

PRESENTATION BY MR. FEDERICO - Recreated from the May 14, 2008 Transcripts:

MR. FEDERICO: Well, first of all, I'd like to say on behalf of the Toronto Police Service, Chief William Blair, and the Toronto Police Services Board, Dr. Alok Mukherjee, thank you for giving us the opportunity to present at this important inquiry. As you might expect, the discussion or debate around Tasers is virtually nationwide, and it is a healthy debate in Ontario as well.

I'd like to start by reading a statement by Chief Blair who is not only the chief of our police service, he's also the president of the Ontario Association of Chiefs of Police for this year. He had this to say about Tasers, and I think it puts it into some context:

There has been considerable comment in the media on Tasers and whether or not they are appropriate for police use. Tasers have an important role to play in protecting the public and our officers from violent people as well as protecting violent people from injuring themselves further. Organizations that use Tasers must have proper policies and procedures, the training and the supervision to ensure they are used in the right circumstances for the right reasons. Within those policies and procedures, there must be clear accountability and transparency.

In Ontario, there are many examples of police officers exercising good judgment in the use of Tasers to resolve tense and dangerous situations. These examples exist because the use of Tasers has been implemented with proper procedures, training, supervision and transparent accountability.

In Toronto, we have devoted considerable time and resources to canvassing North America police practice to ensure we provide those using Tasers with the best training and

5 supervision and the policies and procedures to provide clear guidance on when and how they are to be used.

The work that has been done cannot and should not be overlooked in the public debate about the place of Tasers in our use-of-force model. Police officers across Ontario are professional and dedicated to the safety and security of their communities. Let there never be any doubt about that. With clear policies and procedures, a well-trained officer with a Taser, properly supervised and fully accountable for all use-of-force decisions, can save lives. They've done so in the past and will continue to do so in the future.

Now, what I hope to do is cover a few areas concerning the evolution of the deployment of Tasers in Toronto. Particularly I'll talk about the device in its current deployment. I'll talk about its usage in 2007. I'll talk about accountability, policy and government which includes when it may be used, how we track the use and monitor the use of the device, and our public reporting. I can talk about training, some of the legal issues that have been addressed, comment on the medical and safety issues we've had to consider, and then undertake any discussion or answer any questions that the inquiry might have.

#### **THE DEVICE AND ITS DEPLOYMENT**

The use of Tasers by Toronto Police continues to be a topic of debate for the Toronto Police Services Board, the service and the public. The decision to equip officers with the device was the result of much service and board-sponsored public scrutiny and thought. The approval to deploy Tasers was accompanied by proper controls, training and accountability.

A sample or example of the type of public debate and the forums where we discussed the

deployment of the device publicly, once a month in Toronto, the Police Services Board holds its regular business meeting. A component of that is the public agenda, and every year Toronto Police reports to the board on the use of Tasers since the deployment has occurred, and the board discusses the deployment of Tasers at its public meeting. So the public is invited to depute or make comments. The board asks questions, and I can elaborate on that if there's any interest.

In 2002, in July, the Ministry of the Solicitor General - that's the provincial ministry that oversees policing in Ontario - approved the M26 advanced Taser for use by police tactical teams and hostage rescue units in the province. This followed a successful four-month pilot project which was conducted by the tactical units of Toronto and the Ottawa Police Service.

If I might digress a bit, questions have been raised in Ontario about the selection of the Taser, particularly that device, and not some other device or other manufacturer. The device is not selected by the police services. The device is mandated by the Ministry, so it was the Ministry who set specifications, obviously in consultation with the police service, and it was found that the Taser device met the specifications that policing needed in Ontario. So the use of the TASER, that trade name, is specifically mandated by the Regulations in the Province of Ontario.

The Ministry recognized the limitations, however, of restricting Tasers to tactical teams, and on February 17th, 2004, authorized the use of the device by front-line supervisors. That's because in many instances it is the primary response of the front-line police officer that first encounters the situation and it takes time to bring the emergency task force or the tactical team in, and sometimes there just simply isn't enough time.

On the other hand, in Toronto, we have several hundred supervisors who are on the road and available and they can respond more timely. The ETF still remain the preferred choice, but the supervisor is equipped with the device in the event the situation requires earlier intervention. In our experience, the approval to expand the device to the front-line supervisors ensures greater access to a less lethal force option by more police officers. However, the board did not immediately agree to equip all of the service's front-line officers or supervisors. Instead it requested that a pilot project be conducted in selected divisions to ensure more fully the decision to expand the deployment. In other words, the board and the chief decided that a phased-in incremental distribution would also validate the decision because we would be able to measure its impact and effectiveness in a more controlled way.

So on March 30th, 2006, the service commenced a pilot project in 31, 42 and 53 Division. These are particularly large divisions with a diverse population, diverse in both, I'd say, support and compliance with the law as well as perhaps their own agenda.

This pilot project examined the Taser use by front-line uniformed supervisors and, in our opinion, successfully demonstrated that the service did have clear policy and procedure, comprehensive training and an appropriate reporting structure in place. At the conclusion of the pilot project, approval was granted to deploy the device to all front-line supervisors. Now, I have to say even that decision, though, was lively debated at the board and it's safe to say that the board was not unanimous in making the original recommendation, but after discussion, the board did endorse it.

So currently, there are two models of advanced Taser used by the Toronto Police Service. The original M26 and the newer X26. Both of these

devices are Ministry approved less lethal weapons in accordance with section 14 of the *Equipment and Use of Force Regulations* of the **Police Services Act**. Now, I have been questioned is there a difference between the two devices. My understanding is that it's really just an improved efficiency of the mechanics of the device. In other words, you get more cycles, or the battery lasts longer particularly, and the probes on the X26 extend a little further.

The voltage is achieved with less amperage so it's a technical improvement to the device, not an effectiveness improvement. It's not that the M26 was failing or anything, nor is the X26 "a more powerful" or more debilitating device. It's just, I think, improvements in the efficiency around the mechanics of the device.

Following the approval, training was increased and between February 14th, 2007 and July 26th, 2007, the devices were distributed to the remaining front-line supervisors. We have a total of 454 devices have been issued to uniformed front-line supervisors, and supervisors in high risk units such as the Hold-up Squad, Intelligence or Drug Squad Special Investigative Services and Fugitive Squad to name a few. In our service, the detective in charge of a squad is a supervisor, not unlike a sergeant in uniform. So the device has gone to the detective in charge.

In Toronto, the device is deployed in three basic ways: One is the demonstrated force presence. A spark is demonstrated or the laser sighting system is activated. This illustrates the Taser's capability and is used to get the subject's attention. That's the only compliance use in Toronto the device is put to. At no time does the Taser or its probe make contact with the subject.

The next technique is the drive stun mode.

The device makes contact with the subject but the probes are not fired. In other words, the police officer touches the device but not releasing the probes. The third method is the full deployment. Probes are fired at a subject.

Between January the 1st, 2007 and December 31st, 2007, the service used the Taser 404 times. It was used in the demonstrated force presence in of those incidents, and that represents 35 percent of the deployment. It was used 77 times in the drive-stun mode or 19 percent of the time, and it was used in the full deployment, firing the probes, in the remaining 187 incidents, and that represents 46 percent of the deployment. This, by the way, is all reported to the board at the annual reporting.

#### **CONCERNING OUR ACCOUNTABILITY GOVERNANCE IN POLICY WHEN IT MAY BE USED**

In Toronto, in accordance with our *Police Services Act*, the device is used to gain control of a subject who is assaultive. That is defined by the *Criminal Code* and this includes threatening behaviour. If the officer believes the subject intends or has the ability to carry out their threat. The device therefore is used strictly to gain control of a subject who is at risk of causing harm, not to secure compliance of a subject who is resistant. The policy limits the deployment of the device to the more "serious" of circumstances.

#### **TRACKING**

The Taser has an integrated weapons management system that stores the time and date of each firing internally within the device. This stored information can be downloaded to a personal computer for analysis. This feature, in our opinion, protects officers from unfounded allegation and through solid documentation of 2usage, holds officers accountable for each use. In

addition to the data download system, each air cartridge possesses an individual serial number, and when the cartridges are issued to a police officer, the serial numbers are recorded. In Toronto, we issue the device to an individual police officer. They're assigned that device. In some other services, given the number of devices they have and the number of officers, they may use a quartermaster system where it's issued at the start of a shift.

Every time an air cartridge is fired, it dispenses 20 to 40 tiny confetti-like tags called Anti-Felon Identification devices throughout the area in which the Taser is fired. Each tag has the serial number of the air cartridge printed on it and this can be used to determine who fired the air cartridge in the case more than one device is used. During training, officers are made aware that the weapon's management system makes it possible to trace users who are not following internal standards.

#### **MONITORING OF THE TASERS**

Tasers are used in accordance to established service standards and accountability. The device and its numbered air cartridges are issued individually to officers, thereby ensuring greater accountability. Service policy requires that the officer in charge, that's the officer in charge of the police station where the patrol officer is dispatched, that officer must be notified when the Taser has been deployed. Service policy requires that we submit a use-of-force form and a Toronto Police Service advanced Taser report.

The use-of-force form is a provincially mandated record of the use-of-force, and this report was the result of a lot of debate, probably about a decade ago, about tracking and monitoring police use of force in Ontario generally. But in addition to that use-of-force report, Toronto police requires police officers to submit a separate report in all cases where the Taser is

deployed, including demonstrated force presence. That's also a standard that not every police service is expected to attain. Demonstrated force presence, as I explained earlier, is just showing the weapon. If it's not deployed, technically force has not been applied. Nevertheless, we report on it.

Service policy requires a weapon download in all drive stun and full deployment as soon as practical. So as soon thereafter the event, the device information is downloaded and the reports are filed. Furthermore, the service performs random download checks on Tasers. That is to say, we just go and grab a few Tasers issued to officers and do a download check, random and unannounced.

The service requires that all Taser deployments be reviewed by the use-of-force analyst of the Training and Education Unit and that's the unit that reports to me, and the service's Use-Of-Force Review Committee. Those two committees look at whether or not there are any issues arising out of the effectiveness of the device, the training and the competence of the police officers.

#### **PUBLIC REPORTING**

The service reports annually to the board on the Taser use. This report, as I said earlier, is placed on the public agenda and includes the number and circumstances of Taser use, injuries, public complaints, civil suits, investigations, officer training, deployment and effectiveness. During this process, board members can ask questions and the public is invited to comment.

#### **TRAINING**

All our use-of-force devices and options, including the use of Taser, is governed by the Ontario Regulation of the *Police Services Act*,

number 926.

Every police service shall ensure that at least once every 12 months, each member who may be required to use force on other persons receives training on the use of force.

So we have to qualify every year on our force options, and that's all of them, from handcuffs, pepper spray, nightsticks, empty hand, service27 issued firearm and the Taser. And that's all ranks, by the way, too. The chief has to do it as well. You don't trust the chief alone.

The police service shall maintain written records of the training taken by members and the courses shall include the training on the following matters: the legal requirements, the exercise of judgment - and a heavy emphasis is placed on that - of course safety and the use of device, and safety when it gets deployed, the safety of other people around the deployment, theories relating to the use of force, and then practical proficiency.

All Taser training is conducted by an instructor certified on the specific device approved by the service. Initially members receive a minimum of eight hours training covering law, policy procedure, judgment, skill and technical knowledge, all verified by practical and written examinations. Recertification takes place every 12 months. All training and recertification is conducted in accordance with the Ministry guidelines.

#### **THE LEGAL ISSUES**

The use of any weapon including Tasers by Ontario police services is subject to strict and comprehensive provincial legislation. The **Police Services Act** has Regulations regulating or prohibiting the use of any equipment by a police force or any of its members, regulating the use of force by members of police forces, prescribing

courses of training for members of police forces and prescribing standards in that connection, and requiring that a report be submitted to the Chief of Police whenever a member uses a weapon including a Taser on another person. Ontario Regulation 926, Equipment and Use of Force, provides that:

A member of a police force shall not use a weapon other than a firearm on another person unless that type of weapon has been approved for use by the Solicitor General, the weapon conforms to the technical standards established by the Solicitor General and the weapon is used in accordance with standards established by the Solicitor General.

In 2004, conducted energy weapons were approved for use across the Province of Ontario for trained front-line supervisors or designates acting on their behalf. This expanded the use of Tasers beyond tactical officers which had been approved in 2002. I just recall my earlier statement that explains why it's the selection of a particular manufacturer, TASER, that currently governs the distribution of the device in Ontario.

#### **MEDICAL AND SAFETY ISSUES**

The Ministry regulates the force options available to police services and authorizes their use through regulations under the **Police Services Act**, hence the overall responsibility for ensuring the safety of authorized equipment and devices such as Tasers rests with the Ministry. The Ministry has sufficient confidence that the safety of the Taser and any attendant medical issues have been appropriately addressed and the Ministry has recommended the Taser for use by police services throughout the Province of Ontario.

Our board, at its meeting of March 8th, received several reports describing medical testing and the safety of Tasers as a viable and

appropriate less lethal force option. Also included was a reference to the liability which may be incurred by the service if it were not to adopt a Taser deployment for front-line supervisors. This opinion was provided by the service's senior risk management analyst on civil liability.

This stems from several inquests, coroner inquests where jury recommendations suggested that the Taser be deployed more fully within the service, and recently three inquests have recommended that the Taser be deployed to front line officers beyond the supervisor's rank. When the Taser is deployed in the drive-stun mode, it might leave marks on the skin of the subject. When the probes are fired, the subject is likely to receive minor skin punctures. However, since these injuries are anticipated, they are not included in the classification of injury for the purposes of the annual report. If you'll recall, I indicate we report on the number of injuries, but the actual use of the device usually leaves some marks or minor skin punctures. That doesn't get recorded.

In 2005, the device was used 73 times and in five incidents, unanticipated injury is reported. In three of these events, the injuries were self-inflicted, and in the remaining two, the injuries occurred when the officers attempted to subdue the subject before the Taser was used. So notwithstanding that they were reported associated to the Taser use, it was determined that it wasn't the Taser that caused the injuries.

In 2006, the Taser was used 174 times and there were no unanticipated injuries reported. However, in 2007, the device was used 404 times and one subject was seriously injured when he was struck in the eye with a probe. Finally, after the device has been used by Toronto Police, Toronto Emergency Services must attend and evaluate the subject and only ambulance personnel or medical staff can remove the Taser

probes if they've punctured the skin. This way, each subject receives immediate medical assessment to ensure there are no complications associated with the device's deployment.

This is a capacity that we have in Toronto given the size of the emergency services sector. So we found it quite helpful to have an EMS unit attend or be on hand when the Taser gets used. I know that in Ontario, perhaps in other areas of Canada, it might be more difficult to have that resource readily available, which is why I want to characterize the actual impact the weapon has on the individual so far as being minor. I use that word advisedly, but it's resulted in some marks when drive-stun's been used and a puncture mark like a pin prick when darts have been fired.

So, in conclusion, the record of Taser use by Toronto Police Service shows that officers are using good judgment under difficult circumstances in making appropriate decisions to use the minimum force necessary to resolve often tense and dangerous situations. The service is confident that the Taser has helped avoid injuries to the public and officers, particularly when other force options such as the baton or firearm might have been deployed.

On that point, I'd like to indicate that in Toronto we have tried not to characterize the device as an alternative to lethal force. The device, the Taser, because of how it operates, is limited to just one probe firing at one time and then has to be reloaded. If that fails to incapacitate the individual and the individual was a threat of serious bodily harm, then the risk to the public safety is too great. So it is not designed nor used in Toronto as an alternative to lethal force or the use of our firearms. However, in many circumstances, it might have been characterized that way given the outcome.

The Emergency Task Force in Toronto deploys Tasers but they have a team of at least five

officers who are not only carrying heavy personal armour, they also usually have shields. Then they have a range of force options. So they might in fact decide, in good judgment, to use the Taser as an alternative to lethal force, but they have the backup and the resources behind it.

In encounters where a uniformed officer might have to use lethal force, it's not recommended that the Taser be used. So if a person was -- the subject of the police officer's interest was armed with an edged weapon or a firearm, we would not be recommending the officer resort to a Taser.

However, police officers do make judgment calls, and there have been times when officers have used the Taser instead, and all things worked out. So we're not going to be overly restrictive or critical of an officer who, in good faith, in the performance of their duty, exercises judgment.

Consequently, the service believes that with proper policy, procedures, training and accountability, the Taser is an appropriate police force option that can help improve public safety, and in Ontario, as I said earlier, inquests have recommended the wider deployment. Our chief has requested the board to consider this. However, in Ontario, as I stated earlier, the device has to be approved for distribution by the Ministry and so the first step, before any wider deployment of the Taser could be considered, would be to get Ministry approval. The board and the chief have also understood and embraced that that would probably be the subject of much public discussion before the decision gets made.

I'm happy to take any questions or elaborate further on any aspect I've discussed.