

Analysis of the Respondent's Disclosure (August 2009)

(August 18, 2009) (Volume 3, W-3):

From: Campbell, Ron (JUS)
Sent: August 18, 2009 3:04 PM
To: Johnston, Mike P. (JUS)
Cc: Borton, Doug (JUS)
Subject: Moving of Cst. Mike JACK

Mike: I know Sgt Flindall was into see you last week and this week when I came back and wanted to move Cst. Jack from shift. Your response at that time was no as he had more or less been in charge of ensuring proper supervision occurred.

Since that decision was made and with the background of Cst. Jack's call to S/Sgt Kohen and Sgt Flindall's statements to Cst. Jack.

- a) his job was in jeopardy - for failing to follow direction given to him on cc investigation- he answer shopped and didn't do as instructed.
- b) he would be watching his every move and documenting it
- c) charge under the HTA for driving error on the 12th of Aug
- d) Apparent discussions Sgt Flindall has asked his entire shift to monitor Jack's actions and contact him for any issues (this is also spread to platoon B)

On the Sunday Jack called in sick and there is some talk by Platoon Sgt "B" Sgt Banbury because he called in sick he thinks he was deceitful and wants to investigate why he told a person at an incident on Saturday prior to calling in Sunday that he was not coming in and was sick. (I will look into this on Wednesday the first shift back)

It is my feeling that it is because he is feeling vulnerable as a new employee, with a language issue, and an immigrant to the country that he is feeling the stress of his supervisors comments no matter how well intentioned it is likely resulting in a poisoned work environment and or a possible H.R. complaint. I think the supervisor has lost the focus he is here to assist and correct Cst. Jack as well as discipline him for transgressions that are not learning issues. I have touched on this with Sgt Flindall and will do so again on Wednesday in private.

Mike both you and I discussed this and it appears this officer is being left on his own to fully investigate matters beyond his experience level. When Sgt Flindall came to me this was addressed as he knew it was an issue. Sgt Flindall insists he was given proper direction and fully understood the directions he just did not complete.

As per your request I followed up and updated the briefing note for A/Supt Borton and Insp. Lee, and sent a message directly to Kent Taylor asking him for a driving assessment of Jack.

I received a call back from A/Supt Borton today and he thinks some fresh eyes are needed to continue this member's evaluation and give a fresh perspective on his suitability with the OPP. I am moving him completely away from the A& B side to Platoon "D". I have discussed with Sgt. Rathbun and Sgt Smith and with the bodies coming back in Sept and the new transfer of Rowe from Haldimand in Oct each platoon will be left with 12 persons.

Platoon D gives him a new start and I am awaiting Rich Nie to awaken for shift tonight to advise him of the decision that he will be the new Coach officer for the remainder of Cst. Jack's probation. Rich is a very level headed person and by having him on the opposite side gives Jack a new start from the other side with the alignment of the A&B Sgt of not only being relatives but good friends will assist all in having an objective look at this employee.

The tentative date for the movement is the 30th of August 09. Since his 7 month evaluation will be due on the 27 Aug 09 and outline the issues from his present coach and Sgt. Although this start prior to the end the current schedule which runs to 12 Sept 09. May violate the MOU or as it is now called the collective agreement that all rest days are set in stone until the new schedule is posted. It still complies with giving him at least 7 days notice of a shift change. The new schedule will not be posted until tomorrow at Noon. So I am sure all parties will agree to the move to give everyone a fresh start.

Ron

Please consider the paragraphs from the above e-mail and Counsels' response to the Application:

Paragraph 2:

Since that decision was made and with the background of Cst. Jack's call to S/Sgt Kohen and Sgt Flindall's statements to Cst. Jack.

- a) his job was in jeopardy - for failing to follow direction given to him on cc investigation- he answer shopped and didn't do as instructed.
- b) he would be watching his every move and documenting it
- c) charge under the HTA for driving error on the 12th of Aug
- d) Apparent discussions Sgt Flindall has asked his entire shift to monitor Jack's actions and contact him for any issues (this is also spread to platoon B)

Counsel's Response to the Application (HRTO 2010-07633-I), paragraph 29:

Paragraph 17 – The Respondent denies that the Applicant was switched from one platoon to another because it was discovered that he was being targeted by members of his shift. The Applicant was given an opportunity to have a

Counsel's Response to the Application (HRTO 2010-07633-I), paragraph 46:

The Applicant was not subjected to greater scrutiny than other probationary constables. The Applicant was struggling to perform the duties which were

Counsel's Response to the Application (HRTO 2010-07633-I), paragraph 47:

Paragraph 37 – Sergeant Flindall did not ask the officers in the Detachment to keep the Applicant under surveillance and report back to him. The coaching of a new recruit does not occur in isolation from other police officers. The Applicant was treated in the same manner as all other recruits.

Counsel's Response to the Application (HRTO 2010-07633-I), paragraph 53:

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 to

Paragraph 4:

It is my feeling that it is because he is feeling vulnerable as a new employee, with a language issue, and an immigrant to the country that he is feeling the stress of his supervisors comments no matter how well intentioned it is likely resulting in a poisoned work environment and or a possible H.R. complaint. I think the supervisor has lost the focus he is here to assist and correct Cst. Jack as well as discipline him for transgressions that are not learning issues. I have touched on this with Sgt Flindall and will do so again on Wednesday in private.

How could a comment that my employment was in jeopardy be interpreted as well intentioned? How could a comment that he (Sgt. Flindall) was pissed off with me be viewed as well intentioned? How could a comment that he (Sgt. Flindall) had never had such an incompetent recruit (me) be regarded as well intentioned? How could denying me developmental opportunities be viewed of being in my best interest? How could an order forbidding me to work overtime and to cover for officers on other shifts be considered as well intentioned? How could falsely charging me under the HTA be an act of kindness?

Counsel's Response to the Application (HRTO 2010-07633-I), paragraph 31:

Paragraph 19 – The Respondent denies that that Applicant was subjected to unwanted comments, jokes and harassment or that his workplace was poisoned.

The Respondent is absolutely right in the use of the word 'poisoned'. However, another appropriate word to describe my work environment is toxic!

I do disagree with S/Sgt. Campbell's thoughts that Sgt. Flindall lost the focus he was there to assist and correct me as he never focused on assisting and correcting me in the first place, i.e. total absence of performance evaluation meetings, total absence of positive documentations, denial of developmental opportunities, etc. Initially, he totally neglected me. Then after I had voiced my concerns he launched an annihilation campaign against me.

Paragraph 5:

Mike both you and I discussed this and it appears this officer is being left on his own to fully investigate matters beyond his experience level. When Sgt Flindall came to me this was addressed as he knew it was an issue. Sgt Flindall insists he was given proper direction and fully understood the directions he just did not complete.

Please note that S/Sgt. Campbell acknowledged that I was being subjected to unreasonable demands. However, nothing was done to rectify it and if the Respondent wishes to take the position that something was done by way of S/Sgt. Campbell issuing two or even three negative 233-10s to Sgt. Flindall, then I assert that the punishment obviously did not fit the crime for it continued.

Paragraph 8:

Platoon D gives him a new start and I am awaiting Rich Nie to awaken for shift tonight to advise him of the decision that he will be the new Coach officer for the remainder of Cst. Jack's probation. Rich is a very level headed person and by having him on the opposite side gives Jack a new start from the other side with the alignment of the A&B Sgt of not only being relatives but good friends will assist all in having an objective look at this employee.

I wonder if Sgt. Flindall and Sgt. Banbury had not been relatives and close friends or even if they had been, but worked in different detachments what would have happened. It certainly would have made it a little more difficult for Sgt. Flindall to conduct his surveillance on me. Regardless of that my work environment had been further poisoned after an e-mail exchange between S/Sgt. Campbell and Sgt. Flindall on September 23, 2008.

Counsel's Response to the Application (HRTO 2010-07633-I), paragraph 29:

Paragraph 17 – The Respondent denies that the Applicant was switched from one platoon to another because it was discovered that he was being targeted by members of his shift. The Applicant was given an opportunity to have a

Counsel's Response to the Application (HRTO 2010-07633-I), paragraph 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.

So I was moved from being under the intermittent surveillance by Sgt. Flindall and Sgt. Banbury (relatives and good friends) to being under the constant surveillance by Sgt. Flindall's neighbor, PC Nie. That was "helpful"!

(August 21, 2009) (Volume 3, V-20):

From: Campbell, Ron (JUS)

Sent: August 21, 2009 9:22 AM

To: Johnston, Mike P. (JUS)

Subject: RE: Re; Michael Jack Platoon D

In answer to your question why was he moved.

I had cc you and A/Supt Borton regarding the driving issue. I also added my thoughts on the NCO Flindall losing objectivity with him. He has his shift and Sgt Banbury's shift all watching this officer and reporting any screw ups. Couple this with statements from Sgt Flindall he admits making but not in the context that Cst Jack has reported.

1. his job is in jeopardy
2. he will be documenting his every move and he will be getting paper on issues that have been discussed. (this was after not following his direction on Criminal Harassment charge)

Then he screws up with the cruiser witnessed by Flindall and Payne and is given a ticket under the HTA and a 233-10.

Sgt Banbury comes to me complaining Jack has feigned illness the next day. I investigated and thank goodness he wrote his medical issues in his daily journal Sat afternoon along with a witness who assisted him a CP office in Buckhorn the Sat afternoon. He reports this continued through the night. I really think it is stress related from the scrutiny he is under. (Banbury wanted him charged with deceit...he should know all about that) In any event this is unfounded.

Finally his present coach Shawn Filman is going off on 4 months parental leave starting in Sept. So with all the issues in the email to yourself and Doug Borton Doug Borton advised he felt the only thing to do was move him. You will note I advised this was against an earlier decision you had made but with this further info I think we were heading to an issue as Mike is basically an immigrant of Jewish background. You and I discussed we felt he was being targeted. To his own demise he has alienated his shift by not being 100% truthful when shopping for answers..

On Wednesday Mike Jack, Rob Flindall, his OPPA alternate rep. Mitch Anderson and myself sat down and all the issues surrounding Mike were discussed in his presence with OPPA rep.

Long and short Sgt Flindall was advised that supervision is an issue here. That Cst. Jack needs one on one supervision to correct the problems. Work improvement plans need to be in place and direct supervision from a coach. Both he and Mitch brought up that everything has been thrown at him at once without prior issues reported on his PCS 066. It is also apparent Cst. Jack is not following direction.

Cst Jack will be given an independent assessment by Rich Nie to avoid a possible HR complaint. Interestingly Cst. Jack brought up in the meeting he felt he had been left on his own to investigate matters in which he had no experience. He also brought up but refused to name officers on his shift for inappropriate remarks and berating him in front of the shift as well. In other words work place harassment and discrimination policy...I assume it is in relation to his ethnic origin. Anyway I stressed the importance of him coming forward and have also stressed this issue to his new coach. I stressed in Rob's presence the duty of management to stop it if it occurred.

Then yesterday I got a call from Brian Gilkinson about the utter poor quality of 3 Crown briefs handed in by Cst. Jack. He stated there is no basis for a charge in any of the cases as all it is or amounts to is a collection of one line statements by the alleged complainants with no basis or facts to prove the accused actually did it nor do they outline the elements of the offence. This would be for the [REDACTED] complaint [REDACTED] complaint of Criminal Harassment.(exactly what Sgt Flindall) had given him a negative 233-10. Interestingly enough Sgt Flindall had just got done complaining to me about Bob. L. from the court sending this very brief back saying there was no offence for the very same reasons that the Crown was now stating. So I brought this to his attention that again it was simply unsubstantiated rumours and investigation needed to be completed. The same goes for a brief on [REDACTED] So again I asked Rob where is the coach officer who should be guiding this and where is the vetting of the briefs by him!!! Sgt Flindall has now taken on the responsibility of following up on both cases involving Cst. Jack's briefs and investigations as this is as much of a screw up by him.

Ron

Please note the following excerpts:

- ***'I also added my thoughts on the NCO Flindall loosing objectivity with him. He (Sgt. Flindall) has his shift and Sgt. Banbury's shift all watching this officer and reporting any screw ups'***
- ***'Couple this with statements from Sgt. Flindall he admits making but not in the context that Cst. Jack has reported'***
 - ***his job is in jeopardy***
 - ***he will be documenting his every move and he will be getting paper on issues that have been discussed***
- ***'I think it is stress related from the scrutiny he (me) is under'***
- ***'You and I discussed we felt he (me) was being targeted'***
- ***'Long and short Sgt. Flindall was advised that supervision is an issue here'***
- ***'Both he (me) and Mitch brought up that everything has been thrown at him (me) at once without prior issues reported on his PCS 066'***
- ***'Cst. Jack will be given an independent assessment by Rich Nie to avoid a possible HR complaint'***
- ***'Interestingly Cst. Jack brought up in the meeting he felt he had been left on his own to investigate matters in which he had no experience'***
- ***'He (me) also brought up but refused to name officers on his shift for inappropriate remarks and berating him in front of the shift as well'***
- ***'In other words work place harassment and discrimination policy...I assume it is in relation to his ethnic group'***
- ***'So I asked Rob (Sgt. Flindall) where is the coach officer who should be guiding this and where is the vetting of the briefs by him!!!'***

This e-mail contained in the Respondent's disclosure to the Applicant, as per the January 16th, 2012 deadline was actually in the possession of Counsel for the Respondent prior to responding to the application. Of consequential importance is:

- Counsel had specifically requested for an extension of the statutory 30 days provided for a response.

- Counsel requested this extension so as to have enough time to review the volumes of material given to by the OPP.
- Counsel had to review the volumes of material provided by the OPP in order to provide the response to the Application.
- Yet Counsel for the Respondent deliberately manipulated the truth by responding with a series of denials to the allegations contained in the Application so as to lead the Tribunal in believing the Application was questionable.

The following excerpts from the Counsel's response illustrate this final point:

Counsel's Response to the Application (HRTO 2010-07633-I):

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*.
29. Paragraph 17 – The Respondent denies that the Applicant was switched from one platoon to another because it was discovered that he was being targeted by members of his shift. The Applicant was given an opportunity to have a fresh start with a new coach officer who was part of a different platoon in an attempt to give him an opportunity to improve his performance under the guidance of a coach officer who may have had a different style than the original coach officer.
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".
47. Paragraph 37 – Sergeant Flindall did not ask the officers in the Detachment to keep the Applicant under surveillance and report back to him. The coaching of a new recruit does not occur in isolation from other police officers. The Applicant was treated in the same manner as all other recruits.

55. Broadly speaking, the Respondent denies:

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

To add further insult to this Judicial Process Counsel for the Respondent violated her very oath she made to the Law Society of Upper Canada, an oath to be truthful while maintaining impartiality in her representations so as not to bring the administration of the Society into disrepute. Counsel for the Respondent very conscientiously declared in section 21 of her response that she was telling the truth:

21. Declaration and Signature

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

Declaration:

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

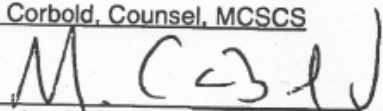
I understand that information about my Response can become public at a hearing, in a written decision, or in other ways determined by Tribunal policies.

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

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

Marnie Corbold, Counsel, MCSCS

Name



Respondent's Signature

03/05/2011

Date (dd/mm/yyyy)

Counsel for the Respondent then signed this section and in doing so placed her credibility at stake.

The Tribunal should clearly see how the Ontario Provincial Police violated my fundamental rights as a Canadian Citizen, one deserving the protection under the Ontario Human Rights Code and had the audacity to deny doing so in the formal response to my application before this Tribunal.

A “clean slate” and a “fresh start with a new set of eyes” hypocrisy:

(August 24, 2009) (Volume 2, L-12):

From: Postma, Jason (JUS)
Sent: Monday, August 24, 2009 5:08 AM
To: Campbell, Ron (JUS)
Subject: Probationary Constable Michael Jack Staff,

I believe in giving guys a second chance - and I mean that. Some concerns however.

Documentation: If Mike is not going to work out, do we have a structure of incidents laid out from Filman and Flindal so we are not starting fresh?

Supervision: I believe Pete will be back shortly on shift in September (unless there are developments I'm not aware of). Will Pete be ready for this task? If I'm to remain, who will be the next 2ic if Rich is coaching?

Coaching: Rich is a good officer, but he has been in this coaching roll way to long. He needs a few years of no recruits to get that front line grove back (my opinion). I don't want him to burn out if Mike requires extra documentation and process. He will do the job and will do it right, but I'm sensing the negative side of him of late.

Moral: D platoon is the laughing stock of this office because of these developments. People are not viewing this as second chance or re-focus, they look at this as "its not our problem anymore." Our shift is not happy, but will give Mike every chance to succeed. Its surprising how many people knew about this before I did, and before Rich made any comment on this.

Another note, from experience - problem officers or the rising stars define which coaches are successful in terminating probationarys or making positive recommendations. Everyone wants the good one, but very few are equipped to document and terminate employment if they don't meet the standards. We need to examine potential coaches more thoroughly in the future.

Just some thoughts Ron. Thanks for letting me "vent."
Jason.

Please note the following excerpts:

- *'do we have a structure of incidents laid out from Filman and Flindall so we are not starting fresh?'*
- *'Rich is a good officer, but he has been in this coaching roll way too long. He needs a few years of no recruits to get that front line grove back (my opinion).'*
- *'I do not want him to burn out if Mike requires extra documentation and process'.*
- *'I am sensing the negative side of him of late'.*
- *'D platoon is the laughing stock of this office because of these developments.'*
- *'Our shift is not happy,...'*
- *'Another note, from experience – problem officers or the rising stars define which coaches are successful in terminating probationarys or making positive recommendations. Everyone wants the good one, but very few are equipped to document and terminate employment if they don't meet the standards. We need to examine potential coaches more thoroughly in the future'.*

In light of the above information, it is clear that PC Richard Nie was handpicked to finish me off. This assertion is based on the following:

- PC Nie had a proven track record of being a coach officer the OPP could rely on to negatively document in detail to justify a termination of employment,
- PC Nie had exercised this malign skill of his to justify the termination of minority probationer Mr. Harry Allen Chase (Exhibit 48 and Exhibit 63),
- I was deliberately placed on PC Nie's shift since Sgt. Flindall had 'lost the focus' and they, being the next-door neighbors could easily confer together in order to get information from the opposite shift (while Platoon 'B' and Platoon 'C' worked days and nights, Platoon 'A' and Platoon 'D' were off) and in this way the OPP had coverage on all platoons (though this may sound far-fetched, consider my often repeated belief – a surreptitiously orchestrated plan was put in place to scrutinize my every move/action and document them in order to justify a forced termination),
- PC Nie's biasness towards me,
- PC Nie's lack of objectivity with me,
- PC Nie's belittling treatment of me,
- PC Nie's focus on the negative aspects of my performance – both real and fabricated,
- PC Nie's meticulousness in documenting my real and fabricated shortcomings over the following three months until my forced resignation.

Aside from what I have mentioned I was being placed in the midst of a platoon that felt they were the laughing stock of the detachment because of me (**'these developments'** refer explicitly to me) and they had the hypocrisy to say that I was getting a clean and fresh start in the midst of this already poisoned work environment.

Moral: D platoon is the laughing stock of this office because of these developments. People are not viewing this as second chance or re-focus, they look at this as "its not our problem anymore." Our shift is not happy, but will give Mike every chance to succeed. Its surprising how many people knew about this before I did, and before Rich made any comment on this.

How could one say that I would be given every chance to succeed if at the same time they were stating that everyone that I was going to be working with was not happy with me? In the opinionated environment of a policing profession I was already viewed as an "Undesirable". According to Sgt. Postma his platoon (that I was soon to be working on) was the laughing stock because of me. There is simply no excuse for the prejudice directed at me.