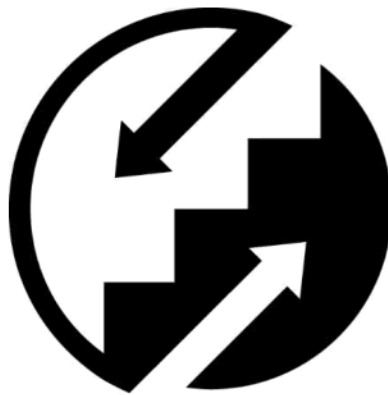


**PERSONAL PROTECTIVE EQUIPMENT
WITHIN THE MINISTRY OF FORESTS, LANDS
& NATURAL RESOURCES
COMPLIANCE & ENFORCEMENT BRANCH**



A Subject Matter Expert's
Recommendations

Joel Johnston Consulting Inc. ©

March 29, 2018

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Introduction

Since 2010, the Ministry of Forests, Lands and Natural Resources – Compliance and Enforcement Branch (CEB) has ostensibly evolved into a fully-uniformed compliance and enforcement agency that educates, encourages compliance and enforces some 52 pieces of relevant legislation (Land Act, Wildfire Act, Water Sustainability Act, Forests and Range Practices Act, Forest Act, Off-Road Vehicle Act, etc.). NROs interact with the public frequently, conducting approximately 8,000 inspections and engaging in approximately 2,000 compliance actions annually.ⁱ BC Natural Resource Officers (NROs) wear a two-tone green uniform with a provincial shoulder flash/crest, a duty belt, portable radio and remote speaker microphone. As part of their issued personal protective equipment (PPE), in many cases NROs wear a black external soft body armour carrier with "NATURAL RESOURCE OFFICER" emblazoned in white print (or internal soft body armour). NROs drive marked "Enforcement" vehicles. NROs look like law enforcement officers and are generally perceived as such by members of the public. Currently CEB has fallen short of the mark in terms of properly equipping NROs with the appropriate complement of personal protective equipment (PPE) commensurate with the risks they face. Equipment that would enhance their safety, public safety, and the safety of their colleagues and co-workers.

Executive Summary

This report specifically identifies an existing gap within CEB in the area of Occupational Health and Safety – a gap in personal protective equipment (PPE) – in the forms of a baton and OC spray – that might afford an NRO, who may otherwise be unable to safely disengage from a violent situation, the opportunity to preserve their safety, their life, or that of a co-worker in a trained fashion.

This report summarizes risk faced by NROs in the field as identified by internal and external risk assessments, by a subject matter expert, and by NROs themselves.

This report demonstrates that parallel problems have existed across similar agencies in the past with tragic results that could have been averted, and where recent Canadian case law now exists requiring employers to act on foreseeable risk with solutions that are realistic and as comprehensive as possible.

This report will offer a clear recommendation and rationale for remedying the identified problem, and will outline how the identified recommendation could be diligently, effectively and expeditiously implemented within CEB.

This report will also offer two less-desirable options along with the accompanying rationale for why these options are not recommended.

Risk:

NROs, on occasion engage in, and sometimes without warning become engaged in high-risk enforcement activity. This risk has been identified at many levels including through recent internal and independent external risk assessments. In 2007 a federal ruling under the Canada Labour Code regarding the safety of National Park Wardens (a similar occupation to provincial NROs), the Court agreed that: "inherent risk associated with law enforcement is related to the nature of the work, which involves the unpredictability of human behavior connected with individuals who may have violent tendencies, dislike authority, be mentally unstable and/or be under the influence of alcohol or drugs."ⁱⁱ

A recent random sampling of NROs surveyed indicated that all who responded agree that they face danger in dealing with unpredictable human behaviour in challenging circumstances on a regular basis.ⁱⁱⁱ As a subject matter expert who has trained CEB personnel (NROs) for the past six years, I am fully cognizant of the risks that NROs face in dealing with the public in a compliance and enforcement capacity. Enforcement personnel with other agencies have faced the same issues with tragic results. The Courts in Canada have made it clear that lessons that have already been learned mustn't be repeated.^{iv}

In September of 2017 – twelve years after the RCMP Mayerthorpe tragedy, the RCMP were criminally convicted of Canada Labour Code violations for failing to ensure the health and safety of its members by failing to provide adequate use of force equipment and related user training. Judge Leslie Jackson wrote in his decision **"Front-line officers were left exposed to potential grievous bodily harm and/or death while responding to active shooter events for years, while the carbine rollout limped along, apparently on the assumption that, as the likelihood of such an event was relatively rare, a timely implementation was not required. Almost all members of RCMP management who testified at trial said that safety of their members was a priority of theirs. While they paid lip service to that ideal, their actions, or in this case inactions, belie that concern."**^v

A recent Alberta Fatality Inquiry (June, 2017 – publicly released March 27, 2018) has made as the primary recommendation that all Community Peace Officers (including all officers who deal with the public) be trained and authorized to carry batons and OC spray. Alberta Judge Bruce Fraser said **"... any officer dealing with public enforcement, in my view, should be properly trained for officer safety and weapons training as well as defensive tactics. Officer Lazenby should have had that training and been allowed to carry weapons (batons, pepper spray, handcuffs and body armour) as did level 1 officers. They both deal with an unknown public as demonstrated by this incident that resulted in his death."**^{vi}

Almost all NROs have faced confrontational behaviour during the course of their careers. Verbal abuse, veiled and direct threats, aggressive posturing, group dynamics – being surrounded/circled, lawful requests ignored, fail to stop for inspection, fail to comply with lawful requests, etc. have all been related by multiple officers.^{vii}

NROs are primarily focused on enforcing legislation specific to resource protection, but they have also been empowered with enforcing other provincial legislation. The very nature of CEB work coupled with the changing nature of norms, values and recreational pursuits brings NROs into contact with members of the public (often with more than one person at a time) in a variety of settings – often alone, often in remote locations and hazardous environments, often with limited information, often where real-time communications are compromised or non-existent, often when back-up or support is not available, often with people who are under the influence of drugs and/or alcohol and/or mental instability, and often with people who are armed with a variety of outdoor-related weapons (edged weapons – knives, hatchets, axes, machetes, and sometimes firearms). The very nature of many CEB duties would be classified as high-risk in most law enforcement circles (remote off-road vehicle checks, enforcing fire bans, enforcement of legislation on private property, etc.). NROs also come across more traditional offences, (i.e. drug, alcohol and weapons offences) in the course of conducting their duties which might not normally come to the attention of traditional law enforcement officers. If they suddenly come into contact with a violent offender – regardless of the offence committed, no one including the offender cares what shoulder flash that officer is wearing when behaviour escalates without warning and violence begins. These situations, albeit fairly rare can and do happen.

CEB has prudently enacted policies and procedures to mitigate risk associated with the higher-risk aspects of NRO work. The reality is quite simply that disengagement from every situation isn't always possible for a variety of reasons (human behaviour escalates rapidly without provocation or warning; officer becomes physically constrained by environment or position; officer's partner compromised; officer working with another agency member who may be compromised; officer working with private contractor who may be compromised; officer falls down; officer becomes injured; etc.). The inability to safely disengage from a situation is a foreseeable risk for which existing risk mitigation policy will never be the answer. More can and, in accordance with law, must be done.

The issuance of PPE to compliance and enforcement officers in Canada is not uncharted territory. PPE in the form of soft body armour (SBA), expandable batons, and OC spray have been issued to a variety of enforcement agencies across BC and Canada. Many of these agencies do not engage in duties that involve the kinds of risks that BC NROs face.

The issuance of PPE to BC NROs has been on the table for more than 5 years.

The implementation of the appropriate PPE within CEB would be a relatively seamless process – including the delivery of certification training, policy and procedures which are already in a pre-developed state.

It is recommended that additional PPE be issued to all NROs as soon as practicable.

- Issue current, state of the art expandable batons along with retention/security holsters (tension spring; cover/hood; snaps/Velcro®; etc.) to all NROs.
- Issue current, state of the art oleoresin capsicum personal defense spray (vs. "Bear Spray" – which is essentially the same product and works on the same control/defense principle – the only difference is the product's formulation and packaging) along with retention/security holsters (tension spring; snaps; cover/hood; etc.) to all NROs.
- Develop and deliver comprehensive training, evaluation, certification and re-certification standards in the context of use, carrying, retaining, displaying, actual use and follow-up measures of the expandable baton and OCS – for defensive purposes only (in accordance with the Criminal Code of Canada the National Use of Force Framework and CEB Policy). These are in a pre-developed state and easily modified to suit the needs of CEB.
- Develop and implement restrictive policy and procedures around the carry, display – for defensive purposes only, use – for defensive purposes only, and follow-up measures of expandable batons and OCS personal defense spray. These are in a pre-developed state and easily modified to suit the needs of CEB.
- Develop and implement policy around comprehensive reporting on the display, use, and follow-up measures of expandable batons and OCS personal defense spray.

This recommendation is prudent, achievable and harmonious with risk mitigation steps already in place in the areas of policies and procedures. This recommendation represents a more comprehensive risk mitigation strategy. It is incumbent upon the employer to ensure that they have implemented comprehensive – not partial risk mitigation strategies. The Courts have made this clear.

Supporting Discussion

NROs have no mandate to arrest and control anyone. They are directed by policy to conduct a risk assessment of all work activities and to make decisions in accordance with such assessments. They are specifically and properly directed by policy not to engage in, or to disengage from situations that appear dangerous or that the risk assessment reveals may be dangerous (and/or to resource those situations/missions appropriately). CEB Policy directives can go a long way in mitigating risk, but short of telling NROs not to leave the confines of their office, all risk cannot be mitigated. Because of the nature of the work, the nature of resource users, the environment in which the work happens and the unpredictability of human behaviour there will always be residual risk.

NROs interact with the public frequently, conducting approximately 8,000 inspections and engaging in approximately 2,000 compliance actions annually^{viii}. As is the case with the vast majority of enforcement agencies, more than 99% of all encounters are resolved at the level of officer presence and communication.

Some of the work that NROs do on a regular basis would be classified by many standards as "high-risk" (i.e. working alone, working at night/in low light, working in isolation, working without the luxury of support/back-up, working without live communications, etc.). Some of the work that NROs do is perceived as dangerous work by the officers themselves.

Survey of NROs

As part of this report I engaged in a small sample-size (~10%) survey of NROs soliciting their opinion regarding whether they had experienced confrontational* and/or assaultive* behaviour and what parts of their work they perceived as dangerous and why.

***Confrontational** = challenge your authority; verbal abuse; psychological intimidation (posturing, aggressive body language and expression, etc.).

***Assaultive** = aggressive body language; threats; closing proximity; attempts to impede your path/movement; attempts to grab or otherwise physically apply force to you.

Their responses were not surprising to me. A sampling of the types of work that NROs feel are most dangerous are related below:

1. "Private Land inspections, and after hours inspections/stops of any recreationalist – i.e. After 7pm. Private Land owners, because they "believe they have more rights in general after all they own it, and many, many unknown factors to officers conducting an inspection. Stopping and checking any recreationalist after hours due to the fact that most recreation comes with the use of alcohol and drugs which can and does change people's behaviours, and again lots of unknowns with these scenarios."^{ix}
2. "Interactions with the unknown public, and occasionally with the regulated community. Specifically but not limited to, issuing of violation tickets; Land Act Trespass (squatter sites), recreationalists at both designated and undesignated sites – often associated with large groups. Complaints stemming from Water Sustainability or Ground Water files where two parties are not getting along (Hatfield/McCoy) type of scenario. Wildfire non-compliance, mostly due to the consequences of being caught i.e. large VT \$1150 and fines/recovery costs that can run into the millions."^x

3. *"Entering onto private property to inspect for violations under our NRO mandate. Prior to entering onto private property, we don't have the ability to verify if the owners have a criminal record and/or known to be violent etc.... On occasion, engaging with someone on their own property, the person(s) will come across as territorial and defensive. At times, even during daylight hours, a person might be consuming alcohol and the ability to have a respectful, productive conversation isn't easy."*^{xi}
4. *"Wildfire Act enforcement (either responding to unlawful backyard burns in a setting as referenced above) or conducting campfire ban enforcement patrols in campgrounds. Often these require engaging groups of people. Often times these groups are consuming alcohol or drugs. Our most common enforcement response for unlawful burning under the wildfire act is to issue a Violation Ticket. Each violation ticket for an unlawful fire, now comes with an \$1150.00 fine. This \$1150.00 VT at times infuriates the client as they view the penalty amount as unreasonable."*^{xii}
5. *"Conducting Land Act enforcement. More specifically, evicting squatters off of Crown land who have established their primary residence on our public lands. Some folks feel as though they truly have the right to reside on Crown land. Many are mentally ill, have substance abuse issues or have extensive criminal records and are in a desperate economic state which is why they are choosing to live where they do. Our Land Act enforcement responses can include seizing and removing their homes and belongings. This can trigger a very strong emotional and physical response. As a result, we'll incorporate several mitigating strategies to reduce risk of assault and involve other agencies during these processes. That said, we are there to inspect, verify compliance and take action when there is a trespass and this is not welcomed by these illegal squatters. The biggest risk is the unknown element."*^{xiii}

Almost all NROs have faced confrontational behaviour during the course of their careers. Verbal abuse, veiled and direct threats, aggressive posturing, group dynamics – being surrounded/circled, lawful requests ignored, fail to stop for inspection, fail to comply with lawful requests, etc. have all been related by multiple officers. Oftentimes this behaviour is easily-deflected, moved past and compliance is achieved. In other cases the confrontational behaviour escalates with no sign of forthcoming compliance and the NROs choose to disengage from the escalating behaviour. In other cases the confrontational behaviour begins to border on assaultive behaviour, where it appears a physical assault may be imminent and a number of NROs have felt they have been fortunate to escape the situation. An example is related below:

- *"Conducting a campfire enforcement ban patrol. I and my partner entered a recreation site to inspect for compliance with the fire ban and general rules of the site. The campsite facilitator informed us of a problem site... a group was camped there and was being too loud. A person at that site, was alleged to have used a chainsaw in the site, was making excessive noise, playing loud music and tried to start a fire. Upon entry of the site, things were quiet. My partner was contact, I was cover. My partner asked if anyone was in the tent situated on the site. We heard mumbling....My partner then inquired again and introduced who we were and asked if they could come out and speak with us. I then noticed a group of 4 young men approaching the campsite. I notified my partner. We tactically repositioned ourselves closer to our vehicle and allowed the small group to enter*

*the site. As this was happening, the occupant of the tent, jumped out of his tent yelling profanities saying 'quit f***ing harassing me motherf***ers' and attempted to close the distance on us very suddenly. His group of friends restrained him from approaching us. They physically held him back and tried calming him down. We thanked the cooperative members of his group for their support, provided a very brief summary of why we were there from the cab of our truck and that they'd need to leave the site in the morning when they were sober. RCMP notified."*

"If the friends didn't show up when they did, to restrain the intoxicated aggressive person in the tent, we would have been in a fight. The young man was 25 years old, approx. 6 foot 1 and about 210 lbs with a muscular build...the imminent assault would have most likely generated injuries for all involved."^{xiv}

It is clear that NROs face confrontational behaviour on a regular basis. In most cases the NROs have been able to recognize the escalating risk, make the decision to disengage, and been physically able to disengage. In some cases they have been fortunate to have been able to do so. There will be situations where disengagement is not possible.

CEB has conducted internal and independent external risk assessments previously and they have identified assaultive behaviour as a very real possibility. In 2010-2011, an internal CEB Risk Analysis Team report identified high levels of risk to officer safety associated with potential assaultive subject behaviors. In 2013, an independent Violence in the Workplace Risk Assessment Report was conducted by PSA Occupational Safety Specialists. That report concluded that Natural Resource Officers should be equipped with soft body armor (SBA), oleoresin capicum spray (OCS), and expandable batons for conducting mandated law enforcement activities.^{xv}

PPE in Canada

The issuance of PPE to BC NROs has been on the table for more than 5 years. When DTI Defensive Tactics Inc. first began training CEB personnel in 2012 and 2013 the use of low-profile expandable batons and oleoresin capsicum spray (OCS) for defensive purposes only was part of the 4-day training program in Confrontation/Risk Management. Since that time a decision was made not to provide this PPE to NROs. CEB's leadership team has taken a number of steps to understand and mitigate the risks associated with the nature of NRO work - specifically related to the increasing number of interactions with the general public, which is now CEB's largest client group.

Sound, prudent policy and procedures around planning and risk assessment, and dealing with violence in the workplace have been implemented by CEB. In a somewhat perplexing decision, CEB issued PPE in the form of soft body armour (SBA) to NROs in 2014, with the option of wearing the SBA in a concealed manner (under the uniform shirt) or in an external black SBA carrier over the uniform shirt. The decision to issue SBA appears to acknowledge a significant level of risk to the individual NRO while at the same time affording no tools or force response options to address those risks. As a subject matter expert who appears before the Courts in Canada, this concerns me.

The issuance of PPE to compliance and enforcement officers is not uncharted territory. PPE in the form of soft body armour (SBA), expandable batons, and OC spray have been issued to a variety of enforcement agencies across BC and Canada. Many of these agencies do not engage in work that involves the kinds of risks that BC NROs face.

ONTARIO – currently unregulated – left up to employer to determine PPE requirements of their personnel. Legislation pending under revised Police Services Act and other pending legislation

A variety of compliance and enforcement agencies carry a variety of PPE – batons, and/or OCS (& handcuffs).

MANITOBA – currently unregulated – left up to employer to determine PPE requirements of their personnel.

Manitoba Natural Resources Officers became a fully-equipped service in 1998 and carry all the same PPE as a Conservation Officer (CO) (sidearm, baton and/or OCS, handcuffs, etc.)

SASKATCHEWAN – regulated by a variety of provincial and federal legislation – regulations dictate PPE authorized

A variety of compliance and enforcement agencies carry a variety of PPE – batons and/or OCS (& handcuffs). Saskatchewan Ministry of Environment Officers became a fully-equipped service in 1998 (now COs).

ALBERTA – Regulated under the Alberta Solicitor General and Ministry of Public Safety. Regulations/legislation dictate authorized PPE.

Almost all municipal enforcement officers in Alberta wear body armour (typically external) and carry handcuffs, OC and batons. Commercial Vehicle Enforcement Officers also carry PPE. Alberta Parks Rangers and Fish & Wildlife Officers are fully-armed services.

YUKON TERRITORY – no regulations around PPE. It is currently left up to the employer to determine PPE requirements of their personnel.

A variety of compliance and enforcement agencies carry a variety of PPE – batons and/or OCS (& handcuffs).

BRITISH COLUMBIA – no regulations around PPE (except security industry). It is currently left up to the employer to determine PPE requirements of their personnel.

A variety of compliance and enforcement agencies carry a variety of PPE – batons and/or OCS (& handcuffs).

A Relevant, Compelling Cautionary Tale:

On August 10, 2012 Alberta suffered a tragic, high-profile death of Municipal District of Foothills Community Peace Officer and ex-35-year RCMP member Rod Lazenby, who was fatally beaten by Trevor Kloschinsky, a man later characterized as “kind of a loose cannon who did not like outsiders” over a canine-related by-law infraction. Kloschinsky admitted killing Lazenby on his property, but was found to be delusional and therefore not criminally responsible for his actions. A psychiatrist testified Kloschinsky was “actively psychotic” when he attacked Lazenby and probably didn’t realize he was doing anything wrong.^{xvi} Lazenby did not have any PPE to defend himself with.^{xvii} Almost all Community Peace Officers in Alberta now wear body armour (typically external) and carry handcuffs, OC and batons.

A June 20, 2017 Bulletin from Alberta Justice and Solicitor General to All Authorized Employers and Peace Officers said: “Alberta OHS is responsible for enforcing OHS laws through inspections, investigations and prosecutions. The legislation establishes minimum standards for safe and healthy practices in Alberta workplaces. Therefore, it is incumbent upon all authorized employers to not only be aware of their responsibilities as their peace officers’ employer, but to ensure their peace officers have the proper training and tools as well as having up to date policies and protocols.”

“I request that all authorized employers learn from this incident and follow closely the events that are taking place within law enforcement as it pertains to incidents in St. Albert and Moncton involving the RCMP.”¹

The RCMP Mayerthorpe, Alberta tragedy occurred on March 3, 2005 on the property of well-known town menace James Roszko who shot and killed RCMP constables Anthony Gordon, Lionide Johnston, Brock Myrol and Peter Schiemann with an H&K91 .308 semi-automatic battle rifle. The incident occurred while the officers were providing “scene protection” (generally considered a lower-risk activity) after the execution of a warrant for a property seizure on the farm where Roszko had fled the scene. The officers were equipped with their issued sidearm (generally a S&W model 5946 9mm pistol), which was no match for Roszko. This was the worst one-day loss of life for the RCMP and the worst multiple-officer killing in modern Canadian history. Some six years later, on October 21, 2011, the Commissioner of the RCMP, William J. S. Elliott, announced that RCMP officers would have a new weapon at their disposition, the C8 Rifle. One of the main conclusions that led to this result was the fact that the officers who were shot down did not have the appropriate weapon to face someone with a semi-automatic rifle, as stated in the public inquiry.^{xviii}

The RCMP Spiritwood, Saskatchewan tragedy occurred on July 7, 2006. The incident began in the town of Spiritwood, Saskatchewan, Canada, ~148 km northwest of Saskatoon, and ended ~ 27 kilometres away. On July 7, two members from the RCMP detachment in Spiritwood, Constables Robin Cameron and Marc Bourdages, responded to an assault call at a residence near the detachment. A man later identified as Curtis Dagenais (“known to police”), fled the scene in a pickup truck. RCMP members followed for ~27 kilometres. During the pursuit, gunfire was exchanged between RCMP officers (armed with pistols) and Dagenais (armed with a rifle), resulting in both constables being shot in the head through their car windshield. Dagenais abandoned his car and escaped on foot. A massive manhunt failed to find Dagenais, who turned himself in without incident to the RCMP’s Spiritwood detachment on July 18, 2006.

The RCMP Moncton (Codiac), New Brunswick tragedy was a shooting spree that took place on June 4, 2014. Justin Bourque, a 24-year-old from Moncton, shot five members of the RCMP with a high-powered assault rifle, killing three and severely injuring two. A manhunt for Bourque was launched and continued for two days. On June 6, Bourque was found and taken into custody. Calls for RCMP members to be armed with patrol rifles came after the 2005 Mayerthorpe, Alberta and the 2006 Spiritwood, Saskatchewan shootings that had left six RCMP members dead by rifle fire. The Moncton incident was the deadliest attack on RCMP members since the Mayerthorpe tragedy in 2005 that left four RCMP officers dead with a subsequent promise that RCMP members would be equipped with patrol carbines for precisely these types of rare situations.

A 2008 subject matter expert Working/Focus Group had recommended the immediate implementation of patrol carbines within the RCMP – many municipal police agencies (Vancouver, Calgary, Edmonton, OPP – to name several) across Canada had implemented this safety measure years previously after recognizing a response capability gap in the wake of incidents like the North Hollywood Bank of America shootout that had left LAPD officers severely outgunned in 1997, and the Columbine High School mass shooting of 1999. A 2010 report by an independent researcher found that the RCMP had a firearms capability gap that needed to be remedied^{xix}. However in the wake of overwhelmingly negative public backlash from a 2007 TASER®-related fatality, the RCMP's perceived need to avoid public scrutiny and public backlash regarding equipping the police with "military-style weaponry" overrode the consideration for the safety of officers in the field. As a result, the implementation of patrol carbines was delayed, for many years.

The Moncton incident, while perhaps not specific to the location, was predictable. It had been identified by members in the field for 10 years or more. It had been identified by independent risk assessment. It had been identified by a subject matter expert working/focus group. The MacNeil Report reiterated that the provision of appropriate safety equipment after the Mayerthorpe and Spiritwood tragedies "took far too long".^{xx}

In September of 2017 – twelve years after Mayerthorpe, the RCMP were criminally convicted of Canada Labour Code violations for failing to ensure the health and safety of its members by failing to provide adequate use of force equipment and related user training. Judge Leslie Jackson wrote in his decision "Front-line officers were left exposed to potential grievous bodily harm and/or death while responding to active shooter events for years, while the carbine rollout limped along, apparently on the assumption that, as the likelihood of such an event was relatively rare, a timely implementation was not required. Almost all members of RCMP management who testified at trial said that safety of their members was a priority of theirs. While they paid lip service to that ideal, their actions, or in this case inactions, belie that concern."^{xxi}

This clearly-worded decision by Judge Jackson now forms a significant piece of Canadian Case Law that will be referred to in the future where continued omissions around employee safety occur.

Vehicles designed to be operated within the law are equipped with automatically-deploying airbags – hopefully never to be used. Window washers who work on secure, inspected platforms, and who are required to comply with safe workplace policies and regulations wear additional fall-protection – hopefully never to be used. The list of analogies goes on. Appropriate, necessary safety equipment commensurate with industry risks and the training to support its use should complement existing risk mitigation policies and practices, and should not be provided subsequent to tragedy, or as a result of Court order – particularly when the relevant, transferable, difficult lessons have already been learned elsewhere.

The Recommended Option in Detail

The issuance of personal protective equipment (PPE) to NROs has been on the table for more than 5 years. When DTI Defensive Tactics Inc. first began training CEB personnel in 2012 and 2013 the use of low-profile expandable batons and oleoresin capsicum spray (OCS) for defensive purposes only was part of the 4-day training program in Confrontation/Risk Management. Since that time a decision was made not to provide this PPE to NROs. CEB's leadership team has taken a number of steps to understand and mitigate the risks associated with the nature of NRO work - specifically related to the increasing number of interactions with the general public, which is now CEB's largest client group.

Sound, prudent policy and procedures around planning and risk assessment, and dealing with violence in the workplace have been implemented by CEB. In a somewhat perplexing decision, CEB issued PPE in the form of soft body armour (SBA) to NROs in 2014, with the option of wearing the SBA in a concealed manner (under the uniform shirt) or in an external black SBA carrier over the uniform shirt. The decision to issue SBA appears to acknowledge a significant level of risk to the individual NRO while at the same time affording no tools or force response options to address those risks. As a subject matter expert who appears before the Courts in Canada, this concerns me.

Issue additional PPE to all NROs

- Issue current, state of the art expandable batons and retention/security holsters (tension spring; cover/hood; snaps/Velcro®; etc.) to all NROs.
- Issue current state of the art oleoresin capsicum personal defense spray (vs. "Bear Spray" – which is essentially the same product and works on the same control/defense principle – the only difference is the product's formulation and packaging) and retention/security holsters (tension spring; snaps; cover/hood; etc.) to all NROs.
- Develop and deliver comprehensive training, evaluation, certification and re-certification standards in the context of use, carrying, retaining, displaying, actual use and follow-up measures of the expandable baton and OCS – for defensive purposes only (in accordance with the Criminal Code of Canada the National Use of Force Framework and CEB Policy).
- Develop and implement restrictive policy and procedures around the carry, display – for defensive purposes only, use – for defensive purposes only, and follow-up measures of expandable batons and OCS personal defense spray.
- Develop and implement policy around comprehensive reporting and accountability on the display, use, and follow-up measures of expandable batons and OCS personal defense spray.

This recommendation continues to rely primarily on the continuous risk assessment and planning process along with mandatory disengagement from situations that are detectably escalating. This is prudent and the existing foundational policy and procedural underpinnings, in conjunction with the acknowledgment that there remains foreseeable residual risk, diligently supports the issuance of additional PPE to all NROs.

The implementation of comprehensive training, certification and re-certification standards to a level that meets or exceeds best training practises in Canada further supports the issuance of additional PPE to all NROs. These are in a pre-developed stage and easily-modified to suit the requirements of CEB.

The development and implementation of restrictive policy around the carry, display, use and follow-up and reporting of issued PPE – for defensive purposes only in accordance with the federal statutes (Criminal Code of Canada) on self defense and the use of force, the National Use of Force Framework, and CEB policy and procedures further supports the issuance of additional PPE to all NROs. These are in a pre-developed stage and easily-modified to suit the requirements of CEB.

Option 1 is consistent with the manner in which other similar enforcement agencies are equipped across British Columbia and Canada. The issuance of batons and personal defense OCS is not breaking any new ground. These tools are designed so that they can be used for defensive purposes. The expandable baton and personal defense OCS are specifically designed and packaged so that they can be carried discretely and fairly unobtrusively on the person, and they can be accessed in exigent circumstances. "Bear spray" is generally not packaged in the same manner.

Batons and OCS are different tools. They operate at different ranges and in different circumstances. The baton is used in close proximity to an individual (< 1 meter). The psychological impact and deterrent effect of the baton being opened suddenly and forcefully has quelled violence in the past – even from a distance. If actually used, it is used to deliver impact at fairly close quarters. Primary targets include striking the large muscle groups of the arms and legs to create "motor dysfunction" (like a Charlie horse).

OCS can be used from 1 to 3 meters from a subject or group of subjects. The display of OCS can and has deterred violence in the past. If actually used' it is sprayed into the face – specifically the eyes of the aggressor(s). OCS works on the principle of "pain compliance" and "distraction". It normally causes eye closure, blinking and watering. It can have an inflammatory effect on the mucous membranes of the nose and throat causing coughing and sneezing. These effects can create an opportunity for disengagement. Normally the effects of OCS dissipate within 15 minutes and this can be accelerated with application of cool water to the affected areas.

This recommendation is the only option that provides NROs with the PPE that is commensurate with the risks they face and consistent with existing case law. They may, in the rare event where they find themselves unable to safely disengage from escalating violence, afford them the ability to create an opportunity to tactically re-position, withdraw or disengage from said violence in a trained fashion.

Option 2:

Issue additional PPE to all NROs

- Issue current, state of the art expandable batons and retention/security holsters (tension spring; cover/hood; snaps/Velcro®; etc.) to all NROs.
- Re-work current CEB policy around the carry and use of "Bear Spray" (OCS manufactured and sold as an animal repellent) to allow NROs to carry it on their person at all times and specifically identify its use as an "option of opportunity" for defensive purposes only in dealing with violent human behaviour where disengagement is not a viable option.
- Develop and deliver comprehensive training, evaluation, certification and re-certification standards in the context of use, carrying, retaining, displaying, actual use and follow-up measures of the expandable baton and "Bear Spray" – for defensive purposes only (in accordance with the Criminal Code of Canada the National Use of Force Framework and CEB Policy).
- Develop and implement restrictive policy and procedures around the carry, display – for defensive purposes only, use – for defensive purposes only, and follow-up measures of expandable batons and "Bear Spray".
- Develop and implement policy around comprehensive reporting and accountability on the display, use, and follow-up measures of expandable batons and "Bear Spray".

Option 2 is similar to Option 1. It provides NROs with the expandable baton (already discussed), and it clearly articulates the possibility of using already-issued "Bear spray" or animal repellent against sudden, unanticipated human violence as an "option of opportunity". The reality is that the currently-issued "Bear spray" could already be considered for use as an "option of opportunity" for sudden, unanticipated human violence by an NRO. In fact "Bear spray" could be used as an "option of opportunity" by a hiker, a jogger (in fact anyone in Canada) against sudden, unanticipated human violence (in accordance with the Criminal Code of Canada).

The problem is that "Bear spray" is not normally designed or packaged in the same fashion as personal defense spray. It is usually in a larger canister and is disseminated differently. It cannot be carried as discretely and conveniently as OCS personal defense spray. It was simply not designed for carry and use for interpersonal violence. It was designed as wildlife repellent.

The other issue with a policy amendment to specifically acknowledge the currently-issued "Bear spray" as a potential option of opportunity for dealing with sudden, unanticipated violence, is that it acknowledges this risk, and yet leaves the NRO with a tool that was not specifically designed or manufactured for the task.

Option 2 is less desirable and is not recommended.

Option 3:

Do not issue additional PPE to NROs.

- Maintain the status quo.
- Rely strictly on policy and procedure to mitigate risk.
- This represents a partial risk mitigation strategy.
- This is not supported by current Canadian case law.

Option 3 is least desirable and is not recommended. As stated previously in this report, policy and procedures alone can never mitigate the foreseeable residual risk where NROs are not able to disengage from sudden, unanticipated human violence. There are tools, training and policy that can assist with this residual risk

Conclusion

It is clear that NROs deal with confrontational and in rare cases assaultive behaviour. The risk mitigation measures taken by CEB in terms of policies and procedures around risk assessment and management have been prudent. NROs are left with the reality of residual risk. There will be events that NRO's are unable to safely disengage from. The hard lessons have been learned elsewhere with tragic consequences. There are PPE options readily available to mitigate the existing residual risk. It is incumbent upon the employer to ensure that they have implemented comprehensive – not partial risk mitigation strategies. The Courts have made this clear.

It is recommended that additional PPE be issued to all NROs as soon as practicable in conjunction with comprehensive training, evaluation, certification and re-certification standards in the context of use, carrying, retaining, displaying, actual use and follow-up measures of the expandable baton and OCS – for defensive purposes only (in accordance with the Criminal Code of Canada, the National Use of Force Framework and CEB Policy). In conjunction with the development and implementation of restrictive policy and procedures around the carry, display – for defensive purposes only, use – for defensive purposes only, and follow-up measures of expandable batons and OCS personal defense spray. In conjunction with the development and implementation of policy around comprehensive reporting and accountability on the display, use, and follow-up measures of expandable batons and OCS personal defense spray.

This recommendation is prudent, achievable and harmonious with risk mitigation steps already in place in the areas of policies and procedures. This recommendation represents a comprehensive risk mitigation strategy.

Addendum

PPE Policy Recommendations:

Selection of PPE: conduct a scan of a variety of agencies (BC Conservation Officer Service, Vancouver Police Department, Environment Canada – Wildlife Enforcement, Alberta Justice & Solicitor General, RCMP, Ontario Provincial Police, etc.) to determine appropriate manufacturer and model of personal issue oleoresin capicum spray and expandable baton and holsters/carriers and adopt as “approved PPE by CEB Executive”.

Carrying of PPE: mandatory carry policy of approved PPE on duty belt on dominant side of body (while on active duty); only approved PPE may be carried NROs; approved PPE may only be carried if the NRO is currently certified in its use; approved PPE may NOT be carried unless on active duty as an NRO.

Use of PPE: to be used in accordance with current risk management policy; there remains an obligation to conduct as thorough a risk assessment as possible in all cases, and to disengage from confrontation whenever it is detected. PPE is to be used for defensive purposes ONLY to facilitate safe disengagement when it cannot be achieved by lesser means. PPE shall NOT be used to coerce compliance in any circumstances.

“Use of PPE” includes: drawing and displaying as a deterrent; actual application (deployment of OC spray at subject; striking subject with baton).

Follow-up After Use of PPE: contact/notify – local police, BCAS, Supervisor; comprehensive SB-OR (incident) reporting

Training: All NROs must successfully complete a certification training course on the use of approved PPE including a practical and written evaluation in order to be “certified” to carry approved PPE; Re-certification is recommended every 3 years.

PPE Recommended Training Topics for both OCS and Baton (Lesson Plan Topics):

- PPE context of use
 - Federal statutes (CCC) on self-defence & use of force – including authorizations, limitations and accountability
 - National Use of Force Framework
 - CEB Policy
- PPE Specifications and Operation (anatomy and how they operate)
- Brief historical perspective
- PPE Advantages
- PPE Limitations
- PPE Physiological Effects/Control Principles (how they work)
- PPE Required Follow-up Protocols
 - Contact/Communication/Notification Requirements
 - Comprehensive Incident Reporting
- Carry and Use of PPE
 - PPE Retention/Protection
 - Verbal Direction
 - Stances
 - Drawing, Gripping & Displaying
 - Techniques & Tactics (actual deployment of OC spray & baton strikes)
 - Tactical Movement/Re-positioning/Disengagement
- Written Exam
- Practical Evaluation

End Notes:

ⁱ Ministry of Forests, Lands & Natural Resources – Compliance and Enforcement Annual Report for fiscal year-end March 2014

ⁱⁱ Ministry Of Forests, Lands and Natural Resource Operations Decision Note – Date: March 17, 2017
Ministry of Forests, Lands & Natural Resources – Compliance and Enforcement Annual Report for fiscal year-end March 2014

ⁱⁱⁱ Survey of NROs – February/March 2018

^{iv} <http://www.cbc.ca/news/canada/new-brunswick/rcmp-labour-code-trial-moncton-shooting-1.4312673>

^v <http://www.cbc.ca/news/canada/new-brunswick/rcmp-labour-code-trial-moncton-shooting-1.4312673>

^{vi} https://www.justice.alberta.ca/programs_services/fatality/Documents/fatality-report-lazenby.pdf

^{vii} Survey of NROs – February/March 2018

^{viii} Ministry of Forests, Lands & Natural Resources – Compliance and Enforcement Annual Report for fiscal year-end March 2014

^{ix} Survey of NROs – February/March 2018

^x Survey of NROs – February/March 2018

^{xi} Survey of NROs – February/March 2018

^{xii} Survey of NROs – February/March 2018

^{xiii} Survey of NROs – February/March 2018

^{xiv} Survey of NROs – February/March 2018

^{xv} Decision Note on the Issuance of PPE to NROs for defensive purposes only – 2017

^{xvi} <http://www.cbc.ca/news/canada/calgary/alberta-rod-lazenby-fatality-inquiry-1.4156099>

^{xvii} <http://www.cbc.ca/news/canada/calgary/rod-lazenby-fatality-inquiry-1.4159666>

^{xviii} <http://www.lapresse.ca/actualites/justice-et-faits-divers/201110/21/01-4459757-les-policiers-de-la-grc-auront-des-armes-de-plus-haut-calibre.php>

^{xix} www.cbc.ca/news/canada/new-brunswick/rcmp-labour-code-apriltwentsix-1.4085395

^{xx} <http://www.mayerthorpefreelancer.com/2015/01/17/rcmp-took-far-too-long-implementing-lesson-of-mayerthorpe-shooting-moncton-report>

^{xxi} <http://www.cbc.ca/news/canada/new-brunswick/rcmp-labour-code-trial-moncton-shooting-1.4312673>

Joel Johnston:

My companies (DTI Defensive Tactics Incorporated and Joel Johnston Consulting Inc.) have worked with the Ministry of Forests, Lands & Natural Resources – Compliance & Enforcement Branch (CEB) since 2012. Since that time we have delivered comprehensive "Confrontation/Risk Management Training" to all CEB personnel (Natural Resource Officers – or NROs) and continue to deliver Academy-level training to new hires and ongoing refresher training to in-service personnel.

I have spent 33 years as a law enforcement officer, supervisor, officer-in-charge, use of force trainer and Instructor-Trainer, ERT operator, supervisor and trainer, Provincial Use of Force & ERT Coordinator, policy maker, independent subject matter expert and advisor/consultant. I have worked as an advisor with the US National Institute of Justice, the Canadian Police Research Center, the International Law Enforcement Forum on Minimal Force Options, and the RCMP on a large number of projects – all related to use of force, accountability, public safety and officer safety. I have presented to the International Association of Chiefs of Police, the International Law Enforcement Educators & Trainers Association, the American Society of Law Enforcement Trainers, The American Correctional Officers Association, the Canadian Association of Chiefs of Police, The Federal, Provincial & Territorial Ministers of Justice, and the House of Commons Standing Committee on Security and Public Safety. I have been accepted as a use of force, arrest & control tactics, emergency response and related training subject matter expert witness in the Courts in BC, Alberta, Saskatchewan, Manitoba, Ontario and Quebec. I have been retained in 62 matters before the Courts and have testified in approximately one third of those cases. I was lead on the implementation process for the intermediate weapons (expandable baton and OC spray) within the Vancouver Police Department in 1991 (including a 6-month field test of these options, subsequent recommendations and implementation – including policy and training). I have authored Course Training Standards and Lesson Plans and trained law enforcement officers and trainers across North America in the use of batons and OC spray and been published in Canada's major law enforcement magazines on the subject. I was also seconded to The Commission of Inquiry on Policing in British Columbia ("The Oppal Commission") in 1994 and authored the report on "the Use of Impact Weapons by Police Officers in British Columbia". My CV is attached separately to this report.