

REQUEST FOR RECONSIDERATION

APPENDIX

1. The Vice Chair (VC) has been stating all through the hearing process which spanned 5 plus years that he is yet to read through all the materials and disclosure. The applicant, Michael Jack (Jack) believes that his case was outside of the capabilities of the seized VC based on those comments. The applicant, in reading the decision is alarmed and concerned as to why the VC left out or failed to take into account numerous documentary evidence as well as testimonies that established a prima facie case supporting the application and other documents that conclusively establish support of the applications-kindly refer to the closing submissions of the applicant.¹

2. *Audmax Inc. v Ontario (Human Rights Tribunal)* was a judicial review of the HRTO decision brought on both substantive and procedural fairness grounds. This case illustrates that deficiencies in the Tribunal's written reasons can lead to a finding that the decision itself was unreasonable, as well as a finding that the procedure afforded to the parties was unfair.²

3. According to the Divisional Court, a human rights applicant must establish a causal nexus between the disadvantage experienced by the applicant and an arbitrary distinction based on a prohibited ground of discrimination. The Divisional Court also confirmed that discrimination can be established in the absence of an intent or motive to discriminate, however, more is required than "mere speculation" as to the existence of a discriminatory bias on the part of the respondent.

Patently Unreasonable – Associating with Undesirables

4. The VC failed to take into account the testimony of Jack wherein he testified about how humiliated and disheartened he was when accused of 'Associating with Undesirables'³ and how Jack testified that it was a 'coup de grace' orchestrated by some officers to finish him off.⁴

5. The VC failed to take into account the testimony of Sgt. Peter Butorac wherein he testified about how embarrassing it was to get such an accusation levied against one⁵ and if such a reference was in line with his understanding of the *Human Rights Code (Code)*.⁶

¹ www.racisminopp.org/michael_documents_tribunal.html#32

² *Audmax Inc. v. Ontario Human Rights Tribunal*, 2011 ONSC 315

³ Closing submissions of the applicant, 6-Dec-16, para: 49-59

⁴ Testimony of applicant, Exhibit 92, pg. 41, para: 4.

⁵ Closing submissions of the applicant, 6-Dec-16, para: 130

⁶ Closing submissions of the applicant, 6-Dec-16, para: 52

6. The VC failed to take into account the testimony of Karen German wherein she testified about who the so called ‘Undesirables’ were and how she had to asked more than once to identify who the Undesirables were.⁷
7. The VC failed to take into account and totally overlooked that the allegation of Jack running an undercover plate was false and that he never did such a thing⁸ which caused the internal investigation of ‘associating with Undesirables’.⁹
8. The VC failed to take into account and totally overlooked the fact that Cst. Brockley perjured himself on the stand with respect to his knowledge of the 13 phone calls made by the applicant to one of the so called ‘Undesirables’.¹⁰
9. When the test of a reasonable person is applied here it is plainly evident that there was no substance to the allegation.¹¹

Patently Unreasonable – The August 5, 2008 email

10. The conventional approach to applying human rights legislation in the workplace requires the tribunal to decide at the outset into which of two categories the case falls: (1) “direct discrimination”, where the standard is discriminatory on its face, or (2) “adverse effect discrimination”, where the facially neutral standard discriminates in effect. If a prima facie case of either form of discrimination is established, the burden shifts to the employer to justify it.¹²
11. The VC failed to take into account and totally overlooked the email from Sergeant Brad Rathbun (Rathbun) dated August 5, 2008.¹³ Had the subject person been (Inspector) Mike Johnston the email would not have read:

‘... the Canadian male who has spent time in the Canadian Army, with the name of Mike JOHNSTON (Date of Birth).’

Reference: Closing submission of the applicant 6 Dec 2016, para. 16

⁷ Closing submissions of the applicant, para: 130

⁸ Exhibits 102, 192

⁹ Exhibits 46, 132

¹⁰ Closing submissions of the applicant, para: 56; Applicant’s reply to closing submissions of the respondent, para: 89-105 (www.racisminopp.org/michael_documents_tribunal.html#34)

¹¹ Applicant’s reply to closing submissions of the respondent, para: 106-112

¹² *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3, 1999, para. 18

¹³ Closing submission of the applicant 6 Dec 2016, para. 15 to 33

12. The amount of attention that email generated did influence the minds of management in the OPPs general headquarters and caused the applicant to undergo a second screening stage including another interview with the OPP's psychologist all of which was "adverse effect discrimination".¹⁴
13. It's adverse effects did not end then and there but continued on by the employer issuing direction that the applicant was to be watched when he commenced his employment at the detachment.¹⁵
14. There was no evidence adduced by the respondent OPP that this second screening stage, second interview with the psychologist and the direction that he be watched when he commenced employment at the detachment was necessary to the safe and efficient performance of the job by the applicant and to any concerns of the respondent. To the contrary, that inference is belied by the email from the psychologist that he finds no concerns in the applicant.¹⁶
15. If taken into account and not totally overlooked the VC would have had to see that the applicant did not pose a serious risk to himself, his colleagues, or the general public. Hence that whole process was not necessary for the applicant to perform his job safely and effectively. This leaving the VC to face squarely whether that standard of scrutiny (to be watched when he commenced his employment at the detachment) was unjustifiably discriminatory with the meaning of the *Code*.¹⁷
16. The end result of this simple examination, if conducted by the VC would be a finding of "direct discrimination" and "adverse effect discrimination".¹⁸ In both cases the respondent OPP failed to have regard for the applicant in question.¹⁹

Patently Unreasonable – Disregarding August 18 and 21, 2009 emails

17. The VC failed to take into account and totally overlooked S/Sgt. Campbell's emails to Insp. Johnston dated August 18 and 21, 2009, wherein the respondent witness S/Sgt. Campbell communicated with Insp. Mike Johnston evidence of targeting Jack and discrimination of Jack's protected grounds and proof of Sgt. Flindall's lack of objectivity with Jack. These were Human Right violations being perpetrated against Jack.²⁰

¹⁴ Ibid

¹⁵ Closing submission of the applicant 6 Dec 2016, email from Flindall to Campbell and Campbell's response

¹⁶ Closing submissions of the applicant 6 Dec 2016, para. 25

¹⁷ *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3, 1999, para. 18

¹⁸ Ibid, para. 20 to 24

¹⁹ *Thwaites v. Canadian Armed Forces*, 1993 342 (CHRT), p. D/282 (p. 23)

²⁰ Closing submissions of the applicant, para: 95 (Exhibits 99, 155)

Patently Unreasonable – Disregarding lack of fundamental obligations towards a recruit

18. The VC failed to take into account the lack of fundamental obligations towards Jack, such as failing to hold mandatory performance evaluation meetings with him and even failing to take him to a one-day mandatory orientation session at the provincial communication center throughout his entire probationary term.²¹
19. The VC failed to take into account the fact that Jack was even denied payment by his superiors for overtime work incurred – overtime that he was ordered to do by the same superiors.²² How more unreasonable can it possibly get?

Patently Unreasonable – Disregarding applicant’s testimony

20. The VC failed to take into account the applicant’s testimony about the treatment he endured. Unfortunately, the applicant’s testimony was not transcribed and only remains in the VC notes. One of the small yet crucial points in the applicant’s testimony was about Sgt. Flindall being irritated whenever the applicant opened his mouth to say something during shift briefings and nodding at the applicant to shut his mouth.

Patently Unreasonable – August 31, 2009 teleconference

21. The VC failed to take into account and totally overlooked S/Sgt. Kohen’s testimony and her notes dated August 31, 2009, wherein she documented proof of Flindall’s strong dislike of Jack.²³

Patently Unreasonable – Marked for termination

22. The VC failed to take into account and totally overlooked the testimony of Campbell, Flindall and Jack about the meeting that occurred on August 19, 2009 wherein Jack was told that he would be given every opportunity to succeed by being transferred to Nie’s supervision September 9, 2009.²⁴
23. The VC failed to take into account and totally overlooked the cross examination of Constable Richard Nie (Nie) wherein he admitted that he began compiling evidence for termination of employment of Jack from the very first day and within the first hour of working with Jack on September 9, 2009. That was less than 3 months prior to the decision to terminate Jack.²⁵

²¹ Closing submissions of the applicant, para: 79-81,

²² Closing submissions of the applicant, para: 104 (bullet points 9-10)

²³ Closing submissions of the applicant, para: 87, 104

²⁴ Closing submissions of the applicant, para: 64, 88

²⁵ Closing submissions of the applicant, para: 123, (Testimony of Nie, 15-Sep-16 pgs. 168-170)

24. S/Sgt. Kohen testified that she used Point Form Chronology (PFC)²⁶ document to compile her briefing notes to make recommendation to Chief Superintendent Armstrong to terminate employment of the applicant.²⁷
25. Filman even added false incidents and information just to discredit the applicant and shovel more dirt on him.²⁸
26. In light of these points (18 to 21) it is patently unreasonable to attach any credibility to the PFC document. This is something that the VC should have and ought to have picked up had he read through the applicant's closing submissions, reply submissions and all the referenced materials.
27. It was the VC's duty to provide fair justice and not bring the administration of the HRTO into disrepute. However, it was much less work and far less stressful to simply focus on the respondent's version and quote the supportive case law.

Patently Unreasonable – Crazy Ivan

28. The VC failed to take into account and totally overlooked Flindall's testimony about the possible derogatory nature of a nick name of Crazy Ivan given to Jack and addressed his members of its usage and it's non-compliance of police orders.²⁹
29. The VC failed to take into account and totally overlooked the testimony of Cst. Duignan who testified about the usage of the nick name of Crazy Ivan for Jack by members before Jack started working at Peterborough detachment.³⁰
30. The VC failed to take into account and totally overlooked the testimony of Sgt. Jason Postma who testified about the usage of the nick name of Crazy Ivan for Jack by members while Jack was working albeit not in his presence.³¹
31. The VC failed to take into account and totally disregarded the testimony of Jack about how derogatory he found such a nickname.³²
32. The VC did focus on the fact that Jack was not aware of the nickname until many months after his termination from employment. Herein, the VC acknowledges the use of that nickname and that it was used behind Jack's back. Like in *Shaw v. Phipps, 2012 ONCA 155*, race and ancestry were the prohibited grounds and the adverse effects were the testimony of

²⁶ Exhibit 143

²⁷ Testimony of Kohen, 11-Feb-16 pgs. 179-180

²⁸ Closing submissions of the applicant, para: 75-77

²⁹ Closing submissions of the applicant, para: 13 (Testimony of Flindall, 2-Sep-16 pgs. 19-20, 139-140)

³⁰ Closing submissions of the applicant, para: 13, 41 (Testimony of Duignan, 8-Feb-16 pg. 173-175)

³¹ Closing submissions of the applicant, para: 41 (Testimony of Postma, 10-Feb-16 pg. 13)

³² Exhibit 92, p. 68, (Testimony of Jack, 22-Sep-15 pgs. 63-65)

Jack and the volumes of documentary evidence as referenced on the www.racisminopp.org web site.³³

Patently Unreasonable – Refusal to sign Performance Evaluation Reports

33. The VC failed to take into account and totally overlooked the testimony and cross of Jack wherein he testified that he never refused to sign any of his Performance Evaluation Reports (PERs).³⁴
34. The VC failed to take into account and totally overlooked the testimony of Sgt. Butorac wherein he said that when Jack told him that he was ready to sign the PER that Butorac looked for the PER, but could not find it and that PER which was entered as an exhibit did bear the signature wording ‘REFUSED’.³⁵
35. The testimony of Butorac here is cogent and totally contrary to the position of the VC wherein he states that Jack refused to sign some of his PERs.³⁶
36. The VC has failed to take into account and totally overlooked Jack’s two pages of missing officer notes³⁷ that was withheld by the respondent since the start of the hearing and not disclosed until September 15, 2016 and disclosed only after numerous demands by the applicant which conclusively shows the applicant was on his days off duty when his alleged refusal to sign his PER8 report was flagrantly fabricated.³⁸

Patently Unreasonable – The HRTO decision and The Bias of the Vice Chair

37. It is apparent from the decision that any evidence that is detrimental to the respondent is either omitted like it never existed or dismissed as unreliable. According to the VC the applicant, who is a mature and well educated individual (trilingual and with Master’s degree in science), just dreamed the whole thing up and then dedicated 7 years of his life pursuing his “dream”.³⁹
38. In paragraph 12 of the decision the VC states that it was a belief held by the applicant that he was treated differently. The VC focuses on the wording “my belief” and then goes on to provide general comments to substantiate his position. However, the hearing showed proof

³³ *Shaw v. Phipps*, 2012 ONCA 155; www.racisminopp.org/michael_documents_tribunal.html

³⁴ Closing submissions of the applicant, para: 114-116

³⁵ Closing submissions of the applicant, para: 114-116

³⁶ Closing submissions of the applicant, para: 114-116

³⁷ Exhibit 127

³⁸ Closing submissions of the applicant, para: 114-116

³⁹ www.racisminopp.org

that the applicant was treated differently. The applicant's belief was supported by facts which were uncovered, heard, documented yet excluded from the decision.⁴⁰

39. Further on in that paragraph the VC comments on the applicant's statement portrays it as having a lack of supportive information. However, why is it that the applicant's statement has 115 reference documents that it relies on? The "belief statement" is supported by documentary evidence, not to mention documentary evidence uncovered during the course of the hearing.⁴¹
40. In paragraph 13 of the decision the VC states 'the oral and documentary evidence before me supports the respondent's version of the events'. That is another general statement and one that is lacking supportive information. One only needs to look at the applicant's closing submissions and the sheer volume of exhibits introduced to support differential treatment and once and for all dismiss any notion that the differential treatment was nothing, but a figment of the applicant's imagination. However, it is much easier to simply make general comments when one does not want to spend the time delving into the piles of supportive exhibits. One needs only look at exhibit 99 and the differential treatment is put to rest ipso facto.⁴²

Patently Unreasonable – Disregarding HRTO rules

41. In paragraph 14 of the decision the VC states 'The applicant submits that the sheer number and frequency of these incidents are evidence of the continuous discrimination he was subject to'.
42. The VC failed to take into account the HRTO's own rules. The HRTO brochure on discrimination states that discrimination can be very subtle, such as being subjected to differential management standards and scrutiny.

Racial discrimination can often be very subtle, such as being assigned to less desirable jobs, or being denied mentoring and development opportunities. It might also mean being subjected to different management standards than other workers.⁴³

Patently Unreasonable – Disregarding applicant's poisoned work environment

43. The VC also failed to take into account and appears to be intentionally oblivious that the applicant had to perform his duties and learn the new job amidst all this adverse treatment in the poisoned work environment.⁴⁴

⁴⁰ Closing submissions of the applicant

⁴¹ List of tendered exhibits; www.racisminopp.org/michael_documents_tribunal.html#28

⁴² Closing submissions of the applicant, para: 95 (Exhibits 99)

⁴³ Closing submissions of the applicant, para: 5-6 (Ontario's Human Rights Code-Racism & Racial Discrimination Brochure)

⁴⁴ Closing submissions of the applicant, para: 43, 109, 125

44. In paragraph 15 of the decision the VC states 'In my view, the respondent provided persuasive non-discriminatory reasons for its actions..'. What happened to S/Sgt. Campbell's emails and testimony that the applicant was being targeted and Cst. Duignan's audio recording that the applicant was being fucked around?⁴⁵
45. VC's statement 'In my view' is an opinion. Facts, on the other hand, speak otherwise.

Patently Unreasonable – Disregarding applicant's prior performance

46. In paragraph 18 of the decision the VC focuses on one aspect of the applicant's training at the Police Academy. The VC states that 'the applicant failed to pass Police Vehicle operations during pursuit driving twice. The VC fails to take into account the applicant's testimony that dozens of other recruits also failed this portion of Police Vehicle operations. Again, it is nowhere to be found because applicant's testimony was not transcribed.
47. The VC has failed to take into account and totally overlooked Jack's well above-average performance prior to the commencement of his probationary period at Peterborough detachment.⁴⁶ It is a fact that the applicant's average at OPC was 10 percent higher than the course average, that the applicant was one out of five recruits to win 100% on the Ontario Police Fitness Award out of 460 recruits and that the applicant won the hand gun shooting award out of 110 OPP recruits.⁴⁷ Only the fact that he failed to pass Police Vehicle operation during pursuit twice, like dozens of other recruits at OPC did, is mentioned. This paragraph is discriminatory in and of itself!

Patently Unreasonable – Dismissing the testimony of the only true witness of the applicant

48. In paragraph 30 of the decision the VC dismisses Greco's testimony on an opinion. That opinion was that if Greco considered Jack a friend and hearing Jack tell him that he is going through a hard time at the detachment then why did Greco not tell Jack what Constable Marc Gravelle (Gravelle) had been confiding in him concerning Jack. On this rather weak notion the VC dismisses Greco's testimony as unreliable.
49. However, it was the testimony of Greco that Gravelle was a friend at that point (2009).

There were several. Steven Gray, Marc Gravelle. Marc Gravelle would probably be a person whom I would have said would have been a friend to me at that point in time, and somebody was very familiar with, and probably somebody would have seen most often.⁴⁸

⁴⁵ Closing submissions of the applicant, para: 95 (Exhibits 99); Testimony of Duignan, 8-Feb-16 pgs: 167, 169

⁴⁶ Exhibits 1, 3, 4, 5, 9, 12, 15, 92 pgs. 1-2; www.racisminopp.org/michael_documents_personal.html#2

⁴⁷ Testimony of the applicant and Will-say of Sgt. Morphet

⁴⁸ Testimony of Greco, 10-Feb-16 pg. 65 lines 1-6.

50. Whereas Jack at that same point in time was not as close a friend to Greco as Gravelle was.

I know Mr. Jack originally from the gym. We became friends. I am not saying that we would have beer together, but we knew each other primarily from the gym, and over the years I got to know Mr. Jack better.⁴⁹

51. It is evident that Greco's relationship with Gravelle at that time was closer than his relationship to Jack who was a probationary recruit and one that Greco would see only at the Gym. Whereas, Greco had known Gravelle for quite some time through many court appearances and also from the gym. His relationship with Gravelle at that time was strong than his relationship with Jack albeit they were both his friends.

52. Being that they were both his friends it was only natural that Greco would, out of an unspoken ethical code not reveal to Jack what Gravelle had disclosed to him in private conversations. It was only much later on when the HTA charge against Jack was dismissed which took place in mid-2010 that the relationship between Greco and Jack deepened and grew stronger than that of Greco and Gravelle.⁵⁰

53. During Mr. Greco's cross examination the HRTTO learns from counsel the derogatory nature and racial nature of "Crazy Ivan".

Q. Mr. Greco, I take it that the most significant aspect of the statements that Mr. Gravelle made to you were the racial aspect of a "Crazy Ivan"?

A. From Marc Gravelle, yes.⁵¹

54. Mr. Greco was cross examined on the following testimony in his examination in chief;

THE WITNESS: He did indicate to me that they didn't like him, that they called him "Crazy Ivan". He mocked his accent, and continued to try to persuade me not to represent Mr. Jack. And I declined, and continued through my firm to represent Mr. Jack.⁵²

55. When cross examined as to why he makes no mention of Gravelle's comments in his statement he indicates that he did but infers not in those exact same words for he says:

A. I didn't say that they didn't like him, but I did make the reference that he wouldn't be on the force very much longer, which denotes, what, that they liked him as much?

Q. Who said that?

⁴⁹ Testimony of Greco, 10-Feb-16 pg. 62 lines 19-23.

⁵⁰ Testimony of Greco, 10-Feb-16 pg. 74 lines 1-9

⁵¹ Testimony of Greco, 10-Feb-16 pg. 86 lines 12-16

⁵² Testimony of Greco, 10-Feb-16 pg. 66 lines 19-24

A. Well, this was all out of the conversation with Marc Gravelle. Quote:

"...Marc Gravelle suggested on multiple occasions that he did not think Mike would be on the force very much longer..."⁵³

56. Mr. Greco attempts to give an explanation to counsel Bill Manuel as to why he only alludes to Gravelle's comments in his statement but is silenced by counsel.

A. Can I give a reply why? Or...

Q. No.⁵⁴

57. In re-examination Greco is now asked to give his reason and counsel tried to object to the very door he opened but what came out of Greco was cogent testimony and a rational explanation. The underhand tactics of counsel was not held in check by the VC rather they were made to deliberately confuse the applicant who was handling this witness. Simply put there was no basis for the objection.

Q. The counsel just raised a number of points, and you wanted to provide your response to that.

A. Yes.

Q. So, I would like to hear your response.

A. With respect to the comments from Marc Gravelle, there was only twice in my career that I have had court officials try to dissuade me from representing someone. One was a Hells Angels Captain. The second was Mr. Jack.

MR. MANUEL: Is this reply?

THE WITNESS: So, if...

MR. MANUEL: I didn't question on that.

THE WITNESS: So, I have testified today something that went beyond the affidavit, because I remember very clearly. You don't forget something like that, and you don't articulate in something like this mocking the accent. This was something drawn up in anticipation of the fact that I eventually thought I would be able to testify, and here I am. But I will assure you, sir, the reference was, "Crazy Ivan", and the mocking was in Russian accent. No question, which was consistent with everything he had to tell me about what was going on in that force.

MR. MANUEL: We are way, way off. This is not proper reply.⁵⁵

⁵³ Testimony of Greco, 10-Feb-16 pg. 85 lines 1-10

⁵⁴ Testimony of Greco, 10-Feb-16 pg. 85 lines 23-24

58. Paragraphs 42 to 51 in this request for reconsideration are just an example of an analysis of the transcripts to refute the assertion held by the VC in paragraph 30 of his decision. But it was time consuming and onerous. It was much easier to simply dismiss the one and only witness for the applicant on a rather narrow and subjective view of the VC that if Jack was his friend then Greco ought to have disclosed the information Gravelle was making about Jack.
59. It is evident that what is stated in paragraph 37 of the decision anything that was detrimental to the position of the respondent was simply dismissed as unreliable.

Patently Unreasonable – Failing to see the whole picture

60. With respect to paragraph 41 of the decision the applicant submits that discrimination is made out by the differential treatment he received as documented in item 3 of paragraph 40 of the decision.
61. With respect to paragraph 44 in the decision, the Tribunal's own rules stipulate that discrimination can be manifested through differential management standards and scrutiny. All of which have been elicited during the course of the hearing and outlined in the applicant's closing submission, yet all those facts, and not just allegations, are simply dismissed.
62. The VC attempts to refute the applicant's assertion of why the HTA charges were laid against Jack along with a negative 233-10 documentation. Just because OPP policy allows the use of two disciplinary processes to address a member's wrong actions does not mean that one has to use both. Discretion is an authority every officer has under the HTA and that authority supersedes an organization's policies. If Flindall really wanted to help the applicant develop and pass his probationary term a simple negative 233-10 or a simple caution would have sufficed. However Flindall's actions towards Jack do serve to display his 'strong dislike' of the applicant.⁵⁶
63. Furthermore, did the VC forget that it is easy for one to examine each individual allegation or incident and ask how is that discrimination of a *Code* protected ground? Such a method of examination can easily dismiss any application. It is only when all incidents and allegations are examined collectively that they lead up to Human Rights violations.
64. As such the decision is also flawed in respect of much of the reasoning that is set out. In particular, there is an overall failure to indicate whether discrimination is direct, or based on the adverse impact of a neutral policy, and the test in *Meiorin* is not properly considered and applied. There is also a common failure to tie the alleged discrimination or discriminatory

⁵⁵ Testimony of Greco, 10-Feb-16 pg. 86 line 9 to pg. 87 line 13

⁵⁶ Applicant's reply to Respondent's closing submissions, para: 20; Exhibit 125 p. 1

impact to a prohibited ground of discrimination. The burden of tying to a prohibited ground was placed entirely on the applicant.⁵⁷

65. It is necessary to look at these various issues cumulatively. If taken separately, some might not reach the level of patent unreasonableness required to justify setting aside the entire decision. However, considered cumulatively, the decision as a whole is fatally flawed and can only be described as patently unreasonable. In these circumstances, a divisional court would set the decision aside and remit the case to the Tribunal for a new hearing before a different adjudicator.⁵⁸
66. The VC's decision failed to take into account the discrimination of Jack's protected grounds of race, ancestry when the instructor at the Provincial Police Academy (PPA) addressed the whole class about the applicant's accent. This address was humiliating and was compounded when, at the detachment, references about understanding him due to his thick accent were even made in his formal PERs.⁵⁹
67. With respect to paragraph 70 of the VC's decision it is evident that the VC did not bother to look at and read the applicant's 'reply to the respondent's closing submissions'. In that reply the applicant identifies that Brockley perjured himself on the witness stand when he said that the 13 phone calls was another factor in prompting the internal investigation by the Professional Standards Bureau (PSB). However, as testimony revealed those 13 phone calls were only realized by Brockley on January 13, 2013. How can something that was only discovered in 2013 be foreseen and revealed in a hearing dealing with a time frame of August 2008 to December 2009?⁶⁰
68. With respect to paragraph 61 of the VC's decision, it is next to impossible to dismiss the fact that many entries in the applicant's PERs were fabricated and or did not make much sense.⁶¹ During the course of the hearing when the applicant's PERs were closely examined and picked apart the VC himself on a number of occasions stated, '*What is this doing here?*' and also highlighted certain portions of the PERs for later reference.⁶²
69. In paragraph 62 of the decision the VC casually states that '*Perhaps he did not deserve the negative ratings. Clearly the applicant sees it that way. However, for there to be a finding of Code-related discrimination there must be a link between these negative performance reviews and the ground(s) of discrimination the applicant has pled. The applicant has not provided any evidence that would demonstrate that link.*'

⁵⁷ *Audmax Inc. v. Ontario Human Rights Tribunal*, 2011 ONSC 315, para. 103

⁵⁸ *Ibid*, para. 104

⁵⁹ Applicant's closing submissions para. 44-47

⁶⁰ Applicant's reply to Respondent's closing submissions para. 89 to 105

⁶¹ Exhibits: 34, 40, 52, 63, 66; www.racisminopp.org/michael_documents_personal.html#4

⁶² Closing submissions of the applicant, para: 124

70. What stronger evidence could one possibly have than the derogatory nickname 'Crazy Ivan'? The VC focused on the applicant becoming aware of it several months after his termination of employment. However, the VC totally missed or totally overlooked the fact that in acknowledging that the applicant only became aware of it several months after his termination you are also acknowledging it was being used behind the applicant's back and that colleagues he worked with were referencing him by that derogatory nick name.
71. What stronger evidence could the applicant possibly have outside of Greco's testimony?
72. What stronger evidence could the applicant possibly have that the same people who fabricated the applicant's PERs, accused him of so many wrongdoings that turned out to be false were the ones referencing him and viewing him as a Crazy Russian or a Dirty Jew with the use of the nick name 'Crazy Ivan'?⁶³
73. The only remaining strong piece of evidence is what is referenced in the applicant's closing submission, exhibit 99. However, as previously stated it wasn't taken into account and it was totally overlooked by the VC.
74. What stronger evidence could the applicant possibly have than the consistent denial by all the police witnesses including the ones the applicant was forced to call, that they never referenced the applicant by that nickname.
75. The strongest inference could be drawn by their denials – it was easier to deny its use than to admit using such a derogatory nickname and then open oneself up to a possibly prosecution of 'discreditable conduct' under the *Police Services Act (PSA)*.
76. Lastly, just because the applicant did not know at the time that he had a derogatory nickname does not make it any less of an offence. The offence is made out the moment one uses it to reference the one and only person it applied to. The constant use of such a term made it possible for almost everyone at that detachment to unite under one understanding, "Jack is a crazy Russian, not well liked, he may be dangerous" (after all he has shot and killed many people during his time in the Israeli Army) all of which poisoned his work environment and made it perfectly normal for others to violate his Code protected rights.⁶⁴
77. Alas, had these references (paragraphs 70 to 77) been given their true attention one would then actually have one provincial entity prosecuting another provincial entity.

⁶³ Closing submissions of the applicant, para: 125

⁶⁴ Closing submission of the applicant 6 Dec 2016 and Applicant's reply submissions 5 Mar 2017

Conclusion

78. All of the aforementioned are just some of the evidence, exhibits and testimony that was not worthy of any attention by the VC and also totally overlooked.
79. When one compares the amount of exhibits tendered by the respondent it equates to less than a 7th of the amount tendered by the applicant.
80. When one looks at the witnesses who testified one sees that the applicant only had one witness aside himself: Mr. Greco. Though the respondent will argue that the applicant had several other police witnesses the applicant pointed out that they were never his witnesses, but he was forced to call them because the respondent, at the last minute changed their position on who they were going to call and who they weren't. This was done and conveniently granted by the HRT0 on the grounds that the respondent once again had new counsel. A total of 6 counsels, namely Marnie Corbold, Lynettee D'Sousa, Lorenzo Policelli, Bill Manuel, Heidi Blutstein and Mimi Singh, have been involved with this case.
81. As a result the applicant was forced to call as his witnesses: Constable Jamie Brockley, Constable Mary D'Amico, Constable Melinda Moran, Constable Kevin Duignan, Constable Marc Gravelle, Constable Karen German, Sergeant Brad Rathbun, Sergeant Jason Postma, Inspector Mike Johnston, Staff Sergeant Colleen Kohen, Superintendent Hugh Stevenson and Chief Superintendent Mike Armstrong. This was a deliberate move by the respondent for they knew the Rules of Evidence dictated it would be an examination in chief for each of them by the applicant – a more stringent approach of garnishing any possible evidence.
82. Seeing this the applicant sought permission from the VC to have these witnesses declared as hostile witness, but his request was denied and as a result each of them were found to have numerous responses of 'I cannot recall' and or 'I don't remember'. Though the respondent might beg to differ on this assertion the applicant points out that had they been declared hostile witnesses he would have been able to conduct his examination in chief in the manner of a cross-examination. Via a cross examination the applicant would have been able to put forward numerous documentary evidence to jog their memories.
83. At the commencement of each set of hearing days the applicant and his representative were offered and at times literally coerced by the VC to entertain mediation, which they never asked for, but did so under coercion. At one such time the VC said, 'Well let me put it this way, I am forcing you.'
84. One has to just count the number of times the applicant had to entertain mediation to see that the VC simply wanted the case to end.

85. For all of the aforementioned the applicant is able to say that his application was too much for the VC. Thus this Tribunal did fail in its task to take into account all of the evidence.⁶⁵
86. The VC used his years of experience under the bar and his ten year HRT0 term to extract choice case law to easily support casual references to testimony without much attention being paid to documentary evidence and more importantly hardly any attention to much of the applicant's testimony and documentary evidence in the form of tendered exhibits.⁶⁶
87. The applicant prays that justice can be corrected, but is optimistic for he is actually asking one provincial entity to hold accountable another provincial entity.
88. Mindful of this factual observation the applicant believes that his only hope lies in a Judicial Review, but wishes to show that he has exhausted all attempt to get fair justice.
89. Pertinent and relevant documents have been published on the following webpages:

www.racisminopp.org/michael_documents_tribunal.html
www.racisminopp.org/michael_documents_personal.html

Respectfully submitted this 1st day of March, 2018 (electronically)



Lloyd Tapp for
Michael Jack

⁶⁵ HRT0 decision 5-Feb-18, para. 7, line 7 and 8; Numerous times VC said 'I am yet to look over or read everything'.

⁶⁶ http://www.racisminopp.org/michael_documents_tribunal.html#28