

***Achieving Zero Harm/Zero Death – An Examination of Less-Lethal Force Options, including the Possible Expansion of Conducted Energy Weapons (CEWs)***

**Toronto Police Services Board – Public Consultation**

*October 18, 7:00 PM*

Toronto Central Grosvenor Street YMCA Centre, Auditorium

Facilitator	Supt. Peter Lennox, Toronto Police Service (TPS)
Welcome and Introductions	Andy Pringle, Chair, Toronto Police Services Board
Presentation	Deputy Chief Barbara McLean -TPS A/S/Supt Randy Carter - TPS Sgt. Darren Sutcliffe -TPS Dr. Peter I. Collins, Forensic Psychologist Mr. Ron Bain, Executive Director, Ontario Association of Chiefs of Police
Deputations	
Concluding Remarks	Andy Pringle



# Achieving Zero Harm/Zero Death

## An Examination of Less-Lethal Force Options, including the Possible Expansion of Conducted Energy Weapons (C.E.W.s)

Discussion Paper for Public Consultation

October 18, 2017

Near midnight on July 5, 2015, Toronto Police were dispatched to 502 Gilbert Avenue to respond to a 911 call regarding a man armed with a hammer who had threatened to kill the caller's friend. Police issued several verbal commands to the man to drop his hammer but he failed to do so and advanced toward the two officers continuing to hold the hammer at which time one of the officers fired his pistol.

A coroner was called and a post-mortem examination was conducted which revealed that the man died as a result of gunshot wounds to the left chest.

The jury for the inquest into the death of Andrew Loku heard from 28 witnesses, considered 37 exhibits and deliberated for 23.5 hours before making several recommendations including:

*11. Ensure that all patrol cars are equipped with less lethal weapons, e.g., CEW, sock or beanbag guns and that all officers are trained in the use of such weapons along with defensive equipment such as shields and helmets.*

The Coroner's Comment with respect to this recommendation:

*The jury heard that some of the less lethal weapons provided to*

*first response officers are carried in some but not all first response police cars. They felt that such equipment should be carried in all cars and that all officers should be trained in its use.*

The Toronto Police Service strive every day to achieve zero harm/zero death in all of their interactions with the public they serve in their mission to deliver police services in partnership with their communities to keep Toronto the best and safest place to be.

The Toronto Police Service (the Service) has deployed less lethal tools and continues to explore other options but at the same time proposes to expand the deployment of Conducted Energy Weapons (C.E.W.) to on-duty Primary Response Unit constables and to on-duty constables from designated specialized units.



This proposal is in response to identified needs from our community including but not limited to Coroner's Inquest recommendations. This proposal also aligns most closely with one of the

Service's three goals; to **Focus on the complex needs of a large city.**

### **Coroner's Recommendations**

From 2005 to 2017, eighteen inquests in Ontario have had similar recommendations that also include either introducing C.E.W.s to policing or expanding their deployment to all frontline officers.



Eleven of the eighteen Inquests recommended full deployment to the frontline including the most recent concluded inquest into the death of Andrew Loku, 2017

The death of Jerry Knight, 2004:

*“Use of a Taser, particularly in full deployment (probe) mode, has proven highly effective in gaining rapid control of subjects, avoiding prolonged and potentially dangerous physical confrontations. (Lucas, Dr. William, Office of the Chief Coroner, Inquest into the death of Jerry Knight, deceased July 17, 2004, June 20, 2008.”*

Similarly, Justice Frank Iacobucci, in his independent report to the Service, Police Encounters with People in Crisis (2014), recommended, with some

conditions (CEW/body cameras), expanding deployment in the Toronto Police Service to more frontline police officers (recommendation # 59).

### **De-escalation and negotiation**

The Service has increased the emphasis on de-escalation and negotiation as a primary means of resolving potentially confrontational situations. **Specifically, it has added three weeks of judgement and decision-making training to its recruit training and a third day to its annual in-service training, all of which focus on de-escalation.**

In addition, the Service has made further investments in de-escalation training by participating in the Ministry of Community Safety and Correctional Services working group responding to the Ontario Ombudsman's Report, A Matter of Life and Death.

The Ombudsman recommends, among other things, that the Ontario police Use of Force Model be revised to ensure that it clearly identifies de-escalation options rather than just force options, and that there should be more recruit and in-service police training that emphasizes de-escalation instead of force. This new model has not been finalized as of yet. That said, the Service will both contribute to the results and incorporate the findings into its training and procedures.

## Shields

The Service is studying the feasibility of equipping Primary Response Unit (P.R.U.) officers with shields as part of their protection equipment.

The Service is examining situations where the shield would be helpful while observing for effectiveness and the prevention of unintended harm to the public or the officers using the shield.

Intuitively, there are both limitations and opportunities with this tool. For example, introducing shields to an event that does not require immediate intervention might give officers the means to contain the person while other officers without shields wait to disarm and apprehend the person when it's safe.

When dealing with emotionally disturbed persons, officers are already encouraged to de-escalate situations by attempting to build rapport. Presenting a shield from the outset could be perceived as a barrier and prevent officers from accomplishing this goal.

By providing some measure of protection, shields might allow officers to move closer to a threat without increasing the likelihood of using lethal force. However, at some point officers have to take physical control and disarm the person.

Without adequate back-up in attendance, using a shield is a risky tactic because carrying a shield makes it difficult for officers to access their

handcuffs or other force options or even defend themselves if the shield is grabbed and the officer's arm gets trapped. Dropping the shield, of course, defeats its purpose.

To test this tool, the Service has acquired shields and the Toronto Police College assessing them for applicable tactics and training. It will then determine whether it should pilot the shields in an operational capacity, in a cross section of experiences with potentially confrontational situations, and in areas where the Service experiences some of the highest calls for service involving emotionally disturbed persons.

This trial will be evaluated based on the Service's experience and informed by any assessments from other jurisdictions. At this time, the Service is not aware of any police service in Canada that has issued shields to its Primary Response Unit. It is aware that the New York City Police Department was exploring the use of shields for their P.R.U. but is not aware of any decision having been made to date.

Reportedly, Police Scotland have shields that are kept in most patrol vehicles for use against unarmed assaultive persons. According to the Police Executive Research Foundation, Critical Issues in Policing Series: Guiding Principles on Use of Force 2016,

*Police Scotland officials explained that the personal protection*

*shields would not be used to proactively confront a subject with a knife. (The shields offer limited knife protection and have no ballistic capability.) Rather, the shields are considered an extra measure of protection for surrounding and containing a subject who is unarmed (p.101).*

So far the Service has not found any published evaluations of the effectiveness of shields for P.R.U. officers, including from Scotland. That said, the Service is committed to an objective review of shields for their practicality and effectiveness for Primary Response officers, and their ability to assist in achieving the goal of zero harm/zero death.

## **SOCK rounds**



In 2016 the Service increased the less lethal options available to officers through the introduction of the soft-nosed, impact round (SOCK). A specially designated, easily distinguishable shotgun (high visibility orange butt and fore-stock) is used by specially trained constables of the P.R.U.

On the basis that distance equals time, and time allows officers to explore multiple options to safely resolve a potentially violent situation, the SOCK round gives officers a longer range, less lethal weapon that can help them keep an assaultive person from advancing or at least slow the person down. This gives the officers the time and confidence to consider other options, including time to try more de-escalation techniques.

So far the SOCK round has been used in 74 situations. Each time the weapon was used (fired 12 times - displayed 62 times) it allowed the officers to transition to another option and bring the situation to a conclusion without resorting to lethal force.

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## **Ministry of Community Safety**

Since 2007 the Service has issued C.E.W.s to members of the Emergency Task Force (E.T.F.), frontline sergeants, and sergeants/detectives in specialized units such as Public Order, Intelligence, Organized Crime, Hold-Up, Drugs, and the Provincial Repeat Offender and Parole Enforcement and Fugitive Squad.

Currently, 545 members are issued C.E.W.s; however, on any given shift only about 58 are available because of scheduled and unscheduled absences (days-off, annual leave, court, special assignments, sickness/injury, separations).

In August 2013, the Ministry allowed police services to determine which officers should be permitted to carry C.E.W.s, based on their local needs and circumstances, effectively approving the expansion as proposed by the Service.

Included in their announcement was a commitment to openness and accountability in policing. After consulting with police and community groups, the government introduced changes that:

- **Provide direction and guidance as to when a C.E.W. would be deemed to be appropriate**
- **Increase reporting provisions (i.e., C.E.W. use will be reported in an open and transparent manner, including when a C.E.W. is displayed with the intention to achieve behaviour compliance)**
- **Enhance 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 C.E.W.s and**

- *Expect that police services should **engage local communities** prior to deciding to expand C.E.W. deployment in their jurisdiction.*

## **Medical Research**

The Ministry of Community Safety and Correctional Services considered medical research in its Review (2009, pp.10-11). It reviewed 10 studies and found that:

*... a significant body of research has developed over time examining medical issues relating to CEWs such as cardiac, respiratory and metabolic effects, and the benefits and risks associated with use of this weapon.*

*According to a Calgary study entitled Police/Public Interaction: Arrests, Use of Force by Police, and Resulting Injuries to Subjects and Officers – A Description of Risk in One Major Canadian City (2008), CEWs scored high in safety for both suspects and officers in 562 use-of-force incidents over a two year period.*

*The study found that “the use of CEWs resulted in fewer citizen and officer injuries than either physical control or the baton.*

*Thirteen percent of CEW use was associated with subject injury requiring some treatment*

*in hospital, and 87% of all CEW uses resulted in no or minor subject injuries (pp. 151-152)."*

*Furthermore, in 96.7% of all CEW uses, "officers received either no or only minor injuries. There were 9.6% fewer officer injuries requiring medical treatment when a CEW was used when compared to when a baton was used (ibid, p 152)."*

*The report goes on to state that: "The commonly held belief that the conducted energy weapon carries a significant risk of injury or death for the population of interest is not supported by the data. Within the force modality framework most commonly available to police officers, the CEW was less injurious than either the baton or empty hand physical control (ibid, p 153)."*

*A study published in the Annals of Emergency Medicine in 2008 examined CEW uses in 1,201 subjects in six U.S. law enforcement agencies during a 36-month period. The study found that 99.75% of subjects "experienced no injuries or mild injuries only" (Bozeman, et.al. Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects., Annals of Emergency Medicine, (2008, p. 5) and of the 492 mild injuries identified, "the*

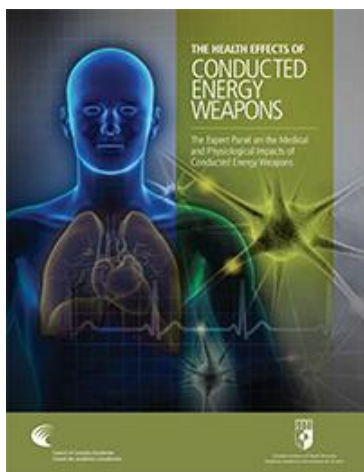
*majority (83%) were superficial puncture wounds from conducted electrical weapon probes (ibid, p 5)." Other mild injuries occurred in 5.2% of subjects and were primarily related to blunt trauma from falls (ibid, p 5).*

*The study concludes that: The primary finding that 99.75% of subjects experienced mild or no injuries represents the first assessment of the safety of this class of weapons when used by law enforcement officers in field conditions.*

*This injury profile compares favorably with other intermediate force options available. These findings support the continued use of conducted electrical weapons in settings in which they can be safely substituted for more injurious intermediate force or lethal force options (ibid p 6)."*

The report, The Health Effects of Conducted Energy Weapons was published in 2013. The assessment was conducted by a panel of 14 experts, chaired by the Honourable Stephen T. Goudge, of the Court of Appeal for Ontario. It is considered an in-depth analysis of the state of knowledge regarding the medical and physiological impacts of C.E.W.s and is described as one of the most comprehensive assessments of national and international evidence to date (Council of Canadian Academies, 2013).





Overall the report observed that while C.E.W.s are intended to be safe and to reduce injury compared with other force options they are not necessarily risk free and that further research is needed. On the other hand, the expert panel found that the most common injuries from C.E.W.s, such as puncture wounds from the projectile probes, are unlikely to pose serious medical risks, and that

*... available studies suggest that while fatal complications are biologically plausible, they would be extremely rare (viii).*

In Toronto, in accordance with Ministry standards, the C.E.W. is only directly applied (used in full deployment or drive stun mode) when the subject is assaultive as defined by the *Criminal Code*, which includes threatening behaviour, or if the officer believes that there is an imminent need to control the person (e.g. the person is attempting or threatening suicide).

Therefore, the direct application of the weapon is only used to gain control of a person who is at risk of causing harm,

not to secure compliance of a person who is merely resistant.

Dr. Dirk Huyer, Chief Coroner for Ontario, spoke at the Ministry's announcement authorizing wider deployment and said,

*"As you have already heard, today's decision was in part informed by several recommendations that arose during Coroners inquests... I am pleased to see that following careful consideration and research the Ministry is implementing recommendations to allow expansion of CEW use by police officers."*

Dr. Pollanen, Chief Forensic Pathologist for Ontario, added,

*First of all, as a physician and a scientist I can tell you that this [the Ministry's authorization] does represent evidence-based public policy at its best. A lot of input has gone into this that has been multi-disciplinary, recommendations from many coroner's inquests, review of the literature, and other modalities that are important to make decisions of a medical type or that encroach on medical issues.*

*The second thing is, the direct medical issues related to the use of CEWs: And what we know is that sometimes people die in*



*police custody after altercations with police in a struggle. This is a very rare outcome. We also know that based upon all the published literature that sudden and unexpected death after the deployment of a Taser is unusual and quite rare.*

*In those circumstances where there has been a link between the deployment of the CEW and a fatal outcome, there is no clear evidence through, for example, verdicts from a coroner's jury, that the deployment of the device has been the primary cause of death.*

*At best it's been contributory, and the contributory nature of the cause of death has to do with pre-existing medical conditions that may not be outwardly apparent.*

*On this basis, when you look at the small number of anecdotal cases relative to the larger scope of medical evidence, the results are fairly clear, in other words, it suggests that an evidence-based public policy approach such as the one that the government is endorsing is the way to go.*

Commissioner Thomas Braidwood, in his report Restoring Public Confidence (2009), remarked that

*I am satisfied that, on balance, our society is better off with these weapons in use, than without them (p.294).*

Indeed he went on to say that

*I would find it hard to justify recommending a restriction on the assignment of conducted energy weapons if no such restriction applies to the assignment of a service pistol (p.313).*

## **Experience**

The C.E.W. is a battery powered, hand held, less lethal weapon, that when used in full deployment mode is designed to immobilize.

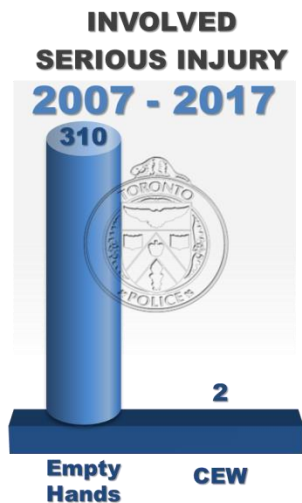
The Service's record consistently demonstrates that the C.E.W. has proven to be an effective tool that has helped avoid injuries, perhaps even death, to the public and police officers. Indeed, evidence shows that the C.E.W. is a less injurious force option when compared to other options even empty hand techniques, which are generally considered to be one of the minimal force options available to an officer.

Since 2007, when the Service started submitting annual reports to the Toronto Police Services Board on C.E.W. use, it has used the C.E.W. more than 2,800 times. During that period, 2 people have received an injury serious enough to invoke the Special Investigations Unit's (S.I.U.) mandate, and 1 person has died (\*the cause of death, however, has yet

to be reported by the S.I.U [Nabico, 2017]).



Yet after struggling or fighting with an officer when the officer used only empty hand techniques in those same years, 310 people received an injury serious enough to invoke the S.I.U.'s mandate, and 4 have died.



While the manufacturer has credited the C.E.W. with saving lives, it is the Service's experience that it has been an alternative to lethal force and its use has prevented people from seriously injuring or killing themselves.

Although not promoted as a substitute for lethal force when facing an active potentially lethal attack, it has been used as an alternative by Toronto Police officers when lethal force would otherwise have been justified.

In the last 2½ years alone, officers used the C.E.W. on at least three occasions to try to stop persons, armed with knives, from seriously injuring or killing themselves. In each case the person was saved from further harm when the C.E.W. immobilized them allowing the officers to take them safely to the hospital for help.

Overall, therefore, it can be said that in Toronto the C.E.W. has averted the use of lethal force by the police, and perhaps even saved lives.

### Expansion proposal

This deployment will be part of a suite of responses to potential use of force situations that emphasizes de-escalation, includes other less lethal force options like the soft-nosed shotgun-fired impact round (SOCK), and explores enhanced officer protection such as shields.

This means that the officers who are typically the first responders to emergency (9.1.1.) calls-for-service, the calls that are often higher risk, and officers from specialized units who attend planned events where potentially confrontational situations often arise, will have the C.E.W. available when they

need them to help them safely resolve the incident.

Toronto Police officers had approximately 2.2 million documented contacts with members of the public last year. Of those, the Service used force 1177 times, or about 0.05% of encounters. This is about average for the Service. This demonstrates that in the overwhelming percentage of cases, officers are successful in resolving incidents safely without resorting to force. The Service wants to reduce even these low numbers where it is safe to do so; the Service's goal is Zero Harm/Zero Death.

Since 2002, governed by the restrictions of the Ministry of Community Safety and Correctional Services (the Ministry), the Service has deployed C.E.W.s, first to its tactical unit, the Emergency Task Force (E.T.F.), and, thereafter, to its frontline supervisors (sergeants and some detectives).

In 2013, the Ministry lifted its restrictions and on September 12, 2013, the Service submitted its 2014-2023 Capital Program Request to the Board that included an amount to fund the expanded deployment of C.E.W.s.

On November 25, 2013, the Ministry released its amended C.E.W. Use of Force Guidelines and training standards. To date, except for authorizing the deployment of C.E.W.s to other classes of officers, the Guidelines are largely unchanged from 2010; however, the training standards now specify

**increased judgement training for new users** and, as a result, the length of **training increased from 8 to 12 hours.**

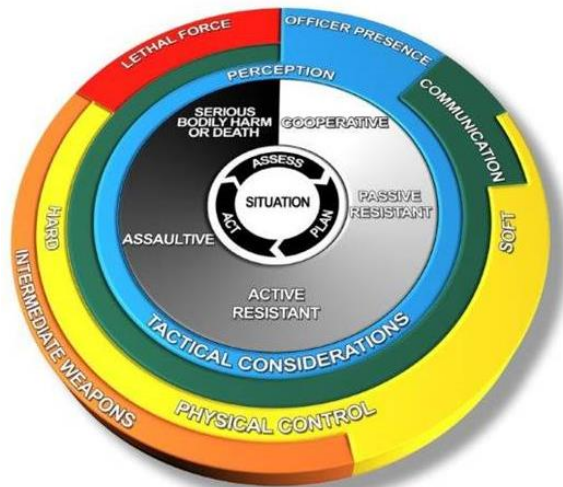
**The Service believes that through proper policy, procedures, training, and accountability the C.E.W. is an appropriate use of force option that can help maintain public and officer safety. The Service also believes that it should be available to non-supervisory frontline officers.**

## **Training**

Each of the officers who will be issued a C.E.W. will only receive one after they have completed the Ministry approved user training. This training will consist of **16 hours of study and scenario based exercises - four (4) hours longer than was previously the case.** The training will include practical and written examinations. The officers will need to demonstrate knowledge and proficiency on the legislation and regulatory framework, the community context surrounding the weapon's development and introduction, and the structure and function of the weapon and its effects.

**The four additional hours are specifically dedicated to judgement training and the C.E.W.** Any officer failing to meet the standard is re-engaged with the curriculum with a goal of developing the skill sets necessary to achieve the standard.

## Ontario Use of Force Model



The officer continuously assesses the situation and selects the most reasonable option relative to those circumstances as perceived at that point in time.

The training team of the Toronto Police College has re-designed the practical scenario training to continue to emphasize that officers must use sound judgement along with **effective de-escalation techniques** when deciding whether to use force and what force options to use.



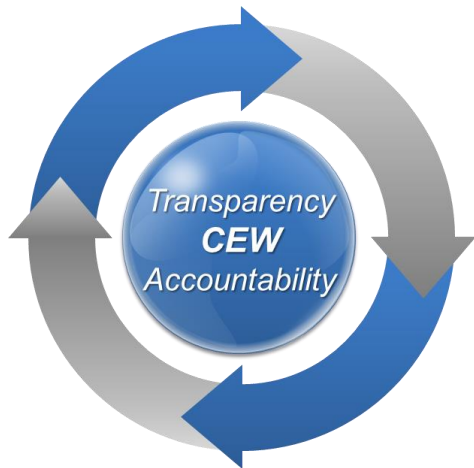
The training is based on a set of principles that foster the responsible and accountable use of C.E.W.s, while recognizing that they are an appropriate tool for officers who must resort to force. These guiding principles are that:

- The **decision to use force** is the fundamental decision to be made before deciding what force option to use;
- C.E.W.s should be used as a weapon of need, **not a tool of convenience**.
- **Officers should not over-rely on C.E.W.s** in situations where more effective and less risky alternatives are available; and
- C.E.W.s are but just one of a number of tools that police have available to do their jobs, and are considered **one part of the Service's overall use-of-force response**.

In accordance with Ministry training standards, recertification takes place every 12 months and all C.E.W. training is conducted by Ministry certified use of force instructors.

As well, the Service is enhancing how it evaluates its training and whether members follow their training. It has partnered with Dr. Nancy McNaughton of the University Of Toronto Faculty Of Medicine to further develop an academically and scientifically sound methodology. Preliminary assessments are underway.

## Transparency and Accountability



To ensure that C.E.W.s are used lawfully and effectively, the Service has several accountability systems in place such as:

- a **specific procedure** (15-09) that governs the use of the weapon, including when its use is permitted and not permitted;
- a **specific report** that must be submitted by the officer each time the officer uses it against a person, justifying its use;
- a **review** of that report by a supervisor to identify any breaches of law, policy, or

procedures, or any training concerns;

- a **further review** of that report by the Use-of-Force Analyst to identify trends and issues for training, policy and procedural purposes;
- **daily testing** of the weapon before each tour of duty to ensure proper functioning
- a **regular inspection** of the weapons to make sure they are functioning properly; and
- a **regular download and audit** of each weapon's internal data system to confirm usage and its condition.

Transparency, is achieved through public reporting and public oversight to ensure that C.E.W.s are used appropriately and any improper use is dealt with through discipline and/or training.

Lastly, each year, the Service submits a comprehensive report to the Toronto Police Service Board that describes the circumstances and use of the weapon including a description of the person against whom the weapon was used.

## Conclusion

The Toronto Police Service has deployed less lethal tools and continues to explore other options, but at the same time proposes to expand the deployment of Conducted Energy Weapons to on-duty Primary Response Unit constables and to on-duty constables from designated specialized units.

The C.E.W. has been in use by the Service since 2002. During this time, the record consistently demonstrates that officers are using good judgement under difficult circumstances and that they are making appropriate decisions to use force only when reasonably necessary to resolve tense and dangerous situations.

The Ministry of Community Safety and Correctional Services as the governing body for policing in Ontario has approved its expanded deployment; numerous Coroner's juries across the province have recommended an expanded use of the C.E.W; and medical research has supported their effectiveness with little resulting injury. The Toronto Police Service has increased de-escalation training for officers, as well as training specific to the use of C.E.W.s. Accountability for the use of the C.E.W. is captured through day to day supervision as well as mandatory reporting, aligned with the C.E.W.s' data retention capabilities.

Finally, the acquisition of the C.E.W. is part of a suite of responses to potential use of force situations that emphasizes de-escalation, includes other less lethal force options like the soft-nosed shotgun-fired impact round (SOCK), and explores enhanced officer protection such as shields.

The Service is confident that based on the evidence, the C.E.W. is a less injurious, effective force option. It believes that through proper **policy, procedures, training, and accountability**, the C.E.W. is an important use of force option that can help maintain public and officer safety, and assist with its goal of zero harm/zero death.