



**Submission to the Ministry of the Solicitor
General's consultation regarding training
for peace officers and use of force
by police services**

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Overview

The Ministry of the Solicitor General has requested public and stakeholder input on various proposed regulations made under the *Community Safety and Policing Act, 2019*.¹ Amongst the proposed regulations, those relating to training and use of force are especially significant in the provision of police and special constable services throughout Ontario. I am concerned that the proposed regulations still do not fully implement my important recommendations from 2016 to strengthen training and de-escalation requirements for officers. As I have repeatedly communicated to the Ministry, I am hopeful that clearer guidelines and more effective training on police standards will ensure more successful de-escalations, enhance the safety of Ontarians and police officers, and improve the public's trust and confidence in the police.

Ombudsman role and jurisdiction

The Ontario Ombudsman has a long history of independently and impartially investigating and resolving complaints about the provision of public services. Specifically, the Ombudsman oversees provincial government organizations, municipalities, publicly funded school boards, and universities. We also oversee the provision of French language services under the *French Language Services Act* and the provision of child welfare services. When problems are identified, the Ombudsman may make recommendations to resolve an issue, improve processes, and strengthen governance and accountability.

The Ombudsman's role was captured by Justice Brian Dickson of the Supreme Court of Canada in 1984 in a description that is no less true today:

[The Ombudsman's] unique characteristics render him capable of addressing many of the concerns left untouched by the traditional bureaucratic control devices. He is impartial. His services are free, and available to all. Because he often operates informally, his investigations do not impede the normal processes of government. Most importantly, his powers of investigation can bring to light cases of bureaucratic maladministration that would otherwise pass unnoticed.

The Ombudsman “can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds”: *Re*

¹ In preparing this submission, my Office relied on the summary of the proposal—not the proposed regulation—as the Ministry has not made the latter available.

Ombudsman Act (1970), 72 W.W.R. 176 (Alta. S.C.), per Milvain C.J., at pp. 192-93.

On the other hand, he may find the complaint groundless, not a rare occurrence, in which event his impartial and independent report, absolving the public authority, may well serve to enhance the morale and restore the self-confidence of the public employees impugned.²

Although police services and special constables 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. In some cases, I also have direct oversight over the public sector organizations that employ special constables. Between April 1, 2022 and March 31, 2023, my Office received 360 complaints about municipal police, 151 about the Ontario Provincial Police, 8 about the Special Investigations Unit, and 4 related to special constables.

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.

Ombudsman's previous reports and submissions on de-escalation

My Office has repeatedly made recommendations aimed at reducing fatal interactions between the public and police. In 2016, I issued *A Matter of Life and Death*,³ 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.

² *British Columbia Development Corporation v. Friedmann (Ombudsman)*, [1984] 2 S.C.R. 447.

³ 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>.

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 over more than two decades. The 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.

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.

Now, seven years later, the Ministry of the Solicitor General has not yet fully implemented any of my 22 recommendations and 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.

In October 2022, my Office prepared a submission as part of the Ministry's consultation regarding use of force by police services. In this submission, I reiterated the recommendations from my 2016 report, including that the Ministry develop a consistent provincial standard for de-escalation techniques. In the submission, my Office made five proposals reiterating the need for a regulation specifically requiring police to use de-escalation techniques before force wherever possible. I also called for a reporting process that would help police services and the Ministry learn from successful de-escalation cases and develop best practices. The government has not yet implemented these proposals.⁴

In February 2023, I made another submission to the Ministry of the Solicitor General as part of its consultation on new regulations regarding special constables. In that submission, my Office explained that the province's 3,000 special constables who work for police services, transit agencies, universities

⁴ Online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/submissions-to-government/2022/submission-to-the-ministry-of-the-solicitor-general%E2%80%99s-consultation-regarding-equipment-and-use-of-fo>>.

and community housing corporations, should be required to meet consistent standards for the use of de-escalation techniques and complete training on de-escalation, and that the Ministry establish an independent mechanism to handle complaints about them.⁵

In response to the government's current consultation, I once again reiterate the importance of regulatory standards requiring training and the use of de-escalation whenever possible. While I welcome the Ministry's proposals that would require periodic use-of-force training and special courses for trainers and "coach officers," I remain concerned about the ongoing refusal to make de-escalation training standardized and mandatory for all frontline officers across Ontario.

Proposed Regulation on Training

The *Comprehensive Ontario Police Services Act, 2019* will, if and when it is brought fully into force, require specific training for police officers. The proposed regulation indicates that the Ontario Police College's Basic Constable Training program will meet the core training requirements for police officers, including with respect to de-escalation.

Under the proposed regulation, police officers who may be required to use force on another person or carry or use a weapon will be required to complete training on any issued weapons not covered in Basic Constable Training, complete a use-of-force requalification course (which includes de-escalation techniques) every 12 months, and complete Mental Health Crisis Response Training every 12 months.

The proposal also specifies a large number of other courses that police officers occupying certain roles would be required to take, including:

- Individuals who train police officers on use of force and Tasers (and those who "train the trainers") would need to complete specific courses, and refresher courses every 2 years;
- Every police officer providing "coaching to a probationary police officer" would need to complete a coaching professionals course;

⁵ Online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/submissions-to-government/2023/submission-regarding-proposed-regulations-for-special-constables>>.

- Police officers who collect confidential identifying information (a process most know as “carding” or “street checks”) would need to complete a specific training program first.

The proposal would also require most types of special constables who may need to use force or carry weapons to complete training on their issued weapons and take a use-of-force requalification course, which includes “de-escalation techniques,” every 12 months.

The proposal suggests that police officers and special constables who are already in their role when these requirements come into effect may be exempted from some of these new training requirements.

Improving training and changing police culture

I commend the Ministry for proposing a regulation that would, if brought into effect in the way the Ministry describes, signal progress on at least three recommendations I identified in my 2016 report, *A Matter of Life and Death*, with respect to improved training and police culture.

The required completion of the Mental Health Crisis Response Training every 12 months echoes my call for more training on mental illness and strategies to de-escalate situations involving persons in crisis. Although my Office was not able to review the training material since it is not part of this consultation, I am hopeful that the periodic training will provide the focused and relevant curriculum necessary to help police appropriately respond to situations involving persons with mental illness.

In my 2016 report, I also noted that the Ministry should institute and monitor a mandatory two-year recertification for use-of-force trainers. I am encouraged by the proposed requirement for individuals who train police officers on use of force and Tasers (and those who “train the trainers”) to complete trainer courses and refresher courses every two years.

Similarly, under the proposed regulation, every police officer providing “coaching to a probationary police officer” would have to complete a coaching professionals course. I commend the Ministry for this new requirement, which will help ensure that coach officers are well positioned as they help shape new officers’ skills and perceptions.

Proposed Regulation on Use of Force

The Ministry says that its new use-of-force regulation will be generally very similar to the current “Equipment and Use of Force” regulation made under the *Police Services Act*, although some matters covered in the current regulation would be moved to other regulations. However, the Ministry does propose one important change, which would authorize police services to use certain types of weapons (other than firearms) through regulation, rather than through separate Ministerial approvals and standards.

The proposed regulation addresses approvals, specifications, and standards for use of weapons, including firearms deployed with less lethal ammunition, aerosol weapons (“OC spray”), batons, conducted energy weapons (“Tasers”), and others. Certain units, such as tactical units or hostage rescue teams, would not be required to meet the requirements for aerosol weapons. Similarly, members of a public order unit would be excluded from the baton requirements.

The proposed regulation is highly technical and, in some cases, extensively prescribes when officers can use certain equipment, such as a Taser. However, based on the summary the Ministry has made available for its consultation, there does not appear to be any requirement for officers to attempt to de-escalate a situation before using a Taser or any other weapon contemplated in the regulation.

Requiring de-escalation before the use of force or weapons

As I highlighted in my October 2022 and February 2023 submissions, I remain disappointed that the Ministry persists in its refusal to enact a regulation specifically addressing de-escalation. A new 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 Ministry’s proposed regulatory changes do not seem to recognize that the use of force is too often the direct consequence of a failure to attempt de-escalation.

Unfortunately, the Ministry has told my Office that it does not intend to develop a regulation that specifically addresses de-escalation. Although I am disappointed by the Ministry’s position, any regulatory review or development that addresses the use of force by peace officers is an opportunity for the Ministry to address and reconsider this significant regulatory gap.

Police work plays a vital role in protecting people and preventing crime. There will be times when these duties require police officers to use weapons, and the regulation gives them the power to do so when necessary. However, there is no requirement that weapons be used as a last resort, and only in situations where de-escalation fails or is not possible in the circumstance.

In countless cases where police officers interact with people in crisis, they successfully resolve situations without any use of force. However, the success of those interactions should not depend on whether or not a particular police service offered adequate training to that officer. The Ministry has the authority and moral imperative to provide guidance and direction to all peace officers who may deal with people in crisis through standardized and mandatory training. The use-of force regulation should provide specific guidance on de-escalation techniques and their use, and require that these be considered before any use of force.

Proposal 1

I urge the Ministry to address de-escalation in its regulation on use of force and to set clear and consistent standards throughout Ontario on the use of de-escalation techniques by peace officers. There should be a regulatory requirement to use communication and de-escalation techniques before the use of force or weapons, where tactical and public safety considerations permit.

Prescribing appropriate and proportional requirements for all circumstances involving the use of a weapon

The Ministry proposes to exempt certain units and teams from the prescribed approvals, specifications, and standards for the use of certain weapons. I understand that policing strategies require flexibility to ensure public safety, but the information in the Ministry's proposal suggests there may be *no* restrictions on the use of certain weapons by these special units and teams. As an example, the proposal merely notes that public order units are not required to meet the specifications for batons, without contemplating *any* specification for the legal use of batons by these units. While this may not be the government's intention, I am concerned that some units may be left with no guidance or restrictions on the use of certain weapons.

Proposal 2

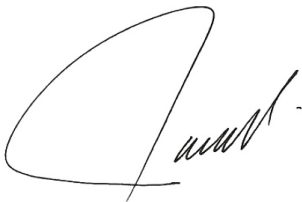
The Ministry should prescribe appropriate and proportional requirements for the use of police equipment in all circumstances, including for public order units, tactical units, hostage rescue teams, and containment teams.

Conclusion

I am encouraged by the Ministry's training regulation, which appears to respond to my repeated calls for enhanced training on how to respond to and de-escalate situations involving persons with mental illness. However, I have identified several shortcomings in the use-of-force regulation, and made proposals that, if implemented, may enhance public trust in police and help ensure that fewer encounters turn deadly.

I also take this opportunity to reiterate again my hope that the Ministry will establish a separate regulation regarding the use of de-escalation techniques for peace officers.

My staff would be pleased to provide further information and answer questions regarding any of these proposals.



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Ce rapport est aussi disponible en français