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Deep flaws in Canada’s “Braidwood Inquiry” give Tasers a bum rap, says FSRC

Editor’s note: Give us your feedback! We’re very interested in your thoughts on the situation discussed in this Force Science News article. You can click here to e-mail us or you can send a note to: editor@forcescience.org. Let us know what you think!

Certain key recommendations from an eminent jurist that call for stricter limitations on Taser use are based on “outdated and inaccurate medical information,” according to the Force Science Research Center. Incorporated into departmental policies and practices, these proposals are likely to needlessly increase severe injuries and deaths to subjects and officers alike, recognized use-of-force authorities have told Force Science News.

The recommendations were issued recently as part of a 546-page report on a year-long inquiry into the efficacy and safety of conducted energy weapons, spearheaded by the Honorable Thomas Braidwood, a retired justice with the appellate courts of British Columbia and the Yukon Territories in Canada.

Last Friday [8/14/09], Taser International petitioned the British Columbia Supreme Court to overturn Braidwood’s conclusions, claiming that his recommendations will place law enforcement and the public at greater risk. “The [Braidwood] commission did not consider or refer to a substantial body of scientific and medical literature concerning the safety of the device that Taser itself provided to the commission,” said an attorney for the manufacturer.

(To read more details of Taser’s complaint, click here.)

Braidwood, 50 years a judge and lawyer, was appointed by the BC provincial government to launch the investigation after a disruptive Polish construction worker, Robert Dziekanski, was subjected to multiple Taser applications during a confrontation with

Royal Canadian Mounted Police constables about 2 years ago in the Vancouver International Airport and died almost immediately afterward. His was said to be the 16th death following the police use of Tasers in Canada since 2003.

Officially, Braidwood's recommendations—19 in all—are directed only toward law enforcement agencies in British Columbia. But a potential ripple effect is anticipated in some other Canadian provinces, and departments in the U.S. may soon feel pressure to conform as well.

“Some elements of the Braidwood report are well-reasoned, pertinent, and needed,” says Dr. Bill Lewinski, executive director of the FSRC. “But some critical ones are not. Unfortunately, I think the flawed components of the report will have a widespread effect and will be cited in any controversy or investigation of Taser use in the United States and throughout the world, to the detriment of officers on the street and the resistant subjects they are attempting to control.”

FSRC has no financial relationship with Taser International or any other manufacturer of conducted energy weapons.

The Braidwood Inquiry is designed as a 2-stage effort. The new report on Phase 1, pertaining to CEWs in general and Tasers in particular, can now be viewed and downloaded in full without charge by clicking [here](#). (At the Braidwood website, you can also read transcripts of all the testimony given before Braidwood's commission.) Phase 2, a detailed exploration of Dziekanski's death, was begun earlier this year but is currently in recess, scheduled to resume in September. A release date for that report has not been announced.

Before penning his initial findings and recommendations, Braidwood listened to more than 60 public hearing presentations on CEWs from “a wide range” of commercial, engineering, medical, mental health, law enforcement, civilian oversight, and political interests, his report says, and his staff “explored a variety” of medical, scientific, legal, and policy resources.

Some of Braidwood's conclusions are commendable, Lewinski says. For example, to name just a few positives from the report:

- The jurist states that “there is no doubt that in the great majority of deployments, [the Taser] is effective” and that “on balance” he believes that “our society is better off with [CEWs] in use than without them” (although, as we'll see, he insists some “significant changes” must be made);
- He rejects the idea of declaring a moratorium on Taser use until more research is conducted, as Amnesty International and other activist civil liberties organizations have strenuously advocated.

- He stresses the need for expanded, mandatory, centralized reporting of all incidents in which Tasers are deployed, including when “deployment is limited to display-mode only,” to better inform “the development of policy and training.”
- He recommends uniform standards, curriculum, and qualifications for CEW training and retraining.
- He exhibits an admirable respect for human life and a concern that police use of force be conservative and responsible, reflecting the cultural values of the populace he serves.

Nonetheless, there are shortcomings in Braidwood’s report, say Lewinski and other knowledgeable observers, that should not pass unchallenged.

In his findings, Braidwood devotes considerable attention to the potential risk that Taser-ing supposedly poses to a subject’s heart. “I concluded,” he writes, “that even in the case of people with healthy hearts, an external electrical current [from a CEW] can overtake the human body’s internal electrical system, resulting in ventricular capture, which may lead to ventricular tachycardia and, in some cases, ventricular fibrillation.”

He mentions also the risks of “muscle damage (rhabdomyolysis), which can lead to cardiac arrest or acute renal (kidney) failure” and of spasms “in the muscles of respiration (diaphragm and intercostal muscles), interfering with the subject’s ability to breathe.”

Bottom line: “I am satisfied from the evidence before me that conducted energy weapons...have the capacity to cause the subject’s death.”

The problem, Lewinski asserts, is that the medical findings Braidwood relied on came from studies that “in large part were old or poorly done.” Given more recent, competent research, “some of that early information appears not to be accurate, and it seems that Judge Braidwood did not get the latest medical information available, or rejected it, which could have led to significantly different conclusions,” Lewinski says.

“Some of his conclusions would not be considered plausible or reasonable by contemporary experts in the medical field. They are old, outdated, and biased and not founded on good science.”

Current research suggests that among various measures used to control resistant subjects, Tasers are scarcely more stress-inducing than a blast of pepper spray. By far the most taxing to a subject’s physical system is struggling with the police [See FSN transmission #127, sent 7/20/09].

Dr. Christine Hall, one of the foremost researchers of in-custody deaths and a medical faculty member at 2 Canadian universities, also takes issue with Braidwood’s medical

conclusions. Despite his recitation of “theoretical risks,” she says, “research done in the field on real subjects in real interactions demonstrates an extremely low complication rate.”

Suspects aren’t hooked up to a heart monitor when they get Tasered, she points out, and “after death it’s impossible to prove what a subject’s heart rhythm was at the time of death,” and thus impossible to say that ventricular fibrillation has occurred much less that Taser caused it.

“Those of us who spend a lot of time looking at the medical literature don’t find that link, especially when we consider all subjects who die in custody,” Hall told FSN.

“No responsible person would ever say that any given control modality could never cause death. There is no ‘never’ in medicine.

“But if you only focus on blaming CEWs, what’s happening with all the other people who die in custody under overwhelmingly similar circumstances except that no CEW was used? We shouldn’t be disregarding the large group of in-custody deaths as a whole in favor of pursuing one small sub-set.”

Hall testified to that effect before the Braidwood commission, but in his report the judge does not address the larger issue.

(Click [here](#) to read an extremely insightful, thorough and impressive elaboration on Hall’s position that she prepared specifically for FSN. This is highly recommended reading.)

For whatever reason, Braidwood persisted in accepting the potential for the Taser to inflict severe injury and death, and that concern cascades through a number of his key recommendations.

For instance, departments policing British Columbia generally have regarded the Taser to be an intermediate control weapon, appropriate for dealing, at the lowest threshold, with “actively resistant” subjects. Braidwood wants to raise the bar. He recommends that officers “be prohibited from deploying a [CEW] unless...the subject is causing bodily harm”—in other words, actively assaulting—or the officer has “reasonable grounds” to believe that the subject will do so “imminently.”

He elaborates: “[I]t is not enough that the...subject ‘has caused’ bodily harm, even moments ago. There must be a continuing risk.” Moreover, what’s “reasonable” can’t be left up to the officer’s subjective judgment alone. “[A] disinterested third person who is aware of all the circumstances and is acting reasonably [should] also [be able to] reach the same conclusion...[f]or the officer’s actions to be justified.”

Even if that standard is met, Taser use should still be prohibited, Braidwood recommends, “unless the officer is satisfied, on reasonable grounds, that no lesser force option has been, or will be effective, in eliminating the risk of bodily harm” and that “de-escalation and/or crisis intervention techniques have not been or will not be effective.” He believes that police are obligated to “use the least force necessary to manage the risk.”

Braidwood especially stresses the importance of mandating a crisis-intervention approach “when dealing with emotionally disturbed people,” unless an officer decides, “on reasonable grounds,” that such techniques “will not be effective in eliminating the risk of bodily harm.” In his view, “the worst possible response is to aggravate or escalate the crisis, such as by deploying a [CEW] and/or using force to physically restrain the subject.” Only in “rare,” “extreme circumstances,” he claims, will crisis intervention techniques “not be effective.”

Other of his core recommendations regarding Taser deployment include:

- prohibit Taser use against a suicidal subject unless the subject is actively causing bodily harm to himself or the officer reasonably believes he will do so imminently;
- prohibit a Taser discharge longer than 5 seconds, unless that doesn’t work and the officer “is satisfied, on reasonable grounds, that...a further discharge will be effective...”;
- require a call for “paramedic assistance...in every medically high-risk situation, preferably before deployment...or, if that is not feasible, then as soon as practicable thereafter.” High-risk, in Braidwood’s view, involves firing probes across a subject’s chest, discharging electrical current for more than 5 seconds, and deploying a device against an EDP, an elderly person, a pregnant woman, or anyone “the officer has reason to believe has a medical condition that may be worsened because of the deployment (e.g., heart disease, implanted pacemaker or defibrillator, etc.)”;
- see that officers assigned a CEW also have “an automated external defibrillator readily available for use”;
- “prohibit a trainer’s or trainee’s exposure to the electrical current of a [CEW],” even if voluntary, as part of any instructional curriculum.

Among the use-of-force authorities we consulted in preparing this article was Greg Meyer, former head of the LAPD Police Academy and a technical advisor to FSRC, who is frequently called to testify as an expert on less-lethal devices and their use. Like Lewinski, he believes that some of Braidwood’s recommendations for improving training and data collection are highly desirable.

But when it comes to issues of field deployment, “he just doesn’t get it, like so many bureaucrats who sit in judgment behind a desk,” Meyer says. “Some of the recommendations just won’t work at the front-line level on the street.

“A lot of people officers have to deal with are so drunk, so drugged, so mentally ill, so resistant to authority that they are not receptive to verbal efforts to de-escalate the situation. They need to be subdued and they need to be subdued quickly.” In these situations, as Hall puts it, “The cards are stacked against ‘talk therapy.’”

Meyer continues: “The active-resistance level, where Braidwood says Tasering should now be prohibited, is very often a precursor to a higher-level threat. In a fast-breaking situation, a confrontation can move from active resistance to assault very quickly. If an officer is able to use a Taser at the lower level, he may be able to prevent that escalation. Otherwise, he may suddenly be thrust into the fight of his life. Most times, the officer will win. But there will be times when he he’ll lose.”

He offers a scenario where an officer is in a standoff with a suspect who’s armed with a knife. “Why wait to see what he’s going to do with that knife? You should be able to tell him a couple of times to drop it, then use your Taser so he doesn’t have an opportunity to put you in a situation where you have to shoot him.”

Lewinski adds: “Of course I am in favor of crisis negotiation as a primary option. But using a Taser early in some conflicts—the exact opposite of what Braidwood recommends—can be in the best interests of the suspect. The latest medical science suggests that the longer people struggle with police, the greater the risk of their dying. It’s fighting, not Tasering, that’s most dangerous.”

Also, Meyer expressed concern about the “reasonable grounds” qualifier that Braidwood weaves into several of his recommendations but does not define. “What constitutes a ‘reasonable’ belief?” Meyer asks. “According to whom? What does that really mean to the brass, to the officer, to his supervisor, to a board of inquiry?”

Under Braidwood’s recommendations, he conceives that Taser use could become so restricted and policies so ambiguous “that officers are afraid to use CEWs because of the administrative response and the potential for criminal charges being launched against them.” Lewinski says flatly that in light of Braidwood’s report, “It is inevitable that the Taser will be used less than it has been.”

Indeed, one prominent trainer told us, “If I was on the street I wouldn’t take a Taser out at all. If I was ordered to carry one, I would put it on my belt and never use it. I would not trust the way I would be evaluated. No one seems to be interested anymore in what’s right, what’s lawful, what makes any sense. People have lost their objectivity on this subject.”

Meyer claims, “There is no doubt in my mind that because of high-profile incidents like the Vancouver Airport confrontation, a number of officers have stopped carrying and using Tasers and have gone back to conventional control tactics—boots, nightsticks, et cetera.”

If Taser use wanes significantly, he predicts, we will see a “tremendous upsurge in subjects who get broken bones and severe internal injuries from conventional tactics, officers who get broken bones and severe injuries while attempting to use these tactics, subjects who are shot to death when an officer is being overpowered, and officers who are shot to death with their own gun when they are overpowered.

“All of these things happened quite routinely before we got Tasers 30 years ago, and such things still happen when officers are not equipped with Tasers or don’t think to use them quickly to prevent such tragedies.”

Braidwood, incidentally, writes in his report that he considered whether CEWs make interactions safer for officers and suspects alike...and concluded that the evidence was “inconclusive.”

In British Columbia, the provincial solicitor-general has said that he expects all police forces operating in the province to comply with all of Braidwood’s proposals. In a public statement acknowledging compliance, the RCMP, which polices roughly 70% of the province’s population, said it believes the recommendations “will support greater accountability” by officers. The chief of the province’s Transit Police Service described the guidelines as “excellent.”

Braidwood himself states: “If my recommendations...are implemented, then I am confident that the public will be well served by including [CEWs] in the arsenal of our law enforcement agencies. If they are not, then I cannot support their use.”

What do you think? E-mail your comments to editor@forcescience.org

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