

PRIVILEGED & CONFIDENTIAL

INVESTIGATION

**University of Ottawa
June 12, 2019 Protection Services Incident**

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1 MANDATE AND SCOPE

Turnpenney Milne LLP was retained on June 18, 2019 by Noël Badiou, Director of the Human Rights Office, at The University of Ottawa (“the University”), to investigate information shared on Twitter, a social networking website by a University student (“the Student”).

The information from the Student’s Twitter feed indicates that he was subject to harassment and discrimination because of race, while he was present on the University campus. The incident in question occurred on June 12, 2019. A copy of the Twitter thread is attached at Appendix A. The Student did not file a formal complaint with the University, though as outlined in the Twitter thread, he tweeted at the University’s Twitter account. As the Student did not provide a formal complaint pursuant to either of University procedures 36-1 (Complaints of Harassment/Discrimination initiated by students) or 36-2 (Complaints of Harassment/Discrimination initiated by employees), the University initiated an investigation further to its obligations under its Policy 67a “Prevention of Harassment and Discrimination”.

The University’s mandate outlines a two stepped process pertaining to the June 12, 2019 incident. First, the Investigator is to submit an initial report that addresses the incident itself, and what occurred. Second, the Investigator submits a second report that will consider systemic implications related to the incident, and the work of Protection Services as it pertains to racialized members of the University community. This is the first of such reports.

This report sets out the following:

- A summary of the investigative process;
- Executive summary;
- Summary of the background of the student and of the witnesses;
- Relevant contextual information;
- Summary of the information from the student’s Twitter feed;
- Comments regarding credibility;
- University of Ottawa’s policies and procedures;
- Summary of the relevant legal and policy framework;
- A review of the evidence and findings of fact; and
- Conclusions.

2 INVESTIGATIVE AUTHORITY

The University retained the Investigator to conduct an independent, neutral Investigation into 1) the incident that took place on Wednesday June 12, 2019 involving a University of Ottawa student and the University of Ottawa Protection Services; and 2) make determinations of fact as to whether Policy 33 – Security and the Trespass to Property Act or any applicable other regulation were appropriately applied during this incident in accordance with the law, human rights and best practices in the sector. The University also retained the Investigator to produce a written report of her findings at the conclusion of the Investigation (“Report”). The Investigator’s findings are determined on a balance of probabilities, given all of the evidence, and considering all of the evidence available at the time of the drafting of this Report. Further to the retainer, the Report is delivered to Director of the Human Rights Office (the “Director”).

3 INVESTIGATIVE PROCESS

The following is a summary of the investigative process that the Investigator utilized regarding the Complaint.

On June 13, 2019, the Student tweeted that he had been subject to discrimination and harassment by University Protection Services Officers (“PSOs”) the day before. The Student included the University’s Twitter handle in the tweet. As the Student’s tweets were visible to the general public, the tweets pertaining to the incident were visible to the general public. The Communications Directorate replied to the Student’s tweet on June 13, 2019 and advised him that they had asked the Human Rights Office to inquire into the matter. In addition, the Communications Directorate posted a comprehensive and official response to the tweet on the University’s Twitter account, on June 14, 2019 in which it advised the public that it would review the issue internally and would appoint an external investigator to examine the incident. The Director contacted the Student on June 13, 2019 to arrange a time to meet to obtain more details about the incident. On June 14, 2019 the Student replied to the email and advised the Director that he did not wish to speak [REDACTED].

On June 18, 2019, the University retained the Investigator. The five PSOs who were involved in the June 12, 2019 incident were notified by letter that the University had appointed an Investigator, and that she wished to meet with them.

The Investigator contacted the Student on each of the following dates: June 24, 2019, July 11, 2019, and July 16, 2019. In her correspondence and telephone messages she indicated that she wished to speak to the Student and would be willing to answer any questions he may have in advance of a possible meeting. The Student did not respond to the Investigator's messages.

Prior to the interviews, where relevant, witnesses were provided with copies of the Twitter thread, and University policies and procedures.

The Investigator met with nine individuals during the Investigation. Eight of the nine interviews were conducted in person. One interview was conducted on the Skype video conferencing system. For one PSO, follow-up questions were posed in writing. The Investigator conducted the following interviews:

- Witness ■ – In-person interview on July 8, 2019 in the presence of a support person;
- Witness ■ – In-person interview on July 8, 2019, in the presence of a support person;
- Witness ■ – In-person interview on July 9, 2019, and he accepted a subsequent request for a follow up interview. The interview was scheduled on July 26, 2019. Witness ■ emailed the Investigator's office that morning to advise that he was unwell, and consequently unable to attend the meeting. Witness ■ initially agreed to reschedule the interview, then declined to attend a follow up interview. Follow up questions were posed to Witness ■ by email on August 8, 2019, no response was received to the email;
- Witness ■ – In-person interview on July 9, 2019, partly in the presence of a support person;
- Witness ■ – In-person interview on July 12, 2019 in the presence of a support person;

The Investigator then met with several witnesses who were determined to have information relevant to the Investigation. For the purposes of this Report, the witnesses' names have been redacted and their evidence anonymized. Should one be needed, a Witness Key can be provided:

- Witness ■ - In-person interview on July 26, 2019;
- Witness ■ - In-person interview on July 30, 2019 in the presence of a support person;
- Witness ■ - In-person Interview on July 30, 2019 in the presence of a support person; and

- Witness I - Skype video conference interview on August 8, 2019.

At the outset of each interview, witnesses were cautioned about the confidentiality expected of them pertaining to the Investigation and reminded not to talk to others about their interview with the Investigator. In the eight in-person interviews, the witnesses were told that they would be asked to review and sign the Investigator's notes at the conclusion of the interview to confirm the accuracy of the notes. In the video conference interview, the witness was advised that the Investigator was taking notes and was also recording the interview. The Investigator advised the witness that the notes and video would be the record of the witness's evidence.

The Investigator was also provided with a number of documents to review and consider for the Investigation. The relevant documents have been indexed and can be provided if required. These documents include the following: job descriptions, University policies and procedures, campus maps, video recordings, photographs, a resume, training materials, incident reports, and use of force reports.

4 EXECUTIVE SUMMARY OF FINDINGS

Note: a more detailed review of the findings and accompanying analysis can be found in Section 10, below.

1. Summary Concern 1

The Student was improperly stopped, questioned, and detained in part because of his race.

2. Summary Concern 2

The information from the Student's Twitter feed is that he was followed as he attempted to leave his interaction with the PSOs. However, the PSOs chose to follow him and persistently demand that he produce identification. This conduct was in part motivated by his race.

3. Summary Concern 3

The information from the Student's Twitter feed is that he was grabbed by the waist and arms during the arrest. There is insufficient evidence to support that he was assaulted during that interaction. It is possible that the PSOs made contact with the Student's phone. However, the evidence does not support a finding that they grabbed the phone. Notwithstanding, the overall arrest likely amounts to an incident of workplace violence, and discrimination based on race.

4. Summary Concern 4

The information from the Student's Twitter feed is that he was humiliated by the experience of being handcuffed in a public place. While he was not literally surrounded by PSOs, given his heightened emotion, he felt surrounded.

5. Summary Concern 5

The June 12, 2019 incident occurred not only because of the Student's race but also because the PSOs misunderstood the scope of their authority under University Procedures 2, 15 and 33.

5 SUMMARY OF THE BACKGROUND OF THE STUDENT AND THE WITNESSES

The Student is a [REDACTED] student at the University. He is also currently the [REDACTED], and a student in the [REDACTED].

Witness [REDACTED] is a male who describes his ethnic background as being [REDACTED] and [REDACTED]. He identifies racially as [REDACTED]. He commenced employment at the University as a PSO in [REDACTED].

Witness [REDACTED] is a male who identifies racially as [REDACTED]. He is [REDACTED]. Witness [REDACTED] has been employed by the University since [REDACTED]. He is PSO and is a [REDACTED] employee.

Witness [REDACTED] is a male who identifies racially as [REDACTED]. He is [REDACTED]. He has been employed as a PSO at the University since [REDACTED]. Witness [REDACTED] is a [REDACTED] employee.

Witness [REDACTED] is a male who identifies as [REDACTED]. He is [REDACTED]. He commenced employment at the University as a PSO in or around [REDACTED].

Witness [REDACTED] is a male who identifies racially as [REDACTED]. He is [REDACTED]. He commenced work at the University in [REDACTED]. Witness [REDACTED] was initially employed as a PSO and is now a [REDACTED] in Protection Services.

Witness [REDACTED] is a male who visually appears to be [REDACTED] and is [REDACTED]. He has worked at the University since [REDACTED], initially as a PSO, and is now the [REDACTED].

Witness ■ - is a male who identifies as ■ and ■. He has worked at the University since ■. Witness ■ commenced work at the University as a PSO. However, in ■ he switched roles ■.

Witness ■ - is a female who identifies racially as ■. She is ■. She has been employed as a PSO by the University since ■. She is a ■ employee.

Witness ■ - is a female who identifies as ■ and ■ and ■. She has worked at the University for ■ and is a permanent employee. When she commenced work at the University, she was a PSO. She is now an ■.

Apart from Witness ■, all the witnesses have completed a 2-year police foundations or equivalent program at a Canadian college. This course provides the training for security guard personnel, or PSOs on their duties and responsibilities under the *Criminal Code*, *Private Investigator's Act* and *Trespass to Property Act*.

Six of the PSOs attended their interviews in uniform. The uniforms are dark in colour and look similar to uniforms worn by police officers.

6 CONTEXTUAL INFORMATION

The University of Ottawa is a post-secondary academic institution located in downtown Ottawa, in the heart of the capital. The campus covers approximately 42 hectares of land and is situated right next to a men's shelter and is in very close proximity to a number of hotels, a major shopping mall, a transit hub and private residences. Ryerson University ("Ryerson") and the University of Toronto ("U of T") are also similarly situated in downtown areas adjacent to hotels, shopping mall and mass transit. Much like Ryerson and U of T, it is not always clear when an individual is situated on University property or other public or private property. The University has more than 40,000 students and 5,000 employees.

7 SUMMARY OF THE INFORMATION FROM THE STUDENT'S TWITTER FEED

The information from the Student's Twitter feed indicates that he was stopped and carded by University campus security. More specifically, the information from the Student's Twitter feed indicates that while he was riding his skateboard on campus, two security guards stopped him and advised him that he was not allowed to ride his skateboard on campus. The information from the Student's Twitter feed indicates

that he immediately stopped and advised them that he would not skateboard. The PSOs asked him for ID, and he told them that he did not have his wallet on him, however he was going to his office where he could prove his identity to them. The PSOs asked the Student for his student ID and threatened to arrest him for trespassing. During this interaction, the information from the Student's Twitter feed indicates that he attempted to walk away, but the PSOs followed him, and hit his phone to the ground as he tried to record their interaction. The information from the Student's Twitter feed indicates that the PSOs then grabbed him and put him in handcuffs. The information from the Student's Twitter feed indicates that the PSOs then handcuffed him and forced him to wait for over 2 hours for the police to attend the scene. During this time, the information from the Student's Twitter feed indicates that he was surrounded by PSOs, and that the handcuffs were cutting off his circulation. The author of the Student's Twitter feed describes the incident as humiliating.

8 COMMENTS REGARDING CREDIBILITY

In reviewing the concerns, the Investigator has been guided by the oral evidence of each of the witnesses as well as the relevant documents produced. In assessing the facts, the Investigator has made findings of credibility (where necessary) and in doing so, considered the following, as outlined in *Faryna v. Chorny*, [1952] 2 D.L. R. 354 at 357.

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practiced and informed person would readily recognize as reasonable in that place in those conditions.

In *Perry v. The Centre for Advanced Medicine*¹, the Ontario Human Rights Tribunal ("the Tribunal") set out a comprehensive approach to assessing credibility and reliability of evidence, and that approach has been adopted herein. That case drew from *F.H. v. McDougall*, 2008 SCC 53 at paragraph 58) in emphasizing that evidence should be considered in the context of its totality, and not in isolation. The Tribunal went

¹ 2017 HRTO 191.

on to draw from *R. v. Morrisey*² in differentiating between veracity and accuracy in evidence (at paragraph 234):

The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously, a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is honest witness, may, however, still be unreliable.³

In emphasizing the multi-faceted nature of assessing the reliability and veracity of a witness's evidence, the Tribunal looked to *Visic v. Elia Associates Professional Corporation*⁴, noting (at paragraph 235):

...a conclusion of credibility develops from various interrelated findings, such as whether, on a balance of probabilities, the evidence was sufficiently probable, logically connected to other points, and/or buttressed by independent evidence; as well as findings with respect to the state of the witnesses, such as candour and evasiveness, capacity to perceive and remember, and attitude towards the parties. A finding of lack of credibility or reliability with respect to one aspect of the witness's evidence does not automatically render the entirety of the witness's evidence as incredible or unreliable. As such, a tribunal is entitled to accept or reject some, all or none of a witness's evidence: see *Lomba v. Home Depot Canada*, 2010 HRT0 1434.⁵

Therefore, crucial to any determination of credibility is an assessment of the evidence in its totality and understanding the distinction between veracity and accuracy. Further, the Investigator assesses credibility by properly situating the evidence within its context and undertaking a multi-faceted analysis of same.

² 1995 CanLII 3498 (ON CA).

³ Supra at paragraph 205.

⁴ 2011 HRT0 1230.

⁵ Supra at paragraph 54.

CREDIBILITY OF THE WITNESSES

Credibility assessments for the witnesses are contained in the evidence and/or findings section of this Report.

The Investigator was unable to confirm whether the concerns outlined in the Twitter feed came directly from the Student. However, they are presumed to be true given the following: first, the Director contacted the Student regarding the June 12, 2019 incident via his University email account. The Student did not state that he had not authored the Twitter feed. Second, the essential facts of the June 12, 2019 incident were corroborated by Witnesses ■, ■, ■, and ■.

Nonetheless, the Investigator includes the following information regarding the credibility of the witnesses and the reliability of their evidence. Each witness has access to their colleague's report of the incident, and the University's videos of the incident. Most of the witnesses brought copies of the June 12, 2019 Protection Services Incident Report with them to their interview. The collective University incident report includes each PSO's individual report. During their interviews, many of the witnesses had to be asked what they observed during an interaction as their default approach was to speak as though they witnessed something, when in fact they were told a fact by someone else, or it was information contained in someone else's report.

Given these facts the Investigator finds that the PSOs evidence was consistent with what was in the incident report which they had in front of them. In addition, it appeared that the PSOs had discussed their evidence.

9 LEGAL AND POLICY FRAMEWORK

OTTAWA UNIVERSITY'S POLICIES AND PROCEDURES

The University has in place Policy 67a Prevention of Harassment and Discrimination, and Procedures 2, 15 and 33. These policies and procedures contain content that touches on the subject matter of the issues in this Investigation. The Investigator has been guided by, and applied, the following relevant excerpts from the University's policies and procedures:

Policy No. 67a - Prevention of Harassment and Discrimination

Application

2. Subject to clause 4, this Policy applies to all complaint of harassment and/or discrimination involving University of Ottawa employees, students, contractors, visitors and volunteers.

a) **Student** means an individual registered at the University, whether full time or part time and including special students, at the undergraduate, graduate or postdoctoral level and including medical residents and fellows;

b) **Employee** includes all unionized and non-unionized academic and administrative staff as well as those whose salary is paid through sources other than the University's operating funds, such as grants, research grants and external contracts.

3. See also the University's Violence Prevention Policy, Policy 66.

Discrimination means:

a) a distinction—intentional or unintentional, direct or indirect—because of a person's race, ancestry, ethnic origin, creed, place of origin, colour, citizenship, sex, sexual orientation, gender identity and expression, age, pregnancy, marital status, family status, record of offences, political affiliation, religious belief, disability or means to accommodate the disability and

b) that has the effect of erecting barriers, or creating obligations, disadvantages or situations of unequal treatment that withhold or limit access to privileges, advantages or political, social or economic rights available to other members of society.

Systemic discrimination means a situation that unintentionally singles out particular people and results in unequal treatment. It exists in a situation where a requirement, qualification or factor exists that is not overt discrimination but results in the exclusion of, restriction of or preference for a group of persons who are identified by one of the personal characteristics as listed in paragraph (a) of the above definition of discrimination. Systemic discrimination does not occur when the requirement, qualification or factor is in good faith and legitimate in the circumstances or is permitted by law.

Harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. A single unwelcome incident, if serious enough, can be sufficient to support an instance of harassment. Harassment includes comments or conduct that intimidates, humiliates, undermines or dominates the other person by belittling, embarrassing or demeaning them or involves the use of abusive or threatening language.

Poisoned environment means a comment or conduct that constitutes harassment or discrimination and that creates a negative psychological and emotional environment for work or study.

Workplace harassment means engaging in a course of vexatious comment or conduct against a worker in a workplace, conduct that is known or ought reasonably to be known to be unwelcome. Workplace harassment does not include legitimate performance management of an employee.

Procedure No. 2 – Trespassing

Purpose

The purpose of this procedure is to provide a standard process to address all trespass issues at the University of Ottawa.

Process

Patrol officers must use radio code 10-15 when confronted with a suspected trespasser on campus.

In such cases:

- 1) Patrol officer will advise the Communication Centre of suspected trespasser and his location.
- 2) Dispatcher will advise all available patrol officers to assist.
- 3) Where possible, the patrol officer will get proper identification from suspected trespasser.
- 4) Dispatcher verifies if the individual's name is listed in the CICSY/TARS systems.
- 5) If the individual is on record in the CICSY/TARS systems:
 - a) The code 10-46P (positive) is radioed.
 - b) Code 10-35 means that police services are required.
- 6) If the individual is not on record, the code 10-46N (negative) is radioed.

When a 10-46N (negative) code is transmitted:

- 1) The patrol officer records the individual's name, address, date of birth, occupation, and the reason for his presence on campus.
- 2) If the individual has no valid reason for being on campus, the patrol officer will give him a verbal trespass notice and advise him of the campus boundaries.
- 3) If the individual refuses to leave the campus, the patrol officer will ask the dispatcher to request Ottawa Police backup.

- 4) If the same individual is seen on campus again, the patrol officer will issue a written trespass notice and warn him that next time he will be arrested and transferred forth with to the Ottawa Police.
- 5) If the individual has a legitimate reason to be on campus, the patrol officer will inform him as follows:
 - a) In the case of a salesperson, that written permission from the University is required to circulate on campus. A verbal trespass notice will be given if he doesn't.
 - b) If he/she returns on campus without proper authorization, a charge may be laid by the Ottawa Police.
 - c) He/she must leave the campus immediately.

Note: The patrol officer must complete an occurrence report in TARS for all cases of trespassing and make sure to provide all personnel information concerning the suspect.

Suspicious Individuals

When a patrol officer receives a complaint concerning the presence of someone suspicious on campus, he must:

- 1) Investigate the matter thoroughly.
- 2) Obtain the full name, address and date of birth of the individual.
- 3) Assess the situation and, based on the circumstances, determine if a verbal warning or a written notice of trespassing is warranted. If a written trespass notice is necessary, the patrol officer must:
 - a) Obtain authorization from his Team Coordinator before issuing the notice.
 - b) Fill out the notice of trespass.
 - c) Have the individual sign the notice of trespass. If the person refuses, the patrol officer must note it on the form and initial it.
 - d) Give the person the third copy of the notice of trespass.
 - e) Inform the individual of the campus boundaries and order him to leave the area immediately.
- 4) If the situation does not warrant a written notice of trespass, verbally request that the individual leave the campus. If the person refuses to identify himself or to leave the campus, the Ottawa Police will be called to the scene.
- 5) Fill out an occurrence report whenever a trespass notice is issued.
- 6) Send a copy of the trespass notice and the occurrence report to the Investigation and Prevention Division. The Investigators will forward a copy to the Chief of the Ottawa Police. The person's name and information is entered in TARS.

Procedure No. 15 – Request For Identification

Purpose

The purpose of this procedure is to outline the process to be followed by Protection Services staff to identify individuals on campus.

Process

The University of Ottawa issues an official identification card to all staff members and students.

On the back of the identification card, it is clearly stated that "upon request this card must be shown to authorized University officers."

Protection Services staff will ask people to identify themselves in the following situations:

- 1) When there is a reason to believe that someone has committed an offence to the Criminal Code of Canada, a provincial statute or University Policy No. 58.
- 2) When an unidentified person is found on University property.
- 3) When an unidentified person requests entry into a locked building.
- 4) When a University employee or student, who is known or has identified himself, complains that someone on campus is not whom he claims to be.

When a problem arises with a person not identified as a University employee or student, the Ottawa Police may be called for assistance and a charge may be laid (please refer to Procedure No. 2).

When a problem occurs with a person identified as a University employee or student, an occurrence report is submitted to the Dean of the Faculty or the Director of the Service concerned. Human Resources Services may be informed of the situation as required. Depending on the gravity of the case, the Ottawa Police may be called for assistance.

In the event an individual refuses to show identification, the process outlined in Procedure No. 2 must be initiated.

Procedure No. 33 - Security

Purpose

1. To enhance the security of persons and their property, to ensure their rights are protected and to safeguard University property.

Responsibility

5. Protection Services will:

- a) analyze and determine security needs of University property and develop procedures and methods to meet these requirements;
- b) supplement the normal protective measures taken by faculties, schools and services by the provision of twenty-four hour per day patrolling, with particular emphasis during the periods that are not considered normal working hours;
- c) investigate occurrences related to the protection of persons and their property as well as University property.

Identification

8. Members of the Protection Services are authorized to request proof of identity from persons on campus.

Access to University Grounds and Buildings

14. The University of Ottawa grounds and buildings are private property and the University reserves the right to bar any person from that property.

University - Use of Force Training Materials

Why can officers use force?

- To establish and maintain lawful control
 - To stop an attack or other injury
 - To overcome resistance to lawful authority.

Use of Force Must

- Be reasonable
- Balance society's interest against the individual's rights
- Depend on the subject's actions
- Be timely
 - On time
 - Not too early or late.

The Use of Force Model

- DOES NOT ITSELF CREATE RULES
- It mirrors the degree of practical necessity and reasonableness based on:
 - Criticality of need to control situations
 - Each individual use of force, in turn based on:
 - Outcome criticality of individual subject actions
 - Probable physical outcome to the subject, and

- Officer's alternatives

What Is A Resister

- Is doing or about to do something illegal
- Officer is clearly identified
- Officer directs the subject
 - They are in violation of
 - What they are legally required to do
 - What will happen if they don't comply
- Officer gives enough time to cooperate
- Subject does not cooperate
- Officer has justification for acting now.

LEGISLATION

In addition to the University's policies and procedures described above, the following legislation and case law has been applied in this Investigation.

Trespass to Property Act ("TPA")

Trespass an offence

2. (1) Every person who is not acting under a right or authority conferred by law and who,
 - (a) without the express permission of the occupier, the proof of which rests on the defendant,
 - (i) enters on premises when entry is prohibited under this Act, or
 - (ii) engages in an activity on premises when the activity is prohibited under this Act; or
 - (b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,

is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Colour of right as a defence

(2) It is a defence to a charge under subsection (1) in respect of premises that is land that the person charged reasonably believed that he or she had title to or an interest in the land that entitled him or her to do the act complained of. R.S.O. 1990, c. T.21, s. 2 (2).

Arrest without warrant on premises

9. (1) A police officer, or the occupier of premises, or a person authorized by the occupier may arrest without warrant any person he or she believes on reasonable and probable grounds to be on the premises in contravention of section 2. R.S.O. 1990, c. T.21, s. 9 (1).

Delivery to police officer

- (2) Where the person who makes an arrest under subsection (1) is not a police officer, he or she shall promptly call for the assistance of a police officer and give the person arrested into the custody of the police officer. R.S.O. 1990, c. T.21, s. 9 (2).

Deemed arrest

- (3) A police officer to whom the custody of a person is given under subsection (2) shall be deemed to have arrested the person for the purposes of the provisions of the *Provincial Offences Act* applying to his or her release or continued detention and bail.

Private Security and Investigative Services Act (“PSISA”), and PSISA Regulations 363/07 and 26/10

Mandatory Requirements

10 (1) No person is eligible to hold a licence under this Act unless,

- (a) the person possesses a clean criminal record; and
- (b) in the case of an individual,
 - (i) the person is 18 years old or older,
 - (ii) the person is entitled to work in Canada, and
 - (iii) the person has successfully completed all prescribed training and testing.

PSISA Regulation 363/07

Breach of code of conduct

1. A licensee is in breach of the code of conduct if the licensee contravenes or fails to comply with this Regulation.

Individual licensees

2. (1) Every individual licensee, while working as a private investigator or security guard, shall,

- (a) act with honesty and integrity;
- (b) respect and use all property and equipment in accordance with the conditions of his or her licence;
- (c) comply with all federal, provincial and municipal laws;
- (d) treat all persons equally, without discrimination based on a person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability;
- (e) refrain from using profane, abusive or insulting language or actions or actions that are otherwise uncivil to any member of the public;
- (f) refrain from exercising unnecessary force;
- (g) refrain from behaviour that is either prohibited or not authorized by law;

(2) No individual licensee shall,

- (b) conspire with another person or aid or abet another licensee in a breach of this code of conduct;
- (c) wilfully or negligently make a false statement or complaint against another licensee;
or
- (d) misrepresent to any person the type, class or conditions of his or her licence.

PSISA Regulation 26/10

Training and testing for applicants

2. (1) A licence to act as a security guard shall not be issued to an applicant unless the applicant,

- (a) has successfully completed a training program that,
 - (i) complies with the Training Syllabus for Security Guards published by the Ministry and dated January 20, 2015, and
 - (ii) is provided by an entity described in subsection (3);

(a.1) before taking the licensing test referred to in clause (b), has provided the person or entity administering the test with a valid St. John Ambulance Emergency First Aid Certificate or its equivalent; and

(b) has successfully completed the licensing test for security guards set by the Ministry

Training and testing for licence renewals and new applications

4. A licensee or an individual who was issued a licence to act as a security guard or private investigator may renew the licence or be issued a new licence without having to meet the requirements of subsection 2 (1) or (2), as appropriate.

PSISA Regulation 26/10 – Training Syllabus for Security Guards

The government of Ontario mandates the following one-time training for all security guards:

Training content and program length

The minimum length of in-class time for the basic security guard training program is **no less than 40 hours** with Emergency Level First Aid Certification included or **no less than 33.5 hours** with Emergency Level First Aid Certification not included. The following table suggests the duration for each training section and includes both in-class and outside class hours. Outside class hours refer to pre-reading only; all other training methods must take place in-class. These hours are estimates and may need to be adjusted based on student learning abilities/trainer preference. The trainer must determine the optimal number of hours for each section of his/her program design, but the total must be no less than 40 or 33.5 hours with Emergency Level First Aid Certification not included.

Training content and suggested duration

Training content	Suggested Duration	
	Inside class hours	Outside class hours
1. Introduction to the Security Industry	2	2
2. The <i>Private Security and Investigative Services Act</i>	2	3
3. Basic Security Procedures	3	5
4. Report Writing	2	2
5. Health and Safety	1	1

6. Emergency Response Preparation	4	4
7. Canadian Legal System	3	6
8. Legal Authorities	7.5	10
9. Effective Communications	4	3
10. Sensitivity Training	3	2
11. Use of Force Theory	2	2
12. Emergency Level First Aid Certification	6.5	-
Total	40	40

The above materials are found at:

http://www.mcscs.jus.gov.on.ca/english/PSIS/Training/SecurityGuardSyllabus/PSIS_SG_syllabus.html

The Ontario Human Rights Code (the “Code”)

The author of the Student’s Twitter feed indicates that the Student was subject to discrimination and/or harassment on the basis of race as a student. The Twitter feed indicates that the Student was going to work. The implication of the Twitter feed is that the Student was also subject to discrimination and/or harassment as an employee. The *Code* provides as follows:

Services

1 Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

Employment

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

Harassment in employment

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

Acts of officers, etc.

46.3 (1) For the purposes of this Act, except subsection 2 (2), subsection 5 (2), section 7 and subsection 46.2 (1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization.

As outlined above, section 1 Services, and section 5 Employment, both include "because of race" in their definitions. It is useful to consider how that phrase has been interpreted in human rights case law and policy.

I. The Ontario Human Rights Commission Policy and guidelines on racism and racial discrimination outlines ("OHRC Policy) a number of factors that are evidence of race-based discrimination. At page 21 of the policy, subtle racism is defined. This form of discrimination is described as, "not a practice which one could expect to see overtly, and that it is often subversive and subtle. Manifestations of subtle racism can include the following:

- Treating normal differences of opinion as confrontational or insubordinate when
- Characterising normal communication from racialized persons as rude or aggressive

II. Further, the OHRC Policy also notes the following:

...it is important to note that persons who reasonably believe they are being racially profiled can be expected to find the experience upsetting and might well react in an angry and verbally aggressive manner. A citizen who honestly and reasonably believes that he or she is being treated unjustly is entitled to protest vigorously, as long as there is no resort to threatening gestures to accompany the words. A Tribunal has stated that a person's use of abusive language in these

circumstances requires reasonable tolerance and tact and cannot form the basis for further differential treatment⁶.

The Occupational Health and Safety Act (“OHSa”)

Relevant OHSa definitions:

Worker

s. 1(1)(c)

“worker” means any of the following, but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program:

1. A person who performs work or supplies services for monetary compensation.
2. A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
3. A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university, private career college or other post-secondary institution.
4. REPEALED: 2017, c. 22, Sched. 1, s. 71 (2).
5. Such other persons as may be prescribed who perform work or supply services to an employer for no monetary compensation; (“travailleur”)

⁶ See *Johnson v. Halifax (Regional Municipality) Police Service (2003)*, 48 C.H.R.R. D/307 (N.S. Bd. Inq.) at para. 41 and 60. Also, *Hum v. Royal Canadian Mounted Police (1986)*, 8 C.H.R.R. D/3748 (C.H.R.T.) at para. 29696 and 29697

Workplace Violence

1(a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,

(b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,

(c) a statement or behaviour that is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

The Ontario Ministry of Labour (“MOL”) has published a guide on understanding workplace violence and outlines that workplace violence can include the following:

- Verbally threatening to attack a worker;
- Leaving threatening notes at or sending threatening emails to a workplace;
- Shaking a fist in a worker’s face;
- Wielding a weapon at work;
- Hitting or trying to hit a worker;
- Throwing an object at a worker; and
- Trying to run down a worker using a vehicle or equipment such as a forklift.⁷

The MOL notes that the harassing or violent person may be someone who comes into contact with the employee due to the nature of his or her work. This may include, but is not limited to, a client, customer, volunteer, student, patient, etc. The harassing or violent person may also be part of the workforce, including a co-worker, manager, supervisor or employer.

As outlined in *Rheem Canada Ltd v. USW*, the statutory definition of workplace violence is broad, and is meant to increase awareness of the behaviours that will not be tolerated at work.⁸

⁷ Ministry of Labour, Health and Safety Guidelines, “Workplace Violence and Harassment: Understanding the Law”, September 2016, online: <<https://www.ontario.ca/page/understand-law-workplace-violence-and-harassment>>

⁸ *Rheem Canada Ltd v USW*, 2012 CarswellOnt 9107, [2012] OLAA 346, at para 46.

CASE LAW

Racial Profiling Case Law

One of the questions to be answered in this Investigation is whether or not the Student's race was a factor in the decision to engage with, arrest and detain him. Much of the racial profiling case law arises in the policing context. While this Investigation does not pertain to actions taken by a police service, the principles enunciated in policing cases are particularly relevant. Security guards are not peace officers; however, they do receive the same basic training as police officers, are permitted to apply handcuffs to and arrest individuals, and they wear uniforms similar to those of a police officer.

As outlined in *Peel Law Association v. Pieters*, 2013 ONCA 396 at paragraph 59, the Ontario Court of Appeal states that in cases concerning racial discrimination, the relevant ground of discrimination (race for example) must be a factor in the adverse treatment experienced by the complainant.

In *R. v. Brown*, 2003 CanLII 52142 (ON CA) at paragraph 7, the Ontario Court of Appeal describes racial profiling as follows:

Racial profiling is criminal profiling based on race. Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group. In this context, race is illegitimately used as a proxy for the criminality or general criminal propensity of an entire racial group.

In *Phipps v. Toronto Police Services Board*, 2009 HRTO 877 ("*Phipps*"), the Human Rights Tribunal stated key principles from other decisions which should be considered in cases where racial discrimination is asserted in the policing context. Those concepts are summarized in *Jean v. Ottawa Police Services Board*, 2015 HRTO 1488 (CanLII) at paragraph 79:

- the grounds alleged by the applicant do not need to be the sole or the major factor in the actions taken by the respondents; it is sufficient for him to prove that one or more of the prohibited grounds was a factor;
- There is no need to prove intention - the focus is on the effect of the respondent's actions on the applicant;
- The evidence supporting the explanation must be credible on all the evidence;
- Racial stereotyping will usually be the result of subtle unconscious beliefs, biases and prejudices;
- When assessing the respondent's explanation, the ultimate question is whether an inference of discrimination is more probable from the evidence than the actual explanations offered by the respondent;

- Discrimination will more often be proven by circumstantial evidence inference rather than direct evidence;

Case law related to Use of Force and/or Appropriate Arrests

Cases pertaining to the appropriate use of force to be applied in an arrest typically arise in the criminal law context. To that end, these principles are often discussed in the context of Charter challenges, and/or allegations of discrimination on the basis of race. As outlined in the Use of Force training materials, the use of force by either security guards or police officers is not always appropriate or necessary in the circumstances. In *R. v. Hood*, 2008 BCPC 217 (CanLII) ("*Hood*"), at paragraphs 60 to 71, the British Columbia Provincial Court outlines the importance of police officers being careful and proportionate when making arrests, and that they should have objectively reasonable grounds to exercise this type of force. The court pointed out at paragraphs 81-82 that in those circumstances, there were other options that were available to the police officer which he did not canvas before making the arrest. While this principle is drawn from a criminal case which has a different, and higher standard of proof to establish a violation of the law, it should be noted that the principle is still relevant. Namely, if the courts state that police officers need to exercise care when they are involved in investigating more serious criminal offences, then security guards should equally exercise care when investigating minor offences and/or infractions.

Further, as outlined by the Tribunal in *Abbott v. Toronto Police Services Board*, 2009 HRTO 1909 ("*Abbott*") at paragraphs 42 and 43, the police constantly have choices to make in the exercise of their power. As such, in a racial profiling case, the question is, did race play a role in the failure to use a lower level of force? Further, as observed by the Nova Scotia Board of inquiry in *Johnson v. Halifax Regional Police Service*, (2003) 48 C.H.R.R. D/307 at paragraph 51: "In order to consider if differential treatment occurred, the board must necessarily hypothesize about how events would have unfolded if the driver... of the vehicle had been white rather than black".

The Divisional Court of Ontario has also recently considered the issue of a police officer's use of force towards a Black person. In *Elmardy v. Toronto Police Services Board*, 2017 ONSC 2074 (CanLII) ("*Elmardy*"), the court applied the racial profiling test from *Brown*. The court concluded that the police stop was racially motivated. Further, the court found that the police officer used excessive force in responding to Mr. Elmardy because they perceived him to be a dangerous because of his race.

10 SUMMARY OF EVIDENCE AND FINDINGS

The Investigator met individually with each of the five PSOs referred to in the information from the Student's Twitter feed. She sought to re-interview Witness , and Witness . Witness initially agreed to meet with the Investigator a second time, then he called in sick for the scheduled interview. Witness agreed to reschedule the interview, then declined a second meeting. The Investigator emailed Witness two questions by email; however, he did not respond to her email. Witness also declined a request for a second interview. The Investigator did not meet with the Student. The Investigator contacted the Student several times to request that he participate in the Investigation; however, he did not respond to those queries. As such, all of the Student's information is drawn from a series of tweets or a "Twitter thread" that he posted on Twitter on June 13, 2019.

Evidence Regarding the PSOs' training – Witness

At the outset to the Investigation meeting, Witness was asked his age and how he identifies racially.

Nonetheless, Witness visually appears to be Caucasian or White. During the remainder of the interview Witness was generally co-operative and forthright in giving his evidence.

not able to do ongoing training as training has given way to other work commitments, including the need to ensure new staff are up to date.

He notes that with all the budget cuts over the past few years, he has been really focused on the mandatory portions of the training such as first aid, CPR, and use of force training. optional training when a bigger budget. Namely, training that was not mandatory, but useful for a person's "tool belt". He states that the more tools PSOs have, the better able they are to respond to issues. For example, provide the PSOs with mental health training via the OPS. In addition, PSOs had access to a diversity in profiling training through a criminology professor on campus, as well as powers of arrest, notebook taking and court preparation, and tactical training/verbal judo. Tactical training /verbal judo is training that

enables PSOs to identify the types of individuals they encounter in an interaction, namely if the individual before them nice, difficult, sly, a chameleon pretending to be nice, but who could do them harm in the long run. Tactical training is concerned with assessing whether someone may be violent, aggressive, or cooperative. Verbal Judo is deploying communication techniques to deescalate a situation. The diversity training was a day long session and was last delivered in 2009. All of the other optional training ended in or about 2009 or 2010. Since that time, [REDACTED] attempted to squeeze in this content into existing mandatory training sessions.

Witness [REDACTED] explained the methods PSOs use to transmit information to individuals that the PSOs encounter. He explained that a guard may need to modify their language, adapt the terms that they use. He noted that it is particularly important that persons are presented with options to choose from in the interaction with PSOs. Witness [REDACTED] states that this involves the art of negotiating.

Witness [REDACTED] explained what constitutes a valid reason for a person to be on campus. He states that the following people would have a valid reason to be on campus: a student, staff member, a visitor, someone who wants to look at the buildings, contractors, clients for restaurants, cafeteria, bookstore, library, and the sports facility. At times there are VIP events, and room bookings, he states that anybody that has business here or not has a valid reason to be on campus.

Witness [REDACTED] was asked how the application of discretion is learnt by and taught to PSOs. He states that it comes back to being ethical. Witness [REDACTED] notes that they have the guidelines via the *Private Investigator Act*, the University Discrimination and Harassment policy, and University workplace violence mandatory training. In his view, the bottom line is that you treat people the way you want to be treated. However, he stated that there is nothing that is directly in place in training to address that issue.

Despite Witness [REDACTED] 's initial response to a question, he provided detailed and forthright evidence on all other points. I find him to be a credible and reliable witness.

Concern 1: The information from the Student's Twitter feed indicates that Witness [REDACTED] and Witness [REDACTED] improperly stopped and "carded" him. The information from the Student's Twitter feed indicates that this was motivated by his race.

a. Information from the Student's Twitter Feed

The information from the Student's Twitter feed indicates that on June 12, 2019 the Student was "stopped and carded" by both Witness and Witness on the University campus. Because he did not participate in this Investigation, the Student's information is based on his tweets entitled "Full Story". The information from the Student's Twitter feed indicates that on the day of the incident two campus PSOs (Witness and Witness) stopped him because he was riding his skateboard. They requested that he not ride his skateboard while on campus. The information from the Student's Twitter feed indicates states that he was unaware of any rule barring the riding of skateboards on campus, however he immediately complied and proceeded to walk to his office. However, Witness and Witness refused to allow him to proceed to work. They asked him to provide some form of identification as they needed to confirm that he was a student of the University. The information from the Student's Twitter feed indicates explained that he had forgotten his wallet and did not have his student card on him; however, he was willing to escort them to his office on campus to prove his identity and

. Witness and Witness informed him that he would have to produce his student card. The information from the Student's Twitter feed asserts that they got in his face, (presumably the information from the Student's Twitter feed meant that the PSOs behaved in a confrontational or annoyingly direct or persistent manner towards him)⁹ raised their voices and stated that he had to leave the campus.

b. Evidence of Witness

On the day of the incident, Witness was patrolling the University campus with his partner Witness . Witness was driving a vehicle. They drove through parking lot K and patrolled the area in front of 90 University (a private residence owned by the University). While exiting lot K Witness noted a person skateboarding between the buildings Simard and Hamelin Hall and performing what he understood to be "tricks" on an elevated cement platform. Witness located and marked the area on a campus map, it is attached as Appendix B. He did not know the name of the person at the time; however, this person was The Student. Witness parked his vehicle. Witness remained in the vehicle. Witness went over to the Student to speak with him. Witness informed the Student that skateboard tricks were not allowed on

⁹ See <https://www.collinsdictionary.com/dictionary/english/be-or-get-in-someones-face>

campus. The Student acknowledged his comment and agreed to stop skateboarding. For his incident report, Witness ■ asked the Student if he was a student. The Student answered in the affirmative. Witness ■ asked for his name and student identification number. The Student stated that he did not need to provide that information. Witness ■ informed the Student that he did in fact have to provide it per University policy. The Student responded he did not have his student card on him. Witness ■ asked for his verbal student number or some form of identification. He asked for his name verbatim. The Student refused. At this point the Student started recording the conversation. Witness ■ informed the Student that if he did not produce any identification, then he must leave the University Campus. The Student refused stating he was a student and had paid a great deal of money to be there. The Student then proceeded to walk away stating he had to go to work on campus. He did not identify where he worked or what he did on campus.

Witness ■ states that people perform skateboarding tricks frequently, especially during the summer when it happens multiple times a week, sometimes daily. He says that he asks people doing tricks to stop. Further, he always asks people doing skateboarding tricks to provide identification. If those individuals do not provide ID, he asks them to leave campus.

a. Evidence of Witness ■

Witness ■ states that he and Witness ■ viewed the Student performing skateboarding “tricks”. Witness ■ exited the vehicle to speak with the Student; Witness ■ remained in the vehicle. Witness ■ reports that he could not hear the interaction between the parties and his view was partial obstructed by a cement structure. Witness ■ confirmed that the incident occurred in the same location noted by Witness ■. He did, however, see Witness ■ gesturing to him to approach where he was located. Witness ■ exited the vehicle and approached the Student and Witness ■. As he approached, Witness ■ was asking the Student for some form of identification. Witness ■ called and asked the dispatcher to put a camera on them. Witness ■ confirmed that the Student refused to identify himself. He told the Student that he had to show identification or leave the property as per the *Trespass To Property Act*. The Student refused and walked away down a pedestrian pathway.

Witness ■ stated that in his experience he sees someone doing a skateboarding trick once every two weeks. However, this activity is becoming less popular than it was in the past. Other than the Student, he says that he has never arrested someone for doing skateboard tricks, though he notes he might have back in the 2000’s. Witness ■ states that it depends on the situation whether he asks someone who is

performing skateboarding tricks to provide identification. To that end, he says that, in many instances when he approaches a person who is on a skateboard, he can tell whether they are a student. In his experience he says it is not very often students who perform skateboarding tricks.

b. Evidence of Witness █

Witness █ was not present during the June 12, 2019 incident. However, her role involves checking PSO incident reports for completeness after an incident. Witness █ was notified about the incident the day after it occurred. She added photographs, and videos to the report and added identifying information about the Student to the report. Witness █ retains copies of videos and photographs for incident reports. She reviewed a copy of a video that purports to show the Student performing skateboarding tricks. She confirmed that the video was created the day before.

c. Evidence of Witness █

Witness █ stated that there are a lot of suspicious people on campus. He explained that suspicious people could be individuals trying to get in a building with no access card or trying to force open a door. Suspicious people are those engaging in prohibited activities, and Witness █ stated that doing skateboarding tricks is a prohibited activity. As such the inference of his statement was that doing skateboarding tricks is a suspicious activity. Witness █ stated that riding a skateboard on campus is fine.

d. Evidence of Witness █

In the University's incident report for the June 12, 2019 incident, the Student is listed as a suspicious individual. Witness █ states that the PSO who either observes an incident, or who receives a call for an incident denotes whether someone is suspicious. The dispatcher for the call will save that denotation in the incident report. Witness █ also states minor calls are ranked as a level 1 and calls for suspicious persons a level 2.

e. Other evidence

There is a 42 second video from one of the University's cameras. It depicts a person that appears to be the Student riding a skateboard. The individual is wearing the same clothing as the Student is later seen in on another video, and on his own video. At the 5 second mark, the Student mounts a slightly elevated structure beside a set of stairs with his skateboard, he stands on that structure for a few seconds and then completely descends from it at the 11 second mark. Thereafter he skates off screen. The trick does not

involve any complicated moves, nor does it involve the Student mounting a structure of a great height. To that end, the Student was able to easily jump from the structure without exerting any apparent effort. There is no visible damage to the structure, nor does the Student impede anyone's pathway. Witness █ confirmed that this video was taken on June 12, 2019.

Finding

Witness █ participated in the Investigation interview, however he appeared unwilling to do so at the outset. He asked the Investigator various questions about the process, and she provided him with responses to those questions. In advance of the meeting, Witness █ was advised that he could speak to the Investigator in advance of the meeting to discuss these process questions. During the interview, Witness █ responded to questions, however at times he provided evasive responses to questions. Witness █ was generally cooperative as a witness. Both Witness █'s and Witness █'s evidence was generally credible. Namely, it reflects what they seem to believe was true, despite the fact that some of that evidence may not make sense.

The evidence demonstrates that the Student performed a skateboarding trick. That trick on the video lasted for less than 6 seconds including the performance of the trick, and a few seconds of the Student standing on top of the structure while holding his skateboard. The PSOs assert that this incident is the reason that they interacted with the Student. It is more likely than not that, in part, the Student's skateboarding trick was part of the reason why Witness █ and Witness █ chose to stop the Student. However, applying a *Code* analysis, the Investigator must consider whether the Student's race could have been one of the reasons why he was not only stopped, but asked to produce identification. As noted in *Phipps*, in making a finding of discrimination on the basis of race, the Investigator may find that race is a factor, though not the only factor in a complainant's differential treatment.

The incident that gave rise to the interaction with the PSOs is objectively minor in nature. While it may be the case that people are not permitted to perform skateboarding tricks on campus, the question is, did this incident necessitate the type of response that the Student received from Witness █ and Witness █. The Investigator finds that their response was neither proportional nor reasonable in the circumstances. At the outset, the Investigator prefers the evidence of Witness █ to Witness █ regarding the frequency of skateboarding tricks on campus. Witness █ has been employed at the University far longer than Witness █, and as such has more experience in these interactions. The Investigator finds that persons performing skateboarding tricks occurs infrequently. There is no evidence to suggest that there was anything

particularly problematic about this skateboarding trick as compared to others. The video depicts the Student performing a trick, then leaving. While performing the trick, the Student does not impede anyone's path, nor does he endanger himself, nor does he damage University property. Consequently, it is unclear why the PSOs did not simply direct the Student to stop his activity, and then when he did so, terminate the interaction. There is no dispute that the Student stopped the activity when directed to do so. Therefore, it does not make sense that the PSOs still required him to produce ID thereafter.

Similar to the facts in *Elmardy*, the evidence suggests that the Student's race may have been a factor in the stop. Witness ■ stated that it is usually people who are not students that perform skateboarding tricks. This leads to the inference that Witness ■ assumed that the Student was not a student. The Student also indicated that he was going to work. Neither Witness ■ nor ■ appears to have considered that the Student may be a University employee. Further, the Student was deemed to be a suspicious person in the incident report. There is no evidence to suggest that there was anything suspicious about the Student on the date in question which would render him being labelled as such. Rather, at the time he was stopped, he was engaged in minor prohibited behavior. Such behavior does not render him suspicious. It is conceivable that part of the reason that the PSO deemed the Student to be suspicious is because of their training, and the wording of Procedure 2. The nomenclature "suspicious" has an impact on how people are perceived. Deeming someone to be suspicious is a powerful statement that has significant implications. The PSOs chose to demand ID from, then subsequently arrest someone who was engaged in relatively innocuous behavior.

The only thing that distinguishes the Student from other people depicted on the videos of the incident taken on June 12, 2019 is that he is Black. The PSOs' decision to request ID suggests that they were of the view that the Student was not entitled to be on campus; namely he was not a student or an employee. The Investigator had very limited information about the nature of employment relationship between the Student and the University. To that end, it is not clear whether the Student is an employee under the *Employment Standards Act* or other employment legislation. Nonetheless, as noted by the Supreme Court of Canada, Canadian human rights legislation should be given a large and liberal interpretation¹⁰. The

¹⁰ See: *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, 1985 CanLII 18 (S.C.C.); *Action travail des femmes v. Canadian National Railway Company*, [1987] 1 S.C.R. 1114, 1987 CanLII 109 (S.C.C.), and *British Columbia Human Rights Tribunal v. Schrenk*, [2017] 2 SCR 795, 2017 SCC 62 (CanLII)

*Fragility*¹², White people are a racial group. Further, as most White people are not trained to think critically about race, some White people are prone to debate the existence of racism, despite their lack of understanding of the complexity of issues pertaining to race. Witness ■ in effect challenged the significance of race as a factor in an Investigation where there is information by an individual about race-based concerns. Consequently, the Investigator finds that it is more likely than not that the PSOs are not receiving any nuanced, or up to date training on issues pertaining to race, including racial discrimination.

Further, the Investigator finds that ■ has not been provided with sufficient tools to facilitate training the PSOs on diversity issues including race. ■ does not have the budget to send PSOs to training sessions conducted by experts in diversity issues.

Concern 2: Information from the Student's Twitter feed indicates that Witness ■ and Witness ■ proceeded to follow and threaten him while he attempted to leave campus and deescalate the situation. Information from the Student's Twitter feed indicates that this is because he is Black.

a. Information from the Student's Twitter Feed

Information from the Student's Twitter feed indicates he complied with Witness ■ and Witness ■'s request when he started to leave the area of campus where he was located. Information from the Student's Twitter feed indicates that he began to leave with his skateboard in his hand in an attempt to deescalate the situation, and because he was exhausted and needed to get to work. Information from the Student's Twitter feed indicates that, despite the fact he was leaving, Witness ■ and Witness ■ continued to follow him and continued to threaten him with arrest. They said he was "trespassing" but could not define in what way he was trespassing as he was going to his office. Information from the Student's Twitter feed indicates he asked them to "please stop following" him.

b. Evidence of Witness ■

Witness ■ states that the Student stated he was heading to work and did not exit the campus. It was Witness ■'s position that the Student was an unidentified individual engaging in prohibited activity on the University campus and must leave. Witness ■ and the Student talked back and forth. Witness ■ informed the Student that as he was engaged in prohibited activity, he must leave; if he remained, he would be

¹² *International Journal of Critical Pedagogy*, Vol 3 (3) (2011) pp 54-70

considered a trespasser and subject to arrest. The Student responded that as a student he had a right to be on campus and did not have to identify himself to him. The Student also stated that Witness ■ following him was harassment. Witness ■ informed him this was not harassment, rather he wanted to make sure he belonged there. He states that despite asking the Student multiple times for ID and providing him one last opportunity to leave campus Witness ■ and Witness ■ arrested the Student.

c. Evidence of Witness ■

Witness ■ states that after the Student walked away from him and Witness ■, Witness ■ asked him what he thought. Meaning what should he do next. Witness ■ said that it was his call. They then chose to follow the Student. Witness ■ describes what transpired next as happening very quickly within a short distance. He states that Witness ■ continued to ask the Student for identification and threatened to arrest him for noncompliance. The Student refused stating he did not have to identify himself to them. Witness ■ gave The Student one last opportunity to comply with his request, then arrested him for trespassing.

d. Other Evidence

The Student's Twitter feed included a 45 second video of the interaction with the PSOs; however, it only depicts his feet while he is walking, and the lower part of the torso of one of the PSOs. In the video, neither the Student nor the PSO who he is speaking with are yelling. Each person's volume of speech is equivalent. The Student repeatedly says, "stop following me", and also says, "I'm not breaking any of the rules on campus". A PSO says, "I'm going to ask you one last time to leave campus". The Student says, "for what reason", and "stop following me". A PSO says, "do you have ID on you". The Student responds with, "stop following me, I don't have to have ID on me. I said I don't have ID on me, I told you the first time I don't have ID on me". The PSO says, "this is the last time, if I don't see you walking off campus, I'm going to arrest you right now." The Student says, "for what? The PSO responds, "for trespass to property". The Student says, "I'm trespassing how I'm a student that pays a lot of money to go here. You stop following me. You are actually making me uncomfortable right now." A PSO says, "you are under arrest". The Student says, "for what"? A PSO says, "trespass to property". At what appears to be the point of arrest, the Student says, "what are you doing? Are you kidding me right now, what am I doing wrong?"

The University recorded video of part of the interaction between Witness ■, Witness ■ and the Student. The video does not have sound. It is 2 minutes and 1 second in length and depicts the following:

- Witness ■, Witness ■ and the Student walking along a walkway

- Within the first 16 seconds of the video a White male can be seen skateboarding on the walkway¹³, and at the 18-19 second mark he passes the 3 individuals;
- At all times, the Student is walking ahead of, and away from the PSOs;
- Throughout the interaction, there a number of individuals walking by in either direction;
- From the commencement of the video to the 45 second mark approximately 10 people walk by;
- At the 44 second mark, Witness ■s, then 1 second later Witness ■ grab each of the Student's arms;
- Witness ■ and Witness ■ place handcuffs on the Student, this action takes place from the 44 second mark to the 1 minute and 40 second mark;
- Neither during the arrest nor at any point during the video, is the Student seen physically resisting arrest, demonstrating any displays of force or threatening body language towards the PSOs;
- At the 1 minute and 40 second mark, Witness ■ can be seen talking to someone off camera;
- At the 1 minute 50 second mark, a person can be seen on camera videotaping the interaction with their mobile phone;
- At the 2-minute mark, Witness ■ can be seen walking into the frame.

Finding

The Investigator finds that the Student did attempt to deescalate the skateboarding incident by attempting to walk away. There is no dispute that the Student stopped doing a skateboarding trick and walked away. In other words, he was given a direction and he complied with that direction. However, the PSOs chose to continue to engage with the Student despite him complying with their initial request. The fact that Witness ■ asked Witness ■ what he should do next suggests that PSOs are able to exercise discretion when interacting with persons on campus. This means that they have options open to them regarding how they respond to a situation. Yet Witness ■ and Witness ■ chose to continue to engage with

¹³ Witnesses ■, ■ and ■ all confirmed the location of the walkway is Between Lot K and the Morrisette building

the Student when there was no demonstrable reason to do so. There is no evidence to suggest that the Student was behaving in a threatening, violent or aggressive manner. At best he was asserting a right to be left alone, challenging the authority of the PSOs to request ID, and advising them that he did not have ID. As stated in the OHRC policy, it is not inappropriate for a person who feels that they have been treated unfairly, to object that purported unfair treatment. It is not an offence to speak back to a person in authority whether they are a police officer, security guard, or PSO.

There is also no evidence to suggest that the Student presented a real or significant safety threat to himself or others. Further, at no point during the Student's video does either PSO explain the Student's skateboarding tricks as a thing that he did wrong that led to their interaction. The Student notes that he is feeling uncomfortable, his tone of voice gives rise to an inference that he felt that way. As noted in *Abbott and Hood* persons who are charged with ensuring community safety have a set of tools available to them when performing their duties. One of those tools is deescalating a situation. Instead of deescalating this situation, the PSOs chose to escalate it. Given the Student's apparent discomfort, the PSOs could have engaged with him in another way. This gives rise to the question why did they not do so?

As outlined in *Abbott*, the Investigator must necessarily consider if the situation would be different if the Student was White. The Investigator finds Witness ■'s evidence that people do not often frequently perform skateboarding tricks on campus to be credible given his years of experience. What distinguishes this incident is that the Student is Black. A White male¹⁴ skateboards past the PSOs and the Student at the beginning of the University video, yet neither PSO engages with that male. Rather they continue to follow the Student as he walks away. In other words, the PSOs escalate the situation, instead of merely letting the Student walk away. The Investigator finds that the evidence points to a reasonable inference that if the Student were White, the PSOs would have been less likely to conclude that the Student was the type of person that needed to be identified and then arrested. Similar to the facts in *Elmardy*, the choice to arrest the Student for a minor incident, and his refusal to provide ID is a significant overreaction given the situation. As such, the Student was subject to discrimination under the *Code*.

Concern 3: Information from the Student's Twitter feed indicates that he was grabbed by the arms and waist by the PSOs and that they hit his phone out of his hand. The information from the Student's

¹⁴ This is the same person who is seen in the University video, and appears to be the person that is referenced in the Twitter feed

Twitter feed indicates that when he was handcuffed, the handcuffs were applied too tightly. The information from the Student's Twitter feed indicates that he received excessive treatment because he is Black.

a. Evidence of The Student

Information from the Student's Twitter feed indicates that Witness ■ and Witness ■ grabbed him by the arms and waist and struck his phone from his hand. They proceeded to handcuff and arrest him. Information from the Student's Twitter feed indicates that the handcuffs were placed on too tight and cut off the circulation to the Student's hands. When he informed Witness ■ and Witness ■ of this, they responded he will "be fine". Information from the Student's Twitter feed indicates that the Student asked several times what authorized them to harass and detain him as he was no longer skateboarding and had not acted in a threatening way. Information from the Student's Twitter feed indicates that the Student ties this behavior to the fact that he is Black.

b. Evidence of Witness ■

Witness ■ described that he and Witness ■ physically removed the Student's personal effects, placed them on the concrete, and effected arrest. Witness ■ placed his hand on the left side and Witness ■ placed his hand on the right side of the Student's body. They leant the Student over a flowerpot. Witness ■ pulled his arms behind his back and applied the handcuffs. He said the handcuffs were secure but not too tight. He believes Witness ■ checked the spacing of the handcuffs with his fingers. Witness ■ states they did not strike the Student's phone from his hand; they removed the phone from his hand when they applied the handcuffs.

c. Evidence of Witness ■

Witness ■ states that the Student had a skateboard in one hand and a phone in the other. Witness ■ grabbed his arm where he held the cellphone and Witness ■ grabbed the arm which held the skateboard. They pulled his arms behind his back and applied handcuffs. He removed the phone from his hand and placed it on a cement planter.

d. Evidence of Witness ■

Witness ■ states that the Student asked the PSOs to loosen the handcuffs and stated that he was losing feeling. Witness ■ offered to check his handcuffs for tightness. When he checked the Student's handcuffs,

Witness ■ was able to put his full index finger between his wrist and the link of the handcuff, and there was still space to spare. Witness ■ was able to move his finger between his wrist and the link of the handcuff. He told the Student that he would not be loosening his handcuffs. The Student said he was not comfortable with the handcuffs on. Witness ■ responded that handcuffs were not designed to be comfortable.

Finding

The implication of the information from the Student's Twitter feed appears to be that the Student asserts that excessive/unlawful force was used by the PSOs. The Investigator has considered the evidence of Witness ■ and Witness ■, as well as reviewed the University video tape and the Student's video. Both the PSOs' evidence and the video suggest that it was more likely than not that they did grab the Student by the waist and grab his arms. It is difficult to gauge the degree of force that the PSOs applied during the arrest. However, it is not apparent that they applied a degree of force so as to cause injury to the Student. The PSOs state that Witness ■ took the Student's phone and placed it on the cement planter. The University video depicts Witness ■ placing the phone on a cement planter, there is no video evidence to suggest that either Witness ■ or Witness ■ hit the phone. Nonetheless, it is conceivable that during the arrest, one of the PSOs made contact with the Student's phone.

The video and photographic evidence does not show the handcuffs in any detail. It is not possible to ascertain how tightly the handcuffs were applied. Nor does the Investigator have the Student's direct evidence on this point. Given the circumstances the Investigator finds that the PSOs did not apply the handcuffs too tightly onto the Student's wrists.

Nonetheless, the Student's arrest likely meets the definition of workplace violence. While the nature of the Student's workplace relationship with the University is unclear, he meets the definition of a worker under *OHSA*. Co-op students are considered workers under the statute. While the Student was at work he was subjected to an unjustified arrest. That arrest involved PSOs grabbing and restraining him. Though, the Student was not actually inside the building where he may have worked, he was on University property. The *OHSA* should be read broadly to include University property as part of the workplace. Further, as noted in *Rheem*, workplace violence is a broad term that can encompass a variety of workplace behaviours. While the process of cuffing the Student may not have been a highly violent event, the PSOs grabbing the Student's wrists and waist can reasonably be viewed as a forceful act. As such I find that the Student was likely subjected to workplace violence in violation of *OHSA*. Further, as outlined in Allegations

2 and 3, the arrest itself was unnecessary and occurred in part because the Student is Black. Consequently, the Investigator finds that that grabbing the Student's waist and arms, to arrest him was excessive and occurred because of his race.

Concern 4: Information from the Student's Twitter feed indicates that that he was forced to sit for over two hours as he waited for the police to attend the scene, during which time he felt humiliated and scared. Information from the Student's Twitter feed indicates that that five more than the original two PSOs surrounded him as he was in handcuffs.

a. Information from the Student's Twitter Feed

Information from the Student's Twitter feed indicates that, while detained, Witness ■ and Witness ■ forced him to sit on one of the busiest streets on campus and he was humiliated as his peers walked by. Information from the Student's Twitter feed indicates that the Student was in discomfort due to the tightness of the handcuffs used by Witness ■ and Witness ■. The author of the Twitter feed indicates that the Student was detained for 2 hours waiting for the police to arrive. At this point several onlookers had approached the scene. Information from the Student's Twitter feed indicates that the PSOs told them to "mind their own business". The author of the Twitter feed indicates that a White student skateboarded by and no PSO stopped him or asked him for ID. Information from the Student's Twitter feed indicates that the entire ordeal caused the Student a great deal of humiliation and embarrassment. The Student felt helpless.

b. Evidence of Witness ■

Witness ■ states that Witness ■ called dispatch and immediately informed the Ottawa Police Service ("OPS") that they had a subject in custody. An essential part of section 495 of the *Canada Criminal Code* is that, after effecting a citizen's arrest, a citizen must immediately contact the police to hand over the detained person. Witness ■ states that Witness ■, Witness ■, Witness ■, and Witness ■ were on the scene while they awaited support form OPS. Witness ■ was there during the entirety of the incident. Witness ■, Witness ■, and Witness ■ arrived after the fact. During the incident, Witness ■ and Witness ■ reiterated why they had arrested him. Witness ■ states that he recalls that people were gathering at the scene. These individuals challenged the arrest and its legality. Witness ■ stated the reason why the Student was arrested to onlookers. A male professor asked for the reasons for the arrest. The Student's brother arrived and challenged their reasons for the arrest. Witness ■ states that the Student was restrained from 4:25

pm until the OPS arrived, and that this was just under an hour. Witness ■ offered to take the Student to a more private area, but the Student refused.

c. Evidence of Witness ■

During his arrest, and while he was detained, the Student was yelling at passersby that he was being arrested for skateboarding. A crowd began to form around them. Many people were videotaping the incident. They offered to escort the Student into a building, but he refused. However, he continued saying this was embarrassing for him. Witness ■ felt that the Student wanted the crowd to see him and be there and therefore he refused to be taken inside. Immediately, after applying handcuffs, Witness ■ called the OPS to assist. Witness ■ stated initially that the OPS arrived within 10-20 minutes, however, after reviewing the incident report he revised his evidence and stated that it was approximately an hour. He recalls that Witness ■, Witness ■, and Witness ■ arrived at some point but was not sure when they arrived. Witness ■ states that Witness ■ checked the Student's handcuffs and explained again why the Student had been arrested. He states that he observed that Witness ■'s finger was able to go through the space between the handcuff and the Student's wrists.

d. Evidence of Witness ■

At the outset of the interview, Witness ■ was asked how he identified racially. He responded by asking the relevance of the question. His tone and manner in response to that question was combative. The Investigator responded, that it was because she needed to describe the witnesses, and because this is a case about race. At the beginning of the interview Witness ■ said that he may need to take a call pertaining to a personal matter. The Investigator advised him that this would be permitted and that he could take breaks. Throughout the interview Witness ■ frequently looked at his watch; he consistently looked at his watch in 5 to 10-minute intervals. In addition, he was often evasive in his response to questions. At one point during the interview, the Investigator asked Witness ■ to provide her with a copy of the document that he was reading from. Witness ■ was unwilling to provide the Investigator with a copy of the document and stated that he would need to ask his boss. The Investigator eventually received a copy of the document, it did not contain either private or confidential information. Rather it was a document related to training.

Witness ■ states that he arrived on the scene of the arrest about 10-15 minutes after it occurred. When he arrived, a crowd had formed and both Witness ■ and Witness ■ were asking them to backup. He noted

that the Student's brother was very emotional and asking questions. Witness ■ explained to Witness ■ that he had spoken to the Student before in a prior incident where he had caught him skateboarding. He had also refused to identify himself at that time. On that occasion, Witness ■ had let him go. He did not recall the time period. Witness ■ confirmed Witness ■'s account that the Student was only detained for an hour or so on June 12, 2019.

e. Evidence of Witness ■

Witness ■ states that he was present at the June 12, 2019 incident, however he arrived on the scene after The Student had been placed under arrest. When he arrived, a crowd was forming. He attended the scene as a means to provide back-up to his colleagues. When he arrived at the scene the Student was seated on a flowerpot, a cement block, right near the pedestrian walkway. Witness ■ notes that the crowd was being belligerent and calling the PSOs names, but that was to be expected. They were asking why the Student had been arrested. The Student asked if he could call his brother. Witness ■ was being questioned by bystanders and people that were walking by. He advised them that he could not speak on the matter. However, he did explain to some people why the Student had been arrested, namely, because he was doing tricks and stuff. Witness ■ asked the Student if he wanted to go inside either the Perez or Morrissette buildings, as it is more peaceful there and not as warm. The Student did not wish to leave the walkway and asked the crowd to stick around. Witness ■ heard Witness ■ and Witness ■ ask the Student the same question more than once.

Witness ■ states that the PSOs did not surround the Student, rather he was further way, and that he and Witness ■ were walking around. Next, he states that the Student was not forced to sit at the scene for two hours, rather the OPS attended the scene after an hour. While he could not see Witness ■'s hands when he tested the handcuffs, he did observe him grab the Student's arm.

f. Evidence of Witness ■

Witness ■ was on patrol during the incident on June 12, 2019. He describes himself as being the third person to arrive at the scene. He heard on the radio that Witness ■ and Witness ■ were going to make contact with the Student, and he decided to attend the scene. When he arrived, the Student was handcuffed and was seated on a planter. A crowd was also beginning to form of approximately 10-15 people. He spoke with Witness ■ and Witness ■ to ascertain what had occurred. He states that Witness ■ and Witness ■ advised him that the Student was seen doing skateboard tricks, and that they had asked

him for ID, and he had refused to provide identification. Witness ■ also states that they advised the Student numerous times that he would either need to provide ID or he would have to leave campus, and he refused to do so. They also told him that the Student continued to walk through the main part of the campus. The PSOs then arrested him for trespassing.

After the conversation, Witness ■ performed crowd control to ensure that the crowd was not getting too close to the PSOs. He noted that the crowd was upset about what had occurred. Nonetheless, the group was mainly staying back on their own, and the Student was pretty compliant, although pretty upset. Namely, he was just sitting there, was not going anywhere, not resisting, and not showing any signs of aggression. Witness ■ identified that the Student was not resisting arrest but was visibly upset. The Student stated that he believed he had been placed under arrest unfairly. And that even though he was a student he didn't need to provide ID, and repeatedly stated, "how am I trespassing when I'm a student and I pay to be here". At some point, Witness ■ also arrived on the scene. The Student also stated that he wanted to call his brother. Around that time, Witness ■ arrived. During the interaction, Witness ■ started to notice that the Student as well as the two PSOs were very agitated towards each other. The Student repeatedly asked, "why are you detaining me, why are you stopping me". Witness ■ decided that as he was not present during the original arrest, he would attempt to explain to the Student the reason for his arrest. Witness ■ advised the Student that the reason why he was spoken to in the first place, was because of the skateboard tricks he was performing. And that when the two men from parking¹⁵ asked him to identify himself, he refused to do so. As per University policy, PSOs are allowed to request ID. Witness ■ states that he believes on the back of student cards it states when an official from the University of Ottawa requests a student card it must be provided, as the card is the University's property.

The Student responded that he didn't have his student ID card on him. Witness ■ explained if he had given the PSOs his first and last name or his student number, they would be able to verify whether he was a student. The Student repeatedly stated that he did not have to provide ID. Witness ■ explained that as he refused to identify himself, and they could not verify that he was a student he was asked to leave the property. The Student stated that he did not have to leave as he was a student. Witness ■ then explained to him that under the *Trespass to Property Act*, if he refuses to leave when asked to do so by the owner of the property or someone authorized to enforce the rules of the property, that he could be placed under

¹⁵ The witness is referring to Witness ■ and ■

arrest for trespassing for failure to leave when requested to do so. Witness ■ advised him the reason he was placed under arrest was not due to skateboarding or doing tricks, it was because he refused to identify himself against policy. He was also seen doing prohibited activity on property and refused to leave when asked to do so.

The Student asked why he was being detained, and why he had to wait for so long before he could be released. He stated that he was embarrassed that everyone was going by and seeing him in handcuffs. Witness ■ advised him that under s.494 under the *Criminal Code of Canada*, that when a civilian such as a security guard performs an arrest, they must be turned over to the police. He advised him that he was not actually detained, as it is against the law for security guards to detain any person, but that he was actually under arrest. Witness ■ told the Student that his dispatcher had told them, that the OPS was very busy with calls. The dispatcher advised the PSOs that when he called OPS, they said that they had a very high call volume and it could take a while before they could arrive. Later on, they asked for an additional call to be made to the OPS because the crowd was getting significantly larger. The dispatcher advised them that they were still very busy, and it could still take a while before they arrived. Witness ■ told the Student, that they were just waiting for police, he advised him that sometimes it can be 10 minutes, other times it could take a couple of hours. The Student got visibly irritated. He started to frown at Witness ■, and said, “yeah whatever you are just making this up as you go”. The Student was constantly looking around. Witness ■ decided that as the Student already agitated towards him, and he had explained why he was under arrest, him speaking to the Student further would only aggravate the situation. When asked what agitated meant, Witness ■ stated that the Student wasn’t responding well to him trying to speak to him, he was ignoring him, and that judging by the Student’s facial expressions it looked like he was very mad, or angry towards him. When Witness ■ tried to speak to him, he would continuously cut him off. He returned to his duties regarding crowd control, and he stayed in a crowd control position until around 5:30 pm, when a request to unlock a door came in, and the OPS arrived. At that time, the situation was already becoming calm. Once Witness ■ was done with the other call, by the time he came back, everyone else had dispersed and the Student was released without charge.

Witness ■ agreed that a White person on a skateboard did skate pass them, however, he states that the individual was not doing tricks. And as such because they were not doing any tricks, he wasn’t doing anything wrong. Skateboarding is allowed on campus, but tricks are not.

g. Evidence of Witness █

Witness █ explained that his role involves receiving calls from the community and sometimes outside of the community. He receives calls for emergency support, suspicious people, chemical spills, and for persons in medical distress. Witness █'s role also involves directing cameras to areas. This means that he will direct a camera at scene to ensure that an officer has visual backup. He reports to Witness █. On June 12, 2019, Witness █ states that he got a call from a PSO, who reported that a suspicious person was doing stunts on campus. The PSO asked him to place a camera on the scene, and Witness █ did so. Witness █ left the camera to deal with other clients. When he returned to the camera, he spoke to Witness █ regarding what was happening. Witness █ advised him that Witness █ had told the Student numerous times to leave, he had refused to do so, consequently the person was placed under arrest. Witness █ says he was asked to call the OPS, and he did so.

Witness █ states he saw Witness █ and Witness █ place the Student under arrest on camera. Witness █ states he saw a group was forming around them. Once the Student was in custody, either Witness █ or Witness █ asked him to call the OPS. OPS informed him they were very busy as it was 5.00 pm by that point. The OPS did not provide him with an estimated time of arrival. Witness █ passed that on to the PSOs at the scene. Witness █ confirmed there were only five PSOs on the scene. He confirmed that the arrest lasted about an hour.

h. Evidence of Witness █

Witness █ was not present during the June 12, 2019 incident. However, she was working during the time of the incident, though at another location. Witness █ had access to her radio, as well as a surveillance camera at that location. During the time of the incident, Witness █ states that she heard what she describes as chatter on the radio system used by the PSOs. She states that her colleague identified that he was located on the pedestrian walkway, so she turned a video camera towards that area, and positioned it to towards two of her colleagues. Witness █ states that she believes three other individuals directed cameras towards the scene. She states that the incident occurred on the pedestrian walkway between lot K and the Morrisette building. Witness █ was providing service to clients, so she did not see the entire incident at the time that it occurred. At a certain point during the incident, she looked back at the camera and observed that the Student was in custody. However, she did not observe the arrest. Witness █ confirms she saw the Student sitting on the planter as well as the crowd forming around the parties. Witness █ believes she heard either Witness █ or Witness █ ask for help and backup. She recalls

that she heard Witness ■ ask for OPS to attend the scene over the radio. She saw the OPS arrive, and the PSOs hand the Student over to the OPS. Witness ■ viewed the video of the incident. She identified Witness ■, Witness ■ and Witness ■. She confirmed that she saved the video to a server, took still shots from the video, and added the documents the incident report for June 12, 2019.

Finding

The evidence demonstrates that the Student did not have to wait for 2 hours before the OPS arrived on the scene. The incident reports, and PSOs evidence give rise to the conclusion that it was more likely than not that the entire incident occurred over the course of approximately an hour. In addition, the photographic evidence suggests that there were not 7 PSOs at the scene, rather there was 5. Nonetheless, the Investigator finds that nothing turns on the fact that the Student's evidence on these points is not accurate. The Student states that he was upset during the incident and this evidence is supported by Witness ■. It is also notable that Witness ■ stated that the Student and Witness ■ and Witness ■ were behaving in an agitated way towards one another, a fact that supports an inference the Student was upset. As the Student was upset, and handcuffed, it is conceivable that his perception of the number of PSOs who were present at the scene is not accurate. The Investigator finds that on a balance of probabilities it is possible that the Student perceived there to be 7 PSOs, notably, the OPS also attended the scene. At one point there were both PSOs and OPS officers on site. Whether there were 5 or 7 PSOs does not detract from the fact that the incident was objectively upsetting.

Further, whether the Student was detained for an hour or two hours does not detract from the fact that the arrest was not a proportionate response to the Student performing skateboarding tricks.

The Investigator does not find Witness ■'s evidence that Witness ■ had previously seen the Student skateboarding, and that he refused to provide ID on that occasion to be credible. Witness ■ did not provide that evidence in his initial interview. As such the evidence is less reliable because it did not come from the person who allegedly witnessed the event. Further, the Investigator did not have the opportunity to discuss this evidence with Witness ■ as he refused to make himself available for a second interview.

Witness ■, Witness ■ and Witness ■ take the position that the reason for the Student's arrest was his performance of skateboarding tricks and failure to present ID upon request. University Procedures 2 and 15, and the *Trespass to Property Act* authorize PSOs to request identification from an individual on University property, and where required arrest a person who is trespassing on campus. However, the role

of a PSO or security guard under statute, including the *PSISA* requires them to use their authority in a proportional manner. PSOs or Security guards are charged with assessing a situation, applying critical thinking, and aligning their behavior with codes of conduct, the *Code*, *OHSA*, and University policies. The evidence demonstrates that Witness ■ and Witness ■ reacted instead of responded to a situation. Reacting means doing what first comes to mind in a situation, responding involves the use of patience, and critical thinking; including assessing the available options and assessing possible explanations. Responding also involves managing one's own emotions and behaviours so as not to escalate a situation. Witness ■ and Witness ■ chose to react instead of respond to the Student, and their reaction was, in part, based on the Student's race.

Concern 5: The PSOs questioning, pursuit of and arrest of the Student only occurred because of his race.

a. Evidence of the Witnesses

All of the witnesses provided evidence regarding the scope of a PSO's role and responsibilities. Part of the role is to enforce the *Trespass to Property Act*, and adhere to Procedures 2, 15, and 33. Procedures 2, 15 and 33 provide specific direction regarding trespassers and ID requirements on campus. Each witness spoke of the need to ensure that people do not trespass, and that they provide ID when asked to do so.


Finding

As outlined above, race was a factor in how the events of June 12, 2019 unfolded, however it was not the only factor. A plain reading of Procedures 2, 15 and 33 suggest that PSOs may have little discretion regarding how they apply these procedures. However, University policies and procedures must be read in conjunction with a PSO's obligations under the *Code*, *OHSA* and the *PSISA*. Each of those statutes make it clear that the requirements within those legislation are paramount. Nonetheless, the Investigator finds that it is conceivable that there may be a degree of misapprehension amongst the PSOs about the scope of their responsibilities under Procedures 2, 15 and 33. Consequently, the Investigator finds that this misapprehension contributed to how the June 12, 2019 incident developed.

11 CONCLUSIONS

Having considered all the evidence the Investigator finds that the Student was subject to discrimination because of his race on June 12, 2019 on the University campus. He was subject to discrimination under the *Code* both as an employee and student of the University. Further, the Student appears to have been

subjected to workplace violence under *OHS*A when he was unnecessarily arrested. The PSOs repeated insistence that the Student should produce ID did was not reasonable considering all the facts. Their choice to follow, continue to engage, then arrest the Student was also an unreasonable and disproportionate response to the situation. The Student performed a skateboarding trick; he did not engage in any violent acts. The PSOs actions give rise to an inference that the Student's race was a factor in the treatment he experienced on June 12, 2019, though not the only factor. The PSOs also appear to have misunderstood the scope of their authority under University Procedures 2, 15 and 33.



Submitted by Esi Codjoe, Investigator
Turnpenney Milne LLP
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