

CACOLE Conference – Panel
Civilian Oversight Regarding Taser Use
June 16, 2008
Speaking Notes for Chair Alok Mukherjee

I. Introduction: Overview of the Toronto Experience

The use of Tasers by members of the Toronto Police Service has long been an issue of debate for members of the Board, the Service and the community. I wish I could say that the debate is now settled. It is not.

It is fair to say that in Toronto, the decision to equip certain officers with the device was one that was entered into after much scrutiny and forethought. When the Toronto Police Services Board decided to approve limited deployment of Tasers by the Police Service, it wished to make sure that adequate controls around the device, comprehensive training and accountability and oversight mechanisms would be firmly in place. The Police Service also recognized and accepted the importance of these measures.

Hindsight shows that we were right to exercise a very high level of due diligence.

I'd like to give you a bit of a chronological background on the introduction of Tasers in the Toronto Police Service. In July 2002, following a four-month pilot project conducted by the Toronto Police Service Emergency Task Force (ETF), the then-Ministry of the Solicitor General (now the Ministry of Community Safety and Correctional Services) approved the M26 Advanced Taser for use by police tactical teams and hostage rescue units in Ontario. And in February 2004, the Ministry authorized the use of the M26 Advanced Taser by front-line supervisors.

II. Decision-Making Process that led to Use of Tasers by Toronto Police Service

Despite the Ministry authorization, the Toronto Police Services Board did not immediately agree to provide the equipment to the Service's front-line officers, embarking, instead, on a methodical decision-making process.

At its November 18, 2004 meeting, the Board requested additional information on the status of de-escalation training and any medical safety risks associated with the use of Tasers, including copies of reports and research studies that had been conducted.

The Board also requested a Taser protocol and an implementation plan for a possible second pilot project.

On March 30, 2006, the Toronto Police Service commenced this pilot project in three police divisions. It involved use of Tasers by front-line uniform supervisors. Only after receiving the results of this second pilot project did the Board approve limited deployment of Tasers on an interim basis.

As part of its consideration, the Toronto Police Services Board heard deputations from members of the public and requested additional reports from the Chief, the Toronto Medical Officer of Health and Board staff regarding any medical and operational research that had been conducted.

The Board endorsed a draft protocol for Taser use and required that it be notified of any changes to this protocol. The Board also put in place regular reporting requirements on Taser use.

At the conclusion of the pilot project, in September 2006, satisfied with the procedures and methods of accountability that had been established, the Board approved expansion of Taser deployment to all front-line supervisors.

At present, front line supervisors and members of tactical units, specifically the Emergency Task Force, are the only Toronto police personnel authorized to have Tasers.

While making this decision, the Board also noted that the Toronto Medical Officer of Health, in his report, had indicated that he did not find studies evaluating any long term health effects on individuals who had been exposed to Tasers.

This has been, and remains, a long-standing concern of Board members, who have voiced an interest in seeing independent studies conducted regarding the long-term effects under certain medical, psychological, neurological and other conditions of being subjected to Taser use.

III. Public Reaction to Taser Use and the Board's Taser Forum

The debates that have taken place at our Board around Taser use have very much reflected the public debate on this topic. Critics in the community have raised concerns about “usage creep,” about Tasers as a tool of convenience and about the fact that, in some incidents, Tasers appear to have been used indiscriminately to render individuals compliant.

Some of the most high-profile and widely discussed cases have occurred in the United States and through media like YouTube and the internet, people are able to view images in great detail, soon after they have occurred. This has generated considerable public concern and questions have been posed as to whether Canadian police services are using Tasers in the same way as some of their American counterparts have alleged to use them.

Because of the information, as well as the misinformation, that was in the public domain, I wanted an opportunity for members of the public to hear about the Taser device and to ask questions directly of the manufacturers. As a result, in January of this year, I invited Tom Smith, the CEO of Taser International, to attend a community forum. The purpose was made clear from the outset – this was not a meeting to determine whether Toronto Police Service officers should carry Tasers but to provide information and answer questions that members of the public may have.

At the session, I acknowledged that recent events have raised questions about the proper use, effects and desirability of the Taser as a tool for policing.

There was considerable interest from both the public and the media and a number of pertinent questions were posed and answered. I believe that this was an important session to host as it allowed some of the basic facts about the device to be discussed in a public forum.

IV. Testimony Before the House of Commons Standing Committee on Public Safety and National Security

On February 27 of this year, I, along with Staff Superintendent Mike Federico, attended the Federal House of Commons Standing Committee on Public Safety and National Security which was holding hearings on Tasers.

This was an invaluable opportunity to share with the committee the Toronto experience as it relates to Tasers, and the safeguards that both the Board and the Service have built into the use of the device by Toronto Police Service officers.

Members of the Standing Committee took note particularly of the role of the Toronto Police Services Board in establishing a governance framework for the deployment of Tasers in Toronto, in terms of the extent of due diligence as well as the scope of the framework.

V. Establishing a Governance Framework: Policy and Procedures; Training; Monitoring; Accountability

Policy and Procedure

In terms of the policy framework, the Toronto Police Services Board has focused on ensuring that sufficient safeguards exist with respect to Taser use by members of the Service. The decisions to expand the pilot project and to allow a roll-out plan for implementation across the city took place in a thoughtful and methodical manner.

The Board also insisted that a protocol be developed, that a regular reporting scheme be established and that public input be sought throughout the process.

A comprehensive Taser procedure has been a critical cornerstone of the Toronto experience.

Under the procedure, the Taser can be used only in an assaultive situation, that is, a situation in which the individual is a threat to his or her own, or somebody else's, security and safety. Use of Taser is not justified against someone who is simply causing a

disturbance or acting out to bring attention upon themselves. Its use is not justified for crowd control or to obtain compliance.

The Service's procedure uses the term "assaultive" as defined in the *Criminal Code*. The *Criminal Code* defines a situation as assaultive when the person involved applies force intentionally, without permission, or threatens to do so and has the ability as well as the capability to carry out the threat. Thus, using this definition, the device is used strictly to gain control of a subject who is at risk of causing harm, and not to secure compliance of a subject who is passively resisting. This is an important distinction.

Training

The Board has consistently focused on the importance of training in equipping officers with the Taser. While the Taser is a powerful tool, like many others that a police officer carries, it is important to focus not just on the device, but on the controls that have been placed around its use. This very much includes the provision of appropriate and regular training in its use and in the judgment that is involved in making the decision to use it.

Before a device is issued there is a full eight hours of training which emphasizes policy, procedure, and judgment as well as

skill and technical knowledge. All of this is tested, both in a practical exercise and in written format. Every 12 months after this initial training, a person has to re-certify on the device.

Monitoring

As I will discuss shortly, the Board has placed a great deal of emphasis on monitoring the use of Tasers by police officers in the Toronto Police Service. The Board has put into place the requirement for regular reporting and has, over time, expanded the information required under such reports in order to be able to critically assess and analyze Taser usage in Toronto.

Accountability

The principle of accountability with respect to the use of Taser is extremely important, and is built in to the Toronto Police Service Taser procedure governing the use of the device.

Accountability is ensured, first, through use of the Taser's built-in weapons management system. This is intended to prevent misuse or abuse of the device and to protect officers from unfounded allegations.

Each time the Taser is fired, the date, time and duration of the firing is recorded and stored within the weapon itself. This data can then be downloaded for analysis purposes. The Taser's air cartridges are individually serial numbered. When they are issued to an officer the serial numbers are recorded. Every time an air cartridge is fired it dispenses 20–40 confetti like tags that Taser International calls AFIDs (Anti-Felon Identification) throughout the area where it was fired. Each tag has the serial number of the air cartridge printed on it and can be used to determine which Taser was fired.

Service procedure requires both random downloads and mandatory downloads whenever the Taser is used in the drive, stun or full deployment modes. In addition, officers are required to maintain detailed information in their note books. Comparison of the two sets of information allows the Service to check for consistency. Lastly, all Tasers and air cartridges within the Service are personally issued to each officer for accountability purposes.

VI. Reporting to the Public: The Annual Board Report

At its meeting of March 8, 2005, the Board directed the Chief of Police to provide an annual report to the Board on the use of Tasers within the Toronto Police Service.

The report, which is placed on the public agenda is required to include information on complaints and investigations related to Taser use, officer training, availability of Tasers to front-line officers, incidents of Taser deployment (including division, circumstance, number of persons, involved, reason for deployment and any injuries sustained), deaths and civil actions.

Board members have been able to analyze this information, note trends and ask questions arising from the reports. For example, Board members have been particularly interested in the use of Tasers on what are termed EDPs, or emotionally disturbed persons.

The reports include basic information about the incidents, including whether or not the subject in any given incident was an EDP. In this way, Board members have been able to pose relevant questions related to the use of Tasers on this group of people and to satisfy itself about any concerns raised in this area.

VII. Learnings from the Toronto Experience

Statistics: Injuries and Death Attributable to Use of Taser by Toronto Police Service Officers

I think it is useful to look at the statistics from the Toronto experience. These, as I have noted, have been reported publicly.

2005

Of the 73 total Taser deployments in 2005, injuries were reported in only five cases. In three of the five reported cases, the injuries were self-inflicted. In the remaining two cases, it is believed that the injuries were sustained when the officers attempted to subdue the individual, and were not as a result of the Taser deployment. In 2005, there were no deaths attributed to the deployment of the Taser by members of the Service.

2006

In 2006, the Taser was used 174 times during 156 incidents within the defined categories of Taser deployment. In 2006, there were no injuries sustained as a result of Taser deployment by members of the Service, other than minor skin punctures. In

2006, there were no deaths attributed to the deployment of the Taser by members of the Service.

2007

The Board has not yet received the 2007 Annual Report on Tasers. However, between January 1, 2007 and July 31, 2007, the Service had 215 Taser incidents and there were no injuries or deaths resulting from Taser deployment.

Challenges Facing Toronto Police Services Board Re: Taser Use

Like our counterparts across Canada, the Toronto Police Services Board faces many questions and concerns with respect to the use of Tasers by our police officers.

While there have been legitimate queries made following the deaths of individuals upon whom the Taser has been used, the medical evidence is, at this point, inconclusive. I believe it is important for boards to encourage greater medical research in this area, to share and disseminate information that is collected and to engage in fair and objective dialogue on the subject. There is an interest for all of us – police services, boards, and the public – to have a tool that can potentially be used to save lives.

At the same time, we must be mindful of the risks that this potentially live-saving device may itself have and constantly look to ways to minimize such risks.

In Toronto, we have had recommendations from the juries in Coroner's Inquests that all front-line officers should be equipped with Tasers. This recommendation, it has been stated, could save lives in situations where, otherwise, an officer's firearm would be used.

At this point, this is a dilemma with which our Board has been grappling. Aside from the basic fact that any expansion of Taser use to all front-line officers would require legislative amendment, the Board has raised questions as to whether this is a good idea, from a policy perspective.

This is something that, no doubt, we will have to turn our minds to in the future.

I believe that the philosophy that the Toronto Police Services Board has followed thus far has been a smart and sensible one. Our approach has been to proceed cautiously in this area. While we are certainly aware of the Taser's benefits, we remain alive,

too, to the serious concerns that have been raised and the questions that still remain unanswered with respect to this tool.

We will not stop asking questions and we will continue to encourage further research and review. This, to me, is a vital part of civilian oversight's role in this area.

VIII. Conclusion: Looking to the Future

The Toronto Police Services Board views the Taser as an important tool to be used by a police officer in certain limited and clearly articulated situations, that is, where an individual is acting in an assaultive manner, rather than simply as a tool of compliance.

The Board supports the philosophy of our Chief that the Taser can be a valuable tool for police officers as long as the proper parameters for use are outlined, the necessary training is provided and the relevant structures of accountability are established.

We believe that the Board and the Service have been responsible in establishing such parameters and we are committed to

consistently reviewing them to ensure that they are clear and current and that all officers adhere to them.

Thank you.