

British Columbia Civil Liberties Association

Submission to the Braidwood Inquiry Study Commission into Conducted Energy Weapons

May 2008

I. Introduction

The British Columbia Civil Liberties Association (the “BCCLA” or “Association”) wishes to thank the Braidwood Inquiry (the “Inquiry”) staff and the Commissioner for the opportunity to make this submission.

The BCCLA is Canada’s leading and most active civil liberties organization, founded in 1962. The Association’s work focuses on a full range of civil liberties issues including fundamental freedoms (speech, religion, association, assembly), equality, due process, privacy, democratic rights, etc. The BCCLA’s work encompasses four program areas: public education, complaint assistance, law/policy reform and litigation. The Association is led by a volunteer Board of Directors and supplemented by professional staff. For more information about the Association, visit bccla.org.

Since our beginnings in 1962, police accountability has been a major focus for the BCCLA’s work. The BCCLA’s police accountability work touches on all four core programming areas including public education, assisting individuals who wish to file complaints about police conduct, filing complaints in our own name, law and policy reform via submissions to various agencies and litigation.¹

¹ For a sampling of the BCCLA’s police accountability work, please see submissions of the BCCLA to the Oppal Inquiry into Policing in 1993 (http://www.bccla.org/othercontent/1993_Municipal_Policing.pdf and http://www.bccla.org/othercontent/1993_Supplementary_Brief.pdf), to the Special Committee to Review the Police Complaints Process in 2001 (<http://www.bccla.org/othercontent/2001LegReview.pdf>), to Dirk Ryneveld, Q.C., B.C. Police Complaint Commissioner in 2006 (<http://www.bccla.org/othercontent/06OPCCRecommendations.pdf>) and to Josiah Wood, Q.C., Chair, Police Act Review in 2006 (<http://www.bccla.org/othercontent/06WoodReviewSubmission.pdf>).

Police bear a tremendous responsibility in Canada's democracy. They are responsible for public safety and serve the public by preventing and investigating crime. In doing so, they at times place their own lives at risk in dealing with dangerous and violent individuals. They are deserving of our respect and support.

At the same time, the BCCLA recognizes that police possess extraordinary power to undertake this responsibility including the authority to detain, arrest, search and seize property and use force, including lethal force, in the lawful execution of their duties. A hallmark of a liberal democracy like Canada is the rule of law. As the legitimacy of police authority is dependent upon the confidence of the public and civil society, consistent with the rule of law, the police in turn must always remain fully accountable to civilian authority. This is the principle that underlies all of the BCCLA's police accountability work.

In carrying out its responsibilities to ensure public safety, prevent and investigate crime and uphold the rule of law, the police use a variety of tools including weapons. Given the implications for individuals' civil liberties by police deployment of weapons, the BCCLA submits that whenever a new weapon is considered for use by police forces, there must be thorough and independent (of police) research and analysis into whether a weapon does not pose an unreasonable risk of harm/safety to the public. If not, clear rules and regulations about training, use and accountability regarding the weapon must be established *before* the weapon is approved.

Consistent with the principle that the police are responsible to civilian authority, the responsibility for the assessment and regulation of new weapon technology lies with the civilian government, not the police.

Indeed, public confidence in the police can only be maintained if the police and weapons like the Conducted Energy Weapon ("CEW" or "Taser") are in fact and are perceived to be serving the *public* interest, not simply the police's interest via reduction in officer injuries. That necessarily means that the police's political masters, Solicitors General, Ministers of Public Safety and Attorneys General throughout Canada, must take responsibility for ensuring that new

technology – technology such as a CEW that inflicts severe pain on individuals and may cause irreparable harm – does not pose an unreasonable risk of harm to Canadians. These same authorities must ensure that there are appropriate high and uniform standards with respect to training, use and reporting/accountability if they determine that CEW technology does not pose an unreasonable risk.

With advances in new weapon and other policing technology, the example of the CEW is likely not to be the last time a new and perhaps controversial weapon is considered for use by the police. We should learn from our mistakes in relation to CEWs. The BCCLA submits that the Braidwood Inquiry should recommend to the provincial government that more careful study, research and assessment should occur before any new weapon, or other significantly intrusive policing technology, is approved for use by the police. In addition, if such technology is approved for use, approval should be conditional upon the establishment of a clear and thorough regulatory environment.

II. Police Governance and Regulation of the Conducted Energy Weapon

Regulatory Governance Failure Regarding CEWs

The B.C. Civil Liberties Association submits that there has been an utter failure, indeed an abdication, of government control over the evaluation, approval and regulation of the Conducted Energy Weapon into use by police forces in British Columbia and Canada. This failure was induced in part by and compounded by the fact that police forces sold the technology to its political masters and the general public as a weapon that would be used as a substitute for the use of firearms, thus saving lives. The Inquiry has heard from then Attorney General Ujjal Dosanjh who was the Minister responsible at the time for first approving the CEW for police use in British Columbia. This Inquiry also heard from Kevin Begg, Director of Police Services and Assistant Deputy Minister of the Ministry of Public Safety and Solicitor General (the “Ministry”) who was also the Director at the time CEWs were first approved. In Mr. Begg’s words:

“It was expected that Tasers would be limited to being used in situations where subjects were violent, aggressive or armed, in other words, in situations with a very high level of risk and potential for serious injury to both police officers and subjects.”²

To be fair to Mr. Dosanjh, back when the CEW was introduced in B.C., the BCCLA’s position was much the same as his. When asked by the media to comment on the introduction of the CEW at the time, the BCCLA made it clear that though we have no expertise on the safety of the weapon (which is the responsibility of the government to determine), we would support the use of CEW technology as a substitute for the use of firearms because it would save lives. Our openness to CEW technology was further predicated of course on the existence of clear, uniform and high standards of regulation regarding training, use and accountability.

It is worth pausing to note that the “pilot project” by the Victoria Police Department that was used as the basis for evaluating the CEW before approval by the Minister was a six month project with a relatively small number of deployments. In the BCCLA’s submission, this is woefully inadequate basis upon which to evaluate a new, complex and potentially harmful weapon technology.

As the Braidwood Inquiry is now well aware, the original concept of the CEW being limited to deployment in situations only where a firearm would be used is now long outdated. Instead, “usage creep”, as it has been termed, is the norm. As a weapon classified on the use of force spectrum as “intermediate” and permissible for those subjects who are “actively resistant”, the CEW is authorized for use in a wide variety of applications in which the threshold for use is much less than an imminent, significant risk of serious harm and injury, if not death.

In August 2004, after a growing number of deaths locally, in Canada and in the United States associated with CEW use, the BCCLA wrote to then Solicitor General Rich Coleman to undertake a comprehensive review of police use of tasers, including audits of actual use and formulation of provincial wide uniform policies for all municipal police services relating to training, use and reporting/accountability. We urged the Minister to undertake a review and to

² Transcripts of the Braidwood Inquiry, May 7, 2008 at page 53: <http://www.braidwoodinquiry.ca/transcripts/08-05-07.pdf>

implement uniform training, use and reporting standards. This letter is attached to our submission.

Mr. Coleman's response in December 2004 (also attached), was to point to various reviews that were ongoing including the Office of the Complaint Commissioner's review (undertaken on his behalf by the Victoria Police Department – which raises questions about independence of review given the Victoria Department's significant investment in Taser technology and endorsement of the technology) which he noted had made interim recommendations and an in-custody death review by the Coroners Service. To this date, the BCCLA has heard no word of the Coroners Service review and we are unaware of any standards or uniform policy being prescribed by the Ministry of the Solicitor General to require all police forces in British Columbia to adhere to common standards regarding training, use and reporting involving CEWs.

The BCCLA submits that recent documentation from the Attorney General of British Columbia submitted to the Braidwood Inquiry further confirms the Ministry of Public Safety has failed to play an adequate governance role in the area of CEW regulation:

1. December 21, 2007 Letter from Minister John Les³

Via a letter dated December 21, 2007 from then Minister Les to RCMP Deputy Commissioner Gary Bass and Chief Constables of Independent Municipal Police Departments in B.C., Mr. Les finally admits that the “time has come for British Columbia law enforcement agencies to come together to clarify practices and policies around Taser use.” The letter also establishes the Ministry's goal to “establish definitive threshold of use guidelines and training requirements.”

The BCCLA submits that this response is long overdue. This effort should have been initiated by the Ministry when CEW's were first contemplated for use in British Columbia. Uniform standards should have been imposed *before* the approval of the CEW. Certainly, after it was clear that civilian deaths were associated with CEW use and that CEW deployment was occurring in situations far less serious than a risk of grievous bodily harm or death, the provincial

³ Tab 47 of the submission of the Attorney General of B.C.

government should have undertake a much more rigorous evaluation and regulation of CEWs. The provincial government clearly had notice that there was a potential problem with CEWs many years ago.

2. Taser Trends in BC Research Plan⁴

The Ministry prepared a document entitled “Taser Trends in BC Research Plan” dated February 19, 2008. The document outlines options for analyzing data of past CEW use to aid in identifying key issues regarding CEWs. Both Kevin Begg and Joel Johnson, the provincial Use of Force Coordinator, have made presentations that have included the intention to collect more data.

The BCCLA submits that this kind of data collection and analysis should have been conducted when CEWs were first approved for use, or shortly thereafter, and especially when it became apparent that deaths were associated with CEW deployment and deployment was occurring in much less serious situations than was envisioned when the weapon was approved. This lacunae in data collection seriously undermines the capacity of police and civilian authorities to ensure accountability and create appropriate regulations. Paul Kennedy’s criticism of the RCMP in his Interim Report on Conducted Energy Weapons is similarly apt with respect to the government of British Columbia and municipal police forces in B.C.:

“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.”⁵

⁴ Ibid, Tab 52.

⁵ http://www.cpc-cpp.gc.ca/DefaultSite/Reppub/index_e.aspx?articleid=1683

Inadequate Expertise and Staffing within the Ministry of Public Safety and Solicitor General

Furthermore, the BCCLA submits that the Police Services Division has not had adequate staff to provide the Ministry and Minister with expert advice regarding civilian governance regarding the regulation of police use of force. The Oppal Inquiry into Policing in B.C. recommended in 1994 that the province appoint a use of force coordinator. However, it wasn't until 2005 that Police Services Division hired Staff Sergeant Joel Johnson on secondment from the Vancouver Police Department in the position of Use of Force Coordinator.

After having reviewed Mr. Johnson's background and qualifications, the BCCLA submits that he is not in a position to provide disinterested⁶ and expert policy advice and guidance to the Ministry with respect to civilian governance of police use of force. Though perhaps an expert in use of force techniques in the context of policing, his expertise must be distinguished from expertise or experience in drafting police policy and civilian governance of police and making recommendations with respect to whether a particular use of force technology such as CEWs do not pose an unreasonable risk of safety to the public. Perhaps unsurprisingly, he also strongly endorses the continued use of CEWs in a July 2007 draft paper for the Director of Police Services entitled "Conducted Energy Weapons Provincial Policy Review and Recommended Options". The paper has been endorsed by the B.C. Association of Municipal Chiefs of Police though Kevin Begg has indicated that he has "issues" with it and has not approved it.⁷

The BCCLA has reviewed Mr. Johnson's draft report and shares Mr. Begg's concerns. Our view is that it does not provide a thorough, academic, disinterested review of the literature nor a

⁶ It has also been reported that Mr. Johnson operates a private use-of-force training firm called "Defensive Tactics Inc.". DTI's website indicates that Mr. Johnson is a Taser International certified instructor: <http://www.dtidefensivetactics.com/bios.html>. It is not clear whether DTI provides CEW training but to the extent it does and Mr. Johnson stands to gain personally and financially by this training and consulting, there is a serious question regarding a conflict of interest with respect to his advising the Ministry and the police regarding CEWs. Though he disclosed this firm in general terms during his presentation to the Braidwood Inquiry, he did not provide specific details regarding DTI's involvement in CEWs nor was he asked by Commission Counsel. The fact that he has disclosed this information to the Chief of the Vancouver Police Department is immaterial given that his employer as the provincial Use of Force Coordinator is the province of British Columbia, not the Vancouver Police Board.

⁷ Transcripts of the Braidwood Inquiry, May 7, 2008 at page 56: <http://www.braidwoodinquiry.ca/transcripts/08-05-07.pdf>

thorough analysis of the issues necessary to provide sound policy and regulatory advice to the Ministry.

The BCCLA also learned through the submission of Mr. Begg that the Police Services Division has recently engaged a Program Manager with expertise in police use of force to provide a “civilian lens” through which to provide policy advice regarding police use of force.⁸ We have since learned that this Program Manager was only appointed in early 2008. The BCCLA is uncertain of the qualifications of this person for this position and whether in fact she is able to provide “expert” advice with respect to the use of force. Mr. Begg did not provide further details in his presentation nor do the materials in the submission of the Attorney General of B.C. illuminate the Ministry’s staffing capacity to meet this need.

Regardless of the Program Manager’s qualifications to undertake this function today, the BCCLA submits that the Police Services Division has not historically had adequate capacity to properly create civilian governing authority over the police regarding CEWs nor has it asserted, as it had a responsibility to do, true regulatory control including appropriate standards regarding CEWS. It has instead, by default, left it in the hands of the police to provide this role. This points to a serious problem of a lack of adequate civilian governance over the police.

Regulatory Authority to Appropriately Regulate CEWs

In his presentation to the Inquiry, Kevin Begg, Director of Police Services and Assistant Deputy Minister suggests that the provisions of the *Police Act*, particularly Part 8, need to be strengthened so that the Ministry can properly regulate CEWs in British Columbia.⁹

The BCCLA submits that the only impediment to ensuring that there are high, uniform, legally enforceable standards with respect to CEWs in the province of British Columbia, whether that be when CEWs were first introduced, currently or in the future, is a lack of political will.

⁸ Ibid, at page 52.

⁹ Ibid, at page 57.

Though legislation may always be fine tuned, there is currently – and there has been historically – clear regulation making authority in the *Police Act* for creating uniform, high standards with respect to training, use and reporting of CEW deployment. In particular, paragraph 74(2)(t) of the *Police Act* states that “Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (t) respecting the use of force by a class of officers in the performance of their duties, including, without limitation,
 - (i) the training or retraining in the use of physical force
 - (A) in emergency response situations, pursuits or forcible entries, and
 - (B) as a means of restraining an individual, and
 - (ii) the training or retraining in the use of
 - (A) firearms, ammunition, batons, capsicum spray, physical restraint devices or other weapons and equipment,
 - (B) police dogs, horses and other animals, and
 - (C) motor vehicles when in pursuit or in emergency response situations;”

This paragraph is broadly worded and would provide the basis for a legally enforceable regulation applicable to all municipal police departments in British Columbia that would govern training, use and reporting of CEW deployment.

Furthermore, section 11 of the *Use of Force Regulation*, B.C. Reg. 21/2000 states:

- “Each police force must develop or adopt a use of force model approved by the director and develop a written use of force policy that includes at least the following force options:
- (a) officer presence;
 - (b) communication;
 - (c) physical control;
 - (d) intermediate weapons;
 - (e) lethal force.”

The BCCLA believes that the Director of Police Services has the legal authority to deny approval of a use of force policy for a particular police force, including a policy relating to CEWs, if he is not satisfied with the policy.

The BCCLA submits that the Director of Police Service has legal authority to create a standard, uniform CEW policy for all municipal police forces in B.C. During the presentation of the B.C.

Association of Municipal Chiefs of Police, there was acknowledgement that there is in fact such a uniform policy with respect to police pursuits.¹⁰

The BCCLA submits that the only impediment to all municipal police forces in British Columbia being subject to uniform policies with respect to the training, use and reporting regarding CEWs has been the lack of political will to do so by the Minister of Public Safety and Solicitor General and his staff. This has resulted in a vacuum of responsible police governance by the Ministry and municipal police boards.

The BCCLA submits that the lack of adequate civilian governance and oversight of police in the Police Services Division has resulted in inadequate regulatory control of police use of force as well as other matters including accountability in the area of police involved deaths.

The BCCLA therefore recommends that the Braidwood Inquiry undertake a thorough audit and review of the structure and staffing of the Police Services Division as well as the Ministry of Public Safety and Solicitor General to make recommendations to ensure the proper capacity to provide civilian governance with respect to the regulation of the CEW, use of force and policing generally.

III. Public Safety

There have been approximately twenty deaths of civilians reportedly associated with the deployment of CEWs in Canada. In the United States, there have been reports of numerous more civilian deaths associated with CEW deployment.¹¹

The Ministry of Public Safety (provincially) and the Department of Public Safety (federally) have a legal and moral responsibility to determine whether the CEW does not pose an

¹⁰ See Transcripts of the Braidwood Inquiry, May 14, 2008, comments of Bob Rich, Deputy Chief Constable, Vancouver Police Department.

¹¹ The BCCLA knows of no authoritative list compiled by a government authority. Cameron Ward, Barrister & Solicitor, of Vancouver, B.C. has compiled a list of 337 deaths reportedly associated with CEW deployment in North America up to April 24, 2008.

unreasonable risk of harm to the public to be approved as a weapon for use by police in B.C. and Canada.

Given the lack of scientific certainty and independent research regarding this question, the BCCLA submits that the Braidwood Inquiry should recommend that the provincial and federal governments commission new independent research to determine:

- the risk of a CEW application(s) to those with pre-existing heart disease
- the risk of the application of multiple CEW shocks
- the risk of a CEW application(s) to vulnerable populations such as children, the elderly and pregnant women
- the physiological and psychological impact of pain as a result of the application of the CEW¹²
- the risk of a CEW application(s) to those who have ingested drugs (cocaine, methamphetamine, etc.) and who are exhibiting symptoms of serious agitation or distress
- the risk of a Taser application(s) to those who are exhibiting signs of mental illness

This research must be independent. That is, funding for this research should be provided by the government or another agency independent of the police or other existing or potential users of CEWs. Moreover, the researchers must also be independent of and perceived to be independent of the police or other users of CEWs.

¹² Paul Kennedy in his Interim Report on the RCMP Use of Conducted Energy Weapon makes note of how little attention has been paid to the issue of pain in relation to the CEW (at page 11 and 22).

IV. A Precautionary Approach to CEWs

Given the number of CEW related deaths and the lack of scientific certainty regarding the safety of the CEW, the BCCLA recommends that governments take a precautionary approach to CEW use by police.

Consistent with a precautionary approach, the BCCLA submits that the provincial and federal governments should immediately place a moratorium on the use of CEWs.

In the alternative, if CEW deployment is permitted, the BCCLA submits that CEW deployment should be restricted only to situations where firearms would otherwise be authorized.

The BCCLA submits that restricting CEW deployment in this way would be consistent with the law respecting use of force under the *Criminal Code*. Section 25 of the *Code* states:

Protection of persons acting under authority

25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- (a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;

(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;

(c) the person to be arrested takes flight to avoid arrest;

(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

(e) the flight cannot be prevented by reasonable means in a less violent manner.

(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the *Corrections and Conditional Release Act*, if

(a) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and

(b) the escape cannot be prevented by reasonable means in a less violent manner.

R.S., 1985, c. C-46, s. 25; 1994, c. 12, s. 1.

The meaning of “grievous bodily harm” has been judicially interpreted to mean “serious hurt or pain”: *R v. Bottrell*, (1981) 60 C.C.C. (2d) 211 at para. 31 (B.C. Court of Appeal)

The BCCLA submits that it should now be uncontroversial that application of a CEW to a human at least causes “serious hurt or pain”. Therefore, CEW deployment is either intended to or likely to cause grievous bodily harm. Police officers are therefore not authorized, pursuant to subsection 25(3), to deploy a CEW unless they have reasonable and probable grounds to believe that the application of this level of force is necessary for their self-preservation or the self-preservation of someone under their protection from grievous bodily harm (ie serious hurt or pain) or death.

In more simple words, the BCCLA submits that section 25 of the *Criminal Code* will only authorize the use of force that is intended or likely to cause serious hurt or pain (i.e. deployment of a CEW) when a police officer has a reasonable belief that he or she needs to use that level of force to protect him/herself against a threat of serious hurt or pain or death. Section 26 of the *Criminal Code* makes any one who uses excessive force criminally liable for such use of force. Arguably, the deployment of a CEW by police should give rise to criminal liability when they have no reasonable basis to fear of grievous bodily harm (serious hurt or pain) or death.

In sum, the BCCLA submits that there is authority in the *Criminal Code* to restrict the use of a CEW to only those circumstances that would justify the use of a firearm.

Furthermore, according to the National Use of Force Model (municipal police forces) or the Incident Management Intervention Model (RCMP), lethal force (firearm) is authorized when there are situational factors that indicate a probable risk of grievous bodily harm or death. In the RCMP model, grievous bodily harm or death is defined as a category of resistance:

“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 or firearms.”¹³

The BCCLA notes that prior to 2000, provincial regulations regarding firearm use restricted police officers from drawing or discharging a firearm unless an officer has reasonable grounds for believing it is necessary to protect his or her life or the life of another person, or to apprehend or detain a person whom the police officer believes to be dangerous.¹⁴

V. Regulation of CEWs

The BCCLA submits that if CEWs are permitted in British Columbia, they must only be allowed under strict, uniform, regulated standards. A specific regulation under the *Police Act* regarding CEWs should be approved by the Lieutenant Governor in Council.

1. Training

The BCCLA submits that training with respect to CEW deployment, use and reporting should be uniform throughout the province. All new police recruits should receive training regarding CEW under the auspices of the Justice Institute of British Columbia. CEW trainers must themselves be certified by the province to a specified, high standard. Currently, individual municipal police

¹³ Ibid, at 31.

¹⁴ *Police Firearm Regulation*, B.C. Reg. 203/98

departments each train their own officers which will result in different approaches and deployment standards of the CEW.

Training standards and materials should be developed independent of any training programs by Taser International or any other CEW manufacturer or distributor. Training materials and instruction should include current information regarding the health risks associated with CEW use. No trainer or instructor shall own shares in Taser International or any other CEW manufacturer or distributor nor otherwise receive any benefit from Taser International or any other CEW manufacturer or distributor.

Given the relatively young age of this technology, certification should occur on an annual basis to ensure that new information with respect to CEW safety and deployment be conveyed as soon as possible to front line officers.

The BCCLA submits that all police officers in British Columbia should also receive significant training in crisis intervention including interacting with individuals who have a mental disorder or mental health difficulties as well as emergency medical training.

With respect to training in crisis intervention, the Braidwood Inquiry received information from the Vancouver Police Department with respect to a training program that they have implemented to provide their officers with crisis intervention training. The BCCLA commends the Vancouver Police Department for taking that initiative and endorses their recommendation that this training be mandatory for all municipal police officers and provincial police officers in British Columbia and that the provincial government fund this training.

2. Use

In addition to the restriction on the use of CEWs to when use of a firearm is authorized, the BCCLA recommends the following standards be implemented in a specific CEW regulation:

- (a) If situational factors indicate the presence of a mental health crisis or other health crisis that does not require the immediate apprehension of a subject, police should ensure that there are officers or other personnel appropriately trained in crisis intervention to attempt to control the subject using appropriate crisis intervention tactics including dialogue and persuasion.
- (b) There should be no deployment of a CEW until Emergency Health Service (“EHS”) personnel are present on the scene unless exigent circumstances justify deployment before the arrival of EHS personnel. Notwithstanding such exigent circumstances, police must call for EHS personnel to attend and must ensure that EHS personnel examine a subject who has been subject to a probe mode deployment of a CEW.¹⁵
- (c) Deployment of CEW should be limited to the number of times necessary to eliminate the probable risk of grievous bodily harm or death.

3. *Reporting*

The BCCLA recommends that if the CEW use is authorized, police forces use CEW technology that provides as much data as possible in order to ascertain objective evidence about a deployment.

As discussed above, appropriate and timely regulation depends on the availability of as much empirical data as possible. The BCCLA supports any efforts to ensure that CEW deployment be recorded in PRIME. Further, we recommend that any incident involving CEW deployment (including drawing but not discharging the weapon) be recorded as soon as possible including objective data (as recorded by the CEW itself) and subjective information. This data should be reviewed by appropriate supervisors of municipal police forces immediately after an incident and

¹⁵ Note that the RCMP Operation Manual for Conducted Energy Weapons includes the following direction in Article 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 Service (EMS) attendance in your strategy.”

Further, the “optimal response strategy should include ... EMS to attend with members;” (Articles 3.2.4.1 and 3.2.4.1.1)

by Police Services Division personnel on a regular basis to ensure compliance with a CEW regulation and to undertake analysis to ensure CEW regulations and policies are appropriate.

CEW deployment and other use of statistics should be published annually by the Ministry of Public Safety and Solicitor General in adequate detail to provide the public with a meaningful ability to understand the circumstances and justification for CEW deployment.

VI. Independent Public Review in Three Years

The BCCLA submits that the Braidwood Inquiry should recommend that a further independent public review of the CEW occur three years after the report of the Inquiry.

The CEW has become the most controversial use of force tool employed by police. There is an underlying question of public confidence in the use of the CEW by police as a result of the death of Mr. Dziekanski and others. Many in the general population oppose its use. At the same time, the police and civilian authorities responsible for the police including the Ministry of Public Safety and Solicitor General continue to support its use, though acknowledge that there is a need for uniform standards regarding training, use and reporting.

At present, there is likely general consensus that more research is required regarding the safety of the CEW and more data regarding current and past use. With the implementation of new reporting structures if CEW use continues and new research, there will be a significant amount of new information to draw upon to inform public policy with respect to CEWs.

With new research and information and likely a continuing public debate about the efficacy and safety of CEW use, a further independent review would assist in addressing current and any future uncertainties and assist the Ministry in updating CEW regulation if it continues to be used.

VII. Conclusion

The controversy regarding Conducted Energy Weapons provides insight into issues regarding use of force as well as civilian governance and oversight of policing more generally. The Braidwood Inquiry is a welcome opportunity to address both these issues in a thorough and systematic way.

The BCCLA believes that there is significant scientific uncertainty regarding the safety and deployment of CEWs and inadequate regulation of the weapon to justify a moratorium at this time. If the Inquiry is of the view that CEW use should continue, it must recommend strong regulatory restrictions for training, use and reporting.

The BCCLA again wishes to thank the Braidwood Inquiry for the opportunity to make this submission.

Respectfully submitted:

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