

Part 5

British Columbia Police Departments' Policies on Conducted Energy Weapon Use

**PART 5: BRITISH COLUMBIA POLICE DEPARTMENTS' POLICIES
ON CONDUCTED ENERGY WEAPON USE**

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A. INTRODUCTION

In this part, I will examine the policies that individual policing bodies have developed that deal specifically with the use of conducted energy weapons. The absence of provincial leadership has resulted in a patchwork quilt, with troubling gaps and inconsistencies.

Before undertaking this examination, I will identify the law enforcement bodies whose policies have been reviewed. There are currently 11 municipal police departments providing policing services in 12 municipalities, as set out in Table 3. In all other areas of the province (accounting for approximately 70 percent of the provincial population), the RCMP acts as the provincial police force.

Table 3: Municipal police departments in British Columbia

Region	Municipality	Population ⁵⁵	Police strength ⁵⁶
Greater Victoria	Victoria (including Esquimalt)	96,066	222
	Saanich	110,737	147
	Central Saanich	16,768	21
	Oak Bay	18,059	24
Lower Mainland	Vancouver	589,352	1,235
	West Vancouver	46,764	80
	Delta	102,945	160
	Port Moody	30,120	45
	New Westminster	57,645	109
	Abbotsford	129,685	199
Kootenays	Nelson	9,923	20

In addition, there are several provincially regulated law enforcement agencies:

- The *South Coast British Columbia Transportation Authority Police Service (Transit Authority Police)* delivers policing services to multiple modes of the transit system: rail (SkyTrain and West Coast Express), bus, and the SeaBus. As the Transit Authority Police is a supplementary police agency, the

⁵⁵ Source: 2006 Federal Census.

⁵⁶ Police Services Branch, Ministry of Public Safety and Solicitor General. See http://www.pssg.gov.bc.ca/police_services/publications/statistics/policeresourcesinbc.pdf (2007).

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relevant municipal police department or RCMP detachment retains primary responsibility for policing in each jurisdiction.

- The provincial *Sheriff Services* is a subdivision of the Court Services Branch of the Ministry of Attorney General. Its responsibilities include transporting prisoners, providing courtroom security, assembling and supervising juries, serving court documents, and carrying out court orders.
- The provincial *Corrections Branch* (Adult Custody Division) is a branch of the Ministry of Public Safety and Solicitor General. It operates correctional centres, which hold inmates who are remanded in custody for trial, sentenced to imprisonment for the commission of offences, or detained by immigration authorities.
- The *Stl'atl'imx Tribal Police Force* and *Kitasoo-Xaixais Public Safety Department* are designated policing units established under s. 4.1 of the *Police Act*, to provide policing on specified reserves in the Lillooet and Klemtu areas, respectively.

B. THE USE OF FORCE CONTINUUM

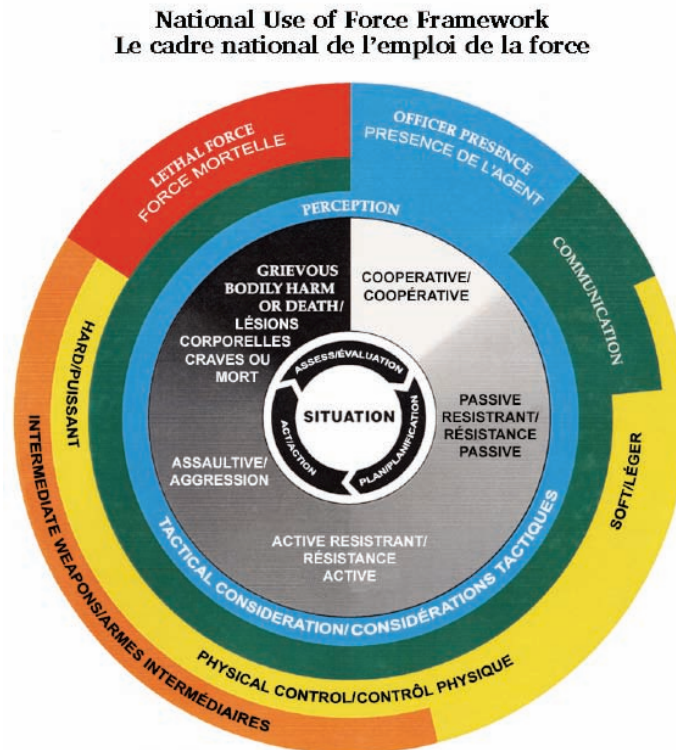
In order to put the discussion of police departments' policies respecting conducted energy weapon use into the proper context, one needs to be familiar with a concept known in policing as the "use-of-force continuum." There are two principal models:

- The National Use of Force Framework (NUFF) was developed in 1999 by 65 use-of-force trainers across Canada and the United States. The Canadian Association of Chiefs of Police endorsed it as a framework from which law enforcement agencies could build their own use-of-force policies or standards;⁵⁷ and
- The Incident Management/Intervention Model (IM/IM) was developed by the RCMP for use by its officers.

⁵⁷ See *The Police Chief* magazine, June 2008, available at http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1397&issue_id=102004.

1. National Use of Force Framework

Diagram 1: National Use of Force Framework⁵⁸



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

L'agent doit continuellement évaluer la situation et agir de manière raisonnable afin d'assurer sa propre sécurité et celle du public.

The National Use of Force Framework (NUFF—see Diagram 1) includes a graphical representation of the various factors a police officer uses to assess a situation and act in a reasonable manner to ensure officer and public safety. It promotes a continuous assessment and evaluation of each situation, and helps officers understand and make use of a variety of force options to respond to potentially violent situations.

58 The Canadian Association of Chiefs of Police, *A National Use of Force Framework* (Ottawa: CACP, 2000), see <http://www.cacp.ca/media/library/download/264/nationaluofframework.pdf>.

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Six principles underlie the national framework:

1. A peace officer's primary responsibility is to preserve and protect life;
2. Public safety is the primary objective of any use of force;
3. Police officer safety is essential to public safety;
4. The National Use of Force Framework does not replace or augment the law; the law speaks for itself;
5. The National Use of Force Framework was constructed in consideration of (federal) statute law and current case law; and
6. The National Use of Force Framework is not intended to dictate policy to any agency.

Those who drafted the framework explain how the graphic should be used:

The assessment process begins in the centre of the graphic with the situation confronting the officer. From there, the assessment process moves outward and addresses the subject's behaviour and the officer's perceptions and tactical considerations. Based on the officer's assessment of the conditions represented by these inner circles, the officer selects from the use-of-force options contained in the framework's outer circle. After the officer chooses a response option the officer must continue to assess, plan, and act to determine whether his or her actions are appropriate and effective. The whole process should be seen as dynamic and constantly evolving until the situation is brought under control⁵⁹ [emphasis added].

In a November 2000 commentary on the National Use of Force Framework,⁶⁰ the Canadian Association of Chiefs of Police discussed the three principal components of the assessment process: the situation, the subject's behaviour, and the officer's perception and tactical considerations.

a. The situation

When an officer responds to an incident, the officer must address at least six different conditions, which I summarize as follows:

- *The environment*—including weather, time of day, location, and physical position;

⁵⁹ *Ibid.*, p. 11.

⁶⁰ *Ibid.*

- *Number of subjects*—meaning that the number of officers versus the number of subjects will affect the officer's assessment of the situation;
- *Perception of subject's abilities*—including intoxication by alcohol or drugs; subject's size, strength, and emotional state; and proximity to weapons;
- *Prior knowledge of subject*—including criminal history and reputation;
- *Time and distance*—including pressing threat to public safety, availability of cover, imminent arrival of backup, and ability to increase the distance; and
- *Potential attack signs*—meaning a subject's physical behaviours that may give clues as to the subject's intentions (*e.g.*, ignoring the officer; aggressive verbalization; refusing to comply with a lawful request; invasion of personal space; and hiding).

b. The subject's behaviour

The framework divides subject behaviours into five categories, and gives examples of the types of behaviour that fall within each category, which I quote:

- *Cooperative*—the subject responds appropriately to the officer's presence, direction, and control.
- *Resistant (passive)*—the subject refuses, with little or no physical action, to cooperate with the officer's lawful direction. This can assume the form of a verbal refusal or consciously contrived physical activity.
- *Resistant (active)*—the subject uses non-assaultive physical action to resist, or while resisting an officer's lawful direction. Examples would include pulling away to prevent or escape control, or overt movements such as walking toward, or away from an officer. Running away is another example of active resistance.
- *Assaultive*—the subject attempts to apply, or applies force to any person; attempts or threatens by an act or gesture to apply force to another person, if he/she has, or causes that other person to believe upon reasonable grounds that he/she has, present ability to effect his/her purpose. Examples include kicking and punching, but may also include aggressive body language that signals the intent to assault.
- *Grievous bodily harm or death*—the subject exhibits actions that the officer reasonably believes are intended to, or likely to, cause grievous bodily harm or death to any person. Examples include assaults with a knife, stick, or firearm, or actions that would result in serious injury to an officer or member of the public.

c. The officer's perceptions and tactical considerations

These can be summarized as follows:

- **Perceptions**—how an officer sees or perceives a situation is, in part, a function of the personal characteristics he or she brings to the situation. These personal characteristics affect the officer's beliefs concerning his or her ability to deal with the situation. They include strength, training, fears, gender, fatigue, injuries, cultural background, and sight/vision.
- **Tactical considerations**—these include the option of disengaging, officer appearance, uniform and equipment, number of officers, availability of backup or cover, and availability of special units and equipment.

Based on the officer's assessment of the situation, the officer must develop a plan that involves selecting an appropriate response. The dynamic nature of the situation requires constant assessment, which means that the force options selected may change at any point:

- **Officer presence**—the simple presence of an officer, or visible signs of authority such as a uniform or marked police car may change a subject's behaviour.
- **Communication**—an officer may use verbal and non-verbal communication to control and/or resolve the situation.
- **Physical control**—this means any physical technique, not involving the use of a weapon, used to control a subject. *Soft* techniques include restraining techniques, joint locks and non-resistant handcuffing. *Hard* techniques include empty hand strikes such as punches and kicks.
- **Intermediate weapons**—these are less lethal weapons (those whose use is not intended to cause serious injury or death), which include impact weapons and aerosols.⁶¹
- **Lethal force**—this involves the use of any weapons or techniques that are intended to, or are reasonably likely to, cause grievous bodily harm or death.

Although force options are arrayed along a continuum of severity, the officer is not required to attempt all lower level force options before applying a higher level of force. Choice of force turns on an officer's overall assessment of the demands of the

⁶¹ Although the framework does not refer specifically to conducted energy weapons (presumably because they did not come into use until after the framework was developed), it is generally accepted that conducted energy weapons are another example of intermediate weapons.

situation. For this reason, the National Use of Force Framework is represented visually in the form of a wheel, to emphasize the non-linear nature of this assessment.

Four British Columbia law enforcement agencies explicitly reference the National Use of Force Framework as governing the response of their officers.⁶²

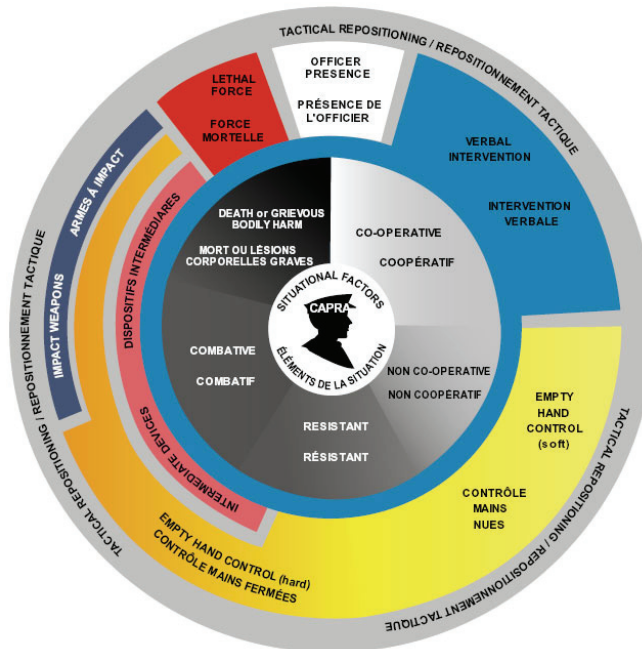
2. The RCMP's Incident Management/Intervention Model

The RCMP has developed a similar use-of-force model known as the Incident Management/Intervention Model (IM/IM), with a similar graphical depiction (see Diagram 2).

a. The former model

When this Commission began its work, the IM/IM was as follows:

Diagram 2: Incident Management/Intervention Model⁶³



62 Central Saanich, Abbotsford, Nelson, and the Transit Authority Police. However, all provincially regulated law enforcement agencies have use-of-force models that follow a roughly similar organizational structure.

63 See <http://www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/imim-migi-eng.htm>. The graphic model illustrated here has been revised.

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According to the RCMP,⁶⁴ seven principles apply in determining whether and how to intervene in a policing situation:

1. The primary objective of any intervention is public safety.
2. Police officer safety is essential to public safety.
3. The intervention model must always be applied in the context of a careful assessment of risk.
4. Risk assessment must take into account the likelihood and extent of life loss, injury, and damage to property.
5. Risk assessment is a continuous process and risk management must evolve as situations change.
6. The best strategy is to utilize the least amount of intervention to manage the risk.
7. The best intervention causes the least amount of harm or damage.

In the inner (grey) portion of the graphic, five potential levels of resistance of suspects were set out, and the Incident Management/Intervention Model provided informative descriptions of expected behaviours of individuals displaying each of these levels.

Comparing these descriptions to the National Use of Force Framework satisfies me that they are substantively the same. The Incident Management/Intervention Model categories of resistance of individuals stated:

- **Cooperative**—there is no resistance. The person responds positively to verbal requests, commands, or activation of a police vehicle's emergency equipment. The person willingly complies.
- **Non-cooperative**—there is little or no physical resistance. The person does not comply with the officer's request. This can be done through verbal defiance with little or no physical response or failing to pull their vehicle over and stop when an officer activates the police vehicle's emergency equipment. This may include refusal to leave the scene, failure to follow directions, taunting officers, and advising others to disregard officer's lawful requests.
- **Resistant**—the person demonstrates resistance to control by the police officer through behaviours such as pulling away, pushing away, or running away. This can include a situation where a police officer activates a police

64 The revised Incident Management/Intervention Model now includes six principles. See footnote 63.

vehicle's emergency equipment and the suspect fails to stop and attempts to evade apprehension by driving evasively.

- *Combative*—the person attempts or threatens to apply force to anyone (*e.g.*, punching; kicking; clenching fists with intent to hurt or resist; threats of an assault). In the case of a person operating a vehicle, they attempt to collide with the police vehicle, another vehicle, or a pedestrian.
- *Person shows the potential to cause grievous bodily harm or death*—the person acts in a way which would lead the police officer to believe could result in grievous bodily harm or death to the public or the police (*e.g.*, knife attack; baseball bat; use of firearm. In the case of a person operating a vehicle, they collide with the police, police vehicle, another vehicle, or a pedestrian).

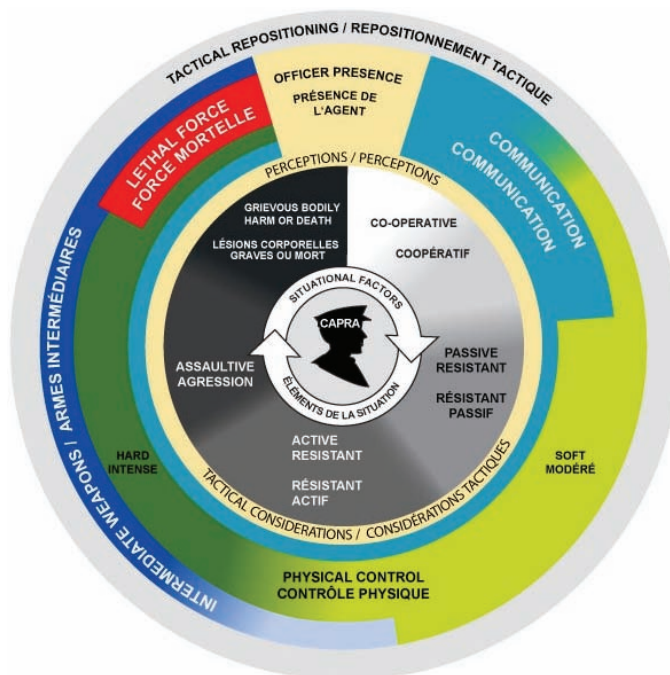
With respect to the force options available to officers, there was one significant difference between the National Use of Force Framework and the RCMP's former Incident Management/Intervention Model. While both models authorized the use of "intermediate weapons/devices" (including conducted energy weapons) when the subject's behaviour reached the active resistant (National Use of Force Framework) or resistant (RCMP) level, the RCMP's Incident Management/Intervention Model included a higher level "impact weapons" category between the 8:30 and 11:00 o'clock positions, and authorized the use of extendable batons and extended impact weapons (such as a sock round) only when this level of subject behaviour was reached. In other words, these types of weapons could be used only when the subject was combative, whereas conducted energy weapons could be used in the case of resistant behaviour.

b. The revised model

According to an operational manual bulletin dated December 14, 2007, the RCMP advised its members that, effective immediately, a conducted energy weapon could only be deployed on persons "who are displaying **Active Resistant Behaviour** and higher categories of behaviour" (para. 1.1). The types of subject behaviours included in that term are comparable to the "Resistant" behaviours described in the former model. During the RCMP's oral presentations at our public forums, I was referred to a revised graphic depiction of the IM/IM (see Diagram 3), which had recently been introduced.

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Diagram 3: Revised Incident Management/Intervention Model⁶⁵



The new wheel adopts the same terminology as the National Use of Force Framework wheel for the second, third, and fourth categories of suspect behaviour—passive resistant, active resistant, and assaultive. Comparing the types of subject behaviours that the two models describe for these categories, I am satisfied that the two models are substantively the same.

The new Incident Management/Intervention Model wheel also eliminates the reference to “impact weapons.” While this change does not affect conducted energy weapons, it would appear that the threshold for use of extendable batons and extended impact weapons has been lowered to instances of active resistant behaviour.

⁶⁵ See Assistant Commissioner Macintyre’s PowerPoint presentation to the Commission’s public forum, May 22, 2008, slide 7. Although the RCMP’s website continued to show the former graphic depiction (Diagram 2) as recently as May 6, 2009, I was advised that it would be updated imminently.

c. New policy for conducted energy weapons

On February 12, 2009, RCMP Commissioner William Elliott made a presentation to the House of Commons Standing Committee on Public Safety and National Security, in which he stated:

On June 18, 2008, all members of the RCMP were instructed that the CEW “must only be used where it is necessary to do so in circumstances of threats to officer or public safety.” This requirement has subsequently been written into our formal policy.⁶⁶

The new policy, found in the RCMP’s Operational Manual—Conducted Energy Weapon,⁶⁷ can best be understood when compared to the previous policy, both of which are set out below:

Previous policy

3.1.1. The CEW must be used in accordance with CEW training and the principles of the Incident Management/Intervention Model (IM/IM).

New policy

3.1.1. The CEW must only be used in accordance with CEW training, the principles of the Incident Management/Intervention Model (IM/IM) and in response to a threat to officer or public safety as determined by a member’s assessment of the totality of the circumstances being encountered.

NOTE: Member’s actions must be reasonable and the force used must be necessary in the circumstances.

Under the previous policy, conducted energy weapon usage had to comply with training and the Incident Management/Intervention Model use-of-force continuum. As discussed earlier, they authorized use in the face of a subject’s active resistance. The new policy continues to make both those factors applicable (which must mean that active resistance continues to be the subject behaviour threshold), but now adds a new requirement, “a threat to officer or public safety.” I interpret the new policy to mean that an RCMP officer may now deploy a conducted energy weapon against a

66 See <http://www.RCMP-grc.gc.ca/news-nouvelles/2009/2009-02-12-commiss-secu-eng.htm>.

67 See <http://www.RCMP-grc.gc.ca:80/ccaps-spcca/cew-ai/operations-17-7-eng.htm>.

subject who is exhibiting active resistance, but only if the subject's behaviour poses a threat to officer or public safety.

With this understanding of the general use-of-force continuum, I turn now to an examination of the policies developed by the various law enforcement agencies in British Columbia respecting use of conducted energy weapons.

C. POLICIES ON USE OF CONDUCTED ENERGY WEAPONS

In the discussion that follows, I will frequently refer to the number of law enforcement agencies that have policies on specific issues, but will usually not identify them by name. I take this approach because my objective is not to conduct an audit of each agency's policies, but rather to identify more generally the issues that are dealt with (and the ones that are not), and the variations among law enforcement agencies on substantive policy issues.

For readers who wish a more detailed breakdown of each policing agency's policies, please refer to Appendix E.

1. Designation of conducted energy weapons

It is generally accepted that a conducted energy weapon is an intermediate weapon for the purposes of the National Use of Force Framework, although less than half the agencies explicitly state this policy.

Most agencies state that officers may use only those models of conducted energy weapons that are approved by the agency. Several agencies refer specifically to the TASER M26 and X26 models.

As I discussed in Part 4, the *Use of Force Regulation* is the principal authority in British Columbia respecting intermediate weapons. It deals with the approval of weapons as intermediate weapons, and with training, qualification, and re-qualification.

However, only two agencies refer specifically to the Regulation.

2. Training in the use of conducted energy weapons

Most agencies have provisions stating that proper training is required before an officer is allowed to use a conducted energy weapon. However, the policies do not specify the length or content of that training, except that one agency requires training on excited delirium and resuscitation of an unconscious subject.

Most agencies require that officers who have been qualified in the use of a conducted energy weapon be periodically re-certified. However, there is no consistency in the frequency of re-certification, which ranges between one and two years.

Only one policy requires that all conducted energy weapon training is to be conducted by an instructor certified on the specific device used.

Although some agencies require that a supervisor be notified when a conducted energy weapon is deployed, there is some ambiguity about whether notification must be before or after deployment. No agency specifies whether supervisors must be certified to use such weapons.

3. Wearing of a conducted energy weapon

Four agencies require that a conducted energy weapon be carried in a holster on the side opposite the firearm, while one agency requires that a conducted energy weapon be carried in the locked trunk of the police cruiser, when not carried by the officer.

Most agencies specify that an officer may carry a conducted energy weapon only when on duty.

Very few policies specify testing of a conducted energy weapon at the beginning of an officer's shift, such as conducting a spark test and inspecting the weapon to ensure that it is operating properly.

4. When a conducted energy weapon should not be used

In the 2005 Canadian Police Research Centre report, entitled *Review of Conducted Energy Devices*, the authors noted the variety and complexity of circumstances that may confront an officer, and concluded (at page 27):

It would be unwise and counter-productive for any police service or government body to develop policies and procedures that explicitly specify in what kinds of circumstances a CED [conducted energy device] may or may not be used.

Notwithstanding this caution, police agencies have taken varying approaches to “preclusions” (*i.e.*, those circumstances in which conducted energy weapons should not be used):

- Three agencies preclude use in a punitive, criminal, or coercive manner;
- One agency precludes use against children,⁶⁸ elderly persons, apparently pregnant women, physically disabled persons, and handcuffed prisoners (unless the prisoner is assaultive and cannot be otherwise controlled);
- Three agencies preclude use against a passively resistant subject;
- Several agencies preclude use when the subject is near flammable, volatile, or explosive materials;
- Several agencies preclude use when there is a potential for a serious fall; and
- Four agencies are silent as to circumstances in which deployment is prohibited.

5. Pre-deployment considerations

Two agencies require that, if reasonable, the officer notify a supervisor before using a conducted energy weapon, although they are ambiguous about whether the officer must also get the supervisor’s authorization.

Seven agencies require that a cover officer be present for officer safety before a conducted energy weapon is deployed.

68 U.N. Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, UNOHCHROR, 49th Sess., UN Doc. CRC/C/GBR/CO/4, 1 at 7. See <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>.

Ten agencies suggest that the weapon first be shown to the subject (referred to as “force presence”), with the goal of obtaining compliance without actually using the weapon.

Several agencies require that a verbal warning (*e.g.*, “Police, stop or you will be hit with 50,000 volts of electricity”) be issued before the weapon is actually used (if tactically appropriate), and three agencies specify the content of a verbal warning. However, the BC Association of Chiefs of Police has recently endorsed the provincial use of force coordinator’s recommendation that this warning not be required.

Four agencies require that the officer with the conducted energy weapon give a verbal warning to other officers at the scene that the weapon is about to be discharged.

No agencies require that an ambulance with a defibrillator be summoned, either before or after a conducted energy weapon is deployed.

6. Deployment considerations

There are several aspects to deployment that should be considered. I will begin with the subject’s behaviour, and then consider the various types of deployment (*i.e.*, push-stun mode and probe mode), and the requirement to record the event on video.

a. Categories of subject behaviour

According to the RCMP’s current Incident Management/Intervention Model, an officer is authorized to use an intermediate weapon (which includes a conducted energy weapon) when a subject is exhibiting “active resistant” behaviour. However, its February 2009 policy amendment appears to have added an additional requirement that the subject’s behaviour poses “a threat to officer or public safety” (an exceptionally subjective standard, which I will discuss in more detail in Part 10).

In the case of municipal police forces, the National Use of Force Framework authorizes the use of intermediate weapons at that same level of “active resistant” subject behaviour but, as I noted earlier, this framework is not binding on police forces. Indeed, the framework states that it “is not intended to dictate policy to any agency.”

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Thus, in the absence of any overarching provincial policy, it has been left to each municipal police department to decide the level of subject behaviour that justifies use of a conducted energy weapon.

Six agencies set the threshold at active resistance but, even within these six, there is some variation in the types of behaviour that constitute active resistance:

- One policy speaks of resisting an officer's lawful efforts to take the person into custody without attacking the officer.
- The transit police service recently increased its threshold from "non-compliant" to "active resistant" which, under both use-of-force models, includes pulling away or running away. However, the new policy specifically states that fleeing for non-payment of a transit fare does not justify use of a conducted energy weapon.

Other agencies do not refer specifically to an "active resistant" threshold, opting instead to use their own unique terminology for what threshold of subject behaviour is required, such as the following:

- Two agencies refer to a "combative or non-compliant individual who poses a risk of bodily harm to the public or the police."
- Two other agencies refer to subjects who "need to be immediately controlled," or subjects whom a member believes "will be actively aggressive/assaultive toward police or others."
- Five agencies also specify higher risk behaviour that warrants conducted energy weapon use—"more dangerous or assaultive behaviour that threatens the safety of the subject, the public or officers."
- One policy states that a conducted energy weapon may be used "by an officer who has reasonable and probable grounds to believe that a dangerous or violent subject, who is a danger to himself or others, requires immediate control."
- One policy requires that three conditions be met:
 - The subject is a danger to himself, herself, or others, or will be resistant towards police officers;
 - The subject needs to be immediately controlled; and
 - Lesser force options are ineffective or inappropriate in the circumstances.

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- One policy states very generally that the department “supports the use of intermediate weapons by members who are qualified and/or certified to use them when lower levels of force ... have been ineffective and/or inappropriate, and the use of higher levels of force ... may not be justified and/or appropriate.”
- One policy begins with the general instruction that officers shall consider using a conducted energy weapon as a use-of-force option “in situations involving violent individual(s) who pose a threat to the officer(s) and/or to the public,” but then gives a more specific instruction:

CEWs may only be used on those subjects whom an officer has reasonable grounds to believe are a danger to themselves or others and need to be immediately controlled. CEWs may also be used if the officer reasonably believes the subject will be actively resistant/assaultive toward police or others, or poses a threat to the officer or others, of serious bodily injury or death.
- One policy states that a conducted energy weapon “shall only be used on subjects where it is necessary to effect the apprehension of a person whom the member reasonably believes is dangerous to themselves or others, and the subject needs to be controlled and the member is satisfied that a lesser means or force would not gain control over the subject in a safe manner.”
- One policy states that conducted energy weapon technology “is an effective option for incapacitating individuals demonstrating aggressive/assaultive behaviour, under the influence of drugs or alcohol, injurious to themselves or being destructive.” The weapon may be deployed in tactical operations, in a cell entry and extraction, in response to an escape or escape attempt, or for external prowling in a secure outside yard. It may also be used, as approved by the warden, “when intervention is required to prevent self-harm, compel compliance, terminate violent and destructive behaviour, protect safety of staff and inmates, and when less use of force is inappropriate or unreasonable.”⁶⁹

When discussing conducted energy weapons, some policies also refer to the highest level of subject behaviour (grievous bodily harm or death), when use of lethal force is authorized. They do not suggest that a conducted energy weapon can be used only when this threshold has been reached, but focus instead on whether it is appropriate for an officer to use a conducted energy weapon in such circumstances:

⁶⁹ As will become clear in Part 6 (Training), the policies described in this part do not seem to have been carried through into training materials—the latter are often inconsistent with the agency’s policies.

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- Six agencies state that at no time shall a conducted energy weapon be a replacement for a firearm in a deadly force encounter.
- Three agencies state that conducted energy weapons are not an alternative to lethal force, but rather can be used in conjunction with lethal force where reasonable and appropriate to do so.

At the Commission's public forum, the BC Association of Chiefs of Police expressed the view that a conducted energy weapon is not an appropriate force option when an officer is attempting to stop a violent subject who is actively causing, or anticipated to cause, grievous bodily harm or death. However, it may be appropriate to use conducted energy weapons in high-risk scenarios, but only where there is time, distance, cover (lethal overwatch), and an absence of imminent jeopardy.⁷⁰

Only a few policies comment on whether it is appropriate to use a conducted energy weapon to prevent a subject from committing suicide or other acts of self-harm.

Several agencies address the issue of the subject's medical condition. Four agencies identify "excited delirium" as a relevant medical condition. Until recently the RCMP policy stated that individuals experiencing excited delirium require medical treatment, which first requires that they be restrained. It added that in considering intervention options for excited delirium cases, the use of a conducted energy weapon in a probe-mode deployment may be the most effective response to establish control.

That policy has now been replaced with the following:

Acutely agitated or delirious persons may be at a high risk of death. If an individual is in an acutely agitated or delirious state, and whenever possible when responding to reports of violent individuals, request the assistance of emergency medical services. If possible bring medical assistance to the scene.

Another agency's policy states that the ambulance service should be called as soon as possible in the case of excited delirium or psychosis, and consideration must be given to containing the individual but delaying intervention until the ambulance service is on the scene.

⁷⁰ Lethal overwatch refers to the practice in which one officer deploys a conducted energy weapon at the subject while another officer is pointing his or her firearm at the subject.

b. Types of deployment

There are several ways in which a conducted energy weapon may be deployed. The subject may be warned that it may be used, it may be drawn from the holster and pointed at the subject, or it may be pointed with a spark test and/or with targeting the laser light on the subject's body ("force presence"). If the cartridge is not attached, it may be pressed against the subject's skin, and the electrodes in the nose of the weapon send an electrical current into the subject's body ("push-stun mode"). With the cartridge attached, the officer may deploy the two barbed darts, which imbed in the subject's clothing or skin ("probe mode"). Finally, after the weapon has been used in probe mode, the officer may use it in push-stun mode, because of the two electrodes in the leading edge of the spent cartridge.

Several agencies refer to "force presence" as an option available to an officer.

Two agencies state that in the face of active resistance, the officer may only use the conducted energy weapon in push-stun mode. However, when an officer is confronted, or reasonably believes that they will be confronted, by a subject who is offering assaultive resistance, or poses a threat of serious bodily injury or death to themselves, the police, or to others, an officer may use the CEW in either the push-stun mode or probe mode.

When used in push-stun mode, a conducted energy weapon will transmit an electrical current for an initial cycle of five seconds, which can be repeated by depressing the trigger again after completion of the previous cycle. Four agencies state that continuous applications for periods exceeding 15 to 20 seconds may pose an increased risk to the subject, while three agencies state that a second discharge should last only five seconds. Only one agency acknowledges that continuous discharge may be hazardous to the subject, and cautions that unless situational factors require it, continuous discharge should not be applied. One agency specifies that push-stun mode may be used in a second discharge.

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When used in probe mode, the initial electrical current of five seconds can be repeated any number of times by repeatedly pulling the trigger after completion of the previous cycle. Five agencies require a situational reassessment after the failure of a first (or second) discharge. Seven agencies state that a second discharge may be appropriate if the first discharge does not control the subject. No agency specifies a maximum number of discharges. One agency states that if the subject has not been controlled after two discharges, the officer should consider that the weapon is ineffective, and consider another appropriate force option to gain control.

Only one agency acknowledges that multiple discharges may be hazardous to the subject, and cautions that unless situational factors require it, multiple discharges should not be applied.

One agency recommends that the probes be aimed at large muscle groups, the pelvic girdle, and nerve endings. Two agencies mandate that the laser sight not be centred higher than the subject's mid-chest. Three agencies prohibit aiming probes at sensitive body parts such as the head, neck, face, or genitalia.

Four agencies recommend that a subject be restrained while the conducted energy weapon is activated.

c. Use of the weapon-mounted camera to record discharge

The TASER X26 model is available with an optional video and audio recorder. Only one agency (the provincial Corrections Branch) requires that a video record be made of the deployment of the conducted energy weapon. However, rather than relying on the weapon's built-in video camera, the branch requires that every deployment be videotaped on a hand-held video recorder, and it also relies on wall-mounted closed-circuit video cameras.

7. Post-deployment considerations

Ten agencies require that a supervisor be notified to attend at the scene, for various purposes, after a conducted energy weapon has been deployed. For example, one

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agency specifies that the supervisor's duties include ensuring that the subject receives proper medical care, photographing the scene and any injuries, and confirming a data download to the training officer.

Nine agencies require that the subject be handcuffed after use of a conducted energy weapon. Eleven agencies require that the officer advise the subject that a conducted energy weapon has been used on them, and that the effects are temporary. Five agencies require photos or video documentation of a subject's injuries attributable to a conducted energy weapon.

With respect to medical assistance, one agency requires that the subject not be left in the prone position, while two others require that the subject be placed in the recovery position.⁷¹ Five agencies mandate that officers must continuously monitor the subject's medical condition after use of a conducted energy weapon.

Six agencies require that an ambulance be called after every deployment, regardless of the nature of injuries. Four agencies require that an ambulance be called only if the officer believes it is necessary. One agency requires that an ambulance be called only if the subject requests one. Four policies require that the officer advise paramedics that a conducted energy weapon was used on the subject.

One agency requires medical treatment when a probe penetrates an eye, genital, or breast. Two agencies require medical intervention when the subject exhibits prolonged paralysis, loss of consciousness, seizure, or any other indications of medical concern. One agency requires medical intervention when a subject is injured due to a post-discharge fall.

Ten agencies require medical assistance for barb removal, but:

- Six agencies allow an officer to remove a probe from clothing;
- Three agencies allow an officer trained in first aid or probe removal to remove a probe; and

⁷¹ In its February 2009 policy amendments, the RCMP deleted the direction that the subject should be removed from the prone position as soon as possible after control had been established.

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- One agency requires that, if an officer removes a probe, it be done in the manner that least interferes with the subject's privacy and dignity.

Two agencies mandate that paramedics decide whether a subject should be transported to hospital. Two agencies specify how the subject will be transported, and the circumstances in which an officer should accompany the subject in the ambulance.

Eight agencies require that the incident scene be preserved as a major crime scene if the subject has been injured, and one of these agencies requires that a forensic identification squad attend the scene.

Seven agencies require that relevant paraphernalia be seized if the subject has been injured, and three agencies require that the conducted energy weapon and spent cartridge be preserved as an exhibit.

8. Reporting on conducted energy weapon use

All agencies require that a use-of-force or analogous written report be completed after a conducted energy weapon has been deployed, but:

- The format of the report varies; and
- Only six specify that "deployment" includes force presence as well as discharge.

Three agencies specify the narrative content of use-of-force reports, requiring such elements as reasons for contact, environmental conditions, and subject behaviour. Six agencies require that the data be downloaded from the weapon and attached to the use-of-force report.

Almost all agencies require that a completed use-of-force report be submitted to a supervisor, but they are not consistent on what the supervisor does with the reports. Five agencies require that the "Subject Behaviour-Officer Response" template report in PRIME be completed.⁷²

⁷² PRIME-BC is the Police Records Information Management Environment, an electronic records management system that links all police department information across the province.

Only one municipal police force requires that the firearms officer maintain a software program detailing all operational deployments of conducted energy weapons. During the Commission's public forums, the RCMP advised me that it is developing a national reporting database.

Six agencies specify the circumstances warranting a review of general use-of-force reports. Seven agencies specify the purpose of a review, when a review of an incident does occur (*e.g.*, adherence to departmental use-of-force policy, evaluation of that policy, evaluation of training protocols, etc.).

9. Administration

Six agencies require that a record of all conducted energy weapon assignments to officers be maintained, to account for all weapons. Eight agencies require that, when a weapon is assigned to an officer, the officer test the operation of the weapon using the spark test. One agency issues conducted energy weapon inspection protocols when weapons are assigned to officers, requiring them to examine the cartridge for cracks or damage, and to inspect the holster regularly.

Most agencies require that a conducted energy weapon be stored in a secure room or equipment office.

Only two agencies contain very specific protocols on conducted energy weapon maintenance, especially battery and component replacement. The timing of maintenance inspection, if required, varies among agencies. Only two agencies require inspection after a conducted energy weapon has been discharged. One agency requires that defective weapons be brought to the attention of a supervisor.

Only one agency requires data downloading annually, and specifies the officer responsible for this task. Six agencies require that data be downloaded from a conducted energy weapon after it has been discharged, and that the data be attached to the use-of-force report. Only one agency requires a data download from a malfunctioning weapon.

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Only one agency (the RCMP) requires independent testing of an ineffective or malfunctioning conducted energy weapon, or after an incident involving injury requiring medical treatment or death proximal to use of the weapon. No other agencies have policies respecting weapon calibration or testing of output, although in late 2008, the Minister of Public Safety and Solicitor General announced that municipal police departments had agreed to research and establish a standard for regular calibration of all conducted energy weapons used in the province, and that the RCMP had also been asked to comply.

With respect to voluntary exposure to a conducted energy weapon's electrical current, the RCMP has a policy that voluntary exposure is limited to RCMP candidates participating in weapon training; the public is completely precluded from voluntary exposure. The Corrections Branch's policy prohibits voluntary exposure during training.

D. CONCLUSIONS

From this review, I have reached several conclusions.

First, there is a troubling lack of consistency in the provincial law enforcement agencies' policies respecting conducted energy weapon use. This has occurred, in my view, because of a lack of leadership at the provincial level in developing province-wide standards for all aspects of conducted energy weapon use, with the result that each agency has had to develop its own policy.

This inconsistency is most acute in each agency's articulation of when conducted energy weapon use is authorized. While "active resistance" would appear to be the industry standard, the wide variation in language used appears to set somewhat different thresholds.

As I stated in Part 4 of this Report, it is in my view the responsibility of the provincial government to set policy for such important issues as conducted energy weapon use. I am satisfied that ss. 40 and 74 of the *Police Act* grant adequate authority for the

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province to set province-wide standards on this issue. While interested parties, including the policing community, have a legitimate role to play in the development of such policy, the ultimate responsibility rests with civilian authority.

Second, the manner in which the current policies are drafted creates several problems:

- They are incomplete. The policies of all law enforcement agencies, when viewed collectively, identify virtually all the issues that should be covered in policy, but no one agency's policy comes close to doing so.
- They fail to differentiate between what matters should be addressed in policy, and what matters should be assigned to training. For example, it is inappropriate for a policy to leave it up to trainers to determine the circumstances in which a conducted energy weapon may be used, but policies need not dwell on detailed procedures such as what steps an officer should carry out at the beginning of each shift.
- There are many instances of poor drafting. While it is not my intent to criticize those who drafted these policies, it is not surprising that these policies are uneven, inconsistent, and incomplete when each law enforcement agency has been left to fend for itself. For example, several policies preclude use of conducted energy weapons against elderly people or apparently pregnant women, without specifying what to do if such a person has a weapon.

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