



**Submission to the Ministry of the Solicitor General's
consultation regarding proposed regulations
for special constables**

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Overview

The Ministry of the Solicitor General has requested public and stakeholder input on four proposed regulations under the *Community Safety and Policing Act, 2019* regarding special constables. These regulations address the appointment and functions of special constables, the authorization of special constable employers, the code of conduct for special constables, complaints against special constables, and special constable uniforms.

As peace officers, special constables closely interact with members of the public every day. There are an estimated 3,000 special constables in Ontario, employed by a variety of public sector organizations including police services boards, transit agencies, universities, conservation authorities, and community housing corporations. Although special constables have many of the powers usually associated with police officers, Ontario legislation and regulation have historically provided very little direction and oversight regarding the use of this authority.

The government's four proposed regulations are an important step toward remedying this long-standing deficiency, and I welcome this effort to develop a regulatory framework for special constables. However, my review has identified further gaps that the government should address to ensure accountability and transparency in the oversight of special constables.

Ombudsman jurisdiction

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, my Office 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, I can make recommendations to resolve an issue, improve processes, and strengthen governance and accountability.

Generally, police services and special constables are not jurisdictional to my Office. However, my Office 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. Over the past five years, my Office has received 20 complaints related to special constables.

The Ontario Civilian Police Commission has a public process for reviewing certain complaints about special constables. Many organizations that employ special constables also have their own complaint processes. Where appropriate, my Office refers complaints about special constables to their employer, to the Ontario Civilian Police Commission, or to the relevant police services board.

Background

The need for improved police de-escalation training has been highlighted in numerous reports and inquests. For instance, in 2016, my Office published *A Matter of Life and Death*,¹ an investigative report prompted by the 2013 death of 18-year-old Sammy Yatim, who was fatally shot by police on a Toronto streetcar. The gruesome video of the young man being shot by a police officer gave rise to a broader public conversation about the use of lethal force by peace officers in Ontario.

In this report, my Office reviewed scores of fatal police shootings in Ontario involving persons in crisis and the recommendations made in the aftermath of their deaths. The report highlighted the importance of using de-escalation techniques when dealing with people in crisis and emphasized that the provincial government needs to exercise its legal responsibility to guide police services' responses. Although all 22 of my recommendations were accepted when the report was published, the Ministry has implemented **none** of them. My recommendations provided practical guidance for addressing important matters regarding 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. As I recently expressed in my 2021-2022 Annual Report, I am particularly concerned that the Ministry has decided not to proceed with a specific regulation for de-escalation, as I recommended.²

Although *A Matter of Life and Death* addressed de-escalation by police officers, many of the recommendations are equally applicable to special constables. As peace officers, special constables may be armed with oleo capsicum (OC) spray or foam, batons, and, in some cases, firearms and Tasers. They are frequently

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>>.

² Ombudsman of Ontario, "Annual Report 2021-2022" (August 2022) at p 19, online:

<<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/annual-reports/2021-2022-annual-report>>.

required to interact with people in situations of crisis which may escalate to a use of force. Successful de-escalation of conflict situations by special constables is a matter of public safety and protection of lives.

The proposed regulations

The first regulation³ proposed by the Ministry addresses the appointment and functions of special constables, as well as matters related to the employers of special constables. It sets out how special constables are appointed, who can employ them, and different classifications for this role. Depending on the classification, the proposed regulation grants certain powers, including the use of weaponry. The regulation would generally allow for all types of special constables to carry OC spray/foam and a baton and, in some cases, a firearm and a Taser. The regulation does not establish any requirement that special constables attempt de-escalation techniques before using the weapons listed.

A second proposed regulation⁴ addresses conduct of special constables and, more particularly, compliance with legal obligations, human rights, integrity, interaction with the public, and performance of duties. While the proposed regulation addresses the circumstances where use of force is permissible, it does not require that special constables attempt de-escalation techniques before resorting to force.

A third proposed regulation⁵ addresses complaints about special constables. It provides that such complaints can be made to the employer or the chief of the policing body that appointed the special constable. Those who employ special constables would be required to establish a complaints and investigation process to review these concerns, subject to certain procedural requirements. The regulation would not provide for the public to complain about special constables to an independent oversight body, such as the newly created Law Enforcement Complaints Agency, in most circumstances.⁶

Finally, a fourth proposed regulation⁷ addresses certain requirements for the uniforms of special constables.

³ Matters Respecting the Appointment and Functions of Special Constables and the Authorization of Special Constable Employers (22-SOLGEN021).

⁴ Code of Conduct for Special Constables (22-SOLGEN011).

⁵ Complaints about Special Constables (22-SOLGEN019).

⁶ The proposed regulation would exclude special constables employed by the Niagara Parks Commission. Complaints about special constables of the Commission would follow the process in Part X of the *Community Safety and Policing Act, 2019*.

⁷ Special Constable Uniforms (22-SOLGEN023).

I am encouraged by the Ministry's willingness to develop a consistent regulatory framework that would standardize many aspects of the work of special constables throughout the province. However, I am alarmed that there is no requirement to try de-escalating situations before resorting to force. I am also concerned that the regulations do not designate an independent oversight body to review all complaints about special constables.

Setting a holistic standard on the use of force

I have repeatedly called on the Ministry to develop a regulation specifically requiring that police officers try de-escalation before resorting to more forceful options. Given the nature of the role of special constables, this call to action is equally applicable to their work. I continue to believe that such a regulation is necessary given the lack of standardized training and guidance on how peace officers interact with persons in crisis.

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, I believe that 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 blatant regulatory gap.

Special constables play a vital role in protecting people and preventing crime. There will be times when these duties require special constables to use reasonable force, and the regulation gives them the power to do so when necessary. My concern is not about the ability of special constables to use force, but rather that there is little guidance for how and when they should do so.

The proposed regulations allow special constables to use force and certain weapons, but there is no requirement that force only be used as a last resort, when de-escalation fails. The Ministry has the authority and moral imperative to provide guidance and direction to all peace officers, including special constables, who may deal with people in crisis. It 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 the regulations on special constables, and to set a clear and consistent standard throughout Ontario on the use of de-escalation techniques by special constables. There should be a regulatory requirement to use communication and de-escalation techniques before the use of force, where tactical and public safety considerations permit.

With respect to training for special constables, the *Community Safety and Policing Act, 2019* expressly recognizes the importance of de-escalation. Paragraph 92(1)(f) of the Act provides that the successful completion of training prescribed by the Minister, including techniques to de-escalate situations, is a prerequisite to being appointed special constable. Training special constables on practices, standards, and techniques is key to preventing the inappropriate or premature use of force. Although the Ministry has confirmed that a regulation is being developed to address training requirements under the Act, it has not been released for consultation yet, and it is unclear whether it will address specific de-escalation techniques and training requirements for special constables. I encourage the Ministry to carefully consider and specifically address de-escalation training requirements for special constables in any proposed training regulation.

Proposal 2

The Ministry should prescribe specific training, including techniques to de-escalate situations, under paragraph 92(1)(f) of the *Community Safety and Policing Act, 2019*.

Complaints about special constables

The new regulatory proposals would require all special constable employers to create clear and consistent public complaint processes. I applaud this new requirement, as currently there is great variation between the complaint processes of different employers, and some do not advertise any complaint process at all.

I am concerned, however, that the regulation does not provide any independent oversight mechanism for most special constables. This is a step in the wrong direction. At present, the Ontario Civilian Police Commission can investigate,

inquire into, and report on the conduct or the performance of duties of a special constable. It may do so on its own motion (sometimes after having received a public complaint), at the request of the Solicitor General, the Independent Police Review Director, a municipal council, or a Police Services Board.

Once the *Comprehensive Ontario Police Services Act, 2019* comes into force and the commission is dissolved, there will be no mechanism to independently review most complaints about special constables. The Special Investigations Unit and the newly created Law Enforcement Complaints Agency will only be able to take complaints about special constables of the Niagara Parks Commission, not special constables employed by other organizations.

An independent and impartial oversight mechanism enhances the complaint system for special constables. Although I do not doubt that many complaints can be resolved by special constable employers, an arms-length oversight mechanism is essential to enhance public confidence in the complaints system and to promote accountability of all special constables throughout Ontario.

The Office of the Independent Police Review Director (OIPRD) is an independent civilian oversight agency mandated to receive, manage, and oversee all public complaints about the police in Ontario. When the *Community Safety and Policing Act, 2019* comes into force, the OIPRD will be dissolved and its police oversight role will be moved to the newly created Law Enforcement Complaints Agency (LECA). LECA will be empowered to review complaints from members of the public about, among other things, the conduct of police officers and special constables of the Niagara Parks Commission. This existing oversight mechanism could be expanded to take complaints about other peace officers, including all special constables. In doing so, the Ministry would address the gap created by the dissolution of the Ontario Civilian Police Commission.

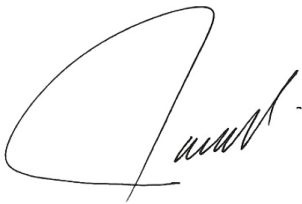
Given the importance of independent oversight, I encourage the Ministry to ensure the public can raise concerns about special constables to an independent and impartial oversight office, such as the OIPRD, soon to be known as the LECA. Special constables are frontline officers with considerable powers and discretion to carry out important public safety duties, and I am concerned that the lack of an independent oversight mechanism may well jeopardize public confidence in the fair and impartial resolution of complaints.

Proposal 3

The Ministry should provide an independent oversight mechanism, such as the Law Enforcement Complaints Agency, for complaints about all special constables. This oversight would enhance accountability of and public confidence in special constables, and would address the gap that will be left by the dissolution of the Ontario Civilian Police Commission.

Conclusion

I commend the Ministry for developing a regulatory framework for special constables. However, I have identified several shortcomings in this submission that I hope will be addressed by the Ministry, and made proposals to assist it in doing so. I also take this opportunity to reiterate my hope that the Ministry will reconsider its lack of progress on its strategy for the use of force and de-escalation more broadly. My staff would be pleased to provide further information and answer questions regarding any of these proposals.



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