

PRIVILEGED & CONFIDENTIAL

INDEPENDENT REVIEW

**University of Ottawa
Protection Services**

**Esi Codjoe, Investigator
Turnpenney Milne LLP
501 – 2 Berkeley Street
Toronto, Ontario
416-868-1457, extension 113
esi@tmlp.ca**

Date: January 28, 2020

TABLE OF CONTENTS

1 MANDATE AND AUTHORITY3

2 REVIEW PROCESS4

3 SUMMARY OF THE ISSUES5

4 EXECUTIVE SUMMARY OF FINDINGS.....6

1. SUMMARY ISSUE 16

2. SUMMARY ISSUE 26

3. SUMMARY ISSUE 36

5 CONTEXTUAL INFORMATION.....6

6 SUMMARY OF REVIEW22

ISSUE 1: ARE THE UNIVERSITY’S POLICIES AND PROCEDURES UP TO DATE AS THEY RELATE TO PROTECTION SERVICES?22

ISSUE 2: ARE THERE ANY SPECIFIC AND/OR NEGATIVE IMPACTS IN THE APPLICATION OF THE UNIVERSITY’S POLICIES AND PROCEDURES ON COMMUNITY MEMBERS WHO BELONG TO HISTORICALLY DISADVANTAGED GROUPS, AND SPECIFICALLY THOSE WHO BELONG TO RACIALIZED COMMUNITIES?24

ISSUE 3: ARE THERE ANY SPECIFIC AND/OR SYSTEMIC NEGATIVE IMPACTS TO COMMUNITY MEMBERS WHO BELONG TO HISTORICALLY DISADVANTAGED GROUPS, AND SPECIFICALLY THOSE WHO BELONG TO RACIALIZED COMMUNITIES IN THE APPLICATION OF THE *TRESPASS TO PROPERTY ACT* (“TPA”)?28

7 RECOMMENDATIONS AND CONCLUSIONS32

1 MANDATE AND AUTHORITY

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. 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 to further its obligations under its Policy 67a “Prevention of Harassment and Discrimination”.

The University’s mandate pertaining to the June 12, 2019 incident outlines a two-step process. First, the Investigator is to submit an initial report (the “Phase 1 Report”) that addresses the incident itself, and what occurred. Second, the Investigator submits a second report (the “Phase 2 Report” or “Independent Review”) that will consider any systemic implications related to the incident, and the work of Protection Services as it pertains to racialized members of the University community. The Phase 2 Report mandates that the Investigator perform the role of a reviewer. The Phase 1 Report was delivered in September 2019 and includes findings of fact and law pertaining to the June 12, 2019 incident.

As outlined above, the mandate for the Phase 2 Report differs from that of the Phase 1 Report. The mandate of the Phase 2 Report is to *review* University policies and procedures as they relate to Protection Services, advise as to whether they are up to date. Second, to review whether there are any specific and/or negative impacts to community members who belong to historically disadvantaged groups, and specifically those who belong to racialized communities. The third purpose of the Phase 2 Report is to review the application of the *Trespass to Property Act* (“TPA”) and advise as to whether there are any specific and/or systemic negative impacts to community members who belong to historically disadvantaged groups, and specifically those who belong to racialized communities.

A note of caution pertaining to the mandate. The University retained the Investigator to investigate and examine issues arising out of a June 12, 2019 Incident Reported on Twitter between the Student and Protection Services. As such, the Investigator’s mandate is limited to that incident, and the issues that are closely connected to that incident. It is beyond the Investigator’s scope to investigate specific incidents

that other community members may have experienced with Protection Services and/or private security guards/companies with whom the University may contract. Further, it is not within the Investigator’s mandate to investigate general issues of alleged racial discrimination and/or harassment within and including the following relationships or circumstances:

- Allegations pertaining to students and their interactions with professors;
- University employees and the University as an employer;
- Students and their academic experience;
- Students/University employees and the University as a provider of housing and healthcare services;
- Community members and the University as a service provider including, but not limited to childcare services, or the gym; and
- Community members and their engagements with the Ottawa Police Service (“OPS”).

This report sets out the following:

- An outline of the review goals and scope;
- A summary of the review process undertaken;
- Summary of the issues;
- Executive summary of the findings pertaining to the issues;
- Relevant contextual information;
- Summary of the relevant legal and policy framework;
- Findings of fact; and
- Recommendations and Conclusions.

2 REVIEW PROCESS

The Investigator reviewed the Protection Services Incident Report data related to three types of incidents 1) Use of Force, 2) Trespass Notice, and 3) Use of Force & Trespass Notice for the years 2014-2018 inclusive, and January 1, 2019 to July 22, 2019. There is a total of 426 Incident Reports for those periods. However, this data represents a subset of the total of total interactions Protection Services has with

members of the public, both in terms of calls to its call communication centre and incidents. In the four-year period 2015 to 2018 there were a total of 11,081 reported incidents. In addition, each year, the communication centre receives approximately 40,000 calls, including calls to the emergency campus number as well the non-emergency campus number.

Of those incidents there are more than twenty different categories of acts, including both violent and non-violent. These acts/events include things such as, graffiti, theft under \$5,000, suspicious persons and sick or injured persons. Theft under \$5,000, suspicious persons and sick or injured persons are the top four of the highest numbers of incidents. Further the number of incidents of suspicious persons and thefts under \$5,000 have gone up each year since 2015. Sick or injured persons make up 2,314 of those incidents, suspicious persons are 1,550, theft under \$5,000 is 964, and graffiti is 315. Protection Services Officers (“PSOs”) generate Incident Reports whenever they use force further to use of force techniques, and/or when they issue trespass notices.

Next, the Investigator reviewed the University policies and procedures pertaining to Protection Services, as well as University data collection approaches.

Lastly, the Investigator examined the *TPA*, and how Protection Services application of the act could impact historically marginalized communities, and in particular racialized community members.

3 SUMMARY OF THE ISSUES

Issue 1: Are the University policies and procedures up to date as they relate to Protection Services?

Issue 2: Are there any specific and/or negative impacts in the application of the University policies and procedures on community members who belong to historically disadvantaged groups, and specifically those who belong to racialized communities?

Issue 3: Are there any specific and/or systemic negative impacts to community members who belong to historically disadvantaged groups, and specifically those who belong to racialized communities in the application of the *TPA*?

4 EXECUTIVE SUMMARY OF FINDINGS

Note: a more detailed review of the findings and accompanying analysis can be found in Section 8, below.

1. Summary Issue 1

The University should define terms such as “valid reason to be on campus” and “suspicious person”. University procedures 2 and 15, policy 33 should be reviewed to ensure that they are internally consistent with each other, and the University’s Interim Directive to Policy 33. The Interim Directive effectively addresses most of the problematic issues inherent in Procedure 2.

2. Summary Issue 2

The Protection Services Incident Report data suggests that racialized members of the University community could be over-represented in the number of persons with whom the PSOs interact with in certain contexts; namely in the application of the use of force and trespass notices.

The Incident Report data raises concerns about how and when PSOs interact with members of the University of Ottawa community. However, it is unclear whether force is definitively being disproportionately applied to racialized community members.

3. Summary Issue 3

The *TPA* provides broad latitude to occupiers to remove unwanted individuals from their property. This right is longstanding and has not changed substantially over hundreds of years. The current statute provides no guidance on how an occupier should exercise their right to remove unwanted individuals. The lack of statutory guidance regarding how to administer the act means that the *TPA* could be applied in a discriminatory and arbitrary fashion. Nonetheless, it is unclear whether the *TPA* is being disproportionately applied to historically disadvantaged and/or racialized community members.

5 CONTEXTUAL INFORMATION

The University is a post-secondary academic institution located in downtown Ottawa. It is centrally located near to government buildings, including the legislature. 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. 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.

The University is an employer and a goods and services provider. It provides services to the public including, but not limited to the following: short-term stay facilities (akin to hotel rooms in student residences), gyms, childcare, and event space rentals.

According to data drawn from the 2016 Census, and the City of Ottawa's own data, Ottawa has a population of one million people.ⁱ Further, the 2016 Census indicates that Ottawa's population is ethnically diverse. For example, among recent immigrants, the places of birth rank as follows:

1. Asia – 17,165
2. Africa – 6,150
3. Americas – 4,060
4. Europe – 2,565

Notably in the Americas data, the largest group of immigrants are from Haiti at 1,290. Americas encompass the following countries: Brazil, Colombia, Cuba, Haiti, Jamaica, Mexico, United States, Venezuela and other places of birth in the Americas. Many of the countries listed in the Americas have sizable Black, Indigenous and/or mixed-race communities. The racialized population (referred to as visible minority in the Census) is 241,250, of that total the largest group of racialized persons are Black at 60,205.ⁱⁱ The University's data indicates it has 8,328 international students enrolled in its programs in the fall of 2019. This number represents 19.3% of the student population. The University does not currently collect race-based data for its student population. However, the overall University population, like all university populations, is transitory given factors such as: the length of University programs, and the fact that some students move to Ottawa for education, then return to their primary hometowns'.

LEGAL AND POLICY FRAMEWORK

UNIVERSITY OF OTTAWA POLICIES AND PROCEDURES

As previously mentioned in the Phase 1 Report, the University has in place policies and procedures pertaining to harassment and discrimination, as well as Protection Services, they are outlined below:

Policy No. 67a - Prevention of Harassment and Discrimination

Application

2. Subject to clause 4, this Policy applies to all complaints 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 forthwith 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.

Policy 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.

Interim Directive on The Interpretation and Application of University of Ottawa Policy 33 – Security

Section 8 (Requests for Identifying Information)

Adoption: August 30, 2019 by the President and Vice-Chancellor

1. Commitment

The University's first priority is to ensure a safe, inclusive and respectful environment for everyone on campus.

Protection Services is committed to ensuring the safety and security of all members of the University community and of University property in a manner that respects the University's obligations under the Ontario Human Rights Code, Ontario Human Rights Commission-established policies, and best practices in public and private policing. Protection Services consults with the

University's Human Rights Office as needed to meet its commitment to a human rights-positive approach to campus safety.

2. Context and Purpose of this Interim Directive

University Policy 33 – Security, section 8 states that members of Protection Services are authorized to request proof of identity from persons on campus.

The University's campuses are comprised of its privately-owned buildings and land to which members of the University community and the public are normally permitted access.

The University is currently reviewing University Policy 33 – Security and its associated procedures. Pending the outcome of that review and further consultations related to best practices, the University wishes to establish this Interim Directive to clarify the interpretation and application of Protection Services' authority, under section 8 of Policy 33, to request identification from an individual.

3. Effective Date and Application of this Interim Directive

This interim Directive is effective immediately and will apply until further notice by the Office of the President. Notification of any change will be given through publication of the latest version of this interim Directive on the Protection Services' website.

This interim Directive supersedes all other University policies and procedures relating to Protection Services' authority to request identification.

4. Requests for identification

When Protection Services personnel makes a request for identification, their request is based on the circumstances of the situation and limited to the information they need to respond effectively to the situation.

Requesting identification must never be requested randomly and arbitrarily and should not be Protection Services' routine practice. However, it is important for Protection Services personnel to request identification when there is a request for their assistance, for example:

- When Protection Services receives a phone call requesting assistance or reporting an incident, to allow for follow-up with the caller;
- When an individual makes a request to Protection Services to access premises on campus (for example, a building, classroom, office, or laboratory) to which the public is not ordinarily invited or permitted access, in order to confirm that the individual is permitted to access those premises;
- When Protection Services personnel is responding to a specific active or ongoing incident or is following up in relation to such an incident, where the individual from whom the information is requested is a witness or may have knowledge of such incident or be of assistance in the follow-up by Protection Services, provided that individual is not suspected of wrongdoing;
- When Protection Services personnel is providing assistance to an individual, for example, when an individual is experiencing an active or ongoing health or mental health incident and verification

of the individual's identity is necessary to effectively provide the individual with appropriate assistance.

- In circumstances other than in ones where Protection Services' is providing assistance (for example, investigating potential wrongdoing), Protection Services personnel should limit a request for identification to those situations where the verification of the person's identity is necessary to protect the safety of persons or property and the request complies with the Ontario Human Rights Code, and with security and policing best practices.
- Verifying the identity of an individual generally involves Protections Services personnel looking at a document or piece of identification given to them by the individual that Protection Services personnel reasonably considers to be a reliable, independent source document containing the identifying information of the individual in order to ensure that the individual is who they say they are.
- When making a request for identification, Protection Services personnel will inform the individual of the following:
 - the reason for the request, unless so informing the individual might compromise the safety of an individual; would likely compromise an ongoing investigation; or might disclose the identity of a person contrary to the law; and
 - that the individual may choose not to provide their identifying information, unless so informing the individual might compromise the safety of an individual.

5. Protection Services Personnel's Contact information

When Protection Services personnel engage with members of the University community and the public in response to a security incident, they will provide those individuals with their direct contact information, the general contact information for Protection Services, and any other information necessary to allow those individuals to follow up about the incident.

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

The legislation is relevant as it relates to the scope of Protection Services role, and the duties performed by PSOs. Thus, for completeness the Investigator has excerpted the relevant portions of the four statutes below.

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 *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.

The Occupational Health and Safety Act ("OHS")

Relevant *OHS* 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”)

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.ⁱⁱⁱ

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 customer, volunteer, or student 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 behaviour that will not be tolerated at work.^{iv}

6 SUMMARY OF REVIEW

Issue 1: Are the University’s policies and procedures up to date as they relate to Protection Services?

a. Summary of Review

The focus of this section is whether the University’s policies and procedures are up to date. To that end, University Procedure 2 has some gaps. Namely, at the outset of the procedure it outlines how to address trespass issues without providing any clarity about what trespassing is, or a definition. In fairness, such a definition would be better addressed by a clearer statutory definition, a point which will be further explored in Issue 3. Nonetheless, without either a definition of trespassing imbedded in the procedure or a companion document that explains that concept, Procedure 2 simply says what the PSOs should do without the reason they are doing it. Further, the definition of trespassing should reflect the reality of the University’s public/private nature. While it is true that the University is technically private property, much of its property is ordinarily made available to the public. Persons are permitted to walk in most areas of the University’s grounds without having to seek a specific licence or authorization to do so. In addition, the University’s property abuts public and private property; consequently, it is not always evident when an individual is on University property. Given this reality, it is likely that many individuals technically unknowingly “trespass” on University property every day.

Next, the concept of a valid reason for being on campus should be clarified. It would be useful if the concept of a valid reason were explained and or contextualized. The term valid reason is vague on its face. A non-exhaustive list of examples could be provided of such reasons. Point 5 under 10-46N (negative) code is unclear. As currently worded, it is unclear to whom this provision applies. Namely is it just to a salesperson or to others also? What kind of permission does a non-salesperson require, and what happens when they may appear on campus in the future? Point 5 does not clearly outline what procedure applies to salespersons and non-salespersons.

As previously noted in the Phase 1 Report, the use of the term suspicious individuals in Procedure 2 is problematic. The term is not defined, which could create opportunities to have the term be applied to persons in violation of the *Code*. For example, two historically marginalized communities that are covered by the *Code* often have the term suspicious applied to them. Namely, Black and Indigenous people engaging in activities such as shopping, and persons who are or who appear to be Muslim while flying. Persons from these communities are sometimes deemed to be suspicious simply by virtue of belonging

to these communities, and not because of objective facts. Consequently, a definition of what renders someone as being objectively suspicious would be helpful.

The University's Procedure 15 enables Protection Services to request identification from an unidentified person found on University property. The difficulty with this procedure as it is currently crafted is that it does not provide any context or rationale. A plain reading of the text is that the procedure empowers PSOs to simply demand identification without any justification. Further, if an individual refuses to do so they would be subject to the trespass process under Procedure 2, which means that an individual could be subject to arrest. This is problematic. However, the new Interim Directive to Policy 33^v provides a more appropriate balance to that procedure. The Interim Directive provides the PSOs with the tools to understand when and how they should perform their duties regarding asking persons for identification. For example, the Interim Directive to Policy 33 includes the following provisions:

When making a request for identification, Protection Services personnel will inform the individual of the following:

- the reason for the request, unless so informing the individual might compromise the safety of an individual; would likely compromise an ongoing investigation; or might disclose the identity of a person contrary to the law; and
- that the individual may choose not to provide their identifying information, unless so informing the individual might compromise the safety of an individual.

Another helpful element of the Interim Directive to Policy 33 is clause 5. It outlines that the public is entitled to a PSO's contact information when they engage with a PSO. One way to ensure that the information is readily available is for the officer to provide an individual with a business contact card with the officer's information.

The paragraph pertaining to a PSO's ability to request identifying information for reasons of the safety of persons or property should be clarified to better define what safety means. Notably, it is only appropriate to ask for identifying information in circumstances where the safety risk to persons or property is not remote, merely speculative, or when the risk is largely insignificant. For example, a person doing a minor skateboarding trick is likely a circumstance that does not necessitate a request for identifying information. If a person breaks or is about to break a window, then a PSO may reasonably ask that person for identification.

Next, the clause in Procedure 15 that outlines that Procedure 2 applies if a person refuses to show identification should be updated to be consistent with the Interim Directive to Policy 33. The Interim Directive makes it clear that an individual is entitled to decline to provide such information unless their failure to do so compromises an individual's safety, and that it supersedes all other Procedures and policies. As such, Procedure 15 should be amended.

Nonetheless, overall, the interim directive to Policy 33 provides useful information to community members so that they understand the scope of the PSOs' powers. This is an important tool, one that is in keeping with many of the best practices found in the Report of the Independent Street Checks Review (the "Review").^{vi} The Review was initiated in part because of concerns that racialized persons were being disproportionately being subjected to carding or street checks by municipal police services. In the Review Justice Tulloch made a number of recommendations in Recommendation 7.1. One is that police officers should inform people that they do not need to provide identifying information to the police, subject to specific caveats. In other words, police officers should not have the right to simply ask for identifying information without reasonable justification. This recommendation as well as others found in the Review should inform the drafting of new versions of Policy 33 and Procedure 15.

Policy 33 should be updated to make it consistent with the Interim Directive in two areas. First, under Identification number 8, and second, under Access to University Grounds and Buildings, clause 14. Each clause should be amended reflect the language from the Interim Directive that specifies that PSOs will exercise their duties in a manner that respects the *Code*.

Issue 2: Are there any specific and/or negative impacts in the application of the University's policies and procedures on community members who belong to historically disadvantaged groups, and specifically those who belong to racialized communities?

a. Summary of Review

The Investigator reviewed Incident Report data for 5 full years, and the first 7 months of 2019. The Incident Report data related to three types of incidents: 1) Use of Force, 2) Trespass Notices, and 3) Use of Force & Trespass Notices. There are 426 Incident Reports during this period, and the persons identified in the reports include students and non-students. Given the limits of the reports, the Investigator experienced challenges analyzing the data. First, other than as noted below, the Incident Reports do not contain any data regarding the race of the person(s) with whom the PSOs engaged. In the rare incidents

that race was mentioned, the race of the person was usually identified as being Black or African/African American.^{vii} These two terms were used in 14 separate reports. Nonetheless, the Investigator did observe some possible trends in the data as it pertains to racialized persons. The Investigator observed that of the 480 listed names in the Incident Reports, 243 of them appeared to names that are not traditionally western European in origin; namely 50%. Where a name was listed more than once in an annual report it was only counted once. The Investigator applied a conservative reading of the ethnic origin of the names given the lack of comprehensive data. In addition, the Investigator inferred that there is a reasonable probability that names that appear to be African, East Asian, South Asian, South American or Muslim most likely belong to persons who are ethnically Black, East Asian, South Asian, are from the Middle East or are Latinx.

The Investigator makes the above assumption in part based on her extensive experience interacting with ethnically diverse communities throughout her legal career including, and in particular, as an adjudicator at high volume Ontario provincial tribunals such as the Landlord and Tenant Board and the Human Rights Tribunal.^{viii} In addition, some research does indicate that there is validity to estimating a person's ethnic origin based on their name.^{ix} However, it should be noted that a person's name cannot always be assumed to be an indicator of that person's ethnic origin. Further, the Investigator does not assert that her methodology regarding determining names is as robust as more reliable data evaluation tools.

The Investigator notes that the percentage of PSO interactions with what appears to be racialized individuals does not align with the Census data for Ottawa. The 2016 Census does not indicate that the population of Ottawa is 50% racialized, rather the racialized population comprises 26% of the population.^x Nonetheless, it is possible that the student population is more diverse than Ottawa's population given the presence of 8,328 international students at the University. Yet, the University does not collect race-based data for its students, so it is unclear whether the international students are primarily racialized, and if so, what the breakdowns are for each racialized community. Racism operates differently depending on the race of the individual on the receiving end of such differential treatment.

The Investigator reviewed the 14 Incident Reports within which a person was specifically noted as being Black or African American. On the whole the reports were unremarkable; namely there was nothing that stood out in the reports on their face as compared to other reports in which the person's race was not mentioned. However, the facts in one Incident Report bears noting. In a 2014 report, a University employee calls Protection Services to report that there is a suspicious Black person in a University building.

The employee notes that the person does not look like a student. The person was issued a written trespass notice and advised that she could not return to the University. Presumably the person was not a University student as they were issued a trespass notice. However the PSOs taking action based on this description of how someone looked is potentially problematic. A key challenge with the description that the person does not look like a student is there is no standard student “look”. Students are a variety of ages and come from all races and socio-economic brackets. Consequently, a student might be a 40-year female or a 17-year-old male. A student may be in receipt of social assistance or may be independently wealthy. A student may wear obviously expensive high-priced designer clothing or may wear clothing that looks like it is inexpensive but is actually very expensive. Further, a student may be wearing clothing that is objectively very inexpensive. The notion that someone does not look like the sort of person who belongs can be a proxy for discriminatory mindsets and can lead to discriminatory treatment such as racial profiling.^{xi}

Next, the Investigator found that the Investigation Report data for 2014-2019 shows that PSOs used force at least 121 times during the period. The term use of force as used by the PSOs includes, but is not limited to: holding, using a baton, restraining (without handcuffs) and the application of handcuffs. These are terms that are used in the PSO’s use of force training materials, and the Incident Reports. The most common form of use of force that was utilized by the PSOs was handcuffs. There were at least 94 instances in which the PSOs applied handcuffs to individuals regardless of ethnic origin. The most commonly cited reason for a PSO interaction that led to an Incident Report is a *TPA* issue or someone identified as being a suspicious person. The numbers for each are approximately 134 and 102 respectively for all persons listed, regardless of ethnic origin, during the 2014-2019 period. These numbers are generally accurate based on the data. Notably, the reports do not always use consistent terminology, and some reasons for interactions as well as types of use of force are listed under multiple grounds. The data that lists multiple grounds was not counted in the above totals. Again, the Investigator used a conservative methodology given the limited data.

It appears that the PSOs are using force on average approximately 22 times a year for all Incident Reports. This is in the context of 11,081 incidents in a five-year period, and approximately 2,700 incidents each year. While on first blush this number is small relative to the number of yearly incidents, it still raises questions, and could be evidence of a larger problem. The PSOs most often engage in a use of force when they are dealing with trespassing issues and/or suspicious persons. In the Phase 1 Report, the PSOs reported that their use of force in one instance pertaining to alleged trespassing was in keeping with their

training. The University's policies and procedures contain no guidance on what it means to engage in trespassing, or what constitutes a suspicious person. Further outlined in issue 3 below, the *TPA* contains a paucity of guidance about what it means for an individual to engage in trespassing. The *TPA* does not provide guidance regarding how an occupier or their designate should interpret the statute. Thus, it is conceivable that persons are being subjected to the use of force by PSOs based on trespassing infractions which should not be viewed as such. In addition, the term suspicious person as outlined in issue 1 above, is vague, and could lead to the term being applied and/or utilized in a discriminatory fashion. In the larger Canadian society, some communities of equity seeking groups are more likely to be viewed as suspicious.^{xii} This attitude among some Canadians may be a function of unconscious or conscious bias. Thus, the failure to define suspicious persons does not assist racialized members of the University community in being free from discrimination or harassment under the *Code*. It is conceivable that the use of force numbers can be explained by other factors that are not specified in the Incident Reports. However, the reports do not contain enough information to draw definitive conclusions.

The use of force data raises the question "why is force being used"? The majority of the incidents on campus are at best described as provincial offences or minor criminal offences. Namely, the data shows that most of the Incident Reports pertain to trespass to property issues. As previously mentioned, trespass to property is at best a vague term when applied to an institution which has property that is ordinarily available to the public. Given this reality, it is unclear if a PSO would need to use handcuffs or other forms of force to address trespassing. The Incident Report data on trespassing and use of force also raises the question as to whether some communities are being racially profiled; namely a racialized person appears to be more likely to found to be engaging in trespassing activity, deemed to be suspicious, or to have force applied to their person by a PSO. Or is the apparent overrepresentation of racialized persons in the data attributable to some of factor? The numbers paint part of the picture, but without more detailed information contained in individual reports, or race based data for the University population it is difficult to ascertain the true scope of any potential issue.

Consequently, part of the PSO training should be an exploration of critical thinking about whether force is needed at all, and effective means to communicate with community members who may be engaged in trespassing or suspicious activities. For example, can other mechanisms be used such as talking to a person? Are other forms of de-escalation appropriate? Should PSOs consider how they use their body language, and their word choice? All of these are key considerations as they relate to use of force, and overall communication with the University community.

The Incident Report data raises concerns about how and when PSOs interact with members of the University community. However, it is unclear whether force is being definitively applied disproportionately to racialized community members.

Finally, the University does not currently collect race-based data regarding its student population or in its Incident Reports. That said, the University is currently exploring commencing the collection of race-based data pertaining to its student population. The Investigator recommends that it do so for a variety of reasons. First, in order to understand the University population and its needs, the University needs to know the demographics of its population. Second, collecting race-based data in the Incident Reports will facilitate an evidence-based understanding of which community members the PSOs most frequently engage. To the extent that there is an over representation of certain racialized communities with respect to being issued trespass notices, or on whom the PSOs have used force, the data would show this.

Issue 3: Are there any specific and/or systemic negative impacts to community members who belong to historically disadvantaged groups, and specifically those who belong to racialized communities in the application of the *Trespass to Property Act* (“TPA”)?

a. Summary of Review

In order to address the issue 3 question, the Investigator must explain the background, purpose, and a previous study on the *TPA*. To that end, this section contains an outline of the relevant provisions of the *TPA*, their historical foundation, and a previous Ontario government-initiated task force on trespass to publicly used property.

The two sections of the *TPA* that are most relevant to the issue 3 question are subsections 2(1), 2(2), 9(1), 9(2) and 9(3). They read as follows:

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. **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.

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.

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.

The *TPA* outlines that certain kinds of entry onto another's property constitutes an offence; namely trespassing. Subsection 2(1) outlines, among other things, that a person who has not been given a legal right or authority to enter a property without permission of the occupier and does not leave when told to do so is guilty of an offence. If required, the defendant is expected to prove that they were given explicit permission to the property. However, a defendant also has a defence to an allegation that they trespassed on a property; they mistakenly believed they had a right to enter and/or permission to do so.

Subsections 9(1) and 9(2) of the *TPA* empower occupiers or persons to whom they have delegated their authority to arrest a person they find trespassing on a property, and then deliver the individual to a police officer. The person effecting an arrest can be anyone, including a security guard. The arrest powers under the *TPA* are significant in that they enable persons to arrest individuals, and potentially detain them, until the arrival of the police.

The leading case on the concept of arrest under the *TPA* is *R v. Asante-Mensah*^{xiii}. The Supreme Court outlined the historical background of the act. The Court explains the concept of arrest at common law, and citizen’s arrest. The former is defined as follows:

The word “arrest” ... is a term of art. First, it should be noted that arrest is a continuing act; it starts with the arrester taking a person into his custody, (sc. by action or words restraining him from moving anywhere beyond the arrester’s control), and it continues until the person so restrained is either released from custody or, having been brought before a magistrate, is remanded in custody by the magistrate’s judicial act.^{xiv}

Further, the Court notes that the concept of citizen’s arrest is as old as the common law and predates modern police forces. The powers link back close to a thousand years to the reign of Henry II. Citizens were expected to maintain the “King’s Peace”, and as such apprehend all felons. This meant that citizens had the right and a positive obligation to arrest a person committing a felony. However, simple trespass was not typically viewed as a breach of the peace, and consequently it did not give rise to a right of arrest.^{xv} Over time, the power to engage in a citizen’s arrest has been laid out in statutes such as s.494 of the *Criminal Code*, and provincial legislation such as the *TPA*. The concept of a citizen’s arrest is consequently deeply entrenched in the common law, and our societal concept of arrest. Yet the concept is not explained in either the *Criminal Code* or the *TPA*, the implication of this omission is that the scope and application of the concept is universally understood. The historical foundation of the statute helps to explain why the current statutory language contains little guidance regarding how the arrest provisions should be exercised.

Further, the Court noted that in a 1979 discussion paper, the Ontario Ministry of the Attorney General argued that the purpose of the *TPA* was to provide a relatively quick, cheap and intelligible remedy for trespass. The Court also notes that in 1980 what was then the *Petty Trespass Act*, was reformed and the *Occupiers’ Liability Act* enacted to facilitate prosecutions and increase the protection of the interests of rural landowners, a community of landowners that had expressed concern about farm losses. This means that a key focus of the predecessor version of the *TPA* is that it provided an efficient remedy for *rural* landowners to address a tangible, and pressing concern, in communities that may be more remote, and thus implicitly may have less immediate access to police services. These purposes may make sense both now and in the past given the unique challenges that rural landowners may have in managing incidents on their property given their locations. Nonetheless this purpose of the *TPA* is still problematic. First, it assumes that occupiers in rural communities have an understanding of the scope of their citizen’s arrest power despite the paucity of statutory language that explains the concept. In addition, the lack of

guidance regarding the arrest power in the *TPA* does not address the unique issues that face landowners in metropolitan areas.

Given the breadth of these powers, and the lack of any specific guidance regarding the application of the powers outlined in the statute, the statutory language creates gaps. Those gaps could facilitate individuals engaging in differential treatment of racialized and/or historically disadvantaged groups.

Next, the application of the *TPA* has given rise to systemic and/or systemic impacts on historically disadvantaged groups, and specifically those who belong to racialized communities. In 1987, the Ontario Government commissioned a task force to examine equity issues as they pertain to trespass to public use property.^{xvi} Chairperson Anand's (as he then was) terms of reference were to investigate community concerns raised regarding the law of trespass on publicly-used property. Specifically, individuals alleged that the *TPA* was being applied in a discriminatory manner towards youth and racialized community members. Anand's findings and conclusions in the taskforce report are as relevant now as they were 33 years ago. In short, Anand made the following conclusions:

- Publicly-used property means property to which the public is normally admitted, regardless of its public or private ownership, and includes the common areas of shopping malls...and universities;
- The *TPA* makes no distinction between types of property and the degree of public use. Under the act, a shopping mall is no different from a private home...they carry with them the right to exclude at the owner's whim;
- The *TPA* creates the potential for the discriminatory enforcement of its terms against racialized community members. An owner can require a person to leave the property for any reason or no reason at all;
- The *TPA* allows for wide "prosecutorial" discretion to reside in an occupier of a publicly-used property. It is open to an occupier to set unreasonable limits to a ban, one which may have been established on a whim. This occurs in the absence of any requirement of any overt misconduct on the part unwanted visitor. In essence occupiers police the act;
- There should be a definition of misconduct that is sufficient to justify the exclusion of a visitor in the *TPA*; and,

- There should be a standard of defined unreasonable misconduct that is sufficient to warrant excluding a person from a publicly-used property.^{xvii}

These findings and conclusions remain true today as the statutory language remains largely unchanged. As such, the recommendations from the taskforce should apply to the University. To that end, the Investigator's earlier recommendations regarding defining the terms used in the University's policies and procedures should be adopted. Despite the lack of statutory language to reflect the publicly-used nature of University property, the University should nonetheless apply the *TPA*'s trespass provisions in light of how the public uses its property. This would mean the University's right to exclude persons from its premises would have more reasonable limits than those outlined in the statute.

The Incident Report data raises concerns about how and when PSOs interact with members of the University community pertaining to trespass issues. However, in the context of issues under the *TPA*, it is unclear whether force is being disproportionately applied to racialized community members, and the scope of possible racial profiling regarding trespassing, and suspicious person issues.

7 RECOMMENDATIONS AND CONCLUSIONS

- A. A review of the facts that form the basis of this Phase 2 Report demonstrate that Protection Services PSOs have used force in some of their interactions with community members during the 2015-2019 years. They also engage with community members under the authority of the *TPA*. Yet what is not clear is who are the people with whom the PSOs engage. The 426 Incident Reports reviewed give some indication that there may be a higher level of PSO engagement with racialized community members than there is with White community members. These numbers do not align with the Census data regarding numbers of racialized members in the wider Ottawa community. Though it is noted that the University population may be different than in Ottawa, however this data is not currently available.

The Investigator recommends that the University begin collecting race-based data for its student population generally. This data will help enhance the University's knowledge about its community makeup and the services that they require.

- B. The University should expand on the changes it has made to Policy 33. It should also ensure that PSOs receive training on how to apply critical thinking skills to their interactions with community members including when they are considering using force. Part of that training should involve empathy training, and how to identify what a PSO knows or does not know in an interaction with a community member.
- C. Lastly, the University should provide ongoing, expert training to its PSOs on a variety of topics related to marginalized communities. Such training could include interactive empathy training, equity diversity and inclusion training (EDI), and training on critical race theory. The training should occur at least once a year and should be at least 3 hours in duration. The PSOs should be evaluated on the effectiveness of this training each year.^{xviii} This aligns with the amount of initial sensitivity training that PSOs received under the *PSISA* Regulation 26/10. The training should not be entirely lecture based, rather it should encompass pedagogical approaches that are best suited to adult learners. Consequently, it is likely that this training will need to be partially interactive and/or scenario based.

The University has begun some good work around ensuring that it consults with its communities and transforms its policies and procedures. If the above recommendations are adopted, it would likely engender a better trained group of PSOs; individuals who better understand and respect the community that they serve. The PSOs would then be more effective ambassadors for the values that the University holds dear, such as a strong commitment to community, and having a positive impact on its campus, its city and beyond. Further, it is likely that a natural consequence of the proposed changes would be that the University would be less likely to have violations of *OHSA* and/or the *Code*.



Submitted by Esi Codjoe
Investigator
Turnpenney Milne LLP
January 28, 2020

ENDNOTES

ⁱ See: <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Geo2=PR&Code2=01&SearchType=Begins&SearchPR=01&TABID=1&B1=All&type=0&Code1=3506008&SearchText=ottawa> & <https://www.cbc.ca/news/canada/ottawa/ottawa-hits-one-million-population-1.5170559>

ⁱⁱ *Supra* note i

ⁱⁱⁱ See: 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>

^{iv} *Rheem Canada Ltd v USW*, 2012 CarswellOnt 9107, [2012] OLAA 346, at para 46.

^v See: <https://www.uottawa.ca/administration-and-governance/interim-directive-interpretation-and-application-university-ottawa-policy-33-security-section-8>

^{vi} See: <https://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/StreetChecks.pdf>

^{vii} The term African American is not an accurate term when it is applied to Black persons within Canada. The term typically refers to persons of African descent who reside in America. The more accurate term for a person of African descent within Canada is any of the following: Black, African Canadian and Afro-Caribbean, see for example: <https://www.thecanadianencyclopedia.ca/en/article/black-canadians>

^{viii} The Landlord and Tenant Board is the highest volume tribunal in the province of Ontario based on raw numbers, see: http://www.sjto.gov.on.ca/documents/sjto/2019_11_19-Tribunals-Ontario-Annual-Report.pdf at page 50. The Human Rights Tribunal’s numbers are lower but are still significant given the complexity of the work, and the number of adjudicators at the Tribunal.

^{ix} See: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0201774>

^x *Supra* note ii

^{xi} See: <http://www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling/effects-racial-profiling>

^{xii} See: <http://ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario#overlay-context=en/user>

^{xiii} 2003 SCC 38 (CanLII), [2003] 2 SCR 3

^{xiv} *Supra* note xiii

^{xv} *Supra* note xiii paras 36-38

^{xvi} See R. Anand, *Task Force on the Law Concerning Trespass to Publicly-Used Property As it Affects Youth and Minorities* (1987)

^{xvii} *Supra* note xvi at pgs iii-xiv

^{xviii} Professor Scot Wortley from the University of Toronto has written on the subject of evaluating program/training effectiveness