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**Commission for
Public Complaints Against the
Royal Canadian Mounted Police**

**Commission des
plaintes du public contre la
Gendarmerie royale du Canada**

RCMP Use of the Conducted Energy Weapon (CEW)

Interim Report

Including Recommendations for Immediate Implementation

December 11, 2007

Canada

Table of Contents

Executive Summary	1
Introduction	8
Background	8
Use of Force and Accountability	9
Conducted Energy Weapon	10
What is a Conducted Energy Weapon (CEW)	10
What is a Taser®	10
RCMP decision to adopt the Taser®	12
Commission CEW Related Complaints	14
Commission Lodged Complaints	14
Commission’s Interim and Satisfied Review Reports	15
RCMP Commissioner’s Responses to the Commission’s Interim Reports	17
Summary	18
What is Excited Delirium	19
Excited Delirium and Law Enforcement	20
Summary of Initial Literature Analysis	21
CEW Policy and Protocols	23
RCMP Policy Development Process	23
History of RCMP Policy Development for CEWs	24
Commission Assessment of Appropriateness	26
Reporting Protocols	27
Summary	28
IM/IM and Use of Force	29
What is the IM/IM	29
Relationship to Policy	33
Relationship to Training	33
CEW Placement in the IM/IM	34
Challenges as to Where the CEW Fits in the IM/IM	34
Alternatives to Current Placement on the IM/IM	37
Summary	38
RCMP Training for CEW Use	39
Commission’s Interim Recommendations	41
Glossary of Terms	46
Appendix A: Sample of the RCMP Commissioner’s Response to the Commission’s Interim Reports	47
Appendix B: Reviewed Literature	48
Appendix C: Current RCMP Conducted Energy Weapon Policy	52

Executive Summary

The most powerful asset in a police officer's arsenal is public support. Anything that erodes that support reduces the ability of an officer to successfully discharge his/her responsibility on behalf of the public. For that reason, law enforcement use of the conducted energy weapon (CEW),¹ and other use of force techniques, is a public policy issue. The very nature of policing and the dynamics of the relationship between the police and those who are policed call into question actions and techniques vested with law enforcement personnel that would otherwise be illegal to most citizens.

The police need tools and techniques that enable them to justifiably and reasonably do their job of enforcing laws and protecting society, while at the same time protecting themselves. On the other hand, citizens have the right not to be subject to unreasonable police practices and behaviours that constitute abuse and erode civil liberties. Because of this dynamic relationship, policing policies are critical to the public's perception of the police in that they establish standards by which the RCMP as a whole and its members individually may be held accountable. As such, policy development is central to police governance.

The CEW is currently one of several use of force weapons available to law enforcement. As such, the CEW has a role in specific situations that require less than lethal alternatives to reduce the risk of injury or death to both the officer and the individual when use of force is required. In other words, it is an option in cases where lethal force would otherwise have been considered. However, CEW use has expanded to include subduing resistant subjects who do not pose a threat of grievous bodily harm or death and on whom the use of lethal force would not be an option. The question to be addressed then is in what situations are CEWs not appropriate for use.

The Commission for Public Complaints Against the RCMP (Commission) is not recommending an outright moratorium on CEW use by the RCMP, as the weapon has a role in certain situations. Rather, the CEW needs to be appropriately classified in use of force models for very specific behaviours involving very specific situations. This means restricting the use of the CEW in both *push stun* and *probe* modes and classifying it an "impact weapon", permissible only in those situations where an individual is behaving in a manner classified as being "combative" or posing a risk of "death or grievous bodily harm."

Current RCMP policy classifies the CEW as an "intermediate" device placing it in the same category as oleoresin capsicum spray. This classification permits use of the weapon for those situations where an individual is exhibiting behaviours that are deemed "resistant", and not just "combative" or posing a risk of "death or grievous bodily harm" to the officer, themselves or the general public. It is the position of the Commission that the placement of the CEW as an "intermediate" device authorizes deployment of the weapon earlier than reasonable.

¹ Conducted energy weapon (CEW) is also commonly referred to as a conducted energy device (CED), Taser® or stun gun. These terms can be used interchangeably.

The current approach by the RCMP clearly illustrates a shift in permissible usage from the original intent in 2001, which was more restrictive in that the weapon was to be used to subdue individual suspects who resisted arrest, were combative or who were suicidal. The Commission refers to this expanded and less restrictive use as “usage creep”. This has resulted in deployment of the weapon outside stated objectives as illustrated by cases that have been reviewed by the Commission over the past six years where the individuals have exhibited behaviours that were clearly non-combative or where there was no active resistance.

Current RCMP policy for CEW use has evolved without adequate, if any, reference to the realities of the weapon’s use by the RCMP. Changes to policy appear to have appropriately considered the experiences of external sources, but failure to correlate this data to RCMP-specific experiences amounts to a significant oversight, which should be redressed at the earliest opportunity.

Of particular concern is the fact that there are currently 2,840 CEWs within the RCMP and since introduction, 9,132 members have been trained to use the CEW, yet there exists no empirical data generated by the RCMP as to the benefits, or detriments, of using the weapon. The CEW has been deployed in *push stun* or *probe* mode over 3,000 times since its introduction in December 2001, yet not one annual report has been produced and the information captured on the Conducted Energy Weapon Usage Form has not been thoroughly examined nor utilized in the development of current CEW policy. This is further exacerbated by the fact that the CEW data base at headquarters has only been fully operational since late 2005, yet the CEW was first deployed in the field in late 2001. Accurate and meaningful data on CEW use is crucial in terms of understanding when and why members are employing certain use of force techniques and enabling senior officers to take corrective action when necessary.

Failure to properly collect, collate or analyze its own data means that the RCMP is unable, by its own inaction, to relate any external research to RCMP use of the CEW. Six years after the introduction of the CEW to the RCMP arsenal, there exists neither comprehensive nor even more cursory analyses readily available to the Commission to assist in conducting this review. This neglect means that the RCMP has been unable to implement systemic accountability processes, such as public reporting, and cannot evaluate what effects its policy changes have had on CEW use, training or officer and public safety. In effect, CEW use was liberalized without a complete thoughtful analysis or strategic plan, which amounts to a critical shortfall in the management and oversight of the CEW.

Supervision of those members that use the CEW is another method for ensuring appropriateness. Though the Commission was not able to fully examine the data pertaining to the number of members and instructors trained to use the CEW according to rank, the numbers tend to indicate that not all supervisors in the field are trained on the CEW. Yet, those supervisors are the ones who are responsible for the members under their control who may be authorized to use the weapon, and complete the necessary forms that are submitted to headquarters. The Commission is of the opinion that any corrective action that may be needed for members who improperly use CEWs is impeded in those situations where the supervisor is not trained and certified.

A mechanism is needed to ensure ongoing compliance with the RCMP use of force model and current CEW policy during operational use. The RCMP has acknowledged that proper assessment and accountability relating to the use of the CEW requires adequate reporting and analysis. This information is crucial in resolving concerns about use and developing appropriate and applicable policies and practices. In addition to the lack of RCMP-wide evaluations of CEW use, there has been little done to determine how CEW use has affected the application of other use of force options. These too are key considerations in determining the overall merits of the CEW. To ensure consistency of practice and policies and to establish a defined accountability mechanism, in addition to enhancing transparency, a National Use of Force Coordinator within the RCMP is essential.

Training programs must ensure that RCMP members learn to appropriately deploy a CEW and that the decision-making process and assessment of situational factors according to the use of force model is appropriate and justifiable when using the weapon. The use of force model is taught extensively during cadet training at Depot when cadets receive training for almost all other types of intervention options, including the use of firearms. CEW training, however, is not taught at the same time as the other use of force options; though this appears to be changing. Currently, CEW training can be provided years after completion of cadet training at Depot and the requirement of yearly re-certification has decreased to every three years. The Commission believes that this time period is too long and that biannual re-certification is more appropriate. This will ensure that those permitted to use CEWs remain current with policy, policy shifts and situational assessment techniques and experiences in the use of force model.

The tragic occurrences associated with CEW use in the past few months have raised the level of public concern regarding the weapon. The RCMP relies upon studies that speak to the relative safety of CEWs as a less lethal technology. However, many of these same studies note the lack of research in relation to “at risk groups”. It is imperative that research be continued to establish the safety levels for “at risk groups” and to determine whether, by virtue of the very symptomology exhibited by these groups (i.e. drug use or psychiatric disorders), they may be exposed to a disproportionate number of police interventions where CEW use may be deemed appropriate.

When examining CEW use by law enforcement personnel, it is evident that consideration must be given to the condition of excited delirium. However, it should be noted that the term does not have universal acceptance within the medical community. Excited delirium, while still a contentious issue with some, has been identified in the literature to be a compelling medical concern that should be taken into account by law enforcement personnel. However, the topic as it relates to the use of CEWs rests in the currently held belief that individuals in a state of excited delirium are in immediate need of medical intervention and that treatment should not be delayed in the hopes that the individual’s condition will improve. The position of the Commission is that CEWs are not the preferred option for dealing with individuals experiencing the condition(s) of excited delirium unless the behaviour is combative or poses a risk of death or grievous bodily harm to the officer, the individual or the general public. As such, the CEW is not a medical tool for dealing with individuals who appear to be experiencing the condition(s) of excited delirium. It is clear that RCMP involvement in CEW related research is necessary to further assist policy development and practice.

To address these concerns and others identified throughout this interim report, the Commission recommends, **for immediate implementation**, the following:

Recommendation 1: The RCMP immediately restrict the use of the conducted energy weapon by classifying it as an “impact weapon” in the use of force model and allow its use only in those situations where an individual is behaving in a manner classified as being “combative” or posing a risk of “death or grievous bodily harm” to the officer, themselves or the general public. This includes use of the device in both *push stun* and *probe* modes.

Recommendation 2: The RCMP only use the conducted energy weapon in situations where an individual appears to be experiencing the condition(s) of excited delirium when the behaviour is combative or poses a risk of death or grievous bodily harm to the officer, the individual or the general public.

Recommendation 3: The RCMP immediately communicate this change in use of force classification to all members.

Recommendation 4: The RCMP immediately redesign the conducted energy weapon training members receive to reflect the classification of the device as an “impact weapon”.

Recommendation 5: The RCMP immediately amend the conducted energy weapon policy by instituting the requirement that re-certification occur every two years.

Recommendation 6: The RCMP immediately appoint a National Use of Force Coordinator responsible at a minimum for the following:

- National direction and coordination of all use of force techniques and equipment;
- Development of national policies, procedures and training for all use of force techniques and equipment;
- Implementation of national policies, procedures and training for all use of force techniques and equipment;
- Monitoring of compliance with national policies, procedures and training for all use of force techniques and equipment;
- Creation, maintenance and population of data bases related to the deployment of use of force techniques and equipment; and
- Analyses of trends in the use of all use of force techniques and equipment.

Recommendation 7: The RCMP immediately institute and enforce stricter reporting requirements on conducted energy weapon use to ensure that appropriate records are completed and forwarded to the national data base after every use of the weapon.

Recommendation 8: The RCMP produce a Quarterly Report on the use of the conducted energy weapon that will be distributed to the Minister of Public Safety, the Commissioner of the RCMP, the Chair of the Commission for Public Complaints Against the RCMP and all Commanding Officers in each Division that details at a minimum:

- Number and nature of incidents in which the conducted energy weapon is used;
- Type of use (i.e. *push stun*, *probe*, threat of use, de-holster, etc.);
- Number of instances medical care was required after use;
- Nature of medical concerns or conditions after use;
- Number of members and instructors trained;
- Number of members and instructors that successfully passed training and number that were unsuccessful at training; and
- Number of members and instructors that successfully re-certified and number that were unsuccessful at re-certification.

The Quarterly Report will be produced for a period of three years effective immediately.

Recommendation 9: The RCMP produce an Annual Report on the use of the conducted energy weapon that will be distributed to the Minister of Public Safety, the Commissioner of the RCMP, the Chair of the Commission for Public Complaints Against the RCMP and all Commanding Officers in each Division that is comprehensive of all Quarterly Reports for that year, and at a minimum details:

- All data required and analyzed in the Quarterly Report;
- Justifications for suggested or actual changes in policy;
- Justification for suggested or actual changes in training;
- An analysis of trends of use;
- An analysis of the relationship between use and officer/public safety; and
- An analysis of the relationship between use and suggested changes in policy and training.

The Annual Report will continue to be produced after the time period for the Quarterly Report has expired.

Recommendation 10: The RCMP continue to be engaged in conducted energy weapon related research looking at medical, legal and social aspects of the weapon's use. This includes focusing at a minimum on:

- CEW use, the infliction of pain and the measurement of such pain;
- Appropriateness of CEW application in contrast to other forms of use of force interventions;
- CEW use against vulnerable or at-risk populations;
- Alternate use of force/intervention options when dealing with people who present with symptoms of excited delirium;
- CEW use, excited delirium and sudden or unexpected death within the context of a rural setting or Northern policing; and
- Connections between CEW use, excited delirium and the possibility of death.

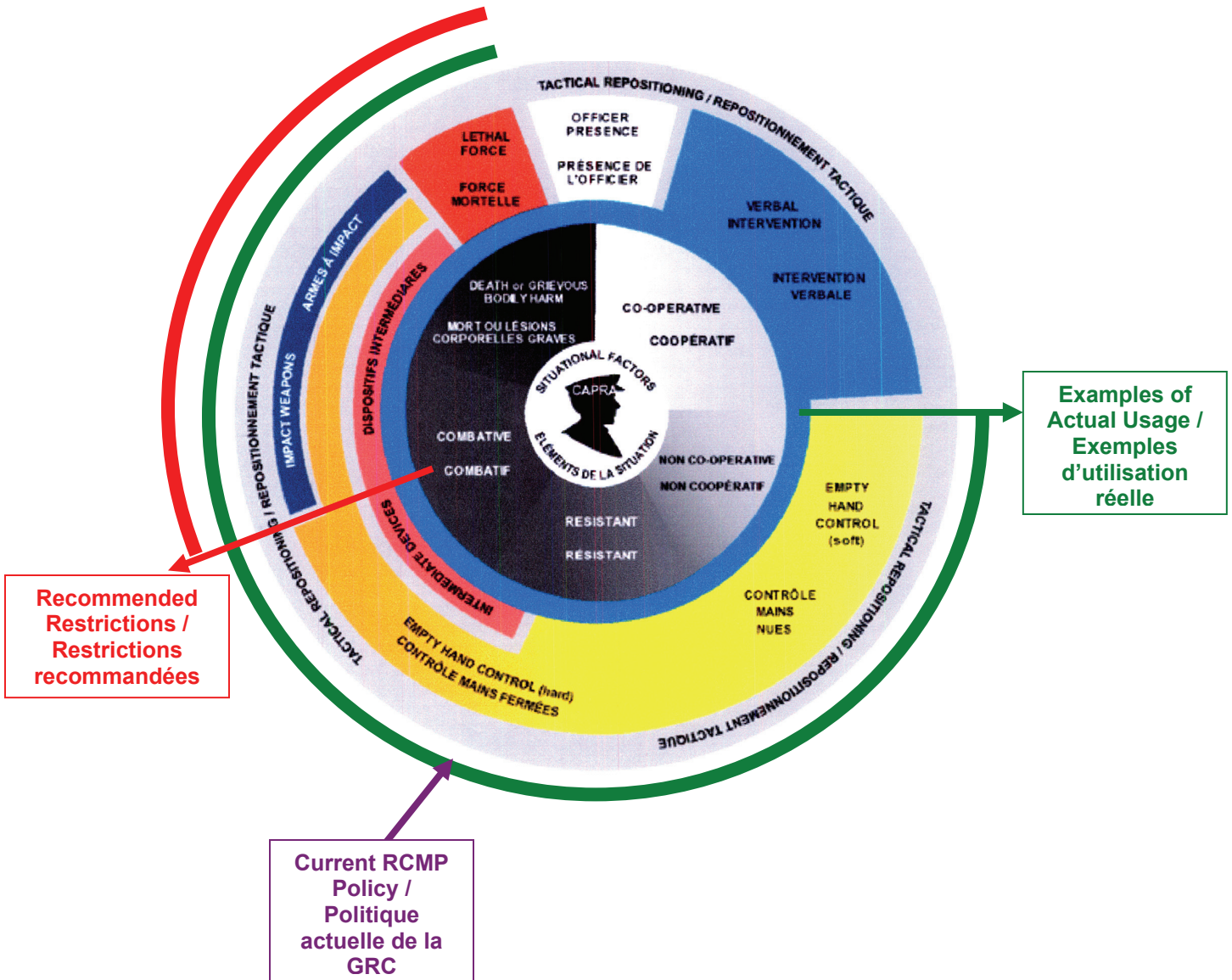
This includes notably collaborative research projects being carried out by the Canadian Police Research Centre (CPRC).

The Commission intends to further examine RCMP use of the conducted energy weapon. With challenges in obtaining accurate and meaningful data, the need to fully evaluate existing RCMP data on CEW use by RCMP members, the amount of research and literature that exists on the subject, and the necessity to conduct cross-jurisdictional comparisons, the Commission intends to produce a Final Report by the summer of 2008 that expands on these and many other issues identified to date. The Final Report will include comprehensive recommendations.

Paul E. Kennedy
Chair, Commission for Public Complaints
Against the RCMP

Proposed Restrictions on Incident Management/Intervention Model

Restrictions proposées concernant le Modèle d'intervention pour la gestion d'incidents



Introduction

Background

On October 14, 2007, four Royal Canadian Mounted Police (RCMP) members from the Richmond, British Columbia Detachment responded to a complaint of a male acting erratically at the Vancouver International Airport. While attempting to subdue and arrest the individual, later identified as Mr. Robert Dziekanski, the members deployed a conducted energy weapon (CEW).² Within seconds of being taken into custody, Mr. Dziekanski went unconscious and subsequently died. A video capturing the event was later aired on national and international news networks and was met with great public concern at the treatment and ultimate death of Mr. Dziekanski.

As a result of the media attention and the death of Mr. Dziekanski, the safety and necessity of CEWs was called into question as was the behaviour of the specific members involved in the airport incident, as well as the RCMP in general. In response, the British Columbia Solicitor General, the British Columbia Coroner, the Commons Public Safety Committee, the Minister of Public Safety and the RCMP all initiated independent reviews into the use of CEWs.

On November 19, 2007, two Chilliwack RCMP members responded to a call involving a Mr. Robert Knipstrom, reportedly behaving in an agitated and threatening manner. In resolving the incident, the police deployed a CEW. Mr. Knipstrom was transported to hospital for treatment; after being admitted to hospital in serious condition he died a few days later.

On November 20, 2007, the Minister of Public Safety, the Honourable Stockwell Day, requested that the Commission “[...] review the RCMP’s protocols on the use of CEDs and their implementation, including compliance with such protocols” and provide an interim report by December 12, 2007.

To that end, the Commission embarked on a review of all RCMP policies and protocols related to the use of CEWs in order to prepare a thorough understanding of the issue at hand. Specifically, the interim report will identify and briefly review significant Canadian studies, the RCMP’s Incident Management/Intervention Model (IM/IM)³ and use of force, the history of CED policy development, RCMP training for CEW use, and CEW related complaints lodged with the Commission and the previous findings and recommendations made by the Commission. The interim report will provide initial recommendations related to CEW use by the RCMP.

The Commission will also prepare a final report that will further expand on the issues examined in the interim report, and will include consultations with provincial review bodies, provincial governments, RCMP members and other interested stakeholders.

² Conducted energy weapon (CEW) is also commonly referred to as a conducted energy device (CED), Taser® or stun gun. These terms can be used interchangeably.

³ The IM/IM is “used by the RCMP to determine the appropriate level of force, if any, required to preserve public and officer safety in relation to a police incident.” Royal Canadian Mounted Police, *Privacy Impact Assessment – Conducted Energy Weapon*, <www.rcmp-grc.gc.ca/pia/cew_e/htm> [RCMP, *Privacy Impact Assessment – CEW*].

Use of Force and Accountability

The *Criminal Code*⁴ of Canada justifies action taken by peace officers in doing anything that they are required or authorized to do in the administration or enforcement of the law, as long as they act on reasonable grounds and use only as much force as is necessary for that purpose. This principle is generally accepted as necessary to serve and protect society. However, this legal authorization for the police to use force is not absolute; it must be proportionate and reasonable to the situation that the officers find themselves in.

The force available to law enforcement personnel can range from guiding someone by the elbow, to joint locks to lethal force, if warranted. Within that range the police have a variety of weapons at their disposal, such as OC spray, ASP baton, CEWs, and a service weapon. The public trust that the police will use these weapons responsibly and reasonably and that these weapons will not cause more harm than justified. All police services employ some type of use of force guidelines that assist officers in the field to properly assess and react to the situation at hand. The RCMP's Incident Management/Intervention Model (IM/IM), which is used to train and guide members in the use of force, promotes risk assessment and depicts various levels of resistance behaviours and reasonable intervention options. As with similar models, the IM/IM is based on the principle that the best strategy employs the least intervention necessary to manage risk.

Just as a police officer who uses force to control a situation must justify and document their actions through note-taking and legal articulation so to must the police department as a social institution justify to the public why the weapons and strategies utilized by its officers to carry out their lawful duties, are necessary. The most transparent way of doing this is to properly collect and analyze empirical data submitted from officers in the field, ensure that required paperwork is completed and to be aware of and adaptable to emerging information on the safety and effectiveness of weapons and devices at the disposal of law enforcement. In the absence of such information and administrative control, the use of weapons available to officers, and specific to this report, CEWs, should be tightly controlled and supervised. It is the position of the Commission that until empirical data is submitted by the RCMP that clearly demonstrates that a broader use of CEW is in the best interests of officer and public safety, it should be restricted by being designated as an impact weapon on the IM/IM.

It is of note that the RCMP has fully supported the Commission with respect to the Minister's request and the completion of the interim report.

⁴ *Criminal Code*, R.S.C. 1985, c. C-46.

Conducted Energy Weapon

What is a Conducted Energy Weapon (CEW)

CEWs encompass a variety of electrical weapons which generally pulse high voltage and low power into a subject in order to override his/her motor and sensory nervous system. In short, it provides an electrical shock. The effects are instantaneous and range from a localized sensation of pain to muscular incapacitation which often results in the subject being unable to maintain motor control and falling to the ground.

CEWs were originally introduced to law enforcement in the 1990s in the United States as an option in cases where lethal force would otherwise have been an option; however, their use has expanded to include subduing resistant subjects who do not pose a threat of grievous bodily harm or death and on whom the use of lethal force would not be an option. Prior to authorizing CEW use, the RCMP initiated a study on its merits. The study, entitled *The Conducted Energy Weapon Evaluation Project*, concluded:

While not 100% effective, it does provide the officer with a tool that is **not matched** by any of the officer's current intervention options. The ability to control a **combative** subject, from a distance, in a manner that is typically less injurious than conventional control techniques can only benefit the police officer and the community they serve" [emphasis added].⁵

The underlying rationale for this expanded use is the belief that CEWs reduce the risk of injury or death to both the subject and officer when use of force is required. This belief is supported by a variety of studies and reviews drawn from both clinical and in-field data.

What is a Taser®

CEWs are manufactured by a number of companies. Taser® is the brand name of the manufacturer that produces the two CEW models approved for use by the RCMP — the Taser M26 and the newer Taser X26. From an operational standpoint the Taser X26 has the advantage of being lighter and smaller than the Taser M26, but functions in the same manner when deployed in an operational capacity. They are similar in appearance to a service weapon. The Taser® stores firing data for later retrieval and may be fitted with a camera to record events, issues which will be explored in more depth in the final report.

Both models may be used in one of two ways — *push stun* mode or *probe* mode. In push stun mode the activated Taser® is pressed against the subject and transfers electrical energy to him/her. To ensure maximal effect and to minimize the chance of injury officers are trained to apply the Taser® onto designated areas of the body. This is done when one engages the weapon which initiates a five-second discharge. The duration may be shortened by removing the Taser® from the subject or engaging the safety. The electroshock can penetrate up to 2.5 centimetres of

⁵ Royal Canadian Mounted Police & Canadian Police Research Centre, *The Conducted Energy Weapon Evaluation Project* (Ottawa: RCMP, CPRC, 2002), p. 30.

clothing. In this mode the Taser® is considered to be a *pain compliance tool* and will not generally cause muscular incapacitation.

In probe mode the Taser® shoots probes from a cartridge attached to the front of the Taser®. The probes are tipped with a short dart that has a small barb to ensure that it remains embedded in the subject. They are fired with enough force to penetrate layered clothing and are attached to the Taser® by two wires through which electrical current pulses into the subject. This is achieved by pulling the trigger which releases the compressed nitrogen within the cartridge thus propelling the probes forward. Each of the probes must hit the subject or the Taser® will have no effect. Usually, the probes strike the subject farther apart than would be the case in push stun mode. The result is a much wider area of sensory and muscle disruption that translates into *muscular incapacitation in addition to pain*.

Of note, regardless of the mode, the subjects will experience pain. However, little attention appears to have been paid to the level of pain induced by CEW application. The use of CEWs was reviewed in *R. v. Hannibal*, 2003 BCPC 0504. In that case, in which an RCMP member was charged with assault for an incident in August 2001, Judge Challenger commented, “No studies have been done with respect to the subjective experience of being tasered in comparison to conventional empty hand control (soft) techniques.”⁶ However, an Amnesty International report⁷ contained the following anecdotal references:

According to [Taser International] they are one of the few non-lethal weapons effective in causing incapacitation without physiological injury. They have pointed out that any pain involved is transient, with no after-effects. However, officers subjected to even a fraction of the normal taser discharge during training have reported feeling acute pain:

“Bjornstad, who was jolted for 1.5 seconds as part of his training, said all of his muscles contracted and the shock was like a finger in a light socket many times over. “who [*sic*] has experienced it will remember it forever... You don’t want to do this. It’s very uncomfortable...and that’s an understatement.” (*The Olympian*, 14 October 2002)

“It’s like getting punched 100 times in a row, but once it’s off, you are back to normal again.” (*The Olympian* 2 March 2002)

“It felt terrible.” “It hurts. I’m going to think twice before I use this on anyone.” (two officers quoted in the *Mobile Register* 8 April 2002)

“It is the most profound pain that I have ever felt. You get total compliance because they don’t want that pain again.” (firearms consultant, quoted in *The Associated Press* 12 August 2003)

⁶ *R. v. Hannibal*, 2003 BCPC 504, at para. 119.

⁷ Amnesty International, *United States of America: Excessive and Lethal Force? Amnesty International’s Concerns about Deaths and Ill-Treatment involving Police Use of Tasers*, <<http://www.amnesty.org/en/report/info/AMR51/139/2004>>.

“They call it the longest five seconds of their life...it’s extreme pain, there’s no question about it. No one would want to get hit by it a second time.” (County Sheriff, quoted in *The Kalazazoo [sic] Gazette*, Michigan, 7 March 2004)

In assessing the negative aspects of CEW deployment Judge Challenger wrote:

The RCMP and other forces should consider the taser’s potential for superficial burning and tissue damage which can create scabbing and scarring. The taser creates extreme pain and can create instant, complete incapacitation. **Conventional pain compliance techniques can be carefully controlled by the officer administering them. The amount of pain inflicted by the taser cannot be adjusted** [emphasis added].

The pain component of CEW use remains a subject largely left to anecdotal commentary and not sufficiently explored to assist in determining the appropriateness of its use in law enforcement interventions.

RCMP decision to adopt the Taser®

During the 1990s law enforcement agencies across North America increasingly adopted CEWs as a less lethal force option. On May 17, 2000, the RCMP commenced an assessment of the effectiveness and use of CEWs, specifically the Taser M26. This assessment, *The Conducted Energy Weapon Evaluation Project*, consisted of three parts: an independent research technical assessment, testing on volunteers, and a six-month field trial.

At the conclusion of the project it was recommended that the Taser M26 be adopted for use in the field as a less lethal technology.

The RCMP first authorized the use of CEWs, specifically Taser M26s, on December 20, 2001. On October 21, 2005, the RCMP approved the use of the Taser X26 after conducting two separate field tests. Only RCMP members certified in the use of CEWs may carry or deploy the weapon.

At present, the RCMP has 1,709 Taser M26s and 1,131 Taser X26s deployed throughout Canada.

Figure 1: Number of CEWs in the field (by year)

M26 Taser®

Division	2002	2003	2004	2005	2006	2007
A	23	13	17	10	11	11
B	36	87	61	58	59	62
C	0	7	14	14	15	15
D	25	43	84	113	126	134
E	48	515	508	541	574	630
F	9	49	129	165	189	210
G	3	35	34	36	37	39
H	2	15	35	59	64	69
J	2	73	56	60	83	97
K	76	279	265	273	277	286
L	0	9	12	14	14	15
M	31	38	39	46	49	36
N	275	222	145	184	185	24
O	15	19	42	29	29	29
T	2	0	0	3	3	10
V	2	23	44	41	42	42
Total	549	1,427	1,485	1,646	1,757	1,709

X26 Taser®

Division	2003	2004	2005	2006	2007
A	0	0	0	0	3
B	0	0	0	8	34
C	0	0	2	13	17
D	0	0	0	59	73
E	0	3	7	135	392
F	0	0	0	0	67
G	0	0	0	0	3
H	0	0	0	0	25
J	0	0	0	2	38
K	0	3	8	172	318
L	0	0	0	10	15
M	0	3	4	5	49
N	5	9	10	16	24
O	0	0	0	0	6
T	0	0	0	0	35
V	0	0	0	29	32
Total	5	18	31	449	1,131

Commission CEW Related Complaints

Commission Lodged Complaints

Anyone, including a non-citizen of Canada, who has a concern about the conduct of an RCMP member, can lodge a complaint with the Commission. The individual does not have to be directly involved in the incident; he/she can lodge a complaint on behalf of someone else, or as a witness to an incident.

From December 20, 2001 to present, the Commission has received 138 complaints involving CEW use, whether the device was actually deployed or the CEW warning was given. It is of note that complaints lodged directly with the RCMP are not reflected in the Commission's complaint statistics.⁸ For that same time period, there were 86 complaints which originated in British Columbia⁹ ("E" Division) alleging inappropriate CEW use. This accounts for 62% of the total CEW related complaints.

In 2007,¹⁰ the Commission received 23 complaints involving the deployment or warning of CEW use. Of those 23 complaints, 14 originated in British Columbia, representing 61% of all CEW related complaints for that year.

Specific to the death of Mr. Dziekanski, the Commission has received seven (7)¹¹ additional formal complaints and 97 expressions of concerns.

Figure 2: Public Complaints Received by the Commission Pertaining to CEW Use or the Warning of CEW Use

Figure 2A: Complaints since December 20, 2001

	Use	Use (third party*)	Warning	Warning (third party*)	Total
All Complaints	74	34	27	3	138
Complaints not including recent YVR ¹² incidents**	74	27	27	3	131
YVR Incident Complaints***	0	7	0	0	7
All Complaints made in British Columbia	37	26	20	3	86
Complaints made in British Columbia not including recent YVR incidents**	37	19	20	3	79
YVR Incident Complaints made in British Columbia***	0	7	0	0	7

⁸The Commission received approximately half of all complaints against the RCMP; the other half are complaints received directly by the RCMP.

⁹ "E" Division in British Columbia was highlighted in this report for a variety of reasons: 1) One third (1/3) of the RCMP is stationed in this Division; 2) the Division has the highest number of CEWs in use; and 3) recent events have focused attention on this Division.

¹⁰ From January 1, 2007 to December 10, 2007 and does not include complaints related to the death of Mr. Dziekanski.

¹¹ The Commission also received three (3) additional complaints relating to the RCMP's media handling of Mr. Dziekanski's death.

¹² Vancouver International Airport.

Figure 2B: Complaints in 2007

	Use	Use (third party*)	Warning	Warning (third party*)	Total
All Complaints	12	11	6	1	30
Complaints not including recent YVR incidents**	12	4	6	1	23
YVR Incident Complaints***	0	7	0	0	7
All Complaints made in British Columbia	7	9	4	1	21
Complaints made in British Columbia not including recent YVR incidents**	7	2	4	1	14
YVR Incident Complaints made in British Columbia***	0	7	0	0	7

* Third party indicating that the individual lodging the complaint is not directly involved in the incident; they have lodged the complaint on behalf of someone else, or as a witness to an incident.

** Includes two (2) complaints pertaining to the Chilliwack incident, one of which is the Chair-Initiated Complaint.

*** Includes the Chair-Initiated Complaint pertaining to the YVR incident.

Commission's Interim and Satisfied Review Reports

If an individual has made a complaint concerning the conduct of an RCMP member and is not satisfied with the way the RCMP handled their complaint, he/she has a right of appeal under the *RCMP Act*. The Commission received 21 appeals from December 20, 2001 to present relating to CEWs. Of these, 15 appeals related to the actual deployment of a CEW; while six (6) related to the threat of deployment.

When the Commission conducts a review, it evaluates the evidence on the file in relation to the RCMP Operational Manual, the *Criminal Code* of Canada, the CAPRA¹³ problem-solving model, and the IM/IM. The *Criminal Code* authorizes police officers to use reasonable force in the administration and enforcement of the law. In addition, the CAPRA problem-solving model and the IM/IM require that members assess risk and continually assess the appropriateness of intervening, in addition to their level of force. Currently, RCMP policy allows for the use of intermediate devices, which include CEWs, in situations where the subject is resistant.¹⁴

The Commission has concluded in previous review reports that the use of intermediate devices such as a CEW is a judgement call that requires the RCMP member(s) to exercise common sense in the situation. When considering how much force is appropriate, it is essential that the member

¹³ CAPRA is an acronym for Client, Acquire/Analyse Information, Partnerships, Response, and Assessment of Action taken.

¹⁴ Resistant is a behaviour classification that is described by the RCMP as: "The person resists by pulling away, pushing away with the intent of not being controlled, running away, open and angry refusal to respond to lawful commands." Royal Canadian Mounted Police. National Learning Services. Tactical Training Section, "PPSI Instructor's Course: Incident Management & Tactical Principles", CD-ROM: *IM/IM* (Ottawa: RCMP, 2006).

consider the principle of proportionality: the amount of force used should bear some reasonable relationship to the amount of resistance the member is facing, as well as the context of the incident.

If the Commission determines, on the balance of probabilities, that the RCMP member(s) acted in an appropriate manner, a satisfied report is prepared and submitted to all parties involved. Generally, however, if after a review of the evidence the Commission finds that the RCMP member(s) did not act in an appropriate manner, adverse findings are made and an interim report is submitted to the Commissioner of the RCMP for consideration. The Commission has made the following adverse findings in previous interim reports relevant to CEW use:

- Insufficient evidence to confirm or deny the CEW use;
- Improperly deployed CEW and/or CEW use constituted excessive use of force;
- Failure to comply with reporting policy requirements;
- Failure to comply with medical treatment policy requirements;
- Initial CEW deployment was reasonable and consistent with policy, but subsequent deployments constituted excessive use of force.

A review of the previous findings and recommendations made by the Commission also demonstrates that the Commission was satisfied with the deployment of the CEW in a number of cases when the RCMP member could demonstrate that they complied with RCMP policy by deploying the CEW “to subdue individual suspects who resist arrest, are combative or suicidal.” Specifically, when the member could articulate that they utilized the least intervention necessary to manage risk and that the intervention caused the least harm or damage.

Conversely, the Commission made adverse findings when the evidence demonstrated that the member(s) failed to adequately assess and reassess risk and then adjust the appropriateness of the level of their intervention, even when the threat level had decreased. Typically, these types of adverse findings were made when a CEW was applied multiple times even after the subjects were no longer exhibiting combative or resistant behaviour.

A recurring trend in the Commission’s adverse findings involved members failing to properly assess the behaviour being presented to them, and then inappropriately categorizing the behaviour, and thereby elevating the level of intervention beyond what was warranted according to the IM/IM.

The most frequent finding of improper categorization of behaviour occurred when the RCMP members were presented with resistant behaviour. It is the position of the Commission that a distinction must be made between “passive resistance” and a more “active resistance”, given that active resistance borders on combative behaviour. Even though current RCMP policy allows for the use of intermediate devices in instances where an individual is resistant but not combative, it was the recommendation of the Commission that policy should be rewritten to clarify that resistance in and of itself does not justify the use of weapons such as OC spray or a CEW.

Historically, the Commission has provided the Commissioner of the RCMP with the following recommendations in relation to the CEW:

- that members receive training and guidance on interaction with people experiencing mental health crises;
- that the RCMP provide training on mental health crisis intervention to all members who have direct dealings with clients;
- that the RCMP implement a national policy on how to apprehend someone experiencing a mental health crisis;
- that the members receive operational guidance on RCMP policy pertaining to the deployment of CEWs;
- that the members receive operational guidance on RCMP policy pertaining to the application and proper use of the IM/IM;
- that the member and/or the RCMP apologise to the complainant;
- that the RCMP review the policy relating to CEW use and recommend that the RCMP consider:
 - a. where the CEW should properly fit in the use of force paradigm;
 - b. redefining resistant behaviour;
 - c. continue to review training policies;
 - d. ensuring that trainers who are not experts in the use of force restrict training to the technical aspects of CEW use and that training relating to its appropriate use be provided solely by use of force experts; and
 - e. utilizing the renewed reporting requirements to statistically track all use of force options.

RCMP Commissioner's Responses to the Commission's Interim Reports

After an interim report is submitted to the RCMP, the RCMP Commissioner is required to provide a response indicating what action the RCMP has taken, or will take, in response to the Commission's report. If the Commissioner rejects the Commission's recommendations, the Commissioner must provide reasons for doing so.¹⁵

Since December 20, 2001, the Commission has made 22 findings relative to CEW use or threatened use. Fifteen (15) of those findings found no fault with the conduct of the RCMP and the Commission made seven (7) adverse findings. Therefore, the Commission was satisfied with the RCMP's conduct in 68% of the allegations and found misconduct in 32%.

The Commissioner of the RCMP has agreed with four (4) of the seven (7) adverse findings made by the Commission. There are currently two interim reports awaiting a response by the Commissioner of the RCMP.

¹⁵ Please see Appendix A for a sample of the RCMP Commissioner's reasons.

Commission's Findings			
Satisfied	Adverse	Total	
15	7	22	
Commissioner's Response to the Commission's Adverse Findings			
Agree	Disagree	Total	
4	1	5	
Note: The Commission has not yet received the Commissioner's Notices pertaining to two (2) of the adverse findings.			

Summary

Although a cursory view of the statistics related to complaints lodged with Commission may suggest to some that the issue of inappropriate CEW use by the RCMP is relatively rare, it is important to place these numbers within the larger context of public complaints. It is the Commission's belief that the 3,000 cases of CEW deployment by RCMP members, due to the lax reporting structures within the Force, would suggest that the use of this weapon has been under-reported. Further, as the Commission only receives about half of all complaints lodged against RCMP members it is difficult for the Commission to fully appreciate the size and scope of the problem. Additionally, the Commission is aware that the public at large may not fully understand what their rights are with respect to filing a complaint or requesting an appeal. As stated in the 2006–2007 Annual Report, the Commission is making community outreach a priority.

What is Excited Delirium

When examining CEWs in use by law enforcement personnel, it is evident that consideration must be given to the condition of excited delirium. However, it should be noted that the term does not have universal acceptance within the medical community. A full examination of the connection between CEW use and excited delirium is beyond the scope of this report, and it will be examined in greater detail in the full report. However, a brief review of excited delirium is provided below.

Excited delirium is a term used to describe a condition that may be associated with sudden deaths proximal to police restraint. It appears to be most closely linked to psychiatric disorders or drug consumption, particularly cocaine. The two consistent elements of the condition are extreme physical exertion coupled with a delirious mental state. Subjects believed to be experiencing excited delirium may manifest a variety of indicators such as bizarre behaviour, great strength, and aggression (see Figure 3).

Figure 3: Symptoms of Excited Delirium¹⁶

Visible signs of Excited Delirium include, but are not limited to:

- Unbelievable strength
- Impervious to pain
- Able to offer effective resistance against multiple officers over an extended period of time
- Overheating (hyperthermia)
- Sweating
- Bizarre and violent behaviour
- Aggression
- Hyperactivity
- Extreme paranoia
- Incoherent shouting

The importance of excited delirium, for the purposes of this report, is the potential connection to sudden deaths proximal to restraint. Such deaths may mirror unexplained deaths from long before the advent of CEW use. Frequently in sudden unexplained deaths in which the police have been involved, there appears to be a connection to excited delirium, extreme exertion, often while resisting arrest during which time a CEW may be used, and subsequent restraint. There may be a complex interaction for which ongoing research may provide the answers. This topic is briefly dealt with in following review of the literature, and will be dealt with in greater detail in the final report.

¹⁶ Taken verbatim from Darren Laur, *Excited Delirium and its Correlation to Sudden and Unexpected Death Proximal to Restraint (TR-02-2005)* (Ottawa: Canadian Police Research Centre, 2004) [Laur, *Excited Delirium*].

Excited Delirium and Law Enforcement

Deaths of individuals proximal to restraint are not unique in the law enforcement context; medical literature indicates that this phenomenon has been reported in other professional fields, most notably psychiatric and emergency medicine. In view of these conclusions it has been repeatedly suggested in the literature that excited delirium be treated as an acute medical emergency by law enforcement and emergency personnel.

However, this presents a conundrum for police officers, as emergency medical personnel typically will not transport individuals via ambulance who are actively displaying symptoms of excited delirium. In fact, it is the very symptoms of excited delirium that precipitate law enforcement attendance and it is those symptoms that often prevent these individuals from receiving immediate medical care; simply because they are far too violent and combative to receive treatment until they are restrained. This places law enforcement professionals in a difficult situation, as they have care and control of an individual whose state of being constitutes an acute medical emergency, but who cannot receive treatment until they are restrained, which may conclude with their death.

Excited delirium, while still a contentious issue with some, has been identified in the literature to be a compelling medical concern that should be taken into account by law enforcement personnel. However, the topic as it relates to the use of CEWs rests in the currently held belief that individuals in a state of excited delirium are in immediate need of medical intervention and that treatment should not be delayed in the hopes that the individual's condition will improve. Furthermore, medical practitioners cannot provide treatment until an individual is restrained. Lastly, as the exertion involved in resisting restraint is suspected of having an adverse effect on the health of the individual, it is considered preferable to use the quickest means to subdue him/her.

Summary of Initial Literature Analysis

A review of the existing research, both nationally and internationally, identifies hundreds of scientific and medical reports which examined the use of CEWs, excited delirium and sudden or unexpected death. The Commission reviewed over a dozen significant medical, scientific and academic research papers and studies in preparation for this report. Of these, three reports were chosen for the interim report's literature review as they best represent the use of CEWs in a Canadian context. These reports have significantly impacted the policy development and understanding of CEW use by law enforcement within Canada and have provided much needed clarity to the wider debate on CEW use.

In addition, because CEWs manufactured by TASER International are approved from use by the RCMP, the Commission reviewed the product and research information listed on the company's website. The company claims that the use of a Taser® significantly reduces the risk of serious injury to both subject and officer.

The Canadian Police Research Centre (CPRC)¹⁷ noted in their 2005 study:

[...] police officers need to be aware of the adverse effects of multiple, consecutive cycles of CEDs on a subject; deploying a CED on a subjects head, neck or genitalia; deploying a CED where a person can fall from a height; and deploying a CED on a subject where it is known to the officer that the subject has flammable substances on their clothing or on their person, or standing in or near obvious flammable/explosive substances conditions such as a puddle of gasoline or a natural gas leak".¹⁸

Indeed, TASER International itself has released¹⁹ two training bulletins and a product warning that specifically address multiple discharges, potential secondary injuries and deployment against "susceptible people". Nevertheless, it is the position of TASER International that excited delirium and/or drug intoxication is the cause of the vast majority of deaths proximal to a CEW deployment and point out that they have been successful in every lawsuit launched against them.

It is important to note that there is a distinct lack of research nationally and internationally that thoroughly examines the connection between CEW use, excited delirium and the likelihood of death. Medical research is still in the early stages of reviewing this condition. What little is known of this condition suggests the need for a more conservative course of action with respect to the deployment of CEWs against vulnerable populations (people experiencing mental health crises, those suffering from drug toxicity and those exhibiting symptoms of excited delirium). The research suggests that these populations have a higher likelihood of death, not necessarily as

¹⁷ The CPRC is a partnership among the Canadian Association of Chiefs of Police (CACP), the RCMP, and the National Research Council Canada. It is governed by an independent advisory board made up of representatives from police and other related organizations across Canada. The CPRC's mission is to provide leadership and focus for science and technology in policing and public safety across Canada through research, development, standards, evaluation and commercialization.

¹⁸ Drazen Manojlovic, et al. *Review of Conducted Energy Devices. (TR-01-2006)* (Ottawa: Canadian Police Research Centre, 2005), p. iii.

¹⁹ Please see Appendix B for excerpts of TASER International's training bulletins and product warning.

a result of the use of force or restraint employed, but because of the mental or medical condition of the person at the time of police intervention.

The research available generally indicates that regardless of the type of restraint or use of force option, death can occur in individuals who are in a vulnerable medical state. Due to ethical considerations, research and experimentation is often conducted on animal (porcine) subjects or, if they do involve human subjects, the individuals are adult volunteers who are by all accounts healthy and not in the throes of a mental health crisis, drug overdoses or in a state of excited delirium. Amnesty International Canada highlighted the primary concern with the research into CEW use to date: “While a number of studies into taser use have been undertaken or are ongoing, both in the USA and Canada, none has yet been published which fully meets the criteria for a full, rigorous inquiry into the use or effect of tasers.”²⁰

The reviewed studies appear to lend credence to the assertion that CEWs are typically safe when used on healthy populations. However, the 2005 CPRC study did indicate that there was a glaring lack of globally accepted safety parameters around the use of CEWs.

As previously stated, there has not been sufficient research to examine the negative effects CEWs may have on vulnerable populations. This is generally due to the fact that for ethical and logistical reasons researchers cannot conduct controlled experiments on those suffering from the previously mentioned afflictions. An additional gap in the medical and academic literature is that most of these studies have focused on policing in urban settings, where police officers are able to call for back-up and medical personnel are nearby. However, there has been no identified research that addressed CEW use, excited delirium and sudden or unexpected death within the context of a rural setting or Northern policing. In addition, the Commission could not identify one study that specifically dealt with CEW use and the issue of pain inducement.²¹ Considering that the CEW in push stun mode is touted to be an acceptable pain compliance technique, the lack of empirical or scientific data into the type and intensity of such pain is of concern.

The Commission underscores the need for further research and empirical data collection into the use of CEWs, focusing on the following issues:

- CEW use, the infliction of pain and the measurement of such pain;
- appropriateness of CEW application in the field in contrast to other forms of use of force interventions;
- CEW use against vulnerable or at-risk populations;
- alternate use of force/intervention options when dealing with people who present with symptoms of excited delirium;
- CEW use, excited delirium and sudden or unexpected death within the context of a rural setting or Northern policing;
- connections between CEW use, excited delirium and the possibility of death.

²⁰ Amnesty International, *Canada: Inappropriate and Excessive Use of Tasers*, (London: Amnesty International, 2007), p. 2.

²¹ The Commission is aware of medical studies into pain and the physiological and psychological impact pain has on the body. However, these studies are within the broader context of enhancing medical knowledge and not specific to pain compliance techniques utilized by law enforcement.

CEW Policy²² and Protocols

Overview

The following section consists of a brief review of the manner in which the RCMP has governed CEW use by its members. This review demonstrates that policy changes since the RCMP authorized CEW use in 2001 have loosened constraints that were originally in effect. This was done without an assessment of the propriety or efficacy of use within the Force and only recently has the RCMP developed processes to enable it to evaluate the use of the CEW, “to identify CED trends [...] deployment concerns [and] to measure prevention/deterrence effectiveness.”²³ This amounts to a critical omission in the management of CEW usage by the RCMP.

RCMP Policy Development Process

Police operations are generally governed by policy. In the case of the RCMP, policy may be generated at the national, regional, divisional or detachment level. This allows for flexibility in addressing operational issues through a wide variety of police environments (e.g. municipal or remote northern communities). Operational policies must be constantly reviewed and revised to reflect changes in methods, law, technology and a host of other factors. One of the main bodies that undertakes such work within the RCMP is the National Incident Management Working Group comprised of individuals from both the training and operations side of the RCMP. Efforts are currently under way to ensure the relevance and robustness of this group (i.e. ensuring representation at the Divisional level). It is important to note that the RCMP does not have a National Use of Force Coordinator or specific body responsible for issues of use of force, but rather, addresses issues around use of force via the Working Group.

Policies are critical to the public’s perception of police in that they establish standards by which the RCMP as a whole and its members individually may be held accountable. As such, policy development is central to police governance. The process involves identification of an issue and determination that policy or policy change is required. Early in the process, a review of other police agencies both domestically and internationally may be undertaken. As the process unfolds, a policy will be subjected to many levels of review and consultation to ensure that it meets the varied needs within the RCMP and is legally sound. In 2007 the RCMP began consulting with the Commission when revising certain policies, commencing with the revision of the CEW policy.²⁴

²² Royal Canadian Mounted Police, *Operational Manual* (Ottawa: RCMP) [RCMP, *OM*]. RCMP policy on CEWs is found in the RCMP, *OM* c.III.2.1.5: Use of Force: Conducted Energy Weapon (CEW) (2001-12-20 to 2005-05-31) and RCMP, *OM* c.17.7: Conducted Energy Weapons (CEW) (2005-06-01 to present).

²³ PERF Center on Force & Accountability, *PERF Conducted Energy Device Policy and Training Guidelines for Consideration*, (Washington, D.C.: PERF, 2005), p. 4.

²⁴ RCMP operational policy development is a lengthy process outlined in its checklist (See Bruce Stuart & Chris Lawrence, *Report on Conducted Energy Weapons and Excited Delirium Syndrome* (N.p.: RCMP, 2007), p. 16.

History of RCMP Policy Development for CEWs

A review of the changes to RCMP national policy relating to CEWs reveals some trends that are worthy of note. The first iteration of the CEW policy was issued on December 20, 2001 and there were several revisions made culminating with the current policy document, issued August 8, 2007. The original policy dealt with CEW use, medical precautions, reporting and maintenance.

Date of Change	CEW Policy and Policy Changes
2001-12-20 (Original)	<ul style="list-style-type: none"> • CEW was “authorized for RCMP operational use as a less lethal means for controlling suspects and averting injury to members, suspects and the public.” • When originally approved for use the CEW could only be used to “subdue individual suspects who resist arrest, are combative or suicidal.” • Use for “crowd control” was specifically precluded. • Additionally, the RCMP member had to consider “other possible intervention options to calm or subdue a suspect.” • Only trained members or certified trainers could use the CEW.
2002-05-15	<ul style="list-style-type: none"> • The wording relating to crowd control was changed so that the CEW was “not to be used for crowd <i>dispersal</i>.”
2002-09-25	<ul style="list-style-type: none"> • Policy amended to stipulate that members qualified to use the CEW must re-qualify annually.
2004-06-23	<ul style="list-style-type: none"> • The original section authorizing CEW use was revised by deleting reference to “less lethal” to read, “approved for RCMP operational use as an intervention device to control individuals and avert injury to members and the public.” • Policy amended to extend the period for re-certification for CEW use to every three years. • A definition section was added that defined use as “an occasion when the CEW challenge has been issued to an individual whether or not the CEW is activated, or when a CEW is activated without a CEW Challenge.” • For the first time policy referred to the IM/IM, stating that the CEW must be used in accordance with the principles of the IM/IM. • The sentence directing that the CEW not be used for crowd dispersal was deleted. • References to “suspect” were changed to “individual”.
2005-06-01	<ul style="list-style-type: none"> • Definition of use expanded to include “when the presence of the CEW assists in taking control of a situation whether the CEW Challenge is given or not.”
2005-09-08	<ul style="list-style-type: none"> • Reflective of concerns raised in contemporaneous studies the policy was revised to read: “Multiple deployment or continuous cycling of the CEW may be hazardous to a subject. Unless situational factors dictate otherwise, do not cycle the CEW repeatedly, or more than 15-20 seconds at a time against a subject.”²⁵
2007-08-08 (Current)	<ul style="list-style-type: none"> • Current policy substantially rewrote CEW protocols, especially by including a section dedicated to excited delirium. First, it added, “Unless situational factors dictate otherwise (see IM/IM), make every effort to take control of the subject as soon as possible during a CEW probe-mode deployment.”

²⁵ This issue was first raised in an RCMP *OM Bulletin* on July 12, 2005.

	<ul style="list-style-type: none"> • The last aspect of the definition of use was modified to read: “<i>The CEW is drawn from its holster and used in controlling a situation whether or not the CEW Challenge is given.</i>” • Some of the aspects introduced by reference to excited delirium include: “In considering intervention options for excited delirium cases, the use of CEW in a probe-mode deployment may be the most effective response to establish control. NOTE: The CEW in push stun mode is primarily pain compliance” [emphasis added]; and • “If you suspect that an individual is experiencing an excited delirium medical emergency, when possible create a response strategy before deploying the CEW and include Emergency Medical Services (EMS) attendance in your strategy.”
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The original policy contained provisions directing when the CEW could be used (i.e. the CEW could only be used to “subdue individual suspects who resist arrest, are combative or suicidal;” other interventions options had to be considered before using the CEW to arrest a suspect) and prohibiting its use in other instances (i.e. the CEW could not be used for crowd control). However, over time one can 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 IM/IM and outside of the scope of dedicated CEW policy. The increasing acceptance of the CEW was also manifest when policy was amended in 2004 such that the standard for CEW re-certification was increased from one (1) year to three (3) years. This is significant given that CEW policy has changed repeatedly since 2001 and the longest period without amendments is less than two years.

The most recent version of the policy recaptures some of the directive quality but more in terms of addressing health and safety concerns, especially relating to excited delirium, than in terms of appropriate situational responses. For example, restrictions pertaining to multiple deployments and continuous cycling first incorporated in 2005 are currently in force. Previously, there was no restriction as to the number or duration of deployments.

The placement of excited delirium considerations is highly noteworthy. It gives the appearance that the CEW is the preferred option for interventions involving individuals believed to be exhibiting signs of excited delirium. In fact, current policy reads, “In considering intervention options for excited delirium cases, the use of the CEW in a **probe-mode deployment may be the most effective response** to establish control [emphasis added].” The danger here is that officers who interpret an individual’s behaviour as being consistent with signs of excited delirium may feel authorized to use the CEW when the behaviour itself would not otherwise permit CEW deployment. Policy must reinforce that believing someone is experiencing excited delirium is not a justification for CEW use. They must exhibit behaviour (i.e. being combative) which would otherwise justify use of the CEW.

A large part of the mandate of the Commission is the review of member conduct and, in assessing the propriety of member conduct in relation to CEW use, the IM/IM has become the focal point of that type of review. This issue is explored further below.

Commission Assessment of Appropriateness

During the first years of CEW use, prior to policy modification and integration of the IM/IM as policy, CEW policy and the IM/IM were sometimes in conflict. Policy changes have served to eliminate these conflicts.

The evolution of policy can be seen from the types of findings that have been made by the Commission in those cases where it has found inappropriate behaviour on the part of RCMP members. In rationalizing CEW usage members relied heavily upon articulation of the principles of IM/IM, which is consistent with their training. Often, it appeared that policy considerations were secondary or not operative when members assessed the reasonableness of their actions. The result was that, although members may have believed that they acted appropriately within the context of the IM/IM, they may have acted in clear contravention of policy. There were also cases where the opposite occurred.

Failures to adhere to policy generally fell into three categories. The first category consisted of breaches where the CEW was used other than “to subdue individual suspects who resist arrest, are combative or suicidal.” The second category was the failure to consider other intervention options. The last category was the failure to provide a verbal warning prior to use.

The policy changes noted in the table above will have the effect of eliminating the first two policy considerations from further review, thereby loosening constraints to use. This seems to support a more liberal acceptance of CEW use by the RCMP. However, it should also be noted that some changes in policy (i.e. restrictions to multiple or continuous CEW discharge) are a response to emerging medical research that has raised concerns about CEW application and potentially susceptible individuals (those suffering from excited delirium).

Unfortunately, the RCMP’s failure to properly collect, collate or analyze its own data means that the Force is unable, by its own inaction, to relate any external research to RCMP use of the CEW. Six years after the introduction of the CEW to the RCMP arsenal, there exists neither comprehensive nor even more cursory analyses readily available to the Commission to assist in conducting this review. This neglect means that the RCMP has been unable to implement systemic accountability processes, such as public reporting, and cannot evaluate what effects its policy changes have had on CEW use, training or officer and public safety. In effect, CEW use was liberalized without a complete thoughtful analysis, a process which we describe as “usage creep”.²⁶ This can be contrasted to a number of other North American police agencies which provided rationales for their use of CEWs based not only on the research and studies of others but also on empirical data relating to their own agencies actual use.

²⁶ This concern was recently raised in a position paper dealing with CEW use in which the authors warned of the close monitoring of deployment standards which is needed to ensure that the standards do not become so elastic as to undermine the purpose for imposing them. (See American Civil Liberties Union of Oregon, *ACLU of Oregon Recommendations Regarding Police Use of Conducted Energy Devices*, online: American Civil Liberties Union of Oregon <http://www.aclu-or.org/site/DocServer/Taser_Statement10_5_07.pdf?docID=2461>, at p. 5.

Reporting Protocols

There appears to be a universal understanding within the law enforcement field of the need to properly report CEW use. “Accurate record keeping of [CEW] incidents promotes evaluations of the effectiveness and reliability of this less-lethal option, in addition to providing an accurate account of events that resulted in the need for use.”²⁷

RCMP policy, as it relates to reporting on CEW usage, has also evolved. In the original 2001 policy, members were required to record a brief description of each use in their notebook. In 2002²⁸ the RCMP introduced Form 3996, the Conducted Energy Weapon Usage Report, which became the new mandatory reporting regime for CEW use. Unlike the notebook entries, which generally remained in the possession of the members who created them and are only kept for a limited time, the Form 3996 was to be kept on file and forwarded to a central repository in Ottawa at CCAPS.

In June 2004, at the same time that policy constraints on the use of CEWs were beginning to be loosened, the reporting protocols were altered such that the Form 3996 did not need to be forwarded to CCAPS except where:

- 1) medical or physical afflictions are claimed or observed;
- 2) there is an anticipated civil claim;
- 3) significant abuse of drugs or alcohol is evident or complications or difficulties are encountered; or
- 4) circumstances dictate that the incident is to be added to the database.

Since the requirement to complete Form 3996 was deleted this meant that there was no uniform reporting structure in effect. Any apparent or alleged injuries were to be recorded in the operational file and the requirement to follow divisional directives on reporting was mandated. This undoubtedly contributed to the significant decrease in reported CEW use in 2004 as compared to 2003 as illustrated in Figure 8 below.

In 2005 mandatory Form 3996 reporting was reinstated along with an obligation to complete the Form within fifteen days. However, there continued to be systemic deficits in collecting data relating to all CEW usages. Bulletin OM-470, October 28, 2005, confirmed that Form 3996 could be completed online and receipt of facsimile transmissions of the Form had not been valid since June 2005. Members who had forwarded the Forms by facsimile were directed to resubmit online, as the numbers supported that usage was under-reported in the preceding months.

These changes demonstrate a lack of strategic planning with respect to establishing an effective reporting system and the response to Commission inquiries on CEW use precipitated by this review call into question the efficacy of the current reporting scheme. In June 2005, the RCMP reported that:

²⁷ International Association of Chiefs of Police, *Electro-Muscular Disruption Technology: A Nine-Step Strategy for Effective Deployment* (Alexandria, VA: IACP, [2005]).

²⁸ In June 2004 members were only required to submit Form 3996 under certain specified circumstances and not in all cases. In September 2005 mandatory Form 3996 reporting recommenced.

The primary purpose behind development of the form was to gather statistical information that would inform the debate as to the safety and efficacy of the CEW as a less-lethal force option. A secondary purpose was to be able to quickly retrieve CEW incident data in response to a request as to whether a Form 3996 had been submitted in relation to a given subject.

The original proposal in 2001 was that the Form 3996 CEW incident data would have been stored in a restricted-access, stand-alone electronic database, housed on a national server. **The database was partially developed; however, it was never implemented or populated. Paper forms have been submitted and are on file, but the data from those forms have never been loaded into a database.**

...

To demonstrate the safety and efficacy of CEWs, it is essential to gather the data from all incidents involving the deployment of a CEW. **Statistical data is necessary to enable accountability to the public** [emphasis added].²⁹

The RCMP has now developed and currently has in place an electronic database that captures completed national use of Form 3996. Efforts are now complete in transposing previous paper copies of Form 3996 into the electronic database³⁰. Of note, the RCMP has never produced an Annual Report tracking CEW use. Given the importance of this process as related above, it is critical that this work commence immediately and expeditiously. While this data may be of benefit to many branches within the RCMP, it may be beneficial to have the project overseen by a National Use of Force Coordinator.

In the interim, the RCMP has expended notable efforts to compile data requested by the Commission in furtherance of this report.

Summary

Current RCMP policy for CEW use has evolved without adequate, if any, reference to the realities of its use by the RCMP. Changes to policy appear to have appropriately considered the experiences of external sources but failing to correlate this data to the RCMP experience amounts to a significant omission, which should be redressed by the Force at the earliest opportunity.

²⁹ RCMP, *Privacy Impact Assessment – CEW*, *supra* note 3.

³⁰ However, there may be no way to recover lost information during those periods when the RCMP neglected to maintain comprehensive record keeping. These time periods include the earliest CEW use when members only had to record events in their notebook; a period commencing in June 2004 when the RCMP lowered the mandatory reporting requirements which it had introduced in 2002; and a period in June 2005 after the RCMP had again made reporting mandatory but shifted from paper to electronic reports.

IM/IM and Use of Force

What is the IM/IM

The IM/IM is a comprehensive guide to aid RCMP members in determining and applying appropriate intervention techniques when involved in all manner of civilian interactions. RCMP members are trained to use the IM/IM as an aid to determine both how to intervene in incidents and when force may be necessary. There are seven underlying principles upon which the IM/IM is based:

Figure 4: Principles of IM/IM³¹

Seven Underlying Principles of the Incident Management Intervention Model (IM/IM)

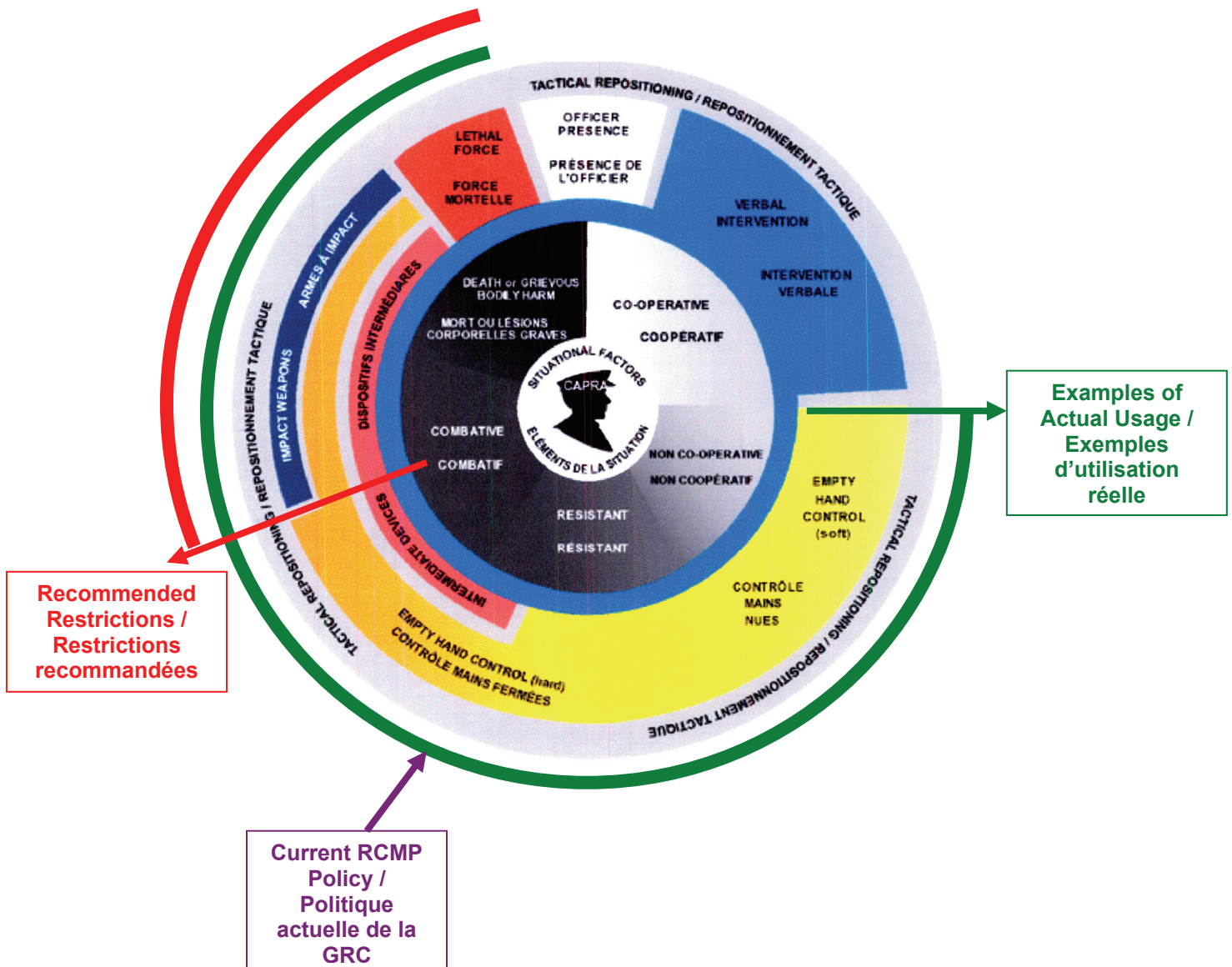
1. The primary objective of any intervention is public safety.
2. Police safety is essential for public safety.
3. The intervention model must always be applied in the context of careful risk assessment.
4. Risk assessment must take into account the likelihood and extent of loss of life, injury and damage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

The written guide has also been translated into a graphical model to permit a simple visual recognition of the key elements of intervention management. It consists of a series of concentric circles forming rings. The rings of each of these elements are subdivided with the subdivisions in the member options ring overlapping, thus signifying that there may be more than one appropriate option available to respond to a given risk assessment.

³¹ Royal Canadian Mounted Police, *Operational Manual* (Ottawa: RCMP), c. 17.1.

Figure 5: IM/IM

Proposed Restrictions on Incident Management/Intervention Model
Restrictions proposées concernant le Modèle d'intervention
pour la gestion d'incidents



The central aspect of the IM/IM which RCMP members use to assist them in analyzing situations is CAPRA, a problem-solving model that promotes acquiring information, analyzing it and formulating an appropriate response. Members must consider all of the relevant situational factors in order to arrive at the most appropriate method of intervention. An example of some of these factors follows:

- the number of officers versus the number of subjects;
- officer's age and sex versus the subject(s)';
- height and weight of the officer versus that of the subject;
- officer's skill level (including previous self-defence training);
- officer's weapons versus the subject(s)' weapons;
- proximity to the subject;
- special knowledge of the subject (i.e. martial arts skills);
- officer's current physical fitness level versus the subject(s)' apparent fitness level;
- police officer's injuries or level of exhaustion;
- threat cues;
- the environment;
- the subject(s)' level of sobriety.

The key consideration is the assessment of the subject's behaviour. Whenever a police officer is engaged in an interaction with a member of the public it is incumbent upon that police officer to perform a risk assessment, first determining which of the five behaviour classifications (cooperative, non-cooperative, resistant, combative and potential to cause grievous bodily harm or death) the situation/individual falls into.

Figure 6: Behaviour Classifications³²

Behaviour Classifications (Categories of Resistance)	
•	<p>Co-operative</p> <ul style="list-style-type: none"> • There is no resistance. • The client responds positively to verbal requests, and commands. • The client willingly complies. • There is little or no physical resistance. • Usually the presence of the uniform, police car, or proper identification will suffice to initiate a surrender or an arrest.
•	<p>Non-Cooperative</p> <ul style="list-style-type: none"> • The client does not comply to the police officer's requests. • This is done through verbal defiance with little or no physical resistance. • This may include: Refusal to leave the scene, failure to follow directions, taunting Officers and advising others to disregard police officer's lawful instructions.
•	<p>Resistant</p> <ul style="list-style-type: none"> • The person resists control by the police officer. • The person resist by pulling away, pushing away with the intent of not being controlled, running away, open and angry refusal to respond to lawful commands.
•	<p>Combative</p> <ul style="list-style-type: none"> • The client attempts or threatens to apply force to anyone, e.g. punching, kicking, clenching fists with the intent to hurt or resist arrest, or threatens assault.

³² *Supra* note 14.

- Active aggression.
- The client attacks the Officer in order to defeat attempts of control.
- The attack is a physical assault on the Officer in which the client strikes or uses techniques in a manner that may result in injuries to the Officer or others.
- **Death or Grievous Bodily Harm**
 - The client acts in any way which would lead the Officer to believe that their actions could result in death or grievous bodily harm to the police or any other person.
 - For this level of behaviour to exist, the presence of a weapon is not an essential element as long as the fear of death or grievous bodily harm exists.
 - This level would be present in the case of most weapon attacks and would of course include the threat of the following:
 - knife attack
 - baseball bat
 - firearms

Similarly, the officer intervention options provide for a range of responses and, as mentioned above, more than one form of intervention may be appropriate in the circumstances of a specific interaction. The options include officer presence, verbal intervention, empty hand control,³³ intermediate devices which currently include CEWs and OC spray, impact weapons³⁴ and the use of lethal force.

Figure 7: Levels of Intervention³⁵

- Levels of Intervention (Intervention/Response Options)**
- **Officer presence**
 - An officer's presence alone may impact on how a situation unfolds.
 - Ex: Uniformed Member, Foot Patrol, Marked Police vehicle, Number of Police vehicles in area, Type of uniform/equipment worn
 - **Verbal intervention**
 - Crisis intervention Techniques
 - Verbal communication (volume, tone, pitch, voice assistance, - p.a. system)
 - Vocabulary (context, commands, structure)
 - Non-verbal communication (posture, gestures, facial expressions)
 - **Empty hand control (soft)**
 - Soft physical restraint methods
 - Restraint techniques
 - Joint locks
 - Pain compliance
 - Distractions, stuns, creating imbalance
 - Hand cuffing
 - **Empty hand control (hard)**
 - Blocks
 - Strikes
 - Carotid Control Technique³⁶

³³ Empty hand control is use of force without weapons. Soft techniques are the least intrusive and may include restraining techniques such as handcuffing or joint locks to gain control of a subject. Hard techniques are designed to stop unwanted behaviour and carry with them a greater risk of injury to both the subject and the member. These include kicks and strikes.

³⁴ This option includes ASP batons.

³⁵ *Supra* note 14.

³⁶ The RCMP, *Operational Manual* c. 17.5: Carotid Control Technique states: "This technique will only be applied by a member who has received approved RCMP training in its use and **only if a person is threatened with death or grievous bodily harm** [emphasis added]."

- **Intermediate Devices**
 - O.C. Spray
 - CS gas
 - Conducted Energy Weapon
 - Water Projection System
- **Impact weapons**
 - Use of police defensive baton
 - Other Force approved impact batons, etc.
 - Use of extendable baton
 - Extended Range Impact
- **Lethal force**
 - Firearms
 - Self-defence techniques
 - Use of defensive baton upon a lethal impact zone
 - Police Motor Vehicle
- **Tactical Repositioning**
 - Police officers can tactically reposition at any point during a situation.

Proper implementation of the model requires the officer to continuously monitor the risk posed by the subject's behaviour and to modify the officer's response so that it remains appropriate at all times. The IM/IM does not require a stepping stone approach to officer intervention; just as incidents can escalate, immediately requiring a significantly higher level of response, so too can they de-escalate, necessitating a marked reduction in response level. Even in highly charged and dynamic situations officers are expected to continuously re-evaluate the circumstances.

Relationship to Policy

Although the underlying principles of the IM/IM were repeated in policy, the IM/IM was originally not itself a policy document. It was considered an aid to assist members in assessing behavioural and risk factors and thereafter in determining the most appropriate intervention option. It created a fluid framework wherein members must continuously assess risk and modify their responses as needed. This was contrasted with operational policy which was generally designed to more definitively guide the actions of members. This is consistent with a use of force philosophy in which it is deemed preferable to permit members to exercise their judgement within a general intervention framework rather than to fetter their discretion with directive or restrictive policy. The rationale advanced in favour of this approach is that it prevents the members from second-guessing themselves during dynamic often volatile interactions that may require immediate responses.

In 2005 the IM/IM was officially transposed into a stand-alone policy. Changes to dedicated CEW policy resulted in increasing reliance on the IM/IM for usage, save for amendments to the CEW policy which specifically related to health and safety concerns (i.e. excited delirium).

Relationship to Training

The IM/IM is a critical element of RCMP member cadet training and throughout a member's career for all use of force training, such as CEW or special weapons training. Throughout their time at Depot, the cadets are introduced to the IM/IM through classroom and scenario-based training and they are expected to be able to articulate their interactive responses. It appears that,

from the earliest days of their RCMP training, efforts are made to imbed the underlying principles of the IM/IM in officers' psyches such that they become second nature when carrying out their day-to-day duties.

CEW Placement in the IM/IM

Currently, the CEW falls into the intermediate devices category on the IM/IM. Its use corresponds to the mid-range of the resistant category for subject behaviour. This category is defined as:

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

The CEW is available to respond to behaviours from resistant to high risk situations where there is a risk of grievous bodily harm or death.

Within the officer response options, CEW use falls after officer presence and communication, which are ever-present options available to members. It also falls after, but overlaps with, empty hand control (soft) and empty hand control (hard). It is considered to be a lower intervention than impact weapons, but also overlaps with this category.

Challenges as to Where the CEW Fits in the IM/IM

CEW usage during high risk situations, such as where there is a fear of grievous bodily harm or death, does not appear to pose the same level of public concern as that which is generated during lower risk interventions. The fact that intermediate device options fall within the mid-range of the resistant behaviour category would seem to suggest that the CEW is not to be used for the lowest end of this category. Unfortunately, there is no specific guidance provided as to how this should be assessed and this may potentially lead to "usage creep". This has the effect of CEW usage at consecutively lower levels of risk, particularly relevant for resistant behaviour that could be considered "passive" or for non-cooperative behaviour.

Although past policy required the consideration of other intervention options, there have been cases examined by the Commission where CEW response appeared to be a first response or where when used once, was subsequently used without a proper reassessment of changing behaviour; for example where the subject had been somewhat subdued and was then only non-cooperative. In such cases there was no resort to open hand (soft) techniques. In fact, in some instances open hand (soft) techniques were not even considered before resorting to the CEW. These cases tended to show a disconnect between the policy at the time, discussed in the following section, and the application of the IM/IM. Justification for the use of force was then described in terms of the IM/IM and failed to address the specific requirements of the CEW policy.

One potential cause of the lowered threshold for the use of the CEW is the overemphasis of the latter two underlying principles of the IM/IM when contemplating CEW use:

- 6) The best strategy is the least intervention necessary to manage risk.
- 7) The best intervention causes the least harm or damage.

Simply put, by promoting the use of the CEW as the intervention method least likely to cause injury to officer or subject, it is not surprising that this option has become a preferred choice. Police agencies routinely cite these principles when advocating the use of CEWs. Unfortunately, it appears that in overstating these two principles the RCMP has created a preference for CEW use amongst its members where consideration of the other principles of the IM/IM is diminished. In particular, members are not conducting appropriate risk assessments before turning to the CEW.

Use of force experts consider the CEW to be safer than open hand (soft control) even though authorized CEW use commences after open hand (soft) techniques (i.e. a thumb lock). Given this philosophy, it should come as no surprise that the CEW has encroached into increasingly low risk interventions. The problem rests not just with CEW users but also with senior RCMP members who review CEW use and find no impropriety in situations where the RCMP Commissioner describes the conduct as “totally inappropriate”.

The second and broader problem is the overall appreciation for when it is appropriate to deploy a CEW. The reasons for judgement in *R. v. Hannibal*, provide a comprehensive review of this problem. In that case, pertaining to a member of the RCMP involved in an incident in August 2001, Judge Challenger heard conflicting expert evidence on the issue. This included evidence that in *push stun* mode the CEW was equivalent to the lowest degree of physical intervention, empty hand control (soft)³⁷ and prompted her to remark “that not all police use of force experts agree on where the Taser M26 falls in levels of intervention.”³⁸ After reviewing the facts of that case, Judge Challenger found that the use of force was unnecessary³⁹ and stated: “I can only infer that the corporate philosophy of the Taser M26 as a panacea was embraced by [the member] during the course of his training.”⁴⁰

Accepting the Taser® as a panacea for intervention is likely facilitated by the view that the Taser® in *push stun* mode is a preferred low-end means of intervention and the method least likely to cause harm. By logical extension this would equate its use to even the least invasive form of empty hand control and justify deployment whenever force was required.

Amnesty International prepared a paper in relation to this issue. This report contained much anecdotal information to support the premise that in practice CEWs have found a broader range of acceptable usage than that for which they were originally promoted and noted:

³⁷ *Hannibal*, *supra* note 6 at para. 128.

³⁸ *Ibid.* at para. 129.

³⁹ *Ibid.* at para. 145.

⁴⁰ *Ibid.* at para. 147.

[...] far from being used to avoid lethal force, many US police agencies are deploying tasers as a routine force option to subdue non-compliant or disturbed individuals who do not pose a serious danger to themselves or others. In some departments, tasers have become the most prevalent force tool. They have been used against unruly schoolchildren; unarmed mentally disturbed or intoxicated individuals; suspects fleeing minor crime scenes and people who argue with police or fail to comply immediately with a command.

[...]

Tasers have been described by many police departments as “filling a niche” on the force scale. However, Amnesty International is concerned that deployment of tasers rather than minimizing the use of force, may dangerously extend the boundaries of what are considered “acceptable” levels of force. While the organization concedes that there may be limited circumstances under which tasers might be considered an alternative to deadly force, there is evidence to suggest that measures such as stricter controls and training on the use of force and firearms can be more effective in reducing unnecessary deaths or injuries [...].⁴¹

The British Columbia Office of the Police Complaint Commissioner issued a comprehensive assessment of Taser® technology and responded to Amnesty International’s observations. While acknowledging concurrence with many of Amnesty International’s views relating to accountability, contraindications, administrative accountability and public reporting, the report posited:

We also believe that [Amnesty International] has **significantly downplayed** the risks associated with officers attempting to subdue an “unarmed” individual, and the potential for serious injury to both parties in arrest situations even where no weapons are used. This fails to reflect the reality that officers are often called upon to control individuals who may be larger, stronger and younger, and who have received formal or informal training in unarmed combat, either in martial arts school or a prison yard. The implication that an unarmed individual cannot pose a serious risk is a dangerous fallacy [emphasis in original].⁴²

Although this report envisaged a broader range of appropriate CEW use than Amnesty International, it recognized that “a precise delineation of when it is appropriate for police to deploy” CEWs is a critical issue.⁴³ Most police models seek to balance the restrictive use view of Amnesty International, where the CEW would only be used in cases where there is a perception of grievous bodily harm or death, with the liberal corporate philosophy, where the CEW could be deployed even when a peace officer is faced with non-cooperation.⁴⁴ There seems to be no dispute as to the value of CEWs in critical incident situations involving bodily harm or death. However, police use of force models consistently position appropriate CEW use in the resistant or combative subject behaviour category.

⁴¹ *Supra* note 7 at 2-3.

⁴² British Columbia. Office of the Police Complaint Commissioner, *Taser Technology Review Final Report, OPCC File No. 2474*, (Victoria: OPCC, 2005), p. 25.

⁴³ *Ibid.*, p. 25.

⁴⁴ *Hannibal*, *supra* note 6 at para. 125.

Wherever the CEW is placed, it will be necessary to ensure that due consideration is given to all the situational factors. Overvaluing the sixth and seventh principles of the IM/IM may well result in a lack of consideration of the third through fifth principles, assessing the risk factors.

Alternatives to Current Placement on the IM/IM

The Commission has previously articulated to the RCMP Commissioner concerns about the placement of the CEW within the IM/IM. In a review referenced in the Commission's 2006–2007 Annual Report⁴⁵ it was noted:

Two options that might assist in clarifying appropriate deployment of the CEW involve moving the CEW on the graphical model of the IM/IM. One possibility would be to move the CEW from the intermediate devices category to a level that commences after the resistant behavioural category, at the combative zone. This would result in a decrease in CEW availability during less confrontational incidents.

Alternatively, consideration might be given to deleting the non-cooperative category and splitting the resistant category into passive and active. This was the approach used in drafting the National Use of Force Framework,⁴⁶ which the RCMP collaborated in. The CEW could be situated at the start of the active resistant category. This would permit “appropriate” usage to remain in the range of what is currently contemplated by policy but would hopefully generate more thought in assessing what level of resistance a subject exhibited. This might decrease problems wherein members overuse the term resistant and may routinely select the CEW as the preferred manner of intervention.⁴⁷

The RCMP Commissioner's response was that the placement of the CEW within the IM/IM had just been reviewed by “a panel of experts” and was found to be appropriate. He also indicated that the issue of redefining the resistant behavioural category would be dealt with at a meeting in January 2007. It appears that this issue was not raised at that time and, in any event, there have been no changes to the definitions of the various behavioural categories contained in the IM/IM. The above recommendations were made in the context of the review of CEW use in one particular instance. It was far more limited than the scope of this review which even at these early stages has caused the Commission to reassess those recommendations.

Particularly in terms of this interim report, the Commission no longer considers redefining the behavioural categories in the IM/IM as an effective option to address the systemic concerns raised earlier. Rather, immediate consideration should be given to the first recommendation, that the CEW be positioned as an intervention option to respond to combative level behaviour and higher.

⁴⁵ Commission for Public Complaints against the RCMP, *Annual Report 2006–2007* (Ottawa: CPC, 2007), p. 24-25.

⁴⁶ Canadian Association of Chiefs of Police, *A National Use of Force Framework* (N.p.: CACP, 2000).

⁴⁷ Commission for Public Complaints against the RCMP, *Incident Related to Use of Force (Taser) – May 16, 2006*, online: Commission for Public Complaints against the RCMP <http://www.cpc-cpp.gc.ca/DefaultSite/Reppub/index_e.aspx?articleid=1363>.

Summary

With the CEW categorized as an intermediate device in the IM/IM, RCMP reporting statistics indicate that the CEW has been used in 4,025 instances. In 42% of reported cases the CEW was used in touch stun mode as opposed to 29% of the cases where the weapon was used in probe mode. Also of interest is that the weapon was reportedly used 9% of the time in both touch stun and probe modes. However, of particular note is the fact that the mere presence of the CEW (being unholstered but not used) occurred in 20% of the total reported cases. This indicates, at least initially, that the mere presence of the weapon may have had a deterrent effect. These findings are worthy of further examination in the Commission’s final report.

Figure 8: CEW use as reported in RCMP database⁴⁸

Year	CEW Reports	CEW Use on Touch Stun Mode	CEW Use on Probe Mode	CEW Use on Touch Stun and Probe Modes	CEW Unholstered But Not Used
2001	2	0	1	0	1
2002	84	38	15	7	24
2003	559	302	163	28	66
2004	240	135	68	20	17
2005	600	247	196	64	93
2006	1,123	464	325	104	230
2007*	1,417	512	399	133	373
Total	4,025	1,698	1,167	356	804

⁴⁸ Data up to and including November 30, 2007

RCMP Training for CEW Use

The interim report will provide a rudimentary explanation of RCMP training for CEW use; the final report will go into more depth after further consultation with the RCMP.

Figure 9: RCMP Members and CEWs in the Field

Year	Trained Members in the Field			CEWs in the Field – By Model Number		
	Instructors	Users	Total	M26	X26	Total
2001	0	189	189	0	0	0
2002	67	709	776	549	0	549
2003	159	2,902	3,061	1,427	5	1,432
2004	69	1,898	1,967	1,485	18	1,503
2005	77	1,257	1,334	1,646	31	1,677
2006	115	897	1,012	1,757	449	2,206
2007*	0	1,280	1,280	1,709	1,131	2,840

*Data up to and including December 7, 2007

Updated on December 10, 2007

Currently, the RCMP CEW user course is 16 hours in length and candidates must be qualified in First Aid, the baton, OC spray, Carotid Control technique and their service weapon. The course instruction utilizes a combination of lectures, discussions, demonstrations and scenario-based training. The curriculum is divided into 14 modules that cover technological aspects of CEW use; effects on the central, sensory and motor nervous systems; medical considerations; principles of the IM/IM, RCMP policy and deployment; maintenance of the weapon; field applications related to drug addicts, those suffering from mental health crises and potential suicides; and a stand-alone module on excited delirium. In order to be certified to use the CEW, an RCMP member must obtain a passing grade of 80% on a written exam, demonstrate that they can appropriately utilize the CEW and provide legal articulation for their actions, and demonstrate that they can properly remove probes after deployment. Certification to use the CEW is valid for three (3) years.

The CEW instructor's course is very similar to the user course but focuses on training the individual to be able to properly educate others on the use of the weapon. In order to be considered for the instructor's course a candidate must demonstrate they have met all the criteria for the general user course, as described above, as well as being a current Public and Police Safety Instructor. The course is 32 hours in length, extended over four days. Day one concentrates on the CEW user course; day two focuses on excited delirium, media presentations, learning how to demonstrate the use of the CEW; day three and four consists of learning how to teach the CEW user course.

The CEW re-certification course is similar in nature to the initial user course. It is four (4) hours in duration which includes lectures, discussions and demonstrations. Unlike the initial user

course and the instructor's course, the re-certification course is graded on a pass or fail basis. Individuals must complete a written exam, be able to articulate the justification for using the CEW and successfully remove a probe.

Both during training and in the field, the competency of the RCMP members certified to use a CEW is assessed by their peers and supervisors.

The Commission has been advised by the RCMP that starting in January 2008, all cadets at Depot will be certified in using the CEW. It remains to be seen if every cadet will be issued a CEW upon graduation.

Commission's Interim Recommendations

The CEW is currently one of several use of force weapons available to law enforcement. As such, the CEW has a role in specific situations that require less than lethal alternatives to reduce the risk of injury or death to both the officer and the individual when use of force is required. In other words, it is an option in cases where lethal force would otherwise have been considered. However, CEW use has expanded to include subduing resistant subjects who do not pose a threat of grievous bodily harm or death and on whom the use of lethal force would not be an option. The question to be addressed then is in what situations are CEWs not appropriate for use.

The Commission for Public Complaints Against the RCMP (Commission) is not recommending an outright moratorium on CEW use by the RCMP, as the weapon has a role in certain situations. Rather, the CEW needs to be appropriately classified in use of force models for very specific behaviours involving very specific situations. This means restricting the use of the CEW in both *push stun* and *probe* modes and classifying it an "impact weapon", permissible only in those situations where an individual is behaving in a manner classified as being "combative" or posing a risk of "death or grievous bodily harm."

Current RCMP policy classifies the CEW as an "intermediate" device placing it in the same category as oleoresin capsicum spray. This classification permits use of the weapon for those situations where an individual is exhibiting behaviours that are deemed "resistant", and not just "combative" or posing a risk of "death or grievous bodily harm" to the officer, themselves or the general public. It is the position of the Commission that the placement of the CEW as an "intermediate" device authorizes deployment of the weapon earlier than reasonable.

The current approach by the RCMP clearly illustrates a shift in permissible usage from the original intent in 2001, which was more restrictive in that the weapon was to be used to subdue individual suspects who resisted arrest, were combative or who were suicidal. The Commission refers to this expanded and less restrictive use as "usage creep". This has resulted in deployment of the weapon outside stated objectives as illustrated by cases that have been reviewed by the Commission over the past six years where the individuals have exhibited behaviours that were clearly non-combative or where there was no active resistance.

Current RCMP policy for CEW use has evolved without adequate, if any, reference to the realities of the weapon's use by the RCMP. Changes to policy appear to have appropriately considered the experiences of external sources, but failure to correlate this data to RCMP-specific experiences amounts to a significant oversight, which should be redressed at the earliest opportunity.

Of particular concern is the fact that there are currently 2,840 CEWs within the RCMP and since introduction, 9,132 members have been trained to use the CEW, yet there exists no empirical data generated by the RCMP as to the benefits, or detriments, of using the weapon. The CEW has been deployed in *push stun* or *probe* mode over 3,000 times since its introduction in December 2001, yet not one annual report has been produced and the information captured on

the Conducted Energy Weapon Usage Form has not been thoroughly examined nor utilized in the development of current CEW policy. This is further exacerbated by the fact that the CEW data base at headquarters has only been fully operational since late 2005, yet the CEW was first deployed in the field in late 2001. Accurate and meaningful data on CEW use is crucial in terms of understanding when and why members are employing certain use of force techniques and enabling senior officers to take corrective action when necessary.

Failure to properly collect, collate or analyze its own data means that the RCMP is unable, by its own inaction, to relate any external research to RCMP use of the CEW. Six years after the introduction of the CEW to the RCMP arsenal, there exists neither comprehensive nor even more cursory analyses readily available to the Commission to assist in conducting this review. This neglect means that the RCMP has been unable to implement systemic accountability processes, such as public reporting, and cannot evaluate what effects its policy changes have had on CEW use, training or officer and public safety. In effect, CEW use was liberalized without a complete thoughtful analysis or strategic plan, which amounts to a critical shortfall in the management and oversight of the CEW.

Supervision of those members that use the CEW is another method for ensuring appropriateness. Though the Commission was not able to fully examine the data pertaining to the number of members and instructors trained to use the CEW according to rank, the numbers tend to indicate that not all supervisors in the field are trained on the CEW. Yet, those supervisors are the ones who are responsible for the members under their control who may be authorized to use the weapon, and complete the necessary forms that are submitted to headquarters. The Commission is of the opinion that any corrective action that may be needed for members who improperly use CEWs is impeded in those situations where the supervisor is not trained and certified.

A mechanism is needed to ensure ongoing compliance with the RCMP use of force model and current CEW policy during operational use. The RCMP has acknowledged that proper assessment and accountability relating to the use of the CEW requires adequate reporting and analysis. This information is crucial in resolving concerns about use and developing appropriate and applicable policies and practices. In addition to the lack of RCMP-wide evaluations of CEW use, there has been little done to determine how CEW use has affected the application of other use of force options. These too are key considerations in determining the overall merits of the CEW. To ensure consistency of practice and policies and to establish a defined accountability mechanism, in addition to enhancing transparency, a National Use of Force Coordinator within the RCMP is essential.

Training programs must ensure that RCMP members learn to appropriately deploy a CEW and that the decision-making process and assessment of situational factors according to the use of force model is appropriate and justifiable when using the weapon. The use of force model is taught extensively during cadet training at Depot when cadets receive training for almost all other types of intervention options, including the use of firearms. CEW training, however, is not taught at the same time as the other use of force options; though this appears to be changing. Currently, CEW training can be provided years after completion of cadet training at Depot and the requirement of yearly re-certification has decreased to every three years. The Commission believes that this time period is too long and that biannual re-certification is more appropriate.

This will ensure that those permitted to use CEWs remain current with policy, policy shifts and situational assessment techniques and experiences in the use of force model.

The tragic occurrences associated with CEW use in the past few months have raised the level of public concern regarding the weapon. The RCMP relies upon studies that speak to the relative safety of CEWs as a less lethal technology. However, many of these same studies note the lack of research in relation to “at risk groups”. It is imperative that research be continued to establish the safety levels for “at risk groups” and to determine whether, by virtue of the very symptomology exhibited by these groups (i.e. drug use or psychiatric disorders), they may be exposed to a disproportionate number of police interventions where CEW use may be deemed appropriate.

When examining CEW use by law enforcement personnel, it is evident that consideration must be given to the condition of excited delirium. However, it should be noted that the term does not have universal acceptance within the medical community. Excited delirium, while still a contentious issue with some, has been identified in the literature to be a compelling medical concern that should be taken into account by law enforcement personnel. However, the topic as it relates to the use of CEWs rests in the currently held belief that individuals in a state of excited delirium are in immediate need of medical intervention and that treatment should not be delayed in the hopes that the individual’s condition will improve. The position of the Commission is that CEWs are not the preferred option for dealing with individuals experiencing the condition(s) of excited delirium unless the behaviour is combative or poses a risk of death or grievous bodily harm to the officer, the individual or the general public. As such, the CEW is not a medical tool for dealing with individuals who appear to be experiencing the condition(s) of excited delirium. It is clear that RCMP involvement in CEW related research is necessary to further assist policy development and practice.

To address these concerns and others identified throughout this interim report, the Commission recommends, **for immediate implementation**, the following:

Recommendation 1: The RCMP immediately restrict the use of the conducted energy weapon by classifying it as an “impact weapon” in the use of force model and allow its use only in those situations where an individual is behaving in a manner classified as being “combative” or posing a risk of “death or grievous bodily harm” to the officer, themselves or the general public. This includes use of the device in both *push stun* and *probe* modes.

Recommendation 2: The RCMP only use the conducted energy weapon in situations where an individual appears to be experiencing the condition(s) of excited delirium when the behaviour is combative or poses a risk of death or grievous bodily harm to the officer, the individual or the general public.

Recommendation 3: The RCMP immediately communicate this change in use of force classification to all members.

Recommendation 4: The RCMP immediately redesign the conducted energy weapon training members receive to reflect the classification of the device as an “impact weapon”.

Recommendation 5: The RCMP immediately amend the conducted energy weapon policy by instituting the requirement that re-certification occur every two years.

Recommendation 6: The RCMP immediately appoint a National Use of Force Coordinator responsible at a minimum for the following:

- National direction and coordination of all use of force techniques and equipment;
- Development of national policies, procedures and training for all use of force techniques and equipment;
- Implementation of national policies, procedures and training for all use of force techniques and equipment;
- Monitoring of compliance with national policies, procedures and training for all use of force techniques and equipment;
- Creation, maintenance and population of data bases related to the deployment of use of force techniques and equipment; and
- Analyses of trends in the use of all use of force techniques and equipment.

Recommendation 7: The RCMP immediately institute and enforce stricter reporting requirements on conducted energy weapon use to ensure that appropriate records are completed and forwarded to the national data base after every use of the weapon.

Recommendation 8: The RCMP produce a Quarterly Report on the use of the conducted energy weapon that will be distributed to the Minister of Public Safety, the Commissioner of the RCMP, the Chair of the Commission for Public Complaints Against the RCMP and all Commanding Officers in each Division that details at a minimum:

- Number and nature of incidents in which the conducted energy weapon is used;
- Type of use (i.e. *push stun*, *probe*, threat of use, de-holster, etc.);
- Number of instances medical care was required after use;
- Nature of medical concerns or conditions after use;
- Number of members and instructors trained;
- Number of members and instructors that successfully passed training and number that were unsuccessful at training; and
- Number of members and instructors that successfully re-certified and number that were unsuccessful at re-certification.

The Quarterly Report will be produced for a period of three years effective immediately.

Recommendation 9: The RCMP produce an Annual Report on the use of the conducted energy weapon that will be distributed to the Minister of Public Safety, the Commissioner of the RCMP, the Chair of the Commission for Public Complaints Against the RCMP and all Commanding Officers in each Division that is comprehensive of all Quarterly Reports for that year, and at a minimum details:

- All data required and analyzed in the Quarterly Report;
- Justifications for suggested or actual changes in policy;
- Justification for suggested or actual changes in training;
- An analysis of trends of use;

- An analysis of the relationship between use and officer/public safety; and
- An analysis of the relationship between use and suggested changes in policy and training.

The Annual Report will continue to be produced after the time period for the Quarterly Report has expired.

Recommendation 10: The RCMP continue to be engaged in conducted energy weapon related research looking at medical, legal and social aspects of the weapon's use. This includes focusing at a minimum on:

- CEW use, the infliction of pain and the measurement of such pain;
- Appropriateness of CEW application in contrast to other forms of use of force interventions;
- CEW use against vulnerable or at-risk populations;
- Alternate use of force/intervention options when dealing with people who present with symptoms of excited delirium;
- CEW use, excited delirium and sudden or unexpected death within the context of a rural setting or Northern policing; and
- Connections between CEW use, excited delirium and the possibility of death.

This includes notably collaborative research projects being carried out by the Canadian Police Research Centre (CPRC).

Glossary of Terms

<u>TERM</u>	<u>DESCRIPTION</u>
3996 Form	Conducted Energy Weapon Usage Form used by the RCMP
ASP Baton	Trademark of Armament Systems and Procedures (ASP), a manufacturer of impact weapons for law enforcement
CACP	Canadian Association of Chiefs of Police
CAPRA	Clients, Acquiring & Analyzing Information, Partnerships, Response, Assessment
CCAPS	Community, Contract and Aboriginal Policing Services within the RCMP
CED	Conducted energy device; also known as a conducted energy weapon (CEW)
CEW	Conducted energy weapon
Commission	The Commission for Public Complaints Against the RCMP
Commissioner	The Commissioner of the RCMP
CPC	Acronym for The Commission for Public Complaints Against the RCMP
CPRC	The Canadian Police Research Centre
Excited Delirium	Also known as ED and/or excited delirium syndrome (EDS)
IM/IM	Incident Management/Intervention Model
OC spray	Oleoresin Capsicum spray; also known as pepper spray
OPCC	Office of the Police Complaints Commissioner; also known as the British Columbia Office of the Police Complaints Commissioner (BCOPCC)
RCMP	Royal Canadian Mounted Police
Taser®	Brand name for a conducted energy device
YVR	Vancouver International Airport

Appendix A: Sample of the RCMP Commissioner's Response to the Commission's Interim Reports

As required under the *RCMP Act*, the Commissioner of the RCMP provided reasons for his disagreement with the Commission's adverse findings and recommendations:

- The Commissioner of the RCMP disagreed with the Commission's finding that the complainant's behaviour did not warrant the use of the CEW. The Commission found in the interim report that the deployment of the CEW was inappropriate, as "[t]he mere clenching of one's fists does not constitute combative behaviour." The Commissioner responded: "I found that [the complainant] was physically resisting arrest, and that his behaviour had become somewhat combative. In addition, his clenched fists and increasing verbal outlash towards the members involved, as well as his physical resistance at being handcuffed, all pointed to the potential escalation of an already dangerous situation."
- In response to another interim report the Commissioner of the RCMP agreed with the Commission's adverse finding but with exception, stating: "[...] the use of the M26 Advanced Taser on a subject displaying resistant behaviour would reduce the potential for injury, both on the part of the subject and of the police officer, when compared with conventional use of force techniques such as joint manipulation, pressure points, stunning blows or strikes."
- In a 2007 Commissioner's Notice, the Commissioner of the RCMP rejected the Commission's recommendation calling for a review of the CEW policy, stating: "In response to recent concerns regarding the potential misuse of the CEW, a panel of experts was put together by our Operational Policy Centre and concluded that the CEW is well placed in our use of force continuum."
- With respect to the Commission's recommendation that the RCMP should review its training policy as it relates to CEWs, the Commissioner noted in a 2007 notice: "The course module of the CEW Instructor Course was revised in October 2005 to ensure our trainers are well-versed not only in the functionality of the device, but also in the philosophy of less than lethal interventions, the physiological and psychological effects of its use, and more precisely, on how its use fits into the IM/IM use of force continuum. Moreover, in order to qualify to take part in this course, candidates must be active public and police safety instructors, confident in the principles of IM/IM. I am therefore convinced that our CEW trainers are fully qualified to do so."

Appendix B: Reviewed Literature

Darren Laur, *Excited Delirium and its Correlation to Sudden and Unexpected Death Proximal to Restraint. (TR-02-2005) (Ottawa: Canadian Police Research Centre, 2004).*

The paper released by the Canadian Police Research Centre (CPRC) in 2005 endeavoured to provide clarification on sudden and unexpected death proximal to police restraint and to establish what role, if any, excited delirium played in those deaths. Central to their examination was a review of the existing medical and scientific research that had been conducted nationally and internationally. The study also focused on the possible correlation between deaths attributed to excited delirium and police use of force, which included an examination of the role of CEWs. Based on the available literature, medical research and scientific experiments the CPRC presented a list of symptoms associated with excited delirium and proposed protocols for those dealing with individuals who appear to be in a state of excited delirium.

The study identified three groups who appeared to be most likely to succumb to “sudden and unexpected death proximal to restraint attributed to excited delirium”:⁴⁹

- Those who suffer from psychiatric illness.
- Those who are chronic illicit stimulant substance abuse users.
- Combination of mental illness and substance abuse.

The authors noted that it would be unrealistic to expect law enforcement officers to determine, at the scene, what precipitated the onset of excited delirium, as they are not adequately trained to make these distinctions.

In addition to the three high risk groups, the study identified nine potential contributory states to sudden death and excited delirium:⁵⁰

- Contributing factor no. 1: Cocaine toxicity and Dopaminergic effect to heart muscle
- Contributing factor no. 2: Cocaine toxicity to brain (hyperthermia)
- Contributing factor no. 3: Cocaine Associated Rhabdomyolysis (CAR)
- Contributing factor no. 4: Metabolic Acidosis
- Contributing factor no. 5: Neuronal Catecholamine Release
- Contributing factor no. 6: Antipsychotic Drugs and Sudden Death
- Contributing factor no. 7: Genetic Susceptibility to Arrhythmia
- Contributing factor no. 8: Hypertrophic Cardiomyopathy
- Contributing factor no. 9: Face down prone restraint proximal to arrest

The study concluded by noting that excited delirium should be considered a medical emergency and treated accordingly by law enforcement and emergency personnel. Due to the fact that there is a lack of information about excited delirium and how it manifests itself, the authors noted that policy and procedures would have to be fluid enough to adapt to emerging studies.

⁴⁹ Laur, *Excited Delirium*, *supra* note 16 at 17-18.

⁵⁰ *Ibid.*, 20-27.

Drazen Manojlovic, et al. *Review of Conducted Energy Devices. (TR-01-2006) (Ottawa: Canadian Police Research Centre, 2005).*

In light of the number of deaths occurring proximal to the deployment of a CEW by police, the Canadian Association of Chiefs of Police (CACCP) approached the CPRC and requested that they conduct a review of the available scientific and medical data to establish if CEWs posed an increased safety risk. The report was divided into three sections: medical safety of the CEW; policy considerations for police CEW operations; and excited delirium. The review of the existing medical research conducted in Canada and the United States confirmed the hypothesis that a causal link between death (sudden or otherwise) and the use of CEWs could not be established. Risk to or damage of the heart could also not be established when using a CEW. The report also indicated that the state of excited delirium was emerging as the most probable explanation for unexpected death.

Despite the medical reviews finding little correlation between CEWs and death, the authors of the report noted: “The issue related to multiple CED applications and its impact on respiration, pH levels, and other associated physical effects, offers a plausible theory on the possible connection between deaths, CED use, and people exhibiting the symptoms of [excited delirium].”⁵¹ This report confirms that CEW use is typically safe on healthy populations, but there is a danger of sudden death subsequent to deployment of CEWs especially for those suffering from illicit drug toxicity or excited delirium.

The review also focused on policy considerations and put forward a best practices model. Their review of information available at the time supported the belief that CEW use, when deployed under appropriate circumstances, increased officer safety; decreased the number of injuries to both subject and officer; and decreased the number of fatal encounters between the police and the public. However, with the benefits come increased accountability, and the CPRC proposed the development of usage data bases, reporting protocols and appropriate policy and guidance models.

The review also examined the phenomenon of excited delirium and the potential link to sudden death. A thorough explanation of the medical realities of this state of being illustrated the difficulties police officers face when interacting with individuals displaying symptoms consistent with excited delirium. Dr. Christine Hall cautioned against allowing those in a state of excited delirium to “wind down”, as the more lethal aspects of excited delirium can progress rapidly. She notes: “Not only are property owners not content to watch police allow a subject to continue to destroy property, there is some medical evidence that suggests that progression to a state of exhaustion is, in itself, dangerous.”⁵² Due to the lack of scientific and medical knowledge related to excited delirium generally, Dr. Hall presents a list of observable behaviour and physiological symptoms that can be used by police officers when determining if someone may be suffering from excited delirium. The report underscored that excited delirium should be viewed as an acute medical emergency by law enforcement personnel and recommended the inclusion of emergency medical services as soon as possible.

⁵¹ Drazen Manojlovic, et al. *Review of Conducted Energy Devices*, *supra* note 18 at p. v.

⁵² *Ibid.*, p. iv.

This CPRC product concluded by calling for the establishment of best practices protocols that were comprehensive yet responsive enough to the realities facing law enforcement officers in the field. It also provided a list of issues that needed to be addressed in the future, such as safety parameters and additional scientific information about excited delirium and sudden or unexpected death proximal to restraint.

British Columbia. Office of the Police Complaint Commissioner, *Taser Technology Review Final Report OPCC File No. 2474* (Victoria: Office of the Police Complaints Commissioner, 2005).

The Office of the British Columbia Police Complaint Commissioner (OPCC) released an interim report in September 2004 on Taser® technology relative to law enforcement duties in British Columbia. The focus of the interim report was the medical and law enforcement implications of utilizing a CEW in the field. The final report was intended to provide training standards with respect to CEWs, excited delirium and restraint protocols.

The OPCC examined officer training injuries, which by logical extension would provide insight into injuries that could potentially be inflicted in the field during CEW use. These injuries, identified as secondary in nature, included shoulder dislocations, chipped teeth, vertigo, muscle soreness, cuts, electrical burns and, in one case, a compressed fracture of the spine.⁵³ The review of the available literature “suggests there may be a potential for musculoskeletal injuries caused by the powerful muscle contractions when a CED is applied.”⁵⁴

The study invited a panel of experts, including medical professionals, to review the available medical literature and identify gaps in research. With respect to excited delirium the panel concluded that instead of being a firm diagnosis, the phenomenon was best described as a “symptom cluster”. Further, “it was also noted that cocaine and methamphetamine abuse overlap with mental disorders and produce paranoia and control over-ride, where the subject feels a loss of control over their thoughts and actions. Because these drugs can over-stimulate already delirious patients, increased fatality rates are seen in hospitals without the presence of TASERS or other lower lethality weapons.”⁵⁵

The study also called for the establishment of a Provincial Use of Force Coordinator in British Columbia who would be responsible for coordinating information related to CEW deployment, reviewing emerging technology and research and disseminating best practices to other Use of Force Coordinators throughout the province.

⁵³ It was later found that this officer had osteoporosis.

⁵⁴ *Supra* note 42 at 16.

⁵⁵ *Ibid.*, 29-30.

TASER International

Although TASER International claims their products are safe and do not cause death, two important bulletins were released in June 2005 and May 2006, respectively. The June 2005 training bulletin states in part:⁵⁶

Repeated, prolonged, and/or continuous exposure(s) to the TASER electrical discharge may cause strong muscle contractions that may impair breathing and respiration, particularly when the probes are placed across the chest or diaphragm. Users should avoid prolonged, extended, uninterrupted discharges or extensive multiple discharges whenever practicable in order to minimise the potential for over-exertion of the subject or potential impairment of full ability to breathe over a protracted period of time...[people experiencing excited delirium] are at significant and potentially fatal health risks from further prolonged exertion and/or impaired breathing.

The May 2006 training bulletin states in part:⁵⁷

The TASER device can cause strong muscle contractions that may result in physical exertion or athletic-type injuries. In certain instances this may be serious for some people [...] This may also occur in instances where a person has an unusual and/or unanticipated response to the TASER device deployment and/or discharge [...] TASER International has now been made aware of several incidents where volunteer have alleged to have sustained injuries during or temporal to a group exposure [...] TASER International is now recommending that the **group exposure method should not be used** for TASER exposures [emphasis added].

Further, the product warning for law enforcement published on March, 1, 2007 states in part:⁵⁸

[...] In some circumstances, in susceptible people, it is conceivable that the stress and exertion of extensive repeated, prolonged, or continuous application(s) of the TASER device may contribute to cumulative exhaustion, stress, and associated medical risk(s) [...] Unrelated to TASER exposure, conditions such as excited delirium, severe exhaustion, drug intoxication or chronic drug abuse, and/or over-exertion from physical struggle may result in serious injury or death. [...] it is advisable to use expedient physical restraint in conjunction with the TASER device to minimize the overall duration of stress, exertion, and potential breathing impairment particularly on individuals exhibiting symptoms of excited delirium and/or exhaustion.

⁵⁶ TASER International, *Training Bulletin* (June 2005), cited in Amnesty International, *Canada: Inappropriate and Excessive Use of Tasers*, *supra* note 20 at 4-5. (TASER International no longer has this bulletin on its website. The Commission contacted TASER International and requested a copy of the 2005 bulletin; our request was forwarded to their legal department.)

⁵⁷ TASER International, *Training Bulletin 13.0-01: Recommendation Against Group Exposures*, online: TASER International <<http://www2.taser.com/training/documents/training%20bulletin/training%20bulletin%2013.0-01.pdf>>.

⁵⁸ TASER International, *Product Warnings - Law Enforcement: Important Safety and Health Information* online: TASER International <<http://www.taser.com/legal/Pages/Warning.aspx>>.

Appendix C: Current RCMP Conducted Energy Weapon Policy

17.7. Conducted Energy Weapon

1. [General](#)
2. [Definitions](#)
3. [Deployment](#)
4. [Voluntary Exposure](#)
5. [Deployment Aftercare](#)
6. [Reporting](#)
7. [Maintenance and Control](#)
8. [Data Downloads](#)
9. [Independent CEW Testing](#)
- 17-7-1 [Approved Holsters](#)
- 17-7-2 [Taser Model M26 Battery-Charging Method](#)

Related Links

[FM ch. 6.](#)

(For information regarding this policy, contact National Contract Policing Br., Community, Contract and Aboriginal Policing Services Dir. at GroupWise address OPS POLICY HQ.)

1. General

1. 1. Only the advanced Taser M26 (model 44000) and Taser X26E (Law Enforcement) (model 26012) conducted energy weapons (CEW) are approved for RCMP operational use as intervention devices to control individuals and avert injury to members and the public.

NOTE: As any Taser M26 reaches its life expectancy, it will be replaced by a Taser X26E. No new Taser M26 will be purchased.

1. 2. The fluorescent yellow stickers on the CEW are intended to differentiate it from the pistol and must not be removed or altered under any circumstance.

1. 3. Only trained members and certified instructors who have successfully completed the CEW User Course or the CEW Instructor Course are permitted to use the CEW.

1. 4. Members certified to operate the CEW must re-qualify every three years.

1. 5. CEW training and member re-certification must be documented on HRMIS.

2. Definitions

2. 1. **CEW Challenge** means the declaration issued by a member before using the CEW: "Police, stop or you will be hit with 50,000 volts of electricity!"

2. 2. **push stun mode** means pressing or pushing an activated CEW onto designated push/stun locations on an individual, allowing electrical energy to be transferred to that individual.

2. 3. **probe mode** means deploying an activated CEW by propelling and discharging two electrical probes, equipped with small barbs that hook onto a person's clothing or skin, allowing electrical energy to be transferred to that person.

2. 4. **use of the CEW** means:

2. 4. 1. the CEW Challenge (see sec. [2.1.](#)) has been issued to a person whether or not the CEW is activated;

2. 4. 2. the CEW is activated without a CEW Challenge; or

2. 4. 3. the CEW is drawn from its holster and used in controlling a situation, whether or not the CEW Challenge is given.

2. 5. **operational cartridge** means an RCMP-approved cartridge for operational use and training, except scenario-based training.

2. 6. **training cartridge** means the RCMP-approved blue simulation air cartridge for scenario-based training.

2. 7. **excited delirium** means "a state of extreme mental and physiological excitement, characterized by extreme agitation, hyperthermia, hostility, exceptional strength and endurance without apparent fatigue" (Morrison and Sadler, 2001).

2. 7. 1. Excited delirium is a medical emergency which may be brought on by stimulant use, psychiatric illness or a combination of both. Subjects may exhibit the following symptoms or behaviour:

2. 7. 1. 1. removal of clothing;

2. 7. 1. 2. bizarre and violent behavior;

2. 7. 1. 3. running in heavy street traffic;

2. 7. 1. 4. hyperactivity;

2. 7. 1. 5. aggression;

2. 7. 1. 6. smashing objects, particularly windows and glass;

2. 7. 1. 7. non-responsive to police presence or verbal intervention;

2. 7. 1. 8. extreme paranoia;

2. 7. 1. 9. incoherent shouting, unintelligible speech, animal sounds;

2. 7. 1. 10. flight behavior;

2. 7. 1. 11. lid lift (eyes opening so wide the whites of the eyes are completely visible);

2. 7. 1. 12. unusual strength;

2. 7. 1. 13. impervious to pain;

2. 7. 1. 14. ability to resist numerous police officers over an extended period of time;

2. 7. 1. 15. overheating (hyperthermia); or

2. 7. 1. 16. profuse sweating or no sweating at all.

2. 8. **data download** means retrieving information, recorded and stored in the Taser M26 or Taser X26E about its deployment, through the data port-function by connecting the data port to a computer. By conducting a data download, information is provided about CEW usage which provides accountability and which can be valuable to an investigation.

3. Deployment

3. 1. General

3. 1. 1. The CEW must be used in accordance with CEW training and the principles of the [Incident Management/Intervention Model \(IM/IM\)](#). See also ch. [17.1](#).

3. 1. 2. Before using the CEW, when tactically feasible, give the CEW Challenge. See sec. [2.1](#).

3. 1. 3. Multiple deployment or continuous cycling of the CEW may be hazardous to a subject. Unless situational factors dictate otherwise (see [IM/IM](#)), do not cycle the CEW repeatedly, nor more than 15-20 seconds at a time against a subject.

3. 1. 4. Unless situational factors dictate otherwise (see [IM/IM](#)), make every effort to take control of the subject as soon as possible during a CEW probe-mode deployment.

3. 1. 5. For cold-weather limitations for model M26, see sec. [7.3](#).

3. 2. Excited Delirium

3. 2. 1. All members must familiarize themselves with the common signs of excited delirium outlined in sec. [2.7](#).

3. 2. 2. Individuals experiencing excited delirium require medical treatment which first requires that they be restrained.

3. 2. 3. In considering intervention options for excited delirium cases, the use of the CEW in a probe-mode deployment may be the most effective response to establish control.

NOTE: The CEW in push stun mode is primarily pain compliance.

3. 2. 4. If you suspect that an individual is experiencing an excited delirium medical emergency, when possible create a response strategy before deploying the CEW and include Emergency Medical Services (EMS) attendance in your strategy.

3. 2. 4. 1. An optimal response strategy should include the following:

3. 2. 4. 1. 1. EMS to attend with members;

3. 2. 4. 1. 2. ensure there are enough members on the scene for a quick and effective "hands on" (control) in an effort to minimize the incidence of physical confrontation;

NOTE: On its own, the CEW is not intended as a restraint device.

3. 2. 4. 1. 3. one member on CEW;

3. 2. 4. 1. 4. effective control of arms and legs during CEW deployment cycle;

3. 2. 4. 1. 5. apply approved restraints;

3. 2. 4. 1. 6. when safe to do so, remove the subject from the prone position as soon as possible after control is established;

3. 2. 4. 1. 7. if no EMS is present at the scene and the subject suddenly becomes quiet and stops resisting, EMS should be summoned and preparation be made for CPR; and

3. 2. 4. 1. 8. as excited delirium is a medical emergency, all subjects should be transported via EMS, where possible, and placed in Health Services care as soon as possible.

3. 2. 5. If possible promptly go to the hospital to relay your observations to health care personnel to ensure information is properly relayed.

3. 2. 6. If there is evidence of substance abuse, seize as an exhibit.

4. Voluntary Exposure

4. 1. Only candidates taking the CEW User Course or the CEW Instructor Course are permitted to participate in the CEW Voluntary Exposure Exercise, conducted by a CEW Instructor.

NOTE: Do not permit any member of the public to participate in a CEW voluntary exposure exercise.

5. Deployment Aftercare

5. 1. Advise the individual that he/she has been subjected to a CEW deployment and that the effects will be short term.

5. 2. Ensure the individual receives medical attention if any unusual reactions occur or if you think that he or she is in distress.

5. 3. If the CEW was used in probe mode, a member currently certified in first aid may remove the probes. It is not necessary to have a medically trained person examine the individual, unless a probe is lodged in a sensitive part of the body, such as the eye or the groin, or the individual's physical condition warrants medical attention.

5. 4. Remove the probe from an individual in a manner that least interferes with the privacy and dignity of that individual, ensuring the safety of the member and the individual.

5. 5. If a medical or physical affliction is claimed or observed, to the best of your ability:

5. 5. 1. Make note of the actual or alleged affliction/injury.

5. 5. 2. Photograph the actual or alleged affliction/injury.

5. 5. 3. Obtain a statement.

6. Reporting

6. 1. General

6. 1. 1. As soon as practicable each time the CEW is used, notify your supervisor.

6. 1. 2. Record on the investigative file any apparent or alleged affliction/injury caused by the CEW.

6. 1. 3. Complete form [3996](#) before the end of a shift every time the CEW is used, and place a completed copy on the operational file.

6. 1. 4. Where applicable, follow division reporting directives.

6. 1. 5. For occupational health and safety reporting requirements, see [OSM ch. 3](#).

6. 2. **Supervisor**

6. 2. 1. Ensure members submit form [3996](#). Review forms for quality assurance.

6. 2. 2. To make changes or additions after submission of form [3996](#), resubmit the form in its entirety. The system will automatically purge the old form and replace it with the new one. Place a copy of the revised form on the operational file.

6. 3. **Commander**

6. 3. 1. Ensure that members under your command are aware of the directives in this chapter.

6. 3. 2. Ensure the original CEW package received contains one CEW, four operational cartridges, two fully charged battery packs, one instruction book, one black carrying case, and one holster.

6. 3. 3. Maintain a control log for each CEW assigned to the unit by recording the time, date and name of each member who has a CEW.

6. 3. 4. Keep an adequate supply of CEWs, RCMP-approved holsters, CEW operational cartridges and replacement batteries on hand.

7. **Maintenance and Control**

7. 1. **General**

7. 1. 1. The CEW is a prohibited firearm. The CEW and its cartridges must be secured in accordance with the [Public Agents Firearms Regulations](#).

7. 1. 2. A member operating a CEW must safely dispose of spent cartridges.

7. 1. 3. Spent probes will be placed in a biomedical waste container.

7. 1. 4. The CEW must be carried in an RCMP-approved holster (see [App. 17-7-1](#)) on the member's non-dominant side, e.g. opposite the sidearm.

7. 1. 5. For use of the M26 in -20°C, see sec. [7.2.3.3](#).

7. 2. **Batteries**

7. 2. 1. **Model X26E**

7. 2. 1. 1. The X26E uses a model-specific, digital power magazine (DPM).

7. 2. 1. 2. Replace the DPM when the percentage life reads below 20% on the digital display.

7. 2. 1. 3. DPMs below 20% may be used for training.

7. 2. 1. 4. Dispose of the DPM when it drops to 1%.

CAUTION: Continued use at 0% may damage the CEW.

7. 2. 2. Model M26

7. 2. 2. 1. Given the specialized and particular power supply requirements for the M26, only RCMP-approved batteries must be used. See sec. [7.2.4.2](#). See also [App. 17-7-2](#) for battery-charging method.

7. 2. 2. 2. The M26 battery indicator is a simple "power indicator" light when used with NiMH batteries. A spark test is the only approved and reliable method to assess the state of the NiMH batteries and the functionality of the CEW.

7. 2. 3. Model M26 Precautions

7. 2. 3. 1. Ensure batteries are properly charged at all times, particularly during severely cold temperatures.

7. 2. 3. 2. Avoid exposing the M26 to temperatures below -10°C for extended periods.

7. 2. 3. 3. At -20°C or below, when practicable, carry the CEW and cartridges in a warm area or under your storm coat.

7. 2. 4. Model M26 Battery Cooling Period

7. 2. 4. 1. Do not cycle the CEW more than 10 times consecutively. When the CEW is continuously re-cycled, a cooling-off period of 10 minutes must be allowed to prevent internal damage.

7. 2. 4. 2. These batteries can only be purchased through M.D. Charlton. See [App. 17-7-2](#).

7. 2. 5. Model M26 Battery Care

7. 2. 5. 1. You can only use the following authorized AA batteries listed in order of preference: Taser International (Rechargeable NiMH 44700); and Eveready Energizer ACCU (Rechargeable NiMH in 2100 mA or more).

7. 2. 5. 2. Recharge CEW NiMH batteries every two weeks. The NiMH batteries do not retain a full charge over time. When not used, NiMH batteries lose 1% or more of their charge each day at room temperature.

7. 2. 5. 3. Do not charge both the CEW and a separate battery pack at the same time on the same charger.

7. 2. 5. 4. To ensure that the CEW NiMH batteries are capable of accepting a full charge, CEW NiMH batteries must be conditioned when received and drained semiannually according to the manufacturer's instructions.

7. 2. 5. 5. Purchase these batteries through the authorized distributor of Taser, M.D. Charlton, because of the unique construction of the battery and to meet the demands of the Taser.

7. 2. 5. 6. Upon receipt of a new CEW and every six months thereafter, recharge the batteries three times consecutively. Remove the batteries or CEW from the charger when the green light indicates that the batteries are fully charged. Wait five seconds, then reinsert the batteries or CEW into the charger, and repeat a third time. Repeat these steps when the CEW batteries are drained or battery problems are experienced. See [App. 17-7-2](#).

7. 2. 5. 7. If battery problems persist after the batteries have been conditioned, return the CEW, the batteries and the charger to the Armourer for inspection/repairs.

7. 3. Model M26 and Cartridges Cold-weather Limitations

- 7. 3. 1. At -10° C or colder, the M26 may deploy improperly or not at all.
- 7. 3. 2. At or near -20° C, the following limitations have been observed:
 - 7. 3. 2. 1. trigger is stiff and requires excessively hard pull to activate,
 - 7. 3. 2. 2. reduced cycle rate,
 - 7. 3. 2. 3. deployment range limited to 15' or 4.5 m maximum,
 - 7. 3. 2. 4. one to two seconds delay in cartridge firing, and
 - 7. 3. 2. 5. rapid transition from cold to warm areas may cause laser sight to frost.
- 7. 3. 3. The X26E does not have the same limitations as the M26.

7. 4. Operational/Training Cartridges

7. 4. 1. Operational Cartridges: TASER Standard Air Cartridge model 44200 with 21-foot filament - for operational use with both the M26 and X26E.

NOTE: This is a newer version of the currently approved TASER Standard Air Cartridge model 34222 which is no longer available for purchase. Model 34222 is still approved and will be phased out through attrition.

7. 4. 2. Training Cartridges: blue TASER simulation Air Cartridge model 44205 with a 21-foot, non-conductive nylon wire for use in RCMP scenario-based training. This training cartridge is intended to be purchased only by CEW instructors or Division Training Coordinators.

7. 4. 3. Monitor operational cartridges. They are marked with a five-year expiration date.

7. 4. 4. If the operational cartridge has not been deployed in five years, immediately replace it with a new operational cartridge.

7. 4. 5. You may use expired operational cartridges for training purposes, except for scenario-based training.

7. 4. 6. An operational cartridge should not be stored for a long term and carried in the extended DPM of the Taser Model X26E. Cartridges are to be stored in the cartridge carrier/holder provided on the holster.

7. 5. Repair/Replacement

7. 5. 1. In compliance with the [Canada Labour Code](#), malfunctioning CEWs must be marked or tagged to indicate that they are faulty and to be removed from service.

7. 5. 2. The supervisor will:

7. 5. 2. 1. ensure faulty or malfunctioning CEWs are removed from service, are properly tagged and immediately sent to a qualified person designated by the Cr. Ops. Officer to conduct CEW data downloading. See shipping procedures in [FM ch. 6.4.4.](#)

7. 5. 2. 2. after the download is complete, ensure the CEW is returned to the Senior Armourer, "Depot" Division for repair or replacement. See [FM ch. 6.4.](#)

7. 5. 3. If the CEW is being shipped for independent testing as part of an investigation, follow the same shipping procedures. See [FM ch. 6.4.4.](#)

8. Data Downloads

8. 1. General

8. 1. 1. The following individuals are qualified to conduct CEW downloads: CEW Instructor Trainers, the RCMP Armourer, and any other qualified person designated by the Cr. Ops. Officer.

8. 1. 2. Follow the same shipping process (see [FM ch. 6.4.4.](#)) if the CEW is being shipped specifically for a data download for an investigation about CEW usage or yearly storage of data and resetting of the internal clock to Greenwich Mean Time.

8. 2. Division

8. 2. 1. Develop a system for downloading and storing the data from all CEWs in your division a minimum of once a year.

8. 2. 2. Ensure the CEW's internal clock is reset to the correct Greenwich Mean Time a minimum of once a year.

9. Independent CEW Testing

9. 1. The Canadian Police Research Center (CPRC) will conduct independent testing of a CEW when:

9. 1. 1. someone is seriously injured or dies when a member resorts to lethal force because a CEW was ineffective or malfunctioned;

9. 1. 2. a member is seriously injured or dies as a direct or indirect result of a CEW malfunction; or

9. 1. 3. any incident in which it is in the public interest or the member's interest to determine the working state of a CEW.

9. 2. Testing will be conducted at division expense.

9. 3. The CEW must be packaged and shipped in accordance with [FM ch. 6.4.4.](#) to the following address:

Canadian Police Research Center
National Research Council
Building M-55
1200 Montreal Rd.
Ottawa, ON.
K1A 0R6

References

- Morrison, A., & Sadler, D. (2001). Death of a psychiatric patient during physical restraint. Excited delirium--a case report. *Medicine Science and Law*, 41(1), 46 - 50.
- British Columbia: Office of the Police Complaints Commissioner, TASER Technology Review - Final Report, File number 2474, April 2005.
- Manojlovic et al (for the Canadian Association of Chiefs of Police - August 22, 2005). Review of Conducted Energy Devices - Canadian Police Research Center, Technical Report, TR-01-2006.
- [Criminal Code](#)

App. 17-7-1 - Approved Holsters

Duties	Holster Type	Manufacturer/ Model Name	Model Numbers	Special Requirements
Uniform and ERT	Thigh Holster	Safariland SLS Tactical Thigh Holster with Quick Release Leg Harness	M26 RH - 6005-63-121	Must be fitted with Taser Cartridge Holder, Black. See (1) .
			M26 LH - 6005-63-122	
			X26E RH - 6005-64-121	
			X26E LH - 6005-64-122	
	Thigh Holster	Blade Tech Thigh Holster with 2 spare cartridge holders	M26 RH - 44856	None
			M26 LH - 44878	
			X26E RH - 44920	
			X26E LH - 44921	
Plain Clothes	Belt Holster	Blade Tech Tek-Lok Thumb-Lock	M26 RH - 44855	Must be fitted with Dual Cartridge Holster, see (2) .
			M26 LH - 44875	
			X26E RH - 44952	
			X26E LH - 44953	

NOTE: All other CEW holsters other than those listed in these directives are to be removed from service within 6 months.

(1) Safariland Taser Cartridge Holder - Black - model 307-9-23PBL (need 2 per holster).

(2) Cartridge Carrier: Dual Cartridge Holster model 26802 for use with the Blade Tech Tek-Lok Holster with Thumb-Lock for plain clothes use.

App. 17-7-2 - Taser Model M26 Battery-Charging Method

1. Batteries and Charging Procedures

1. 1. The only battery approved by Taser International are Energizer rechargeable NiMH batteries which must be purchased from M.D. Charlton, telephone number: 250-652-5266.

NOTES:

1. Batteries purchased from local convenience stores have an insulator on the top of the battery which do not allow for a positive contact with the battery cartridge and will cause problems with both the operation of the Taser, as well as attempting to charge the batteries. If this insulator is removed there is a high risk of damaging the battery resulting in a nonfunctioning battery pack, if it is used.

2. Never mix different types or ratings of batteries, e.g. alkaline and NiMH, 2500 mAh and 2100 mAh.

2. Reconditioning Batteries

2. 1. Batteries should be reconditioned when they are new, and once every six months, using the following method:

2. 1. 1. Plug in the battery charger and ensure the yellow power light is illuminated.

2. 1. 2. Insert the battery tray in the charges, or connect the data port charger adapter and CHARGE FOR A MINIMUM OF 12 HOURS. The red light will extinguish and the green light will illuminate to indicate a full charge. It is critical to continue to charge the batteries for a MINIMUM of 12 hours during the initial cycle.

2. 1. 3. After the initial cycle, remove the batteries from the charger for approximately 10 seconds, either remove the battery pack or unplug the data port adapter. When the green light extinguishes, reinsert the batteries and allow them to charge until the green light illuminates.

2. 1. 4. Repeat step 3 again, to ensure three complete charging cycles. Normal charging requires only one normal charging cycle (until the green light illuminates).

NOTES:

1. It is no longer recommended to simultaneously charge two sets of batteries, one in the charger, and one in the Taser via the dataport adapter. Charging this way with current higher capacity batteries can lead to false positives, where the charger senses that the batteries are charged when in fact they have not fully charged.

2. Only charge one set of batteries at a time to ensure a proper charge. NiMH batteries will self-discharge at a rate of approximately one percent per day. So, Taser International recommends charging the batteries every two weeks.

3. If a Taser fails and the problem is related to using unapproved batteries, the warranty may not be honoured and replacement will be at our cost.