

**IN THE MATTER OF:** The Nova Scotia *Human Rights Act*, R.S.N.S.1989, c.214, as amended

-and-

**IN THE MATTER OF:** Board File No.42000-30-H22-0038

**BETWEEN:**

**Carmel Mitchell**

(Complainant)

-and-

**A.J. Acheson Sales Ltd. (o/a Canadian Tire – Dartmouth Crossing)**

(Respondent)

-and-

**Independent Security Services Atlantic (ISS) Inc.**

-and-

**The Nova Scotia Human Rights Commission**

### **Decision**

1. This Board of Inquiry was appointed by nomination of the Chief Judge of the Provincial Court on July 18, 2024. The complaint was filed with the Nova Scotia Human Rights Commission on June 10, 2021, alleging discrimination in relation to the provision of access to services or facilities based on race and colour, contrary to s.5(1)(a) and (i) and (j) of the *Human Rights Act*, R.S.N.S.1989, c.214, on June 22, 2020.

2. Independent Security Services Atlantic (ISS) Inc., hereafter referred to as ISS, was joined as a party to these proceedings after a hearing on June 24, 2025. Written reasons for that decision followed, including particularly how ISS had been served with notice of the joinder hearing, and was aware of the location and time of the joinder hearing, but chose not to participate.

*Recent Procedural History*

3. At the time of the joinder hearing, and decision, hearing dates had already been set for August 18 – 20, 2025. ISS was duly served with the decision in relation to its joinder, and that the hearing would commence on August 18, 2025. What happened on August 18, 2025, was recorded in my decision of November 6, 2025, from which I repeat paragraphs 8 and 9 for purposes of the chronology here:

8. In the absence of anyone from ISS Inc., the other parties engaged in a mediation process without this Chair's involvement. Midway through the day, I was advised that a representative of ISS Inc. had spoken by telephone with counsel for A.J. Acheson Sales Ltd., which confirmed ISS Inc.'s awareness of the proceedings. Explanations were apparently proposed by the caller for the absence of each of the persons who had been served, but those explanations were not offered to this Board of Inquiry by ISS Inc.

9. The August 18, 2025, hearing closed with my direction that ISS Inc. be served with advice about the continuation dates for the hearing, and that in the event of their non-appearance, an order could be made against ISS Inc., and to its detriment.

After discussion with the parties who were present on August 18, 2025, the proceedings were adjourned to November 13 and 14, 2025.

4. There was further contact from Shawn Drysdale on October 16 and 17, 2025, seeking an adjournment of these proceedings. That request was heard by Teams on November 4, 2025. Mr Drysdale was the only person associated with ISS who attended the meeting. I use the word "associated" because his status was unclear, and was not clarified by him. He first claimed that he was a "key witness" but that he was medically unable to participate in the hearing as a witness. He resisted provision of information as to this medical inability.

5. Counsel for Ms Mitchell opposed the adjournment request because no reason had been offered as to why ISS would be unable to participate in the

hearing scheduled to continue on November 13, 2025. I determined that the hearing would proceed as scheduled on November 13 and 14, 2025.

6. On November 6, 2025, counsel for the parties re-assembled by teleconference. ISS had retained counsel, Mr Kent Clarke. He and counsel for the other parties (Michael Murphy for Ms Mitchell, and Kymberly Franklin for the Nova Scotia Human Rights Commission) had agreed that the matter should be adjourned to allow Mr Clarke to become familiar with the disclosure, and for ISS to fully respond to a production request made by Mr Murphy. New hearing dates were also set for February 10 – 12, 2026.

7. I prepared a written decision in relation to my November 4 rejection of the November 4 adjournment request, and my subsequent acquiescence on November 6 with the agreement of all parties to adjourn the scheduled November hearing dates.

8. A further organizational pre-hearing teleconference was held on January 19, 2026. All parties were present by counsel. The consensus was that the potential witnesses were known, ISS was endeavouring to meet Mr Murphy's production request, and that the three days scheduled should be necessary but sufficient for all evidence to be heard, and final submissions made. The scheduled hearing dates remained as February 10 – 12, 2026, inclusive.

#### *The Hearing: The Limitation Issue*

9. Just past noon on February 9, 2026, counsel for ISS by motion requested a dismissal of the complaint against ISS on the basis that it had been joined as a party outside the limitation period in the *Human Rights Act*. Lawrence Conrad, President of ISS, offered an affidavit dated February 9, 2026, claiming that prejudice had resulted from ISS having been added as a party. He asserted, in part, that ISS was "never given an opportunity to file a Response or Rebuttal to the complaint," and that the ISS employee involved in the incident "can not be located." Counsel for ISS provided no legislative or case law authority for ISS's assertion that this Board of Inquiry lacked jurisdiction because of the alleged missed limitation period.

10. At the commencement of the hearing on February 10, 2026, I entertained the ISS motion. Counsel for ISS repeated the assertion that ISS had been “unable” to respond to its joinder. I rejected that position for the same reasons that I proceeded with the joinder application on June 24, 2024 in the absence of ISS (the company had been properly served but failed to respond or appear). It has been clear since the proceedings in June 2025 that ISS has always had notice of these proceedings, and has always had the ability to participate in the proceedings of this Inquiry, since service of the motion to add them as a party.

11. With respect to the assertion that ISS had been added as a party outside the limitation period in the Nova Scotia *Human Rights Act*, I brought the decision of *Finlayson v. City of Winnipeg*, 1981 CarswellMan 378, to the attention of the parties. The same argument made by ISS here had been made to a Manitoba Human Rights Adjudication Panel in that case. Although there are distinguishing factual features in *Finlayson* relating to the relationships among the parties, the applicable legal rule is the same.

12. The limitation period in the Nova Scotia *Human Rights Act* applies to the making of the original complaint under s.29(2) of the *Act*. The limitation period does not apply to the joinder of parties under s.33(c) of the *Act*. The statutory scheme under the Nova Scotia *Human Rights Act* is the same as was applicable in Manitoba at the time of the *Finlayson* case, where the same conclusion was reached. The idea that Ms Mitchell’s complaint, made on June 10, 2021, within one year of the allegedly discriminatory incident on June 22, 2020, is barred from being heard because ISS was added as a party on June 24, 2025, is a non-starter.

13. Had ISS chosen to appear to resist being added as a party to these proceedings in June 2025, it could have raised the issue of delay, and presented evidence of real or apprehended prejudice, as factors to consider in whether it would be just to add them as a party. This would have included all of the reasons raised in the February 9, 2026, affidavit of Lawrence Conrad. Instead, having been served with notice of the application to add them as a party in June 2025, ISS chose to sit out a hearing where they would have been entitled to be heard on those very issues.

14. It was unfortunate to receive such meagre notice of the asserted limitation issue, and a repetition of the “unable to participate” argument, less than 24 hours before the scheduled commencement of the hearing. This was particularly disturbing when no mention of the issue had been made during the January 19, 2026, pre-hearing conference when all parties were represented by counsel and present. Despite all of that, the argument that this hearing should not proceed because of a missed limitation is not legally correct. The motion by ISS to dismiss the claim against it as being out of time was dismissed summarily on February 10, 2026, with reasons to follow. I have now expressed those reasons in paragraphs 12 and 13.

15. I do wish to add that, to the knowledge of this Board of Inquiry, no evidence of prejudice to ISS in relation to its defence of this claim has emerged since I ordered that ISS be added as a party on June 24, 2025. Indeed, the *viva voce* evidence of both Mr Shawn Drysdale and Mr Aaron Wilson directly contradicted one of the key assertions of prejudice made by ISS President Lawrence Conrad in his February 9, 2026, affidavit. At paragraph 8(b) of the Affidavit Mr Conrad asserted an inability on the part of ISS to locate the former employee who had been involved in the event. Mr Drysdale, an ISS employee, testified under oath during the main hearing that he had personally spoken with the involved former employee some time after ISS had been added as a party to this proceeding in June 2025. Mr Wilson also testified during the main hearing that he was aware of the content of that contact with the involved former employee in relation to the merits of Ms Mitchell’s complaint.

*The Hearing: The Event of Complaint*

16. As stated earlier, Carmel Mitchell complained to the Nova Scotia Human Rights Commission on June 10, 2021, that she had been discriminated against in relation to the provision of access to services or facilities based on race and colour contrary to s.5(1)(a) and (i) and (j) of the *Human Rights Act* on June 22, 2020. At that time A.J. Acheson Sales Ltd., the operator of the Canadian Tire store in the retail development generally known as Dartmouth Crossing in the Halifax Regional Municipality, was named as the entity responsible.

17. At the hearing Ms Mitchell provided evidence, consistent with her complaint, that the focus of her concern was her treatment on June 22, 2020, by a security guard both inside and outside the Canadian Tire premises. After searching out a pump for a kiddie pool at the Canadian Tire store, and paying for it at a cash register/check out located in the back interior of the store, she started to return to her car where her daughter, and mother, were waiting for her. Her departure led her through the main checkout area at the front of the store where she could access the exit doors.

18. Ms Mitchell reported that her transaction had taken her approximately 20 minutes to complete from the time she had entered the store, looked unsuccessfully for the item, sought out staff for help to find the item, then found another staff member who was able to actually locate the desired item, and then to process her purchase. By the conclusion of her transaction, Ms Mitchell was determined to depart from the store and return to her car with despatch.

19. As she was enroute from the place of her purchase to her car, Ms Mitchell had her kiddie pool pump in a Canadian Tire bag. That bag had been supplied by the employee who had conducted the sale transaction.

20. I accept the evidence of Ms Mitchell to this point in her narrative without reservation. Her account of her shopping experience at the Canadian Tire reflects a contextual reality of lived experience – the successive minor annoyances of having to expend both time and energy to consult with two different staff members over a protracted period of time to find a small item within a store offering thousands of products, while family members were waiting outside. That kind of detail demonstrated an enduring freshness to the nature and quality of Ms Mitchell’s recollection. Those contextual factors gave this Board confidence that Ms Mitchell’s recollection of the event was bright and accurate. No contradictory evidence to Ms Mitchell’s purchase narrative was offered.

21. Of significant importance to me about Ms Mitchell’s recounting of her shopping experience was that by the time that she was leaving the Canadian Tire store on June 22, 2020, she now owned the item that she had purchased. Her purchase transaction with Canadian Tire was concluded.

22. The events which prompted Ms Mitchell's human rights complaint began to unfold at the front of the store. There is an area at the Dartmouth Crossing Canadian Tire between the front cash register/check out location, and the actual exit doors to a large parking lot. It was there, inside the store but after passing through the front checkout area, that Ms Mitchell first encountered a uniformed security guard. Her own purchase transaction had taken place at a location in the store not visible from the security guard's location.

23. Ms Mitchell testified that the security guard stepped in front of her and asked her to show her receipt. Ms Mitchell felt caught by surprise, but noted that no one else was being stopped to show a receipt. She stepped around the guard and proceeded out of the store without verbally responding to him, or opening her bag to show her receipt.

24. Ms Mitchell testified that the security guard followed her out of the store. He continued to tell her that she needed to show her receipt. As Ms Mitchell continued to walk towards her vehicle, the guard escalated the encounter by physically grabbing Ms Mitchell's Canadian Tire bag, and then her wrist.

25. At this point Ms Mitchell noticed that other people were watching the security guard's behaviour towards her. Some were laughing. Ms Mitchell understood that she had been brought to public attention by the actions of the security guard. She testified that she believed that the onlookers were laughing at her predicament, as if she had been caught stealing.

26. Ms Mitchell tried to pull her wrist away from the security guard. The guard would not let her go, repeating that she had to show a receipt. The guard said that he had not seen her pay for her item. Ms Mitchell said that this encounter terminated when she told the guard that she would call the police, at which point he released his grip on her.

27. Ms Mitchell understood that at some stores, such as Walmart, every purchaser is required or expected to show proof of purchase. She did not believe, nor observe, nor expect, that that was Canadian Tire's policy. She testified that she had not seen any sign that there could be these kinds of

receipt requests when she had entered the store. As a consequence, she felt that the security guard's request on June 22, 2020, had personally targeted her.

28. As I have already noted from her evidence, when Ms Mitchell was first confronted by the security guard, she was surprised. As a Black Nova Scotian she had grown up with a public retail environment that required her to take conscious precautions about how she shopped. On that day in the Canadian Tire she had thought that by carrying her purchase in the bag (that had been given to her in store by a store employee who had conducted the sale transaction) provided security or protection from being treated like a thief, or potential thief.

29, When approached at the front of the store, Ms Mitchell also believed that she had been singled out based on her race or colour. She thought that because, as I noted above, she had observed that no one else was being stopped and asked to produce a receipt as she was approaching the store's exit doors.

*The ISS Business Record of the Event*

30. ISS has a business record of a report made on the same day (June 22, 2020) by one of its employees about an encounter with a woman in the area of the front exit doors at Canadian Tire, and which continued on into the parking lot. The circumstances described in that business record bear some resemblance to the encounter described by Ms Mitchell. ISS introduced the document into evidence as Exhibit 2, Tab J.

31. There is a question about how this report might be used, and valued, in this matter. The ISS employee recorded as having prepared the report is no longer in the employ of ISS. Evidence from Mr Drysdale and Mr Wilson, both current ISS employees, indicated that they have been in contact with the employee, that he is currently working in Alberta, but that he was unwilling to return to Nova Scotia for the purpose of this hearing.

32. Mr Wilson testified that he had not personally spoken to the former employee about the matter. However he did offer an answer at the end of his cross-examination that included an assertion that a report about the incident

had been discussed with the former employee, and what the former employee had said in response. The specific content of that answer was hearsay. I had no way to determine whether what the former employee was supposed to have said was reliable or trustworthy. The importance of Mr Wilson's assertion for me was that the involved security employee had been available to ISS as part of ISS's preparation for this hearing.

33. Mr Drysdale testified that he did not know the former employee personally, but had spoken with him personally. This conversation had happened after Mr Drysdale knew that ISS had become a named party in in this proceeding (so some time after June 24, 2025). Mr Drysdale also stated on direct, in response to a question from ISS's counsel, that he did not know whether he had asked that former employee for his current address. Nevertheless, Mr Drysdale had the means to be in contact with the former employee.

34. The ISS "business record" purportedly prepared by then ISS employee A.B. (name anonymized), provides the following factual information:

- a) Name of the Involved/ Reporting Security Officer
- b) The date and time when the incident report was created: June 22, 2020, at 17:36
- c) The fact that A.B. asked the lady for her receipt
- d) The fact that she refused to give it to him
- e) A.B. reported that "I tried to stop her and nobody from the Canadian tire comes out"
- f) A.B. also reported that he told the lady that he would "call the police," and then asked the lady "to come inside and I will call the manager"

35. It is apparent to me that Exhibit 2, Tab J, refers to the same encounter described by Ms Mitchell, though it does not contain any reference to physical contact between Ms Mitchell and the security officer. A.B.'s report is consistent with Ms Mitchell's own report of a request to see her receipt, and how the interaction moved from inside the store premises to the parking lot outside, and that there were vocalized comments about colour, gender, and calling the police.

36. The parties to this inquiry appear to have proceeded on the basis that this was a “business record” that could be relied upon for the truth of its contents in some respects. I can understand that approach with respect to the recording of events. I had a concern about the document being used as a basis to claim that opinions or justifications expressed in the record were “evidence” about what happened, or available to serve as “context” for other facts. I heard submissions from the parties about those concerns.

37. I am aware that Ms Mitchell’s evidence, as led by her own counsel and in her responses to counsel for ISS, differed from the description of the encounter provided in the Exhibit 2, Tab J, report. In particular, Ms Mitchell testified in direct and cross-examination, about the following elements of the encounter proposed by the report:

- (a) that she would not have used and did not use the “reported you to stop a black girl” language;
- (b) in relation to whether or not Ms Mitchell had a cell phone in her hand during the encounter; and,
- (c) whether Ms Mitchell did “dial some number.”

38. Ms Mitchell recalled that she would have referred to herself as a “Black woman” rather than as a “Black girl.” She told counsel for ISS only that she had yelled at A.B., and threatened to call the police, “the news,” and particularly “CTV tonight.” Despite what she said to the security guard, she had made no calls at the time.

39. I accept that Ms Mitchell’s version of her verbal response to A.B. (describing herself as a “Black woman” rather than as a “Black girl”) would have made more sense, even in a stressful situation, for a senior professional educator and mother - which she was. The descriptor “black girl” in A.B.’s report could well be understood as infantilizing or dismissive of someone who was, at the time, 42 years old. I am not persuaded that Ms Mitchell would have referred to herself as a “Black girl,” even though the report written by A.B. purports to put those words in her mouth.

40. A helpful overview of the principles underlying the appropriate approach to the proper use of “business records” was discussed in *K/S A/S Offshore Atlantic v. Marystown Shipyard Ltd.*, 1990 CarswellNfld 52 (NLCA), at

paras.87 – 104. Business records are generally understood to be documents created in the ordinary course of business. Sometimes these documents are created (or filled in) by humans, sometimes through human or automated input to computers or other machines. The information may be mundane (like a time record of an employee punching in and out of work), or observational (as with medical records of a patient’s visual appearance). As such, business records are generally understood as documentary of information rather than interpretive or conclusory about information.

41. Of course the nature of some “business records” allows for a mix of content, as in the case of medical records. The comments of Justice Boudreau in *Bezanson v. Sun Life Assurance Co of Canada*, 2015 NSSC 1, at para.31, are instructive about how to approach the evidentiary value of these kinds of “business records”:

31 *Ares v. Venner* continues to stand for the proposition, in my view, that some simple observational opinions might be permitted to stand in business records. It should be noted that even lay persons are often permitted to opine in areas of common human experience (such as a person’s temperature (“warm to touch”), color (“flushed”), mood (“angry”), and so on). But a true opinion, given by a person within their area of special expertise, is not and could never be a business record. In particular, where the medical opinions are crucial and of utmost importance to the case, as they would be here, the Court needs to be assured of their reliability. Such opinions must be brought forward to the Court by their authors, defended, and properly tested by cross-examination.

42. Exhibit 2, Tab J, contains some recital of observed facts which have already been identified. These are “documentary” and can appropriately be proven by the tendering of a “business record” such as has been offered here. The document contains attribution of spoken words by both A.B. and Ms Mitchell. Ms Mitchell has acknowledged some of those words (A.B.’s request for a receipt) and some of her words (referencing her own concerns about being targeted because of her colour).

43. However the proposed “record” also includes two opinions, including that:

- a) the incident had involved “theft”; and,
- b) the lady was “going through the self checkout without having the checkout.”

Ms Mitchell’s evidence at the hearing directly disputed and rejected the accuracy of those opinions. Both of these interpretive or “opinion” assertions in Exhibit 2, Tab J, if factually true, could reflect negatively on Ms Mitchell.

44. For the reasons expressed in *K/S A/S Offshore Atlantic v. Marystown Shipyard Ltd.*, *supra*, particularly at paras.88, 95 – 96, and 104, I have decided that admission of Exhibit 2, Tab J, as a “business record” is permissible for proof of the factual events described in it, subject to the record being evaluated against other evidence, including *viva voce* evidence, about those same factual circumstances.

45. At the same time, I am also of the view that it would be legally impermissible to accept the expressions of opinion or interpretation in Exhibit 2, Tab J, for the truth of them. Ms Mitchell provided evidence that directly contradicted the “theft” opinion. She also directly contradicted the opinion that she had gone “through the self checkout without having the checkout,” assuming that the record’s creator meant to say that she went through the front check-out without having a receipt or without paying.

46. The “business record” was prepared without Ms Mitchell’s input. She had no opportunity to challenge any opinions put into that record at the time of its creation on June 22, 2020. Fairness would require that Ms Mitchell have the opportunity to test the reliability of those kinds of opinions before they are received by this Board of Inquiry for their truth.

47. As was explained in *K/S A/S Offshore Atlantic v. Marystown Shipyard Ltd.*, *supra*, at para.104:

102 The decision in the *Ares* case does not extend to matters where there is no opportunity for the party against whom the evidence is admitted to test its reliability. Hall J., having ruled that hospital records were admissible, went on to say at p. 626 [of S.C.R.]:

This should, in no way, preclude a party wishing to challenge the accuracy of the records or entries from doing so. Had the respondent here wanted to challenge the accuracy of the nurses' notes, the nurses were present in court and available to be called as witnesses if the respondent had so wished.

No such opportunity was provided to Ms Mitchell or her counsel at this hearing.

48. A.B., the author of Exhibit 2, Tab J, was sufficiently available to ISS that he was spoken to by Mr Drysdale. That conversation had occurred fairly recently: since the joinder of ISS as a party to this proceeding on June 24, 2025. Although the administrative steps to subpoena a witness in another province for an appearance at an administrative tribunal could have been difficult or complicated to complete, the author of the record is known, and not unavailable. Obtaining address information could have facilitated a subpoena request by ISS, or any of the other parties to this proceeding, to enable A.B.'s evidence to be heard, remotely or otherwise. No request was made to have the author of Exhibit 2, Tab J, appear before this Board of Inquiry in person or by video.

49. I will not treat Exhibit 2, Tab J, as proof of what I consider to be opinions or interpretations. To do so would be unfair to Ms Mitchell for the reasons that I have already outlined in paragraphs 45 and 46 of this decision.

*Facts in relation to A.B.*

50. Evidence was introduced at the hearing about the employee intake training process at ISS, and specifically the training received by A.B. between April 27, 2020, and June 18, 2020 (Exhibit 2, Tab H).

51. Evidence was also introduced at the hearing about the work assignments for A.B. between April 28, 2020, and February 27, 2021 (Exhibit 2, Tab I). Those records show, as "business records," that A.B. was scheduled and actually worked at the Canadian Tire, Dartmouth Crossing, on June 22, 2020, for 8.02 hours, between 10:00 and 18:02.

52. I heard evidence from Mr Drysdale and Mr Wilson about the layout of the Canadian Tire store location at Dartmouth Crossing, and the general nature of the services contracted by Canadian Tire (A.J. Acheson Sales) with ISS at the relevant time. Both Mr Drysdale and Mr Wilson described the approach and attitude which ISS adopted in fulfilling the security role that Canadian Tire had contracted to ISS.

53. Both Mr Drysdale and Mr Wilson were candid about their approach and attitude in relation to protecting Canadian Tire against loss. However, both also demonstrated a clear and evident hesitancy to draw any lines that might limit the actions of its employees when confronted with a potential or possible theft scenario. They were also clearly reluctant to acknowledge any fault in A.B.'s work performance on June 22, 2020, relating to Ms Mitchell.

*Factual Conclusions about the Event*

54. It is my view from the evidence that on June 22, 2020, in the later afternoon, A.B. was performing security services in uniform to discourage loss at the front of the Canadian Tire store in Dartmouth Crossing. While he had been scheduled for work at that location since 10 am, at the time of his encounter with Ms Mitchell, it was later in the afternoon but before 6:00 pm.

55. Ms Mitchell had purchased a small item at a cash register/checkout location elsewhere in the store, which was not visible to A.B.. She had the item that she now owned in a bag supplied and identified with Canadian Tire branding. A.B. attempted to interrupt Ms Mitchell's departure through the front doors of the Canadian Tire store for the purpose of seeing whether she had a receipt. Ms Mitchell, already feeling somewhat annoyed with the time that her shopping visit had taken, and understanding that she had been singled out, walked around A.B. and left the store without responding.

56. Ms Mitchell had not noticed any signs upon entering or while leaving the Canadian Tire store which indicated that shoppers or customers would be subject to a check of their possessions upon leaving. Mr Wilson testified that there was one sign at the front entrance doors, but did not specifically identify the location further, nor what the content was, nor what the visibility of the notice was on that day. Based on the evidence, there was no obvious

universal belongings-check program in place, or even being actively pursued, on the date of this event at the Dartmouth Crossing Canadian Tire.

57. Ms Mitchell was aware on June 22, 2020, that not everyone was getting asked to show a receipt as she had been. As she continued on her way, Ms Mitchell was pursued outside of the entrance doors by A.B.. There, in the presence of onlookers in the parking lot, A.B. repeated his request for Ms Mitchell to produce a receipt. He initiated physical contact with Ms Mitchell, and attempted to restrain her efforts to continue towards her car. There was a verbal exchange which included demands by A.B. that Mitchell return to the inside of the Canadian Tire store, and threats by Ms Mitchell to call the police or “the news” or “CTV” about A.B.’s behaviour.

58. In the course of that short, physical encounter, I am persuaded by the evidence that the issues of Ms Mitchell’s race (Blackness) and gender (female) were raised between Ms Mitchell and A.B. I expect that Ms Mitchell likely identified those issues as issues of concern to her once she began responding verbally to A.B., and while she was attempting to physically dis-engage from A.B.’s grip on her wrist.

59. I understand why Ms Mitchell raised both her gender and race or colour as being implicated in her interaction with the security guard. Ms Mitchell was being confronted in public by a uniformed security guard who was attempting, by efforts that included physical contact restraint, to keep her from leaving the store parking lot. The interaction had attracted attention of bystanders. The only inference to be drawn from observing such a drama was its apparent genesis in Ms Mitchell’s potential or actual criminality.

60. As Ms Mitchell testified at the hearing, she had a culturally-sensitive understanding about the targeting of Blacks in retail environments in Nova Scotia. She had experienced the differential treatments of being followed in stores, sometimes being ignored, or sometimes being provided with delayed service. While she had not personally experienced other manifestations of racial profiling identified in the Nova Scotia Human Rights Commission’s May 2013 Report on Racial Profiling, “Working Together to Better Serve All Nova Scotians”: Exhibit 1, Tab 3, she testified that even before this incident she knew that “as a Black shopper you have to be vigilant.”

61. Ms Mitchell's culturally-sensitive apprehension about the Nova Scotia retail environment was a legitimate apprehension on her part. She had learned this growing up in a society where she was visibly different from the majority of the population. She testified that she had learned to cope with the manifestations of differential, negative treatment in the retail environment, and acknowledged that "sometimes" she had had the emotional resources to be assertive enough to "correct it while you are there." June 22, 2020, had become one of those unhappy occasions thrust upon her.

62. Ms Mitchell specifically explained to Mr Clarke that the behaviour of the security guard, together with the presence of other shoppers leaving the store at the same time, and the guard's behaviour towards her outside in the parking lot where unknown members of the public were laughing about the situation, contributed to her perception of being targeted. Ms Mitchell explained how she responded with all of the assertiveness that she could muster in that moment. She also described some of the emotional consequences that followed the encounter, and which involved both her mother and her daughter.

63. I accept that evidence given by Ms Mitchell as truthful, credible, and persuasive as to how the security guard's behaviour impacted her and was understood by her. The series of vocal demands by the security guard, and his continued efforts to physically restrain her while she physically and verbally objected to his behaviour, all took place in the presence of members of the public. The security guard's behaviour, as a uniformed authority figure, made Ms Mitchell a clear target of negative public attention.

*Was the Receipt-checking Initiative Discriminatory?*

64. I appreciate that the evidence about this event, even from Ms Mitchell, does not include specific verbal utterances that identify race or colour as factors in A.B.'s choices about how to engage with Ms Mitchell on June 22, 2020. Ms Mitchell and A.B. were, according to both, already in a physical struggle by the time Ms Mitchell was expressing her views that this was objectionable to her as a Black woman.

65. *Danielson v. Dollar Giant Store*, 2013 BCHRT 108, was a case involving a false belief by a loss prevention worker that an aboriginal customer had engaged in the theft of some candy. Danielson asserted that his aboriginal status or appearance had been a factor in the adverse behaviour (arrest for a theft that had not taken place). However, no verbal reference to that status had occurred during the interaction between the loss prevention officer and Danielson.

66. The *Danielson* Tribunal stated at para.61:

61 Adverse treatment or effect must be determined from both a subjective and objective perspective, including consideration of the impact on the individual's personal dignity: *Stone v. British Columbia (Ministry of Health)*, 2007 BCHRT 55 (B.C. Human Rights Trib.).

That Tribunal then proceeded to find, at para.68, that Danielson had engaged in shopping behaviour which “could reasonably attract the scrutiny of the LPA,” by selecting and deselecting and re-selecting particular products on a shelf of high-risk products for theft (candy).

67. Similarly in *Barta v. Sears Canada Inc.*, 2010 BCHRT 289 (B.C. Human Rights Trib.), Barta asserted that a loss prevention officer had targeted Barta based on colour. There was no specific evidence about colour having been raised at the time of the event. The Tribunal instead attributed loss prevention attention to evidence about specific behaviours by Barta while handling merchandise.

68. By identifying and relying upon evidence of a reason or reasons for loss prevention attention other than race, and in the absence of other evidence, the cases of *Danielson* and *Barta* determined that race or colour had *not* been proven to have been a factor in the treatment of either of the individuals in those cases. That was so even in the case of *Danielson* where the loss prevention officer had been proven to have formed an “impression” of the shopper's ancestry: *Danielson v. Dollar Giant Store, supra*, at para.73.

69. In Nova Scotia, proof of a human rights violation is similarly not achieved through proof only of a subjective discomfort, perception, or understanding expressed on the part of a complainant. The Court in *Moore v. Play It Again Sports Ltd.*, 2004 NSCA 132, decided that whatever Ms Moore subjectively believed, a successful discrimination claim required her to also establish that her protected characteristic (race) was objectively engaged, and therefore a factor, in the behaviour of the respondent.

70. Subsequent cases have confirmed this understanding of the law: *e.g.*, *Symonds and Halifax Regional Municipality*, 2021 CarswellNS 313, at para.107; and *Nova Scotia Liquor Corp. v. Nova Scotia (Board of Inquiry)*, 2016 NSCA 28, at para.96. Counsel for ISS also acknowledged the appropriateness of this test in referring this Board to the November 6, 2025, decision of Eric Slone on a Board of Inquiry in Board File No. 42000-30-H22-0038: *Dorrington and A.J. Acheson Sales Ltd. and NSHRC*, 2025 CanLII 114860, at para.19.

71. The legal reality that flowed from *Moore* was that if the evidence in a discrimination case shows that the questioned behaviour was objectively neutral, then without something more, the protected characteristic would not have been proven to have been engaged as a *factor* in the behaviour of the respondent. The claim of discrimination would fail. See *Moore, supra*, at paras.70 – 75, and particularly para.75:

75 The foregoing is applicable where the conduct at issue is not plainly and obviously offensive, but capable of being either offensive or inoffensive depending on each individual's sensibilities. Where the quality of the utterance lies in the eye of the beholder, it is not unreasonable to require that the beholder make known that the conduct was offensive to him or her.

72. The Court in *Moore* explained the evidentiary onus on the part of a complainant as being an obligation to establish that the behaviour in question was known by the respondent to have been offensive. Did A.B. know that his behaviour towards Ms Mitchell was offensive?

73. The relevance of that question, and how it should be addressed in this case, was actually specifically addressed in one of the cases referenced by the Nova Scotia Court of Appeal in *Moore, supra*, at para.73. The Court quoted from the sexual harassment case of *Cuff v. Gypsy Restaurant* 1987 CarswellOnt 3663 (Ont. Bd. Inq.), where Chairman Bayefsky explained at paras.101 - 102:

101. Comment or conduct ‘that is known or ought reasonably to be known to be unwelcome’ imports an objective element into the definition of harassment. The fact that this particular complainant found the behaviour vexatious is not sufficient. Respondents either must have known, or they ought reasonably to have known, the behaviour to be unwelcome . . .

102. A complainant who clearly indicates to the respondent that his actions were unwelcome will more likely be able to satisfy the condition that the respondent knew the behaviour was unwelcome. . .

74. What that means in this case is that if the respondent (A.B.) knew or ought reasonably to have known that his behaviour objectively engaged issues of race or colour, then that would have made race or colour a factor in the interaction. That is consistent with *Danielson* and *Barta*. That is the test that I will apply to both the interior and exterior contacts by A.B. with Ms Mitchell.

#### *Conclusion as to Discrimination*

75. I have no evidence as to what was in A.B.’s mind when he made his initial request to Ms Mitchell for a receipt. I have nothing from which to infer or to presume that Ms Mitchell being Black was a factor in his initial request. However the encounter did not end with that initial request and Ms Mitchell’s step around him to get out through the front doors of the Canadian Tire.

76. The encounter which did occur outside the Canadian Tire store is concerning on many levels. Those concerns arise from things which relate to the initial encounter inside the store:

- a) The evidence shows that A.B. had been assigned to work at the Canadian Tire store in Dartmouth Crossing on May 25 as well as June 1, 8, 12, and 15, 2020, prior to the event on June 22, 2020. That being so he should have known of the existence of other “checkouts” on the premises which were not visible from his location at the front of the store: Exhibit 2, Tab I, pages 149 – 151;
- b) The evidence does not show that A.B. provided Ms Mitchell with any reason for his request. This could have provided an opportunity for a “friendly” interaction of the type described by Mr Wilson in terms of how receipt checks should be carried out, or a specific loss prevention concern based on observed conduct.

77. Mr Wilson and Mr Drysdale both gave evidence relating to the ISS approach to loss prevention at the Canadian Tire in Dartmouth Crossing. Exhibit 2, Tab A, contained a “Site Sheet” which purported to be a high-level description of the authority granted to ISS to act on Canadian Tire’s behalf in providing site security and loss prevention services. The exhibited “Site Sheet” was actually titled for the Canadian Tire Tacoma store, which I understand was the predecessor location of the A.J. Acheson Sales Ltd.’s Dartmouth Crossing store.

78. For ISS’s purposes, site sheets apparently contain the expected duties and responsibilities of ISS employees at the identified location. Mr Drysdale was unsure whether the site sheet at Exhibit 2, Tab A, was in fact “the full version” of what obligations or authorizations existed on June 22, 2020. Mr Drysdale was clear that requesting receipts from customers was acceptable as part of their loss prevention work, and receipt checks are mentioned in Exhibit 2, Tab A. It was also acceptable, in Mr Drysdale’s view, to step in front of a customer to make such a request, and that employees such as A.B. were trained to do so.

79. Several other parts of Mr Drysdale’s testimony about receipt checking were frankly perplexing. Mr Drysdale stated that “there was no direction” from Canadian Tire as to how to respond to a refusal of a request for a receipt. There was also no specific direction in relation to following customers out of the store, nor about restraining customers. Mr Drysdale also stated that if something was not articulated in the direction from the client store, “we decide how to react.”

80. Most perplexing of all to this Board of Inquiry was Mr Drysdale's comment in his evidence that he could not confirm a discussion with Canadian Tire about what should happen if there was an issue arising from the checking of receipts. This strikes me as extremely odd. If true, it would provide scope to ISS to make its own independent judgment about how far to take all interactions with Canadian Tire's shoppers and customers.

81. In the site sheet before me (Exhibit 2, Tab A) the only instructions about receipts are as follows:

Guard is to verify parcels with receipts to whomever he/she did not witness paying with articles in hand passing through a cash register [or?] self check-out. Guard will politely ask customer for their receipt and quickly verify their contents.

...

Loss Prevention Officer . . must obtain the 4 elements of arrest before approaching anyone for theft. The 4 elements of arrest are: 1.Selection 2.Concealment 3.Continuity 4.Theft

The officer will report any theft or attempt to the store manager . . . .

There is nothing in the site sheet before me which refers to making physical contact with a customer in any circumstances.

82. I query, like Mr Drysdale, whether the Exhibit 2, Tab A, "site sheet" document truly reflects the full instructions negotiated between Canadian Tire and ISS. The Tacoma store mentioned in the heading may well have had a different layout of check-outs or cash registers than the Dartmouth Crossing store. What that means for me in this matter is that I do not feel confident trusting that Exhibit 2, Tab A, accurately reflects Canadian Tire's instructions to ISS. I am left with not knowing specifically what scope was given to ISS by Canadian Tire to pursue their loss prevention work. I cannot rely on this exhibit, limited as it is, to give special and unlimited authority to ISS in relation to Canadian Tire's shoppers and customers.

83. I do however note what the "site sheet" does say about "the 4 elements of arrest before approaching anyone for theft." The instructions from Canadian Tire to ISS, and put before this Inquiry by ISS, were that if an

arrest were to be made for theft, there needed to be four things known by a loss prevention officer. I repeat:

The 4 elements of arrest are: 1.Selection 2.Concealment 3.Continuity  
4.Theft

84. I cannot find in the *viva voce* evidence before me, nor in the report prepared by A.B. (Exhibit 2, Tab J), that A.B. ever acquired any of the 4 elements of arrest. He had not seen Ms Mitchell select the product. He had not seen her conceal the product. He had not seen her maintain continuity (presumably continuous possession) of that product. And finally, he had not seen a “theft” (presumably non-payment). A.B. had not seen those things because Ms Mitchell’s transaction with Canadian Tire had happened out of his view. There never had been concealment, and there never had been “theft” because the item had been purchased.

85. The only thing that Ms Mitchell had done on the evidence was to ignore A.B.’s request that she show her receipt. Unlike the cases of *Danielson* and *Barta* referenced earlier, there was no observed behaviour with merchandise which could have provided a free-standing reason for special loss prevention attention to Ms Mitchell. There was no authority granted in the Site Sheet (Exhibit 2, Tab A) to arrest or physically detain customers who ignored requests to display their receipts.

86. Nevertheless, A.B. pursued Ms Mitchell outside the Canadian Tire store and laid his hands on her to detain her. He did so without either legal authorization from Canadian Tire, or his own training as described in the evidence heard from ISS. He did so to a Black woman. He did so in the presence of members of the public. Ms Mitchell had to threaten A.B. with police or publicity before she was able to free herself of him.

87. In my view, A.B.’s temporary physical detention of Ms Mitchell in public was the act of discrimination that does fall within the meaning of the *Human Rights Act*. I repeat my finding from paragraph 59 of this decision: I understand why Ms Mitchell raised both her gender and race or colour as being implicated in her interaction with the security guard. Ms Mitchell was being confronted in public to the point where a uniformed security guard was attempting, by efforts that included physical contact restraint, to keep

her from leaving the store parking lot. The interaction had attracted the attention of bystanders. The only inference to be drawn from observing such a drama was its apparent genesis in Ms Mitchell's potential or actual criminality.

88. A.B. attempted to persuade, and then coerce, Ms Mitchell back into the store as if she needed to justify herself, and justify her possession of the Canadian Tire bag that contained her purchase. A.B. was doing this without any of the grounds identified in the Site Sheet which could have contributed to the formulation of proper grounds to arrest (Exhibit 2, Tab A).

89. While neither race nor colour may have been verbally uttered by A.B. during his encounter his encounter with Ms Mitchell, he was aware of her race and colour. He knew that his behaviour was unwelcome because of Ms Mitchell's response posture towards him both inside and outside the store. I also find that A.B. should also reasonably have known that his pursuit tactics outside the store would be unwelcome. That is because:

- a) his behaviour was beyond the scope of his training and authority;
- b) his behaviour publicly associated a member of a racialized community with a groundless imputation of theft; and,
- c) A.B. ought to have known, working in a Nova Scotia retail environment, that associating colour or race with retail criminality was discriminatory.

90. It is my finding that A.B.'s conduct made Ms Mitchell's race and colour a factor in the encounter because of how he chose to manage his interaction with her. Instead of simply following her to collect identification information (Exhibit 2, Tab A), he created a physical, public interaction with a Black woman who had a Canadian Tire bag. He was attempting to compel her to return to the store. A.B. reasonably ought to have known how his interaction would appear to those whose only source of information would have been the visual tableau he had created.

91. By transforming his security role from "receipt checking" into a noisy and visible public effort to physically detain a Black woman in the parking lot outside the store, without legitimate grounds to do so, constituted a discriminatory act by A.B..

92. A.B.'s behaviour also created a discriminatory disadvantage to Ms Mitchell: *e.g.*, *Danielson v. Dollar Giant Store*, 2013 BCHRT 289, at paras.58 - 62. It was a negative imputation on her character as a person – that she was a thief, which inevitably associated that imputed character flaw with her visible identity as a Black woman.

*Was A.B. Justified in his Behaviour?*

93. In his evidence before this Inquiry, Mr Wilson described ISS's loss prevention approach at one point as:

Our job is to stop theft, not to watch the show.

94. A few examples drawn from Mr Wilson's evidence should suffice to demonstrate that his evidence cannot be relied upon, in my view, to justify any of the behaviours of A.B. after Ms Mitchell ignored his request and stepped around him.

95. In addition to not restricting ISS authority to the site sheet's necessary visual elements for "theft," Mr Wilson expressed the following views:

- (a) That a suspicion that there might have been a theft would justify the search of a customer;
- (b) That possession of a Canadian Tire bag and a refusal to show a receipt would justify a belief that a theft may have occurred based on the alternative ideas that (i) being in possession of a Canadian Tire branded bag doesn't tell you that there has been a purchase because the target may have "brought it into the store."; and (ii) that he would be curious to see if there was theft, and inclined to think that there had been theft "because she didn't want to show" her receipt;
- (c) That a shopper's persistent refusal to show a receipt justified his view that "we can stop them until we determine if there has been" theft;
- (d) That in order to suspect theft, the guard would have needed to see the "selection" of a product. Nevertheless, "If I believe a crime has taken place, I can use reasonable force to stop the crime";

- (e) That a shopper's failure to show a receipt when they had a bag constituted "a strong possibility the item in the bag is stolen" and that "I would do what I can to get the product back";
- (f) That if an individual was "passively ignoring me, I'm going to stop you and get your attention. I'm going to stop you";
- (g) Upon reading the report of A.B., he would not have been concerned, but "I would want to know if there was a theft."

All of those attitudes suggest that ISS considers itself in an adversarial relationship with shoppers in the Canadian Tire premises. All of those attitudes were consistent with the behaviour followed by A.B. on June 20, 2022.

96. In terms of A.B.'s actual physical encounter with Ms Mitchell, Mr Wilson gave a similarly problematic answer. He said:

"She was allowed to leave," "she chose to leave the property unscathed. He didn't hurt her. I encourage our guards to get the job done. Was she hurt? . . . If we have the opportunity to get her back in the store . . .we have done our job."

That too is consistent with the behaviour of A.B. on June 20, 2022, but utterly lacking in awareness of the psychological consequences for persons targeted by ISS security personnel.

97. There were other times in Mr Wilson's evidence when he took a less aggressive tone in terms of how to perform security tasks at the Canadian Tire. For example, he testified that:

- (a) In June 2020 Canadian Tire wanted a uniformed "deterrent" standing behind the cashiers (between the cashiers and the door with the sensomatic bar) asking for receipts. That uniformed presence was "one stage of preventing theft";
- (b) In terms of the use of physical force by a security guard, if the suspect is "in the parking lot, fleeing on foot," the guard's responsibility is only to get identifying information;

(c) Upon reviewing the report by A.B., Mr Wilson expressed reservations, such as: “I would have a lot of questions about this report . . . The main question I would have is was there a theft, did they see it. . . .There’s an indication of theft, but no value here. I was curious to know why she didn’t want to give a receipt. If she left and had a receipt. They said let it go. . . . Doesn’t describe the item at all.”

98. However, Mr Wilson also made the following comments about A.B.’s report (Exhibit 2, Tab J), expressing the problematic belief that A.B. had followed proper procedures:

- a) When A.B. wrote that “I tried to stop her . . . she refused,” Mr Wilson observed that that indicated to him that “This could possibly be a theft”;
- b) When Ms Mitchell stepped out of line, “if you believe a theft has occurred, I have to collect information”;
- c) He did not believe that Ms Mitchell having an item in a bag meant that she had paid for it; and,
- d) He believed that A.B. had “reasonable grounds” to ask for a receipt.

99. On the specific question of customers coming through the front store who had purchased their items at other check-outs (he gave sporting goods and automotive as examples), Mr Wilson’s own response was telling:

“Could they have passed through a cash and I couldn’t see? Sure.”

However he also asserted to Mr Murphy in cross-examination that if Ms Mitchell had explained that she had made her purchase at another register in the back of the store, that would still *not* have been a “reasonable” explanation for refusing to show a receipt. Mr Wilson defended that opinion by saying that “Everyone would say that if they had the opportunity.”

100. Based on the foregoing points which I have taken from Mr Wilson’s evidence, and the fact that Mr Wilson never took the time to discuss this

matter with A.B., Mr Wilson's assertion that A.B.'s behaviour towards Ms Mitchell in 2020 was within the range of what would have been appropriate is not reasonable. Mr Wilson's evidence does not justify nor excuse the choices made by A.B. on June 22, 2020.

101. Mr Wilson has been trained to some level in law enforcement. He would know that a storeowner and/or his designate would not have the right to search a customer and any customer's belongings simply because the person had a store bag and was on the store premises. He would know that even a police officer, let alone a security guard like A.B., does not gain a power to arrest for theft until he sees the target apparently committing the theft. A concise and current summary of the law in Nova Scotia in that regard, which has not changed substantially in 50 years, is *R. v. Affleck*, 2010 NSPC 51, at paras.40 – 42.

102. The “apparently committing” criterion as fundamental to the act of detaining a person against their will is perhaps why the instructions on the site sheet introduced by ISS in evidence (Exhibit 2, Tab A) require that there be observation of:

“1.Selection 2.Concealment 3.Continuity 4.Theft.”

That is also why the criteria of observations which justify loss prevention interest (as in the *Danielson* and *Barta* cases referenced earlier) are relevant and important in cases such as these.

103. The request for a receipt which precipitated the whole of the interaction between Ms Mitchell and A.B. was not premised upon any of the essential precursors to a legal arrest or detention for theft. A.B. had not seen Ms Mitchell's selection of the item involved, nor its concealment, nor her continuing possession of the item after concealment, and not the theft (which is complete upon the intent to deprive the lawful owner of it).

104. The evidence of Ms Mitchell, which I accept, instead makes very clear that the item which she purchased was identified for her by a Canadian Tire employee, who then (without any concealment by her) sold that item to Ms Mitchell, and provided her with a bag to transport what was now *her* item.

105. The fact that the security guard at the front of the store remained ignorant of all of those events did not entitle him to enforce his request to confirm a corresponding receipt by (1) making physical contact with Ms Mitchell (2) in an effort to detain her, or (3) to compel her to return to the interior of the store in physical restraint, (4) all in the presence of members of the public. The evidence of Mr Wilson does not support any justification for any of that behaviour by A.B. towards Ms Mitchell.

106. Counsel for ISS also called witnesses Jilene Reid and General Manager Shawn Drysdale. Both are ISS employees. Ms Reid administers the intake and training process for new employees. Mr Drysdale has been the General Manager of ISS since 2012, and has been with the company for about 20 years.

107. Ms Reid did not know A.B.. Mr Drysdale also did not know A.B. personally. Mr Drysdale was not aware of A.B.'s incident report (Exhibit 2, Tab J) until 2023 or 2024. He did reach out to A.B. after reviewing the incident report and discussed it with him. Mr Drysdale offered a legal opinion about an aspect of the interaction as described in the incident report, which I interrupted and ignored.

108. Mr Drysdale was questioned about cross-cultural issues, or perhaps better understood as inter-cultural issues, arising between their guards and the general public. Although he had spoken about training being modified based on the "Sobeys" case, Mr Drysdale's view was that an employee's reaction to a customer should be based on what the customer is doing – not why the customer is doing it. Mr Drysdale said that he would not be able to train someone to deal with that issue.

109. Mr Drysdale followed up on that comment in response to another question from Ms Franklyn for the Commission. In acknowledging the genuineness of Ms Mitchell's feelings as expressed at the hearing, Mr Drysdale also acknowledged that:

I can make someone feel without intending to . . . but that doesn't mean I did anything wrong.

110. The Nova Scotia Human Rights Commission's report on racial profiling: "Working Together to Better Serve All Nova Scotians": Exhibit 1, Tab 3, and referred to earlier at para.60, makes the following observation at page 92, which I adopt:

Again, the behaviour of profiling is not problematic; the problem is introduced when we make harmful assumptions about certain racial or ethnic groups. These negative profiles, which are ingrained in society, are based on stereotypes. They lead to discriminatory thoughts and behaviours *regardless of intention*. [my emphasis]

That is a view consistent with decades of human rights jurisprudence that proof of discriminatory effects does not require proof of an intent to discriminate. The law expects people to act with awareness of the potential consequences of their behaviour.

111. A.B.'s choice as to how to engage with Ms Mitchell, and where to engage with Ms Mitchell, fed the kind of discriminatory impacts felt by Ms Mitchell, regardless of the intentions of A.B., or ISS. A lack of active thought about how A.B.'s choices about behaviour would publicly expose his target, and impact his target, was enough to create a discriminatory impact. A.B. ought reasonably to have known that his behaviour at that time, and in that location, would implicate Ms Mitchell's race as a negative factor in the interaction.

### *Conclusion*

112. The conclusion of this Board of Inquiry is therefore that it is everyone's responsibility to avoid behaviour which causes someone to be disadvantaged because of their race or colour. While I have no reason to believe that ISS relies upon racial profiling in its loss prevention work, it was how A.B. chose to do his work that made Ms Mitchell's race and colour a factor in his treatment of her on June 22, 2020. A.B. ought reasonably to have known how his behaviour would negatively affect Ms Mitchell because of her race or colour.

113. Having reviewed the whole of the evidence, it is clear that there was no legitimate reason from a loss prevention perspective to single out Ms Mitchell from other shoppers at the Canadian Tire store on June 22, 2020. This was also not a situation where all customers were being subjected to receipt confirmation checks.

114. Instead of collecting identifying information (including license plate information) about a customer who had not responded to a receipt request, A.B. made an effort in public view to physically restrain Ms Mitchell and to have her return to the interior of the Canadian Tire store. Those behaviours by A.B. conveyed a serious but entirely unjustified imputation of wrongdoing on the part of Ms Mitchell.

115. A.B.'s behaviour also necessarily associated Ms Mitchell's Blackness with an unjustified imputation of criminal activity. In a province where racial profiling in the retail context has been recognized as showing a significantly higher prevalence of both explicit and subjective incidents for Black individuals, the wrongful and damaging imputation of criminality to Ms Mitchell in this situation was clear and profound. That is a reality that A.B. ought reasonably to have known would flow from his choices about how to behave towards Ms Mitchell.

116. I find that there has been a violation of s.5(1)(a)(i) and (j) of the *Human Rights Act* by ISS through the actions of its employee A.B. in the parking lot outside the Canadian Tire store.

117. I invite the parties to consult with each other about a convenient date to resume the hearing to determine the appropriate remedy, unless they are able to resolve that on their own. The parties can contact this Board if there is a need to schedule further hearing time.

DATED this 10th day of May, 2026

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Donald C. Murray, K.C.  
Board of Inquiry Chair