

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

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

Report Month: 9

Evaluation period: 09 September 2009 to 09 October 2009

Attitude Towards Learning

Rating: Does Not Meet Requirements

When I asked Cst. Nie to show me how to locate addresses on the Niche Records Management System (RMS) as I had never been shown how to locate certain ones properly – I asked exactly that! First and foremost, I retained very little knowledge about the Niche RMS from my training at the Ontario Provincial Police Academy (due to the constant sleep deprivation we were subjected to at the Academy it was almost impossible to remain mentally focused in a classroom environment. As a result, the 3 day training on the usage of the Niche RMS was very inefficient). Second, my first coach officer Cst. Filman had never shown me how to locate addresses on the Niche RMS. I learned how to locate addresses on the Niche RMS by playing with the system but I also knew that there must have been a better, more effective and simpler method to accomplish that. Instead of simply showing me how to do it, Cst. Nie accused me of checking to see if he would show me something different than I had been shown before.

This position that Cst. Nie took is indicative of, at the very least, an extremely biased individual. The incident occurred on the second day of “training” with my new coach officer. What was wrong with a probationary asking his new coach officer how to do something that a previous coach officer ought to have showed him? Were we not supposed to start with a clean slate as it was put to me?

Exhibit 26a, page3:

I have discussed your issues with him at length. He advised me that he is responsible for your shift change and that it is in your best interest to look at this as a clean slate and start fresh with your new platoon and coach officer. He advised that you can dispute the last PCS066 (MAY) and put your disputes

Response to the Application (HRTO 2010-07633-I) Paragraph 48:

to attempt to give him a fresh start with a different coach to see if different personalities might result in improved performance.

Had Cst. Nie been genuinely interested in helping me pass my probationary period, he ought to have displayed some understanding and ought to have just explained to me that this is what he does regardless of what someone else showed me. So much for the “clean slate”!

I would never have advised Cst. Nie that it was my mistake for to this date I am not certain what mistake I had made. Does asking your coach officer a job related question constitute making a mistake? I was rattled by Cst. Nie attitude. I did advise Cst. Nie that I felt embarrassed. I felt embarrassed because with 8 months on the job I did not know how to effectively locate certain addresses on the Niche RMS and had to ask him to show me. I could not have possibly envisioned that instead of getting help I would be reprimanded, accused of playing mind games, and subsequently rated negatively in my Month 9 performance evaluation. **Great rapport establishment right from the beginning!**

Also, for some reason Cst. Nie accused me of playing mind games with him (he said it to me approximately 2 months into our time together). Yet another point worth mentioning is Cst. Nie’s admission to

me that when he was a rookie, he was “swimming” throughout the first year on the job. His first posting was in the Highway Safety Division, which meant that he only had to deal with traffic related incidents – no domestics, no break and enters, no thefts from vehicles and from premises, no neighbor disputes, no nuisance and harassing phone calls, no frauds, no walk-in complaints, etc. The first break and enter call he was dispatched to took place on his first shift at the Peterborough Detachment. He was then 3 years on the job. When he was coaching me, he had 9 years on the job while I was still in my first year, a year filled with aggravating factors such as toxic and disruptive workplace environment. I tried to seek his compassion and gain his understanding of my situation. I disclosed everything about myself, e.g. where I came from, how I immigrated to Canada, how I became a police officer, my education, my interests, my aspirations, why I needed this job, the fact that I was the only one in my family living in Canada and even that I needed the job to be able to sponsor my family to come to Canada or at least give me the hope that one day my family and I will re-unite. I literally did not hide anything from him. I hoped that he would understand my perspective, see that I am not an evil person, and realize that my judgment and my performance were severely undermined by the poisoned work environment and by his authoritarian coaching methods. I hoped he would change his dictatorial and intolerant approach to “coaching” and ease up on me. I hoped he would start looking for the positive in me and provide me with support and inspiration. Alas, my efforts were in vain. Cst. Nie remained as cold as a chunk of ice and constantly prided himself on being objective.

Federal Statues

Rating: Does Not Meet Requirements

First, it is true that I was hesitant in arresting the male. By that time into my probationary period my self confidence and belief in what I was doing and how I was doing it were severely damaged to the point that I constantly doubted myself. To add insult to injury, on the evening of the event (23-Sep-09) I was served with a Notice of Internal Complaint that on September 11, 2009, a complaint was commenced against me alleging that I was associating with undesirables and that I was under investigation by the Professional Standards Bureau (PSB) of the OPP (Exhibit 39). That certainly did not help to raise my morale or boost my spirits. Second, the arrested male was acting up and Cst. Nie ordered me to proceed quickly with both the arrest and with transporting the male to the detachment. After the male had been lodged in the rear of the cruiser, Cst. Nie literally pressured me to depart from the scene promptly. While I was driving, Cst. Nie kept the male occupied by having a meaningless conversation with him. By this time in my probation I was subject to so much humiliation and ridicule from my new coach officer that I was literally scared to say excuse me to read him his rights. However, the fact is, based on everything that was happening to me reading him his rights did not enter my mind. Then again, why did not Cst. Nie read him his rights? He was present for his arrest. It does not have to be the arresting officer that has to read the accused his rights. It can be done by any officer associated with the arrest or the circumstances of the arrest. Cst. Nie obviously was aware of the fact that the accused was not advised of his rights to counsel all the time yet he kept quiet. He did not even advise the accused of his rights himself. To use this as an example to justify a Does Not Meet Requirements rating was extremely shallow in judgment. The previous evaluations showed that I met the requirements in this field so this had to be an isolated case. So it is clear that Cst. Nie was looking for any opportunity to justify as many such negative ratings as possible. Though I was not reminded of failing to read the rights to counsel by Cst. Nie at the detachment I was negatively rated in my Month 9 performance evaluation.

Note: It is noteworthy to mention that the complainant in the unwanted person call knew me by my first name. He stated that he recognized me from the Nu Bodies gym where I used to be a member. I vaguely recalled speaking with him in the past at the club but that was all I remembered. We must have introduced ourselves by first names and that was how he knew my name. Had he not brought it up first, I doubt I would have recognized him at all. At one point during the conversation with us outside of his house, he looked at me and said, “I know, Mike, you are recording everything, right?” I did not take any note of it as

it was not the first time I was told by a member of the public that police record conversations. Eventually, the matter was resolved and we departed from the scene.

On September 24, 2009, I was working a night shift at the Peterborough Detachment. Shortly after the beginning of the shift in a face-to-face conversation Cst. Nie accused me of recording our conversations. I was frightened by his accusations and his attitude as I had been doing nothing of the kind. I did carry a personal tape recorder in my duty bag and never made a secret of it. In one instance, Sgt. Flindall even borrowed it from me to record something but I never secretly recorded any of the conversations with my peers. As a matter of fact, I used it only once with Cst. Filman in an open manner. I also had a cheap portable digital camera with audio recording feature, which did not quite work, that I purchased on eBay in the spring of 2009. However, after showing it to my Platoon 'A' shift co-workers and to Sgt. Flindall I was advised by Cst. D'Amico not to carry it. I followed her advice and never carried it with me since that day. During the conversation, Cst. Nie threatened me, **"If I ever find out that you record our conversations, we are done! I have a job, you do not!"** I advised Cst. Nie that when the complainant said, "I know, Mike, you are recording everything, right?" he addressed the police and not me as an individual as I did not record anything whatsoever and I was barely familiar with the complainant. Further, in an attempt to clear off Cst. Nie's accusations made in bad faith I asked him to speak with the complainant and see for himself what the complainant had to say about it. I told Cst. Nie, "Go ask him if he addressed me personally or the police when he said I know Mike you are recording everything, right?" (Exhibit 49). Cst. Nie said it was ridiculous and that he was not going to do it. He further added that he had heard from other officers that I recorded conversations. How should one in my position have felt after that? At this point I could literally feel the flames of racism burning me. It was very obvious that Cst. Nie like the rest were very negatively biased towards me. They constantly brought up the past to justify the present and even brought up unrelated incidents based on one's sole perception.

Police Vehicle Operations

Rating: Does Not Meet Requirements

The comments are true. After being charged by Sgt. Flindall under the HTA on August 15, 2009, and subsequently disallowed to work on my own I lacked confidence in driving. I subsequently drove slower and more cautiously. Also, when I attended remedial driving sessions with Sgt. Kent Taylor in the fall of 2009 he specifically instructed me that safe driving should take precedence over other tasks when one is behind the wheel of a motor vehicle.

With respect to the youth riding a bicycle on the side walk with no helmet or light I did not notice any wrongdoing on his part. I did not notice that the youth had no helmet or light on and trusted Cst. Nie's observation after he had pointed them out to me. First, I was 12 hours on the job and was getting tired. Second, I would like to stress that by that point in my monthly evaluations I had become so concerned about the future of my career based on how I was being targeted and treated that I was constantly on pins and needles. Whenever any officer spoke to me, be it my supervisor, coach officer or another platoon member I wanted to digest the information completely and try to wholly please them. Naturally such a process of constant analysis would have an adverse effect on one's ability to multitask. This careful documentation of Cst. Nie actually serves as an example of how the constant discrimination I was being subjected to was affecting my work.

Traffic Enforcement

Rating: Does Not Meet Requirements

During my training with Cst. Nie I was responsible for handling and documenting all the calls I took, as it should have been happening of course. When I had to stay at the detachment to complete my paper work Cst. Nie reprimanded me for it. Out of the 2 community policing offices in our patrol zone, only one had a working computer at the time. To combat the problem, I started taking paper work home and continued coming to the detachment on my time off duty to complete paper work so I could have a fresh start each shift and spend more time on the road. In one of my subsequent evaluations Cst. Nie negatively rated me for doing that.

The credibility of the rating in this evaluation is questionable since the previous 8 evaluations had a rating of Meets Requirements. One is constantly being harped upon via their supervisors to maintain the least number of tasks on their task list and when I have tried to achieve that I get criticized.

It is also noteworthy to mention that I was reprimanded in the *Self-Awareness* section of my Month 6 & 7 performance evaluation for taking the initiative to conduct the requested extra patrol in the problem area in my patrol zone while I had **only 4 tasks on my list!**

Oral

Rating: Does Not Meet Requirements

The comments are true. I can only say in my defence that first, it was my first sudden death call and second, being accompanied by the Big Brother Cst. Nie severely eroded my independent judgment. Also, in another occurrence on September 19, 2009, in which a senior citizen complained about being taken advantage of by a concrete work contractor after I have interviewed her Cst. Nie reprimanded me for taking too long to conduct the interview and asking too many unnecessary questions.

The bottom line is whenever I took my time to elicit all the pertinent information I was reprimanded for taking too long. I was also reprimanded for asking too many questions and whenever I was brief I was reprimanded for not covering the relevant points. With my accent I feel the appropriate level of understanding was not given me by my coach officer. It is common knowledge that a person with an accent can take longer to achieve that which a person without an accent would. It is also common knowledge that everyone learns at their own pace and not at another's pace. Furthermore, any mature and impartial coach officer would know that a rookie will often ask too many so called unnecessary questions but that rookie's quality of interviews would naturally improve over time. Not so for me. I was expected to conduct an interview at the standards of an experienced officer immediately. If anything, such a lack of understanding on the part of a coach officer speaks to the coach officer's inability to conduct an unbiased evaluation

Radio Communications

Rating: Does Not Meet Requirements

The first example is true. I feared Cst. Nie's presence. As a result, the major part of my mental and emotional focus was redirected from the tasks at hand to staying focused on my every action and constantly measuring how I was perceived by Cst. Nie.

The second example is also true. At the time, I could not keep track of what everybody else was doing on top of my personal duties. I thought monitoring officers' calls was the job of the dispatcher.

Furthermore, why is Cst. Nie referring to my ability to listen on the radio negatively? Does he not remember he has just rated me in the area of my listening skills as meets requirements?

Again the credibility of my coach officer is brought to question.

What needs to be pointed out is that I was very conscious of my accent being thick. I was reminded that I spoke with a funny accent. I was also asked if I could speak with a Canadian accent. So naturally all of this had a cumulative effect on my communications category and radio communications category.

Decisive Insight

Rating: Does Not Meet Requirements

The example referring to stopping a pedestrian is true. First, it was late at night and I did not clearly see the object the male was holding in his hand. From a distance the object appeared as a container to me. Second, after being reprimanded by Cst. Nie on September 18, 2009 for not stopping a youth riding a bicycle with no helmet or light, as mentioned in the *Police Vehicle Operations* section in this performance evaluation, I started paying particular attention to the pedestrians around me. That was the reason I stopped the pedestrian to verify he was not consuming alcohol in a public place. I felt that if I did not stop to inquire about the object the pedestrian had in his hand, I would be criticized and the incident would eventually be reflected in my next monthly evaluation. So I checked on the pedestrian and still got criticized.

It is also noteworthy to mention that when I attempted to roll the passenger side window down to ask the pedestrian a question from inside the cruiser, Cst. Nie, who was the passenger, immediately and abruptly rolled it up and in an angry voice and manner said to me, "You just killed me. What if he had a knife? You should always step out of the cruiser when dealing with pedestrians." I understood Cst. Nie's perspective and his attempt to emphasize the importance of officer safety techniques and being vigilant at all times, but not to the point of ridicule. I was just going to ask a peacefully walking pedestrian a simple question.

Analytical Thinking

Rating: Does Not Meet Requirements

The comments are true. How could I have remained dynamic in dealing with individual situations if almost everything I had done was rated as "bad or wrong" by my coach officers and by my supervisors? Of course, not knowing any better, I was trying to pattern handle new calls after calls handled successfully without any reprimands.

As later pointed out by Cst. Tapp this category should have been rated with Meets Requirements. There was no specific incident to offer a rating in this category. There was also absolutely no basis for referring to the youth on the bicycle incident since there was no similar incident worth identifying for this category other than Cst. Nie's belief that I have trouble connecting the dots or piecing together the key elements to develop a solution. I guess all of my educational qualifications and skills so far just did not cut it.

Again one has to question the credibility of the evaluator and the evaluation.

For my rebuttal regarding the incident with the youth on the bicycle, please refer to the Police Vehicle Operations section in this performance evaluation.

Resolution

Rating: Does Not Meet Requirements

From the first hour of my work on Platoon 'D' shift Cst. Nie started constantly finding faults with me and meticulously documenting them in his notebook and in my monthly performance evaluations. Regardless of what I did or how I did it I was almost always wrong in Cst. Nie's eyes. He constantly made me feel as a misfit and as a failure. Having said that, how long would it take for one to lose confidence in trusting one's decisions and wait to be told what to do?

The example referring to the stand-by keep the peace is true.

Personal Accountability

Rating: Does Not Meet Requirements

On September 9, 2009, Cst. Nie told me that I needed to complete a vehicle record search form and send to the Ministry of Transportation as a follow up on a Compulsory Automobile Insurance Act (CAIA) charge I laid in August. I advised Cst. Nie that I knew how to complete the form as I had filled out and mailed two in the spring of 2009 when I laid similar charges. For some reason, Cst. Nie said that if I had done it in the past he could easily find it in the Niche RMS. I told Cst. Nie that I had done it twice and further advised him that Cst. David McNab had taught me the procedure when I came to work at the detachment on my time off. I was so glad and excited to have a fresh start with my new coach officer that I rushed to an adjacent room with an available computer and set out to work. By the time I finished, Cst. Nie entered the room and I gladly presented him with the completed form for a review. He looked at me in a sort of way as a python looks at its prey before devouring it and said, "Michael, I am not going to play games with you. You just told me you have never done it before. I will not tolerate this." I was speechless. When I attempted to reason with him by asking, "Richard, if I have two occurrences in the Niche RMS where I filled this form out that can easily be verified and an officer who can testify that he taught me how to do it, why on God's Green Earth would I tell you that I did not know how to complete the form and then in 10-15 minutes present you a completed form?" Cst. Nie responded he did not know why but that he had heard me saying that I did not know how to do it. All my further attempts to reason with him failed. He then said it was water under the bridge. Though I felt extremely shaken and uncomfortable I assumed we resolved our misunderstanding and moved on.

After reviewing this performance evaluation and having found the whole incident thoroughly documented from Cst. Nie's perspective only, I voiced my concerns about his take on the incident being plain wrong, to which he simply said "One of us is not telling the truth". So much for the "good start with a clean plate" on the new platoon with a new coach officer! I was already viewed as a liar.

On September 19, 2009, in yet another attempt to follow Cst. Nie's rules to the letter, I asked him how he wanted me to sign a ticket. He immediately accused me of trying to set him up and playing mind games with him. No matter what I did or how I did it, Cst. Nie almost always found a problem with me. I was fearful of asking him questions. Every time I asked a question, I anticipated he would find something wrong with it. There was that constant perception on his part that I was playing mind games with him. To date I am not certain if that perception was real or deliberately fabricated to oppress me.

I am glad that Cst. Nie was able to note that I show no ability to accept responsibility for my action because it is also evident that due to the constant racial discrimination I was being subjected to my employment was being affected.

Flexibility

Rating: Does Not Meet Requirements

On September 9, 2009, Cst. Nie accused me of not contacting the complainant in a pending threats call in a timely manner. The incident was subsequently negatively documented in the *Flexibility* section of my Month 9 performance evaluation (Exhibit 32).

On 09SEP09 at the start of shift PC Jack was advised of a pending threats call. He was asked to call the dispatcher for details. Upon returning to his coach, he advised that there were three calls outstanding and he had taken details on a stolen vehicle. He was advised to call back and get all three call details, and then prioritize which one to deal with first. He returned to advise that the threats call was not in his zone. It was explained how with only three day shift officers working for the first hour of the day, he would be taking calls in every zone. After 45 minutes he still had not contacted the complainant for the threats call which was obviously the most important call.

Due to the 'up to the minute' documentation by my coach officer a detailed analysis of this negative rating is essential for one to get a clear understanding of the truth:

- I started my shift at 5 am.
- When I was walking towards the detachment Sgt. Banbury advised me of the pending threats call which was left over from night shift.
- I was in my civilian attire and did my routine: changed and went into the Constables' office.
- I subsequently contacted the dispatcher and obtained the details of the leftover calls.
- I placed a call to the complainant in the threats call since it, though it was not the oldest call it appeared to be the most serious. The complainant did not answer.
- I touched base with the other calls that did not require immediate police involvement.
- At 05:42 am I telephoned the complainant again at which time I spoke with him. He was very agitated and resolute in the fact that he had already told the police dispatcher everything and so he was not telling me 'shit' and hung up on me.
- At 5:50 am I called the complainant again and spoke with him again during which time he was extremely rude again.
- By now it was a few minutes past 6:00 am and shift briefing was announced.
- During the shift briefing I was introduced to my new shift. It is noteworthy to mention that I telephoned Cst. Nie a few days prior on my scheduled day off to see if he wanted to meet to have a coffee so we could establish some rapport. His response on the phone was very curt and sharp, 'I do not any police work on my days off,' and I sensed by the tone of his voice that he was displeased.
- Upon hitting the road with my new coach officer, Cst. Nie we attended the address of the threats call where we spoke to the complainant around 07:20 am. The complainant was a not-so-bright middle-aged male with a very lengthy criminal record who had recently got out of jail. He lived in a small trailer on his friend's property.
- At that time the complainant was agitated and was under the belief that police were not going to do anything. Using strong language he told us not to come back and that he did not want us to do

anything (Exhibit 28). Note: I have subsequently compiled a record of the complainant's interaction with Peterborough OPP Detachment and to date have this record on file.

Any officer working on one's evaluation sometime later can easily access the occurrence and see that I spoke to the complainant at 05:42 am. In the performance evaluation Cst. Nie wrote, "After 45 minutes he still had not contacted the complainant for the threats call which was obviously the most important call". Hence Cst. Nie's documentation of this incident with a negative rating is erroneous and false. Considering the fact that I started my shift at 05:00 am, where is Cst. Nie getting his 45 minutes from? Did Cst. Nie ever consider what I was doing during those alleged 45 minutes?

This example in the very first evaluation from Cst. Nie serves a two-fold purpose. Aside from it showing that it is completely erroneous and false it also serves to rate him in the following areas:

Communicational Skills

- 1) Written – (... documents information accurately ...) – Does Not Meet Requirements

Problem Solving Skills

- 2) Decisive Insight – (... uses knowledge and training ... to make the best decision ...) – Does Not Meet Requirements
- 3) Analytical Thinking – (... demonstrates logical thinking ...) – Does Not Meet requirements

Leadership Attributes

- 4) Personal Accountability – (... takes responsibility for one's own actions and consequences...) – Does Not Meet Requirements. Should have been able to see that the call was indeed handled in a timely and efficient manner.

Interpersonal Attributes

- 5) Integrity – (... demonstrates ... ethical standards as set out in The Promise of the OPP ... protects the rights of all persons ... consistent with the Human Rights Code) – Does Not meets Requirements

Personal Impact

- 6) Self-Awareness – (... recognizes and manages personal biases ...) – Does Not meet Requirements

The aforementioned is just an example of how one of my ratings in one field can cast speculation on the credibility of performance evaluations and also on their author. Aside from all of the aforementioned: it is my first day on a new platoon with a new coach officer working early shift for the first time (starts at 5:00 am as opposed to 6:00 am). We literally just started off. Why would Cst. Nie time me with a minute precision? Does it not look overly zealous on his part?

Response to the Application (HRTO 2010-07633-I) Paragraph 50:

50. Paragraphs 40 to 44 – Constable Nie's evaluations of the Applicant accurately reflected the Applicant's performance. Contrary to the Applicant's assertion, both positive and negative performance was noted. Constable Nie did carefully document the Applicant's performance. That is the job of a coach officer.

Respectful Relations

Rating: Does Not Meet Requirements

How can one truly maintain respectful relations with individuals that are referring to you (in your absence) as a "Crazy Ivan"?

It is noteworthy to mention that after reviewing my performance evaluations and 233-10s for the months 6, 7, 8 and 9, I observed an attention-drawing trend. First I was accused of answer shopping, then I was accused of not asking questions and after that I was accused of asking questions I knew answers to. What should have I really done to please my evaluators? This compelling trend is more commonly referred to as 'a no-win situation'. I was being led to the slaughter house and there was nothing I could do about it. Note: The value of Decisive Insight is only achieved upon realizing the collective knowledge of the majority where after one is able to make a well-meaning and wise answer.

Exhibit 23b - File 233-10 (Month 7):

On the 2nd of August 2009, PC JACK was spoken to by his coach officer PC S. FILMAN and his Sergeant, R. FLINDALL in regards to complaints received from his peers that PC JACK is constantly "shopping for answers". Complaints were received not only from his platoon mates, but also officers from other shifts. At this time, he was advised to cease and desist and that if advice is given by his coach officer or Sergeant, he is to follow this direction.

Exhibit 27 - PCS-066P (Month 8) (*Personal Accountability* section):

As well PC JACK has complained on a number of occasions that he felt abandoned or didn't have help with calls for service. In a number of instances in which he's complained, it was found that he had not let it be known that he required assistance and did not actively seek out assistance.

Exhibit 32 - PCS-066P (Month 9) (*Personal Accountability* section):

Since that day, it has been daily that something will come up where PC Jack attempts to ask questions that he already knows the answer to. On 19SEP09 he asked his coach how to sign

Self-Confidence

Rating: Does Not Meet Requirements

I did not have much confidence left when I reported to Platoon 'D' shift. The rest of the confidence was quickly eroded by Cst. Nie's accusations of me lying to him, playing mind games with him, not doing anything properly, not accepting personal responsibility for my mistakes, etc. I was literally being made to feel like I was a puppet on Cst. Nie's string and hence the string of the Ontario Provincial Police and the Ontario Public Service.

For example, in the morning on September 9, 2009, while in the Constables' office, I asked Cst. Nie if I could go to the washroom. Cst. Nie looked at me and said, "Michael, do not ever ask me that question again." At that time, it felt normal and logical to me to ask for a permission to take a washroom break. Later I pondered why I asked such a childish question. The only rationale answer appears to be that I felt like a slave. My self-confidence was severely eroded and I feared to even go to the washroom without asking for permission first. I felt like I was a puppet. How does one adjust from being made to feel like a slave at the detachment to being an authority figure on the road?

I accept this rating wholeheartedly since it is a proof of how my level of self-confidence was completely eroded by those who were supposed to develop me.