

**CITATION:** Merrifield v. The Attorney General, 2017 ONSC 1333  
**COURT FILE NO.:** CV-13-00333733-000T  
**DATE:** 20170228

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
PETER MERRIFIELD )  
)  
Plaintiff ) Ms. L. Young and Mr. J. Phillips, Counsel  
) for the Plaintiff  
)  
- and - )  
)  
)  
)  
THE ATTORNEY GENERAL OF )  
CANADA, INSPECTOR JAMES JAGOE, )  
SUPERINTENDENT MARC PROULX ) Mr. S. Gaudet, Mr. J. Gorham, Mr. A. Law,  
) Counsel for the Defendant  
Defendant )  
)  
)  
)  
) **HEARD:** November 17 to 21, 24-28,  
) December 1 to 4, 2014, May 19, 20, 21, 22,  
) 25, 26, 27, 29, June 1, 2, 3, 4, 5, November  
) 16, 17, 18, 19, 20, 30, December 1, 2, 3, 4,  
) 2015, March 30, 31, April 1, 2016

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## **REASONS FOR DECISION**

### **VALLEE J.**

#### **Introduction**

- [1] Peter Merrifield<sup>1</sup> joined the Royal Canadian Mounted Police in 1998 and continues to serve as a member. He alleges that after he participated in a Barrie nomination meeting for the Progressive Conservative Party in 2005, his superiors made certain unjustified and unwarranted decisions about him based on allegations that had no merit. He was investigated and punitively transferred. His reputation was tarnished. He was not permitted to work during a national security emergency because his superior officers believed he was “not the appropriate resource.” Mr. Merrifield states that he was accused of committing criminal offences and subjected to an internal investigation which was groundless. He states that his superiors harassed and bullied him. They damaged his reputation, impaired his career advancement, and caused him to suffer severe emotional distress including depression. As a result, he was off work for significant periods of time. Mr. Merrifield states that his superiors intentionally caused him emotional distress or had a reckless disregard for causing him to suffer emotional distress. Mr. Merrifield claims damages for harassment, intentional infliction of mental suffering, loss of income and general damages, among other things.
- [2] The Attorney General, on behalf of the RCMP, states that Mr. Merrifield violated the *Royal Canadian Mounted Police Regulations 1988, SOR/88-361*; however, he was never formally disciplined for any of the matters raised in this action. None of the decisions made by his superiors nor their actions taken constitute harassment or intentional infliction of mental suffering. Mr. Merrifield is a well-respected member of the RCMP. He is regarded as a very skilled officer and an asset to the organization. His superiors were entitled to make their decisions. He was not treated inappropriately. Mr. Merrifield’s career has not been impacted. He has been promoted twice and is now a Sergeant. His compensation has increased. He is a valued and respected member of the Force.

#### **Issues**

1. Should the statement of defence be struck for late disclosure?
2. In Ontario, is harassment recognized as a tort upon which a civil cause of action may be based?
3. If it is, do the actions taken by the RCMP regarding Mr. Merrifield constitute harassment?
4. Do the actions of the RCMP constitute a breach of Mr. Merrifield’s rights under the *Canadian Charter of Rights and Freedoms*?

5. Has the RCMP breached a contract of employment with Mr. Merrifield?
  6. Do the actions of the RCMP regarding Mr. Merrifield constitute abuse of public office?
  7. Do the actions of the RCMP regarding Mr. Merrifield constitute intentional infliction of mental suffering?
  8. Does the RCMP have a fiduciary duty to Mr. Merrifield? If so, do its actions constitute a breach of fiduciary duty?
  9. Has Mr. Merrifield suffered a loss of income related to the actions taken by the RCMP? If so, what amount should be awarded to Mr. Merrifield for his loss of income?
  10. If Mr. Merrifield is entitled to general damages, what amount should be awarded to him?
  11. Is Mr. Merrifield is entitled to punitive and or aggravated damages? If so, what amount should be awarded?
- [3] To properly consider these issues, a review of Mr. Merrifield's career with the RCMP and the various decisions made by his superiors is required.<sup>ii</sup>
- [4] Mr. Merrifield's first posting was the Wynyard Detachment in central Saskatchewan. In January 2002, he was transferred to Ontario. He successfully applied to the Air Marshall program in April, 2002. The program was set up in response to the terrorist attacks in the United States on September 11, 2001. As an Air Marshall, Mr. Merrifield's duties were to operate covertly as a passenger on aircraft in order to provide security and respond to any potential terrorist situations. In the same year, Mr. Merrifield joined the Mounted Police Association (MPA). It provides representation to members experiencing issues with management.
- [5] In November 2003, Mr. Merrifield had a performance evaluation. It covered the time from his arrival in the Air Marshall unit up to November 2003. The evaluation was very positive. It stated:
- Constable Merrifield has designed and prepared lectures on CACPP [Canadian Air Carrier Protection Program] and presented to outside agencies, and has been involved in designing and presenting APO [Aircraft Protective Officers] training program of tactical skills to seconded members, he planned and prepared in-service training terrorism lectures for APO Unit.
- Cst Merrifield is a highly motivated, confident member who is an asset to this program. Cst. Merrifield is a team player and is a



value added member to the program. His enthusiasm, dedication, commitment to duty has [sic] a positive influence on others and this along with his positive attitude, out going [sic] personality will serve him well in his future endeavours. A pleasure to have this member in the program.

- [6] Mr. Merrifield enjoyed public speaking. His superior, Insp. Josey supported his speaking engagements and interest in national security work.

### **Leave Without Pay**

- [7] Mr. Merrifield had been interested in politics since the 1980s. At that time, he was the co-founder of a Liberal youth riding association. He became involved in politics again in 2004. No member of the RCMP had ever run for political office; however, the RCMP had applicable rules and policies if a member wanted to do so.

- [8] Early in 2004, Mr. Merrifield explored running in a nomination meeting<sup>iii</sup> to be held in the York-Simcoe riding. He downloaded the paperwork two weeks before the application deadline.

- [9] Mr. Merrifield requested guidance and direction regarding the RCMP's policies and process from the Policy Center. On February 3, 2004, he exchanged emails with Sgt. Wendy Verecchia, (Advisor, Harassment, Human Rights, Conflicts of Issue, Central Region). She advised him that she thought he would need to be placed on leave without pay ("LWOP") and that she would contact Policy Center to confirm.

- [10] Section 58.4(1) of the *Royal Canadian Mounted Police Regulations* SOR/88 – 361 states that:

A member who is a peace officer may, only while on leave without pay granted for that purpose, (a) run for nomination or stand as a candidate in a federal...election"

- [11] The March 19, 1999 Administrative Manual states in section F.4 that:

LWOP ensures separation between the member and the RCMP: consequently, annual leave, RTO [regular time off] and LTO [lieu time off] cannot be used for political activities when LWOP is warranted.

- [12] Mr. Merrifield sent a memo to Insp. Josey, requesting LWOP to participate in political activities on February 11, 2004 and March 31, 2004. March 31, 2004 was the date for another nomination meeting to be held in Richmond Hill. Mr. Merrifield stated that this memo was actually back-dated. It was prepared after the first nomination meeting because Sgt. Verecchia's memo dated February 11, 2004 was attached to it.

- [13] Cpl. DuPuy, who was an operations support officer, filled out the forms for Mr. Merrifield to apply for LWOP. A transfer authorization, form A-22A, was required to change his status to LWOP.
- [14] Mr. Merrifield requested one day of LWOP. The completed forms indicated only LWOP, not any particular type. Mr. Merrifield was directed to put “personal needs” LWOP on the form. He did not know at the time when he completed the forms that he could take only two personal needs LWOPs in his career. Due to time constraints, the LWOP for Mr. Merrifield to participate as a candidate in the York-Simcoe nomination meeting was actually requested and granted after the nomination was held.
- [15] Sgt. Verecchia received a formal response from the Policy Center. She sent an email to Mr. Merrifield dated February 11, 2004 which stated, “while running for nomination, a member must be on LWOP but once the nomination process is completed and the electoral campaigning has not begun, the member may return to his usual employment. When the member stands as a candidate in an election, LWOP would have to be taken again.” Mr. Merrifield interpreted “while running for nomination” to mean the date of the nomination meeting.
- [16] After February 11, 2004, Mr. Merrifield prepared paperwork to run in a number of other ridings, which included York-Simcoe, Richmond Hill and Mississauga-Brampton-South. He stated that all of his paperwork was submitted between February 11, 2004 and March 31, 2004. After that, the PC Regional Co-ordinator approached him and advised against using this shot gun approach to secure a nomination.
- [17] Mr. Merrifield participated as a candidate in the nomination meeting for York-Simcoe on February 11, 2004. He did not make any efforts in advance to be nominated. He simply attended the meeting. Accordingly, he was not successful in obtaining the nomination. Mr. Merrifield participated in this nomination meeting without proper approval (which came after the fact) because he decided to run on short notice; however, he stated that he did so but with full knowledge of the RCMP. He stated that he obtained informal approval from Insp. Josey to attend.
- [18] At the end of the meeting, he was approached to run as a candidate at the Richmond Hill’s riding’s nomination meeting.
- [19] Mr. Merrifield then attempted to withdraw his papers relating to the other nomination meetings; however, it was too late to withdraw from the Mississauga-Brampton-South nomination meeting. He did not request LWOP to attend this meeting. He stated that he spoke with Cpl. DuPuy who advised that he should submit the paperwork for two nomination meetings, being York-Simcoe and Richmond Hill, even though he had attended more than two, and that would be enough.
- [20] On March 13, 2004, Mr. Merrifield attended the nomination meeting for Mississauga-Brampton-South. He stated that he attended as a courtesy. The ballots had been printed and he did not want to be a “no show”.

- [21] Mr. Merrifield requested LWOP for the Richmond Hill nomination meeting and the related election period at the same time that he requested LWOP for the York-Simcoe nomination meeting. No election date had been set yet. Mr. Merrifield's application for these LWOPs was granted.
- [22] On March 31, 2004, Mr. Merrifield participated as a candidate in the nomination meeting for Richmond Hill and was successful. He sent a memo to Insp. Josey dated May 5, 2004 requesting LWOP to run in the upcoming election. He included a partially completed form A-22A because the election date had not yet been set.
- [23] On the same day, Insp. Josey sent a memo to the Assistant Commissioner for "O" Division, Bradley Holman, stating that the request for LWOP was not processed in timely fashion because of time constraints. He stated, "I am submitting it to you for review and favourable consideration."
- [24] On May 13, 2004, Sgt. Steven Boos, Advisor to the Career Development and Resourcing Unit (CDR), called Mr. Merrifield to discuss the rules for fundraising. He advised that LWOP would be required for active campaigning and attending meetings as a candidate. Two days later, Mr. Merrifield received LWOP approval for the election.
- [25] Sgt. Boos sent an email to Insp. Josey on May 18, 2004 discussing the two LWOP dates, February 11, 2004 (for the York-Simcoe nomination meeting) and March 31, 2004 (for the Richmond Hill nomination meeting). The email states that transfer authorizations were issued for these dates and it requests transfer authorizations be prepared showing Mr. Merrifield going on "personal needs" LWOP for these dates. The two transfer authorizations showing just "leave without pay" were attached.
- [26] Mr. Merrifield stated that from May to June 2004, he campaigned for the election. He had a campaign manager, a support team and campaign materials. They set out his rank and work experience which was permitted according to s. 57(2) of the *RCMP Regulations*, as set out in X.2 of the Administrative Manual. It states that a member who is running for nomination or standing as a candidate in a federal election, may for identification purposes, disclose his or her rank, level and work experience in the force. He ran in the federal election which was held on June 28, 2004 but he was not elected. None of his superiors had any concerns regarding his campaign materials.
- [27] After the election, Mr. Merrifield returned to work as an Air Marshall. He was very interested in terrorism. As a result, he developed other areas of work in addition to just doing his job as an Air Marshall. He gathered open source intelligence on terrorism and did some restricted outside speaking engagements which he enjoyed.
- [28] Subsequently, there was a lot of confusion regarding Mr. Merrifield's LWOPs. On June 30 2004, Sgt. Sergeant, RCMP Policy Analyst Human Resources, sent an email directing Cathy Jenion, District Manager for London, Central Region Compensation Services, to re-identify the three "personal needs" LWOP to "special leave without pay." Sgt.

Verecchia had stated that Mr. Merrifield's leaves were to be shown as regular LWOP but no such type of leave was identified in the HRMIS program for members.<sup>iv</sup>

- [29] Mr. Merrifield stated that he did not know why the three personal needs LWOPs were shown or why they were re-coded to special LWOP. These decisions were made at the policy level. He never received a copy of this email during the course of his employment. In July 2004, he understood from a conversation with Sgt. Boos that he was entitled to only two personal needs LWOPs in his career. He thought he had used both of them.
- [30] Mr. Merrifield stated that sometime between July and the end of September, Sgt. Boos called him and said that he had good news. Only one LWOP was being used for the election so he could run again because he still had one LWOP remaining. Mr. Merrifield stated that, at this point, he understood that LWOPs had not been used and were not required for nomination meetings.
- [31] Cpl. DuPuy recalled that between January and June 2004, Mr. Merrifield approached him and Insp. Josey about needing LWOP because he had political ambitions. He recalled that they contacted Sgt. Verecchia and Sgt. Boos and sought their guidance as to what to do and how the process worked. Cpl. DuPuy stated that all of this was new to him. Insp. Josey directed him to look into it, see what was required and make sure it was done. He stated that he knew Mr. Merrifield was attempting to get a nomination for the PC party.
- [32] Cpl. DuPuy knew that Mr. Merrifield needed LWOP to run for a nomination. He contacted Sgt. Verecchia prior to preparing the documents. He knew that Mr. Merrifield had run at another nomination meeting but could not recall which riding.
- [33] Cpl. DuPuy was familiar with transfer reports. If a person's duties changed, these had to be filled out. He had never prepared a LWOP application for political reasons. He completed one for Mr. Merrifield which stated "LWOP – Personal Needs". He signed the document dated January 11, 2004 because at that time he was acting for Insp. Josey.
- [34] Later, Cpl. DuPuy learned that an Inspector could not sign the form. LWOP had to be requested from the Commanding Officer (C.O.). This meant that the forms had to be redone, backdated and resubmitted.
- [35] Cpl. DuPuy stated that Mr. Merrifield was quite helpful. He did not conceal his political activities and in fact was very open about them. He wanted to do everything properly. He still wanted to be employed by the RCMP if he was not elected. It was in his interest to make sure everything was done right.
- [36] Sgt. Verecchia was responsible for coordinating harassment complaints and providing human resource advice to the members in 2004. On February 3, 2004, she received an email from Mr. Merrifield requesting conflict of interest advice. He wanted to run for political office and was seeking clarification on exactly what the regulations and policies stated.

- [37] Sgt. Verecchia stated that ss. 56 to 58(7) of the *RCMP Regulations* cover political activities, when members need LWOP and how they are to act. She looked up the regulations and responded to Mr. Merrifield with her interpretation. She sent him an email stating that because he was presenting himself for nomination to eventually run in a federal election, the policy stated that he must be on LWOP to run for the nomination. A member could not be on annual leave or regular time off for this purpose. The LWOP would be continuous and without pay. In the case of the nomination process, it would begin on the day he entered the process and end on the day he withdrew or the process was concluded. Sgt. Verecchia sent a request to the Policy Branch, for their interpretation. The Policy Branch's interpretation was the same as hers. A member cannot voice his or her political opinion or solicit support while working for the RCMP. There has to be a separation.
- [38] Part of Sgt. Boos' responsibilities was the administration of LWOP policies. As part of the protocol, he would interview a member requesting LWOP to ensure that the member was fully aware of the conditions. He stated that LWOP is a separation of the member's employment from RCMP. Even though the member is separated, the member still has obligations with respect to conduct. A member had to be fully advised of conditions regarding other employment.
- [39] Sgt. Boos' general understanding of LWOP with respect to political activities was that LWOP was required for nomination, soliciting funds, the actual period of campaigning and running in the election. Sgt. Boos explained that in 2004, there were six kinds of LWOP. Two were potentially applicable to Mr. Merrifield. Personal needs LWOP could be granted for two periods during a member's career for a specific cumulative length. Special LWOP required exceptional circumstances and it had to be in the best interests of the RCMP. There were no conditions regarding the number of times that special LWOP could be taken. The C.O. of a division was the person who had authority to approve LWOP.
- [40] Sgt. Boos explained that his responsibility was to identify the type of leave that Mr. Merrifield required and then to make a recommendation to the C.O. for approval. If a member wanted LWOP, he would submit a request through his Line Officer (immediate superior) setting out the need for it. It would come to Sgt. Boos' department. A staffing interview would be conducted to advise the member of the LWOP conditions followed by a recommendation to the Officer in Charge (OIC) of CDR, who was his superior. The OIC would then forward the recommendations to the C.O. for approval or denial of LWOP. If it was approved, the recommendation would come back. The OIC of CDR could authorize a transfer notice. Once it was issued, it would be distributed to various sections involved. One would be the Compensation Branch so that they could stop payment of the member's salary and physically separate the member from the organization. The transfer notice would also be sent to the member's Line Officer.
- [41] Sgt. Boos stated that he had a telephone discussion with Insp. Josey. They discussed that there had been a previous occasion when Mr. Merrifield had stood for nomination as a federal election candidate. Sgt. Verecchia had provided direction with respect to LWOP

on the same day as the nomination meeting. There was not enough time to go through the full LWOP application process.

- [42] Sgt. Boos noted that Sgt. Verecchia said that “regular” LWOP was required. In fact there is no such thing as regular LWOP.
- [43] Sgt. Boos looked through the six types of LWOP. He stated that only two potentially applied to Mr. Merrifield, being personal needs LWOP and special LWOP. He explained that special LWOP is for exceptional circumstances. He did not consider Mr. Merrifield’s running as a candidate to be an exceptional circumstance. He thought exceptional circumstances would be a death in the family or something beyond the member’s control. Special LWOP had to be in the best interests of the RCMP. Sgt. Boos acknowledged that he did not have training regarding interpretation of policy. He had no previous experience with personal needs or special LWOP. This was the one and only political leave that he ever had to deal with.
- [44] Sgt. Boos stated that he had a formal interview with Mr. Merrifield to explain LWOP to him. Prior to this time, Mr. Merrifield did not know that personal needs LWOP was limited to two terms. Mr. Merrifield provided information as to what constituted campaigning and what did not. He described what he thought he could do without LWOP. Sgt. Boos described when LWOP was required. He described the nature of personal needs LWOP. A member could take it two times in his career up to a period of 15 months cumulative. Mr. Merrifield said he would need 35 to 40 days of leave for the election. They discussed some possible start dates. The election call was expected in the very near future. Since LWOP was subject to approval by the C.O., Sgt. Boos told Mr. Merrifield that he would make the recommendation to go forward with LWOP. Sgt. Boos stated that he went through the policy line by line with Mr. Merrifield. He said the election could be called on Sunday May 23, 2004. Monday May 24th was a holiday. The party wanted him to start campaigning on May 25th. Mr. Merrifield agreed to call and let Sgt. Boos know as soon as he learned that the election had been called. Mr. Merrifield would also call his OIC. A system would be put in place where theoretical approval would be obtained and then Mr. Merrifield could be on LWOP before the documents were actually signed.
- [45] Sgt. Boos made a note of this discussion and spoke to Insp. Josey the next day. They discussed the first two occasions when Mr. Merrifield sought nomination without LWOP. Insp. Josey was going to deal directly with the C.O. They decided that the two days when Mr. Merrifield should have had LWOP would be considered one day.
- [46] On May 18, 2004 when he had the approval from the C.O., Sgt. Boos sent an email to Insp. Josey with a copy to Mr. Merrifield. He provided his work cell and personal home number. He was working diligently to make LWOP in two periods work. Sgt. Boos’ strategy was to consider the earlier two days to be one first request for LWOP, even though they were not continuous, and the election period to be the second request for LWOP. He prepared the transfer authorizations and submitted them.

- [47] One of the transfer documents shows Mr. Merrifield's transfer from the Air Marshalls to LWOP. At the bottom of the form it says, "personal needs without pay – no relocation expenses." The implementation date was to be May 22, 2004. Sgt. Boos learned that the first two requests, being the request to consider two non-consecutive days as one request for LWOP, had been approved by C.O. Holman on May 17, 2004. Sgt Boos advised Mr. Merrifield that the LWOP for the electoral period had also been approved by the C.O.
- [48] Sgt. Boos explained that when Mr. Merrifield did not have LWOP, steps were taken to retroactively approve LWOP for the two dates, February 11 and March 30, 2004, and to stop Mr. Merrifield's pay for them. The LWOP was put into effect.
- [49] After the two personal needs LWOPs were granted, Sgt. Boos reflected on the situation and began to wonder whether personal needs LWOP was the right type of LWOP to use. He did not share this concern with Mr. Merrifield. Upon making an inquiry on June 23, 2004, he learned that the compensation department was having some difficulty with the fact that there were three time periods that had to be coded to personal needs but the system only allowed for two. This issue was addressed by re-coding the two personal needs LWOPs to three special LWOPs. Since a special LWOP had no restrictions with respect to the cumulative length or number of approved requests, it appeared to be a better fit when LWOP was required for three dates. Sgt. Boos learned about this re-coding in an email but he did not forward it to Mr. Merrifield.
- [50] Sgt. Boos recalled that he had a conversation with Mr. Merrifield following the election, after Mr. Merrifield returned to work. He could not recall where the conversation occurred and whether it was in person or over the phone. He advised Mr. Merrifield that the LWOPS were re-coded to special LWOPs so the two personal needs LWOPs remained for future use. He stated that this was the only conversation that he had with Mr. Merrifield about the re-coding. He could not find any notes or documents with respect to this conversation.
- [51] Mr. Seguin was the C.O. of "O" Division. He retired from the RCMP on March 31, 2008. He testified that he became the C.O. of "O" Division beginning on October 12, 2004. He was aware of the regulations governing participation in political activities. He understood that members could participate but they had to apply for a leave during campaigns. Requirements with respect to running for nomination in a party were also included in the regulations. Mr. Seguin was familiar with the Administrative Manual and appendix 12.12 regarding the leave requirements. The C.O. had to approve requests for LWOP.
- [52] The Administrative Manual states that LWOP can be approved for education, spousal relocation, care of pre-school children and personal needs. With respect to special LWOP, in contrast to personal needs LWOP, it was granted for exceptional circumstances. Furthermore, the Division had to be in a position to allow someone to go on leave without impact on its operations. Mr. Seguin did not receive an application from Mr. Merrifield for LWOP to run for a political party, either for special LWOP or

personal needs LWOP. In his term as C.O., he never received a request by a member for LWOP for political activities.

- [53] Mr. Seguin became aware at some point that Mr. Merrifield had run in the 2004 election for the Conservative Party. He understood that Mr. Merrifield had applied for LWOP and had received it for the election.
- [54] Mr. Merrifield had another performance evaluation for the period February 2004 to October 2004. This covered the time when he was participating in political activities. Some excerpts are as follows:

As a member of this unit who is particularly passionate about counter-terrorism, Cst. Merrifield took the initiative to provide instructional lectures to the Peel Regional Police Airport Division via their training section. These lectures included topics such as The History of Aviation and Airport Terrorism and an authorized explanation of the Canadian Air Carrier Protection Program...

Cst. Merrifield recognizes the importance of keeping abreast of terrorist trends, profiles and recent intelligence. He is very passionate about this issue and in addition to reviewing all of the intelligence information that is forwarded to our office from various agencies, he researches and seeks out materials related to terrorism. He also readily shares this information with other members of the unit and applies it to his work on a daily basis...

Cst. Merrifield is a highly motivated, dedicated, productive member of this unit. Cst Merrifield has the respect of his peers and supervisors and his positive attitude influences others to perform at higher levels. Cst. Merrifield's input is value added, demonstrating many of the qualities necessary for a supervisor role. Cst. Merrifield is an asset and credit to the force and will do well in his future endeavours. A pleasure to have on the unit.

#### **INSET/TAG 2004**

- [55] In addition to the Air Marshalls unit, the Integrated National Security Enforcement Team (INSET) was also established after the terrorist attack that occurred in the United States on September 11, 2001. It was responsible for all criminal investigations in Ontario relating to people who posed a threat to Canada. There were two sides to INSET: investigations and intelligence information gathering. It carried out long-term investigations and had a quick response team for day-to-day investigations. It also had an intelligence component comprised of analysts.
- [56] During his time as an Air Marshall, Mr. Merrifield expressed an interest in working at INSET.



- [57] Mr. Merrifield was transferred to INSET on October 17, 2004. He then reported to S/Sgt. King and Insp. Jagoe. On October 19, 2004, after being at INSET for two days, he participated in a radio talk show hosted by Michael Coren. The topic was “What is terrorism?” Apparently, someone made a complaint to INSET about Mr. Merrifield’s participation on the show.
- [58] Two days later, S/Sgt. King learned that Mr. Merrifield had been on the show. S/Sgt. King asked him about comments that he provided on the radio show. Subsequently, S/Sgt. King asked him to review a security information sheet and sign it, which he did. S/Sgt. King asked Mr. Merrifield not to make any more appearances while he was working at INSET. Mr. Merrifield stated that he respected this direction and agreed to it.
- [59] Mr. Merrifield stated that early in 2005, he was doing open source work with the Jewish community. Speaking at events was considered community outreach. He did this approximately six times in the course of his duties. He never requested permission to attend these speaking engagements. The Indo-Canadian Community in Mississauga recognized him at an awards dinner and named him Police Officer of the Year.
- [60] Mr. Merrifield explained that within INSET was a small unit known as the Threat Assessment Group (TAG). The members of TAG carried out threat assessments on international people who came to visit Canada including heads of state and special dignitaries. Mr. Merrifield explained that in addition to investigators, TAG also had analysts. They did tactical analysis on active investigations. The analysts looked at trends, predictors and human intelligence.
- [61] Mr. Merrifield expressed an interest in working in TAG. On January 20, 2005, Sgt. Rick Cousins carried out a “file review” at Headquarters to consider whether Mr. Merrifield would be suitable for TAG. Mr. Merrifield did not meet with Sgt. Cousins. In the written review, Sgt. Cousins’ point form notes state: “able to handle any type of investigation; very intelligent person, learns and comprehends quicker than most; Commanding Officers Certificate of Appreciation for apprehending dangerous offender in trying circumstances; ability to express himself verbally/written are [sic] exceptional; well rounded police officer with unlimited potential.” He concluded, “It is recommended Cst Merrifield be planned to INSET TAG”
- [62] On February 2, 2005, Mr. Merrifield was invited to and attended an event at B’nai Brith, a Jewish organization, where he gave a short speech as a member of the RCMP. Julian Fantino, (then Chief of Police for Toronto Police Service), among others, gave a speech as well.
- [63] On February 10, 2005, Mr. Merrifield was permanently posted to TAG. His work consisted of monitoring criminal extremist and terrorist groups. He gathered open source information, carried out community outreach and worked to recruit confidential informants. He investigated threats to national security and Very Important Persons (VIPs) such as the Prime Minister. He also looked after threat assessments of official visitors like the Royal Family and Members of Parliament. At times, he travelled with the

Prime Minister's protective detail when the Prime Minister made visits to various places. For example, he travelled with the Prime Minister to four or five media outlets in the Greater Toronto Area (GTA) where the Prime Minister was addressing issues arising from the sponsorship scandal.

- [64] Mr. Merrifield was required to have top secret security clearance to perform this job. He was also a top level marksman. His work at TAG was an achievement of a career goal. It was his dream job.
- [65] In February or early March, 2005, a threat was made against then Liberal Prime Minister Paul Martin and U.S. President George W. Bush. Mr. Merrifield was the lead investigator for the team that investigated this threat. They successfully located the person who made the threat. As a result of Mr. Merrifield's work, that person was arrested, tried and convicted of a criminal offence.
- [66] Up until May 2005, Mr. Merrifield got along well with everyone at TAG. He was asked to train others. He loved the work. An incident occurred when a person penetrated the U.S. Oval Office's electronic inbox and bombarded it with emails. Mr. Merrifield carried out an extensive internet tracing operation through numerous countries. He and TAG located the person who was subsequently convicted.
- [67] No concerns were ever raised about Mr. Merrifield's earlier political activities, involvement with the Conservative Party and any impact they might have on his ability to do his job at TAG, which included providing protection for a Liberal Prime Minister.
- [68] In June or July 2004, Supt. Proulx became the "O" Division Intelligence Officer (DIO) for the Criminal Intelligence branch. He held that position until June 2006 and was the Superintendent responsible for TAG. As DIO, he reported to C/Supt. Mazerolle whose superior officer was the C.O. Supt. Proulx retired on May 15, 2009.
- [69] Mr. Proulx explained that TAG was an anomaly. TAG reported in a straight line directly to him but Insp. Jagoe, who was in charge of INSET, had authority over TAG's day-to-day operations. TAG took their day-to-day tasks from INSET. Mr. Proulx described his role in TAG as primarily administrative.
- [70] Mr. Proulx learned of Mr. Merrifield in January 2005. There was a vacancy in TAG. He was approached by someone who stated that there was a member who wanted to come to TAG. He received a staffing note about Mr. Merrifield. He came highly praised. The transfer was subsequently authorized. Supt. Proulx agreed to the transfer. He stated that anyone would want to take on Mr. Merrifield, given the contents of the staffing note.
- [71] Prior to May 2005, Supt. Proulx did not know anything about Mr. Merrifield's political activities. He did not learn about them until May 16, 2005.
- [72] In December 2002, Insp. Jagoe was promoted to run INSET and was its OIC until 2007. Insp. Jagoe was promoted to Superintendent in December 2007. Insp. Jagoe reported to

C/Supt. Mazerolle. Subsequently, he reported to Insp. Van Doren whose portfolio included national security and border integrity.

- [73] All employees at INSET reported to Insp. Jagoe except for the people in TAG who reported to Supt. Proulx. Insp. Jagoe received regular briefings from A/Sgt. Crane who worked in TAG. Insp. Penny was Insp. Jagoe's second in command.
- [74] Supt. Jagoe recalled that shortly after Mr. Merrifield arrived at INSET, S/Sgt. King spoke to him about his participation in a radio interview. Supt. Jagoe understood that S/Sgt. King told Mr. Merrifield that speaking about national security matters was not appropriate and he agreed that he would discontinue it. Insp. Jagoe did not hear the interview. He briefed Insp. Van Doren about Mr. Merrifield's participation in the radio show.
- [75] A/Sgt. Crane explained that he was acting as Sgt. with respect to TAG. It had existed since at least 2000 when he joined it. In January 2005, it had seven members although they were not at the office all the time. In addition, there were two TAG members who provided personal protection to VIPs when they visited. TAG was the intelligence side to the VIP visits. A/Sgt. Crane reported to Supt. Proulx who was his Line Officer. A/Sgt. Crane also reported to Insp. Jagoe daily so that he had an operational awareness of TAG's activities.
- [76] TAG members would monitor known subjects of interest with potential to cause any danger or embarrassment to any VIPs coming to the area. They would also perform Order in Council checks which were requests from the government to carry out background checks on certain people with respect to criminal activity. A check could be requested with respect to anyone who was going to be appointed to do something. TAG also did risk assessments for the criminal intelligence branch and the federal government.
- [77] When Mr. Merrifield joined INSET, TAG was understaffed and had a vacancy. A/Sgt. Crane spoke to Mr. Merrifield about joining TAG and suggested that he apply. At the time, A/Sgt. Crane knew that Mr. Merrifield had offered himself for political candidacy previously but he did not know the details of his political background. He was aware that Mr. Merrifield had run in an election in 2004 but he did not recall the party that he represented. The fact that Mr. Merrifield had run for office previously did not cause A/Sgt. Crane any concerns whatsoever.
- [78] A/Sgt. Crane stated that initially, he did not know much about LWOP. He just knew that a member could not participate in politics without it.
- [79] In April 2005, A/Sgt. Crane had a conversation with Mr. Merrifield about his future participation in politics because there was another upcoming federal election. A/Sgt. Crane asked Mr. Merrifield, out of curiosity, whether he had any ambition to run in the next federal election. A/Sgt. Crane thought that if Mr. Merrifield did have ambitions, he could have a conflict of interest because the RCMP's primary duty was to serve the elected Liberal party. The RCMP had duties to the other parties but to a lesser degree.

A/Sgt. Crane said Mr. Merrifield's answer was "none whatsoever. It was too expensive." He did not differentiate between running at a nomination meeting and running as a candidate in a Federal election.

- [80] In spring 2005, there were a lot of high level VIP visits. Mr. Merrifield had no limits on the work that he could do. A/Sgt. Crane stated that he had an excellent working relationship with Mr. Merrifield. He was a good member and who showed a lot of promise. In fact, on May 3, 2005, he asked Mr. Merrifield to mentor another member and help raise his standard of performance.
- [81] Supt. Jagoe stated that he was aware that Mr. Merrifield had investigated death threats against Prime Minister Martin and U.S. President George Bush. He read somewhere that Mr. Merrifield had done a good job. Nobody was concerned about his investigating these threats. Nobody was concerned about Mr. Merrifield's working in TAG after running in an election.
- [82] Mr. Merrifield had another performance evaluation covering the period August 1 2004 to August 1, 2005. On the evaluation, A/Sgt. Crane stated that "his educational background and expertise in world politics are well suited for the TAG environment." Mr. Merrifield's role as lead investigator with respect to the threat against the Prime Minister and the U.S. President, which concluded with charges being laid, was also noted.

### **Operation Bridgeout**

- [83] Sgt. Park worked at INSET from 2003 to 2007. He was in charge of Operation Bridgeout, a complex tactical exercise held in May 2005. Mr. Merrifield helped to organize it which required several months of intensive planning. He did this in addition to his regular duties.
- [84] Sgt. Park had a lot of interaction with Mr. Merrifield during the planning for the exercise. They drove back and forth to Sault Ste. Marie, London and Sarnia to attend meetings so that they could keep abreast of the project.
- [85] Sgt. Park recalled that Mr. Merrifield had mentioned running for a Conservative seat in either Newmarket or Barrie. This came up during a trip to Sault Ste. Marie. Sgt. Park could not recall exactly when this occurred. There was not much conversation about it. Sgt. Park knew that Mr. Merrifield had run for a seat a year earlier.
- [86] Mr. Merrifield had worked a minimum of twenty hours of voluntary overtime on the Operation Bridgeout. He was not paid for these hours nor did he receive any additional time off. Sgt. Park stated that Mr. Merrifield was enthusiastic about national security work and he put more time and effort into Operation Bridgeout than even Sgt. Park did.
- [87] At the conclusion of the project, Sgt. Park signed a performance log dated May 17, 2005 with respect to Mr. Merrifield. He described Operation Bridgeout as follows:

Operation bridge out was a multi-agency/bi-national exercise that took place between Sault Ste. Marie, Michigan and Sault Ste. Marie, Ontario. It was the largest exercises between Ontario and the State of Michigan and possibly the largest in Canadian and US history of its kind. Three separate exercises were occurring simultaneously, Detroit/Windsor, Sarnia and Sault Ste. Marie, Ontario and Michigan. The operation commenced May 9 and terminated in the evening of May 11, 2005. The exercise was designed to challenge agencies on both sides of the border to react to a national, state and local emergency, namely a terrorist incident. Canadian, U.S. federal, state and local agencies would be participating in Operation Bridgeout, more than 70 agencies in the U.S. and Canada in the Sault Ste. Marie region.

...

During the scenario Constable Merrifield wore many hats. He acted as a referee/marshal along with Sergeant Park. He assisted in coordinating and controlling the scenario to ensure the script and timelines were on track. He was diligent in his duties and along with Sergeant Park worked 16 hour days back-to-back. Although Constable Merrifield came down with flu-like symptoms, he pushed forward and at the end of the day the scenario proved to be a big success. Sergeant Park received comments from several personnel involved in the exercise stating that this had been the best planned scenario that they had been involved in, in recent times and for some it was the best ever. Much of the success is attributed to the hard work and dedication of Constable Merrifield.

During the actual exercise and the months of planning leading to the exercise I was very impressed with the above average abilities and strong work ethic displayed by Constable Merrifield. He presented himself professionally throughout the exercise and was a good ambassador for the force. In my opinion, Constable Merrifield was the best selection I could have made in planning and preparing a scenario of this magnitude. Should something of this nature arise in the future he would no doubt be my number one selection. Outstanding job!!

- [88] Sgt. Park stated that there was general talk on the floor that Mr. Merrifield was going to run for a seat for the Conservative Party; however, he did not pay much attention to it.
- [89] Supt. Jagoe stated that he did not have any concerns about Mr. Merrifield's entering TAG. The first significant conversation he had with Mr. Merrifield was in Sault Ste. Marie during Operation Bridgeout. Mr. Merrifield sat next to him when a large group of people went out for dinner at the end of the exercise. At that point, he and Mr. Merrifield got into a discussion about Mr. Merrifield's interest in politics. They discussed Mr. Merrifield's previous run for the Conservative Party and that when he did this, he had to

take a leave of absence from the Force. There was some conversation about the upcoming election. Mr. Merrifield said it was very expensive to be involved in campaigns and running for politics. Insp. Jagoe did not ask Mr. Merrifield whether he was going to be running in the upcoming election.

**Barrie Nomination Meeting - May 14, 2005**

- [90] Mr. Merrifield stated that after he ran unsuccessfully for the Richmond Hill seat, he was still interested in politics but mostly from a policy, criminal justice reform and national security perspective. He wanted to contribute to the direction of the Party in a non-partisan way.
- [91] He had been to events as the candidate of record for Richmond Hill. They were hosted by Belinda Stronach and Peter Van Loan. It was public knowledge that he had stood for election as a Conservative in 2004. Mr. Merrifield's personal friendship with Belinda Stronach was also well known. He would openly attend a lunch or breakfast with her and her staff.
- [92] Mr. Merrifield recalled that before May 12, 2005, at the end of Operation Bridgeout, all the participants went out for dinner. He was sitting near Insp. Jagoe, Sgt. Park and A/Sgt. Crane. He received a call and left the table to take it. The Richmond Hill riding association was offering him a candidacy. He returned to the table and mentioned the call. He was asked if he would run again in election and said he would not do that "anytime soon." It was too expensive and he had issues with the process.
- [93] Mr. Merrifield stated that some things were happening in the Barrie riding that he did not think were proper. The riding association was not following the rules. He was told that the only way he could speak to the riding association was by being a candidate at a nomination meeting. He had to renew his party membership. He stated that he did not want to pursue candidacy in another election.
- [94] Mr. Merrifield stated that he mentioned to Sgt. Park, during one of their many car trips that he would participate in another nomination meeting. The nomination meeting was not discussed at the Bridgeout dinner. He did not tell Insp. Jagoe that he would be running at a nomination meeting.
- [95] Based on his earlier conversation with Sgt. Boos, when he learned his LWOPs were re-coded such that only one had been used for the Richmond Hill nomination meeting and the election, Mr. Merrifield concluded that he did not need LWOP to participate in a nomination meeting. Furthermore, s. 3.2 of the Administrative Manual, part XII.12, entitled Political Activities stated, "If LWOP is not required to participate in political activities, a member must conduct any politically related activities on his/her own time." At the end of April 2005, just prior to the deadline, Mr. Merrifield put in his name for the Barrie riding nomination meeting which was to be held on Saturday, May 14, 2005.

- [96] On May 2, 2005, Mr. Merrifield sent a letter to members of Conservative Party National Council regarding his concerns, specifically that the nomination process was being abused. He asked the Council to take control of the nomination selection.
- [97] While he was away at Operation Bridgeout, Mr. Merrifield's wife and his former Richmond Hill campaign manager sent out three hundred campaign cards. They were recycled from the Richmond Hill election.
- [98] On May 6, 2005, Mr. Merrifield was part of Prime Minister Paul Martin's protective detail for his visit to Hamilton and Brantford. Around the same time, he spoke to Cpl. Frith, who worked at INSET, about his running at the nomination meeting. Cpl. Frith was a member of the Conservative Party and had received a campaign card.
- [99] On Friday May 13, 2005, the day before the Barrie nomination meeting, Mr. Merrifield had the flu and took the day off. He stated that several RCMP members were fully aware in advance of the date that he intended to run at the Barrie nomination meeting. They included C/Supt. Mazerolle, Sgt. Gilchrist, S/Sgt. Smith and Insp. Jagoe. None of them expressed any concerns to him about it prior to the event.
- [100] Mr. Merrifield stated that on Saturday May 14 2005, which was a day off for him, he ran at the Barrie nomination meeting. He stated that mathematically, he could not have won the nomination. It was all about selling memberships. The only point to his attending was to try and draw votes away from the leading candidate and throw the election in favour of the second candidate.
- [101] When Mr. Merrifield returned to work on Monday, May 16, 2005, A/Sgt. Crane said that Insp. Jagoe was upset. A co-worker said he was in trouble. He understood that there were three issues: first, he had run in the meeting without LWOP, second, he had identified himself as working in national security, and third, the campaign literature mentioned defending the traditional concept of marriage and challenging the gun registry.
- [102] A/Sgt. Crane stated that he first learned of Mr. Merrifield's running at the Barrie nomination meeting on Friday May 13, 2005, the day before the meeting, when Cpl. Frith came into his office and said, "Did you hear Merrifield is running for nomination?" A/Sgt. Crane said that Cpl. Frith told him about the campaign literature. He had joined the party so he had received it. A/Sgt. Crane stated that he scoffed at this suggestion because he had already spoken to Mr. Merrifield about it. Cpl. Frith had the literature with him. A/Sgt. Crane stated that he had a look at it for a couple of minutes and asked if he could keep it. Cpl. Frith said no. He wanted it back. A/Sgt. Crane returned it. Cpl. Frith also advised him that the nomination meeting was being held the next day, on Saturday, May 14, 2005.
- [103] A/Sgt. Crane said that he was shocked by the campaign literature. Mr. Merrifield had said that he was not going to run in an election but now he was doing so. He felt that Mr. Merrifield had lied to him.

- [104] A/Sgt. Crane then had a brief conversation with Insp. Jagoe in his office. A/Sgt. Crane said, “Are you aware that Cst. Merrifield is running for nomination in the Barrie riding?” Insp. Jagoe was not pleased. He told A/Sgt. Crane to contact Supt. Proulx.
- [105] Supt. Proulx was not in the office that day so A/Sgt. Crane spoke to Sgt. Gilchrist on the phone. He was acting for Supt. Proulx. Mr. Merrifield was not on duty that day either so A/Sgt. Crane did not have an opportunity to speak with him at the office. A/Sgt. Crane did not recall whether he attempted to call Mr. Merrifield at home. He stated that he had Mr. Merrifield’s phone number and could have called him.
- [106] A/Sgt. Crane discussed the matter at length with Sgt. Gilchrist. They both agreed that they should review the provisions of the *RCMP Regulations* so that they would have the information when they had an opportunity to speak to Supt. Proulx.
- [107] A/Sgt. Crane stated that he had not received from Mr. Merrifield a request for LWOP for the nomination meeting. If Mr. Merrifield had obtained LWOP for the nomination meeting, he would have known about it.
- [108] A/Sgt. Crane stated that he was shocked, hurt and annoyed when he learned that Mr. Merrifield was running for the nomination. He felt that Mr. Merrifield had told him one thing and then had done the opposite. He thought Mr. Merrifield had lied to him. He testified that he still believes that Mr. Merrifield lied to him.
- [109] A/Sgt. Crane agreed that if he was aware that a member was going to act contrary to policy, he should stop the member. Section 37(e) of the *Royal Canadian Mounted Police Act* R.S.C. 1985 c. R-10R states, “It is incumbent on every member...to ensure that any improper or unlawful conduct or of any member is not concealed or permitted to continue.” A/Sgt. Crane stated that he did not know where Mr. Merrifield was in the process with respect to the nomination meeting. He had not attended it yet. A/Sgt. Crane felt he had to update himself on the rules. He believed he did not have all of the facts.
- [110] A/Sgt. Crane stated that after the nomination meeting, a lot of members in INSET were upset and dismayed that Mr. Merrifield had referred to himself as an RCMP officer in his political materials. There were approximately eighty-five people at the office. They understood that he was promoting himself an expert. A/Sgt. Crane stated that he would never say that he, himself, was an expert on anything. It seemed that Mr. Merrifield had taken an air of authority. A/Sgt. Crane acknowledged that the term “expert” was not used in any of Mr. Merrifield’s campaign materials.
- [111] C/Supt. Mazerolle was the Criminal Operations (CROPS) officer for “O” Division from 2004 until the end of the April 2012. From August 2010 until the end of May 2011 he was acting C.O. Both Supt. Proulx and Insp. Van Doren reported directly to him. All three of them, as well as C.O. Seguin, had offices on the same floor near each other in London.



- [112] C/Supt. Mazerolle stated that on May 13, 2005, Insp. Van Doren told him that there was a concern with respect to a nomination pamphlet relating to Mr. Merrifield. Insp. Van Doren said that he had directed Insp. Jagoe to address the matter with Supt. Proulx.
- [113] C/Supt. Mazerolle stated that he did not know that Mr. Merrifield had run in an election in 2004 when he spoke to Insp. Van Doren on Friday, May 13. He learned about it after the brochure came to his attention. The 2004 election did not present any issues because policies and procedures were followed at that time.
- [114] C/Supt. Mazerolle said that he did not see the pamphlet prior to the nomination meeting. On Sunday, May 15, 2005 he first spoke to Supt. Proulx about it. He was shopping and ran into Supt. Proulx. He took him aside and asked him if he was aware of the pamphlet and that Mr. Merrifield had been seeking a nomination. Supt. Proulx was not aware of it and said that he would look into when he got back to the office.
- [115] C/Supt. Mazerolle stated that if Mr. Merrifield had gone through the right procedure, there would have been no concern about his running at the Barrie nomination meeting. C/Supt. Mazerolle said that he did not have all of the information but believed there was no need to intervene because matter had been sent to a competent Superintendent, being Supt. Proulx.
- [116] A/Sgt. Crane stated that he spoke to Mr. Merrifield when he returned to work on Monday, May 16, 2005. Mr. Merrifield said that he had concerns about the Conservative party and had issues with people who were standing for the nomination. The only way that he could speak out about it was to put his name forward at the nomination. Mr. Merrifield said it was not going any further. He said his campaign manager had sent out literature without his knowledge while he was working on Operation Bridgeout. A/Sgt. Crane reviewed the provisions of the *RCMP Regulations* with Mr. Merrifield and told him that he still had to meet the requirements, which included being on LWOP or resigning from the Force. Mr Merrifield felt that he had done nothing wrong. A/Sgt. Crane described the tone of the meeting as cordial. He stated that after he reported the matter, it was out of his mind. He was on holidays for the following week and did not have any further involvement in the matter until he returned on May 24, 2005.
- [117] Supt. Jagoe stated that he was aware that Mr. Merrifield had previously run for political office and had obtained the approvals. It was general knowledge that Mr. Merrifield had run as a Conservative. Supt. Jagoe stated that on Friday, May 13, 2005, he was not aware that the Barrie nomination meeting was happening the next day. If Cpl. Frith gave a statement saying that he told him about the upcoming nomination meeting, it would be wrong. If A/Sgt. Crane stated that he told him about the upcoming nomination meeting, he would also be wrong. Supt. Jagoe stated that he had no information as to the date of the nomination meeting. If he was aware that Mr. Merrifield's conduct was potentially improper, he would have been required to take steps to prevent it in accordance with Part IV, s. 37(e) of the *RCMP Act*. He understood that if a person were to participate in a full campaign, some special leave would be required. He had to obtain approval from his Line Officer.

- [118] Supt. Jagoe stated that a few days after the Operation Bridgeout dinner, Cpl. Frith, an INSET employee, came into his office. Cpl. Frith showed him Mr. Merrifield's pamphlet. Supt. Jagoe stated that he was busy at the time and asked Cpl. Frith if he could have the pamphlet. Cpl. Frith declined but offered to get one for him. Supt. Jagoe stated that he did not order Cpl. Frith to get it.
- [119] Insp. Jagoe asked Cpl. Frith for the pamphlet because was interested in looking at the content. He knew that the Assistant Commissioner had to approve investigations into sensitive sectors such as politics. Supt. Jagoe stated that he did not know that the pamphlet was going to be used at a private political function. He also stated that he did not know that the pamphlet had been distributed for a campaign
- [120] A couple of days later, Cpl. Frith brought him the pamphlet and then he took the time to read it. He stated that he was surprised by the content. Mr. Merrifield had identified himself as a member of the RCMP. There was information in the pamphlet that was critical of the sitting government and the gun registry. Supt. Jagoe stated that this concerned him because Mr. Merrifield's duties in TAG included conducting threat assessments on internationally protected people including the Prime Minister. Supt. Jagoe questioned whether this was appropriate. If the Force had a member conducting a threat assessment and if that member was very critical of the government and if something happened to an internationally protected person such as the Prime Minister, this would be a conflict. It would result in an inquiry.
- [121] Insp. Jagoe wanted to ensure that Mr. Merrifield had sought the appropriate authority. He called Supt. Proulx and asked him if he was aware of Mr. Merrifield's interest in politics. Supt. Proulx stated that he was not. Insp. Jagoe said that he would send the pamphlet to him.
- [122] Supt. Jagoe stated that he was not familiar with section 57(2) of the *Regulations* which states that a member who is running for nomination may disclose his rank, level, position and work experience. He stated that he was more concerned about whether Mr. Merrifield had approval to attend the meeting. He stated that he did not know whether Mr. Merrifield needed approval with respect to the platform he was advancing because he did not have that level of detail. Nevertheless, he was concerned about the platform. He drew that concern without looking at the Administration Manual.
- [123] Supt. Jagoe recalled that within a few days of receiving the pamphlet, A/Sgt. Crane and Sgt. Gilchrist came into his office and told him that they were aware that Mr. Merrifield was interested in running for politics. Supt. Jagoe stated that he told them that the information they had should be shared with Supt. Proulx and that it was a matter between A/Sgt. Crane, Mr. Merrifield and Supt. Proulx.
- [124] On Wednesday May 18, Insp. Jagoe sent a memo to Supt. Proulx. The email begins with, "further to our discussions and emails..." (None of the emails that preceded this one were produced.) Supt. Jagoe stated that he kept all the emails related to making decisions of substantive value. There may have been previous emails that he deleted. Supt. Jagoe

stated the archival system at the RCMP keeps documents for ninety days. He searched for other emails but did not find any in his deleted box. He did not obtain archived tapes or take any other steps to look for them.

- [125] In addition to sending the email to Supt. Proulx, Insp. Jagoe also briefed his superior, Insp. Van Doren who was happy with the steps he had taken. Supt. Jagoe said he had two or three phone conversations with Insp. Van Doren specifically regarding the pamphlet and that Mr. Merrifield might be considering running. Supt. Jagoe stated that he did not take any notes of these conversations.
- [126] Mr. Van Doren retired from the RCMP as a Superintendent. He was the Assistant Criminal Operations Officer (CROPS) for border integrity and national security. In May of 2005 he was an Inspector acting as a Superintendent. He oversaw responses to national security for Ontario. Insp. Van Doren was the Line Officer for INSET. He stated that Insp. Jagoe reported to him. His own superior was C/Supt. Mazerolle. He would speak to Insp. Jagoe daily in briefings on operational issues and sometimes on human resources issues.
- [127] Mr. Van Doren had a vague recollection of a conversation with Insp. Jagoe on Friday May 13, 2005. Insp. Van Doren took notes dated Friday May 13, 2015. At 11:30 a.m. there is a reference to Insp. Jagoe. In his point form notes, Insp. Van Doren stated, "Re: Peter Merrifield - ran in the last election as a conservative - lost - proper authorities previously sought - pamphlet identifies RCMP's role - NS team - INSET- background in NS. Threat Assessment group - Marc Proulx - OIC CROPS advised." Insp. Van Doren spoke to Insp. Jagoe about Mr. Merrifield. He was seeking a nomination for a political position. Mr. Van Doren recalled there was a pamphlet. Mr. Merrifield was part of TAG under the authority of Supt. Proulx. Mr. Van Doren recalled that he told Insp. Jagoe to deal with Supt. Proulx regarding any concerns relating to Mr. Merrifield. He stated that he briefed C/Supt. Mazerolle about the telephone call and then took no further steps. He left Insp. Jagoe and Supt. Proulx to deal with the matter.
- [128] Supt. Jagoe stated that he was familiar with the Ministerial direction regarding investigations into sensitive sectors dated November 4, 2003. It was issued after the terrorist attacks on September 11, 2001. Insp. Jagoe knew about the policy when he spoke to Cpl. Frith about the pamphlet. Investigations into political parties required Ministerial approval. Supt. Jagoe was aware that allegations had been made that he violated the policy and that he ordered Cpl. Frith to attend a political meeting. He stated that he never ordered Cpl. Frith to attend any meeting. The allegation was not true.
- [129] Mr. Frith retired from the RCMP in 2010 as a Corporal. He worked in the National Security section from 2002 to 2008. He worked in the same building and on the same floor as Mr. Merrifield did when he was in TAG. In 2005, he lived in the Barrie riding.
- [130] Mr. Frith stated that he became a member of the Conservative Party to support Mr. Merrifield at the nomination meeting. Since Mr. Merrifield was in his riding, Mr. Frith volunteered to vote for him. Mr. Merrifield did not ask him to do it. Mr. Frith stated that

he received Mr. Merrifield's nomination meeting campaign brochure. He brought it to the office before the election and showed it to several people. He was impressed by it because there was a good picture of Mr. Merrifield's family on it. He stated that he thought it was sharp. He was proud of the brochure which is why he brought it to the office. Mr. Frith stated that he was not sure whether he showed the brochure to A/Sgt. Crane. They all worked in the same area.

- [131] Insp. Jagoe had an open door policy. Mr. Frith stated that he showed the brochure to Insp. Jagoe on Thursday, May 12 or Friday, May 13 2005. Mr. Frith said that he told Insp. Jagoe about the nomination meeting to be held on Saturday, May 14 2005.
- [132] Mr. Frith said that Insp. Jagoe wanted the brochure for his personal use. Mr. Frith did not give it to him. It was his property. They discussed the upcoming nomination meeting. Insp. Jagoe knew that Cpl. Frith was going to the nomination meeting. Cpl. Frith told him that the only place he could get a brochure for Insp. Jagoe was the nomination meeting location. Mr. Frith stated that he was comfortable getting a brochure for Insp. Jagoe if it was only for his personal use and not for any other use. Insp. Jagoe stated that it would be for his personal use only. Mr. Frith stated that his understanding of personal use was whatever a person might want to do with the brochure in his own house, such as displaying it. Sending the brochure to headquarters for scrutiny would not be personal use. Mr. Frith testified that if Insp. Jagoe had wanted it for any other purpose beyond personal use, he would not have obtained a campaign brochure for him. He would have had to get his own if he wanted it for other reasons.
- [133] There were three candidates at the nomination meeting: Mr. Merrifield, Mr. Brian Broley and Mr. Patrick Brown. Mr. Frith stated that he attended the nomination meeting with his wife and went for the sole purpose of voting for Mr. Merrifield. He obtained a brochure for Insp. Jagoe, took it home and gave it to Insp. Jagoe on the following Monday. He told Insp. Jagoe that the brochure was only for his personal use.
- [134] Cpl. Frith did not know anything about the rules regarding participation in political events. He did not know whether Mr. Merrifield had applied to participate. Mr. Frith stated that he went to vote because he thought Mr. Merrifield might win. He did not want the other candidate to win. He was not ordered by Insp. Jagoe to attend. He stated he had always planned to attend.
- [135] Supt. Proulx stated that prior to the Barrie nomination meeting, no one mentioned to him that Mr. Merrifield had investigated a threat made against President Bush and Prime Minister Martin. He did not recall discussing this with anyone after Mr. Merrifield ran in the 2004 election. It never came up.
- [136] On Monday, May 16 2005, A/Sgt. Crane called Supt. Proulx and told him that Mr. Merrifield had run in a nomination meeting over the weekend. A/Sgt. Crane told him that Mr. Merrifield had a previous career as a politician. Supt. Proulx asked A/Sgt. Crane if Mr. Merrifield had followed the correct process. A/Sgt. Crane said that Mr. Merrifield had told him that he did not need leave because the nomination meeting occurred on a

Saturday and he did not want to win. He just wanted to make a speech. Supt. Proulx asked A/Sgt. Crane whether Mr. Merrifield had permission to attend the nomination meeting and A/Sgt. Crane stated that he did not think so.

- [137] Right after he spoke with A/Sgt. Crane, Supt. Proulx called Insp. Jagoe and asked him to send the campaign materials to him so that he could review them.
- [138] Mr. Proulx recalled that Insp. Jagoe did not express any concerns prior to the nomination meeting. He received Insp. Jagoe's comments on May 18 or 19, 2005. Supt. Proulx was not concerned about what happened in 2004 because it was approved. He was concerned about Mr. Merrifield's attendance at the 2005 nomination meeting, possibly without LWOP.
- [139] Mr. Proulx stated that on Monday, May 16 2005, he reviewed the Operations Manual and determined that members were allowed to run in politics but they had to have approved leave. At that time he did not quite understand the various types of leave. He stated that he still does not really understand them. He just knew that Mr. Merrifield needed permission.
- [140] Mr. Proulx stated that he also either looked in the HRMIS system or asked his assistant to look into it. He stated that all of the holidays, leave and sick days are recorded in this system for all of the members. He did not find anything in the HRMIS system that indicated that Mr. Merrifield had been granted leave. Then he made a call to Sgt. Cousins in Career Resource Development.
- [141] Sgt. Cousins told him that the coding for Mr. Merrifield's leave in the previous year was done improperly. It would have to be re-done. Sgt. Cousins also told him that Mr. Merrifield would have to ask permission for the recent nomination meeting after it occurred and this would have to be approved by the C.O.
- [142] Mr. Proulx stated that at some point in the same week, he spoke to Sgt. Verecchia. She was very familiar with Mr. Merrifield and believed that he had been granted leave in 2004. Sgt. Verecchia told him she had outlined the process to Mr. Merrifield in 2004. Mr. Proulx testified that at some point in the same week, Insp. Jagoe sent him the campaign brochure. He read it and had a conversation on the Thursday or Friday with Mr. Merrifield. He told Mr. Merrifield that he had run without authority and that he would have to ask for retroactive permission. He should write a memo to explain the fact that his name had been in the nomination. Mr. Proulx stated that he told Mr. Merrifield that Sgt. Cousins had explained to him that there were errors in the coding of his leave in 2004. Sgt. Cousins had said that Mr. Merrifield's two opportunities for elections had been used. Mr. Proulx stated that he told Mr. Merrifield that if he wanted to run again, he should not bypass the policy. Rather, he should write a memo to him. They would then visit the C.O. Supt. Proulx thought that this would be the end of the matter, and that Mr. Merrifield would write the memo.

- [143] Supt. Proulx attended a briefing meeting with C/Supt. Mazerolle and C.O. Seguin in C.O. Seguin's office on May 26, 2005. He discussed his concerns about Mr. Merrifield's involvement in the Barrie nomination meeting without LWOP. He did not tell them that he was planning to have a meeting with Mr. Merrifield on the 27<sup>th</sup>.
- [144] Mr. Seguin stated that his earliest recollection of Mr. Merrifield was in May 2005. The nomination meeting in Barrie came to his attention. Mr. Merrifield had put his name forward for the riding nomination. He first heard of this from Supt. Proulx. He did not make any notes of the discussion. He did not know that Mr. Merrifield had previously run in an election. Mr. Seguin stated that when Mr. Merrifield ran for office in 2004, he was not the C.O.
- [145] Mr. Seguin stated that he was not aware of any concern about Mr. Merrifield's working in TAG and, in the previous year, having run as a Conservative candidate in a federal election. He stated that he subsequently learned that other officers knew about the nomination meeting before it occurred. He learned this from Supt. Proulx and by reading statements. Mr. Seguin stated that he was not aware that anybody took any steps to prevent Mr. Merrifield from attending the Barrie nomination meeting. He would have expected someone to take action if that person knew of Mr. Merrifield's involvement.
- [146] Mr. Seguin stated that he asked Supt. Proulx whether Mr. Merrifield had submitted a request for leave and he told him to make sure the policy was being followed. He left the issue with Supt. Proulx to follow up and report to C/Supt. Mazerolle.
- [147] Mr. Seguin stated that he was unsure of whether he knew, at the time, that Mr. Merrifield attended the nomination meeting. Mr. Seguin stated that he did not discuss these activities with Insp. Jagoe then. It was probably a year or two afterwards when they discussed it. He recalled that he was at INSET one day and Insp. Jagoe still had the brochure regarding Mr. Merrifield's nomination meeting attendance. Mr. Seguin stated that he glanced at it but did not read it. He had not seen it previously.
- [148] Mr. Seguin stated that in the end, a review was done. Mr. Merrifield was given a memo dated September 28, 2005, was advised of policy and was reminded of his obligations. The memo resulted in no discipline. Mr. Seguin stated that the memo satisfied him. The issue was resolved. Mr. Seguin testified, "I wasn't concerned that Mr. Merrifield attended the nomination without my consent."

**Stronach Investigation - May 19, 2005**

- [149] Mr. Merrifield stated that after the nomination meeting, he returned to work on either May 18 or 19, 2005. TAG received a request for an Order in Council check on Belinda Stronach because she was going to be a Liberal cabinet minister. Mr. Merrifield stated that he declined to do the check because he was friends with her.
- [150] Shortly afterwards, Ms. Stronach received a death threat. She had received a number of threatening emails after she crossed the floor and became a Liberal. One of the threats was, "You just signed your death sentence, you German whore." This was taken

seriously. A/Sgt. Crane stated that after he returned from holidays, he learned about the death threat. The investigation was assigned to Mr. Merrifield.

- [151] Mr. Merrifield stated that on May 19, 2005, A/Sgt. Crane called him at home. The protective unit was going to extend security to Ms. Stronach and A/Sgt. Crane needed to find her. Mr. Merrifield had Ms. Stronach's cell number. He gave it to A/Sgt. Crane.
- [152] A/Sgt. Crane was the officer who assigned the investigation to Mr. Merrifield. Mr. Merrifield stated that he worked on it for six days. On the first day, he went to Ms. Stronach's constituency office and reviewed many emails. Mr. Merrifield stated that he contacted Ms. Stronach directly on that day to ask her if she was comfortable with his doing the investigation. Mr. Merrifield said that she stated that she had no concerns. She said that she would prefer that he do the investigation because she knew that he would take care of her and her children. Mr. Merrifield said he was going above and beyond expectations. It was about the victim.
- [153] Mr. Merrifield stated that he received information regarding the location of the phone where the death threat had been made. It was a payphone. He went to the area to see if there was any video surveillance. He went to Ms. Stronach's home, spoke to the person responsible for security and made arrangements to install a panic button. He organized a special level response for this. He worked many hours on the investigation. He stated that everyone in TAG was aware that he was handling the investigation. His information was turned into briefing notes that were sent up to his superiors.
- [154] A/Sgt. Crane wondered whether Mr. Merrifield should be working on the file as he had just run for the Conservative nomination in Barrie. A/Sgt. Crane stated that he was concerned about it. His specific concern was that there was a potential for a conflict of interest as Ms. Stronach had gone from being a Conservative to a Liberal. A/Sgt. Crane stated, "You can't have a Conservative candidate guarding a Liberal MP." Furthermore, A/Sgt. Crane stated that he learned that Mr. Merrifield had called Ms. Stronach. Mr. Merrifield said that he called her and that she had no problem with his conducting the investigation. This call raised a red flag with A/Sgt. Crane. The issue was that Mr. Merrifield was seeking the opinion of the complainant. This did not sit well with him. A/Sgt. Crane stated that he told Supt. Proulx about the situation. Supt. Proulx had the same concerns. Therefore, Mr. Merrifield was removed from the Stronach file. It was re-assigned. A/Sgt. Crane said that his instructions were that Mr. Merrifield was not to deal with any VIP visits. All of the files were taken away from him, not just those relating to politics.
- [155] Mr. Merrifield testified that on May 24, 2005 he met with A/Sgt. Crane who told him that he was being removed from the Stronach investigation on Supt. Proulx's instructions. A/Sgt. Crane may have said that this was due to a conflict of interest. The next day he was actually removed from the investigation. Mr. Merrifield stated that he had also been doing a threat assessment for the Royal Family. He was removed from this assessment as well as a Prime Minister's visit.

- [156] Mr. Merrifield testified that he was upset that he had been removed from the investigation and that other work was taken away from him. There was certainly no conflict regarding the Royal Family. Everyone knew that he had been removed from the Stronach death threat investigation. It was unusual. There was an appearance that he had done something wrong.
- [157] Mr. Merrifield stated that Insp. Jagoe alleged he had broken a policy by having direct communication with a victim, Ms. Stronach. He spoke to Sgt. Boos who referred him to the local MPA representative, Sgt. Nicota.
- [158] Supt. Jagoe stated he was concerned that a junior Constable would be phoning a Member of Parliament and having a conversation. He did not feel that this was appropriate. He believed that officers must remain an arm's length from victims. Otherwise, it would appear that Ms. Stronach was deciding who was doing the investigation and this could be viewed as a conflict. Supt. Jagoe stated that he was not aware of any policy that would have prevented Mr. Merrifield from contacting Ms. Stronach.
- [159] Mr. Proulx stated that in February 2005, he was not aware of Mr. Merrifield's past political activities. When he was in charge of TAG, he could not recall deaths threats being made against Prime Minister Martin and President Bush. Later on he became aware that Mr. Merrifield had investigated the threats. He learned that Mr. Merrifield had received a related commendation. He agreed that Mr. Merrifield's 2004 election activities were probably well known. Nobody at that time suggested that there was a conflict. Mr. Proulx stated that if he had known about the 2004 election activities back then, he would have seen them as a conflict. Mr. Proulx said that Mr. Merrifield's running against Prime Minister Martin in 2004 and then at a nomination meeting in 2005 meant that he could not investigate a death threat. He did not know that a nomination meeting takes place at a private party event. He did not see the distinction between this and running in an election.
- [160] Mr. Proulx stated that when he discussed the Stronach matter with A/Sgt. Crane, A/Sgt. Crane said that he felt there was a conflict of interest. Mr. Proulx shared his concern, specifically that Mr. Merrifield was a member of the Conservative party. Most members of the Conservative party were upset with Ms. Stronach. If something were to happen to her, the RCMP's threat assessment would be reviewed. If Mr. Merrifield's name was attached to it, the RCMP would be blamed regardless of whether Mr. Merrifield had done a perfect job. Someone might think he was happy that something happened to her. (Mr. Proulx was confused. He thought Mr. Merrifield was doing a threat assessment. As noted above, he was investigating a death threat.) Mr. Proulx stated that he instructed A/Sgt. Crane to take the file away from Mr. Merrifield. He then asked A/Sgt. Crane what kind of work could be assigned to Mr. Merrifield if he could not work on a political file because of his past. A/Sgt. Crane said "not much". Anyone could make a point of it. They agreed to schedule a meeting on Friday morning in London to discuss the matter. Mr. Proulx stated that prior to the meeting in London, he did not know that Mr. Merrifield had spoken with Ms. Stronach. He said that this heightened the conflict and it was not acceptable.



- [161] Mr. Proulx stated that he had a second conversation with Sgt. Verecchia on May 24, 2005. He wanted to ask her about the Stronach issue and whether he was wrong to think that there was a conflict. Sgt. Verecchia told him that he was correct and that she would send him the policies. She said the conflict could be real, apparent or potential. She sent him a copy of the email that she had received from Mr. Merrifield on February 3, 2004 and the response from Professional Standards.
- [162] Mr. Merrifield said that he explained to Supt. Proulx that he had already spoken to Ms. Stronach and that she had no issue with him carrying out the investigation. Mr. Proulx stated that this was also a conflict. One is not supposed to talk with a Member of Parliament. He stated that if the RCMP does a threat assessment on a U.S. President, the RCMP does not speak to him.
- [163] In his testimony, Mr. Proulx subsequently agreed that Mr. Merrifield was assigned to investigate a death threat against Ms. Stronach. It was not a threat assessment. A threat assessment is about gathering information and determining a threat. He stated that A/Sgt. Crane described it as a threat and risk assessment. Mr. Proulx stated that even if it was only a death threat, he would still have seen a conflict. A/Sgt. Crane said there was a conflict.
- [164] Mr. Proulx agreed that there was no policy that would prohibit a member from speaking to a Minister. Mr. Proulx then changed his testimony and stated that he did not see anything wrong with an officer's contacting a victim of a potential death threat.
- [165] Mr. Proulx stated that his concern was not about Mr. Merrifield's integrity or the quality of his work. It was about what would be perceived if something happened. Mr. Proulx stated that he told Mr. Merrifield that he had asked A/Sgt. Crane to remove him from the Stronach investigation.
- [166] C/Supt. Mazerolle recalled that there was one meeting with Insp. Proulx and C.O. Seguin close to the end of May in C.O. Seguin's office about the issues relating to the Stronach investigation. After the meeting in the C.O.'s office, C/Supt. Mazerolle recalled that Insp. Proulx told him that he intended to remove Mr. Merrifield from TAG and assign him to Criminal Investigations North.
- [167] Mr. Seguin stated that the Stronach investigation was an operational matter and that C/Supt. Mazerolle was taking care of it. He was not sure if there was a policy would prevent Mr. Merrifield from contacting Ms. Stronach. There was perception of conflict and a decision was made to remove Mr. Merrifield from the investigation. He agreed with the decision. He stated that the actions taken were within the authority of the officers who made the decisions. He was not aware that Mr. Merrifield had been taken off a 2005 Royal Family visit. He agreed that this visit was not a political matter.
- [168] Sgt. Verecchia stated that on May 26, 2005, Supt. Proulx sent her a request for guidance regarding the conflict of interest policy and whether Mr. Merrifield had contravened the policy on this issue. He provided Mr. Merrifield's brochure for the Barrie nomination

event. Sgt. Verecchia stated that it was not just a coincidence that Supt. Proulx contacted her. He contacted her because he already knew that she had provided advice to Mr. Merrifield in 2004.

[169] Sgt. Verecchia explained that Supt. Proulx had asked her for the information that she had given to Mr. Merrifield earlier regarding LWOP and political activities. She sent it to him. She understood Supt. Proulx wanted an opinion as to whether Mr. Merrifield had contravened the conflict of interest policy and whether his campaign material was contrary to the requirements in the *RCMP Regulations*.

[170] Supt. Proulx then sent her an email with respect to Mr. Merrifield's website and information about the Stronach investigation. She told Supt. Proulx that Mr. Merrifield's investigation of Ms. Stronach's death threat was a conflict. He was partisan and his objectivity might be questioned. The RCMP had to be objective especially with respect to political investigations. Sgt. Verecchia stated she believed that objectively, it was an apparent conflict for Mr. Merrifield and the RCMP. If something had happened, Mr. Merrifield's integrity could be questioned and the Force's objectivity could be questioned as well. His involvement in the Stronach investigation created both perceived and apparent conflicts.

[171] Sgt. Verecchia stated that she had some concerns about the material that Supt. Proulx sent her. Mr. Merrifield was not on LWOP at this time and was still working for the RCMP. She was concerned that the pamphlet had been distributed. Mr. Merrifield was speaking against some of the laws of the day, including the gun registry, while not on LWOP. The gun registry was a law of Canada and it had to be enforced. Mr. Merrifield was voicing political opinions and undertaking political activities contrary to the *RCMP Regulations* and the conflict policy. She discussed four specific concerns with Supt. Proulx:

- (a) speaking about the gun registry;
- (b) the distribution of the campaign material;
- (c) an active website in which it appeared that Mr. Merrifield was campaigning; and
- (d) his involvement in a political investigation with respect to Ms. Stronach.

[172] She stated that he should not be involved in any of them. She stated that she felt Mr. Merrifield had crossed a line, that he was using the RCMP to further his political activities and to sell himself as a nominee. While working as an RCMP officer, he should not have taken a public stance against the government and its existing laws. He had an obligation to enforce the laws and remain objective. Mr. Merrifield was proceeding contrary to the advice that she had given him in 2004.

[173] Sgt. Verecchia stated that section 12.12 F of the Conflict of Interest Policy states that once a member returns from LWOP, the officer is to determine a suitable assignment taking into account political opinions expressed, political impact that may result from the posting and investigations with political overtones being conducted by the proposed unit.

Sgt. Verecchia stated that she advised Supt. Proulx that Mr. Merrifield should not be doing any political investigations as it was a conflict.

**London Meeting - May 27, 2005**

- [174] Mr. Merrifield stated that he and A/Sgt. Crane were summoned to a meeting on May 27, 2005 at the London office. He was led to believe that Supt. Proulx wanted to discipline him for his participation in the Barrie nomination meeting and deal with his removal from the Stronach investigation. Two days before the meeting, he contacted Sgt. Nicota, who was a part-time Staff Relations Representative (SRR) because he wanted a SRR with him at the meeting. Mr. Merrifield explained that SRRs help to guide members through policy issues and provide advice regarding grievance matters, among other things.
- [175] Mr. Merrifield stated that he met with Sgt. Nicota for an hour. He in turn contacted Sgt. Bohus who had a full-time SRR position. Sgt. Nicota wanted Sgt. Bohus to be at the meeting.
- [176] The meeting was held on May 27, 2005. Mr. Merrifield recalled that he, Supt. Proulx, Sgt. Smith, Sgt. Bohus and Sgt. Nicota attended. The meeting was approximately two hours long and centered around Mr. Merrifield's participation in politics, the Barrie nomination meeting, the Stronach matter and the alleged conflict in TAG. Supt. Proulx asked him if he had obtained LWOP. The meeting started out in a professional manner but deteriorated after Sgt. Bohus excused himself to attend another matter.
- [177] Mr. Merrifield stated that he showed Supt. Proulx s. 3.2 of the Administration Manual, XII.12, the same section that he had shown to A/Sgt. Crane. He said he believed that LWOP was not required for nomination meetings based on his discussion with Sgt. Boos.
- [178] Mr. Merrifield stated that Supt. Proulx became condescending and belligerent as he made a series of allegations: that he was using the Force to advance his political career; that a Conservative policy was in contravention of the Force policy, being the position on the firearms registry; and that the Conservative position on the traditional definition of marriage was hate literature. Mr. Merrifield stated that the views on the traditional definition of marriage were his own. The conversation went in circles. Supt. Proulx attacked his personal integrity. He did not understand or would not accept the difference between running in a nomination meeting which was a private event open to only members of the Conservative Party in contrast to running in a public election. Mr. Merrifield stated that he explained the difference at least twice.
- [179] Mr. Merrifield stated that Supt. Proulx asked him why he had run in the nomination meeting. He explained that it was to protest. Supt. Proulx did not believe that he would be involved only for reasons of ethics and integrity. Supt. Proulx stated that he would have to choose between politics and the RCMP.
- [180] Mr. Merrifield said that he was very upset by Supt. Proulx's accusation that he was using the Force to further his political career. He stated that in his seven years as a police

officer, he had been shot at, attacked with a knife and steel bar, run off the road and left for dead. He had a strong commitment to the RCMP.

- [181] At one point, Supt. Proulx stood up and leaned across the table, balancing himself on his fingers. He then went into the partisan aspect of politics and stated that Ms. Stronach was a Liberal and Mr. Merrifield was a Conservative. If anything happened when he was investigating a threat, there would be a big problem. Mr. Merrifield stated that he reminded Supt. Proulx that he had investigated the threat related to Prime Minister Martin who was a Liberal and there was no issue. He disclosed his political views before he became part of TAG. Supt. Proulx stated that he would forward the campaign literature to headquarters for review and he would be looking into it. Mr. Merrifield had the impression that he would be under investigation.
- [182] Mr. Merrifield stated that Supt. Proulx had already made a decision before the meeting started. He told him to clean up his things at TAG and report to Toronto. Mr. Merrifield stated that he felt intimidated. He had worked in the private sector before he became a member of the RCMP. He had not been on the Force long enough to qualify for a pension. He had three young children. The prospect of being unemployed was very stressful.
- [183] Mr. Nicota retired from the Force in August 2009 as a Sergeant. He recalled attending the meeting on May 27, 2005 and said it was two hours long. Going into the meeting, he believed that Mr. Merrifield had followed all of the relevant policies. He was aware that Mr. Merrifield had run as a candidate in Richmond Hill during the 2004 election.
- [184] Mr. Nicota's recollection of the meeting was that it started with a discussion of the Stronach situation. Mr. Merrifield had been investigating a threat to her life. After Sgt. Bohus left, the meeting turned into an attack on Mr. Merrifield by Supt. Proulx. He started looking at Mr. Merrifield's resume and questioned its validity. It was a trenchant attack on Mr. Merrifield's character, on everything that he had done prior to joining the Force and during his career with the Force. Mr. Nicota recalled that Sgt. Smith quietly took notes. A/Sgt. Crane looked flushed and upset. Supt. Proulx was agitated, his voice was elevated and his tone was sarcastic.
- [185] Mr. Nicota stated that it was the most unusual meeting that he had ever seen in the Force. He said it was like watching a totally unforeseen, bad train wreck. After Sgt. Bohus left, the atmosphere completely changed and the meeting became out of hand. The tone went from professional and collegial to disrespectful. Supt. Proulx stated that he did not believe anything that Mr. Merrifield said about his previous work. He questioned Mr. Merrifield's political motives and asked what he was doing in the Force. Supt. Proulx could not seem to understand the difference between Mr. Merrifield's putting forward his name as candidate at a nomination meeting and actually running for office. Mr. Nicota understood that Mr. Merrifield did not intend to win the nomination meeting. He attended because he had a problem with one of the other candidates.

- [186] Mr. Nicota stated that other people will say that Sgt. Bohus never left the meeting. Mr. Nicota said that they are incorrect and that Sgt. Bohus did leave half way through. He noted this in an email one year later because he found it was suspicious and interesting that Supt. Proulx would change his tone after Sgt. Bohus left. It was as if he waited for Sgt. Bohus to leave and then went into attack mode.
- [187] Mr. Nicota stated that Supt. Proulx's demeanor and questioning was intrusive, inappropriate and unprofessional. He was questioning Mr. Merrifield's campaign literature and waving his hands. He was not behaving the way a Superintendent should behave.
- [188] At the meeting, an issue regarding Cpl. Frith was discussed. Mr. Merrifield believed that Cpl. Frith had been directed to attend the political meeting where Mr. Merrifield was standing as candidate. He was directed to bring back materials and report on the meeting. Mr. Nicota stated that this was a gross violation of RCMP Policy and the law.
- [189] Prior to the meeting, Mr. Nicota thought that the issues between A/Sgt. Crane, Supt. Proulx and Mr. Merrifield could be resolved; however, Supt. Proulx said Mr. Merrifield should choose between politics or the RCMP. Mr. Nicota stated that based on his own experience with the RCMP and how it works, he believed that Supt. Proulx had commenced an investigation. Mr. Nicota stated, "You have a feeling when something just doesn't add up." He stated that after he left the meeting, he wondered where the matter would be going. To him, it seemed like it was heading toward disciplinary action rather than an informal resolution. He stated that Supt. Proulx's manner of dealing with the issues at the meeting came right out of left field and was totally unexpected.
- [190] Mr. Nicota stated that after the May 27, 2005 meeting, he called C.O. Seguin, who was a troop mate and personal friend. He asked C.O. Seguin to contact an officer from outside of the Division to come in and conduct an investigation, to try to unravel what other issues might be at hand. He wanted to make sure C.O. Seguin had all of the information from an independent investigator.
- [191] Sgt. Nicota sent an email later on to SRR Ford and Mr. Merrifield. It states:
- ...in my 32 years, I never witnessed an "Accused" (let alone a serving member of the RCMP) confronted in the manner as Peter MERRIFIELD was subjected to by Supt. PROULX....Mr. PROULX'S manner of questioning was the epitome of harassment and could be used for classic textbook lecture material example. Supt. PROULX'S questions ridiculed, demeaned and embarrassed MERRIFIELD.
- [192] Mr. Proulx's recollection of May 27, 2005 was that prior to the meeting, he spoke to Sgt. Bohus. Sgt. Bohus told him, "Be careful with this member. You're treading on thin ice." Sgt. Bohus said that he would support Supt. Proulx at the meeting arranged for May 27,

2005. Mr. Proulx stated he believed that Mr. Merrifield's work on the Stronach investigation was a clear conflict.

- [193] Mr. Proulx stated that he called the May 27, 2005 meeting because he wanted to personally explain to Mr. Merrifield why he had removed him from the Stronach file and also to get his side of the story. Mr. Proulx said that he was considering transferring Mr. Merrifield from TAG and wanted to hear from him. He also wanted to discuss the nomination meeting, the fact that Mr. Merrifield had run without LWOP and the contents of the pamphlet.
- [194] Mr. Proulx stated that at the outset of the meeting, he initiated the discussion and said that he wanted to address three things: running in the election without approval, the Stronach investigation and what to do with Mr. Merrifield with respect to TAG. Mr. Proulx had a very different recollection of the tone of the meeting in contrast to that of Mr. Merrifield and SRR Nicota. He stated that overall the tone of the meeting was very good. There was no shouting or finger pointing. It was a civilized meeting.
- [195] Mr. Proulx stated that he told Mr. Merrifield that he should have had permission from the C.O. to attend the "election". Mr. Merrifield replied that he had no intention to win the nomination. He was just there to speak. The nomination meeting was not an election. Mr. Merrifield stated that A/Sgt. Crane had only asked him whether he would be running in another election. Mr. Proulx said that he told Mr. Merrifield that he was playing on words and that A/Sgt. Crane would not know the difference between a "nomination election" and a federal election. Mr. Merrifield stated that he wanted to speak at the nomination meeting because he had a concern about one of the candidates. He did not want to win the nomination meeting. Mr. Proulx conceded that the tone of the meeting was raised at this point. Mr. Merrifield stated that he had distributed only 300 pamphlets whereas in the previous year, when he was running in the Federal election, he distributed 50,000. Mr. Merrifield stated that he understood he did not need LWOP because the nomination meeting was on a Saturday. Mr. Proulx commented that Mr. Merrifield had invested money in the pamphlets but said he did not want to win. This did not make sense to Mr. Proulx.
- [196] Mr. Proulx told Mr. Merrifield that his website was open and that he was running for election. There was a lot of discussion between the difference between running at a nomination meeting and in an election. Mr. Proulx told Mr. Merrifield he was splitting hairs and that regardless of which it was, he had to be on LWOP. At the same time, Sgt. Nicota was saying that the nomination meeting was not an election. Mr. Proulx stated that voices were raised at this point as three people were trying to talk over each other. Mr. Merrifield was not seeing things the way he did.
- [197] With respect to the pamphlet and the website, Mr. Proulx said he asked Mr. Merrifield about the contents. He stated, "Don't you think you're criticizing the Commissioner if you say you're going scrap the gun registry? You're a member, you can't do it." Mr. Proulx stated that he was not a politician and that he did not follow politics at all. He had no idea of what the Conservative platform was for the upcoming election. In the

pamphlet, Mr. Merrifield stated that he had received numerous awards. Mr. Proulx stated that he asked Mr. Merrifield about his awards and that they discussed a couple of them. The pamphlet said that Mr. Merrifield had worked across North America. Mr. Merrifield told him that he had travelled as an Air Marshall to numerous locations. Mr. Proulx said, “Don’t you think you’re misleading your constituents?” Mr. Merrifield said no.

- [198] On the last page of the pamphlet, there was a statement that the traditional definition of marriage would be defended. Mr. Proulx stated he was concerned about this because an RCMP officer has to treat everybody equally. He stated to Mr. Merrifield, “Doesn’t this show your views against gay marriage?” He also asked Mr. Merrifield, “Didn’t you think that this was in conflict with your position?” Mr. Merrifield was not on LWOP. Mr. Proulx stated that Mr. Merrifield did not see a conflict in any of these issues. Mr. Proulx stated that as far as he was concerned, nominations and elections were all in the same group. They were the same thing. Mr. Merrifield had different definitions.
- [199] Mr. Proulx stated that he may have questioned Mr. Merrifield about his objectivity. At the end of the meeting, he stated that he was going to forward the campaign materials to headquarters for review.
- [200] Mr. Proulx stated that he subsequently had a telephone conversation with Supt. Dubeau. Mr. Dubeau told him to be careful about issues relating to political activity and human rights. Politics was a touchy issue in the Force.
- [201] Mr. Proulx said that he stated to Mr. Merrifield that ninety-five percent of TAG’s work dealt with politicians. TAG members have to interview them. It was important to get the best information available from the subject of a threat. Mr. Proulx stated that they might be reluctant to give information to Mr. Merrifield. He was recognizable because he was a candidate for three nomination meetings and one election.
- [202] Mr. Proulx stated that Mr. Merrifield told him that he wanted to continue to work at INSET. Mr. Proulx said that INSET was not in line of command. He told Mr. Merrifield that TAG was an issue and that he did not see Mr. Merrifield staying there. Mr. Proulx said the meeting did not provide him with any evidence that he could leave Mr. Merrifield at TAG. Mr. Proulx stated that at the end of the meeting, he told Mr. Merrifield that he would make a decision about it and get back to him. He did not threaten Mr. Merrifield’s employment. He said, “You’ve chosen a hobby that comes in conflict with TAG duties. You can’t be on TAG.” He stated that he never said that Mr. Merrifield would have to choose between the RCMP and politics.
- [203] Mr. Proulx stated that he returned to his office and made some notes of the meeting. Neither Sgt. Bohus nor Sgt. Nicota came to him on that day to raise any concerns about the meeting.
- [204] Mr. Smith retired from the RCMP in April, 2008 as a Staff Sergeant. He now provides contract services to the RCMP.

- [205] Mr. Smith stated that, prior to retirement, when he was in charge of Criminal Analysis, he worked at London headquarters. His line officer was Supt. Proulx.
- [206] Mr. Smith stated that he did not know Mr. Merrifield until spring 2005. He did not know that Mr. Merrifield had been involved in politics, that he had attended a political event without LWOP or that he was involved in the Stronach investigation.
- [207] He first met Mr. Merrifield at the May 27, 2005 meeting. Supt. Proulx asked him to attend in absence of another member, Sgt. Gilchrist. He recalled that copies of pages from Mr. Merrifield's website and a pamphlet were at the meeting.
- [208] Mr. Smith recalled that Mr. Merrifield responded to Supt. Proulx's concerns. He said emphatically that it was not his intention to run for nomination. He was there just to speak publicly to members of the Conservative party. He had concerns about one particular candidate that was running and wanted to speak about him.
- [209] Mr. Smith stated that the exchange between Supt. Proulx and Mr. Merrifield went on for some time and became heated. The tone was argumentative on both sides. Mr. Merrifield may have felt that his integrity was being challenged. He did not recall Supt. Proulx's standing up and leaning over the table during the meeting. There was a perception that Mr. Merrifield was not being honest and forthright.
- [210] Mr. Smith stated that Supt. Proulx was concerned about Mr. Merrifield's exercising poor judgment. Supt. Proulx said that Mr. Merrifield would have to make a choice between his career or politics. Mr. Smith testified that Supt. Proulx did not say Mr. Merrifield could not work at TAG, only that he was considering it. He said he would consult with various policy centers in Ottawa. The meeting lasted approximately two and a half hours and ended at this point.
- [211] Mr. Smith stated that he would expect steps to be taken against an officer who was not forthright with a superior officer. No Code of Conduct proceedings were initiated against Mr. Merrifield, nor was he disciplined in any way regarding the issues discussed at the meeting.
- [212] Mr. Smith stated that Sgt. Nicota's comments in his email to SRR Ford were false.
- [213] Mr. Smith stated that Supt. Proulx was on leave in August 2005 and previously had assigned to him full acting duties as Superintendent in charge of the Criminal Intelligence branch. He prepared an email dated August 12, 2005 to Cpl. Dunn, the OIC of the Conflict Resolution Team. He had obtained a cassette video regarding Mr. Merrifield's appearance on the Michael Coran radio show ten months earlier, on October 19, 2004. Mr. Smith stated that Supt. Proulx had asked him to send the tape to Cpl. Dunn for review because Supt. Proulx wanted her comments.
- [214] Mr. Merrifield had another performance review for the period August 1, 2004 to August 1, 2005 which included the time period when he participated on the Coren show, when he ran in the Barrie nomination meeting, and when he was at TAG. Mr. Smith noted that in



the review, Supt. Proulx stated, “Cst. Merrifield is a great asset to the RCMP. His leadership skills and overall communication abilities were quite apparent during his stay with TAG.” A/Sgt. Crane stated:

[Cst. Merrifield’s] personable character, dedicated work ethic and tireless ambition are several of the notable qualities of this member...Though only in the Force for a limited number of years, he has continually stepped to the forefront and exhibited a willingness to apply himself to the tasks presented to him. He assimilated into the TAG quickly and was tasked to become a team leader and develop a program to establish a balanced reporting of the seven Strategic Criminal Extremist Groups...He was also the lead investigator involving an individual who was sending threatening letters to the Prime Minister Canada/President of the U.S. This file involved several local Police Services and a foreign agency. Cst. Merrifield directed the file and mentored several other members who had less experience in criminal code investigations. The file was concluded with charges and the unit benefited by his professionalism and mentoring. Cst. Merrifield is a forward thinking individual who seeks innovation and solutions to resolve operational requirements.

- [215] Regarding the questions that Supt. Proulx asked Mr. Merrifield in the London meeting, Mr. Seguin agreed that if Supt. Proulx had questioned Mr. Merrifield about the pamphlet’s contents, this would amount to a sensitive sector investigation because the questions would be about a private political event. Mr. Seguin stated that questions should have been asked about policy compliance. Mr. Merrifield should not have been asked about the contents of the pamphlet.
- [216] Mr. Seguin stated that his direction to Supt. Proulx was to follow up with respect to the Administrative Manual, as to whether Mr. Merrifield sought authority to attend the nomination meeting. He was not aware that an Internal Complaint file had been opened nor was he aware of the actions that Supt. Proulx was taking. He knew that no actions were ultimately taken with respect to Mr. Merrifield’s failure to obtain LWOP to attend the nomination meeting. Mr. Seguin said that there was no Code of Conduct investigation with respect to the LWOP issue because it was not a big deal. Mr. Merrifield’s comments on the Coran radio show were also not a big deal. He expected that there would be follow up on the LWOP issue and that it would be addressed.
- [217] Mr. Merrifield stated that after the May 27, 2005 meeting, he had a lot of medical issues. He had headaches and dizziness. He was nauseous and felt very stressed and intimidated. He was fearful for his employment. He felt that Supt. Proulx was targeting him. He felt isolated from his peers and most members of the Force. He stated that there is a perception of two tiered justice in the Force: one for Commissioned ranks and one for the others. Those who are not commissioned officers fear reprisal for stepping out of line.

[218] Mr. Merrifield stated that his colleagues perceived that he had done something wrong. He was stripped of his investigative role in TAG. A/Sgt. Crane had told people that he was in trouble. After that, he was transferred. It was an embarrassing, stressful situation. It left him in doubt about his future with the Force.

### **Criminal Intelligence - June 2005**

[219] Mr. Merrifield stated that in June 2005, Supt. Proulx transferred him from TAG to Toronto North Criminal Intelligence. It had no vacancies. He was considered “surplus to establishment.” This unit was under Supt. Proulx’s line of command. Mr. Merrifield stated that he had no choice in the transfer. He discussed it with Sgt. Nicota. He asked Insp. Jagoe if he could stay on the investigative side of INSET where there were vacancies. Nobody had said that the conflict concern extended beyond TAG’s work. Even though INSET was under Insp. Jagoe’s command, not Supt. Proulx’s command, Insp. Jagoe said that it was Supt. Proulx’s decision.

[220] Mr. Merrifield stated that the other members in Criminal Intelligence were gracious and supportive. He became a recruiter of confidential informants and a source handler. The investigations were restricted to criminal enterprise, organized crime, biker gangs, immigration and passports. He obtained approval to probe intelligence in areas of his interest. This included criminal organizations and firearms, and to identify high risk gangs using smuggled firearms.

[221] Mr. Merrifield stated that there was a homicide at the Phoenix night club in Toronto. He had obtained related confidential information about firearms smuggling. Some individuals were stopped at the border and were arrested. Mr. Merrifield stated that while he was travelling to Niagara Falls to interview them, INSET asked him to return. Mr. Merrifield believed that this was an interference with the performance of his duties. He had top level security clearance. He was never told the reason why he was called off the interview.

### **The Bob Pritchard Radio Show - July 9, 2005**

[222] Mr. Merrifield stated that in the summer of 2005, he had knee surgery and was off work. Shortly after the terrorist attacks in London, England, he was contacted by an acquaintance to participate in a talk show regarding the history of terrorism. He agreed to do it but said clearly that he could not be identified as a member of the RCMP nor would he speak in any official capacity. He spoke on the radio as a private citizen.

[223] Mr. Merrifield stated that he was not aware of s. 1.1, Part 27 of the Operations Manual which stated that all media contacts were to be reported to the detachment or unit commander and to a Division Media Relations non-commissioned officer as soon as possible.

[224] Mr. Merrifield recalled commenting on the talk show that Al Qaeda indicated that Canada was a potential target for terrorism. This was not a secret. It was widely reported.

- [225] Mr. Merrifield stated that Supt. Proulx called him at home the next week. He accused him of disclosing top secret information. Mr. Merrifield stated that he tried to reason with Supt. Proulx. He said that the information that he had provided was about the historical development of terrorism which he had learned from self-study. Mr. Merrifield said that he had not disclosed any RCMP information. Supt. Proulx was not satisfied. He said several times that C.O. Seguin and C/Supt. Mazerolle were very upset. He recited several complaints that Insp. Jagoe had made and said that Insp. Jagoe was making calls about him. Mr. Merrifield said that the conversation was direct, terse and accusatory. Supt. Proulx said that there would be an investigation and disciplinary proceedings.
- [226] Mr. Merrifield stated that disclosing top secret information would be a violation of the *Security of Information Act*, R.S.C. 1985, c. O-5 (SOIA). The penalty for this offence was up to 14 years of imprisonment. The only person who could investigate this was the officer in charge of INSET, being Insp. Jagoe. This represented a glaring conflict because he had made the complaint and he would be investigating it.
- [227] Regarding the Pritchard show, Supt. Jagoe testified that he was on his way to work one morning in July 2005, after Mr. Merrifield had been transferred to Criminal Intelligence, when he received a phone call from Cpl. Oliver asking him if he was listening to the radio. He said that Mr. Merrifield was doing an interview on the radio and that he was talking about national security. Supt. Jagoe said that when he got to the office he called Supt. Proulx to ask him if he was aware of it. He was not. Supt. Jagoe stated that his immediate concern was national security. There are clear protocols and processes that have to be followed to do media interviews. National Headquarters was very concerned about providing a message in a consistent manner. It wanted only certain people to speak on behalf of the RCMP. Supt. Jagoe said he thought that Mr. Merrifield should have obtained the approvals to do an interview. He knew that Mr. Merrifield had not sought approval through him.
- [228] Supt. Jagoe received a recording of the show from Supt. Proulx. He listened to the entire interview. Mr. Merrifield was described as a consultant, someone who works within the field. He was not identified as an RCMP member but his name was clearly mentioned. Supt. Jagoe stated he was concerned because the discussion was about the history of terrorism. There were questions about Toronto and Canada as targets for terrorists. He believed that this information was getting into some very sensitive areas. The fact that Mr. Merrifield was not identified as member of the Force did not allay his concerns. He was readily identifiable as a member and therefore his comments would be viewed as credible.
- [229] Supt. Jagoe stated that shortly after listening to the CD, he wrote a memo dated July 20, 2005 to Supt. Proulx in which he outlined his concerns. He stated he believed that Mr. Merrifield was aware that approval was required to do media interviews because S/Sgt. King had spoken to him about this shortly after his arrival at INSET. He believed that Mr. Merrifield had spoken about sensitive topics. Even if the information was available in the public domain, having a member validate it was potentially harmful to the Force's ability to collect information in the future.

- [230] Supt. Jagoe stated that people who work in the intelligence field at the RCMP are bound by SOIA. They are required to sign documents stating that they will not talk about secret information in the public domain. Supt. Jagoe stated that after he listened to the CD, he concluded that Mr. Merrifield had not violated the legislation. Nevertheless, he had concerns.
- [231] Supt. Jagoe stated that the information that Mr. Merrifield had provided on the radio show was widely known but in the circumstances, Mr. Merrifield, as a member of the RCMP, was validating the information for the public. Supt. Jagoe stated that he was not aware of any investigation that had been done to determine whether Mr. Merrifield had violated SOIA. He was not aware of any steps taken by Supt. Proulx after their conversation. He was not involved in this matter after he spoke to Supt. Proulx. He agreed that in the briefing note from Supt. Proulx to the Commissioner dated January 17, 2006, Supt. Proulx stated, "Merrifield didn't reveal any classified information." Supt. Jagoe stated that he did not know that Supt. Proulx had made this determination.
- [232] Mr. Merrifield stated that while he was at Criminal Intelligence, Supt. Proulx attended at the unit to give a briefing about an upcoming restructuring. The meeting took place in a small boardroom. All the members of the unit were there. Supt. Proulx said, "All of you have a job, except for you Peter." His expectation was that everyone would toe the line. Then he said, "You know what toeing the line is like eh Peter?" Mr. Merrifield stated that he took this as a reference to his adhering to the Conservative platform. He said that Supt. Proulx told a story about when he was a non-commissioned officer and how a commissioned officer was rude to him. Supt. Proulx stated that he was subsequently promoted and got even. Mr. Merrifield stated that this sense of retaliation bothered him. Supt. Proulx did not spend any time with him personally and did not say anything about the disciplinary investigation that he had threatened earlier.
- [233] A/Sgt. Crane stated he had no involvement in Mr. Merrifield's reassignment out of TAG. He was not consulted about where Mr. Merrifield should go. He stated he did not talk with anyone about it and had nothing to do with it. He said it was up to Insp. Jagoe to determine whether Mr. Merrifield could go to the investigative side of INSET. A/Sgt. Crane stated that he was not prepared to continue to work with Mr. Merrifield after he misrepresented his intentions. He had asked Mr. Merrifield if he would be running in an election and Mr. Merrifield said no. He put his name up for the nomination. At that point the trust was broken. He stated that Mr. Merrifield had to work somewhere else, notwithstanding the fact that Mr. Merrifield told him that he was just at the meeting to make a speech. A/Sgt. Crane said that Mr. Merrifield was transferred because he participated in the nomination meeting. He did not recall asking for Mr. Merrifield to be removed from TAG. It was not within his purview to do this. A/Sgt. Crane stated that he had nothing to do with the transfer and that it was Supt. Proulx's decision based on the information that he collected.
- [234] Supt. Jagoe stated that even though he did not know how Supt. Proulx was going to deal with his concerns and even though there was no discussion with Mr. Merrifield about the information provided on the radio show, he decided that Mr. Merrifield was not coming

back to INSET. In addition, there was the situation with Ms. Stronach. Supt. Jagoe believed that Mr. Merrifield's contacting her directly and asking her if it was okay to conduct the investigation was inappropriate. In Supt. Jagoe's opinion, Mr. Merrifield showed very poor judgment.

- [235] Supt. Jagoe stated that he did not discuss his concerns about Mr. Merrifield with the officers who administered Criminal Intelligence because he did not want to tarnish Mr. Merrifield's reputation. Regardless of whether a Code of Conduct proceeding had been initiated, it did not alter his belief that Mr. Merrifield had poor judgment.
- [236] C/Supt. Mazerolle took some notes regarding Mr. Merrifield's remaining in TAG or potentially being transferred to INSET. His note dated June 2, 2005 states "Jagoe called to say he tried to accommodate Merrifield at INSET." C/Supt. Mazerolle stated that he took this to mean that Mr. Merrifield was seeking a position at INSET. The note went on to say, "he was concerned about the review and hoped the C.O. in CROPS knew what they were doing." C/Supt. Mazerolle stated that this was about the pamphlet. He knew that Mr. Merrifield wanted to be in INSET. He did not recall having any concerns about Mr. Merrifield's working at INSET.
- [237] C/Supt. Mazerolle stated that several months later, Insp. Jagoe told him that he would not have Mr. Merrifield at INSET. He said that Mr. Merrifield has not been truthful with him. Insp. Jagoe did not tell him whether he or Supt. Proulx had asked Mr. Merrifield for an explanation.
- [238] C/Supt. Mazerolle stated from June 2, 2005, Mr. Merrifield wanted to return to INSET and that INSET probably had vacancies. C/Supt. Mazerolle was asked whether there was any reason why Mr. Merrifield could not return to INSET. He stated it was not his call. There were no findings against Mr. Merrifield. By this time, Insp. Jagoe said that Mr. Merrifield could not go to INSET. He would not support it. Insp. Jagoe would not support it then or even in 2006.
- [239] Mr. Proulx stated that on May 30, he was not sure whether he had authority to remove Cst. Merrifield from TAG. He met with Insp. Brine, who was in charge of Human Resources in London, to ask him what he could do and what the best approach would be. Mr. Proulx stated that he learned that he could transfer Mr. Merrifield to another one of his units as long as it did not involve a lot of extra travel for Mr. Merrifield. He knew that Mr. Merrifield lived in Barrie at that time and that the drive to Criminal Intelligence in Newmarket was less than the drive to Steeles where TAG was located. Mr. Proulx stated that he could not transfer Mr. Merrifield to INSET because it was not one of his units. That would require full staffing transfer. Mr. Proulx stated that he decided to transfer Mr. Merrifield to Criminal Intelligence. He was still being paid through TAG. It was a temporary, good solution. It allowed him to properly assess the matter before making a final or radical decision. Mr. Proulx stated that he also spoke to C.O. Seguin and C/Supt. Mazerolle on May 30.

- [240] Mr. Proulx stated that on June 1, he travelled to Toronto and met with Mr. Merrifield and A/Sgt. Crane. He confirmed that he was transferring Mr. Merrifield to Criminal Intelligence temporarily. He explained that the reason for this was because there were hardly any duties for Mr. Merrifield in TAG. Mr. Merrifield was concerned about the optics of the transfer and what others would think. Mr. Proulx stated that he met with the other people in TAG to advise them that he was transferring Mr. Merrifield to Newmarket temporarily and that he had done nothing wrong. He was not under investigation.
- [241] Mr. Proulx stated that Mr. Merrifield was in fact not under investigation. He had not interviewed anyone and had all of the information he needed. He knew that Criminal Intelligence in Newmarket was busy but there were no Constable vacancies there.
- [242] Mr. Proulx stated that he sent an email to A/Sgt. Crane to ask him some questions. A/Sgt. Crane answered the questions in his email to Supt. Proulx. Mr. Proulx stated that he wanted to be precise in the memo that he would be sending to C/Supt. Brown, head of Human Resources for Central Region.
- [243] Mr. Proulx stated that on June 6, he received another email from A/Sgt. Crane. Mr. Proulx stated that his writing is at the bottom of this email. It was a summary of the information that he had. It states:

Early March 2005 not running, May 13 NCO found out, PMRTO [regular time off] 14 NOM (lost) no intention of winning a seat 300 pamphlets delegate, website open April 29, no LWOP as per last year's running from NCPC [National Compensation Policy Centre] SGT Boos not of opinion that AM [administrative manual] 2.5.H.3 special leave applied.

- [244] Mr. Proulx stated that on June 7, 2005, he sent his email to C/Supt. Brown. He did not fully understand the various types of leave without pay. He set out the issue in his memo and figured Human Resources could make a ruling. Making this type of decision was not his job. Mr. Proulx set out four questions:
1. By his actions has Constable Peter Merrifield contravened the RCMP regulation 58.4(1) taking into the account the policy ruling from 2004? This includes reactivating its website and distributing pamphlets.
  2. By his "public" views on certain topics as outlined in his campaign platform, has he placed himself in a conflict of interest situation?
  3. Should the special leave of 2004 be modified to reflect two (2) periods of LWOP personal leave as per AM.II.5.S.5? Meaning, Constable Merrifield's entitlement for two periods of LWOP in his career has been expanded. [sic expended]

4. By his actions, has Constable Merrifield contravened the RCMP regulation 56.1 and impaired his ability to be impartial with a view to work within national security investigations within the RCMP (INSET)?

- [245] This memo shows that Supt. Proulx thought that Mr. Merrifield originally had special LWOP and wondered if it should be classified as personal needs. This is the opposite of what happened.
- [246] Mr. Proulx said that he did not initiate a Code of Conduct investigation regarding the fact that Mr. Merrifield attended a nomination meeting without LWOP. He stated that he felt it was a misinterpretation of policy. It was not a conduct matter. He saw it as an administrative issue.
- [247] Mr. Proulx stated that he made a decision to transfer Mr. Merrifield out of TAG. Mr. Merrifield was concerned about how this would be perceived. Mr. Proulx stated that he wanted to make sure it was not perceived negatively. He recalled making an announcement. He could not recall who was there. He thought there were five members in TAG.
- [248] Mr. Proulx was asked whether he could have seconded Mr. Merrifield to INSET with Insp. Jagoe's concurrence. He stated that Insp. Brine told him that he could transfer Mr. Merrifield within only his unit. He agreed that Mr. Merrifield had asked to go to INSET but he did not ask Insp. Brine about it. He did not recall asking Insp. Jagoe whether he would accommodate it.
- [249] Mr. Proulx stated that in June 2005, he did not think that the 2004 LWOP coding issue had been fixed. He did not know whether it would be re-coded to the kind of leave that a member could take only two times. He did not really understand LWOP.
- [250] Sgt. Sim is a serving member of the RCMP. He has worked in the Criminal Intelligence section since 2003. He worked with Mr. Merrifield when he was there in 2005 along with Cst. Brown. He recalled that Mr. Merrifield first came into the section in the summer of 2005. At that time, Sgt. Penny was the OIC of the Criminal Intelligence section. When Mr. Merrifield was transferred to the Criminal Intelligence section he was "surplus to establishment" meaning that there was no vacancy in the section.
- [251] Sgt. Sim knew that Mr. Merrifield had previously been at TAG. Sgt. Sim recalled that he and Cst. Brown were told to take over a file relating to threats against Belinda Stronach. Mr. Merrifield had been the previous investigator. Sgt. Sim understood that there was some conflict of interest with Mr. Merrifield and the file.
- [252] Sgt. Sim stated that he and Cst. Brown were handling human sources and getting information from them. They introduced Mr. Merrifield to their sources. Sgt. Sim said that Mr. Merrifield had a knack for intelligence work. He was one of the best. His work was exemplary. He was invaluable to the section, especially with respect to intelligence

probes regarding criminal groups. Sgt. Sim stated that they never had to explain anything to him.

- [253] Mr. Brown retired from the RCMP as a Constable. He first met Mr. Merrifield when he and Sgt. Sim were assigned the Stronach file. He stated that he did not know why Mr. Merrifield was transferred from TAG to Criminal Intelligence. He thought that something was going on between Mr. Merrifield and his superiors.
- [254] Mr. Brown stated that at Criminal Intelligence, he, Sgt. Sim and Mr. Merrifield were developing sources and they were working on issues relating to guns. Mr. Brown stated that Mr. Merrifield was innovative and sharp. He was good at getting information out of people who did not want to provide it.
- [255] Supt. Proulx stated that he received a phone call from Insp. Jagoe on July 11, 2005. Mr. Merrifield had been on the Bob Pritchard show on Saturday July 9, 2005. He understood that Mr. Merrifield had talked for a few hours on counter-terrorism and Insp. Jagoe had some concerns about it. He did not know why Mr. Merrifield would do this. He told Insp. Jagoe that he would look into it, get a copy of the tape and listen to it and then speak to Mr. Merrifield.
- [256] Mr. Proulx stated that the RCMP is sensitive about public speaking. Members were not allowed to go out and speak on their own initiative. Public speaking on local issues had to be authorized by a line officer or him. Public speaking on national issues had to be authorized by the C.O. The C.O. should have authorized this interview.
- [257] Mr. Proulx stated that he researched the show on the internet. He was able to listen to the first part of it and recognized Mr. Merrifield's voice. He had identified himself as a consultant in terrorism. The whole interview was not available on the website.
- [258] Mr. Proulx then called Sgt. Penny, the officer in charge of Criminal Intelligence where Mr. Merrifield was working. He wanted to know whether Sgt. Penny was aware of the interview. Sgt. Penny told him that it was not the first time that Mr. Merrifield had spoken. He said that Supt. Proulx only needed to Google Mr. Merrifield's name and he would find other occasions. Sgt. Penny told Supt. Proulx that he had not authorized it.
- [259] Mr. Proulx then called Mr. Merrifield at home where he was recovering from knee surgery. Mr. Merrifield said that Bob Pritchard was a friend of his and he had spoken on the show on Saturday. He stated that Bob Pritchard had called him 45 minutes in advance. Mr. Proulx told Mr. Merrifield he should not have done it because terrorism is a sensitive issue and public speaking on the issue had to be pre-approved. Mr. Proulx stated that he told Mr. Merrifield that Insp. Jagoe was very concerned and that he would have to listen to the tape and determine whether Mr. Merrifield's comments were from open sources. His concern was that people who listened to the show would want to identify Mr. Merrifield. They would Google him and they would find out that he was an RCMP officer. They would think his comments were coming from the RCMP. Mr. Merrifield had to refrain from doing this without proper authorization.



- [260] Mr. Proulx stated that the next morning he sent an email about the interview to Insp. Schmidt (because C/Supt. Mazerolle was on holidays) and to C.O. Seguin to give them some notice. Mr. Proulx stated that he copied the email to Insp. Jagoe keep him updated.
- [261] Mr. Proulx stated that on July 13, 2005, Mr. Merrifield called him and wanted a clarification of their discussion. He asked if he was under investigation. Mr. Proulx stated that he was not but he had to ascertain that Mr. Merrifield had not divulged any secrets in the interview.
- [262] On July 18, 2005, Supt. Proulx received the DVD of the show. A copy of it was made and sent to Insp. Jagoe so that he could listen to it and determine whether Mr. Merrifield said anything that was top secret. Mr. Proulx testified that in his view, it was a huge conflict of interest for a member to speak about national security in the media. He was concerned that Mr. Merrifield might have released top secret information to the public.
- [263] On the same day, Supt. Proulx sent an email to Sgt. Paradis. He wanted a transcript of the show and wanted to know if a search could be done to see if Mr. Merrifield had participated in other shows. In addition, Supt. Proulx wanted to know if Mr. Merrifield had permission to speak on these shows and whether he did this regularly.
- [264] On July 18 or 20, 2005, Supt. Proulx received an email from Sgt. Paradis. She advised him that she had requested a transcript and could not identify any other shows in her search through the media system. Mr. Proulx stated that he received the transcript and read it before July 27, 2005.
- [265] Mr. Proulx stated that by July 21, 2005 he had not received an answer from C/Supt. Brown regarding his email dated June 7, 2005 setting out the four questions. He sent a follow up email. Mr. Proulx testified that he was in the process of cataloguing the other shows and they would be forwarded to C/Supt. Brown. The tape was being analyzed to determine if there was a Code of Conduct breach. He did not know if anything on the tape was outside of public knowledge. Mr. Proulx stated that regardless of whether Mr. Merrifield had released information that was not public, he was still considering whether Mr. Merrifield had breached the Code of Conduct.
- [266] Mr. Proulx stated that he did not order an investigation under Part IV of the Code of Conduct at that time. He believed that the matter could be resolved at the lowest level and that this was preferable because Code investigations “make people uneasy.” At that point, he had not made a final decision yet as to whether a Code of Conduct investigation was warranted and was still waiting for an answer from C/Supt. Brown. He thought that talking about national security publicly without authorization might have been a breach of the Code.
- [267] Mr. Proulx stated that on July 26, 2005, he received a copy of two emails between from Supt. Trueman and Sgt. Davis of Professional Standards and Employee Relations. He did not know who Sgt. Davis was. It appears that Sgt. Davis was providing advice to Supt. Trueman regarding the relevant policy sections to consider.

[268] On July 27, 2005, Supt. Proulx sent a memo to Supt. Trueman in Ottawa. It states, “As per my discussion with Cpl. Dunn of your unit last week, here is a summary of the preliminary research I have conducted on the parallel activities of Cst. Peter Merrifield as a “panelist” or as a “host” of a radio/TV show.” Supt. Proulx provided details regarding Mr. Merrifield’s speaking on the Coran show, on the Pritchard show and at a B’nai Brith event. He stated:

I strongly believe that Mr. Merrifield has placed himself in a conflict of interest situation by appearing on those shows and may cause some embarrassment for the RCMP as a result of his views, actions or comments. However, I am seeking your view on this from a National Policy Center’s perspective regarding the “Conflict of Interest” policy/guidelines.” Transcripts and media articles were attached to the memo.

[269] Supt. Trueman was located at the National Policy Center and was an expert on conflict issues. Mr. Proulx stated that he wanted his advice before making a harsh decision. Mr. Proulx stated that he sent an email to Supt. Trueman dated July 27, 2005 with a number of attachments. One was the end of the transcript of the Pritchard show. He was seeking review from the National Policy Centre with respect to conflict issues. The fourth paragraph in the memo noted the B’nai Brith panel discussion on February 2, 2005. Supt. Proulx stated in the memo to Supt. Trueman that Mr. Merrifield had attended a panel with police chiefs and was referred to as a security expert with RCMP’s INSET. Mr. Proulx said that he was seeking advice from Supt. Trueman because Mr. Merrifield had appeared on other shows. Mr. Proulx stated, “I’m not a Code of Conduct guy. I wanted to take a different approach with other actions.”

### **The Secret File 2005-1117**

[270] On July 26 2005, Supt. Proulx opened a file marked “Secret”. It was coded as a Professional Standards matter, “XX82”. The word “Secret” was written on the file jacket. Mr. Merrifield stated that he was never served with notice of a Professional Standards investigation relating to this file. He obtained this file jacket in 2014 on the eve of trial from the Professional Standards unit, (which investigates allegations of misconduct made against members), only because he made an access to information request after several years of litigation. This document was not produced by the Attorney General. There were no contents in the file jacket.

[271] Mr. Proulx stated that he had a number of documents regarding the inquiries that he was making with respect to Mr. Merrifield. On July 25 or 26, 2005, he gave all of the documents to his assistant, Ms. Robson, and asked her to open an official file. He was going away on holidays and wanted all of the documents to be accessible to others while he was away. He explained that an Occurrence Report (form 2500) is the first page of any file that is opened. An Occurrence Report was prepared for this file. In the upper right hand corner there is a file number, 2005-1117. In the left hand corner, there is a reported date which is July 26, 2005. An “OSR” classification is noted on the document.

Mr. Proulx did not know what OSR stood for. He stated that he reviewed a code cheat sheet with Ms. Robson and decided that the file would be coded XX82 which indicates an internal complaint against a RCMP member. He chose this classification because Insp. Jagoe had brought some concerns to him regarding Mr. Merrifield's participation in the radio talk show. The form shows that the complaint was "taken by Supt. Marc Proulx". In the details section, two allegations are set out being, "S-1 alleged to seek federal election nomination seat without prior authorization" and "S-1 alleged to have appeared on TV and radio talk shows discussing national security terrorism without prior authorization". Mr. Proulx stated that he provided this information to Ms. Robson. At the bottom of the form on the left is a due date, September 14, 2005. This is a diary date for the file to come up for review.

- [272] Mr. Proulx stated that his initials are on the file jacket. In the middle at the bottom it says "05-10-05" and there is a slash across it. Mr. Proulx stated that this shows the date that the file was concluded. This was the day after Supt. Proulx had given Mr. Merrifield the administrative memo setting out his expectations.
- [273] "Secret" is written in the centre of the file jacket. Mr. Proulx stated that secret files can be accessed by only certain people. He did not know why this file was considered secret. He stated that he did not write this word on the file. He was not aware of any special coding for a Code of Conduct investigation. There were no Occurrence Reports (16-24) in the file because it was not an investigation file. Mr. Proulx explained that this was an administrative file and was used to hold documents in order to keep track of them.
- [274] Mr. Proulx stated that he did not know why the file was marked secret. Mr. Proulx then stated that he did know why the file was marked secret. A security classification on a file is related to the highest document in the file. If there was a top secret document in a file, even if it was only one out of five documents, then the file has to be classified as top secret. Mr. Proulx then stated that there were a few pages in this file that were classified as secret and this is why the notation Secret was placed on the file.
- [275] Although Mr. Proulx initially testified that the Secret file was simply a file to hold documents and that he had advised Mr. Merrifield that he was not under investigation, he subsequently stated that he had carried out a fact-finding investigation. He denied that he interviewed Mr. Merrifield at the London meeting on May 27, 2005. He described it as a discussion between a boss and an employee.
- [276] Mr. Proulx did not know that the Secret file was not produced until 2014, on the eve of trial. He had no explanation for this. He never indicated to Mr. Smith, the person in charge of gathering the documents for this action, that a document might be missing.
- [277] Sgt. Verecchia examined file XX82 and the related occurrence report. She stated that XX82 means there was an internal complaint made by Supt. Proulx and that one of the allegations was "alleged to seek federal election and nomination seat without prior authorization". In her view, this meant that a Code of Conduct investigation was underway.

- [278] Sgt. Nicota reviewed the Occurrence Report with respect to the Secret file. He recognized it and stated that it is a form that commences an investigation. It shows that there was an internal complaint against a member. Supt. Proulx had opened the file and Mr. Merrifield was the subject of the investigation. Mr. Nicota also reviewed the file jacket. He stated that he was familiar with it. He said that it was curious that the file had an access restriction. Sgt. Nicota was familiar with the classification of documents for the RCMP. He testified that a secret file denotes a national security investigation. An investigation against a member should fall within the administrative or criminal side. An “A” file is a confidential file, a “B” File is a secret file and a “C” file is a threat to life file. Sgt. Nicota stated that the fact that “Secret” was written on the file folder shows that someone believed the allegations were a threat to national security. It indicates a very sensitive investigation. Sgt. Nicota stated that he would expect to see occurrence reports, exhibit reports, surveillance, investigators’ comments and evidence in a file like this. An investigative report (Form 16-24) outlines every action taken by an investigator. It is a mandatory form. Without it, one does not know what has occurred in the investigation.
- [279] Supt. Jagoe stated that he would expect to find investigative reports and exhibit reports (Form 16-24) in this type of file. These types of allegations are investigated by the Professional Standards unit. They maintain the documents and hold them separately.
- [280] C.O. Seguin testified that he was not familiar with the Secret file and did not recall if Supt. Proulx had told him that he had opened such a file. C.O. Seguin stated that he had never previously seen the related Occurrence Report. The purpose of such a report was to collect data for the opening of an operational file. He had no involvement in the opening of this file and did not know to what it related. He did not know whether Supt. Proulx had initiated a Code of Conduct investigation. If Supt. Proulx had done so, it would not have come to C.O. Seguin’s office because Supt. Proulx would be within his authority to order it. If a Code of Conduct investigation was referred to a disciplinary hearing it, would come to his office. He stated that he was not aware of the action that Supt. Proulx was taking.
- [281] Commr. Paulson stated that if he saw a document like the Occurrence Report in a file, it would suggest that a Code of Conduct investigation was underway. He said a member should be notified as soon as possible of a Code of Conduct investigation. Commr. Paulson stated that the allegations on the Occurrence Report were poorly written explanations. They seemed to be significant suggestions of misconduct. He stated if an individual ordered a Code of Conduct investigation, he would expect that it would be appropriately documented.
- [282] Commr. Paulson testified that a person could use a document such as an Occurrence Report and assign a file number to it without having an issue move forward as a Code of Conduct matter. This could happen because, in an early assessment, there might be a determination that it is no longer a Code of Conduct matter or it might be informally resolved. He stated he would expect that the person who was making these determinations would document them in the file. Subject to canvassing alternative explanations for where some documented analysis and accounting considerations were

placed, Commr. Paulson said he would be concerned if there were no Occurrence Reports or evidence lists in file 2005-1117. He would still expect to see a record of the investigation maintained in some form. This would include detailed notes as to statements or investigative steps taken and the provenance of exhibits.

- [283] Mr. Smith stated that in 2008, he started requesting documents for production in this action. He generated a document list in 2010. The first supplementary document list was provided on June 16, 2010 in advance of examinations for discovery. The second supplementary document list was provided on February 21, 2014. The third supplementary document list was provided on September 30, 2014. The fourth supplementary document list was provided on October 31, 2014. From June 2010 up to the pre-trial conference in June 2014, the AG produced no additional documents. No additional documents were produced until the trial began.
- [284] Mr. Smith stated that he received the Secret file between 2008 and 2010. Access to it was restricted to himself as S/Sgt., C.O. Seguin, Supt. Proulx, Sgt. Gilchrist and the office manager Ms. Robson.
- [285] Mr. Smith stated that he was not privy to the contents of the file. When he received it, he skimmed through the file to see if any information should be redacted before disclosure. He stated that hand writing on the file jacket states, “conclude file” Oct 12, 2005.
- [286] Mr. Smith then referred to a different copy of the file jacket that has a further notation on it. It shows a further entry in 2010, under the 2005 “conclude file” entry. The day and month next to 2010 are illegible. The writing next to this date appears to be “Annual Review by civ lit” although the entry has a line through it and is difficult to read. The word “Secret” is not on this copy of the file jacket with the 2010 entry.
- [287] The copy of the file jacket with the word “Secret” written on it predates the copy of the file jacket with the 2010 entry and without the word “Secret” on it. “Secret” could not have been easily removed later on because there is a background pattern on the document that is intact. No explanation was provided for the fact that the word “Secret” is not on the copy of the file jacket that contains the 2010 notation “Annual Review by civ lit”.
- [288] Mr. Smith stated that the copy of the file jacket with the word “Secret” was made prior to 2010. He provided it to the Department of Justice prior to 2010. It was not produced in this action until 2014.
- [289] Mr. Smith reviewed the related Occurrence Report. He said that it could have been attached to the inside cover of the file. He did not recall when it was produced. He did recall that Mr. Merrifield’s counsel requested the documents in file jacket. The Occurrence Report was provided only after that request was received. Mr. Smith stated that he did not see the Occurrence Report on his initial review because it was produced by someone else. He assumed the contents of the file had been produced to the Department of Justice.

- [290] Mr. Smith stated that by looking only at “occurrence 2005-1117” on the file jacket, he could not determine the nature of the file. He stated that prior to becoming the file manager, he was not aware of the details of allegation S1 (alleged – seeking election without authorization, on TV). Between 2008 and 2010, before the commencement of the trial, he was aware that Supt. Proulx had made these allegations against Mr. Merrifield and that there was an internal investigation. Mr. Smith stated that someone identified that there was a “wallet”, which was like an accordion file that would contain the contents of the file 2005 – 1117. He became aware of the wallet in 2010. He stated that he went through it briefly and sent it to the Criminal Intelligence branch. He asked them to review it prior to disclosure to determine if any redactions were required. Criminal Intelligence returned the wallet. He then provided the wallet and its contents to the Department of Justice. Mr. Smith could not recall whether he thought that the wallet, its contents and a cassette were produced before November 2014.
- [291] Mr. Smith stated that file 2005 – 1117 was reviewed in 2014 because it related to Mr. Merrifield’s political activities and speaking to the media on several occasion. It was relevant to this action. He did not know that the file number was provided in response to an access to information request made by Mr. Merrifield.
- [292] Mr. Proulx stated that he received an email from Cpl. Dunn on September 22, 2005, which contained references to policy. He stated that he thought that this email was in response to his June 7, 2005 memo to C/Supt. Brown in which he set out the four specific questions. Mr. Proulx stated he assumed that the issue regarding the appropriate type of leave had been resolved internally. He was not privy to it. With respect to the question of whether Mr. Merrifield had contravened RCMP Regulation 58.4(1), the answer was not clear. There was no answer regarding whether Mr. Merrifield had placed himself in a conflict by stating his public views on topics outlined in his campaign brochure. There was no response as to whether Mr. Merrifield had contravened the Regulation. There was no ruling on anything. Mr. Proulx stated that he still wanted to resolve this “for Mr. Merrifield”. There were new chapters regarding the policy. He had not made a final decision.
- [293] Mr. Proulx testified that he received an email from Mr. Merrifield dated September 23, 2005, in which he had stated that 19 weeks had passed without any resolution as to whether he had violated the *RCMP Act*. Supt. Proulx took offence to this follow up email from Mr. Merrifield because he was Mr. Merrifield’s superior. His view was that superior officers do not respond to diary date inquiries from junior officers. Mr. Merrifield asked whether he was the “subject of an internal investigation”. Supt. Proulx responded and advised Mr. Merrifield that he was not under investigation. He had not interviewed anyone. He said, “I sent some documents to HQ in Ottawa (as I told you) because the “conflict of interest” is not in the manual as of yet and wanted to get guidance from the policy center.” Mr. Proulx stated that in his mind he was not investigating. He just wanted direction so he could he could make the right decision.
- [294] Although Mr. Proulx stated that he was not “investigating”, at a minimum, he was doing research regarding Mr. Merrifield’s public speaking. The Coran show and the B’nai

Brith event preceded the Barrie nomination meeting. The Pritchard show occurred after Mr. Merrifield had been transferred to Criminal Intelligence.

[295] Mr. Proulx stated that Mr. Merrifield sent him a response dated September 23, 2005 indicating that he meant no offence by his follow up email. He said he was operating under a cloud with the stress of not knowing the result of a serious allegation. He had been suffering from symptoms that he believed were stress related. Mr. Proulx stated that he was not aware of Mr. Merrifield's stress before he received the email. He thought he acted as quickly as he could and was waiting for Ottawa to respond.

[296] SRR Nicota sent an email to Supt. Proulx in which he stated:

Five months is a long time to wait living under the gun or a very dark cloud. He [Cst. Merrifield] was the subject of rumour and inuendo [sic] despite your trip to INSET-TAG to deal with his situation. When his investigations were turned over to another Unit, further questions arose as to his character and work ethic. I am suggesting your reaction to his message was an overreaction.

[297] Sgt. Nicota said that he was under the impression that Mr. Merrifield was being investigated.

[298] Mr. Proulx stated that he did not respond to Sgt. Nicota's email.

[299] On September 23, 2005 at 11:30 a.m., right after he had sent his email to Mr. Merrifield, Supt. Proulx spoke to Supt. Trueman about how to close the matter. Supt. Trueman said that the policies were not clear in the past. The best way to close out the matter was to write an administrative memo to go into Mr. Merrifield's file which would set out Supt. Proulx's expectations as to media relations, conflict of interest and how not to get into a conflict. Supt. Trueman did not state that Mr. Merrifield had any conflict.

[300] Supt. Proulx took Supt. Trueman's advice and provided a memo to Mr. Merrifield dated September 28, 2005. It is entitled "Potential Conflict of Interest relevant to Political Activities/Outside Activities". It states:

This memorandum is prepared in order to address certain concerns I have with your "outside activities". More specifically, I am concerned you may have unwittingly placed yourself in a conflict of interest position relevant to your political activities. Your participation at various TV/Radio shows as a guest speaker or panelist when dealing with sensitive issues, such as terrorism, clearly has the potential to place you in contravention of existing policy.

Sections 56 to 58.7, *RCMP regulations* outline your rights and obligations when contemplating engaging or participating in

political activities. I encourage you to carefully read those sections prior to engaging in any further activities. Prior approval must be sought by the appropriate officer before engaging in a “*political campaign*”.

In so far as your participation at various TV/Radio talk shows or discussion panel, I would refer you to A.M. XII.12 *Secondary employment/Outside activities* published 2005-08-12. Furthermore, all media releases, media interviews or press conferences which are likely to be controversial and are of *National Interest* must be pre-approved by the Commanding Officer of the Division (O.M. – Divisional policy, 27.1).

While you are conducting those activities, concerns for conflict of interest will ensure:

1. that the member is not representing himself as an RCMP member to the public while doing the activity
2. that he is not providing a service that competes with the RCMP
3. that it is the member’s responsibility to ensure that he avoids any actual, apparent or potential conflict of interest

While this serves only as a reminder of your obligations and rights as a member of the RCMP, I am confident that if you keep those guidelines in sight while conducting outside activities, you will continue to be a valuable member of the RCMP and contribute to our organizational goals and mission.

Be assured of my continued support with your future career endeavors, and I remain available to further discuss these issues should you wish.

[301] It should be noted that A.M. XII.12 was published on August 12, 2005, a month after Mr. Merrifield’s appearance on the Pritchard show. C.O. Seguin said it was actually a new administrative chapter.

[302] Mr. Seguin stated that he did not order anything to be done regarding Mr. Merrifield’s participation in the radio show on terrorism. Insp. Schmidt had already directed Supt. Proulx to follow up and get the details. Mr. Seguin stated that when something was in the media, normally a briefing note would be provided to Ottawa. As of July 12, 2005, he was not aware of any other media appearances. He never listened to the radio interview or read a transcript of it. He said that the radio address was not a big deal.



- [303] C.O. Seguin stated that he reviewed the memo dated September 28, 2005 from Supt. Proulx to Mr. Merrifield. C.O. Seguin stated that Supt. Proulx was within his authority to prepare this. He did not provide any direction to Supt. Proulx regarding the specific steps that he was to take.
- [304] Mr. Brown stated that on December 12, 2005, he and Sgt. Sim met in a boardroom with Supt. Proulx. He and Sgt. Sim were trying to make a bid to have Mr. Merrifield stay in Criminal Intelligence. He was fun to work with and they were getting things done. They questioned why Mr. Merrifield was leaving Criminal Intelligence. Mr. Brown recalled that Supt. Proulx said that someone had it out for Mr. Merrifield but it was not him. Mr. Brown said that he prepared a statement setting this out. Supt. Proulx said that Mr. Merrifield's transfer from Criminal Intelligence was out of his hands.
- [305] Mr. Proulx's recollection of the meeting confirmed Mr. Brown's testimony.
- [306] Mr. Proulx stated that he had no involvement in the ultimate staffing process for Mr. Merrifield once he determined that Mr. Merrifield could no longer be in TAG. Mr. Proulx stated he did not have any positions available in Newmarket.
- [307] A/Sgt. Crane stated that honesty is a core value in the RCMP and that a breach of it is reportable. He told Supt. Proulx that Mr. Merrifield lied to him and that he did not believe Mr. Merrifield. This was not reflected in Mr. Merrifield's performance report dated October 11, 2005. There are no comments in the report that say Mr. Merrifield was dishonest and a liar.
- [308] Commr. Paulson reviewed Mr. Merrifield's performance evaluation for the period August 1, 2004 to August 1, 2005. He understood that the document was signed by A/Sgt. Crane, Insp. Jagoe and Supt. Proulx. Commr. Paulson stated that if a line officer thought that a junior that he was evaluating had lied to him about the use of leave without pay or unauthorized public speaking, he would expect it to be set out in the performance review. He stated that appraisals are supposed to be evidence-based, accurate and actionable. They were to help people improve rather than to criticize and punish them. If the writer of a performance evaluation felt that someone was not truthful, the reference in the performance review should be linked to some work related issue that might have some consequences for the work.
- [309] Mr. Proulx stated that by the time the performance report was written, the issues were concluded. He had given Mr. Merrifield the memo dated September 28, 2005. Mr. Proulx felt that the issues were dealt with on October 4, 2005 when he gave Mr. Merrifield the memo.
- [310] Mr. Merrifield stated that after the summer of 2005, he submitted multiple search warrants, production orders, one-party consents and 540 affidavits containing evidence with respect to nuclear proliferation prosecutions. The Public Prosecution Service elected to proceed based on his 540 sworn submissions. He was the chief witness in this prosecution.

- [311] In January 2006, Mr. Merrifield was transferred to a permanent position in the Customs and Excise section at the airport.
- [312] Mr. Proulx said that he could not keep Mr. Merrifield in TAG “because he was a candidate in a federal election”.
- [313] Mr. Seguin stated that Supt. Proulx prepared a Briefing Note to the Commissioner dated January 17, 2006. It was written on the recommendation of C/Supt. Mazerolle in order to provide a review of Mr. Merrifield’s transfers from INSET to TAG and then to the Criminal Intelligence Branch. C.O. Seguin approved the Briefing Note. It states:

During the summer, while this review was ongoing, Cst. Merrifield participated in a radio talk show where he identified himself as a “Security and Counter-terrorism consultant”. Although Cst. Merrifield did not reveal any classified information or his affiliation with the RCMP, his line officer once more brought the issue of a potential conflict of interest to his attention. The review of this matter revealed that the new conflict of interest policy came into effect in September 2005. It was therefore determined by Supt. Proulx that an administrative memorandum would resolve any ambiguity regarding this issue with Sgt. Merrifield, specifically regarding his behaviour and demeanour. In October 2005, he was given an administrative memo outlining clearly the expectation of his line officer and a copy of the appropriate related policies.

- [314] Mr. Seguin noted that the recommendation section of the Briefing Note to the Commissioner states:

It is clear that the member has placed himself in a position of at least a perceived conflict of interest which jeopardizes the effectiveness and reputation of both the RCMP and the member. As a result, measured and reasonable steps have been taken to minimize the conflict and ensure the effectiveness of the RCMP.

- [315] Supt. Proulx concluded that Mr. Merrifield had a conflict issue even though Supt. Trueman, who was an expert on these issues, did not concur. He said the policy was unclear.
- [316] Mr. Seguin signed the Briefing Note. It was forwarded to Ottawa. He did not recall receiving any response from the Commissioner’s office to the briefing note. He knew that Mr. Merrifield had been removed from TAG and had been transferred to Toronto North Customs and Excise. He did not make the decision. Rather he was briefed on it. The decision was made by the Criminal Intelligence branch.

- [317] Mr. Proulx stated that Mr. Merrifield was not disciplined regarding his participation at the Barrie nomination meeting without LWOP or his participation on the radio show.
- [318] Mr. Proulx's evidence that he had nothing to do with Mr. Merrifield's transfer is contradicted by Mr. Seguin's evidence. The Criminal Intelligence branch was under Supt. Proulx's command.

### **The Special Operations Center - October 23, 2005**

- [319] Mr. Merrifield testified that on September 11, 2005, he received a call from Sgt. Sim. A terrorist threat had been made against Toronto. Accordingly, the Special Operations Center (SOC) was "stood up." The SOC was a large room with a number of TV screens and twenty desks for use by various police agencies across Toronto. Each agency would have one or two desks to use during national security events. The purpose of the SOC was to facilitate information sharing. The situation required "all hands on deck". Mr. Merrifield was directed to report to the SOC. While he was en route, Sgt. Sim called him and told him to turn around and go home.
- [320] Mr. Merrifield stated that he was the only member in the Division ordered to not attend the national emergency. He testified that this meant he was not trusted by the organization and his days were numbered. He could not comprehend why, in the middle of efforts to thwart a national terrorist attack, Insp. Van Doren, the incident commander, would have the presence of mind to direct that he be ordered to not attend the SOC. This would mean that two other members would have to work twelve hour shifts rather than eight hour shifts. Mr. Merrifield contacted SSR Bohus about this. Mr. Merrifield had the highest of security clearance.
- [321] Mr. Merrifield requested an explanation from Supt. Proulx. The response was that Insp. Van Doren believed that he was "not the appropriate resource." He said this response was essentially "none of your business."
- [322] Mr. Merrifield stated that he felt destroyed after he was called back from the SOC and was told that he was not the appropriate asset when "all hands on deck" were required for a national emergency.
- [323] Sgt. Sim was in charge of the SOC investigators. Sgt. Penny told him to stand up the unit and staff the desks. He contacted Mr. Merrifield and Cst. Brown to tell them that he was doing this. Subsequently, Sgt. Penny told him that Mr. Merrifield was not allowed to go to the SOC and be part of the team. Sgt. Sim believed that Mr. Merrifield was not allowed to go because of perceived conflicts with politics. He was a black sheep among the higher ups. He had been blackballed. Sgt. Sim stated that when this type of thing happens, you are not going anywhere in the force. He recalled that Mr. Merrifield was extremely upset when he was told he could not work at the SOC.
- [324] C/Supt. Mazerolle was overall commander of a project known as Obolt. It concerned the bomb threats to various locations in the Greater Toronto Area. This was the reason why the SOC was stood up. C/Supt. Mazerolle stated that on one day, during the evening,

Insp. Van Doren came into his office and said he had dealt with a minor issue. He said that Mr. Merrifield had been called into work in the SOC and Insp. Van Doren had decided to stand him down. C/Supt. Mazerolle stated that he had no reason to question Insp. Van Doren. It was his call to make these decisions.

- [325] Mr. Van Doren is retired. He explained that the RCMP was responding to what appeared to be a serious threat to the country. They had information that there were two stashes of explosives and that the first people on the scene would be subject to car bombs. This required a multi-jurisdictional response involving chiefs of police from various police forces. Insp. Van Doren stated he was second in command and was looking after the national security part. He was in the London headquarters when all of this was happening.
- [326] Insp. Van Doren's notes show that on October 23, 2005, Sgt. McIntyre contacted him for relief for the overnight shift. Sgt. Penny, Mr. Merrifield's supervisor, had recommended him. Insp. Van Doren requested that someone else be selected instead of Mr. Merrifield. He knew that Mr. Merrifield had been removed from INSET and felt that it was not fair to him or to the organization that he be at the SOC. He believed that if something bad happened and if Mr. Merrifield had been responsible for it by either doing something or not doing something, the RCMP would be blamed for it. Insp. Van Doren agreed that a decision to not allow someone to work at the SOC was significant. He stated that this was a critical situation and he did not think that Mr. Merrifield should be put in the situation because he had recently been removed from INSET.
- [327] On the next day, October 24, 2005, SRR Bohus, came to his office and wanted to talk about Mr. Merrifield. Insp. Van Doren stated that he took time to speak to SRR Bohus because he felt that Mr. Merrifield deserved an explanation as to why he had been stood down. He told SRR Bohus that his decision was based on the fact that it was a national security incident. He was aware that Mr. Merrifield had been removed from INSET and did not feel it was appropriate for Mr. Merrifield or the RCMP to "force him back into the situation." He believed that Mr. Merrifield "was not the appropriate resource".
- [328] Insp. Van Doren recalled a conversation with Supt. Proulx on the same day. Supt. Proulx came into his office and stated that Sgt. Penny had told him the previous night that Mr. Merrifield believed that the decision to exclude him from the SOC was workplace harassment. Insp. Van Doren stated that his discussions with Insp. Jagoe did not have any bearing on his decision that Mr. Merrifield should not report to the SOC.
- [329] The inquiry about Mr. Merrifield's working at the SOC would not normally have come to Insp. Van Doren's attention. Generally, he did not make decisions as to who manned the SOC but Sgt. McIntyre had called him. It was unusual for someone to request staffing advice from him. Insp. Van Doren said he knew that Mr. Merrifield had been removed from INSET but he did not know how that information had come to him. He stated that probably Insp. Jagoe or Supt. Proulx told him.

- [330] Mr. Van Doren stated that he received an email from SRR Bohus on December 14, 2005 in which he requested a meeting with Supt. Proulx, the C.O. and himself to clear the air. In the email, SRR Bohus stated:

I also believe it prudent at this time to request a meeting between yourself, Supt. Proulx, the C.O. and the SR/OPS officer with myself and my client to clear up once and for all any misinformation that might be floating about in regards to my client's past political activities. In my view, there has been a great deal of innuendo that is circulating about and I strongly believe we have to have a roundtable discussion to clear the air once and for all.

- [331] Insp. Van Doren sent an email to SRR Bohus in response on December 19, 2005. He stated:

I was managing an "O" Division response to a N.S. incident that had the potential for serious consequences for Canada and her citizens.

As a line officer O INSET, I was aware the Constable Merrifield was recently transferred from the O INSET (TAG) site. That decision was based on concerns about his suitability to carry out O INSET work. Supt. Proulx as the line officer for CID was dealing with that aspect.

Further to my responsibility to manage the O INSET response to the above noted N.S. incident, I directed that Constable Merrifield be advised not to report for duty at the SOC. My decision was based on the need to select the most appropriate resources for that assignment. I concluded, based on the information available at the time, the Constable Merrifield was not the most appropriate resource.

As regards your request to arrange a meeting with division senior management, that request should be directed to Supt. Proulx, as Constable Merrifield's line officer, for his consideration and response.

- [332] Insp. Van Doren stated that he was not asked to attend a meeting with Mr. Merrifield after this.
- [333] Even though Supt. Proulx's memo to Mr. Merrifield dated September 28, 2005 resolved all outstanding issues, no one ever told Insp. Van Doren that there were no concerns about Mr. Merrifield.

- [334] Mr. Proulx stated that he had a conversation with Mr. Merrifield about his being stood down from the SOC. Mr. Merrifield was concerned and wanted a reason for why this had happened. Mr. Proulx stated that he had spoken with Insp. Van Doren about it. Insp. Van Doren told him that he was aware that Mr. Merrifield had been pulled from TAG and had said that he would wait until that was resolved before he put him back in the SOC.
- [335] Mr. Proulx stated that he did not tell Insp. Van Doren that the election and radio program issues were resolved because he did not know whether Insp. Van Doren was aware of them. Insp. Van Doren never asked him about Mr. Merrifield's working at INSET or at the SOC. Supt. Proulx only learned of Mr. Merrifield's callback from the SOC after it happened. Mr. Proulx said that he did not tell Insp. Van Doren that the matter was resolved because there was still a Human Resources question as to where Mr. Merrifield was going to be posted. Insp. Van Doren thought the matter was not resolved and Supt. Proulx did not correct him.
- [336] C/Supt. Mazerolle recalled Insp. Van Doren's briefing him about standing down Mr. Merrifield from the SOC. The reason was something about a conflict of interest. By that time, C/Supt. Mazerolle had read Supt. Proulx's September 28, 2005 memo to Mr. Merrifield. He did not tell Insp. Van Doren that Mr. Merrifield had done nothing wrong. He did not make inquiries as to what the conflict was. He did not want to know why Mr. Merrifield was stood down from the SOC. Insp. Van Doren had made the decision. C/Supt. Mazerolle did not question it. He was not aware of the information Insp. Van Doren had when he made the decision.
- [337] C/Supt. Mazerolle stated that a couple of days later, Insp. Van Doren told him that he had been questioned about his decision by SSR Bohus and he gave him the reason for it. C/Supt. Mazerolle did not ask about the reason. The issue had been addressed by Insp. Van Doren and he had confidence in his abilities. C/Supt. Mazerolle stated that even though the SRR had spoken to him about concerns with respect to Mr. Merrifield and he knew that Mr. Merrifield had been stood down from the SOC, he was not concerned. He stated he had no contact with Mr. Merrifield. The decision had been made by others. Even though he knew that Mr. Merrifield had been cleared, he did not inform Insp. Van Doren.
- [338] C/Supt. Mazerolle had the authority to intervene in a decision made by a Superintendent who reported to him, when that Superintendent was within his authority to make the decision. He could have told Insp. Van Doren that Mr. Merrifield was cleared of conflict issues.
- [339] There is no logical explanation for the fact that both Supt. Proulx and C/Supt. Mazerolle neglected to tell Insp. Van Doren that all concerns about Mr. Merrifield had been resolved a month earlier. Mr. Proulx said that a decision still had to be made about Mr. Merrifield's transfer. This was an excuse. The transfer was an administrative matter resulting from Supt. Proulx's decision that Mr. Merrifield could not work in TAG. It had no bearing on whether Mr. Merrifield was suitable to work in the SOC. C/Supt.

Mazerolle chose to ignore the matter. He knew that Supt. Van Doren had made a decision based on incorrect information. C/Supt. Mazerolle was indifferent. Both Supt. Proulx and C/Supt. Mazerolle had opportunities to set the matter straight but they neglected to do so. They allowed the perception of Mr. Merrifield's tarnished reputation to continue.

- [340] Supt. Jagoe stated that in the early fall of 2005, SRR Bohus called him one day. He asked him whether he would accept Mr. Merrifield as a transfer to INSET from TAG. Supt. Jagoe stated that he could not accept Mr. Merrifield as a transfer because of his involvement in the media. He stated that INSET had to be able to investigate all threats to national security. It was clear to him that he needed people to follow procedures and protocols in everything they did. At that time, he was thinking only about the radio interview that Mr. Merrifield had done. Supt. Jagoe stated that this was Supt. Proulx's decision to make as he was Mr. Merrifield's line officer.
- [341] Supt. Jagoe stated that he did not typically use words such as "Merrifield had burned his bridges"; however, SRR Bohus could have understood him to say that. Mr. Merrifield's public speaking and political activities caused him to have this view; however, he did not consider his refusal to have Mr. Merrifield at INSET as discipline. When he spoke to SRR Bohus in the fall of 2005, he did not know what had become of his concerns with respect to the nomination meeting. He assumed that they had been dealt with. He also assumed that the matter regarding the Pritchard radio show interview was concluded. Nevertheless, he remained concerned enough to tell SRR Bohus that he was not going to have Mr. Merrifield back at INSET.
- [342] Supt. Jagoe stated, "he did not demonstrate to me that it was appropriate for him to come back." Supt. Jagoe stated that he made this determination without knowing the outcome of any steps that Supt. Proulx might have taken. Even as of the date of his testimony, Supt. Jagoe's view of Mr. Merrifield's appearance on the Pritchard show was that he went too far and disclosed sensitive issues. He knew that Supt. Proulx's memo to Mr. Merrifield dated September 28, 2005 did not result in any discipline.
- [343] Supt. Jagoe stated that he knew Mr. Merrifield had been temporarily transferred to Criminal Investigations and ultimately, about six months later, that he was formally transferred to Customs and Excise under the command of Insp. Johnson. He was aware that the Customs and Excise unit did some counter proliferation work.<sup>v</sup> He knew that Mr. Merrifield had been the lead on one case that had an excellent result. This did not surprise Supt. Jagoe. Mr. Merrifield was a talented investigator. Supt. Jagoe stated that he knew that this type of work would require access to sensitive information. He was not aware that Mr. Merrifield's security clearance was ever reduced nor did he ask for it to be. He knew that the work in Customs and Excise touched on international security. The unit would prepare affidavits for search warrants and mutual legal assistance treaties. Members, including Mr. Merrifield, would give evidence give at preliminary inquiries, trials and before administrative tribunals. He was not concerned about Mr. Merrifield's believability. Counter proliferation investigations fell under Border Integrity which was under the command of Insp. Van Doren. Supt. Jagoe stated that he never advised Insp.

Johnson about his concerns regarding Mr. Merrifield's judgment. He never advised Insp. Andy White, who was in charge of Serious Organized Crime, of his concerns about Mr. Merrifield's judgment. He knew that Insp. White ran counter proliferation investigations.

- [344] C/Supt. Mazerolle recalled that SRR Bohus had approached him about Mr. Merrifield. He said that senior management was missing an opportunity because Mr. Merrifield was a good member and should be moving up the ranks. C/Supt. Mazerolle recalled that SRR Bohus mentioned this a number of times while Mr. Merrifield was still at TAG. When he went to Customs and Excise, SRR Bohus mentioned it. He was a strong supporter of Mr. Merrifield. SRR Bohus said that Mr. Merrifield was not happy with how he was being treated.
- [345] In October, 2005, Supt. Proulx sent an email to Insp. Brine in Human Resources to request a staffing interview so that Mr. Merrifield could be re-posted. He stated, "I am convinced at this moment that Cst. Merrifield cannot work within the TAG...it would be in the best interest of the RCMP and of Cst. Merrifield if he was assigned to other duties not related to "politics"."
- [346] Mr. Merrifield stated that staffing interviews are usually conducted to determine a member's interests and abilities and to provide an opportunity for the member to learn about vacancies. A recommendation is made. Everyone knew about his participation in the 2004 federal election. He had been posted to TAG less than three months after he stood for election. He believed that his work relating to Liberal Prime Minister Martin after he had stood for the election showed that he did not have a conflict.
- [347] Mr. Merrifield had a personnel interview with Sgt. McCann on November 7, 2005. He stated that he wanted to work on the investigative side of INSET which had vacancies. In fact, a workshop was held on October 18, 2005, the topic of which was how to attract and retain qualified members to work in national security because there were many vacancies. There were retention issues. Working on the investigative side of INSET would involve investigating terrorists. Mr. Merrifield's previous political activities would have been irrelevant because the work did not involve VIPs with political affiliations. Mr. Merrifield would not consider a posting that required moving because he had a young family. Sgt. McCann told him that he would make an inquiry "through the back door" about the possibility of Mr. Merrifield's working at INSET.
- [348] When Supt. McCann began the staffing interview, he knew that Supt. Proulx had decided that Mr. Merrifield could not work in TAG. He could not recall whether he contacted Insp. Jagoe to see if Mr. Merrifield could be transferred to INSET. His notes dated November 23, 2005 show that he had a conversation with Insp. Jagoe and that Insp. Jagoe was familiar with Mr. Merrifield. His notes also state, "INSET inquiry." Based on this, Supt. McCann stated that he likely made the inquiry.
- [349] Mr. Merrifield stated that he believed he was well qualified to do investigative work at INSET. His performance evaluation that covered the period from August 1, 2004 to August 1, 2005 was drafted by A/Sgt. Crane. Insp. Jagoe and Supt. Proulx added



comments. They were extremely positive. He had been doing community outreach because he thought that the RCMP was relying on dated information. Mr. Merrifield explained that doing community outreach was essential if you wanted people to provide information. He attended various events outside of his shifts. He went to communities that he thought could provide the most useful information. He recruited sources. Some of this was an extension of the relationships that he had through politics. It allowed him to collect information from a wider spectrum of human sources. His performance evaluation noted that his planning and organization skills were good and that he had worked a lot of voluntary overtime on Operation Bridgeout to the disadvantage of his family. Regarding his interpersonal skills, he was noted to be a popular and respected member of INSET. A/Sgt. Crane signed this evaluation on September 12, 2005.

- [350] Mr. Merrifield stated that he was told Insp. Jagoe would not have him back at INSET, given the security level required for their work. This made no sense because Mr. Merrifield had the top secret security level which was required to work at INSET. No additional security level would have been required to do the work.
- [351] Mr. Merrifield said that “unofficially, the wall had gone up.” He stated that Sgt. McCann made every effort for him. He was candid. A transfer to Customs and Excise, which had a vacancy, was going to happen whether Mr. Merrifield wanted it or not. There was nothing else.
- [352] Supt. McCann disagreed that if Insp. Jagoe had agreed to have Mr. Merrifield at INSET, he likely would not have been transferred to Customs and Excise. He stated that Customs and Excise was an appropriate fit for Mr. Merrifield.
- [353] This is completely illogical. Supt. McCann knew that Mr. Merrifield’s interest was in national security work. He had received high praise for the work that he had done at TAG. The fact that Supt. McCann contacted Insp. Jagoe shows that Supt. McCann thought that transferring Mr. Merrifield to the investigative side of INSET made sense. It had a number of vacancies.

### **The Promotion Process**

- [354] Insp. MacKinnon was the Promotion Co-ordinator. He introduced a new promotion system in 2006. The new promotion system had five stages: 1) a job simulation exercise exam (JSE exam), 2) line officer/supervisor support, 3) advertisement, 4) validation/competency and 5) line officer selection. Insp. MacKinnon explained that the job simulation exercise JSE exam would typically be held in February. Usually in November of each year, there would be a publication alerting members interested in promotion regarding when the next JSE exam would be held. It was a voluntary system. Members had to identify their interest to Insp. MacKinnon’s office regarding which exam they wanted to write and state how many years of service they had within the RCMP.
- [355] Sometime in 2005, a notice went out entitled “NCO Promotion Exams Job Simulation 2006.” Insp. MacKinnon stated that this would alert members that they had to register to

write an exam. Members had to have seven years of service by April 1, 2008 before they could write the JSE exam in 2006. This was because the RCMP adopted a two year cycle for writing the exam. Members were allowed to write the exam without having to wait for the two years if they would have the amount of service before the expiry of the two year period.

- [356] Mr. Merrifield expressed an interest in writing the Corporal exam. He sent an email to Insp. MacKinnon's office dated December 8, 2005 to register to write the JSE exam in February 2006.
- [357] Insp. MacKinnon explained that a member who was interested in writing the JSE exam would submit a competency resume. For example, a position might require the ability to develop resources and obtain judicial authorizations. Candidates would have to supply examples of their work in that area. If appropriate, these examples would be validated as sufficient for the requirements of a promotion.
- [358] Various job vacancies with required ranks and relevant criteria were listed on the Force's intranet. If Mr. Merrifield wanted to apply for one of these jobs, he would have to pass the JSE exam and submit a package outlining his various competencies to show that he had the ability to do the job. Then, the application would be forwarded to the line officer for selection. Insp. MacKinnon stated that initially, only three validated candidates were forwarded. The line officer would determine which one was the best for the position.
- [359] Under the new promotion system, the line officer who had the vacancy would be the person to select the best candidate for it. If the line officer felt that there was any conflict, he could ask another line officer to make the selection. That would be up to him or her.
- [360] If Mr. Merrifield had wanted to move into a promotion in INSET in 2006, he would have had to go to the line officer of INSET to be selected. This was Insp. Jagoe. If Mr. Merrifield was in one position and wanted to go into another, there was a way to do it without a staffing interview but it was not the correct process. A secondment could have accomplished this back in 2005 and 2006.

### **Loss of Income due to Delayed Promotional Opportunities**

- [361] Mr. Merrifield stated that he wanted to write the JSE exam as soon as possible. He obtained some practice exams to help him prepare. He explained that once he passed the JSE exam, he would receive a four percent pay raise to the level of a senior Constable even if he was not yet promoted.
- [362] Mr. Merrifield explained that he was not eligible to write the exam until his seventh year of service. He had to write it to be promotable in his eighth year. Mr. Merrifield provided a list of his competencies up to December 2013. Effective April 30, 2009, he had the following competencies: "prepare/present testimony; develop/manage human sources; obtain judicial authorizations; conduct invest-general; concern for safety; and records/information management". As of December 16, 2013, he had additional

competencies: “legis-no specific context and legis-border integrity-IBET”. Competencies are rated on a scale from 1 to 4. Mr. Merrifield’s rating for prepare/present testimony was rated two. All of the rest were rated three. In addition, Mr. Merrifield had firearms training. He was a top level marksman.

- [363] Mr. Merrifield was unable to write the JSE exam in 2006 because he was off duty sick. He claims that as a result, he has suffered a loss of income. If he had been able to write the exam, he should have been promoted to Corporal effective July 1, 2006. Instead, he was actually promoted to Corporal on July 1, 2009. Similarly, if he had been promoted to Corporal on July 1, 2009, he should have been promoted to Sergeant effective July 1, 2008. Instead, he was actually promoted to Sergeant on March 1, 2014.
- [364] Stephen Raine was the chair of the National Staffing Committee for the RCMP. He is now retired. He was qualified as an expert in the RCMP’s hiring process, including the means by which potential candidates demonstrate their credentials and methods by which potential candidates are identified and qualified in relation to promotions. A Statement of his Expert Opinion dated May 8, 2014 was filed.
- [365] Mr. Raine was provided with a list of twelve job postings for Corporal positions for the period April 2007 to January 2013. He was also provided with a list of nine job postings for Sergeant positions for the period April 2007 and January 2013. These are found in Appendix 1 of his Statement of Expert Opinion.
- [366] Mr. Raine was asked to make the following assumptions:
- a. Mr. Merrifield would have applied for these positions had he been able to;
  - b. Mr. Merrifield would have had the qualifications set out in his NCO application dated November 2013 with the exception of rank when he applied for the Corporal positions;
  - c. Mr. Merrifield would have had the qualifications including the rank of Corporal when applying for Sergeant positions;
  - d. Mr. Merrifield would have applied for each of the positions identified;
  - e. The job summary, job requirements and competency profile for each position were as set out in each of the Corporal and Sergeant postings; and,
  - f. Mr. Merrifield was not subject to any Code of Conduct investigations.
- [367] Mr. Raine was asked to provide his opinion regarding whether Mr. Merrifield would have been qualified for the above noted positions. He was not asked to provide an opinion as to whether Mr. Merrifield “would have been awarded the position but simply whether, all else being equal, he would not have been disqualified.”

[368] Mr. Raine's expert opinion, set out on page 4 of his Statement of Expert Opinion, is:

Based on the items I received, I am satisfied that Peter Merrifield had all the necessary qualifications and Competencies required to perform the positions as set out in Appendix 1 and that, providing his *[sic]* submitted his application on time, and to the right location and with the assumption that he was not under any discipline investigation or formal sanction, he would have been able to compete for the positions noted.

[369] Mr. Raine noted that he could not make an assessment of whether Mr. Merrifield would have been successful in his application for any particular position because he did not have access to the packages of other applicants who applied for those positions. Nevertheless, he stated that Mr. Merrifield's application would have been competitive.

[370] Ian Wollach is a member of the Canadian Institute of Chartered Accountants and is designated as a specialist in forensic and investigative accounting. He was qualified as an expert in quantifying damages. His Income Loss Report regarding Mr. Merrifield dated March 24, 2014 was filed.

[371] Mr. Wollach stated that initially, he was provided with certain documents including a series of Mr. Merrifield's T4 slips, the RCMP pay scale and Mr. Merrifield's pension statement. He was asked to determine Mr. Merrifield's income losses due to delayed promotional opportunities. In doing so, he made certain assumptions that are set out on pages two and three of his report. They are the following:

- a. Mr. Merrifield's income losses commence effective July 1, 2006 (when he should have been promoted to a Corporal), and cease as of March 1, 2015 (the projected date he will reach the top pay step on the salary scale for Sergeants);
- b. The difference between his post-incident earnings (per his T4 slips) and his annual salary (per salary scales provided) is assumed to be additional income earned primarily through overtime opportunities;
- c. his pre-incident earnings should be determined as the sum of his annual salary and estimated overtime income; and,
- d. His pre-incident overtime income was estimated assuming he would have worked the same amount of overtime as he did in the past (for example, in 2011, his overtime income as a Corporal was estimated at approximately 11.7% of his salary, and therefore, we assume his pre-incident earnings as a Sergeant in 2011 should be 11.7% greater than his applicable salary).

[372] Mr. Wollach compared Mr. Merrifield's pre-incident earnings (the amount he would have earned had he been promoted to Corporal on July 1, 2006 and to Sergeant on July 1, 2008) to his post-incident earnings (the amount he actually earned given his promotion to

Corporal on July 1, 2009 and to Sergeant on March 1, 2014). A number of charts are contained in Mr. Wollach's report showing how he considered the amounts set out in Mr. Merrifield's T4 slips, the RCMP pay scale and Mr. Merrifield's pension statement and how he applied the above noted assumptions to calculate Mr. Merrifield's loss of income due to delayed promotional opportunities. His opinion is that Mr. Merrifield's loss is \$71,913.

### **Transfer to Customs and Excise - January 2006**

- [373] Mr. Merrifield left Supt. Proulx's chain of command on January 16, 2006 when he was transferred to Customs and Excise.
- [374] Mr. Merrifield stated that from January to July 2006, he was on sick leave supported by his family doctor. He was suffering from stress, dizziness, nausea. He was angry and frustrated. He inappropriately lashed out at his family. He feared that he would lose his job. He was ill, depressed and scared. It was a very dark spot in his life. He turned in his service pistol. The RCMP Health Services unit did not challenge his need for sick leave.
- [375] Mr. Merrifield could not write the JSE examination.

### **Mr. Merrifield's American Express Card**

- [376] In January 2006, Supt. Proulx ordered a Part IV Code of Conduct investigation against Mr. Merrifield alleging disgraceful conduct regarding the use of his American Express (Amex) credit card. To understand the very serious allegations that Supt. Proulx made against Mr. Merrifield, a detailed review of the communications and events leading up to the investigation is necessary.
- [377] Mr. Merrifield explained that he was issued a RCMP covert Amex credit card in 2002 or 2003 when he was in the Air Marshalls program. These cards were "covertly backstopped" meaning that they could not be linked to the RCMP. If someone had possession of the card, he would not know that the user was an RCMP officer. Mr. Merrifield stated that as an Air Marshall, he would use the Amex card to purchase clothes if his luggage was delayed.
- [378] When Mr. Merrifield was seconded to INSET, he had to move to Ontario. Nevertheless, the statement for the Amex card continued to be sent to his former address in Saskatchewan. Accordingly, he was receiving delayed statements.
- [379] Mr. Merrifield stated that he had an outstanding balance on his card of approximately \$1,200. He acknowledged that ultimately, he was personally responsible for all the expenses incurred on the card. At that time, he had significant expenses on the card for travel and various items for Operation Bridgeout. Nevertheless, he was owed reimbursement for expenses and payment for overtime work. At one point, the gas card for police vehicles was not working. He used his Amex for gas. He had to use it once for

gas for his personal vehicle when no police vehicles were available. Mr. Merrifield explained that he would fill out an expense report based on his receipts. It would be submitted to his supervisor for review and approval. Then the line officer would sign off. Then it would go to the pay office where a cheque would be issued for reimbursement.

- [380] Mr. Merrifield stated that he completed all of his expense claims and left them with A/Sgt. Crane before he was temporarily transferred to Criminal Investigations.
- [381] On November 7, 2005, Mr. Merrifield received an email from John Steeves, Manager of Accounting Services, stating that he had been sent a duplicate payment for certain expenses that he had submitted for a trip to Ottawa in the spring of 2005. Mr. Steeves described the manner in which the administrative error had been made and said an account receivable would be issued to cover the overpayment.
- [382] Mr. Merrifield replied to Mr. Steeves on the same day, advising him that would be on two RTOs (Regular Time Offs) and would address the matter when he returned. He pointed out that he had not received payment for overtime claims submitted in June, 2005 exceeding \$1,400. He stated that the amount identified by Mr. Steeves was part of a claim that had not been paid in a reasonable time.
- [383] Mr. Merrifield stated that he spoke to a public servant in the RCMP and said that he would pay the balance if the card was going into default but he did not want to pay the amount from his personal funds when he was owed money.
- [384] Supt. Proulx sent an email to Mr. Merrifield on November 8, 2005. It referred to an earlier conversation between them on October 24, 2005. Supt. Proulx wrote:

In our first conversation, you made reference to two things that struct [sic] my attention:

1. You said that the “missing money” were [sic] from the expenses claims [sic] related to your trips to SSM regarding the training exercise “Rouge [sic] Tanker. You submitted two expense claims related to this. The first one was submitted on the 19 April for \$713.13. A cheque was issued on June 9. The second claim was submitted on May 18 and a cheque was issued on June 10 for \$722.30. So I take from this that by June 13<sup>th</sup> or 14<sup>th</sup> you had received both payment [sic] and should have cleared your Amex.
2. The second fact was that during our conversation of Oct. 24<sup>th</sup> when I brought to your attention the present mater, you stated that this was “all” resolved and that you had made payment two weks[sic] ago and that the cheque had cleared your bank account. When I dealt with Corporate on this issue the next

day, they had your cheque in hand, which they had received a few days prior and it wasn't cashed as of yet.

3. Now, it appears corporate claims you have been inadvertently paid twice for the same claim in the amount of \$838.35. As you say, it is bizarre. I will ask Corporate to conduct a complete review/reconciliation of your Amex - 1393 accounts for the past two years in order to ascertain that you are treated fairly and that you do not over pay the RCMP.

[385] Mr. Merrifield sent an email response to Supt. Proulx on November 10, 2005. It stated:

The claims were from Rogue Tanker (2) and TA Course Ottawa (1) so there should [be] a total of three cheques payable to me in addition to the OT.

As I stated previously two cheques were issued to Amex by my wife both in excess of \$1100.00 in order to clear the bill. The second cheque was ordered not to be issued by London and was reissued to the Receiver General and forwarded to John Steeves as per his request. The first cheque had indeed cleared and the second was sent to John Steeves on the 13<sup>th</sup> of October by interoffice mail. At that point I believed the matter [was] resolved. You and I spoke on the 24<sup>th</sup> and I informed you of these details. As of the 24<sup>th</sup> I believed that I had no balance owing to Amex or the Receiver General and believed that both cheques had cleared. Upon arriving home [on] the 24<sup>th</sup> my wife checked on internet banking and the second cheque to the RG had not cleared some 11 days after being forwarded to London. I would have gladly informed you of this had you called me back...I appreciate that you are very busy and I am also aware that you were off sick but I believe that these details should clarify the issues that "struck your attention" and were available by the morning of the 25<sup>th</sup>.

I also believe that much of the confusion was caused by claims that were forwarded to the incorrect offices for signing by INSET. The TA claim went to London then back to INSET instead of to Ottawa causing a delay. The Rogue Tanker claim was sent by INSET to CSIS attn: the facilitator of the TA course who contacted me regarding the confusion and advising that he had not received the correct claim. The third claim which was a Rogue Tanker claim was the only one paid in a timely fashion. These three claims total nearly \$2,400.00 which was the amount owing on Amex.

I will complete a review from my end as well which should provide a clearer picture of what the status of payments is. At the

end of the day the Amex should be clear and the expense issue is being resolved.

[386] Supt. Proulx sent another email to Mr. Merrifield dated November 10, 2005. It stated:

You are absolutely right, there were three claims (2 for Rouge [sic] Tanker and one for a course in Ottawa) totalling over \$2300. I also noticed that one claim took over 52 days to be resolved, however all those payments were made from the RCMP to you prior to mid-June 2005. Therefore, your Amex should have been cleared around the end of June 2005, not in October 2005. It appears [sic] that you have had an outstanding balance with Amex prior to those claims, hence the reason I asked for an audit of your expenses/Amex card payments. Once corporate have [sic] completed this review, I will bring the finding to your attention and we can discuss then what happened.

[387] Mr. Merrifield replied on November 10, 2005 as follows:

One other factor to mention was that when I was transferred to INSET from CACPP my AMEX bill did not follow for a couple of months, the same thing happened in June when I was transferred from TAG to TNDCIS and despite changing the address it still goes to the INSET building to date.

[388] Mr. Merrifield stated that he understood that Supt. Proulx was going to have a two year audit done. He was waiting for Supt. Proulx's response.

[389] On January 4, 2006, Mr. Merrifield received an email from Mr. Steeves which said, "the A/R issued to you for the duplicate payment you received is now 30 days past due. Please advise of your intentions."

[390] On January 5, 2006, Mr. Merrifield responded, "I was advised that a two year audit/review was under-way of my 1393's and Amex as ordered by Supt. Proulx. Awaiting results." Mr. Steeves responded on the same day and said:

The review was completed and Supt. Proulx was advised. I suspect that if you have not heard any different then things were fine. Supt. Proulx is aware of the duplicate payment.

I have also CCd him on this message.

It was during this review that the duplicate payment was discovered. I have a copy of the RG cheques and the claims involved if you wish to see them. It would appear that the same claim was faxed twice to Ottawa in error but this was not caught



by the DBA unit and payment was issued to you on both occasions.

The invoice issued to you is for the exact amount of the second payment. [Emphasis added]

[391] On January 5, 2006, at 12:07 pm, Mr. Merrifield sent an email to Mr. Steeves requesting the date that the audit was ordered and the date when it was completed. On January 5, 2006 at 12:10 pm, Mr. Steeves sent an email to Supt. Proulx stating, “How do you wish me to handle this?”

[392] On January 5 at 3:33 pm, Supt. Proulx sent an email to Mr. Merrifield stating:

I sent you an email on November 8<sup>th</sup> and informed you I was requesting a review of your Amex...I sent the request to John Steeves the same day...He gave me a reply at the end of November...it did not provide the information I wanted and asked John Steeves this morning for further clarification. As a manager, I have to be certain that your Amex is used in relation to your work and not for personal expenses. In a nut shell, if you take a cash advance, there should be an expense account submitted shortly thereafter to offset the use of the money. If not then why was the cash advance used for...Once John Steeves completes this review I will address his findings with you accordingly.

[393] On January 5, 2006 at 5:07 pm, Mr. Merrifield sent Supt. Proulx an email which stated:

My request of John Steeves which has gone unanswered by him and now responded to by you is in relation to the following details.

Mr. Steeves stated in his e-mail to me that the audit he conducted revealed an overpayment. This overpayment was brought to my attention in writing on November 07 by Mr. Steeves. Your e-mail to me stating your intention to order an audit was not issued until Nov. 08. I am therefore confused as to how this audit found an overpayment before it had been ordered.

In your e-mail to me of Nov. 08, you stated that you ordered the audit to “ensure that I was treated fairly by the RMCP” and not overpay the RCMP. You also stated at that time that you would contact me with the results to discuss. It would appear that the audit was completed at the end of November. Your attached message today states a completely different reason for the audit.

My request today of Mr. Steeves was for Mr. Steeves. It was not “regarding your actions” sir it was to clarify dates of request and actions by Mr. Steeves office which I believe I am entitled to.

With regards to your message today I believe that you are already in possession of the information you are seeking. My AMEX balance at the time of the expense submissions was approximately \$2300.00. The amount of expenses submitted was approximately \$2300.00 I am now confused as to your reasoning explained today for the audit. It is an accusation of improper use of AMEX/Expenses? Is there reason to believe that my AMEX was used for anything other than RCMP business?

I will treat the lack of response by Mr. Steeves and his decision to involve you as the choice by him not to respond to my request. I must state for the record that I am very concerned by the actions of “O” division HQ personnel in my treatment over the last year. I have responded quickly and honestly to every request made of me. I have provided responses to every person who made requests of me in this matter and other more serious matters. I am more than disappointed with the treatment I have received, the lack of answers to my requests and the clandestine like investigation of my activities in and outside the RCMP. These investigations have been intrusive, harassing and stressful. They impacted negatively on my home life as well as my professional life.

I have until now attempted to deal with matters informally and at the lowest level.

- [394] Supt. Proulx replied on January 6, 2006 and stated, “If you have any concerns, you know where I am and I have never refused to meet with you and whoever you wanted to bring along.”
- [395] Supt. Proulx did not tell Mr. Merrifield that he had in fact prepared a memorandum to order a Part IV investigation to be carried out by Professional Standards.
- [396] Mr. Proulx stated that the first time he became aware of any issues regarding Mr. Merrifield’s credit card was on October 24, 2005. Claude Caron, Director General of Finance, sent a letter dated October 13, 2005 to Mr. Merrifield advising him that the outstanding balance on his Amex card had been paid by the RCMP pursuant to its agreement with Amex. Supt. Proulx received a copy of it. He understood from that letter that Mr. Merrifield had failed to make a payment on his Amex corporate card in the amount of \$1,223.74 and that the RCMP had cancelled his card. The RCMP had paid the Amex balance and now Mr. Merrifield was supposed to reimburse the RCMP by way of a certified cheque to the Receiver General. Mr. Proulx understood that the Amex balance was 90 days past due.

- [397] Mr. Proulx stated that he called Mr. Merrifield to speak to him about it. His response was that everything had been resolved two weeks ago. His cheque had been cashed. His explanation was that the Amex account was not paid on time because the RCMP had not paid him some expenses on time.
- [398] Mr. Proulx stated that the next day, he went to see John Steeves because he figured that if the RCMP was late in paying Mr. Merrifield and there was a mix-up in the payment of the credit card, maybe the Amex card should not have been cancelled. Mr. Steeves advised Mr. Proulx that he had just received Mr. Merrifield's cheque the previous day. Mr. Proulx stated that he was surprised by this because when he spoke to Mr. Merrifield, he said that the cheque had been cashed. There was an obvious inconsistency. Mr. Proulx asked Mr. Steeves to check to see if the RCMP had been late in paying Mr. Merrifield and if so exactly how late the payment was.
- [399] Mr. Proulx recalled receiving a copy of an email that Mr. Merrifield had sent to Mr. Steeves. It stated:

Following up on our dealings regarding Amex. I had spoken with Bev Scott in Ottawa prior to the RCMP paying the AMEX. When the period of time had expired and the Force paid Bev was not working on that Monday and I had directed my wife to pay Amex on that date before the Force would have to.

You then forwarded me an e-mail to Not pay Amex but instead forward a cheque to your office. I did that on the week of October 10-14 on the 13<sup>th</sup> to ensure it would leave Newmarket by interoffice mail. It was sent to your attention. I received a phone call from Supt. Proulx on October 24 advising that he had been contacted by Ottawa to look into this. A review at my bank on the 24<sup>th</sup> October did not show the cheque clearing. Have you received it and is this matter concluded?

- [400] Mr. Proulx received a copy of an email dated October 28, 2005, which was Mr. Steeves' reply to Mr. Merrifield that the cheque had been received.
- [401] Mr. Proulx recalled that he next saw Mr. Steeves on November 2. Mr. Steeves stated that he had sent an email to Mr. Proulx which showed that Mr. Merrifield had no outstanding expense account and that everything had been paid for. Then Mr. Steeves sent Supt. Proulx an email dated November 2 and stated that Cst. Merrifield had been paid a double payment of an expense account and that the amount was \$800. (The actual amount of the double payment was \$838.35.) Mr. Proulx stated that Mr. Merrifield had not submitted any expense accounts after the May 8 to 12 period, for Operation Rogue Tanker. Mr. Merrifield had submitted a claim in May for the week of April 11 to 15 but the RCMP took 52 days to pay this amount. Mr. Proulx stated that this was unusually long. It was paid in June. He called Mr. Merrifield and told him he had received some information from Mr. Steeves who had uncovered double payment for an expense account. Mr.

Merrifield stated that he did not recall receiving two cheques for the same expense and said he would look into it.

- [402] Mr. Proulx stated that he thought all of a sudden there were a lot of inconsistencies in Mr. Merrifield's story regarding whether the cheques had been cashed and about the fact that the RCMP had paid him late. Mr. Steeves had sent Mr. Merrifield an email dated November 7 notifying him about the duplicate payment. Mr. Merrifield responded to Mr. Steeves stating that he had not received payment for an overtime claim that he had submitted in June which exceeded \$1400. Mr. Proulx stated that there was no relationship between overtime and payment of expense accounts. They come from different pockets of the RCMP. Mr. Proulx responded to Mr. Merrifield by email dated November 8, 2005. In that email, he said that he was going to ask the corporate department to conduct a complete review reconciliation of Merrifield's Amex account for the past two years in order to ascertain that Merrifield was treated fairly and that he did not overpay the RCMP. Mr. Proulx stated that there were a lot of inconsistencies with respect to Mr. Merrifield's account. He believed that Mr. Merrifield had not recognized the fact that he had received double payment even though Mr. Steeves had been clear with both cheque numbers. Mr. Proulx stated that his only purpose at that time in requesting the complete review reconciliation for the past two years was to make sure that Mr. Merrifield was not being overcharged and that he received the money that he was entitled to receive. Mr. Proulx forwarded the email to Mr. Steeves asking him to do the review.
- [403] Mr. Proulx said that Mr. Steeves replied to him on November 28 and said everything was fine. Mr. Proulx sent an email to Mr. Steeves dated December 1, 2005 in which he stated that Insp. Josey (Mr. Merrifield's supervisor when he was in the Air Marshall program) had authorized a payment from relocation funds. Accordingly, the issue was fully resolved as of December 1, 2005. As of November 2, 2005, he knew that it was not an account receivable. In his email to Mr. Steeves, Mr. Proulx said if Mr. Steeves had not uncovered any irregularities, then he was satisfied.
- [404] Mr. Proulx stated that subsequently, Mr. Steeves came into his office and said that there was something else that he did not want to put in writing. There were two back-to-back \$500 cash advances and a gas purchase. He was concerned that there was no matching expense for it. Mr. Proulx stated that this might be indicative of kiting or fraud, serious criminal offences. He thought Mr. Merrifield had deceived him about the duplicate payment. He told Mr. Steeves to stop the work that he was doing and that this would be a matter for a formal Part IV Code of Conduct investigation.
- [405] He described the internal investigation as simply a method for getting to the bottom of the issues and to give both parties an opportunity to set out in writing their sides of the story. Mr. Proulx recalled speaking to S/Sgt. Babinko who was in charge of internal investigations. In December, Mr. Proulx started to prepare a memo to order the Part IV investigation. If a cash advance had been taken, there should be an expense account to offset the use of the money. Mr. Proulx stated that prior to that, Mr. Merrifield had not

been informed that there was a concern regarding potential cash advances without proper expense claims.

[406] Mr. Proulx stated that he was not prepared to tell Mr. Merrifield about it because he was just finalizing the memorandum to order the Part IV investigation. Mr. Proulx stated that he was hinting to Mr. Merrifield that some cash advances were uncovered.

[407] Mr. Proulx had no notes of the date that Mr. Steeves came to see him or of any details of the conversation with Mr. Steeves.

[408] Mr. Proulx agreed that the information that he obtained later with respect to the cash withdrawals showed that they were not taken back-to-back. In fact the dates were September 22, November 23 and November 30, 2005. Mr. Proulx did not recall the purpose of September 22 cash advance. He did not receive any other dates regarding the cash withdrawals.

[409] His note dated 2006-01-06 states:

Cash adv	Sept 22 <sup>nd</sup>
<u>SW</u>	2004
<u>SW</u>	Nov 23 <sup>th</sup>
	Nov 30 <sup>th</sup>
	?
A/R	
\$3637.66	

[410] Mr. Proulx stated that he did not investigate the matter himself because he might have been required to make a decision on discipline and he had to stay independent.

[411] Mr. Proulx stated that at no time did he ask Mr. Merrifield for an explanation regarding the cash withdrawals. He did not know that expense claims had been submitted for two cash withdrawals relating to Mr. Merrifield's eye surgery and that the surgery was required for an injury on the job.

[412] Mr. Steeves sent an email to Cpl. DuPuy dated January 9, 2006 requesting copies of documents supporting payment requests. It states, "the issue I am dealing with is somewhat urgent." Mr. Proulx stated that he told Mr. Steeves to do nothing further after January 5, 2006 because he had already sent the memorandum ordering the Part IV investigation. (The memorandum was dated January 6, 2006 but he did not sign it until January 13, 2006.) Mr. Proulx had no explanation for why Mr. Steeves would be contacting Cpl. DuPuy on January 9, 2006. Mr. Steeves had completed his review by January 5, 2006. Mr. Proulx had told Mr. Merrifield that he would get back to him after the review was completed. He did not do this.

**Code of Conduct Part IV Investigation – Preceding Events**

[413] Mr. Proulx sent a memorandum to S/Sgt. Wally Babinko dated January 6, 2006 ordering the Part IV investigation. He acknowledged that in the memorandum, he raised the issue that the Amex account was over 90 days due but it had already been paid. He did not identify two cash withdrawals without offsetting expense claims. In the memorandum, he stated that several cash advances were suspected to be for personal reasons. He stated:

Cst. Merrifield is suspected of having contravened administrative policy concerning the use and payment of his Corporate American Express Card. As a result of his non payment [sic] and misuse of Corporate American Express Card he may have engaged in disgraceful conduct that could bring discredit to the Force contrary to Section 39(1) of the RCMP Act.

[414] Mr. Proulx stated that he was reporting Mr. Merrifield for disgraceful conduct that could bring discredit to the force.

[415] Mr. Proulx said that he had earlier told Mr. Merrifield to hold off paying the \$837 until he had a chance to investigate. A mistake had been made in an account receivable showing that it was outstanding but Insp. Josey had authorized payment. When he sent the memorandum, he knew that this was cleared up. Mr. Proulx stated that he was concerned that Mr. Merrifield's activities might constitute kiting and fraud. Cashing the second cheque was deceitful. He wanted the matter investigated. He felt Mr. Merrifield was deceiving him about the payments. Mr. Proulx did not ask Mr. Merrifield for a written explanation before he ordered the Part IV investigation. He stated that this was not a requirement in 2006. Mr. Proulx stated that he was not concerned that he had inaccurate information when he ordered the investigation. Mr. Steeves had given it to him.

[416] Mr. Proulx had no explanation as to why Mr. Steeves was communicating with Cpl. DuPuy urgently on January 9, 2006. He said he did not know about it.

[417] Mr. Proulx received an email from Mr. Merrifield on January 5 at 3:30, one day before the date of the memorandum. He knew that Mr. Merrifield had made a complaint about him.

[418] Mr. Steeves explained that an Amex card would be issued to anyone in the Force who wanted one. No credit application was required because the card was protected against loss. The RCMP guaranteed payment.

[419] Mr. Steeves stated that Mr. Merrifield sent an email to Lynn Huard dated August 3, 2005 with respect to his Amex account. In that email, he stated that he was not getting his Amex statements in time because he had moved to a different section. This was causing a lag of two to three months before he received the statements. There was an issue about his balance on the card. In the email he stated that he had paid \$1,000 a short time ago and that the balance was now around \$1,200.

- [420] Mr. Steeves stated that this did not resolve the issue because Amex does not allow outstanding balances. When you receive a statement, the entire amount is due. Mr. Steeves stated that the corporate Amex card could be used to pay for expenses related to travel, hotels, airfare, and car rentals. Cash advances could be taken for small amounts such as taxi fares. A member was required to keep the receipts and submit them with an expense claim. The card could not be used for anything else.
- [421] On September 16, 2005, the RCMP had issued an invoice to Mr. Merrifield indicating that his Amex account was 138 days past due in the amount of \$1,223.74. The copy of the invoice shows Mr. Merrifield's handwriting and states "cheque attached 2005/10/11" along with his signature. Mr. Steeves stated he did not know when Mr. Merrifield had received the invoice. On October 28, 2005, Mr. Steeves sent an email to Merrifield which stated, "cheque received." Mr. Steeves stated that he sent a copy of this email to Supt. Proulx.
- [422] Mr. Steeves stated that he carried out that review requested by Supt. Proulx and sent it to him along with an email dated November 2, 2005. In that email, he stated that his review showed that Mr. Merrifield had received a duplicate payment of \$838.35. An account receivable would be issued in the next few days to recover that amount. Mr. Steeves stated that two claims had been submitted by two different authorities for the same cost. This resulted in two payments of \$838.35 made on June 6, 2005 and June 21, 2005.
- [423] Mr. Steeves stated that he had never previously dealt with a situation where the entire balance on an Amex card was paid by the RCMP. He stated that late submission of expense claims and late processing of the claims can result in a card's going into arrears. Mr. Steeves said that there was no relationship between outstanding pay for overtime and a balance owing on an Amex card except that the card holder would have funds to pay the amount.
- [424] Mr. Steeves stated that he was not copied on the email that Supt. Proulx sent to Mr. Merrifield on November 8, 2005 which said that Supt. Proulx was going to ask Corporate to conduct a review.
- [425] Mr. Steeves sent an email to Mr. Merrifield dated January 4, 2006 commenting that the account receivable issued to him regarding the duplicate payment was thirty days past due and asking him to advise of his intentions. Mr. Merrifield responded on January 5, 2006 stating that he was awaiting the results of the two year review as ordered by Supt. Proulx. Mr. Merrifield stated he was not aware of the results or the outcome of the audit. He commented that if the amount was paid twice then he had no problem paying that amount to the Receiver General. He requested some time to receive the outstanding overtime payment which would more than provide him with funds to cover the amount owed for the duplicate payment. Mr. Steeves did not have any concerns about this.
- [426] Mr. Steeves sent an email to Mr. Merrifield on the same day and said, "The review was completed and Supt. Proulx was advised. I suspect that if you have not heard any different then things were fine."

- [427] On January 9, 2006, Mr. Steeves sent an email to Cpl. DuPuy asking for copies of the supporting documentation for specific payment requests made by Mr. Merrifield. The email concluded as follows: "The issue I am dealing with is somewhat urgent so I am soliciting your earliest response." Mr. Steeves stated that he was not sure why he determined the issue to be urgent or why he was contacting Cpl. DuPuy after Supt. Proulx told him to hold off on pursuing the matter. He received the documents. They were placed in the file.
- [428] Mr. Steeves stated he received an email from S/Sgt. Babinko on January 19, 2006, about a Part IV investigation. Mr. Steeves said that this was the first time that he knew that a Part IV investigation had been ordered regarding Mr. Merrifield's use of his Amex card.
- [429] S/Sgt. Babinko requested Mr. Merrifield's Amex statements from January 2005 to January 2006, his expense statements for that time, any documents signed by Mr. Merrifield for the use of the card, and any related policy. Mr. Steeves provided all of this.
- [430] Six months later, Mr. Steeves received an email from Insp. Block dated July 31, 2006 regarding the duplicate payment. Supt. Proulx was being transferred and was discussing some outstanding issues with Insp. Block before he left his position. Mr. Steeves himself was also leaving the Division. Mr. Steeves replied the same day and stated, "There were some internal activities (code) being conducted and I was advised not to aggressively pursue this until that had been settled."
- [431] Mr. Steeves stated that he would not have told Mr. Merrifield that "things were fine" in his email dated January 5, 2006 if he had thought that there was a problem. If Supt. Proulx had told him that there was a problem, he would not have said this. He simply wanted the duplicate payment to be repaid. His review showed just some late payments. Everything was fine. Mr. Steeves pointed out that misuse and tardiness are two different things.
- [432] Mr. Merrifield sent an email to Mr. Proulx dated January 5, 2006, and asked whether there was an "accusation of improper use of AMEX/Expenses? Is there reason to believe that my AMEX was used for anything other than RCMP business?" Mr. Proulx responded by inviting Mr. Merrifield to meet with him if Mr. Merrifield had any concerns.
- [433] On January 6, 2006, Supt. Proulx finalized the memorandum and spoke to Supt. Trueman before sending it. This was the first Part IV investigation that he had ordered. He understood that it would be a fact-finding mission so that he could make an appropriate decision as to whether there should be discipline or whether Mr. Merrifield should simply be cautioned about how he should manage his matters. Mr. Proulx stated at that time that he was not certain that Mr. Merrifield had improperly used his credit card. He had doubts. He stated that this is what the investigation was all about.



- [434] Mr. Proulx stated that around this time, Mr. Merrifield was about to be transferred to a different unit. He did not know the date when this would occur. He had no further involvement in the credit card issue after he ordered the investigation.
- [435] Mr. Proulx stated he sent a briefing note to the Commissioner dated January 17, 2006. On page 2 under current status it states: "On 2006-01-13, after a review of Cst. Merrifield's use and mis-payment of his AMEX card, his line officer directed a Part IV investigation alleging that Cst. Merrifield has repeatedly used his Corporate Amex for personal reasons."
- [436] Mr. Proulx could not say why he stated January 13, 2006 in the briefing note when the memorandum to S/Sgt. Babinko was dated January 6, 2006. He thought maybe he had missed it. He believed he had signed the memorandum on January 13, 2006. Mr. Proulx agreed that his notes contained material errors regarding the dates of the withdrawals and the payments. He thought they were back-to-back withdrawals at the time. Now he knows that they were not. He agreed that Mr. Steeves had sent an email to Cpl DuPuy in which he said he required information on an urgent basis regarding Mr. Merrifield. This email is dated January 9, 2006. The briefing note dated January 17 states that the Part IV investigation was ordered on January 13, 2006. He agreed that the memo to S/Sgt Babinko ordering the investigation shows a receipt stamp date of January 18, 2006.
- [437] Mr. Proulx testified that shortly after ordering the Part IV investigation of Mr. Merrifield, he himself was engaging in disgraceful conduct that could have brought discredit to the Force.

### **The Investigation**

- [438] Sgt. Dickinson testified that he was in the Complaints and Internal Investigation Section (CIIS), now called the Professional Standards Unit, in 2006. His duties at CIIS included carrying out Part IV investigations and occasionally doing an administrative review.
- [439] Sgt. Dickinson stated that a Part IV proceeding is initiated by a mandate letter. CIIS was asked to conduct a Part IV investigation into Mr. Merrifield's conduct. He was suspected to have contravened administrative policy with respect to the use and payment of his Amex card. Sgt. Dickinson was assigned to carry out the investigation on January 24, 2006.
- [440] He received a file that had been opened by S/Sgt. Babinko. It contained a few documents including a form 1624 that detailed the steps that had already been taken. S/Sgt. Babinko had made inquiries of John Steeves and Bev Scott in Ottawa, regarding the Amex user agreement. No agreement existed. The file also contained the policy regarding use of corporate credit cards, the mandate memorandum and a letter to Mr. Merrifield advising him that the RCMP had paid the outstanding balance on his Amex card.

- [441] The file was coded “XX82 Intern COM-RCMP Member”. The occurrence date set out was October 13, 2005. Sgt. Dickinson stated that when the investigation started, there was nothing payable on the Amex card. Mr. Merrifield was hoping that Ms. Scott would alert him before the RCMP paid off the amount owing on card. The RCMP had paid the account before they alerted him. At no point did Mr. Merrifield say he would not pay the account. Mr. Merrifield was waiting for documents to confirm that he had received a double payment. This did not form part of the Part IV investigation.
- [442] Sgt. Dickinson stated that in the mandate memorandum, Supt. Proulx did not identify any specific transactions of concern nor did he set out a date range or a timeframe. From Sgt. Dickinson’s perspective, when he conducted the review, regardless of whether there was a \$1 item or a \$10,000 item, it was within his purview to investigate it. In fact, Sgt. Dickinson reviewed Mr. Merrifield’s expenditures and reimbursements back to 2004, one of which was \$6.00 for parking when Mr. Merrifield was in the Air Carriers program.
- [443] Sgt. Dickinson stated that a number of people could have known that this Part IV investigation had been ordered. They would include the line officer, likely the Conduct Advisor, the C.O. through monthly reports and members in the CIIS. He stated that this group would be advised of the investigation. When he would go out to interview other people they would learn some of the details. Anyone he spoke to would know that he was from CIIS. He spoke to more than ten people in the course of the investigation.
- [444] Sgt. Dickinson’s first step in the investigation was to contact Mr. Steeves and obtain copies of the Amex bills and the expense claims. When he met with Mr. Steeves, Sgt. Dickinson took notes on a scratch pad. They state, “While on travel status can use card for almost anything.”
- [445] Sgt. Dickinson testified that he did not know that Mr. Merrifield’s card was a covert American Express card. The statements showed that they were being sent to the INSET office after Mr. Merrifield had left there. The statement for February 14, 2005 is addressed to 345 Harry Walker Drive which is the Toronto North detachment. This was not Mr. Merrifield’s address either. Sgt. Dickinson was aware that Mr. Merrifield’s transfer from TAG was in progress. He agreed that if Mr. Merrifield had moved in May 2005 he would not be receiving the statements on time. There would be some delay. Mr. Merrifield told him that this had occurred.
- [446] Sgt. Dickinson stated that a version of s. 5.1.1 of the Financial Management Manual would have been in effect from January 2005 to 2006. It states that, “If suspected misuse of the DTC [Designated Travel Card] is identified, ask the employee to provide a written explanation for the transaction in question.” The file that S/Sgt. Babinko had opened did not contain a written explanation for the cash withdrawals.
- [447] Mr. Merrifield stated that he contacted Sgt. Dickinson in May 2006. Sgt. Dickinson told him that there were concerns about cash withdrawals and expenses on the card that were not within the authorized use. There were ten cash advances totalling \$3,000. At this point, Mr. Merrifield did not have any information as to which cash withdrawals were in

issue. He was off work on sick leave at the time. He said that he thought the cash advances were taken out to make human source payments.

[448] Sgt. Dickinson followed up on the issue of human source payments by contacting Supt. Proulx and Sgt. Christiansen in London. He could not substantiate Mr. Merrifield's statement that he had taken money out to pay sources.

[449] With respect to the cash withdrawals, Mr. Merrifield stated that RCMP members are not covered for health insurance by OHIP. Rather, they are covered by Blue Cross. On July 19, 2006, Mr. Merrifield sent a detailed, two page email to Supt. Dickinson setting out explanations for entries on his Amex account. For example, Mr. Merrifield explained that on July 3, 2005, he took a \$500 cash advance from Amex to attend a walk in clinic after complications from knee surgery. He did not believe that the clinic would accept Blue Cross. He needed an X-ray, crutches and a prescription. When he arrived at the clinic, it accepted his Blue Cross coverage so he returned the cash advance to his Amex account on July 29, 2005. On April 29, 2005, he took a \$300 cash advance to purchase supplies and props for Operation Bridgeout. On March 3, 2005, he took a \$300 advance for a TA course in Ottawa. He was not required to use it so he put it back into his Amex account. On October 5, 2004, he took a cash advance of \$400 which he paid to Bell Mobility because the RCMP had agreed to pay for three months of his plan. It was submitted and approved as an expense.

[450] Mr. Merrifield stated that on September 22 and 23, 2004, he took a cash advance of \$500 on each day to pay for eye surgery which had been approved by the RCMP. The surgeon would not accept Blue Cross, only cash or a cheque. Mr. Merrifield stated that when he received a call the day prior to the surgery to confirm the time, he was advised that payment had not been received from the RCMP. He spoke to Health Services. They said it was an oversight and that he should cover it. He would be reimbursed quickly. Mr. Merrifield stated that he could not cover the amount. He advised Health Services that he would use RCMP funds. They said that he should complete a 1393 expense report with the surgeon's receipt and he would be reimbursed as soon as possible. Mr. Merrifield stated that he took these steps. These amounts were submitted and approved by Health Services. He was reimbursed by Blue Cross and he applied the funds to his Amex account.

[451] In his July 19, 2006 email to Sgt. Dickinson, Mr. Merrifield stated:

I must state at this time that on at least two occasions in writing prior to the ordering of a Code of Conduct, Supt. Proulx stated clearly that he would meet with me to discuss the outcome of the audit. Had he done as he stated, you may have indeed been spared your valuable time in an agency which seems continually short staffed. As I have mentioned from the beginning, I have never used the RCMP Amex card for non-RCMP business. I maintain at least two or three personal credit cards and a personal line of credit for a total available credit limit to me exceeding \$40,000.

I wish to go on the record as very concerned about the actions of Supt. Proulx and Mr. John Steeves in relation to this audit and Code of Conduct. One day prior to the ordering of the Part IV by Supt. Proulx, I questioned Mr. Steeves about details relating to the audit. When a clear contradiction of the timing and reason surrounding the audit appeared between the facts claimed by Supt. Proulx and those of Mr. Steeves, this process went to Part IV. The inconsistencies between the facts presented in writing by Mr. Steeves and Supt. Proulx can only be described as “suspect” of Discreditable Conduct on behalf of the two aforementioned individuals. Mr. Steeves refused to answer my queries on January 05, 2006 and forwarded my e-mail addressed only to him on to Supt. Proulx for a response. Supt. Proulx responded on January 06, 2006 by ordering a Part IV investigation against me contrary to his twice written statement that he wished to discuss the findings of the audit with me first.

Please advise me of further requirements in this matter as I will continue to assist in any way that I can.

- [452] Sgt. Dickinson stated that he contacted Crystal Cane at O Division Health Services to ask whether Mr. Merrifield had submitted a claim for the eye surgery medical expense. She confirmed that Mr. Merrifield had submitted an expense claim for \$900. Nevertheless, Sgt. Dickinson believed that this was not an authorized use of the Amex card.
- [453] With respect to some other cash advances, Mr. Merrifield had stated that they were used to purchase gas. Sgt. Dickinson concluded that this was not an authorized use of the card.
- [454] The expense claim for Mr. Merrifield’s phone shows an amount of \$525 and that it was approved. Sgt. Dickinson agreed that if Mr. Merrifield took out \$400 to pay the account, he did not take out enough. It was definitely a business expense.
- [455] Sgt. Dickinson stated that he requested a credit report on May 18. There was nothing remarkable on the credit report. It showed some short-term debt but payments were being made.
- [456] Mr. Merrifield stated that he met with Sgt. Dickinson on September 11, 2006. He could not provide an interview any earlier because he was off sick. In the interview, he provided emails to Sgt. Dickinson showing that he had been told to hold off on making Amex payments. Sgt. Dickinson commented that it was already overdue and had been paid by the RCMP.
- [457] Mr. Merrifield voluntarily provided personal financial information to show that he had significant credit available. He stated that it would be impossible to kite payments on an

Amex card. Based on his professional experience, he believed that only credit cards that permit minimum payments can be kited.

- [458] Sgt. Dickinson confirmed that when he met with Mr. Merrifield, he produced his personal credit card statements which he was under no obligation to do. He was forthright and cooperative.
- [459] During the September 11, 2006 meeting, Mr. Merrifield provided a recorded statement. He listed the names of 11 officers because they would be able to support his explanation for certain expenses. Sgt. Dickinson stated that he did not speak with them. There was nothing preventing him from doing so. Sgt. Dickinson said there were unresolved issues in his mind but he did not see the point of making further inquiries.
- [460] With respect to the two \$500 cash withdrawals, Sgt. Dickinson did not make an inquiry past the Health Services document. He stated he did not obtain the document. The people at Health Services said it showed that the amount was paid in full. He did not make inquiries to see if it had been submitted to the insurer. Nothing prevented him from doing this except that he needed Mr. Merrifield's consent. He did not request it.
- [461] Sgt. Dickinson stated that he could not recall whether Mr. Merrifield told him that no one ever asked him for an explanation with respect to the cash withdrawals. He recalled Mr. Merrifield said that Supt. Proulx told him there would be meetings and discussions about it. It never happened to his knowledge. He saw nothing to document that a meeting had ever taken place.
- [462] When he had finished his investigation, Sgt. Dickinson prepared a final report. He stated that Mr. Merrifield's failure to pay the balance due on the Amex card had contravened the administrative policy regarding the use of the card. Mr. Merrifield said that he had not read the agreement and did not know that the balance had to be paid immediately.
- [463] Sgt. Dickinson suspected that Mr. Merrifield was kiting payments. His understanding of kiting was that a person would take cash from one card to make a payment on another. When a suggestion was made to him that a person could not kite an Amex card which required the full balance to be paid at the end of each month, Sgt. Dickinson stated that he did not fully understand the concept of kiting. On the last page of his report, he stated that Mr. Merrifield "allowed me to view the monthly statements from one of his two personal credit cards. This was done to address any suspicion that he was "kiting" money from one card to the next in order to make his payments. Sgt. Dickinson stated at the end of this report, "I noted that regular monthly payments were being made and there was no apparent correlation between the dates of the payments and any cash withdrawals take out against his AMEX card."
- [464] Sgt. Dickinson did not make any recommendation as to discipline as this was not his role. This was within the line officer's authority.

[465] On September 20, 2006, Mr. Merrifield received a Performance Log from Sgt. Brown (who was acting officer in charge because Insp. Johnson was ill) with respect to the Part IV investigation. It states:

1. Use of RCMP issued Designated Travel Card (DTC). I understand that at present you do not have a DTC, but should one be issued to you in the future, you are to comply with Admin Manual VII.11, which deals with Travel Credit Cards and Accounts. That the DTC will only be used for “Authorized Business Travel”. That prior to your using a DTC, you will also read and sign the Agreement between you and the Government of Canada” card that comes with it. That you will pay the DTC account on time.
2. That you will maintain an up-to-date police notebook while you are in Customs and Excise.
3. That you will not use your personal motor vehicle for any RCMP business unless you have prior approval from your supervisor as per RCMP policy. That you will then forward an expense claim for mileage as per policy.
4. That you will promptly forward any expense claims and/or over time. That as with all members of the GTA, C&E, you require prior approval from your supervisor for overtime. That without this prior approval you risk not being paid for it.

Peter having had an opportunity to read one of your performance appraisals on another matter, I am sure you are an extremely capable member. Our section will only benefit from your transfer to it. I look forward to working with you in moving ahead from this point.

A copy of this 1004 will be forwarded to CIIS to be placed on file so that it may be concluded.

[466] Mr. Merrifield referred to the Financial Management Manual that sets out policy regarding travel credit cards and accounts. Section 5.1.1 under the heading “Misuse of Designated Travel Cards” states “If suspected misuse of the DTC [designated travel card] is identified, ask the employee to provide a written explanation for the transaction in question.”

[467] Mr. Merrifield stated that he was never asked to provide a written explanation with respect to the transactions that formed the basis of the Part IV investigation ordered by Supt. Proulx. Mr. Merrifield said the action taken by Supt. Proulx was retaliatory. There was no reason for it. The cash withdrawals were legitimate and easily explained. The

Part IV investigation was ordered 14 hours after Mr. Merrifield had said that he would be seeking process for harassment.

[468] Mr. Merrifield testified that the investigation took 11 months. The Performance Log was served on him. The outcome was that the allegations were unfounded.

[469] After he finished his report dated September 15, 2006, Sgt. Dickinson sent an email on October 19, 2006 to Supt. Hebert. He was responsible for the CIIS units. Sgt. Dickinson could not explain why he was communicating with Supt. Hebert with respect to the investigation. It appeared that he had read the file and was asking some questions. The initial email refers to, "Our phone conversation from a couple of weeks ago..." Sgt. Dickinson stated that there was nothing in his notebook about this phone conversation. It was undocumented. He agreed that it would be out of the ordinary for him to be communicating with Supt. Hebert because Mr. Merrifield was not in his chain of command. Supt. Hebert would have been aware of the inquiry because Sgt. Dickinson had asked him questions about payments to human sources. Supt. Hebert was a senior officer to him.

[470] Sgt. Dickinson's email to Supt. Hebert dated October 19, 2006, reported on the outcome of the investigation. It states:

1. All AMEX expenses and cash withdrawals of consequence were confirmed as being work and/or medical related. For some minor expenses (\$20 – 25 range – meals, parking etc), there was no documentation or notes to support but the member did have a credible explanation.

2. Cst. Merrifield said that he had always been advised by supervisors (and believed them) that any expense that could be claimed on a 1393 could be charged on the AMEX card.

[471] Sgt. Dickinson stated that his final report was never produced to Mr. Merrifield until this action was commenced. In the ordinary course he would not have received it or seen it unless he accessed it through an Access to Information and Privacy (ATIP) request.

[472] In June 2006, in the middle of the investigation, Supt. Proulx was transferred to a different position at the police college in Aylmer.

[473] C/Supt. Mazerolle stated that he was aware of the Amex issue in late fall of 2005 because Supt. Proulx had told him about his concerns. He would meet with someone from corporate finance every four to six weeks to discuss any issues as his budget was 93% of the entire division budget. John Steeves had brought the Amex issue to his attention.

[474] C/Supt. Mazerolle stated that he did not take any action or provide any directions to Supt. Proulx, who he thought had things under control. He stated that Part IV investigations were not a regular occurrence. If any officer under his authority requested one, he would

usually be advised of it. He could not override it. He agreed that a Part IV investigation is a more formal step against a member. Ordinarily, he would learn of approximately two Part IV investigations per year.

- [475] C/Supt. Mazerolle stated that he believed that the allegations regarding the Part IV investigation relating to Mr. Merrifield's use of the Amex card were substantiated but not the allegations that Mr. Merrifield had failed to follow the related policy. He did not receive a copy of Sgt. Dickinson's concluding report regarding the investigation. He never spoke to Sgt. Dickinson. He was not aware of the outcome.

### **The Administrative Review - Ottawa Citizen Article January 17, 2006**

- [476] On January 17, 2006, one week before Sgt. Dickinson was assigned to the Part IV investigation, the *Ottawa Citizen* Newspaper published an article written by Gary Dimmock entitled, "RCMP Demotes Officer over Political Bid". The article quoted from Mr. Merrifield's performance evaluations. Mr. Merrifield stated that he did not know about the article before it was published.

- [477] On January 19, 2006, Mr. Merrifield's lawyer at the time, Raj Anand of Weir Foulds, wrote a letter to Commissioner Zaccardelli stating that Mr. Merrifield had not provided any documents to the *Ottawa Citizen*. Mr. Anand also stated:

...Constable Merrifield is very concerned about the reprisals and harassment that he has suffered and continues to experience as a result of exercising his employment, statutory and Charter rights to engage in political activity...

- [478] C.O. Seguin wrote a letter to Mr. Anand dated February 24, 2006, in response to his letter dated January 19, 2006. He stated:

The RCMP is committed to providing a safe and respectful work environment, free of discrimination, offensive behaviour and harassment. In support of its commitment, it has several internal mechanisms that deal with any form of reprisals and harassment in the work place. These mechanisms are at Constable Merrifield's disposal and they can be accessed by him or, if he requires advice, counseling or assistance, through his Staff Relations Representative.

- [479] C/Supt. Mazerolle stated that he was familiar with the *Ottawa Citizen* article. He received an email from Insp. Petit, of the National Security Branch in Ottawa, before 9:00 a.m. on January 17, 2006 regarding a media summary. C/Supt. Mazerolle explained that senior executives within the RCMP received one of these every Monday about anything of concern in the media. He stated that Insp. Petit asked him to prepare a briefing note to the Commissioner regarding some of the statements in the article. Chief Supt. Mazerolle stated that he asked Supt. Proulx and others to prepare the response for the



Commissioner. He received a draft and edited it. It is dated January 17, 2006. Among other things, it states:

All reasonable steps were taken to ensure that Cst. Merrifield was allowed to participate in the political process. However, it is clear that the Member has placed himself in a position of at least a perceived conflict of interest which jeopardizes the effectiveness and reputation of both the RCMP and the Member. As a result, measured and reasonable steps have been taken to minimize that conflict and ensure the effectiveness of the RCMP.

The media reports are fundamentally flawed in that they erroneously report that Cst. Merrifield has been demoted. In addition it must be noted that a Part IV investigation has recently been commenced and this may be a contributing factor.

- [480] C/Supt. Mazerolle stated that he spoke to District Commander Davis in the GTA district. Customs and Excise reported to him. C/Supt. Mazerolle stated that he sent him a copy of the article and discussed the requirement for an administrative review to determine how the information got the *Ottawa Citizen*.
- [481] Mr. Proulx stated that on January 17, 2006 C/Supt. Mazerolle called him. He wanted an explanation as to what had happened and where the information had come from. Paragraph two of the article stated, "Const. Peter Merrifield, who unsuccessfully sought the Conservative nomination in Barrie, Ont., in May 2005, was told months later that it would be in the best interests of the RCMP... if he was assigned to other duties not related to politics."
- [482] Mr. Proulx stated that he was concerned that someone had released an email. The comment was almost the same as the comment he had made in the email to Insp. Brine. That was a protected document and should not have been disclosed. Mr. Proulx stated that on January 17, 2006, he wrote a briefing note to C/Supt. Mazerolle on the topic. By this time, he had already requested the Part IV investigation. He sent the first draft of the briefing note to C/Supt. Mazerolle. He and the C.O. made some changes to it.
- [483] C.O. Seguin stated that he had read the article in the paper. The statement that Mr. Merrifield was demoted was inaccurate. His rank was not lowered. Rather he received a lateral transfer. C.O. Seguin was aware that the transfer was going to happen.
- [484] C/Supt. Mazerolle stated that he signed off on the briefing note. He agreed that the policy that had been brought to Mr. Merrifield's attention was a new policy in September of 2006. When he prepared the briefing note, he was aware that Supt. Proulx had ordered a Part IV investigation.
- [485] After the briefing note went out, C/Supt. Mazerolle's next step was to discuss the matter with C.O. Seguin. He wanted to know how the information was leaked. C/Supt.

Mazerolle stated he contacted District Commissioner Davis. They concluded that in an administrative review would be appropriate to determine the details. This was communicated to Insp. Johnson.

- [486] On January 25, 2006, Insp. Johnson sent a memorandum to CIIS requesting the administrative review into the “unauthorized release of Protected and Classified Information and/or documents relating to Cst. Peter Merrifield” which were quoted in the *Ottawa Citizen* article.
- [487] Sgt. Dickinson was assigned to conduct the administrative review in addition to the Part IV investigation. He explained that an administrative review involves a wide range of people and is an investigation of a situation to obtain the facts whereas a Part IV investigation is an investigation of an allegation against a member. An administrative investigation is not a disciplinary process.
- [488] The administrative review consisted of interviewing eight witnesses including Mr. Merrifield. He advised Sgt. Dickinson that he had given certain documents to four or five lawyers that he had consulted with respect to a civil suit. Sgt. Dickinson stated that these types of documents cannot be disclosed without going through RCMP policies. Mr. Merrifield stated to him that he was not aware of the policy and felt he had the right to do what he wanted with any documents relating to him.
- [489] Mr. Merrifield testified that this comment was taken out of context. It was related to something that he had said to his lawyer.
- [490] Mr. Merrifield stated that the administrative review was concluded in October 2006. He received a document stamped “Received Oct 25, 2006” which stated, among other things, the following:

A review of this investigation indicates that he [Sgt. Dickinson] was unable to determine who had released the information to Mr. DIMMOCK. However in your interview you indicate that you gave copies of documents, that the quotes in question come from, to several lawyers and/or law firms. That you also stated that you were unaware of the policy concerning the release of information. You went on to further state “but I believe as an employee of the RCMP I’m fully entitled to use reports of my performance however I see fit”.

Documents that are protected and/or classified are property the RCMP and must be treated as such.

You are to review Informatics Manual IV.1.C.8<sup>vi</sup> and A.T.I.P. procedures. In the future please comply with these regulations and procedures prior to releasing any Protected and/or Classified RCMP materials.

A copy of this 1004 will be forwarded to “O” Division CIIs to be placed on file so that it may be concluded.

- [491] Regarding the comments set out in the Performance Log, Mr. Merrifield stated that he did not have a DTC at the relevant time. Members in the Air Marshalls Unit had been instructed not to keep notes. They travelled with covert Amex cards. They were not to have anything that might identify them with the RCMP.
- [492] With regard to the direction that personal vehicles were not to be used for RCMP business, Mr. Merrifield recalled that while he was at INSET, TAG had contacted him regarding death threats that had been made against a notable Canadian. They were the same as threats that had been made against the citizens of the Netherlands. They came from a similar address and had similar language. A person had been murdered in the street by an Islamic terrorist. Mr. Merrifield stated that he believed this to be a “risk to persons”. He and his partner were armed. INSET had 15 police vehicles. He stated that he requested keys but none could be found. Neither Supt. Jagoe nor S/Sgt. King were in the office. Mr. Merrifield felt that the matter was urgent. He and his partner took his personal vehicle and drove to the residence of the person to conduct business.
- [493] C/Supt. Mazerolle stated that he recalled receiving Insp. Johnson’s report with the findings. No disciplinary step was taken against Mr. Merrifield but he thought that there was something about unlawfully disclosing documents to his lawyer that he did not have authority to do.
- [494] C/Supt. Mazerolle also thought the allegations in the Part IV investigation and in the administrative review had been substantiated. He did not recall who told him this but thought it was the C.O. He still believes this to be true. In other words, he still believes that Mr. Merrifield leaked confidential information to the media and committed fraud in dealing with his Amex account, activities that constituted disgraceful conduct that could bring discredit to the Force.
- [495] Sgt. Dickinson stated that at the end of the review, he could not substantiate who released the documents to the *Ottawa Citizen*.

#### **Mr. Merrifield’s work at Customs & Excise**

- [496] In July 2006, Mr. Merrifield returned to work. At that time, there was one other officer in Customs & Excise, Cpl. McEachern. Subsequently, another officer, Cst. Schuliakewich joined the department. Mr. Merrifield stated that he and Cst. Schuliakewich wanted to do significant investigations. They started with responding to Crime Stoppers tips about variety stores selling tobacco. Subsequently, they investigated importing of counterfeit tobacco and illegal sales of native tobacco. This led them to the Outlaw motorcycle gang. They undertook a significant investigation regarding cross-border weapons smuggling including assault rifles with armour piercing ammunition and grenade launchers. Mr. Merrifield stated that he continued to recruit human sources.

[497] Cpl. McEachern prepared a performance evaluation for Mr. Merrifield that covered the period January 16, 2006 to August 17, 2007. The following are some excerpts from Cpl. McEachern's comments:

Cst. Merrifield brought with him a number of years' experience within General Duty policing, Canadian Air Carrier Protection Section and intelligence work with INSET and CIS. He is also a trained Range Officer & Basic Firearms Instructor. The skills he brought to the Unit in the area of intelligence led policing, source handling, and tactical operation have proven to be a valuable asset...

His strong work ethic was most evident in Project OSPENCELY, and ongoing weapons investigation where he is the lead investigator. In this matter there was little information, however he utilized several different sources of information and enlisted others to assist in the investigation has expanded into a major u/c operation...

Constable Merrifield is capable of effectively adopting his behaviour to changing circumstances in order to reach a goal. He demonstrates perseverance and takes the initiative. He shows enthusiasm to doing an outstanding job and will adjust his work and personal schedule in order to achieve same...

Cst. Merrifield since arriving in the Toronto North C & E Unit has displayed an eagerness to learn everything he can to allow him to properly fulfil his role within the C & E Unit... He is motivated to gain the expertise and has reached out to our partner agencies such as the CBSA, Department of Homeland Security to gain this knowledge. He is not hesitant to seek advice from any senior experienced members to assist him in his work...

Cst. Merrifield initially found he had a sharp learning curve relating to many of the Operational, Administrative and Court documents used in the Federal Policing environment...His written work...can now be described as complete, concise and presented in a timely manner. This is very evident in the recent files where he has prepared numerous documents such as C – 237 Reports, Form 2350 Operational Plans, Search Warrants, Production Orders and briefings for fellow members. These documents have been processed through the chain of command, courts and found to be clear, concise and easily understood.

Cst. Merrifield has expertise in the area of Weapons & Gangs and developed a presentation in this regard to present to law

enforcement personnel. In this past year he has given the presentation at an Ontario National Gang Investigators Conference, a Gang & Weapons Conference for Municipal and Regional Police Forces in southwestern Ontario and also to a GTA Customs & Excise Workshop. Comments from officers attending have stated that the information provided was very timely, knowledgeable and appropriate for the personnel given to...

Cst. Merrifield interacts with all individuals in a respectful manner. He gets along well with other members and is respectful of the chain of command. Since his arrival to the Unit he has undertaken to develop contacts within the regional police services, Toronto Police Service, CBSA, OPP National Firearms Centre, Chief Provincial Firearms Office and foreign agencies such as ATF and Department of Homeland Security. He has also been active in developing Human sources and this is a strong aspect of his abilities. He has worked with both as a Primary and Secondary handler of several Human sources.

[498] Sgt. Pettipas, Mr. Merrifield's intermediate supervisor, made the following comments on the performance evaluation:

He has expertise in firearms that no one else possesses. He is enthusiastic in the performance of his duties and is extremely successful in recruiting human sources which is the backbone of police work. I consider Cst. Merrifield to be an asset to the unit. He is respected by his coworkers and readily assists whenever needed.

[499] Insp. Johnson stated: "Cst. Merrifield has developed into a tremendous asset for this unit. Keep up the great work!"

[500] Mr. Merrifield explained that subsequently, the RCMP changed its reporting period for performance reports to the fiscal year from the date that a member joined the Force. Another performance report was completed which covered the period April 28, 2007 to April 28, 2008. Sgt. Pettipas made the following comment:

Cst. Merrifield has encountered numerous incidents involving the RCMP which would weigh heavily on anyone. In spite of this he approaches his job with honesty and integrity and a commitment to do the best job he is able. Constable Merrifield is well respected by his peers. They look to him for advice as well as observing how he handles challenging situations. They learned by his example and follow his lead.

[501] Insp. Johnson stated:

Cst. Merrifield has been instrumental in national security/counter proliferation files. He is quickly establishing himself as an expert and is a critical resource for GTA CES. He is fully capable of assuming greater responsibility at the supervisory/mgmt level and expect him to be a strong candidate for the OCDP [officer candidate development program]. This mbr [member] is a truly exceptional performer!

- [502] Through the relationships he built with other agencies, Mr. Merrifield carried out an intelligence probe with respect to the procurement of dual use, controlled items regarding Iran's advancement of its nuclear program. He described this as national security, counter-espionage work. Items were sought by enemy states for advancement of weapons of mass destruction including biological weapons. He stated that he learned from another enforcement agency that there was an opportunity to stop, in transit, items required for uranium enrichment that were going from the U.S. and Canada to Iran via the United Arab Emirates.
- [503] A subsequent performance report covering the period April 28, 2008 to April 28, 2009, notes that, "In Nov 08, Cst. Merrifield conducted a Powerpoint presentation on topics surrounding Counter Proliferation to the participants from across Canada. This was the first course on Counter Proliferation conducted in Canada."

**Meeting with C.O. Seguin – October 3, 2006**

- [504] On August 15 2006, Mr. Merrifield sent a two page email to C.O. Seguin, It states the following:

Sir,

I respectfully request your consideration in reviewing this message. I respect that it is perhaps unorthodox to make direct contact with the Division C.O. but I believe that the circumstances warrant a clear line of communication to avoid any misrepresentation of the information contained within.

There is a misconception that I am "constantly" in the media. Nothing could be further from the truth. In the last 10 months I have been inundated with media requests and contacts. I have never once cooperated, gone on the record or willingly provided comment regarding my involvement in politics and possible sanctions by the RCMP or any issue that would reflect negatively upon the RCMP. Any involvement that I have had with the media has been in my capacity with the Mounted Police Association of Ontario. My involvement there was born out of the unfair treatment that I received for my political involvement by certain officers in this Division.

I have been a loyal and hard-working member since joining the RCMP and serving in "F" Div. in 1997. My service/personnel records clearly show a consistent pattern of hard work and of being a team player. Since transferring to "O" Div. my annual assessments continue to show that willingness to go the extra distance, attain results, and be a team player. While I appreciate that my decision to become involved in Politics makes certain individuals in the RCMP uncomfortable it is my right both legally and by RCMP policy. I have been cautious and prudent to never mix my career in the RCMP in my outside interest or activities in politics. This worked very successfully in 2004 when I participated in a number of nominations and the Federal election.

In 2005 while working in a different section with different management I again exercised my rights in accordance to policy which I had received in writing. I was truthful and forthright in answering questions to managers regarding my intentions and involvement. While intrusive and none of their business I firmly went on the record with Cpl. Crane and Insp. Jagoe prior to the May 2005 nomination informing them both that I would not be participating in the election of 2005. My involvement in a nomination for personal reasons followed guidelines provided to me by NHQ. Insp. Jagoe's response and subsequent repeated false allegations have far surpassed harassment guidelines and have effectively destroyed my reputation and career. Superintendent Proulx's handling of the situation only served to mitigate the circumstances, was unprofessional and abusive. The actions of both officers broke constitutional rights and practices as well as the RCMP Act.

When I attempted to bring these issues to the attention of the Commissioner, the CHRO and yourself you were the only one to respond. Unfortunately you only responded to the mention of harassment and did not reply to the constitutional violations. As a result I had legal representatives research and prepare an opinion based the materials and evidence I had gathered. Much of the statements and documents collected reflect poorly on certain officers involved in this situation. I am now in the possession of a legal opinion which recommends a course of action which would be favourable to me but perhaps reflect poorly on the reputation and image of the RCMP. To this point I am writing to you for intervention in resolving the situation in the best interest of all parties. In the legal opinion it is a recommended course of action to request a Ministerial Investigation of the circumstances by the

Office of the Minister of Public Safety and Emergency Planning followed by Constitutional challenges and Statements of claim.

Beginning in the autumn of 2005 I have received repeated requests from a National Newspaper and a City newspaper regarding my situation and the possibility of Political interference by the RCMP. I have refused comment. This past Friday I received a phone call from a National television news magazine requesting my cooperation for a news story. They informed me of a second RCMP member suspended for political involvement as well as actions/statements by the former Commissioner of Public complaints for the RCMP and the British Columbia Civil Liberties Association. Mention was made last December by reporters who contacted me about my situation in reference to the McDonald Royal Commission of Inquiry into certain actions of the RCMP. At no time have I ever gone on the record or cooperated with the media in any capacity that would harm the reputation of the RCMP.

At this point my level of frustration and the lack of forward momentum to resolve the situation leaves me in the position of acting in my own best interest as the RCMP seems uninterested in resolving the situation.

I would request Sir that an attempt be made to clearly communicate with me to review and resolve the outstanding issues. I am and hope to continue to be a proud member of the RCMP however I hold my values and reputation highly. I am not one to shy away from a fight or accept undo discredit to my character and reputation. I am certain that if you were presented with all of the facts from day one you would form a much different opinion than you currently hold of the situation.

I extend this offer against the advice of my lawyers in the hope of saving undue negative attention to the RCMP from Inquiries and lawsuits. It is my hope that common sense and a shared interest in the reputation of our organization will prevail over preconceived and incorrect opinions.

Very Best regards  
Cst. Peter Merrifield

[505] Mr. Seguin stated that he was brought in to the Commanding Officer position to bring RCMP values into O. Division which included maintaining a respectful workplace. Mr. Seguin wrote a “commanding officers communique” dated December 13, 2005 which



announced mandatory harassment course online which all RCMP employees were required to do. The third paragraph of the communique states:

The Royal Canadian Mounted Police is committed to a harassment free workplace for all employees. Within O. Division, we will be undertaking the initiatives over the next year to ensure all managers and supervisors have the training they need to be effective leaders. Managers and supervisors are expected to be respectful in their dealings with all employees and to provide appropriate and developmental directions and feedback. At the same time, employees are expected to accept direction that is provided in a respectful manner and to treat their managers/supervisors and co-workers with respect.

- [506] The email that C.O. Seguin received from Mr. Merrifield dated August 15, 2006, resulted in a meeting that took place on October 3, 2006. Mr. Seguin stated that Mr. Merrifield's decision to become involved in politics did not make him uncomfortable at all. In his position as Ethics Advisor he had dealt with this previously. Mr. Seguin understood from the email that Mr. Merrifield was making it clear that he was going to be proceeding with legal action.
- [507] Mr. Seguin's point in meeting with Mr. Merrifield was to listen to his concerns. Mr. Seguin stated that at the meeting, Mr. Merrifield took him through his experience at INSET, the 2004 election and talked about a second attempt for nomination in 2005. He spoke of the Barrie nomination meeting, Cpl. Frith's attendance and the backlash that happened afterwards. He said that Insp. Jagoe knew Mr. Merrifield would be seeking a nomination ahead of time and said nothing. Now, Insp. Jagoe was raising an issue after the fact which constituted entrapment. Mr. Merrifield felt that if something was not right, it should have been raised earlier. He thought Cpl. Frith had been ordered by Insp. Jagoe to attend the meeting and that was not right. He then spoke about the Stronach investigation, his transfer from TAG to Customs and Excise and that he was upset that he had been taken off the Stronach investigation. He felt he could do the job effectively and did not feel there was a conflict. He stated that Supt. Proulx had spoken to him disrespectfully and in a harsh manner. He said he had statements from other members to this effect. Mr. Merrifield said that Supt. Proulx told him he would never work in Criminal Intelligence again. Mr. Merrifield provided to C.O. Seguin some emails he had received from Supt. Proulx.
- [508] Mr. Seguin read these emails. He did not find anything disrespectful in them. Supt. Proulx used a very businesslike tone. Mr. Merrifield reviewed the SOC incident and was upset that his participation had been denied. This was tied to TAG. Mr. Merrifield said he felt he had been singled out by an audit of his Amex card and the Part IV investigation which had been completed. Mr. Seguin told Mr. Merrifield that if Cpl. Frith had done something illegal, it would be looked into and dealt with. He made this commitment to Mr. Merrifield. Mr. Seguin stated that he was going to look into the issue of why Cpl. Frith had been at the nomination meeting. There was nothing more for him to do.

[509] According to Mr. Merrifield, C.O. Seguin said to him at the end of the meeting, “Based upon some of the things you’ve told me, I may be left with no choice but to call a code of conduct investigation [with respect to Insp. Jagoe and Supt. Proulx].”

[510] A week after the meeting with Mr. Merrifield, on approximately October 10, 2006, C.O. Seguin met with C/Supt. Mazerolle. He asked C/Supt. Mazerolle to follow up on the Cpl. Frith issue and specifically whether he had been ordered to attend the nomination meeting. He wanted to get to the bottom of the matter. Supt. Panchuk was asked to do an administrative review to determine the facts behind the situation.

[511] Mr. Seguin reviewed a memorandum dated January 17, 2007. Attached to it were statements provided by Sgt. Park and Cpl. Frith which Supt. Panchuk had obtained. In addition, there was a statement from Insp. Jagoe that had been provided on January 18, 2007. In it, he stated:

I drew the conclusion that when we spoke [at the dinner] he [Mr. Merrifield] would have known that he was running as a candidate and not just ‘considering running.’ I base this conclusion on the timing of the pamphlet and upon reflection when I read the pamphlet I recalled Constable Merrifield had told me it was expensive to run a campaign as it required a lot of money. I believed that he would not commit finances to the publishing of a pamphlet unless he was serious about running.

[512] On October 25, 2006, Mr. Merrifield sent a follow up email to C.O. Seguin. He reiterated one of his concerns, that Cpl. Frith had attended a political nomination meeting to obtain campaign literature at the direction of Insp. Jagoe. He referred to a Ministerial Directive regarding sensitive sector operations, one of which is legitimate political functions. He stated, “please accept my deepest appreciation for your attention in these matters, it has been my hope to address these issues in a satisfactory manner resulting in the best possible outcome for both the RCMP and my own personal interests.”

[513] During the October meeting, Mr. Merrifield showed C.O. Seguin two statements from regular members in which they said that Supt. Proulx had commented that Mr. Merrifield would never work in Criminal Intelligence again. Mr. Seguin stated that he did not assign anyone to investigate Mr. Merrifield’s allegations against Supt. Proulx. He said that when he met with Mr. Merrifield, he already had management’s perspective regarding everything that Mr. Merrifield told him. He did not perceive at that point that there was harassment. Mr. Merrifield was complaining about how management did their job and he presented emails in support of his complaints. Mr. Seguin said he read the emails and did not see anything confrontational in them. He agreed that Mr. Merrifield told him that the meeting with Supt. Proulx was confrontational and aggressive. Nevertheless, the emails were businesslike. He did not make any inquiries of third parties about the meeting. He did not read Cst. Brown and Sgt. Sim’s statements nor did he take their names or follow up on the statements, even though he agreed that the best people to ask about an issue would be third parties with no interest. Despite the

diametrically opposed views, he was satisfied that Mr. Merrifield had been treated fairly. Aside from looking into the Cpl. Frith issue, he did not request that anything else be investigated.

- [514] Mr. Seguin stated that he could not recall specific conversations about any further investigations or fact finding arising from the October 3, 2007 meeting but if complaints were made against officers, he would have “looked around and got a feel for it.” He probably would have had a conversation with C/Supt. Mazerolle as he was closer to operations. Mr. Seguin stated that he felt he had both sides of the story. He had Mr. Merrifield’s view and he also had the perspective from the chain of command. He had officers saying that a Member was not following policy and an officer saying that other officers were treating him badly. His expectation was that if Mr. Merrifield felt that he was being harassed, there was an appropriate mechanism within the organization to deal with it, being the internal grievance procedure. Mr. Merrifield could have made a harassment complaint. It would have been fully investigated and all of the facts would have been brought forward. If a complaint had been made, C.O. Seguin would have reviewed it and would have been the decision maker. He would not have been the investigator.
- [515] Mr. Seguin stated that he had received Supt. Proulx’s memo to Mr. Merrifield dated September 28, 2005. He had no concerns that Mr. Merrifield had not been inappropriately dealt with by his line officer. He could not recall why Mr. Merrifield had not been transferred to the investigative side of INSET.
- [516] Supt. Davis was working out of the Newmarket building and was responsible for a number of departments including Customs and Excise. Mr. Merrifield was under his command then.
- [517] He attended the meeting on October 3, 2006. He stated that he was not advised of the purpose of the meeting. The C.O. was simply looking for someone to be present.
- [518] It appears that Supt. Davis did have some involvement in the issue prior to the meeting. Initially, he stated that he said he had never previously seen an email from Ms. Robson to Supt. Hebert stating that she had received a call from Supt. Davis about a meeting to take place at 2:00 p.m. and that she had sent a two page letter to him. Supt. Davis asked her to fax the references in the letter, which she had done. Supt. Davis stated that he had no recollection of that transaction and felt that there was a chance that the C.O.’s secretary may have asked for something. He stated he had no reason to doubt the accuracy of the email and stated he must have made the call. He did not recall making the phone call or receiving any of the documents. He agreed that it did look like he had requested the material and received it.
- [519] Supt. Davis stated that prior to the meeting, he was aware that Mr. Merrifield was involved in politics. He did not have any of details. He would receive media summaries on his desk regularly and recalled that Mr. Merrifield had been interviewed by a variety

of media outlets. He stated that he did not know about any difficulties between Mr. Merrifield, Insp. Jagoe and Supt. Proulx.

- [520] Supt. Davis recalled that at the meeting Mr. Merrifield spoke first, initially about the reason for the meeting which was to explain the context of events that had occurred so that the C.O. would understand them. He referred to the frequency of media communications and the meeting after the nomination meeting. He spoke about Supt. Proulx and the response of the officers that he reported to regarding the events. Mr. Merrifield's message was that he valued his role in the RCMP. He did not act outside of the scope of policy. He believed that the officers could have handled matters better. He stated Supt. Proulx's reaction was unnecessarily harsh. Mr. Merrifield stated he did not intend to do anything outside of the organization's expectations.
- [521] Supt. Davis recalled that C.O. Seguin asked Mr. Merrifield what he wanted done or solved. Mr. Merrifield said he wanted to inform Supt. Davis and the C.O. of the context around the nomination meeting so that the C.O. would have a favourable impression of him as a member.
- [522] Supt. Davis stated that this single meeting was his only involvement with Mr. Merrifield regarding the issues.
- [523] Mr. Ford retired from the RCMP as a Staff Sergeant. He first encountered Mr. Merrifield in the Air Marshalls Program where he was the watch commander. In February 2006, he was elected to be an SRR. In this position, he met with C.O. Seguin from time to time.
- [524] Mr. Ford stated that his initial contact with Mr. Merrifield was at the request of C/Supt. Mazerolle regarding the duplicate cheque issue. During their discussions, he and Mr. Merrifield discussed what was going on in his life, beginning with Cpl. Frith's speaking to Supt. Jagoe about the Barrie nomination meeting pamphlet.

**Mr. Merrifield's Email to C.O. Seguin – January 19, 2007**

- [525] Mr. Ford stated that Mr. Merrifield sent him a lengthy email dated January 19, 2007, the subject of which was "Issues of Concern". Mr. Ford could not recall whether Mr. Merrifield offered to write it or whether he asked Mr. Merrifield to send it so that he would have it as a reference in his next meeting with the C.O. The email stated:

Hi Doug,

The following is some information for your discussions regarding my concerns.

Cpl. FRITH attended two political functions in 2005 at which I saw or spoke to him. The Barrie nomination in May 2005 where the campaign literature was present, and a barbecue in Barrie with Stephen HARPER in August 2005 were Frith introduced me to his neighbour.

If Sgt. PARK conducted the interview there may be a conflict as prior to the nomination I worked with Sgt. PARK extensively on Operation Bridge Out up to and including the days before the nomination. He was fully aware of my pending participation as were many members at INSET. No effort was made to conceal my involvement as I was led to believe that I was acting in accordance fully with policy as it had been articulated to me. Sgt. PARK is a close associate of Insp. JAGOE and they socialize outside of the workplace motorcycle riding. Following the scandal post nomination Sgt. PARK provided a very positive 1004 for outstanding efforts on my work during Operation Bridgeout. Sgt. PARK at no point leading up to the nomination expressed any concerns about my activity.

During my discussions regarding the nomination with Cpl. FRITH he advised me that he “may have gotten me in trouble”. He stated that Insp. JAGOE and Cpl. CRANE had questioned him about campaign literature which he was in possession of. JAGOE demanded copies from FRITH and FRITH advised that he stated to JAGOE that those copies were his own private belongings. FRITH then advised [that] JAGOE requested campaign material from the nomination meeting which is an order from a superior officer to subordinate. This means that when FRITH attended the nomination he was for all intents and purposes on Duty acting on the Direction of the Inspector.

FRITH provided a statement to me in which he states clearly that JAGOE stated to FRITH after the fact to “not worry, I will protect your identity”. This raises questions as [to] JAGOE’S belief regarding the legality of what he had ordered.

JAGOE, CRANE and a number of “O” Div HQ personnel were all aware of my participation in the nomination on Friday, May 13. JAGOE and CRANE reported it to “O” HQ as a policy violation and RCMP Act offence. JAGOE reported several perceived offences but did not bother to check policy which clearly would have mitigated the perception of wrongdoing. At no time did any member of the RCMP attempt to contact me prior to my participation on Saturday May 14 to clarify the situation.

On Friday, May 13 CRANE stated to Cst.s PAOR and OTT that “Peter is in a lot of trouble, he has overstepped his bounds and won’t be with us much longer”. This was one day prior to my nomination appearance.

On Monday, May 16 I was confronted by CRANE and asked to meet privately in a closed office. CRANE presented a number of allegations toward me for my participation most of which I dispelled by showing CRANE the appropriate RCMP policy. CRANE stated that allegations/concerns were presented to him by Insp. JAGOE.

During the period May 19-25 Insp. JAGOE again contacted "O" HQ to provide false allegations against me for my activity in an investigation regarding death threats against member of Parliament Belinda STRONACH. JAGOE alleged that I had broken policy by having direct communications with the victim. I took extraordinary measures to avoid any conflict of interest in the file due to my personal relationship with the intended victim. This was twisted and presented to "O" HQ as some kind of policy breach. No section was ever quoted to me. Subsequently I was stripped of all investigation and Intelligence files and removed from INSET TAG.

Following the May 16 meeting with CRANE I was summoned to "O" HQ for a meeting with Supt. PROULX. At this meeting PROULX indicated that I was a liar, that I was using the RCMP, that I must make a decision to have a career in Politics or the RCMP. He made inappropriate comments regarding material in the campaign literature, challenged the truthfulness of my personal resume which had been scrutinized during my application to the RCMP as part of my background investigation. This was a very unpleasant interaction with Supt. Marc PROULX and was witnessed by a number of members present in the room.

In July 2005 while off-duty sick recovering from surgery I participated on a Radio Talk show providing historical information regarding Terrorism, Counterterrorism and National Security efforts globally during the past 60 years. JAGOE reported this activity to "O" HQ as having Disclosed Top Secret Information regarding INSET investigations. This was completely false. JAGOE never even heard the show and acted on information from a third party which he has protected the identity of. He alleged Official Secrets Act offences which carry a serious term of imprisonment. PROULX contacted me at home and advised that he would be proceeding with formal discipline and that he would obtain a copy of the Radio Show.

MERRIFIELD makes Access to Information Request to begin legal proceedings against the RCMP for Constitutional Rights

Violations. JAGOE receives ATI request and contacts S/Sgt. BOHUS who is representing MERRIFIELD. JAGOE states to BOHUS “to tell MERRIFIELD not to burn any bridges”.

Members BROWN and SIMM provided statements from a conversation they have with PROULX where PROULX clearly states that “someone has it for Peter” and that it is personal.

From this point on Doug it is a steady pattern of harassment, threats, and at one point I am ordered not to report for duty during a National Security crisis. My reputation has been destroyed based on rumours, false allegations, personal vendettas, harassment, abuse of policy, and repeated transfers. I have missed two opportunities for promotion, expended considerable monies on legal work and suffered significant medical concerns. I have bent over backwards to resolve this without going to court and the media once it becomes public. There are a myriad of instances and actions taken against me during that period that will not stand the test of harassment suit. I appreciate that my activities caused discomfort among some Management personnel of the RCMP but I worked hand-in-hand with the Force in 2004 when I was a full-fledged Candidate in a Federal Election without this type of harassment. I always put the reputation of the force first in anything that I did and was careful to protect it at all cost. There are clear constitutional violations in current RCMP policy which I have offered to address in a constructive manner.

If this was about one isolated incident or one single misunderstanding I would not be pursuing the issue with such vigour. However it was much greater than that and with severe consequences to my reputation and career path. My service file clearly indicates the type of member I have been and wish to continue to be.

Of note is some information that was obtained via my Access to Information request which shows cautions were provided to Supt. PROULX from HQ not to cross constitutional lines and an email between JAGOE and PROULX which refer to “a source, a member” in cryptic fashion. Not much about this situation was above board or founded in fact. It is my strong belief that this was mishandled from the beginning and spun into a tall tale without any concern for the truth. If I was in the C.O.’s shoes and had been told tall tales about a member’s activity in the manner he was informed about me I would also have concerns. However because

he was not given the facts, improper opinions and actions may have been formed or taken.

The concern I have is over the implications of the perception by the media, government and public of the RCMP in its handling of issues relating to Politics. I wish to correct the damage done over the past two years internally if possible. I have not ruled out legal action and still retain my law firm and original filings which were prepared.

Hopefully we can get to the truth quickly and correct the situation in a satisfactory manner as quickly as possible.

Thanks again for help Doug,  
Very Best regards,  
Pete

- [526] SRR Ford stated that the C.O. and others were basing their opinions on distorted facts. He asked Mr. Merrifield if he could share the email with the C.O. Mr. Merrifield agreed to that.
- [527] SRR Ford stated that he was concerned about the last five paragraphs regarding what Mr. Merrifield said had been done to him. He was not sure if any of this information was getting to the C.O. SRR Ford forwarded the email to the C.O. SRR Ford stated that he knew that Mr. Merrifield had met with C.O. Seguin earlier on. When Mr. Merrifield sent him the lengthy email, it was obvious that nothing had been resolved.
- [528] Mr. Merrifield also sent the January 19, 2007 email to Sgt. Nicota who was present at the meeting in London with Supt. Proulx. He asked Sgt. Nicota to provide comments regarding the meeting so that SRR Ford would have them when he was dealing with the situation.
- [529] On January 22, 2007, SRR Nicota sent the following email to S/Sgt. Ford:

Hi Doug, as per Peter MERRIFIELD'S message please be advised of the following: in my 32 years as a member of the RCMP I have never witnessed an "Accused" (let alone a serving member of the RCMP) confronted in the manner as Peter MERRIFIELD was subjected to by Supt. PROULX. This unexpected behaviour by Mr. PROULX was only displayed after then SRR Rick BOHUS had to leave the meeting to deal with another matter. Mr. PROULX made it clear that this examination of MERRIFIELD was at the behest of the CROPS officer Mr. MAZEROLLE and the "C.O." (Asst/Commissioner SEGUIN). Mr. PROULX'S manner of questioning was the epitome of harassment and could be used for



classic textbook lecture material example. Supt. PROULX'S questions ridiculed, demeaned and embarrassed MERRIFIELD.

I was angered and dismayed by what I observed and allowed it to continue only because it strengthened MERRIFIELD'S case. MERRIFIELD repeatedly had to explain how a legitimate political nomination process worked and yet Mr. PROULX still failed to comprehend process. All of MERRIFIELD'S campaign material was examined and he was questioned in detail. Regardless of the answers provided to Mr. PROULX, he remained sarcastic, accusatory and made it very clear that MERRIFIELD had to choose between a "political career" or the Force. At no time was there acknowledgement of MERRIFIELD'S Charter rights to allow his name for nomination in the Political office. This meeting only served to exacerbate the problems and failed to resolve the issues under discussion. It was my conclusion there was no desire to resolve the issues but only to find an excuse to administratively exit MERRIFIELD out of the RCMP.

- [530] C.O. Seguin sent a short email to SRR Ford on January 23, 2007 referring only to the issues relating to Cpl. Frith. On February 15, 2007, SRR Ford asked C.O. Seguin whether the investigation covered the harassment issues raised by Mr. Merrifield relating to Supt. Proulx and Insp. Jagoe or whether it covered only the issue regarding Cpl. Frith. C.O. Seguin replied that it only applied to Cpl. Frith and that he was satisfied that Cpl. Frith had attended the meeting on his own.
- [531] Mr. Merrifield stated he did not receive any satisfaction from C.O. Seguin. There was no feedback, email or written decision. There was nothing.

**Mr. Merrifield's Email to D/Commr. Bourduas – May 11, 2007**

- [532] Mr. Merrifield decided to send an email dated May 11, 2007 to Pierre-Yves Bourduas, Deputy Commissioner for the Region, to request his assistance with the issues. The email stated:

Sir,

Please excuse me for writing to you directly, however I believe it is incumbent upon myself to share with you some concerns with very serious repercussions to "O" Division and the RCMP. The past several months have been difficult times for our organization. Criticism of certain actions of the RCMP and the actions of some of its personnel have been portrayed in a manner which disrespects the greater membership. I am trying to avoid any further embarrassment or tarnish to our organization but have been

presented with repeated obstacles in my efforts to resolve a serious situation at the lowest possible level.

During the past two years I have utilized the DSRR program, personal involvement with several officers in "O" Division and a meeting with the Commanding Officer of "O" Division. All efforts have met with a lack of resolution or understanding of the gravity of the circumstances.

This particular situation arose from my involvement as a candidate in a past Federal election of political involvement in 2004/2005 which was conducted in accordance with the RCMP policy. The two years following that involvement have been filled with repeated and ongoing harassment, the abuse of authority by a number of commissioned officers in O division, abuse of process, constitutional violations by commissioned officers, constitutional conflicts and RCMP policy, conduct unbecoming an officer, possible violation of a ministerial directive in relation to National Security Operations in Sensitive Sectors, possible dereliction of duty. I have written to the former Commissioner, former Deputy Commissioner of Human Resources and current Commanding Officer of "O" Division to this capacity. I have offered evidence and the willingness to resolve this matter in a means agreeable to all concerned. These efforts have yielded no results and have left me with little options other than formal legal proceedings which would be public and perhaps embarrassing for our organization. I am hopeful that you can intervene in your capacity as Deputy Commissioner for Central Region. I have utilized a law firm to research and provide opinion on my behalf in these matters. It is their position supported by recent court decisions in Ontario and New Brunswick which state that the RCMP is ill equipped to resolve certain issues within its own internal processes. I on the other hand have faith that this can be resolved internally.

All material in my possession in support of this circumstance are at your disposal. I would be willing to provide greater detail of the circumstances to you or your delegate at the Regional level as efforts at the highest level of Division to correct this have failed. Statements made by subject Officers during this ongoing conflict indicated that they were acting at the direction of the Commanding Officer of "O" Division. I questioned A/Commr. SEGUIN to this regard and he denied having provided the questionable direction. I have no cause to take challenge to the remarks of either Officer, however there exists a conflict in resolving this matter at the

Division level as the C.O. is named as a possible instigator of questionable actions.

Due to the existence of possible conflict of interest at the Division level I am requesting your involvement from Region to facilitate review and possible resolution of the situation. Attached above you will find some previous correspondence relating to this matter.

Please understand that I am not writing to you in order to “cover my bases” for future legal action. I am not going through processes for the sake of future claim or gain. I truly wish to resolve a situation that does not reflect the Values, Ethics or Integrity of our valued members. I believe in all of the good that that we do as an organization coast to coast and proud of my membership in the RCMP. I take great pride in my work and membership and conduct myself in accordance with Ethics and Integrity in all that I do inside and out of the RCMP.

I wish to take this opportunity to thank you for your attention in this circumstance and express my appreciation for the demands that must be made upon your time as Deputy Commissioner of Central region. Please understand that I would not have burdened you with the situation if I did not believe that the best interest of the RCMP and the members involved could be served under your direction. I look forward to speaking with you or your delegate to reach resolution.

[533] On May 28, 2007, Mr. Merrifield issued the Notice of Action in this matter. On June 27, 2007, the Statement of Claim was issued to protect limitation period.

[534] On June 29, 2007, D/Commr. Bourduas responded to Mr. Merrifield’s email and stated, “I have thoroughly reviewed the materials and concluded that your complaints and grievances have been handled appropriately by the C.O. “O” Division. As such it would not be appropriate for me to intervene at this time.”

### **The RCMP’s Internal Grievance Procedure**

[535] In 2008, an issue arose as to whether Mr. Merrifield ought to have used the RCMP internal grievance procedure for adjudication of his claims. The Attorney General brought a motion to strike the claim which was dismissed. In *Merrifield v. Canada (Attorney General)*, 2009 ONCA 127, the court agreed with the motion judge’s decision and stated in paras 9 and 10:

Importantly, the motion judge correctly noted that the RCMP grievance procedure does not have the necessary means to make findings of credibility, as it does not provide for oral hearings, and

the factual findings of an investigator need not be followed by the adjudicator. Nor does the grievance procedure allow for independent third party adjudication.

...the grievance procedure mechanism cannot provide the remedies requested, namely, declarations and damages.

- [536] Mr. Merrifield stated that his health was good until August 2008. He developed a heart problem, atrial fibrillation, and was off duty sick for a period of time. He had committed to the development of a training program for counter proliferation in Canada so while he was at home, he worked with other agencies to develop the program. In November 2008, he returned to light duties at work and attended the implementation of the training program.
- [537] On March 30, 2009, Mr. Merrifield had heart surgery and recuperated at home for two weeks. In April, he returned to work to conduct a raid and arrest on a nuclear proliferation case. He obtained ten pressure transducers configured to be used in nuclear centrifuges for enrichment of uranium. This resulted in the first prosecution and conviction under the *United Nations Act R.S.C., 1985, c. U-2* for proliferation to Iran.
- [538] A Performance Evaluation was prepared for Mr. Merrifield covering the period April 28, 2008 to April 28 2009. It states:

[Cst. Merrifield] has conducted demonstrations and presentations for agencies both within and outside of the RCMP. In autumn of 08, Cst. Merrifield conducted a Powerpoint demonstration on Canadian legislation to the participants of the Strategic Investigation Training seminar in Georgia. In Nov 08, Cst. Merrifield conducted a Powerpoint presentation on topics surrounding Counter Proliferation to the participants from across Canada. This was the first course on Counter Proliferation conducted in Canada. For both presentations, Cst. Merrifield was well-organized and relayed the information in a level that was clearly understood by the audience. Cst. Merrifield is very comfortable in front of an audience and this easy manner comes across with humour and professionalism. Cst. Merrifield has also conducted a demonstration of tight placement, close quarters battle tactics for the Ontario Tactical Association. He has acted as BFI on several occasions. CST Merrifield has been requested by several agencies, both within and outside of the RCMP to provide presentations.

- [539] Insp. Johnson's comment on the Performance Evaluation is, "Cst. Merrifield is an operational member thru and thru. He is knowledgeable, competent and a leader. An excellent assessment and well deserved."

- [540] In June 2009, Supt. Jagoe became concerned again about Mr. Merrifield's public speaking. He had been the keynote speaker for the Ontario National Gang Investigators Association in 2006. He spoke as Vice President of the MPA. He did a TV appearance on a show called The Verdict. Supt. Jagoe was concerned about "national security public speaking". This set off a chain of inquiries. He reported it to C/Supt. Mazerolle who spoke to Dist. Comm. Davis who spoke to Insp. Johnson, who then spoke to Mr. Merrifield. Mr. Merrifield obtained a document from the RCMP website which showed that National Security was within the mandate of Customs & Excise.
- [541] On June 30, 2009, Mr. Merrifield was promoted to the rank of Corporal.
- [542] In January 2010, Mr. Merrifield was the lead investigator on a project called Owatch regarding nuclear proliferation. It resulted in an arrest and a trial. Mr. Merrifield gave all of the evidence for prosecution. The accused was convicted.
- [543] Also, in January 2010, Mr. Merrifield was seconded to the G8 and G20 summits.

#### **Waterloo Police Speaking Event**

- [544] Supt. Jagoe stated that at some point, he received an email from Sgt. Crol in Kitchener, for his information, to advise him of a presentation that was being hosted by the Waterloo Regional Police. Mr. Merrifield was identified as the key note speaker on terrorism.
- [545] Supt. Jagoe stated that he then spoke to Insp. Johnson and told him that he might want to look at the materials because the new RCMP policy required CROPS officer's approval for presentations.
- [546] Section 12.5 of the Operations Manual Ex 223 is entitled Presentation, Conference. It shows a print date of 8/22/2008 and deals with presentations with respect to national security. Section 1.2 deals with the approval for presentations of an operational nature or intended for an international audience. Supt. Jagoe stated that he was involved in policy development in this area. He did not specifically refer to it when he spoke to Insp. Johnson about Mr. Merrifield's being a key note speaker at the Waterloo Police event. Supt. Jagoe stated that he had the impression that Insp. Johnson was not familiar with it. This document was not produced in this action until May 2015; six months after the trial began. Supt. Jagoe had no explanation for this.
- [547] Mr. Merrifield stated that a culmination of events made him feel that he was not being treated fairly. Receiving inquiries stemming from Supt. Jagoe's further concerns about his public speaking was like being "poked" again. He was frustrated, angry and depressed. From February to May 2010, he was off duty sick. He submitted monthly reports to the Health Services unit to support his status.
- [548] Mr. Merrifield returned to work in May 2010. In the following month, he did protective duties for the Queen's visit.

[549] In the fall of 2010, Mr. Merrifield was assigned to project Overlord. This was the intelligence probe that he had started in 2009 regarding firearms smuggling. In 2011, there were a number of people working on Overlord. Between January and October 2011, Mr. Merrifield travelled extensively and obtained confidential information. He obtained an AK 47 fully automated firearm, hundreds of which had been imported as BB guns. They could be converted in fifteen minutes to a fully functioning AK 47.

**Witness X**

[550] As noted above, one of Mr. Merrifield's duties was to cultivate human sources. In his performance logs, his superiors noted that he was extremely good at this.

[551] Mr. Merrifield was a primary handler for several confidential human sources, one of whom I will refer to as Witness X.

[552] Witness X stated that s/he had been a social friend of Mr. Merrifield. S/he then became an informant for Mr. Merrifield in 2006/2007. S/he also worked with other RCMP officers. S/he had several conversations with these other officers in which they discussed Mr. Merrifield. One of them said that Mr. Merrifield was not a team player, he had issues and could not be trusted. This officer stated to Witness X that Witness X should not be working with Mr. Merrifield. The officer said that Mr. Merrifield was suing the RCMP. His career was not going anywhere. It was finished. Witness X stated that in 2011, s/he told Mr. Merrifield that he did not have many friends in the RCMP and informed him of the other officers' comments.

[553] Mr. Merrifield said that there is a sacred trust between an informant and a handler. Telling an informant not to work with a police officer during the course of an investigation was completely inappropriate. It was not in the administration of justice.

[554] A Performance Evaluation of Mr. Merrifield was carried out for the period September 9, 2010 to March 31, 2011. It states:

... Cpl. Merrifield worked alongside with the crown prosecutor during the trial phase of a national priority investigation that he (Cpl. MERRIFIELD) had been involved with. The crown prosecutor had commented on Cpl. Merrifield [sic] leadership and encyclopedic knowledge of the evidence. As well he was required to attend an International POWPOM on Counter Proliferation Investigations held in New Zealand, representing the RCMP on behalf of HQ C & E Branch...

Cpl. Merrifield is considered a subject matter expert on counter proliferation (CP) investigations. As a result, he often lectures on CP investigations and training seminars held both within and outside Canada. During this reporting period he has lectured at training seminars in "D" Division as well as at the annual CP

training seminar held in Ottawa this year. In addition, he was required to travel to New Zealand where he presented a case study based on a successful CP investigation (Project OWATCH). That investigation had been conducted during the previous reporting period by this unit. He maintains recency in CP investigations by regularly conducting research on proliferation activities. These combined efforts speak to Cpl.'s MERRIFIELD [sic] ability to forge ahead with learning and development needs for himself and others. That said, Cpl. MERRIFIELD continues to show flexibility towards re-arranging his personal time with family to facilitate his commitment to CP investigations...

[His immediate supervisor, S/Sgt. Wayne Pupik stated] Cpl. Merrifield has recently taken on the Role of Primary Investigator for Project Overlord. Through his presentation skills, his knowledge with CP investigation and desire to take this project to high levels, I see great things happening in his future.

[Insp. Johnson stated that] Cpl. Merrifield is a high performing knowledgeable member who is more than capable of assuming career responsibility at the senior NCO level.

[555] Mr. Merrifield stated that in the fall of 2011, Customs & Excise underwent a number of personnel changes. It became dysfunctional and was falling apart. Given what Witness X had told him, he felt that the damage to his reputation resulting from the harassment had spread significantly within the RCMP. He went off duty sick in November 2011.

#### **Mr. Merrifield's Email to Senior Management**

[556] Mr. Merrifield stated that November 2011 to January 2012 was the worst part of his life. He disengaged from family, stayed on the couch, got bed sores and did not bathe. He started seeing another psychologist.

[557] While he was at home and in the middle of a deep depression, Mr. Merrifield made another attempt to reach out to senior members of the RCMP. He sent a lengthy email dated January 5, 2012 to a number of people including Commr. Paulson, D/Commr. Graham, Asst/Commr. White, SRR Niebudek, SRR Reed and S/Sgt. Townsend who was on the National executive of the SRR program. The email stated:

Sirs,

I respectfully submit this message with the knowledge that it circumvents the usual chain of Command and for that I apologize.

For nearly seven years I have been engaged in an effort to address unwanted harassment, bullying, abuse of authority and process. This began with the dislike of my standing as a candidate to

become a Member of Parliament. I have been [the] subject of false Criminal allegations, subject to punitive transfers, false code of conduct investigations and subjected to threats by Senior Officers of "O" Division. Throughout this period my health has suffered, I [have] been away from duty periodically to deal with serious depression issues as a result of the harassment, I also required surgery for a stress related heart ailment.

I have exhausted every reasonable method to appeal to the common sense of the RCMP to review the evidence in the matter, but to date there has been no in depth review of the [sic] my claims or evidence. I believe that DOJ is not acting in a manner which has the best interest of the RCMP at heart.

Throughout this same time period I have dismantled weapon smuggling rings along the Canadian/US border, identified and began recovery of more than 250 fully automatic AK 47 receivers improperly imported and distributed throughout Canada, and provided the first ever conviction in Counter Proliferation of the Canadian Nuclear Safety Act and the United Nations - Iran Regulations.

My service file prior to the run in with the Officers named in my lawsuit was exemplary, my service record since the run in has also been exemplary.

It baffles me that when I send C237's about Iranian Procurement and Espionage I am believable. I have been asked in the middle of the night to help prepare a Prime Minister's briefing note on Iranian Nuclear Proliferation investigation and was believable. I was asked to address the World Nuclear Suppliers Group conference in New Zealand in 2010 and brief the combined Enforcement and Diplomatic core on Counter Proliferation Investigations and strategies and was believable. The courts accept my warrants, production orders and one party consents as credible.

Why is it that when I claim that certain Officers bullied me, harassed me and lied I am no longer believable?

I joined the RCMP to catch criminals and work in National Security. I have spent 30 years of my life studying Global Security Issues, International Affairs and Terrorism. I left a comfortable Senior corporate career at age 30 to join the RCMP. I have done everything the RCMP has ever asked of me. I have made my sacrifices in service and posting without question. I have



investigated, arrested and prosecuted murderers, rapists, arsonists and just about every other type of criminal you wish to name. I have been assaulted, shot at, stabbed at, and subject of death threats in the performance of my duties. Throughout all of that I believe that the RCMP had by [sic] back, I trusted that we were an organization of truth and values.

As my lawyers are about to file all of our documents with the court and set the matter down for trial the issue will become public. Knowing this and having repeatedly attempted to negotiate settlement in the matter I want to put a couple of things on the table that have been danced around but never dealt with directly because of process.

I name Supt. Marc PROULX (ret) as the primary abuser/bully, my investigation into his history and background require that I ask the following questions:

1. Supt. PROULX was named in retaliation complaint related to sexual harassment in C Division. The matter was settled out of court just short of appearing before the Canadian Human Rights Tribunal. Supt. PROULX was promoted and transferred to “O” Division as DIO to which he joked with us in the program that he knew nothing about. Was he ever disciplined inside the RCMP for this harassment/retaliation incident in “C” Division?

2. In 2006 I advised Supt. PROULX in writing that I intended to file a formal complaint about his harassment and bullying of me, his response within hours was to lodge a false Code of Conduct Investigation against me alleging Criminal Code Offences. When these claims were later proved without merit, was Supt. PROULX investigated or disciplined for abusing process?

3. I have received allegations that during this time period in 2006 when PROULX was abusing me he may have been arrested by London Police Service attempting to procure a prostitute which was an undercover police officer in a “John Sting” operation. There is no criminal conviction of PROULX, he did not attend the diversion program (John School) in London and the RCMP has no record in the adjudication branch of PROULX being dealt with. He was transferred that year to Canadian Police College after serving only a short period here in “O” Division as DIO. Was PROULX arrested, was he disciplined internally? Lacking criminal conviction if he was arrested then he was the only person of the 59 “johns” arrested in that sting that was not prosecuted.

4. PROULX'S line officers would have been C/Supt Mazerolle and A/Commr Seguin, if PROULX did act in a manner which warranted proper discipline and did not receive it, would the line officers responsible be subject of a Code of Conduct Investigation? It should be noted that DOJ formally requested SEGUIN and MAZEROLLE be removed by name from my Statement of Claim. A few weeks after that request they were nominated as Officer and Member respectively of the Police Order of Merit. Did they request DOJ to make this removal request in order to receive an award? If they did cover up for PROULX in 2006, should they have received an Order of Merit in 2007?

5. In reviewing the CACP rules for nomination it refers to "subject of formal discipline" as grounds to withhold the nomination. Supt. JAGOE was nominated and received the OOM in 2011 while still named formally in my Statement of Claim for his actions as an officer of the RCMP. Should his nomination have been approved at that time? Who approved it?

I wish to apologize again, I hope this is not perceived as confrontational, it is not meant to be. I am frustrated, I have loved my career in the RCMP, there is nothing else as rewarding. I enjoy a 100% conviction rate, I pride myself in being thorough, fair and detailed in my investigations. I try to act in a manner which affords respect to everyone, and I am well aware that I am not perfect. When I find myself off track, I will make the necessary corrections and when required include admitting that I made [a] mistake and apologizing. I have not been afforded the same courtesy, and forcing the truth to be recognized it has affected my health, it has affected my family, it has affected my faith in the RCMP ...

I believe that in my case one officer made errors of judgment in making allegations to his higher-ups before checking policy. Instead of backing up he pushed forward with more false allegations in an attempt to discredit me. My line officer took those fabricated concerns and as a bully he pushed the issue in the only way he knew how, and for which he has a bad track record. Their offences then went ignored or covered up. Which is worse? The crime or the cover up?

I do not expect a response from any of you, as it has been practice to ignore me and cite the "legal process" as grounds. I just wanted you to know the character of those you are standing behind in this matter.

Seven years is a long time, and I am sure for you and your careers and rank many wonderful things have happened. I have worked as hard as possible to be the best member that I can in accordance with our core values. I just can't do it anymore. These seven years have taken a toll on [me]. I am not the same member I use [sic] to be. Anything that I do now is in the best interest of my family and myself. I can no longer worry about the reputation of the RCMP or individuals involved.

If I had my choice I would be back at work leading Project Overlord, a large proliferation investigation with direct links to foreign governments. I would pursue the source I began to recruit who is linked to the Egyptian protest movements and travels between Canada and Egypt. I would like to do these things because they are police work, because they have value.

I did not join to fight liars and bullies inside the RCMP, I hope the RCMP weathers this current trial in the public eye, but from where I sit we have a long way to go to fix it.

I wish you the best in your efforts to lead and correct the RCMP, I know that none of you were personally responsible in my circumstance. Please do not perceive this message in any other way than respectful. I am demoralized, I believe this has dragged out due to "process paralysis" and a lack of ownership of the issue internally.

Very Best Regards  
Cpl. Peter Merrifield

- [558] S/Sgt. Reed stated that he became a full time SRR in 2008. He represented members on typical labour relations issues including conflict management, harassment grievances, complaints and behaviour issues. Regarding harassment issues, he endeavoured to help members find resources and tools to build better relationships between themselves or in a unit. Harassment included demeaning behaviour toward lower ranking members. Some examples included situations where members were spoken down to or disrespected. The effects of harassment included isolation of members from the rest of their group, not being selected for courses and not being selected for overtime work. Sometimes members faced disciplinary proceedings. SRR Reed's goal was always to resolve issues at the lowest possible level to keep officers operating in a friendly, positive environment. He carried out a significant amount of mediation and conflict resolution.
- [559] Mr. Merrifield approached SRR Reed in 2010 and requested assistance. He set up a meeting between Mr. Merrifield and Employee Management Relations Officer, Supt. Boulet to discuss Mr. Merrifield's issues. He recalled that they met and spoke for some

time. His impression was that Supt. Boulet had a general concern for Mr. Merrifield's well-being.

- [560] SRR Reed stated that he wanted to meet with Asst/Commr. White. He believed that Asst/Commr. White was an honest, progressive man who was interested in the betterment of people in the RCMP. He requested that Asst/Commr. White meet with him and Mr. Merrifield to try to fix Mr. Merrifield's problems and get him back into the workplace. Asst/Commr. White was somewhat receptive but the meeting never happened.
- [561] SRR Reed recalled receiving Mr. Merrifield's email dated January 5, 2012, which was sent to him and the Commissioner among others. He stated that Mr. Merrifield wrote it because he was frustrated that he was not being dealt with. It was written from an emotional perspective. It was valuable, strong and clearly written. SRR Reed waited to see what the outcome of the email would be.
- [562] On March 13, 2012, SRR Reed wrote a lengthy email to Commr. Paulson, D/Commr. Graham and Asst/Commr. White. SRR Reed stated that his email to the Commissioner showed his level of frustration. SRR Reed had been dealing with the case for over two years and was very frustrated that Mr. Merrifield was being left in limbo all this time without a clear direction. In his email, SRR Reed stated:

Peter is a very intelligent, productive member who from most people's perspective has potential to be a good leader, commissioned officer and very productive and innovative member of the organization. He leads the way here in "O" Division and perhaps even in the country in the Counter Proliferation world having conducted investigations and been sought and relied upon by US agencies to provide expert evidence and numerous presentations to the US Homeland Security group. They have specifically requested him on numerous occasions.

- [563] SRR Reed stated that the issues that had been brought forward had not been resolved. His purpose was to stimulate interaction between the Force and the member to find a reasonable solution. There had been no response to Mr. Merrifield's email dated January 5, 2012. SRR Reed stated that when he made inquiries, he received only vague answers such as, "We're working on it." The matter had sat in the laps of the Commanding Officer and the Commissioner for two years. In his view, the Force had to either lay a charge, do an investigation and impose sanctions if necessary or put it behind them and move on. Ongoing conflict was not healthy for anyone. If the Force believed that Mr. Merrifield had done something wrong, they should have charged him. Mr. Merrifield was not formally disciplined for participating in the Barrie nomination meeting, for appearing on the Pritchard show or for his political involvement. SRR Reed said that there were "other types" of discipline and that dealing with them was a major aspect of his job as a SRR. He believed that a series of events had occurred that were moving against Mr. Merrifield and upsetting his ability to come to work and perform his job. SRR Reed wanted to put those to rest and move forward.

### **Follow Up Regarding Mr. Merrifield's Email**

[564] Asst/Commr. Stephen is currently the commander of O Division and has been since 2011. He oversees all RCMP activities in Ontario including civil lawsuits.

[565] He received the email from Mr. Merrifield dated January 5, 2012. In paragraph three of his email, Mr. Merrifield stated:

I have received allegations that during this time period in 2006 when PROULX was abusing me, he may have been arrested by London Police Service attempting to procure a prostitute which was an undercover police officer in a "John Sting" operation...

[566] Asst/Commr. White stated that he asked C/Supt. Mazerolle to follow up on this. C/Supt. Mazerolle returned with a document and they had a brief discussion. No action was taken on the issue because Supt. Proulx had retired by then. The RCMP had no jurisdiction to carry out a Code of Conduct investigation.

[567] C/Supt. Mazerolle saw Mr. Merrifield's email dated January 5, 2012. He knew that Mr. Merrifield's allegations with respect to Supt. Proulx were substantiated because he received a related document. C/Supt. Mazerolle stated that he was not aware that anyone had looked into the various issues and reconsidered what happened to Mr. Merrifield. He turned the document over to Asst/Commr. White and did not know what happened after that. He was training to leave for Afghanistan.

[568] Commr. Paulson became aware of Mr. Merrifield within the RCMP when he received Mr. Merrifield's email dated January 5, 2012. Commr. Paulson found the depth and breadth of the information in the email unusual and concerning. He was concerned about it. He recalled that he forwarded it to Asst/Commr. White and a Human Resources officer. He expected that the issues would be addressed. He did not recall receiving any response and/or follow up.

[569] Commr. Paulson stated that occasionally SRRs would communicate with him but it was not a regular occurrence. In SRR Reed's email, he asked that Mr. Merrifield's case be made a priority. Commr. Paulson believed he had a conversation with Asst/Commr. White in which they discussed following up. He stated that he was concerned about the matter but that he was reassured that Asst/Commr. White was on top of it.

[570] In his email dated January 5, 2012, Mr. Merrifield made an allegation that Supt. Proulx had attempted to procure a prostitute. Commr. Paulson stated that he did not know whether an investigation had been conducted with respect to this allegation. He had not seen a police document. No one had ever discussed the contents of such a document with him. No one suggested to him that those allegations may have had some foundation.

### **Serious and Organized Crime**

- [571] In September 2012, Mr. Merrifield told SRR Reed that he wanted to return to work. He had been off for 16 months. He stated that he had suffered severely. He had post-traumatic stress disorder as a result of past events.
- [572] Mr. Merrifield said that he had an opportunity to go to the Source Development Unit. After he obtained medical permission, he applied and passed the first level of screening. He was interviewed for the second level but was subsequently notified that his application was unsuccessful. Mr. Merrifield stated that people with lower marks were selected. Later, he understood that he was not selected because he was engaged in litigation with the RCMP.
- [573] The RCMP took eight months to facilitate Mr. Merrifield's return to work. He was told that his security clearance level had expired after the usual five year period. If he had applied to renew it before the expiry, the approval would have been a routine matter. Mr. Merrifield had to make a fresh application which took considerable time to process, even though he held the top level of security clearance before he went on sick leave.
- [574] While he was on sick leave, Mr. Merrifield was required to submit certain forms. When he came into the office to do this, he attempted to speak with his former co-workers. Mr. Merrifield believed that they had been instructed to not speak to him.
- [575] On April 1, 2013, the RCMP underwent a substantial re-organization. Customs & Excise was combined with several other units. It became Serious and Organized Crime, under Insp. A. White. The objective of the new combined unit was to investigate the highest priorities regardless of the commodity, such as Customs & Excise. Asst/Commr. S. White stated that counter proliferation could have been a priority. It would depend on the group involved.
- [576] Insp. Johnson, Mr. Merrifield's former superior, wanted Mr. Merrifield to return to counter proliferation investigation because he had previously led the force in that new area.
- [577] SRR Reed had a role in Mr. Merrifield's return to work. He wanted to return to counter proliferation work in a leadership role. SRR Reed made efforts with Insp. A. White as he was the OIC of the new unit. SRR Reed understood Insp. A. White's position to be that Mr. Merrifield would not be returning to counter proliferation work and that "he was not the expert he thought he was". Although the decision regarding the type of work that Mr. Merrifield would do in the new unit was up to Insp. A. White, SRR Reed disagreed with his decision and told him so. He did not know why Insp. A. White refused to have Mr. Merrifield return to counter proliferation work. He challenged the decision because he felt it was punitive. Mr. Merrifield's expertise was in counter proliferation. SRR Reed stated that a member would not be removed from a spot when he was the lone expert on the subject unless there was another reason.
- [578] In May 2013, Mr. Merrifield returned to work. He believed that Insp. A. White did not want someone returning from sick leave to take on a role in counter proliferation work.

Mr. Merrifield was assigned to be the file manager for a drug investigation. He worked in this role for three months, from May to July, 2013. He never returned to counter proliferation work.

- [579] Insp. A. White stated that after the units were re-organized, he inherited Project Overlord, which had been handled by staff under Insp. Johnson's command. Mr. Merrifield had worked on this project before he was off duty sick.
- [580] While Mr. Merrifield was on sick leave, a decision had been made in Project Overlord to focus on supporting the prosecution of charges in the U.S. Insp. Johnson knew that Mr. Merrifield had ideas for charges that could be laid in Canada. He sent Insp. A. White an email asking him to hear out Mr. Merrifield on this issue. Mr. Merrifield was also eager to discuss another project proposal.
- [581] Insp. A. White stated that while Project Overlord was not closed, there was minimal activity on it. The resources of the department were focused on two significant drug trafficking investigations. Project Overlord had the staffing that it required so there was no counter proliferation file to which Mr. Merrifield could be assigned. This was the reason why he did not go back into counter proliferation work. Insp. A. White denied stating that he did not want someone returning from sick leave to take a major role in an investigation. The project that Mr. Merrifield had proposed did not go anywhere.
- [582] Insp. A. White stated that he had concerns that Mr. Merrifield was not a competent investigator. A 43 page directed review was done with respect to Project Overlord. There were many concerns about him. A lot of things were found wanting on the investigation. Insp. A. White had concerns about the direction of the file. He believed that statements made by Mr. Merrifield to Insp. Johnson and him were misleading. Project Overlord was the last counter proliferation file that came across his desk. The peer review was done at the end of July 2013. The final report was received in January 2014.
- [583] Insp. A. White stated that there had been conflict in the unit and this was the reason for the directed review. Mr. Merrifield was not subject to any discipline although others were. There were no notes from Mr. Merrifield on the Project Overlord file although he had been the primary investigator for two years. Some interviews had been conducted but they had not been recorded. Some documents had been seized that were not reported to the Justice Department. They were not tracked. There was a continuity problem. Many emails had been received from U.S. authorities. These showed that the investigation was an intelligence probe. No evidence had been obtained. No Mutual Legal Assistance Treaty had been sent so that the American emails could be used. Financial material had been gathered but no accurate analysis of it was done by Proceeds of Crime. They had determined that there was no action to take.
- [584] Insp. A. White met with Mr. Merrifield only three or four times and in total spent just a few hours with him. Mr. Merrifield worked in Serious and Organized Crime for only a few months because he was then elected as a SRR and left Insp. A. White's command on July 7, 2013. Insp. A. White received the report on Project Overlord in 2014. He never

gave a copy of it to Mr. Merrifield. He never sat down with him to discuss the contents. The reason for this was that Mr. Merrifield left his command before the report was received. Nevertheless, Insp. A. White believed that a collective meeting was held, that Mr. Merrifield attended, and that the issues were discussed. Insp. A. White did not attend the meeting.

- [585] Insp. A. White stated that Mr. Merrifield was not disciplined or performance managed as a result of the review. Insp. A. White never actually assessed Mr. Merrifield.
- [586] Cpl. Low-Fowler was the file manager for Project Overlord from August 2009 to May 2013 when Mr. Merrifield was the lead investigator. She worked in Serious and Organized Crime after the units were reorganized, under Insp. A. White.
- [587] Cpl. Low-Fowler stated that she was part of the peer review for the project in August 2013. She was asked to sit with key players in a private meeting room for one day. They were reviewing the file to identify successes, shortcomings and areas for improvement. No individual's shortcomings were discussed at the meeting. She was not aware that a report was generated but assumed that there would be one. She was never briefed on the outcome of the peer review process and was not aware if others were briefed.
- [588] Cpl. Low-Fowler stated that she did not receive notes from Mr. Merrifield for Project Overlord and was concerned about that. She knew that he had a lot of emails that were logged. She did not see any audio/video for witness interviews. Witness will-say statements had been obtained.
- [589] Cpl. Low-Fowler stated that the speed, flow and direction of the file were good when Mr. Merrifield was the lead investigator. There were regular meetings, people knew what needed to be done and there was follow up. The direction and goal was clear. After Mr. Merrifield left, this was not the case. Things were not being assigned or done.

#### **Senate Standing Committee - May 27, 2013**

- [590] As noted above, Mr. Merrifield joined the MPA shortly after he was hired. He was elected to be Vice-President and subsequently President in 2011.
- [591] In 2013, the Senate Standing Committee of Defence and National Security were conducting hearings to explore harassment in the RCMP. Commr. Paulson appeared before the Committee and provided testimony.
- [592] As President of the Mounted Police Association, Mr. Merrifield was invited to appear. In his testimony, he used his own situation as an example of harassment.
- [593] Afterwards, he had lunch with Evan Solomon, the host of a TV show called Power and Politics. He agreed to participate on the show that same day and be interviewed as the President of the MPA. In the interview, Mr. Merrifield spoke about the fact that other officers had told a human source (Witness X) that s/he should not work with Mr. Merrifield.



- [594] Asst/Commr. White learned of Mr. Merrifield's interview on the Solomon show the day after it happened. He sent an email to Commr. Paulson dated May 28 2013, and then had a telephone conversation with him about it. Commr. Paulson wanted to know why Mr. Merrifield had appeared on the Solomon show and made the various statements. Asst/Commr. White testified that he might have told Commr. Paulson that Mr. Merrifield was bitter and frustrated with the organization. He might have told him that the managers were trying to deal with the issue as best as they could. Asst/Commr. White stated that he mentioned C/Supt. Mazerolle's investigation into Supt. Proulx. He said the Commissioner knew that inquiries had been made. He did not know that Mr. Merrifield's statement about Supt. Proulx's involvement with prostitutes had been substantiated to some degree.
- [595] Commr. Paulson recalled the conversation with Asst/Commr. White about the interview. Asst/Commr. White told him that Mr. Merrifield was a very smart, accomplished officer, "who had become solidly and almost irretrievably embittered with the organization...and we were just going to have to let...[the proceedings] play out." Commr. Paulson stated that Asst/Commr. White is a very patient and personable man. He believed that Asst/Commr. White had made every effort to resolve the matter. His assessment was that Mr. Merrifield's performance on the Solomon show was an example of what could be expected until the claim was resolved. There was not much that could be done about it. Commr. Paulson said Asst/Commr. White told him that Mr. Merrifield was locked into a view that the officers he had referred to had harassed him. He was not going to back away from that position. Mr. Merrifield was very determined to have that validated. Commr. Paulson understood that those officers had been trying to respond to Mr. Merrifield but he was recalcitrant and was unresponsive to any direction. Asst/Commr. White told him that that those officers had tried to respond to the circumstances as best they could in the moment and that there was no malfeasance in bringing the Part IV investigation. Commr. Paulson believed that Mr. Merrifield's statement that "Supt. Proulx [was]...attempting to procure a prostitute" was unsubstantiated and unestablished.
- [596] Regarding the actions of the officers toward Mr. Merrifield, Commr. Paulson stated, "their efforts at discipline, failed though they were, were in essence blameless in terms of having to do the right thing to get Mr. Merrifield to ... stay the course as it were." He understood that Asst/Commr. White had tried to speak to Mr. Merrifield but he was not interested.
- [597] Commr. Paulson read the transcript of Mr. Merrifield's TV interview shortly after it occurred. After he read the transcript, he became concerned about whether he was receiving sufficient information about harassment from the officers who were informing him about the case. Commr. Paulson said that he was very concerned after he read the section where Mr. Merrifield spoke of the disparaging comments that had been made to a confidential informant. He said that if the allegation was true, interfering with the handling of an informant is a very serious matter. Commr. Paulson stated that he did not know whether there was any investigation into this issue. He did not order one.

- [598] SRR Reed stated that after Mr. Merrifield's attendance before the Senate Committee, Sgt. Dickinson asked Mr. Merrifield to come in for an interview. This concerned him because Sgt. Dickinson led the Part IV investigation. In SRR Reed's view, it was very unusual for the Professional Standards Unit (formerly the CIIS) to investigate a member without the SRR's involvement. Any officer could have followed up on the matter. Clearly the C.O. asked Sgt. Dickinson to carry out the interview.
- [599] Asst/Commr. White requested Mr. Merrifield's files from the PSU because Mr. Merrifield had raised some issues and no follow up had been done. One issue related to what he described as false Code of Conduct allegations.
- [600] S/Sgt. Dickinson interviewed Mr. Merrifield about the statements he made to the Senate Committee and the press. He said he did not have a mandate to take a statement. He was just asked to take a witness statement and obtain the names of the members that Mr. Merrifield had referred to and the related alleged activity. He was then to check the RCMP records to determine what the RCMP knew. In the meeting for the statement, Mr. Merrifield provided names regarding the allegations as well as additional details. S/Sgt. Dickinson stated that he asked his office administrator to review the records and also to look for criminal records. He did not do any follow up.
- [601] S/Sgt. Dickinson was also asked to provide information with respect to the PSU allegations which Mr. Merrifield raised when he had appeared before the Senate Committee. In an email from S/Sgt. Dickinson to Supt. MacDonald dated May 28, 2013, he stated that he found four PSU files and that Mr. Merrifield had not received any discipline. The second one was the Part IV investigation ordered by Supt. Proulx. The third one was the administrative review. S/Sgt. Dickinson described the fourth one "as an assistance provided to the London Police handled by myself." He described the first one as file 2005-117 (the Secret file). In the email, he stated, "Does not appear to be a PSU handled file." Dickinson stated that although a PSU scoring for a Part IV investigation, XX82, was used on this file, it had not been handled by the PSU. Sgt. Dickinson stated that the XX82 code has been used by others but he believed it should only be used by the PSU for a mandated Code investigation. Once it is used, a member is to be notified unless there is a concern that a member might destroy evidence.
- [602] After Mr. Merrifield's interview with Sgt. Dickinson, Asst/Commr. White received a memo setting out a summary of it. Of the five issues listed, one related to a sexual assault matter involving A/Sgt. Crane and another related to Supt. Proulx. The purpose of the interview had been to identify outstanding issues regarding Mr. Merrifield. He received a document from Sgt. Dickinson, indicating that the PSU located four files. All of them were closed without any discipline. Supt. Proulx had retired.
- [603] A/Sgt. Crane was acquitted of the sexual assault charge. Asst/Comm. White was satisfied that everything had been followed up.
- [604] Commr. Paulson was not aware that Mr. Merrifield had been interviewed. He knew that all of the PSU files involving Mr. Merrifield resulted in no discipline. The only

information that he received in response to his request that the matter be looked into was from Asst/Commr. White, on whom he relied entirely.

**RCMP Media Release - May 28, 2013**

- [605] Commr. Paulson explained that at RCMP headquarters, there is a parliamentary affairs office that co-ordinates appearances at the Senate Committees and House Committees. People from that office sit in on hearings which are relevant to the RCMP and produce documents such as the RCMP Parliamentary Business Bulletin. The Bulletin is not classified and has an unrestricted circulation.
- [606] The Bulletin for the period June 3 to 7, 2013, states, “Amongst other things, Commr. Paulson alluded to disagreements that the Force has had with Cpl. Merrifield in the past, including what Commr. Paulson characterized as him having commented out of turn on national security matters.”
- [607] Commr. Paulson stated that the information he received relating to Mr. Merrifield’s having commented out of turn on national security matters came from Asst/Commr. White.
- [608] The Parliamentary Business Bulletin goes on to state:
- In July 2005, while Merrifield was off duty recovering from surgery, he was asked to speak to Talk 640 Radio about the history of terrorism. During the interview, he did not identify himself as a member of the RCMP or purport to be interviewed as a member of the RCMP. Following the radio program Jagoe alleged that Merrifield had disclosed top secret information regarding RCMP investigations contrary to the *Official Secrets Act*. Jagoe prompted Proulx to take action against Merrifield. Two days after the radio interview, Proulx contacted Merrifield at his home and accused him of violating RCMP policy. He also advised that formal disciplinary proceedings would follow.
- [609] Commr. Paulson stated he would conclude from this portion of the Bulletin that Supt. Proulx had accused Mr. Merrifield of having done this radio talk show without authority and Mr. Merrifield would have been subject to an investigation. The Parliamentary Business Bulletin did not give the impression that the matter was concluded with no discipline.
- [610] In June 2013, Mr. Merrifield stood for election as an SRR and was successful. He served a term which expired in June 2015. At that time he was re-elected.
- [611] On March 6, 2014, Mr. Merrifield was promoted to Sergeant.

### Harassment Complaint - July 7, 2015

[612] On June 24, 2015, Mr. Merrifield attended a mandatory course entitled “Insider Threat and Security Risk Manager”. Cst. Ktabi, one of Mr. Merrifield’s junior officers, also attended the course. Mr. Merrifield had previously dealt with him regarding a performance issue. Part of the discussion in the course was about psychopaths. The instructor asked if anyone could identify psychopaths. Several people stated names. Mr. Merrifield, who is apparently known for his wry sense of humour, stated, “The Commissioner. Just joking. Just a joke.” Cst. Ktabi took offence to this, completed a form known as an A5 on July 7, 2015, and sent it to Insp. Crouch, OIC of INSET. He stated in the form that he considered Mr. Merrifield’s comment to be a form of harassment. The complaint went to the Office for Co-ordination of Harassment Complaints. (OCHC).

[613] Section 2.8 of the RCMP’s harassment policy defines harassment as follows:

2.8 **Harassment** means any improper conduct by an individual that is directed at, and is offensive to, another individual in the workplace, including at any event or any location related to work, and that the individual knew, or ought reasonably to have known, would cause offence or harm. It comprises an objectionable act, comment, or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the *Canadian Human Rights Act*, i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, and pardon conviction.

2.8.1 Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

[614] The information on the A5 did not meet the requirements of a harassment complaint. There is no provision in the policy for a third party complaint. The person alleging that he has been harassed must make the complaint. He can authorize another person to do so on his behalf if he is unable to make the complaint himself due to medical reasons and if he provides written authorization to the other person.

[615] Despite the fact that the requirements for a harassment complaint had not been met, staff at OCHC treated the A5 as a harassment complaint.

[616] Harassment reviewer civilian Ms.O’Neil, of the OCHC, opened ACMT File #2015336749 on July 27, 2015. Mr. Merrifield was the only subject listed on the file and was identified as the “Respondent”.

[617] Ms. O’Neil carried out a review and prepared a “report”, OCHC Review – Case #2015336749, in which she set out a synopsis of the allegation.

- [618] S/Sgt. Floyd, an SRR who had extensive involvement in the development of the harassment policy, explained that the complaints policy regarding harassment was modified and came into force on November 28, 2014.
- [619] S/Sgt. Floyd described the process. He explained that a written complaint would usually be prepared on form 3919. A complaint can be written on another document as long as it contains the necessary criteria. It would be submitted to the OCHC intake office where it is reviewed. Within seven days, the complainant will receive an acknowledgment that the complaint has been received. After that, the complaint is processed and forwarded to the Division where the complaint was received. At the OCHC, the complaint goes to a harassment advisor who works with a decision-maker. The decision-maker is usually the C.O. of the Division. In this instance, Cst. Brunet was the advisor, civilian Ms. Paquet was her assistant and Asst/Commr. White was the C.O.
- [620] S/Sgt. Floyd explained a respondent is not notified until the complaint comes to the Division. Typically, the decision-maker notifies the respondent within 14 days. Upon receipt of the complaint, the decision-maker reviews it to ensure compliance with submission deadlines and policy criteria for harassment.
- [621] In this matter, the complaint was made in mid-July. Mr. Merrifield was not notified of it until October. S/Sgt. Floyd stated that this is not his understanding of how the policy is supposed to work. He stated that in his view, the A5 document does not commence a harassment complaint. A third party complainant cannot make a complaint that someone else has been harassed. The essence of the allegation in the A5 was that Mr. Merrifield may have acted inappropriately at a training event. S/Sgt. Floyd stated that this complaint went to the Inspector. There is a process for a supervisor to follow when a matter is not a formal harassment complaint. If steps need to be taken, the subject of the complaint could be considered a performance issue or a Part IV investigation could be initiated.
- [622] S/Sgt. Floyd stated that if a complaint is going to proceed, it is imperative that the respondent knows what the allegations are so that s/he can respond. The respondent is to receive the 3919 form as well as the allegations. This is mandated under the policy. The respondent typically receives the documents after the decision-maker reviews it and considers it to be a formal harassment complaint.
- [623] In s. 5.2.3, the Policy states that if the complaint is determined to not be a harassment complaint but rather a work performance issue, the supervisor or manager must take appropriate steps to determine if a response, consistent with the workplace relations services, would be appropriate. S/Sgt. Floyd stated that on Friday, November 13, 2015, two days before they were to testify, he and C/Supt. O'Reilly, who was the highest ranking officer responsible for the OCHC, had a conversation. They agreed that this was the process that should have been followed regarding Cst. Ktabi's A5. They agreed that the matter had been handled inappropriately.

- [624] In 2015, C/Supt. O'Reilly was the director general of the Workplace Responsibility branch. He was also directly involved in the development of the new policy for harassment complaints and is now responsible as an overseer and policy expert regarding harassment, among other issues, within the RCMP. He is ultimately responsible for the OCHC. He manages and oversees the superintendent who is responsible for conduct and employee relations who in turn oversees the Staff Sergeant for the OCHC. C/Supt. O'Reilly explained the OCHC is responsible for several things including operating the policy centre for oversight of the harassment policy, carrying out investigations and managing the resolution process. It is the central intake for complaints.
- [625] C/Supt. O'Reilly testified that he first became aware of the complaint involving Mr. Merrifield on July 23, 2015. It came up during a morning briefing that takes place every day which is held by the Professional Responsibility officer, Asst/Commr. McMillan and attended by three director generals including himself. Asst/Commr. McMillan told him that Asst/Commr. White was looking for advice with respect to the report that he had received. C/Supt. O'Reilly stated that the next day he contacted Asst/Commr. White and told him to forward the A5. C/Supt. O'Reilly received it on July 24, 2015. His next step was to contact the Professional Responsibility officer and provide some recommendations. He stated that Asst/Commr. White did not have a role at that point because the A5 did not initiate a harassment complaint.
- [626] On July 27, 2015, C/Supt O'Reilly reported to the Professional Responsibility officer that he had received the A5 and that his recommendation was that it should be treated as a "third party non-complainant process". On July 27, 2015, he sent an email to Supt. MacDonald and Ms. O'Neil which stated that "a third party harassment complaint" was attached. C/Supt. O'Reilly stated that it was very unfortunate that he used this term as a "third party harassment complaint" does not exist in the new policy. In the next paragraph of his email, he directed Ms. O'Neil to open a file and to proceed with "the third party non-complainant process". This was the correct process that should have been initiated. C/Supt. O'Reilly then sent an email to Asst/Commr. White on July 27, 2015 to advise that a file had been opened and that the matter would be addressed through a third party non-complainant process.
- [627] C/Supt. O'Reilly stated that he had quite a few concerns with respect to how the OCHC case review was prepared by Ms. O'Neil. It purported to make Cst. Ktabi's document into a harassment complaint. It stated that a complaint had been received and that it would proceed in accordance with the harassment policy process. C/Supt. O'Reilly stated that this occurred because he had referred to the complaint as a "third party harassment complaint" in his email dated July 27, 2015 to Supt. MacDonald and Ms. O'Neil. He stated that he had misrepresented Cst. Ktabi's document when he called it a third party harassment complaint and this led to the analysis of it as a harassment complaint. He stated that the A5 document did not constitute a formal harassment complaint because, pursuant to the policy, Cst. Ktabi did not have the ability to initiate such a complaint on someone else's behalf.

- [628] He said he believed that the OCHC had reverted to their standard operating procedure when they contacted the SRR. Rather than treating the complaint as an informal resolution outside of the harassment complaint process, they treated it as a harassment complaint and informal resolution within that process. C/Supt. O'Reilly thought that Mr. Merrifield was not informed that there was an error in the interpretation of the policy and that the matter should not have been characterized as a harassment complaint. He said that he did not advise Mr. Merrifield of this and he thought that "O" Division also had not advised him. The first cause of the delay in notifying Mr. Merrifield was that the Commissioner was away on holidays until the end of August and was not available to advise as to how he wanted to be engaged. During September, the matter was overlooked. It was not a priority for case reviewers until it was raised by the Professional Responsibility officer.
- [629] Even though the A5 was dated July 7, 2015, Mr. Merrifield was not served with it until October 22, 2015. He was asked if he wished to engage in informal resolution. He agreed. When the Commissioner returned from holidays, his stance was that he required a written apology. A copy of it was to be sent to all the other officers who attended the course.
- [630] As a result of all of this, Mr. Merrifield's name was entered into the OCHC's database which exists to keep track of harassers and identify patterns. Entries into the database are not removed. They can only be revised to show that a matter has been resolved.
- [631] On November 23, 2015, C/Supt. O'Reilly directed Ms. O'Neil to change the identification in the Administrative Case Management Tool (AMCT) for Mr. Merrifield from "Respondent" to "Subject of Consultation."
- [632] Since November 23, 2015, access to ACMT File #2015336749 has been restricted to C/Supt. O'Reilly, Supt. MacDonald and Ms. O'Neil.
- [633] With respect to the status of the matter, as of November 18, 2015, C/Supt. O'Reilly stated that despite the miscommunication, the matter was still in the "third party complaint process and informal resolution". He confirmed that there is no harassment complaint at this time.
- [634] As a result of the A5 filed by Cst. Ktabi and its mishandling by the RCMP, Mr. Merrifield did not know that a complaint had been made against him until October 22, 2015 when he was served with the A5. He first learned that the RCMP conceded that the matter was handled inappropriately during the testimony of S/Sgt. Floyd and C/Supt. O'Reilly on Tuesday, November 17 and Wednesday, November 18, 2015. In the interval, Mr. Merrifield lived under the shadow of a harassment complaint involving himself and the Commissioner.
- [635] No explanation was provided as to why Mr. Merrifield was not advised of this between Friday, November 13, 2015 and the dates of the testimony.
- [636] I will now turn to the motion brought by the plaintiff.

***Should the statement of defence be struck for late disclosure?***

- [637] During the trial, plaintiff's counsel stated their intention to bring this motion. I determined that I could not decide the motion until the end of trial when all of the evidence had been called. Accordingly, this motion was heard on June 2, 2016.
- [638] Most of the examinations for discovery in this action were conducted in 2010. This trial proceeded over three trial sittings in November 2015, May 2016 and November 2016. The defendants provided additional documents on 13 different dates during the trial, 9 of which were after the plaintiff testified. Some of the documents provided evidence of the decisions and actions of certain witnesses after they had already testified. The plaintiff conducted examinations for discovery relating to some of the late produced documents on May 28, 2015, during the trial. Several significant documents came into the plaintiff's possession only because he made an Access to Information request. The plaintiff states that he was substantially prejudiced by the late production of documents. This prejudice cannot be overcome by an adjournment or costs. Accordingly, the plaintiff requests an order striking the defence.
- [639] The defendants state that the remedy requested by the plaintiff is the most extreme and punitive relief available. The plaintiff has not demonstrated any actual prejudice arising from the late disclosure. Even if there was prejudice, the relief sought is vastly disproportionate to the prejudice.

The Test

- [640] The *Rules of Civil Procedure*: R.R.O. 1990, Reg. 194, set out requirements for production of documents. A party to litigation is required to provide every document relevant to the issues in the action that is in its possession. This is an ongoing obligation throughout the course of the action. According to Rule 53.08, when the issue of late disclosure or production arises at trial, if the evidence is admissible only with leave, leave shall be granted on such terms as are just and with an adjournment if necessary, unless to do so will cause prejudice to the opposite party or will cause undue delay to the conduct of the trial.
- [641] Rule 2 addresses the consequences for non-compliance. Ordinarily, non-compliance is an irregularity which does not render a proceeding a nullity. The court may set aside the proceeding in whole only where necessary and when it is in the interests of justice.
- [642] The plaintiff acknowledges that he seeks a rare and drastic order to strike the defendants' pleading based on non-compliance with their obligation to disclose and produce. The plaintiff relies on *Iannarella v. Corbett*, 2015 ONCA 110, 124 O.R. (3d) 523, *Blatherwick v. Blatherwick*, 2015 ONSC 2606, 8 E.T.R. (4<sup>th</sup>) 30, *Bishop-Gittens v. Lim* 2015 ONSC 3553, 127 O.R. (3d) 74, *Newlove v. Moderco Inc.*, 2002 CanLII 34748 (ON SC), *McAvan Holdings v. BDO Dunwoody Ltd.*, (2003), 65 O.R. (3d) 247 (Sup. Ct.), and *Leone's Music World v. Jam Industries*, 2008 CanLII 87580 (ON SC).



- [643] In *Iannarella*, surveillance evidence was disclosed and produced for the first time during the cross-examination of the plaintiff at trial. The respondents did not serve an affidavit of documents and did not provide particulars of the surveillance either before or after the appellants set the matter down for trial. The court quoted Howden J. from *Beland v. Hill*, 2012 ONSC 4855, at para. 50, in which he stated, “the discovery rules are to be read in a manner to discourage tactics and encourage full and timely disclosure in order to encourage early settlement and reduce court costs.” The court stated in para. 46 of *Iannarella* that “given the interests of fairness and the objectives of efficiency and settlement, the court expects the parties to comply fully and rigorously with the disclosure and production obligations under the *Rules*.” The Court of Appeal stated that because the respondent failed to serve an affidavit of documents, the trial judge ought to have considered how the case would have developed if the respondents had complied with the *Rules*: *Iannarella*, at paras 66 – 67. The court found at para. 33 that the prejudice was “baked in” when the trial was underway. The court ordered a new trial for a variety of reasons including the fact that the surveillance had not been disclosed.
- [644] *Bishop-Gittens v. Lim* also concerned the defendant’s failure to notify the plaintiff that it had conducted surveillance. The court held that the defendant could rely on the surveillance evidence for purposes of impeachment and that any potential prejudice to the plaintiff could be addressed through the imposition of appropriate terms. The prejudicial effect of the surveillance did not outweigh its probative value. The main difference between this case and *Iannarella* is that the trial was not yet underway when the surveillance issue arose. The court stated at para. 17 that, “neither party has taken any steps at trial which could result in prejudice by not knowing that this evidence might be referred to at trial.”
- [645] *Blatherwick* is a family law matter. The husband produced documents during trial that would have affected the valuations of certain assets. The court found that the late disclosure resulted in prejudice. It excluded relevant evidence on the basis that there would be no time to investigate, prepare or respond to new documents that were produced not on the eve of trial but at trial. An adjournment would have been prejudicial to the wife. The court held that the documents that the husband produced during trial were not admissible.
- [646] In *Newlove*, a plaintiff failed to produce financial information and then sought to have it admitted at trial to bolster his claim for damages. The trial judge heard a motion before trial brought by the defendant to dismiss the action or for an order preventing the plaintiff from introducing the evidence. The court held that the proper approach was to proceed with the trial without the previous undisclosed documents. The trial judge quoted from *Bascur v. Fernandez*, [1997] O.J. No. 1136 and stated, “the extreme remedy of dismissal of the action with respect to damages may be granted, in a case where no acceptable excuse for the failure to comply is offered, and the documents cannot be produced in time for proper trial preparation.”
- [647] *McAvan* concerned a company’s failure to obtain files from Canada Customs and Revenue Agency (CRA) in an action where it alleged professional negligence against its

accountants. The defendant accountants brought a motion to compel production of documents. Master Albert directed the plaintiff's to obtain their files from CCRA and deliver a further affidavit of documents, failing which the defendant could bring a motion to stay or dismiss the claim.

- [648] In *Leone's Music World*, the court considered a motion prior to trial to dismiss the plaintiff's claim for failure to comply with two interlocutory court orders that set out documents that the plaintiff was required to produce. Master Pope determined that the defendant would be severely prejudiced if it was required to go to trial and defend a claim for economic loss without complete documentation to test what the plaintiff's purchases, sales, inventory, revenue and profits were during the relevant periods. There had been extensive delays in the proceeding of nine years. The court dismissed the plaintiff's action.
- [649] In the above-noted cases, with the exception of *Leone's Music World*, the court has dealt with failure to produce documents or producing documents at the last minute by either ordering a new trial or finding that the documents were not admissible at trial.
- [650] The defendants rely on *Glass v. 618717 Ontario Inc.*, 2011 ONSC 2810 and *Eloro Resources Ltd. v. Sovereign Capital Group (Ont.) Ltd.*, 2004 CanLII 14047 (ON SC). They also rely on *Newlove* set out above.
- [651] In *Glass*, the plaintiffs brought a motion during trial to strike the defendants' pleadings. They alleged that the defendants failed to produce material documents in a timely fashion. Production of documents was the subject of an earlier motion in which the court ordered the defendants to request certain files from a law firm and provide the plaintiffs with copies of their contents. The defendants reviewed those documents at the law firm and then invited the plaintiffs to review them, which they did. They obtained copies of certain documents from the files. On the motion to strike, the plaintiffs took the position that the defendants had not actually produced the files from the law firm. The court stated that the seriousness of any breach and the related prejudice to the innocent party's right to a fair hearing had to be considered. At para. 36 of *Glass*, the court considered the principles set out in *Newlove* and *Breslin v. Breslin*, 2006 CarswellOnt 6372 at para. 9 where the court stated that the "interlocutory dismissal of an action is a remedy of last resort, to be invoked when the litigant has shown a cavalier disregard of his obligations." The defendants had not failed to produce the documents ordered by the Master. Furthermore, the plaintiffs had not demonstrated any prejudice resulting from their late inspection of the law firm's files. The court did not accept the plaintiff's argument that the failure to produce the files deprived them of the opportunity to obtain favourable evidence or admissions on examinations for discovery. The plaintiffs decided not to proceed with the continued examination of the defendant.
- [652] In *Eloro*, the defendant had not provided an affidavit of documents and had failed to attend at examinations for discovery, despite the fact that a timetable order had been made. The motion was adjourned several times because the defendant's solicitor of record had been removed and the principal of the corporation was out of the country. The

court stated at para. 6 that "... striking a defence is an extreme remedy and a last resort. It should only be ordered when the defence of the action is no longer viable and appropriate because the defendant has by its failure or refusal to be bound by the rules and orders of the court effectively abandoned its right to participate in the court process or when the breaches have become contumelious such as to demonstrate an utter disregard by the defaulting party for the court's orders or when the moving party can demonstrate prejudice." The court found that the breaches occurred during a brief period when the defendant was without counsel. Therefore, the plaintiff's motion was denied.

[653] The cases relied upon by the parties fall into three broad categories:

- (a) requests by a party to admit evidence at trial that is helpful to that party (*Blatherwick and Newlove*);
- (b) motions brought prior to trial (*Bishop-Gittens, McAvan and Eloro*); and
- (c) failure to comply with production orders (*Leone's Music World*).

[654] All of these cases can be distinguished on their facts. Here, the plaintiff requests an order to strike the defence because the defendants failed to locate documents prior to trial and instead produced them during trial. These documents might have been helpful to the plaintiff.

[655] The principles that emerge from these cases indicate that on this motion to strike, the court must consider the seriousness of the failure to produce documents and whether this resulted in prejudice to the plaintiff's right to a fair hearing. Striking a statement of defence is a remedy of last resort to be used when the defendant has shown a cavalier disregard of its production obligations.

#### The Plaintiff's Position

[656] The plaintiff provided two helpful charts. The first one sets out the dates when the defendant provided certain documents and a description of those documents. It also includes the date when the trial began, the two dates when it reconvened and the date when the parties conducted a mid-trial examination for discovery on some of the new productions. In addition, the plaintiff provided a second chart showing the dates when various witnesses testified. Both charts are reproduced below.

REFERENCE NUMBER	WHAT	WHEN PROVIDED	WHAT DOCS
	Original list of documents	April 9/10	Tabs 1-302
	First supplementary list of documents	June 16/10	Tabs 303-311
	Second supplementary list of documents	Feb. 24/14	Tabs 312-331 – Boos, Van Doren

			and Frank Smith Notes
1	Request for file and reply re file jacket 20015-1117	June 24/14 July 16/14	Enclosing file jacket and list of file contents
	Third supplementary list of documents	Sept. 30/14	Tabs 332-334 enclosing 2005-1117
			Occurrence Report and file jacket (file jacket previously supplied via email July 16/14)
	Fourth supplementary list of documents	Oct. 31/14	Tabs 335-341 (Promotion Exam 2006 registration documents)
	Discovery of Peter Merrifield	Nov. 10/14	
	<b>TRIAL COMMENCEMENT</b>	<b>NOV. 17, 2014</b>	
2	Elections Canada Results	Nov. 21/14	Nomination results presented during cross-examination (Exhibits 62,64,66,68)
3	Van Doren Note	Nov. 28/14	1 page
4	2005-1117 file documents	Nov. 30/14	6 documents
5	Boos notes	Nov. 30/14	16 pages (mostly redacted)
6	Continuation reports and Andy White notes	May 13/15	14 pages
7	Crane note and policy	May 14/15	1 page Crane note with printout of policy and regulation
8	Continuation report re BB gun case	May 15/15	4 pages
9	OP manual page	May 18/15	1 page
10	Seguin Notes	May 25/15	2 pgs. re October 2006
11	Proulx Notes	May 25/15	5 new pages plus redacted parts of existing notes –

			new note for Jan. 6/05 with Trueman reference
12	McCann Notes	Nov. 6/15	6 pages notes redacted (appears to show discussion with J. Jagoe)
	<b>TRIAL RECONVENES</b>	<b>Nov. 16/15</b>	
13	Personnel report with Proulx comments	Nov. 18/15	Proulx comments added to end of report, handwritten date on front
14	Mazerolle Notes	Nov. 18/15	2 pages (entries for May 13/05 and June 2/05 referencing Jagoe)

<b>DATE(S)</b>	<b>WITNESS</b>
November 17 to November 21, 2014	Peter Merrifield
November 24, 2014	Peter Merrifield, Michael Nicota
November 25, 2014	Peter Merrifield
November 26, 2014	Peter Merrifield, Stephen Raine
November 27 & 28, 2014	Peter Merrifield
December 1, 2014	Peter Merrifield, Jim Brown, Greg Sims
December 2, 2014	Stephen Frith, Mark DuPuy, Tim Petit, Doug Ford
December 3, 2014	Joseph Robert Paulson, Ian Wallach
May 19, 2015	Sealed testimony – Stephen White
May 20 & 21, 2015	Brian John Reed
May 22, 2015	Frank Phillip Smith, Wendy Verecchia
May 26, 2015	Joseph Donat, Michel Seguin
May 27, 2015	Joseph Donat, Michel Seguin John Steeves

May 29, 2015	John Roy Steeves, Stephen Boos
June 1, 2015	Stephen Boos, Don Crane, Jamie Raymond Jagoe
June 2, 2015	Jamie Jagoe
June 3, 2015	Jamie Jagoe, Marc Proulx
June 4 & 5, 2015	Marc Proulx
November 16, 2015	Marc Proulx
November 17, 2015	Kim Floyd, Michael O'Reilly
November 18, 2015	Michael O'Reilly
November 19, 2015	Martien Van Doren, Rod McCann
November 20, 2015	Rod McCann, Norman Mazerolle

- [657] The plaintiff states that he has suffered irremediable prejudice in the trial of this action. He takes issue with the production of all of the documents during trial; however, four items are particularly concerning.
- [658] Number one on the first chart, being the file jacket and list of file contents for 2005-117, (which has been referred to as the Secret file) were provided on June 24, 2014 and July 16, 2014, four months before the trial began. The plaintiff states that he received these documents pursuant to an ATIP request that he made. They show that the file was coded as an internal investigation with restricted access. Had these documents been provided prior to examinations in 2010, the defendants could have been questioned about them.
- [659] Number 11 on the first chart, being five new pages as well as un-redacted parts of Supt. Proulx's notes produced on May 25, 2015 contain a new note dated January 6, 2005 with a reference to Supt. Trueman. This note states as follows:

Tom Trueman

- when misuse of credit card -
- code of conduct?
- what policy?
- which offence

Fact finding in order to [illegible word] the appropriate action based on the actions of Cst. M.

[660] The plaintiff states that this note refers to the Amex inquiry. Mr. Proulx testified after these notes were produced; however, as part of the examination for discovery in 2010, inquiries were made of Supt. Trueman regarding his recollection of events. An inquiry was not made on this specific point because the plaintiff was not aware of it until the notes were produced five years after examinations. An inquiry was made in 2015 after the notes were produced; however, Supt. Trueman had no recollection of a conversation with or contact from Supt. Proulx on January 6, 2006. The plaintiff states that had this note been produced prior to examinations, an inquiry of Supt. Trueman could have been made through examinations, four years after the note was made. Supt. Trueman may well have had a recollection in 2010 of Supt. Proulx's contacting him in 2006 but he had no recollection of it in 2015, nine years later. If Supt. Trueman had told Supt. Proulx that a Part IV investigation was not warranted, this evidence would have been helpful to the plaintiff.

[661] Number 12 on the first chart, being six pages of redacted notes of Supt. McCann, produced November 6, 2015, appear to show a discussion with Insp. Jagoe on November 23, 2005. A significant portion of the notes is redacted. The part that is not redacted states:

- very familiar with Merrifield member situation.
- work hard
- good work ethic
- stay under the radar
- similar advice from NCO's
- media interview day after 717
- ATIP request on all correspondence Proulx, CROPS office, Jamie
- media interview (not good)

[662] Supt. Jagoe testified that he never had a discussion with Supt. McCann regarding the possibility of Mr. Merrifield's returning to work on the investigative side of INSET. Supt. McCann's notes were disclosed after Supt. Jagoe gave evidence in June 2015. The plaintiff states that had these notes been disclosed prior to examinations, Supt. Jagoe could have been questioned on this issue. Had these notes been disclosed prior to trial, Supt. Jagoe could have been cross-examined on the point.

[663] Number 14 on the first chart, being C/Supt. Mazerolle's notes with entries for May 13, 2005 and June 2, 2005, which refer to Insp. Jagoe, were produced on November 18, 2015. A portion of the notes state, "Jamie called to advise of the Peter Merrifield. Try to advise that he would try to accommodate him in Inset. He stated he was concerned about the review from a policy perspective and that he hoped the C.O. & CROPS knew what they were doing."

[664] The plaintiff states that these notes were produced five months after Supt. Jagoe had already testified. His evidence was that he would not have Mr. Merrifield at INSET because he lacked judgment.

- [665] The plaintiff states that had these notes been produced prior to examinations, Supt. Jagoe could have been questioned about this conversation. Had the notes been produced prior to trial or even prior to Supt. Jagoe's testimony, he could have been cross-examined on this point.
- [666] In addition to the above, the plaintiff states that had there been proper and timely disclosure, he would have given his evidence at trial informed by an appropriate and complete universe of relevant documents, rather than having documents that included references to him and other incidents unknown to him at the time of his trial testimony being introduced into the trial through later witnesses. The plaintiff states that had there been proper and timely disclosure, both parties would have had informed settlement negotiations based on a fully informed understanding of the case. This would have included an assessment of the problems associated with Supt. Proulx's decision to order a Part IV investigation against the plaintiff in January 2006, which would have been informed by the timely recollections of Supt. Trueman. Further, the parties would have been able to make a fully informed assessment of the risks associated with the existence of a formal investigative file, 2005-1117, notice of which was not given to the plaintiff at the time. The parties also would have been able to make a fully informed assessment of the implications of the reference to the June 2, 2005 communication between Insp. Jagoe, C.O. Seguin and C/Supt. Mazerolle.
- [667] The plaintiff argues that *Iannarella* sets out the court's expectations concerning disclosure and the critical role of discovery. It avoids trial by ambush, encourages early settlement and enhances trial efficiency.
- [668] The plaintiff states that the prejudice arising from the late disclosure cannot be overcome by an adjournment or costs. Given that the evidence in the trial proceeded intermittently from November 17, 2014 until December 4, 2015, multiple adjournments to investigate, prepare or respond to new documents that were produced in November 2014, May 2015 and November 2015 would not have been feasible. The trial was already lengthy. The plaintiff is an individual bringing an action against well-resourced defendants. No order that could be made now to put the plaintiff back in a position that would approximate how this litigation and trial should have proceeded if the defendants had complied with their disclosure obligations. As a result, the only appropriate remedy is to strike the defendants' pleading.

#### The Defendants' Position

- [669] Regarding the Secret file 2005 - 1117, the defendants state that the file was the subject of a *Privacy Act* R.S.C. 1985 c. P-21 request made by the plaintiff in 2005. As a result, many of the documents contained in the file were disclosed to the plaintiff in the defendants' initial production of documents in 2010. File 2005 - 1117 is referred to in several other documents in the productions of both parties including Supt. Proulx's email to Supt. Trueman dated July 27, 2005. At discoveries, the plaintiff questioned Supt. Proulx about his memo to Supt. Trueman. Four years later, the plaintiff requested production of file 2005 - 1117. The defendants replied that all of the documents in that



file had already been disclosed except for three. Two of them were national security policy documents that could not be disclosed. The third one was an excerpt from the RCMP career management manual relating to the position of Investigator for National Security investigations. The defendants state that a description of this position as well as a copy of the file cover, were provided to the plaintiff four months in advance of trial.

- [670] The defendants state that during the trial, their counsel learned that there was an internal folder/wallet with sixteen additional documents. The defendants had produced ten of them in 2010. Three of them, although not disclosed by the defendants, were listed in the plaintiff's affidavit of documents. The remaining three documents were provided on November 30, 2014, two weeks after the trial began.
- [671] The wallet is listed on a transmittal acknowledgement dated January 17, 2006, attached to Exhibit Q of the affidavit of Diane Dyke, sworn March 7, 2016 and filed by the defendants on this motion.

### Analysis

- [672] The case law provided by the parties is helpful only with respect to statements of legal principles. None of the cases concerned a situation where the defendant failed to make timely production of documents that might have been helpful to the plaintiff's case.
- [673] The reason why the plaintiff's counsel requested production of file 2005 – 1117 is because the plaintiff received the file jacket in 2014 pursuant to an ATIP request. The defendants have no basis for saying that because the file was referred to in documents that the plaintiff had in 2010, the plaintiff should have made a specific inquiry for the file jacket and the contents and this somehow lessens the seriousness of the defendants' failure to produce the documents. These documents were relevant to the action.
- [674] Regarding the defendants' obligation to produce documents, the onus is not on the plaintiff to analyse the defendants' productions, look for references to other documents which may not have been produced and then request that they be produced. A plaintiff has no knowledge of the undisclosed documents in a defendant's possession. The defendants should have disclosed all of the documents from the folder/wallet in a timely fashion, not after the trial began.
- [675] Regarding the additional notes of various officers in items three, five, six, seven, ten, eleven, thirteen and fourteen on the first chart, the explanations provided for their late production were dubious. Some of them were produced late because they were misfiled. Some of them were in boxes and envelopes with other unrelated documents at the officers' homes. These officers happened to be looking in those boxes and envelopes during trial and found the notes.
- [676] Police officers take notes on a daily basis. These notes are sometimes used to refresh their memories when they are testifying. Through their training, police officers have a heightened appreciation of the importance of accurate note taking and retention. The authors of most of these notes were Commissioned Officers. The fact that these notes

could not be located earlier shows a surprising failure on the part of these officers and/or the RCMP to ensure that the notes were properly filed and retained, and to conduct a thorough search for relevant documents. The court does not condone these failings.

- [677] The plaintiff conducted a mid-trial examination for discovery of Mr. Proulx and Mr. Smith on May 28, 2015. Regarding the late disclosed notes of Supt. McCann and C/Supt. Mazerolle, the plaintiff was put in a difficult position. They were disclosed after the mid-trial examination. The plaintiff could have requested that Supt. Jagoe be recalled for cross-examination on the references to him in these notes; however, a party takes a significant risk in cross-examining on a point when the witness' answer is uncertain. Another mid-trial examination would have been required. The defendants suggest that the solution to any prejudice caused by the late production of notes was to hold further examinations. This is not the way that a trial ought to proceed. A plaintiff should not have to scramble mid-trial to conduct multiple examinations. A plaintiff should not have to forego trial days in order to fit in examinations.
- [678] The reference in Supt. McCann's notes to a conversation with Insp. Jagoe, which Insp. Jagoe said did not occur, calls into question Insp. Jagoe's credibility. While the late disclosure of these notes was proved inconvenient to the plaintiff and this court, I find that the information contained in them is not of sufficient importance that their late production resulted in irremediable prejudice to the plaintiff's right to a fair trial.
- [679] The late production of Supt. Proulx's note dated January 6, 2006, which refers to Supt. Trueman, is a larger issue. Supt. Proulx consulted with Supt. Trueman regarding his concerns that Mr. Merrifield had a conflict of interest and should not continue to work in TAG. The note dated January 6, 2006 appears to show that he consulted Supt. Trueman again before he ordered the Part IV investigation. The only evidence of that contact is Supt. Proulx's note. We will never have Supt. Trueman's evidence regarding that conversation and any recommendations that he made because, due to the late production of the note, Supt. Trueman was unable to recall the event, 10 years after it occurred. Had the note been produced and included in the defendants' productions in 2010, it is reasonable to assume that four years after the event, Supt. Trueman might have been able to recall the conversation. If Supt. Trueman had not concurred with Supt. Proulx's plan to order a Part IV investigation, this evidence would have been quite helpful to the plaintiff; however, Supt. Trueman's advice might have been that investigation was warranted, which would have been helpful to the defendants. We can only speculate.
- [680] It is difficult to conclude that the unavailability of this evidence resulted in irremediable prejudice to the plaintiff's right to a fair trial. The evidence showed that the allegations that formed the basis for the Part IV investigation were unsubstantiated. No wrongdoing was discovered regarding Mr. Merrifield's use of his Amex card. In the plaintiff's best case, if Supt. Trueman's advice to Supt. Proulx was that investigation was not warranted, this would have been one more fact to consider on this issue in assessing Supt. Proulx's actions.

[681] The defendants' failure to locate and produce earlier the documents that were produced during the trial falls below what is expected of a party to an action, especially considering that the defendants employed a file manager, Frank Smith, whose job was to look for relevant documents and provide them to counsel for production. Despite this, I cannot conclude that the seriousness of the failure to produce these documents in a timely fashion detracted significantly from informed settlement negotiations, meaningfully impaired the plaintiff's proper trial preparation or prejudiced a full adjudication of the merits of the action.

### Conclusion

[682] The plaintiff notes that striking a statement of defence is a remedy reserved for rare cases where material prejudice is established. Based on the record before me, I conclude that this is not one of those rare cases. The plaintiff has not established material prejudice sufficient to warrant an order striking the statement of defence.

[683] The parties may make submissions regarding the costs of this motion in their trial costs submissions.

### **Mr. Merrifield's Credibility and the Reliability of his Evidence**

[684] The defendants state that Mr. Merrifield is not a credible or reliable witness. His evidence should be approached with caution and given a reduced weight, particularly where there are conflicts with basic facts and/or the testimony of other witnesses.

[685] They say that one of the central issues in this case, which is relevant to both Mr. Merrifield's credibility and to his claims that he was not required to be on LWOP when he "ran for political office in May 2005" (the Barrie nomination meeting on Saturday, May 14, 2005) is whether Mr. Merrifield actually intended not to win the nomination when he stood as candidate. His evidence was that he did not want to win and ran only to have an opportunity to speak to members of the local riding association about his concerns regarding another candidate.

[686] The defendants state that this is inconsistent with the steps of an active campaign that he took or others took on his behalf to ensure that he would win the nomination. For example, he retained a campaign manager, obtained a list of local party members, made audio recorded telephone calls, created a website, campaign cards and pamphlets for distribution, none of which stated that he was not interested in winning the nomination. At the event, he directed party members to place his name first on the preferential ballot. Cpl. Frith testified that he voted for Mr. Merrifield so that he would be the party's candidate.

[687] The defendants state that Mr. Merrifield ran at the nomination event with the intention of being elected to be the party's candidate. His subsequent statements that he did not intend to win the nomination are disingenuous. This shows that Mr. Merrifield's evidence is

unreliable. It also undermines Mr. Merrifield's testimony that he believed that he did not require LWOP for the nomination meeting because he did not intend to win.

[688] I do not accept the defendants' position on this issue. Mr. Merrifield testified that he sold no Conservative Party memberships in contrast to the other two candidates. He testified that selling memberships was critical to success at a nomination meeting. During the time leading up to the nomination meeting, Mr. Merrifield was away, organizing and participating in operation Bridgeout. He was not soliciting votes. He explained that any votes that he obtained would result in support for Mr. Broley, Mr. Merrifield candidate of choice, once Mr. Merrifield was eliminated. They would not go to Mr. Brown who was the subject of Mr. Merrifield's concerns. Furthermore, Mr. Merrifield stated that he was offered an opportunity to run in the Richmond Hill riding in 2005 and could have run in the federal election for that riding if he wished. If he had wanted to be elected, this would have been an easier path than opposing Mr. Brown, in the Barrie nomination meeting, who had sold a lot of memberships.

[689] The defendants state that Mr. Merrifield gave inconsistent evidence at trial in contrast to examinations for discovery. At examinations, he stated that he put his name forth as a candidate in just two ridings prior to the 2004 federal election, being York-Simcoe and Richmond Hill. On cross-examination, he conceded that he put his name forth in five ridings including Mississauga-Brampton South. He attended that nomination meeting and gave a speech. Despite this, Mr. Merrifield still denies that he ran for this nomination.

[690] The various nomination meetings which Mr. Merrifield attended prior to the Barrie nomination meeting in May 14, 2005, are relatively insignificant details, given the lengthy factual matrix of events between 2005 and 2016. It is incorrect to say that "Mr. Merrifield still denies that he ran for this [Brampton-Mississauga South] nomination. In cross-examination, he was asked:

Q: "so in fact the next writing for which you presented yourself as a candidate for nomination was not Richmond Hill, Ontario. It was this Mississauga Brampton riding."

A: "Correct."

[691] The defendants state that Mr. Merrifield testified on discovery that he was ineligible to participate in the 2006 promotional process due to the codes of conduct and administrative reviews that had been called against him. He also stated that as a result, he did not submit a written expression of intention to write the February 2006 RCMP promotional exam. At trial, he stated that he did register to write the 2006 promotional exam but has no recollection of it, despite the fact that this alleged ineligibility to write this exam is the central part of his claim for loss of promotional opportunity.

[692] Mr. Merrifield's evidence is inconsistent with his evidence at examinations on this point; however, a significant part of his testimony regarding this issue is the fact that he was

off-duty sick on the examination date, which he stated in his testimony. He believed that he was not eligible to write the exam and participate in the promotional process in 2006 for a number of reasons including the Part IV investigation and the administrative review. Mr. Merrifield may be mistaken in believing that he was not eligible, however; I accept his testimony that he was ill at the time and was unable to write the exam. He was off-duty sick. This was medically supported.

- [693] Neither of the two examples offered by the defendants regarding Mr. Merrifield's inconsistent testimony cause me any concern with respect to Mr. Merrifield's credibility. His performance review for the period September 9, 2010 to March 31, 2011 stated that Mr. Merrifield had worked with a Crown prosecutor during a trial and that the prosecutor had commented on Mr. Merrifield's "encyclopedic knowledge of the evidence". I find that this comment is equally applicable to Mr. Merrifield's evidence at trial. He testified for three weeks, which included two weeks of cross-examination. He had a remarkable recall of events that happened between 2004 and 2016, the dates of documents and their contents. He testified in an earnest manner. He was quick to point out where he had made errors in the past and stated that he "owned them." I find that Mr. Merrifield was a credible witness.

#### **Failure to Call a Material Witness**

- [694] The defendants state that Mr. Merrifield refused to call a material witness to corroborate his testimony that he did not intend to win the Barrie nomination event. He stated that he told only one person within the local riding association, Lois Brown, that he did not intend to win. The defendants' state that this court should draw an adverse inference that Ms. Brown would be unsupportive of Mr. Merrifield's case because he did not call her as a witness.
- [695] As noted above, the issue of whether Mr. Merrifield intended to win the nomination meeting or whether he was simply there to address the party members is not a significant issue. The fact that he did not have LWOP when he attended the Barrie nomination event and whether he reasonably believed that he did not require LWOP is the main issue.

#### **Failure to Call Medical Evidence**

- [696] The defendants state that Mr. Merrifield testified that he received treatment from various medical professionals; however, he declined to call any of his treating physicians to corroborate his claims that he either suffered from the alleged psychiatric and/or physical harms or to testify that the harms are medically and causally linked to the alleged instances of harassment that comprise his claim.
- [697] The test for harassment, as set out below, requires the plaintiff to prove that he suffered severe or emotional distress. A plaintiff is not required to provide medical evidence. Mr. Merrifield was off work for significant periods of time in which he suffered from depression among other things. His "off-duty status" was supported by his family physician. The RCMP health services never challenged this.

### **Unreasonable Perceptions of Harassment**

[698] The defendants state that Mr. Merrifield has made sweeping allegations of harassment involving nearly every officer within his chain of command. He even attributes his alleged harassment to people that he never met including Insp. Van Doran. He has unreasonable perceptions of harassment where none exists.

[699] While Mr. Merrifield's emails to various people in positions of authority do state that a number of people have harassed him, in this action, the RCMP, Insp. Jagoe and Supt. Proulx are defendants. One of the tasks of this court is to determine whether Insp. Jagoe and Supt. Proulx harassed plaintiff. The other officers are not defendants in this action.

***In Ontario, is harassment recognized as a tort upon which a civil cause of action may be based?***

#### **The Plaintiff's Position**

[700] The plaintiff and the defendant disagree regarding whether the tort of harassment has been recognized as a cause of action. The plaintiff submits that the tort of harassment does exist and is recognized as a cause of action. The plaintiff relies on several cases to support his position.

[701] *Mainland Sawmills Ltd. v. IWA-Canada, Local 1-3567 Society*, 2006 BCSC 1195, 41 C.C.L.T. (3d) 52, concerned a trespass to property. A number of union members came to the plaintiff's property and forcibly shut down the sawmill operations. Property damage resulted and some employees were assaulted. The plaintiffs made a claim for harassment. The court began its analysis by assuming that the tort of harassment does exist or should exist in Canada. It stated at para. 17 that the elements of the tort of harassment are:

- (a) Outrageous conduct by the defendant;
- (b) Intention on the part of the defendant to cause emotional distress or the defendant's reckless disregard for causing emotional distress;
- (c) The plaintiff's suffering severe or extreme emotional distress; and,
- (d) The defendant's outrageous conduct to be the actual and proximate cause of the emotional distress.

[702] Regarding the claim, the court found that the plaintiffs had not proved the third element of the tort.

[703] *Savino v. Shelestowsky*, 2013 ONSC 4394, 4 C.C.L.T. (4<sup>th</sup>) 94, involved neighbours who had been feuding for years. The plaintiffs brought a claim for damages for harassment and malicious prosecution. The defendants brought a motion to strike the claim. The court noted at para. 15 that the debate as to whether the tort of harassment existed as a

civil cause of action and stated, “While it is not largely accepted, the door does not appear to be entirely closed on the possibility of this tort’s existence.” The court refused to strike the claim.

- [704] *McHale v. Ontario*, 2014 ONSC 5179, concerned a counter-protest of residents against a native protest in Caledonia. The plaintiff brought a motion to amend his claim. The defendant brought a motion to strike portions of the claim. The plaintiff attended court as a Crown witness in criminal proceedings. In his civil claim, he alleged that members of the native community had harassed him and his wife both before and after the appearance. He alleged that the police took no steps to prevent this. In para 44, the court adopted the elements that must be established in an action for harassment as set out in *Mainland Sawmills*. Ultimately, the court struck the plaintiff’s claim for harassment because the plaintiff had not “set out with sufficient particularity the elements of the tort.” (para 49)
- [705] *McIntomney v. Evangelista Estate* 2015 ONSC 1419 is a trial decision. The case involved a woman who did bookkeeping and prepared taxes. She assisted her 80 year old neighbour with his tax returns. She alleged that the neighbour had sexually assaulted her when she went to his house to assist him. He then came to her house, banged on doors and looked in windows. At para. 35, the court set out the elements of harassment, as listed in *Mainland Sawmills*, and described harassment as a “still-developing tort”. It found that the neighbour’s subsequent actions constituted harassment and awarded the plaintiff damages for harassment.

### The Defendants’ Position

- [706] The defendants state that there is no free-standing tort of harassment. They rely on *Desjardins v. Society of Obstetricians and Gynecologists of Canada et al.* 2012 ONSC 7294; in which the court stated at para. 47:

[The plaintiff pleaded that] Lalonde engaged in sexual harassment in the workplace contrary to the Ontario Human Rights Code. Section 46.1(2) states that the Code “does not permit a person to commence an action based solely on an infringement of a right under Part 1.” ...there is no freestanding tort of harassment. Even accepting that the conduct alleged in the Statement of Claim is true, that does not give rise to a claim against Lalonde based in harassment.

- [707] The defendants state that this court should decline to recognize a new tort of civil harassment. The proposed elements of this putative tort conflict with clear and established authority on the scope of compensable tort damages. In particular, because the third element of the putative tort of harassment requires only proof of emotional distress, such a tort would permit recovery for emotional upset, including that which is neither objectively visible nor provable. There is thus a clear and material distinction

between the putative tort of harassment and intentional infliction of mental suffering with regard to the degree and subjectivity of compensable injury.

- [708] The expansion of compensable injury into the realm of subjectively assessed emotional upset runs contrary to authority. In *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para 9, the Supreme Court of Canada held that, “[t]he law does not recognize upset, disgust, anxiety or agitation or other mental states that fall short of injury.” In *Healey v. Lakeridge Health Corp.*, 2011 ONCA 55 at para 65, the Ontario Court of Appeal ruled that because of the multifactorial and highly subjective nature of emotional distress, “[t]he law quite properly insists upon an objective threshold to screen such claims and to refuse compensation unless the injury is serious and prolonged.”
- [709] Because the putative tort of harassment does not insist upon an objective threshold for limiting compensable injury, its existence is at odds with this clear line of authority. Moreover, pinning tort compensation to a subjective experience of injury that is not objectively verifiable create serious evidentiary issues that could expose defendants to unforeseen liability. The better view is to link tort liability to objective determinations of injury including that which is verified by the testimony of medical professionals.
- [710] The defendants acknowledge that in *John v. Cusak*, 2015 ONSC 5004 at para 38, the court characterized the existence of the tort as a “live legal issue”.

### Analysis

- [711] In *Desjardins*, the plaintiff pleaded four different torts, being intentionally interfering with contractual relations, inducing breach of contract, engaging in sexual harassment in the workplace and deceit. The court considered the motion to strike the claim based on the defendant’s position that it disclosed no reasonable cause of action. Regarding the claims for deceit, intentionally interfering with contractual relations and inducing breach of contract, the court found, among other things, that the statement of claim was not sufficiently pleaded to address the required elements of each tort. This left the tort of sexual harassment to be considered on its own.
- [712] The plaintiff’s pleading regarding sexual harassment appears to have been based specifically on a contravention of the *Ontario Human Rights Code*, R.S.O. c. H.19. Part 1 deals with harassment in employment. The court noted that s. 46.1(2) of the *Code* did not permit the plaintiff to bring an action based solely on an infringement of Part 1. Because of its rulings on the other three torts, it held that the plaintiff could not assert a claim of sexual harassment.
- [713] This case can be distinguished from the case at hand because Mr. Merrifield does not allege a violation of the *Human Rights Code*. He does not claim that he was harassed in employment on any of the grounds set out in s.5(2) of the *Code* (race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability). Accordingly, *Desjardins* does not assist the defendants.



- [714] In *Mustapha*, the plaintiff brought an action for psychiatric injury sustained when he saw dead flies in a Culligan bottle of water. The court stated in para 1 that, “he became obsessed with this and the implications for the health of his family which had been consuming water supplied by Culligan for the previous 15 years. The plaintiff developed a major depressive disorder with associated phobia and anxiety.” The court went on to say in para 9 that for an injury to be compensable, “it must be serious and prolonged and rise above the ordinary annoyances, anxieties and fears that people living in society routinely if sometimes reluctantly accept.” The court further stated in para 10 that, “On the findings of the trial judge, supported by medical evidence, Mr. Mustapha developed a major depressive disorder associated with phobia and anxiety. This psychiatric illness was debilitating and had a significant impact on his life; it qualifies as a personal injury at law. It follows that Mr. Mustapha has established that he sustained damage.”
- [715] *Mustapha* may be distinguished from the present case. The court dismissed Mr. Mustapha’s appeal because he had not shown that it was foreseeable that a person of ordinary fortitude would suffer serious injury from seeing flies in the bottle of water that he was about to install. Medical experts described his reactions as “highly unusual” and “very individual”. The corollary of this is that if a plaintiff suffers from a serious and prolonged injury which rises above the ordinary annoyances, anxieties and fears that people living in society routinely if sometimes reluctantly accept, it may qualify as a personal injury at law for which compensation might be awarded. The question of whether medical evidence is required to support Mr. Merrifield’s claim will be discussed below.
- [716] The four cases relied upon by the plaintiff show that the tort of harassment was considered as early as 2006 (*Mainland Sawmills*) in which the British Columbia Superior Court defined the elements of the tort. Subsequently, in 2013 (*Savino*), the Ontario Superior Court of Justice allowed for the possibility that the tort did exist. In both 2014 (*McHale*) and 2015 (*McIntomney*) the Ontario Superior Court of Justice adopted the elements of harassment as set out in *Sawmills*. In *McIntomney*, the plaintiff was awarded damages for harassment.
- [717] *Mustapha* (2008) and *Healey* (2011), relied upon by the defendants, were decided after *Sawmills* (2006) and before *Savino* (2013). The law has evolved since 2011 as shown in *McHale* (2014), *McIntomney* (2015) and *John v. Cusack* (2015).
- [718] Based on the jurisprudence before me, I am satisfied that the tort of harassment does exist, that it has been recognized as a cause of action in Ontario and that its elements are those set out in *McHale* and *McIntomney*.

#### Test for Harassment

- [719] The test for harassment is set out in *McHale* and *McIntomney* above. In this case, there are four questions to be answered.

(a) Was the conduct of the defendants toward Mr. Merrifield outrageous?

- (b) Did the defendants intend to cause emotional stress or did they have a reckless disregard for causing Mr. Merrifield to suffer from emotional stress?
- (c) Did Mr. Merrifield suffer from severe or extreme emotional distress?
- (d) Was the outrageous conduct of the defendants the actual and proximate cause of the emotional distress?

What constitutes outrageous behaviour in the context of harassment?

[720] *The Canadian Oxford Dictionary* defines outrageous as follows: 1. Deeply shocking and unacceptable; 2. grossly cruel; 3. immoral, offensive; and 4. highly unusual or unconventional.<sup>vii</sup>

[721] Of the four harassment cases set out above, *McIntomney* is the only trial decision. The court held that the defendant's conduct constituted sexual battery and found that the plaintiff had proved all the elements of the tort, including outrageous behaviour. The plaintiff was awarded damages.

[722] The tort of intentional infliction of mental suffering has some overlap with the tort of harassment. It requires that a plaintiff prove that the defendant's conduct was outrageous and also flagrant. In *Boucher v. Wal-Mart Canada Corp.*, 2014 ONCA 419, 120 O.R. (3d) 431, para 50, the court found that the plaintiff's supervisor, "... belittled, humiliated and demeaned [Boucher] the plaintiff continuously and unrelentingly, often in front of co-workers, for nearly six months." This constituted flagrant and outrageous conduct.

[723] The defendants state that the plaintiff has to meet a high threshold to prove outrageous conduct. An objective assessment is required. The term outrageous indicates that the conduct must be grossly offensive.

[724] In *Prinzo v. Baycrest Centre for Geriatric Care*, (2002), 60 O.R. (3d) 474 (C.A.), Ms. Prinzo worked for the defendant for 17 years and was the manager of the beauty shop. Her management duties occupied approximately 40 percent of her time. The other 60 percent involved hairstyling. Ms. Prinzo was a model employee until a new person, Gates, became her immediate supervisor. In the next year, Ms. Prinzo fell and hurt herself in Baycrest's parking lot. She suffered musculoskeletal injuries and was unable to use her right arm. She was off work and receiving physiotherapy treatment. Her treating physician stated that she was medically unfit for any form of work. Subsequently, Frost, an occupational nurse began calling Ms. Prinzo and asking about her return to work. Gates also called her. The trial judge found that the calls were harassing and suggested that she was malingering. Frost told the treating physician that it was necessary for Ms. Prinzo to return to work so that she could be let go.

[725] Ms. Prinzo received a letter from Gates which implied that Ms. Prinzo's own physician had agreed that she could return to work. This was false. Ms. Prinzo confirmed that her treating physician had indicated that she was totally disabled. Although Ms. Prinzo's counsel had written a letter to Baycrest requesting that all communication be directed to

him, the calls to her continued. Ms. Prinzo later agreed to return to work; however, she was requested to and did attend a meeting in which Baycrest stated that it wanted to talk about her termination. She stated that she was not in a condition to do so. Baycrest said it was concerned that her conduct not cause harm to the residents. The statement was very hurtful and upsetting to her. She subsequently received a letter from Baycrest setting out her last day of employment.

[726] The trial judge held that the “acts of harassment by the employees of the defendant [Baycrest] were so extreme and insensitive that they constituted a reckless and wanton disregard for the health of the plaintiff”. The court commented in para. 60 that the conduct. “may fairly be described as flagrant and outrageous, meeting the first element of the tort.”

[727] These cases inform my interpretation of outrageous conduct.

What constitutes causing emotional stress or having a reckless disregard for causing a plaintiff to suffer from emotional stress?

[728] In *Prinzo*, the court stated at para. 61 that, “for the conduct to be calculated to produce harm either the actor must desire to produce the consequences that follow, or the consequences must be known by the actor to be substantially certain to follow.” The court stated that Baycrest employees “were well aware of the physical and emotional health of the plaintiff and would realize the detrimental effect their harassment would have had on the plaintiff and yet they persisted [in] such harassment with almost sadistic resolve.”

[729] The plaintiff relies on *Piresferreira v. Ayotte*, (2008), 72 C.C.E.L. (3d) 23. Ms. Piresferreira’s supervisor assaulted her. Then, he issued a performance improvement plan (PIP) for the plaintiff. She reported him to the human resources department after which he received a minor disciplinary reproach. The supervisor and the employer immediately attempted to impose the performance improvement plan on the plaintiff which included an onerous schedule of frequent meetings with the supervisor. The plaintiff went on sick leave and then long-term disability due to the depression and anxiety that she subsequently experienced. She did not return to work. The court found in para. 170 that, “Ayotte’s threat of placing Piresferreira on probation or on a PIP immediately after he had assaulted her and then delivering the plan to her the first time she returned to the office – without first having assumed responsibility for his abusive behaviour – was flagrant and outrageous.” The court went on to state that, “conduct will be considered “calculated to produce harm” where the actor desires to produce the consequences that follow from the act or the consequences are known to be substantially certain to follow. It is also been held to include conduct amounting to reckless disregard as to whether or not shock would ensue as a result of the conduct.” The court further stated:

I am satisfied that Ayotte showed reckless disregard for Piresferreira’s emotional well-being when he yelled and swore at her, assaulted her, immediately threatened probation or a PIP,

refused to apologize for his conduct, delivered the PIP to her at the first opportunity misled Sylvestre and Shiu [his superiors] as to his conduct on May 12 and attempted to bias them against Piresferreira in advance of her filing a complaint against him. I am satisfied that, in this sense, Ayotte’s conduct was “calculated to produce harm” even though he did not actually intend for her to suffer the injury that she did.

[730] The court stated in para. 177 that, “it was reasonably foreseeable to Ayotte that every aspect of this behaviour was likely to cause Piresferreira anxiety, stress and emotional upset.

[731] The plaintiff did not alert me to the fact that *Piresferreira* was overturned in 2010<sup>viii</sup>; however, I will briefly discuss points that I consider important to my analysis of the issues at hand. The Court of Appeal set aside the trial judge’s ruling that the tort of intentional infliction of mental suffering was established because she erroneously concluded that the impact of Ayotte’s behaviour on Ms. Piresferreira was reasonably foreseeable. The court describes recklessness as stated at para. 75 as “proceeding in the face of subjective awareness that harm of the kind that resulted was substantially certain to follow...[the] consequences must be known by the actor to be substantially certain to follow”. At para. 79, the court stated, “foreseeability, which indicates only that a result may follow, is much less than knowledge that a result is substantially certain to follow”. These definitions affirm that intention does not necessarily stem from or follow foreseeability. Further, the court relied on *Kedia International Inc. v. Royal Bank of Canada*, 2008 BCSC 122 at para. 196 to reiterate the high threshold for constructive intention.

#### What constitutes severe or extreme emotional distress?

[732] In *Sawmills*, the court stated that although the tort of harassment does not require proof of a visible and provable illness, it does require proof of “severe or extreme emotional distress”. The court quoted from *Graves*, “[s]evere emotional distress means...emotional distress of such substantial quantity or enduring quality that no reasonable person in a civilized society should be expected to endure it”. At para. 20, the court stated:

The requirement of extreme or severe emotional distress is in keeping with the objective of this tort. That is, it is intended to provide a remedy to a plaintiff who is intentionally subjected to outrageous conduct by a defendant. Presumably that a plaintiff prove that he/she has suffered severe or extreme emotional distress as a result of the conduct of a defendant (albeit not to the extent of physical harm or psychiatric illness) is required because it demonstrates a defendant’s conduct as being sufficiently outrageous as to found a cause of action.

- [733] In *McIntomney*, the plaintiff experienced anxiety, suffered from nightmares, and had trouble sleeping. She became nauseous when she saw the defendant in the neighbourhood. She had previously coached a team but had to stop doing that. After the defendant sexually assaulted her, she was unable to work. She did not sleep well and therefore could not concentrate on her work.
- [734] In *Prinzo*, the plaintiff suffered from stress and anxiety, increased blood pressure, significant weight gain and increased diabetic symptoms.
- [735] In *Piresferreira*, the plaintiff suffered from posttraumatic stress disorder and a major depressive order with symptoms of anxiety.

***Do the defendants' actions toward the plaintiff constitute harassment?***

Leave Without Pay

- [736] Mr. Merrifield ran in a federal election for political office in the Richmond Hill riding. He was the first RCMP officer to do this. Even though the *RCMP Regulations* provide that a member must obtain LWOP for this purpose, there was significant confusion among various officers regarding the process and the correct type of LWOP to be applied.
- [737] Three of Mr. Merrifield's superiors made errors when they gave him advice and or completed the related forms. Sgt. Verechia determined that Mr. Merrifield required regular LWOP. This was incorrect because regular LWOP did not exist. It was not one of the six categories. Cpl. DuPuy signed the transfer forms in place of Insp. Josey. This was incorrect because LWOP had to be approved by the C.O.
- [738] Sgt. Boos was responsible for administering LWOP. He had the best knowledge of it. He interviewed Mr. Merrifield and recommended personal needs LWOP, even though a member could take only two personal needs LWOPs in his career. Mr. Merrifield required LWOP for three different events. Sgt Boos tried to fit three events into two personal needs LWOPS. He decided to include the nomination meetings for York-Simcoe and Richmond Hill as one LWOP period, even though the dates were not continuous. He decided that the Richmond Hill election would be the second LWOP period. The transfer forms were submitted requesting two personal needs LWOPs for the three dates and were approved by the C.O.
- [739] Subsequently, Sgt. Boos learned that his approach was not accepted by the compensation department because there were three different event dates but the system allowed for only two. After Mr. Merrifield had finished his political activities in 2004, the personal needs LWOPs were re-coded to special LWOPs which were not limited in number.
- [740] Sgt. Boos stated that he told Mr. Merrifield about the re-coding and the fact that his two personal needs LWOPs were still available to him. Mr. Merrifield stated that Sgt. Boos told him that LWOP was being used for only the election and not the nomination meetings. There was obviously confusion and a misunderstanding. Three of Mr.

Merrifield's superiors reached incorrect conclusions about the process. Mr. Merrifield did not receive the document that set out the specifics of the re-coding when it occurred. His understanding was based on a conversation. Given the general level of misunderstanding about the matter among his superiors, it is not surprising that Mr. Merrifield also reached an incorrect conclusion after he received information from Sgt. Boos.

- [741] Mr. Merrifield was unsuccessful in the federal election and subsequently returned to work as an Air Marshall. Nobody was concerned about his campaign materials, public perception about an RCMP officer's running in an election or that his activities affected his ability to do his job.
- [742] Mr. Merrifield was transferred to INSET in October, 2004. This was a realization of his goal to work in National Security. Four months later, in February 2005, he was permanently posted to TAG. He had top secret security clearance. He travelled with Liberal Prime Minister Paul Martin's protective detail when he made visits to various places. Nobody was concerned about the fact that Mr. Merrifield had run in a federal election in the previous year as a Conservative candidate. Nobody raised any issue that if something went wrong, there might be a perceived conflict of interest because a former Conservative candidate was providing protection to a Liberal Prime Minister.
- [743] Sgt. Verecchia stated that this would not be a concern because Mr. Merrifield's LWOP status separated him from the RCMP. Accordingly, there would be no real or perceived conflict of interest. Mr. Merrifield investigated death threats against the Prime Minister and U.S. President George W. Bush which resulted in a conviction. He carried out international internet tracing to locate a person who had penetrated the Oval Office internet. This also resulted in a conviction. He demonstrated that his political views did not influence his work. He was bound by his oath that he would, "faithfully, diligently and impartially execute and perform the duties required of [him]".

#### The Barrie Nomination Meeting

- [744] A/Sgt. Crane said he had an excellent working relationship with Mr. Merrifield. In fact, three months after Mr. Merrifield had been transferred to TAG, A/Sgt. Crane asked him to mentor another member.
- [745] During the dinner at the end of Operation Bridgeout, A/Sgt. Crane asked Mr. Merrifield if he had any ambition to run in another federal election. He was curious. According to A/Sgt. Crane, Mr. Merrifield said, "none whatsoever. It was too expensive."
- [746] Mr. Merrifield participated in the Barrie nomination meeting. A nomination meeting is a private event, open only to members of the related political party. Prior to the meeting, Mr. Merrifield did send out some of the campaign flyers similar to those from his federal election campaign with necessary revisions; however, they were sent only to party members who could vote at the meeting. There was no wide-spread public knowledge of Mr. Merrifield's participation at the meeting.

- [747] Mr. Merrifield stated that winning the nomination would have been a mathematical impossibility. He had not sold many memberships and therefore did not have the required support. He participated only as a form of protest against the incumbent. He did not obtain LWOP for the nomination meeting because he thought he did not need it based on his conversation with Sgt. Boos and his understanding of how the earlier LWOPs were re-categorized.
- [748] On Friday May 13, 2005, A/Sgt. Crane knew about the nomination meeting to be held the next day and the fact that Mr. Merrifield would be participating. Mr. Merrifield was off work on Friday. A/Sgt. Crane made no effort to contact Mr. Merrifield to express any concerns. He knew that Mr. Merrifield had not applied for LWOP. He had Mr. Merrifield's home phone number.
- [749] When Mr. Merrifield returned to work the following Monday, A/Sgt. Crane and Insp. Jagoe were highly offended. They thought Mr. Merrifield had lied to them. They had an emotional reaction to the situation. A logical explanation of the difference between a nomination meeting an election fell on deaf ears. Surely, these two higher ranking officers who had management responsibilities were capable of understanding the difference. I find that they chose not to understand it. They adopted a rigid view. In their minds, Mr. Merrifield was dishonest and was not to be trusted. Insp. Jagoe believed that Mr. Merrifield could not continue to work in national security for that reason.
- [750] Mr. Merrifield was taken off the Stronach death threat investigation. Since Ms. Stronach had crossed the floor to become a Liberal, they determined that Mr. Merrifield, a Conservative, should not carry out the investigation. There was a conflict of interest. What if he missed something and there was a negative result? Their view was that it would reflect badly on the RCMP. Mr. Merrifield was also removed from other VIP assignments such as a Royal Family visit. This made no sense whatsoever.
- [751] The stated concern about a perceived conflict was completely at odds with the fact that there was no concern about it after Mr. Merrifield ran in various nomination meetings and had not obtained LWOP for some of them. Granted, he was not doing the type of national security work then as he was doing in TAG. He was an Air Marshall but the nature of his work involved investigating and diffusing potential acts of terrorism. This was covert work done to protect national security.
- [752] Insp. Jagoe took his concerns to Supt. Proulx, who by his own admission, did not follow politics and did not know the difference between a nomination meeting and an election. To him it was all the same thing. In the meeting on May 27, 2005, he was not receptive to Mr. Merrifield's explanation. I find that Supt. Proulx aggressively challenged Mr. Merrifield on his political platform and his campaign materials, which was completely inappropriate. Mr. Merrifield's political views were irrelevant. Mr. Seguin testified that the only question he should have asked was whether Mr. Merrifield obtained LWOP for the Barrie nomination meeting and if not, why not. I accept the evidence of Sgt. Nicota regarding Supt. Proulx's conduct at the May 27, 2005 meeting. Mr. Smith, who was a Staff Sergeant at the time, confirmed that there was an argumentative tone and the

discussion became heated. Supt. Davis stated that Supt. Proulx was unduly harsh. A commissioned officer should have sufficient management skills to avoid having a heated, argumentative encounter with a Constable. I find that Supt. Proulx's conduct went beyond all standards of what is right and decent. It was outrageous.

- [753] Within a few weeks, in June 2005, Supt. Proulx temporarily transferred Mr. Merrifield into another unit, Criminal Investigations, while he did some investigating into the alleged conflict issue and whether he had the authority to transfer Mr. Merrifield out of TAG. This took six months. He consulted Sgt. Verecchia who believed that there could be problem with perceived conflict. He consulted the Policy Branch. It took a long time to respond and when it did, the reply was not responsive to the issue. I find that if there was a significant concern that Mr. Merrifield's attendance at the Barrie nomination meeting had compromised his ability to work in national security, the Policy Branch would have provided Supt. Proulx with direction in a timely manner.
- [754] I find that the potential for a perceived conflict of interest was remote at best; however, Insp. Jagoe and A/Sgt. Crane had decided that they would not work with Mr. Merrifield anymore. They did not want him in TAG. Insp. Jagoe did not want Mr. Merrifield in INSET. Supt. Proulx adopted a view that supported their position. The possibility of a perceived conflict was not a *bona fide* reason to transfer Mr. Merrifield out of TAG. It was the excuse for it.
- [755] When Mr. Merrifield was transferred out of TAG, there were vacancies on the investigative side of INSET. Mr. Merrifield's skills and knowledge would have been an asset in that area. Investigating terrorists did not involve VIPs with political affiliations. Even if a perceived conflict was a real concern, it would not have precluded Mr. Merrifield from working in this side of INSET. He had been doing community outreach and had recruited sources. He had worked a lot of voluntary overtime. He was dedicated to his job.
- [756] Supt. Jagoe agreed that Mr. Merrifield would not have been in a conflict doing this type of work. Supt. McCann stated that his notes reflected that he made an inquiry of Supt. Jagoe on November 23, 2005, two weeks after he had conducted Mr. Merrifield's staffing interview for future placement. Insp. Jagoe did not waiver in his position that he would not have Mr. Merrifield working in national security. He believed that Mr. Merrifield was untrustworthy. I find that this is the real reason why Mr. Merrifield was transferred to Customs & Excise. A/Sgt. Crane said he had "nothing to do with the transfer." This was disingenuous. While he may not have had a role in determining where Mr. Merrifield would be posted, his refusal to have Mr. Merrifield work in TAG had everything to do with the reason why Mr. Merrifield was transferred.
- [757] Even though Insp. Jagoe thought Mr. Merrifield was untrustworthy and lacked judgment, he took no steps to inform the supervisory officers of Criminal Investigations or Customs & Excise of his concerns. Both of those units carried out national security work. Insp. Jagoe's concerns were not noted on Mr. Merrifield's performance evaluations. He said that while Mr. Merrifield was unsuited to do national security work, he could have been



well suited to work in another unit. I find that this is incredulous. Being trustworthy is a core requirement for an RCMP officer to do his job. The fact that Insp. Jagoe did not alert his colleagues in other units shows that his decision that Mr. Merrifield could not continue to do national security work was based on his personal view that Mr. Merrifield had lied to him rather than a genuine concern about a political conflict or Mr. Merrifield's ability to do his job.

- [758] Supt. Proulx's stated reason for transferring Mr. Merrifield was because he had a political conflict. Supt. Proulx carried out his own investigation while telling Mr. Merrifield that he was not under investigation. He delved into Mr. Merrifield's activities when he was at INSET, which was not under his command. If there were any issues with these activities, they should have been addressed at the time. Mr. Proulx testified that, initially, he thought that retroactive approval of LWOP would be satisfactory. It was not until he started his investigation into the earlier activities that he concluded that Mr. Merrifield had a conflict.
- [759] In Mr. Merrifield's performance evaluation, which included his work in TAG, both Supt. Proulx and Insp. Jagoe wrote very positive remarks. This was hypocritical, especially on the part of Insp. Jagoe who thought that Mr. Merrifield was a liar and lacked judgment.
- [760] Supt. Proulx knew that other officers would think that Mr. Merrifield was transferred out of TAG because he had done something wrong. Accordingly, Supt. Proulx met with the TAG group, which consisted of approximately ten people, to explain that Mr. Merrifield had not done anything wrong. This was woefully inadequate to address the situation. TAG was imbedded in INSET. A large number of people worked there.
- [761] Sgt. Reed stated that there were "other types" of discipline in the RCMP aside from formal discipline. A major aspect of his job as a SRR was to deal with the "other types" of discipline.
- [762] I find that Supt. Proulx's decision to transfer Mr. Merrifield out of TAG constituted an "other type" of discipline. It was unjustified and punitive. It resulted in a permanent stain on Mr. Merrifield's reputation and career. The stain did not fade with time. Rather, it spread. Because of the transfer, other officers took a predictably negative view of Mr. Merrifield based on incorrect assumptions. The repercussions of this transfer followed Mr. Merrifield for years to come.
- [763] I find that this unjustified and punitive transfer would not have occurred if Mr. Merrifield's failure to obtain LWOP for the Barrie nomination meeting had been considered rationally. C.O. Seguin, who had an objective view of the situation, knew that no action was taken against Mr. Merrifield for his failure to obtain LWOP. He stated that it was not a big deal. It was just an administrative issue.

#### Special Operations Center

- [764] After Mr. Merrifield was temporarily assigned to Criminal Intelligence, word got out that he was considered unsuitable to do national security work. When the SOC was stood up

in response to a significant terrorist threat against Toronto, Mr. Merrifield was told, en route, to turn around and go home, even though all available personnel were required. I accept his evidence that he was the only member in the Division who was ordered not to attend.

- [765] Sgt. Sim was in charge of the investigators at the SOC. He knew that Mr. Merrifield had been stood down. He believed that this occurred because of perceived conflicts with politics. The commissioned officers' actions showed that Mr. Merrifield was a "black sheep." The fact that Mr. Merrifield was stood down showed that that he had been blackballed. He believed that Mr. Merrifield's career opportunities would be limited as a result of this.
- [766] Insp. Van Doren was the incident commander at the SOC. He was aware that Mr. Merrifield had been removed from TAG. He could not recall how he learned this. He thought that probably Supt. Proulx or Insp. Jagoe had told him.
- [767] It is curious that Mr. Merrifield's employment status would be at the forefront of Insp. Van Doren's mind in the middle of a national emergency. Sgt. McIntyre had contacted Insp. Van Doren about relief for an overnight shift. Sgt. Penny, Mr. Merrifield's supervisor, had recommended him. Insp. Van Doren requested someone else because he thought that since Mr. Merrifield had been removed from TAG, he was not the "appropriate resource" to have at the SOC. Insp. Van Doren believed that there was an issue as to whether Mr. Merrifield was suitable for national security work. Insp. Van Doren stated that he did not know the reason for Mr. Merrifield's removal from TAG. I find that in order for Insp. Van Doren to have come to his conclusion, he likely assumed that Mr. Merrifield had been removed from TAG as a result of some wrong-doing. If he had made a different assumption, for example that Mr. Merrifield had been removed for an administrative reason, then he would have had no reason to conclude that Mr. Merrifield was not the appropriate resource for the SOC. Mr. Merrifield's performance reviews noted that he had considerable knowledge and expertise regarding terrorism. The SOC was stood up to respond to a terrorist threat.
- [768] I do not accept Insp. Van Doren's explanation that "it was not fair to Mr. Merrifield or the organization" that he work at the SOC. I find that Insp. Van Doren stood down Mr. Merrifield because he believed that Mr. Merrifield had an unresolved issue that resulted in his removal from TAG. As a result, his trustworthiness was questionable. Insp. Van Doren agreed that standing down Mr. Merrifield was a significant action to take in the context of a terrorist threat.
- [769] What Insp. Van Doren did not know was that all of the issues had already been addressed by the memorandum dated September 28, 2005 from Supt. Proulx to Mr. Merrifield, a month before the SOC was stood up. There was no wrong-doing. There was no formal discipline. Supt. Proulx had a conversation later with Insp. Van Doren about his decision to stand down Mr. Merrifield. Insp. Van Doren told Supt. Proulx that he was aware that Mr. Merrifield had been removed from TAG and wanted to wait until that issue was resolved. Supt. Proulx did not tell Insp. Van Doren that the issue had already been

resolved prior to standing up the SOC. He had an opportunity to set the record straight about Mr. Merrifield but he did not do it. Mr. Proulx stated that his reason was because there was still a Human Resources question regarding where Mr. Merrifield would be posted. I do not accept Mr. Proulx's evidence on this point. It was not a legitimate reason. It was illogical. I find that it was an excuse. The issue of where Mr. Merrifield would be posted had nothing to do with Insp. Van Doren's belief that Mr. Merrifield was not the appropriate resource for a very important emergency situation.

- [770] This scenario was repeated when Insp. Van Doren briefed C/Supt. Mazerolle about his decision to stand down Mr. Merrifield from the SOC. C/Supt. Mazerolle recalled that Insp. Van Doren had said something about a conflict of interest. C/Supt. Mazerolle had already read the September 28, 2005 memo from Supt. Proulx to Mr. Merrifield that had concluded all of the issues. Like Supt. Proulx, C/Supt. Mazerolle also had an opportunity to set the record straight. He did not tell Insp. Van Doren that Mr. Merrifield had been cleared. He did not ask why Insp. Van Doren thought there was a conflict or what he thought it was. He did not want to know why Mr. Merrifield had been stood down from the SOC. As far as he was concerned, Insp. Van Doren had made a decision within his authority and that was the end of it.
- [771] Being stood down from the SOC was devastating to Mr. Merrifield. This was evident when he testified about the matter in 2014, nine years later. It showed that the stain on his reputation had spread. It showed that a commissioned officer who had no management responsibility for INSET/TAG knew that he had been removed from national security work. Not surprisingly, this officer assumed the worst of him. As a result of the removal and its negative implication, Mr. Merrifield was not trusted to work in a high-stakes emergency situation.
- [772] The effect that this had on Mr. Merrifield was extreme. He was on sick leave for six months from January to July 2006, which was supported by his family doctor. He was under the care of a psychologist. I accept his evidence regarding his medical condition. He was depressed. He suffered from stress, dizziness and nausea. He was scared that he would lose his job. He took out his emotions on his family. He turned in his service pistol. This period was a very dark period in his life. The RCMP Health Services did not challenge his need for sick leave. I find that Mr. Merrifield was unable to write the Corporal JSE examination. He was suffering from severe or extreme emotional distress.
- [773] I find that the failure of Supt. Proulx and C/Supt. Mazerolle to set the record straight when they had the opportunity to do so, with minimal effort, shows a disregard for the detrimental impact of decisions, based on misinformation and the spread of negative impressions and assumptions, on Mr. Merrifield's career. They were recklessly indifferent to the effect of the kind of harm that Mr. Merrifield suffered, which they knew was substantially certain to follow.

#### The Part IV Investigation

- [774] Mr. Merrifield had been back to work for only a few months when he received an email from John Steeves dated October 4, 2005 regarding the outstanding amount on his Amex. Supt. Proulx appears to have become involved on October 24, 2005. Mr. Merrifield sent several lengthy emails to Supt. Proulx to explain the situation.
- [775] Supt. Proulx sent an email to Mr. Merrifield in which he stated that he was going to ask for a review of Mr. Merrifield's statements for the past two years. A later email from Mr. Steeves suggested that a review had been done before November 8, 2005 which disclosed the duplicate payment.
- [776] Mr. Steeves sent an email to Supt. Proulx on November 28, 2005, advising him that everything was fine. Mr. Steeves sent an email to Mr. Merrifield on January 5, 2006 stating that Supt. Proulx had already been advised of the review and commenting that if Mr. Merrifield had "not heard any different then things were fine." Mr. Steeves stated that he would not have told Mr. Merrifield that things were fine if he had thought that there was a problem. Nevertheless, Mr. Proulx stated that Mr. Steeves personally approached him and told him that there were some issues that he did not want to put in writing. There was evidence that Mr. Merrifield had taken back to back cash advances on his Amex card.
- [777] Mr. Proulx's evidence of the conversation that he had with Mr. Steeves about the cash advances is not credible. The memorandum ordering the Part IV investigation is dated January 6, 2005. In it, Supt. Proulx states that he was informed on that same day about the cash advances. If there were any issues with cash advances, Mr. Steeves would have known about them before January 6, 2006. He had already completed his review before then. Mr. Steeves had no reason to withhold this type of information from Mr. Merrifield. He had no reason to not want to put something in writing for Supt. Proulx regarding the Amex account. Mr. Steeves stated that he would not have told Mr. Merrifield that everything was fine on January 5, 2006 if he had known that there was a problem. He said that he first learned of the Part IV investigation when S/Sgt. Babinko contacted him on January 19, 2006.
- [778] Mr. Steeves could not recall why he contacted Cpl. DuPuy on January 9, 2006, saying it was an urgent matter. Mr. Proulx said that he signed the memorandum on January 13, 2006. He had no explanation for the delay between January 6, 2006, the date of the memorandum, and the date that he signed it, seven days later. The only explanation for these events is that Supt. Proulx needed more information to substantiate the memorandum, he asked Mr. Steeves to get it and he received it between January 6 and 13, 2006.
- [779] Supt. Proulx's note dated January 6, 2006 was produced during the trial, on May 25, 2015, before Mr. Proulx testified. It is curious that this note has the same date as the date on the memorandum ordering the Part IV investigation; yet, none of the dates for the cash withdrawals are back to back. If Mr. Steeves did in fact tell Supt. Proulx that they were back to back cash withdrawals, the note dated January 6, 2006 is inconsistent with this information.

- [780] Supt. Proulx's memorandum ordering the Part IV investigation sets out an issue that had already been addressed. Supt. Proulx raised the issue of the double payment and the fact that an account receivable to recuperate the double payment was still outstanding. When he wrote this memorandum, Supt. Proulx knew that this issue had been resolved. Mr. Steeves stated that he had allowed Mr. Merrifield some additional time to repay the amount. Therefore, the only remaining issue was that Mr. Merrifield's Amex statements showed several cash advances which Supt. Proulx stated were suspected to have been for personal reasons. The memorandum did not provide any information as to when these cash advances might have been taken or which particular advances were in issue, despite the fact that Supt. Proulx's note dated January 6, 2006 sets out some dates.
- [781] Supt. Proulx did not ask Mr. Merrifield to explain the cash advances. In fact, the evidence shows that Mr. Merrifield made a specific inquiry as to whether there was anything to suggest that his Amex card had been used for reasons other than RCMP business. Rather than responding to this, Supt. Proulx proceeded in a clandestine manner and ordered the Part IV investigation. In his testimony, he stated specifically that he did not tell Mr. Merrifield about any concerns regarding these cash advances. Rather, he was "hinting" about them.
- [782] The cash advances were easily explained. Supporting documentation was available. The entire Part IV investigation and its effect on Mr. Merrifield could have been avoided had Supt. Proulx simply asked Mr. Merrifield about the advances. He ought to have done this. By September 2005, Supt. Proulx was aware that when Mr. Merrifield was temporarily transferred to Criminal Investigations pending the outcome of the conflict issue, he was living "under the gun or a very dark cloud," knowing that his conduct was being "subjected to very senior levels of the RCMP for scrutiny and possible disciplinary action." SRR Nicota informed Supt. Proulx of this in his email dated September 27, 2005.
- [783] Mr. Merrifield received the memo from Supt. Proulx on October 4, 2005, clearing him of all of the earlier issues. Nevertheless, Mr. Merrifield was deemed to be unsuitable for national security work. Some of his colleagues took a dim view of him. Within three months, he was off work suffering from severe emotional distress. He had only been back to work for approximately six months before Supt. Proulx ordered the Part IV investigation, alleging that Mr. Merrifield "may have engaged in disgraceful conduct that could bring discredit to the Force." Making an allegation that Mr. Merrifield was essentially taking RCMP funds for his personal use was equivalent to accusing Mr. Merrifield of theft and kiting, criminal offenses. The implications were dire. Mr. Merrifield lived under these allegations for eleven months until he learned the outcome of Sgt. Dickinson's investigation. In the end, there was no evidence that Mr. Merrifield had taken RCMP money for his personal use or that he was kiting payments. Despite this, C/Supt. Mazerolle still believes that the allegations in the Part IV investigation were substantiated and that Mr. Merrifield committed fraud in dealing with his Amex account.
- [784] I find that the actions of Supt. Proulx were the actual and proximate cause of Mr. Merrifield's severe emotional distress.

[785] I find that when Supt. Proulx ordered the Part IV investigation, he had a reckless disregard of causing Mr. Merrifield emotional distress. He knew that Mr. Merrifield's being subjected to these very serious allegations would cause him significant further emotional distress. Supt. Proulx knew that the kind of harm that Mr. Merrifield suffered was substantially certain to follow. In fact it did. Mr. Merrifield was off work again for 11 months until he was ready to return.

[786] I find that Supt. Proulx's concern that Mr. Merrifield had engaged in disgraceful conduct was disingenuous because he admitted that at approximately the same time that he ordered the Part IV investigation, he himself was engaging in disgraceful conduct that could bring discredit to the Force.

#### The Ottawa Citizen Article

[787] Sgt. Dickinson was ordered to carry out an administrative review into the "unauthorized release of protected and classified information and/or documents relating to Cst. Peter Merrifield." Mr. Merrifield stated that this was an appropriate step to take in the circumstances. At the end of the review, Sgt. Dickinson could not substantiate who released the documents to the Ottawa Citizen. Despite this, C\Supt. Mazerolle still believes that Mr. Merrifield leaked confidential information to the media.

#### Mr. Merrifield's Communication with C.O. Seguin and D/Commr. Bourduas

[788] On August 15, 2006, while the Part IV investigation was still underway, Mr. Merrifield sent a lengthy email to C.O. Seguin setting out what had previously happened to him and politely requesting communication to resolve outstanding issues. C.O. Seguin met with Mr. Merrifield on October 3, 2006; however, C.O. Seguin had already obtained management's perspective. Although Mr. Merrifield provided two witness statements to C.O. Seguin to substantiate his views, C.O. Seguin did not find anything disrespectful in the various emails between Supt. Proulx and Mr. Merrifield. He chose not to follow up with the officers who provided the statements and instead preferred the information that he had received from management. In his view, the only issue that required any action was the allegation that Cpl. Frith had been ordered to attend the Barrie nomination meeting. C.O. Seguin had an opportunity to look into the matter further. If he had spoken to the two officers who provided the statements, he might have concluded that Mr. Merrifield's complaints were substantiated to some degree.

[789] Seven months later, Mr. Merrifield sent a lengthy email to D/Commr. Bourduas, who was responsible for the region. This email was similar to the one that Mr. Merrifield had sent to C.O. Seguin. He asked to speak to D/Commr. Bourduas because he "truly wish[ed] to resolve the situation..." Unfortunately, on June 29, 2007, D/Commr. Bourduas declined to become involved because he believed that the issues had been handled appropriately by C.O. Seguin.

[790] Mr. Merrifield's depression returned. In February 2010, he was off duty sick again for approximately eight months. When he returned to work, in the fall of 2010, Mr.

Merrifield was assigned to project Overlord. He worked on Overlord for most of 2011. In 2011, Witness X told Mr. Merrifield that two other officers had said to him that Mr. Merrifield could not be trusted and that Witness X should not be working with Mr. Merrifield. Because he was pursuing a civil action against the RCMP, there was a perception that he could not be trusted. Nevertheless, Mr. Merrifield's performance evaluations continued to be extremely positive.

- [791] Based on the information that Witness X had provided, I find that Mr. Merrifield justifiably believed that the stain on his reputation resulting from the harassment had spread significantly within the RCMP. His depression returned and he went off duty sick in November 2011.
- [792] At that time, which he described as the worst part of his life, Mr. Merrifield sent out a third lengthy email to the highest level of command. He stated, "I am trying to avoid any further embarrassment or tarnish to our organization but have been presented with repeated obstacles in my efforts to resolve a serious situation at the lowest possible level." This email goes on to show the depths of Mr. Merrifield's pain and frustration regarding the fact that nobody in management was prepared to look objectively at the events beginning in 2005 and the impact of decisions that had been made regarding Mr. Merrifield. C.O. Seguin had brushed off his concerns, preferring management's view of the events when he could have followed up on two statements that Mr. Merrifield provided to him. D/Commr. Bourduas concluded that C.O. Seguin had handled the matter appropriately.
- [793] I find that in his emails to C.O. Seguin, D/Commr. Bourduas and Commr. Paulson, as well as others, Mr. Merrifield was taking extraordinary steps to contact upper management with the hope of resolving his concerns. He was clear about the fact that throughout the period, his health had suffered and that he had been away from duty periodically, "to deal with serious depression issues as a result of the harassment..." Commr. Paulson stated that after he received the email, he referred it to Asst/Commr. White who in addition to being the commanding officer of O division (C.O. Seguin had retired) was also in charge of Human Resources. He expected that the issues would be addressed. He was assured that Asst/Commr. White "was on top of it."
- [794] Mr. Merrifield received no response to this email. His depression continued. He stated that he suffered severely and had post-traumatic stress disorder resulting from the events that had transpired. Even though Asst/Commr. White and C/Supt. Mazerolle knew that Mr. Merrifield's statement about Supt. Proulx was substantiated, they took no steps to respond to this email nor did they delegate this task to anyone else. I find that the RCMP's conduct in ignoring this email went beyond all standards of what is right or decent. I find that it was one of the actual and proximate causes of Mr. Merrifield's severe emotional distress.
- [795] Ten months later, Mr. Merrifield told SRR Reed that he wanted to return to work. The RCMP took a further eight months to facilitate this. His security clearance level had

expired. Even though he held the top level of security clearance before he went on sick leave, there was a significant delay in processing his application.

### Serious and Organized Crime

- [796] As a result of a structural reorganization within the RCMP, when Mr. Merrifield returned to work, he was placed in Serious and Organized Crime. Although he was a national expert on counter proliferation, he was not assigned to do this type of work. Insp. White testified that there was minimal activity on project Overlord. The staffing was adequate. The unit was focused on two significant drug trafficking investigations. Mr. Merrifield was assigned to work on one of them.
- [797] Insp. White had some harsh words regarding Mr. Merrifield's performance. He testified that he was concerned that Mr. Merrifield was not a competent investigator. He believed that Mr. Merrifield had made misleading statements to him and Insp. Johnson. Nevertheless, Insp. White stated that in total he spent just a few hours with Mr. Merrifield when he worked in the unit. Insp. White never assessed Mr. Merrifield's performance. He was certain that Mr. Merrifield attended a meeting in which issues in project Overlord were reviewed, even though Insp. White himself did not attend that meeting. The issues resulted in a report which Insp. White never provided to Mr. Merrifield. He never discussed the contents of it with Mr. Merrifield because Mr. Merrifield left the unit before Insp. White received the report.
- [798] Cpl. Low-Fowler was the file manager for project Overlord when Mr. Merrifield was the lead investigator. She stated that Mr. Merrifield did not provide her with his notes or other documentation for the project. It appears that he was not good with paperwork. Nevertheless, her evidence contradicted that of Insp. White. She stated that within the project, there were regular meetings, people knew what needed to be done and it was followed-up. The direction and the goal were clear.
- [799] Insp. White spent only a few hours with Mr. Merrifield during his time at Serious and Organized Crime. I accept Cpl. Lowe-Fowler's evidence where it conflicts with that of Insp. White regarding Mr. Merrifield's work performance. Cpl. Low-Fowler worked directly with Mr. Merrifield, day-to-day, on project Overlord.

### Senate Committee

- [800] Commr. Paulson testified that after Mr. Merrifield's appearance before the Senate committee, Asst/Commr. White told him that Mr. Merrifield had become "solidly and almost irretrievably embittered with the organization." He was "recalcitrant and not responsive to any direction." I find that Mr. Merrifield's actions show that he was the exact opposite of this. He contacted a number of commissioned officers to try resolve the issues. In his email to D/Commr. Bourduas, he stated, "I have offered evidence and the willingness to resolve this matter in a means agreeable to all concerned these efforts have yielded no results ..." The various SRRs wrote emails on his behalf requesting that the issues be addressed.



- [801] Commr. Paulson stated that Asst/Commr. White told him that Mr. Merrifield had commented out of turn on national security matters. The June 2013 Parliamentary Business Bulletin, written after Mr. Merrifield's attendance before the Senate committee, referred to Mr. Merrifield's participation in the Pritchard show in July 2005. It stated that Insp. Jagoe alleged that Mr. Merrifield had disclosed top-secret information and that subsequently Supt. Proulx contacted Mr. Merrifield and accused him of violating RCMP policy. The Bulletin went on to state that Supt. Proulx advised Mr. Merrifield that formal disciplinary proceedings would follow. I find that the information in this Bulletin was seriously misleading. The question of whether Mr. Merrifield had disclosed top-secret information when he participated in the Pritchard show was resolved in 2005 with a conclusion that he had not done so. Commr. Paulson stated that this portion of the Bulletin suggests that that Mr. Merrifield would have been subject to an investigation. It did not indicate that the matter had been resolved.
- [802] No explanation was provided for the fact that the 2013 Parliamentary Business Bulletin set out misleading information about Mr. Merrifield relating to an incident that had taken place eight years earlier. The Bulletin was unclassified and had an unrestricted circulation. It perpetuated Mr. Merrifield's tarnished reputation.
- [803] It is clear that the information provided to Commr. Paulson by his subordinates about Mr. Merrifield was wrong and deficient. Commr. Paulson rightly relied on them. He understood that Asst/Commr. White had tried to speak to Mr. Merrifield but he was not interested in having a discussion. All of this resulted in Commr. Paulson's having a negative view of Mr. Merrifield. He understood that Mr. Merrifield was not interested in discussing his issues but rather was focused on proceeding with this action. Commr. Paulson stated that he was never advised that Mr. Merrifield's statement in paragraph number three of his email (that Supt. Proulx had attempted to procure a prostitute at approximately the same time that he had ordered the Part IV investigation) may have had some foundation. Asst/Commr. White confirmed that Commr. Paulson was never advised of this. Both C/Supt. Mazerolle and Asst/Commr. White knew that Mr. Merrifield's statement about Supt. Proulx had been substantiated. C/Supt. Mazerolle stated that he received a related document. Although Mr. Merrifield and the defendants disagree on the date when the defendants knew about this (both dates are after Supt. Proulx retired), the fact that there was an allegation, which on a first reading seems preposterous but was later substantiated, ought to have alerted management to the possibility that the other statements made in the rest of Mr. Merrifield's email might have been credible.
- [804] In considering the actions that officers had taken regarding Mr. Merrifield, Commr. Paulson stated that they had made efforts to discipline him. Commr. Paulson believed that these efforts were blameless because the officers were trying to get Mr. Merrifield to do the right thing.

#### Ktabi Harassment Complaint

- [805] The RCMP's handling of Cst. Ktabi's harassment complaint can best be described as an administrative bungle. The complaint was made in July 2015, eight months after a new

policy was implemented, but Mr. Merrifield was not notified of it until October 2015. Under the previous policy, a third party could make a harassment complaint on behalf of the person who was the subject of the alleged harassment. This was not retained in the new policy. Under the new policy, Cst. Ktabi's complaint should not have proceeded; however, C\Supt. O'Reilly made the mistake of recommending that the complaint be treated as a "third-party non-complainant process". Mr. Merrifield's name was entered into the database which exists to keep track of harassers and to identify patterns. C\Supt. O'Reilly's mistake set in motion a series of events that should not have occurred. I find that this was an innocent mistake on the part of C\Supt. O'Reilly. It does not meet the test for harassment as set out above. Nevertheless, I find that the RCMP handled this matter poorly. The complaint was dated July 7, 2015. Mr. Merrifield was not notified of it until October 22, 2015. The delay until the end of August can be explained because Commr. Paulson was away on holidays. After that, the matter was overlooked.

- [806] S/Sgt. Floyd and C/Supt. O'Reilly had a discussion on Friday, November 13, 2015, two business days before they were to testify. They agreed that the matter had been handled inappropriately and that it was not actually a harassment complaint. At this point, the matter had been hanging over Mr. Merrifield's head for almost a month. Quite surprisingly, Mr. Merrifield did not learn of the mistake and that management had determined that it was not a harassment complaint until Tuesday November 17, 2015 during S/Sgt. Floyd and C/Supt. O'Reilly's testimony. No explanation was offered as to why Mr. Merrifield was not notified of this earlier.

### Conclusion

- [807] For the reasons set out above, I find that the defendants' conduct toward the plaintiff was outrageous. The defendants had a reckless disregard of causing the plaintiff to suffer emotional distress. His emotional distress was severe. The defendants' outrageous conduct was the actual and proximate cause of the plaintiff's emotional distress. The plaintiff has proven the tort of harassment.

### ***Do the actions of the RCMP constitute a breach of Mr. Merrifield's Charter rights?***

#### The Plaintiff's Position

- [808] The plaintiff does not take the position that s. 58.4(1) of the *RCMP Regulation* requiring a member to be on LWOP if s/he wished to participate in the political process is invalid. No decision was made to deny the plaintiff LWOP for this purpose. Instead, the plaintiff states that the conduct of the individual defendants infringed his rights set out in ss. 2 and 3 of the *Charter*, being freedom of expression and association and the right to vote and be qualified for membership of a legislative assembly.
- [809] The plaintiff's position is that Supt. Proulx's examination of his political literature and criticism of his opinions at the May 27, 2005 meeting conveyed a message that his political views were incompatible with the RCMP's accepted positions. Supt. Proulx told the plaintiff that he would have to choose between his career in the Force or politics.

Supt. Proulx then carried out an investigation into whether engaging in political activities without LWOP created a conflict. Subsequently, the plaintiff was punitively removed from TAG for expressing his political views. The punishment constitutes a *Charter* infringement.

### The Defendants' Position

[810] The defendants state that the facts of this case do not establish any infringement of the plaintiff's ss. 2 and 3 *Charter* rights. He published his campaign materials and distributed them. He ran in the Barrie nomination meeting on May 14, 2005. There is no evidence that he wanted to run for political office again and was denied LWOP. The plaintiff did not challenge s. 58.4(1) of the *RCMP Regulation*.

### Analysis

[811] I disagree with the plaintiff's submission that steps were taken to punish him for expressing his political views. Any conflict was within management's discretion to resolve simply by a retroactive LWOP approval, which had been granted in the past. Punitive steps were taken against the plaintiff because Insp. Jagoe and A/Sgt. Crane believed the plaintiff had lied to them when he said he would not be running in an election anytime soon. A/Sgt. Crane stated that at this point, "the trust was broken." He refused to continue to work with the plaintiff. Insp. Jagoe refused to have the plaintiff transferred to the investigative side INSET, even though it had vacancies.

### Conclusion

[812] The evidence does not support the plaintiff's position that he was punitively transferred for expressing his political views. Accordingly, I find that his *Charter* rights were not breached.

### ***Has the RCMP breached its contract of employment with Mr. Merrifield?***

### The Plaintiff's Position

[813] The plaintiff states that the RCMP breached its contract of employment with him by failing to provide him with a safe and harassment free work environment. The RCMP has an explicit policy against harassment which includes a Mission, Vision and Values statement. The section entitled "Commitment to the Employees of the RCMP" states:

In the spirit of shared leadership and recognizing all employees as our greatest asset, we commit to: open, honest and bilateral communication; demonstrating leadership through accountability and responsibility at all levels; treating all employees with equal

respect and consideration...[and] Ensuring a safe and harassment free work environment” among other things.

[814] The parties disagree as to whether there is an employment relationship between the Crown and regular members of the RCMP.

#### The Defendants’ Position

[815] The defendants rely on several cases in which plaintiffs were terminated and subsequently made claims for wrongful and constructive dismissal. In *Flanagan v. Canada (Attorney General)*, 2013 B.C.S.C. 1205, 55 B.C.L.R. (5<sup>th</sup>) 139, the trial judge dismissed a constructive dismissal action by a former member of the RCMP on the grounds that the plaintiff’s employment relationship was defined solely by statute, concluding in para. 64 that, “the weight of authority is against the existence of a contract law-based employment relationship between the RCMP and its members.” The British Columbia Court of Appeal affirmed the decision.

[816] In *Davidson v. Canada (Attorney General)*, 2015 ONSC 8008, 2016 C.L.L.C. 220 – 027, the court struck a proposed class proceeding brought on behalf of all female members of the RCMP alleging breach of contract for sexual discrimination, harassment and bullying. In para. 37, the court stated:

A series of cases from across the country, in which RCMP officers have brought wrongful dismissal claims, are authority that there is no contact of employment between the Crown or the RCMP with RCMP members and that the employment relationship with members of the RCMP is fashioned by statute not contract.

#### The Plaintiff’s Position

[817] The plaintiff states that if the court were to accept the defendants’ position that there is no employment contract, based on law that recognizes the primacy of the statutory regime, this would mean that the Court of Appeal’s decision, which held that the grievance procedure was inadequate to address this plaintiff’s claims, would be meaningless.

#### Analysis and Conclusion

[818] I disagree. In this action, the plaintiff makes three tort claims, among others, that are properly before the court. In *Flanagan* at para. 76, the court stated:

Indeed, virtually all of the cases I have before me in which the Courts have taken jurisdiction to hear a dispute between a member and the RCMP involve a tort rather than what has been described as a simple “garden-variety” labour dispute over such things as benefits or promotion. It has been said that the Courts are better equipped to deal with that sort of claim than is a grievance scheme,

such as that of the RCMP, which, as noted, lacks independent adjudication.

[819] The plaintiff's argues that the RCMP was required to act in accordance with its own policy; however, I am not aware of any legislative requirement for compliance with the policy and, therefore, cannot interpret the RCMP's actions as a breach of contract in this respect.

[820] Considering the above, I find that Mr. Merrifield's claim for breach of contract is not supported at law because his relationship with the RCMP is governed by statute, not contract.

***Do the actions of the RCMP regarding Mr. Merrifield constitute abuse of/misfeasance in public office?***

[821] The requirements for the tort of abuse of/malfeasance in public office are set out in *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263 at para. 32 as follows:

- (a) the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer (in the exercise of public functions generally);
- (b) the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff;
- (c) the unlawful conduct must be the cause of the plaintiff's injuries; and,
- (d) the injuries suffered must be compensable in tort law.

[822] In *Odhavji*, the plaintiffs alleged that police officers, who had fatally shot an individual, had failed to cooperate with the Special Investigations Unit during its investigation. Cooperation is a statutory requirement under the *Police Services Act*, R.S.O. 1990, c. P.15. The plaintiffs also alleged that the Chief of Police failed to ensure that the officers cooperated. The defendant brought a motion to strike the claim.

[823] The court stated in para. 23 that, "the tort involves deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff." In para. 28, the court stated, "the officer must deliberately engage in conduct that he or she knows to be inconsistent with the obligations of the office." Furthermore, the court commented in para. 30 that, "the underlying purpose of the tort is to protect each citizen's reasonable expectation that a public officer will not intentionally injure a member of the public through deliberate and unlawful conduct in the exercise of public functions." The court allowed the appeal on this point because it was not plain and obvious that the actions for misfeasance in a public office against the officers and the Chief would fail.

[824] In *O'Dwyer v. Ontario Racing Commission*, 2008 ONCA 446, 293 D.L.R. (4<sup>th</sup>) 559, a starter at a racetrack was under investigation. The Commission decided that he would not be approved to work in the next racing season. Accordingly, he was not re-hired and

suffered damages. The plaintiff had a statutory right to have the Commission's decision reviewed under s. 11(7) of the *Racing Commission Act, 2000*, S.O. 2000 c.20.

- [825] The court found that the Commission's conduct frustrated the plaintiff's right to have the decision reviewed. The Commission acted with reckless indifference as to the legality of its acts or the probable consequences to the plaintiff. At para. 42, the court stated:

The state of mind required to establish liability depends on which category the tort [misfeasance in public office] falls into. Category A involves "targeted malice", whereas the requirement of intentional misconduct for Category B may be satisfied by "reckless indifference" as to the legality of the act or its probable consequences. As established in *Odhavji* at para 38, "[a]t the very least.... the defendant must have been subjectively reckless or wilfully blind as to the possibility that harm was a likely consequence of the alleged misconduct".

- [826] I interpret these cases to mean that, in the context of misfeasance in public office, any action or inaction that fails to comply with a statutory requirement constitutes unlawful conduct. Where a plaintiff establishes that the defendant failed to comply with a statutory requirement and did so with reckless indifference, wilful blindness or disregard for the legality of such unlawful conduct, s/he has laid the foundation for a claim of abuse of public office.

#### The Plaintiff's Position

- [827] The plaintiff states that Supt. Proulx and Insp. Jagoe were public officials. They deliberately engaged in a course of abusive and harassing conduct knowing that it would cause harm to the plaintiff. Some examples include Supt. Proulx's punitive transfer of Mr. Merrifield from TAG to Criminal Intelligence and his ordering a Part IV investigation. The plaintiff states that Supt. Proulx exercised his powers for an improper purpose and in bad faith. These incidents constitute unlawful conduct. Both Supt. Proulx and Insp. Jagoe were aware that their conduct was unlawful and contrary to the legal obligation to provide a safe and harassment free work environment.
- [828] The plaintiff further states that A/Sgt. Crane and Insp. Jagoe were aware that he was going to participate in the Barrie nomination meeting and did not take any steps to stop him, contrary to their responsibility set out in s. 37(e) of the *RCMP Act*. A/Sgt. Crane stated that he did not take any steps because he did not have all of the facts. He then falsely advised Supt. Proulx in his email dated June 3, 2005, that as of May 13, 2005, he did not know the nomination meeting was to be held the following day. The plaintiff states that the defendants' failure to comply with their Code of Conduct obligations constitutes unlawful conduct.
- [829] The plaintiff also states that Supt. Proulx and Insp. Jagoe engaged in an unlawful sensitive sector investigation when they took issue with the contents of Mr. Merrifield's

political pamphlet and when Supt. Proulx questioned Mr. Merrifield about it. Supt. Proulx exercised his powers for an improper purpose. Supt. Proulx and Insp. Jagoe were aware that their conduct was unlawful and that it was likely to harm the plaintiff.

Analysis

- [830] I have already found that Supt. Proulx's conduct was tortious; however, this alone does not make it unlawful. The plaintiff's transfer does not constitute an action or inaction that fails to comply with a statute nor does Supt. Proulx's ordering the Part IV investigation. As noted above, there is no legislative requirement that the RCMP must comply with its harassment policy.
- [831] The plaintiff points to s. 37(e) of the *RCMP Act* which states, "It is the responsibility of every member...to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue." A/Sgt. Crane and Insp. Jagoe testified that they were aware of this statutory obligation. A/Sgt. Crane stated that he did not take any action because he believed that he did not have all of the facts. Supt. Jagoe stated that he was aware of the nomination meeting but did not know the exact date. Both officers decided to take no action. Neither of these reasons prevented the officers from contacting the plaintiff before the nomination meeting to ask if he had LWOP. I find that their failure to contact the plaintiff was deliberate and unlawful.
- [832] The next question is whether the officers were aware that their unlawful conduct was likely to harm the plaintiff or whether they were recklessly indifferent to the probable consequences of their conduct. The plaintiff suffered harm, being depression and post-traumatic stress disorder because he was punitively transferred and was subsequently the subject of an unfounded Part IV investigation.
- [833] I find that the officers could not have been aware that their failure to contact the plaintiff would likely harm the plaintiff. They could not have foreseen the actions that Supt. Proulx would take which subsequently caused the plaintiff to suffer. For the same reason, I find that they were not recklessly indifferent to the probable consequences of their inaction. The plaintiff's suffering from depression and post-traumatic stress disorder was not a probable consequence of their failure to act.
- [834] The plaintiff submits that Supt. Proulx and Insp. Jagoe carried out an unlawful sensitive sector investigation when they acquired and reviewed Mr. Merrifield's political brochure and when Supt. Proulx questioned him regarding its contents, I note that sensitive sector investigations are governed by a Ministerial Direction on National Security, found in OPS. Manual Appendix IV-10. It states, "This direction will guide the investigations of the Royal Canadian Mounted Police (RCMP), with respect to matters that fall under subsection 6(1) of the *Security Offences Act* and investigations related to a terrorist offence or terrorist activity as defined in section 2 of the *Criminal Code of Canada*, as they relate to sensitive sectors of Canadian society." Section 2 of the *Security Offences Act* R.S.C., 1985, c. S-7, states generally that the Attorney General of Canada may conduct proceedings with respect to an offence under any law of Canada where (a) the

alleged offence arises out of conduct constituting a threat to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*, R.S.C., 1985, c. C-33 or (b) the victim of the alleged offence is an internationally protected person within the meaning of s. 2 of the *Criminal Code*, R.S.C., 1985, c. C-46.

[835] Section 6(1) of the *Security Offences Act* states, “Members of the Royal Canadian Mounted Police who are peace officers have the primary responsibility to perform the duties that are assigned to peace officers in relation to any offence referred to in section 2 or the apprehension of the commission of such an offence.”

[836] Supt. Proulx and Insp. Jagoe’s actions did not constitute an investigation into a threat to the security of Canada or an investigation related to a terrorist offence or terrorist activity. Mr. Merrifield was not an internationally protected person. I find that the above-noted activities of Supt. Proulx and Insp. Jagoe did not constitute an investigation into a sensitive sector.

[837] I find that the plaintiff has not proven the tort of abuse of/misfeasance in public office.

***Do the actions of the RCMP regarding Mr. Merrifield constitute intentional infliction of mental suffering?***

[838] According to *Boucher v. Wal-Mart Canada Corp.*, 2014 ONCA 419, 120 O.R. (3d) 481, the test for intentional infliction of mental suffering has three elements. The defendants’ conduct must have been (a) flagrant and outrageous, (b) calculated to harm the plaintiff and (c) it must have caused the plaintiff to suffer a visible and provable illness.

[839] The test for intentional infliction of mental suffering is similar to the test for harassment. One difference is that in addition to being outrageous, the conduct resulting in intentional infliction of mental suffering must also be flagrant. Another difference is that the plaintiff must show that he suffered a visible and provable illness.

**Was the defendants’ conduct flagrant**

[840] The defendants state that in order for conduct to be flagrant, its offensiveness must be palpable. The *Oxford English Dictionary* defines palpable as “conspicuously or obviously offensive”.

[841] As discussed earlier, Supt. Proulx ordered the Part IV investigation without asking Mr. Merrifield for an explanation for the cash withdrawals. Before he ordered the investigation, Mr. Merrifield specifically asked him if there was any reason to believe that his Amex card was being used for anything other than RCMP purposes. Supt. Proulx did not reply to this question. Instead, he ordered the investigation. In his mandate letter, he provided no particulars of the transactions that concerned him nor did he provide a date range in which the investigation was to be conducted. He ordered the investigation



alleging discreditable conduct at a time that was contemporaneous to his own discreditable conduct. I find that Supt. Proulx's actions were obviously offensive. Therefore, I find that in addition to being outrageous, his conduct was also flagrant.

Was the defendants' conduct calculated to cause harm?

[842] In *Zoran-Smith v. Bank of Montreal* (2003), 31 C.C.E.L. (3d) 267, the court stated in para. 167 that:

In terms of establishing that the conduct was calculated to produce harm, it suffices if there is a reckless disregard as to whether or not harm would ensue from the conduct. Furthermore, the requirement that the conduct be calculated to produce harm is met where the actor decides to produce the consequences that follow from the act, or if the consequences are known to be substantially certain to follow. There is no requirement of malicious purpose to cause the harm or any motive of spite.

[843] I have already determined that the defendants had a reckless disregard of causing the plaintiff's emotional distress. The plaintiff had already been off work for significant periods of time, suffering from stress and depression because Supt. Proulx and Insp. Jago determined he was no longer suitable to work in national security. As a result of Supt. Proulx's ordering the Part IV investigation, Mr. Merrifield again suffered from stress, depression and post-traumatic stress disorder. Given Mr. Merrifield's medical history and the fact that Supt. Proulx made unfounded allegations that Mr. Merrifield's conduct was disgraceful, I find that Mr. Merrifield's suffering from emotional distress, was a consequence that was known to be substantially certain to follow.

Is medical evidence required to prove that a plaintiff suffered from a visible and provable illness?

[844] The plaintiff states that he was off duty sick, suffering from depression and post-traumatic stress disorder, among other things, which was supported by his family doctor. The RCMP health services never challenged this. The plaintiff states that he is not required to call medical evidence to prove that he was suffering from an illness.

[845] The plaintiff relies on *Rahemtulla v. Vanfred Credit Union* (1984), 4 C.C.E.L. 170 (BCSC). The court did not require medical evidence to support a finding that the plaintiff suffered a visible and provable illness.

[846] Ms. Rahemtulla was a bank teller who was accused of theft and was fired. The allegation was not proved and the court found that she was entitled to reasonable notice or pay in lieu of notice. The plaintiff had suffered from severe depression and was unable to leave her house or participate in any of her normal activities. She stopped eating. She had blackouts and headaches. She was hospitalized twice. Ms. Rahemtulla had some pre-incident medical issues; however, the court found that the most significant cause of her

depression was the manner in which she was terminated and the impact that it had on her prospects for employment. Notwithstanding the absence of medical evidence, the court was, "... satisfied that the plaintiff suffered depression accompanied by symptoms of physical illness as a result of [her supervisor] Mr. Flack's accusations."

[847] The defendants state that a plaintiff must provide medical evidence to show that he suffered a visible and provable illness. They rely on *Prinzo* where the plaintiff provided medical evidence of her injury and was awarded damages for intentional infliction of mental suffering. On appeal, the court confirmed this aspect of the judgment; however, the court referred to *Rahemtulla* and at para. 46 stated, "concerning the requirement of a 'visible and provable illness' it appears that the absence of a medical expert will not necessarily be fatal."

### Conclusion

[848] I have already found that the plaintiff suffered severe or emotional distress. Notwithstanding the absence of medical evidence, I am satisfied that the plaintiff suffered from depression and post-traumatic stress disorder as a result of the RCMP's actions. I find that the plaintiff has proven the tort of intentional infliction of mental suffering.

### ***Does the RCMP have a fiduciary duty to Mr. Merrifield? If so, do its actions constitute a breach of fiduciary duty?***

#### The Plaintiff's Position

[849] The plaintiff relies on *Frame v. Smith*, [1987] 2 S.C.R. 99 for its description of certain characteristics in relationships where fiduciary obligations have been imposed.

[850] In this case, the father brought a civil action against the mother of his children on the basis of a tort for breach of a statutorily authorized order for access on the basis that it was a breach of a fiduciary duty.

[851] When considering whether the mother had breached a fiduciary duty, Wilson J. stated in her dissenting decision at par. 24 that,

[852] Relationships in which a fiduciary obligation have been imposed seem to possess three general characteristics:

1. The fiduciary has scope for the exercise of some discretion or power.
2. The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests.
3. The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.

- [853] Ultimately, the court concluded that...“the statute shows a clear disposition not to permit recourse to the courts for civil actions of this nature.”
- [854] For this and other reasons, the court determined that there was no possible basis for the cause of action.
- [855] Twenty-four years later, the court considered the issue of an *ad hoc* fiduciary duty in *Elder Advocates of Alberta Society v. Alberta*, 2011 SCC 24, [2011] 2 S.C.R. 261. This concerned a motion to strike the plaintiffs’ claim on the basis that the causes of action pleaded were not supportable at law.
- [856] Approximately 12,500 residents of Alberta’s long-term care facilities sued as a class alleging that the government had unjustifiably raised the amount of their required monetary contribution to subsidize medical expenses, which they alleged was the government’s responsibility. The plaintiffs stated that this constituted a breach of fiduciary duty.
- [857] The court held that the claim for breach of fiduciary duty disclosed no cause of action. It was struck. In considering whether the government had a fiduciary duty to the plaintiffs in the circumstances, the court stated at para. 36:

In summary, for an *ad hoc* fiduciary duty to arise, the claimant must show, in addition to the vulnerability arising from the relationship as described by Wilson J. in *Frame*: (1) an undertaking by the alleged fiduciary to act in the best interests of the alleged beneficiary or beneficiaries; (2) a defined person or class of persons vulnerable to a fiduciary’s control (the beneficiary or beneficiaries); and (3) a legal or substantial practical interest of the beneficiary or beneficiaries that stands to be adversely affected by the alleged fiduciary’s exercise of discretion or control.

- [858] In para. 37, the court referred to *Guerin v. R.* [19034] 2 S.C.R. 335, at p. 385 in which the court stated:

It should be noted that fiduciary duties generally arise only with regard to obligations originating in a private law context. Public law duties, the performance of which requires the exercise of discretion, do not typically give rise to a fiduciary relationship.

[Emphasis added by SCC.]

- [859] The plaintiff acknowledges that an employer-employee relationship is presumptively not a fiduciary relationship. The imposition of a fiduciary duty in this type of relationship should be rare.

[860] In *Nadolny v. Peel (Region)*, 2009 CanLII 51194 (ON SC), the plaintiff was a retired employee of the Region of Peel. In order to address an administrative error, the Region decided to increase the premiums payable by its retired non-unionized employees who had received early retirement health benefits. The plaintiff stated that she and the other retirees were vulnerable to the Region because after they had retired, they were no longer employed and were no longer in a position to bargain.

[861] The court considered the indicia of a fiduciary relationship. At para. 40, it stated:

In order for a fiduciary relationship to exist, there must be scope for the exercise of some discretion or power, the ability of that power or discretion to be exercised unilaterally so as to affect the beneficiary's legal or practical interests and a peculiar vulnerability on the part of the claimant to the exercise of that power or discretion. Outside of the established categories of fiduciaries, the case law suggests that there must either be evidence of a mutual understanding that one party has relinquished its own self-interest and agreed to act solely on behalf of the other party, or evidence of a power dependency.

[862] The plaintiff alleged a power dependency relationship. The court held that her pleadings were sufficient to establish the existence of a fiduciary relationship between herself and the Region.

#### The Defendants' Position

[863] The defendants state that in *Elder Advocates*, the court commented on the requirements for the imposition of a fiduciary burden on the Crown. Some of those requirements are set out as follows:

[44] Imposing such a burden on the Crown is inherently at odds with its duty to act in the best interests of society as a whole....

[47] Generally speaking, a strong correspondence with one of the traditional categories of fiduciary relationship – trustee-*cestui qui trust*, executor-beneficiary, solicitor-client, agent-principle, director-corporation, and guardian-ward or parent-child - is a precondition to finding an implied fiduciary duty on the government.

[51] It is not enough that the alleged fiduciary's acts impact generally on a person's well-being, property or security. The interest affected must be a specific *private law* interest to which the person has a pre-existing distinct and complete legal entitlement.

[864] The plaintiff states that the question of whether the employer relinquished its self-interest is the real issue. It makes the imposition of fiduciary duty on an employer an exception to the usual employer-employee obligations.

#### The Plaintiff's Position

[865] The plaintiff states that the RCMP unilaterally adopted the harassment policy which represents a commitment made by the RCMP as an employer to its employees/members. The employees/members, including Mr. Merrifield, were the beneficiaries of this policy. Management and senior officers had discretion regarding enforcement of the policy. The RCMP explicitly and voluntarily relinquished its self-interest in relationship to the employee/members with respect to harassment in the workplace. It made a unilateral commitment to act in the best interests of its employees/members. The plaintiff states that the RCMP had a fiduciary duty to protect him from harassment in the workplace.

#### Analysis and Conclusion

[866] The RCMP did adopt a policy to provide a safe and harassment free workplace; however, I find that the policy did not arise from an undertaking by the RCMP to act in the best interests of its employees/members. The RCMP did not have a private law duty to do so. Mr. Merrifield's affected interest was not a specific private law interest to which he had a pre-existing distinct and complete legal entitlement. Accordingly, I find that the RCMP did not have a fiduciary duty to the plaintiff.

#### ***Has Mr. Merrifield suffered a loss of income related to the actions taken by the RCMP?***

#### The Defendants' Position

[867] The defendants challenge Mr. Merrifield's evidence that he could not write the Cpl. JSE exam on February 4, 2006. He provided no medical evidence to support this. Mr. Merrifield's evidence was that he was too ill to write the exam on that date. February 25, 2006 was the alternative date for candidates to write the exam. The defendants state that Mr. Merrifield gave no explanation as to why he did not write the exam on the alternative date.

[868] The defendants state that although Mr. Merrifield claims that he was too sick to write the exam in February, on January 17, 2006, the day that the *Ottawa Citizen* article was published, Mr. Merrifield was well enough to travel to "O" Division headquarters in London for a meeting with C/Supt. Mazerolle and SRR Bohus. He kept in contact with his colleagues while he was off duty sick. The defendants state that Mr. Merrifield has not met the burden of proving that he was too sick to write the exam and that the cause of that sickness was the direct result of actions taken by the defendants.

[869] The defendants state, in the alternative, that if Mr. Merrifield is entitled to lost wages, the calculation should not take into account any assumptions with respect to overtime.

Because the amount of overtime earned by members varies depending on the position and nature of the duties performed, it is not reasonable to assume that Mr. Merrifield would earn overtime at the same rate as was earned in his previous postings. The defendants state that any and all calculations should rely on base salary.

[870] The defendants also state that Mr. Wollach's assumption that Mr. Merrifield would have been promoted to Corporal within six months of successfully completing the exam is unreasonable. After Mr. Merrifield did complete the exam, he was promoted to Corporal eighteen months later. This is a more reasonable assumption for both promotions.

### Analysis

[871] I find that Mr. Merrifield's testimony that he was able to travel to London on January 17, 2006 and that he maintained contact with his work colleagues while on medical leave is not inconsistent with his testimony that he was too sick to write the Cpl. JSE exam on February 4, 2006. I accept his evidence that he was too sick to write the exam. He was on approved medical leave at that time and did not return to work until July, 2006. The RCMP never challenged Mr. Merrifield's approved medical leave.

[872] I have already found that the plaintiff has proven the torts of harassment and intentional infliction of mental suffering. I find that the mental distress suffered by the plaintiff in February, 2006 resulted in his inability to write the exam.

[873] I accept the defendants' position that the amount of overtime earned by a member varies depending on the position and nature of the duties performed. There was no evidence of an average amount of overtime earned by either a Corporal or a Sergeant across a variety of positions and duties performed. The defendants' assertion that only a base salary for a Corporal and Sergeant should be used to calculate Mr. Merrifield's loss assumes that Mr. Merrifield would work no overtime as a Corporal and Sergeant. This is unrealistic. A calculation assuming no overtime would under-compensate Mr. Merrifield.

[874] Given the lack of evidence regarding a different percentage to be applied, I am satisfied that Mr. Wollach's use of Mr. Merrifield's post-event average overtime is appropriate in calculating his loss.

[875] The defendants' state that eighteen months is an appropriate interval to use to determine when Mr. Merrifield would have been promoted to Corporal and then Sergeant. In fact, Mr. Merrifield waited considerably longer to be promoted to Sergeant. I accept the defendants' position on this issue.

### Conclusion

[876] If Mr. Merrifield wrote the Cpl. JSE exam in February 2006, and using an eighteen month interval, I assume he would have been promoted to Corporal in August 2007. If Mr. Merrifield wrote the Sgt. JSE exam in February 2008, I assume that he would have been promotable in August 2009 because he had to serve as a Corporal for two years.

Using the eighteen month interval, I assume that he would have been promoted to Sergeant in February 2011. Because he would have received these promotions later than the dates shown in Mr. Wollach's report, Mr. Merrifield's loss of income would be less than the amount calculated by Mr. Wollach. Given the promotion dates that I have assumed, I find that Mr. Merrifield's income loss is properly assessed at \$41,000.<sup>ix</sup>

***What amount should be awarded to Mr. Merrifield for general damages?***

Analysis

- [877] Amounts awarded for damages for intentional infliction of mental suffering and harassment have increased significantly since the 1990s.
- [878] In *Clark v. Canada*, [1994] 3 F.C. 323, 3 C.C.E.L. (2d) 172, a female member of the RCMP was harassed by her male co-workers. She was told to be a "real woman" and go home and have children. Her co-workers watched pornographic movies while she was in the office. Plastic breasts were left on her desk. When her body armour was delivered, it was set up with a mocking note attached to it. These are a few examples of what the plaintiff endured. When she complained to her supervisors, they were dismissive. These events caused her to have a documented mental health crisis. She resigned her position.
- [879] The court reviewed awards for intentional infliction of nervous shock prior to 1994, considered a "reasonable measure of consolation" for her particular mental condition and awarded the plaintiff \$5,000. The defendants' state that based on this decision, if Mr. Merrifield is entitled to damages, the amount should be nominal.
- [880] The plaintiff relies on four cases decided between 1997 and 2014. They are *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R.701, *Tipple v. Canada (Attorney General)*, 2012 FCA 158, 431 N.R. 257, 158, *Joseph v. Tl'azt'en First Nation*, 2013 F.C. 767, 9 C.C.E.L. (4<sup>th</sup>) 173 and *Boucher v. Wal-Mart Canada Corp.* The defendants state that these cases are not applicable because the plaintiffs were either terminated or constructively dismissed.
- [881] I disagree with the defendants' position. In all of these cases, the court considered the events leading up to the termination or constructive dismissal. The defendants' actions caused the plaintiffs to suffer from mental health conditions. Damages were awarded to the plaintiffs for mental suffering. I find that these cases are relevant and helpful on this issue.
- [882] In *Wallace*, the Supreme Court of Canada determined that the trial judge had discretion to extend the notice period with respect to the termination. The possibility of recovery for mental health damages remained. It noted that a tort for breach of good faith and fair dealing regarding a dismissal was not yet recognized.
- [883] In *Tipple*, the employer alleged that the plaintiff's actions were a form of misconduct. The matter attracted a considerable amount of media attention. The court found that the

allegations were unfounded. In the interval, the plaintiff had suffered a significant loss of reputation. He was awarded \$250,000 for the loss of reputation and \$125,000 for the psychological injury that he sustained as a result of the manner of his termination.

- [884] In *Joseph*, an employer made vile and serious allegations of fraud upon the employee's termination. This resulted in significant damage to the employee's reputation. The employee had considerable difficulty in finding other employment. Prospective employers stated that the plaintiff had to be vindicated before they would consider hiring him. The court awarded \$85,000 for damage to the employee's physical health, well-being, integrity, dignity and personal and professional reputation.
- [885] In *Boucher*, the plaintiff was a cheerful and productive employee. When the personal defendant became her supervisor, he belittled, humiliated and demeaned the plaintiff in front of others continuously and relentlessly for approximately six months. She complained of her supervisors actions to management who determined that her complaints were unfounded and told her that she would be held responsible for making them. The plaintiff became broken and defeated. She suffered from a number illnesses including depression. A jury awarded the plaintiff \$100,000 for intentional infliction of mental suffering. The award was upheld on appeal.
- [886] Mr. Merrifield suffered from significant depression and post-traumatic stress disorder as a result of the actions taken by the RCMP. He was unable to work for various periods of time. At one point, he disengaged from his family and spent his days lying on a sofa. He did not bathe and developed bed sores. His depression during these periods deprived him of meaningful interaction with his wife and young children. It deprived him of successful performance in a job that he loved and for which he was acknowledged to be a national expert. It also deprived him of the gratification of positive interaction and collaboration with his colleagues.
- [887] Not only did Mr. Merrifield suffer from significant mental health issues as a result of the actions taken by the RCMP, those actions also stained his reputation. A number of people knew that he had been removed from national security work. They assumed that he had done something wrong. Even Insp. Van Doren, who was not Mr. Merrifield's supervisor, knew that he had been removed from national security work. As a result of this, he considered Mr. Merrifield to be unsuitable to work at the SOC during a national security emergency.
- [888] Supt. Proulx accused Mr. Merrifield of using his Amex card for personal reasons, in other words stealing money from the RCMP. Sgt. Dickinson interviewed a number of people during the Part IV investigation. All of them knew the serious allegations against Mr. Merrifield which were tantamount to criminal conduct. The allegations were insidious. For example, Supt. Jagoe still believes that the allegations were substantiated. Just as the news of Mr. Merrifield's removal from national security work spread among the RCMP management and other members, so too would the allegations of disgraceful conduct. Sgt. Dickinson stated that the members that he interviewed would not have known of the outcome of the Part IV investigation or that the allegations were unfounded.



## Conclusion

[889] Taking all of this into account, I award Mr. Merrifield general damages against the defendants for harassment and intentional infliction of mental suffering in the amount of \$100,000.

### ***Is Mr. Merrifield entitled to punitive and or aggravated damages?***

## Analysis

[890] Mr. Merrifield's award of general damages is meant to compensate him for the harm he suffered because of the RCMP's conduct. Punitive damages are not compensatory. In *Boucher* at paras. 59 and 60, the court stated:

Punitive damage awards are not compensatory. They are meant to punish the defendant in exceptional cases where the defendant's conduct has been "malicious, oppressive and high-handed" and "represents a marked departure from the ordinary standards of decent behaviour", see *Whiten*, at para 36.

In other words, punitive damages focus on the defendant's conduct, not on the plaintiff's loss. Here, for reasons I have already outlined, Pinnock's misconduct met this exceptional standard of malicious and oppressive conduct. Pinnock deliberately targeted Boucher. He wanted her to resign. He persisted with his mistreatment of her over the course of five months. He forced her to leave a job that meant a great deal to her. His conduct did indeed amount to a marked departure from the ordinary standards of decent human behaviour.

[891] Punitive damages must be rationally required to punish the defendants' misconduct. I find that punitive damages are not required in this matter. The general damages award is sufficient to denounce and deter the defendant's misconduct.

[892] With respect to aggravated damages, in *Boucher* at para. 66, the court stated:

Aggravated damages are compensatory damages. They are part of breach of contract damages. They compensate a plaintiff for the additional harm suffered because of the way the contract was breached. In a wrongful dismissal claim, aggravated damages may be awarded against the employer where "the employer engages in conduct during the course of dismissal that is 'unfair or is in bad faith'". [citation omitted]

[893] The plaintiff states that he was functionally in a contractual relationship with the RCMP. The RCMP breached the conditions of his employment when they allowed him to suffer from harassment.

Conclusion

[894] I have found that Mr. Merrifield's claim for breach of contract is not supported at law because his relationship with the RCMP is governed by statute, not contract. He is not entitled to aggravated damages which flow from a breach of contract.

Summary

[895] The plaintiff is awarded general damages in the amount of \$100,000 and special damages in the amount of \$41,000.

Costs

[896] If the parties cannot agree on costs, they shall contact the trial coordinator to arrange an attendance date. If they cannot agree on a schedule for serving and filing materials, a conference call may be arranged. All materials shall be filed with the Barrie trial coordinator.

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VALLEE J.

**Released:** February 28, 2017

ENDNOTES

<sup>i</sup> Most of the witnesses in this trial were serving or retired RCMP members. I will refer to a retired member as Mr. regarding his testimony. I will refer to him in the narrative by the rank that he held at the relevant time. The plaintiff was a Constable, Corporal and is now a Sergeant. I will refer to him as Mr. Merrifield for consistency.

<sup>ii</sup> Attached as Schedule 'A' is an organizational chart prepared by the plaintiff.

<sup>iii</sup> At a nomination meeting, a person is selected by other members of the same political party to run as a candidate in the next election.

<sup>iv</sup> HRMIS is the acronym for a computer program that contained information regarding RCMP member's employment and other details

<sup>v</sup> Counter proliferation work includes interrupting shipments to foreign countries of materials that can be used to make nuclear weapons

<sup>vi</sup> This manual was dated 2010. A similar manual for 2006 was not provided

<sup>vii</sup> Katherin Barber, ed. *The Canadian Oxford Dictionary* 2d ed, (Toronto: Oxford University Press Canada, 2004)

<sup>viii</sup> *Piresferriera v. Ayotte*, 2010 ONCA 384

<sup>ix</sup> If my assumptions are incorrect, counsel may address me on this issue