

## **Rebuttal to Probationary Constable Performance Evaluation Report (PCS-066P)**

**By: JACK, Michael (former OPP badge # 12690)**

**Report Month: 8**

**Evaluation period: 09 August 2009 to 09 September 2009**

### **Attitude Towards Learning**

Rating: Does Not Meet Requirements

Realistically this section should have been given a rating of Meets Requirements since, previous evaluations with sections without specific examples reflected such a rating.

As far as avoiding an officer that has given me negative feedback is concerned then I would like to address this point by raising the following questions: How much harassment can one tolerate? If the so called "feedback" is constantly negative, then obviously the person providing the feedback is biased against you and regardless of what you do that person cannot be appeased. In order to avoid further confrontation would it not be the best course of action to reduce the interactions with that person to mandatory ones only?

The very nature of the phrase "He has also been argumentative with officers that have given him direction" emphasizes that voicing my opinion was not doing any good to me. The comment suggests that I literally had no right to say anything. When I tried to express my opinion I was told to stay quite. How does one instantly adjust from being a servile mute in his interactions with the peers to being a figure in a position of authority in his interactions with the public?

I do remember saying something to someone about feeling humiliated but I cannot recall who that officer was, what it was about and under what circumstances I said it.

On July 18, 2009, at approximately 6:45 am Cst. Payne called me into the board room and in a face-to-face conversation accused me of winking at her and in one instance, back in the spring of 2009 when she was still seconded to the Crime Unit, looking at her inappropriately, stating that she had been put off by the way I looked at her. She stated that it was unprofessional of me and she wanted it to stop. I was astounded, speechless and frightened as I had done nothing of the kind. Her accusations were vexatious and tantamount to explicit harassment. It literally scared me to the point that from that moment on I was afraid to look at or speak with Cst. Payne fearing what else she might accuse me of. Because I was a minority and a Probationary Constable that absolutely must please everybody to make it through the probationary period and was not expected to raise any objection to the harassment and discriminatory actions I sucked this one up as well. I could not sleep that day. So much for receiving help from my "go-to" mentoring officer!

Yet again, I am reminded of Cst. Tapp and how the majority at Peterborough Detachment viewed him as an angry and argumentative individual. He too ended up keeping to himself and distanced himself from everyone else at the detachment. But then again we have one thing in common: we are minorities.

**Provincial Statutes**

Rating: Does Not Meet Requirements

For my rebuttal, please refer to the *Provincial Statutes* section in my Month 6 & 7 performance evaluation.

Realistically this section should have been given a rating of Meets Requirements since previous evaluations with sections without specific examples reflected such a rating.

The supposed specific example given precedes the time from of this evaluation period and is actually reflected in month 6 and 7 evaluation. Furthermore, the number of tickets issued is actually what I issued between June 10, 2009, and August 9, 2009, which is my Month 6 & 7 evaluation period. Even if this error was true why was I being classified with a Does Not Meet Requirements rating?

It is quite apparent that Regional Command Staff in Orillia concurred with these erroneous and fraudulent evaluations.

**Police Vehicle Operations**

Rating: Does Not Meet Requirements

On August 15, 2009, I was working a day shift. At approximately 11:30 am Sgt. Flindall, Cst. Payne, Cst. D'Amico, Cst. Moran and I attended a family dispute call. We drove to the call with lights and sirens scaring the motoring public along the way. The call turned out to be nothing and was cleared as non-reportable to my badge. While enroute from the call to detachment I was charged under the Highway Traffic Act (HTA) by Sgt. Flindall for "Fail to Yield to Traffic on Through Highway" – not for causing an accident, but for something that was perceived as an error by Cst. Payne and by Sgt. Flindall. Prior to serving me with the Provincial Offence Notice, Sgt. Flindall told me that he had first consulted with S/Sgt. Campbell and received his approval to charge me under the HTA. Subsequent to the charge, Sgt. Flindall thoroughly documented the incident and the charge in the Niche RMS (RM09096931) for the policing world to see that I was charged under the HTA, handed me an in-house personal documentation known as 233-10 stipulating my "inadequate operation of police vehicle" and negatively rated me in two separate sections of my Month 8 performance evaluation – *Police Vehicle Operations* and *Personal Accountability*.

Without complete details of this incident one cannot help but see how misleading the specific example cited can be (Exhibit 20a and Exhibit 20b).

The charge should never have been applied for there was absolutely no basis for it. This basis was supported by Sgt. Ziggel of Northumberland OPP, the Vice President of the 8<sup>th</sup> Branch of the OPPA (Exhibit 25) and Cst. Tapp who testified for defense based on his experience with the OPP's elite Highway Safety Division (Exhibit 20b).

**Traffic Enforcement**

Rating: Meets Requirements

On August 19, 2009, I had a meeting with S/Sgt. Ron Campbell and Sgt. Flindall with an OPPA alternative representative, Cst. Mitch Anderson sitting in on it. At the meeting, among other things, Sgt. Flindall advised me that it had been discovered that I was issuing speeding tickets mainly at 15 km/hr over the speed the limit. Sgt. Flindall further stated that at the Ontario Provincial Police Academy we were specifically instructed not to reduce charges. Sgt. Flindall ordered me not to reduce tickets from that day on.

First, I was reducing tickets to 15 km/hr only when the locked speed on my radar of the speeding vehicle did not exceed 30 km/hr over the speed limit. Second, at the Academy different instructors expressed different points of view with respect to issuing and reducing speeding tickets, which only makes sense since

an officer has the authority to exercise his/her own discretion when issuing a PON to an offender. For example, in the morning of August 26, 2008, at the recruitment session held at the OPP Headquarters in Orillia, manager of the recruitment section Inspector Sandy Thomas told our class of 110 recruits, while speaking from the podium, that reducing speeding tickets makes the public feel good towards the police. In her words, "So you reduce the ticket and that makes the person feel better." Third, Cst. Filman did not care this way or the other whether I was reducing the speeding tickets or not. All of a sudden, on August 19, 2009, after 8 month on the job it became a problem and I was spoken to about it by Sgt. Flindall. Further to this, Sgt. Flindall stated that "at the Ontario Provincial Police Academy we had been specifically instructed not to reduce tickets" as if he had been in my class from start to finish.

The point being stressed is first, I was complying by my training under the Ontario Provincial Police Academy. Second, I was in total compliance with Inspector Sandy Thomas's message which centered on fostering a positive rapport with the public and the police. Third, my own coach officer had no issues with it. Fourth, I was in compliance with the related authority of the Highway Traffic Act. In fact I was being honest and true to the public because during the operation of the OPP's approved radar (Genesis system) erroneous readings could be obtained and there is a danger that should an officer arbitrarily activate the lock mechanism without being objective, a member of the public could be erroneously charged. I would have rather issued due process based on that which I was certain of and in my evidence (which was written on the rear of the ticket) would make a notation of the fact that my first observations were of a higher reading. In light of aforementioned, one can see that Sgt. Flindall was clearly demonstrating differential treatment towards me and not his other platoon officers. In any case, from that day on I complied with Sgt. Flindall's order and issued speeding tickets to the members of the motoring public at the speed I locked them on my radar.

**Oral**

Rating: Does Not Meet Requirements

In the negative 233-10 document prepared and served upon me by Sgt. Flindall on August 20, 2009, Sgt. Flindall stipulated that I was constantly "shopping for answers". In this section, which was prepared some 20 days after August 20, 2009, I was accused of not requesting clarifications. Contradiction! The comments in this section "he does however have issue when communicating with his supervisor and shift mates ..." actually support my assertion that I was being ridiculed and criticized for seeking guidance and asking questions like I was apparently supposed to do.

Once again in the absence of any specific example this section should reflect a Meets Requirements rating as each and every one of the previous evaluations had such a rating with specific examples.

Furthermore, the comments noted in this section should have been in the more appropriate section of *Personal Accountability*.

**Written**

Rating: Does Not Meet Requirements

Though I acknowledge the fact that more information could have been added to these two synopses referred to in this section, I simply prepared them based on my involvement. At the time of preparation and submission I still did not receive all of the officers' statements and/or notes in each incident.

It is noteworthy to mention that in the *Federal Statues* section of this evaluation I am commended for completing an impaired driver investigation. Though nothing is written about the preparation of the crown

brief synopsis, it was very well written encompassing all the necessary details. In this section I am accused of having difficulty in articulating the information into a crown brief synopsis. Contradiction!

Both Sgt. Flindall and Cst. Filman instructed me to write short Crown Brief Synopses. Sgt. Flindall once said to me that I have to look for two key words in the "Crown Brief Synopsis" phrase. In his own words, "It is brief and it is a synopsis." Further, Cst. Filman told me that a synopsis could and should be half-a-page long. I am a very methodical and attentive to details person so writing long has never been a problem for me. I followed my supervisor and my coach officer instructions and tried to keep my Crown Brief Synopses short. They promptly found yet another problem with me – insufficient quality! I think there were only one or two Crown Brief Synopses that had to be elaborated on a bit ONLY because I tried to fit them on one page. The very comment that "PC Jack has been known to write detailed general occurrence reports" attests that I had no issues writing detailed reports be it either a General Occurrence Report, a Crown Brief Synopsis, or any other document for that sake. I followed my supervisor and my coach officer instructions and I was reprimanded for doing that. These officers contradict themselves again! Another 'no-win situation'. I was being led to the slaughter house and there appeared to be nothing I could do about it.

### **Listening Skills**

Rating: Does Not Meet Requirements

Is it not inconceivable to wonder that when in a stressful situation all energy is focused on the area of the body impacted the most? There were supposed to be regular meetings during my probationary period but this was the second such meeting. I knew that I was targeted and being subjected to differential treatment. I also knew that the deficiencies in my evaluations were affected solely to the type of treatment I was being subjected to. Now I am in a meeting with my supervisor and those deficiencies are being brought to my attention, not in a manner that would encourage or give me hope rather in a manner that brought me down. The deficiencies were being shot at me like arrows from a bow. I could say nothing but remain silent. I really do not remember saying anything in response other than I might have simply nodded my head in acknowledgment of what was being said with the thoughts already going through my mind. How can the mere request to have more time to review my evaluation before signing it imply that my listening skills are not good to the point of not meeting requirements? After all, though he advised (during the meeting which took place on August, 19, 2009) that I had documentation forthcoming, this was the first time I was actually seeing it and reading it. I disagreed with its contents and as per the advice of the President of the 8<sup>th</sup> Branch of the OPPA D/Cst. Karen German declined to sign it without having an OPPA representative to first look at it (Exhibit 26c, pages 31-37).

This Mental Health Act example is brought up in the *Provincial Statutes* section of this performance evaluation and in the *Provincial Statutes* section in my Month 6 & 7 performance evaluation. For my rebuttal, please refer to the *Provincial Statutes* section in my Month 6 & 7 performance evaluation. This entire specific example simply has no relevance what-so-ever in this section.

Consequently there would have been no specific examples to support any basis for a rating and in light of the ratings of sections without specific examples in the previous evaluations I should have been rated with a Meets Requirements.

## Radio Communications

Rating: Does Not Meet Requirements

Sometime in mid-August 2009 I worked a day shift Paid Duty. I was conducting traffic control as at the busy intersection of Highway 115 and Highway 7, situated less than a kilometer to the east of the Peterborough Detachment. Both the Provincial Communication Center and the officers working a day shift at the Peterborough Detachment knew exactly where I was and what I was doing. The Paid Duty lasted for 12 straight hours. It was a very hot sunny day. The traffic lights were shut down by the construction team and I had to manually direct the flow of the traffic approaching the intersection from all four directions while the intersection was being paved. Imagine for a moment standing on your feet for close to 12 hours straight on the steaming pavement inhaling the fumes of the fresh pavement on a hot sunny day regulating a continuous flow of the traffic coming from all directions. Imagine the noise of the paving machinery (it was very loud), the noise of the motor vehicles traveling through the intersection around you, the yelling of the construction workers and the swearing of the upset motoring public waiting for their turn to proceed through the intersection. Having said that, would it be surprising if an officer in that position missed hearing being called on a radio or on a mobile phone? Furthermore, according to Cst. Tapp it is normal for the OPP shift supervisor to attend such an officer's location or get another officer to attend such an officer's location if the officer does not respond to the radio call. How come no one attended my duty location to check on me?

When I was back at the detachment in the Constables' office, Cst. Marc Gravelle advised me that the Communication Center was trying to reach me. I told him that I would call them promptly. He then went on an on saying something about me not responding to the radio calls and I have to say that Cst. Gravelle is skilled at pushing people's buttons. To add insult to injury, after 12 hours on my feet on the hot steaming pavement under the scorching sun with all the noise and oil fumes around me being faced with the stress and danger of the continuous traffic flow and the frustration of the motoring public my nerves were strung. I responded to Cst. Gravelle's nagging again by saying something to the effect, "Thank you for telling me, I heard you. I will call them when I have time."

Note. Only when I was lying in the bed around 11:00 pm that evening did I realize how stressed my leg muscles were. I had to take two extra-strength Advil pills to alleviate the pain in my calves.

Though by definition of this section I do have a proper understanding and usage of Radio Communications the specific example fails to note that the location of the paid duty was on a busy Highway and at an intersection. With the sound of the machinery at the paid duty site and the noise of the traffic I simply did not hear the radio and my cellular phone. It is interesting to point out that the senior officer referred to was none other than Cst. Marc Gravelle – the one who reported me to his supervisor in 2008 as a gun-happy person and in all probability coined the nick name "Crazy Ivan".

I do not know who passed the information of me allegedly becoming irate with Cst. Gravelle to Sgt. Flindall, but I do know that Cst. Gravelle and Cst. Gay witnessed Cst. Payne lashing out on me in front of them in the Constable's office on the morning of July 1, 2009. When on August 19, 2009, prior to my meeting with S/Sgt. Campbell and Sgt. Flindall I asked Cst. Gravelle if he could testify about the respective incident he had witnessed on July 1, 2009, he was very vague and replied something to the effect that I should not be naming any names. Was Cst. Payne ever spoken to about lashing out on me and speaking to me inappropriately? I do not think so.

Note: Sometime in late July 2009 I was working a similar Paid Duty at the same intersection. At one point, when the traffic lights were on I needed to speak with a foreman of the construction team to find out where he wanted me to be and what he wanted me to do. I used my personal mobile phone to call him. As I was speaking with him on my mobile phone a passerby contacted the police and complained about an officer at the intersection standing in the corner speaking on the cell phone. The call was received by Cst. Jason Postma and he subsequently attended the intersection and advised me of the complaint. I advised Cst.

Postma that I was performing my essential duties when I spoke on the phone from the safe location of the intersection, to which he said it was ok but he still had to tell me since there had been a complaint.

However, the fact is I did not answer the radio because I did not hear it and I did not answer my cellular phone because I did not hear it.

Furthermore, it is one thing to know that you have an accent, but another thing to be reminded that you have one and yet another thing to be reminded in writing that you have a thick accent. In all of his years with Toronto Police Cst. Tapp was never once reminded that he had an accent.

The need to bring up an incident from a previous evaluation aside from there already being one for this period raises the impression that the evaluator was trying to further re-enforce his negative rating of me.

### **Analytical Thinking**

Rating: Does Not Meet Requirements

For my rebuttal, please refer to the *Resolution* section in my Month 6 & 7 performance evaluation.

First and foremost, in my Month 5 performance evaluation the example was used by Cst. Filman in the *Resolution* section with a caption of "Meets Requirements". When Sgt. Flindall prepared my Month 6 & 7 performance evaluation he used the same example in the *Resolution* section with a caption of "Does Not Meet Requirements". When Sgt. Flindall and Cst. Filman prepared my Month 8 performance evaluation they used the same example in the *Analytical Thinking* section (this section) and the *Resolution* section (the one below) with a caption of "Does Not Meet Requirements". First, there is a contradiction and then a further reprisal using the same contradictory example in more than one section. If there are no applicable examples to accurately and truthfully do an evaluation in this area why not use the approved caption "No Basis For Rating." Not so for me! They were on a mission to discredit me in as many areas as possible even if it was false and contradictory.

The evaluator mentions utilizing the example from the previous evaluation. Yet the example of the previous evaluation is of a Fraud related incident (SP09087157). The one used here (SP09133110) is of a stand by and keep the peace incident which was a specific example in the *Resolution* section in the previous evaluation.

If there is no available information or specific example to rate this section why not utilize the more appropriate rating available: No Basis For Rating. After all it has been utilized in the past, i.e. six times in my Month 5 performance evaluation. Simply put there was absolutely no basis for rating in this section of this evaluation but the evaluator wanted to provide another Does Not Meet Requirements rating!

The lack of individual cases or examples and the use of the same examples attest to one's strong desire to discredit me in as many areas as possible.

**Resolution**

Rating: Does Not Meet Requirements

Please refer to the *Analytical Thinking* section (the one above).

For my rebuttal, please refer to the *Resolution* section in my Month 6 & 7 performance evaluation.

Once again, if there is no available information or specific example to rate this section why not utilize the more appropriate rating available: No Basis For Rating. After all it has been utilized in the past, i.e. six times in my Month 5 performance evaluation.

The lack of individual cases or examples and the use of the same examples attest to one's strong desire to discredit me in as many areas as possible.

**Follow-Up Orientation**

Rating: Does Not Meet Requirements

For my rebuttal, please refer to the *Follow-Up Orientation* section in my Month 6 & 7 performance evaluation.

As noted in my rebuttal to this section in the previous evaluation the scrutiny given to this minor detail in the large scope of all of the investigation I had, along with the fact that this was a multi-jurisdictional investigation that rightfully fell under the mandate of the Crime Unit one can wonder why was not I given a positive 233-10 and later rated positively in this section of my evaluation? However, to do so would affect the plan that was unfolding – to document me in as many sections possible with a negative rating so that by the eleventh one there would only be one option left for management, serve me with a recommendation of proposed release from employment.

This is also another section that should have been rated with No Basis For Rating since it did not have a specific example.

The lack of individual cases or examples and the use of the same examples attest to one's strong desire to discredit me in as many areas as possible.

**Personal Accountability**

Rating: Does Not Meet Requirements

This is simply not true. In fact when I voiced out my concerns that I was not receiving adequate coaching I got transferred to a new platoon under the guise of a fresh start only to find that the targeting and racial discrimination intensified to the point where I was forced to resign.

From this section it appears that Sgt. Flindall believes he is the ultimate judicial authority and convicts me without being found guilty in a court of law first. However, all I did was to exercise my constitutional right under the Charter of Rights and Freedoms as a Canadian Citizen and pleaded not guilty to the false charge. Though the truth was plainly shown later on when the charge was dismissed through the courts (Exhibit 20b) the stigma associated with the charge remained amongst those I worked with.

With respect to not actively seeking assistance I would like to point out the following:

- Constant shift shortage coupled with increased summer workload = very busy officers.
- I was negatively documented for answer shopping by Sgt. Flindall.
- Who to trust if you are being backstabbed by your peers?
- Who to seek assistance from if you are not wanted by many?

**Planning & Organizing**

Rating: Does Not Meet Requirements

For my rebuttal, please refer to the *Planning & Organizing* section in my Month 6 & 7 performance evaluation.

Once again a rating of No Basis for Rating should have been given due to the lack of any specific example.

The lack of individual cases or examples and the use of the same examples attest to one's strong desire to discredit me in as many areas as possible.

**Respectful Relations**

Rating: Does Not Meet Requirements

For my rebuttal, please refer to the *Respectful Relations* and the *Federal Statues* sections in my Month 6 & 7 performance evaluation.

The lack of individual cases or examples and the use of the same examples attest to one's strong desire to discredit me in as many areas as possible.

**Self-Confidence**

Rating: Does Not Meet Requirements

In light of everything I have articulated how can any ordinary person have any degree of self-confidence left?

For my rebuttal, please refer to the *Self-Confidence* section in my Month 6 & 7 performance evaluation.

The lack of individual cases or examples and the use of the same examples attest to one's strong desire to discredit me in as many areas as possible.

**Team Work**

Rating: Does Not Meet Requirements

For my rebuttal to the first paragraph, please refer to the *Self-Confidence* section in my Month 6 & 7 performance evaluation.

For my rebuttal to the second paragraph, please refer to the *Radio Communications* section in this performance evaluation.

I actually agree with this assessment to a certain degree. Who would want to have any association with individuals that are racially motivated against you? I was being referred to as a "Crazy Ivan" by detachment members including personnel on my very shift. I was being criticized for my accent and my evaluators were so brazen to indicate that I had a thick accent in my evaluations.

The lack of individual cases or examples and the use of the same examples attest to one's strong desire to discredit me in as many areas as possible.



**Self-Awareness**

Rating: Does Not Meet Requirements

For my rebuttal, please refer to the *Self-Confidence* section in my Month 6 & 7 performance evaluation.

In this section it should be noted that though there is no specific example the evaluator, instead of using no basis for rating (considering that the previous evaluation showed a meets requirements) goes on to note a general assessment based on a recollection over the month. I assert that it had to be over the last month, since this notation is absent in the previous evaluation.

The lack of individual cases or examples and the use of the same examples attest to one's strong desire to discredit me in as many areas as possible.

**Department**

Rating: Does Not Meet Requirements

For my rebuttal, please refer to the *Radio Communications* section in this performance evaluation.

Again there is no basis for rating this section in the absence of a specific example and when taken into account with the previous evaluations' rating in this section which also had no specific example why was not I given a rating of Meets Requirements?

Furthermore one has to simply marvel at the credibility of the evaluator since he also did the previous evaluation and noted the following:

**Specific example:**

PC JACK remains professional. To date I am unaware of any instance that PC JACK has been faced with a confrontational person.

The lack of individual cases or examples and the use of the same examples attest to one's strong desire to discredit me in as many areas as possible.

**One must wonder why did the evaluator who is supposedly the same as in all of the previous evaluations was so careless and biased. Whereas the first 5 evaluations were done by Cst. Filman, the next three, Month 6 & 7 and Month 8 were fraudulent and were done by Sgt. Flindall purporting them to have been completed by Cst. Filman.**

**All I can say that this evaluation was racked with fraudulence and incompetence!**