



Ombudsman
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Ombudsman Toronto Report

An Investigation into the Toronto Transit Commission's Oversight
of its Transit Enforcement Unit

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EXECUTIVE SUMMARY

Ombudsman Toronto began its enquiry on April 2, 2015, one day after social media videos of a January 29, 2015 incident at Union Station gained widespread attention. These videos recorded a physical altercation between two TTC employees and two members of the public.

Our focus was on the TTC's system of internal oversight of members of its Transit Enforcement Unit: Transit Enforcement Officers (TEOs) and Transit Fare Inspectors (TFIs).

TEOs are designated Special Constables by the Toronto Police Services Board. They have powers similar to police officers to enforce laws on TTC property and are authorized to carry and use handcuffs, batons and pepper spray. TFIs inspect and enforce rider Proof of Payment and have the power to issue provincial offences tickets and summonses, but they are not Special Constables.

In doing their jobs, TEOs and TFIs sometimes find themselves in conflict with TTC users. Routine interactions can at times result in them using force against, or arresting, a member of the public.

The TTC's Transit Enforcement Unit is responsible for protecting the safety and integrity of the third largest transit system in North America, which serves more than 500 million people annually. The Transit Enforcement Unit plays a vital role in ensuring that the TTC is safe, for both riders and staff.

The information we gathered during our enquiry raised some questions about how the Transit Enforcement Unit handles training, oversight and public reporting. In March, 2016, we launched an investigation to examine these issues more closely, and to consider any systemic recommendations that might be required.

Significant Findings

The TTC conducted an internal review of the Union Station incident that focused on how to improve internal reporting processes. It did not however examine the incident – which presented a risk to public and staff safety – through a preventative lens, with an aim of considering policies and procedures that could reduce the likelihood of a similar incident in the future. We found that this was a missed opportunity.

Other findings included the following:

- The Transit Enforcement Unit's use of force reporting policy is not clear, and there is no internal system to track use of force incidents.
- Its use of force policy does not address the use of de-escalation as an alternative to the use of force.

- Training materials do not clearly outline how TEOs and TFIs are taught and evaluated on de-escalation skills, and their training on dealing with people with mental illness or in emotional distress is limited.
- There is no process for investigating TEO and TFI conduct unless someone makes a complaint, and there is no process for monitoring complaint trends against individual staff members.
- The TTC does not report publicly on complaints about TFIs, and its public reporting on TEO complaints is missing important information necessary for transparency and accountability.

Ombudsman Toronto Recommendations

The TTC is a public organization that employs staff with powers similar to those of police officers and the authority to use force and arrest citizens. The public interest requires that the TTC have a comprehensive, effective and publicly accessible oversight system in place for TEOs and TFIs.

To ensure accountability, the TTC's oversight system must be transparent and subject to scrutiny, and must inspire and maintain public confidence.

We made 26 recommendations aimed at improving the public accountability of the Transit Enforcement Unit.

As highlighted examples, we recommended that the TTC:

- Examine the January 29, 2015 Union Station incident to consider whether it could have been avoided and whether policies or procedures to prevent a similar incident from occurring again should be implemented;
- Amend its use of force policy and training materials to clearly outline the importance of de-escalation as an alternative to the use of force;
- Ensure that TEOs and TFIs receive regular training on responding to people affected by mental illness or in emotional distress;
- Publish detailed annual reports on TEO and TFI use of force incidents and complaints including information on trends, incident summaries, complaint outcomes and historical use of force and complaints data to allow for a comparative analysis;

- Put in place a system to investigate TEO and TFI conduct even where there has been no complaint; and
- Improve internal use of force policies and practice, including by the establishment of:
 - internal systems and processes to monitor, track, and review use of force incidents and to detect and address trends
 - a new use of force report form to capture important information that can be used to improve training and policies.

The TTC accepted all 26 recommendations. It will provide quarterly updates to Ombudsman Toronto on the implementation of the recommendations until implementation is complete.

INTRODUCTION

THE TRANSIT ENFORCEMENT UNIT

1. The TTC's Transit Enforcement Unit (the "Unit") exists to ensure the safety and security of Toronto's transit system and its customers. It employs Transit Enforcement Officers ("TEOs") and Transit Fare Inspectors ("TFIs"). The Unit's activities include emergency response, crime prevention, enforcing TTC By-Law No. 1,¹ and fare inspection and enforcement, the last of which is largely handled by TFIs, who inspect TTC rider Proof of Payment on streetcar lines and at subway interchange stations.
2. In addition to the roles and responsibilities assigned by the TTC, TEOs are designated special constables by the Toronto Police Services Board (the "Police Services Board"), a status that gives them powers similar to those of a police officer to enforce various provincial and federal laws on TTC property. The TTC and the Police Services Board have a formal agreement (the "Special Constable Agreement") covering administrative matters regarding operation of TTC's special constable program. These areas include reporting, governance, and training for TEOs.
3. Riders of the TTC are likely familiar with the posters on TTC vehicles and in stations bearing photos of uniformed TEOs proclaiming:

The Transit Enforcement Unit is proud to keep you safe while you are on the TTC.

THE UNION STATION INCIDENT: CATALYST FOR THE INVESTIGATION

4. On January 29, 2015 at Union Station, following a Toronto Maple Leafs game, one of two TEOs assigned to crowd control for outgoing fans leaving the Air Canada Centre became involved in a physical altercation with two men on the concourse level. The other TEO, who had been directing crowds on the subway platform, attended to assist his partner, and became involved in the altercation.
5. The Toronto Police Service (the "Toronto Police") attended and arrested the two men. They charged both men with assaulting a peace officer and uttering a threat.²

¹ The TTC has the authority to pass by-laws regulating the use of its transit system, in accordance with section 143 and Part XV of the *City of Toronto Act*. By-law No. 1 is a by-law regulating the use of the TTC local passenger transportation system.

² In December 2016 the charges against the men were withdrawn. A related civil matter was launched by both men against the TTC in January 2017.

6. Two months later on March 31, 2015, bystander videos of the incident on various social media sites started to attract the attention of the public and the media.³
7. The videos generated considerable expressions of concern from members of the public, the media, and elected members of government at both the municipal and provincial levels. Some questioned the amount of force used by the TEOs and their training in de-escalation, or questioned the adequacy of the TTC's oversight of TEOs generally.⁴
8. The next day on April 1, 2015, the TTC issued a statement informing the public that the TTC's Chief Executive Officer (the "CEO") had asked Toronto Police to investigate the incident, and that it had agreed to do so. While the TTC had not received any complaint from the public about the incident, it explained that it wished to ensure any use of force by its TEOs was justified, and that approved procedures were followed. In addition to the social media videos, the TTC provided to Toronto Police its own CCTV footage of the incident.
9. The TTC's public statement referred to an agreement between the TTC and the Police Services Board, noting that under this agreement complaints regarding the conduct of TTC special constables can be reviewed by Toronto Police. It also stated that complaints about the conduct of TEOs "are typically handled by a separate unit within the TTC's human resources department" but without further details.

³ There are two versions of the same video available online on YouTube. The longer one, which is approximately six minutes in length, shows one of the men striking a TEO at around the 1:01 mark of the video to 1:08. The second video is a shorter version of the first video, and is approximately three minutes in length. Both videos show the several strikes used by one of the TEOs against one of the men. The longer video can be accessed at <https://www.youtube.com/watch?v=VWhOrVmrGjM> and the shorter version can be accessed at <https://www.youtube.com/watch?v=7BQnyLlp7EE> (accessed 10 April 2017).

⁴ See news articles on the CBC <http://www.cbc.ca/news/canada/toronto/ttc-head-says-he-s-shocked-and-extremely-concerned-about-brawl-video-1.3017467>, the Toronto Star, <https://www.thestar.com/news/gta/2015/04/01/ttc-ask-toronto-police-to-investigate-violent-incident.html>, the National Post <http://news.nationalpost.com/toronto/ttc-to-address-disturbing-incident-caught-on-video-in-which-special-constables-pummel-two-men>, the Toronto Sun <http://www.torontosun.com/2015/04/01/two-charged-for-assaulting-enforcement-officers-ttc> and the Globe and Mail <http://www.theglobeandmail.com/news/toronto/ttc-brawl-under-scrutiny-after-video-surfaces/article23733469/> (all articles accessed 10 April 2017)

10. The statement concluded:

Public safety is the TTC's first priority; public trust in those charged with maintaining that safety must follow. [TEOs] are trained to a police standard in all that they do, including communications, de-escalation and use of force, as necessary. It is for this reason that the TTC is seeking the assistance of police in independently reviewing the matter, and looks forward to the conclusion of their investigation.

11. Later the same day, the CEO held a press conference where he announced that both TEOs had been assigned to administrative duties during the Toronto Police investigation.

OMBUDSMAN TORONTO INVESTIGATION

PRELIMINARY INFORMATION GATHERING

12. On April 2, 2015, prompted by public expressions of concern about videos of the Union Station incident, we contacted the TTC to inquire about its internal oversight mechanisms for monitoring and addressing TEO conduct. Over several months, investigators spoke with and obtained documents from TTC officials.
13. The information we gathered raised questions about how the Unit handles use of force incidents, as well as about other forms of oversight including public complaints procedures, public reporting of use of force incidents and complaints, and de-escalation training for TEOs.
14. Our information gathering raised the same questions with respect to TFIs, who, while not special constables, like TEOs, also have authority to issue tickets and summonses under TTC By-law No. 1. This can place TFIs in situations of conflict with transit users, which may result in the arrest of,⁵ or the use of force against,⁶ a member of the public.
15. As a public organization employing staff with similar powers to those of police officers and the authority to use force against and arrest citizens, the public interest requires that the TTC have a comprehensive, effective and publicly accessible oversight system in place for the Unit. Such a system must be

⁵ TTC Report – 2014 TTC Transit Enforcement Unit Annual Report to the Toronto Transit Commission and the Toronto Police Services Board. Submitted to the Toronto Transit Commission on September 28, 2015. The report notes that a TFI maintains citizen's power of arrest pursuant to the *Criminal Code of Canada* and that in 2014 TFIs made one arrest under the *Trespass to Property Act*. By policy, TFIs are only permitted to effect an arrest when no other options are feasible and there is an immediate threat to personal and/or public safety.

⁶ TTC Report - Transit Fare Inspection and Enforcement Model Update. Submitted to the Toronto Transit Commission on December 20, 2016. The report notes that over the course of six-month period, TFIs were involved in 22 use of force incidents.

transparent, inspire and maintain public confidence, and be subject to public scrutiny to ensure accountability.

THE INVESTIGATION

16. In March, 2016, Ombudsman Toronto launched a formal investigation to examine these issues more closely, and to consider any recommendations that might be required in the public interest to improve the TTC's oversight of the Unit. As part of this, the investigation included a review of the TTC's response to the Union Station incident.
17. The investigation did not review the actions of the TEOs involved in the Union Station incident.
18. Ombudsman Toronto investigators conducted 40 interviews over the course of about 60 hours. Investigators reviewed electronic and physical documents from the Unit, including policy and procedure manuals, training materials, use of force reports, notebook entries, internal reviews, annual reports, complaint investigation files and emails. They also reviewed staff reports and minutes of public meetings of the Police Services Board and the TTC Board, bearing on the issues under investigation.
19. Within the TTC, investigators conducted interviews with:
 - The Head of the Unit, otherwise referred to as the Chief Special Constable
 - Sergeants and Staff Sergeants responsible for training and day-to-day administration and duties of TEOs and TFIs
 - The TTC's Unit Complaints Coordinator, a position in the Human Resources department with responsibility for investigating complaints against TEOs and TFIs
 - The CEO, Chief Service Officer, Executive Director – Corporate Communications, and the Chief People Officer (Human Resources)
 - The Chair of the Board
20. In addition to interviews with TTC staff, investigators accompanied TEOs and TFIs on several occasions in the field during morning and evening rush-hour periods.
21. Outside of the TTC, investigators interviewed:
 - The third party trainer contracted by the TTC to deliver training to TEOs and TFIs

- From the Toronto Police, the Special Constable Liaison Officer, a Use of Force Trainer/Analyst, and investigators from the Professional Standards Unit⁷
 - Ontario transit agencies that employ special constables, including York Region Transit, OC Transpo (Ottawa), and GO Transit
 - Mr. Ian Scott, the former Director of the Special Investigations Unit and Dr. Alok Mukherjee, the former Chair of the Toronto Police Services Board
22. The TTC provided excellent cooperation to us throughout our information gathering and investigation.

INVESTIGATION REPORT

23. This report:
- Provides a brief history and reviews the structure of the Unit, including reporting requirements and complaints procedures
 - Analyzes the TTC's response to the incident at Union Station
 - Reviews the TTC's oversight of the Unit, including how it handles use of force incidents and its public complaints procedures
 - Discusses Unit training and
 - Makes recommendations to improve the public accountability of the Unit, in order to maintain and enhance public trust.

BRIEF HISTORY AND STRUCTURE OF THE TRANSIT ENFORCEMENT UNIT

BACKGROUND: THE ONTARIO SPECIAL CONSTABLE PROGRAM

24. The *Police Services Act, RSO 1990* provides for the appointment of special constables in Ontario. Police services boards may, with the approval of the Ministry of Community Safety and Correctional Services, appoint someone employed by a non-police organization as a special constable and confer on them the powers of a police officer.
25. Across Ontario, special constables are employed by transit agencies, universities, federal and provincial government ministries such as Parks Canada and the Ministry of the Environment, as well as other government agencies such as the Niagara Parks Commission and the Ontario Racing Commission.
26. In Toronto, four organizations have employees with special constable status providing limited law enforcement services as part of their employment: the

⁷ We contacted the current Police Services Board and asked if it wished to participate as part of our investigation. They advised us that the Police Services Board, as currently constituted, has not expressed any concerns related to the Special Constable Agreement. Therefore, it did not feel there was a need to speak with us for the investigation.

TTC; the Toronto Community Housing Corporation; the University of Toronto; and the court security division of the Toronto Police.

27. It is possible for members of the public to confuse special constables, who have similar authority and powers to those of a police officer, with actual police officers. Some agencies whose members have special constable status refer to their officers as "police" (for example, the University of Toronto Campus Police and the Niagara Parks Police Service). Special constables, however, are not subject to the same level of provincial oversight as police officers. This has been the cause of some concern and discussion at the Police Services Board.⁸ During his interview with investigators, the former Chair of the Police Services Board, Dr. Alok Mukherjee, recalled concerns that he and other members of the Police Services Board had over the lack of an oversight for special constables:

From the (Police Services) Board's point of view, there is an unease of these semi-police officers working in the twilight zone, without the same kind of accountability that the police officer has to submit to.

28. The lack of an oversight system for Ontario's special constables was the focus of a February 2010 "white paper" by the Ontario Association of Chiefs of Police (OACP) titled *Report on Special Constables in Ontario*.⁹
29. OACP criticized what it called a "void" in provincial legislation governing special constables, particularly in relation to oversight and regulation, arguing that special constables "should be held accountable to the citizens of Ontario in the same way as police services and police officers." It called on the province to initiate a review of its special constable program and to consider establishing a system of oversight and accountability regarding public complaints, use of force options, and a process for dealing with allegations of misconduct surrounding the exercise of the powers and authorities conferred upon special constables.
30. We made inquiries with the Ministry of Community Safety and Correctional Services to follow up on this issue and to learn more about its role with respect to special constables. Ministry officials told us that the role of the Ministry is limited to the appointment of special constables, as well as the suspension or

⁸ A report from the Chair of the Police Services Board presented at a November 20, 2008 Police Services Board meeting summarized discussions between the TTC and the Police Service Board on the "need to review and redefine issues of governance, oversight, training and accountability with respect to (TTC) special constables." A November 3, 2008 report from the TTC Chief General Manager presented during the same Police Services Board meeting references discussions between the TTC and the Police Services Board over "the lack of a legislative framework governing special constables" and how this impacted the Police Services Board's governance role with respect to TTC special constables. This report refers to the fact that the same oversight and complaint mechanisms for police officers, like investigations by the Special Investigations Unit, do not apply to special constables. See Item #P300 – Public Transit Safety Framework. Extract from the Minutes of the Public Meeting of the Toronto Police Services Board held on November 20, 2008.

⁹ The report is available for download at <http://ottawa.ca/calendar/ottawa/citycouncil/opsb/2010/04-26/item2att2.pdf> (accessed 10 April 2017)

termination of that appointment, as outlined in the *Police Services Act*. They said that the Ministry is aware of the legislative "gap" for special constables, namely, the fact that special constables are not subject to the same degree of oversight as police officers. The Ministry told us that it is currently reviewing issues related to its special constable program as part of its ongoing review of the *Police Services Act*.¹⁰

31. Police oversight bodies such as the Office of the Independent Review Director, which investigates public complaints about the conduct of police officers, and the Special Investigations Unit, which investigates incidents of serious injury, death and sexual assault involving police officers, have no legal authority to investigate incidents involving special constables.
32. The lack of a provincial system of oversight and accountability for special constables in Ontario leaves the responsibility for exercising oversight over special constables in the hands of the employer of special constables and the appointing police services board.

THE HISTORY AND EVOLUTION OF THE TRANSIT ENFORCEMENT UNIT

33. In 1997, the TTC and the Police Services Board first entered into a special constable agreement (the "previous special constable agreement"), in which the Police Services Board conferred special constable status on some TTC safety and security staff – the personnel now known as TEOs.
34. In 2005, TEOs worked in four groups: the Patrol Division (walking and mobile patrols, fare evasion inspections and other law enforcement activities); the Community Response Unit (targeted patrol and enforcement activities in response to community concerns); the plainclothes Criminal Investigations Unit (intelligence gathering and follow up investigations on crimes such as pickpocketing, assaults, robberies, graffiti and counterfeit fares); and System Security, which involved various security related functions, such as facility inspections and emergency/security planning and awareness exercises.
35. By 2010, there were some changes. Transit Patrol was now known as the Patrol Division. Investigative Services was responsible for issues such as counterfeit fare media and internal criminal investigations, surveillance

¹⁰ According to minutes of public meetings of the Toronto Police Services Board, in 2012 the Ministry accepted OACP's suggestion to initiate a review of its special constable program, which was supposed to begin that year (See Item #P21. Status Update: Review of the Special Constable Agreements between the Board and the University of Toronto and the Toronto Community Housing Corporation. Extract from the minutes of the public meeting of the Toronto Police Services Board held on February 16, 2012). In 2013, the Minister advised the Police Services Board that it had developed a series of draft recommendations related to its special constable program on issues such as training standards, use of force issues and oversight. These recommendations were subsequently shared with other ministries and affected stakeholders for "broader consultation" to occur throughout 2013. Since that time, there has been no announcement from the Ministry regarding proposed changes to its special constable program.

operations, and workplace violence threat assessments, while System Security's responsibilities remained the same.¹¹

36. In February 2011, the Police Services Board terminated the previous special constable agreement and TEOs lost special constable status. The reasons for this are beyond the scope of this investigation and are not relevant here.
37. In September 2011, the Unit was reorganized so that it would provide only a transit enforcement function and would report to a department separate from the Investigative Services and System Security Sections. The TTC explained that these changes were made, in part, "to support the TTC in meeting all its new roles and responsibilities as part of (a) new model for transit policing and security."¹²
38. In April 2012, the Police Services Board considered a report from the Chief of Police on the TTC's request for a new special constable agreement. The Chief's report noted that although the TTC had reorganized its Transit Enforcement Unit, the TTC had not provided any further rationale to support a new special constable agreement. The Chief recommended against a new agreement. Notwithstanding this recommendation, the Police Services Board approved a motion to enter into discussions with the TTC and the Chief of Police on "the feasibility" of a new agreement for a TTC special constable program.¹³
39. According to a June 2013 TTC report, a corporate reorganization at that time resulted in the Head of the Unit reporting directly to the Chief Service Officer, "to ensure that risks can immediately be understood, communicated and action taken."¹⁴
40. Later in October 2013, the Police Services Board approved a further motion to have the City Solicitor, in consultation with the Chief of Police, prepare a new special constable agreement with the TTC.¹⁵ The Police Services Board approved a new special constable agreement (the "Special Constable Agreement") in December, 2013 and it was executed on May 15, 2014. Once again, TEOs became eligible for special constable status.
41. According to a public report prepared by City of Toronto Legal Services Division, the Special Constable Agreement was "designed to address the

¹¹ TTC Report - 2010 TTC Special Constable Annual Report to the Toronto Transit Commission and the Toronto Police Services Board. Submitted to the Toronto Transit Commission on April 6, 2011.

¹² TTC Report - Special Constable Designation for Enforcement officers at the TTC. Submitted to the Toronto Transit Commission on September 25, 2013.

¹³ See Item #P58 – Toronto Transit Commission Special Constable Program. Extract from the minutes of the public meeting of the Toronto Police Services Board held on April 5, 2012.

¹⁴ TTC Report - Transit Enforcement Unit Update. Submitted to the Toronto Transit Commission on June 24, 2013.

¹⁵ See Item #P246 – Special Constable Designation for Transit Enforcement Officers at the TTC – Business Plan. Extract from the minutes of the public meeting of the Toronto Police Services Board held on October 7, 2013.

concerns that arose regarding the (previous special constable agreement)..."¹⁶
It provides more detail about the limitations on the authorities granted to TTC special constables and clarifies the roles of the Police Services Board, the TTC and the Toronto Police regarding oversight of the appointment, training and deployment of TTC special constables. It also sets out what the TTC must include as part of a formal public complaints process for complaints about TEOs.

42. Article 10 of the Special Constable Agreement requires the TTC to forward all public complaints relating to the conduct of a TEO to Toronto Police. Toronto Police is to then classify each complaint as one involving major or minor misconduct. If the allegation is major, the Toronto Police Professional Standards Unit conducts an investigation; if it is minor, the complaint is referred back to the TTC for investigation. The Special Constable Agreement does not however define "major misconduct" or "minor misconduct."
43. The Special Constable Agreement also requires the TTC to have a written complaint investigation procedure for any complaints concerning the conduct of a TEO or relating to the policies of the Transit Enforcement Officer Program. This procedure must be made public and requires that the TTC adhere to requirements laid out in Schedule "D" of the Special Constable Agreement (Complaints Investigation Procedure Criteria) under which the TTC must:
 - Post its complaints process online
 - Have a process for members of the public to file complaints in writing, by email, or by fax and
 - Have all investigations conducted by a designated complaint coordinator who has been trained by Toronto Police's Professional Standards Unit. (The TTC Unit Complaints Coordinator)
44. Finally, the Special Constable Agreement explicitly requires the TTC to have an external body oversee its adherence to its complaints procedure.
45. In late 2013, the TTC approached Ombudsman Toronto to ask that this office fulfill this role. Given Ombudsman Toronto's authority to oversee the TTC and receive complaints about the TTC generally, we agreed.¹⁷
46. As a result, the Special Constable Agreement provides that if, at the conclusion of the TTC's investigation of a complaint against a special constable, the complainant is not satisfied with the outcome they can request Ombudsman

¹⁶ See Item #P289 – Agreement with Toronto Transit Commission regarding Special Constables. Extract from the minutes of the public meeting of the Toronto Police Services Board held on December 12, 2013.

¹⁷ It should be noted that whether or not Ombudsman Toronto agreed to serve as the "independent third party" to oversee the TTC's adherence to its complaints process, Ombudsman Toronto already has the statutory authority to investigate complaints associated with the TTC's complaints procedure for TEOs. This was explained in a December 5, 2013 letter from former Ombudsman Fiona Crean to the Police Services Board Chair.

Toronto to review whether the TTC has complied with its complaints procedure. This complements Ombudsman Toronto's statutory jurisdiction to review whether the TTC's investigation of the complaint was adequate, and also whether the TTC's complaints procedure itself is satisfactory.

CURRENT STRUCTURE OF THE TRANSIT ENFORCEMENT UNIT

47. Today, the Unit consists of four sections:
- The Patrol Division
 - System Security
 - Fare Inspection, which is responsible for education, fare policy compliance and enforcement on all Proof of Payment transit routes and interchange sections and
 - Training and Administration, which is responsible for training and policy development
48. General supervision for the Unit is the responsibility of the Head of Transit Enforcement who also holds the rank of Chief Special Constable. There are five Staff Sergeants: two in Patrol Division; one in Training and Administration; one as the Supervisor for Fare Inspections; and, one for System Security. All positions report directly to the Chief Special Constable.

TRANSIT ENFORCEMENT OFFICERS

49. The Patrol Division is comprised of four platoons of TEOs, each one headed by a Sergeant. There are currently 41 TEOs.
50. As special constables, TEOs have authority to enforce certain sections of the *Criminal Code*, the *Mental Health Act*, the *Liquor Licence Act* and the *Trespass to Property Act*. They are also authorized to carry handcuffs, OC (pepper) foam and expandable batons. In a December 2016 Unit report to the TTC Board, the Unit recommended, and the Board approved, a request for enhanced authority for TEOs under the provincial *Highway Traffic Act* to allow TEOs to direct traffic around planned and unplanned closures and service disruptions.¹⁸
51. According to the TTC, conferring special constable designation on TEOs allows the TTC to "increase the level of effectiveness and efficiency in delivering security and limited law enforcement services" in instances where a member of the Toronto Police is not able to respond "in a timely manner."¹⁹

¹⁸ TTC Report - Transit Fare Inspection and Enforcement Model Update. Submitted to the Toronto Transit Commission on December 20, 2016

¹⁹ TTC Report - 2015 TTC Transit Enforcement Annual Report to the Toronto Transit Commission and the Toronto Police Services Board. Submitted to the Toronto Transit Commission on March 23, 2016.

TRANSIT FARE INSPECTORS

52. The newest addition to the Unit is the Transit Fare Inspection Program, whose introduction in August 2014 coincided with the introduction of new Low Floor Light Rail Vehicles on the Spadina 510 streetcar Route, which do not have a farebox. Instead, they are equipped with a system designed to accept the new PRESTO Fare Card – part of an honour based, Proof of Payment system that is gradually being rolled out to all TTC vehicles. The vehicles are also equipped with systems to allow riders to use a TTC token or cash/credit card payment to obtain a Proof of Payment transfer.
53. The job of TFIs is to check PRESTO cards for correct fare payment and to inspect rider Proof of Payment.
54. As Provincial Offences Officers, TFIs are able to issue Provincial Offences tickets and summonses under TTC By-law No. 1. They are not special constables and the Special Constable Agreement does not apply to them.
55. TFIs are trained and expected to perform a range of duties, including, customer service, public education, fare inspections/enforcement and non-physical intervention. The TFI program is supervised by a Staff Sergeant and six Sergeants who act as Team Leads. There is no platoon system like the one in the Transit Patrol Unit for TEOs. There are currently 68 TFIs.
56. In February, 2015, the TTC Board passed a number of motions related to the operation of the Unit, most of which dealt with the Fare Inspection Program. It directed that the then TFI uniform, consisting of a grey shirt, a tactical vest, and Transit Enforcement Unit shoulder patches, be modified to appear more "customer friendly." Another motion asked TTC staff to "search for a third party to undertake the oversight function for fare inspectors." It also approved, in principle, a pilot project involving TFIs not equipped with an expandable baton or handcuffs to perform fare inspections on "one or two LRT or Streetcar lines."²⁰
57. The initial 18 TFIs deployed by the TTC were trained and authorized by the TTC to carry an expandable baton and handcuffs for self-defence purposes and for occasions when a TFI arrests someone in the course of their duties. The eventual pilot project, started in January 2016, involved outfitting an additional 36 TFIs in a "customer friendly" uniform consisting of a white shirt with TTC logo, no baton or handcuffs, and a non-tactical vest. These TFI "white shirts" received similar deployment training as the original 18 TFIs, or "grey shirts", minus use of force and defensive training on the use of baton and handcuffing. As part of the pilot project, TFIs were to collect data on fare evasion rates,

²⁰ TTC Report – Overview of the Transit Enforcement Unit. Submitted to the Toronto Transit Commission on February 25, 2015.

complaints, number of tickets issued, uses of force, and employee assaults, among other things.

58. In a December 2016 Unit report to the TTC Board, findings from the TFI pilot project were summarized. According to the data collected, there was a "negligible difference" between the "grey shirt" and "white shirt" TFI enforcement models. Based in part on the results of the pilot project, the Unit recommended the Board to adopt the "white shirt" fare inspection strategy, that is, a customer friendly uniform with no batons and no handcuffs, for all TFIs. The Board accepted this recommendation.

THE TTC RESPONSE TO THE UNION STATION INCIDENT

59. The incident occurred on January 29, 2015.
60. A member of the Unit completed a summary of the Union Station incident for the TTC's "Morning Report" on January 30, 2015. The Morning Report is a high level summary of the previous day's incidents, sent by email to recipients internal and external to the TTC. Internal recipients include the Chief Special Constable, the CEO, and the Chief Service Officer.
61. The summary of the Union Station incident stated that the two TEOs were threatened and assaulted by two men and that the men resisted arrest. It stated that several other patrons interfered with the arrests and attempted to assist the two men to escape, assaulting the TEOs in the process. The summary did not describe any use of force by the TEOs during the incident.
62. The Unit first learned of a public video of the Union Station incident on February 23, 2015 when a Sergeant in Transit Patrol alerted the Staff Sergeant, Training and Administration of the video's existence on social media. The Staff Sergeant in turn sent an email to the Chief Special Constable to inform him of this.
63. Early the next morning, February 24, 2015, the Staff Sergeant, Training and Administration and the Chief Special Constable viewed the video together. A summary of their reaction was documented as part of a chronology of events prepared later (for the Toronto Police investigation) by the Staff Sergeant, Training and Administration:

A brief discussion was held regarding departmental procedures for reporting and necessary follow up by supervisory and management members in such an incident. Based on the information known at the time, it is agreed that all requirements were met, procedures were followed and appropriate reports submitted. However, (the Chief Special Constable) expresses concern regarding the reporting process(s) and immediately orders an internal review. Later that morning, (the Chief Special Constable) meets with (the) Executive Director-TTC Corporate

*Communications to discuss the content. There had been no public complaint or complaint of any kind filed with respect to the incident.*²¹

64. We asked the Chief Special Constable why he did not flag the video to his direct supervisor, the Chief Service Officer, when it was brought to his attention. He explained that, based on his review of the video, he was satisfied that the force used by the TEOs was appropriate. Further, all Unit procedures for reporting use of force incidents had been followed. Therefore, in his view, there was no need to escalate the issue.
65. The internal review ordered by the Chief Special Constable was called *Gap Analysis and Improvement Plan – Use of Force Incidents* (the "Gap Analysis"). It was not for the purpose of reviewing the actions of the two TEOs, but rather to consider the Unit's reporting processes for use of force incidents. The Chief Special Constable explained:
- Let's say that YouTube (video) never got posted. We would have never known about Union Station ... I don't want to depend on YouTube to let me know what my people are doing and if they are doing it appropriately.*
66. The Chief Special Constable told investigators that he supported the CEO's decision several weeks later to request that Toronto Police investigate the actions of the TEOs. This was not because of any lingering question on his part about the appropriateness of the force used by the TEOs, but because of the concerns expressed by the public and the media about the incident once the video became public.
67. It does not appear that anyone at the TTC outside of the Unit was made aware of the Unit's Gap Analysis, or of the Chief Special Constable's view that the actions of the two TEOs, as captured in the social media video, were appropriate.
68. Documents the TTC provided to us show that in addition to the social media video discovered on February 23, the Unit discovered another social media video of the Union Station incident on March 12, 2015. That day, the Unit forwarded a link of this video to Toronto Police.²²

²¹ The Executive Director-Corporate Communications told investigators that he did not recall receiving a notification from the Chief Special Constable about a social media video of the Union Station incident in February. He said that he first saw a video of the Union Station incident on March 31, 2015.

²² The TTC advised us that the Toronto Police had carriage of the investigation of the Union Station incident, in relation to the arrest and charges against the two men, since January 29, 2015. The purpose of sending the YouTube video to The Toronto Police was in order for the video to be included as part of the Crown's disclosure documents for the court proceedings. The clip, which is the longer, six-minute version of the incident, can be accessed at: <https://www.youtube.com/watch?v=VWhOrVmrGjM> (accessed 10 April 2017).

69. The Unit did not make TTC senior executives aware of the second video, which, like the first one, showed their staff engaged in a physical altercation with members of the public. Senior TTC executives only learned of it when it was brought to light by the media almost three weeks later on March 31, 2015.

THE TRANSIT ENFORCEMENT UNIT GAP ANALYSIS

70. The Unit completed the Gap Analysis in early August 2015. It included a review of the Unit's use of force policy and reporting protocols, and the reporting process for the Union Station incident. It identified areas for improvement to ensure that Unit use of force reporting policies and procedures are more accountable and transparent.
71. The Gap Analysis found that, in the hours after the Union Station incident and into the next day, the two TEOs completed various notes and reports, including their respective notebook entries, records of arrests for the two men, and occupational injury reports. (Both TEOs attended the hospital and were assessed and released shortly afterwards). They also requested a digital video recording of the incident from TTC's video services unit.
72. The Special Constable Agreement requires TEOs to complete a report and submit it to the Toronto Police whenever they are involved in a use of force incident as defined in that agreement. The required report is a Toronto Police Service "Use of Force" – Form 1 ("Use of Force Report").
73. The Special Constable Agreement requires a Use of Force Report to be completed "in accordance with the *Ontario Regulation 926/90* on every occasion that 'use of force' options beyond physical control and handcuffing are exercised in accordance with (Toronto Police) Procedure 15-01, Use of Force." Use of Force Reports are to be provided to the Toronto Police as soon as possible.
74. *Ontario Regulation 926/90* and Toronto Police Procedure 15-01, Use of Force, requires that a Use of Force report to be submitted whenever an officer:
- Uses physical force on another person that results in an injury that requires medical attention
 - Draws a handgun in the presence of a member of the public, excluding a member of the police force while on duty
 - Discharges a firearm
 - Points a firearm at a person or
 - Uses a weapon other than a firearm on another person.
75. The two TEOs used physical force against the two men. Under the Special Constable Agreement, since the physical force used by the TEOs did not result in any reported injuries to the two men requiring medical attention, the Union

Station incident was not a use of force incident reportable to the Toronto Police. Therefore, the Unit was not required to prepare Use of Force Reports.

76. The Chief Special Constable told us that the fact that the Union Station incident was not a reportable use of force incident under the Special Constable Agreement suggested to him that the Unit needed to change its internal reporting procedures to account for such an incident. This was the reason that he ordered the Gap Analysis.
77. Despite the fact that the Union Station incident did not require a Use of Force Report under the terms of the Special Constable Agreement, both TEOs completed Use of Force Reports. The reports were dated February 7, 2015 and were subsequently reviewed by a Sergeant and Staff Sergeant within the Unit. These Use of Force Reports were later submitted to the Toronto Police.
78. Based on information obtained during our interviews it appears that a Staff Sergeant asked the TEOs involved in the Union Station incident to complete Use of Force Reports out of an abundance of caution.

THE USE OF FORCE REVIEW BOARD AND NEW PROTOCOLS FOR USE OF FORCE REPORTING

79. On August 17, 2015, the Executive Director-Corporate Communications emailed an Issue Note to members of the TTC Board informing them that the Toronto Police had concluded its investigation of the Union Station incident and had found that the force used by the TEOs was both lawful and justified. It also referred to the outcome of the Unit's Gap Analysis, which had recently been completed.
80. The Issue Note explained that although the Unit's use of force reporting protocols were compliant with the Special Constable Agreement, the Gap Analysis had determined that internal reporting requirements "ought to be strengthened to ensure accountability whenever use-of-force is applied." It explained that the Unit would be establishing a Use of Force Review Board to review any use of force incident involving a special constable, including the use of OC foam, baton, punching, or any incident when there's an injury sustained "by any party" resulting from the use of force. The Use of Force Review Board would be comprised of the TTC Unit Complaints Coordinator; the Staff Sergeant, Training and Administration; and, a third party expert/trainer on Ontario police use of force standards. (The same person who provides training to TEOs and TFIs).
81. Ten days later, on August 27, 2015, the Staff Sergeant, Training and Administration informed all Unit staff by email of *Routine Order 2015-08.01: Use of Force and Reporting*. The email explained that as a result of the Gap Analysis, and for reasons of "accountability and transparency", changes were

being made to the Unit's use of force and reporting policies. It said that the new policies were "forthcoming", and that in the meantime members were to make themselves aware of and to comply with the contents of the Routine Order.

82. The Routine Order requires members to complete a Use of Force Report "in all cases where a member uses force beyond compliant physical control and handcuffing." It also mentions the Use of Force Review Board, and its mandate to determine the "legality, policy compliance, technical compliance, operational sense and outcomes" of TEO use of force incidents.
83. The Routine Order also set out a new escalation protocol for use of force incidents, requiring that the Chief Special Constable be notified of any use of force incident that is "of a serious nature" or where "the event is likely to be a newsworthy item", although no definition of "serious" or "newsworthy" is provided. The Chief Special Constable is then to notify the Executive Director-Corporate Communications and the Chief Service Officer. Further, the Chief Special Constable is required to report to the Chief Service Officer on the results of any internal review conducted of an incident.

NEW PROTOCOLS TO ENSURE SENIOR MANAGEMENT INFORMED OF INCIDENTS

84. The Chief Special Constable told investigators that should the Unit become aware of a video of an incident involving its members in a high "level of engagement", as in the case of the Union Station incident, he would now bring it to the attention of TTC senior executives, even if he was of the opinion that the force used was appropriate. He has also instituted an informal daily briefing between himself and the Executive Director-Corporate Communications in order to provide updates on issues arising from the Unit, in case Corporate Communications should be contacted about an incident involving the Unit.
85. The Chief Service Officer, to whom the Chief Special Constable reports, told investigators that he would have liked to have been notified of the Union Station incident and the video before it became a news item. He explained that had he been made aware of the incident before the matter attracted public attention, he would have ensured the TTC conducted an internal investigation of the incident.
86. The Chief Service Officer noted that he now gets notified on a regular basis of incidents involving Unit members and attributes this to the changes implemented by the Unit post-Union Station.
87. The CEO informed investigators that he stands by the actions he took once he became aware of the video of the Union Station incident on March 31, 2015, including his request for an independent investigation by the Toronto Police and his direction that the two TEOs be placed on administrative duties.

88. It was important to the CEO that there be "total transparency" in terms of how the TTC was handling this issue, which was one of the reasons he chose to hold a press conference to explain the actions taken by the TTC.
89. The CEO said he believed that he should have been made aware of the incident (and, subsequently, the video) when it occurred. Going forward, his expectation is that the Chief Special Constable will use his judgement to determine if an incident involving members of the Unit is serious enough to warrant flagging to the attention of senior TTC executives.

LIMITATIONS OF TTC'S REVIEW OF THE UNION STATION INCIDENT

90. After viewing the first public video of the Union Station incident, the Chief Special Constable decided that the TEOs had acted appropriately. He initiated the Gap Analysis to focus on internal reporting processes for use of force incidents.
91. The Toronto Police investigation was for the purpose of determining whether there was any criminal liability in relation to the use of force by the TEOs.
92. During his interview, the Staff Sergeant, Training and Administration, advised investigators that once the criminal proceedings involving the two men from Union Station were completed, the Unit would "take a hard look at" what occurred during the Union Station incident to determine whether it could have been avoided.
93. This issue also arose during our interview with the Chief Service Officer. He commented that although the Toronto Police investigation found that the actual use of force was justified and lawful, it did not consider whether the Union Station incident could have been prevented in the first place. This is something that he felt was important for the TTC to consider.

ANALYSIS, FINDINGS AND RECOMMENDATION

94. Ombudsman Toronto did not investigate and makes no findings about the actions of the TEOs involved in the Union Station incident.
95. We find, however, that the TTC should have examined the incident, which presented a risk to public and staff safety, through a preventative lens, with a view to avoiding similar incidents in the future. While it was also useful, the limited nature of the Gap Analysis into how to improve internal reporting processes, did not consider these matters.

96. The Toronto Police investigation also did not take the place of an internal TTC investigation. The Toronto Police investigation focussed on whether the actions of the TEOs were lawful and justifiable, not on whether they were reasonable, appropriate, and consistent with TTC's organizational expectations.
97. The failure of the TTC to examine the incident through a preventative lens was a missed opportunity.
98. Our investigation found that the Unit leadership became aware of a video showing the physical altercation between TEOs and members of the public at Union Station on February 23, 2015 and again on March 12, 2015. While there is some indication the Chief Special Constable notified the Executive Director-Corporate Communications of the existence of the February 23 video, the extent of the information shared is unclear because it was not documented, and recollections differ.
99. What is clear is that the Unit did not notify the Chief Service Officer or the CEO of the existence of videos, or of the Unit's determination that there was no need to review the actions of the TEOs involved any further.
100. The Unit's response to the videos should have included notifying senior officials outside of the Unit, since the videos depicted an incident with the clear potential to raise questions among members of the public and other stakeholders about the oversight and accountability of TEOs.
101. As discussed above, the Gap Analysis undertaken by the Unit as a direct result of the Union Station incident revealed that although the Unit's policies complied with the requirements of the Special Constable Agreement, its oversight mechanisms for TEOs required strengthening. This in turn resulted in a new use of force reporting policy and the creation of the Use of Force Review Board.
102. The Union Station incident was the catalyst for these changes. It was a clear indication to the TTC that it may need to do more than just what is required under the Special Constable Agreement to ensure accountability whenever TEOs are involved in use of force incidents.
103. The TTC should be credited for the steps it has taken to address internal oversight for the Unit as a result of the Union Station incident. However, our analysis of the TTC's response to the Union Station incident reveals that more should have been done.
104. Although more than two years have passed since the Union Station incident, we believe that there remains value in the TTC examining the Union Station incident, in the interest of public safety and safety for TTC staff. The TTC's examination should consider the circumstances that led to the incident, how such an incident could have been avoided, and whether it is necessary to

implement policies and processes that may help to reduce the likelihood of a similar incident from occurring. **(Recommendation 1)**

105. The balance of this report focuses on areas of Unit oversight where we believe more work is necessary in the interests of transparency and accountability, and offers recommendations to assist the TTC on how to approach this.
106. Our investigation of the TTC's oversight of the Unit covers the following five areas:
 - The review and reporting of use of force incidents
 - The training and policy framework in place to address the de-escalation of incidents without the need to use force
 - The process for receiving, reviewing and reporting on public complaints about TEOs and TFIs
 - The use of TTC video cameras in Unit vehicles
 - The exercise of authority

OVERSIGHT OF THE TRANSIT ENFORCEMENT UNIT

107. The Special Constable Agreement with the Police Services Board requires that the TTC establish and maintain:
 - Written policies and procedures with respect to the duties, powers and responsibilities of TEOs
 - A Code of Conduct for TEOs
 - A written procedure for supervising and evaluating TEO powers and
 - A written disciplinary process regarding all matters relating to any allegation of improper exercise of any power or duty of a TEO as granted pursuant to the Special Constable Agreement
108. Besides meeting these requirements, the Unit maintains written policies, procedures and rules on the duties, authorities and responsibilities of all Unit members, including TFIs, who are not covered under the requirements of the Special Constable Agreement. Both TEOs and TFIs are also required to comply with a TTC Code of Ethics and Core Values.

USE OF FORCE

109. The Unit policy on use of force authorizes a range of force options "in response to an event or incident to preserve the peace, prevent crimes, maintain order and apprehend suspects."

110. It states that the application of force is for the purpose of controlling the subject or in defence against an assault. Unit members may only use force "at a level sufficient to control the subject" and force used must never be excessive, or applied for malicious or punitive reasons. The policy also requires that the force used to control the subject must be de-escalated upon subject compliance.
111. No member of the Unit is authorized to use force on another person without having successfully completed an initial training course on the use of force, including instruction on the use of an expandable baton and OC foam. TEOs are also required to complete use of force re-certification training every 12 months.
112. All TEOs are authorized to carry OC foam and an expandable baton. The use of force policy states that they "may" use them for the following purposes:
- to prevent being overpowered when violently attacked
 - to prevent a person being taken from their custody or from escaping custody
 - to disarm an apparently dangerous person armed with an offensive weapon
 - to control a violent situation when other use of force alternatives are not viable or
 - for any other lawful and justifiable purpose
113. During our interviews, staff told us that TFIs are prohibited "by policy" from using force unless they are attacked. The Unit's use of force policy, however, does not specifically mention TFIs.

REPORTING USE OF FORCE INCIDENTS

114. As noted above, the Special Constable Agreement requires that the Unit submit a Use of Force Report to Toronto Police in accordance with the *Ontario Regulation 926/90* on every occasion that use of force options "beyond physical control and handcuffing" are exercised in accordance with (Toronto Police) Procedure 15-01, Use of Force.
115. Prior to the Union Station incident, the Unit's use of force reporting policy mirrored the use of force reporting requirements as outlined in the Special Constable Agreement. Investigators spoke with a Toronto Police Use of Force Trainer/Analyst who receives all Use of Force reports from TTC special constables (as well as University of Toronto and Toronto Community Housing special constables). She confirmed that the Special Constable Agreement does not require the Unit to submit Use of Force Reports that do not involve the use of a weapon or do not result in an injury requiring medical attention.
116. As a result of the Unit's Gap Analysis, however, the forthcoming Unit policy on use of force reporting (already being adhered to but not yet officially adopted) requires TEOs to complete a Use of Force Report any time force is used

"beyond *compliant* physical control and handcuffing" (emphasis added.) In practice, what this appears to mean is that essentially all incidents where a TEO physically touches another person, even if this did not involve a weapon and did not result in an injury requiring medical attention, are required to be reported internally to the Unit on a Use of Force Report – even though not required to be reported to Toronto Police.

117. During interviews with TEOs, we heard concerns that the Unit's new use of force reporting policy will require minor incidents to be reported as a use of force when they otherwise would not be reportable. Another concern was that the new policy will cause the number of Use of Force Reports to skyrocket, potentially leading to accusations that TEOs are using force more often than they should. One TEO emailed the Chief Special Constable and Staff Sergeant, Training and Administration to complain that the change in use of force reporting, and the concomitant increase in Use of Force Reports, will "paint a picture of (the Unit) being a bunch of heavy handed goons."
118. The Staff Sergeant, Training and Administration is responsible for submitting Use of Force Reports to the Toronto Police under the Special Constable Agreement. Since the amended reporting policy now results in the reporting of more Use of Force Reports than what the Special Constable Agreement requires, we asked him how he determines which reports are sent to Toronto Police and which remain internal to the Unit. He responded that it is "a bit of a sliding scale right now" and that he believes there could be greater clarity in the Special Constable Agreement in terms of when the Unit should be sending a Use of Force Report to Toronto Police.
119. The Union Station incident underscores the fact that there is confusion about when the Unit is to submit a Use of Force Report to Toronto Police. The Union Station incident did not trigger a use of force reporting requirement under the Special Constable Agreement but nonetheless, such reports were completed and submitted to Toronto Police.
120. The Chief Special Constable explained that the inclusion of "compliant" into the Unit's use of force reporting policy was due to "arguments" over what exactly physical control means for the purposes of reporting a use of force incident. He stated that adding "compliant" created a use of force definition that provides greater clarity to TEOs on the types of incidents that are to be reported, internally, as a use of force.
121. In an effort to provide more clarification to members as to when a Use of Force Report should (or should not) be completed, in the cover email introducing the new use of force reporting policy (but not in the policy itself), staff were advised "for further clarity" that any time any type of physical control/force is used on a "non-compliant" subject, it must be documented in a Use of Force Report. The email continues that if a TEO handcuffs a person who was "resistive" but was

not injured, that too must be reported on a Use of Force Report. Additionally, TEOs were told that an incident where a non-compliant individual who is not arrested, "but merely physically removed" by being "carried or dragged" shall be reported in a Use of Force Report.

122. A couple of weeks after this email was sent, the Staff Sergeant, Training and Administration sent a second email to respond to questions from staff about the new use of force reporting policy. This email clarified that a Use of Force Report is not required if physical contact is made with a person for the purposes of rendering first-aid or to check on a person's well-being.

OC TRANSPO AND GO TRANSIT USE OF FORCE REPORTING POLICIES

123. The Transit Safety and Enforcement Services section at OC Transpo, Ottawa's public transit system, has employees who are designated special constables by the Ottawa Police Services Board. We were advised that OC Transpo is required to follow the use of force reporting threshold outlined in *Ontario Regulation 926/90*.
124. The OC Transpo Transit Safety and Enforcement Services section has developed its own internal policy to provide members with clarity as to when a use of force report should be submitted. This policy requires a member to complete a report under any of the following conditions:
- When physical control – hard²³ or intermediate weapons are used in response to actual or anticipated assaultive behaviour, grievous bodily harm or death
 - Where the simple presentation of a weapon by the member influenced or changed the subject behaviour or
 - When force is used at the physical control level, if that force response resulted in injury to the Member or subject
125. The OC Transpo policy advises members to consider "the totality of the event" when determining whether a use of force report should be submitted.
126. Members are also encouraged to submit a report at any time if they believe it is appropriate, or if the incident is part of an "unusual event", "high profile", or if they believe it could be "the subject of conduct complaint, even if the reporting threshold is not met." Finally, the policy indicates that management may request/direct a member to complete a use of force report.

²³ This would include closed-fist strikes, elbows, kicks and knee strikes.

127. The GO Transit Safety and Security Division is in the process of amending its use of force reporting policy for its special constables, known as Transit Safety Officers. GO Transit's proposed new use of force reporting policy is consistent with the policy used by OC Transpo.²⁴
128. Previously, GO Transit's policy required a use of force report to be completed whenever an arrest was made and handcuffs were applied, regardless of whether any additional force beyond the handcuffs was used against the person. This was in addition to use of force reports that GO Transit Safety Officers were required to submit when force options such as baton use or OC foam were used.
129. The Director of GO Transit's Safety and Security Division explained that he was not satisfied with this reporting standard since it risked having the more serious use of force incidents, like those involving physical control – hard, OC foam or baton use, "buried" amongst the myriad use of force incidents that only involved the application of handcuffs.

TRACKING USE OF FORCE INCIDENTS

130. Very recently, and since Ombudsman Toronto began this investigation, the Unit began to track the number and type of use of force incidents in which its members are involved.
131. Under the Unit's former use of force reporting policy, TEOs completed relatively few Use of Force Reports: one in 2012, four in 2013; five in 2014, and 10 in 2015.²⁵
132. The Unit's new use of force reporting policy has resulted in these numbers rising exponentially; in 2016, TEOs submitted 197 Use of Force Reports.²⁶
133. The Unit is now producing two types of use of force reports: those required under the Special Constable Agreement to be reported to Toronto Police, and those not required to be reported. However, both types of reports are completed using the Toronto Police Use of Force Report template. The Unit has not created a separate form for use of force reports that need not be reported to the Toronto Police. This is despite the fact that, under its new policy, this will represent the vast majority of reports.

²⁴ The Director of the Safety and Security Division of GO Transit advised our office that it is common for his division to collaborate with other transit agencies, such as OC Transpo, York Region Transit and the TTC on areas of mutual interest, such as training, hiring practices, and operational policies and practices.

²⁵ It should be noted that the Unit did not have special constable status for TEOs during this time period, but the Unit was still reporting all incidents of force as if they did have special constable status.

²⁶ Of these reports, 23 met the reporting requirements under the Special Constable Agreement and were forwarded to Toronto Police.

134. Investigators were told that the Unit hopes to eventually develop some form of regular internal reporting for use of force information, such as quarterly reports. However, no decision has been made yet as to what this information will be used for.
135. GO Transit's Safety and Security Division regularly prepares detailed reports on incidents of arrest and use of force by its special constables. The reports track the type of occurrences where force was used, the number of force incidents in which each special constable has been involved, and any injuries to either those arrested or to the involved Transit Safety Officer(s).
136. Further, it has developed its own internal use of force reporting template that allows it to capture information relevant to its operations, such as the station location where force was used, the nature of the offence, and a detailed description of the moments leading up to the officer's decision to use force, in addition to a description of the force used.
137. The data on use of force incidents now collected by the Unit shows the number and type of use of force incidents in which each TEO and TFI has been involved. This is an improvement. Previously, the only method to access information about a member's use of force history was through the recollection of whoever happened to have reviewed the Use of Force Reports. But even the Unit's new data collection system for use of force incidents is not supported by any type of formal tracking system that can "flag" individual member involvement in use of force incidents should that number get beyond an established threshold. Some Unit officials, including the Chief Special Constable, felt that such a tracking system would be useful.
138. Toronto Police can track incidents and has a proactive Early Intervention process for use of force incidents in which its officers are involved. The Use of Force Trainer/Analyst explained to investigators that this is a proactive process that tracks officer use of force reports. An Early Intervention alert is "triggered" when a member exceeds a threshold number of reports, which results in a review of the officer's performance history. A high number of use of force reports could be related to performance and conduct issues, but other factors may also account for a higher number of use of force reports, such as the location where the officer is assigned, or whether the officer responds more often to calls where force is more likely to be required. The Use of Force Trainer/Analyst explained that the Early Intervention review process is not punitive, but proactive, and meant to assist the member, if necessary.
139. The Unit's lack of a tracking system for member use of force incidents means that a TEO or TFI who is involved in a higher number of use of force incidents relative to his or her peers may go unnoticed. While a relatively high number of use of force incidents may not necessarily be a reason for concern, without a closer look at the reason for this, the Unit may be missing an opportunity to

address member performance and conduct issues and/or to provide member support.

PUBLIC REPORTING OF USE OF FORCE BY TRANSIT ENFORCEMENT OFFICERS

140. The Special Constable Agreement requires that the Unit submit an annual report to the Police Services Board with statistical information on the activities of TEOs, including the number and type of use of force incidents. This was also a requirement of the previous special constable agreement.
141. The Unit's Annual Report, which it submits to both the TTC Board and the Police Services Board, includes one page devoted to Use of Force Reporting. It consists of a chart with numbers of incidents, the type of force used, the number of Use of Force Reports submitted, and the category of offence involved in each type of force application. Below is an example of the use of force reporting as found in the 2015 Annual Report:

<i>Type of Force Utilized</i>	<i>Number of Incidents</i>	<i>Use of Force Reports Submitted</i>	<i>Criminal Code</i>	<i>Provincial Offence (LLA, MHA, TPA)</i>
<i>Expandable Baton</i>	1	1	1	0
<i>OC Foam</i>	2	2	2	0
<i>Empty Hand</i>	6	7 (two reports submitted for same incident)	5	1
Total	9	10		

142. Dr. Muhkerjee, former Chair of the Police Services Board, told investigators that he considers the public reporting of use of force incidents to be a "form of public accountability." Mr. Ian Scott, former Director of the Special Investigations Unit, told us that, in his opinion, public reports are an "essential aspect of accountability."
143. Mr. Scott suggested that the Unit's current reporting on use of force incidents could be improved by presenting year-over-year statistics, rather than only for the year in question. That way, if there were an increase in the number of OC foam deployments, for example, this could prompt either the TTC Board or the Police Services Board to ask questions of the TTC about the increase. The Toronto Police Use of Force Trainer/Analysis with whom we spoke agreed, noting: "Giving one year's worth of numbers really is pie in the sky. It doesn't mean a lot unless you can put it into context."
144. Our investigation found that the Unit used to provide the TTC Board with reports on TEO use of force activities where greater and more detailed statistical information was disclosed. This was specific to TEO use of OC foam.

145. In 1998, the TTC Board approved equipping special constables with OC foam on a one-year trial basis, eventually authorizing permanent issuance in May 2000. The Unit used to provide the TTC Board (but not the Police Services Board) with a mid-year and then a year-end statistical report on incidents of OC foam use. Unlike the current use of force reporting included in the Annual Report, these reports offered year-over-year statistics.²⁷ In addition, some reports provided detailed summaries of the circumstances of the incidents, including an explanation why OC foam was used against a person.²⁸
146. The Unit no longer prepares detailed use of force reports for the TTC Board. The current Chair of the TTC Board advised investigators that he has not seen such reports, but believed it could be useful data to receive as part of the Unit's Annual Report provided to the Board.

PUBLIC REPORTING OF USE OF FORCE BY TRANSIT FARE INSPECTORS

147. As noted above, the Unit submits an Annual Report of its activities to the TTC Board. Since the Special Constable Agreement also requires that it report annually to the Police Services Board on the activities of its special constable program, a protocol has been developed where the Unit submits its Annual Report to the TTC Board with a recommendation that the TTC Board receive it and forward to the Police Services Board.
148. The 2014 Unit Annual Report was the first one to be submitted under this protocol since the TTC regained special constable status for its TEOs. It provided extensive statistical information for both TEOs and TFIs, including year-over-year comparisons of by-law charges and cautions, fare evasion and provincial offence categories, "Top Ten" charts of incidents at TTC stations, as well as use of force reporting and public complaints numbers for both groups.
149. The 2015 Unit Annual Report, however, looked much different. Gone were the year-over-year comparisons, Top Ten charts and, most noticeably, information about the activities of TFIs. This included information about TFI arrests, use of force incidents, and public complaints.
150. The Staff Sergeant, Training and Administration reported that the difference in reports was due to a directive sent by the Toronto Police Special Constable Liaison Office. It advised the Unit that the Police Services Board only requires statistical information related to the activities of special constables; it is not concerned with or interested in receiving information related to non-special constable activities, such as fare inspection. The Unit was instructed to use a standard reporting template when submitting its Annual Report to the Police Services Board.

²⁷ TTC Report - Oleoresin Capsicum Spray 2010 Year End Report. Submitted to the TTC Board on March 1, 2011.

²⁸ TTC Report - Oleoresin Capsicum Spray 2007 Year End Report. Submitted to the TTC Board on March 26, 2008. The report provided summaries of the each of the OC foam incidents.

151. Currently, the Unit only provides one Annual Report to both the TTC Board and the Police Services Board. Unlike the Police Services Board, however, one can surmise that the TTC Board is interested in all activities undertaken by the Unit, not just those involving special constables and reportable under the Special Constable Agreement. Yet we were told that the use of a Toronto Police reporting template for the Annual Report limits the amount of information the TTC Board (and by extension, the public) receives about the Unit, particularly information about TFIs.
152. There was no Unit annual reporting for the activities of TFIs for 2015. The only public report on the activities of TFIs since the 2014 Annual Report where any information was provided about use of force (or complaints, or arrests) was a December 2016 report to the TTC Board about the TFI pilot project. This report included information about the use of force (22 incidents) involving TFIs covering only the first six months of the pilot project.
153. While the requirements of the Special Constable Agreement ensure there will be an annual report on TEOs covering the important oversight issue of use of force, there is nothing requiring a similar public reporting for TFIs.

THE USE OF FORCE REVIEW BOARD

154. As of the date of writing this report, the Use of Force Review Board, created in the wake of the Union Station incident, has yet to convene. It has not yet reviewed a single use of force incident.
155. As explained to investigators, the purpose of the board is to allow the Staff Sergeant, Training and Administration, the Unit's third-party use of force expert/trainer, and the TTC's Unit Complaints Coordinator to meet in order to review use of force incidents that involve empty hand techniques (or physical control) -hard, OC foam and baton use, as well as any incident that results in an injury or death. The board is tasked with determining "legality, policy compliance, technical compliance, operational sense and outcomes."
156. The Unit has not developed any policies or procedures to inform the Use of Force Board's review of incidents. As a result, it is unknown what information or evidence the board will consider as part of a review (e.g., memo books, radio calls, video recordings, witness interviews, live testimony); whether the Unit member(s) involved in the force incident will be required to participate; or, whether disciplinary and/or training action or outcomes can result from a board review. Even the processes and procedures governing when and how the board will convene remain undeveloped.
157. Under the Special Constable Agreement, the TTC is required to have a Unit Complaints Coordinator (the "UCC") who is responsible to investigate complaints made against TEOs. This position is separate and independent from

the Unit and is staffed by a Staff Sergeant located within the Human Resources department. The TTC believes that placing the UCC in the Human Resources department and not in the Unit gives the position a measure of independence and objectivity critical to the investigation of complaints.

158. Our review of past complaint investigations conducted by the UCC indicates that he investigates complaints about excessive use of force by TEOs. One such investigation took place in 2015.
159. It is not clear, however, what the role of the UCC will be in the event he is tasked with investigating a use of force complaint that is being considered concurrently (or has already been considered) by the Use of Force Review Board, of which he is a member.
160. During his interview with investigators, the UCC commented that his participation on the Use of Force Board could potentially put him in an "awkward" position in such a circumstance. The Chief People Officer, to whom the UCC reports, told investigators that she was not familiar with the Use of Force Review Board. However, she commented that anything that could potentially impact the objectivity of the UCC's investigation of a complaint should be examined closely.

ANALYSIS, FINDINGS AND RECOMMENDATIONS

USE OF FORCE REPORTING

161. The Unit's new use of force reporting policy requires members to submit a Use of Force Report anytime force "beyond compliant physical control and handcuffing" is used. It was intended to go beyond the reporting requirements outlined in the Special Constable Agreement and to provide greater clarity to members as to when a Use of Force Report is to be submitted, primarily through the inclusion of the word "compliant."
162. Evidence obtained during our investigation suggests that the new use of force reporting policy has not had the clarifying effect intended. We therefore recommend that the Unit amend its use of force reporting policy to provide greater clarity to members on when a Use of Force Report is to be submitted, including outlining the types of actions that the Unit wishes to be captured in a Use of Force Report.
163. As part of this recommendation, we strongly urge the Unit to consider adopting a use of force reporting policy like the one used by OC Transpo's Transit Safety and Enforcement Services section (also proposed to be used by the GO Transit Safety and Security division). The policy clearly describes the type of member actions that are to be captured on a use of force report, and gives members and

management discretion to submit use of force reports even when not strictly required.

164. It also captures certain types of incidents that are not covered by the Special Constable Agreement. For example, it requires a use of force report whenever presentation of a weapon influences or changes a subject's behaviour, even if that weapon is not used. It also specifies that the use of physical control – hard (e.g. punches) against a person is a reportable use of force incident, even if that force does not result in an injury. Had this policy been in place at the Unit at the time of the Union Station incident, there is no doubt that internal reporting of it as a use of force incident would have been required. **(Recommendation 2)**
165. Additionally, we recommend that the Unit obtain clarification from Toronto Police about its Use of Force Reporting requirements under the Special Constable Agreement. Confusion over the reporting of the Union Station incident as a use of force to Toronto Police despite the fact that the Special Constable Agreement did not require it suggests that further clarity and understanding is needed on this topic. **(Recommendation 3)**
166. The Unit should create its own use of force reporting template to document use of force incidents that are not required to be submitted to Toronto Police. This would allow the Unit to capture information relevant to its operations and to harness the information to identify trends and, potentially, develop policy and training improvements.
167. The current Use of Force Report forms used by the Unit do not have a space to indicate whether the incident occurred on a subway, streetcar, bus, or at what TTC station. Developing a Unit-specific form would not only help the Unit meet its needs, but would also reduce confusion resulting from using the Toronto Police form both for incidents reportable to Toronto Police and incidents reportable only within the Unit. **(Recommendation 4)**
168. The Unit's recent move to begin tracking use of force incidents is a positive initiative. What is lacking, however, is a formal system to monitor the frequency and type of use of force incidents for members that can serve as a way to detect trends or patterns in the use of force that may need to be addressed. Like the Early Intervention process in place at Toronto Police, a tracking system for use of force incidents should not be punitive, but rather, an early opportunity to identify and address patterns of behaviour and/or the need for member support, if they exist. **(Recommendation 5)**
169. Public reporting is a vital aspect of public accountability. The Unit's Annual Report to the TTC Board and the Police Services Board providing information about TEO use of force incidents plays an important role in this.

170. Our investigation found evidence supporting the benefits of providing year-over-year use of force statistics in a public report in order to provide context and to better identify use of force trends. This is not a novel concept for the Unit, which at one time prepared detailed reports for the TTC Board on use of force incidents of OC foam use by TEOs. Such contextual information is vital to ensuring greater accountability and transparency for every occasion that a TEO, or TFI, is involved in a use of force incident with a member of the public.
171. We recommend that the Unit issue public reports on use of force activities for its members, both TEOs and TFIs, on an annual basis. These reports should provide information for all use of force incidents the Unit wishes to be captured on a use of force report, including, at a minimum, the number of incidents, a brief summary of each, and year-over-year use of force statistics. Given the reporting requirements under the Special Constable Agreement, and the fact that the Police Services Board only wishes to receive specific information about TEOs, it will likely be necessary for the Unit to prepare a separate report for submission to the TTC Board to include expanded use of force information for both TEOs and TFIs. **(Recommendation 6)**

TRANSIT FARE INSPECTOR USE OF FORCE

172. According to the Unit, TFIs are prohibited from using force unless it is in defence against an assault. Although the Unit has suggested that staff understand this, there is no specific policy on the use of force by TFIs and when it may be permitted. This should be addressed. The actions of TFIs, and any resulting review of these actions, for instance, by the Use of Force Review Board, should be guided by a policy that reflects the Unit's operational expectations of the TFI position. **(Recommendation 7)**

THE USE OF FORCE REVIEW BOARD

173. The Use of Force Review Board was created to review all use of force incidents involving physical control-hard, OC foam, baton, and where injury or death has occurred. The mandate of the board is to determine the "legality, policy compliance, technical compliance, operational sense and outcomes" of the actions of Unit members involved in use of force incidents.
174. The absence of a comprehensive policy and procedures to guide the board's operations is concerning, given that development of the board was a key feature of the Gap Analysis undertaken by the Unit following the Union Station incident and completed in August 2015. Without these, the board is not equipped to effectively review a use of force incident. This raises questions of what benefit the board will provide to the Unit, and whether it will even be used.

175. The Unit should address this situation immediately by developing policies and procedures for its Use of Force Review Board. Included in these should be clear explanations of the reason the board was created, the board's mandate and processes, and how the board enhances the Unit's oversight of its members. **(Recommendation 8)**
176. A use of force incident subject to review by the board could potentially also become the subject of a complaint investigation by the UCC. The UCC is expected to be an impartial investigator who considers a complaint independently of the Unit. This impartiality could be compromised if the UCC were to participate in a board review of an incident that eventually came before him as the subject of a complaint requiring investigation, placing him in a conflict of interest.
177. We therefore recommend that the Unit remove or replace the UCC as a participating member of its Use of Force Review Board. **(Recommendation 9)**

TRAINING

TRANSIT ENFORCEMENT OFFICERS

178. Initial training for TEOs is made up of 424 hours over 53 days. It includes classroom-based training complemented by practical skills training and dynamic simulations on topics such as evidence handling, courtroom procedures and the use of force.
179. The Special Constable Agreement with the Police Services Board requires the TTC to train TEOs in specific areas including arrest authorities, crime scene management, note taking and report writing, rules of evidence, mental health and dealing with emotionally disturbed persons, and use of force legislation and reporting. TEOs also receive mandatory TTC training in areas such as first aid, the subway rulebook and suicide intervention awareness. All TEO training is reviewed and approved by Toronto Police annually.
180. Annual recertification training is also required for TEOs. It is made up of 24 hours over three days, and includes mandatory defensive tactics and use of force training.
181. According to the 2014 Transit Enforcement Unit Annual Report, this training "is developed and delivered with a view to de-escalation and includes a legislative update and holistic, reality based simulations in the actual transit environment."

TRANSIT FARE INSPECTORS

182. The initial TFI training program (for "grey shirts") consisted of 200 hours over 25 days. Delivered by the same third party trainer as the TEO training, it included fare inspection, customer service, de-escalation, tactical communication and "related enforcement." TFIs also receive the same mandatory TTC training given to TEOs.
183. The Unit 2014 Annual Report notes that TFIs are trained "with a view to non-physical intervention." The training does, however, provide TFIs with practical skills training and "use of force theory" in the event that TFIs are required to use force to defend themselves, for example, when experiencing assaultive behaviour from a TTC customer.
184. As a result of direction from the TTC Board in February 2015, TFIs deployed as part of the pilot project ("white shirts") received the same training curriculum as TFI grey shirts, minus the use of force theory, and legislation and practical skills training. The training for white shirts includes de-escalation tactics.

DE-ESCALATION TRAINING

185. In the days after the Union Station video became a major news story, TTC officials made many public references to the de-escalation training received by TEOs. Both the Chair and Vice Chair of the TTC Board referred to de-escalation during interviews about the Union Station incident.²⁹ The CEO also stated during his press conference that TEOs undergo "rigorous training" to police standards in the areas of communications and de-escalation.
186. In his interview with investigators, the TTC Board Chair remarked how often the topic of de-escalation training for Unit members has come up during Board meetings, especially when discussion of equipping members with weapons, such as batons, has arisen. He commented that the topic of de-escalation is one that the Board has "spent more time on than I even would have imagined", including questions about how robust the training is and whether more is needed.
187. The Unit members we interviewed explained that de-escalation is always the first option when responding to an incident. This was echoed by the CEO, who noted that members should always try to de-escalate a situation so that it does not spiral out of control. The Chief Service Officer also spoke about the importance of training members so that they know how to "de-escalate an event rather than escalate it."

²⁹ See comments made by the Chair of the TTC Board at <http://www.cbc.ca/news/canada/toronto/ttc-head-says-he-s-shocked-and-extremely-concerned-about-brawl-video-1.3017467> and comments by the then Vice Chair of the TTC Board on CBC Metro Morning at <http://www.cbc.ca/metromorning/episodes/2015/04/02/transit-enforcement-officers/> (accessed 10 April 2017).

188. The use of force training for Unit members is based on the Ontario Use of Force Model developed for police officers.³⁰ This model is a graphic in the form of a wheel and represents the elements of the process by which a police officer assesses, plans, and responds to a given situation. The model is intended to be a training aid and is not meant to be used to prescribe specific responses to situations, nor is it meant to serve as a justification for an officer's use of force.³¹
189. The Ontario Use of Force Model makes no reference to de-escalation. In fact, the model has come under criticism for not identifying de-escalation as an option and not identifying possible de-escalation tactics available to officers.
190. In his 2014 report to the Toronto Police Service, *Police Encounters with People in Crisis*, retired Supreme Court Justice Frank Iacobucci, commenting on the Use of Force Model, noted "there is surprisingly little focus on the need to attempt various methods of communication before using physical force or a weapon on a person." He also remarked that the provincial Use of Force training guidelines for police officers, premised on the Use of Force Model, "do not emphasize communication and de-escalation techniques as imperative to all stages of the police response to crisis situations."
191. In a June 2016 report on police training and de-escalation, Ombudsman Ontario recommended that the province develop a new use of force model that "clearly identifies de-escalation options." The Minister of Community Safety and Correctional Services, responsible for policing in the province, agreed with this recommendation. "The use of force model certainly needs to be redefined" remarked the Minister when responding to Ombudsman Ontario's report.
192. The Unit's use of force policy states that force used against a subject must be applied at a level sufficient to control the subject, must never be excessive, and must be de-escalated upon subject compliance. It does not however address the importance of using de-escalation to gain subject compliance before resorting to physical use of force. While it provides examples of subject behaviour where use of force options such as OC foam and expandable baton may be used, it makes no mention of when members may consider the use of de-escalation techniques. Further, it provides no examples of types of de-escalation techniques that could be considered by a member when responding to an incident.
193. Investigators reviewed the use of force training curriculum for TEOs and TFIs. They contained few references to de-escalation and de-escalation techniques. The TEO and TFI training module for use of force theory does not reference de-escalation at all. There is reference to de-escalation in the introduction to the module for use of force simulation-based training, but it is in the context of the

³⁰ See Ontario Use of Force Model (2004) - Appendix A.

³¹ Ron Hoffman, Chris Lawrence and Greg Brown. "Canada's National Use-of-Force Framework for Police Officers" (October 2004) – The Police Chief Magazine.

"de-escalation of force" – not the de-escalation of a situation before having to resort to physical force.

194. There is no TEO and TFI training module devoted to de-escalation. Instead, it was explained to us that "the whole de-escalation theory" is "woven" into the training. We were told that while the training curriculum for TEOs and TFIs may not have "black and white" references to de-escalation, the Unit focuses "heavily" on de-escalation and communications training for members. This includes training TEOs and TFIs using dynamic simulation training scenarios using actors simulating an incident a member might encounter. The primary focus of these training exercises, we were told, is on managing subject behaviour such that TEOs, or TFIs, do not have to resort to using physical force.

EVALUATING DE-ESCALATION SKILLS

195. Unit members, particularly those that have been with the Unit for years, told investigators that the use of force training they receive now is likely the best the Unit has ever received. These members heaped much praise on the dynamic simulation training scenarios that are part of the training.
196. While some believed that the scenarios are effective at getting members to think about how they can resolve a situation through de-escalation, others were uncertain how (or whether) members are being evaluated on their use of de-escalation techniques during these simulations.
197. As part of the initial recruit training for TEOs and TFIs, members are taught and evaluated on physical use of force skills, including handcuffing, takedowns, holds, "stuns", empty hand techniques such as punches, knee and elbow strikes, baton strikes and, for TEOs, OC foam use. Each trainee is required to demonstrate these skills for instructors who evaluate their skills using a form to indicate whether the skill is "superior", "adequate", or a "fail." To achieve a passing grade, a member must score a minimum of "adequate" for all components.
198. There is however no similar evaluation framework process for communication and de-escalation skills. We were told that these are evaluated as part of the dynamic simulation scenarios. These scenarios, however, are not solely for the purpose of evaluating communication and de-escalation skills, but also for evaluating physical use of force techniques.
199. TEOs must be recertified on use of force every 12 months, as are TFIs who are equipped with batons. During this recertification training, they are trained on physical use of force skills, part of which involves the application of the same physical use of force skills they were taught and on which they were evaluated during recruit training. The recertification process involves no specific training

on or evaluation of communication and de-escalation skills. Again, we were told that these are "integrated" into the training as part of the dynamic simulation scenarios.

200. During his interview with investigators, the Unit's third party trainer stated that he did not think there was much value in having members practise communication and de-escalation skills in a "check box" like format, as is done for physical use of force skills. He believes that it is far better to assess communication and de-escalation skills as part of the dynamic simulation scenarios.
201. Recent reports examining use of force and de-escalation training for Ontario police officers have commented on the fact that police officers are required to be recertified annually on use of force skills like baton, OC spray and firearms, but not on communication and de-escalation techniques.
202. In his report to Toronto Police, Justice Iacobucci commented on the training recruits receive at the Ontario Police College and how it was "interesting and somewhat concerning that recruits are not evaluated on forms of communication that are designed to achieve de-escalation without confrontation." He recommended that Toronto Police "consider requiring officers to re-qualify annually or otherwise in the areas of crisis communication and negotiation, de-escalation and containment measures."³²
203. The Ombudsman Ontario report recommends that annual use of force training for all police officers include one day dedicated to training on de-escalation techniques and one day dedicated to training on use of force techniques. The recommendation also states that the province should develop guidelines to evaluate an officer's use of de-escalation techniques. The province has accepted this recommendation in its entirety.

MENTAL HEALTH TRAINING

204. Under the Special Constable Agreement, TEOs have the authority to conduct apprehensions under the *Mental Health Act*. The agreement requires that all TEOs receive training on "emotionally disturbed persons/*Mental Health Act*."
205. In 2014, TEOs participated in a three-day mental health awareness training program which included education on different types of mental illness, communication and crisis intervention techniques, psychological first aid, and information on self-care.

³² The Toronto Police responded that these areas are incorporated into its annual training and that an officer would be required to relinquish his or her use of force options until her or she is able to demonstrate competence.

206. Initially, TFIs were not provided with any training on mental health or on dealing with emotionally disturbed persons; the expectation was that they would "observe and report" any such incident. At its February 2015 meeting however, the TTC Board passed a motion supporting mental health training for all TFIs. The Unit engaged Ombudsman Toronto to assist it in identifying organizations that could provide this training. After the training took place, we were told that the feedback from the participants and the facilitators of the training was "overwhelmingly positive."
207. We spoke with the CEO about the increased mental health training that has been implemented for Unit members. He acknowledged that it is incumbent on the TTC to ensure that TEOs and TFIs are equipped and trained to be able to respond to persons whose behaviour might be affected by mental illness.
208. We heard from several Unit members that a high number of their interactions involve patrons who are either impacted by some form of mental illness, are "emotionally disturbed", or are otherwise experiencing a crisis. One Sergeant told us that the Unit conducts mental health apprehensions "all the time."
209. In 2015, when TEOs were granted the authority to apprehend under the *Mental Health Act*, TEOs apprehended 41 patrons under this authority, and transported 30 of them to a mental health facility. From 2008 to 2010, the number of apprehensions was 55, 47 and 43, respectively.
210. The three-day mental health awareness training that TEOs and TFIs received in 2014 and 2015, we were told, was a "one-time deal." Several Unit members told us they believe they could benefit from more regular training on this topic, perhaps annually or every other year. Some members who have gained experience working with persons impacted by mental illness outside of the TTC believe this experience has aided them immensely as part of their job with the Unit. The more experience and training, we were told, the better.
211. OC Transpo has recognized and acted on the need for regular training for its special constables to deal with patrons impacted by mental health issues. It has designated one of its own special constables as an in-house trainer to provide mental health training for members. To prepare for this position, OC Transpo had the special constable/trainer spend time with the Mental Health Unit of the Ottawa Police Service. The Chief Special Constable for OC Transpo told us that the organization believes it is important to have this additional in-house training resource for members due to the frequency of member interactions with customers impacted by issues of homelessness and mental illness.

ANALYSIS, FINDINGS AND RECOMMENDATIONS

212. Throughout our investigation, we heard repeated reference to the importance of de-escalation as part of the duties of TEOs and TFIs. This should be clearly reflected in the Unit policies and training documents.
213. The Unit's use of force policy refers to de-escalation only in the context of de-escalating the use of force, not as an option to be considered and employed as an alternative. The training documents barely make any mention of de-escalation.
214. The Unit's use of force policy should be amended to clearly outline the importance of de-escalation as an alternative to the use of physical force, rather than referring to it just as an approach to be considered after force has been used. It should also include a clear definition of de-escalation tactics and should offer examples of situations where they may be appropriate, as it currently does for the use of batons and OC foam. These amendments will ensure that the Unit's policy on the use of force reflects the TTC's commitment to de-escalation as an important aspect of the job of TEOs and TFIs. **(Recommendation 10)**
215. On paper, the use of force training delivered to TEOs and TFIs is skewed towards the physical use of force. TEOs and TFIs are trained on and required to demonstrate proficiency in a wide range of specific physical use of force skills such as punches, takedowns and baton strikes, but there is nothing similar for de-escalation skills. Instead, we were told, de-escalation skills are "integrated" into the training, often as part of scenarios that also include the use of physical force.
216. Oral assurances that members of the Unit are trained in de-escalation are insufficient. We are recommending that the Unit develop training materials for TEOs and TFIs that explicitly highlight the importance and value of de-escalation as an alternative to the use of force, not just as an approach to consider once force has been applied and compliance has been achieved. The training materials should also clearly outline how de-escalation skills are taught to members, as they do with respect to physical use of force skills. **(Recommendation 11)**
217. The Unit has no formal evaluation tool for de-escalation skills. At best, this represents a missed opportunity to highlight the importance of de-escalation to the job of both a TEO and a TFI. At worst, it devalues the utility of de-escalation when compared to physical use of force skills in the eyes of Unit members and the public. The Unit should develop a formal process to ensure that TEOs and TFIs are formally assessed and evaluated on de-escalation skills as part of both initial and ongoing training. **(Recommendation 12)**

218. By all accounts, the three-day mental health training received by TEOs and TFIs was very successful and well received. Given the frequency with which Unit members interact with people affected by mental illness or in crisis, the TTC must consider some form of regular, ongoing mental health training for them.
219. We appreciate that more training requires resources and the TTC, like all City divisions, agencies and corporations, is facing significant budgetary challenges. However, given the public importance attached to this topic, and the emphasis it has received within the broader law enforcement community, it is necessary, not optional. **(Recommendation 13)**

PUBLIC COMPLAINTS

220. The TTC's website provides information on the complaints investigations procedures for both TEOs and TFIs.

COMPLAINTS INVESTIGATIONS PROCEDURE – TRANSIT ENFORCEMENT OFFICERS

221. The procedure for investigation of complaints about TEOs is based on the requirements of the Special Constable Agreement.
222. The TTC must forward all public complaints about the conduct of a TEO to Toronto Police. Toronto Police Professional Standards Unit investigates major complaints; minor complaints are referred back to the TTC for investigation. A complaint referred back to the TTC must be investigated and reported on by the UCC within 60 days from the date the complaint was assigned to the TTC for investigation. Each complaint investigation must be conducted in a "thorough, fair and impartial manner and be expeditiously resolved."
223. The Chief Special Constable is responsible for disciplinary action and penalties for TEOs at the conclusion of a complaint investigation.
224. The Special Constable Agreement requires that the Unit report complaint information about TEOs in its Annual Report to the Police Services Board.

COMPLAINTS INVESTIGATIONS PROCEDURE – TRANSIT FARE INSPECTORS

225. The TTC forwards all complaints involving the conduct of a TFI to the UCC. The UCC has 60 days from the date the complaint was received to investigate and report on his findings to the Chief Special Constable, who is responsible for any penalties and/or discipline related to the matter.
226. The procedure notes that at any time during the UCC's investigation of a complaint, the police may be requested to investigate the matter if he identifies any criminality by a TFI.

227. Complaints made more than six months after the incident in question are reviewed by the UCC and the Chief Special Constable to consider the "severity of the allegations" to determine if an investigation is warranted. In addition, a complaint may not be investigated if it is the opinion of both the UCC and the Chief Special Constable that:
- The complaint is frivolous or vexatious or made in bath faith
 - The complaint could be more appropriately dealt with, in whole or in part, under any other Act or/or policy
 - Having regard to all the circumstances, dealing with the complaint is not in the public interest
228. For complaint investigations of either TEOs and TFIs, there are three categories of possible complaint investigation findings:
1. **Unsubstantiated**: no evidence exists to support the allegation; available evidence would not constitute misconduct; or, the identity of the officer involved cannot be established
 2. **Substantiated**: complaint found to be supported by the evidence
 3. **Informal Resolution**: successful mediation of a less serious complaint.

THE LOCAL RESOLUTION PROCESS

229. The Special Constable Agreement requires that a formal complaint about a TEO be in writing and signed by the complainant.
230. The UCC told investigators that he often receives telephone calls or emails from people with complaints that are minor in nature, such as that a TEO (or TFI) was rude or unprofessional. Often, we were told, the complainant prefers that the issue be forwarded to the supervisor of the member in question, without engaging the formal complaint process. The UCC does not regard these as complaints *per se* but rather what he calls "concerns" (or "informal complaints") that are then handled through a local resolution process.
231. Upon receiving a telephone call or email from a complainant, the UCC will ask the complainant what they are looking for in terms of resolving the matter. They are typically advised of the difference between a local resolution and a formal complaint. The matter is not moved forward until the complainant determines how they would like their complaint handled.
232. According to the UCC, if a complainant has already predetermined how they would like the complaint to be handled, he may not always discuss the other options for complaints. If the complainant makes it clear they will not be satisfied by pursuing the matter through local resolution, then he will advise them of the option of making a formal complaint. Similarly if a complainant is

clearly seeking disciplinary action against the TEO or TFI, the UCC will inform them about the formal complaint process.

233. When a matter proceeds through local resolution, the UCC advises the complainant that he will pass on their information to the Chief Special Constable and the supervisor of the TEO or TFI may meet with the employee involved. The supervisor will advise the TEO or TFI of how they made the complainant feel and obtain their version of events. Once the supervisor has met with the member the UCC informs the complainant that the resolution has been completed as indicated and that there is no formal investigation into the matter. This local resolution process is not guided by any policy or procedure, either in terms of what issues will be dealt with under it, or in what manner.
234. The UCC recently developed a complaint intake form for complaints about Unit members. Once a complainant fills out the form, the complaint is considered formal and, in the case of TEOs, is sent to Toronto Police for classification. This form, is not available on the TTC's website - it can only be accessed after contact is made with the UCC, and then after it is determined that the complainant wishes to make a formal complaint. During our investigation, the TTC advised us that the UCC now considers any written document as a formal complaint, if the complainant does not wish to complete the intake form. The purpose of the intake form, we were told, is that it has all of the pertinent information that will be required to conduct a thorough investigation in an easy to read format, as well as methods to contact the complainant.
235. When asked why the complaint form is not available online, the UCC replied that once a complaint is submitted on the complaint form, a local resolution is not possible. He explained that the possibility of resolving a complaint through local resolution only exists before there is a formal complaint. If a complainant were to obtain or complete the intake form online, the complaint would automatically be considered a formal one and would have to be sent to Toronto Police, as per the Special Constable Agreement. This, he said, would result in relatively minor issues that could be resolved through local resolution being unnecessarily reported to Toronto Police as formal complaints.
236. The Toronto Police Special Constable Liaison Officer told investigators that it was her expectation that all email complaints about TEOs received by the TTC be forwarded to Toronto Police for classification. If an oral complaint is made, the expectation is that the UCC will attempt to obtain something in writing from the complainant. If the complainant refuses, then the matter is not considered to be a complaint under the Special Constable Agreement and it does not have to be reported to Toronto Police.

237. The UCC tracks the number of informal complaints received about TEOs and TFIs, but this information is neither reported to Toronto Police (in the case of TEOs), nor publicly reported in the Unit's Annual Report. This is because the complaints are not considered to be formal complaints.
238. In 2016, there were six formal and 11 informal complaints about TEOs.
239. We were told that in 2015 there were "upwards of 59" informal complaints against TEOs, but only one formal complaint. The current UCC did not handle complaints in 2015 and there is no clear record of the resolution of these informal complaints.
240. Our investigation found that the requirement for a complaint about a special constable to be made in writing in order to be considered a "formal" complaint is not uniform across all Ontario transit agencies that employ special constables.
241. The special constable agreement between York Region Transit and the York Regional Police Services Board allows complaints about special constables to be made either "verbally" (i.e. orally) or in writing. It states that if the Manager of York Region Transit (who is responsible for investigating complaints) receives an oral complaint, the Manager will provide the complainant with a complaint form to submit a written complaint "if the complainant so wishes." The agreement however does not require that a complaint against a special constable be made in writing.
242. During our investigation, the TTC advised us that if a complainant is unable for any reason to submit anything in writing, the UCC will make every effort to assist the complainant in submitting a complaint to the UCC for review and investigation. Further, the TTC advised that should a complainant make allegations but refuse to submit a written complaint, if, in the opinion of the UCC, the allegations are of an "alarming" nature, the UCC will take on the role of a complainant and initiate an investigation.

INFORMAL RESOLUTION OF A FORMAL COMPLAINT

243. Under the previous special constable agreement, the TTC had a written procedure on the informal resolution of complaints. An informal resolution (different from a local resolution, as discussed above) occurred when someone had filed a formal complaint and an investigation had been initiated, but the complaint was then resolved through mediation.
244. The Unit's current Policies, Procedures and Rules manual was updated in December 2014 in light of the Special Constable Agreement. The manual, however, no longer includes any information on informal resolutions. There is therefore no longer any procedure to resolve complaints about TEOs or TFIs through informal resolution.

245. The old procedure permitted an informal resolution to be considered only if the allegation was "less serious", and if the subject officer, the Head of the Unit, and the complainant agreed to informal resolution. Informal resolution was not permitted when the complainant received injuries of a "serious nature", when the misconduct was categorized as "serious", or when there was a known history of similar misconduct by the subject officer.
246. The procedure defined "serious misconduct" as: being charged or found guilty of a criminal offence; misconduct that impacts upon the integrity, reputation or public confidence in the (TTC special constable service), or in the Toronto Police; and, incidents such as domestic violence, sexual harassment, acts of discrimination, excessive use of force, deceit, breach of confidentiality and liquor offences. The procedure also permitted the Head of Unit or the Chief of Police to deem any other matter as "serious misconduct."
247. A review of historical complaint statistics suggests that it was common for former UCCs to resolve formal complaints through informal resolution. In some years, informal resolution was used in more than half of complaints received. From 2000 to 2005, the UCC at the time conducted 30 formal investigations of complaints, 25 of which were resolved through informal resolution. In 2012, four of six TEO complaints were resolved through informal resolution. In 2013, all three complaints about TEOs were resolved informally.
248. One document we reviewed raised questions about the appropriate use of informal resolution to resolve a complaint when there is a past pattern of conduct by the same Unit member.
249. The document was a memorandum from the former UCC to the Chief Special Constable that discussed "conduct trends" relating to a TFI based on public complaints received about that TFI. It noted that the TFI had been the subject of three complaints in 2015, all of which involved female passengers. The allegations in the first complaint were found to be unsubstantiated after a formal investigation. The other two complaints went to informal resolution, even though the UCC had "reservations" about the conduct of the TFI.
250. One of the complaints was from the family of an elderly woman who was issued a ticket for failing to provide valid Proof of Payment. The elderly passenger had challenged the authority of the TFI which resulted in the TFI not allowing her to continue her journey eastbound from Spadina Station to her destination in Scarborough. Instead, according to the memo, the TFI "inexplicably" removed the elderly woman from the station and put her onto the street at 10:00 P.M. "with no way home and in an unfamiliar neighbourhood."

251. As noted in the memorandum, when asked about his conduct, the TFI told the former UCC that he did not "really care about the consequences" of removing the passenger from the subway station late at night. He remarked the passenger "was fortunate that she wasn't arrested for failing to leave."
252. The former UCC wrote that in light of "an expected learning curve", he felt that it was "sufficient that an informal resolution would suffice in this instance." The proposed resolution involved an "in depth training analysis debrief" with the TFI. The complaint was subsequently closed.
253. Just one month after this complaint had been dealt with, the same TFI was the subject of another complaint by a female passenger. This passenger was a younger woman who had also challenged the authority of the TFI to issue her a ticket. The situation escalated and the TFI arrested the passenger and charged her with assault. (The charge was later changed to causing a disturbance). The following day, the complainant made a formal complaint, asserting that the arrest and ticket were unlawful and unnecessary.
254. The former UCC reviewed the incident, which was captured on TTC video, and noted in the memorandum that his "concerns are many and 'red flags' are warranted..." While he believed the arrest for assault by the TFI was lawful, the former UCC noted in the memo that the actions of the TFI "were unnecessary and or careless." He also identified other concerns, including the TFI's misleading and inaccurate notebook entries that appeared to him to have been "exaggerated to give some justification for the arrest." Further, when the former UCC notified the TFI of the complaint made against him, the TFI asked him "if he could now lay assault charges against the complainant." The former UCC responded that the matter should be taken up with the TFI's supervisor but also noted to the TFI that "on the face of it, it appears to be a vindictive reaction to the complaint."
255. The memorandum further noted that during the investigation of this complaint, due to some "personal struggles" on the part of the complainant, the former UCC decided that "...an informal resolution would be fair settlement even though (he) had some reservations about (the TFI's) reaction and conduct." He drafted a proposed informal resolution with the assistance of a TTC prosecutor that would have had the complainant plead guilty to the charge of causing a disturbance in exchange for the withdrawal of the ticket for no Proof of Payment. However, when he presented the informal resolution to the TFI – one that "would absolve him of any misconduct" – the TFI dismissed the proposed resolution and refused to sign it. According to the UCC, the TFI was also "dismissive" when advised that there appeared to be a trend of complaints against him involving women challenging his authority.
256. In the end, the former UCC logged the complaint as "Withdrawn."

257. The former procedure for the informal resolution of complaints did not provide for the possibility of the UCC continuing with a formal investigation in a situation where the complainant preferred to resolve the matter through informal resolution, or wanted to withdraw the complaint. It also did not provide the authority for the UCC to initiate an investigation of the conduct of a TEO or TFI in the absence of a complaint.

TRACKING COMPLAINT TRENDS

258. The same 2015 memorandum to the Chief Special Constable from the former UCC included a comment on the lack of a process to track complaint trends about TEOs and TFIs:

Historically, due to the small size of the department and organizational changes within, there has been no formal flagging process or software used to track complaint trends. Since inception of the public complaint process in 1997, there have only been 3 investigators and information such as this was informally shared and passed on.

259. The current UCC told us that he is currently using a software package that allows him to track how often a TEO or TFI has been the subject of a complaint. We were also advised that the Unit's Statistical Analyst has recently begun to keep a record of formal complaints lodged against members.
260. There is no policy, however, outlining how the Unit will use this statistical information, how often it will be reviewed, by whom, or for what purpose. Further, the information collected does not include informal complaints, only formal ones. Informal complaints are tracked by the UCC on his own initiative, in an effort to identify trends. How often informal complaints will be reviewed and by whom, or what a "flagging process" will look like, is unclear.
261. It was apparent from our interviews that there was no common understanding about how or whether the UCC can use trends to initiate an investigation, or whether the Unit can use trends, from formal or informal complaints, to address staff performance.
262. During her interview with investigators, the Chief People Officer said that, in her opinion, the fact that a complaint against a TEO or TFI has not been substantiated through an investigation does not preclude the TTC as employer from taking action to address issues raised by the complaint(s). She explained that such action would not be "disciplinary in nature" but rather an attempt to improve the performance of TEO or TFI: "I think we want to set our employees up for success...We don't want them to fail."
263. The tracking of informal complaints for trends purposes is particularly relevant to TFIs, who are the subject of more informal complaints than TEOs. In 2016,

the UCC received 108 informal complaints about TFIs. This is compared to 11 informal complaints about TEOs over the same time period. It is reasonable to expect that the number of informal complaints about TFIs will rise considerably with the extension of Proof of Payment to all surface level transit routes and the accompanying expansion of the transit fare inspector program.

264. The Supervisor for TFIs told investigators that, personally, he wants to be kept apprised of informal complaints against TFIs, even if they have not been substantiated through a formal complaint investigation by the UCC. If he detects a pattern he will "definitely" broach the matter with the TFI involved. This is not a requirement of his position, however, and it is not required through any policy or procedure. Rather, it is something the Supervisor believes is important for him to do as part of the operation of the TFI program. He told investigators that, in his opinion, how the TTC handles complaints about TFIs will "make or break" the fare inspection program.

PUBLIC REPORTING ON COMPLAINTS

265. The UCC is responsible for gathering and maintaining formal complaint statistics for TEOs and TFIs. He currently reports them directly to the Unit. In the case of TEOs, the statistics are then used in preparation of the Annual Report submitted to the TTC Board and the Police Services Board. Apart from this, the TTC does not report to the public on complaints about TEOs or TFIs.
266. The 2015 Transit Enforcement Unit Annual Report reported only one formal complaint against a TEO. Although there were as many as 59 informal complaints against TEOs in the same year, this information was not publicly disclosed. The seven formal and 47 informal complaints lodged against TFIs for 2015 also were not publicly reported, nor was information about the 108 informal and 6 formal public complaints about TFIs in 2016 publicly reported in any type of TTC report.
267. The UCC believes the TTC Board and the public should know how many informal complaints as well as formal ones there are about TEOs and TFIs. He commented that a low number of formal complaints might suggest everything is "hunky dory", but in order to "paint a truer picture", reporting all complaints – formal and informal - is important.
268. Information about TEO public complaints in the Unit Annual Reports only includes the number of (formal) complaints received and the outcomes. There is no information about the nature of the allegations or complaint trends. There is also no information about complaints in prior years. This makes year-over-year comparison, and trends analysis, difficult.

269. This was not always the case. A decade ago, the Unit used to provide year-end statistical reports for the TTC Board with information about complaints on TEOs. These were separate from the Annual Reports submitted to the Police Services Board.
270. For example, a 2005 report submitted to the TTC Board provided a year-over-year complaint chart for the 1997 to 2005 period.³³ The report also provided a brief summary for each of the 16 complaints made about TEOs in 2005. Of these 16 complaints, five raised allegations of illegal detention/arrest, four of assault/excessive force, and five of feeling threatened and intimidated by the actions of TEOs.
271. The Unit no longer provides this level of detail about public complaints in any report, public or internal.

REPORTING THE OUTCOME OF COMPLAINT INVESTIGATIONS TO COMPLAINANTS

272. The Special Constable Agreement requires the TTC to notify the complainant in writing of the outcome of the UCC's complaint investigation.
273. At the time our investigation began, the Chief Special Constable was the official that sent a letter to the complainant at the conclusion of the UCC's investigation. The letter included the UCC's report, and information about the option of contacting Ombudsman Toronto if the complainant was not satisfied with the outcome.
274. The Chief Special Constable has no involvement in the complaint investigation process. During our investigation, the UCC expressed his belief that it was "odd" the investigation outcome letter comes from the Chief Special Constable and not the UCC.
275. The Chief People Officer also expressed concerns about this during her interview with investigators, stating that since it is the UCC who is responsible for investigating the complaint, then it should be the UCC who is responsible for communicating the outcome of the investigation. She pointed out that the complainant's perception of the independence and objectivity of the UCC could be compromised by having the investigative outcome communicated by the Chief Special Constable. She stated that the communication from the Chief Special Constable to the complainant could give the (false) impression that the Chief oversees, or has to "approve or be happy with the results of the investigation."

³³ TTC Report – Annual Special Constable Services Year End 2005 Statistical Report. Submitted to the TTC Board on September 20, 2006.

276. We became aware during our investigation that the Chief Special Constable no longer notifies complainants about the outcome of the UCC's investigations and that this is now the responsibility of the UCC.

ANALYSIS, FINDINGS AND RECOMMENDATIONS

INFORMAL COMPLAINTS RESOLVED BY LOCAL RESOLUTION

277. The UCC uses a local resolution process to address informal complaints against TEOs and TFIs. They are typically less serious complaints about the conduct of a TEO or a TFI.
278. There is however currently no TTC policy that addresses the resolution of informal complaints through local resolution, or what issues are eligible to be dealt with in this manner. There is no reference to local resolution of informal complaints in the complaints investigations procedures for TEOs or TFIs on the TTC website. It is a matter of concern that the UCC's use of the local resolution process, as it is currently structured, is not guided by any policy.
279. Anyone dissatisfied with the conduct of a TEO or a TFI should be fully and properly informed about the differences between pursuing a formal complaint investigation and having the issue addressed through an informal complaint and local resolution process, before deciding which option to pursue. Further, the UCC's use of a local resolution process to address informal complaints against TEOs and TFIs should be guided by a formal policy. At a minimum, the TTC's policies and procedures for local resolution should:
- Outline what matters are eligible for local resolution
 - Indicate that informal complaints raising serious issues cannot be addressed through local resolution, and who makes this determination
 - Provide timelines associated with the resolution of informal complaints through local resolution
 - Outline what communication complainants will receive about the outcome of the local resolution
 - Establish a system to track the outcomes of informal complaints addressed through local resolution and
 - Explain how a complainant can initiate a formal complaint should he or she not be satisfied with the outcome of the local resolution
280. Information about the local resolution process, once formalized in policy, should be included in the TTC's complaints investigation procedures for TEOs and TFIs and posted on the TTC website. **(Recommendation 14)**
281. The distinction drawn between formal complaints (made in writing on a complaint form) and informal complaints (namely, oral complaints and complaints submitted by email), appears to be rooted in the requirement in the

Special Constable Agreement that all complaints about TEOs be made in writing. But the Special Constable Agreement does not apply to TFIs. Furthermore, the fact that Toronto Police does not wish to be notified of oral complaints about TEOs does not mean that the TTC cannot or should not receive these complaints for the purposes of conducting formal complaint investigations.

282. Accepting oral complaints is common practice. Ombudsman Toronto routinely accepts complaints from members of the public who contact us by telephone or who choose to attend in person to make their complaint. York Region Transit's special constable program also permits complaints about special constables – who have similar powers and authorities as TEOs – to be submitted either orally or in writing.
283. Requiring that complaints be reduced to writing presents a barrier to some complainants, something the TTC acknowledged during our investigation. The TTC has assured us that the fact that a complaint is not in writing does not prevent the UCC from reviewing and potentially investigating the complaint allegations. We are therefore recommending that the TTC amend its complaints investigations procedures for TEOs and TFIs to clarify that the UCC accepts and can formally investigate oral complaints. (**Recommendation 15**)
284. During the investigation, we heard from the Toronto Police Special Constable Liaison Officer that all email complaints against TEOs should be submitted to Toronto Police for classification, under the Special Constable Agreement. Based on evidence obtained during this investigation, it may be that the TTC is not forwarding email complaints against TEOs to Toronto Police. The TTC should clarify this aspect of its complaint reporting requirements with Toronto Police. (**Recommendation 16**)

INFORMAL RESOLUTION OF FORMAL COMPLAINTS

285. Our investigation found that informal resolution to resolve formal complaints about the conduct of TEOs was used extensively under the previous special constable agreement. Although the UCC continues to have the ability to resolve a complaint through informal resolution, there is no longer any policy in place to guide this process.
286. The TTC should establish a written procedure to guide the informal resolution of formal complaints about TEOs and TFIs. The TTC may wish to use its previous policy for informal resolution as a starting point, and update it to reflect the new complaints procedure requirements under the Special Constable Agreement. The TTC's new policy should clearly state that the determination of whether or not to attempt informal resolution of a formal complaint should include the agreement of the UCC. (The prior policy required the subject officer, the Head of the Unit and the complainant to agree to pursue informal resolution but made

no mention of the UCC). The policy should also address what relevance, if any, a past history of similar complaints against a TEO or TFI will have on the availability of informal resolution. **(Recommendation 17)**

INVESTIGATION WITHOUT A COMPLAINT

287. The TTC should amend its complaints investigation procedures for TEOs and TFIs to authorize the UCC to conduct an investigation even in the absence of a complaint. The TTC's complaints investigation procedure for TEOs and TFIs does indicate that a "complaint" about the conduct of a TEO or TFI can originate from "sources internal to the TTC concerning the conduct" of a TEO or TFI, which presumably, includes the UCC. But this is not the same as a clear statement authorizing the UCC to initiate an investigation in the absence of a complaint. This would ensure the UCC can investigate matters of concern to him, regardless of whether or not there has been a public complaint. **(Recommendation 18)**

COMPLAINT TRACKING AND REPORTING

288. The UCC has implemented a system to track how often a Unit member has been the subject of a formal or informal complaint. This is a substantial improvement over the previous system where information of this type was, in the words of a former UCC, "informally shared and passed on." However, there is still no formal process to monitor complaint trends and no policy addressing who should be alerted when a trend becomes apparent, or what should be done. The TTC should establish such a process. **(Recommendation 19)**
289. The Special Constable Agreement requires the Unit to submit an Annual Report to the Police Services Board about the activities of TEOs, including information about public complaints. Information about public complaints is not maintained by the Unit, but rather the UCC, who in turn supplies this information to the Unit.
290. The UCC is the independent investigator of complaints about TEOs and TFIs. As such, it makes sense that reports with information about public complaints should come directly from him. The requirement that the Unit provide the Police Services Board with certain information on public complaints about TEOs as special constables does not, and should not, prevent the UCC from preparing a separate report on complaints about both TEOs and TFIs for the TTC Board. This is of particular importance with regard to TFIs, of which the Unit's Annual Report to the TTC Board and the Police Services Board make no mention.
291. A public report from the UCC about TEO and TFI complaints should contain more detailed information than is currently provided in the Unit's Annual Report. At present, the only information included is the number of complaints about TEOs. There are no year-over-year complaint statistics, and no information about the subject matter of the complaints. The more information provided to

the TTC Board – and to the public – about the nature of complaints received, the more useful this information will be when considering the successes and/or the areas of needed improvement for both the TEO and TFI programs.

292. A UCC report on complaints about TEOs and TFIs should at minimum include year-over-year complaint statistics for both formal and informal complaints, brief summaries of complaint issues or common complaints received, complaint outcomes, and information about complaint trends. The inclusion of formal and informal complaints in such a report will help to provide a more complete picture of the effectiveness of the TEO and TFI programs and enhance the public confidence in their operation and oversight. **(Recommendation 20)**
293. As noted earlier, the Chief Special Constable no longer notifies complainants about the outcome of the UCC's investigations. This is now the responsibility of the UCC. This is a positive development and one that should be formalized in the complaints investigation procedures for TEOs and TFIs. **(Recommendation 21)**

TTC VIDEO CAMERAS

294. The TTC has more than 11,000 video cameras on its vehicles and property. All TTC buses, streetcars, and wheel-trans vehicles have cameras.³⁴ All subway trains operating on the Yonge-University-Spadina line are equipped with them, and the TTC is working towards having trains on the Bloor-Danforth subway line equipped with cameras. Most, but not all, subway platforms have video cameras as well, and camera expansion is planned for all platforms across the subway grid.
295. Many of the TEOs with whom investigators spoke were supportive of the increased use of video cameras as part of their work. In fact, we heard that many TEOs would like their interactions with patrons to be captured on video as a way to clear them of any alleged wrongdoing in the event that a complaint is filed about them. As part of the Unit's new use of force policy, any time a member of the Unit uses force, they must request a copy of the digital video recording if one is available so that it will form part of the Use of Force Report for that incident.
296. The Unit has a fleet of 10 patrol cars for TEOs to access as part of their duties. The cars are not equipped with video cameras.
297. We were told that occasionally, TEOs interview patrons in these vehicles, when they consider it more appropriate than doing so on a subway platform or in an electrical room at a station. A Sergeant told us that TEOs may take patrons and

³⁴ In 2013 Ombudsman Toronto issued an investigative report into the TTC's use of video surveillance on wheel-trans vehicles. The report can be accessed at <http://www.ombudsmantoronto.ca/Investigative-Work/Investigative-Reports>

"put them in our cars, even though there's no camera in our cars." He explained that the intent is not to take someone out of the view of a camera, but to speak to a patron in a safe place.

298. TEOs also occasionally use their vehicles to transport patrons. The Special Constable Agreement permits TEOs, with the prior authorization of the Toronto Police officer-in-charge, to transport someone who is apprehended or in custody to a police facility, medical facility or anywhere otherwise directed. If that same individual were to be transported in a Toronto Police vehicle, it is almost certain that the transport would be captured on the Toronto Police In Car Camera System.³⁵
299. We heard of incidents when individuals being transported in a Unit vehicle have injured themselves. One Sergeant recalled a time when an individual repeatedly banged his head on the window during a transport. This Sergeant stated she would be "all for" vehicle cameras, "so if you get to the station and the guy's dripping blood, I can say check the tape..." The UCC, who is also the head of the TTC's Video Services Unit, informed our investigators that video is very helpful for him as a source of evidence during investigations.

ANALYSIS, FINDINGS AND RECOMMENDATION

300. The TTC's video recording policy states that video recording cameras are installed across the system for safety, security and evidentiary reasons. All of these considerations are also present when a TEO interviews or transports someone in a patrol car.
301. We recommend that the TTC install video recording cameras in each of its Unit patrol cars. It has already established a set of policies and procedures guiding the use of its video recording system to address issues such as customer privacy and access. These policies and procedures should be amended to include the use of video recording cameras in patrol cars. **(Recommendation 22)**

THE EXERCISE OF AUTHORITY

302. The Unit developed a Code of Conduct on May 23, 2014, shortly after the enactment of the Special Constable Agreement. Six core values are listed as the basis for the Code:
- Leadership
 - Professionalism
 - Integrity
 - Teamwork

³⁵ We were advised by the Toronto Police that the expectation is that if a vehicle has an operational In Car Camera System it will be activated during all investigative contacts and rear prisoner transports.

- Accountability
- Reliability

303. Although the Code of Conduct does not specifically refer to TFIs, it states that "any member/employee of the Unit" is subject to its provisions.
304. The Unit Code of Conduct is similar to the Code of Conduct for Ontario police officers under the *Police Services Act (Ontario Regulation 268/10)*, with slight modifications. It essentially holds Unit members to the same standards as police officers in the areas of discreditable conduct, insubordination, neglect of duty, deceit, breach of confidence and corrupt practice, among others. It provides in paragraph 2(g)(i) that it is misconduct to engage in "unlawful or unnecessary exercise of authority, in that he or she, without good and sufficient cause makes an unlawful or unnecessary arrest." This is identical to a provision in the *Police Services Act Code of Conduct*.³⁶
305. The Unit's 2014 Annual Report notes that TFIs have a citizen's powers of arrest under the *Criminal Code of Canada*. The Annual Report states that, "by policy", TFIs are only permitted to effect an arrest when no other options are feasible and there exists an immediate threat to personal and/or public safety. Of the three TFI arrests reported in the 2014 Annual Report, one was made under the *Trespass to Property Act* and involved a customer who, with a "vicious" dog that was causing alarm to other customers, refused to leave TTC property. The other two separate arrests were of people alleged to have assaulted TFIs after a request for Proof of Payment.
306. We inquired about Unit policies pertaining to TFI arrest authority and were told that the Unit was awaiting the outcome of the TFI pilot project before developing policies. In the meantime, management instructed TFIs to arrest only as a "last resort", although no written policy has been developed.³⁷
307. As of September 2016, TFIs had made 68 arrests during 2016. This compares with 16 for all of 2015.
308. The issue of arrest authority arose in the days after the Union Station incident becoming public. On April 10, 2015, and in the days following, the Chief Special Constable and the Staff Sergeant, Training and Administration, addressed all front line members and shared a "'legal vs. need' concept of operations" with staff.

³⁶ See section 30(g)(i) of Ontario Regulation 268/10 of the *Police Services Act*.

³⁷ TTC Report – 2014 TTC Transit Enforcement Unit Annual Report to the Toronto Transit Commission and the Toronto Police Services Board. Submitted to the Toronto Transit Commission on September 28, 2015. The report states that citizen's arrests made by a TFI "shall only be made as a last resort and shall be governed by forthcoming policy amendments."

309. In his interview with Ombudsman investigators, the Staff Sergeant, Training and Administration described this as a way to get staff to "take a step back" before making an arrest, and to ask, "Is this the best course of action in all circumstances to deal with the incident?" The Chief Special Constable explained that the "legal vs. need" discussion was about what Unit members have the "legal right" to do, contrasted with what "they should do." As he explained it, although a TEO may, as an example, have the lawful authority to arrest a person for trespassing, the Chief Special Constable wanted to ensure members were considering other options before making a decision to arrest.
310. Throughout the investigation, we heard that the Unit was undergoing a culture change, shifting from a transit policing model to one more oriented towards security and customer service. The Chief Special Constable's address to members about a "legal vs. need" concept of operations was, in essence, a discussion about the proper exercise of discretion specifically, and culture change generally. The Staff Sergeant, Training and Administration told us that the Union Station incident was a "springboard" for this discussion, but he believed that it would likely have occurred anyway as part of the broader culture change occurring within the Unit.
311. We found during our interviews with Unit staff that they did not understand what would be considered an "unnecessary" exercise of authority, or more specifically, an unnecessary arrest, despite the fact that under the Code of Conduct, such an arrest amounts to misconduct. Some, including senior members of the Unit, believe there is "no such thing" as an unnecessary arrest, and that an arrest is either lawful or unlawful. "I don't see there being an unnecessary arrest, to be honest", commented one Sergeant. "Why would I arrest you if it's not necessary?"
312. The Unit has not amended its policies or procedures to guide its members on the appropriate exercise of discretion or to reflect its "legal vs. need" approach to operations. Investigators were told that the lack of clarity in the form of a policy or direction on the exercise of their authority, including arrest authority, has led to confusion and frustration on the front lines. The Chief Special Constable acknowledged this in his interview with investigators, commenting that members are getting a "mixed message." He remarked: "We're giving you authorities – but we really don't want you to use them all the time."

ANALYSIS, FINDINGS AND RECOMMENDATIONS

313. TEOs and TFIs, by virtue of their respective roles, exercise discretion in their work. While issuing a ticket to someone may be within a TFI's legal authority, it may not be necessary in a given situation, and giving a warning may suffice. Similarly, there may be legal grounds for a TEO to arrest someone, but other reasonable options may be available and an arrest may not be necessary.

314. The fact that Unit staff does not fully understand that they have discretion or how they should use it is a matter of concern. It is incumbent on Unit leadership to provide clarity and guidance in this area.
315. Given that the Unit's training and Code of Conduct holds members to account for unnecessary arrests, one would expect that the April 2015 discussion about "legal vs. need" would have reinforced this concept. But we found that there is a lack of understanding among members about what would constitute an "unnecessary" exercise of authority, specifically an unnecessary arrest. Members also expressed frustration about not having a clear idea of management's expectations regarding the exercise of their authority to arrest.
316. From our perspective, the inclusion of "unnecessary arrest" in the Code of Conduct without a common, clearly communicated understanding of what this means is problematic. It suggests that the Unit will likely encounter difficulty not only in ensuring that members are meeting operational expectations, but also in ensuring that they are adhering to the Code of Conduct.
317. The Code of Conduct, which we were told applies to both TEOs and TFIs, was closely modelled on one designed for police officers. It appears to be more aligned with the operational expectations of a law enforcement agency than of a public transit agency whose members have limited law enforcement responsibility.
318. We recommend that the Unit review its Code of Conduct. This is consistent with its stated goal to effect a culture change, and to move away from a policing-type model to more of a customer-service oriented model. The review should clarify the term "unnecessary" arrest, which is a basis for a finding of misconduct. More broadly, the review should examine the entire Code of Conduct to determine whether any changes may be required in order to better align with the Unit's operational vision and organizational expectations.
(Recommendation 23)
319. We also recommend that the Unit consider creating and implementing a policy to provide members with guidance on the use of discretion in exercising their authority. **(Recommendation 24)**
320. We were told that the Unit has instructed TFIs to arrest only as a last resort, but it has no written policy or protocol addressing this. In 2016, TFIs made at least 68 arrests. A written policy on the authority for TFI arrests, and how that authority should be exercised, is necessary for Unit management to ensure that its expectations for the role of TFI are being met.
321. It is unclear how the December 2016 decision of the TTC Board to no longer equip TFIs with handcuffs (or batons) will change the current, and unwritten, policy of arrest as a "last resort" for TFIs. In the interim, the Unit should adopt a

basic policy framework to guide TFIs in exercising their authority to arrest.
(Recommendation 25)

CONCLUSION

322. The TTC Transit Enforcement Unit is responsible for protecting the safety and integrity of the third largest transit system in North America – a system which serves in excess of 500 million people annually. Transit Enforcement Officers and Transit Fare Inspectors play a vital role in ensuring that the TTC remains safe and reliable for these hundreds of millions of riders and for TTC staff.
323. Investigators heard from many witnesses, and saw firsthand, how difficult the jobs of a TEO and TFI can be. Throughout the investigation, we observed much dedication, commitment and justified pride among the members of the Unit.
324. Given the significant role played by the Unit, it is essential that the TTC have a strong and effective oversight system in place for its TEOs and TFIs. Such a system must ensure accountability, promote transparency, and create and maintain public confidence in the Unit. The need for effective oversight is only underscored by the fact that, as special constables, TEOs have many of the same powers and authorities as police officers, yet are not subject to the same level of independent, civilian oversight.
325. TFIs, while they do not have special constable status or the police-like powers of TEOs, often find themselves in confrontational situations with TTC passengers because of the nature of their role. Concerns about the adequacy of oversight for TFIs prompted the TTC Board to request the Unit to search for an independent third party to take on this responsibility. In the meantime, the onus now rests squarely on the TTC to ensure there is a robust oversight system for TFIs.
326. Our investigation revealed some shortcomings in the way the Unit and the TTC responded to the Union Station incident. These include the TTC's failure to examine the incident through a preventative lens and the Unit's inadequate communication about the incident to TTC members outside of the Unit.
327. While the TTC has taken some steps toward improving its oversight of the Unit after the Union Station incident, like amending use of force reporting and creating a Use of Force Review Board, our investigation found that more work is needed in these areas. Also, other areas of Unit oversight need attention. For these reasons, we have made a number of recommendations to address oversight in the crucial areas of use of force, de-escalation, and complaints, as well as in the areas of video surveillance and the exercise of authority.
328. We believe that implementation of our recommendations will help create an improved and comprehensive oversight system for the Unit of which the TTC, its riders, and the public as a whole, can be proud.

RECOMMENDATIONS

329. Based on the evidence obtained and considered in this investigation and our findings, we are making the following recommendations:

UNION STATION INCIDENT

1. The TTC should examine the January 29, 2015 incident at Union Station in the interest of public safety and safety for TTC staff. Matters analyzed in such an examination should include the circumstances that led to the incident, how it could have been avoided, and whether it is necessary to implement policies and processes aimed at reducing the likelihood of a similar incident in the future.

USE OF FORCE

2. The Transit Enforcement Unit should amend its use of force reporting policy to provide greater clarity to members about use of force reports and when they must be completed. The policy should indicate the types of member actions the Unit wishes to capture on a use of force report. The Unit should strongly consider implementing a use of force reporting policy similar to the one put in place by OC Transpo's Transit Safety and Enforcement Services section.
3. The Transit Enforcement Unit should obtain clarification from Toronto Police about the use of force reporting requirements under the Special Constable Agreement.
4. The Transit Enforcement Unit should create its own use of force reporting template to document use of force incidents not required to be submitted to the Toronto Police. The reports should capture information that is relevant to the operations of the Unit, for example, station location and type of TTC vehicle involved. The Unit should use this information to identify trends and, potentially, to develop policy and training improvements.
5. The Transit Enforcement Unit should implement a formal "early warning" tracking system to monitor the frequency and type of use of force incidents in which members are involved as a way to detect and, if need be, address patterns in member use of force.
6. The Transit Enforcement Unit should issue, on an annual basis, a public report documenting TEO and TFI use of force activities. The report should, at a minimum, provide the number of use of force incidents involving TEOs and TFIs, a brief summary of each incident, and statistics of use of force activities for previous years to allow for a comparative analysis.
7. The Transit Enforcement Unit should implement a written policy on TFI authority to use force.

8. The Transit Enforcement Unit should develop written policies and procedures for its Use of Force Review Board. These should include a clear explanation of the board's purpose, its mandate and processes, and how the board enhances the Unit's oversight of its members.
9. The Transit Enforcement Unit should remove or replace the Unit Complaints Coordinator as a participating member of the Use of Force Review Board.

TRAINING – DE-ESCALATION AND MENTAL HEALTH

10. The Transit Enforcement Unit should amend its use of force policy to clearly outline the importance of de-escalation as an alternative to the use of physical force. The policy should provide a definition of de-escalation tactics and offer examples of situations where such tactics may be appropriate.
11. The Transit Enforcement Unit should develop and/or amend training materials for TEOs and TFIs to highlight the importance and value of de-escalation as an alternative to the use of force. The training materials should also clearly outline how de-escalation skills and tactics are taught to TEOs and TFIs.
12. The Transit Enforcement Unit should develop a formal evaluation process to assess TEO and TFI use of de-escalation techniques during initial and ongoing training.
13. The Transit Enforcement Unit should ensure that TEOs and TFIs receive regular training on mental health and on responding to persons impacted by issues related to mental health and mental illness.

PUBLIC COMPLAINTS

14. The TTC should develop a policy on resolving informal complaints against TEOs and TFIs through a local resolution process, and amend its complaints investigation procedures to include information about informal complaints and the resolution of same through a local resolution process. At a minimum, the policy should:
 - Outline what matters are eligible and ineligible for local resolution, and clarify that informal complaints which raise serious issues are ineligible for local resolution
 - Provide timelines within which informal complaints will be resolved by local resolution
 - Outline what communication complainants will receive about the complaints addressed by local resolution, for example, findings and outcome
 - Establish a system to track the outcomes of informal complaints addressed by local resolution and

- Explain how a complainant can initiate a formal complaint should they not be satisfied with the outcome of the local resolution
15. The TTC should amend its complaints investigations procedures to clarify that the Unit Complaints Coordinator accepts and can formally investigate oral complaints about TEOs and TFIs.
 16. The TTC should contact Toronto Police and clarify its complaint reporting obligations under the Special Constable Agreement for complaints about TEOs that the TTC receives by email.
 17. The TTC should establish a written policy for the resolution of formal complaints against TEOs and TFIs informally. The policy should state that the Unit Complaints Coordinator must agree to resolve the complaint informally. The policy should also address whether a complaint can be resolved informally if there is a history of similar complaints against the TEO or TFI involved.
 18. The TTC's complaints investigations procedure for TEOs and TFIs should be amended to empower the Unit Complaints Coordinator to initiate an own initiative investigation in the absence of a public complaint, and, where deemed necessary by the Unit Complaints Coordinator, to continue a complaint investigation even if the complaint has been withdrawn.
 19. The Transit Enforcement Unit should establish a formal process to identify and monitor complaint trends for TEOs and TFIs. The Unit should also implement a policy outlining the process to be followed when a trend becomes apparent.
 20. The TTC, through the Unit Complaints Coordinator, should make and release an annual public report that provides information on public complaints about TEOs and TFIs. These reports should include year-over-year complaint statistics for formal and informal complaints, brief summaries of complaint issues or common complaints received, complaint outcomes, information about complaint trends, and any other information deemed relevant by the Unit Complaints Coordinator.
 21. The TTC should amend its complaints investigations procedures for TEOs and TFIs to reflect that the Unit Complaints Coordinator will notify complainants about the outcome of complaint investigations.

VIDEO CAMERAS

22. The TTC should install video recording cameras in all Transit Enforcement Unit patrol cars. The TTC should also amend its corporate policy and procedures on video recording in public areas to reflect the use of video recording cameras in Transit Enforcement Unit patrol cars.

THE EXERCISE OF AUTHORITY

23. The Transit Enforcement Unit should review its Code of Conduct for TEOs and TFIs to ensure that it aligns with the Unit's operational and organizational expectations of both positions. The Conduct of Conduct should define "unnecessary" arrest, which is a basis for a finding of misconduct.
24. The Transit Enforcement Unit should consider creating a policy on the exercise of discretion by TEOs and TFIs to use their authority.
25. The Transit Enforcement Unit should create a written policy on the arrest authority of a TFI.

REPORTING BACK

26. The TTC should report back to Ombudsman Toronto on a quarterly basis on the status of the implementation of all of the above noted recommendations until such time as we are satisfied that adequate steps have been taken to address them.

THE TTC'S RESPONSE

330. Pursuant to s. 172(2) of the *City of Toronto Act, 2006*, Ombudsman Toronto provided the TTC with a copy of a draft investigation report containing preliminary findings and recommendations, in order to allow the TTC to make representations in response to the draft.
331. Representatives from Ombudsman Toronto and the TTC met on March 9, 2017 to discuss the draft investigation report and to receive the TTC's comments. Ombudsman Toronto then prepared a subsequent draft investigation report and provided it to the TTC on March 30, 2017.
332. The TTC CEO responded by letter of April 10, 2017. He stated that he agreed with and supported the investigation's recommendations. On behalf of the TTC, he committed to implementing all of them, the majority by the end of 2017.
333. A copy of the CEO's response letter, with attached chart outlining the TTC's response to and timeline for the implementation of each of the 26 recommendations, is attached as Appendix B.
334. Ombudsman Toronto will monitor the TTC's progress in implementing the recommendations.

(Original signed)

Susan E. Opler
Ombudsman

APPENDIX A – ONTARIO USE OF FORCE MODEL (2004)

1. **Officer Presence:** The presence of an officer can affect the subject's behaviour and the situation. It is not strictly a use of force option.
2. **Communication:** This is the use of verbal and non-verbal communication to control and/or resolve a situation.
3. **Physical Control:** This refers to any physical technique used to control the subject that does not involve the use of a weapon. This can include soft techniques that have a lower probability of causing injury (e.g. non-resistant handcuffing) and hard techniques, such as empty hand strikes like punches and kicks.
4. **Intermediate Weapons:** This refers to the use of a less-lethal weapon (expandable baton, OC foam), not intended to cause serious bodily harm or death.
5. **Lethal Force:** This is the use of any weapon or technique that is intended to, or is reasonably likely to, cause serious bodily harm or death.



The officer continuously assesses the situation and selects the most reasonable option relative to those circumstances as perceived at that point in time.

APPENDIX B – RESPONSE FROM THE CEO OF THE TTC

TORONTO TRANSIT COMMISSION



JOSH COLLE
CHAIR
ALAN HEISEY, Q.C.
VICE-CHAIR
ANDY BYFORD
CHIEF EXECUTIVE OFFICER

RICK BYERS
JOHN CAMPBELL
SHELLEY CARROLL
VINCENT CRISANTI
CLENN DE BAEREMAEKER

JOANNE DE LAURENTIIS
RON LALONDE
JOE MIHEVC
DENZIL MINNAN-WONG



April 10, 2017

Ms Susan Opler
Ombudsman
City of Toronto
375 University Avenue, Suite 203
Toronto, Ontario M5G 2J5

Dear Ms Opler:

Re: Ombudsman Toronto Report: An Investigation into the Toronto Transit Commission's Oversight of its Transit Enforcement Unit

I have reviewed your report, "An Investigation into the Toronto Transit Commission's Oversight of its Transit Enforcement Unit" and thank you for the thorough investigation and recommendations provided to improve oversight of the unit. We agree with and support the recommendations in your report.

To date 23 of the 26 recommendations are in progress and recommendation 3 is complete. Implementation of the majority of the recommendations is targeted for the end of the third quarter of 2017. The balance of your recommendations will be completed by the end of the year, with video cameras in patrol cars slated for implementation at the end of 2018.

Work on this specific recommendation is underway and involves consultation with the Toronto Police Service on the design, procurement and installation of video recording equipment. It will also require approval from the Toronto Police Services Board in the form of an amendment to the current special constable agreement. TTC staff will also need to ensure privacy regulations are considered and form part of their use, in addition to seeking Board approval for procurement of the equipment itself.

I would like to reiterate that on December 21, 2016, the TTC Board approved a new fare inspection model at the TTC that included changes such as a more customer-friendly uniform and the removal of defensive tools, including handcuffs. Fare inspectors retain citizen powers of arrest pursuant to the Criminal Code of Canada as a last resort, and empty hand force shall only be used only when lawfully permitted in cases of self defense. Based on the model approved by the TTC Board, a new draft policy and procedures manual for Transit Fare Inspectors will be completed by the end of the third quarter of 2017.



I appreciate the opportunity to comment on this important matter and thank you for the comprehensive review and report provided today. I want to assure you that TTC staff will consult with your office prior to finalizing and publishing any policy and process changes identified in your report. We will report back to you on a quarterly basis as implementation of the recommendations progresses.

Sincerely,



Andy Byford
Chief Executive Officer

Attachment: TTC Response



An Investigation into the TTC's Oversight of its Transit Enforcement Unit - Ombudsman Toronto Report

Rec #	Section	Recommendation	Agree	Comments	Implementation Timeline
1	Section 104	Union Station Incident – The TTC should examine the January 29, 2015 incident at Union Station in the interests of public safety and safety for TTC staff. This examination should consider the circumstances that led to the incident, how it could have been avoided, and whether it is necessary to implement policies and processes that may help to reduce the likelihood of a similar incident in the future.	Yes		Unknown
2	Section 164	Use of Force – The Transit Enforcement Unit should amend its use of force reporting policy to provide greater clarity to members about use of force reports and when they must be completed. The policy should indicate the types of member actions the Unit wishes to capture on a use of force report. The Unit should strongly consider implementing a use of force reporting policy similar to the one put in place by the OC Transpo's Transit Safety and Enforcement Services sections.	Yes	In Progress. Formal amendments will be made to the Transit Enforcement Unit Policies and Procedures subject to consultation with the Toronto Police Service and the Toronto Police Services Board pursuant to section 9.5 of the Special Constable Agreement which states "The TTC shall consult with the Board and the Service prior to changing its enforcement policies, rules, standards, or procedures for T.E.O.s and shall forward copies of any such change to the Board and the Service upon its enactment by the TTC."	A draft policy will be submitted to TPS by the end of Q3 2017
3	Section 165	The Transit Enforcement Unit should obtain clarification from Toronto Police about use of force reporting requirements under the Special Constable Agreement.	Yes	Complete. The Staff Sergeant-Training and Administration met with members of the Toronto Police College on June 13, 2016. It was agreed that all Form 1s meeting the PSA ORing 500/500 criteria would be submitted under the established protocol to the Toronto Police Service. For the TTC, that constitutes all interactions where a Special Constable: <ul style="list-style-type: none"> • Uses physical force on another person that results in an injury that requires medical attention. • Uses a weapon other than a firearm on another person (in our case: OC Foam, baton or weapon of opportunity) 	Complete June 13, 2016
4	Section 167	The Transit Enforcement Unit should create its own use of force reporting template to document use of force incidents not required to be submitted to the Toronto Police. The reports should capture information that is relevant to the operations of the Unit, for example, station location and type of TTC vehicle involved. The Unit should use this information to identify trends and, potentially, to develop policy and training improvements.	Yes	In Progress. Formal amendments will be made to the Transit Enforcement Unit Policies and Procedures subject to consultation with the Toronto Police Service and the Toronto Police Services Board pursuant to section 9.5 of the Special Constable Agreement which states "The TTC shall consult with the Board and the Service prior to changing its enforcement policies, rules, standards, or procedures for T.E.O.s and shall forward copies of any such change to the Board and the Service upon its enactment by the TTC."	A draft template will be submitted to TPS by the end of Q3 2017
5	Section 168	The Transit Enforcement Unit should implement a formal "early warning" tracking system to monitor the frequency and type of use of force incidents in which members are involved as a way to detect and, if need be, address patterns in member use of force.	Yes	In Progress. The unit will develop and implement a formal early warning tracking system in consultation with the Toronto Police Service and the Toronto Police Services Board pursuant to section 9.5 of the Special Constable Agreement which states "The TTC shall consult with the Board and the Service prior to changing its enforcement policies, rules, standards, or procedures for T.E.O.s and shall forward copies of any such change to the Board and the Service upon its enactment by the TTC."	A draft tracking system will be submitted to TPS by the end of Q3 2017

An Investigation into the TTC's Oversight of its Transit Enforcement Unit - Ombudsman Toronto Report

Rec #	Section	Recommendation	Agree	Comments	Implementation Timeline
6	Section 171	The Transit Enforcement Unit should issue, on an annual basis, a public report documenting TEO and TFI use of force activities. The report should, at a minimum, provide the number of use of force incidents involving TEOs and TFIs, a brief summary of each incident, and statistics of use of force activities for previous years to allow for a comparative analysis.	Yes	In Progress. 2017 Transit Enforcement Annual Report to TTC and TPSB currently scheduled for consideration at the April TTC meeting and tentatively scheduled for consideration at the May TPSB meeting.	Q3 2017
7	Section 172	The Transit Enforcement Unit should implement a written policy on TFI authority to use force.	Yes	In progress. On December 21, 2016, the TTC Board approved a new model of Fare Inspection for the TTC which included a change to a more customer friendly uniform and the removal of offensive tools. Empty hand force shall only be used by a Transit Fare Inspector when lawfully permitted in cases of self defense. Based on the model approved by the TTC Board, a new policy and procedures manual for TFIs will be completed.	Q4 2017
8	Section 175	The Transit Enforcement Unit should develop written policies and procedures for its Use of Force Review Board. These should include a clear explanation of the board's purpose, its mandate and processes, and how the board enhances the Unit's oversight of its members.	Yes	In progress. Amendments will be made to the Transit Enforcement Unit Policies and Procedures subject to consultation with the Toronto Police Service and the Toronto Police Services Board pursuant to section 9.5 of the Special Constable Agreement which states "The TTC shall consult with the Board and the Service prior to changing its enforcement policies, rules, standards, or procedures for T.E.O.s and shall forward copies of any such change to the Board and the Service upon its enactment by the TTC."	A draft policy will be submitted to TPS by the end of Q3 2017
9	Section 177	The Transit Enforcement Unit should remove or replace the Unit Complaints Coordinator as a participating member of the Use of Force Review Board.	Yes	In progress. Prior to submitting draft amendments to the Transit Enforcement Unit Policies and Procedures to the Toronto Police Service and the Toronto Police Services Board, the Unit Complaints Coordinator will be removed as a participating member of the Use of Force Review Board.	Q3 2017
10	Section 214	Training (De-Escalation and Mental Health) – The Transit Enforcement – The Transit Enforcement Unit should amend its use of force policy to clearly outline the importance of de-escalation as an alternative to the use of physical force. The policy should provide a definition of de-escalation tactics and offer examples of situations where such tactics may be appropriate.	Yes	In progress. Amendments will be made to the Transit Enforcement Unit Policies and Procedures subject to consultation with the Toronto Police Service and the Toronto Police Services Board pursuant to section 9.5 of the Special Constable Agreement which states "The TTC shall consult with the Board and the Service prior to changing its enforcement policies, rules, standards, or procedures for T.E.O.s and shall forward copies of any such change to the Board and the Service upon its enactment by the TTC."	A draft policy will be submitted to TPS by the end of Q3 2017
11	Section 216	The Transit Enforcement Unit should develop and/or amend training materials for TEOs and TFIs to highlight the importance and value of de-escalation as an alternative to the use of force. The training materials should also clearly outline how de-escalation skills and tactics are taught to TEOs and TFIs.	Yes	In progress. Amendments will be made to the Transit Enforcement Unit Policies and Procedures and course training standards subject to consultation with the Toronto Police Service and the Toronto Police Services Board and with the approval of the Toronto Police College pursuant to sections 9.5 of the Special Constable Agreement which states "The TTC shall consult with the Board and the Service prior to changing its enforcement policies, rules, standards, or procedures for T.E.O.s and shall forward copies of any such change to the Board and the Service upon its enactment by the TTC." and Article 12 and Schedule "B" of the Special Constable Agreement which states "The TTC shall inform the Board and the Service of changes and updates to the training requirements, which information shall include a detailed explanation and rationale as to the change and update to the training requirements, and, provided the Board has approved such changes and updates, the TTC shall forthwith provide such modified or additional training for its applicants and T.E.O.s."	A draft policy will be submitted to TPS by the end of Q3 2017

An Investigation into the TTC's Oversight of its Transit Enforcement Toronto Report

Rec #	Section	Recommendation	Agree	Comments	Implementation Timeline
12	Section 217	The Transit Enforcement Unit should develop a formal evaluation process to assess TEO and TFI use of de-escalation techniques during initial and ongoing training.	Yes	In Progress. Since Q4 of 2013 when Transit Enforcement Officers began their recertification training for special constable appointments, a formal evaluation process has been in place to assess first, TEO and subsequently, TFI use of de-escalation techniques during initial and ongoing training. This is accomplished during holistic simulation training conducted during recert and annual recertification training. However, staff will continue to work with external partners to explore how to refine the evaluation process to specifically target de-escalation.	Q3 2017
13	Section 219	The Transit Enforcement Unit should ensure that TEOs and TFIs receive regular training on mental health and on responding to persons impacted by issues related to mental health and mental illness.	Yes	In Progress. TEOs and TFIs currently receive initial training as facilitated by a 3rd party provider and ongoing training as developed and delivered by the TTC Training and Development Department. Additional ongoing training will be implemented in phases and delivered during annual recertification and refresher training delivered to both groups.	TBD
14	Section 260	Public Complaints – The TTC should develop a policy on resolving informal complaints against TEOs and TFIs through a local resolution process, and amend its complaints investigation procedures to include information about informal complaints and the resolution of same through a local resolution process. At a minimum, the policy should: <ul style="list-style-type: none"> • Outline what matters are eligible and ineligible for local resolution, and clarify that informal complaints which raise serious issues are ineligible for local resolution. • Provide timelines within which informal complaints will be resolved by local resolution. • Outline what communication complainants will receive about the complaints addressed by local resolution, for example, findings and outcome. • Establish a system to track the outcomes of informal complaints addressed by local resolutions and. • Explain how a complainant can initiate a formal complaint should they not be satisfied with the outcome of the local resolution. 	Yes	In Progress. This can be done for TFIs but will involve some discussion with the Toronto Police Services Board as it may require a change to the complaint process which is part of the TTC/TPSB special constable agreement.	Q3 for TFIs For TEOs the policy will be submitted to TFS by Q3
15	Section 263	The TTC should amend its complaints investigations procedures to clarify that the Unit Complaints Coordinator accepts and can formally investigate oral complaints about TEOs and TFIs.	Yes	In Progress. To address this concern: When a Complainant is unable to communicate in writing, or due to any disability is unable to meet with the UCC, the UCC shall make every effort to assist the Complainant in completing the form. Receiving complaints verbally is acceptable but the practice of investigating verbal complaints is not used by any other agency (OPHD, GO, Ottawa) including other departments of the TTC. Oral complaints are difficult to investigate because they are subject to interpretation, not always clear in terms of allegations, are difficult to summarize by the UCC and can be modified at any point by the Complainant. A written complaint provides clear allegations which can be investigated. Should the Complainant have a barrier that prevents them from submitting a written complaint the UCC will provide assistance as required. If a Complainant provides allegations of an alarming nature but then refuses to submit a written complaint, the UCC would then take on the role of the Complainant.	Reference to handling verbal complaints can be added to the complaint procedures in Q3.

An Investigation into the TTC's Oversight of its Transit Enforcement Unit - Ombudsman Toronto Report

Rec #	Section	Recommendation	Agree	Comments	Implementation Timeline
16	Section 284	The TTC should contact Toronto Police and clarify its complaint reporting obligations under the Special Constable Agreement for complaints about TEOs that the TTC receives by email.	Yes	In Progress. This can be done but it will require consultation with TPS and/or TP5B	Will be submitted to TPS by Q3
17	Section 286	The TTC should establish a written policy for the resolution of formal complaints against TEOs and TFIs informally. The policy should state that the Unit Complaints Coordinator must agree to resolve the complaint informally. The policy should also address whether a complaint can be resolved informally if there is a history of similar complaints against the TEO or TFI involved.	Yes	In Progress. The process change for TFIs should be fairly straight forward however the process change for TEOs will require discussion with TP5B.	Q3 for TFIs For TEOs the policy will be submitted to TPS by Q3
18	Section 287	The TTC's complaints investigations procedure for TEOs and TFIs should be amended to empower the Unit Complaints Coordinator to initiate an own initiative investigation in the absence of a public complaint, and, where deemed necessary by the Unit Complaints Coordinator, to continue a complaint investigation even if the complainant has been withdrawn.	Yes	In Progress.	Q3 2017
19	Section 288	The Transit Enforcement Unit should establish a formal process to identify and monitor complaint trends for TEOs and TFIs. The Unit should also implement a policy outlining the process to be followed when a trend becomes apparent.	Yes	In Progress.	Q3 2017
20	Section 292	The TTC, through the Unit Complaints Coordinator, should make and release an annual public report that provides information on public complaints about TEOs and TFIs. These reports should include year-over-year complaint statistics for formal and informal complaints, brief summaries of complaint issues or common complaints received, complaint outcomes, information about complaint trends, and any other information deemed relevant by the Unit Complaints Coordinator.	Yes	In Progress. Given the complaint process changed significantly in 2016, the year over year comparison would only begin in 2016. Other than basic statistics it would be extremely difficult to compare specific information for the years prior to 2016.	Q3 2017
21	Section 293	The TTC should amend its complaints investigations procedures for TEOs and TFIs to reflect that the Unit Complaints Coordinator will notify complainants about the outcome of complaint investigations.	Yes	In Progress. This is already practiced by the UCC however it will be documented and added to the complaint procedures.	Q3 2017
22	Section 301	Video Cameras - The TTC should install video recording cameras in all Transit Enforcement Unit patrol cars. The TTC should also amend its corporate policy and procedures on video recording in public areas to reflect the use of video recording cameras in Transit Enforcement Unit patrol cars.	Yes	In progress. The Staff Sergeant Training and Administration and TTC vehicle engineering staff have consulted with the Toronto Police Service on the design, procurement and installation of video recording equipment into TTC Transit Enforcement patrol vehicles. Implementation would require approval from the Toronto Police Services Board in the form of an amendment to the current special constable agreement from a policy and procedures perspective and an equipment approval perspective. Implementation would also be impacted by privacy regulations and procurement/statulation of the equipment. This decision would also require TTC Board approval.	Q4 2018

An Investigation into the TTC's Oversight of its Transit Enforcement Toronto Report

Rec #	Section	Recommendation	Agree	Comments	Implementation Timeline
23	Section 318	The Transit Enforcement Unit should review its Code of Conduct for TEOs and TFIs to ensure that it aligns with the Unit's operational and organizational expectations of both positions. The Code of Conduct should define "unnecessary" arrest, which is a basis for a finding of misconduct.	Yes	<p>In Progress. Formal amendments will be made to the Transit Enforcement Unit Policies and Procedures subject to consultation with the Toronto Police Service and the Toronto Police Services Board pursuant to section 9.5 of the Special Constable Agreement which states "The TTC shall consult with the Board and the Service prior to changing its enforcement policies, rules, standards, or procedures for TEOs and shall forward copies of any such change to the Board and the Service upon its enactment by the TTC."</p>	A draft policy will be submitted to TPS by the end of Q3 2017
24	Section 319	The Transit Enforcement Unit should consider creating a policy on the exercise of discretion by TEOs and TFIs to use their authority.	Yes	<p>In progress: A review of the Transit Enforcement Policy, Procedures and Rules Manual is currently underway. The current document includes the word "discretion" 14 times. Section 01-03.10 states "It is expected that in the course of their duties, Transit Enforcement Officers will exercise discretion and good judgment. Members will use their experience and the training provided by the Commission when involved in a situation. Before any action is initiated by a member, they shall first consider the personal safety of all concerned." As part of the current review, the Transit Enforcement Unit will look for opportunities to reinforce the exercise of discretion by TEOs and TFIs to use their authority in the course of their duties. Formal amendments will be made to the Transit Enforcement Unit Policies and Procedures subject to consultation with the Toronto Police Service and the Toronto Police Services Board pursuant to section 9.5 of the Special Constable Agreement which states "The TTC shall consult with the Board and the Service prior to changing its enforcement policies, rules, standards, or procedures for TEOs and shall forward copies of any such change to the Board and the Service upon its enactment by the TTC."</p>	A draft policy will be submitted to TPS by the end of Q3 2017
25	Section 321	The Transit Enforcement Unit should create a written policy on the arrest authority of a TFI.	Yes	<p>In progress. On December 21, 2016, the TTC Board approved a new model of Fare Inspection for the TTC which included a change to a more customer friendly uniform and the removal of defensive tools including handcuffs. TFI's retain citizen's powers of arrest pursuant to the Criminal Code as a last resort and empty hand force shall only be used by a Transit Fare Inspector when lawfully permitted in cases of self defense. Based on the model approved by the TTC Board, a new policy and procedures manual for TFIs will be completed.</p>	Q4 2017
26		Reporting Back – The TTC should report back to Ombudsman Toronto on a quarterly basis on the status of the implementation of all of the above noted recommendations until such a time as we are satisfied that adequate steps have been taken to address them.	Yes	<p>Pending. To be developed in consultation with the Ombudsman's Office.</p>	Q2 2017