



Ombudsman
Toronto

Listening. Investigating. Improving City Services.

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SENT BY EMAIL

Members of the Board of Directors
Toronto Transit Commission
1900 Yonge St.
Toronto, ON
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Dear TTC Board Members:

Re: Violent Incident on the Queen St. East (501) Streetcar involving Special Constables, Fare Inspectors and a Member of the Public, February 7, 2020

Item 6 on the TTC Board Meeting Agenda for December 16, 2020

On December 8, 2020, TTC management shared with me a draft of its proposed response to the findings and recommendations arising from an investigation of a violent interaction on the Queen St. East (501) streetcar involving two Special Constables, two Fare Inspectors and a member of the public. The independent investigation into the February 7, 2020 incident was done by Rubin Thomlinson at the TTC's request. My team is reviewing the proposed management response in detail. For now, I can only express my deep disappointment and continuing concern.

As you know, my office and I have a long history overseeing TTC enforcement and working with the organization to help it restore public trust in its enforcement personnel, specifically TTC Special Constables (formerly called Transit Enforcement Officers) and Fare Inspectors. I have repeatedly expressed my concern, both publicly and directly to TTC management and staff, about unacceptable violent interactions between these employees and members of the public. All too often, the passengers involved are marginalized members of our community, including people who are racialized, are experiencing homelessness, have lower incomes and/or may be living with mental health challenges or other disabilities.

Please allow me to present some brief background on my involvement with this issue before commenting on the specific incident at hand.

Violent Incident at Union Station in January, 2015 and Ombudsman Toronto's 2017 Investigation

On January 29, 2015, a violent fight broke out between two TTC Special Constables and two members of the public in a crowd at Union Station, after a Toronto Maple Leafs hockey game. Only after videos of the incident appeared on social media two months later did the TTC ask the Toronto Police Service to investigate the incident.

This led Ombudsman Toronto to do a [comprehensive investigation of the TTC's Oversight of its Transit Enforcement Unit](#),¹ resulting in a public report on April 20, 2017. Through our investigation, we found several significant shortcomings in the TTC's oversight of Special Constables and Fare Inspectors in the areas of use of force, training on de-escalation and mental health, public complaints and the use of discretion in exercising authority, among others.

We made 26 concrete recommendations to improve oversight, all of which the TTC accepted. Since then, we have continually followed up on implementation of these recommendations, but have found it to be unacceptably slow. Of the 26 recommendations we made, the TTC has still not yet fully implemented 12.

Violent Incident on the St. Clair West Streetcar on February 18, 2018 involving Two Fare Inspectors and a Young Black Male

The TTC investigated this incident internally, and my staff and I reviewed the internal investigation. We issued [a public report with the results of our review](#).² We found that the TTC's internal investigation fell short in several important ways and was not adequately thorough, fair or transparent. Additionally, we found that the investigator was not independent of the staff whose actions he was investigating.

We made six recommendations to improve the TTC's ability to conduct investigations in a fair and effective way and to enhance public trust in the process, all of which the TTC accepted.

Also, as part of broader discussions that I had with the TTC's CEO, Mr. Leary, the TTC publicly committed to embarking on a broad and comprehensive anti-racism strategy, aimed directly at preventing racial profiling. It also committed to making changes to shift the structure and culture of Special Constable and Fare Inspector services from one of enforcement and compliance to one based on rider security, service, respect and dignity.

The TTC has put a great deal of work into changing its processes for receiving public complaints about Special Constables and Fare Inspectors and how it investigates them. Likewise, the TTC has devoted considerable energy and resources to its anti-racism strategy. I heartily commend the TTC for this valuable, ongoing work. However, while underway to some degree, critically needed changes in the recruitment, training, job requirements, public awareness, accountability and culture of Special Constables and Fare Inspectors are taking unacceptably long to implement, in my opinion.

Violent Incident at Dundas Station in April, 2019, involving Two TTC Special Constables and a Member of the Public in Mental Distress

In April 2019, a member of the public tweeted their concern about how two TTC Special Constables approached and apprehended a woman in mental distress at Dundas Station. The TTC shared the tweet with us.

We reviewed the TTC's video of the incident and the notes of the Special Constables, which revealed significant and troubling discrepancies.

¹ Ombudsman Toronto Report: An Investigation into the Toronto Transit Commission's Oversight of its Transit Enforcement Unit; April 20, 2017.

² Ombudsman Toronto Report: Review of the TTC's Investigation of a February 18, 2018 Incident Involving Transit Fare Inspectors; July 9, 2019.

We met with members of TTC management to discuss the limited powers of arrest that Special Constables have under section 17 of the *Mental Health Act*, R.S.O. 1990. We reminded them that “wanting to get the help they need” for someone apparently experiencing mental distress or illness is **not** grounds to apprehend someone under that authority, and in fact doing so is unlawful.

Section 17 of the *Mental Health Act* states that a Special Constable must have reasonable and probable grounds to believe that a person is acting in a disorderly manner, is presenting a danger to themselves or someone else at that time and is apparently suffering from a mental disorder of a nature or quality that is likely to result in serious physical harm to themselves or another person before a Special Constable can take them into custody for examination by a physician. Also, the circumstances must be such that it would be dangerous to seek an Order for Psychiatric Examination from a Justice of the Peace under section 16. In other words, it must be an emergency.

Violent apprehension of someone in mental distress without legal grounds is a blatant violation of that person’s rights, and can result in significant, lasting trauma.

The TTC agreed to review and update its training of Special Constables on the proper, legal use of this arrest authority, as well as its general training on how to interact appropriately and effectively with people who may be experiencing mental health challenges.

Violent Incident on the Queen St. East (501) Streetcar on February 7, 2020 involving Special Constables, Fare Inspectors and a Member of the Public

Given my previous involvement in these issues, I contacted TTC management immediately after learning of the incident on the 501 streetcar in February, 2020, which became public after someone posted a video on social media. I encouraged them to be as transparent as possible and supported their plan to have the incident independently and impartially investigated. I also worked with them to refine the Scope of Work for the investigation.

I then followed up regularly until TTC management received the investigation report in mid-November, 2020. I shared with them at that time my deep disappointment that the report once again raises many issues that I have already expressed serious concern about.

On December 4, 2020, I met with members of TTC management at their request, to discuss their proposed response to the investigation. I have had several discussions with senior members of the TTC leadership in the days since. My impression from those discussions was that they want to do the right thing by the public, and they appeared to welcome and appreciate my advice. However, I am concerned that TTC management would have done nothing without my intervention, or if this incident had not come to the public’s attention through social media.

My key advice to TTC management was:

- 1) Publicly release the entire Investigation Report, or a complete and impartial summary;
- 2) Publicly release the TTC’s video footage of the incident; and
- 3) Take immediate steps to have Passenger 1’s criminal conviction in May, 2020 on two counts of Assaulting a Peace Officer vacated or overturned (which would remove the resulting probation terms, including a 12-month ban from the 501 streetcar line).

Fairness demands this, given that the convictions were premised on the TTC staff's version of the facts (namely that Passenger 1 started the fight), which the independent investigation found to be untrue.

Overall, I remain convinced that management must move more quickly to change the culture of the TTC's Special Constables and Fare Inspectors, and to improve its oversight of them.

Special Constables and Fare Inspectors have difficult jobs, to be sure. Most days, they do their jobs with care and professionalism, in a way that the TTC and the public should appreciate and admire.

But each time one of these violent encounters with the public occurs and it becomes clear – as it did once again in this most recent case – that TTC staff could and should have de-escalated the situation, but instead they escalated it, public trust is eroded.

The TTC is the pride of Toronto, but Toronto deserves better than this. The evidence is clear: the TTC must move ahead with determination and without further delay to overhaul its oversight of Special Constables and Fare Inspectors, by changing the culture underlying them from one of para-military enforcement and compliance to one based on rider security, service, respect and dignity. Public trust – and therefore the TTC's success – depends on it.

At the invitation of TTC management, I will be attending the public session of your Board meeting on December 16, 2020, for your review of this incident. I would be happy to answer any questions you may have at that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan E. Opler". The signature is fluid and cursive, with the first name "Susan" being the most prominent.

Susan E. Opler
Ombudsman