

De-Escalation & Use of Force Pacer 2.0 Committee Recommendations

On behalf of the Pacer Committee, as requested, the following are our recommendations regarding the Toronto Police Services Board De-Escalation and Use of Force Policy.

- 1) We are not in agreement with the Policy's definition of de-escalation which is described as what is necessary to gain compliance. The Policy should be changed to state that de-escalation is doing what is necessary to move the situation toward a positive or safe outcome for all those directly involved. There are many examples of people who are not "compliant" but who are also not posing a risk and upon whom no force should be used, for example, those who are merely questioning police about what is happening (could be various things – they could be asking what is the officer's concern, what is going to happen and why...). In one notable inquest, a man with developmental disabilities was killed after police determined he was "not compliant." Meanwhile, police were directing him using someone else's name (case of mistaken identity) AND he was hard of hearing. Rather than focus on a positive or safe outcome, they focused on apparent non-compliance and knocked him to the ground. Since he had no comprehension of what was happening and why, he struggled.
- 2) The Policy should be amended to provide for tracking, reporting on, and accountability for Members uttering threats associated to the use of force. Consider, for example, that there have been complaints that officers have threatened force, but then don't have to report it because the CEW or gun was not actually drawn.
- 3) The Policy should ensure that the Service will collect, analyze and report on information annually that informs the Board and the public about intersectionality associated with race, persons in crisis, and the use of force, including by making necessary amendments to sections such as section 43-48. The purpose is track trends and indicators in an effort to prevent harm.
- 4) Since this is to be a public facing document, it should be subject to a plain language review before it's finalized. In addition, once the Policy is otherwise finalized, we recommend that the title be changed to reflect the content of the policy. In this context, the title should demonstrate the Board's recognition of the seriousness of

the issue and the rationale or purpose of the document which is to reduce the level of force currently used as per numerous reports.

- 5) **Section 2 of the Policy**: This section should be improved after consideration and incorporation of the communications-related recommendations from the *Loku* and *Ekamba* inquests.
- 6) **Section 5 of the Policy**: Amend this section by adding the following underlined text: “Service Members are trained to take into account and avoid stereotypical assumptions about individual physical, developmental and mental characteristics of persons in crisis, individuals with mental or developmental issues, and youth, so as to enable the Service Members to more successfully de-escalate incidents where such information is available”.
- 7) **Section 13 of the Policy**: We assume that if a police officer fails in their duty to respond appropriately when a member of public is causing serious harm to someone, the officer may be subject to misconduct proceedings and/or criminal charges. Similarly, it should be clear that a failure to fulfil the duty to intervene with respect to a fellow officer may result in misconduct proceedings and/or criminal charges.
- 8) **Section 14 of the Policy**: Amend the Policy to: (1) provide that any Member who retaliates or attempts to retaliate against a Member who attempts to fulfill the duty to intervene will be subject to the misconduct process; and (2) direct the Chief to monitor and report to the Board on attempted retaliation, retaliation, and related misconduct investigations and proceedings.
- 9) **Section 17 of the Policy**: Amend this section by adding the following underlined text: “Where an incident of excessive use of force in the presence of other Service Members is under investigation, an investigation is conducted of any Service Members who witnessed the incidence and failed to intervene, and determine whether there is need for training, discipline, or criminal charges”.
- 10) **Section 23 of the Policy**: Amend this section to require that: (1) the Service evaluate and grade Members on a pass / fail basis when it comes to the use of force and de-escalation training components of the In Service Training Program; and (2) Members only be permitted to perform duties that are may involve the use of force after receiving a passing grade on both the use of force and de-escalation training components of the In Service Training Program.
- 11) **Section 26 of the Policy**: Amend this section by adding the following underlined text: “Ensure that communication operators and dispatchers are trained to obtain and communicate to the dispatched officer, to the greatest degree possible, all

relevant and unbiased information to facilitate an appropriate response to a call for service”.

12) **Section 43(f) of the Policy:** Amend this subsection by adding the following underlined text: “The number of use of force incidents involving persons in crisis, broken down by the use of force option employed, the type of injuries sustained by the person in crisis, the mental health outcomes of incidents (e.g., whether the individual was apprehended or the situation was de-escalated and the individual left to continue on their own), and trends for the previous four years where available.”

13) **Section 45 of the Policy:** Replace section 45 with the following:

45(1). For the purpose of sections 46–48, incidents of use of physical force are defined as incidents where a member of the public was detained or taken into custody using physical force and which do not fall within the definition in section 36.

45(2) For the purpose of section 45(1),

"Physical force" should be defined as:

Physical force is defined as techniques intended to control or stop a subject's behaviour, which exceed mere physical contact. Physical force includes handcuffing a resisting individual, handcuffing a non-resisting individual who is or appears to be under the age of 18, punches, armlocks, tackles, oleoresin capsicum (OC) aerosol spray, baton, firearms), drawing a firearm or displaying a Conducted Energy Weapon (C.E.W.), whether or not the firearm or C.E.W. was discharged at the subject.

“Physical contact” should be defined as:

Physical contact is defined as reasonable and routine procedural contact with an individual necessary to effectively accomplish a legitimate law enforcement objective. Examples include handcuffing a non-resisting individual who is or appears to be over the age of 18, guiding an individual into a police vehicle, holding the individual's arm while transporting, and maneuvering or securing an individual for a frisk search. Physical contact alone does not constitute force. Physical contact that causes injury exceeds physical contact and constitutes force.

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PACER Committee