

HUMAN RIGHTS TRIBUNAL OF ONTARIO

MICHAEL JACK

Applicant

- and -

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

Respondent

CLOSING SUBMISSIONS OF THE RESPONDENT

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I. INTRODUCTION

1. On July 18, 2008, Michael Jack (“Applicant” and “Jack”) was offered a one year appointment with the Ontario Provincial Police (“OPP”) at its Peterborough County Detachment as a probationary constable. According to the terms of the offer, Jack would be eligible for a permanent position if he could successfully meet the requirements of a probationary constable during his one year probationary term.¹ Jack was coached and evaluated nine times over the course of his probationary year but was unable to demonstrate the required level of competence. On December 15, 2009, Jack tendered his resignation.
2. On December 14, 2010, the Applicant filed an Application with the Human Rights Tribunal (“Tribunal”) against the OPP claiming that his race, ancestry, citizenship, ethnic origin, and place of origin were factors in his failure to succeed as a probationary constable and that he was subjected to discrimination, harassment and a poisoned work environment.² He further claims that he was discriminated against based on his association with a person identified by a protected ground under the *Code*, and claims reprisal or threat of reprisal under the *Code*. In his Application, he self-identifies as being “a member of a racialized minority group” because he is a “Russian-Jew who speaks English with a thick Russian accent.”³
3. The Tribunal heard from twenty witnesses over the course of twenty-two non-consecutive hearing days on the liability portion of his claim between May 22, 2012 and September 15, 2016.⁴ Before the conclusion of the hearing, four of the Respondent’s witnesses retired from the OPP.⁵
4. It is the position of the Respondent that the Applicant has failed to discharge his onus of proving his claim of discrimination, harassment and poisoned workplace contrary to the Ontario *Human Rights Code* (“Code”). His allegations of adverse treatment, racism, reprisal and conspiracy are unproven and based solely on his subjective feelings. The evidence demonstrates that the Applicant was not offered a permanent position as an OPP

constable because he was unable to meet the requirements of the position. The Respondent has set out its response to each of the Applicant's eight broad allegations of discrimination, below.

II. OVERVIEW

Background facts

5. The Applicant was offered a one year appointment with the OPP as a probationary constable and was assigned to the Peterborough County Detachment following his successful completion of basic constable training. Jack completed the requisite training at the Ontario Provincial Police Academy and Ontario Police College.⁶ On January 12, 2009, Jack arrived at the Peterborough County Detachment to start his one year appointment as a probationary constable.
6. In accordance with OPP Orders Section 6.4 Human Resources dated September 2008 (Exhibit 126), a coach is assigned to each OPP recruit. The coach officer is responsible for preparing monthly Performance Evaluation Reports ("PER"). The PERs are standardized documents and are used to assess the performance of all probationary constables using information gathered during the evaluation month. The PERs contain seven broad areas of assessment which are further broken down into 28 more specific sub-areas of assessment [see Appendix A].⁷ In each area, the probationary constable is rated: (i) meets requirements; (ii) does not meet the requirements; or (iii) no basis for rating.
7. If a probationary constable does not meet the requirements in a monthly PER, the coach prepares a Work Improvement Plan to assist the probationary constable in understanding the identified concern and what is needed to become successful.
8. Under the OPP Probationary Constable Evaluation Report Guidelines dated November 2008 (Exhibit 24), each PER is reviewed by the supervising sergeant, Detachment Commander, Regional Commander and Career Development Bureau. The PER is shared with the recruit.
9. Officers at the OPP Peterborough County Detachment were divided into four different platoons (Platoon A, Platoon B, Platoon C, and Platoon D). The Applicant was posted to

Platoon A under the supervision of Sergeant Rob Flindall. Constable Shaun Filman was assigned to be his coach.

10. The Applicant appeared to be progressing well in his first five months but then his performance began to decline [see Appendix B].⁸ In order to determine whether he could meet the requirements, he was moved in September 2009 to Platoon D, with a new coach officer, Constable Nie and a new supervisor, Sergeant Butorac.
11. Nine detailed PERs were prepared over the duration of Jack's placement at the Detachment. He received copies of all of his PERs.
12. Jack's performance did not improve on Platoon D, in fact, it declined.
13. He was advised of the Respondent's intention to release him from employment on December 13, 2009. The Applicant tendered his resignation on December 15, 2009.⁹

Position of the Parties

14. Jack alleges that: "[his] dismissal from employment was orchestrated by a few officers from the Peterborough Detachment who were biased against me and who targeted me as a result of my status as a foreigner and my ethnic differences. The majority of the officers in the Detachment were locals from the Peterborough area." [Application, para. 57] He asserts that the Detachment was poisoned towards him from the moment of his arrival, stating: "Once placed at the Detachment of the OPP, it became readily apparent that outsiders were not welcome. I was immediately subjected to numerous acts of harassment and discrimination due to my status as a foreign borne (*sic*) individual and further due to my educational background and heavy Russian accent." [Application, para. 13]
15. The Respondent submits that the Applicant is asking the Tribunal to infer from his "educational background and heavy Russian accent" [Application, para. 13] that officers at the Detachment conspired to have him terminated and to create a poisoned workplace for him based on racism. An inference must be supported by evidence and the Applicant has not produced any evidence that could support an inference that any of his race, ancestry, place of origin, citizenship, association, or ethnic origin was a factor in the decision not to recommend him for permanent employment.¹⁰ This Tribunal is not

entitled to draw an inference of discrimination based on the Applicant's speculative beliefs.¹¹

16. The Applicant is also asking the Tribunal to ignore the evidence given by the Respondent's witnesses that he had significant performance issues. There is no basis for the Tribunal to find that the evidence of these witnesses was not trustworthy or reliable.
17. The Applicant has not met his burden of providing the clear, convincing and cogent evidence required to discharge his onus of proving that the Respondent violated his *Code* rights.¹²
18. The Respondent requests that this Application be dismissed.

III. LEGAL FRAMEWORK

19. The provisions of the *Code* that are engaged by this Application provide as follows:

5(1) Every person has a right to equal treatment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability.

8 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, without reprisal or threat of reprisal for so doing.

9 No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

12 A right under Part I is infringed where the discrimination is because of a relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination.

20. It is well settled that in a *Code* case before the Tribunal, the Applicant has the burden to establish, on a balance of probabilities, that he or she was a member of a group protected by the *Code*; that he was subjected to adverse treatment; and that his or her race, colour,

ancestry, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age record of offences, marital status, family status, disability, place of origin or ethnic origin was a factor in the adverse treatment. Clear, convincing and cogent evidence is required to satisfy the balance of probabilities test.¹³

21. As explained by Justice Abella in *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'hôpital Général de Montréal*,¹⁴ the applicant's burden of proving discrimination is not discharged by impugning an employer's conduct on the basis that it had a negative impact on the applicant who was a member of a protected group, at para. 49:

. . . there is a difference between discrimination and a distinction. Not every distinction is discriminatory. It is not enough to impugn an employer's conduct on the basis that what was done had a negative impact on an individual in a protected group. Such membership alone does not, without more, guarantee access to a human rights remedy. It is the link between that group membership and the arbitrariness of the disadvantaging criterion or conduct, either on its face or in its impact, that triggers the possibility of a remedy. It is the claimant that bears this threshold burden.

At the heart of discrimination is the idea that people should not be subjected to an arbitrary disadvantage because of an irrelevant personal characteristic enumerated in the *Code*.

22. In *Morin v. Canada (Attorney General)*,¹⁵ the Canadian Human Rights Tribunal considered what is required to establish a claim of harassment in the employment context. In dismissing the Applicant's claim of harassment, the Tribunal held that the applicant must establish that the conduct was unwelcome, serious and repetitive. Mr. Morin was a black officer with the Royal Canadian Mounted Police who alleged that he was discriminated against during his field training and then terminated from his employment due to his race. He complained that during his recruit field training, he was called derogatory names, he was required to re-write reports and was told that he was not suited to being a police officer. Additionally, he was given two nicknames: "OBO" (in reference to his confusion over the meaning of the term used in car advertisement) and "Kirby Puckett Ass" (in reference to a well-known, large, black baseball player). The Tribunal found that harassment had not occurred.

23. In particular, the Tribunal found that the first nickname given to the applicant (“OBO”) was not a reference to slavery, nor a stereotype of the applicant’s race, but rather based on a mistake of the applicant that his colleagues found humorous. As to his second nickname, the Tribunal found that a reasonable victim would find this to be offensive. However, the applicant did not demonstrate that the conduct was unwelcome, serious or repetitive so as to constitute harassment.
24. In *General Motors of Canada v. Johnson*,¹⁶ the Ontario Court of Appeal held that the test for poisoned workplace is an objective test. The plaintiff’s subjective feelings are insufficient and there must be evidence that the objective reasonable bystander would agree that a poisoned workplace had been created. Johnson was a manager at a General Motors plant assigned to instruct a new employee. The employee did not arrive for training as scheduled. Based on the statement of another colleague, Johnson concluded that the new employee did not arrive because he harbored negative feelings about Mr. Johnson because of his race. General Motors conducted three investigations, the findings of which did not conclude that Johnson had been discriminated against on the basis of race. Johnson took a significant amount of leave and finally said that he would not return to work.
25. In dismissing the claim of poisoned workplace, the Court stated at para. 66:
- Workplaces become poisoned for the purpose of constructive dismissal only where serious wrongful behaviour is demonstrated. The plaintiff bears the onus of establishing a claim of poisoned workplace. As the trial judge recognized, the test is an objective one. A plaintiff’s subjective feelings or even genuinely-held beliefs are insufficient to discharge this onus. There must be evidence that, to the objective reasonable bystander, would support the conclusion that a poisoned workplace environment had been created.

IV. ANALYSIS

26. I will now proceed to discuss each of the Applicant’s eight allegations of discrimination in turn.

First Allegation of Discrimination: Nickname 'Crazy Ivan' and Accent

*The Applicant alleges that he "was subjected to unwanted comments, jokes and harassment and nicknamed 'Crazy Ivan' due to his Russian heritage". He claims that officers would ridicule his accent and was told by Constable Moran to speak with a Canadian accent, which resulted in a poisoned work environment.*¹⁷

27. The evidence with respect to the nickname 'Crazy Ivan' is that no one at the Detachment ever directly referred to the Applicant as 'Crazy Ivan' during his employment. Jack learned of it after he resigned from the Detachment in a conversation with Constable Duignan.¹⁸
28. Sergeant Postma testified that the nickname 'Crazy Ivan' had been used behind Jack's back at the Detachment in a friendly and never in a derogatory fashion.¹⁹ No other witness heard Jack being referred to by the nickname 'Crazy Ivan' behind his back at the Detachment.²⁰
29. The only reference in the evidence to Jack being harassed and ridiculed was his own evidence that he had a subjective feeling that he was "unwelcome" as an outsider and that officers ridiculed him because of his accent.
30. Jack's allegation that Sergeant Rathbun and Constable Gravelle were racially prejudiced against him was denied and not supported by the evidence. Sergeant B. Rathbun, in charge of Platoon C in 2009, testified that Constable Mark Gravelle spoke with him about concerns that he had as a result of taking Jack on a ride along. Gravelle's concerns included that Jack had thirty-two registered guns and had showed Gravelle photos of Jack holding an M16 rifle with a knife in his mouth, like in a Rambo movie. Rathbun gave evidence that he sent an email dated August 5, 2008, to the Operations Manager, Staff Sergeant Ron Campbell and Detachment Commander, Inspector Mike Johnston (Exhibit 93) describing the concerns with Jack as "hair raising".²¹ His intent was to share very concerning information that he had received from his officers with command staff.²²
31. Rathbun categorically denied that the "heritage of Jack had anything to do with his opinion that the information he received was 'hair raising'."²³ He also testified that the reference in the email to the effect that "apparently he is a Russian male who spent time in the Israeli army with the name of Michael Jack" was just a descriptor and nothing else. He stated that the more information that you can give to simplify, or clarify who you are

talking about the better. According to his evidence, his use of the term 'Russian male' was simply a descriptor.

32. Constable Gravelle gave evidence that he first met Jack when he came into the Detachment looking to purchase a *Criminal Code*. Gravelle told Jack that they did not sell copies of the *Criminal Code* at the Detachment. Jack told Gravelle that he had just been hired by the OPP. As a courtesy to a newly hired recruit, Gravelle invited Jack to go with him on a ride along sometime after July 31, 2008.²⁴ He testified he became concerned about Jack when taking him on the ride along. Jack invited him into his home to see his gun collection. He testified that every room in Jack's house was locked and unlocked with different keys, and "[he] had never seen that within the course of my employment or in my personal life." He saw photos of Jack posing in what he described as 'Rambo style' with an M16 and a knife in his mouth.²⁵ He testified that he also found it concerning that Jack asked him whether there was a bullet in the chamber of his gun.²⁶
33. Gravelle recalled making an audio recording in 2013 with Constable Kevin Duignan in a locker room with several other people. In hearing a portion of the recording,²⁷ he testified that the voice referring to Jack as 'Crazy Ivan' was that of Tim Fish, who referred to Jack as a 'complainer'. This officer was not a member of the OPP, but rather a member of the Peterborough Police Service, a separate entity. The audio recording was marked (Exhibit 139) for identification purposes only. No parts of the recording were transcribed. The Applicant did not call Tim Fish or anyone else who was present in the locker room at the time of the recording to give evidence about it. The Respondent submits that the recording (Exhibit 139) is not evidence.
34. Gravelle also testified that he did not make up the nickname 'Crazy Ivan'. He denied describing Jack as 'crazy' or as a 'loose canon'.²⁸
35. Staff Sergeant Campbell testified that he was made aware of concerns regarding Jack's "love of guns" by Sergeant Rathbun prior to Jack's arrival at the Detachment. Campbell testified that this did not bias him towards Jack, stating: "in any situation, there are two sides and different perspectives to a story. You may have one side, and it may look damaging, but there could be a perfectly reasonable explanation for anything."²⁹ He testified that knowing that Jack possessed twenty two guns and not thirty two guns would not have made a difference to Campbell's opinion because: "[Sergeant Rathbun] was

expressing [concern] about a fascination with guns” and not with the number of guns.³⁰ Campbell did not think that Rathbun’s email identifying Jack’s nationality as a Russian male reflected prejudice. Campbell did not agree that his mind was poisoned by Rathbun’s email, which was forwarded by Inspector Johnston to the recruitment section of the Career Development Bureau within the OPP.³¹

36. Campbell testified that he was familiar with Ontario Provincial Police Orders 6.10: Professionalism in the OPP (Exhibit 171). He gave evidence that the Policy imposes specific obligations on managers to ensure that the workplace is free from discrimination and harassment. As the Operations Manager in 2009, he was responsible to report any workplace discrimination or harassment complaint up the chain of command but never had any basis to believe that Jack was being harassed or discriminated against.³²
37. Campbell gave evidence that upon learning of Jack’s complaint to the Ontario Provincial Police Association (“OPPA” and “Association”) that he was receiving inadequate coaching, he organized a meeting on August 19, 2009 with Mitch Anderson from the OPPA, Sergeant Flindall and Jack to discuss his concerns. Campbell invited Jack to bring forward any complaints and told Jack that he could not deal with vague allegations.³³ Jack raised two complaints: inadequate coaching and inappropriate behaviour. When pressed at the meeting to provide particulars of the inappropriate behaviour, “Jack declined”.³⁴ Nor did Mitch Anderson raise a concern with Campbell that he thought Jack was being subjected to harassment or discrimination.³⁵
38. Following the meeting of August 19, 2009, Campbell moved Jack to a different Platoon in order to determine whether Jack was capable of meeting the requirements of a probationary constable.³⁶ He testified that “Jack had significant performance issues.” Campbell sent an email to Staff Sergeant Colleen Kohen of the Career Development Bureau telling her that Jack needs “a good look and some direction”.³⁷ Staff Sergeant Kohen did not raise a concern with him that she thought Jack was being harassed or discriminated against.³⁸
39. The evidence of Constable Filman, Jack’s first coach officer on Platoon A, was that he had not observed Jack being subjected to any discrimination, harassment or ridicule. Filman spent hundreds of hours coaching Jack during his first months at the Detachment.

40. Filman testified that he recalled Jack asking him about speech therapy for his accent. He told Jack that he was not aware of any concerns regarding Jack's accent.³⁹ Filman suggested that Jack contact the OPPA to find out if it could provide assistance.
41. Constable Payne's testimony was consistent with Constable Filman's. After she returned to the Detachment in June 2009, Payne was assigned to be Jack's additional "go-to" mentor on Platoon A. She testified that she never observed any discrimination or harassment of Jack at the Detachment.⁴⁰ She also testified that Jack never told her that he felt discriminated against or targeted. She recalled a conversation where Jack told her that he wanted to go to a speech therapist for his accent. She told Jack that he did not need to do that.
42. Constable Nie, Jack's coach officer on Platoon D, testified that Jack never told him that he felt discriminated against at the Detachment. He gave evidence about a conversation he had with Jack, in which Jack described Canadians as: "subconsciously biased towards people from other countries. He says we like to protect our own home and land from visitors. That when he first came to America, he hated Americans because they treated him poorly. And he said that the longer he stayed here, he grew to like people but others do not like his accent and behaviours. That we are like that in our own countries." Nie told Jack that he was very upset and would not tolerate being accused of bias but continued to do his job "to try and get him hired as a police officer."⁴¹
43. Sergeant Butorac, Jack's supervisor on Platoon D, testified that he did not observe Jack being subjected to any discrimination or harassment on his platoon.⁴² Sergeant Butorac testified that he had not heard any rumours about Jack other than that Jack was having performance issues. He had not heard the nickname 'Crazy Ivan'.⁴³
44. Constable Moran, a constable in Platoon A, testified that she had no recollection of telling Jack to "speak with a Canadian accent" as suggested by Jack in his testimony.⁴⁴ She testified about an incident where Jack had video recorded her on shift. She reported the incident to Sergeant Flindall but wanted to deal with it peer to peer. Her evidence was that she wanted Jack to succeed, so she told Jack not use a recording device.⁴⁵ She testified that nothing about Jack bothered her.⁴⁶
45. Constable D'Amico, another constable in Platoon A, had no recollection of telling Jack to keep quiet when a senior officer is talking, as Jack suggested.⁴⁷

46. Sergeant Flindall's evidence was that he was familiar with the OPP Orders 6.10: Professionalism in the OPP (Exhibit 171). Jack never complained to him about being subjected to discrimination or harassment. He never observed Jack being subjected to discrimination while on his platoon.⁴⁸ He had an open door policy and Jack would often pop in looking for directions and he would give him advice. He also had daily shift briefings and was able to observe his platoon.⁴⁹
47. Flindall heard the nickname 'Crazy Ivan' prior to Jack's arrival at the Detachment.⁵⁰ He testified that he addressed the use of the nickname at a shift briefing. He never heard any one refer to Jack as 'Crazy Ivan' once Jack joined the Detachment.⁵¹ As far as he was concerned, the fact that Jack spoke Russian was valuable to the OPP.⁵²
48. Flindall gave evidence about the meeting of August 19th with Campbell, Mitch Anderson and Jack to address concerns Jack had raised with the OPPA. At the meeting, Campbell encouraged Jack to bring forward any complaints. Flindall testified that he recalled Jack stating that he "felt abandoned" and alluded to inappropriate things said by officers. He testified that Jack did not elaborate or identify the individuals.⁵³
49. To conclude, the evidence to support the complaint that the Applicant "was subjected to unwanted comments, jokes and harassment and nicknamed 'Crazy Ivan' due to his Russian heritage" amounts to nothing more than the Applicant's subjective feelings and speculative beliefs. The nickname 'Crazy Ivan' could not have had a negative effect on the Applicant during his employment. He admits that he did not learn of it until after he left the Detachment. Moreover, if the nickname was used, it was not used widely and it was not used in a derogatory manner. There was also no evidence to support the Applicant's belief that his accent was ridiculed. The evidence was that the Applicant raised his accent with Constable Filman and later Constable Payne. Both constables testified that they reassured him they had no concerns with his accent.
50. There was no evidence of "serious, unwelcome or repetitive conduct" required to establish harassment.⁵⁴ Rathbun's email to Campbell and Johnston describing concerns raised by Constable Gravelle with him were legitimate and not racially motivated. The audio recording made by Constable Gravelle was made in 2013 (over two years after Jack left the Detachment). It has no probative value and does not provide evidence that the Applicant was ridiculed or harassed.

51. The evidence on the first ground does not support a finding of harassment, ridicule or poisoned workplace.

Second Allegation of Discrimination: Differential and Derogatory Treatment

Jack alleges that he was subjected to differential and derogatory treatment including that: his first coach officer was unwilling to train him; ⁵⁵he received negative documentation in relation to damaging a police vehicle; he had not received commendations for work that he collaborated on with other officers who received commendations; he was threatened by Constable D'Amico; he was singled out for his accent; he worked more shifts than others; he received only two progress meetings; he was belittled by Constable Payne; and he was ordered to lay unsubstantiated charges by Constable Filman.⁵⁶

52. The evidence in support of this ground is refuted.
53. Constable Filman denied being disinterested in mentoring and training Jack. He testified that he found completing the PERs to be the most onerous thing about being a mentor and his lateness in submitting these on behalf of Jack, was not a reflection of a lack of interest in him.⁵⁷ At the time that Jack started at the Detachment, Filman was coaching Ken Russaw, another recruit on Platoon A. There were approximately three months of overlap between his coaching of these two recruits.
54. Filman considered his role as mentor as guiding and leading by example.⁵⁸ He spent hundreds of hours patrolling with Jack in his first three months of probation. He taught Jack some of the basic skills including: completing traffic reports; conducting investigations; preparing crown briefs; adding vehicle collisions on NICHE; conducting vehicle stops; conducting RIDE checks; and taking video statements.
55. Constable Filman stated that he thought Jack had a poor attitude towards learning. He described an incident where Jack simply would not speak to him on patrol and would not get out of the police cruiser even though he was Filman's back-up. When Filman confronted Jack, Jack told him that he was tired.⁵⁹ When speaking with other officers at the Detachment, Filman was told that they experienced Jack refusing to talk with them when he felt criticized or when they were unhappy with something he had done.⁶⁰
56. Filman testified that he told Jack that he would be getting his first evaluation and he should expect areas for improvement. Jack replied telling him that "he wouldn't be

- taking any crap.”⁶¹ Filman testified that he had never experienced a similar response from another recruit and “didn’t know how to take that”.
57. He was surprised by Jack’s response to his comment in his first evaluation that he should be more flexible. Jack said: “I should have been more informed to be proactive to answering the phone first, I would have known better and would have done so.”⁶²
58. Filman testified that Jack never told him that he did not understand what he needed to do to improve or asked him for additional explanations.⁶³ When Jack gained his day and night wings, Jack did not tell Constable Filman that he would prefer not to patrol on his own.⁶⁴
59. Constable Filman denied directing Jack to lay ‘unsubstantiated’ charges. The fact that charges are subsequently withdrawn by the Crown, does not make them improper, as suggested by Jack.
60. Filman testified that he had no concern about continuing to mentor Jack after Constable Payne became Jack’s additional ‘go-to’ mentor in June 2009 and was willing to continue to prepare Jack’s PERs after learning that Jack would be changing platoons and coach officers in September 2009. He prepared Jack’s evaluations for months six/seven and eight together with companion Work Improvement Plans.⁶⁵ He was unaware of anything that could have made Jack think that he would be unfair to him in his PERs.⁶⁶
61. Staff Sergeant Campbell testified that he never believed Filman was not fulfilling his responsibilities towards Jack⁶⁷ or that Filman’s late PERs reflected differential treatment. Staff Sergeant Campbell stated: “[i]ts no indication of differential treatment. It’s an indication that the coach officer was late in getting his job done.”⁶⁸ Campbell testified that Constable Payne was not assigned as Jack’s ‘go-to’ coach because Filman was not doing his job. Having an additional ‘go-to’ mentor is not unusual according to Campbell who “has seen other times when a coach officer has been assisted by other officers on platoons with a probationary officer.”
62. Campbell denied Jack’s allegation that he was being targeted when given negative 233-10 documentation for damaging a police cruiser. Staff Sergeant Campbell explained that the decision to give Jack negative 233-10 documentation (Exhibit 20) was made by the Collision Review Committee and the decision was consistent with police orders.⁶⁹

63. Sergeant Flindall gave evidence that officers are accountable for the safe operation of their motor vehicles and responsible for their driving actions.⁷⁰ Because Jack was the driver of the vehicle and not Constable Gilliam, the Collision Review Committee determined that Jack would receive negative documentation. He also testified that receiving a negative 233-10 does not result in any disciplinary action or prevent a probationary constable from becoming a permanent member of the OPP.⁷¹
64. Jack's allegation that he received differential treatment because he did not get credit for work done collaboratively with other officers who did, specifically on the Young's Point break and enter incident, was refuted by Constable D'Amico, another officer on Platoon A.⁷² She testified that she did not receive any positive documentation from Sergeant Flindall for her work on the Young's Point break and enter incident. She testified that she recalls Flindall telling all of the officers involved including Jack that the job was well done.⁷³
65. Constable D'Amico also testified that she had no recollection of ever telling Jack to keep quiet when a senior officer is talking, as Jack testified she did.⁷⁴
66. Contrary to Jack's evidence, Constable Payne did not recall ever telling Jack that despite Filman's coaching, he "sucked" or telling him not to interrupt her because that she was senior to him. She testified that Jack behaved inappropriately towards her⁷⁵ and in one case behaved in an overtly threatening and intimidating manner towards her, demanding her police notes.⁷⁶ She testified that she reported Jack's behaviour to Sergeant Flindall who asked her whether she would like to file a Workplace Discrimination and Harassment Policy (WDHP) complaint. She decided not to make a complaint because Jack would have been fired.⁷⁷ She confronted Jack on July 18, 2009. Jack did not apologize to her. She continued to mentor him but Jack showed unwillingness to follow her directions after their meeting of July 18, 2009.⁷⁸
67. Constable Payne disagreed with Jack's allegation that he "worked more shifts and took less vacation time than any other officer".⁷⁹
68. To conclude on this ground, Jack's allegations that he was subjected to differential and derogatory treatment contrary to the *Code* are unproven. Constable Filman denied being disinterested in coaching Jack. Filman testified that he found completing the PERs onerous and was coaching another recruit during Jack's first three months. He gave

evidence about all the time he spent patrolling with him and teaching him skills. He also testified about how Jack would behave when he felt criticized. Filman denies directing Jack to lay 'unsubstantiated' charges. Both Flindall and Campbell testified that they never had a concerns with Filman's coaching of Jack. Constable Moran testified that she has no recollection of telling Jack to speak with a Canadian accent as suggested by Jack. D'Amico refutes Jack's allegation that only she received positive documentation for work they both did from Flindall. Constable Payne testified that she considered her role as Jack's 'go-to' mentor as a positive thing. Payne denied telling Jack that "he sucked". She testified that she decided not to bring a WDHP complaint against Jack in relation to his inappropriate behaviour towards her because this would have resulted in Jack's dismissal.

69. This ground must fail.

Third Allegation of Discrimination: Unsubstantiated Charges under the HTA

The Applicant's third allegation is that he was charged by Sergeant Flindall with failing to yield to traffic on a highway under the Highway Traffic Act (HTA) and that the charge "was harsh and uncalled for" and "specifically orchestrated for the purpose of poisoning my workplace environment and building up a file to justify the termination of my employment."⁸⁰

70. This allegation is based on the Applicant's speculative belief. There was nothing to support an inference that Flindall's laying of an HTA charge was malicious, racially motivated or seriously wrongful. There was uncontroverted evidence that Jack had poor driving skills consistent with him making an unsafe driving maneuver.⁸¹ Both Flindall and Payne observed Jack commit an HTA offence and testified to this at Jack's HTA trial.⁸² The fact that the charges were dismissed does not allow an inference to be drawn that these were malicious, improper or racially motivated. Such an inference is not supported by the evidence.

71. Flindall gave evidence that according to OPP Policy on Police Vehicles (Exhibit 178): "employees are always accountable for their driving behaviour, and may be called upon

to justify deviation from the law...”⁸³ The Policy allows the laying of an HTA charge together with issuing negative 233-10 documentation for the same event.

72. Before laying the charge, he testified that he spoke with Staff Sergeant Campbell who agreed with his recommendation to charge Jack and serve him with a negative 233-10. ⁸⁴ He also recommended to Campbell that Jack be provided with remedial driving lessons to allow him to succeed as a probationary recruit. ⁸⁵ (Exhibit 180).
73. There is no evidence that would allow the Tribunal to infer that Flindall’s laying of the HTA charge was intended to poison Jack’s workplace. The fact that the charges were dismissed is not probative of the question whether these were intended to justify Jack’s termination based on racism. Jack had poor driving skills. Both Flindall and Payne testified under oath at Jack’s trial about observing his unsafe driving manoeuvre. The witnesses were credible and trustworthy. There is no basis for the Tribunal to find that they lied under oath at his HTA trial in order to poison Jack’s workplace and justify Jack’s termination, as suggested by Jack.

Fourth Allegation of Discrimination: Failure to Address Conduct at Issue

Jack’s fourth allegation is that he complained to Constable Filman, Sergeant Flindall, Constable Payne, Staff Sergeant Kohen and Constable German about the “discriminatory conduct” but the “discriminatory conduct itself was never addressed by the management of the OPP”.

74. This allegation is refuted by the evidence.
75. Constable Filman testified that Jack never told him that he felt harassed or discriminated against. He made his best efforts to help Jack succeed. ⁸⁶
76. Flindall testified that he never observed or received a complaint from Jack that he was being subjected to discrimination while on his platoon. ⁸⁷ As previously mentioned, his recollection of the meeting of August 19, 2009 with Jack and Mitch Anderson of the OPPA, was that Campbell encouraged Jack to bring forward his concerns. He recalled Jack stating that he “felt abandoned” and suggesting that inappropriate things were said by officers but refused to elaborate or identify the individuals. ⁸⁸

77. Constable Payne denied that Jack ever told her that he felt discriminated against or targeted.⁸⁹
78. Staff Sergeant Kohen, staffing advisor for OPP Human Resources in 2009 and lead facilitator for performance management relating to the probationary constable program for Ontario,⁹⁰ was provided with all the performance reviews for all probationary recruits across the province, including Jack's.⁹¹ She gave evidence that Jack never complained to her that he was being harassed and discriminated against. She recalled Jack telling her that his sergeant told him that he could be charged under the *Public Service Act* for improper conduct and insubordination.⁹² She advised Jack to contact the OPPA, and gave him the name of Jim Stiles. Jim Stiles was away on vacation, so she gave Jack the name of Debbie MacKinnon.⁹³ On August 4, 2009, she called Central Region Headquarters to determine if there were performance issues with Jack and determine how she could help. She was told by Inspector Lee that he was not aware of any performance issues.⁹⁴
79. Constable German, a representative of the OPPA, testified that Jack never raised discrimination with her.⁹⁵ Contrary to Jack's allegation, she denied conducting an investigation into Jack's treatment at the Detachment. She thought that Jack and others were being targeted by Staff Sergeant Campbell for performance issues.⁹⁶ In response to the question on cross-examination whether there "was any indication, in your experience with those internal complaints, that any of them were based on a prohibited ground of discrimination?" She responded: "No sir."⁹⁷ She agreed that targeting was not a ground of discrimination.
80. As earlier mentioned, Staff Sergeant Campbell found that Jack had been "under increased scrutiny" by Sergeant Flindall. He determined that Flindall had lost objectivity as a mentor.⁹⁸ He told the Tribunal that he had no basis to believe that Jack was being harassed or discriminated against and Jack never made any such complaint to him.⁹⁹ He also testified that Jack did not raise workplace harassment, discrimination or poisoned work environment in his detailed rebuttal to his six month performance evaluation.¹⁰⁰
81. Jack's fourth allegation that he complained to various officers at the Detachment about "the discriminatory conduct on the part of my peers" was refuted.¹⁰¹ There is no basis upon which the Tribunal could find that the evidence of Constable Filman, Constable

Payne, Staff Sergeant Kohen, Constable German and Staff Sergeant Campbell was not trustworthy or reliable. The evidence of the witnesses was consistent and made at the time of the events.

82. Beyond Jack's oblique allegations about the conduct of his peers at the meeting of August 19, 2009, there was no evidence to support this ground.

Fifth Allegation of Discrimination: Reprisals through Negative Performance Reviews

*Jack alleges that he "was subjected to an unusual amount of negative documentation"; the comments in his evaluations were "false, frivolous, vexatious and made in bad faith" and he "was being reprisal for standing up for my rights".*¹⁰²

83. His allegation that the PERs were: "false, frivolous, vexatious and made in bad faith" or that a conspiracy existed at the Detachment to justify his termination was contradicted by the evidence. But, in any event, this allegation rests on the fundamental misunderstanding that proving wrongful dismissal is sufficient to discharge the onus in a discrimination case under the *Code*.
84. In response to a question in cross-examination from Jack about why so many mistakes were made in regards to him, Inspector Johnston, Detachment Commander, testified: "No, there were lots that was true Mike. There were significant ... you had significant performance issues."¹⁰³
85. Staff Sergeant Campbell testified that he believed that Jack had significant performance issues which should have been brought forward earlier.¹⁰⁴ He moved Jack to another Platoon to determine whether he was capable of meeting the requirements of a probationary constable.¹⁰⁵ Consistent with this, Campbell confirmed his intention in an email to Staff Sergeant Kohen at the Career Development Bureau telling her that Jack needs "a good look and some direction".¹⁰⁶ Staff Sergeant Campbell testified that Jack's performance issues did not improve with his move to another Platoon under a different coach and supervisor.¹⁰⁷
86. Staff Sergeant Kohen testified that Jack was evaluated and assessed using the same criteria as every other probationary constable in the Province. In her experience, during the first couple of months after a probationary recruit arrives at a Detachment, he is

adjusting to police work. In her view, it is too early to tell just after four months whether a probationary recruit is progressing well. ¹⁰⁸ She went on to explain that it is only after about four months when recruits: "... get out on their own, that is when more deficiencies are identified as a result of being on their own, the heavier workload, because they are considered platoon members. So having deficiencies later on in their probation period, that is not surprising to me." She testified that it is not unusual to bring in a fresh set of eyes, as was done with Jack. ¹⁰⁹ Jack's decline starting in his six month was consistent with Kohen's experience with other recruits.

87. Constable Filman testified that he prepared six PERs for Jack. These were reviewed and commented on by his supervisor, the Detachment Commander, the Regional Commander and the Career Development Bureau in accordance with the Probationary Constable Report Evaluation Guidelines (Exhibit 24).
88. In cross-examination, Filman was asked why Jack's displays of poor learning attitude were not documented in Jack's PERs. He testified that "performance evaluations are specific to the specific requirement.... And if at that point I was wanting to be negative about Constable Jack and throw that in and try to fit it in somewhere, I guess I could have done that, but I wasn't looking to do that" ¹¹⁰ and later, "I'm not looking to portray him in any way, I'm giving out the facts as I recall them". ¹¹¹ He went on to explain: "I'm writing what I remember him saying. I mean, if I wanted to be a mean person, I guess, I don't know what to say, I could put this in and say well, he's failed everything, but this is one specific event. On other times he did lots of good things and I think when you have a new recruit it's important to reinforce the good things that they're doing. He was talked to about this incident, and it was hoped that would be the end of it. But that doesn't have to go into the evaluation, he does a lot of good things. It's a balancing act." ¹¹²
89. Filman's evidence that he chose not to include some of his negative experiences with Jack in his PERs because he wanted to reinforce the "good things" in a recruit's performance is inconsistent with Jack's allegation that his PERs were "false, frivolous, vexatious and made in bad faith."
90. Sergeant Flindall testified that he reviewed the six performance evaluations prepared by Constable Filman. He inputted both positively and negatively into these. He recalled

telling Filman to include positive information on Jack's evaluation about Jack's NICHE work.¹¹³

91. He gave evidence that he was frustrated with Jack and told him that his "current employment was in serious jeopardy as a result of his actions and inactions".¹¹⁴ Flindall testified that he "had never had an officer like Michael Jack, let alone a senior officer, that so blatantly disregarded directions that I would give him, in relation to anything." He described an incident where Jack failed to complete an investigation of a criminal harassment complaint in a timely manner putting the victim at risk.¹¹⁵
92. At the meeting of August 19, 2009 with, Campbell, Jack and Mitch Anderson, Flindall told Jack that he would be provided with his evaluation for month seven (Exhibit 33).¹¹⁶ Flindall testified that Jack was served with his six/seven month evaluation, which was prepared by Constable Filman. Jack refused to sign it on the basis that he disagreed with everything in it and wanted his OPPA representative to review it.¹¹⁷ Flindall testified that Filman was directed by Staff Sergeant Kohen to prepare Jack's eight month evaluation and Work Improvement Plan. Kohen reviewed both documents to ensure the quality of these.¹¹⁸
93. In response to a question on cross-examination about why he did not have notes documenting his 'mandatory' meetings with Jack, Flindall testified that "when Jack was initially here, there didn't seem to be any issues. And likely just an oversight on my part, with documenting that stuff. I had no expectations we were going to wind up here today with Mr. Jack. I had every expectation he was going to be successful, so hindsight is 20/20. Should I have written these things down, absolutely, did I, no, I did not."¹¹⁹
94. Flindall testified that once Jack left his platoon, he was no longer involved in his performance evaluations.
95. Constable Payne testified that she considered being Jack's 'go-to' mentor "as a positive thing". She was told that Jack needed help with his task list and prioritizing his list of things to get done. She did not prepare Jack's PERs. She testified that in her view Jack did not succeed because he lacked the time management skills, had a hard time accepting responsibility for his mistakes and would defer blame. She testified that he could not take constructive criticism because he "thinks he is better than everyone else." She testified

that Jack's place of origin, cultural background and language did not contribute to Jack's inability to succeed.¹²⁰

96. Constable Nie testified that he prepared three performance evaluations and companion Work Improvement Plans for Jack. His evaluations of Jack were based on his honest appraisal of Jack's skills, abilities and judgment. He testified that "everything he did for him was the complete honest truth and my best way to try to get something done for him. I didn't coach him any differently than any other recruit that I had. I didn't treat him any differently."¹²¹
97. In the evaluation for month nine, Nie testified that Jack improved in eight categories from the previous month. However, by October 2009, Nie believed that although "he could fix some of the categories", "you can't teach common sense."¹²² By month ten, Nie was of the view that because only one category had improved from the previous month, "that we had flatlined".¹²³ He testified that Jack's cultural background was not a factor at all.¹²⁴ He testified that in his view Jack was unable to multi-task: "it would fall apart as soon as there was three, four, five, six tasks assigned at the same time. He would struggle with where to start. If I could give him one task a day, he would probably be one of the best recruits I had at doing that specific task."¹²⁵ Nie testified that initially Jack was happy to be with him however when he started to give him advice or instructions, "he just wouldn't respond." Nie explained that Jack would give him the silent treatment, he would be silent in the cruiser on patrol.¹²⁶
98. Nie testified about the importance of a police officer being able to think outside of the box which Jack was unable to do. This is why he wasn't successful according to Nie.¹²⁷
99. In response to a question in cross-examination about why his chronology only contained negative comments, Nie testified that: "all of the positive requirements about Mr. Jack are in the evaluation under the meets requirements categories....All the good is on the evaluation and all the bad is on the chronology."¹²⁸ Given that the PERs formed the basis for Jack's evaluation and not the chronology, Nie's testimony is inconsistent with a finding that the PERs were "false, frivolous, vexatious and made in bad faith."
100. Sergeant Butorac agreed with the decision not to recommend Jack for permanency although the decision was not his to make. He testified that Jack's "race, ancestry, ethnic

origin had nothing whatsoever to do with Jack not being recommended for permanency.¹²⁹

101. In summary, there was no evidence that the comments in Jack's PERs were "false, malicious, and made in bad faith", and intended to justify his termination. Constable Filman testified that he prepared the PERs at the time of the events. He chose not to include some of his negative experiences with Jack in his PERs because he did not want to "portray him in any way" and "when you have a new recruit, it's important to reinforce the good things". Filman's evidence is inconsistent with a finding that his PERs were malicious. Staff Sergeant Kohen's testimony that she would expect a recruit's performance to decline after four months, confirms the likelihood that Jack's performance began to decline in his fifth month. Staff Sergeant Kohen's testimony is trustworthy and credible and there is no basis for the Tribunal to ignore it and find that his decline reflected conspiracy. Sergeant Flindall's explanation for why he did not have notes documenting his 'mandatory' meetings with Jack that he had no expectation of litigation is inconsistent with a finding that he conspired to create a poisoned workplace for Jack and justify his termination based on his racism. Constable Nie's testimony that he put all of the good comments in Jack's evaluations which were made at the time of the events is also inconsistent with a finding that his comments were malicious.
102. But in any event, the Applicant's fifth allegation (and Application) rests on his misapprehension that if he can succeed in establishing his wrongful dismissal, he thereby discharges his onus in a discrimination claim under the *Code*. It does not.

Sixth Allegation of Discrimination: Transfer to Platoon D and Continuation of Discriminatory Conduct

Jack's sixth allegation is that Constable German "investigated my concerns and concluded that I had been targeted by some of my platoon members and by Sgt. Flindall" [para. 37]. He further alleges that "as a result of her findings, I was re-assigned from the Platoon 'A' shift to the Platoon 'D' [para. 38] and "received repeated negative performance reviews for illegitimate reasons under Cst. Nie's supervision." [para. 42]¹³⁰

103. Jack's use of the word 'targeted' is misleading and suggestive that OPPA branch representative Constable German determined that Jack experienced conduct prohibited under the *Code*. In fact, Constable German repudiated this suggestion on cross-

examination. She testified that Jack contacted her to tell her that he was having performance issues and wanted to know whether the OPPA would investigate his circumstances. She told Jack that that was not her role. She communicated with acting Superintendent Borton.¹³¹ She testified that Jack may have told her that he was of Russian descent and had a strong accent. As previously mentioned, Constable German thought that Jack and others may have been 'targeted' by Ron Campbell for performance issues.¹³² On cross-examination, Constable German testified that she never meant to suggest that Jack was 'targeted' on the basis of a *Code* ground. In response to the question whether there was: "any indication, in your experience with those internal complaints, that any of them were based on a prohibited ground of discrimination?" She responded: "No sir."¹³³ She also testified that targeting performance is not a ground of discrimination. Constable German denied responsibility for Jack's transfer to Platoon D.

104. Inspector Johnston, the Detachment Commander in 2009, testified that Campbell recommended to him that Jack be transferred from Flindall's Platoon to another Platoon. In cross-examination, Johnston agreed with Jack that he received an email from Campbell stating that: "there is a language issue. So it is likely resulting in a poisoned work environment and a possible HR complaint." Johnston testified however that he did not recall a discussion with Campbell where Campbell told him that he thinks "we are headed to an issue, as Mike is basically an immigrant of Jewish background."¹³⁴

105. Johnston also testified that "as detachment commander [he] had to make a decision. Flindall was also my responsibility based on initial information I was reluctant to move you...while I was away, Sgt. Campbell spoke with acting Superintendent Doug Borton who said "fresh eyes". Ron and I agreed that you should be moved, seems logical to me given ongoing performance issues you should move to a new shift and get a fresh start."¹³⁵ In response to Jack's cross-questioning about a discussion with Campbell concerning Jack's being 'targeted', Johnston agreed that Campbell told him that Jack was 'targeted' but he was unable to comment about what Campbell intended by this.¹³⁶

106. Staff Sergeant Campbell testified that after he spoke with Superintendent Borton, he decided to transfer Jack, get a "fresh set of eyes", prevent "a poisoned work environment"¹³⁷ and give Jack every chance to succeed.¹³⁸ Campbell testified that he never had any basis to believe that Jack was being harassed or discriminated against.¹³⁹

107. As previously mentioned, there was no evidence to support Jack's belief that Constable Nie's evaluations were "unsubstantiated" or "illegitimate". Nie testified that he prepared three PERs for Jack. In the first evaluation for month nine, Nie testified that Jack improved in eight categories from the previous month. Nie's opinion in October was that "he could fix some of the categories" but "you can't teach common sense."¹⁴⁰ By month ten, Nie was of the view that because only one category had improved from the previous month, "that we had flatlined".¹⁴¹
108. Nie described attending a call with Jack, where the complainant knew Jack from the gym. Nie felt that Jack was holding something back from him and told him that: "when we are a team and partners going into a call and we are both wearing the same uniform It shouldn't be one officer and one complainant knowing information that another officer who is your partner doesn't know."¹⁴²
109. Nie testified about a two hour meeting with Sergeant Butorac and Jack on November 19, 2009 (Exhibit 215). He sent his notes summarizing the meeting to Staff Sergeant Kohen of the Career Development Bureau to keep her in the loop. Jack stated that he was in a love/hate relationship with Nie, "where he loved his teaching but hated how intimidating it was to be with him." Jack expressed at the meeting that Nie expected too much from him but also that he would not be behind if Nie had been coaching him from the beginning.¹⁴³
110. Nie testified that in his view Jack did not succeed because: "he struggled with the stress and the pressure of multitasking or having too many things to do at the same time" and "it was not advantageous for him to always go off by himself into an office to work". He testified that Jack's cultural background was not a factor at all.¹⁴⁴
111. Jack's sixth ground is refuted. Constable German never made a determination that Jack had been discriminated against contrary to the *Code*, and Jack's move to Platoon D was not because of her. The decision was made by Staff Sergeant Campbell with the approval of Inspector Johnston. In addition, there is no basis to find that Constable Nie's PERs were "illegitimate". His PERs were made at the time of the events and reviewed and commented on up the chain of command. Jack's allegation that Nie's evaluations were "illegitimate" and "unsubstantiated" is inconsistent with Nie's evidence that Jack told

him he would have been successful if Nie had been his coach from the beginning. Nie's evidence is reliable and trustworthy.

Seventh Allegation of Discrimination: Artificial and Unsubstantiated Complaint

*Jack alleges that he was accused of associating with organized crime "for the sole purpose of poisoning my workplace environment, maligning my reputation, and building up a file to justify termination of my employment."*¹⁴⁵

112. Jack asks the Tribunal to infer from the fact that the Professional Standards Bureau ("PSB") investigation into his association with organized crime was dismissed, that the investigation was intended to poison his workplace, malign his reputation and justify his termination.
113. Inspector Johnston, Detachment Commander, testified that Campbell told him that he thought Jack was hanging out with organized crime at the gym. Johnston told Campbell that he would need to look into this. In response to a question from the Applicant in cross-examination, he testified that although the complaint was unsubstantiated, that did not mean that it did not need to be investigated. The report "does not say [Jack was] cleared."¹⁴⁶ Johnston went to explain that: "if it had been me at a gym with some undesirables, they would have investigated me. It wasn't an issue specific to you. If any officer would have done that we would have to look into it. You have to, it's a police serviceyou were cleared, everything is good."¹⁴⁷
114. Constable Jamie Brockley gave evidence about the incidents that led up to the PSB investigation. Brockley worked on the Drug Unit at the Detachment. He testified that while working on a shift with Jack, he heard Jack running a license plate. He testified that this caught his attention because the vehicle that Jack was running was known to be an undercover police vehicle. Brockley was aware of an investigation by the R.C.M.P. and OPP in relation to people who had been convicted of drug trafficking. Brockley recalled that earlier, Jack had brought a picture of himself posing with these individuals at the gym to the Detachment. Jack had told Constable Brockley earlier that he worked out with two of these same individuals at the gym. Constable Brockley was also aware that

- Jack had made thirteen phone calls to one of the individuals who was being investigated.¹⁴⁸
115. Sergeant Flindall testified that he advised Staff Sergeant Campbell and Inspector Johnston of Brockley's concerns. An internal complaint was filed by Campbell. Flindall was asked to prepare a duty report for the Professional Standards Bureau (Exhibit 187).¹⁴⁹
116. Superintendent Hugh Stevenson, Operations Manager for Central Region, testified that as a result of a call received from Inspector Mike Johnston that Jack had been associating with Albanian organized crime, he conducted a background investigation.¹⁵⁰ He briefed Chief Superintendent Armstrong and Inspector Cox and asked Inspector Johnston to send an email to the PSB to investigate. Sergeant Flindall was asked to prepare a synopsis.¹⁵¹ Stevenson testified that it would be normal practice for the PSB to let the member know that he is being investigated.¹⁵²
117. Sergeant Butorac testified that when he heard that Jack was being investigated by the PSB for associating with undesirables, he wondered what the matter concerned. He explained that "one of the requirements of police officers is that we do not associate with undesirables... [who] are people with criminal records."¹⁵³ Butorac stated that he did not form an unfavourable opinion of Jack as a result, and recalled "commending Jack on his extreme detail, thoroughness and neatness of his accident reports."¹⁵⁴
118. Constable Nie testified that he was aware that Jack had been served with a PSB internal complaint about associating with people involved with organized crime. Jack called him on September 23, 2009 to ask him "what he should do". He told Jack to call the OPPA. Nie testified that knowing that Jack was being investigated did not affect his coaching of Jack.¹⁵⁵
119. Contrary to the Applicant's allegation, the fact that the PSB charges were ultimately unsubstantiated does not mean that an investigation was not warranted, was racially motivated or intended to create a poisoned workplace to justify Jack's termination. There was a reasonable basis for investigating Jack's association with organized crime. He was known to have associated in the past with individuals involved with organized crime; was thought to have run the license plate of an undercover police cruiser; and had asked an individual known to be associating with organized crime, to purchase a rifle scope for him. In addition, there was no evidence that the PSB investigation had an adverse effect

on his employment. As stated by Inspector Johnston, "you were cleared, everything is good."

120. In the words of the Court of Appeal in *General Motors Johnson, supra*, there was no evidence: "that to the objective reasonable bystander, would support the conclusion that a poisoned workplace environment had been created."

Eighth Allegation of Discrimination: Termination of Employment

Jack alleges that: "I was brought down on my knees and then executed",¹⁵⁶ "my resignation was coerced" and "my dismissal from employment was orchestrated by a few officers from the Peterborough Detachment who were biased against me and who targeted me as a result of my status as a foreigner and my ethnic differences. The majority of the officers in the Detachment were locals from the Peterborough area."¹⁵⁷

121. There is no evidence of coercion or that the Applicant was brought down on his knees and "executed".
122. Chief Superintendent Armstrong testified that he met with the Applicant on December 15, 2009, regarding his resignation from the OPP. Two OPPA representatives, Marty McNamara and Karen German, were present at the meeting. Chief Superintendent Armstrong told Jack that he reviewed his performance and that the purpose of probation is to determine whether to offer employment for the next thirty years. He testified that he told Jack that he had not met the requirements and that his options were to resign or be dismissed. Jack asked about the implications of the different options and indicated that he was going to resign.¹⁵⁸
123. Armstrong testified that over the course of his time as Chief Superintendent, he has dismissed five or six probationary recruits. He would normally ask if there was anything that the person wanted him to be aware of. He testified that although there is nothing in his notebook to reflect that he asked Jack the same question, he believes that he followed his usual pattern and asked Jack the same question.¹⁵⁹
124. The evidence is that the probationary period of one year cannot be extended and that if a recruit cannot successfully demonstrate the required competence during the year, he will be relieved of his employment and not offered a position as a permanent constable.

125. Jack was unable to meet the requirements of his probation, and was told that he would not be offered a permanent position. Jack chose to tender his resignation.

V. CONCLUSION

126. It is well settled that to establish discrimination contrary to the *Code*, the Applicant bears the burden of establishing on a balance of probabilities that he was a member of a group protected by the *Code*; that he was subjected to adverse treatment, and that his race, ancestry, place of origin or ethnic origin was a factor in the adverse treatment. According to the Supreme Court of Canada in *F.H. v. McDougall*¹⁶⁰ clear, convincing and cogent evidence is required to satisfy the balance of probabilities in a *Code* case.
127. Relying on the decision of the Supreme Court in *McDougall*, this Tribunal in *Whale v. Keele North Recycling*¹⁶¹ found that to establish a breach of the Code, the inference drawn from the evidence “must be reasonable and more probable than not, based on all the evidence, and more probable than the explanation offered by the respondent. Evidence must always be sufficiently clear, convincing and cogent to satisfy the “balance of probabilities” test stated by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53 (CanLII).
128. In this case, the Applicant has failed to provide “clear, convincing and cogent evidence” to satisfy the balance of probabilities that his explanation is more probable than the explanation of the Respondent. The Applicant’s explanation for his dismissal is that a conspiracy existed among racist officers at the Detachment seeking to justify his termination and create a poisoned workplace for him. The Applicant provides the Tribunal with nothing more than his subjective beliefs. It is well settled that subjective beliefs no matter how sincerely held cannot be relied upon to draw an inference of discrimination. In the words of this Tribunal in *Beldjehem v. University of Ottawa (Telfer School of Management)*:¹⁶²

Evidence of racial discrimination is often circumstantial and depends on whether the decision-maker inferring from the circumstances that discrimination took place (see *Shaw v. Phipps*, 2012 ONCA 155 (CanLII) at para. 33-36). However, an inference has to be supported by evidence. The applicant has not produced any

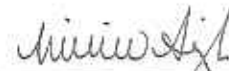
evidence direct or circumstantial, that could support that any of his race, colour, ancestry, place of origin, ethnic origin, or creed were a factor in the decision to terminate his contracts. His belief that this so, however sincerely he holds it, is not evidence. [emphasis added]

129. There is no question that the termination of one's employment is an unpleasant experience.

130. The Respondent's explanation for the decision not to recommend the Applicant for a permanent position is credible and not a pretext for discrimination.

131. The Respondent respectfully requests that this matter be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,



Mimi Singh
Counsel for the Respondent

February 5, 2017

- ¹ The terms of the offer were set out separately in a memo to Jack dated August 25, 2008.
- ² The Application was filed naming the respondent as Her Majesty the Queen in right of Ontario as represented by the Ministry of Community Safety and Correctional Services and operating as the Ontario Provincial Police.
- ³ Application, Schedule A, para. 1.
- ⁴ See CAD dated May 8, 2012, bifurcating the hearing as between liability and remedy.
- ⁵ Sergeant Butorac, Staff Sergeant Campbell, Chief Superintendent Armstrong and Inspector Johnston reired.
- ⁶ Jack initially failed the Police Vehicles Operations component of his training.
- ⁷ Response to Application, para. 10.
- ⁸ Appendix A to the Response to Application, para. 14.
- ⁹ See Exhibits 41 and 70, Jack received notice of release from employment on December 9, 2009 based on Performance and Conduct requirements of a probationary constable signed on August 25, 2008.
- ¹⁰ *Shaw v. Phipps*, 2012 ONCA 155 (CanLII) at para. 33-36.
- ¹¹ *Beldjehem v. University of Ottawa (Telfer School of Management)*, 2014 HRTO 657 (CanLII).
- ¹² *F.H. v. McDougall*, 2008 SCC 53 (CanLII); [2008] 3 S.C.R. 41 at para. 46.
- ¹³ *F.H. v. McDougall*, *supra*, at para. 46.
- ¹⁴ *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employes de l'hopital General de Montreal*, [2007] 1 S.C.R. 161.
- ¹⁵ *Morin v. Canada (Attorney General)*, 2005 CHRT 41.
- ¹⁶ *General Motors of Canada v. Johnson*, 2013 ONCA 502.
- ¹⁷ Application, Schedule A, para. 19.
- ¹⁸ Cross-Ex Michael Jack, transcript dated Sept. 21, 2015 at pp. 139-140; also see Direct Ex., K. Duignan, transcript Feb. 8, 2016, pp. 173-175
- ¹⁹ Direct Ex., J. Postma, transcript dated Feb. 10, 2016, pp. 10-14.
- ²⁰ Cross Ex., R. Campbell, transcript dated Sept, 7, 2016, p. 135, where he testifies that he had never heard the nickname;
Direct Ex., S. Filman transcript dated Sept. 9, 2016 at pp. 69-71 where he testifies that he never heard the nickname;
Direct Ex., J. Payne at pp. 80-85, where she testified that she may have heard the nickname 'Crazy Ivan' but did not recall when she heard it. She also did not recall if anyone referred to Jack by that nickname at the Detachment;
Direct Ex., R. Nie, transcript dated Sept. 15, 2016, at p. 11 where he testified that he never heard Jack referred to by the nickname;
Direct Ex., P. Butorac, transcript dated Sept. 15, 2016, pp. 5-8 where he testified that he had not heard the nickname 'Crazy Ivan';
Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 22 and Cross-Ex. Pp. 139-40, where he testified that he heard the nickname prior to Jack's arrival at the Detachment and addressed the use of the nickname at a shift briefing. Flindall testified that he never heard any one refer to Jack as 'Crazy Ivan' once he joined the Detachment;
Direct Ex., M. D'Amico, transcript Feb. 9, 2016, at p. 148 where she testified that she recalled hearing the nickname 'Crazy Ivan' but not in reference to Jack.
- ²¹ Direct Ex., B. Rathbun, transcript dated Feb. 8, 2016, p. 30-33.
- ²² Direct Ex., B. Rathbun, transcript dated Feb. 8, 2016, p. 33-35.
- ²³ Direct Ex., B. Rathbun, transcript dated Feb. 8, 2016, p. 40.
- ²⁴ Direct Ex., M. Gravelle, transcript dated Feb. 8, 2016, pp. 78-89.
- ²⁵ Direct Ex., M. Gravelle, transcript dated Feb. 8, 2016, p. 100.
- ²⁶ Direct Ex., M. Gravelle, transcript dated Feb. 8, 2016, p. 119.
- ²⁷ Direct Ex., M. Gravelle, transcript dated Feb. 8, 2016, p. 131.
- ²⁸ Direct Ex., M. Gravelle, transcript dated Feb. 8, 2016, 131-144.
- ²⁹ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 9.
- ³⁰ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 71.

- ³¹ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, email to Campbell and Inspector Johnson dated August 5, 2008 forwarded to Sandy Thomas P. 82 - 86.
- ³² Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 180.
- ³³ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, P. 182.
- ³⁴ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 41.
- ³⁵ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 180-182.
- ³⁶ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 183; p. 185.
- ³⁷ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 183-4; also see Exhibit 165.
- ³⁸ Cross Ex., R. Campbell, transcript dated September 8, 2016, pp. 185-6.
- ³⁹ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, p. 69-71.
- ⁴⁰ Direct Ex., J. Payne, transcript dated Sept. 14, Pp. 127-129.
- ⁴¹ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 32-37.
- ⁴² Direct Ex., P.J. Butorac, transcript dated Sept. 15, 2016, p. 23.
- ⁴³ Direct Ex., P.J. Butorac, transcript dated Sept. 15, 2016, pp. 5-8.
- ⁴⁴ Direct Ex., M. Moran, transcript dated Feb. 9, 2016, p. 179.
- ⁴⁵ Direct Ex., M. D'Amico, transcript dated Feb. 9, 2016, pp. 149-153.
- ⁴⁶ Direct Ex., M. D'Amico, transcript dated Feb. 9, 2016, p. 173.
- ⁴⁷ Direct Ex., M. D'Amico, transcript dated Feb. 9, 2016, p. 148.
- ⁴⁸ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 120-122.
- ⁴⁹ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, p. 31.
- ⁵⁰ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, p. 20.
- ⁵¹ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, p. 22; and Cr-Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 139-140.
- ⁵² Cr-Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 140-2.
- ⁵³ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 96-102.
- ⁵⁴ *Morin v. Canada (Attorney General)*, 2005 CHRT 41
- ⁵⁵ Application, para. 21.
- ⁵⁶ Application, para. 21(1) through (10).
- ⁵⁷ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, pp. 38-42 testified that the most onerous thing about being a mentor was: "trying to get the evaluations done, and I had two to do at the same time. Plus I was doing other things, I still had my responsibilities, I still was doing calls, so when the recruit has their day or night wings, then I'm answering calls. Either I's backing then up or I'm attending with then or I'm doing my vehicle stops or I'm attending calls on my own." (sic) (p. 38) Filman admitted that he was late in preparing Jack's five month performance evaluation (p. 41) and that Sergeant Flindall had followed up with him (pp. 41-42).
- ⁵⁸ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, p. 23.
- ⁵⁹ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, pp. 26-7.
- ⁶⁰ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, p. 47.
- ⁶¹ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, p. 27.
- ⁶² Direct Ex., S. Filman, transcript dated Sept. 9, 2016, p. 30.
- ⁶³ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, p. 33.
- ⁶⁴ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, p. 35.
- ⁶⁵ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, pp. 42-43.
- ⁶⁶ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, p. 28.
- ⁶⁷ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016 p. 94.
- ⁶⁸ Cross Ex., R. Campbell, transcript dated Sept. 7, 2016, p. 147.
- ⁶⁹ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016 , pp. 89-92.
- ⁷⁰ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 32-33. See Exhibit 178 "Police Order re. OPP Vehicles, January 2009".
- ⁷¹ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 33-39.
- ⁷² Application, para. 21(3).
- ⁷³ Direct Ex., M. D'Amico, transcript dated Feb. 9, 2016, p.168.
- ⁷⁴ Direct Ex., M. D'Amico, transcript dated Feb. 9, 2016, p.148.
- ⁷⁵ Direct Ex., J. Payne, transcript dated Sept. 14, 2016, pp. 109-111.
- ⁷⁶ Direct Ex., J. Payne, transcript dated Sept. 14, 2016, pp. 104-8.

- ⁷⁷ Direct Ex., J. Payne, transcript dated Sept. 14, 2016, pp. 109-111.
- ⁷⁸ Direct Ex., J. Payne, transcript dated Sept. 14, 2016, pp. 120-124.
- ⁷⁹ Direct Ex., J. Payne, transcript dated Sept. 14, 2016, pp. 125-126.
- ⁸⁰ Application, Schedule A, para. 22-23.
- ⁸¹ Direct Ex., P.J. Butorac, transcript dated Sept. 15, 2016, pp. 22-23; see Exhibit 21 email dated Nov. 10, 2009 from Mr. Taylor to Mr. Nie.
- ⁸² Direct Ex., J. Payne, transcript dated Sept. 14, 2016, pp. 125-126.
- ⁸³ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 42.
- ⁸⁴ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, p. 42-44.
- ⁸⁵ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, 47-48.
- ⁸⁶ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, 69-71.
- ⁸⁷ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 120-122.
- ⁸⁸ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 96-102.
- ⁸⁹ Direct Ex., J. Payne, transcript dated Sept. 14, 2016, pp. 127-129.
- ⁹⁰ Direct Ex., C. Kohen, transcript dated Feb. 11, 2016, p. 98.
- ⁹¹ Direct Ex., C. Kohen, transcript dated Feb. 11, 2016, p. 165.
- ⁹² Direct Ex., C. Kohen, transcript dated Feb. 11, 2016, p. 108.
- ⁹³ Direct Ex., C. Kohen, transcript dated Feb. 11, 2016, pp. 106-110.
- ⁹⁴ Direct Ex., C. Kohen, transcript dated Feb. 11, 2016, p. 117.
- ⁹⁵ Cross-Ex, C. Kohen, transcript dated Feb. 11, 2016, p. 94.
- ⁹⁶ Direct Ex., C. Kohen, transcript dated Feb. 11, 2016, pp. 74-75.
- ⁹⁷ Cross Ex., C. Kohen, transcript dated Feb. 11, 2016, p. 94.
- ⁹⁸ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016 p. 190.
- ⁹⁹ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 190. Campbell invited Jack to voice his concerns at a meeting with Mitch Anderson from the OPPA and Flindall and even told Jack that he could not deal with vague allegations (p. 183-4) Jack raised two complaints: inadequate coaching and inappropriate behaviour. When pressed to provide particulars of the inappropriate behaviour, "Jack declined" (p. 185-6).
- ¹⁰⁰ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, pp. 186-7.
- ¹⁰¹ Application, Schedule A, para. 27.
- ¹⁰² Application, Schedule A, para. 31-36.
- ¹⁰³ Direct Ex., M. Johnston, transcript dated Feb. 2016, p. 142.
- ¹⁰⁴ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 136.
- ¹⁰⁵ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 183 and p. 185.
- ¹⁰⁶ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, pp. 183-4; see Exhibit 165.
- ¹⁰⁷ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 40.
- ¹⁰⁸ Cross Ex., C. Kohen, transcript dated Feb. 11, 2016, p. 132-33.
- ¹⁰⁹ Cross Ex., C. Kohen, transcript dated Feb. 11, 2016, p. 140 and p. 141.
- ¹¹⁰ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, pp. 166-167 and pp. 176-77.
- ¹¹¹ Direct Ex., S. Filman, transcript dated Sept. 9, 2016, pp. 176-77.
- ¹¹² Direct Ex., S. Filman, transcript dated Sept. 9, 2016, pp. 189-190.
- ¹¹³ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 25-26; see Exhibit 176.
- ¹¹⁴ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, p. 80.
- ¹¹⁵ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 82-83.
- ¹¹⁶ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 96-102.
- ¹¹⁷ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, p. 103.
- ¹¹⁸ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, p. 105-108.
- ¹¹⁹ Cross Ex., R. Flindall transcript dated Sept. 12, 2016, p. 195.
- ¹²⁰ Direct Ex., J. Payne transcript dated Sept. 14, 2016, pp. 129-130.
- ¹²¹ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 176-177.
- ¹²² Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 37-44; see Exhibit 221, E-mail dated October 7, 2009 attaching 9 month evaluation from Nie
- ¹²³ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 45-46.
- ¹²⁴ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 55-57.
- ¹²⁵ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 28-31.
- ¹²⁶ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 27-28.

- ¹²⁷ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, p. 175.
- ¹²⁸ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, p. 174.
- ¹²⁹ Direct Ex., P. Butorac, transcript dated Sept. 15, 2016, pp. 26-27.
- ¹³⁰ Application, Schedule A, para. 37 through 48.
- ¹³¹ Direct Ex., K. German, transcript dated Feb. 11, 2016, p. 60 and p. 67.
- ¹³² Direct Ex., K. German, transcript dated Feb. 11, 2016, p. 74-75.
- ¹³³ Cross Ex., K. German, transcript dated Feb. 11, 2016, p. 94.
- ¹³⁴ Direct Ex., M. Johnston, transcript dated Feb. 9, 2016, pp. 40-42.
- ¹³⁵ Direct Ex., M. Johnston, transcript dated Feb. 9, 2016, p. 44.
- ¹³⁶ Direct Ex., M. Johnston, transcript dated Feb. 9, 2016, pp. 45-46.
- ¹³⁷ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 19.
- ¹³⁸ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 97.
- ¹³⁹ Cross Ex., R. Campbell, transcript dated Sept. 8, 2016, p. 180.
- ¹⁴⁰ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 37-44, see Exhibit 221, e-mail dated October 7, 2009 attaching 9 month evaluation from Mr. Nie to various
- ¹⁴¹ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 45-46.
- ¹⁴² Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 24-25.
- ¹⁴³ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 46-51.
- ¹⁴⁴ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, pp. 55-57.
- ¹⁴⁵ Application, Schedule A, para. 49-52.
- ¹⁴⁶ Direct Ex., M. Johnston, transcript dated Feb. 9, 2016, pp. 61-62.
- ¹⁴⁷ Direct Ex., M. Johnston, transcript dated Feb. 9, 2016, pp. 141.
- ¹⁴⁸ Direct Ex., J. Brockley, transcript dated Feb. 11, 2016, pp. 10-23 and p. 28.
- ¹⁴⁹ Direct Ex., R. Flindall, transcript dated Sept. 12, 2016, pp. 11-113; Exhibit 187 Duty Report prepared by Flindall for the PSB.
- ¹⁵⁰ Direct Ex., H. Stevenson, transcript dated Feb. 12, 2016, p. 23.
- ¹⁵¹ Direct Ex., H. Stevenson, transcript dated Feb. 12, 2016, p. 23-24.
- ¹⁵² Direct Ex., H. Stevenson, transcript dated Feb. 12, 2016, p. 37.
- ¹⁵³ Direct Ex., P. Butorac, transcript dated Sept. 15, 2016, pp. 61-62.
- ¹⁵⁴ Direct Ex., P. Butorac, transcript dated Sept. 15, 2016, p. 70.
- ¹⁵⁵ Direct Ex., R. Nie, transcript dated Sept. 15, 2016, p. 23.
- ¹⁵⁶ Applicant's Closing Submissions, para. 133.
- ¹⁵⁷ Application, Schedule A, para. 53-57.
- ¹⁵⁸ Direct Ex., M. Armstrong, transcript dated Feb. 12, 2016, pp. 99-102.
- ¹⁵⁹ Direct Ex., M. Armstrong, transcript dated Feb. 12, 2016, pp. 112-117.
- ¹⁶⁰ *F.H. v. McDougall*, *supra*, at para. 46.
- ¹⁶¹ *Whale v. Keele North Recycling*, 2011 HRTO 1724 (CanLII).
- ¹⁶² *Beldjehem v. University of Ottawa (Telfer School of Management)*, 2014 HRTO 657 (CanLII) at para. 37.

Appendix A

A. Job Knowledge and Skills

1. Attitude Towards Learning
2. Provincial Statutes
3. Federal Statutes
4. Police Order/Procedures/Technical Skills
5. Police Vehicle Operation
6. Traffic Enforcement

B. Communications Skills

7. Oral
8. Written
9. Listening Skills
10. Non-Verbal
11. Radio Communications

C. Community Focus

12. Community Focus
13. Valuing Diversity

D. Problem Solving Skills

14. Decisive Insight
15. Analytical Thinking
16. Resolution
17. Follow-Up Orientation

E. Leadership Attributes

18. Initiative
19. Personal Accountability
20. Planning and Organizing
21. Flexibility

F. Interpersonal Attributes

- 22. Integrity
- 23. Respectful Relations
- 24. Self-Confidence
- 25. Team Work

G. Personal Impact

- 26. Self-Awareness
- 27. Deportment
- 28. Appearance

Appendix B

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, as per paragraph 14 of the Respondent's Response to Application.

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

BETWEEN:
MICHAEL JACK

- and -

**HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO, AS REPRESENTED BY
THE MINISTRY OF COMMUNITY
SAFETY AND CORRECTIONAL
SERVICES OPERATING AS THE
ONTARIO PROVINCIAL POLICE
(Respondent)**

(Applicant)

**HUMAN RIGHTS TRIBUNAL OF
ONTARIO**

**CLOSING SUBMISSIONS OF
THE RESPONDENT**

Legal Services Branch
Ministry of Community and Social
Services
56 Wellesley St. W., 17th Floor
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