
THE THOMAS R. BRAIDWOOD, Q.C.,**COMMISSIONS OF INQUIRY****Submissions of Police Services Division,
Policing and Community Safety Branch****A. Introduction & Overview**

Police Services Division is responsible for superintending policing and law enforcement functions in British Columbia on behalf of the Ministry of Public Safety and Solicitor General.

Police Services Division performs a number of central functions. For the purposes of this Commission's mandate, the relevant responsibilities of Police Services include oversight of policing and administer policing policy in BC; collecting, monitoring, and reporting on provincial crime and police data; and ensuring adequate and effective levels of policing enforcement throughout British Columbia.

In response to recommendations stemming from Justice Wally T. Oppal's 1992 Commission of Inquiry into Policing in British Columbia, the provincial government amended the *Police Act* (R.S.B.C) in July 1998. The reformed *Police Act* strengthened the oversight of policing in British Columbia. The role of the Director of Police Services was established and assigned broad powers to superintend policing in the province, including the authority to inspect and report on the quality and standard of policing and law enforcement services delivery in the province including, but not limited to, inspecting policing and law enforcement operations and procedures, evaluating training programs, evaluating standards of policing and law enforcement, and making recommendations on minimum standards for the selection and training of officers and on the use of force by officers (including training and retraining).

B. Conducted Energy Weapons Use in BC Municipal Police Agencies**(1) History**

British Columbia was the first jurisdiction in Canada to authorize the use Conducted Energy Weapons (CEW) following a pilot project and subsequent evaluation undertaken by the Victoria Police Department. In January 2000, then BC Attorney General, Ujjal Dosanjh, approved the use of CEWs by police.

The RCMP, Greater Vancouver Transit Authority Police Services (GVTAPS), Stl'at'imx and the 11 independent municipal police departments (Abbotsford, Central Saanich, Delta, Nelson, New Westminister, Oak Bay, Port Moody, Saanich, Victoria, Vancouver, and West Vancouver) all utilize CEWs.

The province only has authority over the independent municipal forces and designated forces (such as GVTAPS and Stl'Atl'Imx Tribal Police Services) with respect to standards, policy and regulations around the use of force.

(2) Regulations, Standards and Policies

Police use of force, including CEWs, is managed through a variety of regulations, standards and internal policies.

Use of Force Regulation & Use of Force Model

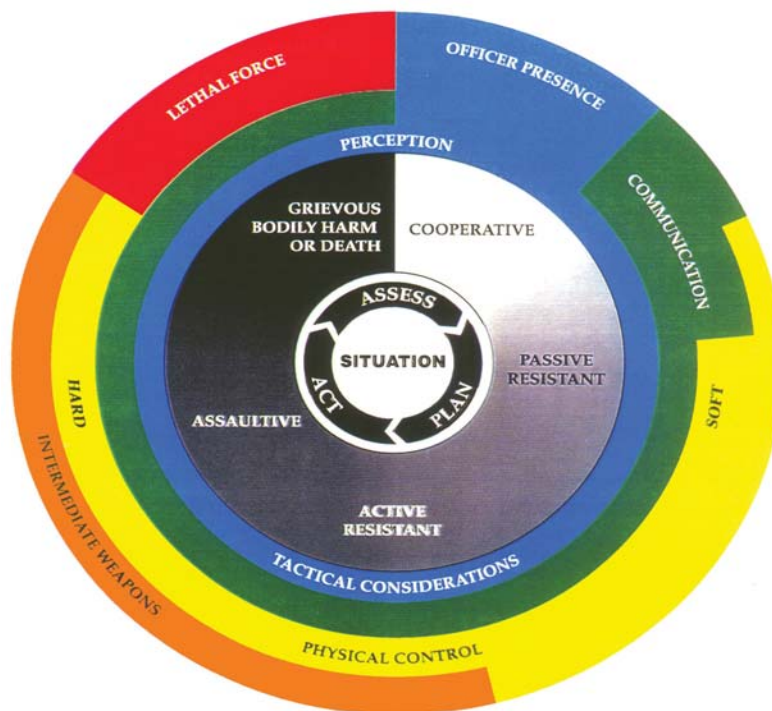
British Columbia's *Use of Force Regulation* contains key sections which apply to the use of CEWs:

- The *Regulation* defines intermediate weapons (CEWs belong to this category) as any weapon that is not a firearm and that when used in its ordinary and intended manner is not likely to cause serious bodily injury or death, as a firearm would.
- The *Regulation* specifies that officers can carry and use an intermediate weapon if: (1) the weapon has been approved by the Director of Police Services Division and a Chief Constable and (2) the officer has completed a training course and been qualified or re-qualified on its use.
- Each police force must adopt a *use of force model* approved by Director of Police Services Division and must have written policy that includes at least the options of presence, communication, physical control, intermediate weapons, and lethal force.
- Re-qualification of intermediate weapon use must occur within a period specified by the police department.
- Officers must also qualify/re-qualify on the use of force model and techniques training (within time periods specified by the police department).
- Each police department must maintain written records of the training and re-qualification courses of each officer.
- Each police department is required to submit to the Director a statistical report on use of force as requested by the Director.

As required by the *Regulation*, the municipal police departments have adopted the National Use of Force Framework (NUFF) that was created by the Canadian Association of Chiefs of Police (CACP) in 2000. This framework is a general model to guide use of force training and conceptualization and is not as specific as agency policy.

See diagram below.

National Use of Force Model



The officer continuously assesses the situation and acts in a reasonable manner to ensure officer and public safety.

Provincial Policing Standards

While the *Use of Force Regulation* defines the weapons and outlines administrative actions (e.g., qualifying, training records), these activities - as defined in agency policy - are framed by the *Provincial Standards for Municipal Police in British Columbia* (hereafter the *Standards*).

The *Standards* were developed in the early 1990s in conjunction with the British Columbia Association of Chiefs of Police (BCACP), and were designed to establish a set of prescribed standards for municipal police in the province.

The *Standards* were developed during a time period when policing operated on the “professional” model wherein the police, like lawyers or doctors, were entrusted to develop their own internal accepted standards of operation. The government’s role was to identify *minimum* acceptable standards for policing.

The *Standards* outline over 400 policing standards in the areas of police role and responsibilities, department management, personnel management, general and specialized operations, and support services. The majority of the *Standards* require that the police address issues through the development of written policy. The manner and degree of detail is left, for the most part, to the departments to determine.

One of the *Standards* (A1) refers specifically to the use of force. It requires that each police department have written policy:

- Recognize that the authority for the use of force is found in the Criminal Code.
- Govern the discharge of warning shots.
- Govern the carrying of firearms, ammunition, and other weapons while off duty.
- Govern the use and control of weapons and ammunition issued by the department.
- Establish the procedures for firearms and weapons inspections, and the replacement of ammunition.
- Require that only officers trained and demonstrating proficiency in the use of department authorized firearms or weapons be allowed to carry and use such firearms or weapons.
- Require each officer to qualify at least annually with any firearm or other weapon that the officer is authorized to use.
- Require that only firearms, ammunition, and other weapons authorized by the Chief Constable be used in the performance of duty.
- Require a written report be submitted whenever an incident occurs.
- Include procedures for reviewing incidents in which an officer applies force by means of a weapon or firearm, lateral neck restraint, or the application of force, by any means, other than routine handcuffing or low levels of restraint and compliance.
- Establish criteria concerning the assignment of an officer whose use of force results in a death or grievous bodily harm.
- Require that only officers trained and demonstrating proficiency in applying the lateral neck restraint are authorized to apply this technique.
- Require each officer authorized to apply the lateral neck restraint, to qualify at least annually in applying this technique.

Departmental Policies

As required by the *Standards*, each police department is currently responsible for the details of their own policies. Those policies identified in the *Standards* must be developed by the department, approved by its Police Board, and subsequently filed with Police Services Division. Policies around CEW use generally form part of a department's overall Use of Force policy (as per *Standard A1*); however, some departments have developed specific CEW policies.

Police Services Division recently conducted a cursory comparison of departmental policies around some fundamental aspects of CEW use. Currently there exists some interdepartmental variation in these areas:

Threshold of use – Some departments state that CEWs can be used “when the officer considers it appropriate in compliance with training.” Other departments allow CEW use at the level of ‘active resistance’ or beyond. Some departments specify considerably more detail regarding when it is appropriate to use CEWs, such as when a subject is a danger to him/herself or others, needs to be immediately controlled, is aggressive or assaultive or poses threat of serious bodily injury or death and lesser force options are not appropriate.

In addition most departmental policies explicitly state that CEWs are not to be used as an alternative to deadly force. Some departments clarify this by stating they can be used if there is an additional officer providing firearm cover and it is reasonable to do so, given the circumstances.

Circumstances when not to use CEWs – Many policies mention that CEWs are not to be used within proximity to flammable materials. Some departments include additional circumstances where CEW use is inappropriate, such as: elevated heights (where a fall could seriously injure), pregnant women, handcuffed subjects, elderly people, and not for pain compliance purposes only.

Medical assistance – Some departments make it mandatory for officers to call for Emergency Health Services or BC Ambulance Service when the CEW has been discharged at a person. Other departments leave this decision to the officers. Almost all departments require that trained medical personnel are required to remove probes that have been lodged in a subject’s skin, but some departments permit officers to remove probes from non-sensitive areas if the officers have been trained to do so.

Accountability mechanisms - All departments require that a written report be submitted when the CEW has been discharged, and that this report be reviewed by a senior officer. Most departments specifically require that a Supervisor be notified as soon as possible, with some requiring that the Supervisor attends the scene. A number of departments specify that the CEW will be seized/handed it for a data download.

Re-certification/training periods – the majority of departments require annual training and re-certification, although some departments specify qualifying only every two or three years (this is less than the *Standards* require, which mandates annual re-certification).

(3) Training of Police Recruits and Police Officers

The 1981 *Police Act Regulation: Rules regarding training, certification and registration of municipal constables appointed under section 26 of the Police Act*, governs the training of municipal constables (other than RCMP recruits). All police officers recruited for the independent municipal police departments receive their recruit training at the British Columbia Justice Institute Police Academy (hereafter the Academy). This training is mandatory for a recruit to be appointed as a police constable in the province.

Until 2006, the Academy provided training to all police recruits on use of the CEWs when it delivered the Operators Course using CEW International's Course Training Standards. At that time, the Academy discontinued the training because the Vancouver Police Department determined that it preferred to conduct its own in-house training. Rather than divide the class into Vancouver and non-Vancouver recruits for this portion of training, the Academy transferred responsibility for all CEW training to the individual independent municipal police departments. Since that time, each police department has conducted its own distinct familiarization, practice and certification sessions specifically on CEWs.

Notwithstanding that the Police Academy does not train recruits on how to operate the CEW, it has an important function in that the Academy trains recruits in overall use of force theory and practice, including use of weapons other than CEWs. At this time, police recruits receive approximately 90 hours of Physical Training and Control Tactics (PTAC) in the course of 21 weeks of Police Recruit Training. The recruits receive technical and tactical training in police use of force application and also receive regular exposure to the National Use of Force Framework. Recruits also take a Legal Studies class where the model is referred to in the process or learning how to articulate use force in the legal context.

(4) Reporting and Record Keeping

In accordance with the *Standards*, all municipal police departmental policies require that a report be submitted when the CEW has been discharged (although the format of that report can vary). In addition, the *Use of Force Regulation* requires that each police department submit to the Director of Police Services Division a statistical report on use of force as requested by the Director. Annual data on shots fired, police pursuits, and deaths in cells have been collected for many years. Since 2000 the data collected concerning "shots fired" has included CEW discharges.

In August 2007, Police Services Division began a project to review the information it collected on use of force by police in BC and on deaths in police cells, in order to improve the data collection process and the quality of information obtained.

Starting with the 2007 calendar year, a new methodology for collecting the data has been developed and new forms requesting the data have been sent regarding the use of firearms, various intermediate weapons and force options (including CEWs), police pursuits, and deaths in custody.

C. Police Services Division Position on CEWs

Police Services Division recognizes that a major challenge facing police organizations involves striking the right balance between officer safety protocols and minimizing the risk to public safety, including the safety of those individuals they are tasked with arresting.

Police Services Division accepts the current general research conclusion that the possibility of CEWs leading to serious injury or death is at a very low likelihood of occurring.

Police Services Division is of the view that CEWs are a valuable less-lethal force option for resolving potentially dangerous, high-risk situations and, as such, does not support a moratorium on its use.

However, Police Services Division shares concerns that there has been 'slippage' in terms of CEWs being used in increasingly lower risk encounters.

Police Services Division, while supporting the use of CEWs by the police, is of the view that an appropriate threshold of use must be established for all policing agencies.

Police Services Division is of the view that concerns regarding CEW use can be appropriately addressed by:

- Enhancing and standardizing both policy and training;
- Implementing sound accountability mechanisms and monitoring processes, both internal and external to the police agencies; and
- Staying abreast of future developments regarding CEW research and policy elsewhere.

D. Police Services Division's Actions to Address CEW Use Concerns

Concerns around CEW use, and the use of force in general, have become increasingly apparent to Police Services Division in the past few years. Prior to, and following, the tragic death of Mr. Dziekanski, Police Services Division has

taken a number of steps toward addressing increasing concerns through the following projects:

Standards Project

Police Services Division is working towards centralizing the development of policing standards and resultant policies. The currently model is decentralized, wherein the province has established *minimum standards* and requires the individual agencies to develop internal policies to meet those standards. The new model envisages a framework in which the province – in consultation with the police and other key stakeholders – would strengthen current legislation, standards and policy in order to:

- Establish a new set of high level policing standards which are sanctioned in a *Police Act* regulation and complemented by a series of related regulations, guidelines and policies;
- Establish a regular schedule of audit and inspections for all independent police forces with priorities that are proactively managed;
- Enhance the governance and development of the process by establishing a standing steering committee and related working groups with stakeholders.

- A multi-year project to develop a centralized, streamlined and consistent approach to standards and policy development has been underway in Police Services Division since the spring of 2007. This new approach is required in order ensure that appropriate policing oversight and accountability mechanisms are in place.

Review of Police Training at the Justice Institute

Police Services Division is currently undertaking a multi-phase review of police training at the Justice Institute Police Academy. This is a formal review of police training, under the authority of s. 40 of the *Police Act* has been underway for over a year.

The overall purpose of the review is to evaluate recruit and advanced police training programs by: reporting on the major issues within the current context of police training; examining governance models and identify strategic directions for police training in future; and, assessing the existing Police Academy curriculum. A significant portion of the curriculum review focus is on use of force. In particular, the review of existing training delivery mechanisms and curriculum will determine whether the current standards are keeping pace with the changing environment of policing.

Use of Force Program Manager

Police Services Division established a new Program Manager position dedicated to use of force issues. The person appointed is a civilian with considerable experience in research and policy concerning police use of force. This position's role is to provide a civilian aspect/overview to use of force issues and policy. Projects initiated include:

- Review of existing CEW policies with view to developing uniform best practice guidelines. Similar work will be done for use of force generally as well as specific topics, such as police pursuits. (On hold pending Inquiry outcome).
- Retrospective review of CEW incidents by police agencies in British Columbia. Objective data is required on the prevalence, context and effectiveness of CEW use in BC. This project will provide data regarding the circumstances and outcomes of CEW use are. (On hold pending Inquiry outcome).
- As directed by the Solicitor General, proposal to establish a steering committee to develop guidelines on policy and practice for CEW use to be made up of key stakeholders (police and civilian). (On hold pending Inquiry outcome).

Use of Force Reporting

As noted above, Police Services Division has initiated a project to improve use of force aggregate data collection methods for the province. For many years Police Services Division collected basic annual use of force data on shots fired (including both lethal and less-lethal firearms, CEW discharges), police pursuits and deaths in cells. New forms to improve the data collection process and the quality of information obtained have been developed and circulated to the police community. The new methodology requires more detailed data on the use of firearms, all intermediate weapons, police pursuits, and deaths in custody.

Provincial Use of Force Coordinator

Police Services Division funded a Provincial Use of Force Coordinator position in 2005. Filled by a sworn police officer, this position is situated at the Justice Institute. The Provincial Use of Force Coordinator is a subject-matter expert in the use of force and has responsibility to: make recommendations on the standardization of all aspects of the use of force including standardized use of force incident-based reporting; conduct research on the use of force to ensure that municipal and provincial police officers have the latest information available on efficient and safe techniques and applications, weapons and letters patent; and Chair the Use of Force Advisory Committee and act as a resource to the Justice Institute of British Columbia, the Pacific Regional Training Center, the

Province of British Columbia, the Municipal Police Departments, the RCMP, the Force Options Training Center and other Provincial agencies.

A key project for the Use of Force Coordinator was the development of an electronic template for uniform Use of Force incident-based reporting for the provincial police records management system, PRIME. The Coordinator is currently working on implementing the template.

In short, Police Services Division is working toward increasing the oversight/monitoring and coordination of use of force issues, evaluating/enhancing policy, evaluating/enhancing training and improving accountability measures. All of these initiatives are aimed at ensuring public safety and improving policing policy, while balancing both police and civilian perspectives.