

16 the occurrence report, right?

17 A. Either that or in speaking with him,

18 I don't know.

19 Q. Okay, either way, so look over the

20 report. You said you did review it. It's numerous

21 pages long, correct?

22 A. Yeah.

23 Q. Turn over to page two, please. You

24 see Mr. Jack's involvement in the numerous dates at

25 the start of those paragraphs?

 - 115 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. Yes.

 2 Q. And that would account for your

 3 comment, "Detailed investigation"?

 4 A. Some of them, but some of them are

 5 post this evaluation.

 6 Q. Granted, that's why they are in

 7 those six/seven alleged period, correct?

 8 A. Right.

 9 Q. Good. Now, I ask you to...I ask you

10 to turn to page five, please of that document. Do

11 you see the name of the regional intelligence

12 officer?

13 A. Yeah.

14 Q. Please read his name, please.

15 A. Detective Constable Dawson.

16 Q. Good, and what does it say beside

17 his name? Interviewed by him? He did the interview

18 for that investigation?

19 A. Sure, I...sorry, I...okay, like I

20 can't say what these...because these aren't...these

21 aren't directly from the report management system,

22 so I don't know...it's hard for me to say this is

23 what I saw if you're asking me to testify to that,

24 because this isn't from...

25 Q. No, I'm not asking you what they

 - 116 - S. Filman

 Cr-Ex (L. TAPP)

 1 saw, please, that is from the records management

 2 system, it's...that copy you had was printed out,

 3 provided to us by counsel, okay?

 4 MS. SINGH: Mr. Vice-Chair, it was not

 5 provided...

 6 MR. TAPP: Okay.

 7 MS. SINGH: ...and this witness is not

 8 in a position to authenticate that

 9 document. I don't know what it is. But in

10 any event, if there's a question, you know,

11 I think the question can be put to the

12 witness, but again to put documents to a

13 witness that hasn't seen this document

14 necessarily, maybe a version of the

15 document, is simply unfair to the witness

16 and not reliable evidence.

17

18 BY MR. TAPP:

19 Q. Okay, you've indicated you did see

20 that occurrence, the report?

21 A. The occurrence, but I can't say...

22 and I can tell you why.

23 Q. Okay.

24 A. If you print something from Niche,

25 from the report management system, it will indicate

 - 117 - S. Filman

 Cr-Ex (L. TAPP)

 1 on the bottom who printed it and when and which

 2 computer they used, and this shows none of that.

 3 So, I can't say this is exactly what I would have

 4 seen on Niche, that's why I'm saying that.

 5 Q. I just want to make sure I

 6 understand you. If you print it from RMS it would

 7 say who printed it and which computer, but would it

 8 also say the date it was printed at the bottom?

 9 A. Yeah, right here, this is...

10 Q. Thank you, good. And it would say

11 the badge number identifying the officer, correct?

12 A. Yes.

13 Q. Thank you. We'll get that back from

14 you. Mr. Filman, I would like you to direct your

15 attention to the listening skills, same thing,

16 analytical thinking, follow-up, orientation in the

17 six/seven PER with respect to that fraud

18 investigation. Is the SP number 09087151 correct?

19 A. 57?

20 Q. Don't you find them to be

21 contradictory entries? The analytical section

22 commends Mr. Jack for his performance in this

23 investigation, yet the listening skills and follow-

24 up orientation section chastise him for the same

25 investigation. What do you have to say about that?

 - 118 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. Well, it's like I said, it's not the

 2 point where...in May, where the advice was obviously

 3 to give it to regional intelligence and from what I

 4 recall a lot of it didn't have to, I think, do with

 5 our jurisdiction or had some complexities to it.

 6 But then the listening skills, and these ones in

 7 this report are specific to things that happened

 8 after that report, so while at that point, and

 9 considering that up until May we're working more

10 closely together, we're still on nights together,

11 which is 12 hours per shift, and now you're three

12 months down the road and its follow-up from that

13 event...it's not the same event, although they are

14 associated as the same occurrence number, the things

15 that occurred are not the same event.

16 Q. Look at the follow-up orientation

17 specific example you mentioned, this fraud call.

18 Isn't Constable Payne's name mentioned several times

19 there?

20 A. It is.

21 Q. Okay, and even Sergeant Flindall's

22 name? Albeit not as much as Payne's name?

23 A. Yeah, but it's, so...it's because

24 ...so Sergeant Flindall is in there because he asked

25 something of Sergeant Flindall, but yes, their name

 - 119 - S. Filman

 Cr-Ex (L. TAPP)

 1 is in there. But that's when I was on that project.

 2 Q. So, I'm going to suggest that it was

 3 not you that completed that entry, but someone other

 4 than you, because the...

 5 A. I don't know. I can't...once again,

 6 it's seven years ago. I can't remember what part I

 7 would have written specifically or not, but I think

 8 that most of the time if I got the information the

 9 package was sent up through me, so that final look

10 ...and at that point Jen's a mentor, so she's

11 helping, she's giving me...that's part of...if she's

12 there to be the mentor, she's there to see what's

13 happening, help him, and then she has to provide me

14 that information for me to put it in here. It's the

15 only way it can get in here, it's the only way I can

16 know, especially when I'm not on the shift.

17 Q. Okay. Where is the occurrence

18 number mentioned in that specific example? Is it

19 not mentioned at the very start?

20 A. Yeah.

21 Q. Okay, how come that is different

22 than all your other specific examples in the first

23 four PERs where the occurrence number is mentioned

24 in the middle of the body or at the end?

25 A. Oh, I don't know.

 - 120 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Okay, thank you. Mr. Filman, I'm

 2 going to direct your attention to your witness

 3 summary. I'm not saying you prepared it, but the

 4 witness summary of your anticipated evidence. Okay,

 5 you have a copy of it there?

 6 A. Are you speaking of the

 7 chronology...

 8 Q. The witness summary. Your witness

 9 summary. I'm not saying you prepared it, but...

10 MS. SINGH: The witness does not have a

11 copy.

12 MR. TAPP: Okay, we'll give you a copy

13 of it.

14 MS. SINGH: He did not prepare it, it

15 was prepared by counsel.

16 MR. TAPP: Thank you.

17 MS. SINGH: I don't even know if this

18 witness has seen it.

19 MR. TAPP: When we specifically

20 requested statements this is what we were

21 provided and...

22 THE VICE-CHAIR: No, I understand.

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

24 so...

25 THE VICE-CHAIR: And I understand it

 - 121 - S. Filman

 Cr-Ex (L. TAPP)

 1 wasn't prepared by the witness and

 2 that's...

 3 MR. TAPP: Okay, thank you.

 4 THE VICE-CHAIR: ...not unusual.

 5

 6 BY MR. TAPP:

 7 Q. You agree you had to furnish counsel

 8 with some information in order for counsel to

 9 prepare that summary, correct?

10 A. Yeah, I guess.

11 Q. Thank you. I'm going to direct your

12 attention to where it is noted, and again I am

13 saying I'm not attributing it to yours, "Detective

14 Constable Filman will state that Flindall did advise

15 him that he was going to provide Mr. Jack with a

16 Provincial Offence Notice, but did not advise when.

17 Constable Filman provided some guidance to Mr. Jack

18 by phone about the charges under the HTA."

19 Now, by the phone, that would be your cell

20 phone, I take it?

21 A. Yeah.

22 Q. Pardon me?

23 A. Yes.

24 Q. Thank you. So, Constable Filman, is

25 one to believe that just because you state that

 - 122 - S. Filman

 Cr-Ex (L. TAPP)

 1 Sergeant Flindall did not advise you when he was

 2 going to charge Mr. Jack under the Highway Traffic

 3 Act you did not have to speak with your probationary

 4 constable about the incident when you became aware

 5 of it?

 6 A. When I became aware of it I was in

 7 Havelock, I was on a call, and by the time I got

 8 back I didn't see Michael, so...and I think we went

 9 on rest days. So, I remember speaking with him and

10 I remember that I was at home.

11 Q. You were the detachments OPPA,

12 Ontario Provincial Police Association,

13 representative at that time, were you not?

14 A. I'm not sure. I was in and around

15 that time, but I'm not sure when I ceased that.

16 Q. Okay. When did you...tell us, when

17 did you become the representative for the

18 Association?

19 A. I'm not sure, it was...I was only in

20 that position for about a year, maybe a bit more.

21 Q. But at some point in 2009 you were

22 the representative, correct?

23 A. I think so. I'm not a hundred

24 percent sure of when it was.

25 Q. I'm having difficulty as to what you

 - 123 - S. Filman

 Cr-Ex (L. TAPP)

 1 remember about...

 2 A. No, I was the rep at some time in

 3 and around there, but I know I wasn't when I entered

 4 Crime, and I entered Crime in September 2009 and...

 5 Q. In when?

 6 A. September 2009.

 7 Q. Thank you.

 8 A. So, I don't remember, it might have

 9 been shortly before that I ended, I can't really...

10 it was in that area, anyways.

11 Q. So, if you only entered Crime in

12 September 2009, that means you were the

13 representative prior to that, correct?

14 A. Sometime in and around there.

15 Q. Okay.

16 A. But I don't remember specifically

17 when that happened if I still was or not.

18 Q. So, that incident, the HTA charge

19 occurred in August 2009, and that is before

20 September 2009, correct?

21 A. Yeah.

22 Q. Thank you. By that witness summary,

23 you did give Mr. Jack some guidance when he did get

24 charged, and that would be in line with your

25 responsibilities as an OPPA representative, correct?

 - 124 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. Or as a coach, I don't remember

 2 under what...why he called me, if it was as a coach

 3 or if it was as a representative.

 4 Q. Why would you say code? The Highway

 5 Traffic Act...

 6 A. I said coach. Coach.

 7 Q. Coach, okay. You would agree that

 8 as per OPPA guidelines you would have had to provide

 9 some correspondence to the OPPA if you executed your

10 duties?

11 A. I'm unaware of that.

12 Q. Okay. You would also agree that the

13 execution of your responsibilities as an OPPA

14 representative is not something you would do on a

15 daily basis?

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

17

18 BY MR. TAPP:

19 Q. Based on your experience as an OPPA

20 rep, that is?

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

22 don't see how this line of questioning

23 about Mr. Filman's OPPA...being an OPPA

24 representative is relevant to what's in

25 issue here.

 - 125 - S. Filman

 Cr-Ex (L. TAPP)

 1 MR. TAPP: I don't have to explain my

 2 relevance...there's a clear indication he's

 3 a coach officer and a representative at the

 4 time, so there's a double duty, you see,

 5 he's performing over here. And it's clear

 6 that he was made aware of the charge

 7 against Mr. Jack, okay? So, there's

 8 also...

 9 THE VICE-CHAIR: Okay, so...

10 MR. TAPP: ...thank you.

11 THE VICE-CHAIR: You have made the point

12 by now, I get it.

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

14

15 BY MR. TAPP:

16 Q. You testified at length in your

17 Examination-in-Chief that you're familiar with the

18 guidelines and OPP Orders concerning probationary

19 constables?

20 A. I've read through these.

21 Q. Right, and you...Mr. Jack wasn't

22 your first one, he was your number four, right?

23 A. That's right.

24 Q. Good. So, I'm going to direct your

25 attention to Exhibit 28. It's called OPP Order

 - 126 - S. Filman

 Cr-Ex (L. TAPP)

 1 6.4.8 probationary constable.

 2 A. Okay.

 3 Q. A two page document. Go to page

 4 three, please. It covers the responsibility towards

 5 coach officers?

 6 A. Yes.

 7 Q. Thank you. Read "Orientation to

 8 Provincial Communication Centre," what it says about

 9 that. Read "Duration" and read "Noted on PCS066,"

10 performance evaluation reports. Read the whole

11 thing, please.

12 A. "Once a probationary constable is

13 posted to a detachment, the detachment commander and

14 coach officer shall ensure that the probationary

15 constable attends an orientation day at their

16 respect Provincial Communications Centre. This will

17 enable the probationary constable to gain firsthand

18 experience in understanding the operations of the

19 PCC and enhance their awareness of the complexity of

20 the operator role and responsibilities."

21 Q. Duration, please?

22 A. "The duration of this assignment

23 shall be one shift and shall be completed before the

24 probationary constable is recommended for

25 permanency."

 - 127 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. And "Noted on PCS066"?

 2 A. "The coach officer shall indicate on

 3 form PCS066P, probationary constable performance

 4 evaluation, that this assignment has been

 5 completed."

 6 Q. What does "shall" mean? Does it

 7 give an option or is it imperative?

 8 A. It's imperative.

 9 Q. Thank you. Did you comply with that

10 directive to you?

11 A. He didn't do it during this time

12 with me, no.

13 Q. And did you have...do you have that

14 noted in any of the performance evaluation reports

15 that you prepared?

16 A. No, but he didn't complete his

17 probation time with me.

18 Q. That you prepared, Mr. Filman?

19 A. Sorry, I...

20 Q. Do you have any notation of that

21 directive being complied in any of your performance

22 evaluation reports that you say you prepared for Mr.

23 Jack?

24 A. No, but it's "shall" to be completed

25 before they're recommended for permanency.

 - 128 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Okay, and it also says shall be

 2 noted on their performance evaluation report, does

 3 it not?

 4 A. Once it's completed.

 5 Q. Once it's completed?

 6 A. Yes.

 7 Q. Okay, show me a performance

 8 evaluation report where it's noted?

 9 A. He didn't do that while he was with

10 me.

11 Q. Okay, so that's the first eight

12 months he didn't do that with you?

13 A. No.

14 Q. Okay, thank you. I refer to the

15 performance evaluation report six/seven, turn over

16 to page 12. Do you see detachment commander's

17 comments written in there?

18 A. Yeah.

19 Q. Okay, and the date of those comments

20 that's written?

21 A. 21 August '09.

22 Q. Read the bottom comment, please.

23 A. "His present coach officer is now on

24 parental leave for the remaining time of his

25 probationary period. The work improvement plan

 - 129 - S. Filman

 Cr-Ex (L. TAPP)

 1 needs to be very detailed. Week plans to follow...

 2 work plans to follow."

 3 Q. But your testimony just a few

 4 seconds ago was that in September you went to the

 5 Crime Unit?

 6 A. Yeah, I went on parental leave in

 7 February of 2010.

 8 Q. Okay, so that statement in that

 9 section, would it be true or untrue?

10 A. Well, I wasn't on parental leave,

11 that's all I can say.

12 Q. Okay, so is it true or untrue?

13 Simple.

14 A. I wasn't on parental leave.

15 Q. Okay, fair enough.

16 MS. SINGH: Just for the record, this

17 witness...you did not ask this witness if

18 that was his signature, so you know, he can

19 make the comment about whether it's...

20 MR. TAPP: Well, I can't ask that,

21 because he doesn't have a signature, in

22 fact he's absent according to that page.

23 THE WITNESS: But this is the Staff

24 Sergeant's comments, not mine.

25

 - 130 - S. Filman

 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. Yes, it is, but the Staff Sergeant

 3 would have to get that information from someone.

 4 Surely the Staff Sergeant didn't make that comment

 5 up without getting it from you that you're going on

 6 parental leave?

 7 A. I know at sometime around that time

 8 I was on vacation, and I think I took a couple

 9 weeks. Perhaps he was confused. I think that's why

10 in that one where you indicate that I was on

11 vacation, but I do remember coming in to do the

12 signatures, because I lived a kilometre from the

13 office.

14 Q. But there is no signature on that

15 one.

16 A. But on the other one that you

17 mentioned where...

18 Q. Okay, all right. In that witness

19 summary prepared by counsel, you apparently provided

20 information that you do not recall an incident in

21 February 2009. Can you read that entry, please?

22 A. Where is it?

23 Q. "Detective Constable Filman does

24 not..." Read that entry.

25 A. Which page is it on?

 - 131 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Witness summary.

 2 A. Yeah, which page?

 3 Q. The very bottom on page three,

 4 please.

 5 A. "Detective Constable Filman does not

 6 recall an incident in February 2009 in which there

 7 was a conversation about GoodLife Fitness Club

 8 amongst other things. Detective Constable Filman

 9 was unaware of the Professional Standards Bureau

10 investigation of Mr. Jack."

11 Q. Thank you. I'm showing you a copy

12 of tendered exhibit, Exhibit 103, is that right, Mr.

13 Jack?

14 MR. JACK: I don't know, but it was

15 tendered yesterday...or the day before

16 yesterday at the beginning. I will give

17 the number in just a second. Okay, it was

18 just started, so...

19 MS. SINGH: Again, Mr. Chair, I don't

20 know that this witness...

21 MR. JACK: 135.

22 MR. TAPP: ...has seen this document

23 before or can...

24 MR. TAPP: We're acknowledging he hasn't

25 seen it.

 - 132 - S. Filman

 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: Okay.

 2 MR. TAPP: Okay? This goes towards his

 3 comment, information he provided to counsel

 4 to document such a response.

 5 MR. JACK: Exhibit 135.

 6 MR. TAPP: Exhibit 135.

 7 MS. SINGH: I don't think it's been

 8 established that he...

 9 MR. TAPP: Well, why don't you wait and

10 you just see? Turn over to page two and

11 read what it says under "Witnesses."

12 MS. SINGH: I make my comments to the

13 Chair.

14 THE VICE-CHAIR: Yes.

15 MR. TAPP: Okay, go ahead. I have a

16 right, Mr. Vice-Chair, to ask this

17 question, because it provides contradictory

18 information.

19 THE VICE-CHAIR: Well, I'm going to

20 allow you to ask your question...

21 MR. TAPP: Yes, and that's all...

22 THE VICE-CHAIR: ...but in both cases

23 these aren't his documents.

24 MR. TAPP: No, I acknowledge that, they

25 are not and I will address that to him.

 - 133 - S. Filman

 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. Now, Mr. Filman, I'm making it very

 3 clear this is not your document. Do you understand

 4 that?

 5 A. Yeah.

 6 Q. Okay. And this was not prepared by

 7 you. Do you understand that?

 8 A. Yeah.

 9 Q. Okay, it says under "Witness" page

10 two, just read what it says, please.

11 A. It says...it hyphened, it has "Shaun

12 Filman." It says, "He was Jack's coach officer, he

13 was there for the photograph and asked Jack about

14 it."

15 Q. Now flip over to page three and my

16 questioning will be very evidence. Second last

17 paragraph, beginning with the words, "Filman wrote."

18 A. "Filman wrote in his duty report

19 that Michael Jack indicated that he had known that

20 David Edwardes-Evans..."

21 Q. We don't need the names of the

22 individuals, thank you. The start of the last

23 paragraph, "Filman wrote..."

24 A. "...in his duty report that some

25 time later Michael Jack was assigned to attend court

 - 134 - S. Filman

 Cr-Ex (L. TAPP)

 1 and fingerprint some persons..."

 2 Q. Okay, thank you, that's all. So,

 3 you did provide a duty report regarding that PSB

 4 investigation, did you not?

 5 A. I must have written a duty report.

 6 Q. Yet you provided information to

 7 counsel and led counsel to believe you did not...you

 8 were not aware of the PSB investigation?

 9 MS. SINGH: Objection.

10 THE VICE-CHAIR: Yes, I object to that

11 as well.

12 MR. TAPP: Okay, all right.

13

14 BY MR. TAPP:

15 Q. Yet you provided information that

16 you were not aware of the Professional Standards

17 Bureau...I'm not going to attribute it to counsel.

18 Correct?

19 A. I don't know who I was asked to give

20 the duty report to and what it was for. I don't

21 recall that.

22 Q. But it's clear by that witness

23 summary you are saying you had no knowledge about

24 the Professional Standards Bureau investigation, yet

25 you were asked to prepare...

 - 135 - S. Filman

 Cr-Ex (L. TAPP)

 1 MS. SINGH: Asked and answered.

 2 MR. TAPP: ...a duty report?

 3 MS. SINGH: The witness statement was

 4 not prepared by this witness, it is not

 5 evidence. The witness is giving his

 6 evidence, the witness did not prepare this

 7 investigation report. This witness has

 8 testified that he has not seen this

 9 investigation report before. And so it's

10 entirely appropriate to ask him if he's

11 seen the report before, if he prepared a

12 duty report, but beyond that, he's in no

13 position to be examined...

14 MR. TAPP: Okay, thank you...

15 MS. SINGH: ...on those documents.

16 MR. TAPP: ...for your comments.

17 MS. SINGH: I make my comments to the

18 Chair and not to Mr. Tapp.

19 MR. TAPP: Oh, pardon me, I thought you

20 had finished.

21 THE VICE-CHAIR: No, you're absolutely

22 correct, Counsel.

23

24 BY MR. TAPP:

25 Q. Okay, I'm going to ask you, Mr.

 - 136 - S. Filman

 Cr-Ex (L. TAPP)

 1 Filman, did you or did you not have an involvement

 2 in that PSB investigation, no matter how significant

 3 or insignificant it might have been?

 4 THE VICE-CHAIR: Okay, that question...

 5 MR. TAPP: Thank you.

 6 THE VICE-CHAIR: ...is fine. Good.

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

 8 THE WITNESS: It's hard for me to answer

 9 that question, only because I'm not sure if

10 ...and I would have to...I don't know how I

11 could find out. If the operations manager

12 or the detachment manager asked me to do a

13 duty report and then they made it a PSB

14 investigation...because it goes through

15 them first. They decide if it goes to PSB.

16 So, while PSB has a duty report, I don't

17 know if I was aware that I was involved in

18 a PSB investigation, because I didn't know

19 if it had made it to that point when I

20 prepared the duty report.

21

22 BY MR. TAPP:

23 Q. Fair enough, but you're saying

24 that...

25 A. They obviously have a duty report.

 - 137 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Yes, and if they have a duty report

 2 with your name on it, who would have prepared it?

 3 A. Yeah, obviously I prepared a duty

 4 report.

 5 Q. Okay, good. And certainly, okay,

 6 you would have some notations in your notebook,

 7 otherwise you don't seem to have much of a memory of

 8 it, so you would have to have some notations

 9 somewhere to document a duty report, correct?

10 A. To document that I wrote a duty

11 report?

12 Q. No. Yes.

13 A. Well, I think just the duty report

14 itself is...

15 Q. Do you document any knowledge about

16 it in the duty report?

17 A. I don't know.

18 Q. You don't understand the question?

19 A. I understand the question, I don't

20 know if I made a notebook entry about it or not or

21 when or...

22 Q. Okay, fair enough. Mr. Filman, when

23 did you prepare your point form chronology of which

24 you have a copy before you, of Mr. Jack that is?

25 A. Well, that chronology has parts of

 - 138 - S. Filman

 Cr-Ex (L. TAPP)

 1 things that I did and I don't know when I did that.

 2 Q. Do you have any notation in your

 3 notes as to when you might have prepared that?

 4 A. I don't know.

 5 Q. If I were to suggest it was sometime

 6 in November would I be correct or would I be wrong?

 7 A. Of which year?

 8 Q. November 2009 that is.

 9 A. I would think that would be

10 incorrect.

11 Q. Pardon me?

12 A. I would think that would be

13 incorrect.

14 Q. Thank you.

15 MR. JACK: Incorrect?

16 MR. TAPP: He said correct.

17 THE WITNESS: No, I said incorrect.

18

19 BY MR. TAPP:

20 Q. Incorrect, okay. I'm going to show

21 you an e-mail that bears your name Thursday November

22 26th, 2009. Maybe this will help refresh your

23 memory.

24 A. Yeah, but I think there's a

25 different chronology than the one that went to

 - 139 - S. Filman

 Cr-Ex (L. TAPP)

 1 counsel. This was a chronology, from what I...I

 2 don't remember. I think this was for something

 3 else.

 4 Q. I can't understand what you...

 5 A. I don't know what this is for.

 6 There's an attachment there, but I don't know what

 7 this is for.

 8 Q. Okay, read who that e-mail is from,

 9 please?

10 A. Ron Campbell.

11 Q. Okay, directly below that, original

12 message?

13 A. Jen Payne.

14 Q. And sent?

15 A. Thursday November 26th, 2009.

16 Q. And to, and who it's going to?

17 A. To me and then carbon copied to

18 Sergeant Flindall, Rich Nie and Staff Sergeant

19 Campbell.

20 Q. Campbell, and you see on that point

21 form...okay, and who is the subject? What's it

22 about?

23 A. The subject is, it's called "Jack

24 Chronology" point zero nine.

25 Q. Thank you. Read the body of it,

 - 140 - S. Filman

 Cr-Ex (L. TAPP)

 1 please. It's addressed to you?

 2 A. Yeah, I've added my..."Shaun, I've

 3 added my information. If you could add yours and

 4 send it to Flindall, he's expecting it after you, so

 5 he can add his information today. Thanks, Jen."

 6 Q. So, now the question is does it make

 7 it more...does it help you refresh your memory that

 8 it was done by you some time after November 26th,

 9 2009?

10 A. I don't know if that's the portions

11 of this or if that's from a chronology of coaching.

12 I don't know what that attachment is.

13 Q. Okay, but you would agree though,

14 your point form chronology...

15 A. No, I don't agree, because I don't

16 know if the information from this is the same as the

17 information that's from that.

18 MR. TAPP: We'll enter this as the next

19 exhibit, please.

20

21 --- EXHIBIT NO. 174: E-mail from Ron Campbell dated

22 November 26, 2009

23

24 BY MR. TAPP:

25 Q. Would you agree that those two lines

 - 141 - S. Filman

 Cr-Ex (L. TAPP)

 1 is talking about you having to add your chronology

 2 to that document? Jack chronology?

 3 A. But I don't know...I don't know if

 4 that's this or that's something else. Because

 5 obviously we had...counsel wasn't involved in

 6 anything at this point.

 7 Q. But really, what would counsel have

 8 to do with preparing the chronology? She can't

 9 write for...

10 A. Well, much later on I was requested

11 to create a chronology for counsel and I did one

12 then and I might have...I don't remember if I used

13 one from whatever this was or if I used portions of

14 that or what. This was in response, but it was much

15 later.

16 Q. So, you're not saying it was in

17 relation to this November 26th?

18 A. I don't know what that document is.

19 Q. Maybe this e-mail, although it was

20 not done by you, but I wanted to help...maybe it

21 will help you jog your memory, because it makes a

22 specific comment of when it was completed by you.

23 MS. SINGH: Again, I...

24 THE VICE-CHAIR: Yes, it's the same

25 problem.

 - 142 - S. Filman

 Cr-Ex (L. TAPP)

 1 MR. TAPP: That's the same? But it says

 2 PC Jack's completed by...chronology

 3 completed by PC Filman. I mean, it's

 4 specific to...

 5 MS. SINGH: It's not...

 6 THE VICE-CHAIR: But it's not his

 7 document.

 8 MR. TAPP: Okay.

 9 THE VICE-CHAIR: I mean, it could say

10 that he flew to the moon. It doesn't mean

11 that...

12 MR. TAPP: Okay, thank you, Mr. Vice-

13 Chair. I direct your attention to you

14 point form chronology of 22nd of January,

15 2009, please.

16 MR. JACK: And what was the exhibit

17 number, please?

18 MR. TAPP: Oh, what was the exhibit

19 number to the previous document, November

20 26th, 2009 Thursday, Mr. Vice-Chair?

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

22 MR. TAPP: I don't think I asked for it

23 to be entered.

24 MS. SINGH: I think it's one...

25 THE VICE-CHAIR: 174.

 - 143 - S. Filman

 Cr-Ex (L. TAPP)

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

 2

 3 BY MR. TAPP:

 4 Q. Can you read out your entry for that

 5 point form chronology on that day, please, while we

 6 get our notes together?

 7 A. Sorry, which date?

 8 Q. 22nd of January 2009. It begins

 9 with a bullet entry, "PC Jack had indicated..."

10 A. "PC Jack had indicated to me that he

11 would stop at a possible witness to a break and

12 enter's residence on his way home since it was on

13 his route. I advised him this was a bad idea as it

14 would be criticized in court and puts him in a bad

15 situation safety-wise as he would have no radio and

16 no use of force options if required."

17 Q. Thank you. Did you make any notes

18 about this break and enter investigation?

19 A. I don't know.

20 Q. Well, this is January and presumably

21 you're with him on every call you went to?

22 A. Yeah, but I don't know which one it

23 is and if I was...

24 Q. Okay, I'll give you a time, please

25 look it up, please.

 - 144 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. No, what I'm saying is that even if

 2 I find a break and entering, it doesn't mean that

 3 that's the one I'm speaking of there, and it

 4 doesn't...

 5 Q. Well, just look up your notes for

 6 the 22nd of January, surely you've got a break and

 7 enter call over there entered. According to your

 8 notes, did you attend an break and enter call with

 9 Jack that night or day?

10 A. It's to see a witness. I don't know

11 if this was a break and enter that occurred that day

12 or...

13 Q. What break and enter call do you

14 have noted there?

15 A. I have none that day.

16 Q. Thank you. Were you in possession

17 of your officer notes when you compiled that point

18 form chronology of Mr. Jack?

19 A. Yeah.

20 Q. Thank you, and that was done

21 sometime after November 26th, correct?

22 A. Sorry, after...

23 Q. The point form chronology...

24 A. Yes, it was sometime after that,

25 yeah.

 - 145 - S. Filman

 Cr-Ex (L. TAPP)

 1 Q. Thank you.

 2 A. But this is...this is to go see a

 3 witness, which tells me it's probably from a break

 4 and enter previous.

 5 Q. Okay, was there information in the

 6 Niche records management system about the break and

 7 enter investigation that you could access in order

 8 to complete that entry 22nd of January, 2009?

 9 A. But the entry isn't about the break

10 and enter incident itself, it's about a conversation

11 you had about stopping to see a witness. So, I

12 don't know when the break and enter occurred. It's

13 just that day he said to me, "I'm going to stop on

14 the way home to talk to his lady."

15 Q. Okay, so it could have been a

16 conversation with a witness about that break and

17 enter, correct?

18 A. About a break and enter, yes.

19 Q. Okay. Do you remember getting a

20 carbon copy of this, Mr. Filman, from the witness or

21 author, Pastor Brian Mahood, regarding the break and

22 enter?

23 A. No, I don't remember getting this.

24 Q. Well, it's a carbon copy addressed

25 to you, surely you would have received a copy of

 - 146 - S. Filman

 Cr-Ex (L. TAPP)

 1 this?

 2 A. Yeah, I probably did.

 3 Q. Okay, and you've just alluded to a

 4 conversation with a witness about it.

 5 A. I don't know...again, I don't know

 6 if that is about this. There's no way for me to put

 7 this with this. There's no way...

 8 Q. You don't have...that's because you

 9 don't have any entry in your note about a break and

10 enter on the 22nd of January, correct?

11 MS. SINGH: Asked and answered.

12 MR. TAPP: No, it's not been answered.

13 MS. SINGH: Asked and answered.

14 THE VICE-CHAIR: It has been answered.

15

16 BY MR. TAPP:

17 Q. Okay. According to that document it

18 shows that the break and enter occurred during the

19 night of January 25th, right?

20 A. I remember this break and enter...

21 Q. Okay, turn over to your notes,

22 please, to January 25th, 2009.

23 A. Yeah.

24 Q. Do you have a notation in there

25 about a break and enter call?

 - 147 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. I was off duty on...

 2 Q. So, try...because it's night shift

 3 and it slips into the next day, try your notes for

 4 26th, please.

 5 A. Yeah, I have an incident at that

 6 place on the 26th.

 7 Q. You have an entry to a break and

 8 enter call?

 9 A. Yeah.

10 Q. Thank you. How many break and enter

11 calls did you attend that night in your notes? It

12 would be documented. In January, January 26th.

13 A. How many did I attend on...

14 Q. Break and enter calls did you attend

15 on January 26th...

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

17 where this line of questioning is going?

18 It doesn't seem to me to be relevant at

19 all.

20 MR. TAPP: It is very relevant, because

21 he compared his point form chronology, Mr.

22 Vice-Chair on or about or after November

23 26th and he's putting down the incident

24 occurred on January 22nd, he's not even

25 referring to his notes. Yes, this will be

 - 148 - S. Filman

 Cr-Ex (L. TAPP)

 1 brought up in submissions, but I'm

 2 directing his attention to that, and trying

 3 to get him to realize that he is obviously

 4 mistaken or did not do a good enough job on

 5 his point form chronology.

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

 7 MR. TAPP: A simple thing of referring

 8 to his notes.

 9 THE VICE-CHAIR: Okay, this is what we

10 have.

11 MR. TAPP: Yes?

12 THE VICE-CHAIR: We have this point,

13 22nd of January, '09. Now we have this

14 letter which indicates that there may have

15 been a break-in January 25th, 2009.

16 MR. TAPP: But we also have the

17 inference being raised by this witness that

18 the call, the break and enter that he and

19 Jack went to occurred on the 22nd, and

20 that's what we're trying...

21 THE VICE-CHAIR: I don't...I haven't

22 heard, there's...

23

24 BY MR. TAPP:

25 Q. Okay, when did you go to the break

 - 149 - S. Filman

 Cr-Ex (L. TAPP)

 1 and enter call that you referred to on 22nd of

 2 January, 2009, please?

 3 MS. SINGH: Mr. Vice-Chair, the

 4 chronology, as I had respectfully submitted

 5 to you, you know, it's like police notes,

 6 it's for purposes of refreshing

 7 recollection. It's not evidence, you know,

 8 it's not necessarily, you know, going to be

 9 accurate or...

10 THE VICE-CHAIR: I understand that. I

11 understand that.

12 MS. SINGH: Yes.

13 MR. TAPP: If I say it was used...the

14 point form chronology was specifically used

15 to terminate him, in the decision to

16 terminate Mr. Jack, so it becomes relevant

17 as to the credibility of the information on

18 that document. Please, this is about Mr.

19 Jack's termination...

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

21 have the chronology saying 22nd of January.

22 MR. TAPP: But we have evidence to say

23 it didn't occur on 22nd of January.

24 THE VICE-CHAIR: Well, I haven't heard

25 any evidence to that fact.

 - 150 - S. Filman

 Cr-Ex (L. TAPP)

 1 MR. TAPP: Okay, that's what I'm trying

 2 to establish from him. Show me your notes

 3 for December...January 22nd that says you

 4 went to a break and enter call.

 5 THE VICE-CHAIR: Okay.

 6 THE WITNESS: But I'm not...

 7

 8 BY MR. TAPP:

 9 Q. Show me a...

10 A. In the chronology I'm not saying

11 that he went to a break and enter call that day.

12 Q. Well, you were with him that day?

13 A. Right, but in the chronology it says

14 that he told me he wanted to stop by a witness'

15 house. I don't know...I don't know if that's

16 related to this letter or that 26th day break and

17 enter. I can't...there's nothing for me to

18 correlate those two things together.

19 Q. So, by that you're saying that it

20 could very well be in relation to a break and enter

21 call that you and he attended prior to the 22nd?

22 A. Or that he dealt with...

23 Q. And he dealt with in your absence?

24 A. Sure.

25 Q. He was four days on the job at that

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 Cr-Ex (L. TAPP)

 1 date and he went to a break and enter on his own?

 2 A. I don't remember what day he showed

 3 up. I'm just saying I can't correlate...

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

 5 THE WITNESS: ...these two things.

 6 MS. SINGH: ...can I ask that Mr. Jack

 7 not be laughing while this witness is

 8 giving...

 9 THE VICE-CHAIR: I agree.

10 MS. SINGH: ...evidence?

11 THE VICE-CHAIR: I agree, that's

12 inappropriate.

13

14 BY MR. TAPP:

15 Q. I'm sorry, it's just involuntary

16 action to some of the comments being made, so...

17 anyways, enough on that, Mr. Filman. I'm going to

18 show you...

19 THE VICE-CHAIR: What are we doing with

20 this?

21 MR. TAPP: Oh, yes, please, let's enter

22 that document as...that I put forth that

23 has his name at the bottom as the next

24 exhibit, please.

25 THE VICE-CHAIR: That's 175.

 - 152 - S. Filman

 Cr-Ex (L. TAPP)

 1 MR. TAPP: That will be a witness re

 2 break and enter.

 3 MS. SINGH: It's already an exhibit...

 4 THE VICE-CHAIR: It is?

 5 MS. SINGH: ...84.

 6 THE VICE-CHAIR: Good for you. We don't

 7 have to worry about it.

 8 MR. TAPP: Oh, we don't have to, right.

 9 THE VICE-CHAIR: So, I'm just going to

10 get rid of this.

11 MR. TAPP: Yes, we'll take that back.

12 Oh, you can keep it, yes...

13 THE VICE-CHAIR: Well, we have marked it

14 as an exhibit, I just don't want to confuse

15 myself.

16 MR. TAPP: Fair enough, Mr. Vice-Chair.

17 THE VICE-CHAIR: I'll put it there for

18 now.

19

20 BY MR. TAPP:

21 Q. I'm going to show you a copy of Mr.

22 Jack's notes where he's working with you on the 26th

23 of January. Notes that you would be providing him

24 guidance on. Anyways, I'm just going to show you to

25 establish the call of a break and enter on January

 - 153 - S. Filman

 Cr-Ex (L. TAPP)

 1 26th, okay, Mr. Filman?

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

 3 witness can't speak about Mr. Jack's note.

 4 Mr. Jack has had loads of time to give his

 5 evidence to this Tribunal. If there's a

 6 question to be put to the witness, then

 7 please put the question to the witness. If

 8 he doesn't have an answer, then I would

 9 ask, Mr. Vice-Chair, that we move on.

10 MR. TAPP: Okay.

11 MS. SINGH: We just move on.

12

13 BY MR. TAPP:

14 Q. Mr. Filman, in the first few days

15 from all your previous probationers you coached,

16 would you not agree that as a coach officer you

17 review their notes regarding specific calls,

18 especially in the first few days of their work, as

19 opposed to months later?

20 A. No, I don't grab their notes and go

21 through them.

22 Q. You don't. If I were to suggest

23 that Mr. Jack has a notation that he was accompanied

24 by you to this break and enter, would that change

25 your testimony any?

 - 154 - S. Filman

 Cr-Ex (L. TAPP)

 1 A. I agree I did come to that break and

 2 enter, I have...but the thing is with this

 3 chronology here, like I don't know...I don't think I

 4 typed these things out.

 5 Q. Okay, all right, that makes it very

 6 clear then of your confusion. I'm sorry, I did not

 7 know that. Those Counsel did at the start, so we

 8 did, we explored this and you indicated you made

 9 your entries for the point form chronology?

10 A. I did send a point form chronology,

11 but what I remember is sending one that was only my

12 ...my input. I never had one that had all of these

13 things mixed in, in order. And then I recall having

14 to do another one, but again, solely my input. It

15 didn't have other people's input, I never saw anyone

16 else...

17 Q. But this one specifically says a

18 hyphen "Shaun Filman" so it's yours...

19 A. It says "PC Filman," but I don't...I

20 have never seen...like I've seen this since, but I

21 didn't have a hand in putting this together this

22 way. So, if I did send something and it was

23 transported over, maybe that's what happened, but I

24 didn't do this this way.

25 Q. By whom? Transported by whom?

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 Cr-Ex (L. TAPP)

 1 A. Well, whoever put this together. I

 2 don't know. Like this has...this, at the beginning,

 3 has a bunch of stuff and like I didn't...I didn't

 4 have a hand, like I wasn't given this with other

 5 people's stuff and then plugging in my stuff. I

 6 didn't plug in my information into something and all

 7 I remember doing is having something that was simply

 8 my chronology, my information.

 9 Q. Isn't this entry, this point form

10 chronology entry in Mr. Jack's evaluation for PER

11 one/two?

12 A. Sorry, this chronology? This whole

13 thing?

14 Q. Not the whole thing, this 22nd of

15 January, 2009 break and enter chronology.

16 THE VICE-CHAIR: It's not a break and

17 enter, it's going to see a witness.

18

19 BY MR. TAPP:

20 Q. In reference to a break and enter?

21 A. Yeah, I agree we went to a break and

22 enter, I don't know...I don't know what your

23 question is though.

24 Q. All right. This chronology, as it's

25 documented, is it documented positively or

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 Cr-Ex (L. TAPP)

 1 negatively?

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

 3

 4 BY MR. TAPP:

 5 Q. Okay, the manner in how it's...what

 6 it conveys, is it documented in a manner to portray

 7 a positive view or negative view?

 8 A. Well, it's a document of facts. I

 9 don't know...

10 Q. It's making a...pardon me?

11 A. It's a document of facts, I don't

12 know, it's just...

13 Q. Now, is the fact...

14 A. ...what happened.

15 Q. ...being portrayed in a negative

16 manner or positive manner?

17 A. I don't know that it's meant either

18 way. It's just this is what happened, this is what

19 I saw. I don't know if I'm...

20 Q. You say, "I advised him that this

21 was a bad idea and it would be criticized," so...

22 A. Sorry, that specific entry?

23 Q. Yes.

24 A. Yeah, I'm telling him that it's a

25 bad idea to do that.

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 Cr-Ex (L. TAPP)

 1 Q. Okay, so it wouldn't be something

 2 ...okay. And how come, if it's a negative or

 3 positive one, how come it's not reflected in that

 4 month's PER?

 5 A. He asked me, I answered, I dealt

 6 with the situation. But at the end of the day, in

 7 totality, it's one of the issues.

 8 Q. Would you not agree from looking at

 9 that month one and two PER you only used four

10 specific examples with a...originating from a call,

11 SP number, but most of your categories have general

12 comments?

13 Mr. Filman, in light of the time it's

14 taking you to look that over, I'm quite prepared, if

15 Counsel wants to in a re-exam, see this. I'm going

16 to put another question to you, Mr. Filman, okay?

17 A. M'hm.

18 Q. The PERs were shared with Mr. Jack,

19 correct?

20 A. The evaluations were given to Mr.

21 Jack...

22 Q. Yes.

23 A. ...yes.

24 Q. And he had opportunities to provide

25 comments, correct?

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 Cr-Ex (L. TAPP)

 1 A. That's right.

 2 Q. Point form chronology was not shared

 3 with Mr. Jack, correct?

 4 A. I don't know.

 5 Q. If I were to suggest to you that

 6 they weren't shared with Mr. Jack then, and if that

 7 statement was true, would Mr. Jack ever have had an

 8 opportunity to provide a comment?

 9 A. I...I don't know. By that being in

10 November, he was off of my platoon and I had very

11 little contact with him, I don't know...and I don't

12 know that process, so I don't know.

13 Q. He was dismissed from employment

14 December 15th, 2009?

15 A. I don't know the day.

16 Q. Okay, thank you. Okay, I need to

17 direct your attention to February 2008 and '09,

18 point form chronology, hyphen, "PC Filman."

19 A. Sorry, February?

20 Q. 2009.

21 A. Okay.

22 Q. Can you read that entry, please.

23 A. Sorry, which day?

24 Q. February 2009, first bullet.

25 A. The first one?

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 Cr-Ex (L. TAPP)

 1 Q. There's no date on it.

 2 A. Right, "PC Jack was spoken to about

 3 his driving habits by me in regards to speed. Often

 4 on patrol he would be unable to multi-task and

 5 maintain an appropriate speed. He would often start

 6 to drive approximately 20 kilometres under the

 7 limit. I spoke to him in regards to a proper speed

 8 and aggravating other drivers. This behaviour

 9 continued. PC Jack was also spoken to about the use

10 of a GPS and, although it is a useful tool, it

11 should not always be relied on and that he should

12 also use a map to get to know his patrol area. PC

13 Jack continued to use this tool all of the time

14 anyway, sometimes asking the dispatcher for township

15 specifics so he could properly enter an address into

16 the GPS."

17 Q. That entry is made by you, Mr.

18 Filman?

19 A. It's like I said, I do remember

20 doing a chronology, it wasn't in this and...

21 THE VICE-CHAIR: What document are we

22 looking at, I'm sorry?

23 THE WITNESS: Oh, it's this large

24 chronology.

25 THE VICE-CHAIR: Oh, it's back to the...

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 Cr-Ex (L. TAPP)

 1 THE WITNESS: So, I believe so.

 2

 3 BY MR. TAPP:

 4 Q. You believe so. You agree that

 5 entry has information of exclusive knowledge that

 6 only you would be aware of? Use of GPS and talking

 7 to him about it?

 8 A. No.

 9 Q. No? Okay. Which one is it?

10 A. Well, he knew about it and I might

11 have told...

12 Q. He knew about it, but he didn't

13 prepare this?

14 A. No, but I might have told other

15 people that...like, I probably would have told later

16 on in...

17 Q. It says PC...

18 A. ...that this has been an issue or I

19 might have told Sergeant Flindall that this is an

20 issue. I think I wrote this, but...

21 Q. It says PC Jack was spoken to and

22 below that it says, "I spoke to him in regards..."

23 A. M'hm, yeah.

24 Q. And it has your name above it?

25 A. No, and I agree that I did do these

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 Cr-Ex (L. TAPP)

 1 things.

 2 Q. Okay, you did do these things?

 3 A. Yes.

 4 Q. Thank you. I'm now going to direct

 5 your attention to Mr. Jack's PER one/two. Please go

 6 over your entry in the following section, "Police

 7 Vehicle Operations." Page four of that PER, please.

 8 A. Yeah?

 9 THE VICE-CHAIR: Which PER?

10 MR. TAPP: Page four.

11 THE VICE-CHAIR: Of which one?

12 MR. TAPP: Month one/two PER, "Police

13 Vehicle Operations."

14

15 BY MR. TAPP:

16 Q. So, the question, Mr. Filman, can

17 you explain why you failed to mention the usage of

18 the GPS and PC Jack's driving habits, ie driving

19 below speed limit, in his PER for this section?

20 A. Sure, so police vehicle operations,

21 what they...what the point or what the objectives

22 they want to meet are, "Drives a motor vehicle in

23 compliance with the traffic laws in a safe and

24 proficient matter, employee's appropriate pursuit

25 and emergency driving strategies in compliance with

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 Cr-Ex (L. TAPP)

 1 policy, able to multi-task efficiently."

 2 So, I did make a point that he has

 3 demonstrated that he can operate a police vehicle in

 4 a safe manner, although he has not been yet tested

 5 in pursuit driving. And then I mentioned that he

 6 did receive a negative 233-10 for a minor collision

 7 in which he drove a cruiser into a ditch.

 8 I didn't mention that he was driving 20

 9 kilometres under, because it doesn't really fit that

10 he's not unsafe, and it doesn't speak to the other

11 parts of that, but simply a police officer...or a

12 police vehicle driving 20 kilometres below the speed

13 limit would annoy other drivers in an 80 zone at 60,

14 they would be hesitant to pass, where they would

15 normally pass another driver. And I spoke to him

16 about it in an effort to make that change.

17 Again, using a GPS is not an unsafe thing

18 to do, they're designed for that purpose, they just

19 can't be hand-held. And I told...I spoke to him

20 about that. It doesn't really fit with the police

21 vehicle operation of the PCS66, it just demonstrates

22 more his safety in arriving to a place on time.

23 So, it doesn't really fit that part. I did

24 match that part with the things that I felt were a

25 concern, but I left those out.

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 Cr-Ex (L. TAPP)

 1 Q. But where one was brought to your

 2 attention and you document in that PER, the other,

 3 the entries in the point form chronology was done

 4 behind his back, without his knowledge?

 5 A. But the portions in the point form

 6 don't really meet the spirit or the...what they're

 7 looking for in the PER. They're looking for people

 8 who can operate safely. He wasn't operating

 9 unsafely, he was just doing things that I would

10 rather him not do or rely on. I would ask that

11 somebody not rely on GPS, because if I need help

12 they rely on learning their patrol area and getting

13 there as quickly as possible.

14 The other problem too, with talking to him

15 about the GPS, is that GPSs can lead you down areas

16 that may not be full roads. It's just it's a thing

17 that a police officer shouldn't rely on, but it

18 doesn't really speak to police vehicle operation as

19 per the PSC66, in my opinion.

20 Q. That's a detailed documentation

21 under that bullet heading, February 2009?

22 A. Yes, it is.

23 Q. Okay, and that would have been done

24 some nine months after that time?

25 A. At least.

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 Cr-Ex (L. TAPP)

 1 Q. At least, okay. Do you have any

 2 notes to support that or are you going from your

 3 memory is so good that you remember that, all that

 4 detail?

 5 A. I remember talking to him about it.

 6 it was an issue, but those things are not for police

 7 notes. Again, if I talk to him about police vehicle

 8 operation and using a GPS and driving 20 kilometres

 9 under, and the next thing we are involved in is some

10 crime where the...the trial can then turn to stuff

11 that I've written about Constable Jack. I don't

12 like putting those things in my notebook, it just

13 opens those things up to things in criminal

14 proceedings that they don't need to be opened up to.

15 Q. Could they be reflected in the

16 redacted portion of your notes that we received?

17 A. I don't think I...no, I didn't make

18 notes about it. It's conversations that we had

19 about it, and I remember that.

20 Q. Okay, I direct your attention to

21 your March 2009 point form chronology entry, hyphen

22 "PC Filman, during routine patrol..."

23 A. Yeah. Would you like me to read it?

24 Q. Yes.

25 A. "During a routine patrol I turned

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 Cr-Ex (L. TAPP)

 1 into the GoodLife parking lot to turn around. As we

 2 were in the lot PC Jack asked if we could stop so he

 3 could go inside. I asked if he had to go to the

 4 washroom, he said no, but that there was a girl in

 5 there that he wanted to ask out and thought maybe

 6 the uniform would help. I said well, that's not

 7 something that we do on duty and we went about our

 8 day. We ended up at the Bridgenorth Community

 9 Policing Office, as we were leaving on our way to

10 return to detachment PC Jack asked if we were on our

11 way and would be going...which way we would be

12 going. I asked why, PC Jack said that if we were

13 going in the direction of GoodLife maybe he could

14 stop in. I shook my head and turned the other

15 direction."

16 Q. Thank you, Mr. Filman. Can you

17 explain why there is no exact date of that incident

18 that has such crucial details?

19 A. I just remember it happening.

20 Again, he's a new recruit, I'm not making notebook

21 entries of that, but I remember it happening.

22 Q. What is it that you have detailed

23 that makes you recall it being March 2009?

24 A. I...doing that, I'm just giving a

25 round about time. It was while we were on day shift

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 Cr-Ex (L. TAPP)

 1 together, so he was still...he didn't have his day

 2 wings.

 3 Q. So, Constable Filman, explain why

 4 the documentation of this incident is missing as

 5 even general comments in Mr. Jack's PER for that

 6 time period, which will be PER two, 9th of March to

 7 9th of April?

 8 A. I don't know which heading that

 9 would pertain to. The performance evaluations ask

10 me to provide an assessment on specific sections. I

11 don't think that would be a specific section. And

12 again, I let him know that's not...it's not

13 something that I think somebody should be doing on

14 duty is going out of their way to try to meet a girl

15 on duty. That's why it sticks out in my head, and

16 it's not something that fits one of the headings in

17 a performance evaluation.

18 Q. And once again, do you have any

19 notes about that?

20 A. I wouldn't make notes about that.

21 Q. That's just your recollection?

22 A. Yes.

23 Q. And a recollection that is done

24 sometime after November 26, 2009 at the earliest?

25 A. Yes.

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 Cr-Ex (L. TAPP)

 1 Q. Okay, and though your PERs contained

 2 many general comments, this is a general observation

 3 and a negative general observation, correct?

 4 A. But my general observations in the

 5 performance evaluations are specific to the specific

 6 requirement. So, like, I mean, I'm not going out of

 7 my way to try to find things in the performance

 8 evaluations for Michael Jack to say, you know, he's

 9 doing these things and whatnot. I'm specifically

10 observing for specific headings, and putting them in

11 there. If...I mean, if at that point I was wanting

12 to be negative about Constable Jack and throw that

13 in and try to fit it in somewhere, I guess I could

14 have done that, but I wasn't looking to do that.

15 Q. But you are putting anything that

16 can even be construed as negative about him in your

17 chronology, correct?

18 A. I put things in the chronology that

19 didn't fit the performance evaluation, yes.

20 Q. And some nine months after the fact,

21 correct?

22 A. Yeah.

23 Q. And without Mr. Jack's ability to

24 provide any possible rebuttal, right?

25 A. Again, I don't know.

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 Cr-Ex (L. TAPP)

 1 Q. Okay.

 2 MS. SINGH: Mr. Vice-Chair, I just rise

 3 to again advise that in fact there's been

 4 no evidence to suggest that the chronology

 5 formed the basis for the termination, and

 6 nor is there any evidence to suggest that

 7 Mr. Jack would be provided with what looks

 8 to me like, you know, a litigation

 9 document, a document prepared in

10 anticipation of litigation, work product,

11 whatever, where the privilege has obviously

12 been waived...

13 THE VICE-CHAIR: It has been.

14 MS. SINGH: ...and produced as part of

15 this. Again, the document was not prepared

16 by Mr. Filman, he can't...he has no ability

17 to compare the entries, and so I was very

18 concerned in the beginning about the

19 reliability about it beyond, you know,

20 something to simply, you know, refresh a

21 witness' recollection. But I'm very

22 concerned that the impression not be left

23 that this is akin to a police note, number

24 one, and accurate necessarily. But, you

25 know, to the extent that the witness can

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 Cr-Ex (L. TAPP)

 1 authenticate it, can, you know, use his

 2 recollection to refresh, and secondly that

 3 it did form the basis for anything.

 4 You know, I think this witness has

 5 testified as to preparing the performance

 6 evaluations, and you know, to the extent

 7 that he is able, he's able to acknowledge

 8 his portions of those performance

 9 evaluations. And so, I think, you know,

10 Mr. Vice-Chair that this line of

11 questioning is inappropriate, and suggests

12 things to the Tribunal that, you know,

13 cannot be verified and are not reliable.

14 THE VICE-CHAIR: I understand.

15 MS. SINGH: Thank you.

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

17 have to respond, she...I have to respond to

18 that.

19 MS. SINGH: I...

20 THE VICE-CHAIR: What are you...she has

21 directed her remarks to me, I would like

22 to...

23 MR. TAPP: Okay, pardon me.

24 THE VICE-CHAIR: ...remark back, and

25 maybe you'll appreciate what I'm saying in

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 Cr-Ex (L. TAPP)

 1 terms of this document. I'm not...

 2 MR. TAPP: Yes, thank you.

 3 THE VICE-CHAIR: ...relying on this

 4 document for anything. Somebody has

 5 compiled other people's statements. We

 6 don't know who, we don't even know if this

 7 is accurate. It's helpful though for me,

 8 in terms of getting a general outline of

 9 how things went down, okay?

10 So, this isn't evidence, but I will

11 be looking to it as a tool for...to help me

12 understand the chronology of events, okay?

13 MR. TAPP: Okay.

14 THE VICE-CHAIR: And, you know, it may

15 be true, it may not be true, I don't know,

16 but I'm not using it as evidence.

17 MS. SINGH: Thank you.

18 MR. TAPP: Thank you. So, contrary to

19 what Counsel said, it has...it is referred

20 to several times in the transcript, it has

21 been deduced by many witnesses, okay?

22 THE VICE-CHAIR: That's right, and I...

23 MR. TAPP: Thank you.

24 THE VICE-CHAIR: And to tell you the

25 truth, I have reluctantly entered it as an

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 Cr-Ex (L. TAPP)

 1 exhibit.

 2 MR. TAPP: Yes.

 3 THE VICE-CHAIR: I think it was prepared

 4 for the purposes of litigation, that's what

 5 it seems to me. And that...

 6 MR. TAPP: And the termination.

 7 THE VICE-CHAIR: ...type of document

 8 typically is privileged, but apparently it

 9 has been waived, because it was disclosed,

10 so...

11 MR. TAPP: Thank you.

12

13 BY MR. TAPP:

14 Q. Okay, so I direct your attention to

15 the March 2009 entry, "PC Filman, spoke to PC Jack

16 as we were still in office..." I think you may have

17 touched a bit about this, but read that and tell me

18 about that, please?

19 A. So, "I spoke to PC Jack as we were

20 still in the office at 10:00 a.m. I told him that I

21 wanted to get going several times and eventually he

22 came out. The vehicle needed fuel, so we went to

23 the gas station across the road from the office,

24 which is also a Tim Hortons. PC Jack was obviously

25 unhappy, staring forward and not saying a word. I

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 Cr-Ex (L. TAPP)

 1 fuelled the vehicle and PC Jack remained inside. As

 2 I was going to have a coffee, so I asked PC Jack if

 3 he wanted one as well, PC Jack declined. I got a

 4 coffee and came out and proceeded to patrol. PC

 5 Jack said, `I'm hungry.' I was somewhat annoyed as

 6 he had been in the office for four hours, but I

 7 said, `What do you want?' He said, `I have food in

 8 my locker.' I said, `You mean the office you were

 9 just in for the past four hours?' PC Jack said, `I

10 don't want that anyway.' Again I said, `Well, what

11 do you want?' PC Jack point at a McDonald's

12 restaurant and said that's crap. I said, `Well, you

13 don't have to have that, but I'm not going to decide

14 what you eat,' so PC Jack decided on a sub. I

15 waited in the car as PC Jack got a sub and we

16 received a radio call for an alarm. PC Jack

17 returned to the vehicle, I told him that we had an

18 alarm call and he said, `Can I get a coffee first?'

19 I told him no, we have a call, we just left a coffee

20 shop. When we were called off the alarm in

21 Lakefield PC Jack again requested a coffee, so we

22 went to the Tim Hortons and he got one."

23 Q. Thank you.

24 THE VICE-CHAIR: I'm sorry, where were

25 you reading? March?

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 Cr-Ex (L. TAPP)

 1 THE WITNESS: It's just March 2009.

 2 THE VICE-CHAIR: Oh, okay.

 3

 4 BY MR. TAPP:

 5 Q. Can you explain why there is no date

 6 of that incident, please? It's a detailed account

 7 of an incident, right?

 8 A. Yeah. I don't remember the exact

 9 date. I remember it happening, it was another

10 example of where he was mad at me and not talking to

11 me, and just being generally like, for lack of a

12 better word, grumpy. And I remember...like, I know

13 it was when he was on day shift with me, and there

14 was still snow on the ground, because I can actually

15 still remember when he came out of the sub shop he

16 grabbed snow off of a car and wiped it across his

17 face.

18 Q. Would you say those comments were

19 favourable or unfavourable?

20 A. Well, they're true, that's all I can

21 say.

22 Q. Okay, those are true?

23 A. Yes.

24 Q. Okay. Can you explain the document

25 ...can you explain why the documentation is missing

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 Cr-Ex (L. TAPP)

 1 in your notes that was shared with us?

 2 A. Sorry?

 3 THE VICE-CHAIR: What documentation?

 4

 5 BY MR. TAPP:

 6 Q. The documentation of this incident

 7 in your point form chronology here that you just

 8 read out, can you explain...

 9 A. This right here? I wouldn't make

10 notes about that.

11 Q. You did not make notes about that?

12 A. I don't make mote about those types

13 of things.

14 Q. Thank you. Can you explain why the

15 documentation of the incident is missing in Mr.

16 Jack's PER for that month, 9th of March to 9th of

17 April?

18 A. Well, again, an incident like that

19 doesn't really fit into one of the headings for a

20 performance evaluation. It's a specific event that

21 occurred, it's a demonstration of my interactions

22 with him and difficulties that he presented to me,

23 but it's not something that I feel needs to be a

24 performance evaluation.

25 Q. Thank you. Can you read the

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 Cr-Ex (L. TAPP)

 1 definition of "Teamwork" in any of the evaluations,

 2 please? Just pick one on your desk, they all are

 3 identical.

 4 A. Yeah, I'm just trying to..."Works

 5 effectively with others towards a common purpose

 6 while putting the group's goals ahead of personal

 7 achievement."

 8 Q. Can you read the definition of

 9 "Deportment," please?

10 A. "Controls emotions, especially when

11 provoked or when facing opposition or hostility.

12 Takes constructive action, deals with situations

13 while maintaining professionalism."

14 Q. And last, can you read the

15 definition of "Respectful relations," please, on

16 page seven?

17 A. "Exercises a skill and willingness

18 to react sensitively, to be empathetic,

19 compassionate and sincere, recognizes the positive

20 contribution of others, demonstrates trust in others

21 by..." sorry, I can't read it on that one,

22 "...acknowledging their strengths, skills and

23 experience."

24 Q. And last, "Flexibility" above that,

25 "Adapts to..."?

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 Cr-Ex (L. TAPP)

 1 A. "A variety of changing situations,

 2 individuals and groups."

 3 Q. So, do you not agree that detailed

 4 documentation of March 2009 in your point form

 5 chronology could have fit in any one of those that

 6 you just read?

 7 A. It's like I said, if I wanted to

 8 point out every negative thing and just jam it in

 9 there, I could. I didn't think it met the standard

10 of being in his performance evaluation and then

11 driving him to another, "Does not meet requirements"

12 when it was unnecessary.

13 Q. So, if it wasn't important enough

14 for you to document it in any one of those areas of

15 your evaluation reports of him, why did you feel it

16 important to mention it in your chronology several

17 months later and without any reference?

18 A. Well, because on point each one is a

19 minor thing, but in totality it creates...

20 Q. Creates a perception?

21 A. No, it doesn't create a perception,

22 it creates a story of this is where it started,

23 these are the things I started to notice. But in

24 March 2009 Mike's with me all the time. He doesn't

25 have to like me, he doesn't have to want to be with

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 Cr-Ex (L. TAPP)

 1 me, but he's got to...he's got to...but he's stuck

 2 there. So, while he's mad at me, because I'm making

 3 him come out on the road and that's the way he acts

 4 to me, that's fine. I don't think it has to be in

 5 his performance evaluation, I don't think it has to

 6 push in a "Does not meet requirements" at that

 7 point.

 8 Q. Assuming that what you documented

 9 there did take place, why did you fail to mention

10 that...to mention what Mr. Jack was doing during his

11 four hours while sitting in the cruiser, sitting in

12 the office?

13 I'll mention that again. Assuming the

14 purported incident did take place, then why did you

15 fail to mention what Mr. Jack was doing during the

16 four hours while sitting in the office?

17 A. Well, he was left with tasks to

18 complete and he just didn't complete them.

19 Q. How do you remember that?

20 A. That's why I came back to get him,

21 and I had run the cruiser out of gas. It needed

22 fuel again. You've had time in the office to catch

23 up on what you need to do and that's a regular thing

24 that I did. It's important that he has time to get

25 it done and I don't need to be sitting there doing

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 Cr-Ex (L. TAPP)

 1 nothing, I can still go into work.

 2 Q. What were the tasks, please?

 3 A. Oh, I don't remember.

 4 Q. Would you not agree that the account

 5 in the incident portrays Mr. Jack as a lazy, rude,

 6 inconsiderate and obnoxious person?

 7 A. I don't know what the last one

 8 means, but I mean, he was being rude to me that day,

 9 sure. I'm not purporting that he's lazy, he

10 certainly wasn't lazy. What I'm saying is that's

11 the way he acted towards me when I had him do things

12 that he didn't want to do.

13 Q. How did you want to portray Mr. Jack

14 when you made this entry?

15 A. I'm not...

16 Q. Undated entry?

17 A. I'm not looking to portray him in

18 any way, I'm giving out the facts as I recall them.

19 So, it's not about painting him in any light, it's

20 painting a picture of the things that I remember and

21 the things that I dealt with.

22 Q. Since this entry, just as many other

23 entries, Mr. Filman, is not contemporaneous, and is

24 not even mentioned either in your notebooks or Mr.

25 Jack's PERs, how were you able to recall these

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 Cr-Ex (L. TAPP)

 1 minute details and even quote Mr. Jack some eight

 2 months after the alleged incident?

 3 A. I've really never...had never and

 4 haven't experienced anything like that at work since

 5 and it weighed on me. I remember those things, I

 6 still remember them to this day.

 7 Q. Wow, that left an indelible

 8 impression on you, you might remember his

 9 responses...

10 A. Well, these specific...

11 Q. ...so many years later?

12 A. I know there's quotation marks, but

13 that's...I'm not saying it's an exact quote, but

14 those are the things that he said.

15 Q. But you do indicate...that clearly

16 states what he responded and you have it in

17 quotation marks?

18 A. Yeah, I'm writing what I remember

19 him saying.

20 THE VICE-CHAIR: Mr. Tapp, I'm mindful

21 of the time...

22 MR. TAPP: The time, so...

23 THE VICE-CHAIR: ...and Counsel has the

24 right to re-examination.

25 MR. TAPP: Well, we've still got...okay.

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 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. I'm referring you to your month one

 3 and two PER, "Attitude Towards Learning," please,

 4 "Meets requirements rating."

 5 A. "PC Jack shows a positive attitude

 6 towards learning. He is interested in reviewing the

 7 Niche manual and when one was not available he

 8 searched one out and in fact his efforts had the OPP

 9 Internet website updated with the manual."

10 Q. Now, read "Personal Accountability

11 Rating" and what you have mentioned there.

12 A. "Meets requirements. When advised

13 of a deficiency PC Jack is receptive and strives to

14 remedy the issue."

15 Q. And, "Respectful Relations," please,

16 what rating?

17 A. "Meets requirements. PC Jack has

18 shown that he values the experience of other

19 officers and recognizes when they are giving him

20 positive assistance."

21 Q. And "Meets requirements" under

22 "Deportment," please?

23 MS. SINGH: Is there...is there a

24 question here?

25

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 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. It's coming, it's coming.

 3 A. "Meets requirements. PC Jack

 4 remains professional to date" something, and then

 5 "anytime that PC Jack has been faced with a

 6 confrontational person," I can't read it on here.

 7 Q. So, can you now explain where there

 8 is a stock discrepancy between your contemporaneous

 9 entries and Mr. Jack's PERs...

10 MS. SINGH: I believe this question has

11 been asked and answered...

12 MR. TAPP: ...and your...

13 MS. SINGH: ...several times, Mr. Vice-

14 Chair.

15

16 BY MR. TAPP:

17 Q. ...synchronous entries in Mr. Jack's

18 point form chronology? That has not been asked.

19 A. I don't understand the question.

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

21 question either, and those aren't

22 contemporaneous anyway.

23 MR. TAPP: No, contemporaneous and PERs,

24 but anyways...okay.

25

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 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. I'm going to direct your attention

 3 and specifically ask you to refer to your note

 4 entries in your point form chronology, all your

 5 notes for 7th of March 2009. Rather, can you read

 6 your point form chronology entry for March 7, 2009,

 7 please?

 8 A. "When we were dispatched to a

 9 domestic dispute I asked PC Jack if he was ready and

10 I got up and left towards the vehicle. I waited for

11 a bit and then came in to find PC Jack still

12 finishing up paperwork. I said that this was a

13 priority call, let's go, and went back to the door,

14 waited then found that PC Jack had gone to the

15 washroom. I was about to leave him behind when he

16 came walking out. He got in the car and again I

17 told him in a priority we must...we hurry."

18 Q. Read the next entry, please. Again,

19 that has a date of 7th of March, 2009.

20 A. "I advised PC Jack that his

21 evaluation was complete and that he would be

22 receiving it soon. PC Jack asked how it was and I

23 said it was good, but he is new and as usual I had

24 indicated some areas that he would have to improve

25 on over time. PC Jack's response to this was, `I'm

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 Cr-Ex (L. TAPP)

 1 not taking any crap'."

 2 Q. And read 7th of March, 2009 entry

 3 please below it.

 4 A. "As I was preparing to leave for the

 5 scheduled end of my shift at 0500 hours PC Jack was

 6 also preparing to leave, although scheduled until

 7 0600 hours. I questioned him on this and he said

 8 that he had come in early to do something so he was

 9 leaving now. I asked if a supervisor had approved

10 this prior to this decision, he said no. I told him

11 that he would have to stay then, because members

12 count on bodies being in until the end of their

13 scheduled shift. I told him that he would have to

14 get approval before changing his shifts to ensure

15 enough people were working. He asked if he could

16 claim overtime for the time, I told him that

17 overtime must be approved and if you come in early

18 that must be approved prior. He went back into the

19 constable's office and then returned and told me

20 that the OIC for day shift said he could go. I told

21 him that he would have to stay anyway, because none

22 of this had been approved by a Sergeant and the OIC

23 was a constable. Sergeant Flindall was advised."

24 Q. So, these are details pertaining to

25 three separate incidents, all occurring on 7th of

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 Cr-Ex (L. TAPP)

 1 March, 2009?

 2 A. That's what it says.

 3 Q. Okay, show me a copy of your notes

 4 reflecting that, please? March 7th, 2009, maybe you

 5 have some entries there.

 6 A. So, in my notes I was on a rest day

 7 on March 7th.

 8 Q. Thank you. Okay, I'm going to show

 9 you, okay, another set of notes that will

10 corroborate your entry in your notes of March 7,

11 2009. It says "Days off."

12 A. March...6 March, '09 and then an

13 arrow and then March 9, '09 this says days off.

14 Q. You were both off duty, you and Mr.

15 Jack?

16 A. It appears so.

17 MR. TAPP: Thank you. Okay, month one

18 and two performance evaluation report...Mr.

19 Vice-Chair, this copy of the notes that

20 were shown to him to corroborate his

21 version of the notes is also something that

22 we have been requesting for a long time, so

23 we would like this entered as an exhibit,

24 please. This one page.

25 THE VICE-CHAIR: Well, whose notes are

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 Cr-Ex (L. TAPP)

 1 these?

 2 MR. TAPP: These are Mr. Jack's notes

 3 that corroborates his version to show that

 4 both of them were off on March 7, 2009.

 5 MS. SINGH: I would object to that, Mr.

 6 Vice-Chair. I don't think that it's

 7 appropriate to put Mr. Jack's notes...

 8 MR. TAPP: Okay, then, Mr. Vice-Chair,

 9 with all due respect, the only reason we're

10 asking this is because we don't have that

11 copy of notes from Mr. Filman for that

12 date. So, in the absence of that, we are

13 being forced to ask you to enter this as an

14 exhibit. Now, unless Counsel is going to

15 undertake to photocopy his notes for that

16 date, then I'm quite content to wait and

17 have her provide it and we'll enter that as

18 an exhibit.

19 MS. SINGH: Mr. Vice-Chair, the accuracy

20 of the notes is not the issue in this case.

21 And the witness has a recollection, and to

22 the extent that he can provide evidence to

23 this Tribunal from his recollection, that

24 is sufficient and reliable. And so, again,

25 I rise, I hate to keep rising, but it would

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 Cr-Ex (L. TAPP)

 1 appear that Mr. Tapp doesn't seem to

 2 appreciate that it's unfair and unreliable

 3 to put other people's notes to this witness

 4 that he has not created, he has not

 5 authored, he has no evidence to provide,

 6 and to suggest that there's some basis to

 7 question his recollection. So, I would

 8 object to that being put into evidence.

 9 MR. TAPP: Thank you.

10

11 BY MR. TAPP:

12 Q. Mr. Filman, can you give us a copy

13 of that page of your notes reflecting that you were

14 on days off for March 7, 2009?

15 A. I have my notes here.

16 Q. Can you give us a copy of that for

17 that date reflecting that you were on days off?

18 THE VICE-CHAIR: What do your notes say?

19 THE WITNESS: It just shows that I'm off

20 that day on March 7th.

21 MS. SINGH: He's given his evidence that

22 he was not there that day, there's no

23 notes.

24 MR. TAPP: But we were deprived that

25 date, Mr. Vice-Chair in the disclosure of

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 1 all...

 2 THE VICE-CHAIR: Okay, he's testified

 3 that he wasn't there those days, and that's

 4 consistent with what you're...

 5 MR. TAPP: Yes, and that's why we

 6 wanted...

 7 THE VICE-CHAIR: ...you're alleging.

 8 Well, it doesn't matter, he has testified

 9 to that effect.

10 MR. TAPP: Okay, thank you, Mr. Vice-

11 Chair.

12 MS. SINGH: And also, Mr. Vice-Chair,

13 just to add to that, my understanding is

14 that the witnesses, that my client has

15 provided everything that was arguably

16 relevant. These entire police notes are

17 not entirely...

18 THE VICE-CHAIR: I under...

19 MS. SINGH: ...arguable relevant and...

20 THE VICE-CHAIR: Yes, I understand that,

21 Counsel.

22 MS. SINGH: Yes, thank you, Mr. Vice-

23 Chair.

24

25 BY MR. TAPP:

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 Cr-Ex (L. TAPP)

 1 Q. Mr. Filman, month one and two PER,

 2 "Attitude Towards Learning" says, "Meets

 3 requirements" rating?

 4 A. Yeah.

 5 Q. And it says, "PC Jack shows a very

 6 positive attitude towards learning"?

 7 A. Yes.

 8 Q. Good. "Personal Accountability"

 9 says, "Meets rating" (sic) and it states, "When

10 advised of a deficiency Mr. Jack is receptive and

11 strives to remedy the issue," correct?

12 A. Yes.

13 Q. Thank you. In "Respectful

14 Relations" where it says "Meets requirements" it

15 states, "PC Jack has shown that he values the

16 experience of other officers and recognizes when

17 they are giving him positive assistance," correct?

18 A. Yes.

19 Q. And in "Deportment" again a positive

20 rating, you note, "PC Jack remains professional,"

21 correct?

22 A. Yes.

23 Q. Okay. Now, again I direct your

24 attention to March 7, 2009, where you say, "As I was

25 preparing to leave..." Do you see the contradiction

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 Cr-Ex (L. TAPP)

 1 contained there?

 2 A. No.

 3 Q. Okay, just I direct your attention

 4 to that entry, "As I was preparing to leave for the

 5 scheduled end of shift..."

 6 A. Yes.

 7 Q. Towards the end you say, "I told him

 8 that he would have to stay anyway, because none of

 9 this had been approved by Sergeant and the OIC was a

10 constable."

11 A. Yes.

12 Q. "Sergeant Flindall advised"?

13 A. Yes.

14 Q. Now I direct your attention to

15 "Teamwork, meets requirement" rating. You note, "PC

16 Jack has always asked other officers who are working

17 on calls for service well into overtime what

18 assistance he can provide. He often stays with

19 them, not leaving until the end of the shift has

20 gone home," correct?

21 A. Yeah.

22 Q. So, how is that statement not

23 contradictory to that bullet entry in your point

24 form chronology that begins with, "As I was

25 preparing to leave..."?

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 Cr-Ex (L. TAPP)

 1 A. I don't see what's contradictory,

 2 I'm sorry.

 3 Q. And particularly you are portraying

 4 it negatively in the point form chronology, yet you

 5 are portraying it as something positive in the

 6 teamwork category of that evaluation.

 7 A. But the specific example I've given

 8 in the teamwork evaluation is not talking about this

 9 incident. So, what I'm doing in the evaluation,

10 which this is Mike's first evaluation, he's new to

11 things, and I want to build up his confidence, and I

12 want to make sure that he's well aware that he is

13 doing things good. So, this is a bad thing, but

14 when officers are staying on overtime from other

15 shifts and Mike offers them help that's a good

16 thing. And when Mike stays to make sure that

17 anybody doesn't need help or stays until they've

18 gone home, that's a good thing.

19 I mean, if I wanted to be a mean person, I

20 guess, I don't know what to say, I could put this in

21 and say well, he's failed everything, but this is

22 one specific event. On other times he did lots of

23 good things and I think when you have a new recruit

24 it's important to reinforce the good things that

25 they're doing. He was talked to about this

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 Cr-Ex (L. TAPP)

 1 incident, and it was hoped that would be the end of

 2 it. But that doesn't have to go into the

 3 evaluation, he does a lot of good things. It's a

 4 balancing act.

 5 Q. The only truthful thing in that

 6 entry there in the point form chronology is the fact

 7 that it alludes to he was on his day off on March 7?

 8 A. I don't...again, like this happened.

 9 The March 7th, I don't know if I put March 7th, but

10 ...and I did do a chronology, and I did do certain

11 events.

12 Q. What's truthful about March 7, 2009?

13 Is anything truthful on his day off...

14 MS. SINGH: I object. I object.

15 THE VICE-CHAIR: Yes, I've already

16 indicated this is not evidence. It's a

17 chronology put together by someone, we

18 don't know who, of entries made by various

19 people.

20 MR. TAPP: And I have to say again, Mr.

21 Vice-Chair, it was this chronology that was

22 used to terminate Mr. Jack. That's why

23 these questions are being asked.

24 MS. SINGH: There's no evidence that...

25 THE VICE-CHAIR: But there's no evidence

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 Cr-Ex (L. TAPP)

 1 to that...

 2 MR. TAPP: There has been. Mr.

 3 Armstrong testified that it was the PER and

 4 the point form chronology. Pardon me,

 5 that's in the transcripts.

 6 THE VICE-CHAIR: I don't know what point

 7 form chronology he was talking about.

 8

 9 BY MR. TAPP:

10 Q. Okay, I direct your attention to

11 month four PER "Communication" please, "Meets

12 requirements" rating.

13 A. Sorry, which section?

14 Q. Communication, please.

15 A. Radio communication?

16 Q. Radio communication. We don't have

17 our copy, it's on your desk. That's why...

18 A. Yeah.

19 Q. ...I can't direct what page it's on.

20 Maybe you can say what page it's on?

21 A. It's on page five.

22 Q. You make it a point to document in

23 the PERs that Michael Jack is conscious that he

24 speaks with an accent or has an accent?

25 A. Yes.

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 Cr-Ex (L. TAPP)

 1 Q. Thank you, and the specific example,

 2 you say, "PC Jack has continued to receive detailed

 3 statements from witnesses, victims and accused

 4 persons. The statements are positive and adequate

 5 for court purposes. I have found that PC Jack is

 6 cautious and detailed when conducting his

 7 interview..."

 8 A. That's not...that's not under "Radio

 9 Communications." Is this under...

10 Q. It's under "Communication." There's

11 another category...

12 A. It's oral communication, oral.

13 Q. Oral communication.

14 A. Yeah, and what you said is there,

15 yes.

16 Q. Okay, and you end the specific

17 example with the SP number?

18 A. I do.

19 Q. Thank you. SP09087157?

20 A. Yes.

21 Q. And in that month evaluation under

22 "Written" with "Meets requirement" your specific

23 example, read it, please?

24 A. "During this evaluation period PC

25 Jack has responded to 42 calls for service, 18 of

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 Cr-Ex (L. TAPP)

 1 which have been reportable. Reports have been done

 2 in a timely manner and are detailed and accurate."

 3 And then I give that incident number as well.

 4 Q. Give the...read the incident number,

 5 please?

 6 A. SP09087157.

 7 Q. Month four, "Analytical Thinking,

 8 meets requirement," read what you have as a specific

 9 example?

10 A. "PC Jack attended to a fraud

11 complaint involving a fraudulent credit card,

12 SP09087157. PC Jack completed a detailed

13 investigation, including a photo line-up. This

14 investigation will likely result in several charges

15 over multiple jurisdictions. PC Jack has since

16 turned the investigation over to the regional

17 intelligence officer."

18 Q. And now read month six/seven PER

19 that you have before you, 9th of June to 9th of

20 August, "Analytical Thinking, meets requirements."

21 THE VICE-CHAIR: After this, we're

22 taking a break.

23 MR. TAPP: Okay, and I've only got

24 probably about three pages, that's it.

25 THE VICE-CHAIR: Well, if you only have

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 Cr-Ex (L. TAPP)

 1 three pages, then we'll take it when...

 2 MR. TAPP: Okay, thank you.

 3 THE VICE-CHAIR: ...when you're finished

 4 with the three pages.

 5 THE WITNESS: Which section?

 6

 7 BY MR. TAPP:

 8 Q. "Analytical Thinking," read the

 9 specific example with the occurrence number, please.

10 A. "SP09087157 PC Jack has been

11 involved in a lengthy credit card investigation in

12 which a credit card was used to obtain merchandise

13 on two occasions from a Home Hardware store north of

14 Peterborough. The credit card fraud is not

15 typically an investigation a probationary would

16 tackle and one not as involved as this matter. As a

17 result of PC Jack's investigation, he has been able

18 to determine the suspect in his investigation has

19 been involved in other criminal activity elsewhere

20 in the province. PC Jack prepared documentation for

21 this jurisdiction, has provided them with

22 information concerning these frauds. PC Jack has

23 completed a Crown brief package in this matter and a

24 warrant has been sought for the suspect's arrest."

25 Q. Now, in that same PER month

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 Cr-Ex (L. TAPP)

 1 six/seven, in follow-up orientation you give him a

 2 "Does not meet requirements" for that same credit

 3 card fraud investigation?

 4 A. Yes.

 5 Q. SP09087157?

 6 A. That's right.

 7 Q. So, can you explain how in previous

 8 PERs you give him four positive ratings and in this

 9 one here you give him a negative rating for the same

10 incident?

11 A. Yeah, in the analytical thinking he

12 met requirements. What he did there met

13 requirements. He did a good job on the analytical

14 thinking part. In follow-up orientation, the same

15 event, he did things that didn't meet requirements.

16 It's the same incident, it's complex and there's

17 lots of parts to it. There are parts where you will

18 do well and there are parts where you can fall down.

19 He fell down on the follow-up, but he did well on

20 the analytical thinking.

21 Q. Thank you, but the glaring

22 difference is the presence of Constable Payne

23 numerous times there in that negative rating, and

24 the presence of Flindall, correct?

25 A. I don't...there's no...there's no

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 Cr-Ex (L. TAPP)

 1 real presence of Sergeant Flindall. So, I don't

 2 want to say that yes, there's presence of him. He's

 3 just asked to...

 4 Q. Read the bottom, second last line.

 5 A. Sure, he learned she would be

 6 working on one of his rest days and...he learned

 7 that she would be home working on one of his rest

 8 days and asked Sergeant Flindall if he could come in

 9 on that day. So, it's just that he's asked him if

10 he could work on his rest day. I don't think that's

11 really any presence.

12 Q. Read the second last line of that

13 paragraph, beginning with the sentence, "He learned

14 she would..."

15 A. Yeah, "He learned she would be

16 working on one his rest days and asked Sergeant

17 Flindall if he could come in on overtime on a day

18 off to meet with the girl when she was working."

19 Q. Did you write that specific example?

20 A. I'm not sure.

21 Q. Not true?

22 A. I'm not sure.

23 THE VICE-CHAIR: Not sure.

24 MR. TAPP: Not sure, pardon me.

25

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 Cr-Ex (L. TAPP)

 1 BY MR. TAPP:

 2 Q. You would note that the occurrence

 3 number is different and is right at the start of

 4 this specific example?

 5 A. But that changes throughout. Like,

 6 I don't think that really speaks to who wrote...

 7 Q. Thank you.

 8 A. The impaired driver was just me and

 9 him together and it's done that way.

10 Q. Okay, I direct your attention to

11 your point form chronology, 20th of June, 2009. "PC

12 Jack attended a stand-by/keep the peace."

13 A. Yeah.

14 Q. Okay, you acknowledge making that

15 entry?

16 A. Yes.

17 Q. Yes, you did?

18 A. Yes.

19 Q. Thank you. I'm going to direct your

20 attention to Mr. Jack's month five PER for the

21 report period 9th of May to June 9th, resolution

22 section, please. Is the specific example used there

23 the specific example that you...or the incident you

24 talk about in your point form chronology, 20th of

25 June 2009?

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 Cr-Ex (L. TAPP)

 1 A. Yes.

 2 Q. Do you know the SP number of that

 3 call?

 4 A. I don't.

 5 Q. Can you please, Constable Filman,

 6 explain how an incident that took place on June

 7 20th, 2009, which is in your officer notes disclosed

 8 to us, made its way in to the performance evaluation

 9 report of a time period ending on June 9th, 2009?

10 A. Yeah, sure. As I had said earlier,

11 Michael Jack came in a recruit class where the

12 report periods had changed. So, the officer I was

13 coaching before him was monthly and he was a bit

14 compressed where some months were jammed together.

15 I think one and two was one and so on. During this

16 evaluation period I had erred and missed it in doing

17 Rusaw's at the same time, and did this one late.

18 So, yeah, this one shouldn't be in that period.

19 It's nearby, so I must have just included it as it's

20 within 11 days of the end of that period, but it was

21 my mistake not to have this one done and that's why

22 it's there.

23 Q. But you agree with the accuracy of

24 your rating, "Meets requirements"?

25 A. No, I don't.

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 Cr-Ex (L. TAPP)

 1 Q. Well, you gave him a "Meets

 2 requirements"?

 3 A. Yeah, and it shouldn't be, you're

 4 right.

 5 Q. It shouldn't be?

 6 A. No.

 7 Q. It should be a "Does not meet

 8 requirements"?

 9 A. That's right.

10 Q. Then why did you give him a "Meets

11 requirements"?

12 A. I was, as I had missed this one and

13 I was doing another one at the same time, I must

14 have missed...it's a drop box, I think, to change it

15 from "Meets requirements" to "Does not" and I must

16 have missed doing that.

17 Q. So, you use a specific example that

18 is 11 months after the end of that performance

19 evaluation period...11 days after that period, rate

20 him with a "Meets requirements," okay? Causing

21 everyone to believe that he met the requirements of

22 that specific category. Then in months six/seven

23 PER for that resolution section you give him a

24 rating, "Does not meet requirements" for the same

25 example?

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 Cr-Ex (L. TAPP)

 1 A. Yeah, and so like I said, when he

 2 was switching to the other platoon, that's when I

 3 think they became aware that I had missed that one,

 4 and so I had to do them both almost at the same

 5 time. From what I recall, I came in on a vacation

 6 day to sign them. I had done them during work time

 7 and forwarded them up and came in to try to sign

 8 them during time off. But yeah, it is the same one

 9 and they're signed roughly at the same time. This

10 one, "Does not meet requirements," which is what the

11 first one should have done, but it wouldn't have

12 left anybody with that impression, because this was

13 the one that was due at that time.

14 Q. Okay, but do you not agree that in

15 PER five that "Meets requirements" is supported?

16 Your documentation and the words, every...all the

17 information in the specific example and how you

18 documented it substantiates a "Meets requirements"?

19 I mean, if your explanation is true, then it would

20 stand to reason that the specific example, the

21 information in there should support a "Does not meet

22 requirements." But it does not, it supports a

23 "Meets requirements"?

24 A. No, he did not meet requirements.

25 In fact what happened there is that the dispatcher

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 Cr-Ex (L. TAPP)

 1 called me and advised me that he had gone up to a

 2 stand-by/keep the peace, he didn't tell me he was

 3 going, so I started heading up that way. Before I

 4 arrived there the dispatcher got me on and said the

 5 complainant was requesting another officer, because

 6 Constable Jack was not getting anywhere with him. I

 7 showed up and resolved the matter with the two

 8 people. So, I resolved the matter, not him. So, it

 9 shows that he didn't meet the requirements.

10 Q. So, why did you document "Meets

11 requirements"?

12 A. Well, that's an error.

13 Q. Okay, and an error that ought to

14 have been picked up at least by a supervisor too?

15 A. Well, like I said, these two went in

16 roughly at the same time, so...

17 Q. What, 34 hours apart?

18 A. They went in roughly at the same

19 time, yeah.

20 Q. And that was in compliance with the

21 guidelines and OPP Orders?

22 A. No, it was an error.

23 Q. Oh, that was an error on your part,

24 non-compliance with those Orders?

25 A. Well, it's not non-compliance with

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 Cr-Ex (L. TAPP)

 1 Orders, it's things changed and I hadn't...

 2 THE VICE-CHAIR: I think we've gone

 3 through all this.

 4 THE WITNESS: Okay.

 5

 6 BY MR. TAPP:

 7 Q. So, in month eight PER that as well

 8 ...in month seven PER in "Resolution" category, you

 9 accurately rate him as "Does not meet requirements,"

10 correct?

11 A. Yeah, he does not meet requirements.

12 Q. Correct?

13 A. Yes, correct.

14 THE VICE-CHAIR: Yes, he said correct.

15 MR. TAPP: Okay, I didn't hear.

16

17 BY MR. TAPP:

18 Q. And you put in here the only

19 difference between the documentation here and the

20 previous documentation is that you add the SP

21 number, SP09133110? I mean, you didn't do that

22 before in...

23 A. No.

24 Q. ...the previous?

25 A. No. Yeah, that's the only

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 Cr-Ex (L. TAPP)

 1 difference.

 2 Q. Okay, good. And in PER eight

 3 "Resolution" the date frame being 9th of August,

 4 2009 to 9th of September 2009, well after June 20th,

 5 in "Resolution" you give him the same, "Does not

 6 meet requirements" and used that same...

 7 A. I think there is one of those two he

 8 only works six shifts and then...usually that's why

 9 there's no opportunity to remedy the work

10 improvement plan, so it has to stay there.

11 Q. You mean he gets faulted with a...

12 doesn't the guidelines say that if you don't have a

13 specific example you have to use a "No basis for

14 rating," as you have in your previous evaluations?

15 A. But I do have a basis and he hasn't

16 met it.

17 Q. But that is at June 20th, Mr.

18 Filman. This period is 9th of August to 9th of

19 September.

20 A. But that's still the basis for that

21 rating.

22 Q. Okay. Performance evaluation

23 six/seven, "Analytical Thinking." Are you there,

24 Mr. Filman?

25 A. Yes.

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 Cr-Ex (L. TAPP)

 1 Q. The specific example, "Analytical

 2 Thinking" page seven of that document you refer to

 3 the fraud SP09087157 and have a "Meets requirements"

 4 rating?

 5 A. Yes.

 6 Q. And the documentation supports that

 7 rating? The specific example...

 8 A. For that example, yes.

 9 Q. Now refer to page seven of PER

10 eight, "Analytical Thinking," please.

11 A. Yes?

12 Q. Why aren't you carrying that

13 positive rating to month eight? It has the same

14 specific example, SP09133110.

15 A. I think number eight I put the...I

16 put the stand-by/keep the peace into the "Analytical

17 Thinking."

18 Q. You agree the stand-by/keep the

19 peace occurred June 20th...

20 A. Yes.

21 Q. ...out of the time frame of this

22 evaluation period?

23 A. I don't know the time frame of the

24 evaluation...

25 Q. Oh, well, look at it, month eight.

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 Cr-Ex (L. TAPP)

 1 9th of August to 9th of September, correct?

 2 A. Sorry, you didn't...if you would let

 3 me finish? I don't know that the time frame really

 4 dictates what you put in there, it's the evaluation

 5 period. So, whatever you have to provide an example

 6 of a specific thing can go in there, it doesn't mean

 7 it has to have occurred in that time. Nothing tells

 8 me that it does anyway. So, the fraud that occurred

 9 further back, the analytical thinking thing was

10 newer. It hadn't occurred to me to put it in there

11 at that point, but it really was analytical thinking

12 that caused the issue not to be resolved. So, it

13 made more sense for it to move forward.

14 Q. But you agree the stand-by/keep the

15 peace incident SP09133110 occurred June 20th, you

16 testified to that?

17 A. Right.

18 Q. Right, so how come you're using...

19 so, in the absence of using that specific...

20 MS. SINGH: Asked...asked and answered.

21 MR. TAPP: Hey, just a minute, I'm

22 making a point.

23 THE VICE-CHAIR: Yes, but...

24 MS. SINGH: I can make my submissions.

25 THE VICE-CHAIR: ...you're repeating,

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 Cr-Ex (L. TAPP)

 1 you're constantly repeating. We've heard

 2 the evidence.

 3

 4 BY MR. TAPP:

 5 Q. How can a positive rating from a

 6 previous category in "Analytical Thinking" of

 7 previous month now replace a negative rating,

 8 contrary to the guidelines that you are...of the

 9 Performance Evaluation Conduct Guidelines of a coach

10 officer?

11 A. I don't know what part it

12 contradicts, but it...it's important...

13 THE VICE-CHAIR: Okay.

14 THE WITNESS: However, if this is newer

15 and I hadn't considered that it was

16 analytical thinking by the time I put it in

17 there, then that's the standing point to

18 me. So, that's the part when you do a WIP,

19 a work improvement plan, that has to be

20 fixed. And like I said when I had been

21 testifying this morning, it's hard to

22 dictate, especially in our area, when

23 you're going to get a certain thing or a

24 type of call. So, if he didn't demonstrate

25 it, then I can't make...I can't make the

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 Cr-Ex (L. TAPP)

 1 change, but it certainly supported it.

 2

 3 BY MR. TAPP:

 4 Q. Okay, Mr. Filman, we have heard

 5 evidence and we have received testimony and

 6 direction from the author of that guidelines the

 7 rating, if you don't have a specific example, goes

 8 back to what it was in the previous month.

 9 A. Okay, well, you've got more than me.

10 Q. Yes, the author of the Performance

11 Conduct Guidelines of a Probationary Officer.

12 A. So, you've...I...I didn't know that.

13 Q. Okay, thank you. It was e-mailed to

14 you. It was e-mail specifically to your Sergeant

15 who talked to you about it...

16 THE VICE-CHAIR: Is there a question?

17 MR. TAPP: Yes. It specifically says

18 that, "Address it with Filman," and we'll

19 tell you exactly what exhibit that is.

20 THE VICE-CHAIR: I thought you had three

21 pages.

22 MR. TAPP: Well, there it is, I...

23 THE VICE-CHAIR: It's 10 to 4:00.

24 MR. TAPP: This is the very last Order.

25 Can you see what the author of those

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 Cr-Ex (L. TAPP)

 1 Performance Conduct Guidelines is saying

 2 about the use of specific examples? It's

 3 highlighted in here.

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

 5 through this?

 6 MR. TAPP: No, not with this witness.

 7 Absolutely not, no.

 8 THE WITNESS: So, this is...

 9 THE VICE-CHAIR: Well, I think we have.

10 MS. SINGH: I...I haven't seen it and I

11 think we've gone through it and I...

12 THE VICE-CHAIR: You use the month

13 before if you don't have a specific

14 example.

15 MR. TAPP: Yes.

16 THE VICE-CHAIR: We've gone through all

17 that.

18 MR. TAPP: But clearly over here he

19 doesn't use...

20 THE VICE-CHAIR: Well, he doesn't, and

21 he said he didn't know the rule.

22 MR. TAPP: Okay, thank you very much,

23 Filman, Constable Filman.

24 THE VICE-CHAIR: Okay.

25 MR. TAPP: I think that's...

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 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: Thank you. Do you have

 2 any questions in re-examination?

 3 MS. SINGH: I do not.

 4 THE VICE-CHAIR: You do not, okay.

 5 MS. SINGH: I'm very happy to share that

 6 with you on a Friday afternoon.

 7 MR. TAPP: Before she starts, hang on a

 8 second.

 9 THE VICE-CHAIR: She's not starting, she

10 has no questions.

11 MR. TAPP: I never said that's it, we've

12 finished with this witness, Mr. Vice-Chair.

13 It raised the inference that I have...

14 THE VICE-CHAIR: I thought you had.

15

16 BY MR. TAPP:

17 Q. Mr. Filman, the last one, were you

18 working on September 11, 2009?

19 A. I don't know, I don't have that

20 notebook. I don't know, I don't have that notebook.

21 Q. I'm going to show you a 2009 duty

22 schedule which was just arranged based on the

23 disclosure also provided. Look, I'm going to show

24 the 2009 schedule and it shows your name...

25 MS. SINGH: I object.

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 Cr-Ex (L. TAPP)

 1 THE VICE-CHAIR: That has actually, I

 2 think, been...

 3 MR. JACK: No, it's been tendered an

 4 exhibit.

 5 THE VICE-CHAIR: Just what's the...

 6 MR. TAPP: The crux of this?

 7

 8 BY MR. TAPP:

 9 Q. Okay, this is the long...Mr. Filman,

10 we have been waiting for these notes for several

11 years, your specifically two page...a few pages of

12 Mr. Jack's notes, okay? Okay? Mr. Jack was on your

13 platoon then, you were on the same platoon, the

14 notes clearly show that Friday September 11th, 2009

15 to Sunday September 13th, 2009 days off.

16 So, by that documentation you would also

17 have been on days off, correct?

18 A. I don't know.

19 Q. Okay, turn to month eight PER,

20 please, over there. If he was off...

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

22 MR. TAPP: ...on September 11th...

23 MS. SINGH: ...Mr. Filman was not Mr.

24 Jack's coach on September the 11th, 2009.

25 MR. TAPP: Mr. Filman prepared month

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 Cr-Ex (L. TAPP)

 1 eight, come on.

 2 THE VICE-CHAIR: He prepared month

 3 eight.

 4 MR. TAPP: Right, so...

 5 THE VICE-CHAIR: He prepared month

 6 eight.

 7

 8 BY MR. TAPP:

 9 Q. Okay, thank you. So, looking at

10 page 12, if Mr. Jack was off on 11 September, 2009

11 how could he have refused to sign an evaluation?

12 A. Well, there's no date that...I don't

13 know what date that happened. All I know is that's

14 the day I would have typed my comments and sent...

15 Q. Do you recognize that handwriting of

16 the word "Refused"...

17 A. I don't.

18 Q. ...from what it looks like?

19 A. I don't know who did that.

20 Q. Is that your signature in the coach

21 officer's, under the...

22 THE VICE-CHAIR: Haven't we...

23 THE WITNESS: It is.

24 THE VICE-CHAIR: Haven't we gone through

25 this?

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 Cr-Ex (L. TAPP)

 1 MS. SINGH: We have. We have, we have

 2 seen it.

 3 MR. TAPP: Okay, now we officially close

 4 it. Thank you very much.

 5 THE VICE-CHAIR: Thank you, and there is

 6 no re-examination?

 7 MS. SINGH: No further examination.

 8 THE VICE-CHAIR: Thank you.

 9 MS. SINGH: Thank you, sir.

10 THE VICE-CHAIR: So, we can go off the

11 record now.

12

13 --- Upon adjourning at 3:54 p.m.

 1 INDEX OF EXHIBITS

 2

 3

 4 EXHIBIT PAGE

 5 NUMBER DESCRIPTION NUMBER

 6

 7

 8 172 E-mail exchange between Messrs.

 9 Campbell, Flindall, et al., dated

10 August 27, 2009 65

11

12 173 E-mail from Colleen Kohen to Robert

13 Flindall, et al, dated September

14 14, 2009 67

15

16 174 E-mail from Ron Campbell dated

17 November 26, 2009 140

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19

 1

 2

 3

 4 REPORTER'S NOTE:

 5

 6

 7

 8

 9 I hereby certify the foregoing to be a true and accurate

10 transcription of the above-noted proceedings held before me on the

11 9th DAY OF SEPTEMBER, 2016, and taken to the best of my skill,

12 ability and understanding.

13

14 }

15 } Certified Correct:

16 }

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21 } \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

22 } Matthew Dixon

23 } Verbatim Reporter

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