



Commission for  
Public Complaints Against the  
Royal Canadian Mounted Police

Commission des  
plaintes du public contre la  
Gendarmerie royale du Canada

## Presentation to the Braidwood Inquiry

---

Paul E. Kennedy  
Chair

**June 25, 2008**

**CHECK AGAINST DELIVERY**

## Presentation

Good afternoon.

I would like to start by thanking you Mr. Chairman for inviting me to speak today and accommodating my schedule. I believe the recent release of my Final Report on the RCMP's use of the conducted energy weapon will be of value to this inquiry.

I am here today with my Director of Strategic Policy and Research, Mr. Michael MacDonald. We will be pleased to answer any questions after my presentation.

In November of last year, the Minister of Public Safety requested that I review the RCMP's CEW protocols, their implementation and internal compliance.

I wholeheartedly took on this task because I believe the value-added of the Commission's work is that we ask the questions that the police typically do not. In addition, we see the problems that the police may themselves not see.

As a civilian oversight body, the Commission brings a different and needed perspective to systemic policing issues. This, I believe, is where our strength lies.

Policing in Canada is built upon the guiding principles of Sir Robert Peel. In particular, four principles strike me as paramount, and are as important today, as they were to Peel in 1829.

First is the fact that the police can only perform their duties if they have the public's approval of their actions. Second is the reality that the police are the public, and the public are the police.

Third, the police must use physical force only to the extent that is necessary to preserve public order. Finally, the police rely on the willingness of public cooperation to undertake their duties.

That said, when I look at the issue of the RCMP's use of the CEW, I believe all police services across the country can learn from each other. The challenges others have faced, and the responses they have taken, are valuable examples for all to learn from.

What is unique about the RCMP experience with the CEW, is that the RCMP is present in every province and territory. In addition, they have been using the weapon since 2001 and have over 3000 devices and over 9000 members trained.

Our research on the RCMP's use of the CEW and the largest single database in Canada brings a truly pan-Canadian perspective to the issue.

Across this country, the debate of CEW use has matured as oversight bodies, NGOs and law enforcement agencies attempt to understand the weapon's use and the unforeseen consequences deployment may have.

Of the numerous analyses currently being undertaken in Canada, including the previous work of the BC OPCC, the Parliamentary Committee on Public Safety and National Security, and Amnesty International, certain themes repeat themselves. We have all found:

- A lack of training,
- Examples of inappropriate use,
- A lack of meaningful data collection, and
- A lack of transparency and accountability.

Overall, I have three interrelated concerns with the RCMP's use of the CEW.

1. That the inappropriate assessment of a subject's behaviour has resulted in elevating the level of intervention beyond what would be considered acceptable.
2. That the position of the CEW on the use of force model allows for the deployment of the weapon far too early in police encounters; and finally,
3. That RCMP data collection and analysis practices for the CEW usage database are both inefficient and ineffective.

I firmly believe that policy decisions the police make that affect their interaction with the public need to be based on sound, factual data. In addition, communicating these policy decisions is essential to obtaining public support.

This is absolutely true with respect to the CEW.

When I look at the issue of CEWs in today's climate, I believe that police use of this weapon is a public policy issue. The public has expressed grave concerns about this weapon.

Following Peel's principle that the police can only perform their duties if they have the public's approval, how can the public not have a right to say how it will be policed?

The RCMP have not effectively engaged the public nor have they explained their actions in this regard. The public's voice must be heard otherwise the RCMP risk losing their support.

When it comes to the current CEW policy, the RCMP decide:

- How the device is deployed against those they police;
- Who gets medical treatment; and,
- What data is collected and released to the public.

In my opinion, this is a flawed system.

To create effective and relevant public policy, appropriate and diverse input into the policy development process is essential. The police must have an impartial body who can act as a reasonable, well informed interlocutor, to undertake in this process.

This is the role I have tried to take.

The police are accountable to the public and their ability to function is contingent on the public's approval of their actions. The CEW debate has brought this into focus like no other issue. Members of the public are rightly demanding a voice in how they are policed and what type of policing will be acceptable in Canada.

Strip away for the moment the public policy debate, the deaths in custody, the almost instinctive aversion to electricity, and the bottom line is this: this device causes intense pain.

Law enforcement, and certainly Taser International, speak to the fact that the CEW renders subjects incapacitated and unable to fight back. This may be true, but it is a thoroughly sanitized description of what happens.

What is missing from the debate, and, what concerns me, is that a pain compliance technique is being wholeheartedly advocated across the country without a full appreciation of the impact on the human body.

I believe this may be changing now though.

There are certain limits that we all instinctively recognize with regards to certain types of police use of force.

What appears to be different with the CEW, is that police officers do not seem to appreciate the seriousness of the device. At least not to the same extent as they view the baton or the handgun.

Police officers recognize that drawing their service weapon is very serious. I have not seen a similar recognition with the CEW.

This lack of recognition is evidenced when the weapon is used, and operationally viewed, as an appropriate intervention tool with at-risk populations, or those who are not posing a serious threat to the officer.

If the State or its representatives want to introduce a device for use against member of the public, it bears the onus of ascertaining what level of risk to the public flows from the use of the device. If there is any ambiguity and uncertainty, that doubt should be resolved in favour of the citizen.

Remember, the public are the police, and the police are the public.

With respect to the CEW there is an ongoing debate concerning deaths proximal to the weapon's use. Until this debate is resolved, I have proceeded on the assumption that there may be a statistically small, but nevertheless material risk, that serious injury or death may occur following use.

This is particularly relevant with respect to "at-risk" groups.

Given the disproportionate number of people with substance or alcohol abuse issues who come into police contact, and who in turn are more likely to become an in custody death statistic, I am not convinced that the CEW is always the best option to subdue such persons. This is of course, absent a risk of harm to themselves, the member or the public.

And as I stated in my Final Report, there has been an absence of input from the medical community in this debate, which I believe has unfairly placed the burden of care for those experiencing signs of a mental health crises, or in the throws of drug toxicity, on the police.

The CEW is not a medical device. It is a tool available for public safety purposes only.

The medical community should be firmly engaging the law enforcement community on the use of the weapon, in particular with at-risk populations.

Despite my concerns about the inducement of pain, I fully recognize that police work involves violent encounters with people in order to gain control of a situation.

However, the profile for the individual who is most likely to be subject to the CEW is no different than the profile of those who are most likely to come into police contact.

It is typically the same group of people that the police have been dealing with long before the CEW was ever introduced.

These are not easy people to deal with. These encounters may involve those who are irrational and unable to function properly. At worst, they are focused on harming themselves or others, with little appreciation of the consequences.

The RCMP's use of force model promotes the use of verbal interventions whenever possible, both to defuse potentially volatile situations and to promote professional, polite and respectful attitudes in any interaction.

These guidelines are based on the RCMP's CAPRA problem solving model and require members to consider all relevant situational factors when determining whether to use force, and the necessary amount of force to be used.

This does not mean that a member needs to be physically assaulted before they can contemplate using the CEW. It means that a proper assessment of situational factors must precede any decision to employ a use of force option.

This is no different from what we expect of members when they decide to use a joint lock, a baton or OC spray.

Police must be able to properly assess the situation and respond accordingly. The ability to do this comes with real life experience ideally under the mentorship of those who have successfully dealt with these kinds of situations in the past using the least degree of force required to maintain public safety.

This is in keeping with Peel's principle that the police must use force only to the extent necessary to maintain public order.

Current RCMP coaching and mentoring programs sometimes involve mentors who have little more than two years experience themselves. New members need good mentors. All members need good policy direction and guidance. If mentoring is weak, then policy and training need to be more focused.

While policing skills can be gained through scenario based training, which the Commission believes is a preferred training method, it still does not replace the dynamics of real life situations.

To ensure appropriate behaviour, you need a strong and balanced system of laws, policies, training and mentoring. If one of these is weak, the system must respond by strengthening the other areas.

This, I believe, has not happened within the RCMP.

However, there are serious administrative issues within the RCMP that are affecting the operational capacity of the Force and therefore member behaviour. The high rate of new recruits, a high rate of turnover and lack of resources have resulted in little mentoring, understaffing of detachments and morale issues. All of these can adversely affect the front-line member attempting to deal with the public.

Based on similar findings outlined in the Auditor General of Canada's report in 2005, the RCMP must accurately gauge and communicate its staffing and resource requirements, in order to effectively police all of their communities.

To equip junior officers with a CEW before they have picked up real life experience in the range of other techniques, I think, is unfair to them, and unfair to the Canadian public.

Although to err is human, the consequence for an error in judgement in deciding when to use the CEW, or any other use of force techniques for that matter, can be quite severe, and may be fatal.

I have already publicly stated that since the introduction of the taser in 2001, the Commission has seen a policy shift within the RCMP that allows for the use of the weapon in circumstances far less constraining than what was originally proposed.

The Commission coined this expanded and less restrictive use in the December 2007 Interim Report as “usage creep”.

This has resulted in cases where individuals, who have exhibited behaviours that were clearly non-combative, or non-assaultive, and which could not even be classified as resistant, have been tasered.

On June 11, 2008, I delivered my Final Report to the Minister of Public Safety and made twelve (12) recommendations that encompassed three broad conclusions:

1. That the RCMP needs to appropriately restrict its members use of the taser as a means of instituting appropriate and proportionate use of the weapon;
2. That the RCMP needs to clarify the nuances within its Use of Force Model to its members and to the public about when it is permissible to deploy the weapon; and,
3. That the RCMP needs to nationally coordinate and strengthen its efforts related to reporting, data collection, and analysis of CEW use.

The Final Report examined and presented the policies and practices of CEW use from other domestic and international police forces. Comparative analyses have highlighted important differences and practices that can assist RCMP decision-making.

When we analyzed the trends that exist within the RCMP usage form database, some of the results were surprising. How can policy discussions within and outside the RCMP not include such statistics?

Based on the data we were able to establish a profile of who would be subjected to this weapon: an unarmed, male, between 20-39, under the influence of drugs or alcohol, involved in a cause disturbance or assault related offence.

This profile is not new to the police. It is a profile that they have encountered long before the taser was introduced.

Other trends the Commission uncovered were:

- The greater the number of members present at the scene, the greater the use of the CEW;
- Constables on general duty are overwhelmingly the ones using the weapon;
- There are CEW deployments against those as young as 13;
- Push stun is used two or more times, in 40% of the cases;
- If a person is under the influence of substances or in a cell, they are less likely to receive medical attention than those who are suffering from a mental health crisis or over 50 years of age.

Unfortunately, due to the poor data collection of the RCMP, we were unable to determine if CEW use has proportionally increased over the years.

Of greater concern to the Commission were the findings of our mini-audit that uncovered that nearly 68% of CPC lodged complaints involving CEW deployments could not be found within the RCMP usage database. Where the device was threatened but not deployed, the Commission found that 100% of these related complaints were missing.

If you extrapolate those numbers, you can quickly see that the RCMP may have a serious and large scale, case of under-reporting. The gap in the usage database then means that the RCMP is unable to make fact based policy decisions.

Despite the concerns the Commission has about CEW use, the RCMP and ourselves, are not at opposite ends of the spectrum. There are choices available to the RCMP and an opportunity for positive, collaborative change.

That is to say, the RCMP can choose to implement change, chose to account for the weapons use, and chose to listen to the public. At this point, the choice for change rests solely with them, and the Minister of Public Safety.

If over time, sound analysis of usage data indicates a persuasive argument for changing policy to either further restrict or lesson restriction on use, then a debate should occur at that time.

This is the approach our colleagues in the United Kingdom have taken and an approach that I believe is more closely aligned with what Canadians want and expect from their national police force.

I believe there should be immediate constraint on use.

A more fulsome description of the situations where the weapon is being used would allow both the Commission and the RCMP to say, “that was an inappropriate use”, or, “I can reasonably say, that was a justifiable use, proportionate to the circumstances.”

Police have to understand the value of articulating their justifications for their actions.

I have not recommended a moratorium on CEW use by the RCMP. Rather, it is my position that use be restricted to only those situations where the individual is combative, sometimes called assaultive, or poses a significant risk of death or grievous bodily harm.

In addition, use should be restricted to senior Constables in rural areas, and Corporals in urban areas. However, we also recognize that members of specialized units need to carry this weapon, and have allowed for their use even if they do not have five (5) years experience. This is because of the significant levels of training and knowledge of use of force tools by such members.

Right now, the police have a wide range of weapons that are currently available to them. They are authorized to enforce the law and to use whatever force is reasonable to do so.

There are other weapons available to the police, beyond the handgun, that also carry the risk of fatal outcome. These too have a place in the police arsenal. But that place is restricted to specific situations.

No one is calling for the RCMP to be disarmed or to not use weapons. That is a reactionary, defensive argument, which neither takes into consideration the reality of police work nor the consequence of force.

The operating position of the Commission is that central to the debate of RCMP CEW use is that deployment should be based on the principle of proportionality

The amount of force used should bear some reasonable relationship to the amount of resistance the member is facing.

As with similar models, the RCMP's use of force model is based on the principle that the best strategy employs the least intervention necessary to manage risk. Accordingly, the best intervention causes the least harm or damage.

Policy, procedures, guidelines, training and member overall appreciation of and approach to the weapon all need to be based on this central principle.

Before I end my discussion, I would like to specifically address the issue of officer safety, and the public's role in this issue.

Legitimate concerns have been raised that by restricting the CEW, members will be put at greater risk when dealing with those who are combative. This issue goes beyond the Commission and alludes to larger problems within society.

Specifically, the lessening of respect towards the police.

Clearly there are those in society who do not respect the authority of the police and have no problem harming officers who are in fact our representatives.

Police must charge these individuals, the Crown must prosecute these offences, and judges need to send a strong message that reflects society's abhorrence of violence towards police officers.

While we as a society should have a voice in how we are policed, we also have a responsibility and obligation to ensure that the social institution of policing is respected and those who take on the difficult job of policing are valued.

This is exactly what Peel was advocating in 1829. Today, the entire system needs to send a clear message and not allow people to get away with assaulting police officers. We all have a role in enhancing public safety.

I would like to conclude by stating that during the production of the Interim and Final Reports, the level of cooperation and openness of the RCMP has been commendable. Our relationship is good and this has been key in helping us achieve our vision of increasing police excellence through accountability.

Thank you for this opportunity to present my thoughts and I look forward to answering your questions.