



Use of Force Advisory Committee 2016 Annual Report

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Members: Nathalie Barbeau, Capitaine, Surete du Quebec
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Introduction

The CACP Use of Force Advisory Committee (UFAC, the Committee) focuses on providing advice and counsel to the CACP on matters related to police use-of-force. Its mandate includes the consideration of use-of-force modalities i.e. policies, procedures, practices, training, techniques, and technology including weapons.

Meetings

In 2016 the Committee held one meeting at the CACP 2016 annual conference in Ottawa ON, on August 13.

Membership

The members of the Committee consist of members of the CACP and technical advisors. They represent police services and agencies that support policing such as police trainers, use of force specialists, and federal and provincial government departments. During 2016 membership changed because of reassignment and separations. The Committee wants to thank the selfless work of our former members on behalf of the CACP.

Election of a new Committee co-chair.

Co-chair Mike Federico is retiring from the Toronto Police Service in September 2017 so the Committee agreed to select new a co-chair at its July 2017 meeting.

Accomplishments

Police Use of Force Models and Police Use of Force Training – Time for change?

The Committee can report that it is now focussed on helping to reform the police use of force (the model, training, reporting, etc.) with an emphasis on de-escalation. To this end it is participating in work being done in Ontario

In 2015, Committee members noted that discussions have arisen in policing circles about whether the current police use of force model might predispose officers to use force in public encounters. There is, in some jurisdictions (e.g. Ontario), an opinion that the model should be amended to specifically emphasize that de-escalation is a necessary step in any use of force situation. This opinion reflects the perception held by some that police culture emphasizes forceful interventions over negotiated outcomes.

In response to a review of police use of force in Toronto by retired Supreme Court of Canada Justice Frank Iacobucci, the Ontario Association of Chiefs of Police (OACP) had this to say about the police use of force model:

The Ontario Use of Force Model is based on the National Use of Force Framework. It is a graphic representation of the various elements involved in the thought process a police officer uses to assess a situation and act in a reasonable manner to ensure public and officer safety. It is approved by the Ministry of Community Safety and Correctional Services.

The Model was developed as a guide to help police officers make informed decisions about using force and the choice of force options, and to help officers explain their decisions. The model is not an authority to use force or to justify officers' actions, instead, it is simply a way to represent the use-of-force decision-making process whereby the police officer assesses the situation and decides on the most reasonable response.

The assessment process begins in the centre of the model with the "situation" facing the officer. From there, the assessment moves away from the centre of the model to consider the subject's behaviour, the officer's perceptions, and tactical considerations. Based on their assessment, officers select the most reasonable force option that can address the situation and that presents the lowest level of risk to the subject, the public and the officer. Options can range from officer presence, direct communication with the subject, the use of intermediate force options such as Conductive Energy Weapons, up to the use of lethal force.

However, it is important to note that force decisions and options are not necessarily used or intended to be used incrementally or sequentially. Events that officers encounter can unfold rapidly and are often very dynamic. Officers are trained to use a variety of strategies to successfully de-escalate volatile situations and there is no single communication method, tool, device, or weapon that will

resolve every scenario. All use of force situations are considered dynamic and constantly evolving until the situation is brought under control. Officers are trained to continue to “assess – plan – act” to determine if their actions are appropriate and effective. Furthermore, the model is not unidirectional – it is depicted in the form of circle so that officers know that they may move clockwise or counter clockwise or even laterally, depending on the situation, to discourage rigid linear, escalation type thinking.

There is, however, an opinion that the model should be amended to specify that de-escalation be specifically listed to emphasize that it is a necessary step in any use of force situation. The OACP points out, though, that communication, essential to achieve de-escalation, encircles the model as a reminder to officers that de-escalation is the goal of crisis management.

As a result, the OACP contends that revisions to the Use of Force Model are not necessary at this time. However, while the OACP continues to have faith in the Model and the training that supports it, it encourages increased emphasis on de-escalation through effective communication, and such techniques as containment and even disengagement or withdrawal if appropriate.

Since the 2015 meeting discussions have intensified in policing circles nationally about whether current police use-of-force models might predispose officers to use force in public encounters rather than attempt to de-escalate. Across Canada reviews of police use of force policy and training have called for reforms in both.

In one of the most recent calls for reform, the Ontario Ombudsman, in a report released in June 2016 entitled A Matter of Life and Death, recommends, among other things, that the Ontario police Use of Force Model be revised to make it easy to understand and to ensure that it clearly identifies de-escalation options rather than just force options, and there should be more recruit and in-service police training that emphasizes de-escalation instead of force.

Specifically, the Ombudsman recommended that:

The Ministry of Community Safety and Correctional Services should institute a new use-of-force model that is easy to understand and clearly identifies de-escalation options, rather than just use-of-force options. Both the B.C. and Las Vegas models have clarity and balance, but Ontario should lead by developing its own model that builds on the best of what others have done. Given the urgency of this issue, a new model should be developed and rolled out to all police services as quickly as possible, and no later than 12 months after the publication of this report (recommendation #3).

Furthermore, the Ombudsman recommends (#2) that a provincial regulation be created that requires officers to attempt to de-escalate before considering force options.

The Ontario Minister of Community Safety and Correctional Services (the Ministry that oversees policing in Ontario) replied that his Ministry accepts the Ombudsman’s recommendations.

Members agreed that the topic is of significant national interest and they reviewed the history of the current National Use of Force Framework. The initiatives to develop a national model arose out of a CACP interest in developing a national approach to help officers make decisions about whether to use force and what force options to use. The model is a decision making aid intended only to help police officers identify an appropriate response and articulate their reasoning.

In Canada, use of force models first began appearing in the 1980's, one the first being the provincial model of Nova Scotia, followed by Quebec in the early 1990's. In 1994, as part of a comprehensive use of force strategy, Ontario developed a provincial use of force model, and a number of other provinces and the Royal Canadian Mounted Police have since followed suit. In 1999, the Canadian Association of Chiefs of Police endorsed an initiative to develop a national use of force model.

The current model is based on six principles of crime prevention and the treatment of offenders that was adopted by the United Nations in 1990. The model's principles are:

- The primary responsibility of a peace officer is to preserve and protect life.
- The primary objective of any use of force is to ensure public safety.
- Police officer safety is essential to public safety.
- The National Use of Force Framework does not replace or augment the law; the law speaks for itself.
- The National Use of Force Framework was constructed in consideration of (federal) statute law and current case law.
- The National Use of Force Framework is not intended to dictate policy to any agency.

While some, the Ontario Ombudsman for example, have suggested that the model should clearly identify de-escalation techniques, the model is configured so as not to identify any specific technique because it is impossible to predict and describe every situation, circumstance, and subject behaviour that might occur, and every officer response and force option that might be available. Instead of specific techniques or definitions, concepts and categories are used. In training, examples are used to help police officers understand the concepts and principles in order to help them make the appropriate assessments and decisions. The model is a decision making aid.

Equally, the model is configured so as not to be mistaken for policy, procedure, or law. The law regarding police use of force speaks for itself. The law does not specify that an officer must de-escalate before using force. It requires that the force be reasonable and necessary. If it is established that the officer failed to de-escalate when appropriate then the subsequent force used would not have been necessary. It would, therefore, not have been reasonable and the officer could be charged under the criminal code with one or more of the assault or homicide offences. Similarly, the officer could be charged with unnecessary or excessive use of force under the various provincial police act regulations.

The Committee noted that at least one other association of chiefs of police has considered the question and concluded that the current model continues to serve its purpose satisfactorily. The Ontario Association of Chiefs of Police (OACP) contends that revisions to the Use of Force Model are not necessary at this time. The OACP points out that communication, essential to achieve de-escalation, encircles the model as a reminder to officers that de-escalation is the goal of crisis management.

However, while the OACP continues to have faith in the model and the training that supports it, it encourages increased emphasis in practice on de-escalation through effective communication and such techniques as containment and even disengagement or withdrawal if appropriate.

Members expressed continued faith in the national and local use of force models but agreed that while it might not be time for a change it was time for a review.

It was the Committee's view that any changes made to the Ontario model would have implications for the national model since the national model is derived, in part, from the Ontario one. In the same way, the Committee recognized that the other recommendations about training, reporting, body worn video, and police culture can have national implications.

The Committee believes that the CACP can be of assistance to the Ontario Minister by providing the national perspective. By offering to work with the Ministry the Committee believes that the CACP can help ensure that policing across Canada and in Ontario benefits from the latest knowledge and developments in the fields under consideration. Accordingly, the Committee tabled the following motion:

That, given the national implications for policing of the work that the Ontario Ministry of Community Safety and Correctional Services is undertaking in response to the recommendations of the Ontario Ombudsman in his report *A Matter of Life and Death*, the CACP Board of Directors contact the Minister and offer to support and work with the Ministry in reviewing the Ontario police use of force model specifically, and to work with the Ministry on the other recommendations, more generally.

On August 27, 2016, the motion was duly passed by way of email polling of members. Since they work for the Ontario Ministry of Community Safety and Correctional Services, Mr. Chris Lawrence and Ms. Lisa Sabourin declared a conflict of interest and abstained from voting.

The CACP Use of Force Committee undertook to be available to work with the Ontario Minister directly on this file if invited.

On November 23, the CACP Board of Directors accepted the Committee's motion and the appropriate correspondence was sent to the Ontario Minister on December 5, 2016.

The Ministry was receptive and has set up two committees, an executive (steering) and a technical committee. Deputy Federico represents the CACP at the Executive Committee and Co-chair Superintendent Susan Decock sits on the Technical Committee. The Executive Committee held an introductory meeting on November 25 and received essential background information and context.

The work in Ontario is the main priority of the CACP Use of Force Committee for 2017.

Hosting a meeting of police trainers and chiefs of police.

The Committee has noted that language and terminology around police use of force used by police officers including police trainers can affect public perception of police culture. For example, the notion held by some police officers that they are warriors in a constant battle against crime has left some to wonder if police increasingly interpret contact with the public as potential combat, especially in light of the fact that much of police work consists of community support - not crime fighting. The Police Executive Research Forum (PERF) in the United States held a symposium on police use of force and discussed police culture: warrior vs guardian (Critical Issues in Policing Series: Re-Engineering Training, August 2015). Many chiefs of police acknowledged that, likely inadvertently, a warrior culture exists among some police officers that is reinforced through training that emphasizes command and control and officer safety over negotiated outcomes and community safety. Even when police were not specifically characterizing themselves, some observers have been left with the impression that police were over emphasizing officer safety, at the expense of others' safety, in both police culture and training when, in fact, the daily experience of police officers is that they rarely confront life threatening situations. Some are concerned that this has left some police officers with an exaggerated sense of danger and, therefore, an inclination to over react.

As a result, Committee members expressed an interest in hosting a meeting of police trainers and chiefs of police to ensure that training is aligned with the chiefs' emphasis on a police culture of service, support and protection with an overall emphasis on the preservation of life.

Members agreed to start discussions with the Executive Director of the CACP.

cont/7

Development of Police Mental Health Strategies.

Uppermost in items #5 and #6 is the recognition that the mental health of the person the police encounter and the police decision to use force intersect. Indeed, our Committee has specifically referenced police encounters with persons who are emotionally disturbed or mentally ill as a priority.

Most recently, Vancouver and Victoria Police (BC) and the Ontario Provincial Police have published their Mental Health Strategies. The goal of each of the strategies is to improve outcomes for people with mental health issues, but implicit in both is that police might have to take direct action such as apprehend the person and perhaps use force to do so. Both strategies reference de-escalation training to help the police respond.

The Committee agreed that these undertakings by police services to develop mental health strategies will be of interest to the CACP. The Committee will monitor any developments.

Establish a Committee website section.

Our Committee was asked to identify an individual who would assume the responsibility of maintaining the Committee's section on the CACP's website.

Approximately two years ago, the CACP, developed a new website, a major feature of which is the ability of CACP committees to post information so that the general membership can be informed of, and stay current with, the activities of the various CACP committees.

The member chosen will receive the necessary training.

Susan Decock undertook the assignment.

Review of Committee priorities.

The current priorities are:

1. Effective communication strategies that reflect the realities of operational police use of force – in particular highlighting what we do well.
2. Developing a national use of force reporting guideline. This is considered a high priority because the development of consistent reporting will help police officers justify their use of force and create a greater degree of national consistency that can benefit research, training, policy, accountability, supervision, governance, and public trust.

3. Use of force training - in particular issues of knowledge and skills perishability and the development of evidence based curriculum.
4. Studying the organizational impacts of the introduction of new training/techniques/technologies, particularly on police operations, budgets and infrastructure.
5. Police encounters with persons who are emotionally disturbed or suffering from mental illness.
6. Threat analysis related to officer/public safety on emerging or existing technology (e.g. lasers used against the public, and other new unlawful weapons).

For 2017 we said that we would focus on three of the priorities:

- Police encounters with persons who are emotionally disturbed or suffering from mental illness and its intersection with police use of force and use of force training.
- Use of Force reporting: the Committee acknowledges that police training, policy, and tactics benefit from accurate and comprehensive data.
- Use of force training - in particular the emphasis on de-escalation training. In this regard the Committee is exploring the benefit of holding a symposium for chiefs of police to assess the latest training approaches to police use of force, especially de-escalation training.

Submitted by:

Co-Chairs

Superintendent Susan Decock and Deputy Chief Mike Federico