

IN THE MATTER OF THE POLICE SERVICES ACT

B E T W E E N:

DAVID SPICER

("The Complainant")

AND

OTTAWA POLICE ASSOCIATION

("The Association")

**AND IN THE MATTER OF A COMPLAINT CONCERNING DUTY OF FAIR
REPRESENTATION**

David K.L. Starkman

Arbitrator

David Spicer

On His Own Behalf

Bill Cole

**On Behalf of the Ottawa Police
Association**

**Hearings in this matter were held on November 25, 2013 May 20, 21, June 2,
November 19, 20, December 12, and 18, 2014 and January 20, 2015 at Ottawa,
Ontario.**

DECISION

The Complainant, Sergeant David Spicer, alleges that the Association breached its duty of fair representation because of the manner in which it handled his grievance and specifically because it refused to take his grievance to arbitration. The Association denied any breach and asserted that at all times it represented Sergeant Spicer fairly and without discrimination. Sergeant Spicer provided a time line concerning his dealings with the Association, and I have reproduced that time line in part because it describes in considerable detail how Sergeant Spicer views the history of this matter, and because it provides a summary of the viva voce testimony Sergeant Spicer provided at the hearing. Sergeant Spicer stated as follows:

From August 2006 to February 2009 I worked in the Professional Standards Section (PSS). Officers who work in PSS are tasked with investigating allegations of misconduct against officers and civilians working for the Ottawa Police Service. The Provincial Statute used for these investigations is the Police Services Act, although some investigations are serious enough to utilize the Criminal Code.

Working in PSS is not a sought after job for obvious reasons. Officers working in this section are looked upon in a negative light as they must interview and investigate fellow officers. The only reason I accepted an offer to work in PSS was the fact that I needed to find a straight day job for a period of time for personal reasons.

Officers who are interviewed during these investigations are offered the opportunity of having a member of the Ottawa Police Association present during their interview for moral support. While I worked in PSS it was routine to have either a civilian member or a sworn member of the Ottawa Police (who worked in the Association office) present during the interviews I conducted.

During my work in PSS I was assigned the majority of the sensitive or high profile cases. These cases included three dismissal cases and a reduction in rank case. The Police Service Act provides authority to a Police Service

to seek dismissal for serious forms of misconduct. I believe that the Ottawa Police Service would find it very difficult to find another PSS officer, current or past, that has investigated, and successfully prosecuted three dismissal cases.

I will say that I was the go to officer for serious investigations while in PSS. My reputation for being a thorough, professional and dedicated investigator followed me after I left PSS as I was sought out on more than one occasion to lead PSS investigations that were related to allegations of serious misconduct. I was sought out even though I was no longer a member of PSS.

The nature of the investigations I was assigned in PSS brought me directly into the "cross hairs" for the Association. This may be difficult to understand, but the members of the Ottawa Police Association did what they could to protect the officers under investigation by PSS, and as a result they were often in the face of the PSS investigator. The Association's protests to possible disciplinary action against officers under investigation were routine.

The nature of the investigations I was assigned included, as I have mentioned, the most serious forms of disciplinary action, dismissal. As a result I was routinely attacked in a personal and professional manner, and harassed by the Ottawa Police Association members. This included the president of the Ottawa Police Association who held the rank of Sergeant.

These attacks on my person were common knowledge amongst the members of the PSS office, but perhaps more importantly these attacks, and the anxiety it caused me, was known by my direct management team and by a number of Senior officers of the Ottawa Police Service. I was not offered any form of assistance for the stress and anxiety I was under, as a result of these attacks by the Association, at any level of the Ottawa Police Service.

I would refer you to a memorandum, dated December 15th 2009, and a 14 page document, dated January 10th 2010, which I have included in this package. The 14 page document highlights the malicious attacks I was subjected to by the Ottawa Police Service Association members; while the memorandum from December 2009 refers to my request to be removed from a PSS investigation, a request which was denied. These documents can be found at **TAB 2. ...**

Staff Sergeant Cleroux was my Staff Sergeant while I worked in PSS, and Mr. Westwick was the head of PSS during the time I worked there. I routinely discussed the frustration and stress I felt as a result of being attacked by the Association with these individuals. They did not provide me with, or suggest any form of support from these attacks. I was expected to work through the situation.

Chief White and Deputy Chief Larochelle were both approached by members of the Association concerning how I conducted my investigations. These complaints resulted in investigations into my method of investigation. These investigations, commenced at the Executive level, determined that I was conducting my investigations in a professional, ethical and dedicated manner. I believe that these complaints by the Association were nothing more than attempts to intimidate and harass me.

Superintendent Jill Skinner and Staff Sergeant Ladouceur were provided with the fourteen page document before you in January 2010.

Superintendent Skinner read the document and then advised me "it wouldn't be good for your career...". Staff Sergeant Ladouceur simply stated that the document was "powerful". These officers did not offer to look into the concerns I raised in the document, nor did they offer any personal support to me.

February 2009:

I was transferred to the Integrated Criminal Intelligence Unit, under Staff Sergeant Ladouceur.

I worked in my new substantive position while also being responsible for finishing the PSS Hearings I had as a result of the number of serious cases of misconduct I was assigned to investigate while in PSS. These Hearings are equivalent to the proceedings in a criminal matter. I finished my last PSS Hearing in September 2011.

October 2009:

I was approached by then Inspector Cheslock, who was responsible for PSS, who inquired if I would be interested in taking on the role of lead investigator for a PSS investigation that had been launched to look into serious allegations of misconduct. I respectfully declined the offer but advised the inspector that I could be a resource person for the PSS investigator who was assigned the file. He thanked me for my offer.

I was summonsed to a meeting by Superintendent Flanagan, shortly after the conversation with Inspector Cheslock. At this meeting were Superintendent Flanagan, Superintendent Armour, Inspector Cheslock, Inspector Skinner (now Superintendent), Staff Sergeant Cleroux, Staff Sergeant Ladouceur and Sergeant Price of PSS. I was asked by Superintendent Flanagan if I would take on the position of lead investigator for the investigation Inspector Cheslock had already approached me about. I declined, again, and again offered my assistance as a resource person to Sergeant Price. Superintendent Flanagan then advised me that I would be assigned the role of lead investigator.

As I have stated I advised Inspector Cheslock and Superintendent Flanagan that I did not want to lead this investigation, later entitled Project

SHIP. The memorandum to Inspector Skinner dated December 2009, found at **TAB 2**, was a request to be removed from this investigation.

December 2009:

I submitted a memorandum to then Inspector Skinner asking that I be removed from the investigation for personal and professional reasons. I had never made such a request in my then 22 year police career. Inspector Skinner refused my request. This necessitated the crafting of the fourteen page document you have before you. I had to write this document before Inspector Skinner would allow me to be removed from the PSS investigation. Again, this was submitted to Inspector Skinner and Staff Sergeant Ladouceur in January of 2010. (**TAB 2**)

June 2010:

I discovered that Staff Sergeant Ladouceur had provided two other Sergeants in the Intelligence Unit with professional development opportunities (courses) to assist them in the 2011 Staff Sergeant Promotional Process. I was overlooked, and I believe I can show that this was deliberate on Staff Sergeant Ladouceur's part. I discussed this with him but he denied knowledge that I was interested in entering the said process. This is clearly explained in the first binder I prepared, which was provided to Ms. Aareneau in November of 2011.

September 2011:

I advised Staff Ladouceur that a member of the Intelligence Unit was using his Ottawa Police Service undercover vehicle for personal reasons while off duty. This is against policy. Staff Sergeant Ladouceur told me to let the issue go.

I had previously advised acting Staff Sergeant Vaillant of this breach of policy but she did not address the issue.

September 2011:

My Team and I were asked to attend a meeting with Superintendent Tyrus Cameron, Inspector Samir Bhatnagar and Inspector Brian Redmond of the RCMP. The purpose of this meeting was to discuss an operational assignment that was to be given to my Team. This assignment was connected to a very violent Organized Crime group that was responsible for trafficking in cocaine. This group is routinely armed and are associated to a number of murders, and attempt murders.

We were advised to assist in a Joint investigation in a certain manner which I can elaborate on in a different fashion. I did voice a few concerns during this meeting related to ensuring my Team was provided with timely and up to date intelligence information on this group for officer safety

reasons. I was assured that we would receive this information. I was then instructed by Superintendent Cameron that my team and I were to follow the course of action they had laid out for us.

I met with my Team after the senior officers had left and we had a brain storming session in which the Team voiced their concerns for their safety and for the integrity of the overall investigation should we conduct ourselves in the fashion suggested by the Superintendent.

I drafted a memorandum to the Superintendent after meeting with my Team. I documented my concerns, and those of my Team, should we conduct ourselves in a certain fashion. I proposed a solution which would allow the investigative team to acquire the information they wanted, while ensuring that my Team and I went home at the end of our shift. We work in plain clothes and we were concerned that the Organized Crime group would mistake us for rival drug dealers and shoot and ask questions later.

I submitted my memorandum to the three senior officers that were present for the meeting. I also ensured that every member of my Team was copied on the email as they had brought the issues forward to me.

I was informed by several officers, after I had sent the memorandum, that the Superintendent was so upset at what I had documented on behalf of my Team that he wanted to transfer me back to the Patrol Division. (Uniformed officers who drive the patrol cars) Inspector Bhatnagar and Staff Ladouceur both told me this.

Inspector Bhatnagar told me to rewrite the memo and to tell my team that I had not been accurate in my memorandum. I told the Inspector that the memorandum was written after consulting with my team and I stood by the information I had included in the memorandum.

I believe the Superintendent's comments are extremely important. I believe that for some reason the Superintendent felt that it was not my right to defend my Team's position and that this was somehow intended to insult him.

I believe that the Superintendent's anger at that memorandum played some part in his refusal to pay attention to the grief I was feeling when I was told that I would have to leave the Unit. I also believe that the Superintendent's anger played a part in the course of action that was taken against me, that this made him vindictive and willing to conspire against me.

I have included the said memorandum with this package. This memorandum can be found at **TAB 3**.

Of note to this memorandum is that I have recently been told that the Ottawa Police Service Drug Unit has come to odds with their RCMP

counterparts while investigating the group that we had been tasked with following. I have been told that members of the Ottawa Police Service have expressed their concern over whether or not the RCMP have been providing them with all the information they have acquired in relation to the group under investigation. I wonder what the Superintendent has said to these officers. Did the Superintendent say he wanted to transfer these officers back to patrol? These are the same concerns I expressed in the said memorandum from September 2011.

Early October 2011:

Staff Sergeant Ladouceur advised me that he was going to conduct an investigation into my Team to see why two members had booked off on sick leave. I am responsible for a team of ten Constables from three different Services (Ottawa Police, RCMP, Canada Border Services Agency; CBSA). Staff Sergeant Ladouceur advised me that he would be interviewing all the members who reported to me to see if there were some identifiable reasons as to why these two officers booked off sick. I advised Staff Ladouceur that I supported this inquiry.

I believe that one officer booked off on sick leave because he was concerned that his poor performance on the team would be noted in his Performance Review which would adversely affect his chances in an upcoming Sergeant Promotional Process. This officer booked off sick then transferred out of the Unit. This officer is Constable Jean Francois Morin.

I am not sure why the second officer booked off on sick leave as he had not reported to me for a year as he had been seconded to different projects. He booked off when I asked him to account for a short period of time in which he had apparently been back with my Team. This officer is Constable Frank Nadanyi. This is referenced in the first binder I prepared.

October 27th 2011:

Staff Sergeant Ladouceur completed his interviews and then called me in to meet with him. He spent the next 2 ½ hours berating me. He used accusatory, defamatory and malicious comments to attack me on a personal and professional level. Staff Ladouceur used general comments to attack me, such as you are an autocrat, but would not provide any specific examples to allow me to defend my-self from these accusations.

As these interviews were to determine what had gone on with my Team to make two members book off sick Staff Sergeant Ladouceur had as many as 14 officers to interview who would have been able to provide first-hand knowledge of my supervisory/management/personal attributes during the time frame these two officers worked for me. Of these officers Staff Ladouceur interviewed 6 or 7 officers before confronting me with the

issues he brought forward. He has never provided an explanation as to why he did not interview everyone. This is referenced in my first binder.

November 25th 2011:

I spent approximately one month after the meeting on October 27th preparing a binder for Ms. Deborah Aarenau who is the Respectful Workplace manager for the Ottawa Police Service. I met with Aarenau on this date and provided her with the documentation for review and comment.

December 8th 2011:

I met with Inspector Bhatnagar and Staff Ladouceur on this date to discuss what had happened during the meeting of October 27th, and to discuss an interaction between Staff Ladouceur and I on December 6th while in the Intelligence office.

Staff Ladouceur requested the meeting on December 8th and sent me an email indicating that he had spoken with Inspector Bhatnagar about the October 27th 2011 meeting, and the discussion we had had in the office on December 6th. Staff Ladouceur went on to say that he had provided the Inspector with his side of the events but he wanted me to have the same opportunity, which could be facilitated on December 8th.

This email can be found at **TAB 4**. I want to quote part of this email at this time as it relates directly to part of the message delivered to me by Inspector Bhatnagar on January 10th 2012.

Staff Ladouceur wrote, "Our interaction yesterday was not productive at all. In an effort to try and move things in a more positive direction I want to meet with you again, only this time I am asking that Inspector Bhatnagar be present. I have briefed him on our meetings from October 27th and the situation from yesterday, but obviously he only has my version of the events. By having him at our next meeting this should ensure that any and all of "our concerns" can be fully and fairly expressed in the presence of a third party". As Inspector Bhatnagar was copied on the following chain of emails it is clear he would have read these words; and that he would be the third party who was to hear "all of the concerns" and that these concerns would be expressed "fully and fairly".

During this meeting I explained, in detail, what I had had to endure while working for Staff Sergeant Ladouceur. I described inappropriate behaviour, examples of favouritism, an example of denying me professional development opportunities for the promotional process, turning a blind eye to the inappropriate use of Ottawa Police Service property (breach of policy), as well as the berating I had to endure during the meeting of October 27th.

I advised the Inspector that I had yet to be given any specific examples to the slanderous comments made to me. The Inspector told me he was taking Staff Ladouceur's side, but he would secure specific examples for me so I could attempt to defend my-self from these comments.

The Inspector asked me if I could report to Staff Ladouceur in the future as there were clearly issues between us. Before I answered this question I asked the Inspector if I said I could not report to Staff Ladouceur would that result in me being removed from the Unit. The Inspector ensured me that I would not be removed from the Unit should I advise him that I could not report to Staff Ladouceur.

I then advised the Inspector that I did not think I could report to Staff Ladouceur so I suggested that I report to the Inspector until Staff Ladouceur retired in April of 2012.

I advised the Inspector that I did not trust Staff Ladouceur to have my back when it came to professional and personal matters. I provided some detail to this statement indicating that Staff Ladouceur's examples of favouritism made me feel he did not have my professional interest at heart, and that the examples of favouritism combined with his berating me made me feel that he did not have my personal well being at heart either.

Inspector Bhatnagar stated that he would contact Labour Relations to assist with the situation.

I advised the Inspector that I could continue in my substantive position, that I enjoyed my work and worked well with my team. I said a different reporting structure would not affect my ability to carry out my assigned duties and would not impact the dedicated and professional approach I took to my job.

The fact that Inspector Bhatnagar asked me for an honest answer in relation to whether or not I could continue reporting to Staff Ladouceur, and then later used my answer against me is appalling. I even asked what the implications might be of answering honestly before answering the question, and was assured that my answer would not result in my removal from the Unit. This type of managerial practice should never be use in my opinion. This, however, is just another example of how the Inspector has taken sides in this matter.

December 12th 2011:

I met with Inspector Bhatnagar so he could provide me with specific examples to the general statements made to me on October 27th. The Inspector provided me with more general statements. This will be described in detail later in this document.

December 14th:

I was contacted by Ms. Aarenau who advised me that she had finished reading my package and determined that the fourteen page document before you (**TAB 2**) was clearly an issue that could be addressed under Respectful Workplace. She advised further that there were grey areas that would require interviews to clarify. Lastly, she advised me that she had been contacted by Superintendent Cameron to ask what was going on with me. He said he had been told something by Inspector Bhatnagar. I was told by Ms. Aarenau that she kept my information confidential so I am not sure why the Superintendent decided he needed to speak to her.

I advised Ms. Aarenau at this time that I would consider her offer of conducting an investigation into the matter I had brought to her attention.

December 16th:

I met with Ms. Jennifer White, a Labour Relations manager of the Ottawa Police Service. I had a three hour meeting in which I disclosed everything I had disclosed to Inspector Bhatnagar and to Ms. Aarenau. This included how the stress of working for Staff Ladouceur was affecting my sleep patterns and was causing me to eat Imodium like it was candy.

Ms. White advised me that there would be three things on her agenda as a result of our meeting, first, to determine how the Ottawa Police Service could help me, second, to acquire specific examples to the many general accusatory comments directed at me by Staff Ladouceur on October 27th, and third, to determine how the Ottawa Police Service could figure out the issue of Staff Ladouceur and I working together.

I left this meeting with a feeling that finally someone would look into the matter of how Staff Ladouceur had treated me. I also left that meeting with the understanding that I would be met with again in the New Year before anything was decided.

December 22nd:

I sent an email to Ms. White that described how I thought she could assist me in obtaining specific examples to the many derogatory, and apparently unsupported, comments that were directed at me by Staff Ladouceur on October 27th.

I also advised Ms. White, in this email, that I had provided Ms. Aarenau with a binder of information supporting what I had told her during our meeting on December 15th. I offered to provide her with this information in the New Year.

Ms. White acknowledged this email stating that she would consider what I had said and would get back to me. Ms. White never communicated with me until after I had been advised that I was to be removed from the

Intelligence Unit. This email can be found at **TAB 9** and will be discussed later in this document.

Annual Leave:

I was on annual leave from Saturday December 24th until Monday January 9th.

January 10th 2012: (Tuesday)

I was summoned to Inspector Bhatnagar's office.

Inspector Bhatnagar advised me that it had been decided that I was to be removed from the Intelligence Unit until Staff Ladouceur retired. He advised me that "they" had had a meeting on January 6th and had made that decision.

I was told that the main reason for removing me from the Unit was because of what I had said about Staff Ladouceur during the meeting on December 8th, and the fact that I had made these comments in front of Staff Ladouceur. The Inspector emphasized the fact that the comments I had made in front of Staff Ladouceur made our relationship irreparable. I asked about all the negative comments he made against me during the berating session in October. I was told that that was acceptable because he had made the comments in private.

I will draw your attention to two points.

First, the email from Staff Ladouceur on December 7th 2011, found at **TAB 4**, regarding the meeting that was to take place on December 8th was very clear in that we could say whatever we needed to say. This is what happened. Staff Ladouceur and I said what was on our mind.

Second, if Inspector Bhatnagar truly wanted the meeting on December 8th to be successful then he would have requested to see me before the meeting to get my side of what was going on. He had already met with Staff Ladouceur but did not provide me the same courtesy/ opportunity to provide my side in a private setting. I believe that the Inspector did not ask to see me because he had already made up his mind on the situation. Apparently he was taking Staff Ladouceur's side, which is of course what he said during that meeting.

The Inspector told me that I had three options. First, I could find myself a spot to work until April or May; second, I could find a place to be transferred to; third if I did not comply with option one or two I would be transferred back to patrol. I was told that I had 72 hours to complete this directive as I was to be removed from the Unit as of Monday January 16th.

I told Inspector Bhatnagar that the move was punitive and that I was being removed because I had brought forward several allegations connected to inappropriate behaviour on Staff Ladouceur's part. I was told that the move was not punitive but it was for my health.

I advised the Inspector that removing me from the Unit was punitive and it would be professionally and personally damaging to me. I said it was humiliating, embarrassing and degrading. I was told that I had no say in the matter.

The Inspector sent me an email entitled "meeting recap" after our meeting. He included Ms. White and the Superintendent on the email. He described the 3 areas of interest in the email but does not refer to me being transferred to Patrol should I not comply with this threat. This email can be found at **TAB 5**.

I provided Inspector Bhatnagar with an option the next day in the form of a memorandum dated January 11th 2012. I suggested that I be permitted to work on a course of study I had been approved to take by Chief White. This memorandum can be found at **TAB 5**, as can the Inspector's email advising me that this option was not possible.

I would like to highlight a few quotes from this memorandum to demonstrate how I clearly explained to the Inspector how removing me from the Intelligence Unit was making me feel.

I stated that to transfer me "to another section/unit for short period of time would leave me in a vulnerable position in that I would certainly be looked upon in a negative fashion by any employee who will have to work with the officer who was asked to leave his substantive position until his Staff Sergeant retires".

I also stated that this scenario "will be humiliating, degrading, embarrassing and professionally damming for me".

I stated that "I believe I am in this situation because I stood up for what I believe to be injustices at the work place".

Finally, I stated that "I believe that being forced out of the Unit in such a manner impacts my professional and personal reputation".

The Inspector advised me, by email that this suggestion was "not possible". I was not told why it was not possible however. I have included this email at **TAB 5**. Of note is that Inspector Bhatnagar c.c.d. Superintendent Cameron and Jennifer White on his email, indicating that they had read my memorandum.

I think it is noteworthy to read Inspector Bhatnagar's email response closely. I clearly stated how being removed from the Intelligence Unit was

making me feel. Inspector Bhatnagar chose to include the following words in reply; "Temporary assignments are routinely done in our Organization. Feel free to choose an area that will enhance your career development and experience. I believe this can be a positive opportunity for you". I am not sure how Inspector Bhatnagar could have read my memorandum and then responded that he believed that removing me from my substantive position could be a "positive opportunity". My email response to the Inspector's email, also included at **TAB 5** clearly articulated this sentiment. I stated "with all due respect I have made it clear that this is not a positive opportunity for me".

It is my opinion that this is clearly indicative of the fact that the Inspector cared little, if at all, for how this situation was making me feel, and that he had chosen his side and was moving forward with the decision he and the Superintendent had made at all costs.

In the Inspector's response he also stated "Please provide me with your three choices in which area you would like to work". This makes it abundantly clear that not only was the option I brought forward "not possible" for my management team, but they did not even consider this option as one of the three options I had been told to submit. Why is that?

I believe it is also noteworthy that in the memorandum I brought up the fact, again, that there had been injustices in the workplace. This was certainly made clear to the Inspector during the meeting on December 8th; yet once again the Inspector chose to ignore this and made no attempt to investigate my complaints.

I provided another suggestion to the Inspector in an email on January 12th. This email can also be found at **TAB 5**. I suggested that I be permitted to work on one of the Surveillance Teams.

My words were clear in this email, "I have expressed my concerns with being moved from the Intel Unit. I believe that being moved to the Surveillance Unit until Staff Ladouceur retires could be seen by our membership as a development opportunity and nothing more. This would assist me personally and professionally". A development opportunity and "nothing more" is in reference to the fact that I had told the Inspector that being removed was punitive. How moving me to the Surveillance Unit would assist me personally and professionally is clearly articulated.

The Inspector replied that I must provide him with two more options after initially saying it was an excellent idea. I was not permitted to work in the Surveillance Unit and was not provided with an explanation as to why this would not be possible.

I believe that my words were clear in my email suggesting I be allowed to work in the Surveillance Unit in that it would assist me personally and

professionally. Again, however, my management team chose to ignore the stress and anxiety I was feeling at being removed from the Intelligence Unit. Their lack of concern for my well being was exemplified in this response as it had been to their response to my first suggestion.

I supplied a third and fourth option to the Inspector via email and he finally decided on the third option, which was to be moved to the Drug Unit. These emails can also be found at **TAB 5**.

I think it is noteworthy that in my email suggesting my third and fourth options I did not provide any substance to the options; substance in how moving to one of these sections would help me minimize the stress that I was under. I made these choices under duress of being transferred to Patrol. I was even more desperate at this point than I was when I drafted the memorandum on January 11th. I just couldn't believe the unfeeling nature of how I was being treated. It certainly felt like vindictive and punitive sentiments were part and parcel of how I was being treated.

January 16th:

I spoke with my family doctor and he provided me with a note to take two months off work due to stress.

I have duty book notes, emails and other documents to support much of what I have outlined here.

Collusion/Punitive actions:

I believe that my management team of Staff Sergeant Ladouceur, Inspector Bhatnagar and Superintendent Cameron communicated with one another while they planned and orchestrated a series of actions against me designed to be punitive in nature. I believe that my fundamental rights as a person and as an employee of the Ottawa Police Service have been purposefully ignored by these individuals.

I fully believe that the email accounts of the members of my management team will show very clearly that they conspired to have me removed from my substantive position and that they attempted to block my return to that position. I believe that the email accounts for these officers will also show that information I provided in confidence to my Inspector, or information that was forwarded to my Inspector, was shared with Staff Sergeant Ladouceur.

Street Check Distribution List:

An example of an action that was, in my opinion, designed to be punitive in nature was removing me from the Street Check distribution list. This action was clearly intended to isolate and harass me.

The Street Check distribution list is a list that is open to each and every officer of our Service. An officer can request to be added to this distribution list regardless of where he or she works. There is no secrecy involved with Street Checks, save for those that are privatized. The Street Checks that are distributed to members of the list have not been privatized.

While I was off on sick leave I noticed that I no longer received any Street Checks on my blackberry. I enquired of Mr. Raymond Bazinet, who is a civilian member of the Intelligence Unit, if I had been removed from the distribution list. I made this enquiry electronically. Mr. Bazinet's reply is clear in that someone "requested" that I be removed from the list. I asked who had made the request but his reply was "I'm afraid I'm going to have to refrain from any comments at this time buddy....sorry". This email exchange can be found at **TAB 6**.

I made an enquiry to Sergeant Matt Skof of the Association as to who had me removed from the Street Check distribution list. His conversation with Jennifer White revealed that that this decision was made by Health Safety and Lifestyles, so as not to stress me while I was off. This email can be found at **TAB 6**.

I made an enquiry of Ms. Mindy Aziz of Health Safety and Lifestyles about this statement. Ms. Aziz had been assigned my file while I was off and she made contact with me on numerous occasions prior, and post removal from the Street Check distribution list. When asked about removing me from the list she responded via email that "I am afraid I am not sure which list you are referring to". This email can also be found at **TAB 6**.

I then spoke with Ms. Aziz and she indicated that she did not know what I was talking about, and further that the Health Safety and Lifestyles section does not get involved in matters such as removing a person from a distribution list. She indicated that she did not make such a request.

Finally, I have included an email from Staff Vaillant indicating that I could be re-instated on the Street Check Distribution list.

I have included the emails referencing this subject for your review. I believe it is clear that Mr. Bazinet was quite uncomfortable when I asked who told him to remove me from the list. It is also interesting that Sergeant Skof was told that the decision to remove me from the list came from Health Safety and Lifestyles, which they deny.

I believe the act was malicious and punitive, and was designed to isolate me. I believe that the email accounts of my management team will show their collusion in this.

Interviews conducted by Ms. Aarenau and Ms. White:

I was interviewed by Ms. Aarenau and Ms. White on May 30th. I was advised that I would be asked the same 9 questions everyone else was asked. I was advised that 24 people had already been interviewed and that I was the last person on their list.

Before they began their interview I asked them what information they had used to formulate their questions. They indicated that they had only used the information I had provided to Chief White on January 18th 2012. The said document can be found at **TAB 7**.

As a background to this interview I would like to bring your attention to the following information.

I had met Ms. Aarenau in November 2011 and had spoken to her for approximately three hours about how I had suffered under Staff Sergeant Ladouceur's supervision. I provided her with numerous specific examples of the treatment I had been subjected to. I also provided her with a binder containing documentation corroborating my statements. This binder contained a summary of approximately 70 typed pages, duty book notes, emails and other supporting documents.

I communicated with Ms. Aarenau by email on December 6th after speaking with Staff Ladouceur in the office. It is in this email that I indicate that I am documenting how the situation was making me feel. This email can be found at **TAB 8**.

I communicated with Ms. Aarenau by email on December 13th and summarized my meeting with Inspector Bhatnagar and Staff Ladouceur on December 8th and with Inspector Bhatnagar on December 12th. This email can be located at **TAB 8**.

I communicated with Ms. Aarenau on January 10th and asked her if she could prepare a written summary of her thoughts on the material I had provided her in respect to the Respectful Workplace policy. Ms. Aarenau did not respond to my request for her thoughts in writing. This email can be found at **TAB 8**.

I communicated with Ms. Aarenau on January 13th and again asked her for a written summary of her thoughts on the material I provided to her. Again, Ms. Aarenau did not respond to my request for her thoughts in writing. This email can be found at **TAB 8**.

I met with Ms. White on December 15th 2011 and spoke with her for approximately three hours. I, again, went through all the inappropriate behaviour that I attributed to Staff Sergeant Ladouceur. I gave very specific examples of this behaviour. She advised me that my side of the story certainly painted a different picture than the one provided to her by Staff Sergeant Ladouceur and Inspector Bhatnagar.

I communicated with Ms. White on December 22nd via email and discussed how she could assist with a part of my complaint concerning how I was treated by Staff Ladouceur. I also advised Ms. White of the binder I had provided to Ms. Aarenau and suggested that I provide this binder to her in the New Year as the binder dealt with the information I had provided to her on December 15th. This email can be found at **TAB 9**.

Ms. White replied that she had "read through it" but she wanted to take a little bit of time to "digest it". She also indicated that she would "read it over again and get back to you". I am not sure if Ms. White was suggesting that she had read the binder I had provided to Ms. Aarenau, because it was very clear that Ms. Aarenau had been instructed to keep the contents and the existence of the binder confidential. Ms. Aarenau's acknowledgement of these instructions is also clear.

In any event, Ms. White was clear that she would get back to me. She never did, until I communicated with her after meeting with Inspector Bhatnagar on January 10th.

I communicated with Ms. White on January 11th regarding the possibility of viewing the memorandum she provided to Superintendent Cameron regarding my removal from the Unit. Her reply was that viewing the memorandum would not benefit me. I have included this email at **TAB 9**.

I have inserted an email I received from Inspector Bhatnagar at **TAB 9** because it relates to the request I had made to Ms. White to view the memorandum she had prepared. I have included this email here because Inspector Bhatnagar's response to me was that he saw that Ms. White had already responded to me on the subject of viewing the memorandum. It is clear from the date/time stamp on these two emails that Ms. White b.c.c'd Inspector Bhatnagar on her email. Why? Why were some emails sent to me with b.c.c's? This is clearly an example of what I have been talking about. Communication with me is not always in confidence. Why did she not want me to know she was forwarding her reply to the Inspector? What other communication was forwarded to persons unknown?

I communicated with Ms. White by email on January 11th and clearly articulated how being removed from my position was affecting me. I clearly stated that I had been under the impression that she would meet with me in the New Year before anything was decided. I also indicated that I had brought forward issues with Staff Ladouceur and inquired if anyone was going to investigate my complaint. This email can be found at **TAB 9**.

I communicated with Ms. White in January 12th. I articulated very clearly how I was looking for confirmation that an investigation would be launched to look into the complaint I had made about how Staff Ladouceur treated me. This email can be found at **TAB 9**.

I do find it interesting that in one of Ms. White's emails she indicated that she believed that removing me from my substantive position for a period of time could be a positive opportunity. This is quite similar to what Inspector Bhatnagar said. Ms. White also read the memorandum from January 11th so I do not know how she could come to this conclusion.

I believe that these emails make it crystal clear that I had advised Ms. Aarenau and Ms. White how working for Staff Ladouceur had made me feel, and how being removed from my substantive position was making me feel.

I will now highlight some of the information that I provided to Chief White on January 18th 2012 as I was told that this information, and only this information, was used to help the ladies formulate their questions.

-I was told that I had been removed from my substantive position in the Intelligence Unit because of a conflict between Staff Ladouceur and I.

-the nature of the conflict resulted from his inappropriate behaviour on his part.

-examples of the inappropriate behaviour included acts of favouritism, denying me professional development opportunities, permitting an Intelligence officer to use his Ottawa Police Service vehicle for personal reasons, and for the time Staff Ladouceur berated me for 2 ½ hours, attacking my personal and professional attributes with no supporting evidence. (I informed Ms. Aarenau and Ms. White of all these examples)

-I met with Staff Ladouceur and Inspector Bhatnagar on December 8th and, again, told my story of how I had been mistreated by Staff Ladouceur. Inspector Bhatnagar advised me that he was taking Staff Ladouceur's side on the matter.

-I met with Inspector Bhatnagar on January 10th and was advised that I was to be removed from the Unit and that I was to provide three options as to where I could work until Staff Ladouceur retired or I would be transferred to Patrol. I provided two options that would be less "humiliating" for me, but I clearly advised the Inspector that removing me from the Unit for any period of time was devastating for me. It was humiliating and degrading and was not an action I agreed with.

I have given a brief account of what I prepared for Chief White because what I was told next was a shock.

I was told by Ms. White that I would be given the same preamble everyone else was, in that the interview was to look at office "dynamics". This preamble does not capture, in any way, what my complaint was about. I was told clearly that the questions were based on the documentation I

provided Chief White, yet they determined that the documentation concerned office "dynamics".

I believe this clearly demonstrates an attempt to minimize and bury the issues raised in my complaint to the Chief, information they had both been provided with by me in 2011.

I brought this point forward during my interview, indicating that my complaint had nothing to do with office "dynamics". They could not explain their choice of words. I also asked them if they had used any of the information I had provided them last year to assist them in formulating their questions. They stated they had not.

In fact, Ms. White indicated that she had not made any notes after our three hour meeting in December and would be pressed to remember everything I had said. I do not believe this statement. A member comes forward with allegations of abuse in the work place, allegations that take three hours to describe, and no notes are taken after the meeting? She had already met with Staff Ladouceur and Inspector Bhatnagar; did she make notes from that meeting? Does she remember what they said?

Ms. White then stated that Staff Ladouceur was asked the same questions as everyone else, but he did have a different story after he read my complaint to the Chief. Again, I was shocked. I asked who provided my complaint to Staff Ladouceur. Ms. White said it was not them. My complaint to Chief White is addressed to him. The package I provided contained confidential emails I had sent to Inspector Bhatnagar and Ms. White. Why would this be provided to Staff Ladouceur, the subject of my complaint? This matter became a Chief's complaint and having investigated numerous Chief's complaints while I was in PSS we did not provide the complaint to the subject officer.

During my interview I was told that a case conference had been held to determine who would investigate my complaint. I was told by Ms. White that originally they had thought that Inspector Bhatnagar would investigate the complaint but it was then determined that the two ladies would investigate the complaint.

Sergeant Mike Lamothe was at the interview with me and he asked who was on the case conference. They began listing names, the two ladies, Superintendent Cameron, Inspector Bhatnagar, and then they said Bernie. I asked who had invited Staff Ladouceur to sit on a case conference to determine who would investigate my complaint against him. The ladies had no answer. This is outrageous.

The questions posed were related to moral in the office, whether or not I had been interviewed after Frank and JF booked off sick (this was designed for the Constables), was there any issue with the management

team, is there a difference in the team from this year to last, how can the team be improved, does everyone have equal opportunity for courses, and the last question was whether or not I had anything else to add. There is a question or two I cannot remember at this time. I believe it is quite clear that these questions do not address the specific issues I raised in my complaint.

I wonder if the question related to whether or not everyone has equal opportunity for courses was their way of addressing my complaint about being denied professional development opportunity. If so they did not specify. I simply answered the question thinking of the Constable who report to me, and therefore gave examples of how they all got the courses they wanted. It was only later that I wondered if they were trying to smooth over that part of my complaint.

I believe this information shows an effort to cover up and or minimize the issues of abuse I brought forward against Staff Ladouceur.

The fact that Staff Ladouceur was provided with the confidential information I provided to Chief White, and was then invited to sit at a case conference to determine who was to investigate my complaint against him speaks clearly to the collusion of my management team. It also speaks to the fact that my complaint was being covered up as the senior officers and subject matter experts who were on that conference call did not see anything wrong with having Staff Ladouceur on the call.

Call to Ms. Aarenau:

Ms. Aarenau advised me on December 14th that she was advised by her Superintendent to call Superintendent Cameron. Ms. Aarenau made this call and he asked her specifically what was going on with me. I am confused as to how this happened. He advised her that he had been told something by Inspector Bhatnagar so he was checking into the matter. Why the Superintendent would specifically ask to speak to the Respectful Workplace Manager is interesting as I told no one that I had gone to see her.

Complaint not investigated:

I was very clear with Ms. Aarenau, Inspector Bhatnagar and Ms. White that I had been mistreated by Staff Sergeant Ladouceur, yet nothing was done with my complaint. Ms. Aarenau did suggest interviewing everyone for me but with the speed that things unraveled I did not have a chance to consider her suggestion.

On May 31st Inspector Bhatnagar told me that he wanted to investigate my allegations against Staff Ladouceur but I did not provide him with the document he was interested in viewing. I have included two emails that I received from Inspector Bhatnagar at **TAB 10**. You will see how both

emails mention a document he wants to view, and can I forward that document to him. These two emails, however, were sent after I had booked off on sick leave. It is yet another example of the efforts my management team have taken to show that they are legitimately concerned for my wellbeing. I will address the content of the first email in the next section.

Also, in regards to Inspector Bhatnagar's comment that he wanted to investigate my complaints against Staff Ladouceur I want to bring you to the timeline of my meetings with the Inspector.

When I met with Inspector Bhatnagar on December 8th and December 12th he mentioned that he and his family were going on a vacation to the Cayman Islands (I believe) and they were departing the week of December 12th. His return date was after Christmas. I was on annual leave over Christmas and did not return until January 9th.

The decision to remove me was made on January 6th. My understanding is that the Inspector, the Superintendent and Ms. White were at that meeting on January 6th. If the Inspector really intended to look into my allegations when was he going to do same? After I was removed? Ms. White was offered a binder corroborating what I had told her but she supported my move without viewing the binder?

Ms. White said in one email that trust is very important in the work place so why was it she never waited to view what I had documented? Is it not possible that my lack of trust was legitimate, and if so was it not possible that it should have been Staff Ladouceur that was removed? Did she already view the binder before the January 6th meeting?

Inspector Bhatnagar suggested, during the meeting on May 31st, that it was Ms. White's suggestion that I be removed from the Unit. If this is true then I again wonder at why she never weighed all the evidence before making a decision.

If this is true then why does she indicate in her email that her recommendations are only that, recommendations, and that my management team made the decision on what would be done with the matter.

No one looked into the stress it was causing me:

I made it very clear to Inspector Bhatnagar, Ms. Aarenau and Ms. White that working for Staff Ladouceur had caused me significant stress, and that this stress was effecting me personally and professionally.

Inspector Bhatnagar advised me on December 12th that he thought I would have booked off on stress leave after the December 8th meeting. This is a deplorable statement to make. If he thought I was that stressed

why would he have not sought me out to see what could be done? His email sent to me after I booked off on sick leave is indicative of his lack of compassion and empathy. Inspector Bhatnagar's statement; "If I did not mention it before, please consider our EAP program as well" is embarrassing to this Service. This email can be found at **TAB 10**.

I think it is also noteworthy to look at Inspector Bhatnagar's message in this email. Inspector Bhatnagar stated that from his "observations the stress level you seemed to be under was a definite concern to me and a big part of the reason to remove you from the immediate environment you stated was having a negative impact on you".

First, I said that Staff Ladouceur was affecting me, not working in the Intelligence Unit (Environment).

Second, the Inspector is clear that "the stress level" I was under "was a definite concern" to him. I believe that this statement is the exact opposite of what he has shown through this whole situation. He thought I was going to book off on stress leave after the meeting on December 8th but did nothing about it. He read my emails, memorandums and heard from me directly on how removing me from the Intelligence Unit was going to affect me, yet he did nothing about it. He was provided with two options for my removal that would assist me in dealing with the stress and humiliation of being removed from my position but denied me these accommodations. This is deplorable.

I believe this email is nothing more than an effort on the Inspector's part to show he is/was concerned about me.

I advised Ms. White how this was making me feel in an email yet she provided me with no assistance.

The negligence of my management team in assisting me with the emotional turmoil I was in is clear. They simply did not care how I was feeling, and never offered me any support. This negligence resulted in me booking off on sick leave.

I believe I was neglected because my management team had already decided that I was wrong for some reason, that my complaint was that of a whistle blower and that I was causing them more work than was necessary. I was being punished for this, and my emotional state was purposefully overlooked.

Lieu Time:

A simple point but yet another example of the punitive nature of my management teams' actions, and their desire to continue with this type of behaviour at all costs.

I have included a couple of emails related to my request for lieu time for the first couple of days of my transfer to the Drug Section. The Inspector asked me to furnish him with documentation to show I had accumulated the lieu time. I was advised by a member of the Unit that Staff Ladouceur was running around the office looking for the "lieu time book" that morning.

I have taken lieu time on many, many occasions, and have never been asked to show documentation to support the accumulation of this time. Even though I was going to attend a wake and funeral for an officer's wife I was still to provide documentation to demonstrate that I had enough hours to take the rest of the day off.

This is clearly an example of Staff Ladouceur and Inspector Bhatnagar getting together to make my life difficult. Again, email accounts for these officers might prove useful in highlighting their collusion in this matter. These emails can be found at **TAB 11**.

Specific Examples to support Defamatory Comments:

I have repeatedly asked for specific examples for the accusatory, defamatory comments directed at me by Staff Ladouceur during our October meeting. I have expressed this to Ms. Aarenau, Ms. White and Inspector Bhatnagar.

At the conclusion of the meeting on December 8th Inspector Bhatnagar said he would speak to Staff Ladouceur and obtain specific examples to the many derogatory comments made to me by Staff Ladouceur in October.

I met with Inspector Bhatnagar on December 12th and these are the specific examples he provided:

- the overall team morale is low (This statement is general in nature and was not supported as to why the moral was low)
- there is a conflict between Bob and Steve (This is a general statement)
- they are tired of Steve's special treatment (This is a general statement. What special treatment?)
- the officers walk on egg shells around me; example, Sergeant in Intelligence Security had a run in with me over a spare car (This would be Sergeant Will Hinterberger. Sergeant Hinterberger and I did discuss the issue of one of his members using a Street Team vehicle. This was approved by acting Staff Lockhart but I had not been informed so that is where the discussion started. This "specific example" however, occurred after my meeting with Staff Ladouceur in October so it should never have been brought forward as an example associated to the berating I took in October)

-some Constables are asked many questions while others are not. (This statement is general in nature, and is new. It was not brought up in October)

-I hold grudges: example, I still speak about the fact that Staff Ladouceur denied me the opportunity to take courses. This example is not related to the berating I took in October. This is something new and is Staff Ladouceur's perception. Why would this be brought up to show that I hold grudges? An example of how I hold grudges, related to the Team's perception is that some members feel I am still upset after the 2010 assignment issue. Again, this is a general statement. Why do they think that?

-officers feel I interrogate them as if they are in a PSS interview. What specific details are available to describe this? No details were given so it is yet another general comment. I would suspect that not many of the officers have ever been interviewed by PSS, and none were interviewed by me so how do they have that opinion? General statement.

-once again I was told that I say "Oh really". I still have no idea what this refers to. There were never any specifics given to such a general statement. Once again it was put out as a negative comment directed at me.

-I was told that I jump on words and that I take notes. This was something new. This was never said during the berating I took in October. In fact, the Inspector gave a specific example of this for me. He said that he saw how I jumped on the statement he made to me during the meeting between Staff Ladouceur the Inspector and I on December 8th. During that meeting the Inspector said "I am beginning to see things that I don't like about you". I absolutely took offence to that and I did write that quote down in my book. These comments should never have been included in the Inspector's submission to me, a submission that was to provide specific examples to the many negative things Staff Ladouceur said about me in October.

-I was told that there are double standards for some officers. This is a new comment, yet again, and is general in nature.

-I was told that Steve was a ghost that he was never around. This is a general statement with no specifics.

-I was told that things in the Unit deteriorated the first 18 months of my time in the Unit as I was tied up with hearings etc. This is a new statement, and was not mentioned during the October meeting. It was not clear whether I was somehow responsible for this deterioration.

-I was told that Steve seldom works with the team and he doesn't share his info. No specifics were given.

-I was told that Steve plays golf on duty. This is new and general in nature.

-I was told that I don't answer calls except if Krista or Steve calls. This was a new statement, and general in nature. No specifics were given.

-I was told I am autocratic. No specific examples were given.

-I was told that I don't believe in team building, and I actually frown on this. This was new and was general in nature.

-I don't attend many team building events. This was new and was general in nature.

-I was told that I cancel team meetings without asking the team. This was a new statement and was, again, provided with no specific examples.

-I was told that I am willing to tolerate three distinct groups within the unit. This was a new statement and was general in nature.

I believe it can be clearly seen that these examples are by and large more general statements. I believe that it is appalling that Inspector Bhatnagar would accept this type of information from Staff Ladouceur as specific examples, and even more appalling that he would provide these examples to me.

The fact that new information was brought forward when the purpose of the Inspector's meeting with Staff Ladouceur was to obtain specific examples to the derogatory general statements that were made to me in October is astonishing. This just speaks to the fact that Staff Ladouceur's notes did little to provide specific examples for the Inspector. This also speaks to the fact that Staff Ladouceur's investigation was little more than a smoke screen to hide his true intentions; to blame me for the areas of weakness in the Unit, areas of weakness that he was aware of before my arrival in the Unit yet chose to do nothing about.

This is yet another example of how Inspector Bhatnagar is taking sides, which is embarrassing and troubling for this Organization.

Favourites:

During the meeting of December 8th 2011 I told the Inspector that Staff Ladouceur clearly favoured then Sergeant Julie Vaillant. I provided the Inspector with examples of this favouritism.

During the meeting with the Inspector on December 12th, January 10th (I'm not sure which) I told the Inspector that the common opinion was that Staff Ladouceur was holding out to retire until a new tenure list could come out for the Staff Sergeants so he could rank Julie number one so she could get the Intel Staff's job. The inspector said that would never happen as he has the final say.

Staff Vaillant is the new Intel Staff Sergeant. I was told by two Sergeants in the Intelligence Unit, Sergeant Lockhart and Sergeant Hinterberger, that they approached Inspector Bhatnagar about the possibility of Staff Vaillant getting the job in Intelligence and they both advised him that bringing her in was not a good idea. I was told that a third Intelligence Sergeant, Sergeant Phung, also told Inspector Bhatnagar the same thing. The common message was that she was a "little Bernie" and everyone wanted a change.

I also understand that Staff Vaillant was brought in through an expression of interest and not through the Tenure policy. I was also told that Staff Ladouceur met with the Deputy Chief to give his word of support for Staff Vaillant to come to the Intelligence Unit.

Does this not speak to the Inspector taking sides? He clearly ignored the concerns of half of the Intelligence Unit Sergeants. How would Inspector Bhatnagar be able to handle any future issue between one of these Sergeants and Staff Vaillant, should there be an issue?

Transfer Date:

I was told, many times, that I would return to the Intelligence Unit when Staff Ladouceur retired. I made a suggestion that I could return on May 22nd as this was supported by my family doctor. I was told that this was not possible as it might cause me stress.

I detailed how this could work in an email to the Inspector and he then responded that how I felt was only a portion of the situation. He then stated that it was to assist another officer (who was transferring out of the Unit on June 1st) who did not want to see me in the office? This would have to be Constable Cotie. This is an interesting comment that was not supported by any form of documentation.

I was also told that the work place assessment had to be completed before I could return. I was clear in my email that I was also mystified at this as the assessment was apparently done to investigate my complaint against Staff Ladouceur.

I was told that I would have to wait until June 1st, then until June 17th to return.

I was told by the Inspector on May 31st that I might be denied returning to the Unit depending on what the report said. How can this be when the report is supposed to chronicle what they did to investigate my complaint against Staff Ladouceur?

I advised the Inspector on June 1st that it was humiliating for me to work in the Drug Section, which is where he wanted me to go. This is the same thing I told him in January. Again, he would not budge, but he eventually

asked me to supply an option as to where I could go for meaningful work. I suggested the Surveillance Unit; again, as I would be alone in my car and therefore it would be less humiliating than in an office with a bunch of employees. Again, this suggestion was turned down.

Again, I want to point out how this conflicts with the Inspector's email on January 16th in which he expressed his concern for the stress I was under (TAB 10). At this meeting I once again expressed how it was humiliating for me to go to the Drug Section, and how working in the Surveillance Unit would at least help me with this humiliation. He again ignored these pleas.

During the meeting on June 1st Inspector Bhatnagar made an interesting comment. He stated that the way I spoke to Staff Ladouceur on December 8th was close to insubordination. I asked him to explain that statement. He said that Staff Ladouceur was a rank higher than me. Again, I have detailed why that meeting was called, and that it was apparently a forum for Staff Ladouceur and I to vent. I never directed profane or insulting language at Staff Ladouceur during that meeting so I do not know what the Inspector is talking about.

During this meeting on June 1st I asked the Inspector if he ever asked Staff Ladouceur why he did not interview everyone before he berated me. The Inspector replied something to the effect, does it really matter if everyone was interviewed. The Inspector's reaction to my question was that of frustration and annoyance. He was clearly annoyed that I brought this issue up again. His reaction is another clear example, in my opinion, of how he is taking sides with Staff Ladouceur.

During this meeting I mentioned how no one had taken steps to assist me in looking into my complaint against Staff Ladouceur. The Inspector was quick to point out how he had requested a document which is before you. The document I drafted in January of 2010 concerning the abuse I had suffered at the hands of the Association. The Inspector stated that this was his attempt to begin his investigation. I have attached two emails the Inspector sent to me for you to read. These emails include his request to view the said document. You will note the dates of these emails, January 16th and January 18th.

The Inspector asked to see the document after I had booked off on sick leave, even though he was advised of all the details on December 8th? The Inspector asked for a document drafted in January 2010 and yet ignores the more recent events? I believe that the requests were made to cover himself for his neglect in addressing the serious concerns I had brought up.

It is crystal clear to me that the Inspector does not care how any of this is affecting me personally, and that he is willing to continue with his punitive actions, actions that I believe are supported and or directed by the

Superintendent. Thank goodness for Staff Laviolette who has provided me with permission to work on my Charles Stuart Distance Education program or I am not sure what I would have done.

It is interesting that I was told that I was not welcome in the Intelligence Unit until Staff Ladouceur retired, but I was told I could drop in to say farewell to Mike Metivier in lieu of going to the farewell party at the Prescott.

Emails associated to this information can be found at **TAB 12**.

I have included a copy of the grievance I brought forward to the Association on May 31st at **TAB 13**.

I have included a copy of the document I sent to Chief Bordeleau on May 31st at **TAB 14**. I had originally asked to speak with the Chief about what had transpired but I was told the Chief would prefer to see a word document detailing what I wanted to speak to him about before meeting with me. This is the document you have before you at TAB 14. The Chief never did meet with me.

I have included copies of my duty book notes at **TAB 15**. There will be duty book notes for the dates mentioned in this document.

Psychological/Physiological Affects:

In this package I have included a number of documents which I believe support the psychological and physiological effects that are attributed to the way I have been mistreated by the Ottawa Police Service.

Part of the documents I wish to provide to counsel will be a document I have entitled "Daily Effects". This is a summary of how the stress related to work has affected me since November 25th 2011. The document is a typed copy of the notes I have made in this regard.

The document will highlight that between the dates of November 25th 2011 and August 1st 2012 I have required the use of Imodium on 45 days, and have had an upset stomach on an additional 69 days.

The document will highlight that during this same period of time there were 70 days in which my sleep pattern was disrupted and 41 days in which I have felt exhausted.

The document will highlight that during this same period of time there were 34 days in which I have felt down, and an additional 41 days in which I have felt nervous, anxious, edgy, angry, impatient and or angry.

The document will highlight what I believe to be 7 occasions in which I have felt I had an anxiety attack.

Finally, the document will highlight the 29 dreams that I have had related to work during this period of time. These dreams began in January 2012.

I want to make it clear that the issue of using Imodium, experiencing disruptive sleeping patterns and the feelings of anger, and feeling down are not exclusive to this time period. I have been feeling these physiological and psychological effects from stress in the workplace for at least two years prior to the creation of this document.

I have included this document at **TAB 20**.

I will be able to provide clinical notes from both my family doctor and from a psychologist to support why I have suffered these physiological effects.

I have discontinued writing in this log on a daily basis as of August 1st 2012. I have decided to only document dreams and anxiety attacks in a log as issues with my sleep patterns and with my stomach continue to be pretty much on a daily basis.

Also at TAB 20 I have included a note from my family doctor indicating why he provided me with two notes for time off from work.

Also at TAB 20 I have included a one page document entitled "notable events". This document was created at the request of my psychologist. He asked me to write down events that I felt had contributed to the way I was feeling. We then discussed these events. You will see that there are two hand written additions to the typed documents. I wrote these events on the document in the spring of 2012 as I wanted to discuss these as well. Although we did discuss the majority of the events I had documented we did not discuss the two hand written additions to the document.

As you will see these events date back to the fall of 2007. The events in question speak to examples of how my management team and members of the Ottawa Police Service Executive office were negligent in addressing how I was being treated by members of the Association; how the Ottawa Police Association were permitted to obstruct and tamper with some of my PSS investigations; how senior members of the Ottawa Police Service ignored my pleas for assistance for how I was being treated; and how elements of corruption were acknowledged and permitted by the Ottawa Police Service Association and by senior officers of the Ottawa Police Service, including the Chief.

Meeting: Inspector Bhatnagar and Staff Vaillant; June 22nd:

This meeting was held on the Friday before I was permitted to return to the Intelligence Unit. I was permitted to return to my substantive position on Monday June 25th, 25 days after Staff Ladouceur retired.

During this meeting I was presented with my goals, which were for my re-integration into the Unit. The goals were read to me by Staff Vaillant and I was asked if I had any issue with them. I agreed to the goals as I dared not say anything to the contrary for fear that I would not be allowed to return to the Unit.

During this meeting the Inspector spoke about people working for him and he stated that he "wants his employees 100% and will do whatever it takes to get them there". I believe this statement fly's in the face of how he treated me.

The Inspector also stated that there is "lots of stuff going on in the personal life of people and we must be mindful of this".

I have since spoken to Staff Vaillant and Inspector Bhatnagar about the goals they provided to me. Three have been modified. These goals and the modified version of the goals are found at **TAB 16**.

Meeting with Inspector Bhatnagar and Staff Vaillant; July 6th

During this first bi-weekly meeting I was to have with the Inspector and Staff Vaillant I was told by the Inspector that my goals were for my re-integration into the Unit and were part of the discussion he had had with me on December 12th. He asked me if I remembered that part of our discussion. I said I had no memory of him suggesting, on December 12th, that I would need such goals. I have since reviewed the notes I took immediately after that meeting and the Inspector never mentioned such a thing.

The Inspector then made a very disturbing and telling statement. He asked me if I knew, during the meeting on December 12th, that I was going to go on a temporary assignment. I replied that I did not know such a thing, and that I only found out about having to go on a temporary assignment on January 10th 2012 when he told me. This statement makes me wonder if the Inspector knew, on December 12th 2011, of my upcoming move. He has since stated that the decision to move me came on January 6th 2012. This is yet another reason why I believe that a search of email accounts may quite likely afford a better insight into how decisions were made as to my immediate future in the Intelligence Unit.

The Inspector said that he, Jen and Deborah had created my goals from the themes of the Unit Review. He stated further that he was going to receive a copy of the report from Acting Chief Gilles Larochelle later that afternoon.

The Inspector stated that my goal related to taking notes came from the Labour Relations section as they stated that note taking is important. This would seem to fly in the face of the comment Ms. White made to me in

May when she stated that she had made no notes from the conversation I had had with her on December 15th.

There was a follow up to Inspector Bhatnagar's statement that he was going to receive a copy of the Unit Review document and the Association was told that Deputy Chief Larochelle had never received a copy of the report.

An email received from the Association regarding this statement can be found at **TAB 17**.

Conversation with Staff Vaillant; July 26th:

During this brief conversation between Staff Vaillant and I she stated that the Unit Review was conducted because of the meeting I had had with Inspector Bhatnagar and Bernie back in December. I then advised her of what Ms. White had told me, that the Unit review was conducted because of my complaint to Chief White.

Conversation with A/Sergeant Pratecante: July 27th

This conversation took place in the Intelligence office while I sat at my desk. Acting Sergeant Pratecante was acting as the Technical Sergeant while Sergeant Lockhart was out of the office.

Acting Sergeant Pratecante advised me that he had been speaking to Staff Sergeant Laviolette of the Drug Unit and Constable Heuchert of the Drug Section about their work with the RCMP on a major drug file.

Acting Sergeant Pratecante used very descriptive language to describe how these officers felt about working with the RCMP on a joint drug investigation.

Acting Sergeant Pratecante advised me that these officers had "kicked out" the RCMP from the investigation.

Inspector Bhatnagar and Superintendent Cameron would have been apprised of these developments as they are the direct supervisory chain for these officers.

Acting Sergeant Pratecante brought up the subject of the investigation.

2011 Performance Review:

I received my 2011 Performance review from Staff Sergeant Vaillant on June 29th. I was astonished to read what had been written. I have included a copy of this Performance Appraisal at **TAB 18**.

I immediately noted that some of the comments made on the review were clearly written by Bernie, while others were clearly written by Julie. I asked

Staff Vaillant to provide me with an explanation of who said what on the review before I discussed the review with her.

I then prepared a package for Staff Vaillant which included emails which contained information which I felt should have been included on my Performance Review. I also included copies of the Competencies of Leadership and Communication. Included in the package I provided for Staff Sergeant Vaillant was a three page outline on what I intended to discuss. This three page outline is included at TAB 18.

We met for almost 4 hours to discuss the review. She agreed to make some additions to the review, but did not agree to remove anything from the review.

During a meeting with Staff Vaillant and Inspector Bhatnagar on July 06th Samir suggested that he could respond to the concerns I had with the comments Bernie had made on my Performance Review. I had expressed this concern to Staff Vaillant in that because of the delay in completing my Performance Review I had been denied the opportunity to question Bernie about the comments he had made.

I advised Inspector Bhatnagar that with all due respect he could not address comments that Bernie had made, such as, a true leader would have observed that there were camps in the unit and would have done something about it. Inspector Bhatnagar then stated that he could address the comments made that related to the memorandum I authored on September 2011 (found at TAB 3).

I did receive an amended 2011 Performance Review from Staff Sergeant Vaillant. In this review she added some of the comments/information that I had brought forward, but she did not remove any of the information that I had identified as information that I felt should be removed. This amended Performance Review can also be found at TAB 16.

On July 27th I provided Inspector Bhatnagar with a hard copy package of information supporting why I wanted to contest my 2011 Performance Review. In this package was a 24 page document outlining why I felt certain things should be added or deleted from my 2011 Performance Review. I will call this document a "summary" of my feelings on the matter. I also sent an electronic copy of the "summary" to the Inspector on August 1st.

I met with the Inspector on August 3rd on an unrelated matter but at the end of that particular discussion we spoke about the package I had provided to him contesting my 2011 Performance Review.

During this discussion the Inspector stated that he did not think it was necessary for him to make a comment on each and every point I had made while contesting my Review. I respectfully suggested that I wanted

his comment on each and every point as I had taken considerable time and effort to document how I felt about certain entries on my Performance Review, and how I felt about certain entries not being made on my Review.

In this document I addressed both the original and amended Reviews that I had received from Staff Vaillant.

The Inspector stated that he was on annual leave during the week of August 6th but he would see what he could get done on my Review during that time period.

I communicated via email with the Inspector on August 10th pertaining to the time line of him completing his review.

At TAB 16 I have also included the email correspondence between Inspector Bhatnagar and I concerning my 2011 Performance Review.

I have also included the emails, containing "at-a-boys", which were omitted from my performance Review at this TAB.

Finally, I have included the "summary" document which I provided to Inspector Bhatnagar at this TAB.

Letter from Chief Bordeleau; Unit Review:

I received a letter from Chief Bordeleau at my residence referencing the Unit Review that was conducted by Ms. Aarenau and Ms. White. I retrieved this letter from my mailbox at approximately 17:40 hours on August 10th.

This letter can be found at **TAB 19**.

In general the letter acknowledges that I made a complaint but states that there was no wrong doing on behalf of my management team. (Staff Ladouceur, Inspector Bhatnagar or Superintendent Cameron)

In the first paragraph Chief Bordeleau states that I have alleged that Staff Ladouceur acted inappropriately and that I have experienced a lack of concern, empathy and support by the Service in addressing my concerns. The Chief also highlights that I made it clear that being removed from the Intelligence Unit was humiliating and embarrassing for me.

In the second paragraph Chief Bordeleau states that prior to the delivery of my complaint to Chief White on January 18th 2012 the CIS management team of Inspector Bhatnagar and Superintendent Cameron had decided that an investigation into the allegations I had brought forward was merited. I believe that Chief Bordeleau was misinformed on this point.

As I have documented I had had a long meeting with Inspector Bhatnagar and Staff Ladouceur on December 8th 2011 in which I identified the basis for my allegations for the inappropriate way I had been treated by Staff Ladouceur. I had a follow up meeting with inspector Bhatnagar on December 12th. During neither of these meetings did Inspector Bhatnagar advise me that he was going to initiate a formal investigation into my allegations.

I have included a number of emails at this TAB to further demonstrate why I believe that Inspector Bhatnagar and Superintendent Cameron had no intention of investigating my complaint against Staff Sergeant Ladouceur.

I will now highlight the information in various emails to and from Inspector Bhatnagar and Ms. Jennifer White. I have included emails to and from Ms. White as she provided advice to Inspector Bhatnagar and Superintendent Cameron on the conflict between Staff Ladouceur and I. On January 10th 2012 Inspector Bhatnagar alluded to having a meeting with Ms. White and Superintendent Cameron on January 6th 2012 at which time they decided that the course of action they would undertake would be to remove me from my position in the Intelligence Unit.

The **first** email I wish to discuss is an email I sent to Ms. White on December 22nd 2011. Included in this email is her response which was sent the same day.

I made it clear to Ms. White that I wanted to continue our dialogue on the information I had brought to her attention during our meeting on December 15th. This information contained many examples of how I felt I had been mistreated by Staff Ladouceur. I advised her that I wanted to provide her with information that I felt would corroborate my complaints against Staff Ladouceur. Lastly, I advised Ms. White that Ms. Aarenau had reviewed the information and had offered to speak to Staff Ladouceur for me. I made it very clear to Ms. White, in my email that I felt that this offer had a condition, and that condition was "whether or not I could continue working with Staff Ladouceur".

Ms. White's response was short and sweet. She simply stated that she wanted some time to digest what she had been told and would then get back to me. She actually stated "I have read through it". I am wondering if she was referring to the fact that she had read through the confidential package I had provided to Ms. Aarenau. You will see that there is no mention of her launching an investigation into my allegations against Staff Ladouceur.

The **second** email begins with an email that Inspector Bhatnagar sent me on January 10th 2012. The email is a response to me asking for a copy of the memorandum that Ms. White authored. This memorandum was sent to Superintendent Cameron by Ms. White and detailed her thoughts on the

situation between Staff Ladouceur and I. Inspector Bhatnagar offer to let me read this memorandum on January 10th but I told him that he should ask for permission first.

This email from Inspector Bhatnagar was sent after the meeting in which he told me I would have to leave the Intelligence Unit. I told the Inspector, during that meeting, that I thought my move was punitive. He told me the move was not punitive and was to be done because of what I said about Staff Ladouceur, and especially because of the fact that I said the things I did in front of him. This related to the meeting on December 8th 2011. Again, I expressed my concerns with how I was treated by Staff Ladouceur at that meeting yet this email by Inspector Bhatnagar, once again, includes no information about whether or not my allegations would be investigated.

This email and Ms. White's reply are quite interesting. Inspector Bhatnagar stated that I could speak with Ms. White about "the recommendation and the rationale behind the decision", which sounds like he is suggesting that she suggested that I be removed from the Unit. Her response states that the memorandum was an "advisory memorandum provided to the Superintendent and his team to ponder and "make a decision on the options"; clearly indicating that the Superintendent made the decision to remove me. In fact, Inspector Bhatnagar told me in May that Ms. White made the decision to remove me from the Unit.

The **third** email I will discuss is an email chain between Ms. White and I. The chain begins on January 11th. In this email I sent to Ms. White I state that "I have brought forward some serious concerns as to how Staff Sergeant Ladouceur has interacted with me and the result is I will be removed from the Unit. I do not understand what process was followed to determine that I should be removed. Were my statements investigated? What steps were taken? I have no idea what was done on my behalf". I also stated "I stood up for myself and have been punished for doing so".

Ms. White's response does not answer any of my questions. There is no response to whether or not my allegations were investigated, and no response as to what steps were taken to arrive at the decision they arrived at.

In my reply to this email, sent on January 12th, I again state "I brought forward some serious concerns about how I was treated by my supervisor and I never received any form of official feedback as to what was done to look into the concerns I brought forward". I also state, "the result of me voicing my feelings, my concerns that I have been subjected to abusive treatment at the hands of my supervisor is that I am removed from a position I love; while my supervisor is allowed to continue in his position". Finally I stated, "If an employee states that they are suffering under

abusive management is that not enough to start an investigation?" "Will this Organization not help me in any way?"

Ms. White did not respond to this email.

I think it is important to note that I believe that there is evidence to show that Ms. White and at least Inspector Bhatnagar were blind copying each other on emails to me. I believe this is significant as the Inspector would have read, first hand, my questions, and if not, surely Ms. White would have been professional, ethical and responsible in conveying my concerns to Inspector Bhatnagar and Superintendent Cameron, I received no feedback from either senior officer in relation to whether or not an investigation was to be conducted on the information I had provided.

The **fourth** email I would like to discuss relates to a memorandum I had sent electronically to the Inspector requesting that I be permitted to work on my distance education program while removed from my position. In the memorandum I indicate that I believe the move is punitive.

Inspector Bhatnagar's response is that the move was not punitive but was as a result of "the comments you made regarding your personal situation working with Bernie". This of course relates to the meeting on December 8th 2011. Of course during this meeting I told the Inspector how I had been mistreated by Bernie, and yet his email on January 11th 2012 makes no mention of an investigation into my allegations. The Superintendent is c.c.'d on this email from the Inspector, as is Ms. White.

In my memorandum I explained to the Inspector that to remove me from my position in the Intelligence Unit, for any period of time would be humiliating, embarrassing and professionally damming for me". I also stated that "I believe I am in this situation because I stood up for what I believe to be injustices at the work place". Again, I was clear in my memorandum that I had brought forward examples of injustices in the work place yet the Inspector ignored this statement and did not make any statement as to whether or not he would investigate my complaint.

Lastly, even though I used very descriptive language in my memorandum to explain how removing me from the Unit would make me feel the Inspector responded that "Feel free to choose an area that will enhance your career development and experience. I believe this can be a positive opportunity for you". My email response was that I had made it clear that "this is not a positive opportunity for me".

The **fifth** email I will highlight is an email I sent on January 16th 2012 indicating that I was booking off on sick leave. Inspector Bhatnagar's response was that he was relieved that I had sought professional advice. He indicated further that "If there is anything I can do to assist further please do not hesitate to contact me anytime". The Superintendent is c.c'd

on the email. Again, there is no indication at all that the Inspector or Superintendent was contemplating investigating my allegations.

The **sixth** email I will refer to is a chain of emails between Ms. White and Mike Lamothe of the Association. The emails were being sent back and forth as Mike was trying to determine when I would be interviewed. During these emails in May 2012 Ms. White stated, "You will recall that this matter was investigated as a result of the complaint put forward to the Chief by Sergeant Spicer in January." I believe this is exactly what transpired. There was never an intention of investigating my complaints against Staff Ladouceur by Inspector Bhatnagar and Superintendent Cameron, but they were forced into action by my complaint made on January 18th 2012.

Lastly, I will refer you to an email between Inspector Bhatnagar and I on May 31st 2012. This email is found at TAB 12. In this chain of emails I had asked the Inspector if my access to the Intelligence office could be re-instated for Friday June 1st, 2012, which was the official date of Staff Ladouceur's retirement. This request was in accordance to what I had been promised; that I would return to my substantive position when Staff Ladouceur retired.

The Inspector replied that he was going to wait until he read the workplace assessment before permitting me to return to the Intelligence Unit. My response was "The workplace assessment was as a result of my complaint against Bernie. You had all the information I gave to the Chief, and much more, in early December and chose to do nothing with it. I cannot understand what this report has to do with my return to the Unit".

The Inspector replied, "Dave, are you able to meet this morning?"

I think the Inspector's response is noteworthy. Again, there is no indication that he had intended to look into my complaint against Bernie when he was advised of the facts on December 8th 2011.

On May 30th I met with Ms. White and Ms. Aarenau as they wanted to interview as part of their Unit Review. They advised me that the Unit Review was as a result of my complaint to the Chief. This is clearly not what was articulated to me in Chief Bordeleau's letter.

They also advised me that the questions that they had developed for the Unit Review were based solely on the material I had provided to Chief White on January 16th. They were both clear with me that the material I had provided to them, in writing and verbally in November and December 2011, had not been used to formulate their questions.

I would respectfully suggest that this is yet another very clear indication that the Ottawa Police Service had no intention of investigating my complaint against Bernie until I made a complaint to the Chief. If they had

would they not have used the extensive information I had provided to them to assist them in investigating the complaint?

This is why I believe that Chief Bordeleau was misinformed before he responded to me the way he did.

In the second paragraph Chief Bordeleau also stated that Ms. Aarenau suggested alternatives to support the resolution of my concerns. It is clear that Chief Bordeleau was not advised by Ms. White that I felt that Ms. Aarenau's assistance came with a caveat, which I highlighted for Ms. White in an email already discussed.

In the third paragraph Chief Bordeleau indicated that the work place assessment will "now serve to offer additional insight to the workings of the Unit, your interactions with Staff Ladouceur, and the appropriateness of these interactions". I have already addressed the nature of the questions asked and the connection they had to the complaint I made to Chief White. I made this clear to Chief Bordeleau in the document I sent him in January, a document found at TAB 14. I stand by those comments.

Of note is that nowhere in this letter from Chief Bordeleau is there an acknowledgement of the specific allegations I brought forward against Staff Ladouceur, yet he states in paragraph three that the report will offer additional insight into the appropriateness of the way Staff Ladouceur interacted with me.

Paragraph four is basically an overview of the report in which the Chief states that Staff Ladouceur did nothing wrong and did not breach any policies. I wonder how this can be true when he allowed a member to use a company car for personal reasons.

In the letter from Chief Bordeleau he indicated that Inspector Bhatnagar had made attempts to obtain a document from me to assist him in his investigation into my allegations against Bernie, but I had not provided the document to him. I believe the Chief has been provided a half truth and has unfortunately included this half truth in a letter to me. I have already highlighted Inspector Bhatnagar's emails to me inquiring about the document related to the abuse I suffered while working in PSS. These requests came after I had booked off on sick leave.

I will again highlight the fact that the Inspector seemed very keen to read a document authored in January 2010 that spoke about the abuse I suffered while working in PSS yet he was not so interested in reading material that spoke about present day issues. I believe this is because I had told him that both Bernie and Superintendent Skinner had dropped the ball on that issue. I am told that Inspector Bhatnagar does not like Superintendent Skinner. Is that his motivation?

I also want to point out that I had made a request to see Chief Bordeleau, before the Unit review document had been completed, about how I had been treated while working for Staff Ladouceur. I was denied the opportunity to speak with the Chief however.

Chief Bordeleau undoubtedly spoke to Inspector Bhatnagar and Superintendent Cameron, and quite likely Ms. Aarenau and Ms. White. I, however, was not given the opportunity to speak to him to answer any questions and or concerns he might have had with the information that was presented to him. As we all know, there are two sides, two perceptions, to every situation.

This is a summary of how I have been treated by the Ottawa Police Service over the last five years.

I will happily provide legal counsel with the first binder I put together, the binder supplied to Ms. Aarenau, and offered to Ms. White.

In mid-January 2012 Sergeant Spicer was off on sick leave. In February, 2012 he wrote for the first time to the Association outlining his situation as follows:

Time Line:

I began working in the Integrated Criminal Intelligence Unit in February 2009. During my assignment to the Intelligence Street Team in the past two years I have had as many as 10 officers reporting to me, at any one time, from three different Services, Ottawa Police, RCMP and the CBSA.

My Performance Reviews at the end of 2009 and 2010 predominately contain notations of "exceeds expectations" in the various assessment areas.

In September 2011 two members of the Street Team booked off on sick leave. These two officers were Constable Jean Francois Morin and Constable Frank Nadanyi. As a result of the officers booking off on sick leave Staff Sergeant Ladouceur conducted interviews with members of the Street Team to determine if there were underlying issues with the Street Team that resulted in their decision to book off sick. I was aware that these interviews would be conducted, and I supported this inquiry.

Staff Sergeant Ladouceur advised me during the last week of October that he had spoken to everyone and he wished to speak with me to discuss issues that were brought forward by members of the Street Team. We met to discuss these issues on October 27th.

To take a quick step back, I was approached in confidence by two different members of the Street Team prior to my meeting with Staff Sergeant Ladouceur on October 27th. These two members advised me that they had been interviewed by Staff Ladouceur and they felt that Staff Ladouceur was going to try and blame me for the fact that the two officers had booked off on sick leave. This was their impression after having been interviewed by Staff Ladouceur.

I met with Staff Ladouceur on October 27th and was subjected to 2 ½ hours of accusatory comments. These comments were general in nature and were not supported with specific examples which would have allowed me to respond to them, to defend myself. Examples of these comments were that I was an autocrat, that I have favorites on the Team and that I hold grudges.

Shortly after this meeting I discovered that Staff Ladouceur did not interview 3 members of the team although they were available for such an interview. Staff Ladouceur has never explained why he did not interview 3 members of the team after he had advised me that he had spoken to everyone. Also, there are an additional 4 officers that worked with/for me during the time frame that Constables Morin and Nadanyi worked with/for me that were never interviewed prior to the October 27th meeting. If the interviews were undertaken to discover if there were issues on the Street Team that resulted in two specific members booking off on sick leave then I cannot understand why 3 current members of the Team and 4 prior members of the Team were not interviewed prior to the meeting on October 27th.

The meeting of October 27th left me feeling devastated, personally and professionally.

On December 6th Staff Ladouceur and I discussed the meeting of October 27th. This discussion resulted in Staff Ladouceur requesting a meeting between the two of us in the presence of Inspector Bhatnagar so that there would be an impartial party present so we could both speak in an open and honest fashion. I whole heartedly agreed to this proposition. We met with Inspector Bhatnagar on December 8th.

During the meeting of December 8th I brought forward several examples of what I will call inappropriate behavior on the part of Staff Ladouceur. Examples of this inappropriate behavior included denying me developmental opportunities in 2010 that would have assisted me in the 2011 Staff Sergeant Promotional Process, permitting an employee to use his Intelligence vehicle for personal reasons after I brought forward this situation to him (he told me to drop the issue), and of course the manner in which he conducted his background interviews for the meeting on October 27th and the way he berated me during this meeting. There was a lot of emotion during this meeting.

Inspector Bhatnagar asked how we could move forward with the issues between the two of us. Staff Ladouceur stated that we could not move forward, that our relationship was finished. I stated that I could continue to be a productive member of this Organization, and specifically in the Intelligence Unit. I said that a different reporting structure could be used until Staff Ladouceur retired (I am told this could be in April or May of this year) to facilitate the two of us working together. Inspector Bhatnagar stated that he did not think it was a good idea that I report to him and stated that he would approach Labor Relations for advice.

During this meeting I advised Inspector Bhatnagar how the inappropriate behavior of Staff Ladouceur had caused me much stress and anxiety.

I was called by Ms. White of Labor Relations and met with her on December 16th. I explained everything to Ms. White. I went through all the examples of Staff Ladouceur's inappropriate behavior which included the way he prepared for the meeting of October 27th, and the way he spoke to me during that meeting. I also advised Ms. White how Staff Ladouceur's behavior had caused me stress and anxiety.

I communicated with Ms. White by email on December 22nd to follow up on the meeting we had had on December 16th. In this email I made two references to meeting with Ms. White in the New Year. Ms. White indicated something to the effect that she would be in touch.

I returned to work on January 9th after two weeks off over the Christmas holidays.

I was summoned to Inspector Bhatnagar's office on Tuesday January 10th. Inspector Bhatnagar advised me that it had been decided that I would be removed from the Intelligence Unit until Staff Ladouceur retired, at which time I would be allowed to return to my substantive position. I was advised that the effective date of my removal would be Monday January 16th.

I advised Inspector Bhatnagar that I did not want to leave the Unit and that removing me was as a result of me bringing forward examples of Staff Ladouceur's inappropriate behavior. I stated that I was being punished for bringing these issues forward. I was advised that the decision was not punitive, and that I had no choice in the matter. He went on to say that "they" had met on January 6th and had made this decision. I would assume "they" would indicate Ms. White, the Inspector and the Superintendent.

During this meeting Inspector Bhatnagar advised me that Ms. White had provided the Superintendent with a memorandum outlining her thoughts on the situation. I asked the Inspector if I could get a copy of this memorandum so I could better understand the thought process behind my removal from the Unit. The Inspector printed the memorandum and

advised me I could read same. I advised the Inspector that I would not read it until he had permission to show it to me, so as not to put him in an awkward spot.

I was advised that I had three options. I could find a place to work until Staff Ladouceur retired; I could suggest a tenure transfer that would have to be approved by the Chief, or I would be transferred to patrol.

I advised Inspector Bhatnagar that he was asking me to make a decision in what amounted to 72 hours that was professionally and personally damning for me. I said that to parachute into some other section for a period of time would be humiliating, degrading and embarrassing for me. Inspector Bhatnagar said it would be for my health, and for my professional growth. I advised him that it would accomplish neither.

With my back against the wall I made a suggestion to Inspector Bhatnagar on January 11th. I suggested that I be provided the opportunity to work full time on the Charles Stuart Distance Education program I had been accepted for. I said that this would be the least humiliating move for me. I was denied this suggestion with no explanation. I was told to provide three more options. I then suggested that I work with the Surveillance Unit to assist the young officers with my surveillance experience. I said that this move might be seen by other officers as a "normal" event so it might be less humiliating for me. This option was originally categorized as an excellent idea, and then it was denied with no explanation.

My third option of working for the Drug Unit was accepted.

I did receive an email from Ms. White on January 12th who indicated that because I had said that I do not trust Staff Ladouceur to have my professional and personal well being at heart that I was removed for the wellbeing of Staff Ladouceur, my team and I. I was told that trust is a fundamental part of any work place, or something to that effect. I was also told that I would not be provided a copy of the memorandum she had authored for the Superintendent as she did not know what benefit it would be to me to read this document.

I agree that trust is important, but as I advised Inspector Bhatnagar and Ms. White, what type of trust would the members of the Street Team have in Staff Ladouceur who did not interview all members of the Team before he met with me on October 27th? What trust would two specific members of the Street Team have in Staff Ladouceur after they felt his interviews were designed to build a case against me? What trust would the entire Team have, with Staff Ladouceur and with our Organization, when I am removed for speaking up for myself? Will they ever speak up for themselves after this?

I advised Ms. White, during the January 12th email exchange, that I was puzzled that not one person in our Organization had told me whether or not my allegations against Staff Ladouceur would be looked into. I had advised Inspector Bhatnagar of these allegations on December 8th.

I verily believe that all my email correspondence with Ms. White, and her correspondence with me, was forwarded to Inspector Bhatnagar and Superintendent Cameron, so I believe that they would certainly have "heard" this comment.

I met with my family doctor on January 16th and have obtained a medical leave of absence from the work place for a period of two months. This time period will be revisited.

I dropped off a package for the Chief on January 18th advising him of the circumstances of my removal from the Intelligence Unit. I received a voice message of my personal cellular telephone from the Chief on January 20th indicating that he would get back to me during the week of January 23rd. The Chief also advised me that he had provided the information to Ms. Francis of HR. Unfortunately I have not heard back from the Chief or Ms. Francis.

I am grieving my removal from the Intelligence Unit. I am grieving the manner in which it was done, asking me to find a place to go to, with no assistance from anyone in this Organization. I am grieving the fact that I could not be accommodated by allowing me the opportunity to work full time on a course of study recognized and encouraged by this Organization. I believe that this accommodation, which I clearly stated was suggested so I would not be further humiliated and degraded, is nothing out of the ordinary for our Organization. Receiving no explanation as to why this option is not feasible is not professional in my opinion.

Respectfully,

Sergeant David Spicer

There was considerable evidence and submissions as to what transpired after Sergeant Spicer put his grievance forward. He was on sick leave from mid-January until May, 2012. Commencing in the month of May, 2012 and following, there were interactions between Sergeant Spicer and Mr. Lamothe regarding Sergeant Spicer's return to work.

Toward the end of May, 2012 Sergeant Spicer provided the Association with a letter he sent to the Police Service which outlined the history of his complaint and stated the following with respect to a proposed remedy:

... As a result of the information presented in this document I am suggesting the following remedies are appropriate to address the fact that I was forcibly removed from my substantive position.

1/ I respectfully request that the sick days I was forced to use as a result of my forced removal from my substantive position be reinstated in my time bank. I would respectfully request that my sick leave time bank on May 22nd 2012 reflect the days in my sick leave time bank on January 13, 2012. This time bank will of course be augmented by the sick days I have earned between January 13, 2012 and May 22, 2012. My time bank balances as of January 13th 2012 is document number 10.

2/ I respectfully request that Inspector Bhatnagar and Superintendent Cameron write me a letter of apology indicating that they knowingly removed me from my substantive position against my will, and against the Tenure Policy.

3/ I respectfully request that the Ottawa Police Service draft a memorandum for my personnel file indicating that I was removed from my substantive position in 2012 in defiance of an Ottawa Police Service Policy, and that this forced removal was not directed as a result of any form of misconduct, inappropriate behavior on my part, or as a result of job performance issues related to my work in the Intelligence Unit.

The evidence is clear that in August and September, 2012 Mr. Lamothe brought the issue of Sergeant Spicer's removal from the Intelligence Unit to the Labour Management table for discussion and in December, 2012 the Association received a first draft of a proposed Memorandum of Settlement. The draft was reviewed by Sergeant Spicer following which Mr. Lamothe had discussions with the Police Services Board which resulted in two subsequent drafts, the final being received in January, 2013 and which provided as follows:

Whereas Sergeant David Spicer was off on accumulated sick leave from January 16 – May 30, 2012;

Whereas Sergeant Spicer has requested the return of this sick leave;

AND WHEREAS the Service has considered this request and is able to approve Sergeant Spicer's request,

The parties agree, on a without precedent or prejudice basis to the following terms and conditions:

1. Sergeant Spicer will have his accumulated sick leave returned to him for the period of January 16 – May 30, 2012;
2. Sergeant Spicer's performance review from 2011 (adjusted during a meeting with Inspector Bhatnagar) stands as adjusted. This performance review is to be treated as confidential, and a copy will not be kept on Sergeant Spicer's Employee File. Labour Relations will maintain a copy of the review. The only exception to this confidentiality will be a situation where the 2011 performance review is needed to confirm patterned or repeated behavior;
3. Sergeant Spicer's current tenure position (Sergeant, Criminal Intelligence Street Team) began on February 2, 2009, and his five-year term will end on August 2, 2014;
4. Sergeant Spicer's current period of performance review will run from October 1st, 2012 until September 30th, 2013;
5. Sergeant Spicer agrees that the issues which he raised in his January 2012 complaint to the chief are resolved, and he further agrees that there are no further outstanding complaints regarding how he was treated up until September 30, 2012, in relation to his treatment by Staff Sergeant Ladouceur;
6. The parties agree that the return of the sick leave is in no way an acknowledgement or admission of any wrongdoing on the part of the Service;
7. Sergeant Spicer agrees and acknowledges that he has received advice and guidance from the Association and that he has had an opportunity to fully consider and come to an understanding of the Agreement and that he has executed it voluntarily; and
8. The terms of this Agreement are strictly confidential and shall not be raised in any future proceeding whatsoever, save and except to enforce the terms herein.

Sergeant Spicer was not satisfied with any of the first three drafts. He continued to disagree with the content of his 2011 performance review. He also did not agree with paragraph 5 that the issues raised in his January, 2012 complaint to the Chief had been resolved; he did not agree that the terms of the Memorandum of Agreement should remain confidential; and he did not agree that the settlement should be on a without precedent or prejudice basis.

It continued to be Sergeant Spicer's belief that the Police Service had acted improperly in transferring him from the Intelligence Unit and that the return of his sick leave and other remedies in the proposed Memoranda of Settlement were inadequate. In his view what was required was an admission of wrongdoing which could be presented to the membership to dissuade the management of the Police Service from acting in a similar fashion in the future and that, absent such a public admission, the matter should proceed to arbitration.

The Association sought a legal opinion from Mr. Christopher Rootham with respect to the matter. Mr. Lamothe testified that Sergeant Spicer reviewed the material being sent to Mr. Rootham in advance of the meeting and was satisfied with the materials and Sergeant Spicer and Mr. Lamothe met with Mr. Rootham in January, 2013. According to Mr. Lamothe there was a discussion at the meeting about getting money in exchange for the benefits. Sergeant Spicer had his questions answered and by correspondence dated January 22, 2013 Mr. Rootham wrote to Mr. Lamothe as follows:

You have asked me to provide an opinion concerning the grievance of Sgt. David Spicer against his transfer. I have reviewed all of the material provided by Sgt. Spicer. I have concluded that there is an arguable case for his grievance; however, the offer made by the Ottawa Police Services

is the extent of any likely award that an arbitrator would make even if Sgt. Spicer was successful in this matter. I recommend that Sgt. Spicer accept the Ottawa Police Services' offer.

Further, in my opinion the Association would not violate its duty of fair representation by accepting this offer on Sgt. Spicer's behalf (if that is possible). If the Association instead is considering abandoning the grievance if Sgt. Spicer does not accept the offer, the Association must ensure that it fully explains its reasoning to Sgt. Spicer and gives him ample time to reconsider his position....

In my opinion, an arbitrator could conclude that the Ottawa Police Service acted reasonably (with "reasonable cause") by deciding that one of the two officers needed to be transferred particularly during a workplace investigation into his unit. An arbitrator is also likely to conclude that Sgt. Spicer's proposal to report directly to the Inspector was not workable.

We do not know precisely why the Ottawa Police Service decided to transfer Sgt. Spicer instead of S/Sgt. Ladouceur (or, as importantly, the reason the Ottawa Police Service will give to an arbitrator). The Association's argument will be that the Ottawa Police Service decided to transfer the "victim" of harassment in this case, and that they acted unfairly by transferring the victim instead of the perpetrator. The difficulty with this argument is that these events started when Sgt. Spicer was confronted with an allegation that two members of his team were off on sick leave as a result of his behavior. This is not a straightforward case of the "victim" of harassment being transferred during an investigation; the investigation into the unit was into whether Sgt. Spicer was a victim, and also whether he was the perpetrator. The fact that S/Sgt. Ladouceur was retiring in 3-4 months may also have been a factor; the Ottawa Police Service may have decided that transferring an officer 3-4 months away from retirement was unfair.

In my opinion, an arbitrator could rule either way in this case. However, the Ottawa Police Service has a good chance of convincing an arbitrator that it acted "fairly" by transferring Sgt. Spicer instead of S/Sgt. Ladouceur.

In conclusion, the Association may win this grievance, or it may not: I cannot predict with certainty what an arbitrator will conclude. In my opinion an arbitrator is probably more likely to conclude that Sgt. Spicer's transfer was not "unfair": the Ottawa Police Service had the right to transfer him, and a reason to do so.

Remedy if successful

The primary remedial principle adopted by arbitrators is to put the victim of a wrong back in the position he or she would have been in had the wrong never been committed. Sgt. Spicer went off on sick leave on January 16,

2012, and never actually performed work in another unit. His evidence is that his illness was caused by the decision to transfer him to another unit, and there is no reason to doubt that evidence....

This return of sick leave credits is precisely what the Ottawa Police Service is offering to settle this grievance. The Ottawa Police Service is also offering to put Sgt. Spicer back in the position he would have been in by extending his 5-year term (so that he gets a full 5 years of work in that position).

While an arbitrator has the jurisdiction or ability to award damages for "mental distress" or a form of "punitive damages", in my opinion an arbitrator is very unlikely to make such an award in this case. In my opinion, an arbitrator will likely conclude that the actions of the Ottawa Police Service do not meet the high threshold of "harsh, vindictive, reprehensible and malicious conduct" to justify an award of punitive damages or mental distress damages.

CONCLUSION ON GRIEVANCE

I have concluded that Sgt. Spicer has an arguable case on the merits of this grievance, but that an arbitrator could also conclude that the Ottawa Police Service acted "fairly" by transferring him out of the Intelligence Unit in light of his own admission that he could not work with his supervisor.

I have also concluded that if Sgt. Spicer was successful in this grievance, an arbitrator would award him a return of his sick leave credits – but no more. The offer made by the Ottawa Police Service is therefore as good as – if not superior to (because of the extra 6 months in the unit)- the successful result at an arbitration.

DUTY OF FAIR REPRESENTATION

You have advised me that the Association's grievance committee is meeting shortly to consider the next steps in this grievance. I remind you that the Association owes a duty of fair representation to Sgt. Spicer in this matter. This duty of fair representation requires the Association to exercise its discretion in good faith, objectively and honestly following a thorough study of the grievance and the case. The Association should take into account the significance of the grievance and of its consequences for Sgt. Spicer on the one hand, and the legitimate interests of the Association on the other.

There are a large number of cases confirming that an Association is permitted to settle a grievance without the approval of the member, even if the member may have had an arguable case if the matter had gone to arbitration. The Association must thoroughly investigate the grievance before taking this step. In my opinion, the Association has met its obligation to thoroughly investigate this matter. In light of my opinion that

the settlement is as good as a successful arbitration decision, an arbitrator would likely conclude that the Association has met its duty of fair representation in this case if it settled the grievance over the objections of Sgt. Spicer.

Cases where an association has refused to take a case to arbitration because the member refused a settlement are much more rare. Labour boards have not rejected the principle that an association may refuse to advance a grievance to arbitration because the member rejected the settlement, but this is a much more drastic step than accepting the settlement over a member's objections and is rarely done. The Association is within its rights to refuse to take this case to arbitration even if the settlement is not entered into, but the Association should first take every step possible to explain to Sgt. Spicer why he should accept this settlement and to explain the consequences if he does not. I recommend that you find out how long the Ottawa Police Service is willing to keep the offer open and then give Sgt. Spicer as much time as possible to make his decision.

If you have any questions about this opinion, please feel free to contact me at any time.

Mr. Lamothe testified that, together with Sergeant Spicer and Mr. Skopf, the Association President, he attended a meeting of the Association's Grievance Committee on January 29, 2013 to discuss Sergeant Spicer's grievance. He stated that at the meeting he gave the Committee the legal opinion referred to above, three drafts of various settlement offers and a verbal report explaining the background to the matter. He testified that temporary transfers are done on a regular basis throughout the Police Service and stated that the return of the sick leave credits had a monetary value to Sergeant Spice because he is entitled, upon leaving the Service, to cash out up to 195 days of banked sick leave.

Following the meeting Mr. Lamothe had further discussions with the Employer and in February, 2013 a Final Offer was received which provided as follows:

WHEREAS following a series of workplace incidents Sergeant David Spicer was off on accumulated sick leave for the period commencing on January 16, 2012 and ending on May 30, 2012;

WHEREAS Sergeant Spicer filed a workplace complaint dated January 18, 2012;

WHEREAS as part of the resolution to his workplace complaint, Sergeant Spicer has requested:

- i the return of sick leave utilized in the above stated period and in an email entitled "options" and dated February 4, 2012, that:
- ii the Service allow him to retire in 2013 with 30 years of Service on his record (Sergeant Spicer has presently acquired 25 years of Service);
- iii the Chief create and assign him to a second Staff Sergeant position in the Intelligence Section and assign him to this position;
- iv that the Chief create and assign him to a covert position in the Professional Standards section; or
- v that the Chief set aside the current tenure Policy and assign him to the position of Staff Sergeant East District HNO;

AND WHEREAS the Service has duly considered these requests:

The parties agree, on a without precedent or prejudice basis, to the following terms and conditions:

1. The Service shall reinstate all sick leave used by Sergeant Spicer for the period of January 16, 2012 to May 30, 2012;
2. The Service acknowledges that Sergeant Spicer does not agree with specified areas of his 2011 Performance Review. This Review stands as amended and Sergeant Spicer's documented comments shall be attached for the record and shall form part of his Review.
3. The 2012-2013 performance review period for Sergeant Spicer shall commence on October 1st, 2012 and end on September 30th, 2013;
4. While the Service acknowledges that it has not addressed all issues raised in the workplace complaint to Sergeant Spicer's satisfaction, the parties agree that this Agreement serves as full and final resolution of the incidents raised in said complaint;

5. The parties agree that this Agreement is in no way an acknowledgement or admission of liability or any wrongdoing on the part of the Service;
6. The Chief shall provide Sergeant Spicer with a personal letter in response to his experience;
7. Sergeant Spicer agrees and acknowledges that he has received advice and guidance from the Association and that he has had an opportunity to fully consider and come to an understanding of this agreement and that he has executed it voluntarily; and
8. The terms of Agreement are strictly confidential and shall not be raised in any future proceeding whosoever, save an except to enforce the terms herein.

Sergeant Spicer was not satisfied with the proposed settlement. He wrote an e-mail to the Association dated February 20, 2013 which sets out his reasons for not signing and which provided in part as follows:

...My understanding is that the arbitrator would listen to the two submissions, and witnesses, and judge on the merits of the cases presented and would rule one way or the other.

My point is that when the arbitrator rules in our favor, and I truly believe he/she will, that that decision alone, with no other recommendation would indicate that the Service was in the wrong to have done what they did. The arbitrator does not have to say they were wrong, but deciding in our favor, coupled with the fact that the Service will say that management has the right to manage as the basis of their argument automatically means they were wrong in doing what they did.

Thus the huge long term benefit to our membership. Our membership must feel that they have a say when faced with punitive, inappropriate or arbitrary actions taken by management. Our case will ensure they know that their Association has their back and will fight management for such arbitrary actions....

On March 16, 2013 Mr. Matt Skopf forward by email to Sergeant Spicer the decision of the Grievance Committee which provided as follows:

The Grievance Committee has reviewed your request for Arbitration in this matter. The committee has taken into the account all the facts surrounding this case and will not approve this arbitration for the following reasons:

- You were returned to your substantive position Intel.
- The OPS investigated your complaint
- The Minutes of Settlement offered included the return of your sick leave, return of your tenure time, your comments were added to PRP and a personal letter from the Chief.

The Grievance Committee used the following to further assist in their decision:

- A review by our legal counsel, who recommends accepting the Minutes of Settlement offered by the OPS.
- The committee reviewed the legal opinion and reviewed the case again.

Based on the experience of our legal counsel it was his feeling that at Arbitration, if successful, you would not be offered or provided anymore benefits than were already offered in the Minutes of Settlement.

Respectfully submitted,

Patrick Laflamme

Chair-Grievance Committee

Mr. Lamothe testified that at all times he endeavored to advance the file and he believed the Association did well in achieving the deal it did.

Mr. Mathew Skopf testified that he was elected President of the Association in December, 2011. At that time one of two labor relations officers was on long term disability. He stated that he received an e-mail from Sergeant Spicer and subsequently met with Sergeant Spicer to discuss the situation and he indicated that Mr. Lamothe would be taking over the file.

Mr. Skopf indicated that he was present when Sergeant Spicer met with the Grievance Committee. He stated that Mr. Lamothe summarized the case, reviewed the legal opinion from Mr. Rootham, and the various draft Memorandum of Understandings from the Police Service. He stated that there were no additional requests from Sergeant Spicer and he believed the Memorandum of Settlement to be a good offer.

Mr. Skopf stated that the Police Service has the power to transfer officers as long as the transfer is not punitive and indicated that in 2012 there had been approximately 402 temporary transfers.

Mr. Skopf testified that he made inquiries as to why Sergeant Spicer had been removed from the Street Check Distribution List and in an e-mail dated April 27, 2012 advised Sergeant Spicer as follows:

Hello Dave. So, I made some enquiries and I have been advised that it was a Health, Safety and Lifestyles decision to eliminate the stressors of the job (i.e. Intel issues) until your return date. I advised LR that it could be a benefit to have you hit the ground running (so to speak) when you know of a specific return time and then they could get you back on the Intel Street Check distribution list ahead of time....

Mr. Rick Laflamme testified that he has been a member of the Ottawa Police Service since 1999 and in 2012/13 was the Chair of the Association's Grievance Committee. He stated that the practice was for the Committee to get the results of the investigation and to make a decision. He stated that, with respect to Sergeant Spicer's grievance, the Committee did not feel that going forward would achieve anything further than the deal offered and did not believe that taking the grievance to arbitration would benefit the entire membership.

Mr. Laflamme stated that at the meeting Sergeant Spicer did not make reference to any missing documents, and did not make reference to any remedies other than those discussed in the Memoranda of Settlement.

SUBMISSIONS OF THE PARTIES

Sergeant Spicer asserted that the Ottawa Police Association breached its duty of fair representation because it would not take his grievance, concerning his transfer from the Intelligence Unit, to arbitration.

In his submission Sergeant Spicer asserted that the Association did not investigate his grievance with respect to his transfer from the Intelligence Unit, did not investigate his allegations that he was denied promotional opportunities, and did not investigate the circumstances surrounding his 2011 performance evaluation or the circumstances surrounding his removal from the Street Check Distribution List.

Sergeant Spicer referred to the elements of the duty of fair representation as discussed at page 527 of the decision of the Supreme Court of Canada in *Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 S.C.R. 509 as follows:

1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.
2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.
3. This discretion must be exercised in good faith, objectively and honestly, after a study of the grievance and the case, taking into account

the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.

4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.
5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.

Reference was also made by Sergeant Spicer to the decision in *Cadioux and ATU, Local 1415*, 2012 CIRB 656 where the Canada Industrial Relations Board reviewed its jurisprudence concerning duty of fair representation complaints as follows:

[11] The Board recently reviewed the scope of a DFR complaint in *Lamolinaire*, 2009 CIRB 463 (*Lamolinaire*):

[30] The law surrounding the duty of fair representation is straightforward. The Board does not sit in appeal of the numerous decisions made by a union in assessing a matter, as that work is part and parcel of the union's power of exclusive representation of the bargaining unit conferred on it when it is granted certification.

[31] One of the union's duties as exclusive representative is to make discretionary decisions.

[32] Generally speaking, the Board respects the decisions made by the unions.

[33] However, the Board does have an important duty to perform under section 37 of the Code. Along with the exclusive power conferred on a union to represent a bargaining unit comes a prohibition against the union acting in a manner that is arbitrary, discriminatory or in bad faith in the representation of the employees in the unit with respect to their rights under the collective agreement.

[34] The Board must therefore closely examine the matter and the procedure followed by a union, to ensure that the union did not act in a manner that was arbitrary, discriminatory or in bad faith.

[35] In Ronald Schiller, 2009 CIRB 435, a recent decision in which the Board considered the investigation conducted by the union, the Board stated the following:

[33] A union also cannot act arbitrarily by only superficially considering the facts or merits of a case. It would be arbitrary not to investigate and discover the circumstances surrounding the grievance or to fail to make a reasonable assessment of the case.

[34] Union officials can make honest mistakes in the sense that they may wrongly assess a grievance but still not act arbitrarily. As the Board stated at paragraph 37 in *Virginia McRae Jackson et al.*, supra:

[37] Accordingly, the Board will normally find that the union has fulfilled its duty of fair representation responsibility if: a) it investigated the grievance, obtained full details of the case, including the employee's side of the story; b) it put its mind to the merits of the claim; c) it made a reasoned judgment about the outcome of the grievance, and d) it advised the employee of the reasons for its decision not to pursue the grievance or refer it to arbitration

[35] In short the Board examines the trade union's process in order to determine whether it acted in an arbitrary, discriminatory or bad faith manner.

[36] Given that a member of a bargaining unit generally does not have an absolute right to have a grievance referred to arbitration, the Board must consider, among other things, the following questions in regard to an investigation conducted by a union:

1. Did the union conduct only a perfunctory or cursory inquiry, or a thorough one?
2. Did the union gather sufficient information to arrive at a sound decision?"
3. Were there any personality conflicts or other bad relations that might have affected the soundness of the union's decision?...

Sergeant Spicer also made reference to the decisions in *Noel v. Societe d'energie de la Baie James* [2001] 2 S.C.R. 207, *Virginia McRae Jackson et. al.* CIRB Decision No. 290

October, 2004, Mr. G., CIRB Decision No. 399 December, 2007, *Schiller and CAW-Canada* CIRB Decision no. 435 January, 2009; Lemi and CAAW-Canada, CIRB Decision, no. 24 July, 1999; and *Baribeau and CUPW*, CIRB Decision no. 302 December, 2004.

The Association denied it breached its duty of fair representation. Both Mr. Skopf, the Association President, and Mr. Lamothe, the Labour Relations Officer handling the matter on behalf of the Association, testified that they agreed with Sergeant Spicer that the Police Service had acted improperly when it transferred him from the Intelligence Unit, but that the settlement offered by the Police Service was a reasonable settlement of his complaint.

The Association referred to the decision in *Christopher Shaw and Windsor Police Association*, June 2, 2014 (I.R. Mackenzie) where at paragraph 45 the Board noted the following definitions.

45 In *Switzer v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)*, [1997] O.L.R.D. No.2605 (cited in *LaFrance. North Bay Police Association*), the Ontario Labour Relations Board provided the following definitions (at paragraph 37):

- (a) "arbitrary" means conduct which is capricious, implausible, or unreasonable, often demonstrated by a consideration of irrelevant factors or a failure to consider all relevant factors;
- (b) "discriminatory" is broadly defined to include situations in which a trade union distinguishes between or treats employees differently without a cogent reason or labour relations basis for doing so;
- (c) "bad faith" refers to conduct motivated by hostility, malice, ill-will, dishonesty, or improper motivation.

The Association also referred to the decisions in *Judd v. C.U.P.E. Local 2000* [2003] B.C.R.B.D. No. 63, and *McLeod v. Camco Inc.* [1987] O.L.R.B. Rep. 547.

DECISION

It appears that Sergeant Spicer had a number of different, and perhaps inter-related complaints. First, he was concerned that an officer was allowed to take his police car home. He brought this matter to the attention of the Chief. He was concerned that he was denied training to assist with promotional opportunities. He was also concerned that he had been abused by Staff Sergeant Ladouceur and believed the matter was not properly investigated by the Police Service. He felt Chief Bordeleau's letter of August 3, 2012 was inaccurate and that the Association did not investigate further. He felt that the Association did not investigate the issues surrounding his 2011 performance review. He believed he had been improperly transferred from the Intelligence Unit.

In his evidence and in his submissions Sergeant Spicer repeatedly insisted that the Association did not investigate his complaints, the single most important complaint being that he had been improperly transferred from the Intelligence Unit. In my view little investigation was required by the Association concerning this matter. It accepted Sergeant Spicer's version of the facts, and agreed that he had been improperly removed from the Intelligence Unit, and the Association sought a remedy on his behalf. An Association's duty to investigate does not always involve the kind of investigation envisaged by Sergeant Spicer, with the collection of evidence including the interviewing of witnesses and the gathering of other relevant information.

The nature and scope of an investigation into an issue turns to a large extent on the context of the complaint and should involve gathering sufficient information to be able to make an informed decision about how to proceed. In this case, with respect to the substantive issue brought forward by the Complainant regarding his removal from the Intelligence Unit, the Complainant provided significant information and this information was accepted by the Association as being accurate and the Association proceeded to discuss the issue with the Police Services Board in an effort to find a resolution.

Sergeant Spicer submitted that the Association's Grievance Committee did not understand his grievance believing that he was grieving the behavior of Staff Sergeant Ladoucer rather than grieving his removal from the Intelligence Unit. Sergeant Spicer was present when the Grievance Committee considered his grievance and could have corrected any misunderstandings at that time, and upon receipt of the Grievance Committee's decision, Sergeant Spicer could have approached the Union again if he believed that the Committee misunderstood the nature of his grievance. In my view the Grievance Committee had sufficient understanding of the grievance to make an informed decision.

In his submissions Sergeant Spicer made numerous references to errors made by the Association such as not providing the Grievance Committee with written submissions concerning the history of his grievance, or that Mr. Lamothe did not keep accurate notes regarding the various meetings he went to where his grievances were discussed or that the Association's witnesses in this proceeding were unreliable because they did not have notes, or because they made allegedly contradictory statements. I find that all of the Association's witnesses gave their evidence in a straightforward and truthful manner

and to the extent that there are discrepancies, they are minor in nature and do not impact on the matters being determined in this proceeding.

There were numerous drafts of proposed Memoranda of Settlements, and the Complainant was consulted throughout the process, and it appears from the drafts that the issues and remedies being discussed were those raised by Sergeant Spicer. At the hearing Sergeant Spicer made it clear that he was not prepared to sign a settlement document, the terms of which were to remain confidential, as he believed that he would be successful in the arbitration. In his view this success would be a message to other police officers that the Ottawa Police Service had acted improperly and that this would act as a deterrent to other managers not to behave in a similar fashion, and would be an incentive to other police officers to come forward when they were being mistreated.

An allegation of a breach of the Association's duty of fair representation is not an opportunity to consider the merits of the grievance per se and as such is not an inquiry into the behaviour of the Police Service with respect to Sergeant Spicer's complaint of an improper transfer. Rather, it is an inquiry into the behaviour of the Association and whether it breached its duty to represent Sergeant Spicer fairly as discussed in the jurisprudence to which I was referred.

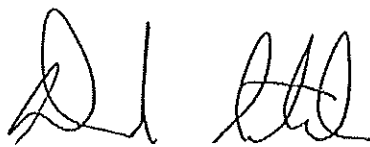
In this matter Sergeant Spicer requested assistance from the Association with respect to his removal from the Intelligence Unit. In my view, the Association understood his complaint, communicated with him on numerous occasions concerning his complaint and over time negotiated a settlement of the grievance.

Sergeant Spicer gave evidence that the Association did not like him because of his years in the Professional Standards Section. This Board heard no direct evidence concerning the specifics of these matters, and in such circumstances, I cannot conclude that the Association's decision not to refer his grievance to arbitration was motivated by personal animosity, or other improper considerations.

The onus is on the Complainant to prove a breach of the Association's duty of fair representation. There was nothing in the considerable evidence presented by Sergeant Spicer which satisfies me that the Association treated him unfairly or in a manner that can be described as arbitrary, discriminatory, or in bad faith. Sergeant Spicer believed that, despite the settlement offers, it would be of benefit to the Association membership to take his grievance to arbitration. The Association's Executive and the Grievance Committee did not share this conclusion and declined to refer the grievance to arbitration. That is a decision the Association was entitled to make.

Therefore, having considered all of the circumstances, I have concluded that the Association did not breach its duty of fair representation and Sergeant Spicer's complaint is therefore dismissed.

Dated at Maberly, Ontario this 11th day of May, 2015

A handwritten signature in black ink, appearing to read 'David K.L. Starkman', written over a horizontal line.

David K.L. Starkman

