



**For Action
with Confidential Attachment**

February 7, 2020 Incident – Investigative Report

Date: December 15, 2020
To: TTC Board
From: General Counsel
Chief Diversity & Culture Officer

Reason for Confidential Information

This report contains advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

This report contains information relating to litigation or potential litigation.

This report contains information about labour relations.

This report contains information relating to personal matters about an identifiable individual, including TTC employees.

Summary

The roles of both TTC Fare Inspectors and Special Constables are built on public trust, cooperation and respect. When the public loses confidence in TTC Fare Inspectors or Special Constables due to an alleged incident of serious misconduct, the mistrust they feel toward them often extends to the entire TTC organization, and are matters of public interest.

On February 7, 2020, an altercation occurred on a TTC streetcar between a passenger and four TTC employees: two members of the Special Constable Service and two members of the Revenue Protection. A video of a portion of the incident was posted to social media, resulting in attention from the media and members of the public. Due to the seriousness of the incident, the TTC retained Rubin Thomlinson LLP, an independent third party workplace investigation firm, to investigate the incident.

To ensure accountability, and inspire and maintain public confidence, an Executive Summary from Rubin Thomlinson LLP with the results of their investigation, and their recommendations for the TTC is found at Attachment 1.

Recommendations

It is recommended that the TTC Board:

1. Endorse actions contained in Attachment 2 – Management Response to February 7, 2020 Incident – Investigative Report Recommendations.
2. Approve the Confidential Recommendations as set out in Confidential Attachment 1; and
3. Authorize that the information and recommendation provided in Confidential Attachment 3 is to remain confidential in its entirety as it contains advice which relates to, or is subject to, client-solicitor privilege, litigation privilege, labour relations and/or a personal matter about identifiable TTC employees.

Financial Summary

The Revenue Protection and Special Constable Service 2020/2021 departmental work plans include a top to bottom review and implementation of new/revised policies, procedures and training. The work plans will be updated to place additional focus on the items related to the recommendations as set out in the Executive Summary prepared by Rubin Thomlinson (Attachment 1). The TTC's 2021 Operating budget submission will include sufficient funding to address these items and to complete the policy, procedure and training review.

The Interim Chief Financial Officer has reviewed this report and agrees with the financial summary information.

Equity/Accessibility Matters

The TTC expects that both TTC Special Constables and Fare Inspectors perform their duties in an equitable, inclusive, respectful, and safe manner.

The results of the independent investigation by Rubin Thomlinson further emphasize a critical need for TTC to take immediate actions to change the culture and practices of the Revenue Protection Department and Special Constable Services to promote greater equity and inclusion. This includes TTC Management immediately working to enhance the mental health training provided to TTC Special Constables and Fare Inspectors to improve their interactions and responsiveness to the needs of all diverse customers, including persons who may be living with mental illness.

Decision History

At the May 13, 2020 Board meeting, the TTC Board adopted a motion requesting that the resolution of external investigations be reported directly to the Board.

[http://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2020/May 13/Reports/Decisions/8 TTC 2019 Annual Report Public Complaints Involving Special.pdf](http://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2020/May%2013/Reports/Decisions/8%20TTC%202019%20Annual%20Report%20Public%20Compl%20aints%20Involving%20Special.pdf)

At its meeting on June 29 and 30, 2020, City Council had before it a report entitled Toronto Transit Commission Status Update – Anti-Racism Strategy and Ombudsman Recommendations and adopted a motion requesting that the TTC Board direct the Chief Executive Officer of the TTC, to ensure the independence of the Special Constable and Transit Enforcement Officer Complaints Investigator by requiring that this investigator report directly to the Toronto Transit Commission Board of Directors.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX14.8>

This action was ratified by the TTC Board at its meeting on September 24, 2020.

Issue Background

On February 7, 2020, there was an altercation that occurred on the TTC Eastbound Queen Street Streetcar involving a passenger and two TTC Special Constables and two TTC Fare Inspectors.

A video of a portion of the incident was posted to social media. The video depicted the TTC employees engaging in a physical struggle with a passenger, and the passenger being sprayed with a substance which was later identified as oleoresin capsicum (OC) spray (otherwise known as “pepper spray”).

This incident generated public interest and related customer concerns received by the TTC. The TTC also received a joint-letter from a number of City Councillors expressing concern with respect to the incident. Due to the seriousness of the incident, the TTC retained Rubin Thomlinson LLP to conduct the investigation.

The Toronto Ombudsman has provided important oversight regarding this investigation and related matters, and will be attending the Public Board meeting to discuss and answer questions regarding this matter. The Toronto Ombudsman has raised similar recommendations in her 2017 and 2019 Reports as raised in this external investigation including mental health training and use of force. The TTC will continue to work with the Ombudsman and her office to progress work underway to create a customer service oriented culture within the Special Constable Service and Revenue Protection, one free from bias and discrimination and responsive to the needs of all diverse customers.

Comments

On March 30, 2020, the TTC retained Rubin Thomlinson LLP to conduct an independent investigation into the February 7, 2020 incident.

Rubin Thomlinson is a firm that is an industry leader in workplace investigations. The external investigator from Rubin Thomlinson in particular has experience and training in conducting investigations into allegations of police misconduct, including excessive use of force. The external investigator has the investigative training from the Office of the Independent Police Review Director, which has been recognized by the Toronto Police Service as meeting their requirement for an Investigator to conduct misconduct investigations involving TTC Special Constables.

The TTC retained Rubin Thomlinson LLP to make findings of fact about the incident, and to determine whether the TTC employees who were involved in the incident contravened specific TTC policies, including but not limited to, the Transit Enforcement Code of Conduct, the TTC's Respect and Dignity Policy, and the TTC Employee Code of Conduct. The TTC also requested recommendations regarding TTC practices if such recommendations were warranted.

Set out in Attachment 1 is the Executive Summary from Rubin Thomlinson LLP.

Summary of Investigation Findings:

As detailed in the Executive Summary, Rubin Thomlinson LLP made the following findings:

- (a) The initial interaction between Passenger 1 and the TTC Special Constables and Fare Inspectors did not breach any TTC policy;
- (b) With respect to the altercation (after the initial interaction), the external investigator found that:
 - (i) One Fare Inspector did not breach any TTC policy;
 - (ii) Both Special Constables used unnecessary force against Passenger 1; and
 - (iii) One Fare Inspector used unauthorized and unnecessary force against Passenger 1.
- (c) The investigator found that the application of force by both Special Constables against Passenger 1 was impacted by their perception of Passenger 1's mental health, and this was found to be discriminatory on the basis of disability.

Summary of Recommendations:

Rubin Thomlinson LLP also made four recommendations which are summarized as follows:

- (1) Improve training for Special Constables and Fare Inspectors with respect to how they interact with people who may have mental health related illnesses;
- (2) Set out expectations and measures to ensure independent note-taking for Special Constables and Fare Inspectors;
- (3) Provide clarity with respect to Fare Inspectors' use of force; and
- (4) Reconsider the ban that had been placed on Passenger 1 from the TTC Queen Street streetcar through a Court order.

TTC Management have accepted all of the recommendations, and information on their actions to address the recommendations can be found in the Management Response set out in Attachment 2.

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Signature

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Attachments

Attachment 1 – Rubin Thomlinson Executive Summary of Investigation Report, dated November 12, 2020

Attachment 2 – TTC Management Response to Recommendations from Investigation by Rubin Thomlinson

Attachment 3 – Confidential Attachment



Executive Summary to:

TORONTO TRANSIT COMMISSION

Per: Diversity and Human Rights Department

November 12, 2020

RE: Streetcar Incident on February 7, 2020

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1. INTRODUCTION AND MANDATE

On March 30, 2020, the Toronto Transit Commission (“TTC”) retained Rubin Thomlinson LLP to conduct an investigation in response to an incident that occurred on a TTC streetcar on February 7, 2020, between a passenger (“the Passenger”) and four TTC employees (two Special Constables and two Fare Inspectors) (“the Respondents”).

This retainer came after a video clip of the incident was posted on social media. It depicted TTC employees engaged in a physical struggle with the Passenger and the Passenger being sprayed with a substance which was later identified as “OC” spray (Oleoresin Capsicum spray, commonly known as “pepper spray”). This clip quickly garnered media attention and led to a number of complaints by members of the public, including City councillors, regarding the Respondents’ treatment of the Passenger. These complaints raised the concern that the Respondents had used unnecessary force when dealing with the Passenger. Based on some individuals’ observations of the Passenger, a concern was also raised that the Respondents’ interactions with him were influenced by their perception that he had a mental health condition.

In response, the TTC initiated a public interest investigation into the incident.

Our mandate was to investigate what occurred between the Passenger and the Respondents. Specifically, I was to determine whether the Respondents had applied unnecessary force, contrary to the Transit Enforcement Unit (“TEU”) Code of Conduct. I was also to determine whether the Respondents’ perceptions of the Passenger’s mental health influenced their actions towards him, in light of the standard under the TEU Code of Conduct to treat passengers without discrimination on the basis of disability (under which a mental health condition would fall). Finally, the TTC asked us to make recommendations regarding TTC practices, if such recommendations were warranted.



2. INVESTIGATIVE PROCESS

Between early April 2020 and July 2020, I made several attempts to contact the Passenger. I had hoped to hear about his experience on the streetcar directly from him. Ultimately, he declined to participate in the investigation.

With the TTC's permission, Rubin Thomlinson requested via Twitter that anyone who was present on the streetcar on February 7, 2020, contact us (the TTC retweeted this request). There were no responses.

Nonetheless, I did proactively identify and interview two witnesses who were on the streetcar, near the Passenger, during most of the incident. I also interviewed the four Respondents who were involved in the incident. On some occasions, I needed to conduct follow-up interviews to clarify evidentiary issues that emerged. In total, I conducted 19 interviews and follow-up interviews with the Respondents and the witnesses.

As part of this process, I also collected and reviewed documentary and video evidence from the TTC.

I submitted my final report to the TTC on October 28, 2020.

As an explanatory note, in making factual findings in the report, the standard of proof I applied was the balance of probabilities. This is the standard used in civil matters such as employment law and human rights. Simply put, this standard meant that I determined what was more likely than not to have occurred.

3. BACKGROUND INFORMATION REGARDING TTC SPECIAL CONSTABLES AND FARE INSPECTORS

As noted above, two of the Respondents are Special Constables and two are Fare Inspectors. Each hold a different role in relation to the TTC operations.

TTC Special Constables are responsible for the enforcement of various federal and provincial statutes, including the *Criminal Code*, in relation to activities that occur on TTC property.

Through an agreement between the TTC and the Toronto Police Service Board, Special Constables are given limited police powers, including the authorization to effect arrests. Through section 25(1) of the *Criminal Code*, Special Constables are justified in applying force in the execution of their duties, provided that certain criteria are met.

TTC Fare Inspectors are designated as provincial offences officers for the purposes of enforcing the *Trespass to Property Act* and TTC Bylaw 1. They are primarily tasked with enforcing the payment of TTC fares through conducting proof of payment inspections on transit lines.

It is important to note that Fare Inspectors do not have the same police powers conferred onto TTC Special Constables, including the authorization to effect arrests or apply force.

***4. INTERACTION BETWEEN THE RESPONDENTS AND THE PASSENGER
– FINDINGS OF FACT***

As I examined the evidence, it became clear to me that the best way to understand the interaction between the Respondents and the Passenger was to view it in two parts, each outlined further below:

- The initial interaction with the Passenger before the physical struggle; and
- The physical struggle itself.

(a) The Initial Interaction

I found that much of the initial interaction between the Passenger and the Respondents was not at issue. I made the findings that follow about the general sequence of events that preceded the physical struggle between the Passenger and the Respondents on February 7, 2020.

The Passenger entered the eastbound Queen Street streetcar and sat by himself. Subsequently, the Respondents, who were tasked with conducting fare inspections, entered the same streetcar. I found that Fare Inspector 1 approached the Passenger randomly to ask for proof of payment, and that the Passenger aggressively refused to provide it. Fare Inspector 1 then motioned for the other Respondents to join her, which they did. The Special Constables asked the Passenger for proof of payment, which he refused to provide. They eventually asked him to exit the streetcar, which he also refused to do. I found that throughout this discussion, the Passenger was belligerent, swore, and spoke loudly. While the Special Constables may have been direct in addressing the Passenger, they nonetheless remained calm and did not raise their voices.

There was no evidence that Fare Inspector 1 and the Special Constables did anything inappropriate during this initial interaction with the Passenger. Accordingly, with

respect to this initial interaction, I did not find that they breached any of the TTC policies that we were asked to consider.

(Fare Inspector 2 did not engage with the Passenger at all during the incident (either initially or thereafter) and I therefore did not find that she contravened any of the applicable policies.)

(b) The Physical Struggle

I also made findings of fact, described below, about the physical struggle that ensued between the Passenger and the Respondents.

I found that following the above-noted initial interaction between the Passenger and the Respondents, the Passenger stood up, and the Special Constables made the initial physical contact by each grabbing one of the Passenger's arms. I further found that the Special Constables then escalated the struggle when Special Constable 1 immediately pulled the Passenger forward, and Special Constable 2 wrapped his arm around the Passenger.

I found that following this initial application of force, the Passenger and the Special Constables engaged in a very fast-moving struggle, during which they flailed their arms, pushed, and punched each other for approximately 12 seconds.

After this struggle, Special Constable 1 pressed his body against the Passenger's and pushed the Passenger into a seat. I found that Special Constable 2 then deployed OC spray approximately one second later.

I found that the Special Constables and the Passenger then struggled against one another for approximately the next 50 seconds. I also found that while her assistance was not requested, Fare Inspector 1 applied a pressure point in which she pressed two of her fingers against the base of the Passenger's neck for approximately 35 seconds.

Finally, I found that after the physical struggle, the Special Constables stood the Passenger up, handcuffed him, and guided him to a nearby window of the streetcar. I found that they then pushed the Passenger against the window, and immediately thereafter, pushed him down so that he was bent over a seat at an approximately 90-degree angle. The Passenger was then kept in that position for approximately 2 minutes and 40 seconds, in plain view of those standing outside of the streetcar, until Toronto Police Service officers arrived.

5. ANALYSIS — WAS THE FORCE UNNECESSARY?

The crux of this investigation was whether, based on the facts that I had found, the force that the Respondents used against the Passenger was unnecessary in the circumstances.

The factors typically considered in this type of analysis include the reasonableness and proportionality of the force used, in light of the situational factors at the time that the force was used, and potential threats to officers or public safety.

In the following sections, I have outlined my findings with respect to whether the force applied was unnecessary. In doing so, I considered the totality of the evidence and the circumstances that existed throughout the interaction. I ultimately made factual determinations based on an evaluation of the evidence, which included, in some cases, evidence that conflicted between the Respondents and the witnesses.

I note at the outset that when making my findings, I considered the notebook entries the Respondents made regarding their interaction with the Passenger. The entries appeared to support the explanations the Respondents provided regarding their actions. Notebook entries can be useful in an investigation because they can capture the writer's contemporaneous recollection of an event. However, to be reliable, these notes should be made without the influence of others, so that they can reflect the writer's own and independent experience of what occurred.

In this case, I concluded that I could not rely on the Respondents' notes, as I found that the Respondents had been placed in the same room – albeit at different desks – when they wrote them. I also found that they discussed the incident amongst themselves prior to completing their notes, and that they were aware of the social media coverage of the incident as they were writing them. Moreover, some of the content of the notes was at odds with the evidence of the witnesses, whom I found to be credible.

I therefore made my findings based on the totality of the remaining credible evidence.

Given the similarity in the explanations provided by the Special Constables, I have addressed their application of force together in the section below, and that of Fare Inspector 1 in a separate section further below.

i. Special Constables

The Special Constables provided various explanations for their applications of force. These explanations included the threats that they perceived from their initial interaction with the Passenger, including the comments that he made to them, the object that he was holding in his hand, and the circumstances that existed immediately before, during, and after, the physical struggle. I have examined each of these explanations below.

Perception of Threat During Initial Interaction

The Special Constables advised me that their use of force was informed, in part, by their perception of the threat the Passenger posed during their initial interaction with him.

First, the Special Constables advised that they had previously received complaints from other patrons about the Passenger's behaviour. I found that shortly after boarding the streetcar, Special Constable 2 and Fare Inspector 2 did indeed receive a complaint from a patron about a male patron (who was later believed to be the Passenger). I also found

that Special Constable 1 was subsequently informed by Special Constable 2 that patrons had complained about the Passenger.

However, I did not find that either Special Constable was presented with any information from other patrons to indicate that the Passenger was specifically violent and/or threatening.

The Special Constables further advised me that during the initial conversation they had with the Passenger, they observed him holding an object in his hand, which they described as being a potential weapon, and that this object informed, in part, their perception of the threat posed by the Passenger.

I found that the object in question was small, no more than two or three inches in length, and was not sharp, knife-like, or edged. I also found that this object was not overly thick, and would have been nearly, if not entirely, covered by the Passenger's hand if he placed it in his fist. I also found that throughout the conversation, the Passenger simply spun the object in his hands. I did not find that he pointed it towards anyone, made any threatening gesture with it, or otherwise indicate an intention to use it as a weapon at any point.

I therefore did not find that the Special Constables' applications of force against the Passenger were justified on account of the prior passenger complaints that they had received or the object in his hand.

The Special Constables also advised that during their initial conversation with the Passenger, he made several threatening comments. Based on the totality of the evidence, I found that the only threatening comment he made, of which the Special Constables were aware, was, "You don't want to mess with me." I did not find that this lone comment justified their subsequent applications of force, either on its own, or in conjunction with the other circumstances that existed.

With the above findings in mind, I next assessed the Special Constables' specific applications of force, taking into account the totality of the circumstances at each stage of the physical struggle.

Initial Application of Force

I did not accept the Special Constables' evidence that the Passenger initiated the fight. Rather, I found that the Special Constables made physical contact with the Passenger when he got up to exit the streetcar. I further found that this initial application of force was unnecessary, given that the Passenger was attempting to exit, was not advised that he was under arrest, and had not displayed any threatening behaviour (apart from the lone, above-noted comment, which, on its own, did not necessitate the application of force).

Punches

I found that the Special Constables' only applications of force which were necessary were the punches that they applied to the Passenger. This was due to the Passenger being assaultive, applying at least one strong punch to Special Constable 1, and appearing to punch Special Constable 2 several times. Based on the relevant evidence, I accepted that the perceived strength of the Passenger's punches warranted the Special Constables applying some measure of force in order to subdue him. Put another way, the punches from the Special Constables were reasonable, proportionate, and necessary in light of the Passenger's own punches towards them.

I was also mindful of the setting at this time: a streetcar with limited room to move, other patrons in the vicinity, and numerous physical barriers, such as rows of seats, on which people could have tripped and/or become injured should the fight have continued. Given the situation, the Special Constables were required to quickly subdue the Passenger in order to maintain public safety, as well as defend themselves. I

therefore found that the punches applied by the Special Constables were necessary, in light of the specific set of circumstances at that particular time.

OC Spray

I found that Special Constable 2's use of OC spray over lesser measures was unnecessary, given the lack of verbal commands for the Passenger to stop resisting, and the brief duration of the struggle up until this point. I also found that at the time the OC spray was deployed, the dynamics of the struggle were in favour of Special Constable 1, who had managed to push the Passenger into a seat.

Bending the Passenger Over a Seat

Finally, I found that it was unnecessary for the Special Constables to have bent the Passenger over a seat at the end of the altercation, and kept him in that position for 2 minutes and 40 seconds, given that he had been handcuffed, no longer posed a threat, and posed a low risk of becoming assaultive, escaping, and/or accessing a weapon. I also note that the nature of this position did not appear to be particularly comfortable or dignified, given that he was bent at the waist at an approximately 90-degree angle, and over a seat.

ii. Fare Inspector 1

I also considered the actions of Fare Inspector 1. As noted at the outset of this summary, Fare Inspectors are not authorized to use force. However, I did consider the Fare Inspectors' evidence that they have been trained to disengage from noncompliant individuals, unless they are specifically requested to assist. I found that in this case, the Special Constables did not ask Fare Inspector 1 to help, and therefore, that her use of force was not consistent with her training.

I also considered that a Fare Inspector's assistance may nonetheless be required where a Special Constable is unable to request it. However, I did not find that this incident represented such a situation, as the struggle had been of a short duration (about one minute), there were two trained Special Constables present to subdue the passenger, and no other patrons were present when Fare Inspector 1 applied the pressure point, as they had been asked to exit. Accordingly, I found that Fare Inspector 1's use of force was unnecessary.

6. ANALYSIS — WAS THE FORCE INFORMED BY THE PASSENGER'S MENTAL HEALTH?

At the request of the TTC, I considered whether the actions of the Respondents were informed, at least in part, by their perceptions of the Passenger's mental health.

i. Special Constables

Based on their evidence, I found that the Special Constables were alert to the possibility that the Passenger had a mental health condition (I made no finding about whether he in fact did). While both Special Constables advised me that they could not definitively conclude that he had such a condition, that was not the focus of my inquiry. Rather, I considered whether their suspicion on this point informed, at least in part, their subsequent decisions to apply force.

The Special Constables denied that their perception of the Passenger's mental health had an impact on their use of force. Given that there was no direct evidence that the Passenger's perceived mental health influenced the Special Constables, I critically examined their explanations for their use of force; namely, that they were required to address the Passenger's threatening behaviour and comments. However, as outlined above, I did not find that the threatening behaviour and comments on which the Special Constables relied in fact occurred. Absent their proffered explanations, I considered

whether their admitted suspicion that the Passenger may have had a mental health condition impacted, at least in part, their application of force.

It is widely accepted that those with perceived mental health conditions are stigmatized as being more dangerous and posing a threat to public safety, simply on the basis of that perceived mental health condition.¹ This stigma is not premised on actual evidence, but rather, is a widely-held misconception that informs how such individuals are ultimately treated. There is evidence to indicate that while most individuals with mental health conditions are no more prone to violent behaviour than the general population, such individuals are nonetheless more likely to experience violence themselves.² I believe that the incident with the Passenger exemplifies this.

The perception of a mental health condition can also lead to what the Ontario Human Rights Commission (“OHRC”) has referred to as “mental health profiling,” which it defines as, “any action undertaken for reasons of safety, security or public protection that relies on stereotypes about a person’s mental health or addiction rather than on reasonable grounds, to single out a person for greater scrutiny or different treatment.”³

The OHRC has listed the following indicia of mental health profiling that are of particular relevance to this investigation:

- Whether the person who undertook the action in question believed that the affected individual had a mental health condition

¹ *Winko v British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 625 at para 35; *R v Swain*, [1991] SCR 933 at 994.

² CMHA, Ontario, “Violence and Mental Health: Unpacking a Complex Issue,” <https://ontario.cmha.ca/documents/violence-and-mental-health-unpacking-a-complex-issue/>

³ OHRC, *Policy on preventing discrimination based on mental health disabilities and addictions* (2014): http://www3.ohrc.on.ca/sites/default/files/Policy%20on%20Preventing%20discrimination%20based%20on%20mental%20health%20disabilities%20and%20addictions_ENGLISH_accessible.pdf#page=12&zom=100,0,0.

- No explanation, or a contradictory or changing explanation, is given for subjecting an individual to greater scrutiny or different treatment, or an explanation is offered that does not accord with common sense
- Unfounded suspicion or action in the face of a possibly innocent explanation
- An overreaction to perceived challenging behaviour
- An unprofessional manner was used, or an individual was subjected to discourteous treatment

Lastly, I was mindful that direct evidence is not required in order to find that discrimination on the basis of a *Human Rights Code* ground (in this case, a perceived mental health condition) has occurred. Rather, the applicable case law and the OHRC have stated that such direct evidence is often not available, and that discrimination can nonetheless be found based on circumstantial evidence and inference. It has also been held that an intention to discriminate is not necessary, nor does the *Code* ground in question need to be the only, or primary, factor for the impugned behaviour, in order to find that discrimination occurred.

Taking into account the totality of the incident in question, I found that the Special Constables' suspicions about the Passenger's mental health explains some of the evidence that the Special Constables provided; specifically, their amplification of their perception of the threat that the Passenger posed. Simply put, I found that a nexus existed between their perception of the Passenger's mental health and their escalated responses to a non-urgent and non-threatening situation.

Having rejected the Special Constables' explanations for their use of force, I was able to infer that the Special Constables' perception of the Passenger's mental health caused them to believe, implicitly or otherwise, that the Passenger was more dangerous than he

in fact had demonstrated himself to be. I further found that their belief on this point informed, at least in part, their decisions to apply force.

I note that it was not simply one particular finding or observation that led me to make this inference. For example, had the Special Constables only been quick to initially apply force, or only placed the Passenger in an unusual position after the struggle, I may have arrived at a different conclusion. However, the totality of the Special Constables' actions led me to believe that they were influenced by their perceptions of the Passenger's mental health, and accordingly, by an unfounded belief that he was more dangerous than he had shown himself to be.

It has been held that mental health disabilities attract the same rights and protections as physical disabilities.⁴ It has been further held that the perception of a mental health disability will trigger human rights protections on the basis of disability.⁵

In subjecting the Passenger to unnecessary applications of force due, in part, to his perceived mental health condition, I therefore found that the Special Constables discriminated against him on the basis of his disability.

When discussing his application of force in the context of the Passenger's perceived mental health condition, one of the Special Constables stated that mental health apprehensions under the *Mental Health Act* often require making physical contact with the individual in question, handcuffing them, and/or applying force. I do not deny that physical contact with an individual with a perceived mental health condition may be necessary and justified in some circumstances.

⁴ *Fleming v Reid*, 1991 CanLII 2728 at IV (Ont CA).

⁵ *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City), and Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, [2000] 1 SCR 665; *Petterson and Poirier v Gorcak* (No. 3) 2009 BCHRT 439.

However, I found that given the totality of these particular circumstances, such contact was unnecessary. Rather, the force appeared to have been partly informed by an implicit assumption about the Passenger’s dangerousness, simply by virtue of his perceived mental health condition.

ii. Fare Inspector 1

I found that Fare Inspector 1’s explanation for her use of force aligned with the circumstances that existed at that time. Specifically, I found that her use of force was motivated by a desire to help her colleagues, who had not been able to subdue the Passenger at the time of her involvement. I further found that she applied force due to her use of force training, which she felt was unrealistic to not apply in this instance.

Therefore, I did not find that Fare Inspector 1’s use of force was motivated by any perception of the Passenger’s mental health.

7. *POLICY BREACHES*

Based on my above findings, I found that the Special Constables each breached the following provisions of the TEU Code of Conduct:

2. (1) A Head of the Transit Enforcement Unit or a Transit Enforcement Unit Member commits misconduct if he or she engages in,
 - (a) Discreditable Conduct, in that he or she,
 - (i) fails to treat or protect persons equally without discrimination with respect to services provided by the Transit Enforcement Unit based on any of the prohibited grounds as set out in section 1 of the Ontario *Human Rights Code*

I further found that the Special Constables and Fare Inspector 1 each breached the following provision of the TEU Code of Conduct:

2. (1) A Head of the Transit Enforcement Unit or a Transit Enforcement Unit Member commits misconduct if he or she engages in,

- ...
- (g) Unlawful or Unnecessary Exercise of Authority, in that he or she,
 - (i) without good and sufficient cause makes an unlawful or unnecessary arrest, or
 - (ii) uses any unnecessary force against a person contacted in the execution of his or her duty

8. RECOMMENDATIONS

Based on the evidence that I gathered throughout the course of this investigation, I made four recommendations for the TTC's consideration:

(i) Additional training regarding mental health

During their interviews, the Respondents all advised that as part of their initial training, they received training regarding interacting with individuals who may have a mental health condition. However, they also said that they have not received specific training about this topic since then. By way of comparison, they receive annual training regarding the use of force.

Given Toronto's diverse population, and particularly the diverse population of those who use the TTC's services, I believe there is a strong need for additional training regarding mental health. The unique nature of the Respondents' positions, which carry an inherent risk of conflict with members of the public, may require specific training regarding how to identify possible indicia of mental health conditions, effective de-escalation strategies (including how to approach and communicate effectively with those who they perceive have a mental health condition), and how to identify, and minimize the impact of, implicit biases.

During their interviews, the Special Constables noted that they are unable to specifically diagnose an individual as having a mental health condition and must address the situation with which they are presented. For clarity, our recommendation is not that Special Constables and/or Fare Inspectors ought to receive training regarding how to make such a diagnosis. Rather, we recommend additional training to assist them to engage more effectively with members of the public who may exhibit signs of a mental health condition (which requires an understanding of how to identify such signs).

The Special Constables and Fare Inspectors will continue to interact with customers who may have mental health issues; this is not going to change. Overtime, new and better information may also become available regarding effective techniques to interact with this segment of the population. For these reasons, the TTC should consider providing regular training to its Special Constables and Fare Inspectors (and perhaps, to other front-line employees) regarding mental health; a one-time training module is not sufficient.

It is our understanding that a training session regarding mental health, scheduled for earlier this year, was cancelled in light of the COVID-19 pandemic. As such, it may be that the TTC has already turned their minds to the need for additional training on this topic and is in the process of implementing the substance of this recommendation.

(ii) Independent note-taking

As noted earlier, I found that the four Respondents were placed in the same room when making their notebook entries about this incident; I also found that they discussed the incident amongst themselves prior to completing their notes. It is conceivable that their discussions with one another had an impact on their perception of the incident and/or informed what they wrote in their entries.

The importance of accurate notebook entries cannot be overstated. Such entries can form the basis for criminal charges and are often relied upon throughout related legal

proceedings. The decisions made on the basis of these notes, ranging from the decision to lay a charge, to a criminal sentence, can have significant repercussions for the affected individuals. As such, it is imperative that such notes reflect the complete, accurate, and independent recollection of the involved officer.

To that end, the TTC may wish to consider setting out expectations regarding the need for notebook entries to be completed independently, and without discussions amongst those who were involved regarding the substance of the incident.

The TTC may also wish to consider implementing measures to ensure that notes are written in separate locations, where possible. While acknowledging that this will not always be feasible, where an incident of a serious and/or high-profile nature, such as this one, occurs, it may not be optically favourable for the employees to write their notes in the same location.

(iii) Clarity regarding Fare Inspectors' use of force

Fare Inspector 1 advised that her application of force was informed, in part, by the mixed messaging that she believed she received in her use of force training. Specifically, she advised that she found it unrealistic to be trained on the use of force, but to also be expected to disengage from situations that warrant force.

She further advised that she was previously involved in discussions with TTC management, in which she was advised that she would receive their support if she applied reasonable force. We note that we have not taken steps to verify Fare Inspector 1's evidence on this particular point.

Nonetheless, the TTC may wish to consider clarifying with Fare Inspectors the expectations regarding their use of force.

(iv) **Reconsideration of the Passenger's ban**

In the course of my investigation, I was advised that the Passenger had been banned from the Queen Street streetcar.

We have not verified whether this is in fact true, and if so, what the basis for the ban was. However, should the ban be based on the perception that the Passenger initiated the fight in question with the Special Constables, the TTC may wish to reconsider this ban, as I did not find that the Passenger in fact initiated the fight.



Management Response to February 7, 2020 Incident – Investigative Report Recommendations

Background

The TTC has been on a journey to change the culture and practices of the Revenue Protection and Special Constable Service departments. As described in the February 2020 TTC Board Report, *TTC's Revenue Protection Strategy*, a reorganization of the Transit Enforcement Unit was initiated in early 2020 to address the most urgent and important issue facing the unit - changing the culture of the departments while enhancing their focus on the key priorities of transit security and maximizing revenue protection.

Since the February 2020 update, the Revenue Protection and Special Constable Service departments have moved from the Operations Group to the Strategy and Customer Experience Group. This further signals the TTC's commitment to putting the customer at the centre while we modernize our service to better serve our customers and the residents of Toronto.

Our journey to changing the culture and practices has been and will continue to be guided by internal and external benchmarking and advice from external stakeholders and independent advisors. TTC has adopted the recommendations through 2017 and 2019 of the Ombudsman Toronto investigation reports, City of Toronto Auditor General audits, stakeholder consultations, etc. Internal benchmarking has informed changes to processes, training, customer service practices, job roles and supporting organizational structures.

The Rubin Thomlinson Investigation Executive Summary (Attachment 1 to the Report), has provided TTC Staff with additional perspective on actions needed to change the culture and practices of Revenue Protection and Special Constable Services. It is important to note the recommendations can be addressed through the work plans that are already underway.

TTC Staff are in the process of reviewing the uniforms, training, customer service practices, mandates, job roles and supporting organizational structures for the Revenue Protection and Special Constables Service departments. This review will be conducted with the advice of the TTC's External Advisor on Diversity and Inclusion, Arleen Huggins. Additional information on the cultural changes will be provided in an upcoming TTC Board report in Q2 2021.

Response to Recommendations

As part of the Executive Summary (Attachment 1 to the Report), Rubin Thomlinson has provided four recommendations. A summary of the management's response is set out in Table 1.

The management response to each recommendation outlines the training in place at the time of the incident, training that was implemented post incident and changes that will be implemented. The TTC has accepted all of the recommendations of the external investigator and is committed to making changes resulting from the recommendations and lessons learned from this incident.

Rec #	Recommendation	Agree	Action Plan	Implementation timeline	Changes already implemented	Comments
1	Additional training regarding mental health <i>... given the diverse population of those who use the TTC's services, we recommend better training for transit enforcement personnel regarding how to interact with those who have a mental illness.</i>	Yes	<p>1.1 Complete the implementation of the new Mental Health Interventions and Mental Health Act Review module.</p> <p>1.2 Complete a review of all training curriculums and modules. This review will include who delivers the training and the delivery methods.</p> <ul style="list-style-type: none"> ○ This review will be conducted with advice from the TTC's External Advisor on Diversity and Inclusion, Arleen Huggins. 	<p>1.1 Q1 2021</p> <p>1.2 Q2 2021</p>	<p>1.1 99% of Special Constables have been trained on this module since February 7, 2020.</p> <p>1.2 Review is in progress. Discussions are in progress with experts in the field of mental health to have them extend the concepts and deliver these additional modules.</p> <p>1.3 At the start of the COVID-19 pandemic, the</p>	<p>1.1 See <i>Appendix 1 – Training Modules Outlines</i> for additional details on the module content.</p> <p>1.2 An internal work plan is currently under development.</p> <p>1.3 Building the Street to Homes team as a budgeted section within the Special Constable Department.</p>

Rec #	Recommendation	Agree	Action Plan	Implementation timeline	Changes already implemented	Comments
			<ul style="list-style-type: none"> ○ Consultation partners will include Ombudsman Toronto, the City of Toronto's Streets to Homes, Indigenous Affairs Office and Confronting Anti-Black Racism (CABR) unit plus mental health industry experts. <p>1.3 Continue to partner Special Constables with Streets to Homes Outreach members to address the needs of some TTC customers.</p>	<p>1.3 Ongoing</p>	<p>Community Engagement Unit arranged a joint operation with the City of Toronto's Streets to Homes unit in order to assist with persons in a time of need. This joint operation provided assistance to persons located on the system that required emergency shelter. Members of the Community Engagement Unit and Patrol Division conduct welfare checks on persons in the subway stations, streetcar lines and bus routes throughout the City, with extra</p>	

Rec #	Recommendation	Agree	Action Plan	Implementation timeline	Changes already implemented	Comments
					attention paid to our busiest stations. This work is ongoing.	
2	Independent note-taking <i>.... recommended that the TTC set out expectations for transit enforcement personnel regarding the need for notebook entries to be completed independently, and without discussions amongst those involved regarding the substance of an incident.</i>	Yes	<p>2.1 Issue a memorandum outlining expectations on independent notetaking to all members of Special Constable Service and Revenue Protection.</p> <p>2.2 Review and enhance the independent note-taking module in comparison with other agencies and against legal requirements to develop a best practice in training, supporting and monitoring staff to meet the expectation of independent note taking.</p> <ul style="list-style-type: none"> ○ Consultations will be conducted with key partners, such as Toronto Police Service, Ontario Police College, etc. <p>2.3 Update procedure manuals to explicitly address collaboration.</p>	<p>2.1 Q4 2020</p> <p>2.2 Q1 2021</p> <p>2.3 Q1 2021</p>	<p>2.1 Yes</p> <p>2.2 Reviewing the module.</p> <p>2.3 Update to be completed Q2 2021.</p>	<p>2.1 Memo to be issued in early December 2020 after review by Ombudsman Toronto and key stakeholders.</p> <p>2.2 To be rolled out in the training module starting January 2021 for all Fare Inspectors and Special Constables. In the interim, a memorandum will be issued, as identified in 2.1 outlining expectations on independent notetaking to all members of Special Constable Service and</p>

Rec #	Recommendation	Agree	Action Plan	Implementation timeline	Changes already implemented	Comments
						Revenue Protection. 2.3 Procedure manuals will be updated in conjunction with other revisions related to use of force, use of discretion and the collection of race based data.
3	Clarity regarding Fare Inspectors' use of force <i>Third, we recommended that the TTC provide clarification to fare inspectors regarding when they can apply force.</i>	Yes	3.1 Issue a memorandum to TTC Special Constables outlining when to use the powers of arrest. 3.2 Complete a review of all training curriculums and modules. Key changes will include use of force, use of discretion and the collection of race based data. <ul style="list-style-type: none"> ○ This review will be conducted with advice from the TTC's External Advisor on Diversity and Inclusion, Arleen Huggins. 	3.1 Q4 2020 3.2 Q2 2021	3.1 Yes 3.2 Review to be completed Q2 2021.	3.1 Memo issued in early December 2020. 3.2 Training using the new curriculum will be rolled out Q3-4 2021.

Rec #	Recommendation	Agree	Action Plan	Implementation timeline	Changes already implemented	Comments
			<ul style="list-style-type: none"> ○ Consultation partners will include Ombudsman Toronto, the City of Toronto's Streets to Homes, Indigenous Affairs Office and Confronting Anti-Black Racism (CABR) unit plus mental health industry experts. <p>3.3 Implement a new annual refresher program for Fare Inspectors including additional education around limitations of use of force.</p>	3.3 Q4 2021		3.3 Interim methods for communicating Fare Inspector limitations around use of force will be implemented in Q1 2021.
4	<p>Reconsideration of Passenger 1's ban</p> <p><i>... TTC may wish to reconsider the ban, in light of my findings regarding how the fight occurred.</i></p>	Yes	<p>4.1 The ban was part of an Ontario Court of Justice Adult Probation Order dated May 28, 2020 against Passenger 1, which contained a condition that Passenger 1 was not to board a TTC vehicle on the 501 Queen Street route for the first 12 months of the order.</p>		Not applicable.	<p>The ban arose as part of a sentence in criminal proceedings, in which Passenger 1 pleaded guilty to two charges of assault against peace officers and to a failure to comply with a release order.</p>

Rec #	Recommendation	Agree	Action Plan	Implementation timeline	Changes already implemented	Comments
			The TTC will be consulting with a criminal lawyer regarding a plan to overturn the convictions and to terminate the ban, and will work with and support Passenger 1 in this endeavour.			

Table 1: Management Response to February 7, 2020 Incident – Investigative Report Recommendations

Changes to Training

The TTC reviews and revises the Special Constable training program annually and the Fare Inspector program as necessary. The training program was revamped in recent years, through consultation with the Ombudsman Toronto, the 519 Community Centre, mental health professionals and other emergency services. The latest changes were in response to Ombudsman Toronto recommendations based on 2017 and 2019 reports. Changes were also made to incorporate feedback from our customers who experience challenges riding the system.

Training modules related to Use of Force, Crisis, De-Escalation and Mental Health Programs have been launched or revised since 2015 as follows:

- January 2018 – Notebooks and Court Room Testimony
- May 2018 – Crisis Communication and De-escalation
- October 2018 – Updated Use of Force Policy reviewed by Toronto Police Service (TPS)
- January 2019 – Ethical Decision Making and Recognizing Discretion; Revised Crisis Communication and De-escalation
- June 2019 – Recognizing Implicit and Explicit Bias
- September 2019 – Confronting Anti-Black Racism
- January 2020 – Mental Health Interventions/Mental Health Act (MHA) Review

For additional information on each of the modules, refer to *Appendix 1 – Training Modules Outlines*.

Currently, the Special Constables receive 90 days of training through their initial onboarding. As part of that training, Special Constables receive 13 days of training on crisis communications, de-escalation, mental health awareness and the Mental Health Act.

As of 2019, Fare Inspectors receive 30 days of training upon initial recruitment. During the 30-day program, Fare Inspectors receive seven days of training in crisis communications, de-escalation, ethical decision making and recognizing discretion and mental health awareness training appropriate to their role.

Both the Special Constable and Fare Inspector training programs include simulations conducted with actors in a transit environment, in order to evaluate the knowledge and skills that each employee receives and to observe their decision-making abilities in a real-time environment.

As part of the initial training, members also participate in instructor-led training delivered by the Alzheimer's Society of Toronto and the City of Toronto Streets to Homes program. In 2019, the TTC added Confronting Anti-Black Racism Training (CABR), delivered by the City of Toronto's CABR Unit. Transit Special Constables and Fare Inspectors participate in holistic-simulation-based training as part of the curriculum.

In January 2020, new modules on Mental Health Interventions and Mental Health Act (MHA) Section 17 Apprehensions were launched. Since February 7, 2020, 99% of

Special Constables have been trained on these modules. Discussions are in progress with experts in the field of mental health to have them extend the concepts and deliver these additional modules.

Training Programs Review

As Revenue Protection and Special Constable Service departments continues to align with corporate processes and programs, the administration of the Fare Inspector and Special Constable training programs will be transitioned to the Operations Training Centre (OTC). This means that OTC would be responsible for all training activities, including administration of scheduling, development, training execution and management of specialized training providers. Curriculum development will continue to be a partnership between all three departments. The main benefit will be to leverage standard training practices that are employed for other large training programs, i.e., Transit Operators program, etc. When revisions are made to the training, the tone of the training as well as the training facilitators will be assessed.

Training delivery methods and models will continue to be reviewed in 2021. This review will include enhancing the following:

- Video review – existing TTC or other agencies
 - Use as a training tool for all Special Constables and Fare Inspectors
 - Focus on what led up to the event with a human rights, diversity and equity lens
 - Focus on key parts of the event and responses
- Role play – previous incidents
 - Reviewing responses to incidents by incorporating lessons learned
 - Provide real time tools that can be used when found in that situation again
- Mental Health
 - Incorporate additional content to be delivered by specialists in this field, including those with lived experience.

Revenue Protection and Special Constable Service – Culture Changes

The TTC is committed to continuing its journey towards building a respectful and inclusive workplace culture by providing continuous education on anti-racism, human rights, accessibility, diversity and inclusion. While strategic programs are being put in place to attract, recruit and retain a diverse workforce that reflects the City that we operate in, we must also look inwardly at our workforce.

The Revenue Protection and Special Constable Service 2020/2021 departmental work plans include a top to bottom review and implementation of new/revised policies, procedures and training. The work plans will be updated to place additional focus on the items related to the recommendations from the Executive Summary (Attachment 2 to the Report). The TTC's 2021 Operating budget submission will include sufficient funding to address these items and to complete the policy, procedure and training review.

In order to effect change internally and externally, we will take a holistic approach to change by looking at people, processes and technology in order to achieve the change objective. In Q2 2021, the TTC will bring forward a report that discusses the culture changes that are being effected in the Revenue Protection and Special Constable

Service departments. The objective is to have a revenue protection and safety and security service that is customer-focused and grounded in respect and dignity for customers and fellow employees. In order to achieve this goal, improvements are required to the way that work is done in these departments with consideration to the deliverables discussed in the *TTC Status Update #2 - Anti-Racism Strategy and Ombudsman Recommendations*.

The Interim Chief Financial Officer has reviewed this report and agrees with the financial summary information.

Equity/Accessibility considerations

The safety of TTC customers and employees is our priority, and the TTC takes this incident very seriously. As detailed in the Executive Summary (Attachment 2 to the Report), the investigator provided four recommendations for consideration and the TTC has accepted all of them.

As Transit Special Constables and Fare Inspectors have significant public contact and perform both enforcement and customer service roles, equity becomes an important factor. Challenges serving customers in a diverse population and living with a mental illness will arise. The importance of having the skills necessary to ensure all customers are treated equally and with dignity and respect, is crucial.

In mid-2019, the Head of Special Constable Service increased the number of dedicated Community Engagement Officers to two from one. The Community Engagement Unit (CEU) focuses on assisting customers living with mental illness by engaging other community stakeholders to share resources and form sustainable solutions to issues of mutual concern, such as panhandling and homelessness. The CEU continues to work with City agencies and partners, such as Furthering Our Community by Uniting Services Toronto (F.O.C.U.S. TO), Streets to Homes, Gerstein Crisis Centre, Mental Health Commission of Canada and the Toronto Police Mobile Crisis Intervention Team.

Revenue Protection and Special Constables Services re-organization

The Revenue Protection department provides an essential role in achieving the TTC's revenue recovery target. A key objective of the 2020 Revenue Protection work plan is to improve the fare inspection program by increasing inspection time in order to increase the number of taps. This objective was to be executed in conjunction with implementing the Ombudsman's recommendations and the Auditor General recommendations from the Phase 1 and Phase 2 Revenue Operations audits. Coupling these two themes together seeks to strike a balance of transit equity with approaches to addressing lost revenue with a concentrated effort to provide great customer service, grounded in respect and dignity.

Changes similar to the Revenue Protection department are currently underway in the Special Constable department. The department is moving to a model that is focused on customer service, respect and dignity, with law enforcement as a secondary initiative.

Key **benefits** of the re-organization of both departments include:

- Increasing the capacity for in-field supervision

- Aligning structure and titles with other operating divisions to remove titles related to law enforcement
- Developing an early intervention system for potential trends of discrimination
- Community partnering and engagement

Comprehensive Culture Change Work Plan 2020-2021

Collectively with internal and external assistance, the TTC has developed a work plan that is intended to make and sustain change. We have validated our plan through an independent review by experts Dr. Akwasi Owusu-Bempah and Dr. Scot Wortley, City of Toronto divisions such as the Confronting Anti-Black Racism (CABR) unit and the Indigenous Affairs Office. The work plan will also be reviewed by the TTC's External Advisor on Diversity and Inclusion, Arleen Huggins.

The TTC will be reaching out to the community through these City divisions as well as through City Council and public consultations. The public consultation plan will be published on TTC.CA in early 2021. In addition, in 2021, the TTC will launch a Community Racial Equity Advisory Committee (C-REAC) and Employee Racial Equity Advisory Committee (E-REAC). The development of these committees will ensure sustainable ongoing consultations on work to identify, address and prevent racism, anti-Black racism and anti-Indigenous racism at the TTC. The two departments will also seek opportunities to further engage customers through existing channels such as the Customer Liaison Panel and the 5-Year Fare Policy & 10-Year Fare Collection Outlook consultations.

According to the Ontario Human Rights Commission (OHRC) there six (6) key principles for addressing racial profiling. These principles will govern positive change and respect for human rights in law enforcement:

- **Acknowledgement:** Substantively acknowledging the reality of racial profiling, including the impact it has on individual and community well-being and trust in law enforcement, and recognizing the specific impact on Indigenous peoples and racialized communities and individuals
- **Engagement:** Active and regular engagement with diverse Indigenous and racialized communities to obtain frank and open feedback on the lived experience of racial profiling and effective approaches to combatting it
- **Policy guidance:** Adopting and implementing all appropriate standards, guidelines, policies and strict directives to address and end racial profiling in law enforcement
- **Data collection:** Implementing race data collection and analysis for identifying and reducing disparity, and managing performance
- **Monitoring and accountability:** Regularly monitoring racial profiling, and setting robust internal accountability mechanisms at the governance, management and operational levels
- **Organizational change:** Implementing multi-faceted organizational change (for example, in relation to training, culture, hiring, incentive structures etc.) consistent with the OHRC's guide Human rights and policing: Creating and sustaining organizational change
- **Multi-year action plan:** Forming anti-racist action plans featuring initiatives geared toward achieving short- and long-term targets for advancing all of these principles.

The Revenue Protection and Special Constable Service Culture Change work plan was reviewed against the OHRC principles to determine its completeness. In Q2 2021, a revised work plan will be presented to the TTC Board that incorporates the OHRC deliverables and feedback from the TTC's External Advisor on Diversity and Inclusion, Arleen Huggins.

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Attachments

Appendix 1 – Training Modules Outlines

Appendix 1 – Training Module Outlines

Memo Books:

Officers are introduced to the proper completion and keeping of a duty memo book. Emphasis is placed on proper procedure that is consistent with TTC policy, existing police practice, and case law. Officers will understand that the memo book is the first step to recording information that will be used for investigations, administration, and prosecution.

Collaborative Notes

Officers will be asked if they made the notes and if they made them independent of other officers. It would be unrealistic to state that an officer had no interaction with another officer prior to making the notes. Still, officers must make their notes based upon their own independent recollection of events. Officers must ensure that their notes are not tainted by other officers' information or perceptions.

In R v. Green (1998) O.J No. 3598 O.C.J

“It is not uncommon for police officers preparing their notes to confer with others or with central notes taken by a designated officer in order to obtain some details, particularly of times, specific addresses or the like. It is preferable that the notes reflect which information comes from a source other than the officer's own recollection, although I recognize that this is perhaps an ideal standard, and one not reached in actual practice. Some limited degree of confirming details may be necessary and might not undermine the reliability of the notes as a whole or the officer's testimony.

There are important reasons for requiring that officers prepare their notes independently. The purpose of notes made by a police officer is to record observations made by that officer...The fact that officers have collaborated on their notes will always cause a trier of fact to give careful consideration to the reliability of that officer's evidence.”

Mental Health Awareness:

The current Mental Health Awareness program was implemented in September 2015 after consultation with the Ombudsman Toronto, the 519 Community Centre and mental health professionals. During the Initial Recruit Training programs, all staff receive the following 3-day training specific to mental health awareness conducted by Dr. Merry C. Lin, registered Clinical Psychologist. The training consists of the following modules:

Mental Health Awareness – 3-day module:

Overview (Day 1)

- Overview of mental illnesses, including:
 - a general understanding of mental illness and prevalence, debunking myths, misconceptions and fears and learn to overcome biases
- Signs and Symptoms
 - Identify when someone is suffering from mental illness and have a general understanding of symptoms, have a general understanding of symptoms, and a basic understanding of how mental illness is diagnosed
- Responding to someone with mental illness

- How to identify when someone is mentally vulnerable, learn the basics of responding to someone with mental illness and practice response skills

Psychological First Aid (Day 2)

- Overview of psychological crisis
 - Understand the responsibility as a special constable, learn the difference between response and intervention, understand the nature of a psychological crisis and the importance of an early response and have a basic understanding of PTSD and symptoms
- Providing Psychological First Aid (PFA)
 - Understand the process of recovering from a crisis, the need for PFA, and the PFA process

Self-Care – Maintaining Health and Well-Being (Day 3)

- Stress and its impact
 - Understand the impact of stress, the adrenaline connection, signs of stress on the body and how to pay attention to your body, mind and emotions along with the signs of adrenal fatigue
- Understand the problem – signs and symptoms
- Strategies to transform compassion fatigue (CF)
 - Learn strategies to mitigate symptoms of CF and identify the four key steps to combat CF
- Staying on top of stressful/challenging lives

Mental Health Interventions

Mental health related calls are on the rise across North America. They can be the most challenging call type for law enforcement officers for two main reasons: difficulty in communicating with the subject and possible dangerousness to the subject or others. Depending on the type and severity of mental disorder, an officer's ability to communicate with this individual may be compromised. Also, there could be an inherent danger should the person want to commit suicide.

Recent statistics show that over the last two years, approximately 25% of the TTC's Special Constable calls for services involve mental health issues. During recruit training officers are provided training through an external specialist, Dr. Merry Lin and Associates. Two days of the three-day program are directed to the understanding mental health illness and psychological first aid. This is augmented during the recruit training with an enforcement perspective for mental health intervention, crisis communication, and Mental Health Act apprehensions.

In 2018 during recertification training, a full half day was dedicated to the area of crisis communication and de-escalation skills relating to people in mental crisis. This content was delivered in an interactive theory session with back to back simulations giving the officers the ability to develop the necessary skills. These skills were further integrated into reality simulation-based training which has continued 2019 and 2020.

Given the high percentage of interactions involving mental health issues, a necessity was identified to revisit and elaborate on the tools to manage these types of interactions and further the assistance that can be provided to persons experiencing a mental health crisis.

Mental Health Act Section 17 Apprehensions

The literature from the Mental Health Commission of Canada (TEMPO 2008) has stated that law enforcement becoming the first point of contact for people in crisis is due to de-institutionalization and the lack of mental health services and supports in the community.

As a result, Special Constables are often the first to respond to individuals having a mental health crisis on TTC property, and in some cases, this may require the officers to de-escalate the situation. The goal of the officers is to ensure the safety of that individual and then to get them the help that they need.

There is research to suggest that there is a difference in focus between law enforcement and clinicians with respect to mental health (Hoffman 2013). Law enforcement uses section 17 of the Mental Health Act as a guide, which emphasizes dangerousness while clinicians focus on the indicators of disorderly thought. Therefore, the reasons for the apprehension may not be the same as the reasons for admission.

This component is meant to be a review of section 17 of the Mental Health Act, with a focus on articulation, elaborating on their perceived observations of a mental disorder as a part of their grounds for apprehension.

Pyramid of Accountability

Over the last several years' officers have become more scrutinized by the public, the media and their organizations. Each organization has gone through its own similar incidents. The TTC experienced this in January of 2015 when two enforcement officers became involved in a violent arrest of two individuals at Union Station. The pyramid of accountability is designed to allow officers a better understanding of the issues of perception and how their actions will be viewed by others. (Lawful, Reasonable, Necessary, Acceptable)

Use of Force Recertification (*Special Constables*) and Legislative Review (*Fare Inspectors*)

The goal of the Use of Force Recertification and Legislative Review course is two-fold. First, Special Constables are mandated to recertify on use of force and de-escalation skills on an annual basis. This course is designed to address current use of force issues, revisit core use of force physical skills, elevate communication and de-escalation, enhance judgement and refresh on past training. Second, the course will refresh and update officers on identified legislative and investigative gaps related to their job description.

NOTE: All Basic Special Constable, Fare Inspector Basic, Recertification and Refresher courses include holistic, reality-based training focused on customer service, de-escalation, communication and judgement and use of force (where applicable) scenarios based on incidents that have occurred in the transit environment.

Modular topics such as crisis communication, customer, de-escalation, discretion, mental health interventions, legislative authorities and procedures are continually woven throughout the training program which culminate in the reality based training/simulation training.

Use of Force (*Special Constables*)

The basic principles of force are explored and linked to all relevant legislation that enables an officer to use force within the boundaries of legislation. Public perception is discussed and woven in with expected behaviour within a transit organization. Emphasis is placed on decision making and knowing when to disengage. Concepts are presented using the established Provincial Use of Force Response Options Model. This model has been accepted in numerous courts and forms the backbone to use of force training throughout the province.

The content is consistent with the standards established by The Ministry of the Solicitor General's Office, The Ontario Police College, The Control Institute, The Toronto Police Service, and other Special Constable agencies that receive use of force training. Officers are to meet the established standards in both theory and practical evaluations.

Training for the use of an expandable baton and pepper foam is part of the Special Constable Initial Recruit and Annual Re-certification training program. Special Constables are trained in the use of an expandable baton and pepper foam in a manner consistent with Provincial training standards, and as required by the Toronto Police Services Board. This includes theory, effects, medical considerations and potential risk of injury.

Biennial Refresher (*Fare Inspectors*)

As the role of the Fare Inspector differs from that of a Special Constable, the biennial Fare Inspector Refresher program is directed towards managing confrontational situations using accepted de-escalation, and communication skills. Content is also directed towards dealing with people in crisis, report writing, enabling use of force legislation, and physical skills focused on self defence for to escape and evade an assault as well as limited control skills to assist a special constable or police officer during an arrest if called upon.

Reality Based/Simulation Training

The most important aspect of any training is the ability to apply the knowledge. Simulation training allows the officer to enter into a realistic environment without knowing what to expect and act in a manner that is consistent with knowledge and skills taught throughout the initial training.

The training is conducted in a realistic open environment in which officers will be expected to communicate, exercise good judgment, use investigative skills, apply appropriate use of force and de-escalate confrontational situations.

Crisis Communication and De-escalation Training:

Crisis communication is a crucial skill that requires a good deal of training on best practices because of the inherent stress and volatility of such interactions with the public. During these types of interactions Special Constables require the skills to de-escalate situations and manage them to the most positive outcome.

Each component of this crisis communication workshop has been carefully considered with respect to satisfying the recommendations of the following key advisory bodies:

- The Mental Health Sub-Committee of the Toronto Police Services' Board
- Mental Health Commission of Canada TEMPO model (Training and Education about Mental Health for Police Organizations, June 2014)
- The Honourable Frank Iacobucci's report for Chief Blair, Police Encounters with People in Crisis (July 2014)
- LivingWorks – Applied Suicide Intervention Skills Training
- Mental Health Commission of Canada – Mental Health First Aid
- Ombudsman Toronto TEU investigation recommendations.

Implemented in 2018, Special Constables and Fare Inspectors participate in a specialized one-day module for Crisis Communication and De-escalation training. This training is included in both initial training and annual recertification training.

Noting a person is in crisis, the Special Constables and Fare Inspectors are trained to use their crisis communication skills for:

Relationship Building

- Empathy
- Rapport
- Non-judgmental

Active Listening

- Ask open ended questions
- Minimal encouragers (brief comments to show you are still listening)
- Mirroring (last few words to show you are still listening)
- Paraphrasing

Hooks and Triggers

- Listen to know what will engage a person and what will set off a person

Crisis Communication and De-escalation Training (2019)

The new 2019 delivery was designed to build on these training components delivered in 2018 using an incident analysis exercise. This module reinforced the active listening skills required for a “client focused” approach presented in the communication program.

This content is further injected into the reality/simulation-based training of the recertification.

Ethical Decision Making and Recognizing Discretion:

Training was updated in 2019 with the inclusion of ethical decision making and recognizing discretion training to further enhance the Special Constables ability to exercise biased free discretion. This course has been designed and implemented to introduce officers to ethical decision-making and discretion as it relates to enforcement, problem solving, report taking, notes and court proceedings. Officers will be shown the significance of critical thinking to enhance their biased free discretion, made aware of the impact of perceived arbitrary enforcement on the community and be educated on how discretion is used not only when dealing with individuals but essential in evidence collecting and investigations. This training is ongoing and will be delivered to all Fare Inspectors and Transit Special Constables.