



# IN SERVICE:10-8

A newsletter devoted to operational police officers across British Columbia.

## PROHIBITED WEAPONS: PROVING POSSESSION

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Section 92(2) of the *Criminal Code* (CC) creates an offence for possessing a prohibited weapon:

s.92(2) CC

Subject to subsection (4) and section 98, every person commits an offence who possesses a prohibited weapon,...knowing that the person is not the holder of a licence under which the person may possess it.

A prohibited weapon is defined in s.84(1) CC:

"prohibited weapon" means

- (a) a knife that has a blade that opens automatically by gravity or centrifugal force or by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, or
- (b) any weapon, other than a firearm, that is prescribed to be a prohibited weapon

In proving an offence under s.92(2) CC, there is both an objective and subjective test that must be satisfied:

- The objective test is whether or not the item in question has the functional characteristics that make it prohibited. Did the weapon possess the prohibited properties?
- The subjective test is whether the possessor knew of the characteristics that made the weapon prohibited. This does not require that the person knew the weapon was prohibited, but only requires knowledge of the prohibited characteristics. In many cases, the appearance of the weapon itself may satisfy this test (ie. nunchaku).

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Succinctly, aside from proving possession<sup>1</sup>, the following two elements must be established:

- **the weapon possesses the characteristics that make it prohibited** (actus reus)
- **the possessor knows the weapon possesses these prohibited characteristics** (mens rea)

Because the offence of possessing a prohibited weapon is one of strict liability, the Crown only need initially prove that the accused was in possession of the prohibited weapon. The burden then shifts to the accused to prove absence of knowledge of the prohibited characteristics<sup>2</sup>. The Crown is not required to demonstrate the person intended to use the item as a weapon as defined in s.2 CC<sup>3</sup>.

### Types of Prohibited Weapons

The definition of "prohibited weapon" in s.84(1) creates two categories of weapons:

- automatic knives
- prescribed weapons

### Automatic Knives

The types of knives that are prohibited under part (a) of the definition of prohibited weapon can generally be divided into three categories:

- switchblade knives
- flick or butterfly knives
- gravity knives

The reason for banning these knives is founded in their capability of being carried or concealed in the hand, automatically opened, and available for use as a weapon<sup>4</sup>.

<sup>1</sup> See s.4(3) CC.

<sup>2</sup> R. v. K (1991) 68 C.C.C. (3d) 135 (B.C.C.A.), R. v. Richard & Walker (1981) 63 C.C.C. (2d) 333 (N.B.C.A.), R. v. Phillips (1978) 44 C.C.C. (2d) 548 (Ont.C.A.)

<sup>3</sup> R. v. K (1991) 68 C.C.C. (3d) 135 (B.C.C.A.), R. v. Richard & Walker (1981) 63 C.C.C. (2d) 333 (N.B.C.A.)

<sup>4</sup> R. v. Archer (1983) 6 C.C.C. (3d) 129 (Ont.C.A.), R. v. Richard & Walker (1981) 63 C.C.C. (2d) 333 (N.B.C.A.)

## Switchblade Knives

“prohibited weapon” means (a) a knife that has a blade that opens automatically...by hand pressure applied to a button, spring or other device in or attached to the handle of the knife,

Switchblade knives usually have a button on the handle of the knife, that when depressed, trigger the spring mechanism within the structure of the handle forcing the blade to open. These knives come in a variety of designs including side and front openers. Common names include leverlock, Italian stiletto, front opening and new age autos. A blade that “opens” only a few degrees as the blade emerges from the handle of the knife, such as when a button on a buck knife is depressed, does not amount to “opening” and escapes the definition<sup>5</sup>.

## Flick or Butterfly Knives

“prohibited weapon” means (a) a knife that has a blade that opens automatically by...centrifugal force...

Flick knives may be opened by simply flicking the wrist or snapping the knife in a circular motion. Some folding knives, although not originally designed to open in this fashion but do because of prolonged use, constitute a prohibited weapon<sup>6</sup>. Capability, not necessarily the design of the knife, determines legality<sup>7</sup>. However, where the pressing of a button supercedes the flicking of the blade, the knife does not fall within the definition<sup>8</sup>. Similarly, a knife that opens by holding the blade and applying centrifugal force to the handle is not prohibited<sup>9</sup>. A butterfly knife (aka: “balisong” or “Manila folder”) has a blade that folds into the handle of the knife so that when the knife is closed the handle also serves as the “carrying case” of the blade. At the base of the knife is a small bar or clip that locks the split handle into position. The clip is not necessary for the knife to function since the handle can be held together when gripped. By holding one of the two parts of the



<sup>5</sup> R. v. Richard & Walker (1981) 63 C.C.C. (2d) 333 (N.B.C.A.)

<sup>6</sup> R. v. Archer (1983) 6 C.C.C. (3d) 129 (Ont.C.A.)

<sup>7</sup> R. v. Richard & Walker (1981) 63 C.C.C. (2d) 333 (N.B.C.A.)

<sup>8</sup> R. v. Styles [1991] O.J. No.1422 (Ont.Crt.Jus.Prov.Div.)

<sup>9</sup> R. v. Archer (1983) 6 C.C.C. (3d) 129 (Ont.C.A.), R. v. Richard & Walker (1981) 63 C.C.C. (2d) 333 (N.B.C.A.)

handle and applying centrifugal force, the knife blade swings open and the two parts of the handle meet to form the knife's handle. To properly operate the knife, the user does require some coordination and dexterity. The automatic nature of the knife is not defeated by the fact the bar must first be raised or the fact the user is required to bring the two parts of the handle together<sup>10</sup>.

## Gravity Knives

“prohibited weapon” means (a) a knife that has a blade that opens automatically by gravity...

The gravity knife, as its name implies, uses gravity to eject the knife blade from the handle of the knife. The operator of the knife usually holds the knife in a vertical position, with the knife pointed at the ground. A release lever is depressed on the side of the knife that



frees the blade from a locked position. Gravity causes the blade to fall from the handle and the blade then locks in the extended, or open, position.

## Prescribed Weapons

Prior to the new firearm and weapon legislation, prohibited weapons included some firearms and many were prohibited by Order in Council. Firearms now have their own classification system. Today, non-firearm weapons are prohibited by regulation. Part III of the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted* made pursuant to s.117.15(1) CC classifies weapons as prohibited<sup>11</sup>:

- Any device that is designed to be used for the purpose of injuring, immobilizing or otherwise incapacitating any person by the discharge therefrom of (a) tear gas, Mace or other gas, or



<sup>10</sup> R. v. Vaughan (1991) 60 C.C.C. (3d) 576 (S.C.C.), R. v. Giroux [1986] B.C.J. No.1654 (B.C.Co.Crt.)

<sup>11</sup> Source www.cfc-ccaf.gc.ca.

(b) any liquid, spray, powder, gas or other substance that is capable of injuring, immobilizing or otherwise incapacitating any person

By definition, the spray must be designed to be used against persons. The labelling of the canister may provide sufficient evidence as to its design<sup>12</sup>. Dog repellants and bear sprays are not designed for persons, but animals, and would therefore fall outside the definition. However, if bear or dog spray were used during the commission of an offence, the item would fall within the definition of "weapon" in s.2 CC thereby aggravating the crime.

- Any instrument or device commonly known as "nunchaku", being hard non-flexible sticks, clubs, pipes, or rods linked by a length or lengths of rope, cord, wire or chain, and any similar instrument or device.



Nunchaku, also referred to as "humchuks" or "chukka sticks" are commonly made of a pair of 12-14 inch rods made of wood, metal, or acrylic, connected by a cord or chain. A weapon known as "hide-a-chuck" appears at first to be a baton but when twisted and pulled apart



becomes a set of nunchaku. Flexible foam covered plastic training "nunchakus" do not fall within the definition because of their softness and flexibility and therefore are not prohibited.

- Any instrument or device commonly known as "shuriken", being a hard non-flexible plate having three or more radiating points with one or more sharp edges in the shape of a polygon, trefoil, cross, star, diamond or other geometrical shape, and any similar instrument or device.



- Any instrument or device commonly known as "manrikigusari" or "kusari", being hexagonal or other geometrically shaped hard weights or hand grips linked by a length or lengths of rope, cord, wire or chain, and any similar instrument or device.



- Any device that is designed to be capable of injuring, immobilizing or incapacitating a person or an animal by discharging an electrical charge produced by means of the amplification or accumulation of the electrical current generated by a battery, where the device is designed or altered so that the electrical charge may be discharged when the device is of a length of less than 480 mm, and any similar device.



Generally, these weapons require contact between the person and the electrodes that protrude from the device. The TASER, although previously classified as a prohibited weapon by Order in Council, is now a prohibited firearm

- A crossbow or similar device that (a) is designed or altered to be aimed and fired by the action of one hand, whether or not it has been redesigned or subsequently altered to be aimed and fired by the action of both hands; or (b) has a length not exceeding 500 mm.



- The device known as the "Constant Companion", being a belt containing a blade capable of being withdrawn from the belt, with the buckle of the belt forming a handle for the blade, and any similar device.



- Any knife commonly known as a "push-dagger" that is designed in such a fashion that the handle is placed perpendicular to the main cutting edge of the blade and any other similar device other than the aboriginal "ulu" knife.



"Push-daggers" are also known as "punch daggers", "dirks", "palm knives", or "t-handled knives". Some push-daggers are also designed to open automatically by depressing a button on the handle of the knife.



<sup>12</sup> R. v. Wade [1994] B.C.J. No.1985 (B.C.S.C.)

- The device commonly known as a "Morning Star" and any similar device consisting of a ball of metal or other heavy material, studded with spikes and connected to a handle by a length of chain, rope or other flexible material.



A morning star (aka: "mace") usually consists of a spiked steel ball, attached to a wooden rod by a length of chain. The wooden rod (handle) is held and swung. This swinging action causes the spiked ball at the end of the chain to reach high speeds, which when striking the intended victim may cause serious injury.

- Any device having a length of less than 30 cm and resembling an innocuous object but designed to conceal a knife or blade, including the device commonly known as the "knife-comb", being a comb with the handle of the comb forming a handle for the knife, and any similar device.



There are several commercially manufactured items that appear to be an innocuous object but in fact conceal a knife. Examples available on the internet include the comb knife, lipstick applicator, pen-knife, cigar knife, key knife, bullet knife, or lighter knife.



pen knife



lipstick knife



shotgun bullet knife

- The device commonly known as a "Spiked Wristband", being a wristband to which a spike or blade is affixed, and any similar device.
- The device commonly known as "Yaqua Blowgun", being a tube or pipe designed for the purpose of shooting arrows or darts by the breath, and any similar device.
- The device commonly known as a "Kiyoga Baton" or "Steel Cobra" and any similar device consisting of a



manually triggered telescoping spring-loaded steel whip terminated in a heavy calibre striking tip.

- The device known as "Brass Knuckles" and any similar device consisting of a band of metal with one or more finger holes designed to fit over the fingers of the hand.



- Any finger ring that has one or more blades or sharp objects that are capable of being projected from the surface of the ring.

There is some disagreement on whether a fixed (solid) spike ring falls within the definition. In *R. v. Buchan* Victoria Registry, June 11<sup>th</sup>, 1987 (B.C.P.C.), Metzger J. found that one blade projecting from the surface of the ring fell within the definition. It was "not necessary to speculate that the objects must be hurled or set out from the surface of the ring". In *R. v. Marchuk*, Richmond Registry, June 8<sup>th</sup>, 1987 (B.C.P.C.) Reed J. examined whether three rings with horned animal heads were prohibited. Reed J. held that the object projected is not restricted to what the ring may do by itself but includes the whole ring being thrust forward in the form of a weapon. In *R. v. Klassen*, Vancouver Criminal Registry, October 20<sup>th</sup> 1989 (B.C.P.C.), Bastin J. held that "something that is capable of being projected also applies to something that simply is projected...from the surface of the ring". However in *R. v. J.* [1989] B.C.J. No.2133 (B.C.P.C.), Collings J. found the definition does not include rings with "fixed spikes" protruding from the surface of the ring. Fradshaw J. in *R. v. Collette* [1991] 118 A.R. 207 (Alta.P.C.) followed the reasoning of Collings J. that a one piece ring with no movable parts does not fit the definition:

[I]t is clear that the ring, to be prohibited, must possess blades or sharp objects that have the capability of being projected from the surface of the ring much in the way that a switchblade or flick knife can cause its blades to extend from the body of the knife.

For a complete list of all weapons (including firearms) prohibited by regulation, log on the Canadian Firearms Centre web-site at [www.cfc-ccaf.gc.ca](http://www.cfc-ccaf.gc.ca).

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