Commentary on Amendments to Public Consultation Draft
De-escalation and Appropriate Use of Force Policy

Page 1 — Heading: "REPORTING REQUIREMENT"

As indicated in amendments of individual sections of the Draft Policy, many Board reporting requirements from the Chief should be quarterly rather than annual. This may, in years to come, eventually be downgraded from quarterly to annual reporting of a greater number of types of information; but particularly in relation to what is held out as being substantial changes to police Use of Force in Toronto, waiting over a year for an initial report, and at least two years before the first set of comparative figures becomes available, greatly diminishes the potential for benefit from the new policy.

Page 2 — Discussion of protecting public safety

Semantics perhaps, but then a policy is always going to be as much about the words used as it is about the objectives and the strategies employed to achieve the stated objectives. The goal of policing is not to "protect public safety", as "public safety" is a goal, not the object; indeed it many cases the goal may be to create public safety where none previously existed so as to be capable of being protected. In the only two places where this phrase is used, I therefore suggest amendment to, the unfortunately wordier, "protect the safety of the public". Other alternatives might include rephrasing as "achieve public safety" or "enhance public safety".

Page 3 — Officers' responsibility to disclose legal bases for their action

In many cases everyone involved will be fully aware of the legal justification for police involvement and/or actions; but in many other cases the public, either those interacting with police or those witnessing the events, will have a different understanding of why police are acting in the way that they are; and this will often lead the public to believe that the public's actions are justified, perhaps on the basis of one single factor, while police may be motivated by a completely different set of legal considerations which might well render the individual's perceived justification irrelevant.

Additionally, members of the public witnessing an interaction may be traumatized by what they perceive to be inappropriate police actions while that action might be precipitated by events that are less than obvious both to witnesses and even the individual(s) with whom police are directly engaged.

Public perception of a lack of justification, even where sound justification for police use of force might exist, tends to create the same results as the public witnessing unjustified or excessive use of force. It certainly requires significantly more resources to correct a misperception than it does to 'set the record straight' at the onset of events, assuming correction of the problems is even possible after the fact.

Obviously police are not able to engage in a legal debate in every situation they encounter; however, the public being given at least some information sufficient to understand 'where the officer is coming from' will help to defuse many situations, minimize misconceptions of police actions, and improve public attitudes towards police; meaning that any additional investment of officer time at that stage will more than compensate for time that would have been required down the road.

For example, protesters will generally be of the opinion that they are engaged in constitutionally protected activity; the concept of police declaring a protest to be illegal, simply on the basis of police perception of potential risk, is, to the vast majority, an anathema to the fundamentals of democracy and the very concept of having clearly enumerated fundamental rights and freedoms. Five minutes of police waiting for the crowd to "capitulate" and disperse, following a police pronouncement that a *Charter* protected exercise of the rights to assemble, associate, and engage in expression has been deemed illegal, is often likely to prove fruitless; however five minutes of police explaining their perspective of the law and relevant circumstances may, at least in some cases, achieve the police objective of enhancing public safety.

Requiring officers to formulate a mental understanding of their reasoning sufficient to verbalize it to the public may, in some situations, lead an officer to recognize for themselves where perhaps some police actions might be inappropriate; and police coming to that understanding for themselves is often going to present a solution which no amount of external stimuli can similarly achieve.

Also, just pointing out there in the draft copy: the underlining of the period eventually needs to be removed, so that it doesn't make it to the final product.

Page 3 onwards — Overall style of formatting chosen

I appreciate that the format, used throughout the document, of "…to ensure that:" followed by no end of points each ending with a semicolon ("**;**") is a fairly common practice in certain legal documents; however, particularly given the length of this policy, four run-on sentences comprising 10 pages of rule and regulation is unwieldy and error prone. Further, given the potential for subsequent amendment, modifications which might be thought to be seemingly minor and simple could easily depart from this style choice, and the ultimate effect of that would be to lead to the document, and by extension the ideas behind it, being perceived as potentially flawed. For this reason, and in keeping with the *"KISS"* (*Keep It Simple…*) principle, despite the added work it unfortunately creates, I recommend reformatting the document such that, to the extent appropriate, each section of the policy forms its own complete sentence (for example changing the preamble similar to "…to ensure the following:").

Such a revision will subsequently aid in circumstances where it is necessary to cite portions of the policy. Revision might, for example, include a change in s. 1 to allow that "…Service Members ***shall*** act professionally and…".

Note that this wide-ranging recommended change is not reflected in any of the amendments I have marked up, within the Public Consultation Draft, where I have instead generally sought to follow the original styling where I recognized it.

Page 4 — Addition of s. 7: Requirement to wait before applying force

In recommending this amendment, I am mindful that I have heard it claimed that officers are trained to act expeditiously, without delay, based on the belief that allowing a potential arrestee to have time to think may lead that individual to choose to seek to evade arrest rather than comply; and while I accept that there may well be individuals for whom that is true, I reject the assertion that such is the normal case; rejected at least until the presentation of sound evidence that that allegation is otherwise true. There are, I submit, bound to be at least as many, I would submit many more in fact, situations where the futility of resistance might become apparent, where the rational mind might be permitted sufficient time to overcome the instinctive "fight or flight" response, and where, particularly with the aid of verbal de-escalation from officers, arrestees can come to recognize that they may face additional charges and/or potential injury should they do other than to surrender.

Further to this end, officer training should be modified to put an end to the use of the bald "Stop Resisting!" command. This practice needs to be amended to include a positive direction… "Stop Resisting! Put your hands behind your back so that I can handcuff you, as I am required to do, so that we can process your arrest and get you booked or released." — just mentioning the idea of "release" will positively affect many interactions.

The 5 minutes was selected in this proposal as that seems like sufficient time for excess adrenaline of all involved to begin to dissipate, although obviously drug use will often interfere with this natural dissipation. The intent of the pause is that both the officer and the proposed arrestee will have time to consider alternatives and consequences.

The five minutes would **not** include any time before the officer arrives at the decision to make an arrest; rather, the five minutes is a 'cooling off period' between the time that the officer advises the individual that they are "under arrest" and the time that the officer escalates to begin applying physical force. The hope would be that, in many cases, the individual would, within those five minutes, comply with an instruction to put their hands behind their back, or similarly follow officer instructions, such that only physical contact, without physical force, would ultimately be necessary.

Where multiple individuals are arrested, the proposal is that the five minute period would only apply leading up to the first instance of physical force being used. But presumably, where there is more than one arrestee, there will be more than one officer.

Page 4 — Originally s. 9, *proposed* s. 10: Chokeholds

The webinar slide "Potential Lethal Use of Force" states that officers are not, and will not be, trained in these techniques. It is inappropriate to authorize the use of techniques (particularly potentially deadly techniques) which officers have never been trained on, even where use of them is only authorized in exceptional circumstances. These methods are simply banned; i.e. prohibited.

The law is already abundantly clear that, in any circumstance where there are no reasonable alternatives to prevent grievous bodily harm or death of a Service Member or a member of the public during an

interaction, **any** use of force is permitted when there is no reasonable alternative and where that use is only to the extent necessary to achieve any permitted course of action by an officer.

We don't seek to include in the policy that officers can use a rock as a weapon in order to prevent loss of life; but they can where no alternatives exist; just as a civilian is equally justified in doing the same in those circumstances where no alternatives exist. However we would never consider including the use of a stone as a weapon into an official police policy or procedure.

Page 5 — Originally s. 11, *proposed* s. 12: S.I.U.

There have been numerous incidents where notification of the S.I.U. has failed to immediately happen as necessary. There is no reason not to make each officer present, at any situation which they believe might fall within the S.I.U.'s mandate, individually responsible for promptly notifying the S.I.U. of their presence. Despite the fact that other officers are certain to also contact the S.I.U., including the Chief's S.I.U. liaison officer, this requirement would ensure:

a) that the S.I.U. was, at the earliest possible opportunity, aware of:
   i. the existence of an event which may fall within the S.I.U.'s mandate, and
   ii. the identity of every officer present;
b) that oversight or error could never lead to delay in notification of the S.I.U.; and
c) that the S.I.U. has the greatest possibility of getting the most objective and impartial record of witness officer testimony.

The requirement here that officers not discuss an incident with others who may be involved in an incident satisfies the Board's obligations under s. 26(1) of the *S.I.U. Act, 2019* and reinforces the duty of officers prescribed by s. 26(2) and (3) of that act.

Page 5 — Originally s. 13, *proposed* s. 14: Directive requiring intervention

Where a Service Member observes Use of Force by others and that officer is of the opinion that such force was appropriate — that is, that they believe that the force used was neither prohibited nor excessive — the addition of subsection (c) ensures that they record both what Use of Force they witnessed others engage in and that they document their perspective, at that moment in time, of why they considered the force used to be reasonable and justified.

Knowing that they will subsequently need to document their observations and reasoning will promote critical thinking; and may in some cases lead an officer to intervene, at least to the extent of verbally inquiring into the other officers' rationalization for the extent of force being used.

Page 5 — Addition of s. 16: Right to seek reassignment

This establishes that an officer who intervenes has a right to receive reassignment, not just a right to request it; and creates the requirement that effort be made to accommodate said officer's desired reassignment posting while not creating a potential hardship for the Service by requiring the Service to give the officer who intervenes the posting that they request.

Intervening against a superior officer, or even intervening in a circumstance where a superior officer fails to intervene against a third officer, is likely to be one of the hardest decisions an officer could have to make. They should have certainty that they will be able to get out from under the command of a superior if their decision to intervene causes conflict, regardless of whether that conflict rises to the level of retaliation, and the officer who intervenes should be able to 'try' to continue working in the environment while still being confident that they have recourse to move elsewhere if that attempt to remain in the unit doesn't work out as well as might be hoped.

Indeed, the assurance of the ability to obtain a transfer out of a particular command unit may motivate an officer to acknowledge and identify improper action which they might otherwise choose to ignore or which might otherwise be deemed accepted within existing police culture, even where it is understood to be outside of officially prescribed acceptable conduct. While this could create the remote possibility for abuse, by some officer simply trying to get assigned to a role they might otherwise have less chance at, there is bound to be at least one independent third party, the recipient of the purported "prohibited or excessive force" available to provide a differently biased perspective.

Page 6 — Originally s. 24, *proposed* s. 22: Ethos and pathos skills training

The soft skills involving ethical and empathetic considerations, communication and de-escalation, human rights, mental health, and anti-Black and Indigenous individual and systemic discrimination and racism, along with Member safety, I abbreviate as ethos and pathos skills for lack of a better term.

Initial training in those skills in particular should precede training in Use of Force, firearms, and similar equipment training. If there do happen to be individuals that prove to be incapable of mastering the requisite ethos and pathos skills, that should be discovered, and they should leave the training program, before receiving weapons training, not afterwards. But more generally applicable, ethos and pathos skills should precede weapons training, both in overall prioritization of policing skills, and in sequence of learning. Any officer relying more on the weapons and combat skills than the other is either in a specialized unit or the wrong line of work. And having already receiving at least basic training in ethos and pathos skills, before beginning to learn weapons and physical force techniques, will ensure that those desired skills are at the mental forefront, ahead of last resort methods, and it will ensure that desired real-life practices, using words before weapons, is a part of the natural flow of the training process.

It seems highly unlikely that there are any officers who haven't received ethos and pathos training; yet we know the problem occasionally arises where those skills aren't the first ones that officers resort to. This reality may reflect those skills appearing to have a lower priority in policy and procedure.

Page 6 — Originally s. 23, *proposed* s. 26: Annual training and recertification

Officers should receive annual refresher training on the ethos and pathos skills as well as for use of force and firearms; and it should be identified in the policy in a manner that indicates that those soft skills carry a higher priority than the force based skills, thus the amendment to place them first on the list.

Page 9 — Originally s. 39, *proposed* s. 41: Aggregate Use of Force Reporting

What was s. 39(b), what would become s. 41(b), would facilitate cover-ups, codify conspiracy, and violate the rights and sworn duties of officers. There is nothing wrong with permitting a single report to be submitted; but mandating that only a unit supervisor may report their version of what happened will most assuredly lead to crimes by police being covered up.

Instead, the proposed replacement for (b) makes clear the right of any officer, who disagrees with a supervisor's version of events, to submit their own individual report.

Proposed (c) enables senior command, Professional Standards or an S.I.U. liaison officer for example, to order any subordinate Service Member involved in an incident, where a consolidated report was prepared under (a), to prepare a separate report. This would enhance the ability to detect deceptive reporting and facilitate investigation of potential issues of concern. Where a Service Member has a concern about preparing their own, separate report, they have the codified authorization to seek resolution or direction from an impartial command officer higher up in the chain of command.

Proposed subsection (d) ensures that anyone ordered to prepare a report under (c) does so without influence from other Members, a step which reduces the potential for collusion to cover up a crime.

Proposed (e) and (f) prevent interference with the intended goal of uncovering the truth.

Page 10 — Originally s. 43, *proposed* s. 45: Public Reports

Those "push Print" reports (i.e. reports which should require no additional labour to prepare a report based on information already entered into the reporting system) in (a) through (d) should be submitted to the Board quarterly; at least for the first few years until several years of historical data have been built up. These reports should also be updated on a monthly basis on the TPS.ca website, with the ability for the public/users to specify desired month date ranges for reporting and comparative figures. The Board can choose to move to annual reporting of these four if it subsequently finds that there is no advantage to quarterly reporting; however, these reports will be of little to no use, other than satisfying idle curiosity, in the first report or two, as it is only by looking at comparative data that the numbers reported will have any meaning. Reporting quarterly, with comparative previous quarters will allow the reporting to become somewhat useful within 9 to 12 months, rather than 2 to 3 years.

The more complex reports, under section (e) through (g), seem likely to be much longer reports which will require more labour to produce, therefore annual reporting seems justified; however, where any of these reports can be produced on an ongoing basis without substantially increased labour, they should

appear on the TPS.ca website and be updated monthly (again, if monthly reporting can be done without significant additional labour requirements) as well as reported annually to the Board.

In the interest of balancing the benefits of the reports with the cost of labour involved to prepare same, reports (h) through (k), which demand analysis and presumably considerable labour, should be reported semi-annually for the first few reports; then, unless the Board considers it beneficial to continue receiving certain reports semi-annually, should be reported to the Board annually. It would be counterproductive to wait until after the expiry of the first year, plus time for analysis and report preparation, to see the first of these reports.

All reports should, in addition to including the current reporting period figures and the previous four quarterly figures (for the first year), or the previous four year's annual figures (once a few years have passed and comparative annual figures become available), should also (once at least five years have passed) include the oldest reliable (Year 1 of any reporting often proves to not be particularly reliable) comparative figures up to ten years earlier (i.e. 2028–2024&2023, 2030–2026&2023, 2036–2032&2026). Decade old figures are often what help put recent figures into meaningful context.

All reports showing multiple timeframes should also include a column reporting change in percentage (i.e. 100 last year and 110 this year, Δ% = **+10%**; 100 last year and 50 this year, Δ% = **–50%**).

Page 11 — Originally s. 45, *proposed* s. 47: Definitions of what to Report

The addition of category of force (d), creates a countable record of when a suspect is ordered to lie on the ground. This has a relationship to the recent beating death of Tyre Nichols in Memphis; in that instance, despite multiple officers being present at a stop for a traffic violation, the non-violent Black suspect was seemingly physically dragged from the vehicle and ordered to lie in the street as the first step in the police interaction; this may have played a part in why events there transpired as they did. Similarly, January's TPSB meeting included the Chief's s. 11 review of the S.I.U. report on the homeless person who suffered a fractured rib in response to using a porta-potty; nothing in any of the reports made public justified the suspect being ordered, at night, in the dark, on a construction site, outside of a porta-potty, when weather history reports it as being "Cold", after it rained in at least some parts of the city, to lie on the ground; and, had the suspect in that situation not been lying on the ground, it seems unlikely that he would have sustained the injuries that he did at the hands of Toronto Police.

So, assuming that the goal is to minimize unnecessary physical injury to, or humiliation and psychological injury of, the public at the hands of the police, then there needs to be some way of analysing if abuses of authority, in the form of orders for suspects to lie on the ground when such an order isn't necessarily warranted, are occurring. Creating a record of when this occurs, with details of the environmental conditions when/where it occurs (i.e. weather, surface type, etc), is the first step in being able to determine if any abuse of authority is occurring, and whether that abuse appears to be as a result of racial or other bias or deficits in a particular officer's training.

I would not be surprised to discover that such "grounding" orders actually lead to more risk and increased public and officer safety concerns, rather than fewer.

Where a single officer is dealing with a suspect alone, the proposed policy amendment establishes that factor, in and of itself, as sufficient to warrant requiring an arrestee to lie on the ground; in all other situations, the officers' report(s) should include their perceived justification for making the order.

Page 11 & 12 — Originally s. 46, *proposed* s. 48: Force Use Reporting

Subsection (b) should include reporting both of the type of call initially dispatched (or updated by dispatch before officers arrived) as well as reporting of what officers classify as the type of call that they ultimately dealt with. We know that it is often brought up by police that there can be a difference between what the original call to 9-1-1 was categorized as, and what police ultimately found themselves dealing with. Both of these "type of incident" classifications should be tracked, with reporting (by incident type) normally being based on the type of incident that officers found themselves dealing with, rather than what the public initially reported to 9-1-1 dispatch. Reporting should also include an indication of whether or not charges were laid; and if so, what charges.

The addition of subsection (g), to report the perceived physical size of the suspect where that is a factor, seems necessary to address those situations where officers claim justification for using an increased level of force based on the suspect's size, with officers subjecting one suspect to treatment that another suspect might not experience, but where currently there is often no record of what that "large individual's" size was, or was perceived to be. The height of the average Canadian male is reportedly 5ft 10.1in; however the height of the average Black or average White Canadian male is closer to 6ft; therefore, claiming justification for a greater level of force because a Black man happened to be 6ft 2in would ultimately skew data to show that more force was used against Black males, even though the Black male in question happened to be relatively normal proportions (just 2 inches taller than the average 6ft Black male). If part of the problem in today's policing is that officers are automatically scared of anybody over 5'9", then we need to know that so that we can figure out how to fix that defect in police thinking.

Page 12 — Originally s. 47, *proposed* s. 49: Public Reports

Similarly to reports in (originally s. 43) *proposed* s. 45, reporting should be quarterly at first, becoming annual after data for annual reporting exists (1–2 years down the road); and, in addition to the previous four years of data, should include data from 10 years earlier (or the oldest year available).

Subsection (g), in addition to counting incidents at each of schools or hospitals, should also report the separate count of Use of Force incidents that occurred on each other type of public property, TTC, parks, gvmt buildings.

Page 12 — Orig. s. 49, *prop.* s. 51: Board's Firearms Injury or Death report

Reports such as those described in this section, Firearm Injury or Death reports, may often include information that would lead to these types of reports being withheld from the public, received and reviewed in the confidential closed meeting. Nothing in this section of the policy, as it currently exists, requires such a report be publically released. The addition of subsection (c), with MFIPPA privacy redactions being made as appropriate, would provide for the requirement to make such reports available to the public. If privacy concerns will never be an issue in such reports, then the addition of subsection (c) is unnecessary as long as subsection (a) is amended to read "(a) **receive at a public meeting,** review…", to ensure that all such reports are made public.

Conclusion — Considerations missing from the proposed policy

Beyond these many recommended changes to the proposed policy, there are a large number of issues which are of primary public concern and which this proposed policy and public consultation process make no effort to consider or address.

The *Big Picture*, public opinions regarding overall response of police:

- when Use of Force is warranted and appropriate;
- requirements to call in MCIT in certain types of calls before responding officers act;
- what constitutes sufficient justification to draw a CEW, a baton, a firearm;
- what constitutes sufficient justification to fire a weapon;
- *to name but a few topics off the top of my head without the aid of input from other members of the public,*

are entirely missing from this conversation. The proposed policy (with the changes that I, and no doubt many others will, suggest) is an improvement and a step in the right direction; but it is far from a solution to the problems that have generated public outcry.

Real solutions will never be found in a process where a few civil servants from one branch of government meet secretly with a few civil servants from other branches of government to figure out how they think our city or our society would function best for them. The public being invited to make written submissions to suggest minor tweaks to a document that fails to address the overall situation will never generate the substantive changes that are required if things are expected to do anything but continue to get worse.

Good ideas come from public interaction and a free exchange of ideas; asking for written submissions to critique the ideas of Board and Service staff will only ever amount to tinkering with the, arguably badly broken, existing system.

Respectfully,

Mr. Kris Langenfeld

February 23, 2023.