

Part 2

The Commission of Inquiry

PART 2: THE COMMISSION OF INQUIRY

PART 2: THE COMMISSION OF INQUIRY

A.	THE COMMISSION	31
1.	Appointment of commissioner	31
2.	Terms of reference	32
3.	The commission team	34
4.	The commission's activities	35
B.	PUBLIC FORUMS	36
1.	Commercial interests	37
2.	Electrical and biomedical engineering	37
3.	Medicine	37
4.	Law enforcement	38
5.	Politicians	40
6.	Non-governmental organizations	40
7.	Concerned citizens	40
C.	RESEARCH PROGRAMS	40
1.	Medical and scientific issues	41
2.	Legal issues	41
3.	Policy analysis	42
4.	Empirical research	42
5.	Written submissions	43
D.	THE COMMISSION'S REPORT	43
1.	The purpose of this Report	43
2.	The minister's responsibilities	44

PART 2: THE COMMISSION OF INQUIRY

A. THE COMMISSION

1. Appointment of commissioner

On November 19, 2007, John Les, the provincial Minister of Public Safety and Solicitor General, announced the government's commitment to hold a commission of inquiry into the circumstances surrounding the death of Robert Dziekanski at the Vancouver International Airport on October 14, 2007, and a review of the appropriate use and policies currently employed by police in British Columbia with respect to conducted energy weapons.

The Minister stated at that time:³

This incident has British Columbians, Canadians and people all over the world seeking answers with regard to not only this human tragedy, but how the province welcomes the world to our airport. By calling a full public inquiry, we want everyone to know that all the facts will be put on the table, we will take action based on those facts and we will learn from this tragedy.

On February 15, 2008,⁴ I was appointed sole commissioner under the *Public Inquiry Act*⁵ to conduct two separate inquiries:

- a study commission to inquire into and report on the use of conducted energy weapons by constables, sheriffs, and authorized persons in British Columbia; and
- a hearing and study commission to inquire into and report on the death of Mr. Dziekanski.

When Attorney General Wally Oppal announced my appointment on February 18, he stated:⁶

Given the overlapping reviews and investigations now being conducted, combined with the jurisdictional complexity of this tragic incident, we felt it

³ See http://www2.news.gov.bc.ca/news_releases_2005-2009/2007PSSG0070-001490.htm.

⁴ See Order in Council 92, approved and ordered on February 15, 2008.

⁵ S.B.C. 2007, c. 9. The *Public Inquiry Act* can be viewed on the Commission website, at <http://www.braidwoodinquiry.ca/legislation.php>.

⁶ See http://www2.news.gov.bc.ca/news_releases_2005-2009/2008AG0006-000220-Attachment1.htm#.

PART 2: THE COMMISSION OF INQUIRY

prudent to adopt a two-phased approach. The federal government has indicated that it will co-operate.

This Report deals only with the study commission into the use of conducted energy weapons. I will publish, at a later date, a separate report dealing with the hearing and study commission into the death of Mr. Dziekanski at the Vancouver International Airport.

2. Terms of reference

Section 2 of the *Public Inquiry Act* states that the Lieutenant Governor in Council may establish a commission to inquire into and report on a matter that it considers to be of public interest. When it does, the Lieutenant Governor in Council must define the purposes of the commission, set the terms of reference of the inquiry, and designate the commission as a study commission, a hearing commission, or both.

The Lieutenant Governor in Council designated this Commission as a study commission.⁷ The parts of the Order in Council applicable to this Commission state as follows:

THE THOMAS R. BRAIDWOOD, Q.C., COMMISSIONS OF INQUIRY ORDER

Definitions

- 1 In this Order:
“conducted energy weapon” means a weapon or device commonly referred to as a Taser;

...
“RCMP” means the Royal Canadian Mounted Police Force continued under the *Royal Canadian Mounted Police Act* (Canada).

Establishment of two commissions

- 2 (1) A study commission, called the Thomas R. Braidwood, Q.C., Study Commission, is established under section 2 of the *Public Inquiry Act* to

⁷ The full text of the Purpose and Terms of Reference can be found in Appendix A.

inquire into and report on the use of conducted energy weapons by the following in the performance of their duties and the exercise of their powers:

- (a) constables of police forces of British Columbia, other than the RCMP;
- (b) sheriffs under the *Sheriff Act*;
- (c) authorized persons under the *Correction Act*.

....

- (3) Thomas R. Braidwood, Q.C., is the sole commissioner of each of the commissions established under this section.

Purposes of the commissions

- 3 (1) The purpose of the study commission established under section 2(1) is to make recommendations respecting the appropriate use of conducted energy weapons by constables, sheriffs and authorized persons referred to in section 2(1), in the performance of their duties and the exercise of their powers.

....

Terms of reference

- 4 (1) The terms of reference of the inquiries to be conducted by the study commission established under section 2(1) are as follows:
 - (a) to review current rules, policies and procedures applicable to constables, sheriffs and authorized persons referred to in section 2(1) in respect of their use of conducted energy weapons and their training and re-training in that use;
 - (b) to review research, studies, reports and evaluations respecting the safety and effectiveness of conducted energy weapons when used in policing and law enforcement in British Columbia and in other jurisdictions;
 - (c) to make recommendations respecting
 - (i) the appropriate use of conducted energy weapons by constables, sheriffs and authorized persons referred to in section 2(1) in the performance of their duties and the exercise of their powers, and
 - (ii) the appropriate training or re-training of those constables, sheriffs and authorized persons in that use of conducted energy weapons.
 - (d) to submit a report to the Attorney General on or before November 30, 2008.⁸

⁸ The original Terms of Reference required that I submit my final report to the Attorney General on or before June 30, 2008. However, by late April 2008 it became clear that this Report date was no longer

3. The commission team

In the weeks following my appointment, I appointed **Leo Perra** to act as Executive Director, and **Cathy Stooshnov** to act as Manager of Finance and Administration. They both brought a wealth of administrative experience—Mr. Perra as a former president of a regional college and executive director of several previous public inquiries, and Ms. Stooshnov as an administrator for numerous other public inquiries since the early 1990s. Together, they secured office space for the Commission in downtown Vancouver, hired staff, and made administrative arrangements for our public forums.

I retained as Commission Counsel **Art Vertlieb, Q.C.**, a partner in the Vancouver law firm of Vertlieb Dosanjh. Mr. Vertlieb brought to this task his considerable experience as a senior civil, criminal, and administrative law litigator. I retained **Patrick McGowan** as Associate Commission Counsel. Mr. McGowan is an experienced criminal and civil law practitioner in Vancouver.

In light of the many complex scientific, medical, legal, and public policy issues arising out of the Terms of Reference, I retained **Sharon Samuels** as Research Counsel. She had served in a similar capacity in several other public inquiries since the mid-1990s. As well, **Karen Ryan** managed an extensive empirical research project relating to conducted energy weapon incident reports. I retained **Keith Hamilton** as Policy Counsel. Mr. Hamilton has acted as policy counsel and principal report-writer for numerous previous public inquiries. I also retained former Provincial Court judge, **Dolores Holmes**, to provide advice.

I retained **Chris Freimond**, of Chris Freimond Communications Inc., as our communications manager. He advised the Commission on matters of public and media communications, and was the key contact person for the Commission.

realistic, given the 61 witnesses scheduled to make presentations at our public forums during May and June 2008, and the time required to complete the Commission's extensive research program, to formulate my recommendations, and to draft the Commission report. Consequently, on April 28, 2008, I wrote to the Deputy Attorney General, requesting an extension of time until December 31, 2008, to file my report. On June 10, 2008, it was announced that the Lieutenant Governor in Council had granted an extension until November 30, 2008. A further extension to June 30, 2009, was granted on November 28, 2008.

A listing of the Commission staff, contractors, and consultants is included at the beginning of this Report.

I would like to express my sincere appreciation to all members of the Commission team, for the professionalism, hard work, and enthusiasm they brought to this task. While I accept sole responsibility for the ultimate recommendations, in all other respects it was a team effort, and all members of the team can be proud of their contributions.

4. The commission's activities

The Terms of Reference are exceptionally broad. They invite me to:

- review the current rules, policies, and procedures applicable to constables, sheriffs, and correctional officers respecting their use of conducted energy weapons, including their training and re-training;
- review research, studies, reports, and evaluations respecting the safety and effectiveness of conducted energy weapons when used in policing and law enforcement; and
- make recommendations respecting the appropriate use of conducted energy weapons, including appropriate training and re-training.

It was obvious to me at the outset that my primary concern, arising from the unfortunate events at the Vancouver International Airport and other conducted energy weapon incidents, was an erosion of public confidence in our law enforcement agencies.

Whatever conclusions I may reach concerning the future use of conducted energy weapons, the most important weapon in the arsenal of the police will be public support. Confidence can be furthered only by a completely open, public, objective process, where the premier experts in their relevant fields can present their views.

To address my mandate, I developed a two-pronged approach. In order to further my own understanding of the complexities of these issues, and to assist in educating the public so that they have confidence in my recommendations, Commission Counsel and Associate Commission Counsel organized a series of informal public forums, where a

wide range of people with varying interests and perspectives were invited to make presentations.

In order to pursue the many technical and policy issues in more depth, our Research Counsel brought together a team of legal, medical, empirical, and policy researchers who analyzed an enormous volume of Canadian and international material and prepared very helpful research papers, which I relied upon in preparing this Report.

I turn now to a more detailed discussion of both of these Commission activities.

B. PUBLIC FORUMS

The public forums were informal, non-adversarial sessions open to the public, held in downtown Vancouver between May 5 and June 25, 2008. In some cases, the Commission invited presenters to participate, based on their medical or scientific knowledge, their law enforcement experience, or their public policy interests. In other cases, individuals or organizations requested an opportunity to make presentations.

Presenters were invited to make their presentations uninterrupted, following which Commission Counsel, Associate Commission Counsel, and/or I asked questions for clarification.⁹

Later in this Report when I discuss policy issues, I will refer to what these presenters told me. At this point, I will only identify each presenter, and their area of interest or the organization they represent (listed alphabetically within each category).

I found every presentation to be well prepared, thoughtful, and respectful. I express my sincere appreciation to every presenter for taking the time to attend our forums and for assisting in the work of the Commission. I learned a great deal, and gained an appreciation of the complexity of these important issues.

⁹ Verbatim transcripts of presentations are available on the Commission's website at <http://www.braidwoodinquiry.ca/transcripts.php>.

1. Commercial interests

Thomas Smith, Chairman of the Board, TASER International, Inc.

Kenneth J. Stethem, Chairman and CEO, Aegis Industries.

2. Electrical and biomedical engineering

Dr. Dorin Panescu, University of Wisconsin-Madison; Madison, Wisconsin

J. Patrick Reilly, Principal Staff Engineer Supervisor; Applied Physics Laboratory,
Johns Hopkins University; Baltimore, Maryland

Dr. Pierre Savard, Professor of Biomedical Engineering; École Polytechnique de
Montréal, Montréal, Quebec

Dr. John G. Webster, Department of Biomedical Engineering; University of Wisconsin-
Madison, Madison, Wisconsin

3. Medicine

Emergency medicine

Dr. William Bozeman, emergency department physician; North Carolina

Dr. Christine Hall, emergency department physician, Victoria General Hospital and
Royal Jubilee Hospital; Victoria, BC

Dr. Jeffrey D. Ho, Department of Emergency Medicine, Hennepin County Medical
Center; University of Minnesota Medical School

Dr. Christian Sloane, emergency department physician; California

Cardiology

Dr. Michael Janusz, Clinical Professor of Surgery, University of British Columbia;
Vancouver, BC; specialist in cardiovascular and thoracic surgery

Dr. Charles Kerr, Professor of Cardiac Electrophysiology, Department of Medicine,
University of British Columbia; Vancouver, BC

Dr. Charles Swerdlow, Clinical Professor of Medicine (cardiac electrophysiology),
Cedars-Sinai Hospital; Los Angeles, California

Dr. Zian H. Tseng, Assistant Professor of Medicine, Cardiac Electrophysiology Section,
University of California; San Francisco, California

Epidemiology

Dr. Keith Chambers, former Assistant Director, Centre for Clinical Epidemiology and
Evaluation, Vancouver General Hospital; Vancouver, BC

Pathology

Dr. John Butt, former Chief Medical Examiner for provinces of Alberta and Nova
Scotia; consulting forensic pathologist; Vancouver, BC

PART 2: THE COMMISSION OF INQUIRY

Psychology

Dr. Michael Webster, counselling psychologist, consultant on police training; Denman Island, BC

Psychiatry

Dr. Shaohua Lu, addiction psychiatrist, clinical assistant professor, University of British Columbia; Vancouver, BC

Dr. Joseph Noone, Clinical Professor of Psychiatry, University of British Columbia; Vancouver, BC; Medical Director of Adult Program, Riverview Hospital; Coquitlam, BC

Dr. Maelor Vallance, Clinical Emeritus Professor of Psychiatry, University of British Columbia; Vancouver, BC

Mental health

Beverly Gutray, Executive Director, Canadian Mental Health Association, BC Division; Vancouver, BC

Dr. Nancy Hall, policy consultant, Canadian Mental Health Association, BC Division; Vancouver, BC

Camia Weaver, justice coordinator, Canadian Mental Health Association, BC Division; Vancouver, BC

4. Law enforcement

Police departments

Delta Police Department:

Chief Constable Jim Cessford

Cst. Jason Martens

Greater Vancouver Transportation Authority Police Service:

Deputy Chief Ken Allen

New Westminster Police Department:

Staff Sgt. Joseph Spindor, training supervisor

Port Moody Police Department:

Cst. Chris Birtsch, Traffic Section

Detective Cst. Paul Dungey, Major Crime Section

Chief Constable Brad Parker

Royal Canadian Mounted Police:

Corp. Gregg Gillis, Use of Force Subject Matter Expert, "E" Division; Vancouver, BC

Insp. Troy Lightfoot, Officer in Charge, Use of Force and Operational Programs, National Headquarters; Ottawa, Ontario

Assistant Commissioner Alastair Macintyre, Officer in Charge of
Criminal Operations, "E" Division; Vancouver, BC

Toronto Police Service:

Staff Superintendent Michael Federico

Vancouver Police Department:

Chief Constable Jim Chu

Cst. Graham Edmunds

Cst. Darren Hall, force options trainer

Cst. Tammy Hammell, conducted energy weapons coordinator, Control
Tactics Section

Sgt. Clive Milligan, in charge of use-of-force training, Control Tactics
Section

Deputy Chief Constable Bob Rich (and President, BC Association of
Municipal Chiefs of Police)

Victoria Police Department:

Cst. Mike Massine, Conducted Energy Weapon Program

Interim Chief Constable Bill Naughton

Corrections Branch

Pete Coulson, Warden, North Fraser Pretrial Centre; Port Coquitlam, BC

Sheriff Services

Supt. Paul Corrado, Strategic Security Operations, Court Services Branch, Ministry of
Attorney General, Province of British Columbia

Policing policy

Kevin Begg, Assistant Deputy Minister and Director of Police Services, Ministry of
Public Safety and Solicitor General, Province of British Columbia; Victoria, BC

Staff Sgt. Joel Johnston, Provincial Use of Force Coordinator, Ministry of Public Safety
and Solicitor General, Province of British Columbia; Victoria, BC

Civilian oversight

Paul Kennedy, Chair, Commission for Public Complaints Against the Royal Canadian
Mounted Police; Ottawa, Ontario

Michael MacDonald, Director of Strategic Policy and Research, Commission for Public
Complaints Against the Royal Canadian Mounted Police; Ottawa, Ontario

Dirk Ryneveld, Q.C., Police Complaint Commissioner; Victoria, BC

5. Politicians

Ujjal Dosanjh, P.C., Q.C., Member of Parliament for Vancouver South; former Attorney General and Premier, Province of British Columbia

6. Non-governmental organizations

Hilary Homes, Amnesty International; Ottawa, Ontario

Murray Mollard, Executive Director, BC Civil Liberties Association; Vancouver, BC

7. Concerned citizens

Zofia Cisowski, mother of Robert Dziekanski

Cathy Gallagher and Joseph Gallagher, on behalf of their mentally ill son

Walter Kosteckyj, lawyer; Vancouver, BC; counsel for Zofia Cisowski

Jay Page, computer graphics and image processing consultant

Errol Povah, political activist

Randy Puder, caregiver for family members with mental illnesses

Jude Swanson, citizen with a mental health diagnosis and a seizure disorder

Cameron Ward, lawyer; Vancouver, BC; counsel for Patti Gillman (sister of Robert Bagnall, who died after being shot with a conducted energy weapon)

C. RESEARCH PROGRAMS

Contemporaneously with the public forums, the Commission's Research Counsel developed an ambitious research program, aimed at a more in-depth analysis of the many legal, scientific, medical, and public policy issues arising out of the Terms of Reference (Appendix A).

In the scientific and medical areas, I retained **Dr. Keith Chambers**, the former Assistant Director at the Centre for Clinical Epidemiology and Evaluation at Vancouver General Hospital, to oversee a comprehensive literature survey and the work of the Commission's medical and scientific researchers.

The Commission's research team prepared numerous research memoranda and discussion papers, which have greatly fostered my understanding of these issues, and which were invaluable in the drafting of this Report.

1. Medical and scientific issues

In addition to preparing summaries of the international academic literature identified by Dr. Chambers,¹⁰ the Commission's researchers also prepared discussion papers on topics such as the following:

- cardiac, respiratory, and metabolic risks;
- mental health and "excited delirium";
- use of conducted energy weapons in push-stun and probe modes;
- repetitive deployment of conducted energy weapons;
- vulnerable groups and higher risk situations;
- post-deployment medical procedures;
- use of conducted energy weapons in clinical settings; and
- reduction in fatalities and injuries.

2. Legal issues

It is important to understand the legal and regulatory framework within which conducted energy weapons are deployed. To that end, the Commission's legal research included an examination of the following:

- product safety and standards regulation of conducted energy weapons in the United States and Canada;
- product safety testing of the TASER M26[®] and TASER X26[®] in the United States;
- the legal status of a conducted energy weapon as a prohibited firearm and/or a prohibited weapon under the Canadian *Criminal Code*;
- classification of the TASER M26 and TASER X26 as firearms under USA law;
- review of Canadian court decisions involving the use of conducted energy weapons;
- international law implications of conducted energy weapon use;
- the Royal Canadian Mounted Police as the provincial police force in British Columbia—its roles, responsibilities, and governance; and

¹⁰ See Appendix C.

- the legal and regulatory framework for conducted energy weapon use by municipal law enforcement agencies in British Columbia.

3. Policy analysis

While a clear understanding of the scientific, medical, and legal issues is essential, the final decision about whether conducted energy weapons should be authorized for use, and if so in what circumstances, is ultimately a public policy decision. Consequently, the Commission's researchers prepared discussion papers on topics such as the following:

- comparative analysis of municipal police department policies respecting use of conducted energy weapons;
- guiding principles for the deployment of conducted energy weapons—subject behaviour, proportionality considerations, contextual factors, and preclusions; and
- cultural differences between Canada and the United States relating to the use of conducted energy weapons.

4. Empirical research

Soon after the Commission began its work, an initial review of information supplied by law enforcement agencies indicated that municipal police officers, sheriffs, and correctional officers had deployed conducted energy weapons approximately 1,500 times since they were introduced in December 1998.

In order to gain a better understanding of the circumstances in which conducted energy weapons have been used by the various policing bodies in British Columbia over that time period, I authorized a comprehensive review of every incident. This necessitated the cooperation of all law enforcement agencies, who gave the Commission's researchers access to their incident reports.¹¹

¹¹ I note in passing that while a public inquiry designated as a *hearing* commission under section 2(2)(c) of the *Public Inquiry Act* has the statutory authority under s. 22 to issue a summons requiring a person to produce for the commission information or a thing in the person's possession or control, no such authority is granted to a *study* commission (such as this one). Given the delay (and in some cases reluctance) of some law enforcement bodies to provide this Commission with information about conducted energy weapon deployments, I invite the Attorney General to consider amending the legislation to extend the summons power to study commissions.

On April 1, 2008, Commission researchers requested incident reports from the RCMP concerning the use of conducted energy weapons in British Columbia. However, by the time these reports were provided (July 31, 2008), there was insufficient time to undertake a comprehensive analysis of them. Fortunately, Mr. Paul Kennedy, Chair of the Commission for Public Complaints Against the RCMP, agreed to extract and isolate BC data from his "Quantitative Analysis of RCMP CEW Database," contained in his June 12, 2008 report entitled *RCMP Use of the Conducted Energy Weapon: Final Report*, which he provided to the Commission.

The results of the Commission's empirical analyses will be discussed in detail in Part 7 of this Report.

5. Written submissions

The Commission also received 38 written submissions from members of the public. Some recounted personal experiences of having a conducted energy weapon deployed against them or a family member, while others emphasized the need to use crisis intervention techniques when dealing with people with disabilities. Some submitters supported the continued use of conducted energy weapons, while an equal number wanted them banned, at least pending further research. I acknowledge with thanks those who took the time to express their views and concerns.

D. THE COMMISSION'S REPORT

1. The purpose of this Report

As stated earlier, this Report addresses only the use of conducted energy weapons as set out in the Terms of Reference. I will publish, at a later date, a separate report dealing with the hearing and study commission into the death of Mr. Dziekanski at the Vancouver International Airport.

2. The minister's responsibilities

Section 28 of the *Public Inquiry Act* directs a commission to make its final report to the minister (in this case the Attorney General of BC), setting out:

- any findings of fact made by the commission that are relevant to the commission's terms of reference, and the reasons for those findings; and
- if required by the commission's terms of reference, any recommendations of the commission.

The minister must submit the report to the Executive Council (Cabinet) at its next meeting. On receiving the report, the Executive Council may direct the minister to withhold portions of the report because of privacy rights, business interests, or the public interest. If it so directs, the minister must remove any portions to be withheld and, in the report, identify any withheld portions and, to the extent possible, summarize them.

Following its review of the report, the Executive Council must then direct the minister to lay the report (except any withheld portions) before the Legislative Assembly. The minister:

- must promptly lay the report before the Legislative Assembly if it is in session or will be in session within 10 days of receiving the direction; and
- in any other case, must promptly file the report with the Clerk of the Legislative Assembly.

Section 28(8) is clear that: "A person [which I interpret to include a commissioner] must not release a report of a commission except in accordance with this section."