

Before commencing my decision on penalty and sentencing in this matter, I would like to thank Mr. David Butt, defence counsel, Ms. Alexandra Ciobotaru, the Service Prosecutor, and Mr. D. John for their submissions, exhibits and evidence tendered, all of which have assisted me in reaching my decision.

Note: This decision is divided into four parts: PART I: OVERVIEW; PART II: THE HEARING; PART III: ANALYSIS AND FINDINGS FOR DISPOSITION; and PART IV: DISPOSITION.

PART I: OVERVIEW

Background

1. Constable Adam Campoli (PC Campoli) #10129 commenced his employment with the Toronto Police Service (TPS) in 2008. PC Campoli presently holds the rank of First Class Constable and is assigned to 23 Division, Major Crime Unit.
2. Constable Joshua Sarasua (PC Sarasua) #9439 commenced his employment with the Toronto Police Service (TPS) in 2006. PC Sarasua presently holds the rank of First Class Constable and is assigned to 23 Division, Primary Response Unit.

Allegations of Misconduct

3. **Charge 1**: Constable Adam Campoli #10129, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did act in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, contrary to Section 2 (1) (a) (xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990, as amended. The particulars of the allegation are:

Being a member of the Toronto Police Service, you were attached to 23 Division in a uniform capacity.

On Tuesday, February 4th 2014, you were on duty and received a radio call regarding a stolen vehicle at 32 Stoffel Drive.

You and your partner, Police Constable Joshua SARASUA (9439) attended 627 Dixon Road to speak with the complainant, D.J., and commenced an investigation in relation to the stolen vehicle.

While at 627 Dixon Road, you searched D.J.'s rental vehicle without a lawful reason.

In doing so, you committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Toronto Police Service.

Charge 2: Constable Adam Campoli # 10129 being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did use profane, abusive or insulting language or is otherwise uncivil to a member of the public, contrary to Section 2(1) (a) (v) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990 as amended. The particulars of the allegation are:

Being a member of the Toronto Police Service, you were attached to 23 Division in a uniform capacity.

On Tuesday, February 4th, 2014, you were on duty and received a radio call regarding a stolen vehicle at 32 Stoffel Drive.

You and your partner, Police Constable Joshua SARASUA (9439) attended the 627 Dixon Road to speak with the complainant, D.J., and commenced an investigation in relation to the stolen vehicle.

You used profane, abusive or insulting language towards D.J.

In doing so, you committed misconduct in that you did use, profane, abusive or insulting language or is otherwise uncivil to a member of the public.

Charge 3: Constable Adam Campoli #10129 and Constable Joshua Sarasua #9439, being members of the Toronto Police Service, you are alleged to have committed misconduct in that you did act in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, contrary to Section 2 (1) (a) (xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990, as amended. The particulars of the allegation are:

Being a member of the Toronto Police Service, you were attached to 23 Division in a uniform capacity.

On Tuesday, February 4th, 2014, you were on duty and received a radio call regarding a stolen vehicle at 32 Stoffel Drive.

You and your partner, Police Constable Joshua SARASUA (9439) attended 627 Dixon Road to speak with the complainant, D.J., and commenced an investigation in relation to the stolen vehicle.

As a result of your investigation, you arrested D.J. for Public Mischief.

D.J. was transported to 23 Division for further investigation. While at 23 Division you and your partner, Police Constable SARASUA (9439), conducted an unlawful strip search of D.J.

In doing so, you committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Toronto Police Service.

Plea

4. On October 7, 2019 Constable Adam Campoli (10129), pled not guilty to Discreditable Conduct (Charge 1) and Use of Profane Language/Incivility (Charge 2). Further Constable Adam Campoli (10129) and Constable Joshua Sarasua (9439) pled not guilty to Discreditable Conduct (Charge 3), contrary to the Police Services Act.

Decision

5. I have carefully reviewed the evidence, exhibits, submission and relevant information presented by the prosecutor, defence counsel and public complainant, as well as reviewed previous tribunal decisions. In light of the mitigating and aggravating circumstances, and in particular, the seriousness of the matter, I impose the following sanction under Section 85(1) (f) of the Police Services Act (PSA).

Case #: 2.2019 (Campoli)

Charge 1: Not Guilty of: Discreditable Conduct

Case #: 2.2019 (Campoli)

Charge 2: Guilty of: Use Profane Language

Case#: 2.2019 (Campoli) and 3.2019 (Sarasua)

Charge 3: Not Guilty of: Discreditable Conduct

My reasons for this are as follows.

PART II: THE HEARING

6. Exhibits

The exhibits for this matter are listed in Appendix 'A', attached hereto. To avoid repetition, all exhibits will be referred to by number without the preface of Appendix 'A'.

Representation

7. In this matter, Mr. Butt represented both PC Campoli and PC Sarasua and Ms. Alexandra Ciobotaru represented the TPS. The public complainant was self represented.
8. The Public Complainant was provided instructions regarding the proceedings, the right for legal representation, the roles of the prosecutor, defense and Adjudicator as well as the Public Complainant's right to call witnesses, introduce evidence, object to evidence adduced, cross examine witnesses and make submissions on all motions and at the end of the hearing.
9. Mr. John indicated that he understood all of the instructions outlined regarding the process, that he was self represented and waived his right to legal representation. Mr. John further indicated that he was prepared to commence the hearing.

Pre-Hearing Motions

10. Prior to the commencement of the Hearing, Defense Counsel – Mr. Butt advised the Tribunal that he would be presenting two separate motions, pertaining to these proceedings.
11. Prior to addressing the Defense Motions, the Tribunal paused to
 - a. Motion # 1 - That the Public Complainant be directed to conduct himself in a civil manner throughout the course of these proceedings.
 - b. Motion # 2 – Admissibility of Evidence - An audio recording alleged to have been made by the Public Complainant, at the time of the incident be excluded.

12. Each Motion was heard sequentially, after all parties made submissions on their respective positions and a decision was rendered. Motion 1 was heard first, followed by Motion 2.

Motion #1:

Defense (Applicant) Submissions

13. Mr. Butt began by submitting Materials for Motion, as Exhibit 2.

14. Defense began by submitting that civility and dignity are imperative in Tribunal settings and that this expectation be extended to public complainants.

15. Mr. Butt acknowledged that this was an unusual Motion to bring forward but argued that previous proceedings involving Mr. John necessitate this motion being tendered.

16. Specifically, Mr. Butt requested the Tribunal to direct or order the Public Complainant prior to the hearing commencing, to a similar order as made by the Human Right's Tribunal matter involving Mr. John, at Tab 9, of Exhibit 2 in which that Tribunal ordered.

17. Mr. Butt then referred again to Tab 9, of Exhibit 2, at paragraph 1 and 14, where the Public Complainant refused to abide by the adjudicating body's direction.

18. The Public Complainant in this matter then interrupted Defense submissions and indicated that he will conduct himself in a proper and civil manner.

19. Defense continued submissions by referring the Tribunal to further references from Tab 9, of Exhibit 2 in support of his Motion, at pages, 28, 30, 31, 32, 33, 34, 35, 36, 37 and a summary found at paragraph 98.

20. Mr. Butt further added, that found at paragraph 100 of Tab 9, Exhibit 2, that, *“Subsequent to this Direction the applicant’s misconduct has not abated and indeed it appears to have escalated”*.

21. Mr. Butt concluded by making reference to paragraph 116, of Tab 9, Exhibit 2 and reiterated the need for fairness for his clients to be treated with dignity and respect in these proceedings, by the Public Complainant.

Prosecution Submissions (Motion # 1):

22. The Prosecutor submitted that the motion was premature, as the hearing had not yet begun.

23. Ms. Ciobotaru, further advised the Tribunal that she had sat with the Public Complainant and explained the proceedings and that she was confident that she could direct him appropriately throughout the proceedings.

24. The prosecutor indicated that Defense’s reference to sexual and lewd remarks is not contained in the Notices of Hearing before this Tribunal.

25. Ms. Ciobotaru, added that Mr. John consents to behaving in an appropriate manner and to follow Tribunal expectations.

26. The prosecutor concluded by indicating that the Motion be dismissed.

Public Complainant’s Submissions (Motion #1):

27. Mr. John indicated that the language in the Superior Court decisions referred to by Defense was inflammatory.

28. The Public Complainant added that he was not present in Court or at the (Human Rights) Tribunal of Ontario (HRTO) when the referred to decisions were rendered.

29. Mr. John also submitted that he will undertake to speak and conduct himself in a proper manner.

Defense – Reply – (Motion #1):

30. Mr. Butt directed the Tribunal once again to Tab 9, of Exhibit 2 and indicated that it was a finding of fact that 37 claims filed by this Public Complainant were dismissed, by the Human Rights Tribunal Ontario and that Mr. John in paragraph 141 was declared, “*A vexatious litigant before the Tribunal*”.

Public Complainant – Reply (Motion#1):

31. Mr. John reiterated that he was not present during the HRTO proceedings, referenced by Mr. Butt.

Analysis and Decision (Motion#1):

32. All three parties – Defense (the Applicant), Prosecutor and Public Complainant (Mr. John) consented to receiving an oral judgement on the Motion in lieu of a written decision. Reasons for my decisions are as follows:

33. I concur with the prosecutor that ordering the Public Complainant as per the HRTO, at this stage – prior to any demonstrated or observed incivility in these proceedings or commencement of this Hearing, is premature.

34. The Public Complainant has indicated on record during this Motion application that he will conduct himself in an appropriate and civil manner.

35. The Tribunal does acknowledge Defense concern to ensure that his clients and all involved in this proceeding demonstrate respect, civility and dignity.

36. All involved parties to this proceeding were reminded the need to conduct themselves with the expectations of this Tribunal. And that there will be an intolerance for any abusive language, inappropriate conduct or the absence of respect and civility - prosecutor, Defense and Public Complainant all indicate they understand.

Decision – Motion # 1:

37. I have considered the submissions of Defense (the Applicant), the Service Prosecutor and Public Complainant (Mr. John) carefully, and reviewed the cases provided to me, as listed in Appendix “A”. I have made a finding with respect to this motion.

This *motion #1 is dismissed* for the reasons above.

Motion #2

38. Prior to discussing this Motion – both the prosecutor and the Public Complainant indicated that they had no prior knowledge or service of motion.

39. Defense counsel was reminded of the Toronto Police Service – Tribunal Rules of Practice, requiring 30 days notice of Motions to be tendered, as outlined in Section 4(3) which state in, *“Unless the Adjudicator otherwise permits, a party bringing a motion shall serve the other party/parties and any third party that would be affected by the order and file with the Adjudicator a notice of motion (Form 2), a factum and a brief of authorities at least thirty days before the Adjudicator deals with any motion”*

40. The Public Complainant asked the Tribunal if the Motion would be dismissed because of the lack of 30 day notice. It was explained to Mr. John that the remedy would be an adjournment but that the Motion would not be dismissed due to lack of notice.

41. The Public Complainant was offered a 30 day adjournment to review the Motion application, but indicated that he wished to waive this right and wished to proceed immediately.

42. The Prosecutor – Ms. Ciobotaru also waived her right of 30 day notice and indicated she was prepared to proceed after a brief recess.

Defense (Applicant) Submissions (Motion #2)

43. Defense began by reiterating the importance of continuity and integrity of evidence.
44. Mr. Butt then pointed the Tribunal to Tab 5, of Exhibit 2, wherein within the Investigator's log notes, dated Dec 11th, 2017 there is the mention of receipt of an audio recording (from the Public Complainant).
45. Defense then referred to the transcript of a voice message left by the Public Complainant, on 2017.11.17 for OIPRD investigator(s), assigned carriage of Mr. John's complainant, in which Mr. John made it clear that he will not participate in an investigative interview.
46. Defense submitted that the continuity and integrity of evidence is essential, that in court central exhibits are tracked closely and if the chain is broken courts or tribunals may disregard the evidence.
47. Mr. Butt added that there exists almost a 4 year gap in the production of this audio recording that prosecution wishes to admit in these proceedings.
48. Further Defense suggested that the voicemail left by Mr. John on 2017.11.17 for the OIPRD is demonstration of a deliberate choice made by the Public Complainant to not address continuity problem, posed by the audio recording in question.
49. Defense then pointed at Tab 7, of Exhibit 2, in paragraphs 92 – 118 which speak to multiple lawsuits filed by Mr. John and the fact that they were all dismissed as frivolous and vexatious. Mr. Butt added that one of the dismissed claims involves the very issues before this Tribunal.

50. Defense then submitted, the audio recording made by Mr. John poses significant continuity concerns, demonstrates a same fact pattern, in that he failed to provide in 2016, to Superior Court during those proceedings – the audio recording in question. And that one would expect a litigant to “*put best foot forward*” during that proceeding. Mr. Butt argued that Mr. John had not done so in 2016.
51. Defense remind the Tribunal that the 2016 legal proceeding resulted dismissal of the law suit brought by Mr. John.
52. Mr. Butt, again stated that there was an opportunity to “*put the audio in play*” during the 2016 Superior Court proceeding, but Mr. John had omitted to do so.
53. Defense then submitted that even if the audio recording did exist earlier, that December 2017 provision of the audio to investigators is from a Defense perspective problematic. It poses a 4 year gap and should have been “*put in play much earlier.*”
54. Mr. Butt then summarized defense concerns about the admissibility of the audio recording the Prosecutor proposed to enter in her case as, 4 year gap, an intervening event where one would expect the recording to surface, that Mr. John is a musician and an individual who is capable of producing recorded sound and that artificial intelligence / technology has advanced and can in modern day mimic voices.
55. Defense counsel then once again referred to Tab 9, of Exhibit 2 and pointed out ten (10) examples contained in various paragraphs, 3, 15, 29, 34, 35, 60, 62, 77, 92, 98 and 102 where the presiding HRTTO made adverse findings of reliability pertaining to the Public Complainant’s claims.
56. Defense concluded by summarizing its position on the Motion, by stating, that evidence must be reliable, that continuity is essential to reliability and that in the case of this audio recording there existed almost a 4 year gap.

57. Mr. Butt added, that this gap is made worse by the failure to produce the audio recording at the 2016 Superior Court proceeding, the Public Complainant's ability to produce recordings and further by advances in technology. Mr. Butt requested that this should be considered in conjunction with Mr. John's previous history to mislead Tribunals / Courts. Defense argued that "*whole is greater than the sum of its parts.*"
58. Defense added that evidence in a tribunal as in a criminal court should consider the reliability and integrity of admitted evidence.
59. Mr. Butt submitted that the audio recording should not be admitted, that it is unfair to his clients as it "*handicaps him in its exploration*". He added that his clients, "*don't have a verbatim recollection of the events and can't say if that's what accurately happened.*" He argues that this disadvantages my clients and deprives them of the ability to properly defend themselves. He proposes that the solution is to deny that aspect of the prosecution's evidence.

Prosecution Submissions (Motion #2):

60. The prosecutor submitted, that the audio recording should be allowed, not excluded and that Defense will be able to test evidence for both continuity and reliability via In-chief and cross examination.
61. The Prosecutor added, that Defense was aware of this recording since 2017.12.11 and that the Officers had opportunity to respond, via statement, or other mean but chose not to.
62. Ms. Ciobotaru concluded by indicating that the recording is relevant to the proceedings.

Public Complainant's Submissions (Motion #1):

63. Mr. John advised the Tribunal that he believed PC Campoli had previously acknowledged his voice on the audio recording during the OIPRD complaint investigation.
64. Mr. John further submitted that he had provided the audio recording in question to his first legal counsel – Ms. Vivian Fung-Lee in 2015.
65. The Public Complainant added that his subsequent legal counsel Mr. Hogan also had the recording in his possession in 2016 during Superior Court Trial referred to by Defense counsel. And that he has emails between himself and his previous counsel confirming the above.
66. Mr. John added that musicians are not sound technicians.
67. Mr. John agreed to waive solicitor – client privilege and consented to the Prosecutor contacting Ms. Fung-Lee and Mr. Hogan to verify his earlier disclosure of the audio recording to them, as his previous legal counsel.
68. The Prosecutor was then tasked to try and contact Ms. Fun-Lee and Mr. Hogan to try and garner further information or corroboration of Mr. John's newly provided information in response to the present Motion.
69. During a brief break, the Prosecutor was able to speak to both Ms. Fung-Lee and Mr. Hogan. Both confirmed having previously represented Mr. John. Both advised the Prosecutor that they did not have current access to the original file.
70. Ms. Ciobotaru then submitted, that in her conversations with Mr. John's previous two counsel that they both also advised the Prosecutor that they recalled "some audio recording's existence" but could not provide any further details as to its content.

Analysis and Decision (Motion#2):

71. At its core is the Defense alleged delay of nearly 4 years, for the audio recording to have been disclosed by the Public Complainant.
72. There are submissions before this Tribunal – made by Mr. John, that the audio in question may have been previously disclosed to counsel as early as 2015 and 2016.
73. This earlier disclosure, considerably narrowing the gap suggested by Defense was canvassed by the Prosecutor with Ms. Fung-Lee and Mr. Hogan who Mr. John submitted were aware of its existence as early as in 2015.
74. The Prosecutor submitted that though not being able to definitively verify with previous counsel the exact contents of an audio, she was able to gather some information that both Ms. Fung-Lee and Mr. Hogan were aware of an audio recording of some sort. Though neither could provide any details to the Prosecutor about the audio recording's content, at this time.
75. With regards to Defense concern of non-disclosure of the audio recording during the 2016 Superior Court proceeding, if the recording existed and was in the possession of Defense counsel for the Public Complainant, it would be speculative on behalf on this Tribunal to determine why any piece of evidence was or was not tendered. I do not find that this speculation on previous evidence disclosure strategy furthers a consideration for this Tribunal at this juncture.
76. Defense raised issues regarding the Public Complainant being a musician and having the ability to produce audio recordings, and further that artificial intelligence and technology have advanced significantly but I will note that Mr. Butt stopped short of alleging any fabrication of the audio in question by the Public Complainant. As such I dismiss these Defense's observations, as being general statements and do not assist the Tribunal on the present Motion.

77. The Prosecution has correctly stated that under 15 (1) evidence – a Tribunal may admit as evidence at a hearing, whether or not given under oath or affirmation or admissible as evidence in a court:

- a. 1. Any oral testimony
- b. 2. Any document or other thing (audio recording)

The evidence when tendered will then be examined for its continuity, reliability and an appropriate weight for its value in helping this Tribunal deliver a fair impartial and just decision.

Decision – Motion #2:

78. I have considered the submissions of Defense (the Applicant), the Service Prosecutor and Public Complainant (Mr. John) carefully, and reviewed the cases provided to me, as listed in Appendix “A”. I have made a finding with respect to this motion.

This motion #2 is dismissed for the reasons above.

Witnesses

79. One witness was called by the Prosecution. Defense called both PC Sarasua and PC Campoli.

Evidence in Chief – Public Complainant – Mr. D. John

80. Prior to commencing the first witness, the Prosecutor entered a disc as Exhibit 4, containing various documents that would be referred to during the Trial, by both the Prosecution, Public Complainant and Defense. See Appendix A for details of Exhibit 4.

81. The Prosecutor began by outlining for the Tribunal in the history of the current matter.

82. Mr. John had initially filed a complainant with the OIPRD in 2017, that he had reviewed his complaint. And that the only statement provided to the OIPRD was that which he provided on the initial complaint form. That no other formal statement had been provided to the OIPRD.
83. Mr. John had left the OIPRD one voice message in addition to the initial written complaint but had not met with investigators.
84. Further Mr. John had provided a statement to the Special Investigations Unit (SIU).
85. The Public Complainant began by advising the Tribunal that, he had called police and reported his vehicle stolen. That he had later received a call from a garage and was told that his vehicle was there.
86. Mr. John also testified that the garage which had contacted him also asked him for money (for return of the vehicle). That he then called Peel Regional Police (PRP) and was told that he should probably attend the garage and investigate. And that he was further advised by PRP that he would have to actually go to the garage and call back once he was physically at the premises (garage).
87. Mr. John advised the Tribunal that he then went to the garage (located at 32 Stoffel Drive – Collision World), initially saw his vehicle. And that because he was concerned that someone would move the vehicle, he went back a second time. Mr. John advised that on this occasion he saw a male with something in his waistband.
88. Mr. John testified that he called Police and advised them, *“I think the person may have got a gun, looked like a handle of a gun.”* And that subsequently Police arrived and met him at the Shell Gas Station, located approximately half a kilometer away, at 627 Dixon Road, Etobicoke.

89. Mr. John then testified that on February the 4th, 2014 he attended the area of 32 Stoffel Drive, saw his vehicle and subsequently called the Police via a 911 twice to report his stolen auto was located. He further advised that the auto was presently located at 37 Stoffel Drive. During the first of two 911 calls, Mr. John also advised the dispatcher that, *"I just uh, tracked down my uh, somebody stole my car. I was tracking down to, to this here. There's a whole bunch of guys there. I don't know if they have, they look like they have weapons on them or something"*.
90. Mr. John also provided the license plate of his stolen vehicle as, *"BTXD771"*.
91. When asked if he was with the vehicle, Mr. John indicated, *"I just, I just drove over here because when I went over there to, to get it, I see the guy reach for his waist like he had something so I just sped off."*
92. Mr. John indicated the vehicle was located at 32 Stoffel Drive and provided a description of his vehicle.
93. Mr. John advised the dispatcher in his 911 call that there were three people around his vehicle and when asked if he saw a weapon, the public complainant advised, *"Like I think I saw the butt of a gun but I can't be sure."*
94. Mr. John then went on to describe the individual he thought may have a firearm as, male, East Indian, skinny, wearing a black toque and dark clothing.
95. Mr. John testified that he then provided his location to the dispatcher as being at the Shell Gas Station. And that he was waiting in a black coloured Mazda.
96. Mr. John was advised that police were being sent and the first 911 call ended.
97. Mr. John testified that he then placed a second 911 call.

98. During the second 911 call Mr. John advised that he had observed a police car drive by. The dispatcher is heard to advise Mr. John that his call is still pending and has not yet been dispatched.
99. Mr. John replied, *"Well, okay, like listen, I don't have all time... these people are packing up my car, they ship off or something bro. I need somebody to send a, a, a, police there immediately."*
100. Mr. John added, *"Like yo, I don't have all, I'm going to, you know what, I'm going to, I'm going to kick down the door to the shop and take my, my car back then."*
101. The public complainant is advised by the dispatcher not to take matters into his own hands to which he is heard on the recording as saying, *"I then, then send someone... I call you forever about my car... I've been waiting over a year for my car... And, and I see it now and these guys with, with, with their weapon at the shop are trying to bully me out of my car. I'm going to stay in my car. I'm going to run into the shop because I told you guys where this car was all along. I myself to go get it."*
102. Mr. John is then asked by the dispatcher if *"there is anyone in the car"*. To which Mr. John replies, *"Yes there is. There is... These people have my car and, I'm not going to let my car get out of my sight again... I'm not letting this car get out of my sight again... Yo, there, there, there is somebody in the car, right now"*.
103. Mr. John is again asked by the dispatcher, *"There, there is somebody inside of the vehicle?"* And Mr. John replies, *"There, there is someone as I just told you."*
104. Mr. John is then heard saying, *"they shove the thing away. That's why when I went there, I tried to confront them. One guy reached for, looked like he had a gun. They're shovelling the snow to try to remove the car."*

105. The dispatcher asked Mr. John if he had seen a gun. To which Mr. John replied, "*I seen the handle*". The dispatcher asked for confirmation that Mr. John had seen the handle of a gun, and he replies, "yes".
106. Mr. John is then asked by the dispatcher on the 911 call if the individual whom he saw with the handle of the gun, is in his vehicle now, to which Mr. John responds on the recording as, "*Well the person standing outside of the vehicle, the other person inside of it... There's three actually. And, and, and when I came, when I went up, that's when they started shovelling the snow. I don't know if they're trying to dig up the snow or what, to remove the car but there's someone in it running everything. Right, if I see them leave, I'm going to, I'm going to, I'm going to ram them with my, block them with my car.*"
107. The public complainant is again advised to avoid approaching the male(s). And the dispatcher attempts to confirm the description of the male with the firearm, by asking, "*The guy with the gun, is that the male, East Indian?*" Mr. John responds with, "*Yes, with the long hair and the black toque.*"
108. Mr. John then testified that PC Campoli and Sarasua were amongst the first Officers to arrive on scene at the Shell Gas Station.
109. Mr. John identified PC Campoli and testified that he was the first to approach him on the date of the incident and that he immediately began swearing at him by saying, "*what the fuck are you talking about?*", was aggressive and questioned him about having "*history with the police, problems with the police.*"
110. Mr. John indicated that a number of officers arrived on scene at the Shell Gas Station.
111. Mr. John then testified that the next Officer who spoke to him was PC Sarasua. And that while PC Sarasua spoke to him, that PC Campoli searched his vehicle without his consent.

112. Mr. John also testified that after searching his vehicle at the Shell Gas Station, (at 627 Dixon Road, Etobicoke) PC Campoli said, *“what the fuck are you talking about...your car isn’t over there”*.
113. The witness then testified that he then drove to 32 Stoffel Drive (Collision World) and that PC Campoli and PC Sarasua followed him to that location, in their own vehicle.
114. The Public Complainant then testified that PC Campoli and Sarasua walked around at 32 Stoffel Drive, saw his vehicle and returned, told him to get out of car and arrested him. He added that the Officers then took him to a police station, where he was booked, questioned and then strip searched by PC Campoli, PC Sarasua and a third *“Indian Officer”*.
115. The Prosecutor then revisited the Public Complaint’s evidence and clarified the following, that he had called the police, to report his vehicle stolen in April of 2013, that he had been provided an occurrence number by Peel Regional Police for insurance purposes, that in June or July of 2013 he had received a letter indicating that his vehicle had been located at the side of a road and was being stored at Collision World in Etobicoke.
116. The Prosecutor further clarified through the witness, that he had contacted his insurance company and advised them of the received letter and the location of his vehicle in June or July of 2013. On February the 4th, 2014, he had contacted the police to report the location of his stolen vehicle and was advised by a Peel Regional Sergeant to actually attend the location where his vehicle was located, and once observed, to re-contact Police. Mr. John further testified that Peel Regional Police (PRP) had directed him to contact the Toronto Police Service (TPS), once he had observed his vehicle.

117. Mr. John further testified that once he saw his vehicle he had called TPS via 911 to report the location of his vehicle. He added that he told TPS dispatchers that a male at 32 Stoffel Drive, may have a gun.
118. When asked by the Prosecutor why he had waited until February 2014 to get his vehicle, Mr. John indicated that he had received information from his insurance company that they would not be paying his claim any further after conducting their investigation.
119. The witness then advised that, *“I went there for the vehicle...get the police to come and get my vehicle back”*. He, added, *“I told them I located my vehicle. and I told them what happened. I told them I see some people by the vehicle”*.
120. Ms. Ciobotaru then clarified that the witness was aware of the location of his vehicle since *“June or July of 2013”*; which he confirmed. The Prosecutor then inquired why the witness had not attended Collision World, until the date of this incident – February 2014, to which he replied that, *“the reason why I didn’t want to go there, because they, they were already being investigated for criminal offences”*.
121. The Prosecutor then played the two 911 calls, contained in Exhibit 5, Tab 1 and 2, for the Tribunal.
122. The Prosecutor asked how he had seen the handle or butt of a firearm, to which Mr. John replied that as he initially drove by 32 Stoffel Drive, the male he had described on the 911 call had lifted his shirt, and he saw what he thought was the butt of a gun. He went on to say that he couldn’t be completely sure that it was a firearm. He added that he recalled seeing 3 individuals by his vehicle.
123. Mr. John testified, that when PC Campoli and PC Sarasua arrived at the Shell Gas Station, along with other officers, he activated a concealed audio recorder which was on his person – and submitted in Exhibit 4, at Tab 1.

124. The Public Complainant also testified that PC Campoli began swearing at him and was the *“most aggressive out of everyone.”*
125. Mr. John also identified PC Sarasua as the officer explaining to him that they had received a gun call to attend the Shell Gas Station.
126. On October the 8th, 2019, the second day of this Trial the Prosecutor continued her examination in chief.
127. Mr. John then produced the device on which he indicated he had recorded his interaction with PC Campoli and PC Sarasua – a RCA Digital Recorder.
128. Mr. John testified that he often records conversations with police officers and added, *“(since I was) fourteen years old, I’ve been harassed, assaulted, falsely charge by the police and, when I make complaints, often goes ignored, unless I actually have uh, tangible evidence that they can actually see or here”.*
129. The prosecutor then played the recording made by the witness – Exhibit 4, Tab 1.
130. Mr. John identified the voices on the recording as that of PC Campoli, PC Sarasua and *“white officer with a beard, I don’t know his name. And another Indian officer, I don’t know his name”.*
131. The witness testified that he believes he is on a C.P.I.C database with a caution stating, *“there’s a note in the C.P.I.C. that says, that has a note record, that I, that I recorded in the T.P.S something, room and to be aware of it and so on, which is on my C.P.I.C, there’s notes to that effect”.*
132. The Prosecutor asked the witness if the recording he made captures the entire interaction of the date of this incident. To which he replied, *“there’s more, but I believe, I believe the battery dies after a while”.*

133. The Prosecutor then asked the witness if he recognized who is heard in the recording, saying, *"I don't give a shit"*. To which Mr. John identified PC Campoli, and added, *"I was looking at him as he was yelling"*.
134. The witness testified that his vehicle which was reported stolen is a black coloured Cadillac STS and that the vehicle he was in on the date of this incident was a rental – black coloured Mazda.
135. The witness was then asked if he recalls who searched his vehicle (the black Mazda) at the Shell Gas Station. To which he indicated it was PC Campoli.
136. Mr. John indicated that he was also searched at the Shell Station by PC Campoli and stated, *"I'm like what's going on here, back it up...and he's like oh, it's for our own safety"*. He identified PC Sarasua as making the comment. The witness then corrected himself and indicated that he could not recall if the Officer said *"for his safety or for their safety"*.
137. The witness then described what he was wearing the day of the incident—specifically – a green jacket and a blue toque.
138. The witness when asked about for how long the search of the vehicle took place, indicated, *"I can't, so much was happening. I'd say maybe like about a minute or minute and half"*.
139. The Prosecutor then asked the witness, if he had alluded to the 911 dispatcher that he had seen the butt of a gun, on one of the males around his vehicle. Mr. John replied, *"yeah, because I said it looked like the butt of a gun. And I'm pretty sure it was"*.
140. The witness advised that once at Collision World officers said to him, *"oh you told us it was a gun...and I said if you want to get technical, I didn't tell you it was a gun... I said it looked like a gun from what I've seen. It looked like the butt of a gun"*.

141. The Prosecutor then inquired about the inconsistency in his earlier testimony and the recording, indicating the presence of a gun. To which Mr. John replied, *“Yeah, I didn’t say it was a gun. I said it looked like the butt of a gun. I was being literal because the way they were being, they, they, I could tell they already wanted to charge me. And at that point, I wanted, I wanted to be very clear that I didn’t tell them, yes definitively that was a gun I seen. I never did, at any point say it was definitively it was a gun. Said it looked like the butt of a gun. Under the law, if I, if I say I think somebody has a gun, and if they don’t have a gun. How they going to charge? I’m thinking how they going to charge me with, with, with, lying about a gun? I said, I said, I think it looked like the butt of a gun. I never said yup, I seen a gun, a hundred percent, I know it a hundred percent. I tried to explain that to them at the gas station. And they said uh, oh yeah, you’re full of shit”*.
142. Mr. John then described his arrest and advised he was transported back to No. 23 Division, by two Officers other than PC Campoli and PC Sarasua. He also described the booking process and the associated initial “pat down” search conducted by the transporting Officer.
143. Mr. John indicated he was then placed in an interview room, and further investigated by a Detective. He indicates subsequently PC Campoli, PC Sarasua and the “Indian Officer”, conducted a strip search of him.
144. Mr. John indicated that PC Campoli and PC Sarasua were giving the orders, *“take that off”*, and the Indian Officer didn’t say anything.
145. Mr. John testified that he was not advised of the reason for the search nor was he advised who had authorized it. He also described the room where it was conducted as a room, with a door and a window in the door, but no cameras in the room.

146. Mr. John acknowledged that he was advised of a previous charge – Fail to Comply with a Recognizance and knew he was going to be held for a bail hearing the next morning.
147. Mr. John then testified that his complaint to the Special Investigations Unit stemming from the strip search was ruled as unsubstantiated.
148. The witness then indicated that he believed that Staff Sergeant Schneider was also present at the station the night of this incident.
149. Mr. John then advised the Tribunal that his Mischief Charge for which he had been arrested on the date of this incident and the previous Fail to Comply Recognizance had been withdrawn by the Prosecutor.
150. The Prosecutor then led the witness through Forensic Identification Photos taken at 32 Stoffel Drive – Collision World, the night of the incident. The witness identified his vehicle in the photos by description and licence plate number.
151. The witness was then asked about his OIPRD Complaint form and the resolution he had indicated – which included financial compensation and a letter of apology from the involved Officers.
152. Finally prior to closing the examination in chief the Prosecutor asked Mr. John to describe himself, by height and weight, as well as his clothing the night of the incident.

Cross Examination – Public Complainant – Mr. D. John

153. Mr. Butt began his cross examination by questioning Mr. John about his clothing description, provided to the Prosecutor. Mr. John conceded that the, “blue toque, green jacket and blue jeans” he described he was wearing in chief, was not in any previous statement to the OIPRD, SIU or any other notes which he had made.

154. Mr. Butt then established through the witness that this proceeding was taking place more than 5 years since the event. And asked Mr. John, *“your position from this tribunal that without contemporaneous notes, without any previous recording, you remember in that level of detail what you were wearing five years and several months ago”*. To which the witness replied, *“yes”*.
155. Mr. Butt then asked the witness if he was, *“anti-police”*. To which he replied, no he wasn't. He was then asked if he was a rap musician and if he had posted some of his work, on You Tube.
156. Mr. John objected to having his videos played – indicating that they were made after the fact and *“not on trial”*.
157. Mr. Butt then submitted the relevance of the videos as being relevant and stated, *“The relevance is the witness has just been asked if he's anti-police and he said no. The animus of an individual in a police Tribunal against police is relevant in assessing credibility. It is not determinative, but it is relevant. And I propose to show videos that will demonstrate a stark, and indeed offensive and demeaning anti-police animus. That's in simple terms the relevance of the material that I propose to put before the Tribunal. And I accept as, as Superintendent has rightfully observed that the weight to be given that, is a matter for you alone, sir”*.
158. Mr. John articulated his objection, by stating, *“I'm also an actor. I work in film. So are they going to take a role in a movie and then say, “oh look it, you played, you played a serial killer in a movie, so you're probably a serial killer in real life.” This is entertainment... My, my music persona and my real life persona is not the same”*. He added, *“All I ask is that the full video be played... the full context needs to be played”*.

159. Links for full videos played for the Tribunal were entered as Exhibit 16.
160. Defense Council began this segment of his cross examination by having the witness acknowledge that his performance name was, "Avalanche the Architect". Mr. Butt then played excerpts from four separate videos, "Black Lives Matter", "Michai Johnson should have killed more", "Black God shoot at the White pig?", and " War Time Anthem" which Mr. John acknowledged that he had performed in each of the videos. Mr. John added, that his lyrics are "*ghost written*".
161. Mr. Butt then questioned Mr. John about the specific lyrics of each of the video excerpts played and suggested to the witness that they described the killing of police officers. To which Mr. John replied that they did not. Mr. Butt suggested to the witness that all references to "*pigs*" in his videos referred to the police. Mr. John refuted the suggestion repeatedly, indicating that they were in reference to an animal stating, "*I pray to Allah*" and *I say something about a pig, you automatically assume its anti-police. Do you understand Muslims don't eat pork?*"
162. In another passage, Mr. Butt suggested that, "*piss on a pig*", referred to urinating on a police officer, to which Mr. John replied that the phrase was misheard, and actually said, "*piss on a pimp*".
163. Mr. Butt then asked the witness if he had provided the OIPRD with a copy of the recording, played for the tribunal in chief examination and made by the public complainant on the date of the incident. Mr. John was then pointed to the title of the recording, he acknowledged as his – which read, "*Pig recorded from February 2014*".
164. Mr. Butt then put to the witness, "*So you do refer to the police as pigs, don't you?*" The witness replied, "*Yes, when they interfere with me*".

165. Mr. Butt then questioned the witness about his prior testimony regarding the definition of the word “pig” in his videos, and his suggestion that it did not refer to police officers. The witness testified, “yes. *I have no problem. I, I, I calling a pig a, a police a pig if I have a problem with them*”. Mr. John then further added under cross examination, “*I have no problem. I called these guys a pigs at court, in, or when I see them. I have no problem. Any, any police officers who interferes with me. I have family members who are police officers who I have the utmost respect for*”.
166. Mr. Butt then asked Mr. John to identify the members of his family whom he had indicated were Police Officers. Mr. John refused to do so stating, “*you guys would love to know who it is, so that you guys can go and investigate them and get them off the force*”.
167. Mr. Butt then showed the witness his criminal record, as contained in Exhibit 4, Tab 16. Mr. John acknowledged the conviction for Utter Death Threats but added, that the matter was under appeal and that he was confident the conviction would be overturned.
168. Mr. Butt then inquired about the substance of the threat uttered, for which Mr. John had been convicted, and the witness replied, “*they said it was through a rap song*”.
169. Mr. John was further questioned about his music and he testified that he does not use his rap music to criminal ends.
170. Defense council then put to the witness if he knew that the SIU complaint he had made against PC Sarasua had been dismissed and unsubstantiated, without having even met with respondent. To which Mr. John replied that he was not aware of that, but believed, “*and I’ll just respond that they’re prejudice*”.
171. Mr. Butt then suggested to the witness that he had a long history of misleading Tribunals and pointed Mr. John to the Human Rights Tribunal of Ontario decision contained in Exhibit 2, Tab 9 as evidence of such.

172. Mr. Butt suggested to Mr. John that he had brought thirty-seven applications, against a broad array of agencies, before the Ontario Human Rights Tribunal. Mr. John could not confirm the number of applications he had initiated.
173. Mr. Butt then suggested to the complainant that he had been found to be a vexatious litigant, in the HRTO proceeding, referred to in Exhibit 2, at Tab 9.
174. Mr. Butt then referenced Justice Baldwin's decision in Exhibit 2, at Tab 6, Her Majesty the Queen and Darren Philip John, Ontario Court of Justice 2013, specifically paragraph 185, which states, "*Darrin John has lied to the court about having a brother named Linden John*" and paragraph 186 where it states, "*Mr. John went to great lengths in his evidence to pin these frauds on his fictional brother*".
175. Mr. Butt put to the witness that he had lied to the court in the aforementioned matter. Mr. John disagreed.
176. Mr. Butt then again turned to Exhibit 2, Tab 9 quoting, "*similarly false claims were made about myself. The Applicant alleged that I conducted my own research about him and had gained access to sealed court files. He alleged that several people, including a lawyer who was involved in the circumstances underlying that application told him that I had reached out to them or people they know asking about him. The applicant also asserts that I made comments to one or more of these persons to the effect that Mr. John will not win, while I'm involved. He also alleged that that the Respondents in that case are referencing me and saying that I have reached out to them to advise them on my application before the Tribunal and advising them on how to proceed. All of these allegations are false*". Mr. Butt suggested to the witness that the above passage is what occurred and that the HRTO adopted the conclusion of falsity, in dismissing his 37 claims as an abuse of process - Mr. John disagreed.

177. Mr. Butt then suggested to the witness that a passage from the same judgement which stated, *“repeatedly makes the patently false allegation that Vice-Chair has been harassing him by telephone”* was consistent with him making false allegation of harassment before the HTRIO – Mr. John disagreed.
178. Mr. Butt again referencing Exhibit 2, Tab 9, put to the witness that in multiple references throughout that Judgement he had used abusive language. Specifically, Mr. Butt suggested that Mr. John had used words such as, *“cunts, whores, pedophiles, cocksuckers and bigots”*. Mr. John disagreed that he had used such language, but acknowledged that he had not read the decision being referred to. Mr. John added that he didn’t wish to read the decision and further that he had not been given an opportunity to *“participate in the process”*.
179. From Exhibit 2, Tab 9, Mr. Butt then cross examined the witness about misleading the HTRIO, quoting, *“in addition to the abusive language directed at other parties in the Tribunal, the Applicant has also attempted to mislead the Tribunal on a number of occasions. In addition to the Applicants false claims on multiple occasions, that he had audio recordings that would substantiate many of his claims of racist discourse, he misled the Tribunal on two other occasions...having considered these circumstances, it is clear that the Applicant was indeed seeking to so confuse and mislead the Tribunal by his false claim that an email address he had provided in nine applications was not in fact his, but that of a brother”*. Mr. John disagreed that he had misled the HTRIO. And again acknowledged that he had not read the decision.
180. Mr. Butt then revisited Exhibit 2, Tab 6, Her Majesty the Queen and Darren Philip John, Ontario Court of Justice 2013 and Tab 9, John and the Regional Municipality of Peel Police Services Board; Human Rights Tribunal of Ontario, 2019. Mr. Butt suggested to the witness that, *“despite having being called out for the lie about your brother when Justice Baldwin in 2013, you continue to perpetuate the same or a similar lie about a brother in 2019”*. Mr. John disagreed that he had, *“recycled the brother fiction from 2013 and again in 2019”*.

181. Mr. Butt then asked the witness if he had been the litigant in a matter against [REDACTED] and if he agreed that the matter had been, *“thrown out the Superior Court as being frivolous, vexatious and an abuse of process”*. Mr. John disagreed.
182. Mr. Butt then returned to Exhibit 2, Tab 9 and put to the witness that, *“there is compelling reason to believe that many, if not all of the Applicants claims are also false and are in intended to primarily embarrass and harass the Respondents identified in them”*. Mr. Butt asked the witness if this was an accurate conclusion of his vexatious litigation. Mr. John disagreed.
183. Mr. Butt then again referring to Exhibit 2, Tab 9 quoted and asked the witness if he agreed with the finding that, *“the Applicant has filed 37 applications with the Tribunal and a smaller, but not insignificant number of civil claims. Several of which appear to be duplicative or overlapping with claims made here or vice-versa. Having reviewed all 37 of these applications and the related civil claims, of which we have been made aware, a number of these cases can be clustered together and related to cases in other forums in what appeared to be persistent attempts to keep alive litigation in one forum that has failed in another”*. Mr. John disagreed.
184. Mr. John then acknowledged that he currently has a Statement of Claim ongoing, as submitted in Exhibit 2, at Tab 1, Statement of Claim between John, Campoli, Sarasua and the Toronto Police Services Board; Ontario Superior Court of Justice 2018.
185. Mr. Butt asked the witness if he agreed that he in fact had launched multiple applications, one in 2016 and another in 2019 related to the same facts which are presently before this Tribunal and thus consistent with finding, at Tab 9, Exhibit 2 that he continues to make, *“persistent attempts to keep alive litigations in one forum that has failed in another”*. The witness disagreed.

186. Mr. Butt then put to the witness that in his OIPRD complaint, entered in his in-chief examination, that the resolution sought by Mr. John was, *“the only resolution I would consider is financial compensation and the police writing an apology letter”*. Mr. John accepted that was the resolution he had sought. Mr. John further acknowledged that he has filed a civil suite against PC Sarasua and Campoli for ten million dollars financial compensation. Mr. John denied that he was, *“engaged in a persistent, frivolous and vexatious pursuit of money”*.
187. Defense council then asked Mr. John if he had provided the OIPRD the recording which he had made, Exhibit 4, Tab 1. To which Mr. John stated, *“I gave them the recording”*. Mr. John acknowledged that he had not given the OIPRD the actual recorder because, *“They didn’t ask for it”*.
188. Mr. John then acknowledged that he had left an audio message for the OIPRD, as entered in Exhibit 4, Tab 7 – indicating that he did not wish to participate further in their investigation.
189. Defense council then canvassed in great detail with the witness, various correspondence between himself (Mr. John) and his vehicle insurance company and Collision World. Entered as Exhibits, TD Insurance Letter 2013.06.19 (Exhibit 6), TD Insurance Letter 2013.06.25 (Exhibit 7), TD Insurance Letter 2013.09.05 (Exhibit 8), Collision World Invoice 1334 (Exhibit 9), Notice of Intention to Sell Articles –Collision World dated 2013.09.18 (Exhibit 10), Email-Collision World to Juliet Bloom, TD Insurance Claim #014346471 – dated 2013.10.01. (Exhibit 11), Collision World Letter dated 2013.11.14 (Exhibit 12), Email Juliet Bloom TD Insurance to Collision World - Claim #014346471 – dated 2013.10.23 and 2013.11.13 (Exhibit 13) and Emails between Juliet Bloom TD Insurance and Collision World – Claim #014346471 – dated 2013.11.28, 2013.11.29, 2013.12.09 (Exhibit 14). Mr. John acknowledged all of the correspondence and his knowledge that his insurance refused to pay any further his claim for the stolen auto and Collision World intent to sell his vehicle for storage and towing fees owed.

190. Mr. Butt then had Exhibit 5, Tab 1 –the first 911 call made by Mr. John on the date of the incident before the Tribunal. Mr. Butt then specifically quoted Mr. John as stating to the call taker, *“I’m on Dixon and Kelsey at the Shell gas station. I just tracked down my uh, somebody stole my car. I was tracking down to this uh, here”*. Mr. John acknowledged his voice in the recording and the substance of the comment quoted.
191. Defense then, put to Mr. John, *“we’ve just gone through all of that extensive insurance correspondence and the efforts made to have you pick up your car. You didn’t just track it down. You had known in February for months that it was precisely there, didn’t you?”*. To which Mr. John replied, *“Yeah, I did know it was there”*.
192. When cross examined on the above inconsistency, Mr. John added, *“Yes, it is true. I just found it that day when I, when I went physically seen it. I knew where it was all along, but I had to go and physically see it for myself”*.
193. Defense asked the witness why he had not clarified the matter for the dispatcher taking the 911 call, to which he replied, *“I didn’t. Because it was freezing cold, and I, in, in the heat of everything, I’m just talking and saying whatever. I didn’t, I didn’t, I’m not going to sit down and, and, and, and, and formulate my words in a certain way. I found it, as they asked me too and that was it”*.
194. Mr. Butt then pointed out to the witness that his evidence was, *“I’m suggesting that the only reasonable interpretation of what you’re doing here is misleading the police to make them believe that you just found your stolen vehicle... You just happened to miraculously appear at the car when three people, one of whom had a gun were standing around the car. Is that your evidence in this Tribunal?”* To which Mr. John replied, *“yes”*.

195. Mr. Butt then made reference to the transcript of the second 911 call made by Mr. John, Exhibit 15, where at page 11, he quoted, *“if someone tries to get into the vehicle to drive away, just give us a call back and let us know, okay? In the meantime, we’ll get someone there?”* The transcript then records Mr. John as saying, *“yo, there, there is somebody in the car right now”*. Mr. John then took the position that he had concerns about the accuracy of the transcript and requested that Exhibit 5, Tab2, the audio of the second 911 call made be played back to verify his comments as captured in the transcript.
196. Subsequent to playing Exhibit 5, Tab for the witness, the witness then acknowledged the comments attributed to him, in the transcript as being accurate, but added, *“I was saying when I was over there, I saw someone in that car... then I was misspoken”*.
197. Mr. Butt then questioned the witness if he had advised the call taker that, *“you saw them shovelling snow to move the car”*. Mr. John agreed with the suggestion. And under further cross examination, added that a *“snow shovel”* was being used to shovel the snow and that he had witnessed this while driving by Collision World.
198. Mr. Butt then showed the witness F.I.S photos, Exhibit 4, Tab 8, specifically, photos 6 and 7. Mr. John identified his vehicle and disagreed with Defense council’s suggestion that there was no indication that any snow had been removed around Mr. John’s vehicle by a shovel.
199. Mr. Butt then cross examined the witness regarding his observation and reporting of a potential firearm on an individual at Collision World. Defense referred to Exhibit 4, Tab 2, the transcript of the recording made by the Public Complainant, and asked the witness if he had reported he had seen a person with a gun. To which Mr. John replied, *“I never said the person had a gun. I said like they look like I have weapons”*. Mr. Butt then referred back to Exhibit 15, the transcript of the 911 calls made and quoted Mr. John as having advised the call taker that, *“I think I saw the butt of a gun, but I can’t be sure”*.

200. Defense council then suggested to the witness that, *“you sir, you wanted the police to come quickly, so you led them to believe that there was a person there with a gun... you used words that were meant to lead them to believe that there was someone with a gun. And then you backed off when they did arrive”*. Mr. John disagreed with the suggestion.
201. Mr. John advised that he had driven by his vehicle twice, prior to police arrival at the Shell Gas Station, where he met Officer PC Sarasua and PC Campoli.
202. Mr. Butt then reviewed in detail Exhibit 4, Tab 10 – Notes of PC Sarasua, with the witness. Mr. John acknowledged that PC Sarasua had captured in his notes that he was working with both PC Campoli and PC Sirpal.
203. Mr. John added that on the date of this incident when he came into first contact with PC Sarasua and PC Campoli, *“there was more than just two of them, there was probably about eight officers”*. Mr. John further acknowledged that there was present a South Asian officer.
204. Mr. John then also acknowledged that in PC Sarasua’s notes was a notation stating, *“black unmarked caravan, in uniform”*. Mr. John then under cross examination indicated that, *“I believe seen Campoli come out of a marked vehicle, I don’t know what car Sarasua came out of... he (PC Campoli) came from the direction of it, and to my recollection it seemed like he came out of one... in my recollection, that’s what I believe I seen”*.
205. Mr. John under further cross examination, when asked if he was certain, that he had witnessed PC Campoli exit a marked police vehicle, he replied, *“I can’t remember one hundred percent, I’m pretty sure, but from as you’re putting it now and you’re stuff and I think back, I never really sat down focused who came out of which vehicle...but I certainly remember Campoli because he was the loudest and first one swearing”*.

206. Mr. Butt then suggested to the witness that, “a few minutes ago you were sure they got out of a marked cruiser. Second, I showed you the notes that shows that they were driving a black Caravan. Three, you changed your story and now you’re not sure”. Mr. John disagreed with the suggestion.

207. Mr. Butt then asked the witness, if he had been corresponding for a month with his insurance company – Mr. John agreed. He was then asked if he owed money to Collision World for storage to which Mr. John disagreed. Mr. Butt then concluded his trilogy of questions by suggesting to the witness that he, *“came up with a scam to try to get your car back... as part of your scam you brought along a recorder, preplanning to further your scam... and your scam was this, you would falsely lead the police to believe that your vehicle, which was reported stolen had just been found... the scam call to the police was a dishonest attempt to get the police to give you your car back without you having to pay the impound fees... And you called 911 on purpose to get prompt attention for your scam... And while the police were there you falsely said get out of my car, you’re searching my car”*. Mr. John again disagreed with suggestion.

208. Mr. Butt then showed the witness Exhibit 19, Toronto Police Service - Property Items Report TP2014—1469409 and reviewed its contents in detail. The witness was asked if the contents of the Form were accurate, to which he replied, *“Two things are inaccurate here, well first I had more cash, but it was taken. And second I never had a cell phone... what they marked down as a cell phone was clearly this recorder because didn’t have a cell – because I didn’t have a phone that day”*.

209. Mr. Butt then cross examined the witness on Exhibit 4, Tab 13 and 14 – his SIU interview recording and transcript. When asked by the SIU investigators as to who conducted the level 3 search of him, he indicated, *“I’m trying to remember the third officer, but I’ll tell – it was the Chinese officer...um the I think Italian, and the East Indian one, not the one with the turban”*. Under further cross examination the witness testified, *that he had forgotten to mention one additional officer who was present during the search stating, “I think it was Schneider...maybe it was Schneider I believe”*.
210. Mr. John then acknowledged that his memory was fresher when giving the SIU interview and admitted that he never mentioned Schneider being present during the search during that SIU interview. In support Mr. Butt quoted, from Exhibit 4, Tab 14, *“Did you ever see him after the booking process, that Sergeant?” And you asked, “Schneider?” And Jim Troy says, “yeah” and your answer, “no.” “was he in the room with you while being stripped searched? No. I – I don’t even – when I saw him at Trial didn’t even recognize him. I don’t even remember who he was, I don’t remember dealing with him at all.”*
211. Defense council then cross examined Mr. John regarding his OIPRD Complaint Form – Exhibit 4, Tab 9. Mr. Butt quoting from the complaint, *“Constable Sarasua who is an oriental officer, when strip searching me physically touched my testicles, to lift them when searching me, when I was naked, which is considered a sexual assault. I believe he did this because he is homosexual. He even complimented me on my physique and the size of my penis, which made me very uncomfortable. The other officers Schneider and Campoli were gawking and behaving in a manner to lead me to believe they were homosexual as well. They appeared to enjoy the sight of a naked man”* suggested that he put Schneider in the room during the search. Mr. John agreed.

212. When cross examined about the inconsistency in his statements to the SIU and OIPRD regarding Officer Schneider, Mr. John replied, *“Neither one of them. I didn’t know the officer’s name I knew there was an Indian officer. I never described the officer uh Schneider, so I’m assuming from reading – looking at that I – I was probably calling the Indian officer, Officer Schneider”*.
213. Mr. John then acknowledged that he had no first hand knowledge of who or if his level 3 search had been authorized by stating, *“there’s no way I could possibly know whether or not it was authorized”*. Under further cross examination and in response to Mr. Butt quoting from Exhibit 4, Tab 9, *“okay um so Schneider is a Sergeant, I don’t know he’s from that division...but he’s the one who authorized the level 3 search”*. Next line, you’re asked, *“the level 3 search at the Toronto Police Station?”* and Mr. John replied, *“yeah”*.
214. Mr. Butt then again revisited Exhibit 13 and Tab 14 in the witnesses’ SIU interview and asked if the following was correct, *“the Schneider guy is the one that gave the authorization for the level 3 search”*. The audio was played for Mr. John and he stated, *“Yes. Everything that verbally was said there I agree I said”*.

Re-Examination

215. The Prosecutor asked the witness who was the individual he had mentioned in his cross examination - Andreus Sodameir was. Mr. John indicated, *“he (was the one who) called her (Collision World) after to do him a favour and pick up the car and bring it to their shop. So he never brought it there, she – he called them, she as a favour to him because he did – I guess work on their property before”*.
216. Mr. John confirmed that he had seen a marked police vehicles at both the gas station and Collision World but did not recall seeing a black coloured Caravan.

217. On the subject of his rap video excerpts which were played for the Tribunal, by the Defense, Mr. John advised that, *“a number of my videos I actually have a disclaimer written on them saying that uh nothing in the video is to be taken seriously I believe that’s part of the reason why a lot of them were skipped forward, because they say this in all of them that – this is entertainment and it’s a clear disclaimer, actually helped drafted by a lawyer in case anybody takes anything in the video seriously”*. Under further re-examination regarding the presence of a disclaimer on his videos, the witness testified, that, *“not all, but the majority of them do. A lot of them do”*.

Public Complainant

218. Mr. John advised the Tribunal that he had no witnesses to call.

219. Mr. John asked that the booking hall video be played for the Tribunal and entered as an exhibit – entered as Exhibit 17.

Defense

220. Mr. Butt indicated that he intended to call two witnesses – PC Sarasua and PC Campoli to testify.

Examination in Chief – PC Sarasua

221. PC Sarasua provided his length of service with the TPS and an overview of his assignments.

222. PC Sarasua testified that on February the 14th, 2014 he was working in uniform and assigned to the Community Response Unit working a modified evening shift, from 2pm – midnight. PC Sarasua added that on that particular day he was assigned to the Humber Valley Project and that his partners for the shift were PC Campoli and PC Sirpal.

223. PC Sarasua also testified that his duties that evening included responding to high priority calls, in the west portion of 23 Division.

224. PC Sarasua indicated that on the date of this incident it was his first time working “directly” with PC Campoli, though he would see him daily over a 3 month period while assigned to the Humber Valley Project. PC Sarasua added that he had also seen PC Sirpal daily over the course of the Humber Valley Project.
225. PC Sarasua then testified that while working with PC Campoli and PC Sirpal and their mode of travel while on duty, *“It was the uh black dodge Caravan, it was unmarked it looks like a civilian’s car...it’s a family van it has no police markings whatsoever. It has also no police um computer uh and only a police radio”*.
226. PC Sarasua then testified as to the information he received from the dispatcher, which initiated his contact with Mr. John. Specifically, PC Sarasua stated, *“I don’t have the time noted down in my notes but it was approximately 5pm. We received a hotshot radio call, which is a call that is occurring at that moment. It was to this Shell gas station on Dixon Road. The information we received was that - from the dispatcher, was that the complainant reported his car stolen and he advised that he had just found his car at 32 Stoffel Drive. He advised that it was a garage, that his vehicle was a Black Cadillac STS, with the licence plate BPXD771... on route to the call the information received from the dispatcher was that the complainant thinks he saw the butt of a gun, and can’t be sure, a description was given about the suspect, it – it was male, East Indian, skinny, wearing a black toque, dark jacket and dark pants. And we were advised that the complainant will wait the Shell gas station...in a black Mazda”*.
227. PC Sarasua then identified a CPIC printout and information received from the dispatcher for Mr. John – entered as Exhibit 18 and testified, *“the information we received was regarding officer safety. The remark – it’s under the heading remarks, and it reads, this male is very aggressive, and belligerent towards police, this male made it known that he is happy when a police officer is killed or a member of a police officer’s family is killed”*.

228. PC Sarasua testified that in his 8 years of employment with the TPS he had never heard of a CPIC caution like the one he encountered on the date of this incident. He further added in relation to its impact, *“when we receive information like that we – we try to proceed with as much caution as possible... we have to keep officer safety in mind...always in the back of our minds that uh you know the shift that we go to could be our last”*.
229. PC Sarasua then testified to how he responds to call where a firearm may be involved. He described his approach as, *“I mean you always have to investigate if – if there’s an allegation of a firearm. We have a rule where if there’s one firearm reported, you always assume that there’s another one, so you don’t miss anything. And you have to investigate all parties involved, including the complainant and I guess the suspect”*. PC Sarasua added, *“It’s been my experience that the person that calls 911 is not always the innocent one. That’s why a full and complete investigation is required uh and that includes everybody involved with the call. You don’t just go to a call and assume that what the complainant says is accurate, you have to investigate it”*.
230. PC Sarasua also testified that he had received information from the dispatcher that the complainant was reporting his vehicle as having been stolen but that, *“(the) vehicle did not come back as stolen”*.
231. PC Sarasua testified, that based on the information he had received from the dispatcher, that his primary focus at this gun call was officer safety. He further added, *“whoever we’re dealing with at a gun call we want to make sure that they are not going to attack us. So we want to see their hands right away., complainant or suspect. We have to take immediate control of the situation, no matter who we’re dealing with and get all the pertinent information immediately because the last thing we want do is get involved in any kind of a shoot out or confrontation of any sort”*.

232. PC Sarasua also testified that of the approximately 18 officers working that evening in No. 23 Division, 10 to 15 of them responded to this call involving Mr. John. Further explaining the extent of the response by stating, *“that would only happen if it’s a very high priority call. As I said earlier, this came over as a hotshot radio call, so that means it’s happening at that moment, and it’s a person with a gun call. Guns take the top priority in the division. A gun call can very easily turn into a shooting or an attempt murder, or a murder. So we want to prevent that from happening. So we try to attend those calls first and foremost and give it the highest priority”*.
233. PC Sarasua then described arriving first at the Shell Gas Station on Dixon Road, with his partners, for the shift – PC Campoli and PC Sirpal, followed by numerous other uniformed officers arriving seconds later.
234. PC Sarasua then described where he first contacted with Mr. John and their respective positions around Mr. John’s vehicle whilst having a conversation.
235. PC Sarasua then went on to describe the interaction as, *“there was a little bit of movement among officers, because we’re all trying to get the information out of Mr. John. The conversation we weren’t getting the information where we needed. So we would kind of I guess take turns speaking with him. And we weren’t the only officers speaking with him, there were other officers on scene kind of trying to figure – uh this – this gun call out. But at one point it was Officer Campoli, at one point it was Officer Sirpal and a majority of the portion it was myself”*.
236. PC Sarasua then went on to describe the purpose and nature of his conversation with Mr. John. PC Sarasua testified that he was, *“trying to verify if his car was actually stolen or not. You know we’re trying to figure out what we’re essentially - what we’re dealing with”*. PC Sarasua added that whilst speaking with Mr. John he was standing by the driver’s side of his black Mazda, facing the rear of the vehicle, only, *“a foot or two”* away from him.

237. PC Sarasua testified that due to the significant size differential between himself and Mr. John and the public complainant's agitated state that an officer safety concern existed. As such in describing the position of his partners during the conversation, PC Sarasua provided that, *"just if something were to happen, uh if the complainant for whatever reason attacks me or anything like that, the - my partners we would have helped me. Out and that's why they would never left my immediate vicinity, they were always very close to me. Especially Officer Campoli, he was directly to my right, the entire time"*.

238. PC Sarasua then testified that PC Campoli had at no point entered Mr. John's black Mazda stating, *"he did not enter the vehicle at all, he was to my right the entire time"*.

239. On the issue of the public complainant's vehicle being searched at the Shell Gas Station, PC Sarasua testified that, *"Very often what it is, is if I'm speaking with the driver for example, my partner will be on the other side, will be on the passenger's side with his flashlight or her flashlight, looking inside the car. And we - I always get that don't search my car, well we're not searching your car, they're looking into the car, there's a big difference... it seems like the members of the public don't make that distinction. They always say search my car, but it - the fact is we're looking inside the car from the outside, but not actually inside the car"*. PC Sarasua added, that numerous other officers were also on scene and it is very likely that one of them may have looked inside the vehicle without entering it.

240. PC Sarasua then described his understanding of tactical communication as, *"the practice of speaking in a manner that elicits compliance, essentially"*.

241. PC Sarasua described what he believes is the value of tactical communication by stating, *“there are many benefits to aggressive tactical communication, number one is to gain compliance from whoever you’re speaking with. This specifically being a gun call, the first thing you really should say to anybody, complainant or suspect, is show me your hands. Let me see your hands. The delivery method of any kind of violence is typically your hands. So you want to say, let me see your hands as a way of showing number one, obviously that you want to see their hands, number two, are now in charge of this this scene. Nobody else is in charge other than the officers. Tactical communication also includes showing whoever you’re speaking with the urgency of the situation, and essentially getting the information that you need as soon as you can get it...you don’t want to leave it to chance to – to have somebody comply, you demand compliance. You essentially show that there’s no funny business going on, we as the officers are here to ensure everybody’s safety. Essentially to gain compliance and to expedite the speed at which you receive information”*.

242. On the use of profanity as tactical communication, PC Sarasua testified, *“occasionally when you speak with certain members of the public a swear word could be very effective. Because it emphasizes the importance of getting information immediately. You’re not asking, you are – you are conveying the importance of getting that information. So sometimes it could be, let me see your effing hands, that’s not meant to demean the person, the person that you’re speaking to, it’s meant to gain compliance immediately and to show that we mean business, that we are not messing around here”*.

243. PC Sarasua acknowledged that the use of profanity is not suitable for all calls. He further added that he himself did not use any profanity when dealing with Mr. John. He did acknowledge raising his voice at Mr. John in an attempt to get compliance.

244. PC Sarasua further testified that, *“at some point somebody used an F word and that allowed Mr. John to I guess kind of stop and begin giving us the information that we needed”*.

245. On the use of profanity in this situation, PC Sarasua testified, *“I think it’s excellent. The swear words in this case were never meant to demean Mr. John. And that’s quite apparent, it’s meant to elicit the exact response that it had, it’s to gain compliance immediately. And to convey the urgency. And quite frankly sometimes you need to speak in a manner that the public kind of understands. I would never say that to you know a very compliant, calm person. You would say it to somebody that is erratic and I guess belligerent in this case and it had the effect – it had the necessary effect in this case”*.

246. PC Sarasua then testified the first uncivil comment, found in Exhibit 4, Tab 1 and 2, which stated, *“I don’t, I don’t really give a shit”* was made by PC Sirpal. PC Sarasua indicated that he believed the comment was made by PC Sirpal because, *“Mr. John didn’t present his hands, Officer Sirpal is saying, I don’t care about who called, but I don’t give a – pardon my French, I don’t give a shit, show me your hands... Darren John stopped and showed us his hands at that point”*.

247. PC Sarasua then again testified that the purpose of his questioning Mr. John was, *“important for me to get his information, so we can run his name and see if there is a car that comes back to his name as stolen”*.

248. Regarding the second use of profanity, found in Exhibit 4, Tab 1 and 2, *“I don’t know what the fuck you’re talking about”* PC Sarasua was not sure who made the comment stating, *“I don’t know exactly, it might have been Officer Campoli or Sirpal... but I’m not one hundred percent sure”*.

249. On the use of this profanity, PC Sarasua testified that, *“using that that f word conveys the sense of urgency that we were all experiencing. And the frustration we were met with when we essentially were investigating a stolen car that didn’t come back to a stolen car. So it just conveys urgency and it kinda – how do I say this, it just it conveys that you know we’re all confused, we have no idea what’s going on here, can you clarify for it for us”*.
250. With regards to the third and final use of profanity, found in Exhibit 4, Tab1and 2, *“there’s coppers there already there buddy. What the fuck don’t you understand, we want to know what car to look for”*, PC Sarasua identified PC Sirpal as having made the comment. PC Sarasua testified that, *“Yes, that – that sentence there’s coppers there buddy, that’s Officer Sirpal for sure”*.
251. On the effect of PC Sirpal’s comment, PC Sarasua testified, *“Officer Sirpal, what he said had a dramatic effect because the, the very next sentence, Mr. John gave us the plate or was about to give us the plate”*.
252. PC Sarasua testified he then attended Collision World, located at 32 Stoffel Drive and described his observations as, *“the black Cadillac was covered in snow. The snow was surrounding the, the vehicle. It had, it did not appear that it had moved or been touched or anything. At least for a few weeks or possibly a few months. It wasn’t like Mr. John had described that there is three males surrounding his car. They’re inside his car. It didn’t appear like that at all. Just it was covered in snow... one set of footprints, which I suspect would’ve been the, the Forensic Officer”*. On the presence of any *“shovel marks”* from Mr. Butt, PC Sarasua answered, *“no, not at all”*.
253. PC Sarasua then identified the footprints he had seen as, those contained in Exhibit 4, at Tab 8, photo number 7.

254. PC Sarasua then testified that neither he nor PC Campoli paraded Mr. John at No. 23 Division post his arrest.
255. PC Sarasua identified Staff Sergeant Schneider as the booking officer in charge, as witnessed on Exhibit 17. PC Sarasua also described the general booking process when a prisoner enters a station. Specifically, he described how property is itemized, and stored whilst a prisoner is in custody.
256. PC Sarasua then identified Exhibit 19 - Toronto Police Service - Property Items Report TP2014—1469409 Mr. John's property document. PC Sarasua also identified booking officer Gore (badge number 90273) as the individual who had created Exhibit 19.
257. PC Sarasua then testified regarding the level 3 search conducted of Mr. John. He advised that he was involved in the search, along with PC Campoli and provided the following criteria for conducting a level 3 search, *"during the investigation process uh, it became apparent to us Mr. Darren John was going to be held for a show cause hearing, which is a bail hearing in the morning. At that point, we, we assess the need for a level three search. There's several criteria that we go through when assessing whether a level three search is required. Some of them include, the demeanour of the prisoner, the person's previous history, whether or not, he or she will be joining the general prison population. And then any other safety concerns we may have... the first thing that the criteria that he met was his demeanour. His demeanour during the entire radio call was a, was hot – very hostile. Very aggressive. So that, he met that criteria in that respect. The second would be that, given his criminal history, one of which was ah uttering threats. We considered that to be a crime of violence. So he met that criteria in that respect. Third one would be that he is joining the general prisoner population as, as he's held for a bail hearing in the morning"*.

258. On the issue of who had authorized the level 3 search, PC Sarasua indicated, *"It was Staff Sergeant Schneider, the same officer in the booking video"*.

259. PC testified the process by which the authorization was obtained as, *"I believe it was through a phone call from the investigator in the Criminal Investigation Bureau. We were working on the case essentially, on Mr. Darren John's case, when an officer made a phone call to the Staff Sergeant, to staff sergeant Schneider requesting the level three search, given these reasons. And Staff Sergeant Schneider authorized the level three search"*.

260. PC Sarasua also acknowledged that shortly after the date of this incident, the TPS Policy for requesting level 3 changed, so that the request must be conducted on camera.

261. PC Sarasua then identified Exhibit 20 - Toronto Police Service - Search of Person - Level 3 report, pertaining to Mr. John on February 4th, 2014. He further identified in authorization box, *"it says Officer in Charge, and beside it is Andrew Schneider, who's the Staff Sergeant... the badge number on the top right. It says by, and then a colon, 3-2-6-7. That is the authorizing officer. So the authorizing officer has to approve of, the level three and the entire case before the case can move on to the next process, which is uh, being sent to court"*.

262. PC Sarasua also testified that the paperwork for an arrest cannot be sent down to court without an Officer in Charge authorization. In this instance he indicated that Staff Sergeant Boyce was the Officer in Charge who relieved Staff Sergeant Schneider and that the level 3 search which was conducted would have been passed along to him, prior to him approving the case for court.

263. PC Sarasua again testified that the level 3 was conducted by himself and PC Campoli, in a closed office, with no windows, within No. 23 Division. PC Sarasua then described the manner in which the search was conducted, stating that, *“they’re never naked at any point, completely naked at any point during the search”*. PC Sarasua added, *“just having somebody, completely naked is it would have a demeaning effect on them, and that’s not the intention. The intention is just to go through the person’s article, articles of clothing to ensure that there is nothing that would harm themselves or anybody else, or any drugs or any means of escaping, so on. But it just, it, it’s, it would be embarrassing and I would never do that... it’s completely unprofessionalism”*.

264. Mr. John indicated to the Tribunal that he would not attend the final day of the hearing, having committed to do so on three separate occasions, to this point. Mr. John indicated that he clearly understood that he was waiving his right if additional witnesses were called, or evidence tendered by Defense in his chosen absence on the final day of the hearing (Friday October the 11th , 2019). To which Mr. John replied, *“Yes. Understood... yes, I understand...absolutely... Yes. I understand all that... And I’m okay with not, if I can’t make it tomorrow I’m okay with not making written submission. I trust the Prosecutor be capable she’ll make the proper submissions”*.

Cross Examination – PC Sarasua by Public Complainant

265. Mr. John asked the witness the address of the Shell Gas Station and then asked, *“What was the address you heard they had the gun at?”* To which PC Sarasua replied, *“The information was that the person with a gun was at 32 Stoffel Drive, where the vehicle was”*.

266. The witness then under cross examination admitted that he was mistaken when he told Mr. John that he had received a call that someone at the gas station had a gun. PC Sarasua under cross examination stated, *"I believe I did. And I believe I was mistaken"*. When asked by Mr. John if he had *"lied"*, PC Sarasua answered, *"The answer is no"*.
267. Mr. John then suggested to the witness, *"you told me that, the person at the gas station had a gun, as a way to explain away the fact that action you, the officers behaviour of yelling and swearing at me. I'm going to suggest that that's why you're trying to explain basically comfort me by saying, oh, we're only acting like this because we got the call with a person here at the gas station had a gun"*. PC Sarasua disagreed with the suggestion.
268. Mr. John then cross examined the witness about Tactical Communication, referred to in the examination in chief. PC Sarasua indicated that Tactical Communication was training received from the Toronto Police College.
269. Mr. John then asked the witness, *"in your tactical – so when you're trained, they're actually telling when you approach someone to say, what the fuck are you talking about? Is that acceptable language?... Did they tell you could use abusive language when you're, when you're tactically communicating?"* To which PC Sarasua replied, *"Not abusive language, and I don't think that that was abusive language... there's a difference. That was tactical communication"*.
270. Mr. John followed up with the question, *"so the word fuck is not an abusive language?"* To which PC Sarasua replied, *"It depends on its context... I believe that the, the, the 'F' word used in a specific context does not necessarily constitute abusive language"*.

271. Mr. John then suggested to the witness, *“the moment you were looking in the car, and the moment that I was, when I said get out of the car, you cant remember if I, if I was looking in the car, or if I was looking at you?”*.. PC Sarasua agreed, stating *“correct”*.

272. Mr. John then asked the witness, *“So when you guys originally came, was my voice raised? Was I yelling when you guys, at our first communication, my first communication was to you guys. With the officers that arrived on scene, was my voice raised?”* PC Sarasua replied, *“I believe it’s, I called police, and no, you were not”*.

273. Mr. John further asked the witness, *“So who was the first person, who was the first people raising their voices on scene? The officers or me?”* To which PC Sarasua replied, *“I believe it might’ve been the officers”*. Mr. John added, *“So there was not even a situation, but you, but you already decided to use a tactical communication, correct?”* PC Sarasua agreed.

274. Mr. John then asked the witness, *“What, what did I say or do to cause this tactical communication to be used?”* PC Sarasua replied, *“It was the information that we received about the radio call. That it was a, a person with a gun call and that the Complainant um, would’ve been happy if police died and their family members died excetra, I’m just paraphrasing. So it, in using tactical communication, we as officers have to uh, take control of the scene”*.

275. Mr. John then suggested to the witness that, *“so you had a preconceived notion, before you came. So you already knew, you already knew tactical communication, no matter how I behaved. When you came, you knew that you were going to use tactical – that, that quote on quote tactical communication, where you’re going to yell and swear before. Doesn’t matter if I was on knees saying please, help me, I seen my mother die. You would use that same technique, yes?”* To which PC Sarasua responded with, *“in any gun call, yes. Tactical communication is absolutely going to be used”*.
276. PC Sarasua was then asked, *“was it your understanding that someone at the gas station had a gun?”* The witness replied, *“from my understanding, I treat a gun call like everybody has a gun”*.
277. Under cross examination, PC Sarasua testified that as some point he was unaware of PC Sirpal’s exact location, whilst at the Shell Gas Station. But confirmed that, *“nobody went in your vehicle... I don’t know where Sirpal was, but I know with certainty because I have a, had the, an excellent view of your vehicle. Nobody was in your car”*.
278. When asked by Mr. John, who is heard on the recording saying, *“I don’t know what the fuck you’re talking about?”* PC Sarasua replied, *“I don’t know if it was officer Sirpal or officer Campoli, I’m not sure. It, it’s hard to make up the voices, but I’m, I’m not one hundred percent sure”*.
279. Under cross examination, PC Sarasua confirmed the accuracy of the recording made as reflecting the events of the date of the incident.
280. PC Sarasua then testified, that after the interaction at the Shell Gas Station, that he, PC Campoli and PC Sirpal followed the public complainant to Collision World, whilst he drove his own black Mazda.

281. Mr. John then asked the witness, *“So my question to you is wasn’t there a concern that should we let him drive over there if we have a concern about this guy and officer safety? He drove, like I’m driving my own vehicle over there. You guys don’t believe me that the vehicle is stolen. But I’m driving over there and there’s police that are now vulnerable because they’re standing. I could just run them over. If there’s officer safety. So was officer safety not a concern when you let me drive over by myself to Collision World?... how did you know I didn’t go to my car when I get there, and could’ve just got a gun?”* To which the witness replied, *“talking to you enough on scene, I was, it wasn’t a concern that you had a gun in your car to me”*.

282. Mr. John then asked the witness, *“have you ever, in your experience used tactical language, swear at someone and it, it calmed someone down?”* To which Pc Sarasua replied, *“yes, absolutely”*.

283. The witness was then asked if he had any criminal conviction in criminal court or findings of guilty before this Tribunal. To which PC Sarasua replied, that he did not.

284. Mr. John then asked about the level 3 search authorization. PC Sarasua under cross examination indicated that it was obtained from Staff Sergeant Schneider but that he could not recall if it was obtained by phone or in person.

Prosecution Cross Examination of – PC Sarasua

285. The Prosecutor in referring to Exhibit 4, Tab 4 inquired about the statement the witness had provided to the OIPRD, on February the 15th, 2018.

286. Specifically, the witness was asked about his response to the question in that interview, *“do you recall where your partners were at that time?”* Which he had replied, *“no, I don’t. I mean I was having an interaction with Darren John. I don’t remember where my partners were, but I know they were not the only officers on the scene. Was a lot of people showing up and as you can hear, the air horn in the police car. We don’t have an air horn in the unmarked Caravan. So that’s someone else on the scene as well”*.
287. The Prosecutor then asked about the inconsistency from his evidence before this Tribunal, the witness replied, *“Just reliving the, the radio call and going through all my notes and in, reliving it in this detail, I re – distinctly remember officer Campoli was directly to my right”*.
288. The Prosecutor suggested to the witness, *“so your evidence is that you have a better recollection today than you do in 2018 when you provided a statement to the Office of the Independent Police Review Director?”* To which PC Sarasua replied, *“yes”*.
289. In reviewing the responses the witness had provided to the OIRPD, from Exhibit 4, Tab 4, on the issue of the search of the vehicle, the Prosecutor suggested to the witness, *“so, is your evidence today more accurate or are your, was your evidence that your provided to the OIPRD more accurate in 2018?”*. To which PC Sarasua responded, *“definitely today it’s much more accurate. I’m just reviewing everything and going through the call in its entirety. I remember a lot more today during this trial”*.
290. The Prosecutor then suggested to the witness, that, *“you acknowledge that there are some discrepancies from your statement to the OIPRD to the evidence that you gave today?”* To which PC Sarasua replied, *“yes... going through the entire radio call in its entirety today, and listening to the 9-1-1 call, and all that. It, it helps jog my memory a lot more. And I recall a lot more today than I did when I provided that statement”*.

291. PC Sarasua then confirmed that he himself had used uncivil language before himself during tactical communication. But added that he did not find the language used as uncivil.
292. And when asked by the Prosecutor, *“when would it be in your, in your experience as a police officer, when would it be appropriate to use this type of language including the ‘F’ word?”* PC Sarasua responded, *“this is a perfect example of how it can and was used uh, and it had the direct effect that it was supposed to have. As soon as uh, you, you assert yourself with the, the Complainant, it, it should, it’s sometimes have the effect that they begin complying immediately. And that’s exactly what happened in this, in this situation”*.
293. When asked if the use of profanity was a part of the tactical communication training administered by the Toronto Police College, PC Sarasua replied, *“I’m not exactly sure if it is”*. When further asked by the Prosecutor, *“is your evidence you sometimes have used profanity or you have witnessed others use profanity in tactical communications to deescalate a situation?”* PC Sarasua indicated, that “yes” it was.
294. PC Sarasua was asked if it was “typical to allow the Complainant or the individual who called 911...to lead you to where the incident or issue is?” PC Sarasua indicated that it was not typical but that he was familiar with the layout of Collision World and the property.
295. The Prosecutor then cross examined the witness on his previous testimony that there were officer safety concerns involving Mr. John at the Gas Station, and the subsequent decision to allow him to drive his own vehicle to Collision World. PC Sarasua responded, *“yes, as the conversations went on. Toward the end, he, he calmed down enough that I, I felt comfortable enough having him show us where the car was located”*.

296. In cross examining the witness regarding the level 3 search of Mr. John the witness acknowledged that his notes as contained in Exhibit 4, Tab 10, did not contain the ground for conducting the level 3 search, or that Staff Sergeant Schneider had authorized the search. PC Sarasua added, *“that’s an oversight. I, I should have put that in my notes... yes. And I remember the grounds”*. PC Sarasua further added, *“I don’t always put everything in my notes. If, if I did that, it would be impractical and my notes would be overly lengthy. If I have recollection of it, I don’t, I typically wouldn’t write it. In this case of, of Mr. Darren John, I re – remembered the reasons for the level three search”*.
297. Under further cross examination regarding Exhibit 4, Tab 10 - TPS Policies and Procedures 01-02 Search of Persons, PC Sarasua acknowledged the requirement to, *“record all relevant details in their Memorandum Book”*, and that he had failed to do so stating, *“It’s an oversight”*.
298. The Prosecutor then asked the witness if at any point during the level 3 search of Mr. John he was left fully naked. PC Sarasua responded, *“he was never naked at any point. It’s, it’s, it’s my practice that he is never, that anybody at level three search is never naked at any point”*.
299. PC Sarasua could not recall how the authorization was communicated to him authorizing the level 3 search of Mr. John but added, *“if we receive that information that its authorized, then we proceed as such and complete the accompanying paperwork with it”*.
300. PC Sarasua testified that at no point on the night of the incident did he see a recorder.

Examination in Chief – PC Campoli

301. PC Campoli provided his length of service with the TPS and an overview of his assignments.

302. PC Campoli testified that on February the 14th, 2014 he was working in uniform and assigned to the Community Response Unit working a modified evening shift, from 2pm – midnight. PC Campoli added that on that particular day he was assigned to the Humber Valley Project and that his partners for the shift were PC Sarasua and PC Sirpal.
303. Mr. Butt then asked the witness, *“You heard Constable Sarasua testify yesterday... do you, in fact, adopt his testimony and his recitation of everything, uh, that he said as your own as well?”* To which PC Campoli responded, *“I do”*.
304. PC Campoli then testified that he never entered or searched Mr. John’s vehicle at the Shell Gas Station.
305. PC Campoli was then asked by Mr. Butt if he could identify from Exhibit 4, Tab 2, who said, *“what’s the plate because the plate doesn’t come back as anything. I don’t know what the fuck you’re talking about”*. PC Campoli responded, *“Yeah, I believe it’s my voice”*.
306. PC Campoli then described his information and thoughts prior to arriving at the Shell Gas Station and his first contact with Mr. John as, *“Mr. John called 911 stating that his vehicle in question was stolen, and as we were approaching the gas station, the CPIC message was read out and the vehicle in fact was not stolen and had not been reported stolen by Mr. John so obviously there was some confusion on top of, you know, there was a mention of guys with guns so we were pulling up with that in our heads”*. PC Campoli added, *“Well obviously there was some urgency in the call because he had mentioned there were guys that he had seen with firearms. Mr. John, as well, was acting very belligerent towards us and aggressively, and we were trying to gain control back in the situation. We didn’t want him to keep control, we wanted to gain it back, not to mention there was confusion so I really didn’t know what he was talking about because there was no car stolen and I was trying to get that information from him”*.

307. On his perspective as to why he deployed the above comment, as tactical communication, PC Campoli testified, *“well in that case, in that scenario I needed him to understand where we were coming from and I had to, I had to take control back because he was trying to, be the alpha dog in that conversation and trying to direct us and say no, like he kept telling us keep going to 32 Stoffel. He was trying to deflect questions and he wasn’t becoming forthright with answers so I needed him to understand that this was urgent”*.
308. PC Campoli then confirmed that he had used similar language before in the form of tactical communication. PC Campoli then provided an example of when he had previously used similar language stating that, *“there was an audio from my microphone that was keyed up and it was played in court of me arresting this individual. It was a gunpoint arrest and he wasn’t listening and - excuse my language, but I was yelling at him to get down on the effin’ ground, get down on the effin’ ground, and you could hear it keyed up and it did work in that case”*.
309. PC Campoli testified that when asked by the OIPRD regarding the language deployed, he had replied, that he didn’t know why he had used it, at the time. He further added, *“that was the first and first time and only time at that point where I heard the audio”*.
310. PC Campoli when asked who has authorized the level 3 search of Mr. John at No. 23 Station, PC Campoli indicated that Staff Sergeant Schneider had done so and when asked by Mr. Butt, *“Okay and do those notes say anything about who authorized the level three search?”* PC Campoli replied, *“yes, it was Staff Sergeant Schneider... I have it noted down that it was, it was because of a Show Cause”*.

311. Regarding the rationale for the level 3 search of Mr. John, PC Campoli testified that, *“well in this scenario he would’ve been kept overnight and gone to, uh, bail court in the morning. He would’ve been in general prisoner population and, as well as with other officers and court officers... the grounds for the search were, you know, the male had a violent past, he was anti-police, his story was inconsistent and he lied to police several times, um, and like I mentioned, the Show Cause”*.

Cross Examination – PC Campoli by the prosecutor

312. The Prosecutor began by asking PC Campoli if he had an independent recollection of Mr. John of Mr. John stating, *“stop searching my car (paraphrased by the prosecutor”*. Mr. John replied that he did not, but now having now heard the audio played back, that it refreshed his memory.

313. PC Campoli was then asked, *“now you acknowledged that you used, the f word when - on at least one occasion”*. To which PC Campoli replied, *“yes”*.

314. The Prosecutor then asked PC Campoli if he understood that he was before the Tribunal on a Notice of Hearing that alleges, *“you (he) used profane, abusive or insulting language, is that correct?”* PC Campoli responded, *“yes”*.

315. *The witness was then asked by the Prosecutor, “would you classify, in your opinion, the f word as prof – in this context, as profane, abusive or insulting?” PC Campoli replied, “no... because first of all it wasn’t directed at Mr. John. It wasn’t intended to insult or degrade him. It was in the context of this, urgency of this call and we needed information from him. The information he provided to us was false and I was trying to get an answer from him... when we were approaching the gas station, I remember dispatch mentioning that the vehicle in question was not on file as stolen”*.

316. The Prosecutor then in cross examination suggested to the witness, *“so would you say that you approached Mr. John with a pre-conceived idea that he was not telling the truth?... from your prospective, when you did approach him, you were under the impression that he was not telling the truth based on the information you heard on the dispatch?”*. PC Campoli initially replied, *“no”*...but added, *“like the testimony we heard yesterday, in regards to sometimes there’s like, broken telephone with dispatchers and police. We were trying to get the right information at the time but he wasn’t providing us the information, he kept directing us to go to Stoffel and guys were gonna leave and we needed information before we went there”*.
317. PC Campoli then confirmed that he had used language such as this instance on more than one previous occasion, stating, *“that’s correct”* and in response to on more than one (previous occasion), *“most likely”*.
318. The witness was then asked if he had been taught to use profanity as part of his tactical communication training or from a manual, to which PC Campoli replied, *“It’s kind of difficult to train, tactical communication. Unfortunately it’s situational and in this situation, for example, it worked because he was brought down and he relayed the information to us afterwards”*.
319. The Prosecutor then asked the witness if from the recording, *“you heard on the recording, multiple other instances of the f word... are you able to indicate if you heard anyone else making those comments or are you able to remember who made those?”* PC Campoli replied, *“I think one instant it was, Officer Sirpal. I’m not sure but - if there were any others but I believe one instant was Officer Sirpal”*.

320. PC Campoli then confirmed that it was him and PC Sarasua who had conducted the level search on Mr. John and that he had in his notes, that Staff Sergeant Schneider had authorized it. On the issue of if he had personally obtained the authorization from Staff Sergeant Schneider, PC Campoli stated, "somebody in the CIB, uh, would've asked him. I believe it was one of the detectives at the time".
321. PC Campoli acknowledged that he should have put in his notes, at the time that he obtained Staff Sergeant Schneider's authorization from by stating, "*You know what? It was an oversight at the time. Looking back I probably should have but I did not*".
322. Under cross examination, why his notes didn't contain more information or ground beyond "*show cause*", in relation to the level 3 search, PC Campoli acknowledged the oversight and stated, "*you know what? Going back to that date and prior to, I never really did write grounds in my book for many other arrests as well. It was almost an oversight. It was just, you know, Show Cause level three approved and that's it. Since then, I, you know, I've learned to make better notes and I have been*".
323. The prosecutor then asked the witness about this statement provided to the OIPRD, found in Exhibit 4, Tab 6, regarding the ground for a level 3 search, of Mr. John. The witness confirmed that in the statement provided he had indicated that the search risk assessment reasons included, "*for any weapons for any safety of other prisoners as well as officers in the cells*". PC Campoli also said that he believed Mr. John had been subjected to a level 2 search, prior to the level 3 search conducted, but did not know the results of that level 2 search.

324. PC Campoli then acknowledged that Mr. John had driven his own vehicle from the Shell Gas Station to Collison World. PC Campoli was then asked by the Prosecutor, *“at that point, was there no concern for weapons, um, but at this stage there was a concern and you’re indicating to investigators that you’re concerned about weapons and the safety other prisoners?”* To which the witness replied, *“well at the time at the station we’ve realized his whole story was a hoax so we’re obviously - there were some concerns to be raised”*.

Closing Submissions

Defense Submissions:

325. Mr. Butt in first addressing the level 3 search submitted, that the Officers testified that the search was authorized. He added, PC Sarasua and Campoli have contemporaneous notes of the authorization. And further that there is a freestanding admissible business record by way of a search template Exhibit 20, with evidence of the authorization indicated on the form.

326. Mr. Butt then acknowledged that the badge number on the search template – Exhibit 20, was different from that of Staff Sergeant Schneider, whom both Officers testified had authorized the level 3 search.

327. Mr. Butt submitted that the above discrepancy is explained by the fact that the arrest carried over into another shift and as such the relieving Staff Sergeant signed off the paperwork associated with Mr. John’s arrest. Mr. Butt added, *“when you’re processing arrest that it would carry over the shift change and that we heard evidence there is, in the normal course, the handover briefing so it’s not at all unusual or problematic that ultimately when the paperwork is done, the template is signed off by a different OIC”*.

328. Mr. Butt then submitted on the issue of the level 3 search that in Mr. John's own evidence as witnessed by Exhibit 4, Tab 13 and 14 – in his interview with the SIU, *“that he told them twice in that interview that indeed it was authorized so it appears to his knowledge it was authorized”*.
329. Mr. Butt then acknowledged that, *“the sensitivity to the issue of level three searches has heightened, policies have changed and it may well be the case in light of all that, that what was acceptable in 2014 is no longer acceptable today”*. Mr. Butt added that employing the concept of *presentism* – judging the past by the standards of the present and the reason that it's a mistake in a judicial setting or quasi-judicial setting would be fundamentally unfair to his clients (PC Sarasua and PC Campoli).
330. Mr. Butt further submitted on the issue of the level 3 search that, *“it is impossible for us to govern ourselves today by future standards we cannot know. That was how – that was the position the officers found themselves in in 2014. They were obliged to govern themselves by 2014 standards”* which he argued they did. Mr. Butt went on to acknowledge that, *“back then it was a bit more informal. You did a telephone call, you could have a conversation...that is now seen as unacceptable and the policy very shortly after this in fact changed to you have to do it on camera with the grounds”*.
331. Mr. Butt then addressed the interview of (ret) Staff Sergeant Schneider – Exhibit 4, Tab 11 and 12. Mr. Butt submitted that, *“at one point he says he doesn't know if he authorized it or not and another point he suggests maybe he did not”*.
332. Mr. Butt added that the Tribunal in examining Staff Sergeant Schneider's statement, *“it's inconsistent with the evidence you have heard, it should be disregarded in fairness, both because of its internal inconsistency and because of the absence of an opportunity to have a live body”* to cross examine.

333. On the legality of the search, Mr. Butt submitted that PC Sarasua and PC Campoli acted, *“in good faith with reasonable grounds they were following an authorization... the search was not illegal and there is certainly not clear and convincing evidence of illegality”*. Mr. Butt added, that even if the Tribunal finds, *“the sloppiness of the procedure and the omissions in the notes”* that this does not translate into clear and convincing evidence of an illegal or unauthorized search.
334. Mr. Butt then turned to the allegations of searching the vehicle, at the Shell Gas Station. He submitted that this issue revolves around, *“at its core, on the credibility of Mr. John... I say he is not credible”*.
335. Mr. Butt on the issue of Mr. John’s lack of credibility submitted that he has, *“an extensive documented history of misleading Tribunals. The second point is that he has an extensive documented history of embarking on a course of action that has no merit and borders on the fraudulent and I’m thinking of all the frivolous and vexatious lawsuits and human rights applications. So this is somebody who is willing to concoct a course of proceedings that has no connection to reality. The third point is that, um, his manner in the witness box, his demeanour and presentation...next...he has, in my submission, a demonstrated animus to police and that’s based on, his videos...the next point around credibility is that in the witness box he demonstrably lied repeatedly, aggressively and flagrantly. Again, just to use one example, is he really saying pimp instead of pig in the video? Again, I think it was clear to everybody in the room that he was making it up as he went along”*.
336. Mr. Butt further submitted that, *“I say when we factor in the insurance documents was an attempt to fraudulently co-op the police into getting his vehicle back so - without paying the storage fees...he was engaged in a calculated pattern of deceit... he knew where his car was...with a recorder and then called 911. That is a deliberate hatching of a plan so I, you know, that plan is irrelevant to the Notice of Hearing but it is relevant to the state of mind of the individual at the time”*.

337. Mr. Butt added, that when Mr. John is heard on Exhibit 4, Tab1, the recording he made of the incident saying, *“why are you searching my car, why are you searching my car,”* that he is not to be believed that there was a search being conducted, or he may have mistaken Officers looking in his vehicle without entering it as a *“search of his vehicle”*. Thus Mr. Butt submitted that there is not clear and convincing evidence of an unlawful search of Mr. John’s vehicle at the Shell Gas Station.
338. With regards to the audio recording made by Mr. John, Mr. Butt argued it poses a continuity problem, stating, *“Mr. John produced what he said – he has no credibility in my submission, but what he said was the recording device he used on the night in question - and it is profoundly unfair to officers who expect their counsel to do the due diligence - to receive disclosure so they can do their due diligence to be faced with the device only in the middle of the Hearing”*. Mr. Butt went on to add, *“I’m not asking you to disregard the-, the audio because we’ve asked lots of questions about it and certainly it is plausible to suggest that it does accurately capture the events”*.
339. On the issue that the Notice of Hearing for the vehicle search is framed as an allegation of discreditable conduct, Mr. Butt argued that, *“even if somebody may have gone into the car, when you’re responding to a gun call and the information doesn’t add up and you have somebody there, you may well want to take a look in the – in a vehicle in those circumstances for officers’ safety. So even if that occurred, in these circumstances that is not discreditable conduct. That is sound practice in pursuit of officer and public safety.* Mr. Butt argued, there is no credible evidence of an illegal vehicle search.
340. Mr. Butt then turned to the allegation of use profane, abusive or insulting language or is otherwise uncivil to a member of the public. Mr. Butt submitted that, *“I say on the evidence, is one acknowledged instance of using the “f” word once”*.

341. Mr. Butt submitted his thoughts on the directed hearing involving this allegation by stating, *“I direct this entirely at the OIPRD and I say it comes down to one use of the “f” word and my basic position directed straight at the OIPRD is really?... I say that is a shamefully inappropriate discharge of the OIPRD mandate... that submission is directed straight at the OIPRD...shame on the OIPRD for forcing us all to be here”*.
342. Mr. Butt then submitted that profane, abusive, insulting should be read together. He argued that the three words taken together define the misconduct and that context matters.
343. Mr. Butt argued that this was a gun call and as such, *“everyone’s elevated in that situation, in that context. Everyone’s heightened and frankly, to be fair to the officers, everyone’s nervous too... and when you’re going to a call where people have guns possibly, as Officer Sarasua said, you have to assume there’s more than one. It’s the plus one rule”*.
344. On the need for Officer to establish control at a gun call, Mr. Butt submitted, *“making inappropriate assumptions can have lethal consequences. So the officers have an imperative to establish control quickly to figure out what’s going on quickly because the quicker they do that the safer everyone will be”*.
345. In describing the officer conduct upon arrival at the Shell Gas Station, Mr. Butt submitted, *“it’s fair to say yes, they were aggressive from the outset, understandably, but in response to that, Mr. John escalated. They need to establish their authority. They need to indicate the seriousness of the situation. And one of the ways to do that, to get attention as a m- method of tactical communication, is to use language that will get attention; and linguistically profanity is an attention getter”*.

346. Mr. Butt argued that, *“profanity is also a way of expressing emotions on the strong end or feelings or ideas on the strong end of the spectrum. So if we think in terms of the principals of linguistics and the principals of tactical communication, they come together... So you have a hum – harmonious melding of linguistics and the principals of tactical communication in this context...the strong language - the one instance we’re talking about, was deployed in the very context of trying to get to the bottom of the call so it wasn’t a throwaway. It was part of the tactical communication aimed at achieving a crucial result which was control and knowledge...two crucial results, control and knowledge”*.
347. Mr. Butt then added one further point regarding the context, suggesting that the recipient must be considered. He argued that, *“can we really say honestly that this individual is somebody who you would say it was – it would be perceived as insulting, abusive, and demeaning? I say no. Why? Look at the language he has employed in the Human Rights Tribunal. That is abusive, insulting and demeaning. So the target audience matters”*.
348. Mr. Butt concluded by summarizing his position on this allegation by stating, *“what we have is one isolated use of the “f” word once in a very urgent gun call situation where it’s being used for legitimate tactical communications purposes which is to establish dominance and to get information. In - and it’s used to a person for whom it could not be said would receive it as out of the ordinary for him. There is no hint, in my submission, in the recording of malice. There is no hint of insult intended. All there is in the delivery of that line is I really need to assert control and get information... that is not in context profane, insulting, demeaning. It’s not contrary to the Police Services Act and it’s not – and we’ve heard uncommon...Would it have been better to use fewer “f” bombs rather than more? Fair point”*. Mr. Butt suggested that this does not constitute clear and convincing evidence of serious misconduct.

349. Mr. Butt added, *“does the imperfection in the response to that call that resulted in the single deployment of the “f” word once constitute serious misconduct, and that’s where I come back to what I said about the OIPRD. Really?”*

350. Mr. Butt then asked to submit one addition piece regarding, how the level 3 search was carried out. On this point, Mr. Butt pointed out to the Tribunal that the SIU investigation into Mr. John’s allegations that during the search he was sexually assaulted was dismissed as unfounded. Mr. Butt argued that this also should be considered as an aspect of credibility of Mr. John.

351. Mr. Butt also submitted with regards to the level 3 search that, *“outright false statements about who was present in the search room. He that was one place where his story was dramatically internally inconsistent”*.

Prosecution Submissions:

352. The Prosecutor began by submitting a Book of Authorities – Exhibit 21.

353. The Prosecutor then referred the Exhibit 21 – Tab A, Jacobs’s v Ottawa Police Service, Court of Appeal for Ontario, 2016, for the standard of proof required in PSA Hearings is clear and convincing. Specifically, she submitted that, *“the standard is more than the civil standard of a balance of probabilities but not as high as the threshold as the criminal standard of beyond a reasonable doubt and that standard in this Tribunal is clear and convincing”*.

354. The Prosecutor then submitted that 3 of the 4 allegations before the Tribunal *“turn on credibility”*. On the issue of credibility the Prosecutor submitted that paragraph 11, in Exhibit 21, Tab C, Faryna v. Chorny, British Columbia Court of Appeal, 1951 provides guidance. She quoted the decision in stating that, *“the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions”*.

355. The Prosecutor in addressing the evidence presented to the Tribunal next turned to Exhibit 21, Tab D, F.H and McDougall, British Columbia Court of Appeal 2008. Here she quoted from paragraph 58, of the decision wherein it was stated, *“The trial judge should not consider the plaintiff's evidence in isolation , but must look at the totality of the evidence to assess the impact of the inconsistencies in that evidence on questions of credibility and reliability pertaining to the core issue in the case”*. The Prosecutor added that the Tribunal should make an assessment on the totality of evidence submitted.
356. On the allegation of the use of profane, abusive or insulting language or otherwise uncivil to a member of the public, the Prosecutor submitted, that the best evidence is what is heard on the recording made by Mr. John and entered as Exhibit 4, Tab 1 and 2.
357. The Prosecutor submitted that, *“this Notice of Hearing discusses an officer committing misconduct in using profane, abusive or insulting language but this Notice of Hearing does not contain the words without provocation or justification and so you’ve heard evidence that these words are sometimes used in tactical communications or in order to de-escalate a situation from the officers. My submission is that this language was used without justification and it’s irrelevant whether or not there was provocation by the complainant...de-escalation and tactical communication can be accomplished without the use of profanity. Raising one’s voice, stern commands as PC Sarasua stated, yelling the word hey over and over on numerous occasions can be just as effective”*.
358. The Prosecutor acknowledged the defense suggestion that context is an important consideration, but submitted, *“name calling and insulting towards somebody would absolutely be aggravating but that should not be the threshold for police officers”*. She submitted that there is clear and convincing evidence before this Tribunal with regards to this allegation against PC Campoli.

359. On the defense submission that the audience or target be considered, and that Mr. John would not have found the language used insulting, the Prosecutor submitted that, *"its not for my friend to make those assessments"* and reminded the Tribunal that Mr. John did submit a complaint to the Office of the Independent Police Review Director (OIPRD) and that it is very clear that Mr. John found the language to be abusive, profane and insulting.
360. The Prosecutor further submitted that, *"it's not fair and quite frankly, the target of that language is irrelevant. It's not acceptable and the prosecution's position is that based on the audio, that charge has been proven on a clear and convincing standard"*.
361. Next on the allegation involving the search of Mr. John's vehicle at the Shell Gas Station, the Prosecution submitted that, *"the only evidence of this search is the testimony of those who took the stand. That would be Mr. John, the officers, PC Campoli and Sarasua, and that recording"*. She added, that at the heart of this allegation, is credibility.
362. Further on the issue of search of the vehicle, the Prosecutor briefly reviewed the conflicting evidence provided by Mr. John and the two Officers who testified and stated, *"the prosecution can't take a position on whether or not that evidence is clear and convincing"*.
363. In turning to the final allegation against both Officers – the unauthorized level 3 search of Mr. John, post arrest, the Prosecutor first turned to the Officers notes. Here she submitted that absent in PC Sarasua's notes is the name of who authorized the search and the grounds for conducting the search. But added that these missing elements in PC Sarasua's notes are contained in PC Campoli's notes.

364. The Prosecutor then submitted that, *“Mr. John would not be able to comment on whether or not that was authorized, although the prosecution acknowledges he did state that it was authorized in his statement to the SIU”*. She added, *“it would’ve been preferable the prosecution submits that these officers articulated their grounds in their notes”*.
365. The Prosecutor then submitted that, *“I would suggest that there’s ample evidence from Mr. John on the level three search for the Hearing Officer to consider and the key factors that I would point the Hearing Officer to are evidence about how many people were in the room, evidence about how the search was conducted, evidence about whether there was any physical contact with Mr. John, and my submission is that if the Hearing Officer looks at these points, uh, he will be able to make an appropriate assessment of this level three search, how it was conducted and the credibility of these witnesses”*.
366. The Prosecutor then directed the Tribunal to Exhibit 21, Tab B, Precious and Hamilton Police Service, OCPC, 2002, paragraph 59 with regards to weighing evidence. Here she quote from the decision, *“In disciplinary proceedings the standard of proof is clear and convincing evidence. In Allan v. Munro (Ont. Bd. Inq., 27 July, 1994) at page 11 clear and convincing was defined to mean weighty, cogent and reliable evidence upon which a trier of fact acting with care and caution can come to the fair and reasonable conclusion that the officer is guilty of misconduct”*. The Prosecutor concluded by stating on this allegation, she took no position as to whether or not there was clear and convincing evidence before the Tribunal.

Defense in Reply

367. Mr. Butt pointed out to the Tribunal that the Prosecution had taken no position on two of the charges before the Tribunal and hence suggested that, *“the prosecution sees dismissal of these charges as a viable option on the - on this evidence... that is extremely weighty in my submission”*.

368. With regards to the Prosecutions submission that, *“without provocation or justification”* were not included in the Notice of Hearing for the allegation of use of profane, abusive or insulting language or otherwise uncivil to a member of the public, Defense submitted, *“one cannot draft a Notice of Hearing in a way that eliminates considerations of common sense and the totality of the evidence”*, that the totality of evidence must be examined.

Public Complainant Submissions:

369. The Public complainant elected not to make any submissions.

Analysis and Decision:

370. Three witnesses testified in this matter. I have reviewed all of the evidence presented including the testimony of the witnesses, and the exhibits.

371. There are three issues to be considered, covered in the Notices of Hearing, before this Tribunal:

- a. Is there clear and convincing evidence that PC Campoli unlawfully search the Public Complainant’s vehicle at the Shell Gas Station, at 627 Dixon Road, Etobicoke and thus commit discreditable conduct (Charge 1)
- b. Is there clear and convincing evidence that PC Campoli use profane, abusive or insulting language in his interaction with the Public Complainant, at the Shell Gas Station, at 627 Dixon Road, Etobicoke (Charge 2)
- c. Is there clear and convincing evidence that PC Campoli and PC Sarasua unlawfully conduct a level 3 (strip search) of the Public Complainant, post arrest and during processing at No. 23 Division (Charge 3 – Campoli and Sarasua jointly charged)

372. Central to decision making and analysis in this matter are the concepts of standard of proof required to find guilt and credibility of witness testimony.
373. As mentioned in paragraph 120 above, the threshold for a finding of guilt in this Tribunal is *clear and convincing* evidence for each of the allegations, contained in the four corners of the Notices of Hearing, before this Tribunal.
374. This standard of proof is outlined in Jacobs v Ottawa Police Service, Court of Appeal for Ontario, 2016, found in Exhibit 21, Tab A, in where the court stated, “*we are bound by the Supreme Court's statement in Penner that the standard of proof in PSA hearings is a higher standard of clear and convincing evidence and not a balance of probabilities.*”
375. Clear and convincing is further addressed, in Precious and Hamilton Police Service, OCPC, 2002, found in Exhibit 21, at Tab B, where it was described as, “*weighty, cogent and reliable evidence upon which a trier of fact acting with care and caution can come to a reasonable conclusion that the officer is guilty of misconduct.*”
376. The case of Faryna vs Chorny, British Columbia Court of Appeal, 1951 found in Exhibit 21, at Tab C, discussed the test that should be used to determine the credibility of a witness. In that case the court noted: “*In short the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*”
377. Credibility of witnesses’ testimony is also discussed in F.H. and McDougall, British Columbia Court of Appeal 2008, found in Exhibit 21, at Tab D. Here the Supreme Court stated, “*The trial judge must not consider the plaintiff’s evidence in isolation, but should consider the totality of the evidence in the case, and assess the impact of any inconsistencies on questions of credibility and reliability pertaining to the core issue in the case.*”

378. I will address this analysis by way of Charge number. Specifically I will speak to Charge 1, then 3 and finally Charge 2.
379. In respect of charge 1 - that PC Campoli unlawfully search the Public Complainant's vehicle at the Shell Gas Station, at 627 Dixon Road, in Etobicoke and thus commit discreditable conduct.
380. I found PC Sarasua's testimony to be reliable and credible. He had made contemporaneous notes on the date of the occurrence and used those to assist with his testimony. He did not provide contradictory answers and those that he provided were fair answers to the questions posed of him. I found that he did not embellish or exaggerate and he made concessions when appropriate.
381. Constable Campoli also testified consistently regarding the search of the vehicle and provided straightforward and clear testimony. It corroborated PC Sarasua's evidence and contradicted Mr. John's allegation.
382. Mr. John had testified that Constable Campoli had searched his vehicle without consent at the Shell Gas Station, at 627 Dixon Road. It should be noted that there is no video of the events at the Shell Gas Station. This does not have a specific bearing on Mr. John's credibility, only his reliability.
383. On the issue of Mr. John's credibility, the Tribunal accepts that his music video constitute freedom of expression and are produced as entertainment for his audience and as such cannot provide direct evidence of animus towards the Police, nor are an influencing factor for this Tribunal.
384. Further previous findings of vexatious litigation though informative cannot in themselves be an influencing factor in assessing the Public Complainant's credibility in these proceedings.

385. However of note and concerning to the Tribunal is the observed examples in this proceeding which demonstrated that portions of Mr. John's testimony were not credible. In detail, Mr. John initially testified that he had just located his stolen vehicle on the date of this incident and that he had witnessed an individual who appeared to be armed with a gun around his vehicle. He also advised the 911 call taker that he had seen people inside his vehicle and that snow was being removed to move his vehicle. All of which was inconsistent with the evidence tendered in this proceeding. Photos submitted as Exhibit – 4, Tab 8 directly contradict Mr. John's evidence in Chief. Mr. John's own testimony under cross examination where he acknowledged having knowledge of his vehicle's location since the summer of 2013, also contradicts his evidence in chief. Finally under cross examination, on the issue of reporting an individual with a gun, Mr. John appeared to be sometimes evasive in his testimony, and his allegations appeared at times to be self-serving.

386. An example of the concern raised for this Tribunal could be found in Mr. John's cross examination. Specifically, when being cross examined, Mr. John conceded that he had prior knowledge of his vehicle's whereabouts that he in fact had or was aware or involved in various correspondence between himself and TD Insurance and Collison World – Exhibits 6 through 14 pertaining to his vehicle which he had reported stolen and additionally, that only when his insurance refused to settle his insurance claim further, is it that Mr. John decided to attend Collison World to attempt to reclaim his vehicle. Further Mr. John under cross examination revealed that there were outstanding storage fees on his vehicle, beyond those already paid by his insurance company, which he did not want to pay. I support the Defense suggestion that Mr. John was engaged in, *“an attempt to fraudulently co-op the police into getting his vehicle back so - without paying the storage fees”*.

387. Another example which calls into question Mr. John's credibility and reliability with regards to his testimony, is his evidence around his observance on an individual inside his vehicle as captured in the 911 calls he placed – Exhibit 5. Under cross examination Mr. John admitted that he had *“misspoken”*, when he reported that he had observed someone in his vehicle.

388. During his In Chief testimony Mr. John testified, that he observed PC Campoli exit from a marked police vehicle, at the Shell Gas Station. Mr. John then under further cross examination, when asked if certain, that he had witnessed PC Campoli exit a marked police vehicle, he replied, *“I can’t remember one hundred percent, I’m pretty sure, but from as you’re putting it now and you’re stuff and I think back, I never really sat down focused who came out of which vehicle”*. Clear evidence was submitted by both Officers orally and by way of their notes – Exhibit 4, Tab 10 that on the day of this event, they were assigned to and operating an unmarked black coloured Dodge Caravan. This again call into question the reliability of Mr. John’s testimony, for this Tribunal.

389. An additional example which calls into question Mr. John’s credibility and reliability with regards to his testimony, is his evidence around his observance of an individual with possibly a firearm at Collision World. Under cross examination, the witness appeared to be somewhat evasive in his responses, argumentative and appeared to retract his suggestion that he had actually reported seeing a firearm.

390. I support the Defense suggestion that, *“you sir, you wanted the police to come quickly, so you led them to believe that there was a person there with a gun... you used words that were meant to lead them to believe that there was someone with a gun. And then you backed off when they did arrive”*.

391. The Complainant did produce audio which he recorded, Exhibit 4, Tab 1 in which Mr. John can be overheard saying, *“And why’s this guy going through my car without... You need a Warrant to go through my car, buddy... Get out of my car. You don’t have my permission to be in there”*.

392. Both Officer Sarasua and Campoli testified that at no time did PC Campoli enter Mr. John's vehicle. PC Sarasua testified in a forthright and direct manner stating, *"He (PC Campoli) did not enter the vehicle at all, he was to my right the entire time"*. PC Sarasua added, *"very often what – what it is, is if I'm speaking with the driver for example, my partner will be on the other side, will be on the passenger's side with his flashlight or her flashlight, looking inside the car. And we - I always get that don't – don't search my car, well we're not searching your car, they're looking into the car, there's a big difference... members of the public don't make that distinction. They always say search my car, but it – the fact is we're looking inside the car from the outside, but not actually inside the car"*.
393. PC Sarasua candidly admitted, that the other Officer on scene may have looked into Mr. John's vehicle and stated, *"absolutely and – and I would actually expect the o – the other officers while I'm dealing with uh – the complainant – I would expect the other officers to be looking inside that car"*.
394. I accept PC Sarasua's evidence in relation to Charge 1 as truthful, credible and plausible. Conversely, for the reasons stated above the Tribunal has concerns regarding portions of Mr. John's testimony and its credibility.
395. In the absence of additional tangible independent corroborating evidence it is reasonable to believe that the visual external search of Mr. John's vehicle may have taken place by one or more Officers on scene, but falls short of establishing clear and convincing evidence for the Tribunal to find that PC Campoli entered Mr. John's vehicle, without consent at the Shell gas Station, located at 627 Dixon Road.
396. For the reason stated above, The Tribunal does not find that the standard of proof – clear and convincing evidence has been met for Charge 1 - that PC Campoli unlawfully search the Public Complainant's vehicle at the Shell Gas Station, at 627 Dixon Road, in Etobicoke and thus commit Discreditable Conduct.
397. In next turning to Charge 3 - that PC Campoli and PC Sarasua unlawfully searched the Public Complainant post arrest and during processing at No. 23 Division.

398. Both Officers testified that the search was authorized. As well both PC Sarasua and Campoli have contemporaneous notes of the authorization. And further a freestanding admissible business record by way of a search template, Exhibit 20, with evidence of the authorization indicated on the form was submitted to the Tribunal.
399. It was acknowledged by the prosecution and Defense that, absent in PC Sarasua's notes is the name of who authorized the search and the grounds for conducting the search. But the Prosecutor added that these missing elements in PC Sarasua's notes are contained in PC Campoli's notes.
400. Both the Defense and Prosecutor further submitted that Mr. John in his previous statement to the SIU during their investigation, that Staff Sergeant Schneider authorized the Level 3 search. Mr. John also acknowledged that in his interview with the SIU, contained in Exhibit 4, Tab 13 & 14, that was aware that the Level 3 search was authorized by Staff Sergeant Schneider.
401. It is acknowledged by the Tribunal that the Officers notes pertaining to the grounds of the level 3 search and additionally how in particular authorization was obtained is less than ideal. Further it is also recognized by the Tribunal that the specific Policy surrounding the manner in which authorization is to be obtained, for a level 3 search has changed a considerably more formal process, and one which requires articulation on recorded video versus the process which was in place in 2014, when the events before this Tribunal transpired.
402. The discrepancy in the badge number on the Search Template – Exhibit 20, is explained by the Change in shift, as it occurred during the course of Mr. John's arrest and subsequent processing.

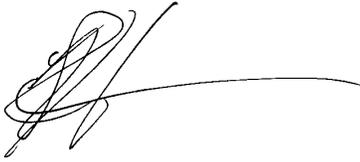
403. At issue for my consideration is if in fact the level 3 search was authorized. Issues surrounding who was present during the search, a suggestion on the manner in which the search were conducted and other elements have previously been addressed by independent investigation conducted by the SIU and are not central to my consideration.
404. The legality of the search emanates out of establishing the appropriate grounds for search and the process is steered by obtaining the appropriate supervisory approval, as the policy dictated in 2014.
405. Based on the totality of the evidence before the Tribunal I find that, though the note keeping was less than ideal, that the Officers testified credibly as to the ground which gave rise to a level 3 search. Further that the supervisory authorization, which would serve as a check and balance for the grounds was obtained – and further acknowledged by even Mr. John as having come from Staff Sergeant Schneider.
406. The Tribunal has no jurisdiction to rule upon the quality or absence of content in the Officers notes, and takes some solace in the revision and formality of the current governing policy.
407. For the reason stated above, The Tribunal does not find that the standard of proof – clear and convincing evidence has been met for Charge 3 - that PC Campoli and PC Sarasua unlawfully searched the Public Complainant post arrest and during processing at No. 23 Division.
408. I will now turn to the final charge before this Tribunal – charge 2 - in that PC Campoli used profane language in speaking to the Public Complainant.
409. On the evidence of all 3 witnesses – Mr. John, PC Sarasua and PC Campoli there is no doubt left in the Tribunal's analysis that profanity was used in 3 separate comments, while the Officer interacted with the Public Complainant at the Shell Gas Station, at 627 Dixon Road, on the date of incident.

410. Two specific sub-issues with regards to this allegation are, who made each of the profane comments and the context in which they are to be interpreted.
411. PC Campoli's own testimony coupled with PC Sarasua's provides the best direct evidence regarding the first sub-issue. PC Campoli admitted in his evidence in chief that he was responsible for the comment, *"I don't know what the fuck you're talking about"* while communicating with Mr. John. The other two comments involving profanity, were attributed collectively by the two testifying Officers as potentially having been made by an Officer not presently before this Tribunal.
412. Regarding the context of the comment made, PC Campoli testified, that the he did not find the use of the above comment offensive or demeaning. He added that he has used similar language in the past when dealing with the Public and that is was a legitimate use of tactical communication. Counsel on behalf of PC Campoli added that the context and target for such language should be factored in any deliberation regarding misconduct.
413. I disagree with the suggestion that the profanity used constitutes legitimate tactical communication. I agree with the Prosecution that, *"this language was used without justification and it's irrelevant whether or not there was provocation by the complainant...de-escalation and tactical communication can be accomplished without the use of profanity"*.
414. I further agree with the Prosecution's submission that, *"the target of that language is irrelevant. It's not acceptable and the prosecution's position is that based on the audio, that charge has been proven on a clear and convincing standard"*.
415. The Police must be held to a higher standard in order to maintain Public trust and legitimacy. Professionalism at all times, and refraining from using profanity is a corner stone of positive efficient and legitimate communication with the Public. The public must be confident that the Police are under control at all times and are properly trained to address even the most frustrating of circumstances.

416. The Tribunal cannot condone the use of profanity nor can it sanction it as training provided by the Toronto Police Service, as acceptable tactical communication.

417. For reasons stated above, the Tribunal does find that the standard of proof – clear and convincing evidence has been met for Charge 2 – use profane, abusive or insulting language or is otherwise uncivil to a member of the public in that PC Campoli used profane language in speaking to the Public Complainant, in his interaction at the Shell Gas Station, located at 627 Dixon Road, in Etobicoke.

418. The Tribunal will now consider submissions for penalty, for Charge 2 (PC Campoli).

A handwritten signature in black ink, consisting of a stylized 'R' followed by a long horizontal line extending to the right.

Riyaz J. Hussein
Superintendent
Hearing Officer

December 6, 2019

Appendix 'A' - List of Exhibits

2/2019 - PC Adam Campoli (10129) & 3/2019 - PC Joshua Sarasua (9439)

Hearing Officer R. Hussein Letter of Delegation (**Exhibit 1**)

Materials pertaining to Defense – Pre-Hearing Motions (**Exhibit 2**)

1. Statement of Claim between John, Campoli, Sarasua and the Toronto Police Services Board; Ontario Superior Court of Justice 2018
2. Interview Summary
3. Special Investigation Unit – Status Search
4. CBC News release – Darren John has music promoter “always looking over my shoulder”
5. Spreadsheet – Date, Action and Notebook page number
6. Her Majesty the Queen and Darren Philip John, Ontario Court of Justice 2013
7. John v Nickels; Radjunovic; Collison World, Daaliwal; Peel Regional Police Services Board, Detective Dabge; OIPRD, McNeilly and Toronto Police Services Board, Detective Meirik, Sergeant Grover, Detective Elliot, Chief Blair and 4 Unknown officers; Ontario Superior Court of Justice, 2016
8. John and Richards; Bell Media Inc., Bell Media, Newstalk 1010; the Showgram and CFRB; Superior Court of Justice, Ontario, 2017
9. John and the Regional Municipality of Peel Police Services Board; Human Rights Tribunal of Ontario, 2019
10. Carbonneau and John, Ontario Superior Court of Justice, 2018
11. Article from the Washington Post

Prosecutor Ms. Alexandra Ciobotaru Letter of Designation (**Exhibit 3**)

Prosecution Materials Disc (**Exhibit 4**)

1. Recording made by the complainant 2014.02.04
2. Transcript complainant’s recording 2014.02.04
3. Recording of PC Sarasua - OIPRD
4. Statement of PC Sarasua – OIPRD
5. Recording of PC Campoli - OIPRD
6. Statement of PC Campoli – OIPRD
7. Statement – Voicemail & Transcript of Mr. D. John – OIPRD
8. FIS Photographs x30
9. Complaint Form From OIPRD
10. Notes of Officer PC Campoli and Sarasua 2014.02.04
11. Statement of S/Sgt Schneider – Supervisor night 2014.02.04 - Transcript
12. Statement of S/Sgt Schneider – Supervisor night of 2014.02.04 – Recording
13. Statement of Mr. D. John – SIU – Transcript
14. Statement of Mr. D. John – SIU - Recording
15. TPS Policies and Procedures 01-02 Search of Persons
16. Criminal Record – Darren John

Prosecution Materials Disc **(Exhibit 5)**

1. 911 Call #1 - made by Mr. D. John
2. 911 Call #2- made by Mr. D. John

TD Insurance Letter 2013.06.19 **(Exhibit 6)**

TD Insurance Letter 2013.06.25 **(Exhibit 7)**

TD Insurance Letter 2013.09.05 **(Exhibit 8)**

Collision World Invoice 1334 **(Exhibit 9)**

Notice of Intention to Sell Articles –Collision World dated 2013.09.18 **(Exhibit 10)**

Email-Collision World to Juliet Bloom, TD Insurance Claim #014346471 – dated 2013.10.01. **(Exhibit 11)**

Collision World Letter dated 2013.11.14 **(Exhibit 12)**

Email Juliet Bloom TD Insurance to Collision World - Claim #014346471 – dated 2013.10.23 and 2013.11.13 **(Exhibit 13)**

Emails between Juliet Bloom TD Insurance and Collision World – Claim #014346471 – dated 2013.11.28, 2013.11.29, 2013.12.09 **(Exhibit 14)**

Transcript of 911 Calls made on 2014.02.04 by Mr. D. John–Call #1 and #2 **(Exhibit 15)**

Print out of links and screen shots of music videos **(Exhibit 16)**

Booking video with audio **(Exhibit 17)**

CPIC return on Public Complainant DJ **(Exhibit 18)**

Toronto Police Service - Property Items Report TP2014—1469409 **(exhibit 19)**

Toronto Police Service - Search of Person - Level 3 report **(exhibit 20)**

Prosecution of Authorities **(Exhibit 21)**

Jacobs v Ottawa Police Service, Court of Appeal for Ontario, 2016 (Tab A)

Precious and Hamilton Police Service, OCPD, 2002 (Tab B)

Faryna v. Chorny, British Columbia Court of Appeal, 1951 (Tab C)

F.H and McDougall, British Columbia Court of Appeal 2008 (Tab D)