



**Submission to the Ministry of the Solicitor General's
consultation regarding equipment and use of force
by police services**

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Overview

- 1 The Ministry of the Solicitor General has requested public and stakeholder input on proposed amendments to O. Reg. 926/90 concerning equipment and the use of force by police services. The provision of effective police services is one of the most consequential functions of government, and the issue raised by these proposed amendments has the potential to affect all Ontarians.
- 2 Clear guidelines and effective training on police standards can make the difference between use of words and use of force, between successful police de-escalation and death by lethal force. Unfortunately, the deaths of Sammy Yatim, Andrew Loku, Michael Eligon, Michael Maclsaac, Byron Debassige, O'Brien Christopher-Reid, Edmond Yu, and even George Floyd have not been enough to motivate action on much-needed policing reform – and have eroded public trust in the police.

Ombudsman jurisdiction

- 3 The Ontario Ombudsman has a long history of independently and impartially investigating and resolving complaints from people who feel they have been unfairly treated in the provision of public services. In this role, the Ombudsman oversees the Ontario government and public sector agencies, municipalities, publicly funded school boards, and universities, as well as the provision of French language services and child protection services. When problems are identified, the Ombudsman may make recommendations to resolve an issue, improve processes, and strengthen the governance and accountability of public sector bodies.
- 4 Although police services are generally not jurisdictional to my Office (except for some administrative aspects of the work of the Ontario Provincial Police), I can review and investigate some aspects of police oversight, including the Ministry of the Solicitor General, the Ontario Civilian Police Commission, and the Special Investigations Unit. Between April 1, 2021 and March 31, 2022, my Office received 302 complaints about municipal police, 128 about the Ontario Provincial Police, and 9 about the Special Investigations Unit.

- 5 Complaints about the conduct of municipal police are currently referred to the Office of the Independent Police Review Director. When the *Comprehensive Ontario Police Services Act, 2019* fully comes into force, the Ombudsman's jurisdiction will extend to a number of police oversight bodies including the Office of the Independent Police Review Director, which will be renamed the Law Enforcement Complaints Agency.

Background

- 6 The call for action to do more to avert fatal police interactions, especially through improved police training, has been echoed for the last three decades in numerous coroner's inquests and independent investigative reports. In 2016, I issued *A Matter of Life and Death*,¹ an investigative report into the direction provided by the Ministry of Community Safety and Correctional Services (now the Ministry of the Solicitor General) to Ontario's police services for de-escalation of conflict situations. This investigation was prompted by the shooting of 18-year-old Sammy Yatim on July 27, 2013 by a Toronto Police Service officer. At the time, the video of the shooting of the young man, alone on a Toronto streetcar while holding a knife, had sparked widespread public concern about the use of lethal force in Ontario.
- 7 In this report, my Office reviewed the scores of fatal police shootings in Ontario involving persons in crisis and the reports and recommendations made in the aftermath of their deaths. This investigation emphasized the importance of police using de-escalation techniques when dealing with people in crisis and highlighted that the provincial government needs to exercise its legal responsibility to direct how police services deal with these situations.
- 8 My report to the former Ministry of Community Safety and Correctional Services made 22 recommendations. These addressed legislative and regulatory guidelines, use of force models, officer training, policy direction around the use of body-worn video, and reporting, tracking, and assessing de-escalation incidents with people in crisis.

¹ Ombudsman of Ontario, "A Matter of Life and Death; Investigation into the direction provided by the Ministry of Community Safety and Correctional Services to Ontario's police services for de-escalation of conflict situations" (June 2016), online: <https://www.ombudsman.on.ca/resources/reports-and-case-summaries/reports-on-investigations/2016/a-matter-of-life-and-death>.

- 9 My recommendations echoed others like those made for decades by numerous coroners' juries, multiple academics and experts, and independent police oversight reviewers like Justice Michael Tulloch to improve police oversight, modernize the use of force, and better train officers to de-escalate interactions with people in crisis.
- 10 Although they were all accepted, the Ministry of the Solicitor General has not yet fully implemented any of my 22 recommendations. I take this opportunity to particularly highlight three key recommendations I communicated to the Ministry in 2016, respecting de-escalation:

Recommendation 2

The Ministry of Community Safety and Correctional Services should develop and implement a regulation on de-escalation, modelled on the Suspect Apprehension Pursuit Regulation, which requires officers to use communications and de-escalation techniques in all situations of conflict before considering force options, wherever tactical and safety considerations permit. This should be done as quickly as possible, and no later than 12 months after the publication of this report.

Recommendation 15

The Ministry of Community Safety and Correctional Services should develop a standard reporting process that enables feedback and learning on de-escalation. The process should be used after all interactions with people perceived to be suffering from a mental illness or who are otherwise in crisis, where force was an option but was not used, and where the situations were successfully de-escalated.

Recommendation 16

The Ministry of Community Safety and Correctional Services should monitor de-escalation reports to identify best practices, and use the information as a learning tool for recruits and in-service training. Successful de-escalations should be shared among police services as a model of expected behaviour.

11 It is regrettable that since the report was issued and the recommendations were accepted in June 2016, little progress has been made on the issue of de-escalation. The Ministry of the Solicitor General has decided not to proceed with a specific regulation for de-escalation as I recommended. Other recommendations, such as a new use of force model and revised training, have stalled. While the mental health crisis response training curriculum has since been revised as I recommended, it remains optional, not mandatory, for all police services.

The proposed amendments

12 The proposed amendments to O. Reg. 926/90 would yield some changes to the current use of force framework, such as:

- Requiring police officers to send a use of force report to their Chief of Police in all cases;
- Clarifying the requirement to submit a use of force report, notably to include instances where a conducted energy weapon is discharged, or certain injuries are caused by a police animal;
- Allowing the head of a containment, tactical, or hostage rescue team to submit the use of force report on behalf of the team or unit in certain situations;
- Requiring the Chief of Police to retain the complete use of force reporting form for at least two years, instead of the current 30-day period for a part of the form.

13 I welcome efforts to improve O. Reg. 926/90 on equipment and use of force. However, I am concerned that the proposed amendments do not adequately cover de-escalation, and, as drafted, the amendments would do little to encourage police officers to attempt to de-escalate crisis situations before using force.

14 The Ministry also proposes changes to the use of force reporting form. Generally, the proposed form is more detailed and would allow the Ministry to collect more information about incidents to improve its use of force strategies and policies. Particularly, the proposed form would include a section on de-escalation where officers must disclose whether de-escalation techniques were attempted, the techniques used, and the success of the technique(s) for controlling the subject's behaviour.

- 15** Although I commend the Ministry for requiring further reporting on de-escalation attempts and techniques, I am concerned that the proposed changes do not address the shortfalls in reporting and monitoring of de-escalation previously identified by my Office.
- 16** Accordingly, I wish to highlight some areas of the proposed amendments to O. Reg. 926/90 where the Ministry misses the opportunity to take the lead on the issue of de-escalation when dealing with persons in crisis. First, I continue to believe that the Ministry of the Solicitor General should develop and implement a regulation that specifically addresses de-escalation and encourages officers to de-escalate situations before using force. Second, I have identified enduring issues in the proposed amendments and reporting form related to the adequacy of reporting and monitoring of de-escalation techniques used by police officers.

Setting a holistic standard on the use of force

- 17** Under the *Police Services Act*, the Lieutenant Governor in Council may enact regulations setting standards for police services. It has done so in the past, including for police pursuits and street checks, where the public interest commanded province-wide consistency in police practices. As set out above, I have already called for a regulation on de-escalation after identifying widespread concerns about the sometimes fatal consequences of the lack of standardized training and guidance on persons in crisis.²
- 18** I am disappointed that the Ministry persists in its refusal to enact a regulation specifically addressing de-escalation. A review of the equipment and use of force regulation cannot by itself address the need for clear guidelines on police interactions with people in crisis. A holistic framework on the use of force must also address and standardize preventive measures that may avert the use of force in the first place. Yet, the proposed amendments do not seem to recognize that a use of force is too often the direct consequence of a failure to attempt de-escalation.
- 19** I understand that policing strategies require flexibility to reflect the realities and sensibilities of local communities, and there may indeed be some aspects of de-escalation training and practices that are particular to each community. However, the Ministry has a clear role and authority to provide better tools to police officers dealing with people in crisis, and can help officers determine when to use force and when to de-escalate.

² *Ibid*, recommendation 2.

Proposal 1

I urge the Ministry to develop and enact a regulation setting a clear and consistent standard throughout Ontario on the use of de-escalation techniques by the police. This regulation should require the use of communication and de-escalation techniques before the use of force, where tactical and public safety considerations permit.

Reporting and monitoring use of force and de-escalation

- 20** In countless cases where police officers interact with people in crisis, they successfully resolve situations without the use of force. Collecting details about how and when this occurs is essential so that police forces can learn from these successes and incorporate lessons learned into new officer training and refresher courses.
- 21** In my 2016 report, I recommended the development of a standard reporting process to facilitate feedback and learning on de-escalation. I emphasized that reporting should not be limited to incidents that lead to bloodshed: Effective reporting should also include reporting on incidents where force was an option but was not used or where the incident was successfully de-escalated. In order for this information to be useful in the development of policies, strategies, and trainings, I further recommended that this information be shared with and monitored by the Ministry of Community Safety and Correctional Services (now the Ministry of the Solicitor General) and shared amongst police services.
- 22** The proposed amendments to O. Reg. 926/90 do not address reporting of police incidents of *successful* de-escalation. Although the proposed form is more detailed than the current one, it would not capture incidents where force was an option but was not used and where the incident was successfully de-escalated. Rather, the proposed form would only be required to be completed where officers drew a weapon or used force.
- 23** The Ministry should develop a formal reporting mechanism to ensure that all noteworthy interactions involving de-escalation are captured, including successful de-escalations, so they can be used as training tools for officers and recruits.

Proposal 2

The Ministry should establish a standard reporting process that captures feedback and learning on *successful* de-escalation for noteworthy interactions with people perceived to be suffering from a mental illness or who are otherwise in crisis, where force was an option but was not used and where the situations were successfully de-escalated.

- 24** I also noted some more pointed concerns about the reporting process.
- 25** Subsection 14.7(6) of the proposed regulation would provide that the Ministry of the Solicitor General “*may* require a chief of police to deliver or make available” a reporting form [my emphasis]. There appears to be no requirement for the use of force reporting forms to be automatically or routinely sent to and received by the Ministry of the Solicitor General. This is disappointing given that the Ministry is expected to exercise its leadership and authority to proactively monitor trends and progress on the issue of de-escalation.
- 26** The Ministry could easily avail itself of an additional tool to develop and enhance police training and courses. The information gathered by the reporting form should therefore be monitored closely by the Ministry to inform the development of best practices and training for police services throughout Ontario.

Proposal 3

The reporting process developed by the Ministry should also be proactively monitored by the Ministry to identify best practices, and advance and develop police training.

- 27** To enhance the value and accuracy of the data collected by the Ministry, use of force reporting should be as thorough as reasonably possible and sourced personally from the different perspectives of all police officers directly involved in the incident. If properly monitored, reporting forms are a useful tool to develop and enhance police training and courses in Ontario, so long as the reporting on the ground is reflective of all use of force incidents.

- 28 I am concerned that “team reporting” may frustrate fulsome and systemic reporting of all use of force incidents. Under the proposed section 14.6, in some circumstances, only one perspective from multiple separate use of force actions will be recorded and reported on for an entire unit, subunit, or team acting under the command of a supervisor. It is particularly questionable that the proposed regulation does not require the author of the report to have been personally involved in or a witness to the reported use of force.
- 29 “Team reporting” would subvert the requirement to gather information and data from all police officers directly involved in a use of force incident and, as such, is incompatible with fulsome and systemic reporting.

Proposal 4

The reporting requirement should be exhaustive and reflect the personal perspectives of each individual officer involved in a use of force incident.

- 30 Finally, another important and continued gap in the reporting process is the absence of any timeline for police officers to submit their reporting forms. Providing a requirement without establishing a timeline may lead to a lack of accountability when police officers fail to report the use of force in a reasonable timeframe. Therefore, a clear timeline should be put in place for the submission of the reporting form.

Proposal 5

The Ministry should prescribe a clear timeline for the submission of the use of force reporting form.

Conclusion

- 31 I remain concerned by the lack of progress of the Ministry of the Solicitor General in addressing important shortcomings with regard to de-escalation. In light of the issues I have identified in the present submission, I hope that the Ministry will take this opportunity to reconsider its use of force and de-escalation strategy, including certain proposed amendments to the regulation. My staff would be pleased to provide further information and answer questions regarding any of the proposals.

32 For reference, all of the proposals made throughout this submission are compiled here as a list.

Proposals

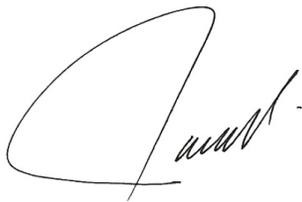
1: I urge the Ministry to develop and enact a regulation setting a clear and consistent standard throughout Ontario on the use of de-escalation techniques by the police. This regulation should require the use of communication and de-escalation techniques before the use of force, where tactical and public safety considerations permit.

2: The Ministry should establish a standard reporting process that captures feedback and learning on *successful* de-escalation for noteworthy interactions with people perceived to be suffering from a mental illness or who are otherwise in crisis, where force was an option but was not used and where the situations were successfully de-escalated.

3: The reporting process developed by the Ministry should also be proactively monitored by the Ministry to identify best practices, and advance and develop police training.

4: The reporting requirement should be exhaustive and reflect the personal perspectives of each individual officer involved in a use of force incident.

5: The Ministry should prescribe a clear timeline for the submission of the use of force reporting form.



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