

**Human Rights Tribunal
of Ontario**

655 Bay Street, 14th Floor
Toronto ON M7A 2A3
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**Tribunal des droits de la personne
de l'Ontario**

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HRTO FILE: 2010-07633-I

May 4, 2011

Michael Jack
c/o Lloyd Tapp
252 Angeline St North
Lindsay, Ontario K9V 4R1

RE: Michael Jack vs. Her Majesty the Queen in Right of Ontario as represented by the Ministry of Community Safety & Correctional Services and operating as the Ontario Provincial Police

Subject: Delivery of Response

Enclosed is the Response to your Application filed by the respondent, Her Majesty the Queen in Right of Ontario as represented by the Ministry of Community Safety & Correctional Services and operating as the Ontario Provincial Police, dated May 2, 2011.

Rule 9.1 of the Human Rights Tribunal of Ontario's (HRTO) Rules of Procedure requires an applicant who intends to prove a version of the facts different from those set out in a Response to include those facts in the Reply, unless that version of facts is already set out in the Application. An applicant may also file a Reply to respond to new matters raised in the Response.

The Reply (Form 3) must be delivered to the other parties and any organization or other person identified as an affected person in the Application or Response, and filed with the HRTO, along with a completed Statement of Delivery (Form 23), not later than **May 18, 2011**.

FILING DOCUMENTS WITH THE HRTO

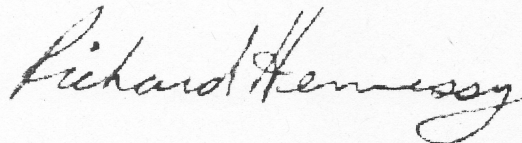
Documents filed as email attachments may not exceed 10 Mb. See Rule 1.17(e).

At least two hard copies of any document larger than 20 pages must be provided to the HRTO. One of the copies must be unbound. See Rule 1.19.1. If you are filing bound documents with the HRTO please provide an index to the bound documents and, if possible, an electronic version.

All written communications must be addressed to the Registrar. Any document, including emails, **must** be copied to the other parties before being filed with the HRTO. The HRTO cannot accept any materials unless you confirm that they have been copied to the other parties.

The HRTO will send information to the address you have provided to us. If your contact information changes, you must advise the HRTO immediately.

Sincerely,



Richard Hennessy
Registrar

Cc:
MCSCS, Legal Services
c/o Marnie Corbold, Counsel
Legal Counsel
655 Bay Street, ste 501
Toronto, Ontario M7A 0A8

Ontario Provincial Police
Association
c/o Marty MacMarow
119 Ferris Lane
Barrie, Ontario L4M 2Y1



Human Rights Tribunal of Ontario

Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

Note: Complete all parts of this form, using the **Respondent's Guide** for help. If your form is not complete, the Tribunal may return it to you. If you are filling this out on paper, please print and ensure that the information you provide is legible. At the end of this form, you will be required to read and agree to a declaration that the information in your Response is complete and accurate (if you are a lawyer or legal representative assisting a respondent with this Form 2, please see the **Practice Direction On Electronic Filing of Applications and Responses By Licensed Representatives**).

Respondents must file a completed Response form no later than **thirty-five (35) days** after the Tribunal sends them a copy of the Application. The cover letter from the Tribunal gives you the exact date.

Tribunal File Number 2010-07633-1

Contact Information for the Respondent

1. Respondent Contact Information – Organization

Contact information for a responding organization, such as a corporation, association, or group. Please complete both this section and Question 3.

Full Name of Organization Her Majesty the Queen in Right of Ontario as represented by the Minister of Community Safety and Correctional Services (Ontario Provincial Police)

Organization Type: Corporation
 Partnership
 Sole proprietorship
 Unincorporated business/organization
 Other (specify): Government of Ontario Ministry

Name of the person within this organization who is authorized to negotiate and bind the organization with respect to this Application:

First (or Given) Name Last (or Family) Name Title
Steve Rooke Superintendent

Street # Street Name Apt/Suite
 contact via counsel

City/Town Province Postal Code Email

Daytime Phone Cell Phone Fax TTY

What is the best way to send information to you?
(if you check email, you are consenting to the delivery of documents by email) Mail Email Fax



Human Rights Tribunal of Ontario

Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

2. Respondent Contact Information – Individual

If you have been named as an individual respondent, please complete this section and then go to Question 3.

First (or Given) Name	Middle Name	Last (or Family) Name

Street #	Street Name	Apt/Suite

City/Town	Province	Postal Code	Email

Daytime Phone	Cell Phone	Fax	TTY

What is the best way to send information to you?
 (if you check email, you are consenting to the delivery of documents by email) Mail Email Fax

3. Representative Contact Information

Complete this Section only if you are authorizing a lawyer or other Representative to act for you.

I authorize the organization and/or person named below to represent me.

First (or Given) Name	Last (or Family) Name
Marnie	Corbold

Organization (if applicable):
 Legal Services Branch, Ministry of Community Safety and Correctional Services

Street #	Street Name	Apt/Suite
655	Bay Street	501

City/Town	Province	Postal Code	Email
Toronto	Ontario	M7A 0A8	marnie.corbold@ontario.ca

Daytime Phone	Cell Phone	Fax	TTY
416-314-3517		416-314-3518	

LSUC No. (if applicable): 32194J

What is the best way to send information to your representative?
 (if you check email, you are consenting to the delivery of documents by email) Mail Email Fax

Contact Information- Additional Respondent(s) and Affected Person(s)

Please complete this section if you believe another person or organization should be named as a respondent or given notice as an affected person.



Human Rights Tribunal of Ontario

Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

4. Contact Information - Additional Respondent

If there is another organization or person who is not already named as a respondent on the Application form and who you believe should be named as a respondent, provide their contact information here. See the Tribunal's **Practice Direction on Naming Respondents** for more information on how to correctly name a potential respondent.

If you are providing contact information for more than one organization or person you believe should be named as an additional respondent, and you are filling this out on paper, attach another sheet of paper with the full contact information for each additional respondent. Number each page.

Organization (if applicable):

First (or Given) Name

Last (or Family) Name

Street #

Street Name

Apt/Suite

City/Town

Province

Postal Code

Email

Daytime Phone

Cell Phone

Fax

TTY

5. Contact Information - Affected Person

If there is any other organization (such as a union or occupational association responsible for collective bargaining) or person who is not already named as an affected person on the Application form and who might be affected by this Application to the Tribunal, provide their contact information here.

If you are providing contact information for more than one affected person, and you are filling this out on paper, attach another sheet of paper with the full contact information for each affected person. Number each page.

Organization (if applicable):

First (or Given) Name

Last (or Family) Name

Street #

Street Name

Apt/Suite

City/Town

Province

Postal Code

Email

Daytime Phone

Cell Phone

Fax

TTY



Human Rights Tribunal of Ontario

Response to an Application under Section 34 of the *Human Rights Code* (Form 2) Request for Early Dismissal of the Application

6. Request for Dismissal without Full Response

Complete this section only if you are requesting that the Tribunal dismiss the Application because one of the four situations below applies. Put an "X" in the box that applies. Please see the **Respondent's Guide**.

I request that the Tribunal dismiss this Application because:

- A claim based on the same facts has been filed in civil court, requesting a remedy based on the alleged human rights violation. (Attach a copy of the statement of claim and the court decision, if any. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)
- A complaint was filed with the Ontario Human Rights Commission based on the same, or substantially the same, facts as this Application. (Attach a copy of the complaint and the decision, if any. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)
- The applicant signed a full and final release with respect to the same matter. (Attach a copy of the release. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)
- The issues in dispute in the Application are within exclusive federal jurisdiction. (Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)

Note: If you put an "X" in any of the boxes above, go to Question 20. Except in these four situations, or as otherwise directed by the Tribunal, requests to dismiss an Application will not be considered without a complete response.

7. Request for Dismissal under s. 45.1 of the *Code* with Full Response

Complete this section only if you are requesting that the Tribunal dismiss the Application because another proceeding has in whole or in part appropriately dealt with the substance of the Application. Put an "X" below if you are making this request. Please see the **Respondent's Guide**.

a)	<input type="checkbox"/> I request that the Tribunal dismiss the Application because another proceeding has in whole or in part appropriately dealt with the substance of the Application. (Attach a copy of the decision)
b)	Please name the other proceeding: _____
c)	Explain why you believe the other proceeding has in whole or in part appropriately dealt with the substance of the Application. _____

Note: You must complete the entire Response form and attach a copy of the document that started the proceeding and a copy of the decision.



Human Rights Tribunal of Ontario

Response to an Application under Section 34 of the *Human Rights Code* (Form 2) Request to Defer the Application

8. Request to Defer

Complete this section only if the facts of the Application are part of another proceeding that is still in progress.

a) Describe the other proceeding:

<input type="checkbox"/> A union grievance	Name of union:	
<input type="checkbox"/> A claim before another board, tribunal or agency	Name of board, tribunal, or agency:	
<input type="checkbox"/> Other	Explain what the other proceeding is:	
b) Are you asking the Tribunal to defer (postpone) the Application until the other proceeding is completed? (Attach a copy of the document that started the other proceeding)		<input type="radio"/> Yes <input type="radio"/> No

Responding to the Allegations in the Application

9. Responding to the Allegations

Please summarize the facts and defences that support your Response to this Application. See the **Respondent's Guide**.

Please include as part of your Response:

- any submissions you make that the Application is outside the Tribunal's jurisdiction;
- what allegations in the Application you agree with;
- what allegations in the Application you disagree with;
- any additional facts that you intend to rely on; and
- any defences that you intend to rely on.

If you are filling this out on paper and need more space, please add more pages. Number each page.

See Appendix A.

10. Exemptions

Complete this section only if you are relying on one of the exemptions found in the *Code*. (See the **Respondent's Guide**)

a) What exemption in the *Code* do you believe applies to this Application?

b) Please explain why you believe the exemption applies:

11. Knowledge of the Events



Human Rights Tribunal of Ontario

Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

a) When and how did you first become aware of the events described in the Application?

Upon receipt of the Application.

b) How did you respond and what was the outcome?

Filed this Response.

12. Disability and Employment

Complete this section only if the applicant alleges that they experienced discrimination in employment on the ground of disability. (See **Respondent's Guide**)

a) Did you know about the applicant's particular needs before seeing the Application?

Yes No

b) What are the requirements (essential job duties) of the position in question?

c) Do you have a written policy, job description or other documentation that describes the requirements of the job?

Yes No

d) Was the applicant unable to perform the requirements of the job because of their disability?

Yes No (Go to 13)

e) If you answered "Yes" to 12d, what have you done to try to meet the particular needs of the applicant so that they could do the job? Explain why you believe you met your duty to accommodate. If you are filling this out on paper and you need more space, please add more pages. Number each page.

Note: If you said "Yes" to Question 12c, you must attach a copy of the policy, job description or other document that describes the requirements of the job.

Questions About Internal Human Rights Policies

13. Internal Human Rights Policies

Complete this section only if the respondent is an organization. Please see the **Respondent's Guide**.

a) Do you have a policy related to the type of discrimination alleged in the Application?

Yes No

b) Do you have a complaint process to deal with discrimination and harassment?

Yes No (Go to 14)

c) Did the applicant make a complaint under the internal complaint process about the facts in this Application?

Yes No (Go to 14)

d) Describe how the organization responded and what was the outcome of the complaint process?

Note: You must attach a copy of the policy, complaint process, or the document that started the complaint, and the decision, if any.



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Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

Mediation

14. Choosing Mediation to Resolve the Application

Mediation is one of the ways the Tribunal tries to resolve disputes. It is a less formal process than a hearing. Mediation can only happen if both parties agree to it. A Tribunal Member will be assigned to mediate the Application. The Member will meet with you to talk about your Response. The Member will also meet with the applicant and will try to work out a solution that both sides can accept. If mediation does not settle all the issues, a hearing will still take place and a different Member will be assigned to hear the case. Mediation is confidential.

Do you agree to try mediation? Yes

Documents that Support your Response

15. Important Documents You Have

If you have documents that are important to your Response, list them here. List only the most important. Indicate whether the document is privileged. See the **Respondent's Guide**.

Note: You are not required to send copies of your documents at this time. However, if you decide to attach copies of the documents you list below to your Response they will be sent to the other parties to the Application along with your Response.

Document Name	Why It Is Important To My Response
Applicant's Performance Evaluation Reports	Documents the performance issues which lead to the decision not to extend an offer of permanent employment to the Applicant.
Officers' notes, etc. which document the Applicant's performance issues.	Supports the above.
Documents related to the decision not to extend an offer of permanent employment to the Applicant.	Supports the Respondent's position not to extend an offer of permanent employment.
Additional relevant documents to be determined.	

16. Important Documents the Applicant Has

If you believe the applicant has documents that are important to your Response, that you do not have, list them here. List only the most important.

Document Name	Why It Is Important To My Response



Human Rights Tribunal of Ontario

Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

17. Important Documents Another Person or Organization Has

If you believe another person or organization has documents that are important to your Response, that you do not have, list them here. List only the most important.

Document Name	Why It Is Important To My Response	Name of Person or Organization Who Has It

Confidential List of Witnesses

18. Witnesses

Please list the witnesses that you intend to rely on in the hearing. **Note:** The Tribunal will not send this list to the applicant. See the **Respondent's Guide**.



Human Rights Tribunal of Ontario

Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

Name of Witness	Why This Witness Is Important To My Response
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Other Important Information

19. Other Important Information the Tribunal Should Know

Is there any other important information you would like to share with the Tribunal?

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Checklist of Required Documents

20. Documents from Questions 6 to 13

Put an "X" in the box beside the documents that you are required to send with your Response. Put the Tribunal file number on each document.

- Copy of a statement of claim and the Court decision, if any (from Question 6)
- Copy of a complaint filed with the Ontario Human Rights Commission and decision, if any (from Question 6)
- Copy of a full and final release that the applicant signed dealing with same matter (from Question 6)
- Submissions in support of a Request for Dismissal without Full Response (under Question 6)
- Copy of a decision from another type of proceeding that appropriately dealt with the substance of the Application (from Question 7)
- Copy of a document that started another type of proceeding based on the same facts (from Questions 7 & 8)
- Copy of the policy, job description or other document that describes the requirements of the job (from Question 12)
- Copy of your organization's policy on discrimination or harassment relevant to this Application (from Question 13)
- Copy of your organization's complaints process relevant to this Application (from Question 13)



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- Copy of the applicant's internal complaint (from Question 13)
- Copy of the decision from the internal complaint process (from Question 13)

21. Declaration and Signature

Instructions: Do not sign your Response until you are sure that you understand what you are declaring here.

Declaration:

To the best of my knowledge, the information in my Response is complete and accurate.

I understand that information about my Response can become public at a hearing, in a written decision, or in other ways determined by Tribunal policies.

I understand that the Tribunal must provide a copy of my Response to the Ontario Human Rights Commission on request.

I understand that the Tribunal may be required to release information requested under the Freedom of Information and Protection of Privacy Act (FIPPA).

Marnie Corbold, Counsel, MCSCS

Name

Respondent's Signature

03/05/2011

Date (dd/mm/yyyy)

- Please check this box if you are filing your response electronically. This represents your signature. You must fill out the date, above.

Accommodation Required

If you require accommodation of *Code* related needs please contact the Registrar at HRTO.Registrar@ontario.ca or

Phone: 416-326-1312 Toll-free: 1-866-598-0322

Fax: 416-326-2199 Toll-free: 1-866-355-6099

TTY: 416-326-2027 Toll-free: 1-866-607-1240

Where to Send your Response

Note: Only file your Response once. If the Tribunal receives this Response more than once, it will only accept the first Response Form received.

Send your completed Response Form and any attachments to:

Human Rights Tribunal of Ontario
655 Bay Street, 14th Floor
Toronto, Ontario
M7A 2A3

Fax: 416-326-2199 Toll-free: 1-866-355-6099

Email: HRTO.Registrar@ontario.ca



Human Rights Tribunal of Ontario

APPENDIX A

APPENDIX A

1. As will be discussed in more detail below, the Respondent denies that it discriminated against, or harassed, the Applicant during his employment with the Ontario Provincial Police (OPP) on the basis of race, ancestry, place of origin, citizenship, ethnic origin or association. The Respondent's decision not to extend an offer of permanent employment to the Applicant was solely based on performance issues which were unrelated to a protected ground under the *Human Rights Code*.

Background

2. The Applicant was offered a position as a 5th Class Recruit Constable with the OPP in a letter dated July 18, 2008, which he accepted on July 24, 2008. In accepting the offer, the Applicant also accepted the conditions attached to the appointment.
3. The Respondent also sent a memo to the Applicant dated August 25, 2008 setting out the "Performance and Conduct Requirements of a Recruit Constable", which among other things advised as follows:

In order for your employment with the OPP to be confirmed beyond the probationary period, the evaluation of your work performance and conduct must demonstrate that you meet the requirements of this position. A recommendation to confirm your appointment as a Provincial Constable will be made after the tenth (10) month of your probationary period.

Pursuant to the Public Service of Ontario Act, a recommendation that you be released from employment for failure to meet the requirements of your position, based on unsatisfactory work performance or inappropriate conduct, may be made at any time during your training and probation period.
4. The Applicant signed an Acknowledgement that he read, understood and accepted the contents of this memo on August 25, 2008.
5. Pursuant to subsection 37(2) of the *Public Service of Ontario Act*, a person who is appointed as a public servant, such as the Applicant, may, during their probationary period, be dismissed for a failure to meet the requirements of their position.
6. Once appointed, the Applicant, as with all OPP Recruit Constables, was required to successfully complete training at both the Ontario Police College and the OPP Provincial Police Academy. The Applicant did successfully

complete this training, although he initially failed the Police Vehicle Operations requirement. During the failed attempt, the assessor's comments were as follows:

This candidate demonstrated acceptable proficiency in each of the driving skills components, but did experience significant difficulty when attempting to apply some of these skills in a motor vehicle pursuit simulation. At a later date, this candidate was given an opportunity to repeat this exercise and again was unable to operate the vehicle in a reasonably safe and proficient manner. Therefore, this candidate has not successfully completed this area of training. Further instruction and evaluation will be made available upon your request.

7. The Applicant did subsequently pass the Police Vehicle Operations component of the training.
8. Having successfully completed the Ontario Police College and OPP Provincial Police Academy training, the Applicant then commenced his one year probationary period at the Peterborough County OPP detachment (Detachment) in January 2009.
9. As a probationary constable, the Applicant was assigned a coach officer to assist with his on-the-job training and whose responsibility it was to assess and document his performance. Nine detailed Performance Evaluation Reports (PER) were prepared in relation to the Applicant's performance over the duration of his placement at the Detachment.
10. The PERs for probationary constables are standardized and are used for assessing all probationary constables. The PER contains 7 broad areas of assessment which are further broken down into 28 more specific sub-areas of assessment as set out below:
 - A. Job Knowledge and Skills
 1. Attitude Towards Learning
 2. Provincial Statutes
 3. Federal Statutes
 4. Police Orders/Procedures/Technical Skills
 5. Police Vehicle Operation
 6. Traffic Enforcement
 - B. Communications Skills
 7. Oral
 8. Written
 9. Listening Skills
 10. Non-Verbal
 11. Radio Communications

- C. Community Focus
 - 12. Community Focus
 - 13. Valuing Diversity
- D. Problem Solving Skills
 - 14. Decisive Insight
 - 15. Analytical Thinking
 - 16. Resolution
 - 17. Follow-Up Orientation
- E. Leadership Attributes
 - 18. Initiative
 - 19. Personal Accountability
 - 20. Planning and Organizing
 - 21. Flexibility
- F. Interpersonal Attributes
 - 22. Integrity
 - 23. Respectful Relations
 - 24. Self-Confidence
 - 25. Team Work
- G. Personal Impact
 - 26. Self-Awareness
 - 27. Deportment
 - 28. Appearance

11. In each area the probationary constable is rated with one of the following ratings:

- Meets Requirements;
- Does Not Meet the Requirements; or
- No Basis for Rating.

The PER also contains specific positive and negative examples of how the probationary constable is or is not meeting the requirements.

12. Each PER is shared with the probationary constable to ensure they are aware of their areas of strength as well as any identified areas of deficiency so they can focus on improving in those particular areas in the next review period. As part of the PER process, Work Improvement Plans may be developed to further assist the probationary constable to achieve a satisfactory level of performance in areas where concerns have been identified, particularly where those concerns are significant or continuous.

13. The Applicant received copies of all of his PERs during his probationary period. Work Improvement Plans were also developed in relation to the Applicant. The Applicant refused to sign several of his later PERs when they started to contain negative comments.

14. The following is an overview of the Applicant's ratings in the 28 specific assessment areas in the 9 PERs which were completed on his performance during the course of his placement at the Detachment.

	Review Period	Ratings
1.	January 9, 2009 to March 9, 2009	<ul style="list-style-type: none"> • 24 Meets Requirement • 3 Does Not Meet Requirement • 1 No Basis for Rating
2.	March 9, 2009 to April 9, 2009	<ul style="list-style-type: none"> • 27 Meets Requirement • 1 No Basis for Rating
3.	April 9, 2009 to May 9, 2009	<ul style="list-style-type: none"> • 28 Meets Requirement
4.	May 9, 2009 to June 9, 2009	<ul style="list-style-type: none"> • 22 Meets Requirement • 6 No Basis for Rating
5.	June 9, 2009 to August 9, 2009	<ul style="list-style-type: none"> • 18 Meets Requirement • 10 Does Not Meet Requirement
6.	August 9, 2009 to Sept. 9, 2009	<ul style="list-style-type: none"> • 11 Meets Requirement • 17 Does Not Meet Requirement
7.	Sept. 9, 2009 to October 9, 2009	<ul style="list-style-type: none"> • 15 Meets Requirement • 13 Does Not Meet Requirement
8.	Oct. 9, 2009 to November 9, 2009	<ul style="list-style-type: none"> • 16 Meets Requirement • 12 Does Not Meet Requirement
9.	Nov. 9, 2009 to December 9, 2009	<ul style="list-style-type: none"> • 17 Meets Requirement • 11 Does Not Meet Requirement

15. Based on a review of the ratings in his PERs it can be seen that the Applicant was progressing well in his first 5 months at the Detachment but his performance then began to decline significantly with only very moderate improvements noted from the low point in the August/September review period through to December 2009 despite a Work Improvement Plan and a change of coach officers.

16. The Applicant's accent, which could be connected to the grounds of place or origin, ethnic origin, race, ancestry or citizenship had absolutely no bearing on the Respondent's decision not to offer the Applicant a permanent position. The decision not to offer him a permanent position was solely based on his failure to meet the requirements of the position as demonstrated by his performance during his probationary period.

17. The Applicant was advised of the Respondent's decision not to offer him a permanent position and the Applicant tendered his resignation on December 15, 2009.
18. While not exhaustive, the following paragraphs set out the nature of the performance issues which lead to the Respondent's decision to not offer a permanent position of employment to the Applicant.

Performance Issues

19. In a number of his PERs the Applicant was found to have a lack of knowledge in relation to the federal and provincial statutes a police officer is responsible for enforcing. Proper enforcement of the law is a key duty of a police officer and knowledge of the relevant statutes is essential.
20. A number of the Applicant's PERs identified problems with police vehicle operation. The Applicant lacked confidence with his driving. There were instances where he parked the vehicle in an unsafe location when conducting a traffic stop. He had difficulty multi-tasking while driving. Police constables are required to drive, activate lights and sirens, communicate on the radio and with their partner sometimes all at the same time. These sorts of driving conditions are part of the everyday work of a police constable and are essential to that work. The Applicant was offered and took remedial driving sessions.
21. Several of the Applicant's PERs identified problems in making decisions and it was an area where no improvement was made. When faced with operational decisions on the road or while attending a call, the Applicant often seemed uncertain about what to do. This uncertainty about what to do did not improve as the Applicant gained more operational experience, which is what would typically be observed with a probationary constable.
22. Issues with radio communications were another area in which the Applicant was found to have performance deficits. While his accent was noted in some of his early PERs, he was assessed as having the met the requirement. Those PERs noted that the Applicant was aware he had a thick accent and that he made an effort to speak clearly and concisely. The negative assessments he received in relation to radio communications did not relate to his accent but rather related to such things as failing to advise the dispatcher of his location or when he got out of his vehicle. There were also situations where he did not respond to attempts to reach him on the radio. Radio communication is the key way in which police officers communicate with the dispatcher, fellow officers and their superiors. A failure to effectively communicate on the radio by not responding or failing to inform can put that

officer's safety at risk as well as that of their colleagues and members of the public.

23. Deficiencies with attitude toward learning was another problem area which was noted in some of the Applicant's PERs. For example, it was noted that the Applicant had an obvious ability to learn but was not willing to take responsibility for mistakes or accept any disappointments. There were examples where he would avoid an officer who had given him negative feedback or be argumentative with officers who had given him direction.
24. Another identified issue was with the Applicant's refusal to accept responsibility for his conduct and his attempts to deflect it by blaming others. Mistakes are expected from time to time with all employees, particular new employees. The expectation is that a probationary constable would admit to his/her mistakes, face any consequences that might flow from the mistake, learn from it and strive to ensure those mistakes were not repeated.
25. As noted above, this is by no means a comprehensive list of the performance issues which were identified in relation to the Applicant that lead to the decision not to extend him an offer of a permanent position with the OPP.
26. In addition to the general responses to the allegations already provided above and in addition to the board denials of the allegations that are contained further below, the Respondent provides the following responses to certain particular allegations or statements made in Appendix A to the Application.

Comments on Particular Paragraphs in Appendix A to the Application

27. Paragraph 13 – The Respondent denies that the Applicant or other "outsiders" are unwelcome at the Detachment. The Respondent values the addition of officers of different backgrounds and origins who speak languages other than English. This is in fact an asset to any Detachment. The Respondent denies that the Applicant was subjected to harassment and discrimination due to "his status as a foreign borne individual". The Applicant did engage in certain conduct – unrelated to his race, ancestry, place of origin, citizenship, ethnic origin or association – which may have negatively impacted on his fellow officer's views of him.

For example, the Applicant would routinely "answer shop" amongst his fellow officers but would not always provide them with the full context resulting in the officers commenting on incomplete information. The Applicant also refused to accept responsibility for his errors and would try to deflect the blame on others. He was also very reluctant to accept advice or guidance for other officers and would be argumentative or give his colleagues the silent treatment in response.

28. Paragraph 14 – The Respondent is not aware of any officers calling the Applicant “Crazy Ivan” and denies that allegation.
29. Paragraph 17 – The Respondent denies that the Applicant was switched from one platoon to another because it was discovered that he was being targeted by members of his shift. The Applicant was given an opportunity to have a fresh start with a new coach officer who was part of a different platoon in an attempt to give him an opportunity to improve his performance under the guidance of a coach officer who may have had a different style than the original coach officer.
30. Paragraph 18 – The Respondent acknowledges that Constable Nie and Sergeant Flindall are neighbours but deny they are “close friends”. They work opposite schedules, rarely therefore see each other at work and do not socialize with each other outside of work.
31. Paragraph 19 – The Respondent denies that that Applicant was subjected to unwanted comments, jokes and harassment or that his workplace was poisoned.
32. Paragraph 19(1) – As previously noted the Respondent denies that the Applicant was called “Crazy Ivan”.
33. Paragraph 19(2) – The Respondent acknowledges that the Applicant’s accent was noted but it was not noted in a discriminatory or harassing fashion. Some officers did initially have difficulty understanding the Applicant on the radio. As noted previously, clear and concise radio communications are critical to effective communication between officers as well as the dispatchers. Unclear communications, whether it be from speaking too quickly, unclearly, etc. have the potential to negatively impact on officer and public safety and to negatively affect the provision of police services to the public. Based on feedback, the Applicant made efforts to enunciate more clearly on the radio and his radio communications greatly improved and became a non-issue in relation to his accent.
34. Paragraph 19(3) – Constable Melynda Moran has no recollection of an incident of this nature ever taking place. She denies she would ever have made such a statement to anyone, including the Applicant. Constable Moran does recall asking the Applicant for clarification when he was communicating on the radio but did so in a professional manner. As noted above, clear radio communication is critical in policing.
35. Paragraph 19(4) – The Respondent denies that officers ridiculed the Applicant’s accent.

36. Paragraph 21(1) – The Respondent denies that the Applicant was treated differently than other recruits because of his race, ancestry, place of origin, citizenship, ethnic origin or association. At the time Constable Filman became the Applicant's coach officer he was completing his coach officer functions with another recruit. In addition, his wife was expecting their first child which arrived not long after the Applicant joined the Detachment which may have meant he was on the phone at various points during the day. In addition, he was a fairly senior member of the platoon which also required him to be on the phone from time to time.

Constable Filman was not disinterested in the Applicant's training or development. On the contrary, it was the Applicant who was not open to constructive criticism or suggestions. At times when Constable Filman would point out something where improvement was needed, the Applicant would not speak to him for hours, even when they were traveling in the same car.

37. Paragraph 21(2) – Sergeant Flindall did not make the decision to discipline the Applicant in this matter. The decision was made by the collision conduct committee. Sergeant Flindall served the documentation on the Applicant following the decision being made by the committee. The Respondent denies that the decision to discipline the Applicant in this incident had anything to do with his race, ancestry, place of origin, citizenship, ethnic origin or association.

38. Paragraph 21(3) – The Respondent denies that one officer was commended to the exclusion of the Applicant and the other involved officers. Eight officers attended at this particular incident including Sergeant Flindall. Sergeant Flindall commended the team for their work and the team included the Applicant. The Applicant did receive negative documentation in relation to a specific aspect of his involvement in this incident. The Applicant had been shopping for answers in relation to this call and in doing so had not provided the officers he was asking with all of the information resulting in the other officers commenting on an issue with only pieces of the relevant information. It was this behaviour that was negatively noted by Sergeant Flindall.

39. Paragraph 21(4) – Constable Maria D'Amico does not recall ever making such a comment to the Applicant. She does recall speaking to the Applicant about his education and advising him that she had a Bachelor of Mathematics degree. She advised him that during his probationary period he should not make other officers feel that he is more educated than them and that after some time, when the other officers felt comfortable with his abilities as a police officer, he could start offering up ideas about programs that might assist with things like Crown briefs. The comment was made as peer advice to help him integrate as a part of the shift. Constable D'Amico had provided

similar advice to another recruit in the past. There was nothing threatening about her advice. Her advice was meant to assist the Applicant.

40. Paragraph 21(6) – Sergeant Flindall has no recollection of directing another officer to attend with the Applicant. If he did so, the Applicant's race, ancestry, place of origin, citizenship, ethnic origin or association had nothing to do with that decision.
41. Paragraph 21(9) – Constable Jennifer Payne did have an interaction with the Applicant on this day. Constable Payne and the Applicant had been dealing with a person in custody for possession of stolen property who was also the prime suspect in an arson. While at the scene and back at the Detachment the Applicant repeatedly asked to use Constable Payne's notes. She provided him with her dash pad with the times and names which she was working from to prepare her own notes but the Applicant continued to ask for her notes. She advised that her notes were not complete yet and that he should be preparing his own notes using the times and names she had already offered from her dash pad. She said her notes were her notes and he should be preparing his notes from his recollections and that she did not want him writing his notes from hers. The Applicant got angry and snapped back at her by raising his voice. He further stated he could just take her notebook from her diary slot at any time and read it.

At that point Constable Payne asked the Applicant why he wanted her notes so badly. He stated he wanted to study them to see how someone else does them. He mentioned the differences in language and her use of the term housecoat and said he would have used a different term. Constable Payne advised him that it is alright to use different terminology. Constable Payne then said she would give him a copy of her notes when she was done. She then observed that the Applicant was not working on his own notes and appeared to be waiting for hers. When she did provide the Applicant with a copy of her completed notes she observed him reading the first few pages and then throwing them back in her diary slot.

Constable Payne was upset by this after the Applicant had made such a big deal about wanting to see her notes and she confronted him about that fact. The Applicant stated that he was having difficulty with the job because of his language barrier and accent and raised concerns about being properly coached. Constable Payne stated that she thought he was using the language barrier as a crutch. She had read a number of the Applicant's reports and they were clear and concise and she told him so. She also said this because the Applicant was clearly capable of articulating things in English. She also advised that Constable Filman was a good and knowledgeable coach officer and that she did not believe he was being improperly coached.

She went on to offer to assist the Applicant in prioritizing his assignment list. She told him she thought he was spending too much time on minor calls for service as opposed to the ones that required investigative follow-up. At one point the Applicant tried to cut her off and she asked him to let her finish. She does not recall saying “do not interrupt me because I am senior to you”. She may have said “don’t interrupt me. Constable Payne was trying to offer the Applicant guidance and cutting her off indicated he did not want to listen.

Constable Payne never stated to the Applicant that “he sucked”.

42. Paragraphs 22 and 23 – The Respondent’s position is that the charges which were laid were appropriate and were in no way inappropriately motivated. The laying of the charge in this case was solely the decision of Sergeant Flindall, not Constable Payne. As a supervisory officer, Sergeant Flindall has a responsibility to hold officers accountable. One area of accountability is the safe operation of OPP vehicles. The Applicant is not the first officer who the Sergeant has charged with an offence under the *Highway Traffic Act* during the execution of their duties.
43. Paragraph 26 – Constable Filman never once heard from the Applicant that anyone was making derogatory remarks towards him or about his accent. The Applicant did express to Constable Filman on a number of occasions that he thought he had a strong accent and wanted to see a speech therapist. Constable Filman advised the Applicant that the OPP Association and the OPP benefits might be able to assist him with that if he wanted to pursue it.
44. Paragraph 27 – Sergeant Flindall has no recollection of the Applicant ever approaching him about derogatory comments by Constable Maria D’Amico.
45. Paragraph 28 – In May 2009 Constable Jennifer Payne was asked by Sergeant Flindall to assist in mentoring the Applicant when she returned to road duties in June 2009, which she agreed to do. In July 2009 after returning from vacation, Constable Payne attempted to assist the Applicant. Specifically on July 18, 2009 Constable Payne spoke privately with the Applicant about a few issues, including the importance of advising the communications centre where he was and what he was doing. She also spoke to him about following up on call that was not his when he had tasks of his own to complete.

Constable Payne also took this opportunity to raise a concern about an incident the previous day when the Applicant had winked at her. The Applicant denied he had winked and said “his eye does that.” She went on to state that the only reason she brought it up was because of two previous incidents. The first incident occurred in May 2009 when Constable Payne was at the Detachment in plain clothes as opposed to her uniform. The Applicant approached her because he knew that Sergeant Flindall had asked

her to provide some mentoring assistance to him. At the end of their conversation the Applicant looked her up and down from head to toe, winked and made a clicking sound with his mouth. This incident made Constable Payne uncomfortable but she did not say anything to him at the time because she was shocked and she wanted to see if it was an isolated incident.

The second incident occurred on June 2, 2009 when Constable Payne returned to uniformed duties. The Applicant approached her and stated “you look good in your uniform”. Constable Payne was caught off guard by the comment. She thought the comment was inappropriate as how she looked in uniform should not be addressed.

When Constable Payne raised these two previous incidents with the Applicant on July 18, 2009 he denied the first one and admitted to the second. The Applicant reiterated that the winking of his eye happens all the time. Constable Payne said either way it was inappropriate and unprofessional and should not continue. Constable Payne asked the Applicant if he wanted to say anything and he thought for a minute and said yes but he did not want to talk about it right now. The Applicant never came back to Constable Payne to talk about it and never came to her again for any advice, direction or assistance.

It is the Respondent's position that the Applicant's coach officers and other officers within the Detachment tried to assist the Applicant but the Applicant failed to heed their advice and guidance. The Applicant was resistant to receiving feedback or constructive criticism and would respond with the silent treatment.

46. Paragraphs 31 to 36 – All of the PERs attributed to Constable Filman were written by him. All the PERs were reviewed by Sergeant Flindall who may have sought revisions before the documents were finalized. The Applicant was subject to the same expectations as every other probationary constable. The Applicant was not subjected to greater scrutiny than other probationary constables. The Applicant was struggling to perform the duties which were required of him and his PERs reflected that fact. Any assistance the Applicant may have sought from his association had no bearing on his PERs or the guidance that was being provided to him by his coach officers and other members of the Detachment. As noted previously, the Applicant was resistant to receiving feedback and advice.
47. Paragraph 37 – Sergeant Flindall did not ask the officers in the Detachment to keep the Applicant under surveillance and report back to him. The coaching of a new recruit does not occur in isolation from other police officers. The Applicant was treated in the same manner as all other recruits.

48. Paragraph 38 – The Applicant had an opportunity at this meeting to raise any concerns he might have and he said nothing. The decision to move the Applicant to a different platoon and a different coach officer was made in response to the negative performance issues which had been identified and to attempt to give him a fresh start with a different coach to see if different personalities might result in improved performance.
49. Paragraph 39 – Sergeant Flindall denies making any such statement.
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.
- With respect to the "cream puff" nickname, other officers at the Detachment joked with Constable Nie whenever he ate a donut in uniform. When the Applicant ordered the cream puffs, Constable Nie said to the Applicant that he was glad he had someone to support him. When he called him "cream puff" the Applicant laughed out loud. It should also be noted that whenever a rookie comes on to a platoon they end up with a nickname. It is part of the camaraderie and shows a sense of belonging. If the Applicant had not laughed or had indicated that the nickname bothered him, Constable Nie would not have used it again.
51. Paragraphs 46 to 48 – Sergeant Butorac recalls discussing this with the Applicant but the Applicant explicitly stated he did not want to do anything now and just wanted to know his options. The Applicant advised the Sergeant that he would let him know if he wanted to proceed on anything.
52. Paragraphs 49 to 52 – The Respondent's position is that a concern had been raised about whether the Applicant was associating with individuals who were involved in criminal activity. The concern having been raised needed to be investigated as such an association would be a significant concern. The investigation was conducted and the concern was found to be unsubstantiated.
53. Paragraphs 53 to 57 – As noted previously, the decision not to offer the Applicant a permanent position was solely based on his performance and had nothing to do with his race, ancestry, place of origin, citizenship, ethnic origin or association. The Applicant was afforded the same opportunity to develop skills and improve over the course of his probationary year as any other recruit. Unfortunately the Applicant was unable to apply his knowledge in an operational setting.

54. Paragraphs 58 to 60 – The Respondent denies that racialized individuals or individuals who were born in countries other than Canada are subjected to differential treatment at the Detachment or within the OPP more broadly.

55. Broadly speaking, the Respondent denies:

- the Applicant's claims that he was subjected to discrimination and harassment;
- the Applicant was subjected to differential and derogatory treatment based on a protected ground;
- it failed to take appropriate action to address any inappropriate conduct on the part of its employees in relation to the Applicant;
- it reprimed against the Applicant through negative PERs;
- the laying of a charge against the Applicant under the *Highway Traffic Act* was discriminatory or harassing;
- the initiation of a complaint under the *Police Services Act* was discrimination or harassment; and
- there has been any systemic discrimination as set out in paragraphs 58-60 of Schedule A to the Application.

56. As previously noted, the Respondent denies that the decision to not offer a permanent position to the Applicant was in any way related to the Applicant's race, ancestry, place of origin, citizenship, ethnic origin or association and was solely based on identified performance issues which had absolutely no bearing or connection to the Applicant's race, ancestry, place of origin, citizenship, ethnic origin or association.