Part 8

Recent Reports on Conducted Energy Weapon Use

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PART 8: RECENT REPORTS ON CONDUCTED ENERGY WEAPON USE

A. RECENT REPORTS ON CONDUCTED ENERGY WEAPON USE

In the 10 years since conducted energy weapons were first introduced into Canadian policing, much has been written about how they work, their effectiveness, the medical risks, and the policies that should prescribe their deployment.

In this part I will summarize, chronologically, the most significant Canadian and international reports.

1. *TASER Technology Research Paper*—Canadian Police Research Centre, September 2000

In December 1998, the Victoria Police Department commenced a six-month field study of a Tasertron TASER conducted energy weapon. During the test period it was deployed 14 times: nine times in probe mode (causing incapacitation) and five times through the threat of use or using the laser sights on the subject. In response to numerous requests for information from other law enforcement agencies about the use of conducted energy weapons, Sgt. Darren Laur prepared this Report, which was published by the Canadian Police Research Centre.

The majority of the report compared and contrasted the various products of two conducted energy weapon manufacturers, Tasertron and TASER International. The information relied upon in this Report was gathered from research on two manufacturers, from law enforcement agencies, and from conducted energy weapon technology experts from the United States.

The author began the section on "Medical Research" by stating: "To say that TASER pulse wave technology has been over-studied by the medical community would be an understatement."[121] After acknowledging that heart attacks, long-term seizure activity, and the potential to cause pacemakers to fail had been hypothesized, the author concluded:

121 *Ibid.*, see footnote 98, p. 6.

> To date, all medical research involving the TASER has found that, when used on a normally healthy adult, the electrical current, supplied by a TASER with 50,000 volts and 5 watts, is extremely safe to use, and will not affect cardiac muscle, will not affect pacemakers, or cause long-term seizures.[122]

The report also referenced Dr. Harrison (a research professor in the Department of Electronics at Carleton University, Ottawa) who, after reviewing all pertinent technical information, recommended the weapon as an alternative to "more lethal ways of controlling violent subjects."[123] To the same effect, Dr. Hendry (co-director of the Pacemaker Clinic at the University of Ottawa's Heart Institute) concluded, after a review of all the American medical research available on conducted energy weapon technology, that the weapon "appears safe for its use in controlling violent offenders."[124]

Although the report did note the existence of serious injuries sustained as a result of conducted energy weapon deployment (*e.g.,* blunt trauma from falling, probe penetration to eye, and the weapon's electrical current igniting subjects who were soaked in flammable liquid), the report emphasized that there had never been a death directly related to the current used by the weapon. The author concluded: "It cannot be emphasized enough that the TASER pulse wave technology weapons … have been medically proven to be safe when used on normal healthy subjects."[125]

The remainder of the report compared and contrasted three conducted energy weapon models manufactured by Tasertron, and one model manufactured by TASER International. The review covered weapon strength and weaknesses, training materials, laser lighting systems, device and cartridge durability, electric arc penetration, wind deviation, power supply, liability insurance, warranty, and product advertisements. While the weapons tested were similar in many ways, the product review suggested that the TASER International Air Taser (precursor to the M26 Model)

122 *Ibid*.
123 *Ibid.*
124 *Ibid.*
125 *Ibid.*, p. 7.

was the superior product, particularly in terms of durability, dart accuracy and stability, and electric current penetration.

The author reached these conclusions on the use of TASER technology:

- increased officer and subject safety;
- decreased officer and subject injuries;
- increased success with subjects immune to pain-compliance tactics;
- established as medically safe for "normal healthy adults";
- medically established as having no effect on heart rhythms or pacemakers;
- electrical output well within safe levels for international and North American standards;
- no fatalities directly related to conducted energy weapons;
- extensively field tested over 20-year operational history;
- morally and legally responsible less lethal option;
- not reliant on pain-compliance tactics; more humane use-of-force option;
- target specific (accurate and no cross-contamination concerns);
- decreased liability issues for management;
- laser sight acts as a deterrent;
- extremely cost effective; and
- maintenance free (TASER international model) or minimal maintenance (Tasertron models).[126]

The paper concluded that both manufacturers offered "an extremely safe and effective less lethal option," and endorsed the TASER less lethal system "as a necessity in the required multifaceted approach" to less lethal use-of-force options.[127]

126 *Ibid.*, pp. 26-27.
127 *Ibid*., p. 27.

2. *TASER Technology Review & Interim Recommendations*—Office of the BC Police Complaint Commissioner, September 2004[128]

In 2004 a young man died after a conducted energy weapon was discharged against him in a Vancouver hotel. The BC Police Complaint Commissioner asked the Victoria Police Department to review the current use-of-force protocols and to make recommendations respecting the use of conducted energy weapons by police officers in British Columbia.

The report included a review of conducted energy weapon technology, tabulation of 4,600 weapon field uses based on data supplied by the manufacturer, usage data from the Edmonton, Alberta, and Victoria, BC, police departments, and a review of the medical literature (including "excited delirium").

With respect to the analysis of field usage data, the report concluded that for each of the three data sources, the overall weapon effectiveness success rate was at least 90 percent.

The literature review concluded that conducted energy weapons were safe and effective, and that risk of death or serious injury was low. Some studies concluded that ventricular fibrillation or cardiac dysrhythmias were unlikely in healthy adults. Some studies cautioned that drug abuse, mental illness, and/or pre-existing heart conditions might increase risk of injury. Only one study expressed negative findings in respect of conducted energy weapons, concluding that these weapons were indeed capable of causing death, and that the electrical charge from the TASER M26 model fell into a range that might cause ventricular fibrillation 50 percent of the time.

During the medical literature review, numerous references to risk factors associated with in-custody deaths were noted, regardless of whether a conducted energy weapon had been utilized. Accordingly, the contributors undertook further research to determine what role, if any, these risk factors played in deaths proximal to conducted

128 B.C. Office of the Police Complaint Commissioner. *TASER Technology Review & Interim Recommendations* (Victoria: OPCC, 2004), available at http://www.opcc.bc.ca/Reports/2004/Interim%20Taser%20Report%20and%20Recommendations.pdf.

energy weapon usage. To complete this task, the Coroners Service provided summaries of restraint-associated deaths in British Columbia, and the researchers reviewed relevant research studies from North America and the United Kingdom.

The report determined that three specific groups of people appeared prone to sudden death proximal to restraint—those suffering from a psychiatric illness, chronic illicit stimulant users, or individuals with a combination of both factors. The report also noted common behaviours associated with "excited delirium," including unbelievable strength, imperviousness to pain, hyperthermia, perspiration, aggression, hyperactivity, and incoherent shouting.[129] The report further noted that death proximal to restraint was not a phenomenon exclusive to law enforcement contexts; such deaths had also been experienced in psychiatric and geriatric facilities.[130]

The report also found that current medical research had identified several medical concerns that might play a contributory role in sudden deaths proximal to restraint, including cocaine toxicity (that may cause the heart to be more susceptible to arrhythmia or cause delirium), metabolic acidosis (a disturbance of the body's acid-base balance), catecholamine release (resulting in an abundance of catecholamines in the blood that can sensitize the heart and promote dysrhythmia), genetic susceptibility to cardiac arrhythmia, and face-down prone restraint.[131]

The report concluded that conducted energy weapons should be retained as an intermediate weapon in British Columbia, because appropriate use of the weapon "presents an acceptable level of risk to subjects being controlled." It made the following specific recommendations:[132]

- *Training*—there were significant inconsistencies throughout the province in the training of police officers, which should be remedied by creation of a standardized lesson plan/course training standard for conducted energy weapon users. This standard should be developed by the Justice Institute in consultation with use of force coordinators from municipal police

129 *Ibid.*, p. 50.
130 *Ibid.*, p. 45.
131 *Ibid.*, pp. 51–54.
132 *Ibid.,* pp. 55-56.

departments and the RCMP. The "core curriculum" would be delivered to all recruits and to all in-service weapon users.

- *Usage reporting*—not all law enforcement agencies in British Columbia required reporting of weapon deployments, or inadequately supervised reporting. An officer should be required to submit a use-of-force report after every push-stun or probe deployment, in a format created by the Justice Institute that allows for province-wide statistical analysis.
- *New acquisitions*—agencies purchasing new conducted energy weapon technology should acquire the TASER X26 rather than the M26, due to its enhanced data collection capabilities and lower electrical output.
- *"Excited delirium" training*—changing patterns of drug abuse made it likely that officers would encounter incidents of "excited delirium" more frequently. Consequently, the Justice Institute should create a standardized lesson plan/course training standard for "excited delirium," to be delivered to all recruits and in-service members, regardless of rank, in British Columbia.
- *Restraint protocols*—although medical evidence remained inconclusive, there did appear to be a linkage between restraint positions and enhanced risk to arrested subjects. Consequently, the use of the maximal restraint position (where handcuffs and ankles were bound behind the back) should be eliminated. Instead, a hobble restraint, a wrap restraint, or other similar device should be used, subject to appropriate training.

3. *TASER Technology Review—Final Report*—Office of the BC Police Complaint Commissioner, June 14, 2005[133]

In this follow-up report, the authors discussed officer training injuries, recent studies and reports, the findings of the investigative team's medical review panel, and recently identified medical contra-indicators. I will discuss each in turn:

- *Officer training injuries*—officers have typically received a 1–2 second discharge as part of conducted energy weapon training. However, there is mounting evidence of the risk of injury from such exposures, including secondary injuries (*e.g.,* from probe penetration or from falling), as well as musculoskeletal injuries caused by powerful muscular contractions.
- *Recent studies and reports*—two recent studies found that adequate margins of safety exist pertaining to ventricular fibrillation and that it is unlikely to be a risk. A third study conducted by the Air Force Research

133 BC Office of the Police Complaint Commissioner. *TASER Technology Review: Final Report* (Victoria: OPCC, 2005), available at http://www.opcc.bc.ca/Reports/2005/Taser%20Report.pdf.

Laboratory demonstrated that very lengthy exposures (three minutes of five seconds on, five seconds off) had significant impact on the blood's acid-base balance, suggesting that police should minimize multiple applications where possible. Further research involved mapping the path of a conducted energy weapon's electrical current through the body of pigs, effectiveness and risks of M26 and X26 models, effectiveness of various other lower lethal use-of-force options, and the electrical risks of conducted energy weapons and delayed ventricular fibrillation.

- *Medical review panel*—the investigative team brought together experts in forensic pathology, cardiology, forensic psychiatry, and emergency medicine, as well as an advanced life support paramedic, to review the research material, to discuss current research on conducted energy weapons, and to identify relevant issues for further study. There was consensus among the medical group that:
    - Sudden and unexpected death proximal to restraint is caused by a variety of factors, not a single precipitating issue. Risk factors identified included significant amounts of acidosis which affect cardiac contractility, respiratory muscle impairment, rhabdomyolysis (the destruction of skeletal muscle tissue [from traumatic injury and/or excessive exertion] that is accompanied by the release of muscle cell contents into the bloodstream), hypoglycemia, and high levels of adrenaline.

  The panel concluded that "excited delirium" is not a single entity, but rather a symptom cluster that occurs frequently in hospital settings. Cocaine and methamphetamine can overstimulate already delirious patients, causing death even without the intervention of conducted energy weapons or other lower lethality weapons.
- *Medical contra-indicators*—it appears likely that the muscular tetany produced by a conducted energy weapon deployment could impair a subject's respiration, which could affect carbon dioxide and pH levels. These effects could be expected to increase with repeated five-second discharges. Applying physical restraint in these circumstances is particularly dangerous, because it restricts the subject's ability to breathe, which is critical as the body tries to return to homeostasis and compensate for increased carbon dioxide levels. Officers should also exercise caution before deploying a conducted energy weapon against a pregnant woman or against people with a low body mass, such as children or the elderly.

The report did not contain formal recommendations, but included some "general guidelines":

- Musculoskeletal injuries may occur during conducted energy weapon training of officers, and consequently, law enforcement agencies need to revisit the issue of mandatory exposure.
- Training protocols should reflect that multiple applications, particularly continuous cycling of the conducted energy weapon for periods exceeding 15–20 seconds, may increase the risk to the subject and should be avoided where practical.
- A single weapon application made before the subject has been exhausted, followed by a restraint technique that does not impair respiration may provide the optimum outcome.
- Subject to situational factors, conducted energy weapons should not be used against subjects who are demonstrating only passive resistance.
- For subjects displaying active resistance (*i.e.,* those resisting an officer's efforts to be taken into custody without attacking the officer), where the officer believes it is appropriate to use a conducted energy weapon, it may be used in push-stun mode only.
- In situations of active resistance,[134] assaultive resistance, or the threat of grievous bodily harm or death, where the officer believes that the use of a conducted energy weapon is appropriate, it may be used in either push-stun or probe mode.

The report also advocated for the creation of a Provincial Use of Force Coordinator, who would be responsible for evaluating and assessing both new and existing technology and ensuring that agencies have access to best practices for all use-of-force options.

4. *Review of Conducted Energy Devices*—Canadian Police Research Centre, August 22, 2005[135]

At the request of the Canadian Association of Chiefs of Police, the Canadian Police Research Centre (the "Centre") conducted a review of the existing scientific research and data respecting conducted energy weapons, and provided a national perspective on the safety and use of such weapons. The Centre collaborated with representatives

134 It would appear to have been an inadvertent error to include "active resistance" in this paragraph, since the preceding paragraph restricted use of a conducted energy weapon to push-stun mode against a subject displaying active resistance.

135 Manojlovic, Drazen, et al., *Review of Conducted Energy Devices* (Ottawa: CPRC, 2005), available at http://www.css.drdc-rddc.gc.ca/cprc/tr/tr-2006-01.pdf.

from the Victoria Police Department who, as discussed earlier in this part, were concurrently conducting a study for the BC Police Complaint Commissioner.

The intent of this Report was to provide guidance and assistance for police agencies in reviewing current usage, and to assist in the development of future training programs, policies, and procedures. The review focused on three areas: medical safety, policy considerations, and "excited delirium."

With respect to *medical safety*, the Centre examined 15 research studies and/or opinions, which it classified as vendor-sponsored, independent, or ongoing. In an effort to prevent duplication, the Centre relied upon and summarized the findings of the Victoria Police Department's interim and final reports (summarized above). The contributors to the Centre's report found that conducted energy weapons "are effective law enforcement tools that are safe in the vast majority of cases."[136] Based on the existing research, the Centre concluded that:

- Definitive research or evidence does not exist that implicates a causal relationship between the use of conducted energy weapons and death.
- Existing studies indicate that the risk of cardiac harm to subjects from a conducted energy weapon is very low.
- "Excited delirium," while not a universally recognized medical condition, is gaining increasing acceptance as a main contributor to deaths proximal to conducted energy weapon use.
- The issue related to multiple conducted energy weapon applications and its impact on respiration, pH levels, and other associated physical effects, offers a plausible theory on the possible connection between death, conducted energy weapon use, and people exhibiting the symptoms of "excited delirium."

With respect to *policy considerations*, the Centre reviewed data from weapon usage in four North American jurisdictions, concluding that when conducted energy weapons are used, there are fewer officer and subject injuries, less use of lethal force, and less use of other force options. It noted that conducted energy weapons are classified as intermediate weapons within the National Use of Force Framework (which means that

136 *Ibid.*, p. ii.

they may be deployed when an officer is confronted with active resistance), and then added, "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 may or may not be used."[137] The report stated that there is no question that "the use of CEDs can and has saved many lives."[138] It concluded that:

- Use of conducted energy weapons is related to a decrease in the use of lethal force in some jurisdictions, and it is also related to substantial decreases in officer and subject injuries.
- While originally marketed and accepted as an alternative to lethal force, the use of conducted energy weapons has grown to include incidents where intermediate (but not lethal) weapons should be used.
- Although each use-of-force incident needs to be judged separately, for the most part the increased use of conducted energy weapons in non-lethal incidents is appropriate.
- Law enforcement agencies should give thoughtful consideration to developing conducted energy weapon usage reporting procedures, forms, or databases.
- It would be unwise and counterproductive to develop policies and procedures that explicitly specify in what kinds of circumstances a conducted energy weapon may or may not be used. Notwithstanding this conclusion, police officers need to be aware of the adverse effects of multiple consecutive cycles on a subject, or of deploying a weapon on a subject's head, neck, or genitalia, or in the presence of a flammable/explosive substance.
- There are no known, scientifically tested, independently verified, and globally accepted safety parameters for conducted energy weapons. This is problematic, as it necessitates complete reliance on the manufacturer's claims pertaining to product safety. Because of the lack of safety parameters, agencies are ill-equipped to respond to technology advances.

With respect to *"excited delirium,"* the report notes that there is no unifying diagnosis; instead, there is a cluster of signs and symptoms collectively forming the condition. The report suggests that persons exhibiting signs of "excited delirium" should be restrained as soon as practicable in order to commence treatment and avoid any risks of the subject progressing to a state of exhaustion. The report urges that

137 *Ibid*, p. 27.
138 *Ibid.*, p. 25.

police officers should be trained to involve medical emergency personnel early in the restraint process, preferably immediately after successful restraint, to attempt to mitigate subject risk. The report also reviews several theories associated with "excited delirium" and in-custody deaths, including asphyxia, cardiac dysrhythmia, metabolic acidosis, and dopaminergic dysfunction. With respect to conducted energy weapons as a possible cause of death, the report states that current research focuses on a variety of proposed but unproven mechanisms and that the causative theories are speculative.

5. *RCMP Use of the Conducted Energy Weapon (CEW)—Interim Report*— Commission for Public Complaints Against the RCMP, December 11, 2007[139]

In November 2007 the federal Minister of Public Safety requested that the Commission for Public Complaints Against the RCMP ("RCMP Commission") review the RCMP's protocols on the use of conducted energy weapons and their implementation, including compliance with such protocols. This interim report identifies and reviews significant Canadian studies, the RCMP's use-of-force model, its policy implementation and training, and conducted energy weapon-related complaints.

The RCMP Commission reported that the RCMP first authorized use of conducted energy weapons in 2001, and there are currently 2,840 weapons in use across Canada. It asserted that police departments must justify to the public why particular weapons and strategies are necessary for officers to perform their lawful duties, but there had been inadequate collection and analysis of empirical data. In the absence of such information and administrative control, the use of conducted energy weapons should be tightly controlled and supervised. In the RCMP Commission's view, the conducted energy weapon should be re-designated from an intermediate device to an impact weapon, until empirical data is submitted to the RCMP Commission that clearly demonstrates that a broader use of the weapon is in the best interest of officer and

139 Canada. Commission for Public Complaints Against the RCMP, *RCMP Use of the Conducted Energy Weapon (CEW): Interim Report* (Ottawa: CPCRCMP, 2008), available at http://www.cpc-cpp.gc.ca/prr/inv/cew-ai/cew_ai_int_rp-eng.aspx.

public safety. According to the RCMP's Incident Management/Intervention Model, an intermediate device may be used when an officer is confronted with resistant behaviour, but an impact weapon may be deployed only in the case of combative behaviour.

The RCMP Commission reported that since 2001 it had received 138 conducted energy weapon-related complaints, and 62 percent of them originated in British Columbia. In resolution of the complaints, some adverse findings were made against members—most commonly that the member failed to properly assess subject behaviour, particularly when presented with resistant behaviour. In the RCMP Commission's view, the RCMP should distinguish between "passive resistance" and "active resistance," and that policy should be rewritten to clarify that resistance in and of itself does not justify the use of conducted energy weapons.

The RCMP Commission addresses issues of "excited delirium," and highlights the current view that those individuals exhibiting such symptoms must be quickly subdued so as to receive immediate medical attention. RCMP policy states, "In considering intervention options for excited delirium cases, the use of the CEW in probe-mode deployment may be the most effective response." However, the RCMP Commission does not view conducted energy weapons as the preferred option for dealing with individuals exhibiting behaviours associated with "excited delirium" unless the behaviour is combative or poses a risk of death or grievous bodily harm. "Excited delirium" should not, in and of itself, be justification for use.

In light of the literature reviewed, the report concludes that available research generally indicates that regardless of the type of restraint, death can occur (*i.e.*, sudden in-custody death is not a phenomenon unique to conducted energy weapon usage), and that the studies tend to support the assertion that such weapons are typically safe when used on healthy adults. The report notes, however, a lack of research into the negative effects that conducted energy weapon exposure may have on vulnerable subjects. Thus, there is a need for further research and empirical data collection, focusing on the following issues:

- conducted energy weapon use, the infliction of pain, and the measurement of such pain;
- appropriateness of conducted energy weapon application in comparison to other use-of-force techniques;
- conducted energy weapon use against vulnerable or at-risk populations;
- alternate use-of-force options for individuals exhibiting symptoms of "excited delirium;"
- conducted energy weapon use, "excited delirium," and sudden death within rural or northern geographical areas; and
- connections between conducted energy weapon use, "excited delirium," and the chance of death.

The RCMP Commission's review of RCMP policy found that, over time, one could see an evolution of the policy which broadened acceptable usage by leaving the assessment of appropriate use to the member in the context of the Incident Management/ Intervention Model, and outside of the scope of dedicated conducted energy weapon policy. While initial policy contained provisions outlining when the weapon could be used (*e.g.,* to subdue individuals who resist arrest, are combative, or suicidal) and when deployment was prohibited (*e.g.,* for crowd control), over time weapon use has expanded to include subduing subjects who exhibit behaviours that are clearly non-combative or who are not actively resisting—evidence of "usage creep."

The RCMP Commission also found inadequate reporting and data collection. Six years after the weapons were first authorized for use, the RCMP has never conducted a cursory, let alone a comprehensive, review of deployment incidents. Current RCMP policy for conducted energy weapon deployment has evolved without adequate reference to the realities of its use by the RCMP.

The RCMP Commission's recommendations included the following:

- The conducted energy weapon should be reclassified as an impact weapon, allowing for use only when a subject is behaving combatively or posing a risk of death or grievous bodily harm.
- When the subject appears to be experiencing the condition of "excited delirium," the conducted energy weapon should be used only when the behaviour is combative or poses a risk of death or grievous bodily harm.

- Officers should be re-certified in conducted energy weapon use every two years.
- The RCMP should appoint a National Use of Force Coordinator.
- The RCMP should institute and enforce stricter reporting requirements on conducted energy weapon use.
- The RCMP should produce quarterly and annual reports on the use of conducted energy weapons.
- The RCMP should continue to be engaged in conducted energy weapon-related research looking at medical, legal, and social aspects of the weapon's use.

6. *RCMP Use of the Conducted Energy Weapon (CEW)—Final Report*— Commission for Public Complaints Against the RCMP, June 12, 2008[140]

In the months following release of the RCMP Commission's *Interim Report*, the RCMP implemented several of the RCMP Commission's recommendations, such as creation of a National Use of Force Coordinator position and institution of annual re-certification for officers using conducted energy weapons. However, the RCMP rejected the RCMP Commission's recommendation to reclassify the weapon from an intermediate device to an impact weapon. Instead, it amended policy to authorize deployment against subjects displaying active resistance or higher. The RCMP also maintained its position that a conducted energy weapon is the best option to gain control over subjects exhibiting symptoms of "excited delirium."

In its *Final Report*, the RCMP Commission stated that the "principle of proportionality" had guided its work. Central to the debate over conducted energy weapon use is the principle that decisions around when to deploy the weapon should be based on the principle of proportionality (*i.e.,* the amount of force used should bear some reasonable relationship to the threat the member is facing and its impact on public safety). The RCMP Commission then articulated three continuing interrelated concerns:

140 Canada. Commission for Public Complaints Against the RCMP, *RCMP Use of the Conducted Energy Weapon (CEW): Final Report* (Ottawa: CPCRCMP, 2007), available at http://www.cpc-cpp.gc.ca/prr/inv/cew-ai/cew_fin_rp-eng.aspx.

- The inappropriate assessment of a subject's behaviour has resulted in elevating the level of intervention beyond what was acceptable according to the RCMP's use-of-force model;
- The position of the conducted energy weapon on the use-of-force model permits deployment far too early in police encounters; and
- RCMP data collection and analysis practices for the conducted energy weapon usage database are ineffective and inefficient.

The RCMP Commission undertook an extensive analysis of RCMP weapon usage, based on its conducted energy weapon database. It identified 4,234 usage reports, but when it attempted to match those reports to citizen complaints that the RCMP Commission had received respecting inappropriate weapon deployment, it concluded that there was extensive systemic under-reporting.[141] Even when reports had been made, the RCMP Commission concluded that the RCMP's supervision to ensure proper weapon deployment was faulty.

The RCMP Commission examined the policies in place in several Canadian, American, and Commonwealth jurisdictions respecting the threshold of subject behaviour that must be present before use of a conducted energy weapon is justified. While most Canadian agencies classify the weapon as an "intermediate weapon" (in which case use is justified in the face of active resistance), some agencies restrict the use of these weapons to specialized units or higher-ranking officers. Internationally, several Commonwealth jurisdictions require evidence of assaultive behaviour or serious violence or threats. None of the policies reviewed by the RCMP Commission dealt substantively with weapon deployment against vulnerable groups, although individuals suffering from a mental illness and/or substance abuse represent a disproportionate amount of police intervention and have an increased statistical likelihood of death.

The RCMP Commission's recommendations included the following:

141 A mini-audit conducted to confirm the robustness and accuracy of the RCMP's database showed that of the 76 complaints received by the Commission pertaining to conducted energy weapon deployment, only 24 incidents reports were located (*i.e.*, 68 percent of incidents had not been reported). Further, no reports were discovered for the 28 complaints relating to *threatened* conducted energy weapon deployment.

- The conducted energy weapon should be classified as an impact weapon, and used only in situations where the subject is combative or poses a risk of death or grievous bodily harm, and the same threshold should apply to subjects who appear to be experiencing the condition of "excited delirium."
- Officers who deploy a conducted energy weapon should in all circumstances seek immediate medical attention for the subject.
- The RCMP should immediately implement clear operational guidelines around conducted energy weapon use against at-risk populations.
- Conducted energy weapons may be used by specialized response teams without restriction, but otherwise the use of such weapons should be restricted as follows:
    - In urban settings, conducted energy weapons should be used only by officers with the rank of corporal or above; and
    - In rural settings, such weapons should be used by constables only if they have at least five years of operational experience.
- The RCMP must provide more robust reporting of conducted energy weapon usage.

The RCMP Commission concluded that while the conducted energy weapon has a place in the RCMP's arsenal, it is conditional on the RCMP's acceptance and implementation of the RCMP Commission's recommendations. If the RCMP cannot account for the use of this weapon and properly instruct its members to deploy it appropriately in an operational setting, then use of the weapon should be prohibited until proper and strict accountability and training measures are fully implemented.

7. *Study of the Conductive Energy Weapon—TASER*—Standing Committee on Public Safety and National Security, June 2008[142]

In November 2007, the House of Commons' Standing Committee on Public Safety and National Security (the "Standing Committee") commenced a review of conducted energy weapon technology, the effects of this technology on the health and safety of persons subjected to it, its role in police work, and the guidelines governing its use by the RCMP.

142 Canada. Standing Committee on Public Safety and National Security, *Study of the Conductive Energy Weapon—TASER®* (Ottawa: Communications Canada, 2008), available at http://www2.parl.gc.ca/Content/HOC/Committee/392/SECU/Reports/RP3582906/392_SECU_Rpt04_PDF/392_SECU_Rpt04-e.pdf.

The Standing Committee travelled across the country, and heard from experts in medicine, biomedical engineering, and ethics; from the manufacturer; from the policing community; and from concerned community groups and individuals.

Consistent with information presented in other reports, the Standing Committee heard evidence that no direct link between conducted energy weapons and death has been established. It heard that "excited delirium" is a medical emergency necessitating swift medical attention. Some witnesses advocated use of a conducted energy weapon to defuse the situation and facilitate restraint of the subject, while others countered that this response could precipitate a myocardial crisis.

The Standing Committee heard that while restraint methods have evolved over the years, the characteristics of those dying in custody have not, and that a theory may account for in-custody deaths, regardless of the restraint technique. According to this theory, when individuals are experiencing "excited delirium" they have elevated levels of adrenaline and potassium in their blood. As they become exhausted, the potassium level drops suddenly while the adrenaline remains high, permitting the toxic effects of increased adrenaline to induce arrhythmia.

Witnesses told the Standing Committee that an autopsy will not reveal whether there has been cardiac arrhythmia or whether an electrical current has passed through the body. It was also suggested that ventricular fibrillation is only probable when probes are placed to bracket the heart, as experienced in swine studies. The Standing Committee's report notes, however, that it is generally agreed that the closer the probes are to the heart, the greater the cardiac risk.

The Standing Committee outlined several shortcomings regarding usage regulations, training, research transparency, and accountability. The Standing Committee found that conducted energy weapon policy is too permissive in light of the concerns raised in scientific research, recognized knowledge gaps, and the lack of independent, peer-reviewed research. It also found deficiencies in mental health and addiction training, and in the availability of mental health and addiction services to assist officers who

are dealing with subjects apparently under the influence of drugs/alcohol or who are suffering from mental illness.

The Standing Committee observed that current research is conducted in police circles, and is neither independent nor peer reviewed. It is essential that independent research be encouraged; a clear recognition of a need for scientific studies. It also noted concerns surrounding the RCMP's public accountability—the RCMP must meet a high standard of transparency and accountability. For example, it was unacceptable that the RCMP has not compiled and analyzed data on conducted energy weapon usage since the weapon was introduced in 2001.

The Standing Committee's recommendations included the following:

- The RCMP should reclassify the conducted energy weapon as an impact weapon, limiting its use to situations where the subject is displaying assaultive behaviour or is posing a threat of death or grievous bodily harm. Further:
    - This restriction should not be lifted until independent research indicates that the use of the weapon does not pose unreasonable risk to the subject, and
    - If the RCMP does not implement this recommendation by December 2008, the Standing Committee will recommend to the House of Commons an immediate moratorium on the RCMP's use of conducted energy weapons.
- The RCMP should revise its policy to include clear and strict usage guidelines (as is the case for firearms) with clear restrictions on multiple discharges.
- The RCMP should improve the training of its members on mental health and addiction issues.
- The RCMP should make use of psychiatric support staff to assist them when an intervention is expected to involve a person suffering from mental illness or drug addiction.
- The Government of Canada should:
    - encourage three federally subsidized research councils to fund scientific research into conducted energy weapon technology and use-of-force methods; and
    - commission independent scientific studies on conducted energy weapon safety.

- Statistics Canada should be given the mandate to create and manage databases on in-custody deaths and on the use of conducted energy weapons and other restraint methods.
- The RCMP should include in its annual report to Parliament data on the use of conducted energy weapons and other use-of-force methods.

8. *An Independent Review of the Adoption and Use of Conducted Energy Weapons by the RCMP*—Compliance Strategy Group, June 5, 2008[143]

Given the controversy surrounding the use of conducted energy weapons after the death of Robert Dziekanski at the Vancouver International Airport in October 2007, the Commissioner of the RCMP ordered an independent review of the policy decisions involved in adoption and deployment of the weapon, the validity and reliability of information used to make these decisions, and the adequacy of the operational procedures, training practices, and accountability mechanisms developed to ensure effective and safe use of the weapon by members of the RCMP.

The researchers reviewed the decision-making processes that led to the RCMP's introduction of the weapon in 2001. One of the rationales was the fact that 80 percent of RCMP officers serve in rural or isolated areas, policing alone with limited supervision resources and little or no backup. They were critical of the RCMP's incomplete literature review, over-reliance on information supplied by the manufacturer, too much consideration given to anecdotal information from police officers, and limited outside consultation.

Some of the issues discussed in the report include the following:

- *Testing of conducted energy weapons*—testing of the weapon appears to be a major gap, in terms of implementation and accountability. No government departments or agencies are responsible for ensuring that the weapon meets the manufacturer's specifications.
- *Use-of-force model*—because the situations police face are fluid and volatile, there should be a greater focus on training officers in subjective threat assessment, situation control, de-escalation techniques, and

143 Kiedrowski, John, *An Independent Review of the Adoption and Use of Conducted Energy Weapons by the Royal Canadian Mounted P*olice (Ottawa: Compliance Strategy Group, 2008). An executive summary is available at http://www.RCMP-grc.gc.ca/ccaps-spcca/cew-ai/kiedrowski-report-rapport-eng.htm.

determining appropriate sequential modes of response to threat cues and situational constraints.

- *Training*—the relationship between the police services and the manufacturer needs to be examined regarding transparency and accountability in matters of training and standards for appropriate use. There is a need to coordinate the approach to conducted energy weapon training and consult experts to design and help develop the course material.
- *Medical safety literature*—one can reasonably conclude that there is no inherent causal link between weapon application and serious injury in normal healthy subjects. Nonetheless, there are genuine risks that need to be taken into account. The existence of such risks does not necessitate prohibition of the weapon, but the risks do call for the development of policies and procedures based on an appropriate model of risk assessment and risk management that would consider the imminence and gravity of possible harm to officers, subjects, and bystanders.
- *"Excited delirium"*—the concept of "excited delirium" serves police interests as an exculpatory explanatory device absolving officers of the responsibility to use the least intrusive, least harmful means necessary to protect the public and themselves.

9. *The Use of the Conducted Energy Device by Law Enforcement Agencies in Nova Scotia*—Advisory Panel to the Minister of Justice, June 30, 2008[144]

In March 2008, the Nova Scotia Minister of Justice and Attorney General appointed an advisory panel to review a report on conducted energy weapon use in the province, and to advise the minister about future use of the weapon. The panel's report included discussion of the following issues:

- *Safety of the conducted energy weapon*—laboratory research on human subjects has demonstrated no clinically significant or lasting changes in cardiovascular or metabolic function, from which the panel concluded that the risk of death or serious injury associated with use of the weapon is low. However, the panel was concerned that some of the research was neither independent nor methodologically sound. It recommended that the minister appoint a panel of scientific experts to critically and systematically review, annually, the new scientific evidence on weapon safety and recommend policy changes that should be considered.

144 Nova Scotia. Dept. of Justice, *Report of the Advisory Panel to the Minister of Justice on the Use of the Conducted Energy Device by Law Enforcement Agencies in Nova Scotia* (Halifax: The Dept., 2008), available at http://www.gov.ns.ca/just/global_docs/CED_2_20080630.pdf.

- *Data regarding weapon use*—many questions relevant to policy formulation cannot be answered because there is no central depository of data. The panel recommended creation of a provincial database to permit a comprehensive review of all use-of-force incidents, and submission to a national body of information on use-of-force incidents in all provinces and territories.
- *Assessment of use-of-force devices*—the province should establish standards for all use-of-force devices, and monitor emerging use-of-force technologies. Federal, provincial, and territorial authorities should establish a mechanism to ensure an independent, rigorous assessment of the risks and benefits of any device to be used by law enforcement that has the potential for causing harm.
- *Appropriate use of the weapon*—the department should examine the nature of weapon use in the province, with a view to establishing a more prescriptive set of provincial use-of-force standards and procedures. In the interim, conducted energy weapon use should be restricted to situations of "violent or aggressive resistance or active threat that may cause serious injury" to the officer, subject, or public.
- *"Excited delirium"*—the panel does not believe it is useful to stipulate the specific diagnosis for "excited delirium" in policy, but rather to define the behaviour (*i.e.,* agitated, aggressive, irrational conduct) as requiring immediate medical attention. More research is needed to determine the risks associated with various means of restraining individuals displaying these symptoms, leading to the development of a training program for law enforcement officers responding to individuals suffering from mental illness.
- *Training*—the department should establish a provincial use-of-force training standard, ensure that all conducted energy weapon operators are certified according to this standard, and conduct audits to ensure adherence to the standard.
- *Public accountability*—a new provincial Law Enforcement Review Commission should be established, to conduct hearings into complaints about use of force, to audit law enforcement agencies' use-of-force policies and practices, and to report annually to the public on use of force.

10. *My Brother's Keeper: A Review of Electronic Control Devices in Saskatchewan Correctional Centres Housing Male Inmates*— Saskatchewan Ombudsman, July 29, 2008[145]

In November 2007, the Saskatchewan Ombudsman commenced a review of the Ministry of Corrections' use of conducted energy weapons in its adult male correctional centres. He identified several concerns about research conducted to date, including lack of rigorous and independent scientific/medical research about the effects of these weapons on humans, the preponderance of research on animals whose results cannot reliably be extrapolated to humans, and reliance on non-representative subjects in human studies. He identified unknown factors and cautions associated with weapon use, including lack of empirical data about the level of pain caused, the acute and long-term psychological impacts, the risks of exposure to vulnerable groups, and the cumulative effects of other non-lethal interventions (*e.g.,* physical restraint) in combination with weapon use.

The Ombudsman made 21 recommendations, including the following:

- Convene a multidisciplinary panel, including medical practitioners versed in the potential effects of weapon technology, to review the available research, paying special attention to the effects on vulnerable populations.
- Review the placement of the weapon in the ministry's use-of-force management model.
- If the ministry decides to authorize use of the weapon in correctional centres:
    - Place it in the impact weapon category.
    - Provide training to its entire medical services staff (nurses and doctors) about the technology and its potential health effects.
    - Ensure that local community hospitals are provided with information about the technology and its potential health effects.
    - Express and articulate the number and duration of applications of the X26 when used in stun mode.

145 Saskatchewan. Ombudsman, *My Brother's Keeper: A Review of Electronic Control Devices in Saskatchewan Correctional Centres Housing Male Inmates* (Regina: Ombudsman, 2008), available at http://www.ombudsman.sk.ca/pdf/ECD%20Report.pdf.

- Accurately document the conditions under which the weapon may be used in presentation and stun modes.
- Specify initial cycle length, whether the initial cycle can be interrupted or is to be continuous, and how many additional cycles are allowed.

11. *Report on Conducted Energy Weapons*—Ontario Association of Chiefs of Police, October 2008[146]

Representatives from 19 police services in Ontario, including the RCMP, attended a one-day information session to canvass current organizational practices and to consider a position that the association could advance regarding the use-of-force threshold, deployment, public reporting, training, and common nomenclature. Subsequently, the executive of the association made six recommendations:

- *Use-of-force threshold*—given that public acceptance of the weapon is based on the understanding that it would only be used in more serious circumstances, it recommended that member services adopt the assaultive level of subject behaviour before the weapon may be deployed.
- *Deployment*—currently, weapons are issued only to uniformed platoon supervisors, acting supervisors, and tactical officers. The association should continue to advocate that the ministry authorize the expanded deployment of the weapon to uniformed primary (first) respond constables.
- *Accountability and reporting*—in the interest of maintaining public confidence, the association should recommend that, at a minimum, police services publicly provide to their police services boards a statistical report on the use of conducted energy weapons annually, and that the report include the number of times the demonstrated force presence mode was used.
- *Individual event reporting and data collection*—the potential benefits of collecting and reporting data on the usage of demonstrated force presence was worth the effort, and the executive agreed to develop a sample weapon report that police services could choose to use. The association should recommend to police services that they collect and report on the number of times the device was used in the demonstrated force presence mode.
- *Training*—the executive was comfortable with the manufacturer providing training on the features, handling, functionality, and maintenance of the weapon, but police services should deliver training on judgement, decision-

146 Ontario Association of Chiefs of Police, *Report on Conducted Energy Weapons* (Toronto: OACP, 2008), available at http://www.oacp.ca/upload5/pdfs/ced_OACP_report_rev_jc__Final_.pdf.

making, tactics, and the level of subject behaviour that justifies the use of force. The executive found no value in trainees experiencing the effects of the weapons, and would not endorse it. It recommended that the association make recommendations to the ministry to harmonize the duration and content of the weapon training and re-qualification curriculum.

- *Nomenclature*—the association and member services should avoid using the brand name TASER, and use instead the generic term "conducted energy weapon."

12. *Use of TASER Weapons by New South Wales Police Force*—New South Wales Ombudsman, November 2008[147]

The Ombudsman undertook this investigation into the use of conducted energy weapons by officers of specialist units in the New South Wales Police Force five years after the weapon was introduced. His purpose was to determine whether the policies, procedures, and training requirements were appropriate and comprehensive, whether weapon use was reasonable and effective, and whether weapon use complied with legal and policy requirements.

The Ombudsman's review of materials from Australia and overseas raised several issues:

- There remains dissent in medical and scientific communities about whether conducted energy weapons can cause irregular heart rhythms, including ventricular fibrillation. While major studies have found that the risk of danger to the heart is low in healthy adults, there is less certainty respecting use of the weapon on people who may be particularly sensitive to exposure, such as pregnant women, the young and elderly, people with pre-existing medical conditions, and those affected by alcohol or drugs.
- There is no doubt that people have died after being subjected to weapon application, but there is dispute about the role of the weapon in either causing or contributing to these deaths.
- Weapon use is most appropriately limited to situations where a person's behaviour is, at a minimum, combative or aggressive. The police should deal with people who are uncooperative or non-compliant (but not violent or aggressive) by other, less forceful means.

147 New South Wales. Ombudsman, *The Use of Taser Weapons by New South Wales Police Force* (Sydney, NSW: Ombudsman, 2008), available at http://www.nswombudsman.nsw.gov.au/publication/PDF/specialreport/Special%20Report%20on%20use%20of%20Taser%20weapons%20by%20NSWPF.pdf.

In New South Wales, authorized officers may use a conducted energy weapon to protect human life; as a less lethal option for controlling people where violent resistance or confrontation occurs or is imminent; if the officer is in danger of being overpowered or to protect the officer or others from injury; or for protection against animals. Following an analysis of the 48 occasions on which the weapon was deployed, the Ombudsman concluded:

- Weapon use by specialist units to manage high-risk incidents has been operating reasonably well.
- These weapons appear to have been a useful option for officers to achieve effective resolution of dangerous and high-risk matters.
- He was not aware of any instances in which a weapon was used in clear contravention of legal and policy requirements.
- In most instances weapons were used in a reasonable manner and an effective resolution of the incident was achieved by the officers involved.

The Ombudsman made several recommendations, including the following:

- *Education and training*—the New South Wales Police Force is overly reliant on information provided by the manufacturer. Further, officers should receive further training on how to effectively back up and support an officer who is deploying a weapon, and how to gain control of a situation if the weapon does not operate effectively.
- *Mental illness*—officers should receive training about mental health issues, including the most effective ways to communicate with people thought to be suffering from mental illness, and the most effective ways to de-escalate situations involving mentally ill people who are behaving in a violent or aggressive manner.
- *Subject behaviour threshold*—officers should not be authorized to deploy a conducted energy weapon against a person unless that person is violently confronting or resisting police.
- *Multiple deployments*—officers should be given further guidance about when it is and is not appropriate to subject a person to multiple or prolonged weapon applications, if and when it is appropriate to deploy in drive-stun mode, and more comprehensive information about potentially hazardous environmental factors that must be considered.
- *Vulnerable subjects*—officers should receive further guidance about if and when it is appropriate to subject the following people to a weapon application: people with mental illness, children, pregnant women, elderly

people, people affected by alcohol or drugs, people with a heart condition or implanted defibrillators, and Indigenous Australians.

- *Accountability*—there should be regular download and auditing of weapon data, comprehensive reporting by officers of each incident (including cases when the weapon was only drawn, aimed, or sparked as a deterrent), and annual reporting by the police force on weapon use.

13. *Investigation of the Orange County Sheriff's Office Use of Conducted Energy Devices*—U.S. Department of Justice, Civil Rights Division, August 2008[148]

Following its review of the Orange County Sheriff's Office use of the conducted energy weapon, the federal Department of Justice's recommendations[149] for policy improvements included the following:

- The current standard of "active physical resistance" is an appropriate level of subject behaviour. "Passive resistance," which should be defined to include persons who question an officer's commands in a non-violent and non-threatening manner, and persons who are non-violently participating in public protest, is insufficient to justify use of the weapon.
- Flight alone should not be the sole justification for deployment of the weapon. The officer should also consider the severity of the offence, any immediate threat to the safety of the officer or others, and the ability of the officer to arrest the subject safely without deployment of the weapon.
- Deployment against a subject who is handcuffed or otherwise restrained should be prohibited, unless the subject is exhibiting aggressive physical behaviour.
- Emergency medical personnel should be notified when it is anticipated that the weapon will be deployed against a subject.
- In the absence of exigent circumstances, simultaneous deployment of more than one conducted energy weapon against a subject should be prohibited.
- An officer should deploy the weapon for not more than one 5-second cycle before stopping to evaluate the situation, and policy should state that a full five-second deployment is often unnecessary to achieve compliance.

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148 U.S. Dept. of Justice. Civil Rights Division, *Investigation of the Orange County Sheriff's Office Use of Conducted Energy Devices*, (Washington: The Dept., 2008), available at http://www.usdoj.gov/crt/split/documents/orangecty_ta_ltr.pdf.

149 Many of these recommendations are drawn from the Police Executive Research Forum's *Conducted Energy Device Policy and Training Guidelines for Consideration*, October 25, 2005, which is available at http://www.policeforum.org/upload/PERF-CED-Guidelines-Updated-10-25-05%5B1%5D_715866088_1230200514040.pdf.

- In the absence of exigent circumstances, an officer should not employ restraint techniques that will impair a subject's respiration.
- While it may be appropriate to use the manufacturer's training materials when discussing the basic functions and operation mechanics of the weapon, the sheriff's office should create its own training materials, scenario-based deployment and arrest drills, and testing procedures.
- Since the weapon is capable of inflicting great pain, and in rare instances is capable of contributing to death or serious bodily injury, officers should be trained to respect the weapon, with the same level of seriousness and professionalism as during a firearms course.

14. *Position Document on Conducted Energy Weapons (CEWs)*—Canadian Association of Chiefs of Police, and Canadian Police Association, February 24, 2009[150]

The Canadian Association of Chiefs of Police (CACP) is formed of chiefs and senior police executives in all provinces and territories in Canada. Its membership of over 1,000 includes police serving in national, provincial, regional, municipal, and First Nations police agencies, as well as transportation and military police.

The Canadian Police Association (CPA) is the national centre for police labour relations. It represents 57,000 police personnel serving in 170 police services across Canada. It promotes the interests of front-line police personnel and the public, and supports its members in improving their conditions in collective bargaining, education and training, equipment, health and safety, and protecting members' rights.

At a joint news conference held in Ottawa on February 24, 2009, the two associations released a joint position document respecting conducted energy weapons that included the following:

- There is a risk associated with an officer's use of any force, which the police mitigate through effective policies, training, and use-of-force options.
- Conducted energy weapons are "intermediate weapons." They are a valuable use-of-force option available to police officers to reduce the risk of injury or death, and are not intended as a substitute for lethal force.

150 Canadian Police Association and Canadian Association of Chiefs of Police, *Position Document on Conducted Energy Weapons (CEWs)*, (Toronto: CPA, 2009), available at https://www.cacp.ca/media/news/download/674/CPA_position_on_CEW_en.pdf.

- Conducted energy weapons are intended for use in situations where there is an imminent need for control and other options have been precluded, either because they were ineffective or would be inappropriate given the totality of circumstances in the situation.
- All police officers should be authorized to carry a conducted energy weapon.

At the news conference, the vice-president of the CACP stated that both associations have been actively engaged in examining the usage and effects of conducted energy weapons, and have reviewed the most current literature and research findings from technical and health perspectives. They took the step of releasing this position document out of concern that inaccurate and incomplete information is circulating in the media relating to the use of this weapon by police:

> It is our view that the public may not understand how police make decisions on when to use force, and what the use-of-force options are that are available to police. The conducted energy weapon is only one tool among many, but it is a very valuable public safety tool for the community and police officers.[151]

The president of the CPA stated that an officer makes the decision to deploy a conducted energy weapon after assessing the totality of the situation—that is, what has happened in the minutes leading up to the situation, any known mental health issues, proximity of other people, and many other factors. What the public bystander sees is usually not the whole picture. He added:

> The bottom line is that conducted energy weapons save lives. They enhance public safety and officer safety. It is our position that all police officers should be authorized to carry a conducted energy weapon. They should also be provided regular and adequate use-of-force training on the use of these weapons and other use-of-force options, to ensure that all officers understand and are competent in the application of force at all levels.[152]

The representatives spoke in favour of moving toward a consistent reporting system for conducted energy weapon use, and for a national standard for the methodology and equipment to test weapons, to determine whether they are performing to the manufacturer's specifications.

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151 *Ibid.*
152 *Ibid.*