



## **Investigation into Incident dated February 18, 2018 Involving Transit Fare Inspectors**

**Date:** July 10, 2018

**To:** TTC Board

**From:** Chief Executive Officer (Acting) and Chief People Officer

### **Summary**

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The Head of the TTC Transit Enforcement Unit (TEU) requested that the TTC Unit Complaint Co-ordinator (UCC) conduct a formal investigation into an incident that occurred on February 18, 2018 involving a customer and three Transit Fare Inspectors.

The purpose of the investigation was to determine whether, on reasonable grounds, the Respondents' comments or conduct amounted to misconduct, specifically discreditable conduct and unlawful or unnecessary exercise of authority under the TEU Code of Conduct.

In addition, the UCC requested the TTC's Diversity and Human Rights Department (DHRD) to provide consultation on whether the Respondents' conduct, on a balance of probabilities, amounted to discrimination and/or harassment under the TTC's Respect and Dignity Policy, which is included under Section 4 of the TEU Code of Conduct.

The Investigation Report for this matter is attached, and the TTC video from the streetcar in question is available online at: <https://youtu.be/pZUutVuDihM> and at <https://youtu.be/HtJ9bLPg9qw>

### **Recommendations**

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It is recommended that the TTC Board:

1. Receive the Investigation Report dated June 28, 2018 regarding the Investigation into Incident dated February 18, 2018 Involving Transit Fare Inspectors.
2. Direct the Chief Executive Officer to:
  - a. Finalize and implement the Policies and Procedures Manual for Transit Fare Inspectors, setting out clearly the role and responsibilities of the Transit Fare Inspectors by July 31, 2018
  - b. Provide clear direction on the role of Transit Fare Inspectors as it relates specifically to use of force

- c. Review the uniform of the Transit Fare Inspector position to ensure it is consistent with the direction of the Transit Fare Inspector role and ensures a clear distinction between Transit Fare Inspectors and Transit Enforcement Officers; and
- d. Undertake community outreach and public education campaigns focused on the role and responsibilities of Transit Fare Inspectors and Transit Enforcement Officers.
- e. Advance regular diversity, inclusion and human rights training as part of the Transit Fare Inspectors' bi-annual refresher program;

## **Financial Summary**

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There are no financial implications related to this report.

## **Equity/Accessibility Matters**

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The TTC is committed to providing a work environment and service delivery that respects the dignity, self-worth and human rights of every individual, and is free from any form of discrimination or harassment.

To help drive accountability for diversity, accessibility, human rights and high professional standards at the TTC, the UCC and the DHRD are independently responsible to conduct complaint investigations in a thorough, fair, and impartial manner.

## **Decision History**

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There is no decision history related to this report.

## **Issue Background**

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On February 18, 2018, an incident occurred between a customer and three TTC Transit Fare Inspectors onboard a TTC 512 streetcar heading westbound. Three Transit Fare Inspectors boarded the TTC streetcar at St Clair Station en route to Bathurst Street at the end of their work shift to return to their home office at Hillcrest Yard on Bathurst Street.

The Customer boarded the TTC streetcar at St Clair West Station and stood in front of the doors facing into the streetcar. After boarding the streetcar, the Customer was standing directly across from one of the Transit Fare Inspectors. The Customer stared at the Transit Fare Inspector. In response to the staring, the Transit Fare Inspector attempted to speak to the Customer, but the Customer did not respond.

Eventually the two other Transit Fare Inspectors separately joined the single Transit Fare Inspector. The Customer and the three Transit Fare Inspectors exited at the St. Clair Avenue West and Bathurst Street stop. The Customer then re-boarded the TTC streetcar and resumed his previous position on the streetcar in front of the doors. However, instead of facing the interior of the streetcar, the Customer now faced the Transit Fare Inspectors who were now standing on the streetcar platform facing the streetcar. The streetcar doors then closed. The Customer then reopened the streetcar doors, re-exited the vehicle and headed directly toward the Transit Fare Inspectors. The Customer entered the personal space of one of the Transit Fare Inspectors who then pushed the Customer back into the streetcar. The Customer then re-approached the Transit Fare Inspector who pushed him while swinging his fist at the Transit Fare Inspector who deflected the punch. The Customer then turned and ran at the Transit Fare Inspectors again. The Customer was then arrested by the Transit Fare Inspectors.

Following a review of the TTC streetcar video, the Head of TTC Transit Enforcement Unit requested a TTC internal investigation into this incident. Additional concerns were raised in the media, which the TTC recognized were serious and a matter of public interest that required investigation. As a result, these concerns were added to the allegations for investigation. The purpose of the internal investigation was to determine whether the Transit Fare Inspectors engaged in conduct that violated the TTC Transit Enforcement Unit Code of Conduct, and specifically whether they engaged in discreditable conduct, unlawful or unnecessary exercise of authority, and engaged in conduct amounting to discrimination and/or harassment.

## **Comments**

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Based on the available evidence, below is a summary of the findings related to this investigation:

- 1) The investigation found insufficient evidence to support that the Respondents failed to treat the Customer equally without discrimination with respect to services based on race, colour and/or ethnic origin under Section 2(1)(a)(i) of the TEU Code of Conduct.
- 2) The investigation found that Respondent 1 did not act in a manner that was uncivil towards a customer amounting to discreditable conduct under Section 2(1)(a)(iv) of the TEU Code of Conduct.
- 3) The investigation found the force applied by Respondent 1 to push and arrest the Customer was reasonable, justified, consistent with the training provided, and did not constitute an assault under Section 2(1)(a)(vi) of the TEU Code of Conduct.
- 4) The investigation found the actions of Respondent 2 and Respondent 3 were consistent with TTC and community expectations and not contrary to Section 2(1)(a)(xi) of the TEU Code of Conduct.

The investigation found that Respondent 1 smiled at a time that could have been considered the climax of a tense interaction between himself and the Customer. It is reasonable to believe this act, regardless of Respondent 1's reason for smiling, is

conflicting with TTC and community expectations and therefore found to be unprofessional, amounting to discreditable conduct under Section 2(1)(a)(xi) of the TEU Code of Conduct.

The Head of the TEU is responsible for the administration of any discipline or corrective action that may be warranted as a result of the investigation findings. A substantiated allegation of discreditable conduct may result in discipline up to and including termination.

- 5) The investigation found the push by Respondent 1 was not unreasonable, and did not constitute an unlawful or unnecessary exercise of authority under Section 2(1)(g)(ii) of the TEU Code of Conduct. The underlying authority for Respondent 1's push is Section 34 of the Criminal Code of Canada – Defence of Person.
- 6) The investigation found the Respondents' conduct on February 18, 2018 did not, on a balance of probabilities, amount to discrimination and/or harassment under the TTC Respect and Dignity Policy, contrary to Section 4 of the TEU Code of Conduct. Based on the evidence, the Respondents were found not to have engaged in conduct amounting to racial profiling, harassment based on race, colour and/or ethnic origin, or personal harassment.

During the course of this investigation, the TFIs and those who were interviewed were asked their thoughts on the TFI role. TTC Investigators found their thoughts to be helpful in making recommendations. The recommendations are independent of the findings and relate to the following:

#### 1. TFI Policies and Procedures

It is learned from this investigation that the TFIs' role is unique and evolving at the TTC. TFIs provide customer service when delivering fare payment information and when conducting fare inspections, while maintaining their enforcement power to issue provincial offences tickets under TTC's By-law No.1.

TFIs would benefit from written policies and procedures that set out their unique role and responsibilities within the organization with clear directives, and a focus on disengagement strategies geared towards the challenges TFIs face in customer service situations. It is recommended that the written policies and procedures also include unwritten 'good practices' referenced during the course of this investigation. In particular, three were highlighted during the course of this investigation:

- i. The practice of TFIs remaining near or on scene should an incident occur;
- ii. The practice of not checking POP or standing together when working in groups of three; and
- iii. The practice of not allowing a customer to return on the same TTC vehicle after an incident.

Formalizing these practices into policies and procedures for TFIs will help to ensure consistent adherence to them by all TFIs.

TTC investigators acknowledge that the TEU, in response to a prior review by the City of Toronto's Ombudsman, has already prepared a draft Policies and Procedures Manual for TFIs, which is expected to be implemented. Following implementation, it is recommended that consideration be given to launching an awareness campaign and community outreach to inform the public of the role and responsibilities of the TFIs as set out in the new Policies and Procedures Manual.

## 2. Clear Direction for TFIs

TFIs are taught escape, evasion, disengagement, and de-escalation tactics; however, they are also advised there will be occasions in which they will be required to exercise their authority to arrest or use force while in the performance of their duties. There is a lack of clarity with respect to the expectations of a TFI.

It is recommended that clear direction and any associated training be provided to TFIs with respect to their role, particularly as it relates to use of force.

## 3. Diversity, Inclusion, and Human Rights Training

All TFIs are provided with comprehensive diversity, inclusion and human rights training at the commencement of their employment. The training relevantly covers:

- The concepts and definitions within diversity, inclusion, and human rights;
- The importance of diversity and inclusion in the provision of services at the TTC;
- An understanding of cultural competency and unconscious biases; and
- Information on workplace harassment, discrimination and violence and ways to address such complaints.

As best practice, it is recommended that consideration be given to providing TFIs with regular diversity, inclusion, and human rights training as part of their in-class bi-annual refresher program. This training should continue to include in-class case studies and role play exercises related to customer service interactions.

## **Contact**

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## **Signature**

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Richard J. Leary  
Chief Executive Officer (Acting)

Gemma Piemontese  
Chief People Officer

## **Attachments**

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Attachment 1 - Investigation into Incident dated February 18, 2018 Involving Transit Fare Inspectors



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# **Toronto Transit Commission**

## **Investigation Report**

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**Investigation into Incident dated February 18, 2018  
Involving Transit Fare Inspectors**

**Date of Report: June 28, 2018**

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## **Executive Summary**

On February 18, 2018, an alleged incident occurred between a customer and three Toronto Transit Commission (TTC) Transit Fare Inspectors onboard a TTC 512 streetcar heading westbound. Three Transit Fare Inspectors boarded the TTC Streetcar at St Clair Station en route to Bathurst Street at the end of their work shift to return to their home office at Hillcrest Yard on Bathurst Street.

The Customer boarded the TTC Streetcar at St Clair West Station and stood in front of the doors facing into the Streetcar. After boarding the Streetcar, the Customer was standing directly across from one of the Transit Fare Inspectors. The Customer stared at the Transit Fare Inspector. In response to the staring, the Transit Fare Inspector attempted to speak to the Customer, but the Customer did not respond.

Eventually the two other Transit Fare Inspectors separately joined the single Transit Fare Inspector. The Customer and the three Transit Fare Inspectors exited at the St. Clair Avenue West and Bathurst Street stop. The Customer then re-boarded the Streetcar and resumed his previous position on the Streetcar in front of the doors. However, instead of facing the interior of the Streetcar, the Customer now faced the Transit Fare Inspectors who were now standing on the streetcar platform facing the Streetcar. The Streetcar doors then closed. The Customer then reopened the Streetcar doors, re-exited the vehicle and headed directly toward the Transit Fare Inspectors. The Customer entered the personal space of one of the Transit Fare Inspectors who then pushed the Customer back into the Streetcar. The Customer then re-approached the Transit Fare Inspector who pushed him while swinging his fist at the Transit Fare Inspector who deflected the punch. The Customer then turned and ran at the Transit Fare Inspectors again. The Customer was then arrested by the Transit Fare Inspectors.

Following a review of the TTC Streetcar video, the Head of TTC Transit Enforcement Unit requested a TTC internal investigation into this alleged incident. Additional concerns were then raised by members of the public and were subsequently added to the allegations. The purpose of the internal investigation was to determine whether the Transit Fare Inspectors engaged in conduct that violated the TTC Transit Enforcement Unit Code of Conduct, and specifically whether they engaged in discreditable conduct, unlawful or unnecessary exercise of authority, and engaged in conduct amounting to discrimination and/or harassment.

### **Findings**

After a thorough investigation into the alleged incident on February 18, 2018, the investigation found that there was insufficient evidence to support a finding of discreditable conduct against two Transit Fare Inspectors (Respondents 2 and 3).

The investigation found that there was sufficient evidence to support a finding of discreditable conduct against one Transit Fare Inspector (Respondent 1), whereby the

Transit Fare Inspector was found to have smiled at the Customer during a tense interaction. This action was found to be unprofessional conduct.

The investigation also found there was insufficient evidence to support that the Transit Fare Inspectors engaged in unlawful or unnecessary exercise of authority, or that they engaged in conduct amounting to discrimination and/or harassment.

## Part I: Introduction

The Head of the Toronto Transit Commission's Transit Enforcement Unit (Complainant) requested a formal investigation into an incident that occurred on February 18, 2018 involving a Customer and three Transit Fare Inspectors.

The complaint was filed on February 20, 2018 and a formal investigation was conducted by Paul Manherz, Unit Complaints Co-ordinator (UCC), TTC's Investigative Services and Jack Pham, Human Rights Consultant (HRC), TTC's Diversity and Human Rights Department. The two Investigators hereinafter will be referred collectively as "TTC Investigators," and individually as the UCC and the HRC, respectively.

### Definitions and Acronyms

Several acronyms are used throughout this report. Each of these acronyms is defined below:

**Civilian Witness(es)** – means a member(s) of the public and/or employee(s) of the Toronto Transit Commission who are not members of the Transit Enforcement Unit.

**Complainant** – means the Head of the Transit Enforcement Unit.

**Complaints Procedure** – means the procedure prepared by the Toronto Transit Commission for managing complaints involving the conduct of Transit Fare Inspectors.

**DHRD** – means the Diversity and Human Rights Department of the Toronto Transit Commission.

**Code of Conduct** – means the document outlining the Transit Enforcement Unit's mission, statement, core values and standards of professional conduct. The expectation is that all members of the Transit Enforcement Unit will comply with this document.

**Customer:** means Civilian Witness 1. This is the individual involved in the incident involving Transit Fare Inspectors that occurred on February 18, 2018.

**EMS** – means Emergency Medical Services in the city of Toronto.

**HRC** – means the Diversity Human Rights Consultant.

**POP** – means proof of payment.

**Respect and Dignity Policy** – means a policy reflecting the commitment by the Toronto Transit Commission to provide a work environment and service delivery that respects the dignity, self-worth and human rights of every individual and allows them to be free from any form of discrimination and harassment. All Toronto Transit Commission employees are expected to observe and are bound by the principles set out in this policy.

**Respondents** – means the three Transit Fare Inspector(s) or Respondent 1, Respondent 2 and Respondent 3 who are alleged to have been involved in misconduct.

**TEO** – means Transit Enforcement Officer (Special Constable).

**TEU** – means Transit Enforcement Unit and includes Transit Enforcement Officers and Transit Fare Inspectors.

**TFI** – means Transit Fare Inspector.

**TPS** – means Toronto Police Service.

**TTC** – means Toronto Transit Commission.

**TTC By-law No.1** – means a by-law regulating the use of the Toronto Transit Commission local passenger transportation system.

**TTC Streetcar** – means the incident streetcar, #4443, owned and operated by the Toronto Transit Commission. On February 18, 2018, this streetcar was operating on the 512 St. Clair streetcar route.

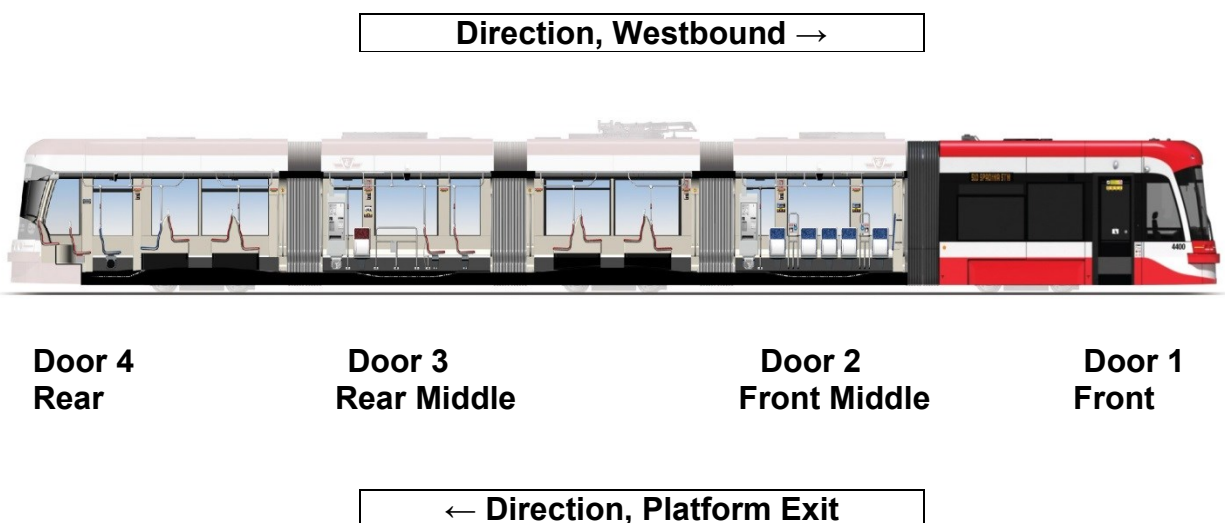
**UCC** – means Unit Complaints Co-ordinator – the designated Complaints Co-ordinator employed by the Toronto Transit Commission, independent of the Transit Enforcement Unit (TEU) who has been trained by the Toronto Police Service’s Professional Standards Unit.

**Witness Officer(s)** – means a member(s) of the Transit Enforcement Unit who provided a statement and/or attended an interview in relation to this investigation.

## Background

On February 18, 2018, the Respondents boarded the TTC Streetcar at St Clair Station. The Respondents were heading westbound to the TTC Hillcrest Yard located at 1138 Bathurst Street, Toronto. While on the TTC Streetcar heading westbound, the Respondents were not conducting POP inspections as it was the end of their work shift. They were on the TTC Streetcar solely for the purpose of commuting to their office. They intended to disembark the TTC Streetcar at Bathurst Street and transfer to a southbound bus.

### Image A: 512 TTC Streetcar (for incident reference)



The TTC Streetcar has four doors for entry and egress. Door 1 is at the front and Door 4 is at the rear. Door 2 and 3 are respectively located approximately one third and two

thirds down the length of the TTC Streetcar from the front. On the TTC Streetcar, Respondent 1 stood by Door 2, and Respondents 2 and 3 stood by Door 3.

While the TTC Streetcar was servicing St Clair West Station, the Customer boarded the TTC Streetcar, stood in front of the vehicle's doors and directly faced Respondent 1 who was standing across from the Customer on the opposite side of the vehicle approximately four feet away.

The Customer continuously stared at Respondent 1. Respondent 1 attempted to break the Customer's stare by looking away. Despite these attempts, the Customer continued to stare at Respondent 1.

Between St Clair West Station and the first westbound surface stop, located at Bathurst Street and St. Clair Avenue West, Respondent 1 repeatedly attempted to speak to the Customer. The Customer did not respond to any attempts of communication by Respondent 1.

Before the TTC Streetcar arrived at the Bathurst Street surface stop, Respondent 2 and Respondent 3 moved from their location by Door 3 to stand adjacent to Respondent 1 by Door 2.

As the TTC Streetcar arrived at the Bathurst Street stop, the Customer turned and faced the vehicle's door. A group of passengers were close behind the Customer waiting to disembark, and the Respondents were behind the group of passengers. When the TTC Streetcar came to a full stop, the doors opened and the Customer stepped off and stood immediately to the left side of the doors while other passengers disembarked. The Respondents exited behind the group of passengers.

As the Respondents stepped off the TTC Streetcar, the Customer passed them while re-entering the vehicle. The Customer stood in the doorway of the TTC Streetcar and was directly facing the Respondents who were now standing on the streetcar platform. The TTC Streetcar doors then closed.

The Customer then repeatedly pressed the door button to reopen the TTC Streetcar doors, re-exited the vehicle and headed directly toward Respondent 1. The Customer stopped in front of Respondent 1, approximately three-to-six inches from him. At that time, Respondent 1 pushed the Customer back.

The Customer then re-approached Respondent 1 while swinging his fists at the head of Respondent 1. Respondent 1 deflected the punch of the Customer. The Respondents made no attempt to arrest the Customer as he again stepped towards the TTC Streetcar. The Customer then turned away from the TTC Streetcar and ran at the Respondents physically contacting Respondent 2. The incident concluded with the Customer being arrested by the Respondents, and then being released unconditionally by TPS.

On February 20, 2018, the Complainant approached the UCC and requested a formal investigation into the possible unnecessary use of force by Respondent 1. In the days following the incident, additional allegations were raised by members of the public alleging the Customer was treated differently because of his race. These additional allegations were added to the ongoing complaint.

On or about February 28, 2018, TPS commenced a criminal investigation into this incident. TPS requested that the TTC refrain from interviewing the Respondents and Civilian Witnesses 1 and 3 until TPS completed their investigation, so as to minimize the possibility of jeopardizing the integrity of their criminal investigation. On April 23, 2018, TPS advised the TTC that they had completed their investigation.

## Part II: Investigation Mandate and Process

An investigation was commenced to determine whether, on reasonable grounds<sup>1</sup>, the Respondents' conduct amounted to discreditable conduct and unlawful or unnecessary exercise of authority under the TEU Code of Conduct. In addition, the UCC requested DHRD to provide consultation on whether the Respondents' conduct, on a balance of probabilities<sup>2</sup>, amounted to discrimination and/or harassment under the TTC's Respect and Dignity Policy, which is included under Section 4 of the TEU Code of Conduct.

After receipt of the complaint, notes and statements were requested from the Respondents and the identified Witness Officers. TEU provided the TTC Investigators access to reports, statements, notebooks, personnel records, training records and other related evidence.

The UCC attempted to contact 10 identified civilian witnesses, including the Customer. Four of the 10 witnesses were TTC employees who had observed some part of the incident or attended the scene. The six remaining witnesses were either onboard the TTC Streetcar or members of the public not travelling on the TTC.

The Customer did not initially respond to invitations by the TTC to provide a statement to the TTC. It was learned that he would not provide a statement to the TTC unless provided with a copy of the TTC Streetcar video in advance. On April 24, 2018, a redacted version of the TTC Streetcar video was provided to counsel for the Customer. On May 24, 2018, the Customer, through his counsel, provided a written statement. Follow up questions for the Customer were forwarded to counsel on May 31, 2018, with a response requested by June 6, 2018; however, no response was received.

Of the civilian witnesses that were contacted, all four TTC employees were interviewed and two other witnesses (Civilian Witnesses 3 and 4) provided written statements. Civilian Witness 3 was also interviewed.

One of the remaining witnesses, Civilian Witness 2 provided extensive information to various media outlets, but did not respond to invitations from the UCC to provide their version of events for the purposes of this investigation. In addition, six Witness Officers and the three Respondents provided written statements and were interviewed.

A thorough review of all available documentary records and evidence related to this incident was conducted, which included the following:

- TTC Streetcar video;
- TTC Transit Control audio;
- YouTube incident video;
- Incident scene measurements;

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<sup>1</sup> As defined in Part 3 of the Toronto Transit Commission Investigation Report, dated June 19, 2018.

<sup>2</sup> As defined in Part 3 of the Toronto Transit Commission Investigation Report, dated June 19, 2018.



- All statements and/or interview notes received, including those from the Customer, Civilian Witnesses, Witness Officers and Respondents;
- Reports submitted by the TTC Chief Supervisor who attended the scene and the TTC Streetcar Operator who had been operating the TTC Streetcar;
- Use of Force Reports submitted by the Respondents;
- Record of Arrest submitted by Respondent 1;
- Personnel records of the Respondents;
- Statement of Claim served on the TTC by the Customer involved in this incident;
- TFI Job Description;
- Policies and Procedures of the TEU (e.g. Use of Force);
- TTC Respect and Dignity Policy;
- TFI Training provided by the TEU related to Use of Force;
- TEU Code of Conduct;
- TFI memorandum notes and audio from TTC Transit Control from an incident that occurred on September 27, 2016, involving two TFIs and a customer; and
- *Criminal Code of Canada* with specific attention given to the various sections that relate to the use of force and self-defence, including Sections: 25, 26 and 34. These sections are noted in the “Referenced Information” at the end of this report.

## **Part III: Standard of Proof**

To determine whether there is a violation of the TTC's TEU Code of Conduct, the standard of proof required is reasonable grounds. Reasonable grounds is defined as reason to believe that misconduct occurred. This belief goes beyond mere suspicion, must be more than an opinion of misconduct, and must be objectively based on factual evidence. To substantiate an allegation, the investigator must be satisfied that the evidence supports that the allegation reasonably occurred<sup>3</sup>.

To determine whether there is a violation of the TTC's Respect and Dignity Policy, the standard of proof required is a balance of probabilities. To substantiate an allegation, the investigator must be satisfied that the evidence supports that the allegation was more likely than not to have occurred.

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<sup>3</sup> Toronto Transit Commission Transit Enforcement Unit, Transit Fare Inspector Complaints Procedure, October 11, 2017, p.20.

## Part IV: Relevant Policies

### TEU Code of Conduct

**Section 2(1)** *A Transit Enforcement Unit Member commits misconduct if he or she engages in,*

**(a)** *Discreditable conduct*, in that he or she,

- (i) fails to treat or protect persons equally without discrimination with respect to services provided by the Transit Enforcement Unit based on any of the prohibited grounds as set out in Section 1 of the Ontario Human Rights Code;*
- (iv) is otherwise uncivil to a member of the public;*
- (vi) assaults any other person;*
- (xi) acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the TTC.*

**(g)** *Unlawful or Unnecessary Exercise of Authority*, in that he or she,

- (ii) uses any unnecessary force against a person contacted in the execution of his or her duty.*

**Section 4** *Any Transit Enforcement Unit Member shall also comply with all other TTC Corporate Policies and Procedures and any Departmental Policies and Procedures, including but not limited to Conditions of Employment and Conflict of Interest.*

The TTC's Respect and Dignity Policy is a TTC corporate policy and included in Section 4 of the TEU Code of Conduct.

The intended language and the aspirations of equity as set out in Section 2(1)(a)(i), are reflected in the TTC's Respect and Dignity Policy.

### TTC's Respect and Dignity Policy

*(4.3) Discrimination and harassment are serious forms of misconduct. TTC employees who are found to have engaged in discriminatory and/or harassing conduct against other employees, contractors or customers will be disciplined, up to and including dismissal.*

#### Definitions

*(5.2) Discrimination: Every Person has a right to equal treatment without discrimination by TTC with respect to its services and facilities, accommodations, contracts, and employment.*

*Discrimination occurs when a person is subjected to differential treatment and/or denied an opportunity in employment, or excluded from access to service or facilities based on one or more protected grounds. Discrimination can be direct or indirect and does not have to be intentional.*

*Protected grounds under the Ontario Human Rights Code and Respect and Dignity Policy are race, ancestry, place of origin, colour, ethnic origin, citizenship, creed/religion, sex including pregnancy and breastfeeding, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status and disability.*

*(5.3) Harassment: Every Person has a right to equal treatment by TTC with respect to its services and facilities, accommodation, contracts, and employment, without harassment.*

*Harassment is defined as engaging in vexatious comments or conduct against a person that is known, or ought reasonably to be known, to be unwelcome, and involves a course of conduct or a single serious incident. Harassment does not have to be based on one or more protected grounds. Harassment also includes personal (non-Code) harassment.*

The TTC's Respect and Dignity Policy does not expressly define racial profiling. In absence of an expressed definition, the Policies and Guidelines of the Ontario Human Rights Commission and Canadian human rights case law are relied on for additional guidance. The Ontario Human Rights Commission distinguishes racial profiling as specifically referring to the realm of safety, security or public protection. This would include professionals in the realm of policing, enforcement, or the like. TFIs, as members of the TTC TEU, fit in this realm.

The Ontario Human Rights Commission<sup>4</sup> defines racial profiling as:

*“any action undertaken for reasons of safety, security or public protection, that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin, or a combination of these, rather than on a reasonable suspicion, to single out an individual for greater scrutiny or different treatment.”*

Racial profiling is differential treatment based on race, colour, and/or ethnic origin, and would be captured within the definition of discrimination as found within the TTC's Respect and Dignity Policy.

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<sup>4</sup> Lavender, T. S. (2017). *The 2018 annotated Ontario Human Rights Code*. Toronto, Ontario: Thomson Reuters.

## Part V: Allegations

1. It is alleged that the Respondents failed to treat a customer equally without discrimination with respect to services on the basis of race, colour and/or ethnic origin, amounting to discreditable conduct under Section 2(1)(a)(i) of the TEU Code of Conduct, which states:

*“Fails to treat or protect persons equally without discrimination with respect to services provided by the Transit Enforcement Unit based on any of the prohibited grounds as set out in Section 1 of the Ontario Human Rights Code”*

2. It is alleged that Respondent 1 acted in a manner that was uncivil towards a customer, amounting to discreditable conduct under Section 2(1)(a)(iv) of the TEU Code of Conduct, which states:

*“Is otherwise uncivil to a member of the public”*

3. It is alleged that Respondent 1 assaulted a customer amounting to discreditable conduct under Section 2(1)(a)(vi) of the TEU Code of Conduct, which states:

*“Assaults any other person”*

4. It is alleged that the Respondents acted in a manner that was not consistent with TTC and community expectations, amounting to discreditable conduct under Section 2(1)(a)(xi) of the TEU Code of Conduct, which states:

*“Acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the TTC”*

5. It is alleged that Respondent 1 pushed a customer without any underlying authority to use force, amounting to unnecessary or unlawful use of force under Section 2(1)(g)(ii) of the TEU Code of Conduct, which states:

*“Uses any unnecessary or unlawful force against a person contacted in the execution of his or her duty”*

6. It is alleged that the Respondents engaged in conduct amounting to discrimination and/or harassment under the TTC's Respect and Dignity Policy, contrary to Section 4 of the TEU Code of Conduct, which states:

*“Any Transit Enforcement Unit Member shall also comply with all other TTC Corporate Policies and Procedures and any Departmental Policies and Procedures, including but not limited to Conditions of Employment and Conflict of Interest.”*

## Part VI: Evidence

### Respondents' Evidence

#### Respondent 1

Respondent 1 is a member of the TTC TEU and carries out his duties in a uniform capacity. The following is a synopsis of the statement and interview responses provided by Respondent 1:

- Respondent 1 has been employed as a TFI since June 2015.
- On February 18, 2018, Respondent 1 was working with two partners, Respondent 2 and Respondent 3.
- They had completed their off-board inspections at St Clair Station and intended to take a streetcar to Bathurst Street and St. Clair Avenue West, and then take a southbound TTC bus to TTC's Hillcrest Yard, to complete their notes and shift.
- At St Clair Station they boarded the TTC Streetcar.
- Respondent 1 and his partners were not conducting POP inspections at this time as it was the end of their work shift. They were on the TTC Streetcar solely for the purpose of commuting to their office.
- Respondent 1 stood near Door 2 and Respondent 2 and Respondent 3 stood together near Door 3.
- At St Clair West Station many passengers exited the TTC Streetcar and then some new passengers also boarded. The Customer boarded the TTC Streetcar at Door 2 stepping just inside the door. The Customer stood still and immediately began staring at Respondent 1, with what Respondent 1 characterized as a "dead stare."
- The Customer's facial expression appeared neutral.
- The Customer was wearing a hoodie with the hood up, a backpack and headphones around his neck.
- Respondent 1 stated that he did not initially feel intimidated by the Customer's stare. Specifically, he stated that he felt "nothing." Then, subsequently he thought that the situation was "weird."
- Respondent 1 stated that he had then looked in a different direction in an attempt to break the Customer's stare, but it did not help. The Customer remained staring at him.
- After almost a minute of non-stop staring, Respondent 1 attempted to engage the Customer to de-escalate the situation by removing any possible tension. Respondent 1 asked the Customer if he was OK. The Customer did not respond and continued to stare at him.
- Respondent 1 told the Customer that he was not checking for POP as he believes passengers may feel intimidated when TFIs are onboard a streetcar. This was another attempt by Respondent 1 to break the stare/tension. The Customer did not respond and continued to stare at him.

- Respondent 1 again asked the Customer if he was OK. The Customer did not respond and continued to stare at him.
- Respondent 1 told the Customer that if he needed help, to let him know. The Customer did not respond and continued to stare at him.
- With each communication Respondent 1 becomes more uncomfortable with the behaviour of the Customer. His continued staring and lack of verbal communication was not something Respondent 1 had encountered before.
- Respondent 1 stated he felt “very uncomfortable” and “it was intimidating.”
- The Customer was emotionless from the time he boarded.
- Respondent 1 looked in a different direction in an attempt to break the Customer’s stare directed at him. However, the Customer continued to stare at him in a fixed manner.
- Respondent 1 observed the Customer place his left arm on the PRESTO card reader. Respondent 1 did not consider this arm movement a threatening gesture.
- Respondent 2 joined Respondent 1 of his own accord and stood to Respondent 1’s left. The Customer continued to stare at Respondent 1.
- Respondent 1 advised Respondent 2 that the Customer had begun staring at him as soon as he boarded.
- Respondent 2 attempted to call Respondent 3 over; however, he was unsuccessful. Respondent 1 noticed this and then waved Respondent 3 over.
- Respondent 1 explained that he thought Respondent 3’s presence could help alleviate the stare from the Customer.
- Respondent 1 explained to TTC Investigators that “alleviating the stare” meant breaking the stare and he thought that having a third TFI present would create a sense of “officer presence.” Respondent 1 underscored that while he does not know whether he himself would have decided to have all three Respondents present, he did believe having an “officer presence” was acceptable in this circumstance.
- Upon Respondent 3’s arrival, Respondent 1 advised him that the Customer had been staring at him since he boarded the TTC Streetcar and the Customer had been non-verbal the entire time.
- Respondent 1 believed the Customer possibly had placed his right hand in his pocket. Respondent 1 did not think there was a weapon in the Customer’s pocket, but he was mindful that there was that possibility. Respondent 1’s training suggests some of the indicators of an individual with a weapon include hands in their pockets accompanied by atypical behaviour. However, upon further questioning and a review of the TTC Streetcar video (during the interview), Respondent 1 acknowledged his initial perception was incorrect and the Customer kept his hands to his side.
- The continued stare by the Customer caused Respondent 1 to feel nervous, scared and unsure as to what was happening. Although curious, Respondent 1 did not know why the Customer was staring at him. Respondent 1 believed the behaviour of the Customer was bizarre and not typical of a TTC customer.
- Respondent 1 did not think that other passengers were at risk of danger at this point, but he did not want to walk away and have his back face the Customer, as he had concerns for his own safety.



- Respondent 1 believed both of the Customer's hands "clenched and unclenched several times."
- When the TTC Streetcar was arriving at the Bathurst Street stop, the Customer turned his body around to face the door.
- The TTC Streetcar arrived at Bathurst Street and the Customer exited the vehicle and stood to the left side of the doors.
- Respondent 1 did not make any attempt to leave the TTC Streetcar through another exit because he did not think there was enough time.
- The Respondents exited the TTC Streetcar after a group of passengers. They walked a few steps to the right (east on the streetcar platform). As Respondent 1 exited he observed peripherally the Customer (standing to the left of the doors off the TTC Streetcar) still staring at him.
- The Respondents then turned to face the Customer and the TTC Streetcar.
- Respondent 1 advised he did this to ensure that the Customer left on the TTC Streetcar. He explained that he did this for "his [own] safety" and "peace of mind." Respondent 1 also stated this is his normal practice, as he typically steps back from the streetcar to make his notes about which vehicle they were on and the time they exited.
- Respondent 1 further added that the reason why he turned around to face the TTC Streetcar and the Customer was because the experience with the Customer was unusual, and in the event that an incident should happen with the Customer at a later time that day, he would need to report his observations from beginning to end. This included being aware of when the Customer re-boarded, the location of the Customer, and in which direction the TTC Streetcar proceeded.
- The Customer re-boarded the TTC Streetcar and stood in his previous position and facing outwards at the Respondents who were standing on the streetcar platform. The Customer continued to stare at Respondent 1 with the same type of stare.
- Respondent 1 was relieved that the Customer was re-boarding the TTC Streetcar. Respondent 1 believed that he could then continue his trip to the office and complete his shift. Respondent 1 stated he "probably smiled" in general, not at the Customer, as it appeared his experience with the Customer was going to end. The Customer re-boarded the TTC Streetcar, the doors were closing and Respondent 1 believed he was going to be able to finish his shift for the day.
- As the doors began to close, Respondent 1 heard and saw the Customer "anxiously" pressing the button on the TTC Streetcar door to reopen the doors. As the Customer continued to stare at Respondent 1, the Customer's eyes widened as if in a panic and his jaw clenched. The Customer's actions worried Respondent 1.
- The TTC Streetcar doors reopened and the Customer stepped off and "lunged" towards Respondent 1 with his fists clenched.
- Respondent 1 described the Customer's demeanour when he re-exited the TTC Streetcar as "very aggressive."
- When the Customer re-exited the TTC Streetcar, Respondent 1 was "fearful."
- The Customer was in Respondent 1's personal space. He believed he was about to be punched.

- Respondent 1 instinctively reacted by giving the Customer a quick push using his two hands on the Customer's chest. The purpose of the push was to create distance between himself and the Customer and avoid any further assault. He did not intend for the Customer to lose his footing and fall.
- Respondent 1 immediately began yelling at the Customer, "Stop!" and "What are you doing!"
- The Customer quickly got to his feet and ran towards Respondent 1 swinging his fists attempting to punch him.
- Respondent 1 moved back to avoid the punches and the Customer became entangled with Respondent 2 and they both went to the ground.
- Respondent 1, along with Respondent 2 and Respondent 3, then affected a citizen's arrest.
- Respondent 1 held the Customer's left arm and elbow against the ground, while Respondent 3 held his right. Respondent 2 held the Customer's legs. The Customer was held in place to prevent the continuation of the assault.
- Both Respondent 1 and Respondent 3 told the Customer he was under arrest and to stop resisting. Respondent 1 placed a call for assistance on the radio to Transit Control.
- Respondent 1 observed the Customer moving his head from side to side, while he was in a prone position. Respondent 1 saw that each time he did this the Customer's nose was scraped. Over the radio, Respondent 1 requested EMS be dispatched for the Customer.
- The Customer was very upset and struggling to free himself. He was also yelling about his headphones. Respondent 1 noticed the Customer's headphones under the TTC Streetcar and either he or Respondent 3 asked a citizen to secure the headphones, believing this may assist in calming the Customer down. This did not work and the Customer continued to scream and yell.
- Respondent 1 had asked a member of the crowd to speak to the Customer to ask him to co-operate. Respondent 1 stated he was doing whatever he could to try and calm the Customer down, but he was not successful.
- Respondent 1 could smell alcohol on the breath of the Customer once he was on the ground and under arrest for assault.
- At approximately 4:37 p.m., four TPS officers arrived on scene and continued the arrest. TEOs also arrived on scene.
- Respondent 1 stood up and allowed TPS officers to take over. The Customer was subsequently placed in handcuffs.
- Respondent 1 explained to TPS and TEOs what had occurred on the TTC Streetcar. He explained that when the Customer re-exited the streetcar the second time (at Bathurst Street) the Customer walked toward him and into his space causing him to be fearful.
- The Customer was later released on scene with no charges, declining EMS.
- Respondent 1 was very upset and confused as to why the Customer had been released by TPS. The Customer had just assaulted him and his partners, and he believed that he would not have gone through this entire ordeal if the situation had not warranted it. Respondent 1 believed his professionalism and integrity were in question.

- After Respondent 1 spoke with TPS and TEOs, he then spoke with his Sergeant (Witness Officer 6). He explained to them that when the Customer had re-exited the streetcar the second time, the Customer lunged out of the TTC Streetcar toward him and he was fearful.
- Respondent 1 explained to TTC Investigators the reason why his account of what happened was different between TPS officers and TEOs and with his own Sergeant was because his Sergeant gave him time to tell the story from beginning to end. When TPS initially asked him questions, he was stressed from what had just occurred and as a result his words did not accurately reflect what happened. He also explained that TPS asked him questions in no particular order and this did not help him convey his version of events accurately.
- Respondent 1 stated that if a customer physically approaches his personal space, ideally he would step back (if there is space available), stick his hands out (arms up) and deliver a loud verbal warning, “STOP GET BACK, WHAT ARE YOU DOING?” However, Respondent 1 notes that if a customer abruptly approaches him without his knowledge there may not be enough time for him to go through his ideal actions.
- After the incident occurred, Respondent 1 was advised by Witness Officer 3 that they had dealt with the Customer on prior occasions. Although Respondent 1 did not remember the Customer, or recall ever having seen him before, Witness Officer 3 told him that they had at one time in the past, pointed him out to Respondent 1.
- Respondent 1 does not recall having seen or interacted with the Customer prior to this incident.

## **Respondent 2**

Respondent 2 is a member of the TTC TEU and carries out his duties in a uniform capacity. The following is a synopsis of the statement and interview responses provided by Respondent 2:

- Respondent 2 has been employed as a TFI since May 2015.
- Since his employment at the TTC, Respondent 2 has worked occasionally with Respondent 1, but rarely with Respondent 3.
- On February 18, 2018, at approximately 4:30 p.m., Respondent 2 was working with Respondent 1 and Respondent 3. They were heading back to their office for the end of their work shift.
- Respondent 2 and his partners had boarded the TTC Streetcar at St Clair Station and were travelling to Bathurst Street and St. Clair Avenue West. They planned to transfer to a southbound bus at Bathurst Street to take them to their office. At this time they were not checking POP given they were completing their shifts and were carrying their personal belongings. Respondent 2 was carrying his lunch bag.

- Respondent 2 boarded the TTC Streetcar with Respondents 1 and 3 through Door 4 (rear door). Respondent 1 proceeded to Door 2 (front middle) and Respondents 2 and 3 walked to Door 3 (rear middle).
- When the TTC Streetcar arrived at St Clair West Station, Respondents 2 and 3 were still standing together at Door 3. Respondent 2 stated that he had a habit of looking around for his partners. As such, as he glanced toward the front section of the TTC Streetcar, he saw Respondent 1 standing near Door 2, on the opposite side, facing the door.
- When Respondent 2 looked at Respondent 1, while at St Clair West Station, he noticed the Customer standing opposite of Respondent 1, staring at him without blinking his eyes. Respondent 1 was returning the Customer's gaze. Respondent 2 did not believe that there was a conversation happening between the two because he did not see any lips moving by either person.
- Respondent 2 saw the Customer's eyes, but not his face. He recalls that the Customer's eyes were "not blinking," which raised some concern for him because he felt as though this was unusual behaviour. At that time, he was concerned for Respondent 1's safety.
- Respondent 2 walked over and joined Respondent 1. The streetcar was still stationed at St Clair West Station. The Customer briefly looked at Respondent 2, but then returned his stare to Respondent 1.
- Respondent 2 stated that Respondent 1 did not ask him to come beside him. Respondent 2 walked over because he thought something was unusual and he was concerned for the safety of Respondent 1.
- When Respondent 2 first arrived at the side of Respondent 1, he asked Respondent 1 what was happening; however, Respondent 2 does not recall the response. The TTC Streetcar proceeded to leave St Clair West Station.
- Respondent 2 stood next to Respondent 1 on the left side. With a closer view of the Customer, Respondent 2 confirmed that the Customer was not blinking.
- Respondent 2 "felt intimidated" and "scared" by the Customer's staring because it was "constant." Respondent 2 gestured (with his hand) for Respondent 3 to come join him and Respondent 1. Respondent 3 did not come at this time.
- Respondent 2 stated that he could not recall what the Customer was doing with his hands or where his hands were.
- Respondent 2 noted that he did not think that other passengers on the TTC Streetcar were at risk of danger at this point.
- Respondent 2 stated that after he attempted to gesture twice with his hands for Respondent 3 to come join them, Respondent 1 waved for Respondent 3 to come over. It was at this moment that Respondent 3 then walked over and stood on the right hand side of Respondent 1.
- Respondent 2 states the Customer did not make any attempts to communicate with them and maintained a continuous stare, directed at Respondent 1's eyes.
- Respondent 2 stated that the Customer's body language was unusual. When combined, he noted the following behaviours were atypical:
  - The Customer did not move, maintaining a very still posture and making no attempt to move his head;

- Customer was standing upright and straight;
  - Customer did not attempt to sit down;
  - Customer had no expression on his face; and
  - Customer was constantly staring at Respondent 1.
- Respondent 2 believed the combination of his staring and lack of body movement made the Customer's behaviour more unusual than the staring alone.
  - Respondent 2 did not necessarily believe the Customer was threatening; however, he noted the Customer's actions were unusual and the situation could potentially lead to a threat.
  - For safety reasons, Respondent 2 typically makes efforts to be aware of his surroundings, and in this case, he noted there were families with children on the TTC Streetcar.
  - Respondent 2 stated that typically when he is faced with a customer staring at him in an unusual manner, he would walk away from the customer. Respondent 2 further explained that he has experienced intense staring from other customers before, but never to this extent or for this duration, which had him concerned for Respondent 1's safety. When the TTC Streetcar was arriving at the St. Clair Avenue West stop (Bathurst Street), the Customer turned his body around to face the door. The door opened and the Customer exited the TTC Streetcar to the left side. The Customer stood standing outside the TTC Streetcar immediately to the left of the door.
  - The Respondents exited the TTC Streetcar and immediately turned around once on the streetcar platform. Respondent 2 did this for three reasons:
    - There were other people around him getting on and off the TTC Streetcar and there was not a lot of room to move.
    - He typically stands back to allow all other passengers to clear the relatively small streetcar platform area. He does not want to push through anybody in order to exit.
    - He did not want to turn his back on the Customer who was acting in an unusual manner.
  - The Customer re-boarded the TTC Streetcar, while staring at Respondent 1 and turned his body to face Respondent 1. The Customer's facial expression had not changed.
  - Respondent 2 believed the Customer had exited the TTC Streetcar and then re-boarded, after possibly realizing he had gotten off at the wrong stop.
  - As the doors closed, the Customer pushed the door button multiple times while staring at Respondent 1. When the doors opened, the Customer stepped out of the TTC Streetcar and walked straight towards Respondent 1.
  - At that point, Respondent 2 believed that the combined actions of the Customer were threatening: the Customer stared at Respondent 1 for an extended period of time; the Customer made efforts to exit the TTC Streetcar while continuing to stare at Respondent 1 after the doors had just closed; and then the Customer exited the vehicle and walked directly up to Respondent 1.

- Respondent 2 believed the Customer was going to physically harm Respondent 1.
- Respondent 2 does not recall where the Customer's hands were or what the Customer's hands were doing at this very moment.
- As the Customer approached Respondent 1, Respondent 1 pushed the Customer back using both hands on the chest. The Customer fell into the streetcar on his back.
- The Customer then stood and very aggressively walked towards Respondent 2 with his hands up in the air. At this time, Respondent 1 had moved behind Respondent 2. The Customer moved very close to Respondent 2 (essentially walking into him). Respondent 2 felt that the Customer was going to physically harm him and he had no space to move further back because of the streetcar shelter.
- With nothing to steady his balance, Respondent 2 dropped his lunch bag and grabbed the Customer's jacket with his right hand and they both fell to the ground.
- Once on the ground, Respondent 1 was holding down the Customer's left arm and Respondent 3 was holding down the Customer's right arm. Respondent 2 was using both of his hands to hold the Customer's ankles for the safety of his partners and the Customer himself.
- Respondent 1 was telling the Customer he was under arrest for assault and to stop resisting.
- The Customer was very aggressive and was not complying with verbal commands to stop resisting or to calm down.
- The Customer was yelling, "Stop hurting me!" Respondent 2 was not sure if he was hurting the Customer by holding his ankles, so he readjusted his grip to hold the Customer more so by his pant legs. Respondent 2 was attempting to solely restrict the movement of the Customer.
- At approximately 4:37 p.m., multiple TPS officers arrived on scene and placed handcuffs on the Customer. The Customer was initially uncooperative with TPS by refusing to provide his left arm to them.
- Once TPS had full control of the Customer, Respondent 2 let go of the Customer's ankles and stepped back.
- Respondent 2 did not recall the Customer making any gestures or engaging in verbal communication with him.
- Respondent 2 could not recall either himself or his partners engaging in any conduct that would have caused the Customer to exit the TTC Streetcar and aggressively approach Respondent 1.
- Respondent 2 did not observe Respondent 1 smile at the Customer at any time.
- Respondent 2 believes he followed the training he has been provided and his actions were lawful, reasonable, necessary and acceptable.
- Respondent 2 does not recall having seen or interacted with the Customer prior to this incident.

## Respondent 3

Respondent 3 is a member of the TTC TEU and carries out his duties in a uniform capacity. The following is a synopsis of the statement and interview responses provided by Respondent 3:

- Respondent 3 has been employed as a TFI since November 2017.
- Respondent 1 was Respondent 3's coach officer from January 2018 until February 18, 2018.
- On February 18 2018, Respondent 3 was working with two partners; Respondents 1 and 2.
- At approximately 4:16 p.m., Respondent 3 and his partners boarded the TTC Streetcar westbound from St Clair Station.
- They were travelling to Bathurst Street and St. Clair Avenue West, where they intended to take a Bathurst Street bus southbound to their final destination (TTC Hillcrest Yard).
- On the TTC Streetcar, the Respondents stood in two different locations within the vehicle.
- Since it was the end or near the end of their work shift, Respondent 3 stated that he and his partners were not checking passenger POP. They were on the TTC Streetcar for the sole purpose of commuting back to their work location. In addition, it is TEU's practice that POP inspections are not conducted in teams of three TFIs as it may be viewed by customers as intimidating.
- Respondent 3 boarded the TTC Streetcar with Respondents 1 and 2 at Door 4. Respondent 1 then situated himself across Door 2, beside the first fare machine. Respondent 2 and Respondent 3 stood across from Door 3, beside the second fare machine.
- At approximately 4:25 p.m., the TTC Streetcar entered St Clair West Station to drop off and pick up passengers. The TTC Streetcar then closed its doors and began travelling around the station in a loop to continue westbound.
- As the TTC Streetcar was completing its loop in the station, Respondent 2 pointed out to Respondent 3 the Customer that was standing across from Respondent 1. The Customer was staring at Respondent 1 in an odd manner.
- Respondent 2 walked up to join Respondent 1, so that he was not alone with the Customer. Respondent 3 believed Respondent 2 did this to add to the officer presence, which usually deters an individual from taking any negative action against them.
- Respondent 3 did not join Respondent 2 as he was not sure what was happening and did not know if his attendance was required.
- As the TTC Streetcar straightened out from the loop, Respondent 3 was able to obtain a better look at the situation and the Customer's actions. He saw the Customer staring at Respondent 1. He characterized the stare as a "direct stare."

- Respondent 3 did not observe the Customer speaking to either Respondent 1 or Respondent 2, and he did not observe Respondents 1 or 2 say anything to the Customer. Respondent 3 did not know what had caused the Customer to stare at Respondent 1, but he knew Respondent 1 was not conducting POP inspections.
- The Customer had a blank stare in his eyes and would not break eye contact with Respondent 1 in the time Respondent 3 observed him.
- Respondent 1 and Respondent 2 then signalled Respondent 3 to attend their location.
- At this time Respondent 3 began to believe the Customer's behaviour was odd. Respondent 3 remained unsure as to what was happening.
- Respondent 3 then walked over and stood on the right hand side of Respondent 1. He asked Respondent 1 what was happening and Respondent 1 replied, "Just wait here."
- While at Respondent 1's side, Respondent 3 looked at the Customer. The Customer continued his blank stare towards Respondent 1 without breaking eye contact.
- Respondent 3 believed the Customer's stare now appeared to have a "bothered" emotion to it. The Customer's eyebrows were flaring and his eyes were more focused. It seemed that he did not like Respondent 1. The Customer's hands were closed at his sides, his breathing was heavy and his arms appeared to be tensed in order to project a larger body frame.
- The Customer's unexplained actions made Respondent 3 feel uncomfortable to the point he did not want to look at him. Respondent 3 turned his head to avoid having to look at him. Respondent 3 did not feel safe, as he did not know the intentions of the Customer. As the moments passed, Respondent 3 made the following observations:
  - The Customer's stare looked agitated;
  - The Customer's stare did not look friendly;
  - The Customer's stare had an unpredictable element to it;
  - The Customer's eyebrows were flaring;
  - The Customer started to breathe heavily;
  - The Customer's hands were closed and fist-like.
- At that time, Respondent 3 stated that he felt "frightened" and "threatened" because the stare was "unpredictable" and hard to read.
- Respondent 3 stated that he did not stand "square" with the Customer because he was afraid.
- When the TTC Streetcar was arriving at the Bathurst Street and St. Clair Avenue West, the Customer turned to face the door.
- At this moment, Respondent 3 was concerned that the Customer was getting off the same stop as them.
- The Customer pushed the door button and the door opened. The Customer exited the TTC Streetcar to the left side and stood standing outside immediately to the left of the door.



- Respondent 3 now believed the Customer had possibly exited the TTC Streetcar to let those off around him, which is a common practice on vehicles that are filled with customers. What confused Respondent 3 was that there was plenty of room for the Customer to have stayed on the TTC Streetcar, simply by stepping to a different area.
- Respondent 3 had considered using a different set of doors to exit, but believed he would not have had enough time to exit the TTC Streetcar before the doors closed. He added that the easiest door to leave was the one in front of him (which was the same door that the Customer exited).
- As the Respondents stepped off the streetcar, they moved to the opposite side of the streetcar platform, across from the TTC Streetcar doors, and turned to face the Customer. Respondent 3 did this as he did not feel safe after the Customer's behaviour on the TTC Streetcar. He wanted to see what the Customer did next and to ensure he did not approach them from behind.
- Customers boarded the TTC Streetcar, while the Customer continued staring at Respondent 1.
- The Customer then stepped back onto the TTC Streetcar.
- Once onboard, the Customer stood just inside the doors, turning to face Respondent 1 again. The Customer continued with the same stare at Respondent 1 that Respondent 3 had observed on the TTC Streetcar. The Customer did not say anything as the doors began to close.
- As the doors were closing, Respondent 3 felt relieved as he thought they would be in the clear and safe. He continued to stand with Respondents 1 and 2 as he wanted to make sure the Customer left.
- Once the doors were closed, the TTC Streetcar did not depart. The Customer began to push the door button "vigorously" while still staring at Respondent 1. Respondent 3 stated that he was confused why the Customer pressed the door button.
- Respondent 3 now found the Customer's behaviour as being extremely odd. The Customer had just exited the TTC Streetcar, re-boarded the TTC Streetcar and was now making efforts to disembark once again, all while continuing his stare at Respondent 1.
- The doors opened and the Customer lunged towards Respondent 1 in what Respondent 3 perceived to be an aggressive and threatening manner. The Customer had his hands clenched in fists to his sides.
- The Customer got very close, almost face-to-face, with Respondent 1.
- Respondent 1 pushed the Customer away from him. The Customer fell backwards, tripping on the low-floor TTC Streetcar step, landing on his back on the floor of the TTC Streetcar.
- Respondent 1 yelled for the Customer to get back.
- The Customer quickly jumped to his feet and exited off the TTC Streetcar, while swinging his arms with his hands in fists making a punching motion towards Respondents 1 and 2.
- Respondent 3 immediately felt threatened and concerned for his safety.

- Respondent 2 ended up in front of Respondent 1 and the Customer was taken to the ground when Respondent 1 advised the Customer that he was under arrest for assault.
- Respondent 1 held the Customer's left arm while Respondent 2 held the Customer's legs and Respondent 3 held the Customer's right arm. Respondent 3 stated this was all in an effort to gain control, effect the arrest, prevent escape and prevent the assault from continuing.
- The Customer continued to struggle with the TFIs and refused to surrender his arms or listen to commands to stop resisting. The Customer kicked and screamed and continuously tried to flip over onto his back, but he was prevented from doing so.
- The Customer was yelling, "Don't touch me! You're hurting me! Let me go!"
- Respondent 3 advised the Customer he was under arrest and they could not let him go.
- If the Respondents did let the Customer go, Respondent 3 believed the Customer would have continued to assault them and/or any bystanders.
- The Customer was able to breathe as no one was on his back. The Customer was only being held in place. The Customer continued to kick and scream.
- A crowd formed and some of the members of the crowd yelled at the TFIs to let the Customer go. Respondent 3 advised the crowd that the Customer was under arrest and specifically directed one member from the crowd to call 911.
- After approximately five minutes, two to three TPS officers arrived and placed a handcuff on the Customer's right arm.
- The Customer had not stopped struggling with the Respondents and kept attempting to free his arms.
- TPS officers took over for Respondent 1, but the Customer pulled his left arm under himself and would not provide it to the officers. The Customer continued to resist and disobey TPS commands to provide them his arm.
- At this point, Respondent 3 allowed TPS to take over the arrest.
- Respondent 3 did not gesture towards the Customer at any time to anger him, entice him, provoke him or encourage him to act aggressively towards the Respondents in any way.
- Respondent 3 did not observe Respondent 1 smile at the Customer at any time.
- Respondent 3 believes he followed the training he had been provided and his actions were lawful, reasonable, necessary and acceptable.
- TPS released the Customer and allowed him to re-board the TTC Streetcar.
- Respondent 3 was confused as to the why the Customer was released.
- Respondent 3 does not recall having seen or interacted with the Customer prior to this incident.

## **Witnesses' Evidence**

### **Civilian Witness 1 (Customer)**

The following is a synopsis of the statement provided by Civilian Witness 1 (referred to as the Customer):

- At approximately 4:30 p.m., on February 18, 2018, the Customer was a TTC passenger travelling on the TTC Streetcar heading westbound having just departed the St Clair West Station.
- When the Customer entered the TTC Streetcar from Door 2, he remained standing at the second door. The customer was wearing a black jacket with a hood and was listening to music using his headphones.
- The Customer noticed a TFI (Respondent 1) when he got on the TTC Streetcar. Respondent 1 was standing on the opposite side, by the window in front of this Customer. Respondent 1 did not speak to the Customer or ask him for POP. The Customer had no conversation or interaction with Respondent 1 or Respondents 2 and 3 on the TTC Streetcar.
- The Respondent 1 was eventually joined by Respondents 2 and 3 and they began to stare at the Customer. The Customer did not pay them much attention as he had paid his fare and there was no reason for the Respondents to talk to him.
- As the TTC Streetcar approached the Bathurst Street and St. Clair Avenue West stop, the Customer turned around to face the door.
- The Customer stepped off the TTC Streetcar and waited at the side of the door to let passengers exit. As the Customer re-entered the TTC Streetcar, the Respondents exited and stood side-by-side standing on the streetcar platform in front of the TTC Streetcar door.
- All three Respondents were still standing on the streetcar platform, staring at the Customer as the doors were closing. Based on where they were positioned, the Respondents were blocking the path to the only exit from the streetcar platform, which is accessible by turning right after exiting the TTC Streetcar and walking down the long streetcar platform to the street lights.
- At that time, the Customer decided to go to a restaurant across the street.
- The Customer opened the doors again and stepped out of the TTC Streetcar and onto the streetcar platform. He still had his headphones on.
- Suddenly and without warning, Respondent 1 outside of the TTC Streetcar pushed the Customer violently backward and he fell, landing back inside the TTC Streetcar on the floor.
- The Customer was shocked and defensively got up to address Respondent 1 in reaction to the violent push. The Customer believed the push was violent and unprovoked by him.
- All Respondents then grabbed the Customer and pushed him to the ground face first into the concrete streetcar platform. As a result of the use of force by the Respondents, the Customer was badly hurt.

- At no point prior to this assault did the Respondents seek to communicate with the Customer or to identify themselves. There was no communication between the Customer and the Respondents. Once incapacitated, lying prone on the ground, the Respondents continued to physically assault the Customer.
- The Customer cried out in pain and repeatedly stated he had done nothing wrong.
- One Respondent held and twisted the Customer's left arm.
- A second Respondent pressed his knee on the Customer's back and right leg, pushing his entire weight down on the Customer's back and shoulder, while holding his right arm behind his back.
- A third Respondent tightly held the Customer's legs and feet, causing severe pain that caused him to cry out in pain.
- The Customer was screaming in pain, and for help, for nearly 10 minutes.
- At no time did the Respondents identify themselves to the Customer.
- At no time did the Respondent ask for POP or otherwise communicate with the Customer before violently pushing him to the ground.
- The Respondents stated that the Customer was under arrest for assault, but they did not respond to the Customer's cries for help or respond to his pleas that they were causing him great pain.
- Shortly after, while still on the ground screaming for help and in pain, multiple TPS officers arrived on scene and proceeded to pile on top of the Customer.
- As a result of these actions, the Customer was further injured. The Customer begged continuously for them to stop hurting him and cried out for help.
- TPS continued to ignore the Customer's pleas and instead forced his arms behind his back in an aggressive manner, in an effort to handcuff and place him under arrest.
- After several minutes of detention, the Customer was dragged towards several parked TPS cruisers, followed by multiple TPS officers and the Respondents.
- After discussion between TPS and the Respondents, the Customer was released without charge approximately 45 minutes after first being detained.
- Prior to the Customer's release, TTC and TPS were aware of the Customer's injuries, but took no steps to assist him or ensure his safe return home.

## **Civilian Witness 2**

The following is a combined synopsis of various statements made by Civilian Witness 2 while speaking to the Canadian Broadcast Corporation (CBC) (aired on public radio on February 22, 2018) and from their public social media accounts:

- This Witness was aboard the TTC Streetcar at the time of the incident and they observed the entire incident.

- The TTC Streetcar stopped at Bathurst Street and St. Clair Avenue West and they saw “a young teenage boy who was about 15 maybe 16 years old” (the Customer).
- The Customer was getting off at this stop and one of the Respondents on the TTC Streetcar grabbed him.
- The Customer had not done anything.
- The Customer reacted defensively and pushed one of the Respondents.
- The Respondents proceeded to restrain him.
- The Customer had only shoved one of the Respondent’s hands off of himself.
- The Respondents took the Customer off the train.
- The Respondents had the Customer on the ground and they were on top of him.
- After a few minutes had passed, three TPS officers showed up.
- These TPS officers proceeded to assist in detaining the Customer, who was not resisting.
- The TPS officers had piled on top of the Customer.
- The Customer was being completely compliant.
- TPS officers “held the (Customer) down screaming” for over 20 minutes, while the Customer was screaming that he was being hurt and he had not done anything.
- There were “five white cops on one black kid” (Respondents and TPS officers detaining the Customer).
- A lot of the other people in the crowd were getting down on the ground, trying to appeal to the Customer and tell him to not resist.
- This Witness believed the Customer was fearful and had not done anything wrong, but if he were to resist, things would become worse for him.
- 20 minutes passed before more TPS officers arrived.
- TPS then picked the Customer up off the ground and escorted him to a TPS car.
- The Customer appeared to be “banged up” and “humiliated.”
- This Witness is certain that if it had been them in this situation, if they had been getting off the TTC Streetcar, the Respondents would not have grabbed them or detained them like they did the Customer. This witness is certain that the Customer was treated the way he was because he is racialized.
- This Witness believes the Respondents had no right to put their hands on the Customer.
- The Customer had no weapon, made no threats, gave no physical resistance and only cried.
- This Witness believes there were many TPS officers in attendance possibly because it was mentioned (during the call) that the incident involved “a young black male.”

### **Civilian Witness 3**

The following is a synopsis of the statement and interview responses provided by Civilian Witness 3:

- On February 18, 2018, at around 4:10 p.m., this Witness boarded the TTC Streetcar at St Clair West Station, heading westbound.
- This Witness boarded the TTC Streetcar through Door 2 (front middle), where Respondent 1 stood.
- Respondent 1 was standing on the right side of a payment machine, directly across from the doors.
- This Witness stood within approximately one metre from Respondent 1.
- This Witness was facing the door where they had just entered when they saw the Customer board the TTC Streetcar.
- The Customer was wearing a hoodie and a backpack, and both of his hands were inside his pockets. This witness believed the Customer's hands were in his pockets as they could not see them.
- This Witness described the Customer as:
  - Having an extremely angry facial expression;
  - Appearing aggressive;
  - Having a very serious demeanour;
  - Having an angry and intimidating stare directed at Respondent 1; and
  - Being very still and not making any body movements.
- What caught this Witness's attention was the fact that the Customer stood directly in front of Respondent 1 and did not move. Usually, people come into a streetcar and try to find a seat or stand in the centre. The Customer did not; he stood very still a few inches in front of the door and looked at Respondent 1 with an extremely angry expression.
- This Witness felt the expression was angry in that it was very serious and a hard expression, his body was straight and rigid and his eyes were frightening. The Customer's facial expression scared this Witness.
- This Witness believed that Respondent 1 was also frightened as he looked away from the Customer several times.
- This Witness heard Respondent 1 ask the Customer if he was doing alright. Respondent 1 was attempting to be helpful and reassuring. The Customer did not move or respond to any of Respondent 1's questions. The Customer kept staring at Respondent 1 in an angry and intimidating way.
- The TTC Streetcar was still inside the St Clair West Station and its doors were still open so people were still getting on. The Customer did not move from where he stood, even though he was in the way of people who were getting on.
- This Witness heard Respondent 1 ask the Customer a second time whether he was alright. The Customer again did not move or respond to Respondent 1, but instead continued to stare at Respondent 1 with an angry face.
- After some time, Respondent 1 asked the Customer if there was anything he needed. If there was, he should let him know. This witness described the tone Respondent 1 used as "reassuring and helpful". By then, Respondents 2 and 3 came and stood next to Respondent 1.

- The Respondent 1 then told the Customer that they were not there to check his bag or anything that he might bring onto the TTC Streetcar. Still, the Customer did not move and continued to stare at Respondent 1 angrily.
- At this time this Witness became worried that the Customer would have a weapon, given that:
  - He looked so angry;
  - Both his hands were inside his pockets; and
  - He did not move at all.
- This Witness decided to move away from the area of the second doors toward the front door (Door 1) of the TTC Streetcar because they were worried that something bad may happen.
- Once they moved further away, this Witness could no longer clearly hear what the Respondent 1 said, if he did say anything. However, they could still see that the Customer was standing in the same place that he had been since he stepped onto the TTC Streetcar.
- Now, all of the Respondents were watching the Customer. The TTC Streetcar started to move.
- The TTC Streetcar stopped at the corner of Bathurst Street and St. Clair Avenue West; the first stop west of St Clair West Station.
- This Witness planned to get off the TTC Streetcar by exiting the front doors, and as a precaution, remain in place on the streetcar platform to ensure the Customer did not also exit. If the Customer did exit the TTC Streetcar, this Witness planned to wait until the TTC Streetcar and the Customer left the stop before they walked east to continue on their journey.
- This Witness exited the TTC Streetcar at the first stop and observed the Customer exit the TTC Streetcar followed by the Respondents and other customers.
- The Customer re-boarded the TTC Streetcar.
- The Respondents did not re-board the TTC Streetcar. The Respondents stood next to each other outside the TTC Streetcar and looked at the Customer through the windows of the doors. Respondent 1 appeared to be smiling, as he looked at the Customer. This Witness characterized the smile as having an air of winning an argument and “a little bit condescending.”
- The TTC Streetcar doors closed and the TTC Streetcar was just about to leave the stop when the Customer pressed the button that opens the doors. This time, the Customer seemed angrier because he “jumped off” the TTC Streetcar and “walked up” to Respondent 1, placing his face very close to Respondent 1’s face. This Witness estimated that the faces of the Respondent 1 and the Customer were about three inches apart.
- The Witness believed, due to the way the Customer exited the TTC Streetcar; he was going to fight with Respondent 1.
- It was at this moment that Respondent 1 pushed the Customer “pretty harshly” in a very quick manner.
- The Customer fell on his back and landed on the entryway of the TTC Streetcar.

- The Customer got up quickly and made a fist with his hand and ran towards Respondent 1 and punched him.
- Respondent 1 tried to step back, but he was tripped by a metal bench that was behind him. This is when Respondents 2 and 3 grabbed the Customer and pushed him down to the ground.
- One of the Respondents yelled out to call 911.
- This Witness called 911 and told the operator what had occurred.
- At this time, the Respondents were still holding the Customer and they told him he was under arrest.
- The Customer was repeatedly yelling and saying, “I didn’t do anything” and that the Respondents were hurting his leg.
- The Respondents were holding the Customer down, but this Witness could not see if they were doing so in an aggressive way.
- Once TPS arrived, this Witness left the area as they believed that TPS would need space.
- During the time the Customer was held on the ground by the Respondents, this Witness heard members of the crowd stating this was race-related. This Witness did not believe this to be true.
- This Witness does not believe the incident was an example of any racial profiling, nor a case of any form of racism.
- Based on what this Witness saw and how they felt, they believed that Respondent 1 felt threatened and was afraid that the Customer would harm him.
- This Witness believed the Customer instigated the whole incident and had multiple opportunities to avoid the situation. This Witness stated the Customer did not have to stare at Respondent 1 the entire time. The Customer could have answered Respondent 1 when he spoke with him, could have remained on the TTC Streetcar for his journey; and could have exited the TTC Streetcar and walked away. This Witness believed that the Customer did not have to walk into Respondent 1 when he got off the TTC Streetcar.
- This Witness believes the only thing Respondent 1 did that was inappropriate was push the Customer.
- This Witness had not met or seen either the Customer or the Respondents before February 18, 2018.

#### **Civilian Witness 4**

The following is a synopsis of the statement provided by Civilian Witness 4:

- On February 18, 2018, this Witness was travelling to St Clair West Station. As they reached the northwest corner of St. Clair Avenue West and Bathurst Street, they heard someone yelling nearby. They noticed that the sound was coming from an individual on the sidewalk at the westbound TTC stop, at that same intersection.



- This Witness observed a “small crowd of people watching a young black male (the Customer) who was pinned to the sidewalk by two TTC personnel. The (Customer) appeared to be between 15 and 18 years of age and ... was the source of the yelling.”
- This Witness recalled the Customer was face down or on his side on the concrete sidewalk adjacent to the TTC Streetcar, which was stopped beside him. There were several people on the TTC Streetcar and some of these people were exiting to obtain a closer view of the situation.
- The Customer was being restrained by two TTC personnel who appeared to be TFIs. The Customer was very loud and repeatedly yelled, “You’re hurting me.” and “I didn’t do anything.”
- This Witness observed a female attempting to comfort and calm the Customer as he seemed to be quite agitated and possibly in physical pain. Another person was observed approaching the TFIs and began yelling. They appeared extremely upset and agitated and demanded that the TFIs let the Customer go and that he was “only a teenager.”
- This Witness overheard an exchange between one of the TFIs and another person who was concerned about the situation. The TFI said to that person that the Customer, while leaving the TTC Streetcar, had physically assaulted or tried to assault one of the TFIs. This TFI talked in a calm, courteous manner although he continued to restrain the Customer with the assistance of the other TFIs.
- After about seven or eight minutes at the scene, this Witness observed several TPS officers arrive in three or four cars. The Customer who was being restrained initially became calm with the arrival of TPS, but after a couple of minutes, he began to yell in an agitated manner.
- This witness found the incident disturbing and believed it appeared to be an overreaction on the part of the TFIs.
- This Witness admits they did not have any knowledge of what happened prior to the Customer being restrained.
- This Witness believed the restrained Customer was very agitated, as was the crowd that was watching this incident.

## **Civilian Witness 5**

The following is a synopsis of the information provided by Civilian Witness 5 during their interview:

- On February 18, 2018, this Witness boarded the middle of the TTC Streetcar and took a position across from Respondent 3 (near Door 3). They observed Respondents 1 and 2 standing closer to the front of the TTC Streetcar; approximately 20 feet from his position. The body language of Respondents 1 and 2 was neutral.
- This Witness observed Respondents 1 and 2 in what they thought was a discussion with a customer, but he could not see who they were speaking with.

- Respondent 3, who was standing near this Witness (by Door 3) walked forward on the TTC Streetcar to join Respondents 1 and 2. This Witness believed the Respondents were investigating one or two people for fare evasion. Although they could not see what was happening, they believed Respondent 3 joined Respondent 1 and 2 for safety reasons.
- This Witness exited the TTC Streetcar at St. Clair Avenue West and Bathurst Street and entered a local shop. They then heard yelling coming from the area of the TTC Streetcar. Upon their return, they observed the Respondents attempting to restrain an individual (the Customer) who was resisting. The Respondents were not harming the Customer, but holding him down. At this time, this Witness was standing approximately 15 feet from the Respondents.
- Based on how the Customer was yelling, this witness believed this person was seeking the attention of the crowd, as the Respondents appeared to be doing their job safely and were trying not to hurt this person.

### **Civilian Witness 6**

The following is a synopsis of the information provided by Civilian Witness 6 during their interview:

- On February 18, 2018, this Witness was operating the TTC Streetcar.
- At Bathurst Street and St. Clair Avenue West (westbound), after departing St. Clair West Station, this Witness opened all of the TTC Streetcar doors to service the stop.
- This Witness then heard a commotion that sounded like a fight was occurring.
- Prior to investigating the commotion this Witness activated the emergency alarm on the TTC Streetcar communications system. They advised the TTC Transit Control Centre that there was a fight on the TTC Streetcar between two passengers.
- This Witness had the operator's door open on the TTC Streetcar and a customer advised them, "It is one of your guys," implying an employee was involved.
- This Witness then observed the incident outside the TTC Streetcar. He observed the Respondents on the ground with the Customer.
- It appeared that the Respondents were arresting the Customer, but they needed assistance.
- This Witness then advised the TTC's Transit Control Centre to send help.
- Within moments, TPS officers arrived and this Witness stood out of the way.
- This Witness could not see the Customer while the Respondents were detaining him.

### **Witness Officer 1**

Witness Officer 1 is a member of the TTC TEU and carries out their duties in a uniform capacity. The following is a synopsis of the statement and interview responses provided by Witness Officer 1:

- On February 18, 2018, this Witness was on shift and partnered with Witness Officer 2. At 4:32 p.m., they received a priority call for a TTC TFI that was involved in a physical altercation.
- At 4:39 p.m., this Witness and their partner arrived at Bathurst Street and St. Clair Avenue West and noticed several TPS officers were on the streetcar platform and had the Customer in custody. There was a large crowd of people on the sidewalk and streetcar platform. The Customer was standing and TPS officers were struggling with him. The Customer was yelling and screaming something similar to, "I didn't do anything!"
- This Witness walked over to them and took a hold of the Customer's left arm and assisted TPS in escorting the Customer over to a TPS vehicle; separating the Customer from the crowd. Once removed from the crowd, the Customer became very quiet.
- This Witness instructed the Respondents to come to the front of the TTC Streetcar, away from the crowd. In front of the TPS Sergeant and a TPS officer, this Witness asked the Respondents what happened.
- Respondent 1 provided his version of events to this Witness, which included the following:
  - The Customer had been staring at him on the TTC Streetcar.
  - Once the TTC Streetcar door opened, the Customer exited the TTC Streetcar and stood on the streetcar platform staring at Respondent 1.
  - Respondent 1 felt the Customer was aggressive, and in response he pushed the Customer with his two hands into the TTC Streetcar.
  - The Customer then came back punching at him. A struggle ensued and the Respondents 2 and 3 became involved.
  - The Customer was placed under arrest by the Respondents.
- Once the Respondents advised the TPS Sergeant of the circumstances, the Sergeant instructed the TPS officers to release the Customer unconditionally. The TPS Sergeant did not believe there were grounds to lay an assault charge against the Customer.
- Based on Respondent 1's articulation of the events, this Witness also believed there were not enough grounds to lay an assault charge against the Customer.
- Moments after Respondent 1 spoke to the TPS Sergeant; Respondent 1 spoke with Witness Officer 6 in the presence of this Witness. Respondent 1 had indicated that the Customer "lunged" at him and he feared for his safety, and as a response, he pushed the Customer back.
- When Respondent 1 provided further explanation to Witness Officer 6, this Witness believed there were enough grounds to lay an assault charge against the Customer.

## **Witness Officer 2**

Witness Officer 2 is a member of the TTC's TEU and carries out their duties in a uniform capacity. The following is a synopsis of the statement and interview responses provided by Witness Officer 2:

- On February 18, 2018, this Witness was on duty in a uniform capacity partnered with Witness Officer 1.
- At about 4:32 p.m., this witness responded to a radio call for assistance from the Respondents stating they were attempting to arrest the Customer and required assistance. There was screaming and yelling in the background, but this Witness could not make out what was being said. The Respondents gave their location as westbound at St. Clair Avenue West and Bathurst Street on the TTC Streetcar.
- At about 4:39 p.m., this Witness and their partner arrived on scene and observed several TPS units in attendance. At the rear doors of the TTC Streetcar, there were approximately four TPS officers and the Respondents holding down the Customer who was lying on the streetcar platform.
- This Witness heard the Customer yelling and screaming, but it was not clear to them what exactly the Customer was saying.
- This Witness also observed a large crowd of about 15 people gathered around in close proximity to the TPS officers and the Respondents. Some of these people were holding cell phones, as if recording the incident. The Customer was brought to his feet and was escorted to a TPS vehicle.
- This Witness noticed the Customer had a cut on the bridge of his nose.
- Respondent 1 identified himself as the TFI involved in the incident and stated he arrested the Customer for assaulting him. Two other TFIs were present during the incident, including Respondent 2 and Respondent 3. Respondent 1 provided his version of events, which included the following:
  - The Customer stepped off the TTC Streetcar and stepped towards Respondent 1. The Customer had an aggressive stare on his face and stepped up to him, chest to chest. Respondent 1 then pushed the Customer back using both hands, as he was fearful for his safety.
- Based on Respondent 1's explanation, this Witness believed there were enough grounds to lay an assault charge against the Customer.
- This Witness then spoke with a TPS Sergeant who was with the Customer and four other TPS officers. The TPS Sergeant advised the Customer was released with no charges and he had been offered and declined medical aid. EMS had attended and was subsequently cleared from the scene.

## **Witness Officer 3**

Witness Officer 3 is a member of the TTC TEU and carries out their duties in a uniform

capacity. The following is a synopsis of the statement and interview responses provided by Witness Officer 3:

- On February 18, 2018, this Witness was scheduled to work from 8 a.m. until 6 p.m. with Witness Officer 4. This witness was assigned as the coach officer for Witness Officer 4, who had recently commenced their job as a TFI.
- On this day around 4:35 p.m., this Witness heard a call for assistance over the radio from the Respondents and recognized the voice as Respondent 1 calling for assistance near Bathurst Street and St. Clair Avenue West.
- Once at the scene, this Witness observed TPS vehicles and TEOs on scene.
- This Witness observed the Customer in the custody of TPS and immediately recognized the Customer as a person they had dealt with on several previous occasions.
- This Witness advised a TPS officer that they had dealt with this Customer before.
- This Witness stated they pointed this Customer out to other TFIs on other occasions to advise them of the Customer's odd behaviour. This witness had previously and specifically warned Witness Officer 4, to be careful of him.
- This Witness had last observed the Customer earlier on February 18, 2018 delivering food on a bicycle.
- This Witness' first incident with the Customer occurred on September 27, 2016. The Customer had been inspected by this Witness for POP on a southbound Spadina streetcar at Harbord Street. The Customer was uncooperative and was not able to produce POP. This Witness asked the Customer to leave the streetcar several times, but the Customer had refused. Eventually, the Customer exited the streetcar, but then banged on the windows of the streetcar from the outside and then walked slowly in front of the streetcar to slow its movement. The Customer also laid down on the streetcar tracks in front of the streetcar at several points to delay its progress.
- In another incident, several weeks after the first incident at Spadina Station, this Witness observed the Customer attempting to sneak up behind them for what they believed were nefarious reasons. At that time, given this Witness' position in the station, they could not think of any other reason for the Customer to sneak up behind them. When the Customer's "sneaking" behaviour was addressed by this Witness, the Customer laughed and walked away.
- In at least two other incidents, this Witness heard the Customer taunt them with calls of, "You will never catch me!" (January 2018) and "Who's your daddy?"
- This Witness believes the behaviour of this Customer, including lying on the streetcar tracks, blocking a streetcar from Bloor to Dundas and sneaking up on them, demonstrates atypical behaviour for an individual. The Customer thinks of their encounters as a game of "cat and mouse." This is apparent by the Customer calling out, "You will never catch me!" for no apparent reason.

#### **Witness Officer 4**

Witness Officer 4 is a member of the TTC TEU and carries out their duties in a uniform

capacity. The following is a synopsis of the statement and interview responses provided by Witness Officer 4:

- On February 18, 2018, this Witness was partnered with their coach officer, Witness Officer 3.
- At approximately 4:40 p.m., this Witness attended the intersection of Bathurst Street and St. Clair Avenue West in relation to the officer assistance call placed by the Respondents. The call related to an assaultive male passenger.
- Upon arrival at the incident scene, this Witness observed TPS and the Customer that had been arrested. This Witness recognized the Customer as the same person Witness Officer 3 had pointed out to them on previous occasions. This Witness had most recently observed the Customer earlier that day (February 18, 2018) delivering food on a bicycle. At that time, the Customer had been wearing the same clothes and shoes as he was at this incident.
- Prior to this incident, Witness Officer 3 had warned this Witness about this Customer as the Customer had previously gone out of his way to act in an unusual manner and/or create a scene.
- On a previous occasion, while conducting offboard inspections with Officer Witness 3 at Spadina Station, this Witness observed the Customer entering a streetcar. Once inside the streetcar the Customer made antagonizing gestures towards Officer Witness 3.
- On a previous occasion at Bathurst Station, this Witness observed the Customer on a streetcar. In a very self-assured tone, the Customer said to this Witness, “You guys will never catch me.” The Customer was smiling and appeared to be having fun.
- On both of this Witness’ previous encounters with the Customer, the Customer had gone out of his way to be noticed and/or to create a scene.
- This Witness is certain the Customer from the incident on February 18, 2018 is the same Customer they had observed previously at Bathurst and Spadina stations.
- Upon this Witness’ arrival at the scene on February 18, 2018, the Customer could be heard yelling, “I didn’t do anything.” Given this Witness’ previous experiences with this Customer and his willingness to antagonize TFIs, this Witness had serious reservations about this claim.

## **Witness Officer 5**

Witness Officer 5 is a member of the TTC TEU and carries out their duties in a uniform capacity. The following is a synopsis of the statement and interview responses provided by Witness Officer 5:

- At 4:31 p.m., this Witness heard a radio call from TFIs indicating they were holding a Customer who was under arrest.
- At 4:45 p.m., this Witness arrived at the TTC Streetcar, which was westbound St. Clair Avenue West and Bathurst Street.

- Upon arrival, this Witness observed at least four TPS vehicles, including one assigned to a TPS Sergeant and a TEO patrol car.
- This Witness observed 30-plus people outside the TTC Streetcar, many taking video and photos of the incident with their mobile phones.
- This Witness noticed the Customer being brought to the front of a TPS patrol car.
- The TPS Sergeant spoke with this Witness advising they were going to be releasing the Customer that had been arrested without charges.
- The TPS Sergeant indicated they did not believe charges were warranted.
- This Witness noticed that Respondent 1 was upset over this information. Respondent 1 explained that the Customer had lunged at him. It was pointed out to Respondent 1 by Witness Officer 1 that Respondent 1 did not tell TPS the Customer had lunged when he provided his version of events to TPS and TPS had now made their decision.
- Prior to departing, this Witness did inquire with TPS as to how the Customer was going to be leaving the area. The TPS Sergeant advised that the Customer was back on the TTC Streetcar, as he refused medical aid from EMS and refused a ride from TPS.
- This Witness was advised by the TPS Sergeant and Witness Officer 1 that this incident was not fare-related. As a result, this Witness did not pursue concerns of allowing the Customer back on the TTC Streetcar.
- This Witness is aware that a party involved in an altercation would typically not be permitted back on a revenue vehicle. This practice is to prevent any further delays, in the event the person caused any further disturbance.

## **Witness Officer 6**

Witness Officer 6 is a member of the TTC TEU and carries out their duties in a uniform capacity. The following is a synopsis of the statement and interview responses provided by Witness Officer 6:

- On February 18, 2018, this Witness reported for duty in uniform in the capacity of TFI Sergeant, responsible for the supervision of TFIs.
- At 4:32 p.m., this Witness heard a priority call from the Respondents over the radio.
- The Respondents indicated that they required immediate assistance at Bathurst Street and St. Clair Avenue West, as they were in a physical altercation with the Customer who had become assaultive.
- At this time, this witness could hear screaming in the background and it sounded very chaotic.
- The Respondents provided an update that the crowd was becoming involved and again requested assistance. This Witness relayed over the radio for the Respondents to disengage, if possible. The Respondents advised they could not disengage and the Customer was under arrest for their safety.
- Upon their arrival, this Witness was advised that the Customer that had been

arrested was being released from TPS custody with no charges, as the TPS Sergeant did not feel the threshold to charge the Customer with assault had been met.

- TPS had released the Customer and were allowing him to re-board the TTC Streetcar to continue his journey.
- Respondent 1 advised this Witness that the Customer had lunged off the TTC Streetcar at him with clenched fists and he had pushed the Customer away as he felt the assault would continue if he had not. Respondent 1 was visibly upset and shocked that the Customer was not charged because in his mind the Customer had assaulted him. Respondent 1 did not understand how this could happen.
- When this Witness asked Respondent 1 if he had explained this version of events to TPS and the TEOs, he stated he did not articulate the events in the same manner.
- Respondent 1 advised this Witness that he had been flustered by everything that had taken place. He had only told TPS and TEOs that the Customer had got close to him upon exiting the TTC Streetcar. Due to the Customer's previous behaviour on the TTC Streetcar, he felt an assault was going to take place, so he pushed the Customer away to create distance.
- Prior to leaving the scene this Witness spoke with the TPS Sergeant. They advised the TPS Sergeant they believed there may have been some miscommunication about what had actually happened. Respondent 1 explained the story to the TPS Sergeant as he had done with this Witness. However, this led the TPS Sergeant to question the conflicting versions provided by Respondent 1.
- Shortly after leaving the incident scene, this Witness spoke to the Respondents separately about what had happened, to ensure they had the complete story.
- The versions of events provided by the Respondents were consistent and had no significant differences.
- Later that day, Witness Officer 3 advised this Witness of their previous encounters with the Customer. This Witness understood the Customer to be a semi-regular customer for Witness Officer 3, but it was the first interaction between the Customer and the Respondents.

## **Video and Audio Evidence**

### **Video Review – TTC Streetcar Video**

TTC Investigators reviewed TTC DVD #15832. This DVD contained all CCTV video recordings from the TTC Streetcar from February 18, 2018 between the hours of 4:15 p.m. and 5:18 p.m. The TTC Streetcar has nine recorded CCTV cameras that view each of the four doors and views down the length of the Streetcar. The following timeline was established by the UCC from the TTC Streetcar video. This review specifically includes the actions of the involved parties:



- 4:15:36 – Respondents 1, 2 and 3 board the TTC Streetcar at the rear (Door 4) and walk forward on the TTC Streetcar.
- 4:15:45 – Respondents 2 and 3 stop and stand near the third set of doors (Door 3), near a PRESTO payment machine. Respondent 1 continues walking forward.
- 4:15:59 – Respondent 1 touches a PRESTO card/device to the two PRESTO machines on each side of the doors, activating the machines. He does this twice.
- 4:17:00 – Respondent 1 walks towards the front of the TTC Streetcar from the second set of doors (Door 2).
- 4:17:08 – Respondent 1 approaches the TTC Streetcar operator and stands in the open doorway to the operator cabin. He stands in this position looking forward and then at a device in his right hand.
- 4:18:40 – Respondent 1 opens a memorandum book and looks at it and then uses a pen to make motions (as if writing in the book).
- 4:19:15 – Respondent 1 walks towards the rear of the TTC Streetcar, stopping across from the second set of doors adjacent to a PRESTO payment machine.
- 4:19:59 – Respondent 1 walks towards the rear of the TTC Streetcar and converses with Respondents 2 and 3.
- 4:20:28 – Respondent 1 then walks forward on the TTC Streetcar stopping by the second set of doors. Respondent 1 touches a PRESTO card/device to the two PRESTO machines on each side of the doors, activating the machines.
- 4:21:00 – Respondent 1 stands across from doors, leaning against a blue seat that is in the closed position. He is looking at a handheld device in his right hand and then appears to use his fingers from both hands to touch the screen.
- 4:23:47 – Respondent 1 places the handheld device on the right side of his body and his left hand into his left pant pocket.
- 4:21:51 – Respondent 1 acknowledges a customer with a head nod as they board in front of him.
- 4:25:40 – The TTC Streetcar enters the ramp descending into St Clair West Station. Respondent 1 is standing in the same position with his left hand in his pocket and his right hand on the right side of his body out of camera view.
- 4:27:01 – The TTC Streetcar stops within the St Clair West Station and customers exit and then enter the vehicle. Four customers exit the second set of doors (Door 2) and 10 customers board. The Customer, who was initially standing directly in front of the second set of TTC Streetcar doors, approximately 12 feet from the vehicle, was the last to board.
- 4:27:17 – The Customer boards at the second set of doors (Door 2) and stops just inside the doors standing in front of the left door (when facing the TTC Streetcar from the outside). There is a passenger with a blue coat standing immediately to his left, holding the stanchion bar within a foot from him.
- The Customer is wearing red running shoes, dark pants, a black-hooded jacket with the hood up and wearing a black backpack. The Customer stands directly in front of Respondent 1, approximately four-to-five feet away with his arms at his side and his body and head facing Respondent 1.

- 4:27:19 – Respondent 1 nods his head slightly towards the Customer and moves his mouth as if talking to him. The Customer makes no response/movement with his head or lips or any other manner and continues to stare at Respondent 1. Respondent 1 has his left hand in his pocket and his right hand down the right side of his body. Respondent 1 maintains his position, posture and eye contact with the Customer.



- The passenger with the blue coat that is standing adjacent to the Customer turns their head to look at the Customer who is standing just inside the door and making no attempt to enter the vehicle any further. The passenger with the blue coat then turns their head to look in the direction the Customer is facing.
- 4:27:27 – Respondent 1 turns his head to his left, looking away from the Customer and shakes his head slightly. Respondent 1 then looks back at the Customer, and moves his mouth as if talking to him, but the Customer makes no response/movement with his head or lips and continues to stare at Respondent 1.



- 4:27:39 – Respondent 1 moves his mouth as if talking to the Customer, but the Customer makes no response/movement with his head or lips and continues to stare at him. While Respondent 1 is talking, the passenger with the blue coat relocates to stand by the opposing stanchion bar (in front of the right door of the same set of doors). The Customer continues to remain stationary, facing Respondent 1 with his body, head and face. His arms remain at his side and his lips do not move. There are four young children to the left of the Customer. Both the Customer and Respondent 1 continue to remain in the same posture, position and head direction so that they are facing each other.
- 4:27:48 – Respondent 1 moves his mouth again, as if talking to the Customer. At this time, the passenger with the blue coat turns and looks at the Customer and then at Respondent 1. The Customer continues to remain stationary, facing Respondent 1 with his body, head and face. The Customer makes no response/movement with his head or lips and continues to stare at Respondent 1.
- 4:27:56 – Respondent 1 continues to move his mouth, as if talking to the Customer, but the Customer makes no response/movement with his head or lips and continues to stare at him. Both the Customer and Respondent 1 remain in the same position, facing each other.
- 4:28:23 – The Customer runs his left hand up the side of the PRESTO machine just to his left and rests his left arm on the top of the PRESTO device. Otherwise, his position does not change and he continues to stare at Respondent 1.

- 4:28:37 – The passenger with the blue coat glances at the Customer and then at Respondent 1.
- 4:28:41 – Respondent 2 walks from the rear of the TTC Streetcar and passes between Respondent 1 and the Customer. Respondent 2 then stands on the left side of Respondent 1, but the Customer does not acknowledge him in any way. Respondent 2 is holding a bag in his left hand. The Customer continues to remain in the same position with his body, face and head facing towards Respondent 1. Respondent 2 uses his right hand to hold onto a stanchion strap hanging from a horizontal stanchion bar.
- 4:28:54 – Respondent 1 turns to his left and Respondent 2 looks at Respondent 1. Respondent 2's face is off camera, but his head moves slightly (as if they are talking to each other).
- 4:29:17 – The doors on the TTC Streetcar close and then immediately reopen. After the doors reopen, the Customer momentarily turns his head slightly in the direction of Respondent 2 and then immediately returns it to Respondent 1. Respondent 1 then leans back onto a blue seat that is folded up directly behind him. Respondent 1 turns to Respondent 2, but their faces are blocked from view by Respondent 2's head. However, their heads move in a conversational manner, as if they are talking to each other. Respondent 1 moves his head towards the Customer twice (as if making reference to him). Respondent 2 indicates towards the Customer once, also with his head (as if making reference to him).
- 4:29:29 – The doors close on the TTC Streetcar and the vehicle proceeds to leave the station. Respondent 1 turns his head in both directions, as he is no longer looking at the Customer.
- 4:29:42 – The Customer readjusts his left hand, so that he is holding onto the PRESTO device. Otherwise, his posture and position remain unchanged. He continues to face Respondent 1 with his body, head and face and his lips have not yet moved in any noticeable manner.
- 4:29:44 – The Customer readjusts his left hand and grips the vertical stanchion bar to his left at shoulder level. Other than this readjustment, the Customer's posture and position remain unchanged. He continues to face Respondent 1 with his body, head and face and his lips do not move in any noticeable manner.
- 4:29:57 – Respondent 1 turns his head so that he is facing the Customer. Respondent 1 maintains the same posture and position with his body, head and face, looking towards the Customer. He remains leaning against the folded blue seat. His left hand is in his pocket and his right hand is down the right side of his body.
- Other than the exchange of words with Respondent 1, Respondent 2 maintains his same position, keeping a general focus on the Customer.
- 4:30:33 – Respondent 2 moves his right fingers in a gesture recognizable as "come here," while looking in Respondent 3's direction.
- 4:30:40 – Respondent 2 moves his right fingers and thumb in a gesture recognizable as "come here," while looking in Respondent 3's direction.

- 4:30:44 – Respondent 1 signals Respondent 3 with his right hand to come forward. Respondent 1 then returns his gaze to the Customer. Respondent 3 makes his way towards Respondents 1 and 2.
- 4:31:06 – The TTC Streetcar completely ascends the ramp to street level. Respondent 3 approaches Respondent 1 and stands to his right, holding a stanchion strap with his left hand. Respondent 3 is wearing a brown backpack. The Respondents are in front of the Customer.
- 4:31:15 – Respondent 2 looks around and then seems to briefly converse with Respondents 1 and 3 as if preparing to exit the TTC Streetcar.
- 16:31:20 – Other passengers approach the door of the TTC Streetcar, as it approaches the first stop at Bathurst Street. The Customer removes his hand from the stanchion bar and turns around slowly to his right and is facing the centre of the two doors; second set of doors from the front. Other passengers stand behind the Customer, as if waiting to exit the TTC Streetcar. The other passengers include the four young children that were to the left of the Customer. As the TTC Streetcar stops, the Customer makes a pushing motion with his right hand near the door button that opens the doors.
- 4:31:33 – The Customer exits the TTC Streetcar and steps off to his left as other passengers exit the vehicle behind him. The Customer turns and stands behind another customer who is waiting to board the Streetcar; to the left of the doors as one exits.
- 4:31:36 – Respondents 1, 2 and 3 all exit the TTC Streetcar stepping to the right. As Respondent 2 exits, he stops approximately 5.5 feet from the TTC Streetcar and turns to face the Customer. Respondent 1 makes eye contact with the Customer, as he exits. The Customer walks towards the open doors appearing to be making steady eye contact with Respondent 1. Respondent 3 exits the TTC Streetcar, as the Customer re-boards. Respondent 3 is then blocked from camera view by the TTC Streetcar structure. The Customer boards the TTC Streetcar and stands in the same position he had been standing en route to the first stop, but with his body, face and head turned in the direction of Respondent 1 (who is now standing on the streetcar platform). Respondent 1 is facing the Customer with his arms at this side and his thumbs hooked on his pant pockets. The same passenger with the blue coat who remained on the TTC Streetcar looks the Customer up and down, as he faces the doors, standing within 12 inches of them (inside the TTC Streetcar).
- 4:31:43 – Respondents 1 and 2 continue to stand approximately 5.5 feet from the TTC Streetcar, as the Customer maintains his same posture and position. The Customer's left hand is at his side in an open position.



- 4:31:46 – The TTC Streetcar doors close and there is no change in the position and posture of the Customer, Respondent 1 or Respondent 2.
- 4:31:48 – As the doors almost completely close, the Customer uses his left hand to press the door button twice in rapid succession. The doors in front of the Customer reopen. The Customer then takes two steps off the TTC Streetcar with purpose directly towards Respondent 1; slowing when his feet are five-to-six inches from those of Respondent 1. The Customer’s arms are at his sides and his hands are in the open position when he steps off the TTC Streetcar. A view of the Customer’s left arm/hand is briefly blocked, as he moves it in front of his body.



- Within the same instant Respondent 1 raises his arms and pushes the Customer in the chest driving him backwards. The Customer loses his footing, falling onto the floor of the TTC Streetcar, at the feet of the passenger with the blue coat. Respondent 1 keeps his hands up and is pointing at the Customer moving his mouth, as if yelling at him. Respondent 2 drops his bag to the ground.





- 4:31:53 – The Customer gets to his feet and runs off the TTC Streetcar towards Respondent 1 swinging his right arm in a punch at Respondent 1’s head. Respondent 1 uses his hands to deflect the Customer’s punch. Respondents 1, 2 and 3 move to their left and back away from the Customer.





- 4:31:56 – The Customer walks back towards the TTC Streetcar, as if to re-board, and takes one step onto the TTC Streetcar. The Customer turns his head to his left to look towards the Respondents and then runs towards them. A scuffle ensues off camera (the camera view is blocked by the TTC Streetcar structure).



- 4:31:59 – The Respondents and the Customer move to the ground. The Respondents hold the Customer on the ground just outside the TTC Streetcar, between the second and third set of doors.
- 4:32:25 – A female approaches the Respondents while they are holding the Customer on the ground, struggling with him. Two Respondents appear to hold down the Customer at the top of his body, while the third Respondent maintains control of the Customer's legs.
- 4:38:18 – Two TPS officers arrive on scene and walk quickly up the open side of the TTC Streetcar from the front.
- 4:40:08 – Two more TPS officers arrive on scene and walk quickly up the open side of the TTC Streetcar from the front.
- 4:40:34 – Witness Officer 3 arrives on scene from the front of the TTC Streetcar on the open side and directs customers back from the incident.
- Witness Officers 1 and 2 arrive on scene from the front of the TTC Streetcar on the open side with Witness Officer 4.
- 4:40:51 – The Customer is escorted by three TPS officers with the assistance of Witness Officer 1 towards the front of the TTC Streetcar. In total, on camera there are five TFIs, two TEOs and six TPS officers.

The TTC Investigators reviewed TTC DVD #15832. This DVD contained all CCTV video recordings from the TTC Streetcar from February 18, 2018 between the hours of 4:15 p.m. and 5:18 p.m. The TTC Streetcar has nine recorded CCTV cameras that view each of the four doors and views down the length of the streetcar. The following timeline was established from the TTC Streetcar video. This review specifically includes the actions of Civilian Witness 2 and Civilian Witness 3. This review was done for purposes of assessing credibility and reliability for these two uninvolved and independent witnesses. These two witnesses are the only non-TTC witnesses that were onboard the incident streetcar who claim to have witnessed the incident.

### Civilian Witness 2

- Civilian Witness 2 boards the TTC Streetcar at St Clair West Station and enters through the third set of doors. This Witness sits in a window seat approximately 29 feet from where Respondent 1 and the Customer were standing.
- At 4:31:48 p.m., the start of the physical confrontation, this Witness is seated in their seat, looking down into their lap. Other customers on the TTC Streetcar around this Witness look forward and outside of the vehicle.
- Other customers continue to look out the windows and some look through the third set of doors.
- This Witness continues to look into their lap.
- From their seated position, this Witness also glances out the window on their left side and the windows on the right side.
- Over two minutes after the initial incident, another passenger moves their mouth in a talking motion while looking at this Witness and then this other passenger points towards the curbside area of the TTC Streetcar, where the incident is now

on the streetcar platform. Civilian Witness 2 partially stands, looking in the direction of the incident and then sits down again.

- Three minutes after the incident began this Witness looks out several windows then returns to their seat and sits down. They continue to look around from a seated position.
- At 4:37:46 p.m., nearly six minutes after the initial incident this Witness exits the TTC Streetcar through the second set of doors, speaks with other passengers on the streetcar platform and then holds what appears to be a cell phone, as if recording the Respondents and the Customer with their phone.
- TPS are on scene within 30 seconds of Civilian Witness 2 exiting the TTC Streetcar.

### Civilian Witness 3

- This Witness boards the same set of doors as the Customer, seconds before him.
- This Witness initially stands within five feet of Respondent 1 and the Customer.
- At 4:39:13 p.m., this Witness walks towards the front of the TTC Streetcar and into a position that allows for a clear view of the second set of doors.
- This Witness exits the front doors at the same stop as the Respondents and the Customer and remains standing outside the first set of doors, facing the second set of doors for several seconds before and after the physical confrontation.

### **Video Review – Instagram (YouTube) Video**

The TTC Investigators reviewed a video taken from the scene that appeared on a public social media account of Civilian Witness 2. This video was taken from outside the TTC Streetcar on February 18, 2018, and included the following:

- The video is not time stamped and is 13 seconds long. The video has a notation that credits it to Civilian Witness 2.
- The Customer is lying on his front on the streetcar platform. Respondent 2 is crouched down holding the ankles or legs of the Customer. Respondent 3 is kneeling between and/or over the Customer's right leg, bent over on the right side of the Customer. The Customer's upper body is not visible, due to the Respondents and TPS officers. There are two TPS officers on the left side of the Customer and a third in front of the Customer on the right side. A TPS Sergeant is also at the Customer's head. Someone yells for the Customer to put his hand back, but it not clear who says this.
- A voice, believed to be the Customer's voice, can be heard yelling, "I didn't do anything though" followed by, "You're hurting me." four times.
- At no time does the video show any TPS officer or the Respondents doing anything other than holding the Customer down.

## Audio Review – TTC Transit Control Recordings

The UCC reviewed all available Transit Control audio files related to this incident from February 18, 2018, between 4:31 p.m. and 4:47 p.m. These files consisted of communication between TTC's Transit Control Centre and others involved in this incident. Transit Control is the dispatcher for subway and surface calls for the TTC. The following information was taken directly from these audio files.

Within the audio, POP 1 refers to a TFI team consisting of the Respondents; 158 West refers to a TEO team consisting of Witness Officers 1 and 2; 158 S refers to the TEO Sergeant consisting of Witness Officer 5; and 157 S refers to the TFI Sergeant consisting of Witness Officer 6.

- 4:31:57 – POP 1 – makes a priority call advising they have “one under arrest,” officer assist, at Bathurst Street and St. Clair Avenue West, westbound streetcar platform. Transit Control advises 157 S and all on channel 1 of this information.
- 4:32:47 – 157 S acknowledges the information. Transit Control advises they have asked the police to attend as well.
- 4:33:03 – Transit Controls asks 158 West if they copied the last transmission; about the assist call from POP 1.
- 4:33:19 – Transit Control advised all responders that there is a yellow alarm activated on the incident streetcar and the operator was providing information.
- 4:33:40 – Transit Control advises all responders that they have reports that this incident is at Wychwood and St. Clair and the Customer is struggling with POP 1.
- 4:33:52 – Transit Control asks 158 West if they copied the last transmission; about the location of the incident.
- 4:34:00 – 157 S asks Transit Control to ensure police are aware this is an officer assist call. Transit Control confirms the police do have the call as an officer assist.
- 4:34:39 – Transit Control hails POP 1.
- 4:35:24 – 157 S attempts to confirm the incident location. POP 1 then advises Transit Control that other people are attempting to get involved. In the background on this transmission a person can be heard yelling, “Get off of me!” Transit Control confirms the POP 1 transmission and advises POP 1 that the police are on their way. Transit Control then asks POP 1 if any weapons are involved.
- 4:36:05 – Transit Control advises all responders the streetcar is holding westbound at St. Clair Avenue and Wychwood Avenue and more people are involved.
- 4:36:26 – 157 S advises that if the POP 1 needs to disengage, then they should disengage.
- 4:36:38 – Transit Control calls POP 1.
- 4:37:11 – Transit Control advises all responders that this streetcar is now westbound on St. Clair Avenue at Vaughan Road and the streetcar number is #4443. 158 West acknowledges the transmission and asks if this incident is

happening on the streetcar, and if it is, to have the streetcar stop. Transit Control confirms the streetcar is holding westbound St. Clair Avenue at Vaughan Road.

- 4:37:45 – Transit Controls asks POP 1 to disengage from the incident and provide more info and confirm if their location is westbound St. Clair Avenue at Vaughan Road on streetcar #4443.
- 4:38:06 – POP 1 advises that one is currently under arrest and in control. Transit Control asks POP 1 if all is in order and whether EMS is required for the Customer that is under arrest.
- 4:38:23 – Transit Control acknowledges Toronto Police are on scene.
- 4:38:30 – 157 S acknowledges that Toronto Police are on scene.
- 4:39:04 – Transit Control asks POP 1 whether they are onboard streetcar #4443.
- 4:39:21 – POP 1 transmits but their message is garbled. A voice is yelling in the background, “You are hurting me!”
- 4:41:25 – 158 West advises everything is in order. EMS was requested by 158 West. Transit Control asks whether EMS is required for the Customer that was arrested.
- 4:41:50 – 158 West confirms EMS is required for the Customer who is under arrest. Transit Control requests to know the age, if he is conscious and breathing and any type of injury.
- 4:42:09 – 158 West advises Transit Control of the Customer’s approximate age and he has apparent scrapes and bruises to his face area, he is conscious and breathing.
- 4:46:57 – 158 S advises they are on scene with multiple TPS units in the westbound direction blocking service. 158 S advises they will see what they can do about getting things cleared up. Transit Control acknowledges the transmission of 158 S.

## **Documentary Evidence**

### **Training Review**

A review of the training provided to TFIs was conducted, including the training related to Use of Force. This training is provided by an external agency through a qualified Use of Force expert. This training is provided when TFIs are initially recruited and repeated every two years as refresher training.

The UCC noted the following from the TFI Recruit Training Standard<sup>5</sup>:

- The introduction for the TFI Recruit Course Training Standard states the following:

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<sup>5</sup> Transit Fare Inspector Recruit Course Training Standard, 2007, p.202.

- As a TFI, there will be occasions in which you will exercise your authority to arrest or use force while in the performance of your duties.
- Given the nature of their work, the TTC believes there is the possibility a TFIs will find themselves in a situation where they are faced with physical conflict.
- The training provided by the TTC is to ensure TFIs are well-informed of the federal and provincial legislation that provides the authority to use physical force, but also clearly outlines when any force may be used.
- TFIs are taught escape, evasion and disengagement tactics, but not specific subject control techniques. Subject control techniques include skills to hold and/or prevent the escape of an individual who is placed under arrest.
- If TFIs should find themselves in a situation that involves physical violence or the threat of physical violence, it is expected that they will comply with their training and act within the law.
- Some relevant components of this training include: familiarity with the various use of force authorities, the importance of a reactionary gap, recognizing threats (including pre-assault indicators), tactical communications and factors of disengagement.
- The training includes study of:
  - The Ontario Use of Force model;
  - Enabling legislation for use of force, including the *Criminal Code of Canada*, Section 25 and 34;
  - An analysis of the reasonableness of force related to Section 25 using the three branch test:
    1. The individual is required or authorized to perform an action in the administration or enforcement of the law.
    2. The individual acts on reasonable grounds in performing the action he or she is required or authorized by law to perform.
    3. The individual does not use unnecessary force.
- Reasonable grounds is defined as a set of facts or circumstances that would satisfy an ordinary, caution and prudent person, that there is reason to believe and which goes beyond mere suspicion.
- The training states that “reasonable grounds” does not mean that an individual has to be right in all instances. Their belief or perception in the circumstances needs to be reasonable to justify the use of force.
- Section 34 of the *Criminal Code of Canada* relates to the use of force for self-defence.
- TFIs are taught to consider the “pyramid of accountability.” This pyramid is to enhance their learning in the area of use of force. Ideally each level of the pyramid should be satisfied when force is used, starting from the bottom. The pyramid includes the following (bottom up):
  - Lawful – measured against the *Criminal Code of Canada*;

- Reasonable – measured on a scale of proportionality;
- Necessary – measured against individual officer/TFI perception;
- Acceptable – measured against an individual’s personal filters.

The UCC met with an expert witness. This expert witness is the owner and founder of the company responsible for the development and delivery of the Use of Force training for all TFIs at the TTC. This expert witness is a qualified Use of Force court expert in three provinces and has been involved in Use of Force instruction for more than 25 years. After reviewing the TTC Streetcar video and the statement of Respondent 1, this expert witness advised the UCC of the following:

- In their opinion, based on Respondent 1’s statement and the TTC Streetcar video, the application of force used in response to the actions taken by the Customer was proportional and within the scope of training provided to TFIs.
- In their opinion, based on Respondent 1’s statement and the TTC Streetcar video, the rationale provided by Respondent 1, for his actions while onboard the TTC Streetcar, is consistent with the training provided to TFIs.

## **Scene Measurements**

The UCC attended the westbound streetcar stop at St. Clair Avenue West and Bathurst Street for the purposes of obtaining incident scene measurements. At this time, the UCC also acquired various measurements and angles from within a Low Floor Light Rail Vehicle (LFLRV) of the same type as the TTC Streetcar. The following was learned:

- Approximately 44 inches (<four feet) was the distance between Respondent 1 and the Customer (toe to toe) when standing by the second door on the TTC Streetcar facing each other for the majority of the trip.
- Approximately 348 inches (~29 feet) was the distance between Civilian Witness 2 and both Respondent 1 and the Customer.
- Approximately 60 inches (~five feet) was the initial distance between Civilian Witness 3 and Respondent 1 before this witness moved further away.
- Approximately 100 inches (~eight feet) was the initial distance between Civilian Witness 3 and the Customer before this witness moved further away.
- Approximately 65 inches (~five feet) was the distance between Respondent 1 and the Customer when the Customer was standing on the TTC Streetcar and Respondent 1 was standing on the streetcar platform.
- Approximately 48 inches (four feet) was the distance between Respondent 1, while standing on the streetcar platform, and the edge of the roadway curb of the streetcar platform.
- Approximately five-to-six inches was the distance between Respondent 1 and the Customer (toe to toe) when the Customer approached Respondent 1 off the TTC Streetcar.

## **Statement of Claim Review**

On April 3, 2018, the TTC received a copy of the Statement of Claim that was served on the TTC by the Customer. This Statement of Claim included a version of events that would reasonably have been provided by the Customer to his counsel for the purposes of filing a lawsuit against the TTC and TPS (as indicated within the claim). The Statement of Claim provided by the Customer includes the following:

- On February 18, 2018 the Customer was travelling on a 512 streetcar (TTC Streetcar), westbound near St. Clair and Bathurst. As he arrived at St. Clair Avenue West and Bathurst Street (westbound stop), he prepared to exit the TTC Streetcar.
- As the Customer turned to exit the TTC Streetcar, suddenly and without warning, one or more of the Respondents grabbed him causing him great shock and mental distress.
- In fear of his safety, the Customer tried to exit the TTC Streetcar, but was grabbed and pushed by the Respondents without notice or warning.
- The Respondents grabbed the Customer and pushed him to the ground face first, into the concrete streetcar platform.
- The Respondents never communicated with the Customer or identified themselves.
- Once on the ground, the Customer was detained by the Respondents without reasonable justification or excuse, until TPS arrived.
- The Customer was held in this position screaming in pain and for help, for an extended period of time.
- When the TPS arrived they piled on top of the Customer.
- The Customer was handcuffed and brought to the front of a cruiser.
- At no time did the Respondents offer the Customer medical assistance or make any medical services team aware of the force that was used on the Customer.

## **TPS Statements**

TPS conducted an investigation regarding this incident to determine whether any criminal charges were warranted. All Respondents met with TPS, and provided TPS statements for their investigation. TPS advised the TTC they found no criminal charges were warranted with respect to any party and no further criminal investigation would be required. The UCC then received authorization from Respondents 2 and 3 to obtain copies of the statements they provided to TPS. Respondent 1 did not provide the UCC with authorization for the release of the statement he provided to TPS. The statement provided by Respondent 2 to TPS was substantially the same as that provided to TTC Investigators. The statement provided by Respondent 3 to TPS was substantially the same as that provided to TTC Investigators.



## Part VII: Analysis

### Credibility Assessment

For the purposes of the analysis, it is important to review the credibility of the Respondents, the Customer and the other involved witnesses to determine the weight that can be placed on their version of events.

The credibility of witnesses can often be linked to how closely their versions of events are to other evidence, including physical evidence, video and the statements of other independent witnesses.

Video surveillance evidence is never subject to stress, and records events accurately and dispassionately. Video surveillance evidence is a silent, but constant, unbiased witness with instant and total recall of all that it observes. In this incident there is significant TTC video from the TTC Streetcar cameras that captured the vast majority of the incident from various angles. Through the use of the TTC Streetcar video, the TTC Investigators were able to determine the credibility and accuracy of some witnesses and the Respondents.

TTC Investigators reviewed the Statement of Claim submitted by counsel for the Customer. This Statement of Claim was served on the TTC on April 3, 2018 and received by the TTC Investigators on April 5, 2018. This Statement of Claim included a version of events that would reasonably have been provided by the Customer to their counsel for the purposes of filing a lawsuit against the TTC and TPS. The TTC Investigators did not place much weight on the Statement of Claim; however, the following discrepancies were noted between the Statement of Claim and other evidence obtained during the course of the investigation:

- It is alleged in the Statement of Claim that the Customer was turning to exit the TTC Streetcar when he was suddenly grabbed, without warning. This implies the Customer was standing on the TTC Streetcar when the Respondents physically engaged him. This is contradicted by the TTC Streetcar video, which shows the Customer exited the TTC Streetcar and intentionally walked up to Respondent 1 prior to the physical altercation.
- It is alleged in the Statement of Claim that the Customer tried to exit the TTC Streetcar, fearing for his safety. This is contradicted by the TTC Streetcar video, which shows that the Customer exited the TTC Streetcar, re-boarded, then disembarked and intentionally walked up to Respondent 1. After being pushed by Respondent 1, the Customer then runs at Respondent 1 while swinging his fist at Respondent 1's head. At no time does the TTC Streetcar video show the Customer making any attempts to move away from the Respondents for fear for his safety.

- It is alleged in the Statement of Claim the Respondents never communicated with the Customer. This is contradicted by the TTC Streetcar video, which shows Respondent 1 moving his mouth at least four different times as if repeatedly speaking to the Customer. Respondent 1 states that he repeatedly communicated with the Customer onboard the TTC Streetcar and this is corroborated by Civilian Witness 3, who overheard Respondent 1 speaking to the Customer.
- It is alleged in the Statement of Claim that the Customer was held down by the Respondents without reasonable justification or excuse. Statements from other witnesses and the Respondents state that the Customer was advised by the Respondents, while being held to the ground, that he was under arrest. The Customer contradicts his own Statement of Claim by way of his statement provided on May 24, 2018, which indicates he was advised by the Respondents he was under arrest.
- It is alleged in the Statement of Claim that at no time did the Respondents offer the Customer medical assistance or make any medical services team aware of the force used on them. Other statements and evidence indicate that two separate calls were made for an ambulance for the Customer. Witness Officer statements and radio transmissions indicate EMS was called and approached the Customer after his arrest and he declined medical assistance. Additional evidence from witnesses and TTC Streetcar video indicates that EMS returned to the scene after the Customer was released unconditionally by TPS. The Customer was offered medical assistance a second time and he refused.

TTC Investigators reviewed the formal statement submitted by the Customer on May 24, 2018. The practice of allowing a witness to review video surveillance evidence prior to providing a statement is not typical for TTC misconduct investigations. The concern is that a witness will tailor their evidence to match the contents of the video surveillance rather than providing their own version of events. However, to ensure the TTC had an opportunity to obtain a statement from the Customer, a redacted copy of the TTC Streetcar video for the initial incident was provided on April 24, 2018. The redacted TTC Streetcar video concealed the identities of individuals other than the Customer, TPS officers and TEU employees.

Other witnesses that participated in this investigation were not provided with a copy of the TTC Streetcar video prior to providing their respective formal statements. On May 24, 2018, the Customer provided a statement to the TTC. TTC Investigators noted the following from the submitted statement:

On May 24, 2018, the Customer provided a statement to the TTC. TTC Investigators noted the following from the submitted statement:

- The Customer stated that none of the Respondents ever spoke with him. This statement is inconsistent with the TTC Streetcar video and evidence from Respondent 1 and Civilian Witness 3.

- The Customer stated that he did not pay much attention to the Respondents. This statement is inconsistent with the evidence from the TTC Streetcar video, the Respondents and Civilian Witness 3.
- The Customer stated that the Respondents blocked his path to the only exit from the streetcar platform when he exited the TTC Streetcar. He claims he was going to make his way to a restaurant. This statement is inconsistent with the TTC Streetcar video, the Respondents, Civilian Witness 3 and scene measurements. Scene measurements indicate the distance between the Customer, while on the TTC Streetcar and Respondent 1, while standing on the streetcar platform, to be approximately 5.5 feet. Scene measurements also indicate there was approximately four feet of space between the Respondents and the roadway curb of the streetcar platform, which had it been his intention, would have allowed the Customer to exit the streetcar platform unhindered. The TTC Streetcar video does show another customer walk past the Respondents with ample room immediately prior to the Customer disembarking the TTC Streetcar for the second time. As the Customer exits the TTC Streetcar the second time, the TTC Streetcar video shows him making no attempt to turn right to make his way past the Respondents to go to a restaurant. Instead, the Customer appears to take purposeful steps forward off the TTC Streetcar to bring him face-to-face with Respondent 1, well within Respondent 1's personal space.
- The Customer stated that he stepped out of the TTC Streetcar and onto the streetcar platform when suddenly and without warning Respondent 1 pushed him backward. This is inconsistent by the TTC Streetcar video, the Respondents and Civilian Witness 3. The Customer appears to intentionally walk up to Respondent 1 after disembarking the TTC Streetcar for a second time so that his face is approximately three inches from Respondent 1's face, based on Civilian Witness 3, and his feet are approximately five-to-six inches from those of Respondent 1, based on scene measurements. The TTC Streetcar video shows that Respondent 1 made no move to use force until the Customer walked up to him, causing their faces and bodies to be in very close proximity.
- The Customer stated that he defensively got up to address the TFI in reaction to the violent and unprovoked push. What is observed on the TTC Streetcar video, and from statements obtained from the Respondents and Civilian Witness 3, is after being pushed, the Customer gained his feet and then ran at the Respondents attempting to punch Respondent 1 in the head.

The Customer is found to have many inconsistencies and discrepancies between his versions of events and other more objective evidence, including the TTC Streetcar video. Although the Customer was involved in a physical confrontation with the Respondents, the discrepancies identified by TTC Investigators are significant and cannot be explained as minor memory flaws. It is for these reasons that TTC Investigators have concerns with respect to the accuracy of the Customer's statement.

It was noted by TTC Investigators that Civilian Witness 2 had provided a detailed description of the events that resulted in this incident. Their account was provided during an interview with a media outlet and on two of their public social media accounts.

Civilian Witness 2 indicated they were present for the duration of the incident and observed the event with their own eyes. Their version of events was very specific stating that a TFI grabbed the Customer as they were exiting the TTC Streetcar and pulled him back into the TTC Streetcar. The Customer, after being grabbed, then defended himself and the incident ended with the Respondents wrestling him to the ground and holding him in place with TPS officers for approximately 20 minutes.

After reviewing the TTC Streetcar video it was determined by TTC Investigators that Civilian Witness 2's version of events is inaccurate and inconsistent from what is captured on TTC Streetcar video.

TTC Investigators reviewed the TTC Streetcar video to determine the position of Civilian Witness 2 in relation to the incident. It was determined that Civilian Witness 2 boards the incident streetcar at St Clair West Station and sits down in a seat near the third set of doors. The incident occurs near the second set of doors. Based on scene measurements taken by the UCC, the distance to the Customer and Respondent 1 was approximately 29 feet from where this witness was seated. The TTC Streetcar video shows Civilian Witness 2 clearly sitting with their head down and/or appearing disinterested in anyone around themselves during much of this incident, including the events that immediately precipitate the physical confrontation. If Civilian Witness 2 had been looking forward from their seated position onboard the TTC Streetcar, there is a possibility they may have been able to observe parts of the initial incident; however, many of the raised seats separating themselves from the Customer and the Respondents, were occupied and would have made an unobstructed view difficult.

Based on the TTC Streetcar video, Civilian Witness 2 takes interest in the events several minutes after the incident has moved outside the TTC Streetcar. Prior to taking interest in the incident, this witness seemed unaware that anything was happening. Civilian Witness 2 was casually looking out of the various windows and into their lap. In addition, Civilian Witness 2 reports that the Customer was held on the ground by TPS for 20 minutes until other TPS officers arrived. However, the TTC Streetcar video evidence suggests the time the initial TPS officers were on the ground with the Customer, until other TPS officers arrived at the incident, to be less than two minutes. The time the Customer stands and is escorted away by TPS officers is within three minutes of the initial arrival time of the first responding TPS officers.

The evidence provided by Civilian Witness 2, both through the media and their social media accounts, is deemed by TTC Investigators to be unreliable.

Upon review of the TTC Streetcar video, the UCC determined Civilian Witness 3 stands within close proximity (~five feet) to Respondent 1 and (~eight feet) to the Customer when they initially board and position themselves on the TTC Streetcar. Their version of events is very close to that of what is captured on the TTC Streetcar video. Civilian Witness 3 is deemed by TTC Investigators to be credible; based on the accuracy of their statement and proximity to the incident.

Civilian Witness 3 is an independent witness and their version of events, which almost mirrors that of the TTC Streetcar video, is also very similar to the information provided by the Respondents. There are some minor differences between the four versions, but their general facts of events are consistent with each other and the TTC Streetcar video. This adds credibility to the versions of events provided by these four involved parties.

The information obtained from the statements and interviews of Civilian Witness 3 and the Respondents were relatively consistent in terms of the information provided; however, there were some facts that contradicted the TTC Streetcar video as follows:

- Respondent 1 stated that the Customer had at least one hand in his pocket while on the TTC Streetcar; however, the TTC Streetcar video shows the Customer never placed either hand in his pocket. Respondent 1 recognized his error only after being presented with TTC Streetcar video evidence.
- Civilian Witness 3 believed both of the Customer's hands were in his pockets, which contradicts the TTC Streetcar video. This witness stated they believed the Customer's hands were in his pockets as they could not see them.
- Respondent 1 stated that when the Customer exited the TTC Streetcar and approached him, both of the Customer's hands were in fists. Based on the TTC Streetcar video, it is reasonable to believe the Customer's hands were open.
- Respondent 3 believed the Customer's hands were clenched in fists when he exited the TTC Streetcar and walked towards Respondent 1.
- Contrary to the TTC Streetcar video, neither the Respondents nor Civilian Witness 3 recalled that after attempting to punch Respondent 1, the Customer then moved back towards the TTC Streetcar (as if to re-board) before running at the Respondents. All four witnesses believed the Customer ran at Respondent 1 after he was pushed and then one continuous scuffle ensued.

The Respondents were involved in a physical confrontation with the Customer after he exited the TTC Streetcar for a second time. According to TTC Streetcar video evidence, during this physical confrontation, the Customer threw a punch at Respondent 1 with a closed fist. Although Respondent 1 and Respondent 3 believed the Customer initially approached Respondent 1 with his fists clenched, the TTC Streetcar video shows this does not happen until after the push by Respondent 1.

The inconsistent information referenced by the Respondents and Civilian Witness 3 above negatively influences their credibility. However, the vast majority of the other information provided by the Respondents and the Civilian Witness 3 is consistent with other evidence, including the TTC Streetcar video. This is different from the information provided by Civilian Witness 1 and 2, who both had significant differences in their versions of events from each other, other independent witnesses and the TTC Streetcar video.

What the TTC Streetcar video does not show is what an involved person was feeling based on what they were witnessing at the time of the incident. This information is important, particularly with respect to the actions taken by Respondent 1 and his use of

force. The Respondents portray their feelings of the situation by way of their notes, statements and interviews. This information is examined as part of the remainder of this analysis.

## **Misconduct Analysis – Section 2**

The misconduct allegations investigated by the UCC include the following:

1. The Respondents failed to treat a customer equally without discrimination with respect to services based on race, colour, and/or ethnic origin, amounting to discreditable conduct under Section 2(1)(a)(i) of the TEU Code of Conduct.
2. Respondent 1 acted in a manner that was uncivil towards a customer amounting to discreditable conduct under Section 2(1)(a)(iv) of the TEU Code of Conduct.
3. Respondent 1 assaulted a customer amounting to discreditable conduct under Section 2(1)(a)(vi) of the TEU Code of Conduct.
4. The Respondents acted in a manner that is not consistent with TTC and community expectations amounting to discreditable conduct under Section 2(1)(a)(xi) of the TEU Code of Conduct.
5. Respondent 1 pushed a customer without any underlying authority to use force, amounting to unlawful or unnecessary exercise of authority under Section 2(1)(g)(ii) of the TEU Code of Conduct.

A TFI is an employee of the TTC and is required by their duties, but not limited to:

- Conduct inspections of passenger fares on POP transit lines;
- Enforce TTC By-law No.1 as encountered in accordance with the TEU's Code of Conduct, code of ethics, cores values and mission statement.

TFIs are considered occupiers of the TTC under the *Trespass to Property Act* given their assigned duties according to their job description. Further, they are tasked specifically with enforcing TTC By-law No.1 and designated as Provincial Offences Officers.

Based on the available evidence reviewed, an altercation occurred on February 18, 2018 between the Respondents and the Customer. In this particular incident, no evidence was found to suggest the Respondents were conducting a POP detail. Nor was the Customer singled out and asked to produce POP. There is no evidence to suggest the Customer was being investigated for any alleged violation of TTC By-law No.1. Nor had the Customer just been investigated for any other matter. What is in dispute is whether the Respondents engaged in misconduct, violating the TEU Code of Conduct.

The analysis of this investigation was conducted using all available evidence.

## **Stages for Analysis**

Given the various stages of the event involving the Respondents on February 18, 2018, it is reasonable to analyze the incident in two separate stages. The first stage includes the period when all involved parties are onboard the TTC Streetcar and the second being the period of time once all parties are off the TTC Streetcar and become involved in a physical confrontation.

### **Stage 1 – On the TTC Streetcar**

When the Customer boards the TTC Streetcar within St Clair West Station, he immediately stands in a position directly in front of Respondent 1. The Customer stands just inside the doors of the TTC Streetcar and makes no motion to walk to a seat or move to a position elsewhere on the TTC Streetcar. The Customer remains almost motionless. There are many other customers on the TTC Streetcar. The area around the Customer is relatively open in terms of space and available seating. Based on scene measurements, the Customer stands approximately 44 inches from Respondent 1 (face-to-face).

Based on the TTC Streetcar video and evidence from Respondent 1 and Civilian Witness 3, upon boarding the Customer appears to immediately engage in direct eye contact with Respondent 1. The Customer makes no motion to speak to him, acknowledge him or move past him. It is likely that none of the Customer's actions, if viewed separately, would make him stand out or bring attention to himself. However, when the Customer's actions are considered together they would cause a reasonable person to question the motivation behind the Customer's decision to stand almost motionless, directly in front of and make direct eye contact with Respondent 1. Two other individuals note the atypical conduct of the Customer, including Respondent 2 and Civilian Witness 3.

The actions of the Customer upon boarding the TTC Streetcar appear to immediately catch the attention of Respondent 1. Both Respondent 1 and Civilian Witness 3 claim in their statements and interview responses that Respondent 1 makes efforts to engage the Customer by asking various questions and making reassuring statements. Respondent 1's actions could be viewed by a reasonable person as attempts de-escalate any tension or uncertainty in relation to the situation. Statements and interview responses from Respondent 1 and Civilian Witness 3 suggest the questions and statements made by Respondent 1 included: Whether the Customer was alright, whether there was anything the Customer needed and the fact that Respondent 1 was not checking POP.

Approximately 40 seconds after the final question/statement made to the Customer by Respondent 1, Respondent 2 joins Respondent 1 on the TTC Streetcar by walking to Respondent 1's location. The Customer makes one slight and brief head turn towards Respondent 2 before turning his head back to face Respondent 1. Based on the TTC

Streetcar video, the three Respondents and Civilian Witness 3, the attention of the Customer appears to be fixed on Respondent 1 for the vast majority of the interaction/incident.

Respondent 2 stated that the Customer's continued action of staring at Respondent 1 from a short, frontal position, combined with the Customer's failure to move his head or body in any significant manner, caused him to move from the rear area of the TTC Streetcar to a position beside Respondent 1. He was concerned for Respondent 1's safety, as the actions of the Customer were unusual. Civilian Witness 3 states they moved away from the Customer for their own safety, as they perceived the actions of the Customer as threatening.

The UCC finds that the Customer's actions are not typical for a TTC customer. His unusual behaviour included his lack of movement, choice of standing position and continued and fixed stare. It is reasonable to believe that it is for these reasons Respondent 1 readily noticed the Customer. The Customer's behaviour continued to be unusual in that he did not respond to Respondent 1's attempts at making conversation and/or reassuring him that he was not checking POP. Instead, Respondent 1 was met with silence and a continued stare from the Customer.

Respondent 1 states that he did not move away from the Customer, as he feared for his safety and he specifically did not want to turn his back to this Customer. After Respondent 2 had unsuccessfully signalled Respondent 3, Respondent 1 waved over Respondent 3 to come to his position on the TTC Streetcar. Respondent 1 stated that he called Respondent 3 over for Respondent 2, but also thought the presence of three TFIs could potentially prevent the Customer from doing anything "funny" or "harmful."

Respondent 1 made the decision to not move away from the Customer. Respondent 1 found the Customer's actions to be both unusual and threatening. He believed his safest position was exactly where he stood. He believed that by having additional TFIs beside him, he could potentially de-escalate the situation through sheer presence; discouraging the Customer from engaging in any harmful behaviour. Without the benefit of hindsight, Respondent 1's decision is not unreasonable. In attempting to determine the reasonableness of Respondent 1's actions one must do so vicariously and with the knowledge that Respondent 1 had at the time.

## **Stage 2 – Off the TTC Streetcar**

Once the TTC Streetcar arrived at the westbound service stop on St. Clair Avenue West at Bathurst Street, the Customer exited the TTC Streetcar and immediately stood behind an unidentified customer who was waiting to board the TTC Streetcar. This is verified by the TTC Streetcar video.

It is reasonable to believe, based on the TTC Streetcar video, the Customer intends to re-board the TTC Streetcar. If he did not intend to re-board the TTC Streetcar, it is



reasonable to believe that the Customer would have immediately exited to the right and proceeded along the streetcar platform.

The Respondents exited the TTC Streetcar at this location, intending to board a southbound Bathurst Street bus to take them to their destination, Hillcrest Yard.

As the Customer re-boards the TTC Streetcar, both Respondent 1 and the Customer continue to maintain direct eye contact. Respondent 1 states that he looked at the Customer as he did not feel safe taking his eyes off of him. Respondent 1 states that he did not know the intentions of the Customer and wanted to ensure his own safety.

Respondent 3 points out that the Customer's behaviour of exiting the TTC Streetcar, only to re-board, seemed unusual in that there was open space on the TTC Streetcar for others to disembark had the Customer simply moved from his position. Had he done this, the Customer could have remained onboard the TTC Streetcar. The extra effort of exiting the TTC Streetcar only to re-board caused Respondent 3 to be concerned about the Customer's intentions.

Once on the TTC Streetcar, the Customer reassumes his previous position; however, he does not face the interior of the TTC Streetcar as he had done when the Respondents were aboard. Instead, the Customer intentionally faces outside the TTC Streetcar and focuses on Respondent 1 who is on the streetcar platform. It was not necessary for the Customer to stand facing in this direction or at this location when he re-boarded the TTC Streetcar. The Customer decided not to move further into the TTC Streetcar and remain focused on Respondent 1. Based on scene measurements, Respondent 1 stood approximately five feet (65 inches) from the position of the Customer. Respondent 1 remains focused on the Customer and stated he "probably smiled" given his relief in that the situation seemed to be over. Respondent 1 was thinking that since the Customer re-boarded the TTC Streetcar and the doors were closing, he was going to be able to finish his shift for the day and go home.

Although the TTC Streetcar video does not show Respondent 1 smiling at any point while off of the TTC Streetcar, his face is blocked from view for approximately 3.5 seconds as the doors close. Civilian Witness 3 is confident that Respondent 1 smiled at about this time and characterized the smile as a "little bit condescending." Respondent 1 acknowledges that he probably smiled in relief that the situation was going to end, and that the smile was not intended for the Customer, but in general (in view of the Customer). Respondent 1 provided a reasonable explanation for smiling; however, the timing of the smile was at the climax of a tense interaction between himself and the Customer. It is reasonable to believe this act, regardless of Respondent 1's reason for smiling, could be construed as conflicting with TTC and community expectations contrary to the TEU Code of Conduct. Respondent 1's act of smiling is found to be unprofessional conduct. However, there is no available evidence that Respondent 1's act of smiling led, or contributed, to the outcome of this incident. At the approximate time Respondent 1 smiles, the Customer states he was exiting the TTC Streetcar to go to a restaurant.

The TTC Streetcar video captures the Customer pressing the button before the doors fully close. The Customer makes efforts to reopen the TTC Streetcar doors by pressing the door button twice in rapid succession. This button activates the TTC Streetcar doors causing them to open.

The behaviour of the Customer up to this point caused concern for Respondent 1. The continued staring by the Customer did not indicate to Respondent 1 that the Customer had missed his stop or taken note of anyone else outside the TTC Streetcar. The Customer's focus remained completely on Respondent 1 and now the Customer took proactive steps to exit the TTC Streetcar immediately after purposely re-boarding and waiting as the doors began to close. Respondent 1's concerns for the Customer's actions are not unreasonable.

Based on the TTC Streetcar video and scene measurements, once the TTC Streetcar doors opened, the Customer took direct and deliberate steps towards Respondent 1 and appeared to stop with his toes approximately five-to-six inches from those of Respondent 1. At this distance, the Customer has entered the personal space of Respondent 1. Although the feet of Respondent 1 and the Customer are five-to-six inches apart, a slight lean on either individual towards the other would place the faces of the two individuals inches apart, or less. Civilian Witness 3 estimates the face of the Customer came within 3 inches of Respondent 1's, which is reasonable to believe.

Respondent 1 stated the Customer's eyes widened and his fists were clenched by his side as he exited the TTC Streetcar for the second time. The Customer approached Respondent 1 aggressively and the Customer placed his face directly into Respondent 1's. Respondent 1 believed he was going to be assaulted. In addition, Respondent 2, Respondent 3 and Civilian Witness 3 all thought the Customer was going to harm Respondent 1. In response, Respondent 1 pushed the Customer back to create distance.

The belief held by the Respondents and Civilian Witness 3 that the Customer was going to harm Respondent 1 when he approached him is reasonable given the following:

- The continued and fixed stare by the Customer at Respondent 1 throughout this incident;
- The full frontal body posturing by the Customer both on the TTC Streetcar and then when the Customer re-boards, turning to face Respondent 1;
- The lack of communication or acknowledgement by the Customer of anyone other than staring intently at Respondent 1;
- The Customer's deliberate actions to quickly and immediately exit the TTC Streetcar just after the doors had closed and the Customer walked directly to Respondent 1 ending with his face within three-to-five inches of Respondent 1's.
- The belief by Respondent 1 and Respondent 3 that the Customer was making fists with his hands as he exited the TTC Streetcar.

After being pushed back, the Customer rushed at Respondent 1 and attempted to punch Respondent 1 in the head. At this time, Respondent 1 was able to move off the line of the Customer's approach and deflect the punch.

The Customer then turned as if to re-board the TTC Streetcar. At this time, none of the Respondents could be seen making any effort to arrest the Customer or challenge his actions. After stepping up on the TTC Streetcar with one foot, the Customer then turned and ran at the Respondents. At this time, the Customer and Respondent 2 fell to the ground outside the TTC Streetcar.

## **Use of Force Model Explained**

TEU Procedure 02-01 outlines the guidelines for the use of force by its members. It is predicated on the Ontario Use of Force Model, which provides the framework for officers, including TFIs, when determining the type of force that is reasonable and necessary to ensure officer and public safety. Any force used must be justified and have a corresponding legal authority.

The Ontario Use of Force Model represents the process by which an officer assesses, plans, and responds to situations that threaten officer and public safety. In this case, we are referring to the actions of a TFI. TFIs study the Use of Force model and are expected to comply with it as outlined in TEU Procedure 02-01.

The Use of Force model was designed for the purpose of assisting law enforcement officers in determining when force is acceptable. Force may be used by anyone and may be justified if in accordance with the *Criminal Code of Canada*. In this case, the analysis relates to TFIs; however, the term officer is used interchangeably.

The assessment process begins in the centre of the model with the "Situation" confronting the officer. From there, the assessment process moves outward and addresses the subject's behaviour and the officers "Perceptions" and "Tactical Considerations." Based on the officer's assessment of the conditions represented by these inner circles, the officer selects from the use of force options contained within the model's outer circle.

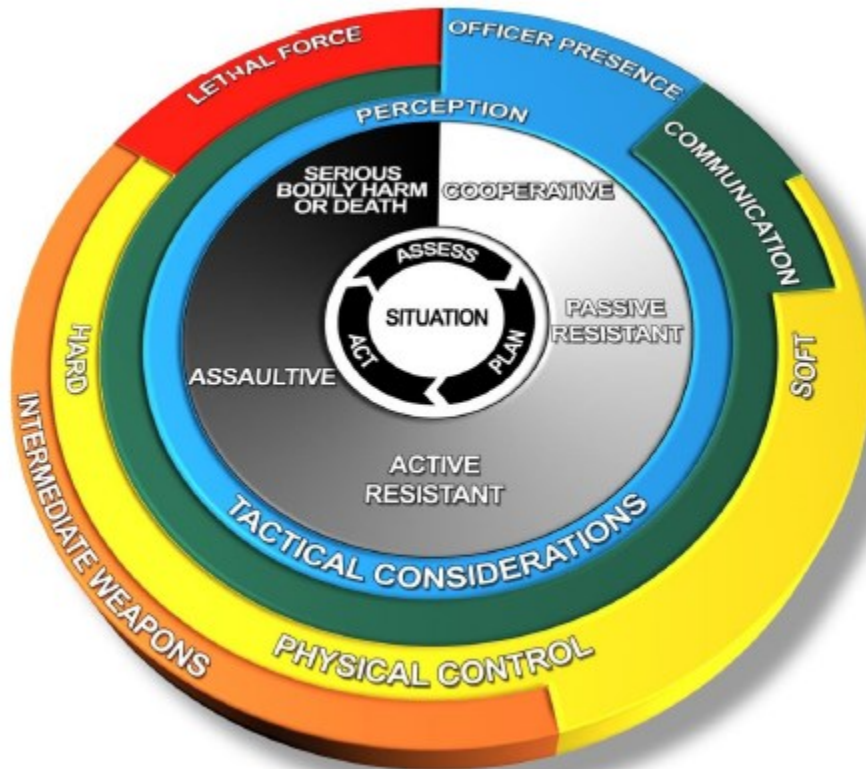
After the officer chooses a response option, the officer must continue to "Assess, Plan and Act" to determine if their actions are appropriate and/or effective, or if a new strategy should be selected. The whole process should be seen as dynamic and constantly evolving until the "Situation" is brought under control.

The innermost circle of the model labelled "Situation" contains the "Assess-Plan-Act" component, which should be visualized as dynamic as an officer's assessment of a situation is never-ending.

The area, adjacent to the "Situation" contains the various subject behaviour categories, including co-operative, resistant, assaultive and serious bodily harm or death.

Perception and tactical considerations are interrelated and are therefore contained in the same ring on the model. Factors that the officer brings to the situation, that are unique to the individual officer, interact with both the situational and behavioural factors to determine how an officer may perceive or assess the situation. Further, the officer's perception of a situation, may affect their assessment and, in turn, their tactical considerations.

### Ontario Use of Force Model (2004)



The outer area of the model represents the officer's use of force options. TFIs are limited in terms of their options as they do not carry handcuffs, batons, pepper spray or any other items designed to be used as a weapon or for physical control.

The process of assessing a situation involves consideration of the situation, the subject behaviour and the officer's perception as well as tactical considerations. The situation itself consists of various aspects, such as the environment, the subject's perceived abilities, physical cues, etc.

Central to the "Assess-Plan-Act" process is the behaviour of the subject. The model records five different categories of subject behaviour in the circle adjacent to the "Situation": Co-operative, Passive Resistant, Active Resistant, Assaultive and Serious Bodily Harm or Death.

The gradual blending of colours in this circle reflects the fact that the boundaries between categories are difficult to distinguish.

“Active Resistant” is used to describe situations where a subject uses non-assaultive physical action to resist or while resisting an officer’s lawful direction. Examples of this include: pulling away to prevent or escape control; overt movements, such as walking toward or away from an officer; and running away from an officer.

“Assaultive” is used to describe situations where a subject attempts to apply, or applies force to any person or attempts or threatens by an act or gesture to apply force to any person, if they have, or cause that other person to believe on reasonable grounds they have the present ability to affect their purpose. Examples include kicking and punching, but may also include aggressive body language that signals the intent to apply force to another person.

Perception and Tactical Considerations are two separate factors that may affect the officer’s overall assessment. Because they are viewed as interrelated, they are graphically represented in the same area of the model. They should be thought of as a group of conditions that mediate between the inner two circles and the response available to the officer. Each officer’s perception will directly impact on their own assessment and subsequent selection of tactical considerations and/or their own use of force options.

How an officer sees or perceives a situation is, in part, a function of the personal characteristics he or she brings to the situation. These personal characteristics affect the officer’s beliefs concerning their ability to deal with the situation. For various reasons, one officer may be confident in their ability to deal with the situation and the resulting assessment will reflect this fact. In contrast to this, another officer, for equally legitimate reasons, may feel the situation to be more threatening and demanding of a different response.

In the model’s outer ring, there are five “Use of Force” options, ranging from officer presence, to lethal force.

There is a great deal of overlap amongst these options indicating that the officer may use several of these at the same time. There is an approximate correspondence between the model’s depiction of a subject’s behaviours and the use of force options available to the officer. Because each officer has different personal characteristics that affect their perception, and because each situation presents different tactical considerations, the correspondence between the subject’s behaviour and that of the officer can never be precise. How reasonable one considers an officer’s actions can be judged only after one considers the complex interplay amongst the situation, the subject’s behaviour, the officer’s perceptions and tactical considerations.

The Use of Force options may be used alone or in combination to enable the officer to control the situation. The premise of the model is that an officer’s perception and tactical

considerations are specific to the situation. The dynamic nature of the situation requires continual assessment; therefore, the Use of Force options selected may change at any point.

The model identifies two levels of physical control, soft and hard. Soft techniques are control-oriented and have a lower probability of causing injury. They may include: restraining techniques; joint locks; and non-resistant handcuffing. Hard techniques are intended to stop a subject's behaviour or to allow application of a control technique and have a higher probability of causing injury. They may include empty hand strikes, such as punches and kicks.

Intermediate weapons involve the use of a less-lethal weapon. Less-lethal weapons are those whose use is not intended to cause serious injury or death. Impact weapons, such as batons and aerosols, fall under this heading. As mentioned, TFIs do not carry any type of intermediate weapons.

## **Use of Force - Further Analysis**

The UCC examined Respondent 1's use of force in this incident in relation to the mentioned guidelines. The purpose of this analysis is to determine whether or not Respondent 1's actions were justified, bearing in mind that individual perception in any situation is apt to differ from person to person.

At the centre of the wheel is the dynamic situation requiring Respondent 1 to constantly "Assess-Plan-Act" according to his perception of the situation and the subject's behaviour.

In this instance, there is substantial evidence to suggest that Respondent 1 believed that he was about to be assaulted, based on the actions of the Customer. Respondent 1's beliefs are not unreasonable given the actions of the Customer leading up to Respondent 1's use of force. In response to his perception and belief he was going to be assaulted, Respondent 1 used both of his hands to defend himself by pushing the Customer away from him.

Using a push to create distance from a person one believes is about to assault them is well within the theory of the use of force teachings. Respondent 1 appears to follow-up the use of force with direct communication with the Customer to stop or get back. This is also in line with the Use of Force model, but in this case the Customer does not follow Respondent 1's direction to stop or stay away. Instead the Customer becomes more aggressive and attempts to punch Respondent 1, and then charges at the Respondents.

After charging at the Respondents, the Customer, who has now demonstrated several acts of assaultive behaviour, is then arrested by the Respondents and held down until

assistance can arrive. Although it is alleged by the Customer that he was assaulted while being held to the ground by the Respondents, there is no evidence to support that the Respondents, while waiting for TPS to arrive, did anything other than hold the Customer in place by leveraging their own body weight and muscle. This was learned by the UCC from the YouTube video of the incident and statements from the Respondents and Civilian Witnesses 3 and 4.

The Provincial Use of Force Model justifies the use of physical control along with appropriate tactical communication provided there is an authority to use force.

With respect to the push by Respondent 1, the authority to use force is found in the *Criminal Code of Canada*, Section 34 – Defence of person (self-defence). With respect to the arrest, the authority to use force is Section 494 of the *Criminal Code of Canada* – arrest by any person. Both of these sections are noted in the referenced section in the appendix of this report. Both sections clearly outline when they are justified.

As a result of this analysis, the UCC noted the following:

- The force used by Respondent 1 to repel the Customer is consistent in terms of the training he is provided and was not such that it constituted an excessive use of force.
- The force used by the Respondents for the arrest is consistent in terms of the training they are provided and was not such that it constituted an excessive use of force.
- Respondents 1 and 3 state Respondent 1 made verbal commands for the Customer to get back, which is also consistent with their training.
- While on the ground with the Customer, the Respondents were also heard yelling to him that he was under arrest. This is also in line with their training.

The force used by Respondent 1 was such that a reasonable person in the same position may have taken similar actions. The reasons for his actions are clear and specific and at no time does Respondent 1 use any force that is not in direct response to the action of the Customer. The behaviour of the Customer in this incident is not typical for a TTC customer and was such that it would – and did – cause several people to be concerned for their safety. Furthermore, it is clear that the force used by the Respondents was reasonable and consistent with their training.

## **Discrimination and Harassment Analysis - Section 4**

The HRC provided consultation to the UCC on the following allegation:

It is alleged that the Respondents engaged in conduct amounting to discrimination and/or harassment under the TTC's Respect and Dignity Policy, which is included in Section 4 of the TEU Code of Conduct that states:

*“Any Transit Enforcement Unit Member shall also comply with all other TTC Corporate Policies and Procedures and any Departmental Policies and Procedures, including but not limited to Conditions of Employment and Conflict of Interest.”*

The TTC's Respect and Dignity Policy is a TTC corporate policy and is included in Section 4 of the TEU Code of Conduct.

This analysis makes a determination on a balance of probabilities, whether the Respondents engaged in conduct amounting to discrimination and/or harassment under the TTC's Respect and Dignity Policy. It will examine three issues in respect to this determination. They are:

- Issue One – Is there sufficient evidence, on a balance of probabilities, to support a finding that racial profiling occurred amounting to discrimination under the TTC's Respect and Dignity Policy?
- Issue Two – Is there sufficient evidence, on a balance of probabilities, to support a finding that harassment based on race, colour, and/or ethnic origin occurred under the TTC's Respect and Dignity Policy?
- Issue Three – Is there sufficient evidence, on balance of probabilities, to support a finding that personal harassment occurred under the TTC's Respect and Dignity Policy?

### **Issue One: Is there sufficient evidence, on a balance of probabilities, to support a finding that racial profiling occurred under the TTC's Respect and Dignity Policy?**

The Ontario Human Rights Commission<sup>6</sup> states that racial profiling is an action relying on stereotype(s) about a person's race, colour, and/or ethnic origin. Racial profiling is a form of discrimination.

The following established principles of law are relied on in this analysis:<sup>7</sup>

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<sup>6</sup> Lavender, T. S. (2017). *The 2018 annotated Ontario Human Rights Code*. Toronto, Ontario: Thomson Reuters.

<sup>7</sup> Pieters v. Toronto Services Board, CanLII (HRTO 1729 2014).



- The protected ground of discrimination need not be the sole or major factor leading to the discriminatory conduct; it is sufficient for it to just be a factor.
- There is no need to establish an intention or motivation to discriminate; the focus of the inquiry is on the effect of the respondent's actions on the complainant.
- There need not be direct evidence of discrimination; discrimination will more often be proven by circumstantial evidence and inference.

The following factors, as summarized by the Ontario Human Rights Commission,<sup>8</sup> were also considered. It is important to note that these considerations should be taken in the context of the totality of the evidence, and are not on their own determinative of racial profiling. Furthermore, in the absence of circumstantial evidence, the mere fact that a customer is racialized is insufficient to suggest that racial profiling has occurred:

- Did the respondent make any statements that suggest the existence of stereotyping?
- Did the respondent's actions correspond to the phenomenon of racial profiling?
- Was the respondent's explanation for why a customer was subjected to greater scrutiny contradictory, changing, or non-existent?
- Did the respondent's explanations accord with common sense?
- Did the respondent conduct themselves in an unprofessional manner with a customer, or was a customer subjected to discourteous treatment?

Based on a review of the video evidence from the TTC Streetcar, the incident on February 18, 2018 is divided into three parts and each assessed in respect of racial profiling. The three parts are:

1. St Clair West Station – On the TTC Streetcar;
2. En route to Bathurst Street Platform – On the TTC Streetcar; and
3. Bathurst Street Platform – Off the TTC Streetcar.

## **1. St Clair West Station – On the TTC Streetcar:**

The following actions during the initial encounter with the Customer on the TTC Streetcar at St Clair West Station are assessed:

- A. Respondent 1 claimed that when the Customer first entered the TTC Streetcar, the Customer immediately looked at Respondent 1. This prompted Respondent 1 to look back at the Customer.
- B. Respondent 1 claimed that the Customer continued to stare at him with a “dead stare,” which made him feel “very uncomfortable” and he “was intimidated.”

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<sup>8</sup> Lavender, T. S. (2017). *The 2018 annotated Ontario Human Rights Code*. Toronto, Ontario: Thomson Reuters.

***A. Respondent 1 claimed that when the Customer first entered the TTC Streetcar, the Customer immediately looked at Respondent 1. This prompted Respondent 1 to look back at the Customer.***

According to the TTC Streetcar video and Respondents 2 and 3's written and oral evidence, Respondents 2 and 3 were in a different section of the TTC Streetcar upon boarding, and did not see when the Customer first entered the vehicle.

Due to the angle of the TTC Streetcar's onboard video cameras, the video does not capture a view of the Customer's eyes. However, the TTC Streetcar video shows that the Customer entered the TTC Streetcar, remained at the door, and directly faced Respondent 1. It is not unusual for passengers to remain at the door, even when there are seats available onboard. It is also not unusual for a passenger to look at another person directly in their sight. In addition, all of the Respondents at the time of the incident were wearing a distinct TFI uniform and vest, which commonly attracts looks from passengers.

As the Customer was at the door directly across from Respondent 1, it is similarly not unusual for Respondent 1 to initially look at the Customer who is directly in his line of sight. The Respondent does not recall having seen or interacted with the Customer prior to this incident.

Therefore, in the absence of any other information, there is insufficient evidence, on a balance of probabilities, to suggest that race, colour, and/or ethnic origin were a factor contributing to Respondent 1's initial look at the Customer. Respondents 2 and 3 were not present during this exchange.

***B. Respondent 1 claimed that the Customer continued to stare at him with a "dead stare," which made him feel "very uncomfortable" and he "was intimidated."***

While it may not be unusual for TFIs to attract looks from passengers, the manner and tone of a look can vary. In this case, Respondent 1 stated that the Customer continued to stare at him with what he described as a "dead stare," which made him feel "uncomfortable" and "intimidated."

The TTC Streetcar video evidence does not capture a view of the Customer's eyes. Hence, more weight will be placed on Civilian Witness 3's evidence, who enters the TTC Streetcar as a chance passenger, and stands in the same section of the TTC Streetcar as Respondent 1 and the Customer as seen on the TTC Streetcar video.

Civilian Witness 3 stated that they observed the Customer staring at Respondent 1, and characterized the Customer's stare as "angry, intimidating" and "continuous." Civilian Witness 3 also noted that the Customer appeared "very still." This witness' account of the Customer not moving is supported by the TTC Streetcar video, whereby it shows the Customer making no significant head or body movements while standing directly in front of Respondent 1. Overall, Civilian Witness 3 provided a balanced recollection of the incident supporting particular details of both the Respondents' and the Customer's accounts of the event, that closely corresponds with the events in the TTC Streetcar video. There is no evidence to suggest that Civilian Witness 3 knows the Respondents, any TTC employee or the Customer. Therefore, based on the above, Civilian Witness 3 is believed to be independent, credible and reliable, and much weight is given to their evidence.

Based on this evidence, the Customer was, more likely than not, staring continuously at Respondent 1. While the initial look may not have been unusual, a continuous, fixed stare from the Customer who was positioned directly facing Respondent 1, reasonably caused a heightened concern for Respondent 1's safety.

According to the TFI Recruit Training standards, "individuals having a predisposed assaultive mindset will often demonstrate indicators of their actions ... it is extremely valuable to be able to identify the indicators to enhance officer safety." A few of the indicators include: body position (an individual's stance); eye contact; hand placement; or stoppage of movement. In this matter, a stare that is unchanging and continuously directed at one person may be considered an indicator. Therefore, it is reasonable and in line with the TFI training that the continuous and fixed stare directed at Respondent 1 would call for Respondent 1's attention to the Customer, and cause for his concern.

In the absence of any other information, there is insufficient evidence, on a balance of probabilities, to suggest that Respondent 1 relied on a racial stereotype to infer the Customer's continuous stare was unusual and "intimidating," causing a heightened concern for his safety. Therefore, race, colour, and/or ethnic origin were not a factor in the actions of Respondent 1 at this time. Respondents 2 and 3 were not present during this exchange.

## **2. En route to Bathurst Street Platform – On the TTC Streetcar:**

The following actions en route to Bathurst Street Platform are assessed:

- A. Respondent 1 claimed that he tried to verbally communicate with the Customer to de-escalate the situation involving the Customer's continued stare.
- B. Respondent 1 claimed that that it was not safe for him to turn his back on the Customer or to move to another section of the TTC Streetcar.

***A. Respondent 1 claimed that he tried to verbally communicate with the Customer to de-escalate the situation involving the Customer's continued stare.***

According to the TFI Recruit Training standards, a recommended de-escalation technique is to ask questions for information. "Information questions require attention and reasonable answers."

The TTC Streetcar video evidence shows Respondent 1's mouth moving at least four different times as if repeatedly speaking to the Customer, which corroborates Respondent 1's evidence that he made four attempts to communicate with the Customer. Civilian Witness 3 also confirmed that Respondent 1 inquired into whether the Customer was doing alright twice, whether the Customer needed any help and offered assistance, and informed the Customer that POP was not being checked.

Civilian Witness 3's evidence also noted that the Customer did not respond to any of Respondent 1's questions, but rather stared at him in the same continuous manner. Civilian Witness 3 stated that Respondent 1's manner and tone while communicating with the Customer was "reassuring and helpful." In the absence of any contradictory evidence, Civilian Witness 3's evidence was found to be credible.

Respondent 1 stated that he had also tried to look in a different direction in order to interrupt the Customer's stare. Despite this, the Customer continued to maintain a continuous fixed stare directed at him. The TTC Streetcar video evidence confirms that Respondent 1 looked away for a moment before motioning to speak with the Customer again. Respondent 1 stated this prompted him to ask whether the Customer was doing alright a second time.

Respondent 1 stated that he then tried to inform the Customer that POP was not being checked because he wanted to alleviate any potential concern, acknowledging that passengers, at times, feel intimidated when they see TFIs on board vehicles. Respondent 1 noted that he was met with silence and a continued stare from the Customer.

Based on the evidence, Respondent 1 used verbal communication with the Customer to address the stare. Respondent 1's information questions appear to have been asked because the Customer's stare was directed at him. The mere fact that the Customer did not respond to any of Respondent 1's attempts to communicate with him is not, in and of itself, threatening behaviour. Rather it was the Customer's lack of responsiveness and stillness, together with the continuous fixed stare that reasonably caused Respondent 1's heightened concern for his safety. The evidence supports that Respondent 1 took reasonable steps to de-escalate the situation by attempting to communicate with the Customer, and such communication was not unreasonable.

The Customer has stated, "I was listening to my music and using my [brand] headphones." It is noted that the Customer did not mention the use of headphones in

his Statement of Claim [the first written evidence] dated March 29, 2018. The Customer first referenced use of the headphones in his statement dated May 24, 2018, which is approximately two months after the Statement of Claim, approximately three months after the incident, and after having received the TTC Streetcar video of the incident from TTC.

Given that the Customer has declined to speak with TTC Investigators, there are inherent limitations as to what can be derived from the Customer's written statements. It is not clear what the Customer meant by, "I was listening to my music and using my [brand] headphones." Based on his statement, it is possible that the headphones were either around the Customer's neck or on his ears.

Respondent 1 stated that the Customer was wearing headphones around his neck. The headphones could not be seen from the TTC Streetcar video evidence. The video shows that the Customer was wearing a jacket with a hood covering the Customer's entire head and obstructing his side profile. The jacket had a high neck collar, the type that could be zipped up and cover at least the bottom part of the Customer's chin. On the TTC Streetcar video, only the Customer's chin and possibly a small area of his neck can be seen. Therefore, whether the Customer was listening to music on his headphones cannot be determined based on the evidence available.

However, this does not alter or diminish the evidence that supports the Customer was staring directly at Respondent 1 in a continuous manner, with no response or significant head or body movements to his communication attempts. There is also no evidence to suggest that Respondent 1 was aware that the Customer was wearing headphones on his head, listening to music and unable to hear his communication attempts.

Therefore, in the absence of any other information, there is insufficient evidence, on a balance of probabilities, to suggest that Respondent 1 relied on a racial stereotype to communicate with the Customer, and therefore, race, colour, and/or ethnic origin were not a factor in Respondent 1's actions. Respondents 2 and 3 were not present during this exchange.

***B. Respondent 1 claimed that it was not safe for him to turn his back on the Customer and move to another section of the TTC Streetcar.***

Respondent 1 stated that he did not initially move to another section of the TTC Streetcar because he did not want to turn his back on the Customer because he had concerns for his safety. The Customer was staring at him in a continuous "dead stare," and positioned directly across from him in a very still manner. Respondent 1 stated he found these actions by the Customer both unusual and intimidating. Given that the Customer was also not responsive to any of Respondent 1's attempts to communicate with him, it is not unreasonable that Respondent 1 had a heightened feeling of concern, and chose to remain standing in front of the Customer.

Based on the TTC Streetcar video, after Respondent 1's attempt to verbally communicate with the Customer, while he did not initiate it, Respondent 1 relied on the support of Respondents 2 and 3 on the TTC Streetcar, a tactic in the TFI Recruit Training known as "Officer Presence". Relying on the presence of other TFIs for support is not, on its own, unreasonable. According to the TFI Recruit Training, officer presence is an option to control a situation noting that "... the simple presence of an officer [TFI] can affect both the subject and situation. Visible signs of authority, such as uniforms ... can change a subject's behaviour."

While Respondent 1 did not specifically request Respondents 2 and 3 to join him, he did support having their presence on the TTC Streetcar. The TTC Streetcar video shows that Respondent 2 joined Respondent 1 without any signal from Respondent 1 himself; Respondent 2 walked over on his own having observed that the Customer was looking at Respondent 1 in an unusual manner. Respondent 2 then motioned for Respondent 3 to come join them. It was only after Respondent 2 had unsuccessfully signaled Respondent 3, that Respondent 1 waved Respondent 3 to come over.

Disengaging can take different forms depending on the circumstances, including removing oneself from the situation. In this case, the Respondents were in a closed moving TTC Streetcar, where the options to move away and maintain the ability to assess the situation for safety reasons were limited to the narrow sections of the TTC Streetcar. The TFI Recruit Training references factors of disengagement, noting that sometimes a partner's safety could be at risk if actions to disengage are taken. Accordingly, Respondents 2 and 3 moved beside Respondent 1 as they were reasonably concerned for his safety. While standing together, the Respondents did not further communicate or engage with the Customer.

According to the TTC Streetcar video evidence, when the TTC Streetcar was arriving at Bathurst Street platform, the Customer turned to face the door, ending the stare and ready to exit. Respondents 1 and 3 stated that they exited at the same door as the Customer because there was not enough time to exit at another door, and Respondent 3 added that this exit was also most convenient. A review of the TTC Streetcar video shows that there was about 15 seconds from the time the Customer turned and faced the door to when the door closed to leave Bathurst Street platform. According to the TTC Streetcar video evidence, the aisle in the section towards the front door exit was not obstructed by any passengers. Therefore, the Respondents' explanation of not having enough time is inconsistent with the TTC Streetcar video evidence.

However, the Respondents having exited at the same door as the Customer, does not alone suggest unfair treatment when assessed together with the circumstances. Specifically, it is not disputed that the Respondents were getting off at Bathurst Street regardless of the Customer's own decision to exit. The Respondents had intended to catch the connecting bus at Bathurst Street in order to return to their home office (Hillcrest Yard on Bathurst Street). As such, there is no reason to suggest that the Respondents were following the Customer by exiting at the same stop through the same door.

Based on the TTC Streetcar video evidence, the Respondents did not immediately follow behind the Customer. The Customer was the first passenger to exit the TTC Streetcar, a group of passengers followed and the Respondents were the last to exit. The Respondents moved with the natural momentum of crowd. Furthermore, according to Civilian Witness 3's evidence and the TTC Streetcar video evidence, the Respondents were not discourteous toward the Customer onboard the TTC Streetcar. The Respondents also seemed to not deviate from the de-escalation techniques outlined the TFI Recruit Training standards leading up to this exit, namely making attempts to communicate with the Customer by asking information questions and relying on each other for support.

In the absence of any other information, there is insufficient evidence, on a balance of probabilities, to suggest that Respondents relied on a racial stereotype in their decisions to remain near the Customer on the TTC Streetcar, and to exit at the same stop through the same door. Therefore, in this circumstance, there is no evidence to support that race, colour, and/or ethnic origin were a factor in the actions of the Respondents.

### **3. St. Clair Avenue West Stop (Bathurst Street) Platform – Off the TTC Streetcar:**

The following actions during the encounter with the Customer at Bathurst Street Streetcar Platform are assessed:

- A. The Respondents remained on the St. Clair Avenue West Stop (Bathurst Street) Platform and watched the Customer re-board the TTC Streetcar.
- B. Respondent 1 is alleged to have smiled at the Customer at the St. Clair Avenue West Stop (Bathurst Street) Platform.
- C. Respondent 1 pushed the Customer when the Customer exited the TTC Streetcar the second time at the St. Clair Avenue West Stop (Bathurst Street) Platform.

#### ***A. The Respondents remained on the St. Clair Avenue West Stop (Bathurst Street) Platform and stood side by side watching the Customer re-board the TTC Streetcar.***

The TTC Streetcar video evidence shows that the Respondents exited the TTC Streetcar while the Customer was re-entering. During this brief passby, Respondent 1 and the Customer appear to make direct eye contact that does not cease until Respondent 1's push. The TTC Streetcar video evidence also shows that the Respondents immediately turned around and faced the Customer who re-boarded the TTC Streetcar at this moment, and stood at the doorway facing outside the TTC streetcar.

The Respondents' decisions to first remain on the streetcar platform, and then remain side-by-side are assessed as two separate decisions. The Respondents stated that it was "good practice" to stay near or on scene if they noticed something unusual so they could report what they observed to Transit Control should an incident arise. In order to determine whether the situation at this point was unusual, a close examination of the Customer's and the Respondents' exit off the TTC Streetcar is relevant.

According to the TTC Streetcar video evidence, the Customer turned away from Respondent 1 and appeared to prepare to exit the TTC Streetcar. It is at this moment that the stare ended. Based on the TTC Streetcar video, the Customer exits the TTC Streetcar first, and turns left. The Respondents proceed to exit after a group of passengers. Upon exiting, Respondent 1 and the Customer appear to make eye contact, which quickly evolves into a more intentional stare. It is apparent from the TTC Streetcar video evidence that the stare was directed at Respondent 1 because the Customer's head was turned towards Respondent 1 while the Customer's body was moving forward in the opposite direction. Also, when the Customer re-boarded the TTC Streetcar, he remained standing at the doorway facing outside the TTC Streetcar, maintaining eye contact with Respondent 1.

Based on this evidence, the eye contact appears to re-engage the tense interaction experienced on the TTC Streetcar, causing the Respondents to reasonably believe something could occur amounting to an incident. Therefore, on a balance of probabilities, the Respondents' explanation to remain on scene given their role as TFIs is not unreasonable.

With respect to their decision to remain standing side-by-side on the streetcar platform, it is not unreasonable that the Respondents did so initially after they turned around. It appeared from the TTC Streetcar video evidence that they were initially standing side-by-side merely because of a natural coincidence as they exited at the same time, closely together.

The Respondents acknowledged that standing in a group of three on a streetcar can be perceived by passengers as intimidating. They had acknowledged this was the reason why, when they initially embarked onto the TTC Streetcar, Respondent 1 stood in the front middle section of the TTC Streetcar, and Respondents 2 and 3 stood in the rear sections of the TTC Streetcar. It is also important to note that there is a difference between the Respondents' decision to remain standing side-by-side while on the streetcar platform, and their decision to remain standing side-by-side on the TTC Streetcar. On the TTC Streetcar, there were limited options to walk away as was explained previously. The Customer was directly in front of the Respondents with no structural physical barrier between them, and there was an uncertainty of what could happen.

In contrast, on the streetcar platform, there was more space for the Respondents to move and still remain present to observe if something should occur. Further, the fact



that the Customer was inside the TTC Streetcar, and the Respondents were outside the TTC Streetcar with the door closing, there is a sense that the Customer was leaving and the tense interaction could possibly be over. This sense would reasonably lessen the risk assessed by Respondents of what could happen, and possibly remove the need to remain standing side-by-side on the streetcar platform. However, it was only a matter of seconds between the time the Respondents were standing side-by-side on the streetcar platform and when the TTC Streetcar door closed and reopened.

The Customer is seen on the TTC Streetcar video pressing the button to re-exit the TTC Streetcar as soon as the door closed. When the Customer re-exited, the TTC Streetcar video evidence shows that the Customer moved immediately in the direction of Respondent 1. This all occurred within a matter of seconds. Based on these facts, it is not evident or known whether the Respondents would have remained standing side-by-side on the streetcar platform had the Customer not pressed the button.

As such, there is insufficient evidence to suggest that the Respondents relied on a racial stereotype in their decision to initially stand together on the streetcar platform side-by-side watching the Customer. Therefore, in this circumstance, on balance of probabilities, race, colour, and/or ethnic origin were found not to be a factor in the Respondents' actions.

***B. Respondent 1 is alleged to have smiled at the Customer at the St. Clair Avenue West Stop (Bathurst Street) Platform.***

Based on a review of the TTC Streetcar video evidence, Respondent 1 does not appear to be smiling. However, there is a brief period in the TTC Streetcar video (approximately 3.5 seconds) where Respondent 1's face is blocked from view when the TTC Streetcar door closed and reopened. While Respondent 1's facial expression does not appear to be smiling before or after the door closed and reopened, the brief period that Respondent 1's face is blocked from view coincides with the time the Civilian Witness 3 stated they saw Respondent 1 smiling.

Civilian Witness 3 stated that Respondent 1's smile was a "little bit condescending," and had an air of winning an argument. They stated they saw Respondent 1's smile around the time that the Customer was re-exiting the TTC Streetcar at Bathurst Street streetcar platform. It is also noted that Civilian Witness 3 was specific not only with the timing of the smile, but with the characterization of the smile. Civilian Witness 3's account is credible and reliable, as this Civilian Witness has provided an overall balanced account of what occurred during the incident, and in fact, corroborated many of Respondent 1's own recollection of what happened on the TTC Streetcar. Moreover, Respondent 1 stated that he "probably smiled" in relief that the situation was going to end, and that the smile was not intended for the Customer. Therefore, based on the evidence available, it is more likely than not, that the smile occurred in view of the Customer while Respondent 1 was on the streetcar platform and the Customer was on the TTC Streetcar staring at him.

Given that this smile followed a cumulative tense interaction between Respondent 1 and the Customer on and off the TTC Streetcar, a smile of any kind in this moment, regardless of intention or how brief, was more likely than not condescending as supported by the evidence.

In considering the overall context of the smile, there is insufficient evidence, on balance of probabilities, to suggest that it was related to the Customer's race, colour, and/or ethnic origin. Rather, the evidence supports that it is a result of the cumulative interaction between Respondent 1 and the Customer on and off the TTC Streetcar.

***C. Respondent 1 pushed the Customer when the Customer exited the TTC Streetcar the second time at the St. Clair Avenue West Stop (Bathurst Street) Platform.***

TTC Streetcar video evidence shows that the Customer exited, re-boarded and re-exited at Bathurst Street. Respondent 1 pushed the Customer when the Customer was on the streetcar platform. It appears from the TTC Streetcar video that the push was forceful enough for the Customer to fall back into the TTC Streetcar, and onto the floor.

Respondent 1 stated that the Customer lunged at him, and it was at this point that he believed that he was going to be assaulted. In response, Respondent 1 states he pushed the Customer to create distance. Based on the TTC Streetcar video evidence, the Customer moved a distance of two-to-three walking steps from the TTC Streetcar entryway before he reached within five-to-six inches of Respondent 1 on the streetcar platform (toe to toe). Given it is reasonable that Respondent 1 may have already had a heightened concern for his own safety, it is reasonable that the estimated two-to-three walking steps taken by the Customer could be perceived as a quick movement and be mistaken for a lunge. Furthermore, according to TTC Streetcar video evidence, the time it took for the Customer to exit the TTC Streetcar the second time and move toward Respondent 1 took no more than two seconds.

Respondent 1 stated that in a situation when a person approaches a TFI's personal space, a TFI would move back, stick out their arms and create a loud verbal warning. Respondent 1 was on the streetcar platform with his back against a wall. Based on the TTC Streetcar video, there was no space for Respondent 1 to take a step back. Respondents 2 and 3 were standing on one side of Respondent 1. While it is possible that Respondent 1 could have shuffled to the other side, it is not an obvious and evident option in a situation that requires a split second decision. As such, Respondent 1's initial reaction to push the Customer does not appear unreasonable, particularly because the Customer entered Respondent 1's personal space in a matter of seconds and very directly. Based on the evidence, and on a balance of probabilities, it is reasonable that Respondent 1's decision to push the Customer was to create distance.

The extent of force on the push is also a relevant consideration. The analysis below only examines whether the extent of the force on the push is linked to race, colour, and/or ethnic origin, or in other words, did Respondent 1 exert this force in part because the Customer is a racialized person? It can be seen from the TTC Streetcar video that the push caused the Customer to fall from the streetcar platform and land well back into the TTC Streetcar.

In order to determine whether race, colour, and/or ethnic origin were a factor in the extent of force exerted, it is relevant to examine the overall context, including what occurred immediately after the push.

Based on the TTC Streetcar video, when the Customer fell after the push, Respondent 1 did not further engage physically. It appears that he was shouting something at the Customer. This is consistent with his recruit training to create a loud verbal warning. Had Respondent 1 independently, or with the Respondents 2 and 3, physically advanced forward towards the Customer or detain him at this point, it would be different. Based on the TTC Streetcar video, it was the Customer who stood up, moved towards Respondent 1 and swung his arms and hands in fists at Respondent 1. Then the Customer moved towards the TTC Streetcar, only to advance forward towards Respondent 1 again. Respondent 1 then appeared to move back. It was at this very moment that the Respondents 2 and 3 made contact with the Customer to block his fists, resulting in the Customer and Respondents 2 and 3 falling to the ground. Once on the ground, the Respondents used their body weight to hold the Customer.

TFIs are not TEOs, and do not carry equipment to address a physical altercation. Therefore, it is not unreasonable that the Respondents would use their own body weight to secure the Customer until TEOs and TPS arrive. There is no evidence to suggest that the Respondents unreasonably used their body weight to hold the Customer down. The Respondents promptly radioed for assistance and continued to hold the Customer.

Therefore, there is insufficient evidence, on a balance of probabilities, to suggest that race, colour, and/or ethnic origin were a factor in Respondent 1's decision to push and exert force on the Customer.

There is also insufficient evidence to support that race, colour, and /or ethnic origin were a factor in the Respondents' actions to detain the Customer.

### **Conclusion for Issue One:**

Based on the evidence available, there is insufficient evidence, on a balance of probabilities, to support that the actions carried out by the Respondents, on February 18, 2018, relied on stereotypes about race, colour, and /or ethnic origin. Specifically:

#### ***St Clair West Station – On the TTC Streetcar:***

- It was found, more likely than not, that Respondent 1 did not unfairly infer the Customer’s continuous stare was unusual and “intimidating,” causing a heightened concern.
- It was found, more likely than not, that the Customer stared at Respondent 1 in a continuous and unrelenting manner.

***En route to Bathurst Street Streetcar Platform – On the TTC Streetcar:***

- It was found, more likely than not, that Respondent 1 did not unreasonably communicate with the Customer on the TTC Streetcar.
- It was found, more likely than not, that the Respondents did not unreasonably remain across from the Customer, while on the TTC Streetcar.

***Bathurst Street Platform – Off the TTC Streetcar:***

- It was found, more likely than not, that the Respondents did not unreasonably stand side-by-side initially on the streetcar platform, and watch the Customer.
- It was found, more likely than not, that Respondent 1 smiled at the Customer in a condescending manner while on the streetcar platform. Based on the evidence, the smile was, more likely than not, a result of the cumulative interactions between the Customer and Respondent 1 on and off the TTC Streetcar, and not because of the Customer’s race, colour, and/or ethnic origin.
- It was found, more likely than not, that Respondent 1 pushed the Customer to create distance.
- It was found, more likely than not, that the Respondents did not unreasonably detain the Customer using their body weight.

In light of the above, there is insufficient evidence, on the balance of probabilities, to support that the Respondents’ engaged in racial profiling amounting to discrimination under the TTC’s Respect and Dignity Policy.

**Issue Two – Is there sufficient evidence, on a balance of probabilities, to support a finding that harassment based on race, colour, and/or ethnic origin occurred under the TTC’s Respect and Dignity Policy?**

The same actions set out in Issue One are considered in the context of racial harassment, which is defined as harassment on the protected ground of race, colour, and/or ethnic origin. Harassment is defined under the TTC’s Respect and Dignity Policy as:

*“... engaging in vexatious comments or conduct against a person that is known, or ought reasonably to be known, to be unwelcome, and involves a course of conduct or a single serious incident.”*

## **Engaged in Vexatious Comments or Conduct Against a Person**

In light of the findings in Issue One, it was found more likely than not that Respondents 2 and 3 did not engage in vexatious comments or conduct against the Customer.

In light of the findings in Issue One, it was found that more likely than not, that Respondent 1 smiled at the Customer while on the Bathurst Street Streetcar Platform. Based on the evidence, the smile occurred during the moment that the Customer was staring at Respondent 1 following a cumulative tense interaction on the TTC Streetcar. A smile from a TFI in this context, regardless of intention, would be considered vexatious. Therefore, it is more likely than not, Respondent 1 engaged in vexatious conduct against the Customer by smiling at him on the Bathurst Street Streetcar Platform.

## **Known, or Ought Reasonably to be Known, to be Unwelcome**

For harassment to be established, it is not enough that Respondent 1 engaged in vexatious conduct, he would also have to have knowledge or ought reasonably to have knowledge that his smile would be unwelcome. Given the circumstances leading up to the smile, namely the tense continued stare between Respondent 1 and the Customer on, and thereafter resumed off the TTC Streetcar, it is likely that Respondent 1 knew or ought to have known that a smile would be unwelcome.

## **Course of Conduct or a Single Serious Incident**

A course of conduct is a series of related events that is similar or same in nature over time. In this case, the event is the interaction between the Customer and the Respondents on and off the TTC Streetcar on February 18, 2018. As there was no interruption in the event, this is considered a single event and therefore a course of conduct has not been established.

The evidence supports that Respondent 1 smiled following a cumulative tense interaction between himself and the Customer, and it occurred in the view of the Customer. Whether this smile had any bearing on the outcome of this incident cannot be determined based on the available evidence. From the Customer's written statement and Statement of Claim, he mentions exiting the TTC Streetcar to go to a restaurant and does not mention the Respondent's smile. Absent any evidence of discriminatory conduct or any other unfair treatment, the smile does not amount to a single serious incident. However, the evidence supports that Respondent 1's smile, was more likely than not, condescending and demonstrated poor judgment. While this falls short of the definition of harassment under the TTC's Respect and Dignity Policy, given the context of the interaction between the Customer and Respondent 1 on and off the TTC Streetcar, and his role as a TFI, the Respondent's smile was inappropriate and amounts to unprofessional conduct.

### **Conclusion for Issue Two:**

In light of the above, there is insufficient evidence, on the balance of probabilities, to support a finding of harassment on the basis of race, colour, and/or ethnic origin under the TTC's Respect and Dignity Policy.

### **Issue Three – Is there sufficient evidence, on balance of probabilities, to support a finding that personal harassment occurred under the TTC's Respect and Dignity Policy?**

The same actions set out in Issue Two are considered in the context of personal harassment, which is defined under the TTC's Respect and Dignity Policy as:

*“... engaging in vexatious comments or conduct against a person that is known, or ought reasonably to be known, to be unwelcome, and involves a course of conduct or a single serious incident. ... Harassment also includes personal (non-Code) harassment.”*

### **Conclusion for Issue Three:**

In light of the findings in Issue Two, there is insufficient evidence, on a balance of probabilities to support a finding of personal harassment under the TTC's Respect and Dignity Policy.

### **Summary of Section 4 Findings**

The Respondents' conduct on February 18, 2018 did not, on a balance of probabilities, amount to discrimination or harassment under the TTC's Respect and Dignity Policy. Specifically:

- Based on the evidence, the Respondents were found not to have engaged in racial profiling amounting to discrimination.
- Based on the evidence, the Respondents were found not to have engaged in conduct amounting to harassment based on race, colour, and/or ethnic origin.
- Based on evidence, the Respondents were found not to have engaged in conduct amounting to personal harassment.

Therefore, based on the evidence, the Respondents are found not to have engaged in conduct amounting to discrimination and/or harassment under the TTC's Respect and Dignity Policy.

## Part VIII: Investigation Findings

1. It is alleged that the Respondents failed to treat a customer equally without discrimination with respect to services on the basis of race, colour, and/or ethnic origin amounting to discreditable conduct under Section 2(1)(a)(i) of the TEU Code of Conduct.

The investigation has found insufficient evidence to support that the Respondents failed to treat the Customer equally without discrimination with respect to services based on race, colour, and/or ethnic origin. This allegation was found to be unsubstantiated.

2. It is alleged that Respondent 1 acted in a manner that was uncivil towards a customer amounting to discreditable conduct under Section 2(1)(a)(iv) of the TEU Code of Conduct.

The investigation has found Respondent 1's actions were reasonable, based on the situation as it occurred and in response to those of the Customer involved in this incident. Respondent 1's actions were not found to be uncivil. This allegation was found to be unsubstantiated.

3. It is alleged that Respondent 1 assaulted a customer amounting to discreditable conduct under Section 2(1)(a)(vi) of the TEU Code of Conduct.

The investigation has found:

- The force applied by Respondent 1 to push the Customer was reasonable, justified and consistent with the training provided and did not constitute an assault.
- The force applied by Respondent 1 to arrest the Customer was reasonable, justified and consistent with the training provided and did not constitute an assault.

This allegation was found to be unsubstantiated.

4. It is alleged that the Respondents acted in a manner that is not consistent with TTC and community expectations amounting to discreditable conduct under Section 2(1)(a)(xi) of the TEU Code of Conduct.

The investigation has found:

- The actions of Respondent 2 and Respondent 3 were consistent with TTC and community expectations.
- Although TTC Streetcar video evidence does not show Respondent 1 smiling, Respondent 1's face is blocked for approximately 3.5 seconds by the frame of

the door, as the doors close on the TTC Streetcar. Both Respondent 1 and Civilian Witness 3 are deemed to be credible witnesses. Respondent 1 himself stated that he “probably smiled” and Civilian Witness 3 also stated that Respondent 1 smiled.

- It is reasonable to believe that Respondent 1 smiled at a time that could have been considered the climax of a tense interaction between himself and the Customer. It is reasonable to believe this act, regardless of Respondent 1’s reason for smiling, is conflicting with TTC and community expectations and therefore found to be unprofessional.

This allegation was found to be unsubstantiated for Respondent 2 and Respondent 3, and substantiated for Respondent 1.

5. It is alleged that a Respondent 1 pushed a customer without any underlying authority to use force, amounting to unlawful or unnecessary exercise of authority under Section 2(1)(g)(ii) of the TEU Code of Conduct.

The investigation has found the push by Respondent 1 was not unreasonable and did not constitute an unlawful or unnecessary exercise of authority. The underlying authority for Respondent 1’s push is Section 34 of the *Criminal Code of Canada* – Defence of Person. This allegation was found to be unsubstantiated.

6. It is alleged that the Respondents engaged in conduct amounting to discrimination and/or harassment under the TTC’s Respect and Dignity Policy, contrary to Section 4 of the TEU Code of Conduct.

The investigation has found the Respondents’ conduct on February 18, 2018 did not, on a balance of probabilities, amount to discrimination and/or harassment under the TTC Respect and Dignity Policy. Specifically:

- Based on the evidence, the Respondents were found not to have engaged in racial profiling amounting to discrimination.
- Based on the evidence, the Respondents were found not to have engaged in conduct amounting to harassment based on race, colour, and/or ethnic origin.
- Based on the evidence, the Respondents were found not to have engaged in conduct amounting to personal harassment.

This allegation was found to be unsubstantiated.



## **Part IX: Recommendations**

During the course of this investigation, TTC investigators asked the TFIs and those who were interviewed their thoughts on the TFI role. TTC Investigators found their thoughts to be helpful in making recommendations. The recommendations are independent of the findings, and are intended to complement existing practices. Three specific areas were identified for the recommendations. They are:

1. TFI Policies and Procedures;
2. Clear Direction for TFIs; and
3. Diversity, Inclusion and Human Rights Training.

### **1. TFI Policies and Procedures**

It is learned from this investigation that the TFIs' role is unique and evolving at the TTC. TFIs provide customer service when delivering fare payment information and when conducting fare inspections, while maintaining their enforcement power to issue provincial offences tickets under TTC's By-law No.1.

TFIs would benefit from written policies and procedures that set out their unique role and responsibilities within the organization with clear directives, and a focus on disengagement strategies geared towards the challenges TFIs face in customer service situations. It is recommended that the written policies and procedures also include unwritten "good practices" referenced during the course of this investigation. In particular, three were highlighted during the course of this investigation:

- i. The practice of TFIs remaining near or on scene should an incident occur;
- ii. The practice of not checking POP or standing together when working in groups of three; and
- iii. The practice of not allowing a customer to return on the same TTC vehicle after an incident.

Formalizing these practices into policies and procedures for TFIs will help to ensure consistent adherence to them by all TFIs.

TTC Investigators acknowledge that the TEU, in response to a prior review by the City of Toronto's Ombudsman, has already prepared a draft Policies and Procedures Manual for TFIs, which is expected to be implemented shortly. Following implementation, it is recommended that consideration be given to launching an awareness campaign and community outreach to inform the public of the role and responsibilities of the TFIs as set out in the new Policies and Procedures Manual.

### **2. Clear Direction for TFIs**

TFIs are taught escape, evasion, disengagement, and de-escalation tactics; however, they are also advised there will be occasions in which they will be required to exercise

their authority to arrest or use force while in the performance of their duties. There is a lack of clarity with respect to the expectations of a TFI.

It is recommended that clear direction and any associated training be provided to TFIs with respect to their role, particularly as it relates to use of force.

### **3. Diversity, Inclusion and Human Rights Training**

All TFIs are provided with comprehensive diversity, inclusion and human rights training at the commencement of their employment. The training relevantly covers:

- The concepts and definitions within diversity, inclusion and human rights.
- The importance of diversity and inclusion in the provision of services at the TTC.
- An understanding of cultural competency and unconscious biases.
- Information on workplace harassment, discrimination and violence and ways to address such complaints.

As best practice, it is recommended that consideration be given to providing TFIs with regular diversity, inclusion and human rights training as part of their in-class, bi-annual refresher program. This training should continue to include in-class case studies and role play exercises related to customer service interactions.

## Part X: Appendix

### Referenced Information

<p><i>Criminal Code</i> Section 25(1) Protection of Persons Acting Under Authority</p>	<p>25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law</p> <ul style="list-style-type: none"> <li>(a) as a private person,</li> <li>(b) as a peace officer or public officer,</li> <li>(c) in aid of a peace officer or public officer, or</li> <li>(d) by virtue of his office, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.</li> </ul>
<p><i>Criminal Code</i> Section 34 Defence of Person</p>	<p>34 (1) A person is not guilty of an offence if</p> <ul style="list-style-type: none"> <li>(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;</li> <li>(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and</li> <li>(c) the act committed is reasonable in the circumstances.</li> </ul> <p><b>Factors</b></p> <p>(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:</p> <ul style="list-style-type: none"> <li>(a) the nature of the force or threat;</li> <li>(b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;</li> <li>(c) the person's role in the incident;</li> <li>(d) whether any party to the incident used or threatened to use a weapon;</li> <li>(e) the size, age, gender and physical capabilities of the parties to the incident;</li> <li>(f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;</li> <li>(f.1) any history of interaction or communication between the parties to the incident;</li> </ul>

	<p>(g) the nature and proportionality of the person's response to the use or threat of force; and  (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.</p> <p><b>No defence</b>  (3) Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.</p>
<p><i>Criminal Code</i>  Section 265  Assault</p>	<p>(1) A person commits an assault when  (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;  (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or  (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.</p>
<p><i>Criminal Code</i>  Section 494  Arrest by any Person</p>	<p>494 (1) Any one may arrest without warrant  (a) a person whom he finds committing an indictable offence; or  (b) a person who, on reasonable grounds, he believes  (i) has committed a criminal offence, and  (ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.</p> <p>(2) The owner or a person in lawful possession of property, or a person authorized by the owner or by a person in lawful possession of property, may arrest a person without a warrant if they find them committing a criminal offence on or in relation to that property and  (a) they make the arrest at that time; or  (b) they make the arrest within a reasonable time after the offence is committed and they</p>

	<p>believe on reasonable grounds that it is not feasible in the circumstances for a peace officer to make the arrest.</p> <p>(3) Any one other than a peace officer who arrests a person without warrant shall forthwith deliver the person to a peace officer.</p> <p>(4) For greater certainty, a person who is authorized to make an arrest under this section is a person who is authorized by law to do so for the purposes of section 25.</p>
<p>Toronto Transit Commission Transit Enforcement Unit Code of Conduct</p>	<p>2 (1)(a) Discreditable Conduct, in that he or she, (iv) uses profane, abusive or insulting language or it otherwise uncivil to a member of the public; (vi) assaults any person; (xi) acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the TTC;</p> <p>2 (1)(g) Unlawful or Unnecessary Exercise of Authority, in that he or she, (ii) uses any unnecessary force against a person contacted in the execution of his or her duty;</p>
<p><i>Trespass to Property Act</i> Section 1(1)(b)</p>	<p><u>1 (1)</u> In this Act, “occupier” includes, (b) a person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises, even if there is more than one occupier of the same premises; (“occupant”)</p>
<p><i>Trespass to Property Act</i> Section 2(1)(a)(ii)</p>	<p><u>2 (1)</u> 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, (ii) engages in an activity on premises when the activity is prohibited under this Act;</p>
<p><i>Trespass to Property Act</i> Section 5(1)(b)</p>	<p><u>5 (1)</u> A notice under this Act may be given, (b) by means of signs posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies;</p>