



Toronto Police Services Board – Public Consultation

*Examination of Less-Lethal Force Options,
Including the Possible Expansion of Conducted Energy Weapons (CEWs)*

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The purpose of this document is to offer a provincial perspective for the public consultation initiated by the Toronto Police Services Board on the possible expansion of Conducted Energy Weapons (CEWs) by the Toronto Police Service. We commend the Board for ensuring that the citizens of Ontario's capital city have an opportunity to consider the facts regarding the deployment of CEWs by front-line officers. The citizens of Toronto deserve to know the facts when it comes to use-of-force options and policing.

As the voice of Ontario's police leaders, the Ontario Association of Chiefs of Police (OACP) has a strong interest in seeing that all police services carefully consider and implement use-of-force options and tools that allow our officers to keep themselves and the citizens they serve as safe as possible. Our Board of Directors reflects the diversity of policing in Ontario. Federal, provincial, municipal, and First Nations police services are represented on our Board (including a seat for the Toronto Police Service's Chief Mark Saunders) to ensure that the full spectrum of policing needs are considered at our table.

The OACP believes that every police service in Ontario polices by *consent*. This means that all police organizations and their personnel, as public services, must secure the trust and confidence of the members of communities in which they work. All police personnel are entrusted by the community with extraordinary powers to enforce the laws passed by governments. The use of any kind of force by police is highly regulated by legislative instruments such as the federal *Criminal Code of Canada* and Ontario's *Police Services Act*, and its Regulations, as well as policies and procedures at the police-service level. Police officer training is extensive and constant at the Ontario Police College and through in-service training and it is mandated by the Government of Ontario, largely through Regulation.

This is why we commend the Toronto Police Services Board for its consideration of use of less-lethal force options, including expanding the use of CEWs. The OACP is pleased to provide a Provincial context in terms of our support and advocacy for CEW expansion and the experience of police services across Ontario with CEWs.

OACP Supports Less-Lethal Force Options

The broad use-of-force continuum used by law enforcement and public safety personnel and approved by the Ministry of Community Safety and Correctional Services ranges from the physical presence of an officer to the use of deadly force. CEWs are just one of several options on this continuum.

Ontarians want their police officers to have use-of-force options that are appropriate to the situations they face in carrying out their duties. These situations are dynamic and require not only a variety of options in order for an officer to respond appropriately, but also extensive training.

While verbal de-escalation remains the primary goal of less-lethal options, CEWs are recognized as an important less-lethal option that officers should have. These devices use electric energy to induce pain or to immobilize or incapacitate a person. They are typically used to facilitate arrests of uncooperative individuals who are resisting by inducing the loss of voluntary muscle control, causing the individual to fall to the ground, where they can be

subdued and taken into custody. Individuals are not meant to, and mostly do not experience any lasting effects after application of the device.

As an intermediate weapon like pepper spray and impact weapons, a CEW is used in situations where there is an imminent need for control and other options have been ruled out by the officer, who must assess the totality of the situation. It needs to be noted, and the OACP acknowledges that there is risk associated with any use-of-force by a police officer.

According to the Ministry of Community Safety and Correctional Services' *Use of Force Guideline*, an officer is allowed to use a CEW, "if the officer believes a subject is threatening or displaying assaultive behaviour or, taking into account the totality of the circumstances, the officer believes there is an imminent need for control of a subject and the officer believes it is reasonably necessary to use a conducted energy weapon. The *Guideline* stipulates that CEW use should be avoided on a handcuffed subject, on a pregnant woman, elderly person, young child or visibly frail person, on sensitive areas of the body (i.e., head, neck, genitals), and on a subject in control of a moving vehicle, bicycle or other conveyance."

OACP Position on Use of CEWs by Ontario Police Personnel

The OACP has long supported the deployment of CEWs for Ontario police personnel, including front-line officers. On June 22, 2005, OACP members passed a resolution at its Annual General Meeting (Addendum A), which called upon the Government of Ontario to keep its stated intention and immediately establish a cost-sharing program for those police services that choose to purchase the X-26 less lethal conducted energy weapon (the approved model at that time).

In June, 2007, OACP members passed another resolution (Addendum B), which noted that many police services purchased X-26 based on assurances made by the Minister of Community Safety and Correctional Services in 2005 that the Government of Ontario would commit to using proceeds-of-crime funding to fund the purchase of CEWs on a cost-shared basis with police services. The resolution also called for the amendment of regulations to allow for the expansion of CEWs for front-line police officers.

In October 2008, the OACP issued a report entitled "*Report on Conducted Energy Weapons*". The report contained a series of recommendations on various issues related to CEWs and helped build the case for Provincial changes to allow police personnel to have access to CEWS. The result of a one-day forum on CEWs involving 19 police services, representatives of the then, Ontario Civilian Commission on Police Services (OCCOPs), and the Ministry of Community Safety and Correctional Services on April 25, 2008, the report outlined recommendations on:

- Deployment
- Training
- Threshold issues
- Accountability, individual event reporting and data collection
- Internal controls (equipment storage and maintenance)
- Nomenclature.

The report made six recommendations that guided the OACP's position on CEWs from that time forward:

1. Establish a threshold justifying the use of a CEW at the assaultive level of subject behaviour in the context of the Ontario Use of Force Model
2. Advocate for the expansion of the deployment of CEWs to all primary (first) response uniform constables
3. Encourage police services to report publicly at least once a year to their police services board on their use of CEWs
4. Encourage police services to include in their public reports the number of times demonstrated force presence was used
5. Harmonize the duration and content of the CEW training and re-qualification curriculum
6. Refer to the instrument as a "Conducted Energy Weapon" (CEW) in all official communications instead of the term "TASER".

Other Reports

Other academic and law enforcement groups as well as multiple Coroner's Inquests have also supported the expansion of CEWs throughout the years. In 2009, the Canadian Association of Chiefs of Police (CACCP) and the Canadian Police Association (CPA) released a joint position document supporting the use of CEWs by police services. The two national police associations stressed the need for greater public awareness about the various use-of-force options available to police in Canada, and the factors that police take into account when deciding which one to use.

The document was the result of a meeting held in Orillia in late January 2009. Police representatives from the Royal Canadian Mounted Police, Ontario Provincial Police (OPP), Sûreté du Québec, and municipal police services across Canada, as well as police training specialists, researchers, and technical experts were present at this workshop organized by the CACCP. It outlined the police community's position on CEWs, including policy, training, accountability and testing, and reflected the OACP's own position in these areas.

In 2013, a study by an expert panel (Canadian Council of Academics) Chaired by Justice Stephen Goudge from the Ontario Court of Appeal looked at the health effects of CEWs. This study provided police leaders with further assurance that the deployment of the devices could enhance public safety without risking the death of an individual.

From 2005 until now, 18 Coroner's Inquests have made recommendations that included either introducing CEWs to policing or expanding their deployment to all front-line officers. Eleven of the 18 inquests recommended full deployment to front-line officers.

Finally, the Police Association of Ontario (PAO), which represents front-line police personnel, has consistently supported the expanded availability of CEWs in all police organizations. The PAO passed a least two resolutions and wrote several letters over the years to the Ministry of Community Safety and Correctional Services urging the government to allow police services to provide the devices to front-line personnel.

Ontario Government Allows Expansion of CEWs Deployment

The OACP's persistent advocacy work met with success when the Provincial restrictions on the use of these devices to certain designated positions and police teams such as members of tactical units, hostage rescue teams, containment teams, and front-line supervisors, were amended to allow police services choose whether or not to provide CEWs to front-line officers.

According to the Government of Ontario's announcement in 2014, "The new approach is based on evidence that shows CEW use results in fewer significant injuries to both subjects and police officers when compared to other use-of-force options. Since CEWs were first introduced in Ontario in 2002, the government has been carefully reviewing independent research, stakeholder input, and the recommendations of several coroners' inquest juries, all of which contributed to this decision".

The change by the Province was made after consultations with police and community groups, and the government introduced changes that:

- Provided direction and guidance as to when a CEW use would be deemed to be appropriate
- Increased reporting provisions (i.e., CEW use will be reported in an open and transparent manner, including when a CEW is displayed with the intention to achieve behaviour compliance)
- Enhanced training, including scenario-based training and training for interactions with people with mental health issues, to assist in ensuring the safe, appropriate, and effective use of CEWs
- Expected that police services should engage local communities prior to deciding to expand CEW deployment in their jurisdiction.

The OACP strongly supported permitting local police services to expand CEWs deployment along with a requirement for police services to report back to police service boards, and the communities, about their use.

Provincial Experiences with CEWs

All Ontario police services that employ CEWs have policies and procedures, training, and supervision, to ensure they are used in the right circumstances, for the right reasons. Within those policies and procedures, there are clear guidelines for accountability and transparency. With clear policies and procedures, a well-trained police officer with a CEW, properly supervised and fully accountable for all use-of-force decisions, can save lives.

Since the Provincial expansion of CEWs, most police services in Ontario have opted for providing this less-lethal force option for front-line officers. All large police services, including the OPP, have made the right decision and provided CEWs to their front-line officers.

In a study of the OPP's CEWs usage trends from 2011 to 2016, the Provincial service indicated that the number of CEWs in circulation rose from 737 in 2011 to 2,815 in 2016, representing an increase of 282 percent over a six-year period. The significant increase in 2014 and 2015

is linked to the deployment of CEWs to all front-line officers beginning in late 2013, following a change in Provincial legislation. However, the report also found that, “traditional use-of-force is consistently linked to more injuries than are CEWs, even once CEWs were deployed to all front-line members in 2014”.

The OPP study also found that:

- In 2016, traditional use of force was linked to 55 percent of all use-of-force related injuries, while CEWs were linked to 45 percent of all use-of-force related injuries
- Use of CEWs increased significantly in 2014 when CEWs were deployed to the front-line, with more than five times the reported total usage of CEWs compared to 2013
- Traditional use-of-force on persons decreased by 54 percent between 2013 and 2015 with the increased availability of CEWs, but subsequently increased by 80 percent in 2016 over 2015
- The increase in both traditional use-of-force and CEW use in 2016 is believed to be linked to the launch of the enhanced, electronic use-of-force reporting in March 2016
- CEWs consistently have a superior effectiveness rate as a use-of-force option.

Effectiveness on Persons: CEW Displayed vs. CEW Deployed

OPP Key Findings

- CEWs are a highly-effective use of force option. Statistics show the effectiveness rate for ‘displayed’ was higher than for ‘deployed’ in every year except 2011.
- “Displayed” effectiveness was consistently very high, between 87 percent and 93 percent from 2011 to 2015, but dipped by 13 percent in 2016 to 80 percent effectiveness when electronic use of force reporting began.
- A theory for the decrease in “displayed” effectiveness of CEWs in 2016 is that the recent focus on de-escalation training and tactical communication mean that officers are more often employing verbal skills to defuse situations. In circumstances when these verbal tactics fail and the CEW must be used, it is less likely that the ‘force display’ of the CEW will be effective.
- “Deployed” effectiveness ranged from 74 percent to 96 percent, though the latter figure dates from 2011 when relatively few CEWs were deployed. In 2015 and 2016, ‘deployed’ effectiveness remained the same at 74 percent for both years.
- There are sub-types of CEW “displayed” (i.e., Probe Deployment, Three-Point Contact, Drive Stun, Multiple Deployment Types); however, the manner in which these sub-types were reported varied between 2011 and 2016, hindering accurate year-over-year analysis.

The OPP’s experience with CEWs is consistent with the experiences of other police services who have provided CEWs to their officers. The OACP has no knowledge of any serious injury or death which may be directly attributable to the use of a CEW as a force option. We are unaware of any serious increase in the number of complaints related to the abuse by a police officer deploying or displaying a CEW.

The OACP is also not aware of any unsafe failures of the weapon, nor of any officer safety issues. In our opinion, the Toronto Police Services Board should consider the expansion of the less-lethal force option for public safety and officer safety reasons, and to ensure that public safety is enhanced by the expansion of less-lethal force options in general.

Conclusion

Non-lethal force is and should be the standard according to the Ministry of Community Safety and Correctional Services' *Use of Force Guideline*, while lethal force is the exception and should only be used where it is necessary to protect against loss of life or serious bodily harm and where there is no reasonable alternative.

The OACP also takes the position that there is a clear need to educate the public. Our communities need to understand, appreciate, and accept that while non-lethal force is the standard. While we have developed and enhanced the emphasis on de-escalation, there will be occasions when our police officers must and will use deadly force. Relatively very few in numbers, these incidents, driven by timing and circumstances, will happen. In those cases, Ontario has a well-established and proven-effective system and process of oversight.

All police services in Ontario – Provincial, Municipal, and First Nations – are committed to ensuring the safety of the public and our police officers. As police leaders, our members continue to believe that CEWs remain an important public safety tool for police officers and the citizens they protect. CEWs offer safety benefits to both police and individuals being apprehended in situations where the officer(s) should have access to a less-than-lethal use-of-force option.

In our view, the CEW is a valuable less-lethal use-of-force option that should be made available to all front-line police officers across Ontario. The fact that all front-line officers in the City of Toronto do not have this force option means that there is currently a risk to the safety and well-being of both individuals being apprehended and to police personnel themselves. The Toronto Police Services Board has the power and the authority to remedy this situation.

Addendum A

Resolution 2005-03: Cost Sharing Program for Conducted Energy Devices (Tasers)

Adopted at the OACP Annual General Meeting on Wednesday, June 22, 2005

WHEREAS Conducted Energy Devices (or TASERs as they are commonly known) deliver a powerful five-second electrical jolt that overrides the human nervous system, causing a temporary loss of muscle control and are a less-lethal alternative to the use of firearms in apprehending an extremely disturbed suspect; and

WHEREAS police officers selected to use TASERs receive special training on the safe use of these less-lethal weapons and, as with firearms or any other instrument of force available to police, their use is subject to rules and safeguards; and

WHEREAS 71 law enforcement agencies in Canada equipped with CED, with this number is growing steadily; and

WHEREAS the Ministry of Community Safety and Correctional Services has approved the use of the X-26 less lethal conducted energy weapon by Ontario police services; and

WHEREAS many police services have purchased the weapon or are in the process of doing so based on assurances by the Minister of Community Safety and Correctional Services to the OACP leadership that the Ontario Government would commit to using proceeds funding (POC grants approximately \$800,000) to fund the purchase of the X26s on a cost-shared basis with police services; and

WHEREAS the Ontario Government appears to now be reluctant to fulfill its cost-sharing promise to Ontario's police services and the communities they serve.

THEREFORE BE IT RESOLVED that the Ontario Association of Chiefs of Police calls upon the Government of Ontario to keep its stated intention and immediately establish a cost sharing program for those police services that choose to purchase the X-26 less lethal conducted energy weapon.

Addendum B

Resolution 2007-04: Cost-Sharing Program and Expansion of Conducted Energy Devices for Ontario Police Services

Adopted at the OACP Annual General Meeting on June 27, 2007

WHEREAS police officers selected to use conducted energy devices (CEDs or "TASERS" as they are often referred to) receive special training on the safe use of these less-lethal weapons and, as with firearms or any other instrument of force available to police, their use is subject to rules and safeguards; and

WHEREAS the Ministry of Community Safety and Correctional Services has approved the use of CEDs by front-line supervisors and tactical units in Ontario police services; and

WHEREAS many police services purchased the devices based on assurances by the Minister of Community Safety and Correctional Services in 2005 to the OACP leadership that the Ontario Government would commit to using proceeds funding to fund the purchase CEDs on a cost-shared basis with police services.

THEREFORE BE IT RESOLVED that the Ontario Association of Chiefs of Police calls upon the Government of Ontario to establish a cost-sharing program for those police services that choose to purchase CEDs.

BE IT FURTHER RESOLVED that the OACP calls upon the Ministry of Community Safety and Correctional Services to amend regulations to allow for the expansion of CEDs for frontline police officers.