

**CANADIAN HUMAN RIGHTS TRIBUNAL    TRIBUNAL CANADIEN DES  
DROITS DE LA PERSONNE**

**JEAN-LUC MORIN**

**Complainant**

- and -

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

- and -

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**DECISION**

MEMBER: Athanasios D. Hadjis    2005 CHRT 41  
2005/10/14

**I. FACTS 1**

**A. Entry into the RCMP 1**

**B. Field Training - Months 1 & 2 2**

**C. Field Training - Months 3 & 4 10**

**D. Field Training - Months 5 & 6 14**

**E. First Extension of Field Training - Month #1 21**

**F. First Extension of Field Training - Month #2 26**

**G. First Extension of Field Training - Month #3 29**

**H. Second Extension of Field Training - Weeks 1 & 2 33**

**I. Second Extension of Field Training - Week 3 35**

**J. Second Extension of Field Training - Week 4 40**

**K. Second Extension of Field Training - Weeks 5 & 6 43**

**L. Return to Montreal 51**

**M. Official Languages Complaint 57**

**II. ANALYSIS 58**

**A. The Section 7 Complaint 58**

**B. *Prima Facie* Case 59**

**C. The RCMP's Explanation 63**

**D. The Section 14 Complaint 75**

**E. Was the Impugned Conduct Related to the Complainant's Colour? 76**

**F. Was the Impugned Conduct Unwelcome? 78**

**G. Was the Impugned Conduct Serious or Repetitive Enough? 79**

**H. Notification to the Employer 80**

**III. CONCLUSION 81**

[1] The Complainant alleges that he was discriminated against on the basis of his colour during his field training as a member of the Royal Canadian Mounted Police (RCMP), and that this discrimination was a factor in the subsequent termination of his employment, in breach of s. 7 of the *Canadian Human Rights Act*. The Complainant also claims that he was harassed by the RCMP on the basis of his colour during this training, in violation of s. 14 of the *Act*.

[2] The Complainant and the Respondent were represented by legal counsel at the Tribunal's inquiry into the complaint. Counsel for the Canadian Human Rights Commission read into the record an opening statement on the first day of the hearing and thereafter did not attend nor participate in the hearing process. The hearing itself lasted 51 days and was conducted in Montreal, Vancouver and Ottawa. Thirty-nine witnesses testified.

[3] For the reasons set out below, I have determined that the Complainant's colour was not a factor in his treatment while employed with the RCMP, or in his subsequent dismissal. He found his training very stressful. It was not an enjoyable period in his life. While the employer may have been very demanding of him during his training, I am not persuaded that discrimination based on his colour was a factor in this treatment. I have also concluded that he was not harassed on the basis of his colour.

## **I. FACTS**

### **A. Entry into the RCMP**

[4] The Complainant is a black man from Montreal. In 1994, he enrolled in a special program administered by the RCMP to train Haitians and Canadians in police technology at the RCMP Training Academy in Regina (commonly referred to as "Depot"). Haiti was in a transitional political period at the time and the program was established to help the country equip itself with a corps of newly trained police officers. Graduates from the program planned on joining the Haitian force. The Complainant successfully completed the program but for reasons related to his dual Canadian/Haitian citizenship, he was unable to accompany the other recruits to Haiti. He returned home to Montreal from Regina to complete his college-level studies. Having by now developed a profound interest in police work, he applied with earnest to enter the RCMP's recruit training program at Depot shortly after obtaining his college diploma. He passed the numerous entrance exams administered by the RCMP and was accepted into the program in April 1996.

[5] The Complainant opted to begin his instruction as soon as possible, which left him with no choice but to enter the English module. The French training was scheduled to commence several months later. The Complainant's first language is French but he had some knowledge of English at the time. The Complainant worked with bilingual text books while at Depot and with time, his knowledge of the language improved. The training lasted six months and he graduated in October 1996.

### **B. Field Training - Months 1 & 2**

[6] Upon completion of his training at Depot, the Complainant was assigned as a general duty officer to the RCMP detachment in Burnaby, British Columbia, to undergo his field training. This stage in a recruit's professional development is administered under the Field Coaching Program, also known as "Recruit Field Training" or RFT. It runs for six months. The recruit is a member of the RCMP during this period but the individual faces dismissal if he or she fails to pass the Field Coaching Program. During the RFT, a regular

member of the RCMP is assigned to the recruit as his or her coach/trainer. The coach rides patrols with the recruit for most of this period and assesses the new member's performance along the way. Assessment reports are prepared at two month intervals, and by the time the last report is drafted at the six-month point, the recruit must satisfy all of the required criteria in order to pass his RFT.

[7] Burnaby is, of course, a large municipality situated within the greater Vancouver area. An agreement exists between the Government of Canada and the City of Burnaby to have the RCMP provide it with policing services. Burnaby's RCMP detachment is the country's second largest. The Complainant had never visited Burnaby before and knew little about the city. He arrived there on about November 15, 1996, two weeks after graduating from Depot, and was met at the airport by his assigned trainer, Constable (Cst.) John Haney.

[8] The Complainant's first contact with his coach was amiable. Cst. Haney invited the Complainant to stay at his home until the recruit could find his own accommodations. The Complainant began his first shift the day after his arrival. Cst. Haney introduced him to other RCMP employees. He set about helping the trainee find an apartment and a convenient bank branch at which to open an account. Despite this fairly friendly start to their working relationship, the Complainant alleges that within days, he was subjected to discriminatory conduct on the part of Cst. Haney.

[9] The Complainant wanted to purchase a used car as soon as he arrived in Burnaby and had been perusing the classified ads in the newspaper. Many of the ads contained the term "OBO", which is an abbreviation for the phrase "or best offer" in reference to the price being sought. The Complainant was unaware of this acronym, particularly since English was his second language. He mistakenly believed that it was the name of someone in the city who had many vehicles to sell. While riding in the patrol car with Cst. Haney, the Complainant mentioned that he intended to call the person named "OBO" about purchasing one of his cars. Cst. Haney began to laugh at the Complainant's mistake. The Complainant did not as yet understand why. Later on, they pulled up to a fast food restaurant to have breakfast with several other RCMP officers from the detachment. Cst. Haney told the others about the Complainant's comment and everyone began to laugh. It was at this point that the Complainant learned the meaning of the abbreviation "OBO" and the reason for the others' laughing.

[10] From that day forward, Cst. Haney and other RCMP members began calling the Complainant by the nickname "OBO". The Complainant acknowledges that he tolerated the term for three or four days and that in fact, he was even grinning along with the others as the story about the classified ads was recounted. However, the usage of the name continued to occur months later, and people he barely knew would call him by this name. The Complainant testified that he felt like a buffoon when addressed this way. He alleges, moreover, that the name has racial connotations. "Or best offer", he contends, is a term that was used during slave auctions in pre-civil war America, and this particularly offended him.

[11] Cst. Haney recalls the discussion in the patrol car about the classified ads, adding that both he and the Complainant found humour in the latter's mistake. But he insists that there was no racial connotation in his reaction. He merely used the term OBO thereafter as a playful nickname, a sign of affiliation with the rest of the team. According to Cst. Haney, many RCMP officers at the detachment were referred to by nicknames, including

himself. This was typical of the camaraderie that existed between them, not unlike the relationship that develops amongst players on sports teams. He adamantly denies the Complainant's ever having indicated expressly or implicitly that he was offended or that the usage of the name was unwelcome. The Complainant either laughed along when addressed that way or did not react at all. Cst. Haney produced a home videotape of a party at his home, which was recorded by Cst. Haney's spouse on November 30, 1996, two weeks after the start of the Complainant's RFT. About a dozen guests can be seen on the tape, including the Complainant. At one point, Cst. Haney's spouse greets the Complainant from behind the camera by saying "Hey, OBO", and he can be seen smiling and responding to her greeting with a pleasant demeanour.

[12] The Complainant alleges that another incident of discriminatory conduct on the part of Cst. Haney occurred during the early stages of his RFT. Prior to a briefing session at the detachment, Cst. Haney observed the Complainant greet Cst. Ader Albert, who is also a black individual of Haitian origin. The Complainant claims that Cst. Haney made some gesture with his hands and remarked, "Is that how you black men shake hands?" The Complainant stated at the hearing that he felt ridiculed by the comment. Cst. Albert testified that he had some recollection of it but that he did not take any offence. He does not recall the Complainant demonstrating any outward objection. Cst. Albert interprets Cst. Haney's statement as his just "trying to be funny". Cst. Haney has no recollection of the incident at all.

[13] Over the course of the first two months of training, the Complainant alleges that Cst. Haney started to become excessively critical of his performance and their relationship began to deteriorate. The coach found fault in much of the Complainant's conduct. Speediness in getting to the scene of a call became a point of contention. Cst. Haney disapproved of the time it took for the Complainant to drive to a location. Occasionally, he got lost. The Complainant points out that he had just arrived in Burnaby and had not as yet become familiar with its geography. For this reason, he opted to rent an apartment within Burnaby, just so that he could remain within the city even when off-duty and get to know it better. The Complainant claims that Cst. Haney was impatient in this regard and that he began to use his watch to measure the recruit's response time in getting to the scene of a call. Cst. Haney would become so enraged with the Complainant's performance that he sometimes shouted at him and banged his hands against the car. On one occasion, the Complainant retorted to Cst. Haney that they were both adults and shouting was not called for.

[14] The Complainant says the constant timing by Cst. Haney placed an inordinate degree of pressure on him to perform, which occasionally caused him to make errors. He felt harassed by this procedure. His fellow recruits were not subjected to this type of performance measurement and indeed, virtually none of the members of the RCMP who testified in this case recalled ever having had their driving timed in this manner during their field training, though several acknowledged being told during their RFT that they were taking too long to get to a scene or to execute their other duties.

[15] Cst. Haney agrees that the Complainant expressed displeasure at the stress he was feeling from having his driving skills timed, but the coach maintains that he developed this "tool" as a mechanism to correct a deficiency in the Complainant's performance. It is important for a police officer to be able to respond quickly and safely to a call. Initially, the Complainant's response times were poor as was his navigation of the city's streets.

The time tool proved effective, notwithstanding the Complainant's protests, and within about a month, his response times improved to an acceptable level. Cst. Haney concedes that none of the other recruits being trained by other coaches around the same time as the Complainant were similarly timed. He contends nonetheless that the timing tool he had developed for the Complainant was useful and "creative" and could prove helpful with other trainees as well. He does not recall any specific instance of having raised his voice or banging his hands over this issue, as alleged by the Complainant. Cst. Haney does not deny that his "constructive criticism" of the Complainant could have been "construed" as yelling by the Complainant.

[16] Cst. Haney did not just time how long it took the Complainant to respond to a call. He kept track of how long it took his trainee to prepare police reports. Cst. Haney claimed that the Complainant was spending too much time on reports and that their quality was poor, both in terms of substantive content and form (language and spelling). He began timing him with the same goal of improving his performance. He claims that he had less success with the tool in this regard than he had with respect to lowering the Complainant's call response time.

[17] According to the Complainant, the fact that his report-writing was being timed placed additional stress on him, which in turn affected his output. Moreover, he points out that unlike the other recruits, he was not permitted to write his reports using the computers available at the detachment and in the patrol car. Had he been permitted to do so, he would have been able to make corrections on-screen before printing and verify the text with a spell-checking utility. Instead, Cst. Haney told him to handwrite his reports and often instructed him to rewrite them whenever something was found lacking. Sometimes he had to rewrite them more than once. This naturally ended up consuming even more time. Cst. Haney was also critical of the Complainant's handwriting, insisting that he print his letters and not use cursive writing when filling out forms and reports, or even when entering information in his notebook. The Complainant submits that his handwriting was neat and that these comments were unnecessary. He feels that he was singled out by Cst. Haney and was treated differently from the other recruits. Cst. Haney was of the view that it was important to learn to write reports by hand, as computers were not always available to officers. Neat handwriting was also viewed as essential by him. The coach who had trained Cst. Haney during his RFT had always insisted on these points. Cst. Haney wanted to pass the benefits of this training on to the Complainant.

[18] Another of the tools used by Cst. Haney was a daily logbook. Starting in mid-December 1996, Cst. Haney began recording the Complainant's activities during each shift. At the end of the day, the Complainant would read the logbook and write a self-assessment of his performance on a scale of 1 to 3, from poor to excellent. The coach would then enter his own assessment based on the same scale, following which there would be some discussion about how their respective conclusions were reached. Cst. Haney wrote suggestions on how improvements could be made. On most days, they both gave identical scores, usually a 2. This rating system was used for a little over a month, ceasing only in mid-January 1997. However, Cst. Haney and other senior officers involved in the Complainant's training continued writing summaries of his performance in the logbook thereafter, up until the end of the initial RFT period. Cst. Haney testified that he used the logbook to identify and have the Complainant understand the deficiencies for which improvement was needed.

[19] The Complainant was annoyed by the logbook. Its use began immediately following Cst. Haney's alleged outburst in the patrol car to which the Complainant had voiced his objections. It is his perception that the coach began using the logbook as a way to retaliate against him.

[20] At the detachment's Christmas party, the Complainant had the opportunity to speak to his supervisor, Corporal (Cpl.) Peter Fischer, and complain about Cst. Haney's "difficult" approach and his yelling. Cpl. Fischer took the complaint under consideration. He consulted his own supervisor, Sergeant (Sgt.) Dwight Watts, and met with Cst. Haney to hear his point of view. The coach explained that deficiencies had been identified regarding the Complainant. Cst. Haney maintained that he was addressing these problems and trying to correct them in a manner that was not overly harsh. After having received this explanation, and mindful that the Complainant had not asked for a new trainer, Cpl. Fischer directed the Complainant to comply with the coach's instructions.

[21] In a separate conversation in early January 1997, Sgt. Watts asked the Complainant if he wanted to change trainers for the balance of his field training. The Complainant turned down the offer. He explained at the hearing that because things were already going so badly for him, he did not want to worsen them by developing an image as someone who flees from a difficult situation. Two other witnesses at the hearing, Cst. Maxime St-Fleur and Cst. Oakland Knight, gave evidence that they requested and were provided with new trainers during their RFT at the Burnaby detachment. Interestingly, both of these recruits were also black and Cst. St-Fleur was a francophone of Haitian origin from Quebec, just like the Complainant. They did not pass their RFT after the initial six-month period and were only successful after having their RFT extended by several months. They are both active regular members of the RCMP today.

[22] On January 20, 1997, Cst. Haney issued the Field Coaching Program Assessment Report for the Complainant at the two-month point. The Complainant testified that he had expected a fairly positive evaluation, based on the entries in the logbook, where the average rating of 2 predominated. Assessment Reports contained a grid listing 28 criteria on the basis of which candidates were rated superior, competent or needing improvement. It came as a shock to the Complainant to learn that Cst. Haney had marked him as needing improvement in ten of the categories. These areas included his ability to define problems, his aptitude at communicating in writing, his knowledge and application of law, policy and procedures, his proficiency at information gathering, and his investigation and evidence gathering skills. His driving and officer safety skills were also noted as deficient, as was his decision-making ability.

[23] The Assessment Report form contained a section where the recruit would provide his own remarks. The Complainant wrote that he agreed with Cst. Haney's comments and that he was willing to improve his English grammar. He added that he appreciated the training given by his coach so far and would do his best to improve his skills in the future.

[24] The Complainant testified that in reality, he did not agree at all with Cst. Haney's assessment of his performance, noting that he was not found lacking in any of the identified areas when he graduated from Depot. Several witnesses remarked, however, that one's achievements within the academic environment at Depot do not necessarily ensure similar success in the real-world environment experienced while training in the field. Cst. Haney testified that in any event, finding a trainee in need of improvement

merely meant that some work was required in order for the candidate to meet the required standard. He noted that many of the Complainant's deficiencies were intertwined with one another. For instance, he had observed that the Complainant had a poor knowledge of provincial and municipal statutes and regulations enforced by the RCMP at the Burnaby detachment. This resulted in the making of ill-advised decisions in various areas, such as crime scene investigations and evidence gathering. Cst. Haney pointed out that he had included words of encouragement in the Assessment Report as well. He made the point of writing that the Complainant is an intelligent individual who has the ability to succeed. He also recognized in the report that some of the difficulties experienced by the Complainant in his drafting may have been because English was his second language.

[25] The Complainant was particularly upset that the Report failed to mention any of the positive or commendable acts performed by him during the course of the first two months of training. One incident that stood out related to a patron in a local restaurant where the Complainant and Cst. Haney were also eating on November 27, 1996. The Complainant noticed that the man began choking on some food, and was unable to breathe. The Complainant intervened immediately and applied the Heimlich manoeuvre to dislodge the obstruction, while Cst. Haney called on his radio for an emergency response team. The Complainant's efforts were successful and the patron's life was saved. Following the incident, Cst. Haney merely commented to the Complainant that he had done a "good job, by the way", as they sat back down at their table to finish their meals.

[26] Back at the police station, the Complainant claims that Cst. Haney made no particular effort to inform any superior officers about his actions nor were they reported in any official manner to other members of the RCMP at the detachment. Cst. Haney testified that both he and the Complainant recounted the story to their colleagues and supervisors when they returned to the station. But Cst. Haney did not think it appropriate that a memo be drafted up and circulated by him applauding their own deeds. It would have been viewed as self-promotion. Such recognition was better left to their supervisors. Indeed, several days later, following the receipt at the detachment of a letter from the restaurant patron, thanking the Complainant and Cst. Haney for saving his life, Superintendent R.W. Fenske, who was the officer in charge of the Burnaby Detachment, wrote a memorandum commending them for their conduct. A copy of the letter was placed in the Complainant's personnel file. Yet no similar mention of the Complainant's actions was included in the two-month Assessment Report prepared by Cst. Haney.

[27] Interestingly, Cst. Haney's involvement in the incident was specifically mentioned with commendation in his annual performance review, prepared by his supervisor some months later. Cpl. Fischer testified that annual performance reviews differ from RFT Performance Assessments. Annual performance reviews are intended to reflect all of an officer's documented exploits, whether positive or negative. Had the Complainant passed his RFT, the event would have been recorded in his annual performance review as well. On the other hand, Performance Assessment Reports are only concerned with documenting whether a recruit has reached the level of competence in each of the Field Training Standard's 28 criteria.

### **C. Field Training - Months 3 & 4**

[28] Over the next two months, Cst. Haney noted some improvement in the Complainant's skills but he remained dissatisfied with respect to certain areas assessed. The trainer was particularly troubled with the quality of the Complainant's note-taking

and report-writing. Cst. Haney had advised the trainee to adopt the trainer's own rather formal style of taking notes. It appears that the Complainant did not emulate this style but evidence was led by other members of the RCMP that ordinarily, officers could adopt their own note-taking method, provided there was sufficient clarity for subsequent use at court proceedings. Cst. Haney remarked that no matter which note-taking method is employed, certain facts must be recorded under all circumstances, and the Complainant was failing to do so, even as he neared the end of his fourth month of training.

[29] On the issue of report-writing, Cst. Haney continued to find that the Complainant had difficulty putting the right information into his documentation and that he took too long to prepare it. Yet Cst. Haney was confident that the Complainant could do better. On at least one occasion when the Complainant was instructed to redo his report, the final outcome was much improved. There are numerous entries made in Cst. Haney's logbook during this period in which he states that the Complainant is capable of achieving success with greater effort. The logbook also documents increasing resistance from the Complainant whenever instructed to redo his work.

[30] Cst. Haney also identified problems relating to the Complainant's decision-making while in the field. The trainer advised that the Complainant needed to augment his knowledge base of law, policy and procedures, in order to improve in this area. Cst. Haney also encouraged the Complainant to ask questions and draw from the experience of others to assist in his decision-making.

[31] The Complainant, on the other hand, disputes these assessments and accuses Cst. Haney of not fulfilling his duty to properly train him. According to the RCMP's Field Coaching Program Training Standard, trainers were expected to interact respectfully with their trainees and establish a positive work relationship. The recruit was supposed to feel comfortable with his or her coach. The coach in turn was to lead by example. Such a rapport never developed between the Complainant and Cst. Haney. The trainer's constant criticisms left the Complainant extremely uncomfortable. He would go to work wondering what else would be found deficient about him that day.

[32] If his skills were lacking in some way, he contends that his trainer did not provide him with sufficient feedback on how to improve them. The Complainant was left to better himself on his own. He therefore enrolled in an English language training course. He began studying the applicable statutes and regulations, and he viewed numerous training video cassettes in his off-hours, usually at the detachment. He often stayed in the office after work. Despite these extra efforts, the Complainant alleges that Cst. Haney did not offer any positive reinforcement. To the contrary, one day in late February 1997, Cst. Haney told the Complainant that the police officer's profession was not for him and that he should consider changing careers. The Complainant replied defiantly that he wanted to succeed and would not resign.

[33] Despite the lack of support from his coach, the Complainant felt confident that with all the extra effort he was expending, his assessment for the second two-month period would improve. Part of his confidence stemmed from the fact that he began patrolling the district on his own starting in late January 1997. He was more relaxed without his trainer next to him, and felt comfortable enough to meet any challenges that he faced. Cst. Haney testified that the Complainant, as is the case with all recruits when they do their first solo patrols, was shadowed by his coach and other officers in separate vehicles during these shifts. Consequently, Cst. Haney backed up the Complainant and arrived on



the scene on all but the most routine calls. Cst. Haney recalls that while on these solo patrols, the Complainant on several occasions failed to follow appropriate procedures in responding to calls and investigating incidents.

[34] The four-month Assessment Report, prepared on March 17, 1997, confirmed that the Complainant had improved to the level of competence in several areas, namely his driving and officer safety skills, as well as his abilities to define problems and gather information. But Cst. Haney also concluded that the trainee still needed improvement in his communication skills, and his knowledge of law, policy and procedures. In addition, he needed to improve his skills at taking statements and at taking control of situations when responding to an incident. In all, Cst. Haney deemed the Complainant as needing improvement with respect to six of the 28 criteria, down from the ten cited in the two-month Assessment Report. The trainer encouraged the Complainant to remain positive and determined during the final two months of the RFT, and urged him to devote an extra effort to the development of his skills. Cst. Haney set out a list of activities to assist the Complainant in improving his knowledge of law, policy and procedures, which included attending a series of weekly off-duty tutorial sessions with Cst. Haney.

[35] The Complainant was disappointed with the Report. It was clear in his mind that he was facing an injustice. Despite all his hard work and efforts, his situation was not improving. He was in perpetual conflict with Cst. Haney and it was evident that the trainer wanted him to fail. The Complainant believes that Cst. Haney's intentions were rooted in prejudice against him and his colour. The Complainant says an incident that occurred just prior to the preparation of the four-month Assessment Report confirms his suspicion.

[36] While both he and Cst. Haney were changing into their uniforms in the locker room at the police station one day, the trainer called the Complainant "Kirby Puckett Ass". The Complainant claims that he took offence at the remark, actually interpreting the first word as being "curvy" and viewing it as a reference to the physical features of his lower torso. More importantly, he associated it with certain racial stereotypes regarding persons of African ancestry. The Complainant would only come to learn later on, when he contacted the Canadian Human Rights Commission to file his complaint, that Kirby Puckett is a well-known African-American baseball player. The Complainant testified that Cst. Haney used the term (as well as "OBO") numerous times, right until the end of training with this coach, in May 1997. The Complainant says that he never expressly voiced an objection to the term since his career depended on Cst. Haney's assessment and he did not want to risk a confrontation with him.

[37] Cst. Haney does not deny using the term "Kirby Puckett Ass", but offers a context for the remark. He and the Complainant, together with several other officers, had been involved in a chase of a suspect on foot and by car through the streets of Burnaby. Cpl. Fischer later issued a memo congratulating all of the officers on their excellent job apprehending the individual. At one point during the pursuit, while Cst. Haney was running after the suspect, the Complainant got out of his patrol car and gave chase on foot as well, behind Cst. Haney. Back at the police station some time later, Cst. Haney asked the Complainant why he chose to leave the vehicle and run behind him. The Complainant answered that he was a faster runner than the coach and it would have been easier for him to catch up to the suspect. Cst. Haney disagreed and they engaged in a back and forth conversation trying to convince each other who is faster. At some point

during this discussion, Cst. Haney called the Complainant, in what he described as an ironic, satirical tone, "Kirby Puckett Ass".

[38] Cst. Haney was aware that Kirby Puckett is an "extremely powerful" baseball player known to have a large, powerful torso, who was inducted into the Baseball Hall of Fame because of his athletic talent. His comment therefore related to the running prowess being claimed by the Complainant, whom he viewed as a fit individual of a muscular build and appearance similar to Kirby Puckett's. The sarcastic tone was meant to imply that although the Complainant was claiming to possess the ability of Kirby Puckett, in actual fact he did not. The player's race did not cross Cst. Haney's mind and he never intended to use the term as a racial epithet. Cst. Haney recalls that this conversation was very jovial in nature. In fact, the Complainant turned to another officer walking by and told him what Cst. Haney had just said. The other person replied that this was "OK because sometimes we all call [Cst. Haney] `Dumbo'", a nickname that alluded to the shape of his ears. When the Complainant heard this, he bent over laughing as he repeated the word Dumbo back to himself several times. Cst. Haney claims that the Complainant called him "Dumbo" other times thereafter.

[39] Cst. Haney insists that he used the term "Kirby Puckett Ass" in no more than five instances, and only within days of this discussion in the locker room. He maintains that the Complainant never objected to the use of the term and that had he done so, the trainer would have ceased using it immediately. Overall, according to Cst. Haney, he and the Complainant used nicknames very infrequently, and called each other by their proper first names "99% of the time".

[40] The Complainant claims that Cst. Haney's attitude outside the workplace demonstrated a prejudice against him as well. The Complainant's fiancée, Natalie Cerrato, joined him in Burnaby in late December 1996. She worked at a local sandwich shop as well as at the detachment, as a volunteer. Cst. Haney knew her and yet, when she served him at the sandwich shop a few times or when they sometimes crossed paths at the detachment, he ignored her. Furthermore, aside from a couple of occasions, Cst. Haney and the Complainant never socialized together on their days off work. The coach never invited the Complainant and his fiancée together to his home.

[41] Several RCMP officers testified, however, that it was not necessarily a normal practice for members to develop personal friendships amongst themselves and to meet outside of work. Cst. Haney stated in his testimony that there was always an open invitation extended to the Complainant to visit his home in Coquitlam, and indeed, he had come over several times during the first weeks of the RFT. But Cst. Haney also noted that by the time Ms. Cerrato arrived in Burnaby, his relationship with the Complainant had already become strained at work. It had evolved almost exclusively into a trainer/recruit relationship. There was a separation in their roles, which may have "translated into a little additional stress" that even extended to his contacts with Ms. Cerrato. Cst. Haney added that he did not recall ever being invited over to the Complainant's home.

#### **D. Field Training - Months 5 & 6**

[42] As they entered the fifth month of the RFT, Cst. Haney commenced the weekly law, policy and procedures tutorial sessions with the Complainant, which he had recommended in the four-month Assessment Report. The Complainant acknowledges that these sessions were organized at the coach's initiative. Cst. Haney conducted them at his home, outside of working hours. Both he and the Complainant received an overtime

allowance for this activity. The meetings lasted for hours at a time during which they reviewed a multitude of scenarios. The sessions ceased after the third week, probably because Cst. Haney was away from the detachment on training. They never resumed, to the disappointment of the Complainant. Cst. Haney testified that he had not intended to tutor the Complainant to the end of the RFT. The goal was to determine in which areas the Complainant was still deficient, and thereafter it would be up to the trainee to concentrate his studies even further in those areas.

[43] As in the preceding period, the Complainant and Cst. Haney only occasionally worked together in the same patrol car during the fifth and sixth months of the RFT. The Complainant regularly drove solo. He also completed rotations in other sections of the detachment as is required of all recruits.

[44] On April 27, 1997, Cst. Michel Merritt arrived on the scene of a call to which the Complainant, who was working solo, had been dispatched as primary responder. A landlord and a tenant had engaged in a dispute regarding the use of the leased premises, which had developed into a shoving match. Cst. Merritt later criticized the Complainant for concentrating too much on trying to resolve the civil dispute between the parties and not focussing on the criminal assault investigation for which he had been called to the scene to conduct. Cst. Merritt noted this observation in the logbook.

[45] Cst. Haney prepared the final Assessment Report on May 17, 1997. He concluded that the Complainant needed improvement in the same six areas cited in the second report but added that improvement was also needed in a seventh field: records management. The coach provided a detailed narrative with the report, which referenced several incidents in support of his findings.

[46] The concern regarding the Complainant's record management skills stemmed from his difficulty in keeping his files current and responding promptly to requests made by his supervisors, Crown counsel and others. Cst. Haney noted that the Complainant was "extremely" unorganized and he failed to adopt several suggestions to improve this weakness. Files were often found torn and tattered at the bottom of his "duty bag". The Complainant brought the bag with him to the hearing. It is soft-sided and resembles an athletic bag. In my view, it is not a case in which one would ordinarily expect to see files carried.

[47] Cst. Haney noted that he still had some concerns about the Complainant's communication skills in his second language, but was pleased to see that he had enrolled in English courses outside of working hours. Of greater concern was the Complainant's ability to prepare his incident reports and all related documents without undue delay. Cst. Haney found that the reports were often inadequate and lacked the necessary detail, which resulted in their having to be done over, thereby further delaying their completion. According to Cst. Haney, the Complainant still required considerable guidance and supervision in the drafting of documents.

[48] The trainer remarked that the Complainant had notably upgraded his knowledge of law, policy and procedures over the previous months, but further improvement was still needed. Several instances where this deficiency emerged were raised. While the Complainant was on a rotation with another unit of the detachment, a replica handgun was found and seized. There was an initial suspicion that the gun had been used in a series of robberies. The Complainant was assigned the task of processing the item as an exhibit for possible criminal charges. When he returned to the station, he was unable to

locate any members of the General Investigation Section (GIS) to whom he was to hand over the gun. So he left it unattended in his office basket for several hours, thereby breaking the continuity of its possession. As things turned out, the initial suspicion regarding the gun's history was unfounded and no charges were laid. But according to Cst. Haney, the Complainant should have conducted himself as if the item was an exhibit. Cst. Haney confronted the Complainant over this matter. There was a strong reaction from the Complainant who protested that the trainer was being overly demanding.

[49] The Complainant testified that he had felt wronged by Cst. Haney's criticism. He had only placed the gun in his basket after having been told by the investigating GIS member back at the crime scene that no criminal charges were going to be laid relating to the gun and that the Complainant should dispose of it. In these circumstances, the continuity of its possession was no longer of any relevance. The Complainant tried to explain these facts to Cst. Haney but the coach refused to accept his explanation.

[50] A similar incident occurred regarding the seizure of a small amount of marijuana in respect of which there was not going to be any prosecution, a so-called "no case" drug seizure. The Complainant was instructed to take possession of the seized drugs and initiate the process for their destruction. This required that he complete a fairly complex form. Instead of doing so immediately, the Complainant decided to store the narcotics in his duty locker for a month, in contravention of detachment and RCMP policy. Cst. Haney wrote in the Assessment Report that this was due to the Complainant's "procrastination". He added in his testimony that if the Complainant found the task of filling out the form daunting, he should have sought out assistance, instead of just leaving a controlled substance to sit in his locker. Cst. Haney was particularly concerned that this type of error was still occurring six months into his field training.

[51] The Complainant disagrees entirely with how Cst. Haney presented these events in his Report. The drugs were seized while the Complainant was on rotation in a neighbourhood liaison unit under the supervision of Constable Anthony Akow. After the suspects in possession of the narcotics had been detained, Cst. Akow directed the Complainant to store the drugs in his locker until such time as the suspects were interviewed and a decision was made on whether to charge them with an offence. One week later, and in each of the ensuing two weeks, the Complainant asked Cst. Akow if a decision had been made and he was told no. Finally, about one month after the date of the seizure, Cst. Akow told the Complainant that charges would not be laid and instructed him to proceed with the destruction of the drugs. Accordingly, he completed the requisite form pursuant to RCMP standards. It was when Cst. Haney saw the recruit filling out this form that he accused him of having procrastinated and not complied with the applicable policy and procedure. The Complainant attempted to explain several times over that he was simply following orders, but Cst. Haney refused to listen and did not try to consult Cst. Akow for confirmation of the Complainant's explanation. The Complainant testified that he felt crushed and victimized by the treatment he received at his coach's hands.

[52] The Complainant called Cst. Akow as a witness at the hearing. His account of the facts is not consistent with the Complainant's. He recalls telling the Complainant on the very evening of the seizure that no charges would be laid and that he should proceed with the drugs' destruction. He remembers that some weeks later, he happened to run into the Complainant at the detachment. Cst. Akow was working out of a satellite police station at the time and only rarely visited the main office. The Complainant informed him that he

had yet to dispose of the drugs. Cst. Akow was surprised to hear this and recalls advising the Complainant that if he did not know what procedure to follow, he should seek the advice of his trainer or another officer. The Complainant did not tell Cst. Akow at this time that he had been storing the marijuana in his duty locker. Cst. Akow only learned of this fact shortly before testifying at the Tribunal hearing. In his opinion, this form of storage was inappropriate. There were two designated sets of lockers at the police station where exhibits were secured temporarily pending further processing, and that is where the Complainant should have placed the seized substances. The Complainant should have been aware of these lockers, and if not, he should have asked his trainer or another officer for advice.

[53] On the issue of the Complainant's evidence gathering skills, Cst. Haney remarked in the final Assessment Report that the Complainant's notes were still incomplete. Important observations were frequently not recorded in his notebook and significant details, such as dates of birth, phone numbers and times, were often lacking.

[54] The Complainant's ability to deal with members of the public was also identified as problematic. Cst. Haney referred in the final Assessment Report to two incidents where the Complainant engaged in a "shouting match" with members of the public. His confrontational approach was unprofessional and not acceptable.

[55] Cst. Haney also reiterated his concerns about the Complainant's decision-making skills, adding that they would likely improve as he upgraded his knowledge and application of law, policy and procedures. The coach encouraged the Complainant to seek out the advice of senior RCMP members and experts in order to further enhance these skills. Cst. Haney also noted that the Complainant needed to begin taking a common sense approach when dealing with situations. As an example, the coach highlighted an incident where the Complainant returned a recovered stolen vehicle to an individual without first verifying the person's identification and vehicle registration. The Complainant countered in his evidence that he knew the individual from before and had spoken to him in French before returning the vehicle. He had established with confidence that this person was in fact the car dealer who had reported the theft. The Complainant's attempts at explaining this to Cst. Haney were rebuked yet again.

[56] Cst. Haney concluded in his Report that in general the Complainant's work ethic was suspect and required improvement. He tended to deflect criticisms that were intended for his benefit and he had the habit of comparing himself to other cadets being trained at Burnaby instead of focussing on what he needed in order to become successful. Nonetheless, Cst. Haney indicated that with a greater effort and a willingness to learn, the Complainant could succeed in the Field Training Program. He therefore recommended that the Complainant's training period be extended. The non-commissioned officer who was in charge of training at Burnaby, Cpl. Richard Cousins, testified that while in theory a recruit who does not pass his initial six-month RFT can be recommended for discharge, in his experience, the training period of all recruits is ordinarily extended in such circumstances. According to Cpl. Cousins, failing to satisfy all the criteria at the end of the initial period does not indicate an inability to succeed but rather that the individual needs more coaching and more development to meet the standards.

[57] The Complainant took issue with the final Assessment Report prepared by Cst. Haney. He recalls that despite its somewhat optimistic conclusion, Cst. Haney told the Complainant several weeks before the Report's completion that it was by no means

certain an extension would be recommended for him. He openly questioned whether the Complainant was destined to have a police career. These remarks had the obvious effect of further discouraging the Complainant, who had been making a tremendous effort to improve himself.

[58] The Complainant was particularly upset at the assertions in the Report that he had not applied himself sufficiently and was unwilling to work hard. He claims that Cst. Haney often accused him during the RFT of being lazy and slow. Aside from being unfounded, the Complainant argues that these statements demonstrated an underlying racial prejudice associated with a negative stereotype of black persons as lazy and lethargic. The communication of these accusations by Cst. Haney to supervisors and other RCMP members served to irreversibly taint his reputation at the detachment.

[59] Contrary to the findings of his trainer, the Complainant felt very comfortable by this point in his role as a police officer. He was at ease going on solo patrols and handling any form of call to which he had been exposed in the past.

[60] He was again frustrated that none of the many positive or outstanding acts executed by him over the course of the previous two months were mentioned. For instance, although he was criticized for placing a suspect's replica gun in his office basket, the Complainant had at the same time taken the initiative to search the detainee's background, and uncovered that he was an illegal immigrant against whom a deportation order had been issued. As a result, the suspect was kept in detention and then handed over to the immigration authorities.

[61] Another incident of good conduct that was not reported took place on April 16, 1997. While on rotation with another unit, the Complainant was heading to the courthouse with Constable C.L. Ramos in an unmarked police car. As they were travelling, the Complainant observed someone trying to break into a parked vehicle. They stopped and apprehended the suspect, who it turned out was in possession of stolen property and had a record of violence. Cst. Ramos drafted up a memo (known as a "1004 Performance Log") commending the Complainant for his "enthusiasm and fine work ethic". Several supervisors endorsed the memo and praised him with remarks such as "good work" and "excellent".

[62] Two days later, on April 18, 1997, the Complainant was assigned to work with Constable R.S. Burns, on rotation with another unit, and was again riding as a passenger in an unmarked police car. He witnessed two persons running away from an apparent altercation with a third individual. The Complainant got out of the car and pursued both suspects on foot. After apprehending and securing the first, he continued the chase and caught the second suspect as well. Both of them were the object of an ongoing assault and kidnapping investigation. Cst. Burns later noted that the Complainant exhibited considerable enthusiasm in apprehending the individuals and that his decision to intervene was correct. This event was not mentioned in the Assessment Report but Cst. Haney testified that he was only made aware of the incident just prior to his testimony in the present case.

[63] The Complainant points out that even his work within the broader community was omitted from the Report. For example, no mention was made of his having volunteered to present scenarios to students attending the 1997 Youth Academy, a project organized to acquaint young people with the RCMP. The officer in charge of the event later sent a letter to the Burnaby detachment expressing gratitude for the Complainant's contribution.

[64] Cst. Haney disagrees with the intimation that the Complainant's successes during his training were ignored. To the contrary, the coach contends that they were incorporated in his general assessment. Ultimately, however, the objective of the Assessment Report and the Field Training Program as a whole was to establish whether the recruit was competent under all the designated criteria. The Field Coaching Program Training Standard, which served as an operational manual for RFTs, stipulated that in preparing Assessment Reports, field coaches were to only document observations of performances that were either in need of improvement or were superior. In the absence of any such mention, the recruit was assumed to be competent in all areas. Where something "noticeably wrong" was observed, the trainer was supposed to provide suggestions for remedial action in the report. In addition, Cst. Haney added that his role as a trainer was to provide the Complainant with an accurate, open and honest impression of the level of his performance. In Cst. Haney's opinion, to emphasize the achievements at the cost of minimizing the deficiencies would have been dishonest and would have negatively impacted on the Complainant's training.

[65] Under the "Trainee's Comments" section of the final Assessment Report, the Complainant did not express any open objection, having resigned himself to the situation. He noted that he had been working very hard over the previous two months but understood that he still needed to work more in certain areas. He accepted the extension to his RFT and declared that he would prove his competence in all areas.

#### **E. First Extension of Field Training - Month #1**

[66] Cpl. Cousins, who headed the training program, accepted Cst. Haney's recommendation that the Complainant's training period be extended for three months. In an effort to start things anew, it was decided that he would be moved into another district of the city to work with new peers and supervisors, and a new trainer. He would still be working out of the detachment's main building. For his part, the Complainant asked his team supervisor, Sgt. Watts, if he could be assigned a bilingual coach this time. Cst. Haney did not speak French, and the Complainant felt that in some instances he may have been better understood by the coach had he been able to express himself in his first language.

[67] Sgt. Watts designated Cst. Dave Carr, whom he considered very competent and well-respected by his peers, as the trainer for the extension period. Cst. Carr held an "official language" (ie. bilingual) position. The Complainant submits however that in fact, Cst. Carr could barely speak a sentence in French. He testified that at no time was he able to express himself and get his point across to the new trainer in French, particularly in decision-making situations. On the other hand, Cst. Carr gave evidence that he deliberately spoke to the Complainant almost exclusively in English since the latter's English language skills were still in need of improvement.

[68] The extension of the Complainant's field training began on June 13, 1997. He met with Cst. Carr and Corporal Lyle Avery, who became his new supervisor. They discussed his problem areas and set out a list of corrective actions. These included an undertaking by the Complainant to study the writing skills and style of other members, to ride along in patrol cars with other officers during his off-hours, and to implement Cst. Carr's system of personal organization. It was agreed that the lines of communication between the three of them would be open at all times. Cpl. Avery underscored the point that both he and Cst. Carr wanted the Complainant to succeed.

[69] The Complainant's reaction to this action plan was mixed. He was personally upset that the RCMP had not seen fit to pass him on his field training, but outwardly he maintained a positive and open attitude toward these guidelines. After all, his greatest desire was to succeed.

[70] The Complainant testified that Cst. Carr's training style was in marked contrast to that of Cst. Haney in several respects. Cst. Carr permitted him to use the available computers to draft his documents, which allowed him to write up his reports much more quickly. In addition, Cst. Carr's tone was very professional and he did not yell at the Complainant. He did not address him using either of the allegedly racial epithets used by his former trainer ("OBO" and "Kirby Puckett Ass"). Cst. Carr testified that he had previously heard the story regarding the Complainant's mistaken use of the term "OBO" but he had not heard of the term "Kirby Puckett Ass" until he saw the Complainant and Cst. Albert exchange messages on the patrol car's mobile computer one day. Cst. Albert used the term to address the Complainant, who in turn used a nickname to address Cst. Albert in reply. The Complainant explained to Cst. Carr that Kirby Puckett Ass was a nickname that had been given to him once. He did not express any displeasure in its use.

[71] Cst. Carr did nonetheless carry over some of Cst. Haney's training techniques. For instance, he relied on a logbook to record events on a daily basis. The Complainant claims that even the slightest error on his part ended up being documented in Cst. Carr's book. Cst. Carr also kept track of how long it took the Complainant to complete his reports. Each time he would make a mistake, Cst. Carr would openly question how this could happen to someone with more than six months' experience in the field. The Complainant's attempts to blame his deficiencies on what he perceived as the poor level of training he had received from Cst. Haney were dismissed by Cst. Carr. This had a chilling effect on the Complainant, who became reluctant to ask questions and learn how to execute a given task, which further aggravated the problem.

[72] A conversation that he had with Cst. Carr and Cpl. Avery several weeks into the extension only added to the frustration he was feeling. Both of the more senior members tried to convince him to consider resigning and take up another profession. Their comments were very upsetting. He thought their opinions of him were unfounded and unfair. He could not understand why he was given an extension on his RFT if they were so certain that he would not pass. How could they claim that he was starting anew, when they had already prejudged him? He felt crushed.

[73] Cst. Carr disagrees. He and Cpl. Avery wanted to speak to the Complainant about his progress to that point. It was clear that he continued to have difficulties in his training and they felt it appropriate to propose that he consider a career other than police work. Cst. Carr believed it to be in the best interest of a trainee to be open and frank with him.

[74] The Complainant's alleged ongoing deficiencies were identified in the first Assessment Report of the extension period, prepared at the one-month point and dated August 3, 1997. Cst. Carr concluded that the Complainant still needed improvement in six of the seven areas where he had been found deficient in Cst. Haney's final Report. He had upgraded himself to the level of competency in the seventh area, incident and risk management.

[75] Cst. Carr testified that the Complainant had actually demonstrated competence in several of the categories for which a need for improvement had been identified, such as in his knowledge of law, policy and procedure and his records management. But this



improvement had only just occurred in the days and weeks prior to the filing of the Report and Cst. Carr felt it inappropriate to upgrade the Complainant until a level of consistency over a longer period had been shown.

[76] The coach felt that the Complainant remained clearly deficient in several of the other fields. Communication skills remained a challenge for the Complainant. His continued difficulty with written English made paperwork a formidable task for him. But Cst. Carr noted that the Complainant even had difficulties with the format of reports and that he was unsure about what information needed to be included. These problems resulted in his taking an inordinate amount of time to complete a report, often necessitating two or three drafts before finalization. Cst. Carr remarked that because paperwork was so cumbersome for the Complainant, he had a propensity to avoid this task.

[77] The Complainant questions the validity of this assessment. He points to the evidence of Constable Dana Lillies, who replaced Cst. Carr as coach for a total of ten work shifts in July 1997. She noted in the logbook that the Complainant's paperwork was satisfactory, with the wording only in need of some "fine tuning" in the odd sentence. She did not identify any problem in the content of the reports. Overall, she did not observe any major problem in his performance, although she acknowledges that all the calls that they attended were relatively routine in nature. In one case, the Complainant reacted quickly and chased down on foot a detained suspect who had managed to run away from the patrol car.

[78] Cst. Carr also noted that the Complainant demonstrated a lack of common sense and made decisions that "defied logic". For instance, while at a scene where someone had died, a so-called "sudden death" call, he opted to tape a statement from a witness with the deceased's body still present, in an environment with considerable noise and commotion. The Complainant was later advised that a written statement would have been more appropriate in such circumstances. A few weeks later, the Complainant attended the scene of a purse snatching. He opted yet again to take a taped statement from the victim, who was very upset, under a noisy Skytrain commuter train platform, with people streaming by. A short written statement would have been more suitable. The Complainant asserts that this criticism was unfair. On account of his being constantly timed in the execution of his tasks, the Complainant had become accustomed to taping statements, which is a quicker process than writing them down.

[79] Cst. Carr also identified a difficulty with the Complainant's ability to make appropriate decisions on whether or not to charge someone. In one incident, he opted to not charge a young offender without having first conducted a background check. It turned out that the individual had been given a warning before, a factor to consider before deciding whether to charge a suspect. In another case, the Complainant proceeded immediately with charges in a case where the assault was minor and where the public interest clearly called for informal resolution between the parties involved. Cst. Carr stated that he and the Complainant had put together a strategy to develop the latter's common sense and logic in handling situations, which would be implemented over the remaining two months in the extension period. Still and all, despite his concerns, the coach did recognize in the report that the Complainant had been making "some good decisions of late".

[80] With respect to crime scene investigation and evidence gathering skills, it was noted that the Complainant had overcome the problems with his notebook. But Cst. Carr was

concerned that the Complainant often appeared content to let other members take over at the scene of an incident rather than deal with the matter himself.

[81] In his general conclusions, Cst. Carr mentioned his concurrence with Cst. Haney's finding that the Complainant deflected responsibility from himself. He frequently blamed Cst. Haney for the difficulties that he was continuing to experience. Cst. Carr mentioned in his Report that whenever the Complainant's inability to use common sense and make logical decisions was raised, he appeared unable to grasp the concept and invariably placed the blame on someone else who had told him to do things that way.

[82] As with the previous Assessment Reports, the Complainant provided his own remarks on the form, after having viewed the document. He wrote that he had made "enormous" efforts since the start of his RFT extension and that he would keep on doing his best until the end.

#### **F. First Extension of Field Training - Month #2**

[83] Cst. Carr acknowledged in the next Assessment Report, dated August 31, 1997, that the Complainant had indeed "stepped up his efforts" during the second month of his extension. It was noted that the Complainant rode along with other officers during his days off. One of the RCMP members with whom he rode was Cst. Luc Montmarquette, who later wrote a 1004 Performance Log documenting his observations. He found the Complainant to have handled his calls in a professional manner without any problems and to have displayed good judgment in dealing with victims. Cst. Montmarquette gave evidence, however, that they only responded to minor calls during their shifts together. The circumstances therefore did not permit him to assess whether the Complainant possessed all of the qualities required of a police officer.

[84] The Complainant also asked to ride with another officer, Cst. Randy Marx, for one eight-hour shift. In the 1004 Performance Log that Cst. Marx completed thereafter, he noted that the Complainant had led the investigation on one assault call and that he acted in a "very professional manner". Cst. Marx did identify a "bit of a language barrier" that affected conversations and report-writing, but he was confident these difficulties would be "smoothed over" in time. Overall, he felt that the Complainant was performing his duties at an expected level. Cst. Marx said that he would have no hesitation working with him in the future.

[85] Interestingly, however, Cst. Marx prepared a supplemental 1004 Performance Log five days later in which he seemed to downplay some of the positive comments in his earlier memo. He underscored the fact that his evaluation was made based only upon one shift and that he could therefore not provide a comprehensive assessment of the Complainant's performance. Cst. Marx recognized in the Performance Log that the Complainant may have been feeling that he was being poorly assessed by his trainers, but he also added that had he worked with the trainee for a month or two, it is possible that he would have reached the same conclusion as they had. Cst. Marx testified that after preparing the first 1004 Performance Log, he had learned of the difficulties that the Complainant had been having in completing his RFT. He then realized that his first report could have been misinterpreted and felt it important to clarify the exact parameters of what he had written. Cpl. Avery faintly recalls having spoken to Cst. Marx about the first Performance Log and telling Cst. Marx that it would be appropriate to only document actual observations and refrain from making additional overly broad statements without having had the benefit of working consistently with the trainee.

[86] The Assessment Report recorded several improvements from the previous assessment. The Complainant was now considered competent in the areas of records management as well as knowledge and application of law, policy and procedure. However, he remained in need of improvement under three of the criteria.

[87] Cst. Carr continued to find the Complainant's communication skills deficient. On account of an ongoing problem with his written English, preparing reports remained a "cumbersome task" for the Complainant. Two drafts were usually necessary to produce an acceptable report, the initial version often requiring proofreading by someone else. To help the Complainant improve his report writing skills, Cst. Carr had begun providing him with hypothetical scenarios on audiotape. The Complainant would listen to the tapes and practice writing up reports to Crown Counsel thereafter. The reports were then proofread and corrected by the trainer. In addition, the Complainant registered himself to take a course in effective writing offered by the RCMP. In this regard, Cst. Carr expressed some disappointment that since arriving in Burnaby, the Complainant had not sought out any other formal training in English.

[88] The Complainant takes issue with this last remark and its implication that he had not done anything to improve his written English. In January 1997, he contacted E Division (British Columbia) headquarters in Vancouver for advice on the availability of English language training in the region. He was registered in the course to which he was referred at Capicollo College but upon receiving the course manual, he realized that the grammar instruction was insufficient. He therefore requested approval to take a more appropriate course being offered by correspondence by the Université du Québec à Montréal. The request was denied, as it was felt that training from within British Columbia should be favoured. Meanwhile, he registered himself in the RCMP's course on effective writing on his own initiative. None of his supervisors had ever informed him of the program's existence. The Complainant happened to learn of it from another officer, Cst. Albert, who had also taken the course.

[89] The Complainant was also very upset with a comment addressed to him in this regard by his supervisor, Corporal Lyle Avery. When asked why his report-writing was taking so long, the Complainant explained that he was translating from French to English and then correcting spelling mistakes. Cpl. Avery retorted that his child was studying French at school and it was not taking him that long to do his homework. Cpl. Avery added that the delay could not have been due to the language barrier, but rather due to the Complainant's inability to draft reports. The Complainant believed he was misjudged. He felt humiliation at being compared to a schoolchild.

[90] With respect to the Complainant's crime scene investigation and evidence gathering skills, Cst. Carr maintained that the Complainant had still not achieved the level of competence. The coach acknowledged that there had been improvement in areas such as the taking of statements and the earnestness with which he took calls. Yet Cst. Carr also identified several instances where the Complainant seemed unaware of the appropriate procedure to follow despite having been in similar situations numerous times before.

[91] Aside from the weakness in report-writing, the Complainant's greatest problems were reportedly in the area of decision-making. Cst. Carr observed that in reaching decisions he tended to think in a "linear fashion" and had difficulty perceiving the "big picture", which encompasses intangibles such as the public interest. Cst. Carr provided the Complainant with additional scenarios on audiotape for him to practice his decision-

making skills. After listening to the facts of a case, the Complainant would determine whether or not to charge the suspect. Cst. Carr observed that as a result of these exercises, the Complainant had begun grasping the concept of taking the public interest into account.

[92] Overall, Cst. Carr found that the Complainant had made progress in the previous month and that he had been working hard at improving his areas of weakness. Cpl. Avery, as supervisor to both Cst. Carr and the Complainant, added his comments to the Report. He highlighted the fact that the Complainant had to his credit achieved improved performance to a competent level in some areas that previously needed improvement. Cpl. Avery recognized the Complainant's continuing efforts to achieve competency in the three remaining categories and assured him that "we will continue to provide all possible support".

### **G. First Extension of Field Training - Month #3**

[93] By September 30, 1997, when the third and final Assessment Report was issued, Cst. Carr had concluded that the Complainant had achieved the level of competence in the areas of communication skills, crime scene investigation, and evidence gathering. However, the Complainant's decision-making skills were still in need of improvement.

[94] Cst. Carr noted that when he first began training the Complainant, this area was of particular concern. Initially, the issue related to his inability to decide whether or not to charge someone. Through practice and the use of scenarios, the Complainant improved and no further problems were noted. But Cst. Carr felt that the Complainant continued to have difficulty making decisions that are basic and fundamental to police work. He was still not looking at the "big picture". He appeared to get excited and rush into decisions without considering what the consequences will be. Both Cst. Carr and Cst. Albert, who had trained the Complainant for a number of shifts in Cst. Carr's absence, had observed this problem and had advised him to slow down and think through his decisions before acting upon them.

[95] Cst. Carr gave some specific examples in his Report of the errors in the Complainant's decision-making. While riding with Cst. Albert, the Complainant arrested a 15-year-old shoplifter. He opted to return her to the group home where she resided. Upon arriving there, he intended to just let her out of the patrol car and drive off. By not escorting her to the door and handing her over to the group home's staff, he ran a risk that she would run away from the home as soon as he was gone.

[96] Another incident related to a call regarding a woman with bullet wounds to her chest, an apparent suicide attempt. Several officers were in attendance. Constable Peter Maw was supervising the operation. While Cst. Carr and another member performed first aid on the injured person, the Complainant was instructed to keep an eye on a man who was found at the scene, a potential suspect. A few minutes later, two GIS investigators arrived. They were initially unable to locate and interview the suspect. He was eventually found alone on a balcony, away from the crime scene, smoking a cigarette. The Complainant had apparently stepped outside to retrieve a tape recorder from a police vehicle and left the suspect unattended.

[97] One of the investigators, Constable Theodore Van Overbeek, later complained about the Complainant's actions to Cpl. Avery. The Complainant denied any wrongdoing, contending that Cst. Maw, a more senior member, had instructed him to get the tape recorder. He understood that Cst. Maw would watch the suspect in the meantime. Cst.

Maw disputed this assertion in his testimony. Interestingly, Cst. Van Overbeek later issued a 1004 Performance Log commending the Complainant on the manner in which he had gathered the evidence at this incident. Cst. Van Overbeek testified that he had prepared the memo at the request of Cst. Carr, who had explained that the Complainant was in need of some "positive reinforcement".

[98] Cst. Carr referred to another call in the Assessment Report as indicative of the Complainant's deficiencies in making decisions. They were dispatched to deal with a dispute between two teenaged sisters who had been fighting quite violently. Their parents were not present. After assessing the situation, the Complainant came to the decision that he would arrest both of them, so as to keep them apart. Cst. Carr criticized him for lacking forethought as to what he would do with two young offenders whom he had arrested without any intention of charging. It was not in the public interest that they be detained. A short time later, the sisters' mother arrived and the Complainant then decided to leave the matter with her. The Complainant agrees that his initial decision was "not the best" but he had never encountered a similar situation in the past. When he asked Cst. Carr for advice, the trainer insisted that he make a decision immediately.

[99] Cst. Carr pointed out that whenever he spoke to the Complainant about his difficulty with decision-making, the recruit did not appear to believe there was a problem. According to Cst. Carr, the Complainant replied that any difficulties he was experiencing related to the pressure being placed on him and the problems that had existed between him and his first trainer, Cst. Haney. Cst. Carr dismissed this claim, stating that having worked with the Complainant for three and a half months, he had witnessed nothing to support the assertion. Cst. Carr added that difficulties between two individuals cannot affect one's ability to make sound decisions. Cst. Carr completed his Report by noting that the Complainant was well-liked by his co-workers, worked well with others, and was an enthusiastic member.

[100] Cpl. Avery attached his own comments to those of Cst. Carr. He concurred with the trainer's findings. He noted that the problem for the Complainant lay in his being unable to function under pressure "within a reasonable time frame as an integral part of a team with constant demands to action tasks at a high level of quality, while still being able to get on to the next call without constant supervision". Cpl. Avery added that in his opinion, the Complainant had the benefit of being trained by "two excellent coaches".

[101] After receiving the final Assessment Report, the Complainant returned home to Montreal for a couple of weeks. He was crushed and dejected at the near certainty that he would be dismissed for having failed to satisfy just one of the 28 criteria of the RFT. In the preceding months, the Complainant had been speaking to Cpl. Les Allen about the difficulties he had been experiencing. Cpl. Allen was involved with the Division Staff Relations Representative (DSRR) Program as a sub-representative responsible for the Burnaby detachment. Since RCMP members were not unionized, the DSRR Program had been established to represent their collective and individual interests within the RCMP. As it became obvious towards the end of the extension period that the Complainant may not satisfy all of the criteria of his RFT, Cpl. Allen began making it known to senior management that he would be requesting a second extension of the Complainant's RFT.

[102] The decision on whether to grant a second extension to the Complainant was to be handled by Cpl. Cousins, Inspector (Insp.) Dennis Schlecker, who was the officer in charge of operations at the Burnaby Detachment, and Staff-Sergeant (Staff-Sgt.) Colin

Abel, who was the Non-commissioned Officer in Charge of the Field Coaching Program for E Division. His role was to supervise the training being offered by all of the Division's detachments. While the Complainant was away in Montreal, several meetings were conducted to discuss his future with the RCMP. Sgt. Watts and Cst. Carr felt that the Complainant would be unable to overcome his deficiency regarding a crucial component of police work, the ability to make sound decisions. They recommended that the Complainant's training not be extended.

[103] Cpl. Cousins was also reluctant to support a further extension, but he continued to believe that the Complainant had the "potential" to be a fully competent member. He testified that he was persuaded in this opinion by the representations of Cpl. Allen. Cpl. Cousins' recommendation for an extension of two months was given only on the condition that the Complainant accept the fact that he was lacking in the area of decision-making and that he would have to make a concerted effort to improve in that category. Cpl. Cousins felt that one of the reasons that the trainee had not managed to achieve full competency was his tendency to deflect responsibility for his shortcomings, and to meet any attempt by his trainers to correct them with resentment.

[104] Insp. Schlecker adopted Cpl. Cousins' recommendations. The Complainant's RFT was extended for a period that Insp. Schlecker curiously described as "no more than and no less than two (2) months" in his memorandum to the officer in charge of the detachment. The assessment during the extension would be focussed on the Complainant's decision-making. A new field coach would be assigned to him with the understanding that he or she demonstrate and document with examples what had been done to assist the Complainant and what the results of this assistance had been. If the Complainant did not reach an acceptable level in decision-making, a recommendation for discharge would automatically follow.

[105] Both Insp. Schlecker and Cpl. Cousins testified that this was the only occasion in their careers, during which they were involved in the training of hundreds of recruits, that they had come across a second extension of an RFT. Staff-Sgt. Abel gave evidence that the Field Coaching Program does not even formally provide for a second extension.

#### **H. Second Extension of Field Training - Weeks 1 & 2**

[106] While in Montreal, the Complainant prepared his comments with respect to the final Assessment Report of September 30, 1997. The remarks were typed and were 14 pages in length. He took the opportunity to express his view on all of the previous Assessment Reports. He provided his perspective on some of the incidents for which he had been criticized. He pointed out that the Reports often failed to make mention of the positive aspects of his performance. In discussing the extension period, he mentioned that "Cst. Carr was an excellent trainer". The Complainant added that Cst. Carr spent a lot of his own time to help him succeed, was patient with him and treated him fairly to the end. The Complainant did not provide any appraisal, positive or negative, about Cst. Haney. At no point in his remarks did the Complainant ever allege or suggest that either Cst. Haney or Cst. Carr treated him in a discriminatory fashion. The Complainant concluded his comments by noting that "we all learn from our mistakes", and requested an additional training extension "if it is the opinion of my superiors that decision-making skill [sic] still needs improvement".

[107] The Complainant handed in his comments upon his return to the detachment in mid-October 1997. He had not been informed of the exchanges that his superiors had

been having about his RFT. He had assumed that he would be dismissed. He only learned that his training had been extended when he arrived at the detachment on October 16, 1997, looked in his basket, and found a copy of Insp. Schlecker's memorandum that set out the conditions of the extension.

[108] The Complainant was told that he would be working with an entirely new team of police officers and serving a different district in one of the busier areas of Burnaby. Sergeant Murray Ross, who was the Watch Commander for the team, was asked to designate a trainer for the Complainant. In consultation with the non-commissioned officer who would be in charge of the Complainant's patrol, Cpl. Larry Johnson, Sgt. Ross selected Cst. Dwayne McDonald as the new coach. Sgt. Ross described Cst. McDonald in his evidence as "an excellent policeman" who was very "mature" despite being a relatively junior member at the time. Cst. McDonald had trained other RCMP officers and, in his previous employment as a customs inspector, he had participated in the ongoing training of new customs officers.

[109] On October 21, 1997, Cst. McDonald and Cpl. Johnson met with the Complainant to discuss the format that this training would take. It was agreed by the supervisors, and accepted by the Complainant, that he would ride with the coach for the entire duration of the extension. He was to be responsible for the handling, investigation and direction of all files, and Cst. McDonald would be available for assistance, only at the Complainant's request. Cst. McDonald was to assess the trainee solely with respect to his decision-making abilities and his activity would be documented on a weekly basis through written reports. The Complainant had indicated his concern that his experience with the previous trainers would be held against him, but Cst. McDonald assured him that they would be making a fresh start together. Aside from having reviewed the Complainant's file, including the previous Assessment Reports, Cst. McDonald did not know anything about the Complainant, and was only casually acquainted with one of the Complainant's previous coaches, Cst. Carr. Cst. McDonald wrote in a follow-up memo that he was confident that this would work in the Complainant's favour, as there would not exist any "bias for or against him".

[110] Cst. McDonald testified that the Complainant's mood at this meeting was energetic and that he demonstrated an eagerness to get on with the training. They went out on patrol together after the meeting and got along well, with a lot of laughter. The Complainant spoke of how hard Cst. Haney had been on him, and in contrast, how good a trainer Cst. Carr had been. The Complainant's attitude in the first two weeks was positive and well-motivated. Cst. McDonald described the calls that were handled over these blocks of work shifts as "routine", but noted nonetheless that the Complainant had performed well. He appeared to be handling the stress of the job despite the "obvious pressure" he was working under.

[111] The Complainant confirmed in his evidence that he was pleased with his first two weeks of training under the tutorship of Cst. McDonald. His report-writing was no longer being criticized nor were his activities being clocked. He still felt stressed about the situation, particularly since the coach tended to document the slightest errors in his performance, even in areas where he had already been deemed competent. He nevertheless viewed Cst. McDonald's first two weekly assessments as positive overall, and felt hopeful. For his part, Cst. McDonald was also feeling "cautiously optimistic" at

this point, although he believed it was still too early to draw any final conclusions. The following week would prove to be an entirely different story.

### **I. Second Extension of Field Training - Week 3**

[112] On November 6, 1997, the Complainant and Cst. McDonald were dispatched to an apartment block where a man had allegedly uttered death threats. Cst. St-Fleur, who was also a recruit at the time, and his trainer, Cst. Marx, were also on patrol in the area, and were first to arrive on the scene. They had spoken to the victim by the time the others arrived. Cst. Marx suggested this incident would provide a good opportunity for both trainers to assess their trainees by letting them handle the inquiries and arrest if needed. By now, Cpl. Johnson, their supervisor, had also shown up. He was interested in observing how the Complainant would perform.

[113] Before allowing the recruits to proceed, Cst. McDonald pointed out that the Complainant would be in charge of the call because it had originally been dispatched to him. The Complainant understood this to mean that he had the authority to give orders to the other officers on the scene. He informed them of his plan for the operation. Based on the information already collected, there appeared to be grounds for an arrest. The Complainant instructed Cst. St-Fleur to get a statement from the victim. In the meantime, the Complainant would arrest the suspect, with the assistance of either Cst. McDonald or Cst. Marx.

[114] According to the Complainant, his plan was inexplicably rejected by the senior officers present. He was told that he could not assign Cst. St-Fleur to take the statement nor to arrest the suspect. The Complainant found this confusing as he understood that they were to work the file together. He therefore inquired of the trainers why they were refusing his approach. This discussion escalated into an argument. He claims that Cst. McDonald flew into a rage, grasped the Complainant's arm and pointed a finger to his chest. He yelled to the Complainant that he was only a recruit and he should do exactly as he was told. Cst. Marx and Cst. St-Fleur then left, and the Complainant completed the file on his own.

[115] Cst. Marx, Cst. McDonald and Cpl. Johnston recorded their initial observations about this incident in three separate 1004 Performance Logs. Their recollections differ from the Complainant's. They claim that it was made clear from the outset that the Complainant would be "in charge of the file". Cst. McDonald testified that the direction was typical of what the Complainant would have received in his training to date. It meant that he would be responsible for the entirety of the investigation including all paperwork and follow-up enquiries. The only difference here was that Cst. St-Fleur was assigned to assist him if needed. Cst. Marx referred to Cst. St-Fleur's role as a "back-up" to the Complainant. All four of the other officers, including Cst. St-Fleur, testified that they were surprised to see the Complainant begin to give orders, particularly to two senior officers, when he had been specifically told to handle the file himself and that the three senior members would observe.

[116] Moreover, when the Complainant was called back and told specifically how they wanted him to conduct the investigation, he became argumentative and refused to listen. Cpl. Johnson described his attitude as defensive, stubborn and arrogant. To make things worse, the Complainant adopted this tone while in the main entranceway of the apartment building. Several members of the public were watching. Cst. Marx noted that the Complainant appeared to lack the ability to understand what the others were trying to



convey to him and make a decision. He was unable to follow a simple direction in a "basic" file. Cst. McDonald described the Complainant's conduct as unacceptable and unprofessional. He was particularly concerned by the fact that the Complainant's previous trainers had previously documented and addressed with him "this type of behaviour". Cst. St-Fleur did not write a report at the time but testified that he had "no idea" why his fellow recruit was unable to understand the instructions being given. To him, the directions were clear. Cst. St-Fleur testified that he even tried to restate and clarify the instructions in French at one point, but the Complainant refused to listen.

[117] The incident caused Cpl. Johnson to have serious reservations about the Complainant's competence. The Complainant appeared to him to be at a loss as to what action to take, and even when given directions, he chose not to follow. Cpl. Johnson described the Complainant's performance in this matter as substandard and indicated that his lack of judgment and decision-making skills were of grave concern. Cpl. Johnson found the performance so disturbing that he had no confidence in the Complainant's ability to "get the job done without someone standing over his shoulder". Cpl. Johnson concluded, in his Performance Log, that if the Complainant's "substandard work" continued, it would be questionable whether his employment with the RCMP would continue.

[118] The Complainant was presented with copies of the negative Performance Logs at the time. He expressed outrage during his testimony that these senior RCMP members opted to make three distinct negative reports about this one incident, an excessive over-reaction in his opinion. Indeed, of the numerous persons acquainted with the RCMP in one way or another who testified at the hearing, most did not recall ever having witnessed a member receive three negative 1004 Performance Logs in respect of one incident. The Complainant feels that one negative report would have been sufficient. He submits that three reports were drafted in order to [TRANSLATION] "crush him psychologically".

[119] All three of the senior officers testified that they each independently decided to prepare a negative 1004 Performance Log about the incident. They did not consult with one another before or during the preparation of their reports. Cst. McDonald claims that considering the presence of three relatively senior officers observing a junior member's conduct in a training context, and the severity of the incident, it would be "common" for each of them to have wanted to record their observations in writing. He denies having raised his voice or jabbed his finger into the Complainant's chest.

[120] The Complainant later apologized to the three members for his behaviour, but he testified that his only motivation for doing so was to preserve a good rapport with his trainer and supervisor. He maintains that he was not wrong but that the problem developed on account of miscommunication.

[121] The Complainant received another negative 1004 Performance Log before the close of that week. It related to a series of events that commenced on November 5, 1997, the day before the death threats incident referred to above. The Complainant had recovered a pick-up truck that had been stolen from an airport parking lot. Numerous gardening tools were found in the vehicle, including a lawnmower, generators and power equipment. The owner of the tools was unknown. On the instructions of Cst. McDonald, the Complainant prepared an advisory of the recovered goods to be distributed through a national police bank, known as "CPIC". Because of the national scope of such notices, a supervisor had to sign off on its issuance. The Complainant presented it for approval to Cpl. Wesley

Waters, who was the road supervisor for the next shift. The Complainant also asked Cpl. Waters to place the notice on the "briefing board", which in effect meant that all the incoming officers reporting for duty would be told to keep an eye out for any information regarding a theft of these goods.

[122] Cpl. Waters looked at the list of items recovered and saw that many of them were manufactured by Honda. In his experience, the manufacturer kept track of the owners of this type of equipment through serial numbers and could easily provide the Complainant with this information. It was therefore not necessary to issue an advisory or a "briefing board" report in order to find out who the owner of the stolen goods was. Cpl. Waters looked up Honda Canada's number in the telephone book and gave it to the Complainant, advising him to call the company the following day. However, instead of placing the call, the Complainant went to another supervisor and asked him to brief the other teams, ignoring Cpl. Waters' previous instructions.

[123] On November 11, 1997, Cpl. Waters ran into the Complainant, who had come into the detachment while on his day off. He asked the recruit how he had made out with his call to Honda. The Complainant responded that he had not managed to call them yet, with the explanation that he was in court all day on November 6<sup>th</sup>. In point of fact, he was not. The Complainant informed Cpl. Waters that he had in any event sent out the CPIC nation-wide advisory about the goods. Cpl. Waters was upset with the Complainant, reiterating to him that all he needed to have done was call Honda. Cpl. Waters was particularly concerned that the victim of the theft, who was likely a landscaper, was without the use of his tools for so many days and was probably losing revenue on account of the delay. The following day, Cpl. Waters called the Honda customer service department himself. Within a couple of minutes, he had the name and address of the owner.

[124] Cpl. Waters criticized the Complainant in a 1004 Performance Log for having chosen to ignore the advice of a senior and more experienced investigator, thereby causing a costly delay in the return of the goods and an unnecessary investigation (ie. the CPIC national advisory).

[125] For his part, the Complainant claims that when he first approached Cpl. Waters, it was primarily to have him check his exhibit report for spelling mistakes. Besides, contends the Complainant, there was nothing wrong in his asking the other road supervisor to brief the next shift about the recovered goods, it was a common practice. On the following day, November 6<sup>th</sup>, he responded to the death threats call, during which the dispute between him and the other senior officers developed. These circumstances prevented him from contacting Honda. The next day, November 7<sup>th</sup>, which was a Friday, he was on a night shift and the manufacturer's offices were closed when he tried to place a call in the evening. He was off-shift thereafter but came in to the station on his third day off, the 11<sup>th</sup>, with the intention of calling Honda.

[126] It is worth noting, however, that the November 6<sup>th</sup> death threats call came in at the end of that day's shift, after 5 PM. The Respondent contends that the Complainant had ample opportunity to contact Honda earlier that day but deliberately chose not to comply with Cpl. Waters' instructions.

[127] The Complainant points out that in the end, the property was returned to the owner on November 13<sup>th</sup>, barely more than a week after its theft. He argues that this is very quick compared to the months that it ordinarily takes to get stolen goods to their rightful

owners. He also notes that the landscaper was so pleased to learn that his tools had been recovered that he offered a gift to the Complainant in gratitude. Cpl. Waters sees no relevance in this latter point, since the owner was simply not aware that he could have had his property returned to him even quicker, had the Complainant followed his original instructions.

[128] In his summary of that week's activities, Cst. McDonald stated that the Complainant's RFT had been "less than positive". He acknowledged that the trainee was under a lot of pressure, which undoubtedly caused him some anxiety. Cst. McDonald added that he did not wish to only dwell on the negatives, so he cited a couple of incidents where the Complainant had acted appropriately and performed very well.

#### **J. Second Extension of Field Training - Week 4**

[129] The next block of work shifts ran from November 13-19, 1997. Cst. McDonald referred to the week as uneventful, with fairly routine calls involving minimal investigation or follow-up. Yet Cst. McDonald documented three incidents in which the Complainant was said to have displayed poor decision-making skills.

[130] The first related to a call that was minor in nature. Someone had reported seeing two men leaving an apartment with a television and loading it into a car. The Complainant drove to the scene and unwisely parked in the middle of a bus stop when there were plenty of other parking spaces available. Cst. McDonald had to remind the Complainant to park elsewhere. Then, a few moments later, someone was seen leaving the apartment. The Complainant approached him and asked if he lived there. The individual said no and the Complainant was about to let him drive away in his car. Cst. McDonald intervened and reminded the Complainant to get the person's identity and a better explanation for why he was there.

[131] After obtaining this information from the man, the Complainant prepared to get back in his patrol car and leave the scene. Cst. McDonald had to step in once again and ask him what remained to be done. The Complainant seemed at a loss, so the coach had to specifically prompt him to locate and speak to the actual occupants of the apartment. This was eventually done and it was determined that they were simply in the process of moving out of their apartment. Cst. McDonald's criticism rested in the Complainant's lack of common sense in conducting this "most basic of police work". The instructions given should not have been necessary.

[132] The second documented negative incident of this week related to an arrest warrant against a young offender that the Complainant and Cst. McDonald executed in Vancouver. The trainer noted that this constituted basic police work, yet he had to prompt the Complainant to notify the Vancouver police force of their activity within that city's limits, and to alert their own dispatcher back in Burnaby once they had arrived. The latter procedure is referred to as a "timer" and is used in situations that pose some risk. If the dispatcher does not hear news from the officers within a designated period, a call will come in on the radio asking them if they are alright.

[133] Once they arrived at the young offender's residence, the Complainant arrested the 14-year-old, but Cst. McDonald had to remind him to inform the youth's mother of what was happening. Cst. McDonald noted in his report that these are common sense steps that form part of standard operating procedure and they should be taken without thought by a member with twelve months' service.

[134] In his testimony, the Complainant expressed frustration at the criticism. The mother did not speak English so he had asked the young offender's 10-year-old sibling to explain the situation to her. Even the young offender confirmed that his mother understood. Cst. McDonald refused to accept the Complainant's explanation that he had already given the information to the mother.

[135] The final documented incident for the week concerned a call that came from a taxi driver complaining that a 14-year-old female customer had refused to pay her fare and threatened him with a knife. The Complainant and Cst. McDonald were dispatched as the primary vehicle to the scene but Cst. Marx, Cst. St-Fleur and Cpl. Johnson also responded. As primary responder, the Complainant was tasked with handling the file. He spoke to the driver for a couple of minutes about what had taken place. He then went to the young woman's residence, into which she had run after leaving the cab. Cst. McDonald claims that the Complainant immediately arrested her, brought her outside, handcuffed her and placed her in the back of his police vehicle.

[136] Cst. McDonald decided to constructively challenge the Complainant about the decision that he had just made. He was particularly concerned that the recruit had acted after only having heard one side of the story. He asked the Complainant if he had obtained the young woman's version of the facts before arresting her. The Complainant replied that he had not, so he returned to the car and spoke to her to confirm whether an offence had occurred. It turned out her version differed from the driver's. She had told the cabbie she was going into her house to make arrangements to repay the taxi company, since she had no money with her. He did not want her to leave without paying so he chased her to the house and began shouting and banging on the door. She was frightened and grabbed a kitchen knife, which she displayed through the window to scare him away. As Cst. St-Fleur recounted in his testimony, she had no intention of hurting the driver. She just wanted him to leave. She showed him the knife through the window to deter him and defend herself.

[137] The Complainant then returned to Cst. McDonald and relayed the young woman's version of the events. Cst. McDonald challenged him again as to what decision he should make now. The Complainant did not respond, so Cpl. Johnson stepped in to ask him again what his decision would be. Cst. McDonald testified that the Complainant appeared to be unsure. It was only once the others suggested to him that the cabbie had not been forthcoming with all of the facts and that no offence had actually occurred, that the Complainant responded by releasing the teenager from custody. Cst. McDonald testified that this decision was ultimately the right course of action to follow, but his concern was that the Complainant was unable to make it on his own, without any prompting or "constructive challenges". Cst. McDonald is not persuaded that the Complainant would have made the right choice had he been on his own.

[138] The Complainant, on the other hand, disputes Cst. McDonald's presentation of the events. In their initial conversation, the driver told the Complainant that the female suspect had placed a knife against his throat and threatened him. The Complainant felt he had enough information to proceed with an arrest. He spoke to the suspect and determined she was lying. He then arrested her for "observation" and so as to "investigate".

[139] While he was dealing with the teenager, the other officers had the benefit of speaking to the cabbie and realizing that he had misrepresented some of the facts. Thus,

they had information that the Complainant lacked and were in a better position to know that an arrest was not warranted. The Complainant claims that when he rejoined the other officers outside, he was neither prompted nor constructively challenged. Instead, they encircled and aggressively confronted him. They did not share their newfound information, but deliberately chose to [TRANSLATION] "play" with him and force him to try to defend his decision. He was made to feel like an [TRANSLATION] "imbecile". The questioning was not in a polite tone. He was yelled at, particularly by Cpl. Johnson, who bellowed that they were all waiting "*right now!*" for the Complainant to decide and tell them what he planned on doing. The Complainant claims that in the end the case only resolved itself after he exercised his negotiation skills to convince the driver to not file charges.

[140] Cst. McDonald and Cpl. Johnson deny having raised their voices and insist that they were merely assessing the Complainant's decision-making ability.

#### **K. Second Extension of Field Training - Weeks 5 & 6**

[141] The next block of work shifts began on November 21, 1997. Cst. McDonald worked with the Complainant for the first two days of this period only. The report for this block noted that the calls were "fairly routine" and the shifts "relatively uneventful". Nonetheless, Cst. McDonald mentioned two specific incidents where the Complainant performed well. In one case, he helped process the arrest of a suspect. During these procedures, he established a good rapport with the detainee. This raised the possibility of his becoming a future informant for the police. In another case, the Complainant and Cst. McDonald were dispatched to a call regarding a break-and-entry theft. The Complainant headed off in the last known direction of the suspect. He soon located and apprehended him. The suspect was a career criminal and Cst. McDonald commended the Complainant for insuring that he would remain off the streets for some time. Cst. McDonald concluded the report with a statement that the Complainant found very encouraging: "This week was more positive for Cst. Morin and hopefully it will become the norm rather than the exception."

[142] For the next several days, the Complainant was tasked by the detachment to provide security at the Asia-Pacific Economic Cooperation ("**APEC**") Summit, held in the Vancouver area. Heads of state and other dignitaries from around the world were in attendance, so security was a vital concern. The Complainant was assigned to work mainly at the final security checkpoint leading into the Simon Fraser University site where some of the meetings were being held. All persons attending this site had to pass through his checkpoint, after having already cleared several others in advance. His task consisted of stopping vehicles, viewing the security passes of the passengers, and relaying their information to the command post by radio. Once their credentials were verified and approved, he would allow the vehicle to enter the grounds.

[143] The Complainant testified that his role was vital to the security of the area. There was a large risk involved and a potential for danger. If a vehicle tried to break through the barricade without permission, the Complainant would have to act instinctively and make a quick decision. This could even entail the use of his firearm. The Complainant perceived this assignment as reflecting a positive assessment of his decision-making skills and an endorsement of his abilities as a police officer. Why would he be assigned to a position of such responsibility if he was not yet competent?

[144] The reply, according to the RCMP, is that the Complainant's assumption is mistaken. There was not as much responsibility attached to this posting as he suggests. This was the last of several checkpoints and it would have been highly unlikely for any unauthorized person to have made it that far. Furthermore, there was minimal decision-making involved with the actual functions of the posting. The decision on whether to admit or refuse someone was made at the command post, not by the Complainant. Traffic control and low-end security functions are usually assigned to members with less service.

[145] Insp. Schlecker testified that when headquarters ordered him to provide a certain number of police officers to work at the APEC Summit, he deliberately sent the "weakest" members of his detachment, unless officers with specific expertise were being requested. Burnaby was a busy detachment that was already understaffed and he needed to maintain as much "competency" there as he could. He could not afford to give up his best personnel for basically "card" and "post-viewing" duties. Based on the reports he had been receiving, Insp. Schlecker had by then developed some concerns about the Complainant's policing skills, even questioning whether he was a danger to himself and others. But this did not prevent him from assigning the Complainant to the "static" checkpoint job at the Summit. Areas with a serious potential for volatility were staffed by special groups, such as riot squads and SWAT teams.

[146] There is no indication in the evidence that any of the more senior RCMP members who testified or whose names were otherwise brought up, were assigned to work at the APEC Summit. Only three individuals from the detachment were mentioned in the evidence as having participated: Cst. Louis Ma, who had just completed his RFT that year and shared duties with the Complainant at the same checkpoint; Cst. St-Fleur, who was doing his RFT at the time and was assigned to open car doors for dignitaries; and the Complainant.

[147] While the Complainant was away working at the APEC Summit, during the 5<sup>th</sup> and 6<sup>th</sup> weeks of the second extension of his training, Cst. McDonald testified that he began to reflect on how the RFT was progressing and whether the Complainant would ultimately be successful. He concluded that certain problems relating to the Complainant's decision-making skills were unlikely to be corrected within the remaining weeks of the extension period. Cst. McDonald cited as specific problems, the Complainant's tendency to rush to judgment without adequate information, his disregard for the advice of others, his unwillingness to accept responsibility for poor decisions, and his lack of common sense. The Complainant had told Cst. McDonald that if he did not succeed, he intended to move back to Quebec and seek employment with another police agency. Cst. McDonald knew that if the RFT was to run its course and the Complainant was still lacking in one of the criteria, he would be dismissed from the RCMP. This would stigmatize him and create an obstacle to his seeking future police-related employment. In addition, if the dismissal came at the end of the two month period, it would unfortunately fall right before Christmas.

[148] Cst. McDonald claims that out of a sense of compassion, he approached Cpl. Johnson and Sgt. Ross and suggested that the Complainant be offered the immediate opportunity to resign. This would afford him the opportunity to gather his effects and organize his return to Montreal before Christmas as well as ensure that his record would merely show that he had served with the RCMP for a year and then resigned to seek employment elsewhere. There would be no indication that he had been dismissed. Cpl.

Johnson welcomed the suggestion, but needed approval from senior management in order to implement it. Insp. Schlecker gave his approval a short time later.

[149] Consequently, on the morning of November 30, 1997, at the start of the Complainant's first shift after returning from the APEC Summit assignment, Cst. McDonald and Cpl. Johnson invited the Complainant to breakfast at a local restaurant. Cst. McDonald testified that it was a cordial conversation, during which he pointed out the Complainant's positive attributes as well as the areas of concern. He explained his opinion that the Complainant would not be able to correct the problems in the remaining weeks of the RFT extension. Therefore, he gave the Complainant the option of resigning immediately. Cst. McDonald claims he made it clear that he would still be willing to offer the balance of the full two months of training if the Complainant so desired.

[150] The Complainant was shocked by the proposition being put to him. He felt that he was coming off two very positive weeks. He had been encouraged by his last Performance Log, in which Cst. McDonald expressed hope that his positive performance would become the "norm". This was hardly suggestive of a premature dismissal. His assignment to the APEC Summit had given him further cause for optimism.

[151] After the breakfast meeting, they all went back to the detachment and the Complainant took some time to ponder his decision. Within an hour, the Complainant informed Cst. McDonald that he would exercise the option of resigning from the RCMP. Later that day, they met to discuss Cst. McDonald's final Assessment Report, which reiterated that the Complainant remained in need of improvement with respect to the single criterion of decision-making. The coach attached a three-page narrative to the Report. He listed four ways in which this deficiency manifested itself: the Complainant's tendency to rush to judgment and decisions without adequate information; his disregard for the advice and instruction of senior investigators; his unwillingness to accept responsibility for poor decisions; and his absence of common sense. Cst. McDonald provided details about some of the incidents that had been mentioned in his weekly Performance Logs, as illustrations of the problems experienced, including the November 6<sup>th</sup> death threats call, the arrest of the teenage girl who had not paid her taxi fare, and the case of the recovered stolen Honda machinery.

[152] The following day, Insp. Schlecker met with the Complainant and requested his handgun and badge. They discussed some of the incidents referred to in Cst. McDonald's report. The Complainant claims that he tried again to provide his version of the events but Insp. Schlecker refused to hear it. The decision was already made. Insp. Schlecker explained that as a youngster, he wanted to learn to play the violin but realized that he just lacked the talent for it. In the same way, the Complainant was simply not cut out to be an RCMP officer. The Complainant left the meeting a broken person, his dream having gone to pieces. That evening, several colleagues from work came over to his home. It was very emotional for everyone.

[153] The Complainant prepared and submitted to the detachment his own comments that day with respect to the final Assessment Report. He stated that he was very proud to have had the opportunity to receive the "best police training in Canada". He thanked all his co-workers, supervisors and superiors for all their support. He did not regret his "journey as a Mountie" and "working with the best". He expressed confidence that it would provide him "various openings" back home in Montreal.

[154] Nevertheless, at the hearing, the Complainant underlined his dissatisfaction with the final Report. Yet again, none of the examples of commendable performance by him during this period were documented in the final Report, even though those incidents had been identified in the weekly Performance Logs. Furthermore, he alleges that he was subjected to differential treatment by his coach and other senior officers throughout this period, including the aggressive confrontation that he endured at the November 6<sup>th</sup> death threats call, not to mention the subsequent issuance of not one but three negative Performance Logs. He feels that he was also treated unfairly when he was encircled by the other officers during the unpaid taxi fare incident. Most importantly, the Complainant accuses Cst. McDonald of having exhibited conduct that demonstrated a racial prejudice against him and other black persons. Three specific examples were given.

[155] The first relates to a sketch that Cst. McDonald allegedly drew one day while at the wheel of their parked patrol car. Cst. St-Fleur and his trainer, Cst. Marx, were seated in an adjacent vehicle. The Complainant claims that Cst. McDonald pulled out a sheet of paper and drew a picture of Cst. St-Fleur, who is also a black man of Haitian origin. The size of his nose and lips was exaggerated in the drawing. Cst. McDonald then stated with a laugh that the Complainant's nose and lips were smaller than those of Cst. St-Fleur. The Complainant did not openly react to this incident, nor did he inform Cst. St-Fleur about it, but he testified that inwardly he felt it was a [TRANSLATION] "stupid" and "racist" act.

[156] Cst. McDonald categorically denies that this incident ever took place. The Complainant made no mention of the drawing in his human rights complaint. He never told or complained to anyone at the RCMP about it. The reference to a sketch first appeared in the Complainant's disclosure documents, namely the statement of the material facts of his case, which was filed with the Tribunal in February 2003. Curiously, according to the statement, the Complainant witnessed the drawing of a racist sketch in the fall of **1996**, not 1997, the artist was Cst. Haney, and the person being drawn was Cst. Albert. The Complainant testified that he had told the Commission about the drawing when he filed the complaint. He added that shortly before the hearing, he had a "flash", and came to the realization that it was Cst. McDonald, not Cst. Haney, who had drawn a picture of Cst. St-Fleur, not Cst. Albert. He completed his testimony on this point by repeating that it was Cst. McDonald who was the artist and that he [TRANSLATION] "did not want to add anything else about Cst. Haney, it's enough".

[157] The second example of racial discrimination given by the Complainant allegedly took place in a fast food restaurant where he, Cst. McDonald and several other officers had stopped during their shifts to have a coffee. Cst. St-Fleur mentioned to Cst. McDonald that his tie was dirty, to which the latter responded, "Who looks more dirtier between you and me?" The Complainant recalls that Cst. St-Fleur's boots were shined up, his shirt was well-pressed, and he was neatly dressed overall. Indeed, Cst. St-Fleur had a reputation for being a very tidy dresser and in his Field Coaching Assessment Reports, under the criterion of "Dress and Deportment", he had received a superior score. The Complainant could only conclude that Cst. McDonald's remark was a reference to Cst. St-Fleur's skin colour. The statement was made in the presence of Cpl. Johnson who did not react in any way. The Complainant viewed this incident as degrading and humiliating, a direct form of racism. This event was not mentioned in the Complainant's human rights complaint, either.



[158] Cst. McDonald denied ever making the comment. Cst. St-Fleur on the other hand testified to having a vague recollection of it. He recalls that his bullet-proof vest was very dirty that day. He viewed Cst. McDonald's remarks as referring to his vest, as if to say, "whose uniform is dirtier, yours or mine?" Cst. St-Fleur looked down at his jacket and realized that Cst. McDonald's comments were justified. Cst. St-Fleur testified that he was surprised when the Complainant later approached him with a shocked look and complained about the remark. Cst. St-Fleur asked him what the "big deal" was. Cst. St-Fleur suspects that the Complainant was simply not aware of the context of the conversation. It was a reasonable misunderstanding on his part, but a misunderstanding nonetheless.

[159] The third incident where the Complainant claims that Cst. McDonald demonstrated insensitivity to persons of colour relates to a discussion that occurred between the two of them and Cst. St-Fleur regarding the RCMP's employment equity program. The coach asserted that black persons and members of other designated groups were being hired by preference over white males. He took the position that this in itself constituted reverse discrimination. The Complainant and Cst. St-Fleur replied that these measures were necessary to correct the under-representation of these groups within the RCMP. The Complainant acknowledges that this exchange was conducted in a professional tone, but he perceives Cst. McDonald's beliefs as evidence that he did not comprehend the extent of the problems facing black persons in the RCMP. The Complainant claims it was "hurtful" to have to witness this lack of understanding.

[160] Cst. McDonald recalled the conversation in his testimony. It related to the initial testing administered to persons applying to join the RCMP. The point score required to advance to the next level of assessment was higher for white males than it was for members of the designated groups. Their discussion turned on whether this was fair, inasmuch as the testing was one-dimensional and persons who would otherwise make competent police officers could end up being screened out. Cst. McDonald claims that he himself pointed out during the conversation that certain groups have historically been under-represented within the RCMP. He alleges that all three of them laughed at the fact that he had to score higher than the other two, but he maintains that he never expressed a negative opinion about that, other than to say that he hoped that the most qualified persons were ultimately selected. According to Cst. McDonald, it was a "constructive conversation".

[161] The Complainant further contends that Insp. Schlecker, the officer in charge of operations, made statements about visible minorities that were offensive and inappropriate. In December 1998, he was asked by the RCMP to provide his comments regarding the Complainant's present human rights complaint, which alleged differential treatment on account of his colour. Insp. Schlecker drafted a memo in which he stated that up until the Commission's investigation into the complaint, he "did not know that Cst. Morin was coloured", and added that the Complainant is "of darker complexion, as I, and I believed also from European extraction". Asked at the hearing to comment about these remarks, Inspector Schlecker said, "Until I was advised that he considered himself black, I really never thought that Constable Morin was black". He further testified that: He [the Complainant] reminds me of a close friend of mine by the name of [...], who is a Hungarian. He could almost be his twin brother. When I look at Constable Morin I never think of him as being a black man. He [the Complainant] tells me he has black heritage. I

believe that and then when I look at him I could say, yes, I could see some of that in you. But without being told that, it is not evident to me.

[162] The Complainant points out that several RCMP documents, including the form that was sent to Burnaby from Depot advising of the Complainant's impending arrival for training, clearly specified that he was a black man of Haitian origin.

[163] In his memo, Insp. Schlecker also declared that the Burnaby detachment had a "much higher than norm ratios [*sic*] of coloured, race and gender mix because of the high turnover of recruits and managements [*sic*] desire to mirror the community of Burnaby". Asked at the hearing about his use of the word "coloured", he explained that in 1972, he had asked a friend in Saskatchewan who was black, "What should we say you are?" The friend replied, "Well, say I'm coloured". So, when Insp. Schlecker used the term in his memo, he did not think it offensive. The Complainant contends that to the contrary, it is offensive and derogatory, as it relates back to the periods of slavery and segregation in the "Old South" of the United States. The Complainant points out that there is an important distinction to be drawn between the word used by Insp. Schlecker, and the phrase "persons of colour", which is being used increasingly these days, in lieu of the term "members of a visible minority group".

[164] In reference to the remark in the memo regarding Burnaby's population, Insp. Schlecker was asked at the hearing to describe the make-up of the city. He noted that "what we consider as the *average white European Canadian* is in certain areas of the community becoming almost a minority in the lower mainland [of British Columbia]" (*my emphasis*).

#### **L. Return to Montreal**

[165] Following his resignation from the RCMP, the Complainant and his fiancée, Ms. Cerrato, immediately began preparing for their return to Montreal. They arranged for movers, packed boxes, terminated their lease, and notified utility companies. Throughout this period, the Complainant was not contacted by any senior officer at the detachment to see how he was doing, nor was any logistical assistance offered. A sum of \$1,500 was made available to the Complainant to cover some of his expenses for his return home, and he received his salary as a Member until mid-January 1998. Even so, he had no choice but to use up all his savings and incur credit card debt to pay his expenses. In order to minimize his costs, he opted to leave some of his furniture and other property in Burnaby, rather than pay for their transport to Quebec.

[166] The couple returned home to Montreal by car, a six day trek during which they passed through some bad weather, almost had an accident, and had to repair their vehicle after a breakdown. It was an ordeal. The Complainant was depressed throughout the trip.

[167] Upon his return to Montreal, the Complainant sought employment with several police forces in Quebec. He applied to the municipal force of the City of Laval, but was informed that he needed a college or university level degree in a policing-related field in order to be screened in. He also made an application to the Sureté du Québec. He passed the physical and driving tests, but failed the interview for reasons that were never conveyed to him. He handed in an application to the Brossard municipal police department but never heard any news back. After applying to the police service of the city of Île-Perrot, he was invited to write an exam. He failed the test, due to his lack of familiarity with Quebec provincial statutes.

[168] On December 22, 1997, the Complainant applied to join the Montreal Urban Community Police Service (MUCPS) as a police officer. In his application, he explained that the reason he decided to leave the RCMP was his desire to work in his native province, to live close to his family, and to work in English and French. No mention was made of his having been expressly or constructively dismissed. The MUCPS had established an employment equity program to encourage the recruitment of employees from designated groups. In accordance with the program, the Complainant filled out a questionnaire in which he identified himself as a visible minority.

[169] After passing his physical test, the Complainant was invited to an interview conducted by a two-member panel. One of the interviewers was Suzanne Lachance. She testified that the interview lasted for about 1.5 hours. Questions were asked of him to assess his maturity, interpersonal abilities, assertiveness, and tolerance to stress. In addition, the panel assessed his responses to three different policing scenarios that were presented to him. These answers were used to measure his analytical and decision-making abilities. After the interview, the panel assessed him with an overall score of 54.82%. A result of 60% or higher was required to recommend him for further consideration for the position of police officer.

[170] The panel prepared a report following the interview. The Complainant had only scored 47/90 with respect to the scenarios put to him. It was noted that he had demonstrated some [TRANSLATION] "rigidity" in dealing with all three cases. He applied laws and regulations [TRANSLATION] "by the book" and he was not very [TRANSLATION] "open" to his decisions being called into question. With respect to one of the situational cases presented to him, the panellists were concerned that in his answer, he chose to ignore the advice of a fellow police officer. In another case, the panel was critical of his decision to arrest some young offenders too quickly, without thinking of the consequences. The interviewers detected some impatience in the manner in which he answered all of these questions. Ms. Lachance remarked that he needed to adopt a more tolerant attitude and better acquaint himself with the use of discretion.

[171] The panel surmised that the Complainant was still strongly influenced by his exposure to the [TRANSLATION] "culture and values" of the RCMP, which differed from those of the MUCPS. Ms. Lachance recalled that the Complainant discussed some of the difficulties he faced integrating into the RCMP, primarily as a francophone but also as a black person. He told the panel that he made considerable efforts to adapt. In the end, he opted to resign so as to be closer to his family. The Complainant never informed the panel of his expected failure to pass his RFT that had led to his resignation. Monique Cyr, who was in charge of the selection and performance evaluation process for police personnel of the Montreal Urban Community, explained that the Complainant's concealment of his impending failure might have been discovered later in the process, when an inquiry is done into an applicant's reputation. If such a lack of candour were uncovered at that stage, an unfavourable report would have been drafted regarding his reputation and his candidacy would have been terminated, in the absence of a justifiable explanation.

[172] Although the Complainant's score did not meet the standard for police officers, the MUCPS was also looking to hire auxiliary police officers at that time. Their jobs consisted principally of handling inmates who were detained in the MUCPS's facilities. They did not carry weapons. The threshold score for the position of auxiliary police

officer had been set at 50%. Since the Complainant had achieved this level, and had previously indicated his interest in this auxiliary position as well, the interview panel decided to continue processing his candidacy, but solely for this job.

[173] The Complainant's file was therefore advanced to the next stage. It consisted of a psychometric assessment of the candidate, in which his psychological traits were measured scientifically. All candidates had to undergo this testing. In the Complainant's case, it was conducted by Dr. Anne Geneviève Girard, PhD, an industrial psychologist and a member of Quebec's professional association of certified human resources and industrial relations consultants (*l'Ordre des conseillers en ressources humaines et en relations industrielles agréés du Québec*). Her mandate from the MUCPS was to determine whether an applicant suffered from any mental or behavioural disorder (psychopathology) and to provide a general overview of the applicant's personality traits. Prior to preparing her assessment of the Complainant, she had not been given any information relating to his first interview or the panel's findings, and was therefore unaware of its decision to consider the Complainant's candidacy for the auxiliary police officer position only. After interviewing and testing the Complainant, Dr. Girard found that the Complainant did not suffer from any disorder that called for an immediate termination of his candidacy. However, she also determined that he only partially satisfied the requirements for the position of police officer.

[174] The Complainant's scores were assessed against the scores of all other MUCPS job applicants who had been tested in the past, about 600 persons. He was rated "poor" with respect to three of the assessment factors (responsibility, empathy, flexibility), which meant that his scores were lower than those of 85% of the group (ie. below the 15<sup>th</sup> percentile). Based on these results, Dr. Girard wrote in her report to the selection committee that the Complainant's sense of responsibility fell below the norm, that he lacked empathy towards others, and that he was inflexible. He tended to [TRANSLATION] "firmly hold on to his ideas" and not to be very sensitive to the opinions of others. In her recommendations, Dr. Girard stated that the Complainant "could" satisfy the requirements for the job of an MUCPS patrol officer, and suggested the examination of his candidacy continue. In her testimony, however, she elaborated that she had no mandate to exclude any of the candidates other than those who had exhibited mental or behavioural disorders. In all other cases her opinion was advisory and not binding on the selection committee.

[175] After receiving Dr. Girard's report, the interview panel decided to reassess their own findings. The panel realized that the Complainant's "rigidity" was not so much rooted in the RCMP environment from which he had just returned, but was instead embedded in his personality. The panel decided therefore not to proceed any further with the Complainant's candidacy, even in regard to the auxiliary police officer position. A letter was sent to the Complainant, dated May 14, 1998, informing him that, pursuant to his psychometric assessment, it was determined that his candidacy did not correspond to the profile sought for the position of MUCPS officer.

[176] The MUCPS was not the only prospective employer to administer psychometric testing to the Complainant. On April 9, 1998, he applied to Canadian National Railways ("CN") for the position of police officer. In the application, he inscribed "resignation" as his reason for leaving his previous employment with the RCMP. The Complainant was tested by CN using the "General Aptitude Test Battery", which measures some, but not

all, of the basic skills required for a clerical position. The aptitudes assessed were intelligence, verbal aptitude, and numerical aptitude. CN set the pass rate at the 25<sup>th</sup> percentile, which means that 75% of the general population would score higher than this cut-off point. The Complainant placed between the 38<sup>th</sup> and the 45<sup>th</sup> percentiles with respect to the three aptitudes assessed by CN. He therefore passed the test, and was in fact offered a job by CN. He had been initially told that a position was available in Quebec, but he was only offered a posting in Toronto. He opted to decline.

[177] The Complainant did not limit his job searches to policing. He searched through the classified ads for employment. In early 1998, he obtained work as a security guard in a seniors' home. He worked the midnight to noon shift at \$10.00 per hour. For a few weeks around the Christmas shopping season of 1998, he was hired by a couple of department stores as a store detective. He worked several other part-time jobs. In 1999, he took a full-time position on contract as a security guard in a private college. Unfortunately, his job functions included emptying garbage cans. Compared to the duties and responsibilities he held as an RCMP officer, he found all of this work demeaning and embarrassing. But he had no choice. He was carrying a significant debt load. Bankruptcy was not an option as it would likely have barred him from any future employment in policing.

[178] The Complainant sought to improve himself academically, so he registered for correspondence courses in drug addiction prevention given by the University of Montreal. He earned his certificate within two years. Thereafter, he took courses in police management from the same university.

[179] In July 1999, the Complainant applied for a position with the agency operating Montreal's airports, Aéroports de Montréal ("ADM"), as an "officer - dog-handler" (*patrouilleur - maître de chien*). The role of these officers and their dogs is to search airplanes, packages, vehicles, or any other object in order to detect explosives. These functions had been performed by specialized RCMP officers until 2000, when the service was transferred directly to ADM. The Complainant's application was processed as part of ADM's initial recruitment to replace the departing RCMP officers.

[180] In the job application forms, applicants were instructed to provide truthful information, failing which their applications could be refused. One of the questions asked on the form was whether the candidate had ever been dismissed or *asked to resign* from a previous position. The Complainant answered "no". He explained later in the document that he had left his job at the RCMP because it was too far away from his home in Montreal, the rents were too high in B.C., and it was unlikely he would be transferred back to Quebec in the next 10 years.

[181] He was asked to take a written exam, which was to be completed within a fixed span of time. In the first portion, the candidate had to complete incident reports in French regarding two video-taped scenarios that were shown to him. The second portion required that he answer two questions in English, one of which also consisted of a scenario. The assessors for this exam did not testify, but the Complainant's answer sheet, together with their comments, were entered into evidence. On one of the incident reports, the remark [TRANSLATION] "unsatisfactory" is inscribed. The other report is marked [TRANSLATION] "satisfactory - borderline - chronology leaves something to be desired". With respect to the English answers, the scenario-based reply was marked [TRANSLATION] "unsatisfactory" and the other one [TRANSLATION] "satisfactory".

[182] The Complainant's application was advanced to the next stage, which consisted of an interview conducted in August 1999. He also underwent a physical test and some stringent field testing that extended over several days. In September 1999, ADM offered him the position on an indeterminate full-time basis. He has worked there to this day. He considers the job very rewarding. He responds whenever bomb threats are called or suspicious packages are found. He searches luggage and aircraft, and if his inquiries prove negative, he authorizes the flight crew to allow the passengers to board and to depart. His services were called upon extensively on September 11, 2001. With the assistance of the Sureté du Québec and the RCMP, he inspected 21 airplanes that had been grounded following the hijackings in the U.S.

[183] The Complainant contends that his success at this job demonstrates that he possesses the qualifications to be a police officer, particularly since his job used to be performed by RCMP officers. The Respondent disagrees, pointing out that the Complainant does not have the formal status of "police officer", he does not have the power to arrest persons, he does not carry a firearm, and he does not conduct investigations.

#### **M. Official Languages Complaint**

[184] Prior to filing the present human rights complaint, the Complainant filed a complaint with the Office of the Commissioner of Official Languages ("OCOL"), on May 28, 1998. He alleged that although he satisfied the linguistic requirements for the job in Burnaby, he was dismissed because the senior officers at the detachment considered his English-language abilities to be insufficient. The OCOL staff member who received his complaint noted on the complaint form that the Complainant [TRANSLATION] "is aware that his complaint does not relate to a question of discrimination".

[185] On July 3, 1998, the Complainant, accompanied by his lawyer, attended the OCOL offices in Ottawa and gave a statement regarding his complaint. The notes that were apparently taken by the OCOL staff members who met with him were entered into evidence, but these individuals did not testify. The notes refer to most of the incidents that were raised in the present case. The Complainant reportedly stated that he was annoyed at being called "OBO" and "Kirby Puckett Ass". There is no indication in the notes, however, that he considered these terms to be racist in nature. Indeed, the Complainant did not make any allegation of racism whatsoever before the OCOL.

[186] A couple of months later, on September 9, 1998, the Complainant filed the present complaint with the Canadian Human Rights Commission.

[187] In September 1999, the OCOL issued its final report after completing its investigation. It concluded that there was no evidence to support the Complainant's allegation that he lost his job due to an inadequate knowledge of English or that he was subjected to linguistic harassment.

## **II. ANALYSIS**

### **A. The Section 7 Complaint**

[188] It is a discriminatory practice, under s. 7 of the Act, to differentiate adversely in relation to an employee, during the course of his employment, on the basis of a prohibited ground, including his colour. It is also a discriminatory practice to dismiss an employee on this prohibited ground.

[189] The initial burden of proof rests with the complainant, who must establish a *prima facie* case of discrimination. The basic guidance for what is required to make out a *prima*

*facie* case was provided by the Supreme Court of Canada in *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536 at para. 28 ("*O'Malley*"). The Court stated that a *prima facie* case is one that covers the allegations made and which, if the allegations are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent. Once the *prima facie* case is established, the onus then shifts to the respondent to provide a reasonable explanation demonstrating that the alleged discrimination did not occur as alleged or that the conduct was somehow non-discriminatory. If a reasonable explanation is given, it is up to the complainant to demonstrate that the explanation is merely a pretext for discrimination (see *Basi v. Canadian National Railway Company (No. 1)* (1988), 9 C.H.R.R. D/5029 at para. 38474 (C.H.R.T.); *Lincoln v. Bay Ferries Ltd.*, 2004 FCA 204 at paras. 17-18).

[190] Discriminatory considerations need not be the sole reason for the actions at issue in order for the complaint to be substantiated. It is sufficient that the discrimination be one of the factors in the employer's decision (*Holden v. Canadian National Railway Company* (1991), 14 C.H.R.R. D/12 at para. 7 (F.C.A.)). The standard of proof in discrimination cases is the civil standard of the balance of probabilities.

[191] As was pointed out in *Basi, supra*, at paragraph 38481, discrimination is not a practice that one would expect to see displayed overtly. In fact, rarely are there cases where one can show by direct evidence that discrimination is purposely practiced. A tribunal should therefore consider all circumstances in determining if there exists a "subtle scent of discrimination". An inference of discrimination may be drawn where the evidence offered in support of it renders such an inference more probable than the other possible inference or hypothesis (B. Vizkelety, *Proving Discrimination in Canada*, (Toronto: Carswell, 1987), at 142; see also *Chopra v. Dept. of National Health and Welfare* (2001), 40 C.H.R.R. D/396 (CHRT)).

### **B. Prima Facie Case**

[192] The Complainant submits that he was subjected to differential treatment throughout his RFT and that his colour was a factor in this differentiation. He also contends that his colour played a role in the decision to terminate his employment, or alternatively, that the mistreatment he experienced impacted on his performance, which ultimately resulted in his dismissal.

[193] The Complainant argues that he was treated differentially while being trained by all three of his coaches. With respect to Cst. Haney, he cites the following treatment:

- Timing the Complainant's response times to the scene of a call;
- Timing his report-writing;
- Insisting that he re-write his reports;
- Denying him access to the office computers;
- Insisting that he change the format of his notebook;
- Refusing to mention positive or commendable acts in the Assessment Reports;
- Repeatedly yelling at him;
- Suggesting only weeks into his RFT that he was not suited to be a police officer and should consider quitting.

[194] The Complainant contends that other trainees were not treated in this way. He believes that his colour was a factor in Cst. Haney's behaviour towards him, as illustrated by the following:

- Addressing the Complainant as "OBO" and "Kirby Puckett Ass";
- Asking him and Cst. St-Fleur if they had shaken hands like "black men" do.

[195] The Complainant contends that not only is the term "OBO" connected to slave-auctions, but that its usage by Cst. Haney referred back to the mistake that the Complainant had made on his first day at work. It was therefore suggestive of a lack of intelligence, which he argues is a negative racial stereotype ascribed to black persons.

[196] Dr. Frances Henry, PhD, F.R.S.C., was called by the Complainant to testify as an expert on the basis of her broad and general expertise on notions of racism, racial discrimination and harassment in society at large and in the workplace, from a social sciences perspective. She gave evidence that the reference to Kirby Puckett, who is known for his large posterior, called attention to the "well known physical characteristic of many people of African origin - their high rounded buttocks". She submitted that this was therefore an inappropriate nickname, particularly considering the asymmetrical relationship that existed between the coach and his trainee. There was little that the Complainant could do to challenge the use of such terminology other than quietly accept it.

[197] The repeated timing of the Complainant's work implied that he was lazy and slow. Dr. Henry identified the possibility of stereotyping here as well, in that "a powerful and very negative image of Blacks is that they are slow".

[198] The Complainant submits that the differential treatment continued while he was under Cst. Carr's tutelage. This included the ongoing timing of his activities, the failure to mention praiseworthy conduct in the Assessment Reports, and the attempt to persuade him to quit the RCMP. The Complainant also believes that Cst. Carr was instrumental in Cst. Marx's decision to issue a second Performance Log in connection with the ride-along shift, to negate the positive message that had been conveyed about the Complainant in an earlier Performance Log.

[199] It is argued that Cst. Carr's overall attitude towards the Complainant was not conducive to the development of a "zone of comfort" between them, which in turn had a chilling effect on the Complainant's willingness to ask questions and seek advice. Any lapses in his earlier training, attributable to the poor treatment received at the hands of Cst. Haney, were thus exacerbated. His performance naturally bore the cost.

[200] The differential treatment continued into the second RFT extension period, under Cst. McDonald. The Complainant believes that the circumstances surrounding the December 6<sup>th</sup>, 1997, incident clearly illustrate that he was treated differently when compared to other RCMP recruits and members. Not only was he affronted and physically attacked by Cst. McDonald in the building hallway, but he was saddled thereafter with three negative 1004 Performance Logs, a never before seen practice, which virtually sealed his fate. This persecution, contends the Complainant, was repeated during the subsequent call involving the teenager who had not paid the taxi driver. The senior officers ridiculed him. Their actions were unjustified.

[201] In addition, just as was the case with the other trainers, Cst. McDonald did not take into consideration some of the Complainant's better work. Indeed, the Complainant questions how the decision to dismiss him came about, in light of his sound performance during the last block of work shifts and at the APEC Summit. He believes that another factor must have been at play - discrimination on the basis of his colour.

[202] Three incidents are specifically mentioned in support of this assertion:



- Cst. McDonald's sketch, in which Cst. St-Fleur's physical features as a black man were exaggerated, and Cst. McDonald's subsequent comment comparing the respective features of Cst. St-Fleur and the Complainant;
- Cst. McDonald's remark that Cst. St-Fleur was "dirtier" than Cst. McDonald's tie; and
- Cst. McDonald's disapproving comments about employment equity policies within the RCMP.

[203] The Complainant also alluded to a sort of domino effect that may have developed from one RFT period to the next. He claims that the Assessment Reports of the initial RFT period were tainted due to Cst. Haney's discriminatory attitude. The negative perceptions of the Complainant were carried forward as these reports were successively read by the other trainers who were therefore influenced by Cst. Haney's discrimination. This influence extended informally to other members of the detachment. For instance, many of the witnesses who were working at the detachment at the time were aware that the Complainant's nickname was "OBO", and even knew the circumstances regarding the used car ads which gave rise to its usage. The Complainant believes that in the same fashion, word about Cst. Haney's poor assessment of him must have reached the others at the detachment.

[204] Although his RFT assessments were made by the three coaches who worked directly with the Complainant, he points out that the decision to constructively dismiss him ultimately rested with Insp. Schlecker. The record, it is argued, contains numerous offensive comments from Insp. Schlecker illustrating a prejudiced view of visible minorities, such as the use of the term "coloured people" and his comment about "average white European Canadians".

[205] Moreover, the Complainant submits that these remarks are indicative of a widespread prejudice against visible minorities that permeated throughout the Burnaby detachment. It was acknowledged by some of the witnesses that the term "DWO", meaning "driving while oriental", had been occasionally used at the time by at least a few officers. The use of this term and Insp. Schlecker's remarks indicate the presence of what Dr. Henry described as a discourse of "we and they" amongst the Burnaby detachment's personnel, where members of minority groups were perceived as outsiders.

[206] In the end, the Complainant's case boils down to a simple point. He is a black man who, despite successfully completing his training at Depot, was told that he was not going to pass his RFT and would not be hired as a regular member. In effect, he was dismissed from the RCMP. According to the evidence, around the same time as the Complainant's RFT, the only individuals who required an extension in order to pass their RFT at the Burnaby detachment were two black men (Cst. St-Fleur and Cst. Knight). It would appear that a short time prior to the Complainant's RFT, a white female candidate did not pass her RFT. Furthermore, just like the Complainant, Cst. St-Fleur's first coach (Cst. Marx) told him part way through his RFT to consider changing his career. Cst. Marx also found that Cst. St-Fleur needed to improve his ability to define problems and his decision-making skills.

[207] Taking all of the preceding elements into account, and applying the *O'Malley* test, I am satisfied that if these allegations are believed, they are complete and sufficient to justify a verdict in the Complainant's favour, in the absence of an answer from the Respondent. The *prima facie* case has been established.

### **C. The RCMP's Explanation**

[208] According to the RCMP, the Complainant was dismissed because he was not qualified to be a regular member. There was no other factor at play. Police officers are entrusted with extraordinary powers for the execution of their duties. It is therefore essential that they be reliable, honest, and in possession of good judgment. This is a *bona fide* occupational requirement. It is during an officer's probationary period that a police force assesses these essential qualities in a recruit. If a new member does not demonstrate that he satisfies these requirements, then in the interest of public safety, his employment must be terminated.

[209] The Respondent submits that the Complainant lacked the qualities and abilities needed to act with good judgment, on a regular and predictable basis. The evidence shows that under stress, he was unable to reason properly, and could not explain or justify the decisions that he made. He did not manage to demonstrate that he was able to reliably, on a regular basis, take all factors into account when formulating his decisions.

[210] A probationary employee does not benefit from the same level of job security as a permanent employee. Employees on probation are meant to undergo a period of testing, demonstration or investigation of their qualifications and suitability for regular employment as permanent employees (*Jacmain v. Attorney General (Canada)*, [1978] S.C.R. 15 at 38). Probationary employees may be terminated if, in the employer's judgment, they have failed to meet the standards set and are considered to be unsatisfactory.

[211] In *Daniels v. Hamilton-Wentworth (Regional Municipality) Police Services Board (No. 2)* (1996), 31 C.H.R.R. D/189 (Ont. Bd. Inq.), this principle was applied in a police hiring setting. The complainant alleged that he was treated unequally and was dismissed near the end of his probation as a police constable because of his race and colour. The Board found that his race was not a factor and noted, at paragraph 125, that it is within an employer's rights to release an employee who is not considered likely to meet the standards of performance required by the organization. Performance criticisms are legitimate factors to consider in assessing the suitability of retaining a probationary constable to become a member of a permanent police force.

[212] In the present case, the Complainant was clearly in a probationary situation. He had to meet the required standards under the Field Coaching Program by the sixth month of his field assessment, in order to be recommended for entry into the RCMP as a regular member. If the Complainant did not meet the standards, it was legitimate to dismiss him, subject to the following qualification: the employer's decision could not be tainted by bad faith (see *Jacmain*, supra at 37), and it could likewise not be tainted by conduct that is proscribed under the *Canadian Human Rights Act*.

[213] The assessment process utilized by the RCMP during the field training was largely subjective. Trainers evaluated recruits against certain criteria, but the evaluation standards and methods could conceivably vary from one coach to another. The Complainant submits, for instance, that Cst. Haney was particularly harsh in his methods and his assessments. But, as was pointed out in *Folch v. Canadian Airlines International* (1992), 17 C.H.R.R. D/261 at para. 165 (C.H.R.T.), the fact that an employer uses subjective criteria in its evaluation of applicants does not in itself render its hiring decisions subject to attack under the Act. Where subjective criteria are used, it may be necessary to scrutinize the hiring decisions more carefully to insure that subjective assessments are not being used to mask discrimination. However, it is not the function of

the Tribunal to determine whether it agrees with each of the hiring decisions made by the employer. Its function is to determine whether the complainant was discriminated against on the alleged grounds of discrimination.

[214] Did the Complainant meet the RCMP's standards? The Respondent submits that he unquestionably failed to do so. This was meticulously documented by not one, but three separate coaches. Initially there were several concerns, but ultimately the common and key preoccupation for all the coaches were the Complainant's decision-making skills. They constituted one of the 28 specified criteria in which a recruit must demonstrate competence. The Field Coach Program Standard sets out 11 components of decision-making that a recruit must demonstrate to be successful. They include:

- making professional decisions that take into account community needs even under difficult and stressful situations;
- considering a range of alternative courses of action;
- taking into account new information or advice and reconsidering decisions;
- clearly and concisely defending decisions made, and responding to questions or challenges that are raised.

[215] The Respondent submits that the incidents referred to in all three coaches' Assessment Reports document that the Complainant lacked competence in each of these areas. For instance, all four of these components were absent in his handling of the call involving the teenager and the taxi driver that took place in the fourth week of his second extension, shortly before he resigned from the RCMP. The arrest of the girl was not in the community's interest and was implemented before he had considered an alternative course of action. He was unable to defend his decision when challenged by senior members, and when finally presented with new information (the girl's perspective on the incident), he had to be prompted to reconsider his decision.

[216] Furthermore, in attempting to justify his errors and deflect criticism, he would deliberately mislead senior officers, as occurred in the incident involving Cpl. Waters where the Complainant falsely stated that he was at court all day on November 6, 1997. This demonstrates, it is argued, that he lacks the honesty expected of RCMP officers.

[217] The three trainers were not alone in finding that the Complainant was lacking in his decision-making skills. Cst. Albert found that the Complainant was rushing to judgment and was not thinking things through, when he let the teenaged shoplifter return to the group home unescorted. Cst. Van Overbeek complained about the Complainant's decision to leave a suspect unattended at a crime scene. Cst. Akow questioned his decision to leave seized marijuana stored in his duty locker for a month. Cst. Merritt criticized the Complainant for concentrating his attention on a civil dispute instead of focussing on the criminal matter for which he had been called.

[218] There is no evidence to support the Complainant's claim that these officers and the trainers who succeeded Cst. Haney were somehow influenced or tainted by the first trainer's alleged racial biases. Burnaby was, after all, a very large detachment and over the course of his RFT, the Complainant worked with several teams, during various work shift blocks and in three different districts. Cst. McDonald did not even know Cst. Haney, and had only a passing acquaintance with Cst. Carr.

[219] The Complainant takes issue with most of the negative assessments ascribed to his performance. He contends that he was wrongly criticized, and that his versions and explanations of what transpired during the various incidents cited were not considered. In

most of the cases, the Complainant feels that he took the appropriate action, or that his errors were inconsequential and did not warrant criticism. That may be, but in my view, we cannot lose sight of the fact that this is a probationary period during which the employer is subjectively assessing the qualifications of the candidate. The mere fact that the Complainant's performance was criticized by his trainers and other more senior members does not prove that he was being discriminated against. As spelled out in *Folch*, it is not the role of the Tribunal to second-guess an employer's assessment of an employee's performance, unless there is evidence that a discriminatory ground was a factor. I would add that it is also not the role of the Tribunal to second-guess the choice of training and assessment methods that an employer may utilize with respect to a particular individual (*e.g.* measuring his time to respond to a call or imposing a specific format for a notebook), provided once again that discrimination is not a factor in their implementation.

[220] The Complainant submits that if one takes into consideration the circumstantial evidence surrounding his RFT at Burnaby, an inference can be drawn that the RCMP's explanation is just a pretext and that in fact, his colour was a factor. The Complainant's most oft-cited proof in support of this assertion was the fact that Cst. Haney gave him the nickname "OBO", and that the term continued to be used by the coach and others at the detachment thereafter. I do not, however, accept the Complainant's contention that this term is in and of itself infused with racial overtones that hearken back to slave auctions in pre-emancipation America. No evidence from any reference source, be it dictionary, encyclopaedia, almanac, or text book, was introduced to support this assertion. To the contrary, the Complainant's own witness, Dr. Henry, who is an expert in racism and racial discrimination, testified that she had never before heard of the use of the terms "OBO"/"or best offer" as racial epithets. It leaves one with the distinct impression that the meaning ascribed to the term was devised for the sole purpose of advancing this case. I am mindful that one of the Complainant's witnesses, Cst. Aubrey Bacchus, an RCMP officer who worked with him at Burnaby, testified that he was aware of the term's claimed connotation. However, he presented his evidence in a manner that was remarkably similar to that previously put forth by the Complainant. In light of the utter absence of any other independent source for this definition, Cst. Bacchus' testimony is cast into doubt. I am therefore not at all persuaded that the term bears in and of itself any racial connotation.

[221] But what of the Complainant's subsidiary submission that the nickname is suggestive of a lack of intelligence, which is a racial stereotype? In this regard, I note that the Complainant was not the only person in the RCMP to have a nickname. Cpl. Cousins testified that one person who developed lice while at Depot was called "Bugs" for years thereafter. Cst. McDonald recalled that another recruit who apparently had misunderstood the meaning of the abbreviation "L.N.U." in relation to a suspect ("last name unknown"), ended up being called by this phrase thereafter. Cst. Anthony Akow testified that he was known as "Silent H" because he pronounced his first name "Antony". Cst. Haney testified that he was known as "Dumbo", in reference to the shape of his ears, and "Weenie Boy" because he liked to eat hot dogs.

[222] None of these terms are particularly flattering, nor arguably are they respectful of another's dignity. Cst. Haney and others confirmed that it is now increasingly frowned upon within the RCMP to address anyone by anything other than their proper names.

This is a welcome development perhaps, but does it imply that the nicknames used in the past were discriminatory? In the case of the particular term "OBO", none of the witnesses who called the Complainant by this nickname or who were aware of its existence, gave any indication that they associated it with a lack of intellect on the part of the Complainant. To the contrary, it was noted by several witnesses, including Cst. Haney, that the Complainant was considered by them to be an intelligent, not to mention amicable, person. Cst. Haney's explanation that the name was simply in keeping with the level of camaraderie that existed amongst members of the detachment is entirely consistent with the scene that appears in the home video. None of the witnesses testified ever having been asked by the Complainant to cease calling him by that name. In all of these circumstances, I am unconvinced that the use of this nickname by Cst. Haney suggests that his opinions about the Complainant's intellect were tainted by racial or discriminatory overtones.

[223] The term "Kirby Puckett Ass", with its reference to the famous African-American athlete, might have appeared more obviously linked to the Complainant's colour, especially given the Complainant's somewhat perplexing testimony as to how the term was first used. The impression he gave was that suddenly, one day, without any warning, Cst. Haney turned to him in the locker room while he was getting dressed, and called him "Kirby Puckett Ass". There was no context given for the statement. It is unfortunate that the Complainant chose not to provide the background to the remark in his evidence because his failure to do so could have had a misleading effect.

[224] Cst. Haney gave the context in his evidence, which was not contradicted. He explained that they were speaking jovially with one another, pleased with their accomplishment at having apprehended a suspect after a difficult chase. The Complainant asserted that he could have outrun Cst. Haney. It seems perfectly logical for someone in the coach's position to have questioned sarcastically, in defence of his own running skills, whether the other individual thought he possessed a professional athlete's talent. Cst. Haney was asked in his cross-examination why he chose the name of a black athlete and not someone else. His explanation was that Kirby Puckett is an athlete who looked like the Complainant in build and in colour. In my opinion, the selection of a black person as a comparator does not lend to the comment a biased or prejudicial connotation in itself. If Cst. Haney wanted to invoke the name of an athlete, must he necessarily have chosen the name of a white athlete in order to avoid the risk of his remark being labelled as racist, as argued by the Complainant? This seems absurd.

[225] Does the addition of the word "ass" connote a degrading remark related to what Dr. Henry described as the "well known physical characteristic" of people of African origin? Several popular idioms certainly exist in our times that incorporate the word "ass", but do not necessarily make reference to a person's posterior. For instance, "smart-ass" is used to describe someone who is a "smart aleck" (*The New Shorter Oxford English Dictionary*), and "hard-ass" is slang for "one who inflexibly follows or enforces rules" (*American Heritage Dictionary of the English Language, Fourth Edition*). Cst. Haney said he had no particular reason for having added the word "ass" to the name, though he did indicate that he associated the Complainant's and Kirby Puckett's running ability with a powerful lower "torso". He categorically denied having in any way intended to refer to the Complainant's race or colour.

[226] The Complainant contends that even if Cst. Haney did not bear any such intentions, underlying his comments subconsciously were the stereotypes alleged. Dr. Henry testified about a phenomenon, which she called "whiteness in discourse", pursuant to which white persons are generally not aware of their racial classification as "white" and do not realize that they see the world through white eyes. In my opinion, although the interpretation of the term being proposed by the Complainant is certainly possible, Cst. Haney's explanation, in the specific context of the conversation, seems equally persuasive.

[227] With respect to Cst. Haney's remark about how "black men" shake hands, the Complainant submits that it exemplifies what Dr. Henry described as the "we and they" discourse. It shows that Cst. Haney views black RCMP officers as outsiders. On the other hand, Cst. St-Fleur did not perceive the comment as having a racial tone. Can an inference of racist overtones be drawn? I am not convinced that the interpretation made by the Complainant is more probable than that proposed by Cst. St-Fleur and the RCMP. I am therefore not persuaded that there were racist overtones in the comment.

[228] The Complainant seemed to suggest that Cst. Haney's coldish attitude with respect Ms. Cerrato was somehow demonstrative of his prejudice. I fail to see how. Cst. Haney's explanation is reasonable. The relationship between him and the Complainant had already become somewhat strained by the time she arrived at Burnaby in late December 1996. After all, it was at about the same time that the Complainant had complained to Cpl. Fischer about Cst. Haney's training techniques. There is nothing to indicate that this explanation is unfounded or pretextual.

[229] It is difficult to accept the Complainant's submission that by timing his performance, Cst. Haney and Cst. Carr were expressly or implicitly suggesting that he was lazy, and by inference, applying a stereotype commonly attributed to black persons. It is a fact that when the Complainant first arrived, he was not familiar with the geography of Burnaby and his response times were slow. Furthermore, several senior officers, in addition to Cst. Haney and Cst. Carr, recognized that it was taking a long time for the Complainant to draft his reports. The adoption of the timing "tool" was meant to improve the Complainant's performance, and indeed his response times did get better. It may have put additional stress on the Complainant, but as I have stated earlier, it is not the function of the Tribunal to determine if a certain training technique is appropriate or not. The same could be said of Cst. Haney's alleged shouting, which he denied and which was not corroborated by any other witness.

[230] It should also be added that according to the Field Coaching Program Standard, coaches were clearly not supposed to record in their Assessment Reports examples of conduct demonstrating that the employee had met the "suitable" standard. Only work that did not meet the standard or that was superior was to be documented. I therefore find no fault with the trainers' recording so-called negative acts in their reports. This is what was expected of them.

[231] The Complainant does not point to any specific evidence from which one may infer that discrimination was a factor in Cst. Carr's conduct, other than the fact that he continued applying the training techniques and practices first adopted by Cst. Haney. Moreover, there is evidence that Cst. Carr (and Cst. Haney for that matter) made additional efforts to help the Complainant pass his RFT: Cst. Carr prepared fact-based scenarios on audiotape for the Complainant to use; Cst. Haney conducted special training

sessions at his home. In addition, other than the Complainant's suspicions, there is no evidence to support the contention that Cst. Carr had anything to do with Cst. Marx's filing of a second 1004 Performance Log. On the contrary, the evidence is that Cpl. Avery asked for the revision.

[232] The situation changes somewhat with respect to the final trainer, Cst. McDonald. The Complainant submits that his biases were revealed in his sketch of Cst. St-Fleur. However, I do not give this evidence any weight. Here is an alleged incident with fairly obvious discriminatory overtones. Yet the Complainant makes no mention of it to anyone at the time, nor does he allude to it in his remarks following his final Assessment Report. Furthermore, he does not raise it in his OCOL complaint, in his human rights complaint, nor even with the Commission investigator. The matter is brought up for the first time in February 2003, in the disclosure of the material facts of his case, and even then, we are later told at the hearing of a sudden last-minute recollection that the sketch artist and the person caricatured have been wrongly identified in the disclosure document. The Complainant's allegations with respect to the sketch are simply not credible.

[233] Cst. McDonald's remark to Cst. St-Fleur about "who is dirtier" is similar to the "black men" comment; it could support more than one interpretation. Cst. St-Fleur, who was directly involved in the conversation, states that the Complainant misunderstood, and that the comment related to his vest, not his skin colour.

[234] Finally, there are the comments about the RCMP's employment equity program. I am not persuaded that Cst. McDonald's expression of an opinion on this matter is necessarily demonstrative of intolerance to others. The Complainant acknowledged they had a civil discussion on the subject. The interaction between employment equity policies and traditional staffing processes is a topic of recurring public discussion. In fact, the provisions and operation of the *Employment Equity Act*, R.S.C. c. E-5, are themselves subject to a comprehensive review by the House of Commons every five years (s. 44). I do not therefore believe that an underlying racist or discriminatory tendency can be inferred from Cst. McDonald's actual comments on the issue.

[235] Insp. Schlecker made several remarks relating to the Complainant's visible minority status, both in the documentation that he filed during the course of the Commission investigation, and in his testimony. His comments were certainly demonstrative of the discourse of "we and they". His apparent belief in the existence of "ordinary" Canadians of any particular colour or origin is disconcerting. It is equally astonishing that someone of his stature and experience within the RCMP would refer to people of African ancestry as "coloured", showing disregard for the significance and regrettable history behind this term. Nonetheless, it is also clear from the evidence that while the formal decision to dismiss the Complainant emanated from Insp. Schlecker, in reality, he merely deferred to the opinions of the Complainant's trainers and supervisors, as well as Cpl. Cousins. It is evident that he did not have any determinative role to play in the process.

[236] The Respondent argues that no inference of discrimination can be drawn from the experiences of Cst. St-Fleur and Cst. Knight. Cst. St-Fleur testified that he had a personality conflict with his trainer, Cst. Marx, and that they did not agree on the manner in which police work should be conducted. Therefore, at his own request, he was assigned a new trainer with whom he was better able to relate. He ultimately passed his RFT. He testified that he does not believe Cst. Marx discriminated against him. He and Cst. Marx simply did not get along.

[237] Interestingly, Cst. Knight's replacement trainer was Cst. McDonald, and it was under his tutelage that he passed his RFT. He found Cst. McDonald very fair and relaxed. He was at ease working with this trainer. Cst. Knight required an extension because his report-writing was found to still be in need of improvement after the first six months, possibly as a result of dyslexia. The Respondent alleges that if there was a common factor to be found between the Complainant and Cst. St-Fleur, which could have influenced their performance during their RFT, it was not discrimination on the basis of their colour. Rather, they were both francophones working in a unilingual English environment, which put them at a certain disadvantage. Whether or not this was the case, however, I find that there is insufficient similarity between the experiences of the two other officers and the Complainant to allow for the drawing of any inference. Ultimately, there is a fundamental difference between the other two recruits and the Complainant - they succeeded in their RFT, while the Complainant did not.

[238] Does all of this evidence put together raise the subtle scent of discrimination? In my opinion, it does not. The evidence offered in support of the Complainant's claim does not render the inference of discrimination more probable than not. On the contrary, in light of what transpired after the Complainant's departure from Burnaby, I am convinced that the explanations provided by the Respondent are reasonable and complete.

[239] The Complainant's application upon his return to Montreal to join the MUCPS as a police officer was refused for virtually the same reasons as those cited by the RCMP. These findings were reached despite the MUCPS' having absolutely no knowledge of the Complainant's assessments and the circumstances surrounding his departure from the RCMP. After interviewing and testing him, the selection committee discovered that he was excessively rigid in his decisions, that he applied laws "by the book" without taking all factors into consideration (including the advice of another officer), and that he was not open to criticism. Similar conclusions were independently reached by Dr. Girard after her psychometric examination of the Complainant. These conclusions are strikingly similar to those given by all three of the Complainant's coaches, not to mention the other RCMP members who had also made observations about his performance.

[240] Although the Complainant was not hired by several other police departments, the Respondent chose, during the hearing, to place particular emphasis on the Complainant's application to the Île-Perrot force. The Complainant attended the hiring exam without having studied Quebec provincial statutes in advance. He was therefore unprepared and did not pass. The Respondent argues that it would have been only logical to expect that an exam being given by a municipal force in Quebec would test applicants on provincial law. The Complainant's failure to realize this and prepare accordingly demonstrates the same lack of judgment that was perceived by his coaches and supervisors back in Burnaby.

[241] Even the Complainant's current employer, ADM, identified some problems with his report-writing abilities (an area in which the RCMP also found him deficient going into his first extension period) and with his answers regarding a crime-based scenario.

[242] Moreover, one also finds evidence upon the Complainant's return to Montreal of a lack of honesty that the RCMP had also purportedly perceived during his RFT. He never informed any of his potential or actual employers of the true circumstances regarding his employment with the RCMP. I can appreciate the Complainant's explanation given in his testimony. He was in dire financial straits and feared that such a disclosure could



jeopardize his employment opportunities. However, I am also mindful that at least two of these employers had made it abundantly clear that misrepresenting the facts on an application would almost automatically lead to a rejection of his candidacy. He opted to withhold the information just the same.

[243] The *Folch* decision cautioned that where an employer uses subjective criteria to assess an employee, the hiring decision should be subjected to greater scrutiny. I have scrutinized the RCMP's decisions closely and I am satisfied that the explanation given for not hiring the Complainant is reasonable, particularly in light of the independent yet strikingly similar evaluations he received from the other employers. I have not been persuaded, on the balance of probabilities, that discrimination on the basis of the Complainant's colour was a factor in his failure to pass his RFT.

[244] There is no question that discrimination is not likely to be practised overtly in Canada, particularly within organizations like the RCMP. A human rights tribunal must inescapably inquire into all the circumstances in order to detect the presence of that odious yet subtle scent of discrimination. I have engaged in this exercise in the present case and determined that the circumstantial evidence of alleged discrimination, particularly as it relates to the conduct of the coaches and other senior members at Burnaby, was equivocal at best. A case will not be substantiated where the inference a complainant is proposing is not shown to be more probable than that proposed by the respondent. In the present case, I am convinced that not only is the RCMP's explanation more probable, it reflects the genuine and sole cause of the Complainant's dismissal. Discrimination on the basis of his colour was not a factor.

#### **D. The Section 14 Complaint**

[245] It is a discriminatory practice, under s. 14 of the *Act*, to harass an individual on a prohibited ground of discrimination in matters related to employment.

[246] Harassment, as proscribed under the *Act*, has been broadly defined as unwelcome conduct related to one of the prohibited grounds of discrimination that detrimentally affects the work environment or leads to adverse job-related consequences for the victims (*Janzen v. Platy Enterprises Ltd.* [1989] 1 S.C.R. 1252 at 1284; *Rampersadsingh v. Wignall (No. 2)* (2002), 45 C.H.R.R. D/237 at para. 40 (C.H.R.T.)). In *Canada (HRC) v. Canada (Armed Forces) and Franke*, [1999] 3 F.C. 653 at paras. 29-50 (F.C.T.D.) ("*Franke*"), Madame Justice Tremblay-Lamer articulated the test for harassment under the *Act*. In order for a complaint to be substantiated, the following must be demonstrated:

- (i) The respondent's alleged conduct must be shown to be related to the prohibited ground of discrimination alleged in the complaint (in the present case, the Complainant's colour). This must be determined in accordance with the standard of a reasonable person in the circumstances of the case, keeping in mind the prevailing social norms.
- (ii) The acts that are the subject of the complaint must be shown to have been unwelcome. This can be determined by assessing the complainant's reaction at the time of the alleged incidents of harassment and ascertaining whether he expressly, or by his behaviour, demonstrated that the conduct was unwelcome. A verbal "no" is not required in all circumstances - a repetitive failure to respond to a harasser's comments constitutes a signal to him that his conduct is unwelcome. The appropriate standard against which to assess a complainant's reaction will also be that of a reasonable person in the circumstances.

- (iii) Ordinarily, harassment requires an element of persistence or repetition, but in certain circumstances even a single incident may be severe enough to create a hostile environment. For instance, a single physical assault may be serious enough to constitute harassment, but a solitary crude joke, although in poor taste, will not generally be enough to constitute harassment since it is less likely, on its own, to create a negative work environment. The objective, reasonable person standard is used to assess this factor as well.
- (iv) Finally, where a complaint is filed against an employer regarding the conduct of one or more of its employees, as in the present case, fairness demands that the victim of the harassment, whenever possible, notify the employer of the alleged offensive conduct. This requirement exists where the employer has a personnel department with a comprehensive and effective harassment policy, including appropriate redress mechanisms, which are already in place.

**E. Was the Impugned Conduct Related to the Complainant's Colour?**

[247] The Complainant alleges that he experienced both a direct, more focussed form of harassment, as well as one that was more broad and general in scope. He argues that the use of the nicknames "OBO" and "Kirby Puckett Ass" clearly constituted harassment on the basis of his colour. On the other hand, he claims that his allegedly harsh treatment during his training, the unfair evaluations and the overall "micro-management" of his RFT, together also amounted to harassment.

[248] I have addressed the term "OBO" earlier in my decision. I am not persuaded that it bears any racial connotation. In *Stadnyk v. Canada (Employment and Immigration Commission)* (2000), 38 C.H.R.R. D/290 at para. 25, the Federal Court of Appeal indicated that where a sexual harassment complainant is a woman, the reasonable person standard should be adapted to the standard of a reasonable woman. The Court noted that there was expert evidence before the tribunal to explain the variance in perception between a reasonable man/person and a reasonable woman. In the present case, all we have is the evidence of Dr. Henry, an acknowledged expert in the field of racism, who testified that she had never heard of any relationship between the term "OBO" and slave auctions. She did, however, suggest that the nickname implied a lack of intellect, which alludes to a racial stereotype of black persons. As I have already indicated, the actual circumstances of this case do not support this contention. This nickname arose as other nicknames did in the RCMP - as a sign of familiarity and camaraderie. In any event, as I elaborate below, Dr. Henry's findings were based on an incomplete knowledge of the facts of the case, and their value to the Tribunal is significantly diminished, as a result. I am satisfied that the nickname does not reasonably have any connection to a black person's colour.

[249] On the other hand, I find that the evidence supports the argument that a reasonable person would *perceive* the "Kirby Puckett Ass" remark as relating to a black person's colour, whether or not Cst. Haney intended it to be so. I am satisfied that Kirby Puckett is an African-American baseball player who, aside from his athletic abilities, had a reputation for having a muscular, corpulent build, incorporating what some viewed as a rather large posterior. Considering certain racial stereotypes about the physical features of persons with African ancestry, it would be reasonable for a recipient of this comment who is black to view it as relating to his or her colour.

[250] I do not, however, feel that a reasonable person in the circumstances of this case would perceive the "micro-management" of the Complainant's training as being related to his colour. As I have already explained, the Complainant's performance was wanting, and the employer, particularly during the probationary period, was entitled to use the means it deemed appropriate, both to train and to assess the recruit.

[251] As I just mentioned above, I feel it important to note that many of Dr. Henry's assertions in her evidence were made based on an incomplete knowledge of the facts of this case. Prior to preparing her report and testifying, she had been presented with only a few documents, such as the Commission investigation report and a synopsis prepared by Commission counsel. Notably, she did not have the benefit of viewing any of the evidence relating to the Complainant's job applications upon his return to Montreal. She was also one of the first witnesses to testify for the Complainant and obviously did not hear any of the evidence regarding the Complainant's performance during the RFT that was introduced by the Respondent later on in the case. Overall, the Tribunal has some misgivings with regard to many of Dr. Henry's findings in her report and in her testimony. She drew numerous conclusions based on incomplete information, and in a manner that occasionally tended to usurp the Tribunal's functions.

[252] I would make a similar remark with respect to a portion of Dr. Girard's evidence as well. Aside from testifying about her observations regarding the MUCPS testing that she had conducted in 1998, the Respondent asked her to draw certain conclusions about the Complainant's abilities. These conclusions were formulated based on the results of the psychometric testing administered to the Complainant by CN, and on his alleged conduct while at Burnaby and thereafter. Dr. Girard did not have the benefit of hearing all of the evidence in this case. Indeed, the facts on which she based some of her assumptions were incomplete. I have therefore chosen not to take these particular conclusions into account.

#### **F. Was the Impugned Conduct Unwelcome?**

[253] The only conduct that I have found to be related to the Complainant's colour is the use of the nickname "Kirby Puckett Ass". Cst. Haney testified that the Complainant did not show any outward signs that the name was unwelcome. On the contrary, he smiled and poked fun back at the coach by calling him "Dumbo". Cst. Carr testified that he witnessed the Complainant use the nickname himself, in an exchange of electronic communications with Cst. St-Fleur. In explaining the name to Cst. Carr, the Complainant did not convey taking offence to its usage.

[254] Cst. Haney testified that had he been told by the Complainant that he was offended by the name, he would have immediately stopped. Constable Christine Briand, who is a francophone, testified that at one point in her career, someone called her "Frenchie". She made her objections to the name known, and the usage immediately stopped.

[255] The Complainant argues that given the asymmetrical nature of his relationship with his trainers, in whose hands his future with the RCMP rested, he had no choice but to refrain from outwardly displaying any disapproval to them. This is a satisfactory explanation in the circumstances. It is reasonable for an employee at an early stage in his career, particularly while on probation, to be reluctant to put his job at risk by protesting against the actions of his superior (see *Bouvier v. Metro Express* (1992), 17 C.H.R.R. D/313 at para. 65 (C.H.R.T.); *Woiden v. Lynn* (2002), 43 C.H.R.R. D/296 at para. 104 (C.H.R.T.)).

[256] Cst. Haney claims that there was no racial or discriminatory motivation in his choice of the term - the Complainant argues the contrary. However, for the purposes of the harassment analysis, the nature of the term from the coach's perspective is irrelevant. The nickname must be judged against a different standard - that of a reasonable person. In my opinion, a reasonable person would understand that a black person is not likely to welcome a statement that can be interpreted as making fun of his posterior on racial grounds.

#### **G. Was the Impugned Conduct Serious or Repetitive Enough?**

[257] The evidence suggests that the term was used more than once. Cst. Haney testified that he said it no more than five times. The Complainant was not specific, stating that it was used repeatedly. However, I found his evidence uneven on this issue. While he made a point of stating that the nickname "OBO" was used continuously, throughout his RFT, and this was independently confirmed by numerous witnesses, a similar assertion was not made with regard to "Kirby Puckett Ass". Aside from Cst. Carr's evidence referenced just above, no other witness testified to having observed the Complainant being called by this name. Having regard to all the circumstances, I am satisfied on the balance of probabilities that Cst. Haney used the term on a few occasions only, as indicated in his evidence, around the time of the incident that gave rise to its usage, in the fourth month of the Complainant's first RFT period.

[258] Where the impugned conduct takes the form of racial slurs, jokes in bad taste, and stereotyping, it must be persistent and frequent in order to constitute harassment. An isolated racial slur, even one that is very harsh, will not by itself constitute harassment within the meaning of the *Act* (see *Rampersadsingh, supra* at para. 54; *Dhanjal v. Air Canada* (1996), 28 C.H.R.R. D/367, at para. 212). In the present case, I am not persuaded that a reasonable person would consider these five or so instances over a short period of time where the term was used, as being serious or repetitive enough to poison the work environment for the Complainant and constitute an impugned form of harassment under the *Act*.

[259] I do not doubt for a moment that the Complainant genuinely felt uncomfortable in the workplace, and that he eventually dreaded the thought of going in to work with Cst. Haney, principally for fear of the criticism he would face. He very likely considered his work environment to be poisoned, but I am convinced that it was not on account of any harassment based on his colour. Rather, the training had not turned out as he had expected, the rapport with his trainer was poor, and he was not achieving the success that he had expected of himself. This was unfortunate, but I am satisfied that his colour was not a factor in what he was experiencing.

#### **H. Notification to the Employer**

[260] Even if the nickname "Kirby Puckett Ass" was found to constitute harassment, the Complainant did not notify his supervisors or any senior RCMP member of this allegedly offensive conduct. The RCMP had in place a comprehensive and extensive anti-harassment policy and infrastructure to deal with any matters that may arise. The policy incorporated appropriate and wide-ranging redress mechanisms. However, in order to initiate this process, alleged victims had to make their disapproval known to offenders as soon as possible. If the problem was not resolved in this manner, victims were to report the harassment to their supervisors. If the alleged harasser was a supervisor, the reporting

was made to the harasser's supervisor or the commander. The details regarding the policy were distributed and made available to all RCMP members, including recruits.

[261] The only complaint of any sort made by the Complainant was to Cpl. Fischer during a Christmas party, in regard to Cst. Haney's alleged use of harsh training techniques. He did not make reference to any objectionable names or epithets. Notwithstanding the rather informal circumstances in which these concerns were conveyed, Cpl. Fischer followed up by speaking to his own supervisor, Sgt. Watts, as well as to Cst. Haney. As a result, the Complainant was given the opportunity to change trainers. He declined.

[262] The Complainant could therefore have followed the same course of action to protest the use of the offensive term, "Kirby Puckett Ass". He did not. Nor did he call upon the services of his DSRR sub-representative, Cpl. Allen. The Complainant asserted that he only learned of the services offered by the DSRR during the first extension of his RFT. Yet many of the RCMP members who testified confirmed that all members, including recruits, are made aware of the DSSR as soon as they arrive at the detachment.

[263] In the particular circumstances of this case, given the absence of any notification to the employer of the harassment, the employer cannot be held responsible.

[264] For all the above noted reasons, the Complainant's claim against the RCMP of discrimination in the form of harassment is unfounded.

### III. CONCLUSION

[265] The Complaint has therefore not been substantiated and is dismissed.

\_\_\_\_\_  
"Signed by"  
Athanasios D. Hadjis

OTTAWA, Ontario  
October

14,

2005

### PARTIES OF RECORD

TRIBUNAL FILE:	T739/4402
STYLE OF CAUSE:	Jean-Luc Morin v. Attorney General of Canada
DATE AND PLACE OF HEARING:	June 17 to 20, 2003 (Montreal) June 24 to 27, 2003 (Montreal) October 20, 21, 23 & 24, 2003 (Montreal) November 3 to 6, 2003 (Vancouver) November 12 & 13, 2003 (Ottawa) November 17 to 21, 2003 (Ottawa) November 24 to 28, 2003 (Ottawa) December 5, 2003 (Ottawa) February 16 to 20, 2004 (Ottawa) February 23 to 26, 2004 (Ottawa) April 6, 2004 (Ottawa) May 3 to 5, 2004 (Ottawa)

May 10 to 11, 2004 (Ottawa)  
May 25 to 27, 2004 (Montreal)  
July 13, 2004 (Ottawa)  
October 18, 19 & 21, 2004 (Montreal)  
October 25, 2004 (Ottawa)

DECISION OF THE TRIBUNAL DATED:

October 14, 2005

APPEARANCES:

Ian Abugov

For the Complainant

Andrea Wright

For the Canadian Human Rights Commission  
(June 17, 2003 only)

Alain Préfontaine  
Catherine Lawrence

For the Respondent