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Attorney General

Legal Services Branch

Ministry of Community Safety and  
Correctional Services

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Ministère du  
Procureur général

Direction des services juridiques

Ministère de la Sécurité communautaire  
et des Services correctionnels

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April 20, 2012

Mr. Lloyd Tapp  
252 Angeline Street North  
Lindsay ON K9V 4R1

**Via Courier**

Dear Mr. Tapp;

**Re: Michael Jack v. HMQ**  
**Tribunal File Number: 2010-07633-I**

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Please find enclosed the following documents delivered to you with respect to the above-noted matter:

1. Request for an Order During Proceedings;
2. Response to a Request for an Order and;
3. Respondent's Casebook.

Also find enclosed a copy of a revised index for:

- a. Documents that are arguably relevant and,
- b. Documents to be relied upon

These indexes have been revised to remove all third party information. Please return all copies of our previous indexes to our attention as soon as possible so that they can be destroyed. The PSB investigation with Mr. Jack has now also been included on the index for documents to be relied upon.

Yours truly,

Lynette D'Souza  
Counsel

*Encl.*

cc. Human Rights Tribunal of Ontario

HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

MICHAEL JACK

Applicant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE  
MINISTER OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES AND  
OPERATING AS THE ONTARIO PROVINCIAL POLICE

Respondent

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RESPONDENT'S BOOK OF ARGUABLY RELEVANT  
DOCUMENTS

VOLUME 1 OF 7

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January 12, 2012

Ministry of Community Safety and  
Correctional Services  
Legal Services Branch  
655 Bay Street  
Suite 501  
Toronto, Ontario M7A 0A8

Lynette D'Souza  
Tel: (416) 326-1237  
Fax: (416) 314-3518

Counsel for the Respondent

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

Applicant



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

MICHAEL JACK

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE  
MINISTER OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES AND  
OPERATING AS THE ONTARIO PROVINCIAL POLICE

Respondent

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- B      Sgt. Robert Flindall #9740 Notes
- C      Professional Standards Bureau, OPP letter to R. Flindall, Re: Order for Duty Report, dated October 14, 2009
- D      Email from T. Thompson, PSB to R. Flindall, Re: PSB Internal Complaint, dated October 15, 2009
- E      R. Flindall fax to T. Thompson with enclosed Confidential Duty Report, dated November 11, 2009
- F      Email from R. Flindall to M. Johnston, Re: PC Michael Jack, dated September 11, 2009
- G      Email from R. Flindall to M. Johnston, Re: Clarification re PC Jack, dated September 15, 2009

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- I
1. November 6, 2009 - email correspondence between R. Flindall, Jennifer Payne, etc. Re: Switching block training
  2. December 15, 2009 - email from J. Payne to G. Smith, M. Reynolds, R. Flindall, Re: Mike Jack's issued equipment
  3. August 15, 2009 - email from R. Flindall to R. Campbell, Re: HTA Charge against Mike Jack while operating force vehicle today
  4. August 15, 2009 - email from R. Flindall to M. Johnston, Re: HTA Charge against Mike Jack while operating vehicle today
  5. August 15, 2009 - General Information Form, Re: Police Vehicle Operation, PC Jack
  6. August 11, 2001 - email from PC Wager to R. Flindall
  7. OPP Briefing Note, Issue: Dangerous police vehicle operation by PC Michael Jack (Probationary)
  8. August 2, 2009 - email from R. Flindall to M. Johnston, Re: [REDACTED]
  9. August 15, 2009 - email from J. Payne to R. Flindall Re Jack's last evaluation
  10. January 9, 2009 - email from PC Jack to R. Campbell and N. Lawlor, Re: Block Training Joining Instructions January 12-15, 2009
  11. August 20, 2009 - email from R. Flindall to B. Lafreniere Re: Constable Michael Jack
  12. November 30, 2009 - email from C. Kohen to R. Flindall Re: PC Jack Chronology
  13. October 29, 2009 - email from J. Payne to R. Flindall, Re: Block Training Joining Instructions January 11-14, 2010
  14. November 20, 2009 - email correspondence between R. Campbell and S. Gozzard-Gilbert, Re: Michael Jack WIN#393080
  15. November 10, 2009 - email from R. Campbell to numerous parties Re: Prob Jack (with teleconference codes)
  16. November 10, 2009 - email from R. Campbell to C. Kohen, R. Nie, etc., Re: Prob Jack
  17. November 10, 2009 - email from R. Campbell to C. Kohen and R. Nie, Re: Prob Jack - Follow up
  18. October 27, 2009 - email from R. Campbell to G. Smith and R. Flindall, Re: FW: Remedial driver training for PC Michael Jack
  19. September 28, 2009 - email from R. Campbell to R. Flindall and M. Johnston, Re: Additional Remarks by Cst Jack regarding his Evaluation



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20. September 14, 2009 - email from R. Campbell to C. Kohen and R. Flindall, Re: Jack WIP masterc.doc
21. September 14, 2009 - email from R. Campbell to M. Johnston, Re: Jack WIB Masterc.doc
22. September 11, 2009 - email from R. Campbell to R. Flindall, Re: Jack
23. September 10, 2009 - email from R. Campbell to J. Payne, Re: Notes Tracking Cst Jack's duties on A Platoon
24. September 9, 2009 - email from R. Campbell to C. Koehn and R. Flindall, re: PCS66\_JACK8.doc
25. September 3, 2009 - email from R. Campbell to S. Gizzards-Gilbert and R. Flindall; Re: Michael Jack's PCS4
26. August 27, 2009 - email from R. Campbell to R. Flindall, S. Filman, J. Postma and R. Nie, Re: PCS066 for Mike Jack
27. August 24, 2009 - email from R. Campbell to R. Flindall, Re: [REDACTED]
28. August 20, 2009 - email from R. Campbell to R. Flindall
29. August 20, 2009 - email from R. Campbell to B. Lafreniere and Sgt Flindall, Re: Constable Michael Jack
30. August 20, 2009 - email from R. Campbell to M. Jack, R. Flindall, J. Postma, R. Nie, Re: Michael Jack Platoon D
31. August 19, 2009 - email from R. Campbell to J. Conway, M. Johnston, R. Flindall, S. Filman, Re: Possible charges against [REDACTED]
32. August 17, 2009 - email from R. Campbell to T. Banbury, M. Johnston, Re: PC Jack – deceit
33. August 16, 2009 - email from R. Campbell to R. Flindall, S. Filman, Re: Mike Jack Driving
34. August 15, 2009 - email from R. Campbell to M. Johnston, R. Flindall, Re: HTA Charge against Mike Jack while operating force vehicle today
35. August 15, 2009 - email from R. Campbell to M. Johnston, Re: HTA Charge against Mike Jack while operating force vehicle today
36. July 17, 2009 - email from R. Campbell to S. Filman, M. Jack, R. Flindall, Re: Overdue Month 5 27 Jun 09
37. July 7, 2009 - email from R. Campbell to M. Jack, M. Gravelle, Re: [REDACTED]
38. June 24, 2009 - email from R. Campbell to R. Flindall, Re: er1303845 – Michael Jack
39. May 11, 2009 - email from R. Campbell to R. Flindall, D. Lee, Re: Jack's next evaluation



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40. March 23, 2009 - email from R. Campbell to R. Flindall, Re: Jack Evaluation
41. September 24, 2008 - email from R. Campbell to R. Flindall, Re: Shift Changes
42. October 29, 2009 - email from R. Flindall to J. Payne, Re: Block Training Joining Instructions January 11-14, 2010
43. October 6, 2009 - email from R. Flindall to P. Butorac Re: [REDACTED]
44. September 27, 2009 - email from R. Flindall to R. Nie, RE: PC Jack
45. September 23, 2009 - email correspondence from R. Flindall to M. Johnston, Re: P/C Jack **\*\*Urgent\*\***
46. September 22, 2009 - email from R. Flindall to M. Johnston, Re: Old occurrence involving PC Jack; General Occurrence Report SP05112642
47. September 13, 2009 - follow up email from R. Flindall to S. Filman, Re: Jack WIP masterc.doc
48. September 13, 2009 - email from R. Flindall to S. Filman, Re: Jack WIP masterc.doc
49. September 13, 2009 - email from R. Flindall to S. Filman, Re: Jack WIP
50. September 11, 2009 - email from R. Flindall to R. Campbell, Re: Jack
51. September 11, 2009 - email from R. Flindall to R. Powers, Re: Tape request from PC Jack; Tape Request form, Background Unit History, Playlist
52. September 11, 2009 - reply email from R. Flindall to C. Kohen, Re: PCS66\_Jack8
53. September 11, 2009 - reply email from R. Flindall to C. Kohen, Re: PCS66\_Jack8
54. September 11, 2009 - email from R. Flindall to C. Kohen, Re: PCS66\_Jack8
55. September 11, 2009 - email from R. Flindall to C. Kohen and R. Campbell, Re: PCS66\_Jack8
56. August 28, 2009 - email from R. Flindall to R. Campbell, Re: PCS066 for Mike Jack
57. August 26, 2009 - email from R. Flindall to s. Filman, Re: Constable Michael Jack
58. August 26, 2009 - email from R. Flindall to R. Campbell and J. Conway, Re: [REDACTED]
59. August 24, 2009 - email from R. Flindall to S. Filman, Re: Constable Michael Jack
60. August 20, 2009 - reply email from R. Flindall to B. Lafreniere, Re: Thank you.
61. August 20, 2009 - email from R. Flindall to B. Lafreniere, Re: Thank you.

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62. August 20, 2009 - email from R. Flindall to B. Lafreniere, Re: Constable Michael Jack
63. August 16, 2009 - email from R. Flindall to R. Campbell, Re: Mike Jack Driving
64. August 16, 2009 - email from R. Flindall to R. Campbell, Re: Ride Havelock Area
65. August 15, 2009 - email (#4) from R. Flindall to M. Johnston, Re: HTA Charge against Mike Jack while operating force vehicle today
66. August 15, 2009 - email (#3) from R. Flindall to M. Johnston, Re: HTA Charge against Mike Jack while operating force vehicle today
67. August 15, 2009 - email (#2) from R. Flindall to M. Johnston, Re: HTA Charge against Mike Jack while operating force vehicle today
68. August 15, 2009 - email from R. Flindall to M. Johnston, Re: HTA Charge against Mike Jack while operating force vehicle today
69. August 15, 2009 - email from R. Flindall to B. Rathbun, J. Postma, T. Banbury, Re: PC Jack
70. August 15, 2009 - email from R. Flindall to M. Moran, Re: Untitled
71. August 15, 2009 - email from R. Flindall to S. Filman, Re: [REDACTED]
72. August 14, 2009 - email from R. Flindall to M. Johnston, Re: PC Jack
73. August 11, 2009 - email from R. Flindall to R. Campbell, Re: At Scenes Collision Investigation Course - PPA - October 19<sup>th</sup> through 23<sup>rd</sup>, 2009
74. August 10, 2009 - email from R. Flindall to R. Campbell, Re: Provincial Communication Centre Notification
75. August 6, 2009 - email from R. Flindall to M. Johnston, Re: P/C Michael Jack
76. August 2, 2009 - email from R. Flindall to M. Johnston, Re: [REDACTED]
77. July 22, 2009 - email from R. Flindall to S. Schroter, Re: Can you look into something for me?
78. June 24, 2009 - email from R. Flindall to R. Campbell, Re: Driving Presentation Class List
79. June 7, 2009 - email from R. Flindall to M. Jack, Re: Occurrence addresses in Niche
80. June 1, 2009 - email from R. Flindall to M. Jack, Re: DAR's - Paid Duty
81. May 14, 2009 - reply email from R. Flindall to R. Campbell, Re: Jack's next evaluation
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83. March 23, 2009 - reply email from R. Flindall to S. Filman, Re: Jack evaluation



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84. March 23, 2009 - email from R. Flindall to M. Johnston, Re: Jack evaluation
85. March 23, 2009 - original email from R. Flindall to R. Campbell, Re: Jack evaluation
86. March 19, 2009 - email from R. Flindall to R. Campbell, Re: Unit 01-152
87. March 9, 2009 - email from R. Flindall to M. Jack, Re: [REDACTED]
88. February 13, 2009 - email from R. Flindall to M. Jack, Re: Talk Lock
89. February 10, 2009 - follow up email from R. Flindall to R. Campbell, Re: Domestic we spoke about earlier
90. February 10, 2009 - email from R. Flindall to S. Filman, Re: INC00000216708 Priority 4 - Minimal has been assigned to JUS MSG OPP RMS ADMIN
91. February 10, 2009 - email from R. Flindall to R. Campbell, Re: Domestic we spoke about earlier
92. January 30, 2009 - email from R. Flindall to R. Campbell, Re: Enr to a cruise MVC
93. September 23, 2009 - email from P. Butorac to M. Johnston, A. Crawford, Re: 254009-0173 Internal Complaint - PC Jack
94. December 24, 2008 - email from K. Chapman to S. Filman, R. Flindall, Re: Gun locker for Michael Jack
95. December 24, 2008 - email from K. Chapman to M. Jack, Re: Welcome to Peterborough w/ attached Welcome Jack document
96. July 31, 2009 - email from M. D'Amico to M. Johnston, Re: [REDACTED]
97. May 11, 2009 - email from S. Filman to M. Jack and R. Flindall, Re: Jack 4 document
98. April 21, 2009 - email from S. Filman to R. Flindall, Re: Jack 1 document
99. March 13, 2009 - email from S. Filman to R. Flindall, Re: Ken Rusaw reviews
100. September 3, 2009 - email from S. Gozzard-Gilbert to R. Flindall, Re: Michael Jack's PCS4
101. July 6, 2009 - email from S. Gozzard-Gilbert to J. Pollock, M. Jack, Re: Michael Jack working for John Pollock
102. January 16, 2009 - email from R. Flindall to M. Jack, R. Campbell, Re: Attendance for block training date RE: emergency dental appointment
103. January 14, 2009 - email from S. Gozzard-Gilbert to K. Raymond, R. Flindall, T. Banbury, B. Rathbun, P. Butorac, Re: Stats for New Recruits 2008
104. September 24, 2008 - email from S. Gozzard-Gilbert to R. Flindall, R. Campbell, M. Johnston, G. Smith, Re: New recruits
105. September 9, 2009 - email from M. Gravelle to R. Flindall, B. Rathbun, Re: Jack



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106. August 10, 2009 - email from M. Jack to M. Moran, C. Laperle, S. Filman, M. D'Amico, Re: SP09178964 B&E 06-Aug-09
107. August 3, 2009 - email from M. Jack to OPP DL Peterborough County Detachment, Re: Found fishing boat on Stoke Lake at Young's point
108. July 31, 2009 - email from M. Jack to R. Flindall, Re: Overtime SP09164458
109. July 31, 2009 - email from M. Jack to M. Johnston, Re: [REDACTED]
110. July 29, 2009 - email from M. Jack to jsmith@kpf.ca, Cc'd R. Flindall, Re: Statement from [REDACTED]
111. July 24, 2009 - email from M. Jack to OPP DL Peterborough County Detachment, Re: RPG for arrest of [REDACTED]
112. March 9, 2009 - email from M. Jack to C. Laperle, Cc'd R. Flindall, Re: [REDACTED]
113. February 10, 2009 - email from M. Jack to R. Flindall, Re: INC000002167808 Priority 8 – Minimal has been assigned to JUS MSG OPP RMS ADMIN
114. August 15, 2009 - email from J. Payne to R. Flindall, Re: Jack's last evaluation
115. September 22, 2009 - email from J. Payne to R. Flindall, Re: Read this occurrence tonite
116. September 25, 2009 - Cover Memo w/ M. Jack's evaluation response

J OPP General Information Form Re: Michael Jack, Date: August 2-15, 2009

K OPP General Information Form Re: Michael Jack, Date: August 15, 2009

**DETACHMENT DOCUMENTS****VOLUME 2:****Peter Butorac**

- L
1. September 20, 2009 - email from R. Nie to P. Butorac, Re: PC Jack's 8mth evaluation
  2. September 25, 2009 - email from R. Nie to R. Flindall and P. Butorac, Re: Jack
  3. October 25, 2009 - email from R. Nie to R. Campbell, C. Kohen, P. Salter, P. Butorac, J. Postma and D. Lee, Re: Jack evaluation draft with attached Evaluation Report and Work Improvement Plans
  4. September 14, 2009 - email from M. Johnston to R. Campbell, R. Flindall, R. Nie, C. Kohen, J. Postma, P. Butorac Re: Jack WIP masterc with attached Work Improvement Plan
  5. September 18, 2009 - email from M. Johnston to R. Nie, Ccd P. Butorac, J. Postma, K. Chapman, Re: P/C Jack

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6. September 20, 2009 - email from M. Johnston to P. Butorac, R. Nie, R. Campbell, Re: P/C Jack \*\*URGENT\*\*
7. September 14, 2009 - email from R. Campbell to M. Johnston, Cc C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: Jack WIP (with attached Work Improvement Plan)
8. September 15, 2011 - email from R. Flindall to M. Johnston (forwarded to R. Campbell), Re: Clarification re PC Jack
9. September 1, 2009 email from M. Johnston to R. Flindall, R. Campbell, Re: PC Michael Jack
10. Undated - email from Ron (R. Campbell) to M. Johnston, D. Borton, Re: Moving of Cst. Mike Jack
11. Undated - OPP Briefing Note, Re: Cst. Jack
12. August 24, 2009 - email from J. Postma to R. Campbell, Re: Probationary Constable Michael Jack
13. General Information Form, R. Flindall Re. Cst. Jack
14. Undated – Confidential Duty Report, Submitted by J. Brockley

#### Richard Nie

M Cst. Richard Nie Notes, September 2009

- N
1. August 18, 2009 - email from R. Campbell to R. Nie, Re: Moving of Cst. Mike Jack
  2. August 20, 2009 - email from R. Campbell to B. Lafrenier, R. Flindall, Cc: R. Nie, J. Postma, Re: Constable Mike Jack
  3. August 26, 2009 - email from J. Postma to R. Nie, Re: Probationary Constable Michael Jack
  4. August 27, 2009 - email from J. Postma to R. Campbell, Cc: R. Nie, Re: PC Jack
  5. August 27, 2009 - email from R. Campbell to R. Flindall, S. Filman, J. Postma, R. Nie, C. Kohen, M. Johnston, Re: PCS066 for Mike Jack
  6. August 28, 2009 - email from R. Campbell to J. Postma, Cc: R. Nie; Re: PC Jack
  7. September 8, 2009 - email from R. Campbell to D. McNeely, Cc: M. Jack, J. Postma, R. Nie, P. Butorac, D. Lee, C. Kohen, Re: Driving Assessment, Thursday 10 Sept 2009 – Kingston
  8. September 9, 2009 - email from R. Campbell to R. Flindall, R. Nie, Re: PCS66\_Jack (with attached Performance Evaluation Report)
  9. September 9, 2009 - email from R. Campbell to C. Kohen, R. Flindall, Cc: M. Johnston, D. Lee, R. Nie, Re: PCS66\_Jack



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10. September 11, 2009 - email from R. Campbell to R. Flindall, Cc: J. Postma, R. Nie, P. Butorac, M. Johnston, Re: Jack
11. September 11, 2009 - email from R. Campbell to M. Johnston, C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: PCS66\_Jack8 (with attached Performance Evaluation Report-Report Month 7, Work Improvement Plan)
12. September 14, 2009 - email from R. Campbell to M. Johnston, Cc: C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: Jack WIB masterc.doc
13. September 16, 2009 - email from R. Campbell to D. McNeely, Cc: J. Postma, P. Butorac, R. Nie, M. Johnston, Re: Ron-can you advise if everything is a go for Friday Driving assessment with Michael
14. September 18, 2009 - email from M. Johnston to R. Nie, Cc: P. Butorac, J. Postma, K. Chapman, Re: P/C Jack
15. September 20, 2009 - email from P. Butorac to M. Johnston, R. Nie, Re: P/C Jack \*\*URGENT\*\*
16. September 20, 2009- email from M. Johnston to P. Butorac, R. Nie, R. Campbell, Re: P/C Jack \*\*URGENT\*\*
17. September 24, 2009 - email from R. Flindall's personal email to R. Nie, Re: PC Jack WIP
18. September 29, 2009 - email from R. Campbell to P. Butorac, R. Nie, J. Postma, Re: FW: Driving assessment – Michael Jack – requires remedial driving
19. September 29, 2009 - email from R. Campbell to J. Postma, P. Butorac, R. Nie Re: FW: Driving assessment – Michael Jack – requires remedial driving
20. October 5, 2009 - email from K. Taylor to C. Kohen, Cc: R. Campbell, D. McNeely, R. Nie, Re: PC Michael Jack – Driving Remediation
21. October 5, 2009 - email from R. Campbell to K. Taylor, C. Kohen, D. Lee, R. Nie, P. Butorac, J. Postma, Re: Driving Memo – Michael Jack (with attached Memo dated October 2, 2009 and Driver Competency Assessment)
22. October 5, 2009 - email from C. Kohen to R. Campbell, D. Lee, R. Nie, P. Butorac, J. Postma, Re: Driving Memo – Michael Jack
23. October 5, 2009 - email from D. Lee to C. Kohen, R. Campbell, R. Nie, P. Butorac, J. Postma, P. Salter, Re: Driving Memo – Michael Jack
24. October 5, 2009 - email from R. Campbell to D. Lee, C. Kohen, R. Nie, P. Butorac, J. Postma, P. Salter, Re: Driving Memo – Michael Jack
25. October 5, 2009- email from R. Campbell to C. Kohen, R. Nie, P. Butorac, Re: Driving Memo – Michael Jack
26. October 8, 2009 - email from R. Campbell to C. Kohen, P. Butorac, R. Nie, J. Postma, D. Lee, P. Salter, RE: PC Jack evaluation draft (with attached Performance Evaluation Report-Month 9 and Work Improvement Plan)



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27. October 14, 2009 - email from K. Taylor to M. Jack, Cc: P. Butorac, R. Nie, C. Kohen, Re: Driver Training
28. October 27, 2009 - email from K. Taylor to R. Nie, Cc: R. Campbell, P. Butorac, C. Kohen, M. Jack, Re: Remedial driver training for PC Michael Jack
29. November 10, 2009 - email from R. Campbell to C. Kohen, R. Nie; Cc: D. Lee, D. Borton, P. Butorac, R. Flindall, Re: Prob Jack (with attached Performance Evaluation Report-Month 10 and Work Improvement Plan)
30. November 10, 2009 - email from C. Kohen to R. Campbell, R. Nie, Cc: D. Lee, D. Borton, P. Butorac, R. Flindall, K. Taylor, Re: Prob Jack
31. November 10, 2009 - email from K. Taylor to R. Nie, Cc: R. Campbell, C. Kohen, P. Butorac, M. Vanlanduyt, RE: PC Jack – PCS66P – Police Vehicle Operation
32. November 10, 2009 - email from R. Campbell to R. Nie, P. Butorac, Re: Updated comments. FW: Prob Jack
33. November 15, 2009 - email from P. Butorac to R. Nie, Re: Michael Jack remedial driver training
34. November 18, 2009 - email from J. Postma to R. Campbell, C. Kohen, Cc: P. Butorac, R. Nie, Re: Prob Jack
35. December 1, 2009 email from K. Taylor to D. Beckett, R. Nie, C. Kohen, P. Butorac, M. Jack, Re: Probationary Constable Michael Jack – Remedial driver training completion
36. December 14, 2009 email from C. Kohen to M. Reynolds, D. Lee, Cc: R. Nie, Re: PC Jack (with attached Release from Employment letter dated December 15, 2009)
37. December 16, 2009 email from R. Campbell to R. Nie, Re: Chronology

**Shaun Filman**

- O Detective Constable Shaun Filman Notes, March 2009 and June 2009
- P Probationary Constable Work Improvement Plans, Re: M. Jack

**DETACHMENT DOCUMENTS**

**VOLUME 3:**

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- Q S/Sgt. Reynolds Notes, December 2009
- R Memo to Cst. Jack, Re: Notice of Proposed Release from Employment, dated December 9, 2009

TAB	DOCUMENT
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S	Memo to Michael Jack, Re: Performance and Conduct Requirements of a Recruit Constable, dated August 28, 2008
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T	Undated - email from M. Reynolds to C. Kohen, D. Lee, Cc: H. Stevenson, Re: Prob Jack Notice Release
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**Jamie Brockley**

- |   |  |
|---|--|
| U | <ol style="list-style-type: none"><li>1. Confidential Duty Report, Submitted on October 24, 2009</li><li>2. Will Say, Detective Constable Jamie Brockley</li></ol> |
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**Deputy Chief Firearms Officers, M.P. (Mike) Johnston**

- |   |  |
|---|--|
| V | <ol style="list-style-type: none"><li>1. September 15, 2009 - email from R. Flindall to M. Johnston, Re: Clarification re PC Jack</li><li>2. October 2, 2009 - D. McNeely M. Jack Driving Memo to R. Campbell, text format</li><li>3. September 23, 2009 - email from M. Johnston to H. Stevenson Re: Com Centre</li><li>4. September 29, 2009 - email from R. Campbell to M. Johnston, D. Lee, Re: Driving assessment – Michael Jack – requires remedial driving</li><li>5. October 5, 2009 - email from R. Campbell to K. Taylor, C. Kohen, D. Lee, R. Nie, P. Butorac, J. Postma, Re: Driving Memo – Michael Jack (with attached D. McNeely M. Jack Driving Memo, dated October 2, 2009 and Driver Competency Assessment)</li><li>6. September 10, 2009 - email from C. Cox to R. Campbell, M. Johnston, Re: I have a question about one of our officers intercepting communications</li><li>7. September 23, 2009 - email from H. Stevenson to M. Graham, Cc: K. Smith, M. Armstrong, M. Johnston, RE: Old occurrence involving PC Jack</li><li>8. August 27, 2009 - email from R. Campbell to C. Kohen, M. Johnston, Re: PC Jack</li><li>9. September 11, 2009 - email from M. Johnston to H. Stevenson, Re: PC Michael Jack</li><li>10. September 9, 2009 - email from R. Campbell to R. Flindall, R. Nie, Re: PCS66_Jack8</li><li>11. September 11, 2009 - email from M. Graham to K. Smith, P. Beesley, P. Powers, M. Armstrong, H. Stevenson, C. Cox, M. Johnston, Re: PC Michael Jack</li><li>12. September 22, 2009 email from R. Flindall to T. Thompson, Cc: M. Johnston, Re: Com Centre</li><li>13. September 17, 2009 email from R. Flindall to T. Thompson, Cc: M. Johnston, Re: Com Centre</li><li>14. September 10, 2009 email from C. Cox to R. Campbell, M. Johnston, Re: Confidential Inquiry</li></ol> |
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TAB	DOCUMENT
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15. August 20, 2009 email from R. Campbell to B. Lafrenier, R. Flindall, Re: Constable Michael Jack
16. August 18, 2009 email from R. Campbell to K. Taylor, Re: HTA Charge against Mike Jack while operating force vehicle today
17. August 18, 2009 email from K. Taylor to R. Campbell, Re: HTA Charge against Mike Jack while operating force vehicle today
18. September 11, 2009 email from R. Campbell to Vi Grimmatt, Re: [REDACTED]
19. August 6, 2009 email from R. Flindall to M. Johnston Re: P/C Michael Jack
20. August 21, 2009 email from R. Campbell to M. Johnston, Re: Michael Jack Platoon D

### Ron Campbell

W

1. August 19, 2009 email from R. Campbell to J. Conway, M. Johnston, R. Flindall, S. Filman, Re: Possible charges against [REDACTED]
2. September 10, 2009 email from R. Campbell to M. Johnston Re Rob Flindall
3. August 18, 2009 email from R. Campbell to M. Johnston, Re Moving of Cst. Mike Jack
4. January 29, 2009 email from H. Stevenson to M. Johnston, R. Campbell, Re: New Recruits – Special Attention to Prob Period – Jack and Kovacs
5. OPP Briefing Note Re: PC Jack
6. September 14, 2009 - email from R. Campbell to M. Johnston, Cc: C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: Jack WIP masterpc (with attached Work Improvement Plant (Jack))
7. September 20, 2009 - email from M. Johnston to P. Butorac, R. Nie, R. Campbell, K. Chapman, R. Flindall, Re: P/C Jack \*\*URGENT\*\*
8. September 20, 2009 - reply email from M. Johnston to P. Butorac, R. Nie, R. Campbell, K. Chapman, R. Flindall, Re: P/C Jack \*\*URGENT\*\*
9. September 18, 2009 - email from M. Johnston to R. Nie, Cc: P. Butorac, J. Postma, K. Chapman, Re: P/C Jack
10. September 14, 2009 - email from M. Johnston to R. Campbell, R. Flindall, R. Nie, C. Kohen, J. Postma, P. Butorac, Re: Jack WIP masterdc (with attached Work Improvement Plant (Jack))
11. November 19, 2009 - email from R. Nie to C. Kohen, R. Flindall, Cc: P. Butorac, Re: Jack Chronology 09
12. October 7, 2009 - email from R. Nie to R. Campbell, C. Kohen, P. Salter, P. Butorac, J. Postma, D. Lee, Re: PC Jack evaluation (with attached Jack Evaluation Report and WIP)
13. September 25, 2009 - email from R. Nie to R. Flindall, Cc: P. Butorac, Re: Jack



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14. September 20, 2009 - email from R. Nie to P. Butorac, Re: PC Jack's 8mth evaluation

X S/Sgt. Campbell Notes, August - November 2009

**PC Jennifer Payne**

Y 1. September 10, 2009 - email from R. Campbell to J. Payne, Cc: R. Flindall, M. Johnston, Re: Notes Tracking Cst Jack's duties on A Platoon

2. September 22, 2009 - email from J. Payne to R. Flindall, Re: Read this occurrence tonight (with attached Occurrence Summary (SP05112642))

Z PC Payne Notes, June - August 2009

**Chronology Re: PC Michael Jack's performance**

AA Chronology #1

BB Chronology #2

**ONTARIO PROVINCIAL POLICE ACADEMY (OPPA) DOCUMENTS**

**VOLUME 4:**

1. Ten Code Test, dated December 9, 2008
2. Post Recruit Orientation - Class #411, undated
3. Recruit Orientation Course, Cruiser Familiarization Check List, dated November 31, 2008
4. Provincial Statutes Assignment #1, Answer Sheet, dated December 8, 2008
5. Crime Scene Scenario Handout - Death Scene - Adult
6. Performance Behavior Simulation, dated December 1, 2008
7. Recruit Scenario Evaluation, dated December 18, 2008
8. Ten Code Test, dated January 5, 2009
9. Ten code Test, dated December 29, 2008

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10. Recruit Scenario Evaluation, dated December 11, 2008
11. Basic Constable Training Program Student Evaluation, September 3 – November 27, 2008 (Diploma Awarded)
12. Basic Constable Training Program Student Evaluation, September 3 – November 27, 2008 (Diploma Not Awarded)
13. Ontario Police College Diploma, Basic Constable Training Program
14. Recruit Leadership Assessment Tool
15. December 15, 2008 - Jack Memo to Sgt. Tozser, Re: Failing to sign the 23:00 sign-in sheet on Sunday 14-Dec-08
16. Use of Force Instructor Evaluation Report, dated December 12, 2008 (with attached Gun Safety Rules, signed by PC Jack)
17. C8 Conversion Test
18. Absence Reports:
  - A) Absence Report, August 2008
  - B) Absence Report, September 2008
  - C) Absence Report, October 2008
  - D) Absence Report, November 2008
19. Recruit Progress/Interview Reports:
  - A) Recruit Progress/Interview Report – Week 1, dated September 12, 2008
  - B) Recruit Progress/Interview Report – Week 2, dated September 12, 2008
  - C) Recruit Progress/Interview Report – Week 3, dated September 20, 2008
  - D) Recruit Progress/Interview Report – Week 4, dated September 26, 2008
  - E) Recruit Progress/Interview Report – Week 5, undated
  - F) Recruit Progress/Interview Report – Week 6, dated October 11, 2008
  - G) Recruit Progress/Interview Report – Week 7, dated October 18, 2008
  - H) Recruit Progress/Interview Report – Week 8, dated October 26, 2008
  - I) Recruit Progress/Interview Report – Week 9, dated October 30, 2008
  - J) Recruit Progress/Interview Report – Week 10, dated November 7, 2008
  - K) Recruit Progress/Interview Report – Week 11, dated November 16, 2008 (2 copies – 1 dated, 1 undated)
  - L) Recruit Progress/Interview Report – Week 12, dated November 19, 2008
  - M) Recruit Progress/Interview Report – Week 13, undated



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20. Defensive Tactics Workshop Notification Form, dated November 11, 2008
21. Defensive Tactics Workshop Notification Form, dated October 8, 2008
22. Physical Feedback Profile
23. Documentation, Re: Swipe Card, dated received, September 30, 2008
24. S/Sgt. Colleen Kohen Notebook Notes and Description of Responsibilities

**COURT TRANSCRIPTS**

**VOLUME 5:**

1. *Provincial Offences Act* Court Transcript, R. v. Jack, April 1, 2010 and May 27, 2010

**CAREER DEVELOPMENT BUREAU DOCUMENTS**

**VOLUME 6:**

1. OPP letter to M. Jack, dated July 18, 2008 (date stamped July 30, 2008)
2. OPP, CDB Memo to Michael Jack, Re: Performance and Conduct Requirements of a Recruit Constable, dated August 25, 2008
3. OPP letter to M. Jack, dated July 18, 2008
4. Uniform Recruitment Applicant Processing Disposition, M. Jack, dated July 4, 2008
5. OPC, Basic Constable Training Program, Student Evaluation, Re: M. Jack, September 3 to November 27, 2008
6. Basic Constable Training Program completion certificate, M. Jack, dated November 27, 2008
7. OPPA Recruit Leadership Assessment Tool, Re: M. Jack
8. MCSCS Absence Reports: September, October and November, 2008
9. M. Jack Memo to Sgt. Tozser, Re: Failing to sign the 23:00 sign-in sheet on Sunday 14-Dec-08, dated December 15, 2008
10. OSMH Memo to Class 411, dated Christmas 2008

TAB	DOCUMENT
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|-----|--|
| 11. | Probationary Constable Performance Evaluation Report – 2 <sup>nd</sup> month, Re: M. Jack, dated May 11, 2009  |
| 12. | Probationary Constable Performance Evaluation Report – 3 <sup>rd</sup> month, Re: M. Jack, dated April 27, 2009  |
| 13. | Probationary Constable Work Improvement Plans, Re: M. Jack, dated May 11, 2009 <ul style="list-style-type: none"><li>▪ Radio Communications</li><li>▪ Flexibility</li><li>▪ Police Vehicle Operation</li></ul> |
| 14. | Probationary Constable Performance Evaluation Report, dated June 11, 2009  |
| 15. | J. Fantino, OPP letter to C. Condon, University of Liverpool, dated May 26, 2009   |
| 16. | C. Condon, University of Liverpool to J. Fantino, Re: Research Participation, undated  |
| 17. | Probationary Constable Performance Evaluation Report, Re: M. Jack – 5 <sup>th</sup> month evaluation, dated August 31, 2009  |
| 18. | Probationary Constable Performance Evaluation Report, Re: M. Jack – 7 <sup>th</sup> month evaluation, dated August 31, 2009  |
| 19. | Probationary Constable Performance Evaluation Report, Re: M. Jack – 8 <sup>th</sup> month evaluation, dated October 5, 2009  |
| 20. | Memo to S/Sgt Campbell, Re: P/C Jack 6 month evaluation (with attached Probationary Constable Performance Evaluation Report)   |
| 21. | Probationary Constable Performance Work Improvement Plan, Re: P/C Jack, dated October 5, 2009  |
| 22. | Sgt. D. McNeely Memo to R. Campbell, Re: M. Jack Driver Competency Assessment, dated October 2, 2009 (with attached Driver Competency Assessment)  |
| 23. | Probationary Constable Performance Evaluation Report, Re: M. Jack – 9 <sup>th</sup> month evaluation, dated October 23, 2009   |
| 24. | Probationary Constable Work Improvement Plan, Re: M. Jack, dated October 8, 2009   |
| 25. | Probationary Constable Performance Evaluation Report, Re: M. Jack – 10 <sup>th</sup> month evaluation, dated November 18, 2009   |
| 26. | Probationary Constable Work Improvement Plan, Re: M. Jack, dated December 14, 2009   |
| 27. | M. Jack Memo Re: Federal Statutes, Rating: Does Not Meet Requirements, dated November 19, 2009   |
| 28. | Probationary Constable Performance Evaluation Report, Re: M. Jack – 11 <sup>th</sup> month evaluation, dated December 14, 2009   |



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29. Probationary Constable Work Improvement Plan, Re: M. Jack, dated December 31, 2009
30. OPP, Career Development Bureau Memorandum to P/C Jack and Peterborough County Detachment, Re: Notice of Proposed Release from Employment, dated December 9, 2009
31. M. Jack Memorandum to Chief Superintendent M. Armstrong, Re: Resignation from the Ontario Provincial Police, dated December 15, 2009
32. August 19, 2008 - email from B. Rathbun to S. Haennel, Re: Mike JACK
33. August 8, 2008 - email from J. Whitney to B. Rathbun, Cc: S. Haennel, Re: JACK, Michael
34. August 15, 2008 - email from S. Haennel to B. Rathbun, Re: Mike JACK
35. September 4, 2008 – email from S. Haenne to B. Rathbun, Re: Michael Jack
36. J. Whitney Memorandum Re: JACK, Michael 080558, dated August 6, 2008
37. August 13, 2008 – email from S. Haennel to D. Traviss, D. Lapalme, Re: Candidate Michael Jack
38. August 5, 2008 – email correspondence between M. Johnston and B. Rathbun, R. Campbell, Cc: S. Thomas, Re: Upcoming recruit
39. August 6, 2008 – email from S. Thomas to S. Haennel, Cc: A. McCollum
40. August 5, 2008 email from S. Thomas to G. Trivett, Cc: S. Haennel, Re: Upcoming Recruit
41. Michael Jack Application, Position of Constable/Cadet, dated April 2, 2008
42. Michael Jack, Police Constable Selection, Confidential Candidate Personal History Form, dated April 28, 2008
43. Jack, Ontario Constable Selection System, Consent and Release of Liability Form, dated March 30, 2008
44. Jack, Checklist of Mandatory Information
45. OPP, Recruitment, Driving Questionnaire, dated May 29, 2008
46. Constable Assessment, Pre-Background Questionnaire, Re: M. Jack, dated May 29, 2008
47. OPP, Career Development Bureau - letter to M. Jack Re: Ontario Association of Chiefs of Police (OACP), Constable Selection System (CSS) Testing Results, dated May 23, 2008 (with attached OACP Certificated of Results)

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48. Police Constable Selection, Applicant Survey Form – M. Jack
49. Michael Jack – Application for Constable/Cadet position, Cover Letter, Resume and References, dated March 31, 2008
50. June 2, 2008 email from M. Jack to S. Haennel, Re: Hello from Michael Jack
51. OPP, Career Development Bureau letter to M. Jack Re: Progression of the Recruitment Process, dated May 30, 2008
52. OPP, Career Development Bureau letter to M. Jack Re: Acknowledgement of Employment Application Receipt and Recruitment Process, dated April 11, 2008
53. OACP, Constable Selection System, Performance Declaration, Re: M. jack, dated may 29, 2008
54. OACP, Constable Selection System, Authorization From, Re: Research Use of Psychological Tests/Interviews/Evaluations – M. Jack, dated May 30, 2008
55. OPP, Corporate Services Confidential Internal Briefing Report, Re: Jack's gun collection, undated
56. Internal Complaint, Re: Jack association with known criminals – Received dated: November 9, 2009
57. Complaint Intake Form, dated September 11, 2009
58. September 23, 2009 - email from P. Butorac to M. Johnston, A. Crawford, Cc: R. Flindall, R. Campbell, Re: 254009-0173 Internal Complaint-PC Jack
59. Memorandum to PC Jack, Re: Notice of Internal Complaint, dated September 23, 2009
60. Professional Standards Bureau Investigation Report 2545009-0173
61. Memorandum to PC Jack, Re: Internal Complaint 2545009-0173, dated November 25, 2009

**ONTARIO PROVINCIAL POLICE ORDERS**

**VOLUME 7:**

1. Chapter 2: Law Enforcement, 2.51: Supervision – Member
  - January - December 2008 Policy
  - September 2008
2. Chapter 6: Administration & Infrastructure, 6.4: Human Resources
  - January - December 2008 Policy
  - September 2008 - December 2009 Police Orders Excerpt



TAB	DOCUMENT
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- |     |   |
|-----|---|
| 3.  | Introduction, 0.1: Introduction to Police Orders <ul style="list-style-type: none"><li>▪ December 2009</li><li>▪ September 2008</li></ul>           |
| 4.  | Chapter 2: Law Enforcement, 2.51: Supervision – Member <ul style="list-style-type: none"><li>▪ September 2008</li><li>▪ December 2009</li></ul>     |
| 5.  | Probationary Constable Evaluation Report Guidelines, dated November 2008  |
| 6.  | Chapter 6: Administration & Infrastructure, 6.16: OPP Vehicles, September 2008  |
| 7.  | Chapter 2: Law Enforcement, 2.2: Communications/Dispatch, September 2008  |
| 8.  | Chapter 6: Administration & Infrastructure, 6.4: Human Resources  |
| 9.  | Chapter 6: Administration & Infrastructure, 6.10: Professionalism in the OPP, September 2008  |
| 10. | Introduction, 0.1: Introduction to Police Orders, September 2008  |
| 11. | Chapter 2: Law Enforcement, 2.51: Supervision – Member, September 2008  |
| 12. | Chapter 6: Administration & Infrastructure, 6.4: Human Resources, 6.4.8: Probationary Constable, September 2008-December 2009 Police Orders Excerpt |
| 13. | Chapter 2: Law Enforcement, 2.51: Supervision – Member, December 2009   |
| 14. | Introduction, 0.1 Introduction to Police Orders, December 2009  |

HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

MICHAEL JACK

Applicant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE  
MINISTER OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES AND  
OPERATING AS THE ONTARIO PROVINCIAL POLICE

Respondent

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DISCLOSURE AND FILING OF DOCUMENTS  
TO BE RELIED UPON

VOLUME 1 OF 5

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April 5, 2012

Ministry of Community Safety and  
Correctional Services  
Legal Services Branch  
655 Bay Street  
Suite 501  
Toronto, Ontario M7A 0A8

Lynette D'Souza  
Tel: (416) 326-1237  
Fax: (416) 314-3518

Counsel for the Respondent

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

Applicant



TAB	DOCUMENT
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- |     |   |
|-----|---|
| 24. | September 27, 2009 - email from R. Flindall to R. Nie, RE: PC Jack  |
| 25. | September 25, 2009 - Cover Memo w/ M. Jack's evaluation response  |
| 26. | September 23, 2009 - email from P. Butorac to M. Johnston, A. Crawford, Re: 254009-0173 Internal Complaint – PC Jack                |
| 27. | September 23, 2009 - email correspondence from R. Flindall to M. Johnston, Re: P/C Jack **Urgent**                                  |
| 28. | September 22, 2009 – email from J. Payne to F. Flindall, Re: Old occurrence involving PC Jack; General Occurrence Report SP05112642 |
| 29. | September 22, 2009 – email from J. Payne to F. Flindall, Re: Read this occurrence tonite  |
| 30. | September 14, 2009 - email from R. Campbell to C. Kohen and R. Flindall, Re: Jack WIP masterc.doc                                   |
| 31. | September 13, 2009 - follow up email from R. Flindall to S. Filman, Re: Jack WIP masterc.doc  |
| 32. | September 13, 2009 - email from R. Flindall to S. Filman, Re: Jack WIP  |
| 33. | September 11, 2009 - email from R. Campbell to R. Flindall, Re: Jack  |
| 34. | September 11, 2009 – reply email from R. Flindall to C. Kohen, Re: PCS66_Jack8  |
| 35. | September 10, 2009 - email from R. Campbell to J. Payne, Re: Notes Tracking Cst Jack's duties on A Platoon                          |
| 36. | September 9, 2009 - email from R. Campbell to C. Kohen and R. Flindall, re: PCS66_JACK8.doc   |
| 37. | August 28, 2009 - email from R. Flindall to R. Campbell, Re: PCS066 for Mike Jack   |
| 38. | August 27, 2009 - email from R. Campbell to R. Flindall, S. Filman, J. Postma and R. Nie, Re: PCS066 for Mike Jack                  |
| 39. | August 26, 2009 - email from R. Flindall to s. Filman, Re: Constable Michael Jack   |
| 40. | August 26, 2009 - email from R. Flindall to R. Campbell and J. Conway   |

TAB	DOCUMENT
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|-----|---|
| 41. | August 24, 2009 - email from R. Flindall to S. Filman, Re: Constable Michael Jack   |
| 42. | August 24, 2009 - email from R. Campbell to R. Flindall   |
| 43. | August 20, 2009 - email from R. Campbell to R. Flindall   |
| 44. | August 20, 2009 - email from R. Flindall to B. Lafreniere Re: Constable Michael Jack  |
| 45. | August 20, 2009 - email from R. Flindall to B. Lafreniere, Re: Constable Michael Jack   |
| 46. | August 20, 2009 - email from R. Campbell to M. Jack, R. Flindall, J. Postma, R. Nie, Re: Michael Jack Platoon D                               |
| 47. | August 20, 2009 - OPP General Information Form Re: Michael Jack, August 2-15, 2009  |
| 48. | August 19, 2009 - email from R. Campbell to J. Conway, M. Johnston, R. Flindall, S. Filman, Re: Possible charges                              |
| 49. | August 17, 2009 - email from R. Campbell to T. Banbury, M. Johnston, Re: PC Jack – deceit   |
| 50. | August 15, 2009 - OPP General Information Form Re: Michael Jack, Date: August 15, 2009  |
| 51. | August 15, 2009 - email from R. Campbell to M. Johnston, R. Flindall, Re: HTA Charge against Mike Jack while operating force vehicle today    |
| 52. | August 15, 2009 - email from R. Flindall to R. Campbell, Re: HTA Charge against Mike Jack while operating force vehicle today                 |
| 53. | August 15, 2009 - email from R. Flindall to B. Rathbun, J. Postma, T. Banbury, Re: PC Jack  |
| 54. | August 15, 2009 - email from R. Flindall to S. Filman   |
| 55. | August 14, 2009 - email from R. Flindall to M. Johnston, Re: PC Jack  |
| 56. | August 11, 2001 - email from PC Wager to R. Flindall, Re: 8 Sat Aug 9   |
| 57. | August 11, 2009 - email from R. Flindall to R. Campbell, Re: At Scenes Collision Investigation Course - PPA - October 19th through 23rd, 2009 |



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|-----|--|
| 58. | August 10, 2009 - email from R. Flindall to R. Campbell, Re: Provincial Communication Centre Notification  |
| 59. | August 10, 2009 - email from M. Johnston to R. Campbell, R. Flindall, C. Laperle, M. Jack, M. Moran, S. Filman, Re: Provincial Communication Centre Notification |
| 60. | August 2, 2009 - email from R. Flindall to M. Johnston   |
| 61. | July 31, 2009 - email from M. Jack to R. Flindall, Re: Overtime SP09164458   |
| 62. | July 31, 2009 - email from M. Jack to M. Johnston, Cc: R. Flindall, M. D'Amico   |
| 63. | July 24, 2009 - email from M. Jack to OPP DL Peterborough County Detachment, Re: RPG for arrest  |
| 64. | July 17, 2009 - email from R. Campbell to S. Filman, M. Jack, R. Flindall, Re: Overdue Month 5 27 Jun 09   |
| 65. | June 24, 2009 - email from R. Flindall to R. Campbell, Re: Driving Presentation Class List   |
| 66. | June 7, 2009 - email from R. Flindall to M. Jack, Re: Occurrence addresses in Niche  |
| 67. | May 14, 2009 - reply email from R. Flindall to R. Campbell, Re: Jack's next evaluation   |
| 68. | May 11, 2009 - email from R. Campbell to R. Flindall, D. Lee, Re: Jack's next evaluation   |
| 69. | May 11, 2009 - email from S. Filman to M. Jack and R. Flindall, Re: Jack 4 document  |
| 70. | April 21, 2009 - email from S. Filman to R. Flindall, Re: Jack 1 document  |
| 71. | March 23, 2009 - reply email from R. Flindall to S. Filman, Re: Jack evaluation  |
| 72. | March 23, 2009 - email from R. Campbell to R. Flindall, Re: Jack Evaluation  |
| 73. | March 19, 2009 - email from R. Flindall to R. Campbell, Re: Unit 01-152  |
| 74. | March 13, 2009 - email from S. Filman to R. Flindall, Re: Ken Rusaw reviews  |
| 75. | February 10, 2009 - email from R. Flindall to S. Filman, Re: INC00000216708 Priority   |

TAB	DOCUMENT
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4 – Minimal has been assigned to JUS MSG OPP RMS ADMIN

76. September 24, 2008 - email from R. Campbell to R. Flindall, Re: Shift Changes

**Sergeant Pete Butorac**

77. October 25, 2009 - email from R. Nie to R. Campbell, C. Kohen, P. Salter, P. Butorac, J. Postma and D. Lee, Re: Jack evaluation draft with attached Evaluation Report and Work Improvement Plans
78. September 25, 2009 - email from R. Nie to R. Flindall and P. Butorac, Re: Jack
79. September 20, 2009 - email from R. Nie to P. Butorac, Re: PC Jack's 8mth evaluation
80. September 18, 2009 - email from M. Johnston to R. Nie, Ccd P. Butorac, J. Postma, K. Chapman, Re: P/C Jack
81. September 14, 2009 - email from R. Campbell to M. Johnston, Cc C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: Jack WIP (with attached Work Improvement Plan)
82. August 24, 2009 - email from J. Postma to R. Campbell, Re: Probationary Constable Michael Jack
83. Undated – Confidential Duty Report, Submitted by J. Brockley

**Provincial Constable Richard Nie**

84. December 14, 2009 email from C. Kohen to M. Reynolds, D. Lee, Cc: R. Nie, Re: PC Jack (with attached Release from Employment letter dated December 15, 2009)
85. December 1, 2009 email from K. Taylor to D. Beckett, R. Nie, C. Kohen, P. Butorac, M. Jack, Re: Probationary Constable Michael Jack – Remedial driver training completion
86. November 18, 2009 - email from J. Postma to R. Campbell, C. Kohen, Cc: P. Butorac, R. Nie, Re: Prob Jack
87. November 15, 2009 - email from P. Butorac to R. Nie, Re: Michael Jack remedial driver training
88. November 10, 2009 - email from R. Campbell to R. Nie, P. Butorac, Re: Updated comments. FW: Prob Jack



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- |      |  |
|------|--|
| 89.  | November 10, 2009 - email from K. Taylor to R. Nie, Cc: R. Campbell, C. Kohen, P. Butorac, M. Vanlanduyt, RE: PC Jack – PCS66P – Police Vehicle Operation  |
| 90.  | November 10, 2009 - email from C. Kohen to R. Campbell, R. Nie, Cc: D. Lee, D. Borton, P. Butorac, R. Flindall, K. Taylor, Re: Prob Jack   |
| 91.  | November 10, 2009 - email from R. Campbell to C. Kohen , R. Nie; Cc: D. Lee, D. Borton, P. Butorac, R. Flindall, Re: Prob Jack (with attached Performance Evaluation Report-Month 10 and Work Improvement Plan)      |
| 92.  | October 27, 2009 - email from K. Taylor to R. Nie, Cc: R. Campbell, P. Butorac, C. Kohen, M. Jack, Re: Remedial driver training for PC Michael Jack  |
| 93.  | October 14, 2009 - email from K. Taylor to M. Jack, Cc: P. Butorac, R. Nie, C. Kohen, Re: Driver Training  |
| 94.  | October 8, 2009 - email from R. Campbell to C. Kohen, P. Butorac, R. Nie, J. Postma, D. Lee, P. Salter, RE: PC Jack evaluation draft (with attached Performance Evaluation Report-Month 9 and Work Improvement Plan) |
| 95.  | October 5, 2009 - email from D. Lee to C. Kohen, R. Campbell, R. Nie, P. Butorac, J. Postma, P. Salter, Re: Driving Memo – Michael Jack  |
| 96.  | October 5, 2009 - email from C. Kohen to R. Campbell, D. Lee, R. Nie, P. Butorac, J. Postma, Re: Driving Memo – Michael Jack   |
| 97.  | October 5, 2009 - email from R. Campbell to K. Taylor, C. Kohen, D. Lee, R. Nie, P. Butorac, J. Postma, Re: Driving Memo – Michael Jack (with attached Memo dated October 2, 2009 and Driver Competency Assessment)  |
| 98.  | October 5, 2009 - email from K. Taylor to C. Kohen, Cc: R. Campbell, D. McNeely, R. Nie, Re: PC Michael Jack – Driving Remediation   |
| 99.  | September 29, 2009 - email from R. Campbell to J. Postma, P. Butorac, R. Nie Re: FW: Driving assessment – Michael Jack – requires remedial driving   |
| 100. | September 29, 2009 - email from R. Campbell to P. Butorac, R. Nie, J. Postma, Re: FW: Driving assessment – Michael Jack – requires remedial driving  |
| 101. | September 24, 2009 - email from R. Flindall's personal email to R. Nie, Re: PC Jack WIP  |

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|------|---|
| 102. | September 20, 2009- email from M. Johnston to P. Butorac, R. Nie, R. Campbell, Re: P/C Jack **URGENT**  |
| 103. | September 18, 2009 - email from M. Johnston to R. Nie, Cc: P. Butorac, J. Postma, K. Chapman, Re: P/C Jack  |
| 104. | September 16, 2009 - email from R. Campbell to D. McNeely, Cc: J. Postma, P. Butorac, R. Nie, M. Johnston, Re: Ron-can you advise if everything is a go for Friday Driving assessment with Michael                    |
| 105. | September 14, 2009 - email from R. Campbell to M. Johnston, Cc: C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: Jack WIB masterc.doc  |
| 106. | September 11, 2009 - email from R. Campbell to M. Johnston, C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: PCS66_Jack8 (with attached Performance Evaluation Report-Report Month 7, Work Improvement Plan) |
| 107. | September 9, 2009 - email from R. Campbell to R. Flindall, R. Nie, Re: PCS66_Jack (with attached Performance Evaluation Report)   |
| 108. | September 8, 2009 - email from R. Campbell to D. McNeely, Cc: M. Jack, J. Postma, R. Nie, P. Butorac, D. Lee, C. Kohen, Re: Driving Assessment, Thursday 10 Sept 2009 – Kingston                                      |
| 109. | August 28, 2009 - email from R. Campbell to J. Postma, Cc: R. Nie; Re: PC Jack  |
| 110. | August 27, 2009 - email from J. Postma to R. Campbell, Cc: R. Nie, Re: PC Jack  |
| 111. | August 26, 2009 - email from J. Postma to R. Nie, Re: Probationary Constable Michael Jack   |
| 112. | August 18, 2009 - email from R. Campbell to R. Nie, Re: Moving of Cst. Mike Jack  |

**Staff Sergeant Michael Reynolds**

- |      |  |
|------|--|
| 113. | December 9, 2009 - Memo to Cst. Jack, Re: Notice of Proposed Release from Employment                       |
| 114. | December 2009 - email from M. Reynolds to C. Kohen, D. Lee, Cc: H. Stevenson, Re: Prob Jack Notice Release |
| 115. | August 25, 2008 - Memo to Michael Jack, Re: Performance and Conduct Requirements of a Recruit Constable    |



TAB	DOCUMENT
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### Deputy Chief Firearms Officers, M.P. (Mike) Johnston

- 116. October 5, 2009 - email from R. Campbell to K. Taylor, C. Kohen, D. Lee, R. Nie, P. Butorac, J. Postma, Re: Driving Memo – Michael Jack (with attached D. McNeely M. Jack Driving Memo, dated October 2, 2009 and Driver Competency Assessment)
- 117. September 23, 2009 - email from H. Stevenson to M. Graham, Cc: K. Smith, M. Armstrong, M. Johnston, RE: Old occurrence involving PC Jack
- 118. September 11, 2009 email from R. Campbell to Vi Grimmatt, Re: [REDACTED]
- 119. September 10, 2009 - email from C. Cox to R. Campbell, M. Johnston, Re: I have a question about one of our officers intercepting communications
- 120. September 9, 2009 - email from R. Campbell to R. Flindall, R. Nie, Re: PCS66\_Jack8
- 121. August 27, 2009 - email from R. Campbell to C. Kohen, M. Johnston, Re: PC Jack
- 122. August 21, 2009 - email from R. Campbell to M. Johnston, Re: Michael Jack Platoon D
- 123. August 18, 2009 email from R. Campbell to K. Taylor, Re: HTA Charge against Mike Jack while operating force vehicle today
- 124. August 6, 2009 email from R. Flindall to M. Johnston Re: P/C Michael Jack

### Ron Campbell

- 125. September 25, 2009 - email from R. Nie to R. Flindall, Cc: P. Butorac, Re: Jack
- 126. September 20, 2009 - email from M. Johnston to P. Butorac, R. Nie, R. Campbell, K. Chapman, R. Flindall, Re: P/C Jack \*\*URGENT\*\*
- 127. September 18, 2009 - email from M. Johnston to R. Nie, Cc: P. Butorac, J. Postma, K. Chapman, Re: P/C Jack
- 128. September 14, 2009 - email from M. Johnston to R. Campbell, R. Flindall, R. Nie, C. Kohen, J. Postma, P. Butorac, Re: Jack WIP masterdc (with attached Work Improvement Plant (Jack))
- 129. September 10, 2009 - email from R. Campbell to M. Johnston, Re: FW: Rob Flindall
- 130. August 2009 - OPP Briefing Note Re: PC Jack
- 131. August 18, 2009 - email from R. Campbell to M. Johnston, Re Moving of Cst. Mike Jack

TAB	DOCUMENT
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132. January 29, 2009 - email from H. Stevenson to M. Johnston, R. Campbell, Re: New Recruits – Special Attention to Prob Period – Jack and [REDACTED]

VOLUME 3:

**Colleen Kohen**

133. December 15, 2009 - email from D. Lee to C. Kohen, Re: Termination
134. December 14, 2009 - email from S. Thomas to C. Kohen, Re: Prob Jack
135. December 14, 2009 - email from C. Kohen to M. Jack, Cc: K. German, OPPA, Re: Notice of Proposed Release from Employment for Michael Jack
136. December 14, 2009 - email from R. Nie to C. Kohen, M. Reynolds, Re: PC Jack
137. December 13, 2009 - email from M. Jack to C. Kohen, Cc: K. German, OPPA, Re: Notice of Proposed Release from Employment for Michael Jack
138. December 13, 2009 - email from C. Kohen to M. Reynolds, D. Lee, Cc: H. Stevenson, S. Thomas, Re: Prob Jack Notice of release
139. December 11, 2009 - email from M. Reynolds to C. Kohen, D. Lee, Re: Proposal to Release Prob Const
140. December 11, 2009 - email from C. Kohen to S. Thomas, Re: Proposal to Release Prob Const
141. December 11, 2009 - email from C. Kohen to M. Reynolds, D. Lee, Re: Proposal to Release Prob Const
142. December 11, 2009 - email from B. Van Dyk to C. Kohen, Cc: R. Hannes, S. Thomas, Re: Proposal to Release Prob Const
143. December 9, 2009 - email from C. Kohen to D. Lee, M. Reynolds, Re: Prob Jack Notice of release
144. December 4, 2009 - email from C. Bell to C. Kohen, Cc: M. Silverthorn, Re: Probationary Jack
145. December 1, 2009 - email from S. Thomas to C. Kohen, Re: Prob Jack
146. December 1, 2009 - email from A. Costello to C. Kohen, with attached Internal Briefing Report
147. December 1, 2009 - email from M. Reynolds to C. Kohen, Cc: R. Flindall, K. Taylor, P. Butorac, Re: Probationary Constable Michael Jack – Remedial driver training completion
148. December 1, 2009 - email from C. Kohen to D. Lee, Re: Prob Jack



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|------|---|
| 149. | November 29, 2009 - email from R. Nie to C. Kohen, R. Flindall, Cc: P. Butorac, Re: Jack Chronology, with attached Chronology   |
| 150. | November 29, 2009 - email from R. Campbell to C. Kohen, Re: Emailing: Jack Chronology.09.doc, with attached Chronology  |
| 151. | November 24, 2009 - email from C. Kohen to S. Thomas, R. Hannes, H. Stevenson, R. Campbell, Cc: R. Nie, P. Butorac, D. Lee, Re: Prob Jack   |
| 152. | November 20, 2009 - email from R. Campbell to C. Kohen, R. Nie  |
| 153. | November 20, 2009 - email from R. Campbell to C. Kohen, Re: Updated comments. FW: Prob Jack, with attached Performance Evaluation Report (Month 10) and WIP   |
| 154. | November 19, 2009 - email from R. Nie to C. Kohen, with attachment `coach09.doc   |
| 155. | November 19, 2009 - email from R. Nie to C. Kohen, Cc: R. Campbell, P. Butorac  |
| 156. | November 18, 2009 - email from R. Nie to C. Kohen, Re: Prob Jack  |
| 157. | November 18, 2009 - email from J. Postma to R. Campbell, C. Kohen, Cc: P. Butorac, R. Nie, Re: Prob Jack  |
| 158. | November 12, 2009 - email from S. Thomas to C. Kohen, R. Hannes, Re: Prob Jack  |
| 159. | November 12, 2009 - email from C. Kohen to R. Hannes, S. Thomas, Re: Prob Jack  |
| 160. | November 10, 2009 - email from R. Campbell to C. Kohen, R. Nie, Cc: D. lee, D. Borton, P. Butorac, R. Flindall, Re: Prob Jack, with attached Performance Evaluation Report (Month 10) and WIP           |
| 161. | November 10, 2009 - email from R. Nie to C. Kohen, R. Campbell, Cc: D. Lee, D. Borton, P. Butorac, R. Flindall, Re: Prob Jack, with attached Performance Evaluation Report (Month 10) and WIP           |
| 162. | November 5, 2009 - email from K. Taylor to P. Butorac, Cc: C. Kohen, Re: Michael Jack remedial driver training  |
| 163. | October 16, 2009 - email from C. Kohen to M. Pomeroy, Re: Prob Jack   |
| 164. | October 7, 2009 - email from R. Nie to R. Campbell, C. Kohen, P. Salter, P. Butorac, Cc: J. Postma, D. Lee, Re: PC Jack evaluation draft, with attached Performance Evaluation Report (Month 9) and WIP |
| 165. | October 7, 2009 - email from R. Campbell to C. Kohen, P. Butorac, R. Nie, P. Slater, RE: Driving Memo – Michael Jack  |
| 166. | October 5, 2009 - email from R. Campbell to C. Kohen, R. Nie, P. Butorac, Re: Driving Memo – Michael Jack   |

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|------|---|
| 167. | October 5, 2009 - email from R. Campbell to C. Kohen, Re: Driving Memo – Michael Jack   |
| 168. | October 5, 2009 - email from R. Campbell to D. Lee, C. Kohen, R. Nie, P. Butorac, J. Postma, P. Salter, Cc: M. Johnston, Re: Driving Memo – Michael Jack  |
| 169. | September 29, 2009 - email from K. Taylor to C. Kohen, R. Campbell, Cc: D. McNeely, Re: Driving Assessment – Michael Jack – requires remedial driving   |
| 170. | September 24, 2009 - email from C. Kohen to M. Johnston, H. Stevenson, Re: Old occurrence involving PC Jack   |
| 171. | September 23, 2009 - email from M. Johnston to R. Campbell, Cc: C. Kohen, Re: Old occurrence involving PC Jack  |
| 172. | September 14, 2009 - email from C. Kohen to R. Flindall, R. Campbell, Cc: S. Filman, Re: Jack WIP masterc.doc   |
| 173. | September 14, 2009 - email from R. Campbell to M. Johnston, Cc: C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: Jack WIP masterc.doc, with attached WIP                                   |
| 174. | September 13, 2009 - email from R. Flindall to R. Campbell, Cc: C. Kohen, S. Filman, Re: Jack WIP masterc.doc, with attached WIP  |
| 175. | September 11, 2009 - email from R. Flindall to C. Kohen, Re: PCS66_JACK8.doc  |
| 176. | September 9, 2009 - email from D. McNeely to R. Campbell, J. Postma, M. Jack, P. Butorac, D. Lee, C. Kohen, K. Taylor, Cc: C. Lungstrass, Re: Driving Assessment ... Friday 18 Sept 2009 - Kingston |
| 177. | September 9, 2009 - email form D. McNeely to R. Campbell, J. Postma, M. Jack, P. Butorac, D. Lee, C. Kohen, K. Taylor, Cc: C. Lungstrass, Re: Driving Assessment ... Friday 18 Sept 2009 - Kingston |
| 178. | September 9, 2009 email from R. Campbell to R. Flindall, Cc: M. Johnston, D. Lee, C. Kohen, Re: PCS66_JACK8.doc, with attached Performance Evaluation Report (Month 7)                              |
| 179. | September 8, 2009 email from R. Campbell to D. McNeely, Cc: M. Jack, J. Postma, R. Nie, P. Butorac, D. Lee, C. Kohen, Re: Driving Assessment...Thursday 10 Sept 2009 - Kingston                     |
| 180. | August 31, 2009 email from S. Filman to D. Lee, C. Kohen, Re: WIPS, with attachments  |
| 181. | August 31, 2009 email from R. Flindall to C. Kohen, Cc: R. Campbell, Re: PCS066 for Mike Jack, with attached Performance Evaluation Report (Month 6)  |
| 182. | August 27, 2009 email from R. Campbell to C. Kohen, Re: PC Jack   |
| 183. | August 27, 2009 email from R. Campbell to C. Kohen, RE: PC Jack   |



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**Chronology Re: PC Michael Jack's performance**

184. Chronology #1

185. Chronology #2

**Additional Documents**

186. OPP, Vehicle Damage Report

187. Criminal Harassment related documents

188. Analysis of case load and charge analysis report

189. Documents relating to a motor vehicle incident

190. A 233-10, General Information Form

191. August 5, 2008 – email from S. Thomas to G. Trivett, Cc: S. Haennel, Re: Upcoming recruit

**VOLUME 4:**

**Ontario Provincial Police Academy (OPPA) Documents**

192. Basic Constable Training Program Student Evaluation, September 3 – November 27, 2008 (Diploma Awarded)

193. Basic Constable Training Program Student Evaluation, September 3 – November 27, 2008 (Diploma Not Awarded)

194. Recruit Leadership Assessment Tool

**Career Development Bureau Documents**

195. December 15, 2009 - M. Jack Memorandum to Chief Superintendent M. Armstrong, Re: Resignation from the Ontario Provincial Police

196. December 31, 2009 - Probationary Constable Work Improvement Plan, Re: M. Jack

197. December 9, 2009 - OPP, Career Development Bureau Memorandum to P/C Jack and Peterborough County Detachment, Re: Notice of Proposed Release from Employment

198. December 14, 2009 - Probationary Constable Performance Evaluation Report, Re: M. Jack – 11th month evaluation

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| 199. | December 14, 2009 - Probationary Constable Work Improvement Plan, Re: M. Jack  |
| 200. | November 25, 2009 - Memorandum to PC Jack, Re: Internal Complaint 2545009-0173   |
| 201. | November 19, 2009 -. Jack Memo Re: Federal Statutes, Rating: Does Not Meet Requirements  |
| 202. | November 18, 2009 - Probationary Constable Performance Evaluation Report, Re: M. Jack – 10th month evaluation                                |
| 203. | October 23, 2009 - Probationary Constable Performance Evaluation Report, Re: M. Jack – 9th month evaluation                                  |
| 204. | October 8, 2009 - Probationary Constable Work Improvement Plan, Re: M. Jack  |
| 205. | October 5, 2009 - Probationary Constable Performance Evaluation Report, Re: M. Jack – 8th month evaluation                                   |
| 206. | October 5, 2009 - Probationary Constable Performance Work Improvement Plan, Re: P/C Jack   |
| 207. | October 2, 2009 - Sgt. D. McNeely Memo to R. Campbell, Re: M. Jack Driver Competency Assessment (with attached Driver Competency Assessment) |
| 208. | September 26, 2009 – P. Butorac Memo Re: P/C Jack's response to his 6 months evaluation  |
| 209. | September 23, 2009 - Memorandum to PC Jack, Re: Notice of Internal Complaint   |
| 210. | September 11, 2009 – OPC Complaint Intake Form   |
| 211. | September 2009 - Professional Standards Bureau Investigation Report 2545009-0173   |
| 212. | August 31, 2009 - Probationary Constable Performance Evaluation Report, Re: M. Jack – 7th month evaluation                                   |
| 213. | August 31, 2009 - Probationary Constable Performance Evaluation Report, Re: M. Jack – 5th month evaluation                                   |
| 214. | June 11, 2009 - Probationary Constable Performance Evaluation Report   |
| 215. | May 26, 2009 - J. Fantino, OPP letter to C. Condon, University of Liverpool  |
| 216. | May 11, 2009 - Probationary Constable Work Improvement Plans, Re: M. Jack (Radio Communications, Flexibility, Police Vehicle Operation)      |
| 217. | May 11, 2009 - Probationary Constable Performance Evaluation Report – 2nd month, Re: M. Jack   |
| 218. | April 27, 2009 - Probationary Constable Performance Evaluation Report – 3rd month, Re: M. Jack   |



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|------|--|
| 219. | OPPA Recruit Leadership Assessment Tool, Re: M. Jack   |
| 220. | OPC, Basic Constable Training Program, Student Evaluation, Re: M. Jack, September 3 to November 27, 2008                   |
| 221. | August 25, 3008 - OPP, CDB Memo to Michael Jack, Re: Performance and Conduct Requirements of a Recruit Constable           |
| 222. | August 5, 2008 – email correspondence between M. Johnston and B. Rathbun, R. Campbell, Cc: S. Thomas, Re: Upcoming recruit |
| 223. | OPP letter to M. Jack, dated July 18, 2008 (date stamped July 30, 2008)  |
| 224. | OPP letter to M. Jack, dated July 18, 2008   |
| 225. | Jack, Ontario Constable Selection System, Consent and Release of Liability Form, dated March 30, 2008                      |

#### **Ontario Provincial Police Orders**

- |      |  |
|------|--|
| 226. | Administration & Infrastructure: Human Resources – Probationary Constable, January-December 2009                   |
| 227. | Administration & Infrastructure: Professionalism in the OPP, December 2009, January 2009 and January-December 2009 |
| 228. | Introduction to Police Orders: Commissioner’s Message – January-December 2009                                      |
| 229. | Administration & Infrastructure: OPP Vehicles – Conduct Committee, January 2009                                    |
| 230. | Introduction to Police Orders: The Promise of the OPP (Values and Ethics), January 2009                            |
| 231. | Human Resources: Probationary Constable, dated January-December 2009   |
| 232. | Law Enforcement: Supervision-Members – Performance Management Program, January-December 2008                       |
| 233. | Probationary Constable Evaluation Report Guidelines, November 2008   |
| 234. | Communications/Dispatch: Radio Transmission, December 2009 and December 2008                                       |
| 235. | Supervision – Member: Performance Management Program, January-December 2008  |

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236.	Administration & Infrastructure: OPP Vehicles – Use of OPP Vehicle, January 2009 and September 2008
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**VOLUME 5:**

237.	Corporate Administrative File
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238.	Corporate – Personnel File
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239.	Detachment – Personnel File
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240.	Provincial Offences Act Court Transcript, R. v. Jack, April 1, 2010 and May 27, 2010; Judgment, dated August 12, 2010
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241.	DAR Schedule
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242.	PSB interview with Mr. Jack
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# Human Rights Tribunal of Ontario

## Request for an Order During Proceedings - Rule 19 (Form 10)

(Disponible en français)

[www.hrto.ca](http://www.hrto.ca)

At any time after an Application has been filed with the Tribunal, a party may make a Request for an Order during a proceeding by completing this Request for an Order During Proceedings (Form 10).

The Tribunal will determine whether a Request for an Order will be heard in writing, in person or electronically and, where necessary, will set a date for the hearing of the Request. This Request may be heard on the basis of Form 10 alone.

### Follow these steps to make your request:

1. Fill out this Form 10.
2. All documents you are relying on must be included with this Form 10.
3. Deliver a copy of Form 10 to all parties and any person or organization who has an interest in this Request.
4. If this is a Request for an Order that a non-party provide a report, statement or oral or affidavit evidence in accordance with Rule 1.7 (q), this Form 10 must be delivered to the non-party in addition to the other parties in the proceeding.
5. Complete a Statement of Delivery (Form 23).
6. File Form 10 and Form 23 with the Tribunal.

### Information for all parties and any person or organization who receives a copy of this Request

You may respond to this Request for an Order by completing a Response to a Request for an Order During Proceedings (Form 11).

### Follow these steps to respond:

1. Fill out Form 11.
2. All documents you are relying on must be included with Form 11.
3. Deliver a copy of Form 11 to all parties and any other person or organization that has an interest in the Request.
4. Complete a Statement of Delivery (Form 23).
5. File Form 11 and Form 23 with the Tribunal.

You must file your Response to a Request for Order not later than **fourteen (14)** days after the Request for Order was delivered to you.

Download forms from the Tribunal's web site [www.hrto.ca](http://www.hrto.ca). If you need a paper copy or accessible format, contact us.

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

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  
Email: [hrto.registrar@ontario.ca](mailto:hrto.registrar@ontario.ca)



# Human Rights Tribunal of Ontario

## Request for an Order During Proceedings - Rule 19 (Form 10)

### Application Information

Tribunal File Number:	2010-07633-I
Name of Applicant:	Michael Jack
Name of each Respondent:	Her Majesty the Queen (HMQ) as represented by the Minister of Community Safety and Correctional Services operating as the Ontario Provincial Police (OPP)

### 1. Your contact information (person or organization making this Request)

First (or Given) Name	Last (or Family) Name	Organization (if applicable)
Lynette	D'Souza	HMQ as represented by the Minister of Community Safety and Correctional Services operating as the OPP

Street #	Street Name	Apt/Suite
655	Bay Street	Suite 501

City/Town	Province	Postal Code	Email
Toronto	ON	M7A 0A8	Lynette.D'Souza@ontario.ca

Daytime Phone	Cell Phone	Fax	TTY
416-326-1237		416-314-3518	

If you are filing this as the Representative (e.g. lawyer) of one of the parties please indicate:

Name of party you act for and are filing this on behalf of: HMQ as represented by the Minister of Community Safety and Correctional Services operating as the Ontario Provincial Police

LSUC No. (if applicable): 45374S

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

Check off whether you are (or are filing on behalf of) the:

Applicant

Respondent

Ontario Human Rights Commission

Other - describe: \_\_\_\_\_

### 2. Please check off what you are requesting:

- Request to consolidate or have applications heard together
- Request to add a party
- Request to amend Application or Response
- Request to defer Application
- Request extension of time
- Request to re-activate deferred Application
- Request for particulars
- Request for production of documents





# Human Rights Tribunal of Ontario

## Request for an Order During Proceedings - Rule 19 (Form 10)

Other, please explain:

### 1. Request for an Order to Amend Respondent's Response.

The Corporate Respondent, Her Majesty the Queen as represented by the Minister of Community Safety and Correctional Services operating as the Ontario Provincial Police, seeks to amend its original response as provided in the attached Amended Appendix A. Information relating to these amendments was only provided and clarified after the filing of the original Response.

Additional information relating to the use of the term "Crazy Ivan" was only provided after the filing of the original Response (Form 2). At the time of the filing of the Response (Form 2), the Respondent's position accurately reflected the information available to it. Based on the Applicant's Application and will-say it appears that the Applicant only learned of the term "Crazy Ivan" after his resignation from the OPP. The Corporate Respondent also seeks to clarify a statement made in paragraph 29 as provided in the Amended Appendix A.

Based on the additional information provided after the original Response was filed, it is the Corporate Respondent's position that an Order permitting these amendments is fair and just.

### 2. Request for an Order Striking out the claim of discrimination based on "association".

Please see Schedule A attached.

### 3. Request for an Order Excluding Applicant's Documents

Please see Schedule A attached.

### 4. Request to Consolidate this Request for an Order during Proceedings with the Respondent's previous Request for an Order During Proceedings for a Case Management Conference.

For the purposes of a fair, just and expedient proceeding, the Respondent requests that this request for an order be consolidated with its previous request for an order during proceedings for a Case Management Conference.

### 3. Please describe the order requested in detail.

Please see Section 2 above and Schedule A attached.

### 4. What are the reasons for the Request, including any facts relied on and submissions in support of the Request.

Please see Schedule A attached.

### 5. Do the other parties consent to your Request?

Yes

No

Don't Know

### 6. If you are requesting production of a Document(s), please explain if you have already



# Human Rights Tribunal of Ontario

## Request for an Order During Proceedings - Rule 19 (Form 10)

requested the document and any response you have received. You must attach a copy of your written Request for the Document(s) and the Responding Party's Response, if any.

**7. If you are relying on any documents in this Request please list below and attach. You must include all the documents you are relying on.**

Please see cases attached.

**8. Please check off how you wish the tribunal to deal with the matter:**

- In Writing
- Conference Call
- Don't Know
- In Person Hearing

**9. Explain why you wish the Tribunal to deal with the request in the manner indicated above.**

To ensure that this request is dealt with in an expeditious matter and for convenience to the parties.

**10. Do the other parties agree with your choice for how the Tribunal should deal with your Request?**

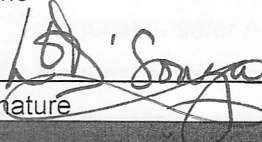
- Yes
- No
- Don't Know

## 11. Signature

By signing my name, I declare that, to the best of my knowledge, the information that is found in this form is complete and accurate.

Lynette D'Souza

Name

  
Signature

20/04/2012

Date (dd/mm/yyyy)

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





# Human Rights Tribunal of Ontario

## Request for an Order During Proceedings - Rule 19 (Form 10)

### Freedom of Information and Privacy

The Tribunal may release information about an Application in response to a request made under the *Freedom of Information and Protection of Privacy Act*. Information may also become public at a hearing, in a written decision, or in accordance with Tribunal policies. At the request of the Commission, the Tribunal must provide the Commission with copies of applications and responses filed with the Tribunal and may disclose other documents in its custody or control.

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 5<sup>th</sup> 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

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

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 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. The Corporate Respondent acknowledges that the term “Crazy Ivan” was used in the detachment, but as indicated by the Applicant in his application and will say, the Applicant appears only to have learned post-employment of the use of this term. The Corporate Respondent is of the view that the use of this term did not amount to discrimination, create a poisoned work environment, or harassment. The use of this term was not a factor in Mr. Jack’s performance management nor a factor in the OPP’s decision to release Mr. Jack from employment.

28.

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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 on the basis of any Code prohibited grounds. 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.



| ~~34-33~~ 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.

| ~~35-34~~ Paragraph 19(4) – The Respondent denies that officers ridiculed the Applicant's accent.

| ~~36-35~~ 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.

| ~~37-36~~ 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.

| ~~38-37~~ 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.

39-38. 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.

40-39. 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.

41-40. 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".

42-41. 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.

43-42. 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.

44-43. Paragraph 27 – Sergeant Flindall has no recollection of the Applicant every approaching him about derogatory comments by Constable Maria D'Amico.

45-44. 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.

46-45. 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.

- | ~~47-46.~~ 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.
- | ~~48-47.~~ 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.
- | ~~49-48.~~ Paragraph 39 – Sergeant Flindall denies making any such statement.
- | ~~50-49.~~ 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.

- | ~~51-50.~~ 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.
- | ~~52-51.~~ 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.

| 53-52. 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.

| 54-53. 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.

| 55-54. 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.

| 56-55. 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.



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

MICHAEL JACK

Applicant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY  
THE MINISTER OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES  
AND OPERATING AS THE ONTARIO PROVINCIAL POLICE

Respondent

REQUEST FOR ORDERS

SCHEDULE A

**Request for an Order Striking out the Claim of Discrimination on the Basis of Association**

***Association Identified by Applicant in Form 1***

1. The Applicant has indicated in Form 1 section 5 (Grounds Claimed) that the Applicant believes that the ground of “Association with a Person Identified by a Ground Listed Above” applies to his Application.

***Application fails to Disclose a Prima Facie Case of Discrimination on the basis of Association***

2. The Applicant has failed to disclose any facts, particulars or allegations that would support a finding that the Respondent has violated the *Code* on the basis of association.
3. The Tribunal’s case law establishes the approach to dismiss an application on the basis of a failure to disclose a *prima facie* case of discrimination.

4. In *Jagait v. IN TECH Risk Management*, 2009 HRTO 779 (CanLII) [hereinafter: *Jagait*], the Tribunal described the test to be considered in the context of a request to dismiss for failure to establish a *prima facie* case of discrimination. The Tribunal stated the following:

The onus is on the applicant to establish a *prima facie case* of discrimination. A *prima facie case* is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a finding in the applicant's favour in the absence of an answer from the respondent: see *Ontario Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC), 1985 CanLII 18 (S.C.C.), at para. 28. Upon establishing a *prima facie case*, the burden shifts to the respondent to provide a credible and rational explanation demonstrating, on a balance of probabilities, that its actions were not discriminatory.

It is well-established that the threshold for establishing a *prima facie case* of discrimination is not high, discrimination is often not overt, the employer may have knowledge of facts or possess evidence of discrimination that is not accessible to an employee whose employment is terminated, and that in many, if not most, cases, the burden will shift to the respondent to provide a non-discriminatory reason for its actions. On the other hand, where the applicant has failed to establish a *prima facie case*, it is neither legally correct nor, in my view, fair, just and expeditious to shift the burden to the respondent to provide a non-discriminatory reason for its actions.

Casebook, Tab 1, *Jagait*

5. The Tribunal will consider the issue of no *prima facie case* of discrimination at a preliminary stage without the hearing of evidence. The threshold test remains the same as in *Jagait*. It will be sufficient if the applicant raises allegations that, if accepted to be true, would be enough to establish a violation of the *Code*.

Casebook, Tab 2 *Arias v. Centre for Spanish Speaking Peoples*, 2009 HRTO 1025 (CanLII) 2009 HRTO 1025 (CanLII), at para. 7.

Casebook, Tab 3, *Capocci v. York Catholic District School Board* 2009 HRTO 107 (CanLII)

Casebook, Tab 4 *Dioba v. Toronto Public Library*, 2009 HRTO 1503 (CanLII)

6. In *Chau v. Olymel SEC/LP*, 2009 HRTO 1386 (CanLII) at para 29 [hereinafter: *Chau*], the Tribunal indicated that a respondent should not be required to respond



to a case where it does not know the case to be met or to require a respondent to defend allegations that do not raise discriminatory conduct. The Tribunal found that where there is no *prima facie* case of discrimination, it is essentially unfair to the respondent to be expected to respond.

Yet, where an applicant clearly fails to establish a *prima facie* case, it is neither legally correct nor fair, just and expeditious to proceed with the Application and to require the respondent to bear the onus of making out a reasonable defence.

Casebook, Tab 5, *Chau*

7. In this case, the Applicant has not established a *prima facie* case of discrimination on the basis of association. The Applicant has not made any allegations nor provided any facts nor particulars of discrimination on the basis of association. Applying the test as set out in the case law, the Applicant's allegations as contained in the Application, even if accepted to be true, are not sufficient to establish that the Respondent violated the *Code* on the basis of association.
8. Accordingly, an order should be granted striking out the claim of discrimination on the basis of association.

#### **Request for an Order Excluding Applicant's Documents**

The Tribunal pursuant to Rule 1.7(n) can limit evidence or submissions on any issue.

The Respondent seeks an order excluding a number of documents from the Applicant's List of Exhibits, as set out below:

##### ***Exhibit 104 Dental Records and Receipts***

A number of the Applicant's dental records have been included in this exhibit.

This document is not relevant to the proceedings. There is no nexus between this document and any of the Applicant's allegations of discrimination.

##### ***Exhibit 111 An Article Entitled OPP Sued for \$350k.***

This is a secondary source article on a law suit against the OPP.

This exhibit is not relevant.

##### ***Exhibit 113-Photos from the film Cheaper by the Dozen 2.***

These photos are not relevant.

**Exhibit 120 Email dated March 22, 2012**

This appears to be an email from counsel with the Ontario Provincial Police Association providing legal advice to another OPP officer that is not from the Peterborough Detachment.

This email is not relevant.

**Exhibit 121 Email dated January 5, 2009**

This email is not relevant.

**Exhibit 122**

This document is a collage of documents which also appears to include submission.

This is not evidence and therefore should be excluded.

**Exhibit 123**

This document is not evidence but submissions and should be excluded.



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HUMAN RIGHTS TRIBUNAL OF ONTARIO

Case No. 2008-001

Respondent: [Name]

Applicant: [Name]

Decision No. [Number]

Date: [Date]

DECISION

1. Introduction

2. Facts

3. Analysis

4. Conclusion

5. Recommendations



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

**BETWEEN:**

**Manminder Jagait**

**Applicant**

**-and-**

**IN TECH Risk Management Inc.**

**Respondent**

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## DECISION

**Adjudicator:** Ken Bhattacharjee

**Date:** June 5, 2009

**File Number:** 2008-00042-1

**Citation:** 2009 HRTO 779

**Indexed as:** Jagait v. IN TECH Risk Management

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## INTRODUCTION

[1] The applicant, Manminder Jagait, filed an Application under s. 34 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "Code"), on July 7, 2008, which alleges that the respondent, IN TECH Risk Management Inc., discriminated against her with respect to employment because of her race, colour, ancestry, place of origin, citizenship, ethnic origin, creed, sex, family status, marital status, and age. Specifically, she alleges that the respondent terminated her employment and denied her severance pay because of these grounds.

[2] The respondent filed a Response to the Application on August 21, 2008, which denies the allegations of discrimination. The Response states that the composition of the respondent's staff is diverse. The Response also states that the respondent terminated the applicant's employment for a non-discriminatory reason: poor work performance.

## PRELIMINARY ISSUE

[3] At the outset of the hearing, counsel for the respondent requested that Fraser Roberts be removed as an individual respondent because the applicant did not name him as a respondent, and he was only named because the organization respondent erroneously identified him as an additional respondent in the Response to the Application. The applicant consented to the Request. Therefore, I ordered that Fraser Roberts be removed as an individual respondent, and that the style of cause be amended accordingly.

## BACKGROUND

[4] The applicant was employed by the respondent as a risk management consultant from February 24, 2003 to August 21, 2007, when the respondent terminated her employment. The Application states that she was not provided with any prior notice of poor work performance. Therefore, in her view, the respondent terminated her



employment and denied her severance pay because she is an immigrant of Indian descent, from England rather than Canada, the only Punjabi Sikh making a high salary, the only woman in her department making a high salary, single with no dependants, and young (33 years of age). The Application does not have any further particulars explaining why the termination was discriminatory.

[5] The Response to the Application states that the respondent terminated the applicant's employment because of poor work performance, including complaints about the applicant from four of the respondent's largest clients and internal complaints about her from other employees on her team. The Response further states that the respondent employed immigrants from all over the world, including the United Kingdom, the United States, Germany, Sri Lanka, Guyana, and India, at all levels of the company; in addition to the applicant, there were immigrants from China, Morocco and Peru in the risk management consultant position; there were employees who were Christian, Jewish and Muslim in the company; more than half of the respondent's employees were female, including three out of seven of the risk management consultants; four out of seven risk management consultants were single and had no dependants; and more than half of the respondent's employees were in their twenties and thirties, including two risk management consultants who were younger than the applicant.

[6] The applicant's Reply to the Response included further particulars with respect to her allegations of discrimination. With respect to the grounds of race, colour, ancestry, place of origin, citizenship, and ethnic origin, the Reply states that she is unaware of the laws of employment in Canada because she is not Canadian and is new to the country, and the respondent used this fact against her. With respect to the ground of age, she states that at the time of her dismissal, the accounting clerk, who gave her a Record of Employment, told her that she will find new employment because she is young. The Reply further states that the respondent was downsizing, and terminated her employment to avoid paying her financial compensation.

[7] The hearing of the merits of the Application took place on May 19, 2009. At the outset of the hearing, counsel for the respondent requested that all or part of the

Application be dismissed as failing to disclose a *prima facie* case of discrimination. I ruled that I would not hear the respondent's request until after the applicant had presented her case.

[8] The applicant testified on her own behalf, and called two witnesses. She also requested that I hear from two other witnesses, but they were not immediately available to testify because she had just issued summonses to them. The applicant stated that they may appear the following day or at a future date. I denied the applicant's request because she failed to provide a good reason why she had failed to issue the summonses in a timely manner, and it would not be fair, just and expeditious to delay or bifurcate the hearing.

## EVIDENCE

[9] The applicant testified that on August 21, 2007 she was called into a meeting with Rory Roberts, the owner of the company, Fraser Roberts, a manager, and the accounts/payroll clerk. She stated that Rory Roberts said, "we have to part ways," and she was then provided with a termination of employment letter. The letter stated that her employment was terminated because of "poor performance, incompetence, and conduct incompatible with the duties of a Risk Management Analyst." The letter also stated that she had been "advised repeatedly of performance shortcomings and given ample opportunity [to] correct deficiencies, yet we are faced again with client complaints".

[10] The applicant denied that her work performance was poor or that there were client complaints about her, or that she had been informed prior to the meeting of any such concerns. She stated that her work performance was excellent and that the respondent gave her raises during her term of employment. She also stated that the real reason why the respondent terminated her employment was because it saw her as expendable because she is an immigrant, from England rather than Canada, Sikh, a woman, single, young, and has no dependants. She further stated that if she was from



Canada, male and Anglo-Saxon, the respondent would have provided her with adequate notice.

[11] After the applicant indicated that she had completed her testimony, I read out each *Code* ground that she listed in her Application, and asked her to identify the facts that she was relying upon to establish discrimination. The applicant's response with respect to each ground was as follows:

- Race: She was the only "East Indian" in her department, and the rest were of Anglo-Saxon background.
- Colour: She was only East Indian female in her department.
- Ancestry: She was hired because she was a hard working immigrant, and fired because she was an immigrant.
- Place of origin: She was born in England, her first language is Punjabi, and her motherland is India.
- Citizenship: The respondent took advantage of the fact that she was new to Canada, having only lived here for 11 years, and was not aware of the law.
- Ethnic origin: The respondent used against her the fact that her heritage is from India and she was seen as not being Canadian.
- Creed: She was the only Sikh working in the company.
- Sex: She is a woman, which is a protected class, and was making a high salary.
- Family status: The respondent used against her the fact that she is not a parent and does not have children.
- Marital status: At a company Christmas lunch in 2004, Rory Roberts pointed out that she was single, and questioned whether there was something wrong with her. Furthermore, at the time of her dismissal, the accounts/payroll clerk told her that she would not have difficulty finding a new job because she is single.
- Age: At the time of her dismissal, the accounts/payroll clerk told her that she would not have difficulty finding a new job because she is young.

[12] In cross-examination, the applicant admitted that she filed a claim with the Ministry of Labour following the termination of her employment, that there were other employees, both in her department and in the company at large, who were racialized, immigrants, female, single, and/or childless, that she is a Canadian citizen, that she does not know if the comments that Rory Roberts made in 2004 were connected to the termination of her employment, and that she had not experienced discrimination in the

workplace prior to the termination of her employment.

[13] The applicant called two witnesses. The first witness, Matthew Cook, was a Vice President with the respondent from December 2004 to December 2005. He testified that the applicant did not report directly to him and he never evaluated her performance, but, as far as he knew, her work performance was competent. He also stated that during the term of his employment, he had to deal with one complaint from a client about the applicant. He stated that the complaint was not serious, and he was able to resolve it. He also stated that at a Christmas party in 2004 Rory Roberts told the applicant: "We have to find you a husband". He stated that although the comment was "badly put", it was a pleasantry and not made with spite or malice.

[14] The second witness, Ken Williams, was a Vice President with the respondent from September 2005 to May 2006. He testified that the applicant did not report directly to him, he was in a different section of the company than her, and he never evaluated her performance, but he never heard anything negative about her work performance, and her ability to get loan approvals was better than average.

**REQUEST TO DISMISS**

[15] Following the applicant's presentation of her case, counsel for the respondent requested that the Tribunal dismiss the Application on the basis that the applicant failed to establish a *prima facie* case of discrimination. Counsel submitted that the applicant listed almost all the grounds of discrimination in section 5 of the *Code*, and did not even attempt to establish a nexus between the termination of her employment and most of the grounds. Furthermore, even where she did attempt to establish a nexus, the evidence did not support her allegation.

[16] The applicant submitted that she did establish a *prima facie* case of discrimination. She stated that the evidence shows that she is member of a protected



class under the *Code*, she was competent in her job, and she was fired without a reason, therefore, she has established that there was discrimination.

[17] Following the parties' submissions, I made an oral ruling dismissing the Application and indicated that written reasons would follow. The following are my reasons.

### ANALYSIS

[18] The onus is on the applicant to establish a *prima facie* case of discrimination. A *prima facie* case is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a finding in the applicant's favour in the absence of an answer from the respondent: see *Ontario Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (S.C.C.); at para. 28. Upon establishing a *prima facie* case, the burden shifts to the respondent to provide a credible and rational explanation demonstrating, on a balance of probabilities, that its actions were not discriminatory.

[19] It is well-established that the threshold for establishing a *prima facie* case of discrimination is not high, discrimination is often not overt, the employer may have knowledge of facts or possess evidence of discrimination that is not accessible to an employee whose employment is terminated, and that in many, if not most, cases the burden will shift to the respondent to provide a non-discriminatory reason for its actions. On the other hand, where the applicant has failed to establish a *prima facie* case, it is neither legally correct nor, in my view, fair, just and expeditious to shift the burden to the respondent to provide a non-discriminatory reason for its actions. In the case at hand, I am not satisfied, after hearing the applicant's evidence, that she has established a *prima facie* case of discrimination.

[20] In her Application, the applicant listed 11 out of the 14 grounds in subsection 5(1) of the *Code*. The Tribunal receives very few applications that list as many *Code*

grounds as this one, and, in my view, the applicant has failed to set out sufficient particulars of differential treatment for many of the listed *Code* grounds. Even for the grounds where she did attempt to set out more detailed particulars, I find that much of her evidence was not credible because it was illogical or internally inconsistent.

[21] The applicant did not make any allegations of differential treatment with respect to the termination of her employment and denial of a severance package. Specifically, she did not allege that the respondent terminated her employment, but retained other employees, who did not share her *Code*-related personal characteristics, or that the respondent provided severance packages to other terminated employees, who did not share her *Code*-related personal characteristics.

[22] In both her pleadings and her evidence at the hearing, the applicant discussed the grounds of race, colour, ancestry, place of origin, citizenship, ethnic origin, and creed as if they were intersectional. Therefore, I have considered these grounds together. The applicant alleges that the respondent terminated her employment because she was only East Indian in a department of Anglo-Saxon employees, the only Punjabi Sikh in the company, and she was unaware of employment laws in Canada because she was not Canadian and was new to Canada, having been here for only 11 years.

[23] The applicant's allegation that she was the only non-Anglo-Saxon employee in her department is not credible. In cross-examination, she admitted that there were other racialized and immigrant employees throughout the company, including in her department.

[24] The applicant's allegation that the respondent took advantage of her lack of awareness of the law because she is not Canadian and is new to Canada is also not credible. In cross-examination, the applicant admitted that she is a Canadian citizen. She has also lived in Canada for 11 years, which, in my view, does not meet the definition of someone who is "new" to Canada. In addition, the applicant immigrated to



Canada from the United Kingdom, which has a similar legal system to Canada, and she is fluent in English. Furthermore, after the respondent terminated her employment, she filed a claim with the Ministry of Labour and her Application with this Tribunal, which indicates familiarity with employment laws in Canada.

[25] With respect to the aforementioned grounds, the only evidence that remains credible is her allegation that she was the only East Indian employee in her department, and the only Punjabi Sikh employee in the company. This evidence coupled with the fact the respondent terminated the applicant's employment without a severance package is not sufficient to establish a *prima facie* case of discrimination because of race, colour, ancestry, place of origin, citizenship, ethnic origin, and creed.

[26] With respect to the ground of sex, the applicant alleged that she was the only woman in her department making a high salary. The mere fact that the applicant was the highest paid female in her department and the respondent terminated her employment without a severance package is not sufficient to establish a *prima facie* case of discrimination because of sex. In cross-examination, the applicant admitted that she was not the only female employee in her department. Furthermore, even if it is true that the respondent terminated the applicant's employment because she had a high salary, that would not constitute a violation of the *Code*.

[27] The applicant also discussed the grounds of family status and marital status as if they were intersectional. Therefore, I have considered these grounds together. The applicant alleges that she was single and had no dependants, at a Christmas lunch in 2004, the owner of the company pointed out that she was single, and questioned whether there was something wrong with her, and at the time of her dismissal, the accounts/payroll clerk told her that she would not have difficulty finding a new job because she is single. In cross-examination, the applicant admitted that there were other employees in her department who were single and had no dependants. She also admitted that she is unsure if the comments that the owner made in 2004 were connected to the termination of her employment, and she had not experienced

discrimination in the workplace prior to the termination of her employment. Furthermore, I prefer the evidence of the applicant's witness, Mr. Cook, who was a disinterested observer, with respect what the owner said to the applicant at the Christmas lunch in 2004. I do not believe that the owner's comments were hostile or that he said that there is something wrong with the applicant because she is single.

[28] The mere fact that the owner made a comment in 2004 about finding her a husband, and a non-management employee told her at the time of her dismissal that she would not have difficulty finding a new job because she is single is not sufficient to establish a *prima facie* case of discrimination because of family status and marital status.

[29] With respect to the ground of age, the applicant alleged that she was dismissed because she was young (33 years of age). She specifically alleged that, at the time of her dismissal, the accounts/payroll clerk told her that she would not have difficulty finding a new job because she is young. The applicant did not present any evidence that she was the youngest employee in her department. The mere fact that the respondent terminated the applicant's employment without a severance package when she was 33 years of age, and a non-management employee told her at that time that she would not have difficulty finding a new job because she is young is not sufficient to establish a *prima facie* case of discrimination because of age.

[30] In dismissing the Application, I need not determine whether or not the respondent's allegation that the applicant had poor work performance is true. Much of the applicant's evidence sought to challenge the respondent's statements about her. I understand her concern that such allegations may affect her reputation and ability to obtain future employment, but the Application is dismissed because the onus is on the applicant to establish a *prima facie* case of discrimination, and she has failed to do so. As a consequence, the burden does not shift to the respondent to establish a non-discriminatory reason for terminating her employment. If the applicant's main concern is that the respondent wrongfully dismissed her and denied her a severance package,



there are other legal forums where she can raise this issue.

**ORDER**

[31] The Application is dismissed.

Dated at Toronto, this 5<sup>th</sup> day of June, 2009.

*"signed by"*

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Ken Bhattacharjee  
Vice-chair

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INTERIM DECISION





# HUMAN RIGHTS TRIBUNAL OF ONTARIO

Margarita Arias, Applicant

Barbara Adamson, Respondent

Centre for Spanish Speaking Peoples

Carita Pereira, Counsel

**BETWEEN:**

OPSEU, Respondent

Margarita Arias  
Counsel

**Applicant**

**-and-**

Centre for Spanish Speaking Peoples and Ontario Public Service Employees Union

**Respondents**

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## INTERIM DECISION

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**Adjudicator:** Michael Gottheil

**Date:** July 10, 2009

**File Number:** 2008-00144-I

**Citation:** 2009 HRTO 1025

**Indexed as :** Arias v. Centre for Spanish Speaking Peoples

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Introduction

**Appearances:**

Margarita Arias, Applicant

Barbara Adamson, Representative

Centre for Spanish Speaking Peoples  
Respondent

Carita Pereira, Counsel

OPSEU, Respondent

Nini Jones, Counsel

2009 HRTO 1025 (CanLII)

## Introduction

[1] This is an Application filed July 29, 2008 under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19 as amended (“the Code”). The Application alleges discrimination in employment on the grounds of age and reprisal.

[2] The applicant is employed as an administrative assistant with the Centre for Spanish Speaking Peoples (“CCSP”), though she has been off work on medical leave since early 2008. She claims that she was subjected to harassment at work because of her age. She also claims that she was treated differently in her employment because she is an older worker.

[3] In an interim decision, 2008 HRTO 132 (CanLII) (the “October 2008 decision”), I ordered that a hearing be scheduled to deal with two issues: a request by both respondents to defer the Application pending the outcome of a Duty of Fair Representation complaint before the Ontario Labour Relations Board (“OLRB”), and whether the Application established a *prima facie* case of discrimination against either or both respondents. I also directed the respondent CSSP to file a complete Response, and provided the applicant the opportunity to file a Reply.

[4] The hearing to deal with the issues identified in the October 2008 decision was held on May 13, 2009. For the reasons that follow, I find that the Application should be dismissed as against the Ontario Public Service Employees Union (“OPSEU”). I also find the Application should proceed as against the respondent CSSP, but the applicant will be required to provide a revised statement of material facts.

[5] At the outset of the hearing, counsel for OPSEU noted that the Application identified OPSEU Local 512 as a respondent. She advised that Local 512 is an administrative unit, and the legal bargaining agent is OPSEU. As a result, it was submitted that the proper name of the union respondent is OPSEU. Neither of the other parties objected to this request. Based on the positions of the parties, the style of cause shall be amended to read “Ontario Public Service Employees Union.”



## Does the Application Disclose a *Prima Facie* Case?

[6] In *Jagait v. IN TECH Risk Management*, 2009 HRTO 779 (CanLII), the Tribunal set out the appropriate approach when considering requests to dismiss an Application because it does not disclose a *prima facie* case:

[18] The onus is on the applicant to establish a *prima facie* case of discrimination. A *prima facie* case is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a finding in the applicant's favour in the absence of an answer from the respondent: see *Ontario Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (S.C.C.), 1985 CanLII 18 (S.C.C.), at para. 28. Upon establishing a *prima facie* case, the burden shifts to the respondent to provide a credible and rational explanation demonstrating, on a balance of probabilities, that its actions were not discriminatory.

[19] It is well-established that the threshold for establishing a *prima facie* case of discrimination is not high, discrimination is often not overt, the employer may have knowledge of facts or possess evidence of discrimination that is not accessible to an employee whose employment is terminated, and that in many, if not most, cases the burden will shift to the respondent to provide a non-discriminatory reason for its actions. On the other hand, where the applicant has failed to establish a *prima facie* case, it is neither legally correct nor, in my view, fair, just and expeditious to shift the burden to the respondent to provide a non-discriminatory reason for its actions. [emphasis added]

[7] In *Jagait*, the Tribunal considered whether to dismiss the Application after hearing testimony from the applicant. In other cases, as with the present case, the Tribunal may consider the question at a preliminary stage, before the applicant has presented evidence. In such circumstances, the threshold test will be the same, but there will be no evidence before the Tribunal. It will be sufficient if the applicant raises allegations that, if accepted to be true, would be enough to establish a violation of the Code. See: *Capocci v. York Catholic District School Board*, 2009 HRTO 107 (CanLII) at para. 20; *Greenhorn v. 621509 Ontario Inc. (Belleville Dodge Chrysler Jeep)*, 2006 HRTO 22 (CanLII), at paras. 21-22).

[8] The Application, as originally filed, set out a lengthy history of alleged mistreatment of the applicant by a number of supervisors and Board members of the CSSP. The applicant alleged she was constantly berated and yelled at by her supervisors, and this behaviour did not stop even though she raised concerns with other senior managers. She alleged the CSSP posted a vacancy for her position on its website, without explanation, which caused her considerable stress. She alleged that after she went on medical leave, the CSSP interfered with her ability to obtain employment insurance and long term disability benefits, and denied her other benefits to which she claims she was entitled under the terms of the collective agreement. The applicant also alleged OPSEU failed to assist her in relation to the difficulties she was experiencing in the workplace, as well as in assisting her to obtain sick leave benefits.

[9] While the Application sets out a large number of allegations of general mistreatment and harassment, it identifies only two incidents which are allegedly related to the applicant's age. First, it alleges that in January 2007, the applicant's supervisor told her that training opportunities were only open to young people. Second, the Application makes a vague reference to the applicant feeling pressured by her supervisor that she was "too old" to perform her job.

[10] In relation to the allegation of reprisal, the applicant's claim is that she felt caught in the middle of tensions between the union and management because she refused to sign a letter supporting a union steward, and refused to take management's side against fellow unionized employees.

[11] In her Reply, the applicant provides a more detailed outline of her claims against the CSSP and OPSEU. However, as with the Application, the bulk of the allegations relate to general concerns about the employment relationship, or personal harassment, not allegations that are tied to age discrimination or reprisal. The allegations in the Reply that relate to age discrimination are as follows:

- a. When the applicant was hired, she was required to fill out a form on which she had to identify her birth date. The applicant alleges that this information was made known to other employees;

[8] The Application, as originally filed, set out a lengthy history of alleged mistreatment of the applicant by a number of supervisors and Board members of the CSSP. The applicant alleged she was constantly berated and yelled at by her supervisors, and this behaviour did not stop even though she raised concerns with other senior managers. She alleged the CSSP posted a vacancy for her position on its website, without explanation, which caused her considerable stress. She alleged that after she went on medical leave, the CSSP interfered with her ability to obtain employment insurance and long term disability benefits, and denied her other benefits to which she claims she was entitled under the terms of the collective agreement. The applicant also alleged OPSEU failed to assist her in relation to the difficulties she was experiencing in the workplace, as well as in assisting her to obtain sick leave benefits.

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[10] In relation to the allegation of reprisal, the applicant's claim is that she felt caught in the middle of tensions between the union and management because she refused to sign a letter supporting a union steward, and refused to take management's side against fellow unionized employees.

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- a. When the applicant was hired, she was required to fill out a form on which she had to identify her birth date. The applicant alleges that this information was made known to other employees;



b. The applicant's supervisor reported more overtime hours for the applicant that she actually worked, in order to demonstrate to senior management that the applicant was too slow because of her age;

c. The President of the Board asked the applicant whether she was going to dye her hair;

d. The respondent CSSP posted a vacancy for the applicant's position because they wanted a younger worker.

[12] At the hearing, the applicant's representative clarified the allegation with respect to the job posting. She said that at the point the CSSP decided to post the position, the applicant's supervisor had stated that she wanted a younger person in the job. In relation to this allegation, the respondents take the position the posting was not an advertisement for the applicant's position, but rather a call for volunteers.

[13] The respondents also took the position that the applicant's Reply improperly raised new allegations, rather than addressing new matters raised in the Responses. For the purpose of this Interim Decision, I am prepared to consider all the allegations raised by the applicant in both the Application and Reply. The applicant's representative pointed out that the original Application was drafted by the applicant, who is not legally trained, and whose first language is not English. The Reply was filed after the representative, who is a paralegal was retained. I am satisfied that it is appropriate to consider all the allegations in the Application and the Reply.

### **The Application Against OPSEU**

[14] In my view, the Application must be dismissed as against OPSEU. The essence of the applicant's claim against OPSEU is that it had a legal obligation, as her bargaining agent, to represent her in disputes with the employer. She claims that OPSEU knew about her claims of age discrimination, but did nothing. The applicant argues that the *Code* requires a union who becomes aware of discrimination to take steps to investigate and represent the employee.

[15] I cannot accept the applicant's submissions. First, her allegations do not establish OPSEU took no steps to assist her. To the contrary, correspondence between

the applicant and OPSEU show that it was willing to assist. Whether OPSEU met its legal duty of fair representation is a matter for the OLRB to determine. However, there is simply nothing before me that established the union "did nothing."

[16] More importantly, I do not accept that, as a matter of law, a union can be found to have violated the *Code* merely because it has failed to properly or adequately represent one of its members. In *Traversy v. Mississauga Professional Firefighters Association, Local 1212*, 2009 HRTO 996 (CanLII), at paragraph 17, the Tribunal stated:

(...) a claim that the union violates the *Code* must be based on an assertion of differential treatment, and not simply a failure to act. The failure or refusal to take forward a human rights issue such as accommodation of a disability in the workplace is not, in and of itself, a breach of the *Code*. There must be a claim, and a factual foundation for the claim, that the failure to act was based on discriminatory factors.

[17] In the present case, the applicant has not alleged that OPSEU failed to act as a result of her age, or indeed because of any prohibited ground of discrimination. The applicant has simply asserted that OPSEU has a duty under the *Code* to investigate and take action. The applicant has provided no legal support for this proposition, and I find that it is not an accurate statement of the law.

[18] At the hearing, the applicant's representative made two other allegations in support of the applicant's position that she had established a foundation for a violation of the *Code* by OPSEU. First, the applicant alleged that because OPSEU's Response included correspondence between the applicant and CSSP, this demonstrated that OPSEU was "an agent of the employer." I find no merit whatsoever in this bald assertion. The applicant has not provided any other allegations which would, if accepted as true, establish that OPSEU was acting on behalf of, or as agent of the employer in the alleged harassment and discrimination.

[19] Second, the applicant alleged that her supervisor was also a union steward, and as a result, the harassment was affected by, or condoned by OPSEU.



[20] It is not disputed that the applicant's supervisor was formerly a union steward, but was, at all material times, holding an acting supervisory position. There is nothing in the Application or Reply to support the allegation, made only at the hearing, that the supervisor was acting on behalf of OPSEU when she allegedly engaged in the harassment of the applicant. Neither is there any basis to support the allegation that OPSEU discriminated against the applicant "with respect to employment." There are no facts alleged that OPSEU had any influence or involvement in any employment decisions made by the CSSP.

[21] With respect to the claim of reprisal, I also find the applicant has failed to establish a prima facie case. As noted above, the claim of reprisal was a vague assertion that the applicant was mistreated because she failed to sign a letter of support for a union steward, circulated by OPSEU. Section 8 of the Code reads:

Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

[22] There is nothing alleged that OPSEU took or failed to take any action with respect to the applicant, or made any threats, because the applicant sought to enforce her rights under the Code.

[23] For the above reasons, the Application against the OPSEU is dismissed.

### **The Application Against CSSP**

[24] On the other hand, the Application and Reply do allege facts, which if accepted as true, could establish a violation of the applicant's rights to be free from discrimination and harassment because of age. For example, the applicant alleges she was denied training opportunities because she was too old. She alleges that she was harassed and subjected to demeaning comments because of her age. She alleges that the CSSP sought to replace her with a younger employee. I am satisfied that, based on the pleadings, the applicant has established a *prima facie* case of age discrimination.

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[25] I do not find however that the applicant has provided any basis for the claim of reprisal pursuant to section 8 of the *Code*. There is nothing alleged in the Application or Reply which if accepted as true, could lead to a finding the CSSP reprised against the applicant for seeking to enforce her rights under the *Code*. The Application, as it relates to reprisal is dismissed.

[26] I caution that my finding that the matter should proceed as against the CSSP does not in any way suggest a finding that discrimination or harassment has in fact occurred. At a hearing, the applicant will have to present evidence in support of her allegations. The CSSP will present its evidence. After considering all the evidence and submissions, the adjudicator will then make a determination of whether there has been a violation of the *Code*.

[27] Before turning to the issue of deferral, I would note that the applicant's claim raises a number of issues that do not appear to fall within the jurisdiction of the Tribunal. The Tribunal does not have the authority to deal with, decide, or provide remedies in respect of general claims of unfair treatment in employment. Rather, the Tribunal's jurisdiction is limited to claims which have a nexus with a proscribed ground of discrimination, in this case age.

[28] In addition, the applicant makes a number of broad assertions such that it is not clear which allegations relate to a claim of age discrimination, and which relate to general employment disputes.

[29] In order to ensure a fair and expeditious hearing, the applicant will be required to provide a complete statement of facts upon which she relies, including particulars of the times when, the places where and the individuals who are alleged to have engaged in the improper conduct. The revised statement of facts should also be sufficiently particularized to allow the respondent and the Tribunal to understand the nexus between the alleged improper conduct and age.

## Deferral

[30] The respondents request that this Application be deferred pending the outcome of a Duty of Fair Representation complaint filed by the applicant at the OLRB. The parties advised that a mediation of the complaint was held, but did not result in a settlement. No hearing date has yet been set.

[31] The Tribunal will generally defer an Application under the *Code* where the same human rights issue is being dealt with in another proceeding. The Tribunal may also defer an Application where there is an overlap of facts in another proceeding. In the latter case, the Tribunal will consider a variety of factors such as the subject matter of the other proceeding, its nature, the type of remedies available, and the status of the other proceeding and steps that have been taken to pursue it. See: *Klein v. Toronto Zionist Council*, 2008 HRTO 228 (CanLII).

[32] In the present case, I do not consider it appropriate to defer. Having made the decision to dismiss the Application against OPSEU, the Application is now strictly about whether the CSSP violated the applicant's rights under the *Code*. The Duty of Fair Representation will not deal with that issue.

[33] While the allegations in the complaint before the OLRB are identical to the allegations before the Tribunal, neither the legal issues nor the potential remedies are the same. There is nothing before me to suggest that the OLRB process is nearing completion. The applicant is entitled to have her human rights Application dealt with in an expeditious manner.

## Order

[34] For the reasons set out above, I make the following order

- a. The Application as against OPSEU is dismissed in its entirety.
- b. The Application as against the CSSP in respect of discrimination and harassment on the ground of age will proceed and is referred to the



Registrar to schedule a hearing. The Application as it relates to reprisal is dismissed.

c. Within 30 days of this Interim Decision, the applicant shall deliver to the respondent, and file with the Tribunal, a revised statement of material facts upon which she relies in support of her claim that the CSSP discriminated against her in employment based on age. The statement of facts must be sufficiently detailed and particularize the dates when, places where and individuals who the applicant claims engaged in conduct contrary to the *Code*. The statement of facts should also set out the nexus between the facts as alleged and age.

d. The Request to defer is dismissed.

Dated at Toronto, this 10<sup>th</sup> day of July, 2009.

*"Signed By"*

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Michael Gottheil  
Chair







# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**BETWEEN:**

**Raffaele (Ralph) Capocci**

**Applicant**

**-and-**

**York Catholic District School Board,  
York Catholic District School Board – Board of Trustees,  
Susan LaRosa, Jo-Ann Dawson and Dino Giuliani**

**Respondents**

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## INTERIM DECISION

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**Adjudicator:** Ken Bhattacharjee  
**Date:** January 30, 2009  
**File Number:** 2008-00471-I  
**Citation:** 2009 HRTO 107  
**Indexed as:** **Capocci v. York Catholic District School Board**

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WRITTEN SUBMISSIONS BY

Raffaele (Ralph) Capocci, Applicant

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On His Own Behalf

York Catholic District School Board, York  
Catholic District School Board – Board of  
Trustees, Susan LaRosa, Jo-Ann Dawson  
and Dino Giuliani, Respondets

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John-Paul Alexandrowicz,  
Counsel

2009 HRTO 107 (CanLI)



## INTRODUCTION

[1] The purpose of this Interim Decision is to address the respondents' request that the Tribunal dismiss the Application on a preliminary basis because (a) it is untimely, (b) it is outside the Tribunal's jurisdiction, (c) it is an abuse of process, and (d) it fails to make out a *prima facie* case of discrimination.

## BACKGROUND

[2] The applicant filed an Application under s. 34 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*"), on October 1, 2008, which alleges that the respondents discriminated against him with respect to services and facilities because of his family status and his association and dealings with persons identified by a prohibited ground of discrimination.

[3] The respondents filed a Request for an Order during Proceedings on November 25, 2008, which requests that the Tribunal dismiss the Application prior to a hearing of the merits of the Application. The applicant filed a Reply and a Response to a Request for an Order on December 8, 2008, which oppose the respondents' request to dismiss the Application on a preliminary basis.

[4] The parties provided written submissions, but requested that the Tribunal deal with the Request for an Order at an in person hearing. In my view, given the detailed nature of the written submissions, it is fair, just and expeditious to determine this matter on the basis of written submissions alone.

## TIMELINESS

[5] The respondents state that the Application is barred by section 34 of the *Code* because the incidents of alleged discrimination occurred more than one year prior to the filing date of the Application (October 1, 2008). The only incidents mentioned in the

Application that occurred less than one year prior to the filing date – the revocation of the applicant’s exclusion from St. Stephen Catholic School (February 2008) and his decision not to join the School Council (September 2008) – are not incidents of alleged discrimination.

[6] The applicant denies that the Application is untimely. He states that the most recent allegations of discrimination in the Application relate to incidents that occurred less than one year prior to the filing date of the Application. Specifically, the respondent LaRosa continued to exclude him from attending School Council and committee meetings (February 2008), and the exclusion prevented him from joining the School Council (September 2008).

[7] Subsection 34(1) of the *Code* provides:

If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,

- (a) within one year after the incident to which the application relates; or
- (b) if there was a series of incidents, within one year after the last incident in the series.

[8] In my view, the Application includes incidents of alleged discrimination within one year of the filing date of the Application. The Application alleges that the respondents subjected him to a series of discriminatory acts in 2007 and 2008. There are specific allegations that the applicant was excluded from the school as a parent from June 2007 to February 2008, and that he continued to be excluded from Council and committee meeting at the school until at least September 2008, which prevented him from joining the School Council. The applicant filed his Application on October 1, 2008. The respondents’ request to dismiss the Application because it is untimely is therefore dismissed.



## JURISDICTION

[9] The respondents state that the Application is outside the Tribunal's jurisdiction because the allegations contained in it relate to rights and duties under the *Education Act*, R.S.O. 1990, c. E.2, as amended. Specifically, section 19 of the *Code* states that the *Code* does not apply to affect the application of the *Education Act* with respect to the duties of teachers; the respondent Dawson is a teacher within the meaning of the *Education Act*; and the majority of allegations in the Application relate to the exercise of her duty and discretion under the *Education Act* to exclude the applicant from the school.

[10] The applicant denies that the Application is outside the Tribunal's jurisdiction. He states that he is relying on the *Code*, not the *Education Act*, to address the acts of discrimination, and that the *Code* has authority over other legislation in Ontario. He further states that the Application is about acts of discrimination against him, not what a teacher can or cannot do with respect to his or her duties.

[11] Section 19 of the *Code* provides:

(1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the *Constitution Act, 1867* and the *Education Act*.

(2) This Act does not apply to affect the application of the *Education Act* with respect to the duties of teachers.

[12] In my view, the Tribunal's jurisdiction over the Application is not ousted by section 19 of the *Code*. I disagree with the respondents' position that section 19 of the *Code* totally ousts the Tribunal's jurisdiction with respect to the duties of teachers, but, for the reasons that follow, it is not necessary for me to determine this issue. With respect to the allegations against the respondent Dawson, the authority to exclude an individual from a school falls under the duties of principals as set out in subsection 265(1) of the *Education Act*, not the duties of teachers as set out in subsection 264(1) of



the *Education Act*. In addition, the allegations against the respondents Giuliani and LaRosa have nothing to do with the duties of teachers. The respondents' request to dismiss the Application pursuant to section 19 of the *Code* is therefore dismissed.

### **ABUSE OF PROCESS**

[13] The respondents state that the Tribunal should dismiss the Application as an abuse of process because it seeks to revive allegations that were resolved in six memoranda of settlement, which were approved and executed by the Ontario Human Rights Commission in October 2008. Specifically, all six of the settled human rights complaints contained allegations about the respondent Board's policies and procedures with respect to anaphylactic students; the applicant is the uncle of one of the complainants and the cousin of another; the applicant attended several of the mediation sessions as a representative of the complainants; and the applicant is seeking remedies against the respondent Board, which were already agreed to in the memoranda of settlement.

[14] The applicant denies that his Application is an abuse of process. He states that the six settlements, which involved children who sought accommodation of their disability, have no relevance to this Application, which involves denial of access to facilities and services because of his association with persons identified by a prohibited ground of discrimination. Specifically, the respondents excluded the applicant from attending the school as a parent and from participating in community matters at public forums at the school because of his involvement in a human rights process on behalf of children with a disability.

[15] In my view, the Application is not an abuse of process. The applicant was not a complainant in any of the six settlements, and while there is some minimal overlap between this Application and one of the settled complaints (both the Application and one of the complaints raise an alleged incident at the respondent Giuliani's house in April 2007), the majority of the applicant's allegations of discrimination are distinct from

those in the six settled human rights complaints. If the respondents have concerns that the applicant is seeking remedies against the respondent Board, which were already agreed to in the six memoranda of settlement, the appropriate time to raise this issue is during the remedies stage of the hearing. The respondents' request to dismiss the Application as an abuse of process is therefore dismissed.

### ***PRIMA FACIE CASE***

[16] The respondents state that the Tribunal should dismiss the Application because it fails to make out a *prima facie* case of a contravention of any provisions of the *Code*. First, the *Code* defines "family status" as being in a parent and child relationship, but the Application does not contain any allegations that relate to the applicant's status as a parent or a child. The applicant only refers to the fact that he is the uncle and cousin of the two of the complainants in the six settled human rights complaints. Second, the Application fails to establish any association between the applicant and persons who have a disability, and there are no allegations that, if proven true, could establish that the respondents discriminated against the applicant because of his alleged association with persons who have a disability.

[17] The applicant denies that the Application fails to make out a *prima facie* case of discrimination. He states that the definition of "family status" in the *Code* is not intended to be exhaustive and should reflect his position in an extended family. He further states that the Response admits that the respondents knew that there was an association between him and students with anaphylaxis, and that the respondents discriminated against him by excluding him from the school and continuing to ban him from activities, which other community members are able to participate in, because of his relationship with, and advocacy on behalf of, children with a disability.

[18] Subsection 10(1) of the *Code* defines family status as "the status of being in a parent and child relationship." I agree with the respondents' submission that the Application does not contain any allegations that relate to the applicant's status of being



in a parent and child relationship. The Tribunal therefore orders that the ground of “family status” be struck from the Application.

[19] Section 12 of the *Code* states that a right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination.

[20] Where a request to dismiss an application on the basis that it fails to make out a *prima facie* case of discrimination is brought at a preliminary stage of the proceeding, there is no “evidence” before the Tribunal, but only “allegations”. In order to maintain the Application, it is sufficient at this stage if the applicant raises allegations which, if accepted as true, would be enough to establish a *prima facie* case: see *Greenhorn v. 621509 Ontario Inc. (Belleville Dodge Chrysler Jeep)*, 2006 HRTO 22 (CanLII), paras. 21-22.

[21] In my view, the Application raises allegations which, if accepted as true, would be enough to establish a *prima facie* case of discrimination. The Application alleges that the respondents knew that he was an advocate for students with a disability (anaphylaxis), and that the respondents subjected him to differential and adverse treatment because of his association and dealings with those students. The respondents’ request to dismiss the Application on the basis that it fails to make out a *prima facie* case discrimination is therefore dismissed, without prejudice to the respondents’ right to make a further request after the applicant has presented his evidence at the hearing.

## ORDER

[22] The Tribunal makes the following Orders:

- (a) The ground of “family status” is struck from the Application.



(b) The respondents' request to dismiss the Application because it is untimely, outside the Tribunal's jurisdiction, an abuse of process, and fails to make out a *prima facie* case of discrimination in relation to section 12 of the *Code*, is dismissed.

[23] I am not seized of this matter.

Dated at Toronto, this 30<sup>th</sup> day of January, 2009.

"Signed by"

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Ken Bhattacharjee  
Vice-chair





# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**BETWEEN:**

**Nacon Dioba**

**Applicant**

**-and-**

**Toronto Public Library**

**Respondent**

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## DECISION

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**Adjudicator:** Jay Sengupta  
**Date:** September 18, 2009  
**File Number:** 2008-00778-1  
**Citation:** 2009 HRTO 1503  
**Indexed as:** Dioba v. Toronto Public Library

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APPEARANCES BY

Nacon Dioba, Applicant

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No one appearing

Toronto Public Library, Respondent

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Clifford J. Hart, Counsel

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## INTRODUCTION

[1] This is an Application filed November 20, 2008, alleging discrimination in the provision of goods, services and facilities on the grounds of race, ancestry, place of origin, ethnic origin, creed, sex and sexual orientation and that he was subjected to sexual harassment, solicitation/advance and reprisal, contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "Code").

[2] A preliminary hearing in this matter was held in Toronto on September 18, 2009, pursuant to two earlier Interim Decisions of the Tribunal, 2009 HRTO 165 (CanLII) and 2009 HRTO 433 (CanLII). The purpose of the hearing was to consider the submissions of the parties on the issues of delay/timeliness, no *prima facie* case and allegedly inappropriate allegations made by the applicant.

[3] The Confirmation of Hearing was sent to the parties on June 10, 2009. In it, the parties were advised that the hearing would commence at 9:30 a.m. on September 18, 2009 at 655 Bay Street, 14<sup>th</sup> Floor, in Toronto. The Notice was sent to the applicant at the address provided by him in his Application and was not returned.

[4] At the time and place set for the commencement of the hearing, the respondent was present and represented. The applicant was not present. I advised those present that the hearing would commence at 10:00 a.m. or when the applicant arrived, whichever occurred first. At 10:00 a.m., the applicant was still not present.

[5] There is no indication that the applicant did not receive notice of the hearing. I am satisfied that the applicant received timely and proper notice of the hearing.

[6] In the absence of the applicant and in the absence of any explanation for his failure to attend as required, I dismissed the Application at the hearing.



[7] Following the hearing, an email was received from the applicant later in the day stating that he would not be attending the hearing as scheduled as he had another appointment that he could not reschedule. This email was copied to counsel for the respondent. The applicant provides no explanation for this late communication and it does not alter my decision to dismiss the Application.

## REASONS

### Dismissed as Abandoned

[8] As the applicant received timely and proper notice of the hearing and failed to attend the hearing, I am satisfied the Application may be dismissed as abandoned.

[9] In addition, I have considered the written submissions of both parties on the preliminary issues of delay/timeliness and no *prima facie* case as the respondent indicated at the hearing that it was content to rely on the written submissions already filed.

### Delay/Timeliness

[10] Section 34 of the *Code* provides:

(1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,

(a) within one year after the incident to which the application relates; or

(b) if there was a series of incidents, within one year after the last incident in the series.

(2) A person may apply under subsection (1) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

[11] In its Interim Decision 2009 HRTO 433, the Tribunal found that the allegations referred to in the Reply filed by the applicant that are alleged to have



taken place up to ten years prior to the October 18, 2008 incident (the “reply allegations”) did not constitute a series of incidents within the meaning of s. 34(1). The Tribunal sought clarification from the applicant whether he intended to ask the Tribunal to exercise its discretion to consider the reply allegations as part of this Application.

[12] Although the applicant’s April 17, 2009 letter responding to the Interim Decision does not clearly state that he seeks to have the Tribunal exercise its discretion pursuant to s.34(2) of the *Code* to consider the reply allegations, I have assumed for the purpose of this Decision that he intended to do so.

[13] Section 34(2) allows the Tribunal to accept an application made beyond this time limit if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

[14] In order to be satisfied that the delay was incurred in good faith, the Tribunal would require a reasonable explanation as to why the applicant did not pursue his rights under the *Code* in a timely manner. Based on a careful review of all the materials, I find the applicant has given the Tribunal no valid reasons he could not pursue his rights under the *Code* with respect to the reply allegations in a timely manner. Accordingly, it is not necessary to determine whether substantial prejudice would result to the respondents if the Application were to proceed.

[15] As a result, the only allegations properly before the Tribunal are the ones relating to the events of October 18, 2008.

#### **No *Prima Facie* Case/No Jurisdiction**

[16] The respondent states that the Tribunal should dismiss the Application because the applicant has failed to establish that he was denied services or that any *Code* protected grounds were involved.

[17] The onus is on the applicant to establish a *prima facie* case of discrimination. A *prima facie* case is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a finding in the applicant's favour in the absence of an answer from the respondent (*Ontario Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (S.C.C.), at para. 28. Upon establishing a *prima facie* case, the burden shifts to the respondent to provide a credible and rational explanation demonstrating, on a balance of probabilities, that its actions were not discriminatory. It is well-established that the threshold for establishing a *prima facie* case of discrimination is not high.

[18] I find, having reviewed the materials submitted by the parties, that the applicant fails to make out a *prima facie* case of a contravention of any provisions of the *Code* during his interactions with the respondent in October, 2008.

[19] Moreover, despite making broad assertions that his sexual orientation, race, ancestry, place of origin, ethnic origin and creed were known to employees of the respondent, he alleges no facts in support of these conclusions. I am not satisfied the Application establishes any connection between the Code grounds asserted and the services provided by the respondent. Furthermore, the applicant concedes on several occasions that he left the premises of the respondent following the arrival of a security guard and was not asked to leave by employees of the respondent.

[20] For all the reasons stated above, the Application is dismissed.

Dated at Toronto this 18<sup>th</sup> day of September, 2009.

*"Signed by"*

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Jay Sengupta  
Vice-chair







# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**BETWEEN:**

**Thao Ngoc Chau**

**Applicant**

**-and-**

**Olymel S.E.C./L.P.**

**Respondent**

**-and-**

**United Food & Commercial Workers Canada,  
Locals 175 & 633**

**Intervenor**

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## DECISION

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**Adjudicator:** Faisal Bhabha  
**Date:** September 1, 2009  
**File Number:** 2008-00149-I  
**Citation:** 2009 HRTO 1386  
**Indexed as:** Chau v. Olymel S.E.C.L.P.

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APPEARANCES

Thao Ngoc Chau, Applicant            )  
  )  
  )       Cecil Norman, representative

Olymel S.E.C.L.P., Respondent        )  
  )  
  )       Stephen Bernardo, Counsel

United Food & Commercial Workers    )  
Canada, Locals 175 & 633, Intervenor )       Marcia Barry, Counsel  
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## INTRODUCTION

[1] This is an Application filed on July 30, 2008 under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19 as amended, (the "Code"). The applicant alleges that he was discriminated against and harassed in his employment on the basis of race, ancestry, place of origin and ethnic origin.

[2] The Tribunal issued an Interim Decision, 2009 HRTO 562 (CanLII), dealing with a number of preliminary issues including a request to intervene by the Union and a request for particulars by the respondent. The applicant filed particulars two days after the deadline set in the Interim Decision. The respondent took the position that the applicant's particulars were insufficient.

[3] The hearing was held in Toronto on June 10, 2009.

## PRELIMINARY ISSUES

[4] At the outset of the hearing, the parties each raised preliminary issues. First, the applicant took the position that two individuals, John He and Michel Boudreault, were personal respondents and ought to be named in the style of cause and be expected to appear before the Tribunal. The respondent adamantly denied the two men were named as personal respondents. Counsel argued that there is no indication that the applicant ever tried to serve documents on these individuals, or that the Tribunal gave them notice of these proceedings. Based on the submissions of the parties, and my own review of the Tribunal file, I concluded neither was named as a personal respondent. I refused to order that they be added this late in the proceedings.

[5] The applicant next requested that the case be referred to the Ontario Human Rights Commission (the "Commission") for a "systemic investigation". No authority for such a referral was provided, though it appears that the applicant may have been invoking the power contained in section 45.4 of the *Code*:



45.4 (1) The Tribunal may refer any matters arising out of a proceeding before it to the Commission if, in the Tribunal's opinion, they are matters of public interest or are otherwise of interest to the Commission.

(2) The Commission may, in its discretion, decide whether to deal with a matter referred to it by the Tribunal.

[6] I heard submissions from the parties on the issue. The applicant's representative argued that all of the witnesses who the applicant intended to call were frightened to testify (due to alleged intimidation by the employer), necessitating the immediate initiation of a systemic investigation by the Commission. Respondent's counsel argued that the request was an abuse of process intended solely to ruin the respondent company's reputation with unproven claims.

[7] I ruled orally against the applicant. The applicant's request was made at the opening of a scheduled two-day hearing. To grant this request would have necessitated ordering a substantial adjournment, making a referral to the Commission, waiting for the Commission to decide whether to deal with the issue, and then determining next steps. This was not the most fair, just and expeditious way of proceeding.

[8] The only reason provided in support of the applicant's request for referral was that witnesses had been allegedly intimidated into not testifying in this hearing. No evidence was adduced to prove this claim. Not only did the applicant not raise the issue of witnesses in advance of the hearing, he failed to comply with his essential pre-hearing disclosure obligations, contained in Rules 16 and 17, requiring disclosure of witness names and anticipated testimony. To date, the applicant has not identified the proposed witnesses. Moreover, there is no evidence that the applicant made any attempts to compel the attendance of any witness through service of a summons. In the face of these circumstances, there was no basis for granting the applicant's preliminary request.

## EVIDENCE

[9] The applicant, Thao Ngoc Chau, who is originally from Vietnam and gave his testimony through an interpreter, testified that he had worked with the respondent company since 1995 with virtually no problems. He testified that more than half of the respondent's employees are of Vietnamese or Chinese origin, and that it was a tolerant workplace for members of these communities.

[10] Upon the commencement of Michel Boudreault's tenure as supervisor, Mr. Chau testified that things began to change. He stated that Mr. Boudreault complained that Mr. Chau's English was poor, his accent unintelligible and that he would likely eventually lose his job for it. He was unable to provide any supporting details about the circumstances in which these statements were allegedly made and further testified that he did not know if Mr. Boudreault was serious or joking. He stated that the comments, nonetheless, caused him significant consternation and hurt feelings.

[11] Mr. Chau testified that the situation with Mr. Boudreault worsened, starting around June 2007. First, Mr. Chau had been delegated for a month to train another employee in his job. Then, he learned why: on August 28, 2007, he was called into a meeting with Mr. Boudreault and was advised that he was being bumped out of his job. Working a Grade 5 position, Mr. Chau says he was told to choose between two Grade 3 level jobs, which he felt to be a demotion.

[12] Mr. Chau believes that he was treated unfairly, effectively given no choice in decisions affecting his career and no opportunity to meaningfully deliberate about his needs and preferences. A big part of his discontent with the process was the way he felt Mr. Boudreault treated him. He testified that he felt bullied and ridiculed and, as a result, was not given the same opportunity to exercise his bumping rights as other employees in the same situation. He felt his English-language deficiencies were used against him.



[13] Mr. Chau further testified that he believed his employer and union had worked together to force him into a lower level position. He stated: "Michel [the manager] didn't treat me fairly; Gill [the union rep] didn't help me but rather took the side of the employer."

[14] Mr. Chau also gave evidence about an incident that occurred in June 2008 when a Quality Control staff member, whose name he could not recall, deposited a few pieces of chicken on the lunch table where Mr. Chau and some colleagues were seated, and stated "This is dog food for you." Mr. Chau testified that he understood the co-worker to be referring not to himself alone, but to the table, which was occupied by mainly Chinese and Vietnamese employees. Mr. Chau testified that he and the others at the table felt angry and frustrated by the comment. He believed someone complained about it to a union representative, Linh Lien, and asked her to raise the issue with the supervisor. Mr. Chau had no knowledge of any follow-up.

[15] On cross-examination by respondent's counsel, Mr. Chau acknowledged that he understood the company had shut down its weekend shift in August 2007 and that the person who replaced him in his job, Ruben Bulawan, was a more senior employee who held a Grade 6 position on the weekend shift. Mr. Chau understood that when Mr. Bulawan was laid off, his bumping rights under the collective agreement were triggered, entitling him to bump into Mr. Chau's job. In turn, he could also bump into a position held by any lower-seniority employee.

[16] Mr. Chau emphatically maintained on cross-examination that when he was called into Mr. Boudreault's office on August 28, 2007, he was not presented with options, but rather was told that he would be bumping into the lowest seniority, Grade 3 position. He testified that he felt this was unfair because Mr. Bulawan had not been forced to bump into the lowest-seniority Grade 5 position, held by an individual whom all the parties referred to as Jogi, which would have preserved Mr. Chau in his position.

[17] On cross-examination by the intervenor's counsel, Mr. Chau testified that he had filed a grievance, dated August 30, 2007, making the following complaint: "Not bumping



according to seniority; Jogi is lower in seniority than Chau but not bumped; Chau not satisfied." He testified that his union representative, Ms. Lien, who is fluent in Vietnamese, assisted him in filing the grievance.

[18] Union counsel tried unsuccessfully to assist Mr. Chau to recall attending a grievance meeting in mid-September 2007 where he was given the option of bumping into Jogi's Grade 5, split-shift position. Mr. Chau stated that his only specific recollection was of his August 28 discussion with Mr. Boudreault, but acknowledged that he attended many meetings with union and management officials.

### REQUEST TO DISMISS

[19] Upon the completion of the applicant's evidence, counsel for the respondent requested that the Tribunal dismiss the Application for failing to establish a *prima facie* case of discrimination. Counsel argued, first, that the request should be granted for procedural reasons. Because of the applicant's serious breaches of the Rules regarding particulars and disclosure, there could be no *prima facie* case to meet because there was no evidence properly before the Tribunal. He asked the Tribunal to refuse to accept any of the applicant's evidence and to dismiss the case on that basis.

[20] Respondent's counsel alternatively urged me to find, even on the evidence before me, that there is no *prima facie* case. Counsel argued that the allegations were extensive, spurious and scurrilous, and that the evidence is scant.

[21] Regarding the "language issue", counsel argued that the applicant provided no dates, locations or context. Counsel also noted that there is no evidence that the applicant has a language deficiency, other than his own claims to that effect. Further, he argued that there is no evidence of a nexus between the applicant's alleged language deficiency and his claim of ethnic or racial discrimination.

[22] Regarding the "chicken incident", respondent's counsel argued that the allegation concerns statements attributed to a bargaining unit member, not management. Counsel

submitted that there is no evidence, other than hearsay, that the matter was ever brought to management's attention. If it was reported, there is no evidence as to what was said or done. On this basis, the respondent asked me to rule that there is insufficient evidence to make a finding of company liability with respect to the "chicken incident".

[23] Finally, regarding the "demotion", respondent's counsel argued that this issue related entirely to the operation of the collective agreement. Counsel argued that the applicant understood the difference between a "bump" and a "demotion", and that the respondent's evidence would clearly establish that the applicant was offered various positions at Grade 5, Grade 4 and Grade 3, and that he made an informed choice from among the available jobs, based on his shift preferences.

[24] The union intervenor was also afforded an opportunity to make submissions. Counsel echoed the respondent's argument that the applicant was bumped in accordance with the collective agreement. On that issue, the union argued that the August 2007 grievance, filed by the applicant, clearly demonstrated that the applicant understood what bumping meant and that he was subject to the same bumping process and rights as every other affected employee.

[25] In opposing the request, the applicant's representative argued that his client's non-compliance with the Rules was minor and that the respondent suffered no prejudice. He noted that the applicant attended the hearing with no witnesses or evidence (other than himself), and therefore had nothing to disclose in advance of the hearing.

[26] The applicant's representative further argued that his client had met the test for establishing a *prima facie* case: he proved that he is an individual from Vietnam, he has limited English, he worked for the employer, he was denied his basic right to exercise bumping rights and was demoted from Grade 5 to Grade 3, and he was treated differentially because of his race and/or language deficiencies (which are a proxy for racial discrimination). He further argued that the respondent had failed to establish a



*prima facie* defence. On the basis of the foregoing factors, the applicant's representative urged me to infer from the circumstantial evidence a nexus between Mr. Chau's race, ethnic origin, place of origin and ancestry, and the treatment to which he was subjected at the hands of his employer.

## ANALYSIS

[27] The applicant bears the onus of establishing a *prima facie* case of discrimination, which can be described as a factual foundation for allegations which, if believed, provide a complete and sufficient basis for finding in the applicant's favour, before considering any responding evidence. Only after the applicant establishes a *prima facie* case does the onus shift to the respondent to provide a credible and rational explanation, or raise a statutory defence, to demonstrate on a balance of probabilities that the applicant's allegations do not amount to discrimination.

[28] It is not difficult to establish a *prima facie* case of discrimination. The Tribunal does not hold applicants to an exacting standard of proof at this stage of the proceedings, given the Tribunal's access-to-justice mandate, and the longstanding interpretive principle of giving "large and liberal" meaning to human rights legislation: *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114.

[29] Yet, where an applicant clearly fails to establish a *prima facie* case, it is neither legally correct nor fair, just and expeditious to proceed with the Application and to require the respondent to bear the onus of making out a reasonable defence: see *Jagait v. IN TECH Risk Management* (2009), HRTO 779 (CanLII) at para. 19.

[30] I am persuaded that the applicant has failed to make allegations and adduce sufficient evidence that could enable me to make a finding of discrimination, regardless of the evidence that may or may not be introduced by the respondent.



[31] This finding is based on the evidence put to me in the applicant's presentation of his case. While the respondent argued that the applicant's technical breaches of the Rules are reason enough to dismiss the Application, it is unnecessary for me to reach that conclusion.

[32] There are no facts before me that could give rise to a finding that the respondent administered the lay-off in August 2007 in a discriminatory manner. Mr. Chau was dissatisfied with the fact that Mr. Bulawan, a more senior employee, bumped him when there was a more junior employee who could have—and in Mr. Chau's view, should have—been bumped. He does not allege that this bump was discriminatory.

[33] It appears that a substantial amount of Mr. Chau's dissatisfaction with the bumping process concerns the union's conduct. However, the union is not a respondent in this Application and the question of union liability is not before me. Other proceedings currently underway are addressing additional issues arising out of the same facts. Mr. Chau filed a grievance related to the bumping process and currently has a duty of fair representation complaint pending against the union with the Ontario Labour Relations Board.

[34] I am also unable to find a sufficient evidentiary basis for Mr. Chau's allegation that the result of the bumping process was, in effect, a demotion instigated by Mr. Boudreault, and related to Mr. Chau's lack of English proficiency. The allegations against Mr. Boudreault are so lacking in detail that they do not amount to a case requiring a response from the respondent. Mr. Chau gave insufficient detail as to the time and place of the alleged threat. Moreover, there were conflicting claims. In his Application, Mr. Chau alleged that Mr. Boudreault expressly threatened him with termination, while in his testimony he described the threat as implied, and stated that it may have been a joke. Either way, in the absence of a clear and consistent account of the allegation, supporting details and any corroborating evidence, I cannot find a *prima facie* case of discrimination arising from the allegations relating to Mr. Boudreault.

[35] Even if I were to accept that Mr. Boudreault made a statement of some sort in reference to the applicant's English-language proficiency, the mere fact of the comment is not sufficient to establish a *prima facie* case of racial discrimination: see *Henry v. Kuntz*, 2004 HRTO 7 at paras. 356-357. While language is not a prohibited ground of discrimination, it can be a defining characteristic of ethnicity or race, and as a consequence can give rise to interests protected under the *Code*: see *Espinoza v. Coldmatic Refrigeration of Canada Ltd.* (1995), 95 C.L.L.C. 230-026, 29 C.H.R.R. D/35 (Ont. Bd. Of Inquiry), aff'd 1998 CarswellOnt 3825 (Ont. Dist. Ct.). The onus is on the applicant, however, to present sufficient facts to support a finding that language is being used as a proxy for racial or ethnic discrimination, which the applicant in this case failed to discharge.

[36] Finally, with regard to what appears to be an unrelated, independent incident, which I have called the "chicken incident", the evidence is simply too scant and speculative to find a *prima facie* case. The applicant argued that the main cause of the racially poisoned workplace was Mr. Boudreault, yet the chicken incident occurred a long time after Mr. Boudreault had left the company. The applicant did not call any of the individuals who witnessed the incident. He also failed to provide key details of the incident, including the name of the individual alleged to have made the discriminatory comment. It is clear, however, that the individual was not a manager. Therefore, even if I accept that the incident occurred, there is still no evidence before me regarding company knowledge of the incident, beyond Mr. Chau's second and third-hand hearsay testimony. On the evidence, it would be impossible for me to find the company vicariously liable for the actions of a nameless, non-managerial employee, or liable for tolerating discrimination about which it had no knowledge or information.



ORDER

[37] The Application is dismissed.

Dated at Toronto this 1<sup>st</sup> day of September, 2009.

*"Signed by"*

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Faisal Bhabha  
Vice-chair

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