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Chair

Mr. Garry Breitkreuz

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• (1535)

[English]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I'd like to bring this meeting to order. This is the Standing Committee on Public Safety and National Security, meeting number 21. We are continuing today with our study of the taser.

We'd like to welcome to our committee, from the Commission for Public Complaints against the Royal Canadian Mounted Police, Mr. Paul Kennedy, the chair, and Mr. Michael MacDonald, director, strategic policy and research; and from the Office of the Police Complaints Commissioner for British Columbia, Mr. Dirk Ryneveld.

Gentlemen, we welcome you to the committee, and we look forward to the testimony you will give us and the answers to the various comments and questions that will be coming.

The usual procedure here is to allow you an opening statement of 10 minutes or so, and then we start with the opposition questions and comments. It's a timed thing, with about seven minutes for each one, ending with the government side.

Mr. Ryneveld will start, so anytime you are ready, sir, you may begin.

Commissioner Dirk Ryneveld (Office of the Police Complaints Commissioner of British Columbia): Thank you very much.

Mr. Chair and honourable members, thank you for inviting me to come to this committee to give you my thoughts on the matter you presently have under study. It's my understanding that I've been invited to speak to you regarding my role as British Columbia police complaints commissioner in relation to conducted energy devices, sometimes referred to, colloquially, as tasers.

It may assist you, though, to know that my jurisdiction is with respect to all municipal police departments in the province of British Columbia. As such, I'm an independent officer of the legislature and report to the speaker of the legislature, and not to any minister of the crown. As you are aware, my counterpart, Paul Kennedy, has jurisdiction respecting complaints against the RCMP, both in British Columbia and across Canada.

In recent months, especially since the highly publicized event involving Mr. Dziekanski at the Vancouver International Airport last year, a number of investigations and inquiries have been announced by various organizations and governments. Very recently, British Columbia Attorney General Wally Oppal announced that former minister of justice, Thomas Braidwood, has been appointed as commissioner for a public inquiry concerning this very topic.

Given the recent escalation of interest in this matter, perhaps you would find it beneficial if I provided you with some background respecting my early involvement in commissioning a study on the use of tasers by the Victoria Police Department in British Columbia.

As early as 2004, reports that subjects had died shortly after the taser had been applied to them caused me to wonder whether there was any direct link between the use of the taser by police and the subsequent death of the subject. My concern was that if the police had mistakenly been using the taser in the honest belief that it was a non-lethal weapon, and therefore a safe alternative to lethal application of force, the matter should be investigated.

When Mr. Robert Bagnell died on June 23, 2004, shortly after Vancouver police had deployed the taser twice while trying to remove him from a locked hotel bathroom because they believed the hotel was on fire, I ordered an external investigation into the matter on August 5 of that year, to be conducted by the Victoria Police Department. I ordered the Victoria Police Department to investigate a matter within my jurisdiction where the Vancouver police had been involved.

In discussions with then-Victoria Police Chief Constable Battershill, he readily agreed to expand his investigation, which I did have jurisdiction to order, into the death of Mr. Bagnell, to include—and here I will read you a quote from the order that I made:

...review the present use of force protocol and make such interim recommendations as he deems appropriate for the use of the TASER by police officers in [B. C.] pending the results of emerging studies presently underway.

I pause here to reflect that even in 2004 there were a number of studies under way, but I wanted some answers right away—if I could possibly get them—for British Columbia municipal police.

You might ask, why Victoria? Well, Victoria was one of the first police forces in Canada to use the taser and was therefore the most experienced force I had available within my mandate to conduct the study. As you can appreciate, I use municipal police forces to do these sorts of things, although I do have the power under my legislation to order the RCMP to conduct certain investigations for complaints against municipal forces.

Now, the Victoria Police were extremely diligent in conducting this study, and Chief Battershill allocated significant resources to it. They produced an interim report on September 29, 2004, entitled *Taser Technology Review & Interim Recommendations*. That can be found on our website at www.opcc.bc.ca, under "Reports", then "Archived Reports", "2004" and "Victoria Police Department".

● (1540)

Those interim recommendations from the Victoria Police Department included the following:

Based on our research to date, this Investigative Team is of the opinion that the TASER should be retained as an Intermediate Weapon for use by police in British Columbia, subject to any recommendations that may emerge from our Final Report. Our analysis of the field usages and the medical literature suggests appropriate use of the TASER presents an acceptable level of risk to subjects being controlled.

At the same time, we believe that more can be done to ensure uniformity of training across the Province, to provide enhanced levels of accountability, and to decrease the risk to those groups most at risk from sudden and unexpected death associated to restraint, whether or not the TASER is used.

You may have already heard about what they call excited delirium and positional asphyxia. They are often correlated with the use of the taser because it's exactly those types of people, under medical or other stresses, who act out, resulting in police involvement and use of the taser.

The interim report of September 2004 also made some recommendations on standardized training:

There appears to be significant inconsistencies throughout the province in the training of police officers in the use of the TASER.

If I may just pause there and ad lib, I believe that lack of consistency is not only in British Columbia but all over Canada. The only consistent thing is inconsistency in reporting, training, and use.

To go on:

Therefore, we are recommending the creation of a standardized Lesson Plan/ Course Training Standard for TASER users in British Columbia. This Course Training Standard would be developed by the Justice Institute of British Columbia in consultation with Use of Force coordinators representing all municipal police agencies and the RCMP. This "core curriculum" would be delivered to all recruits and all in-service TASER users. Agencies would be free to provide training beyond the Course Training Standard, once that initial training had been received.

The second thing they recommended was mandatory reporting. Not all agencies in the province currently require officers to properly report taser deployment. Some agencies with a mandatory reporting policy may not be capturing all usages due to insufficient levels of supervision.

Because of time, I'll just give you the bullets on the recommendations. A copy of my speaking notes will be available to you afterwards.

Acquisition of new taser technology is the next recommendation. If agencies wish to acquire new taser technology, they recommended the X26 taser as opposed to the M26, which was the older version. The X26 apparently has a higher output—for lack of a better expression—due to its enhanced data collection capabilities and lower electrical output. So the newer version was deemed to be a better instrument for data collection and might be safer.

Then it said:

Although there is no evidence to suggest that the output of the M26 TASER exceeds acceptable levels, the X26 provides a greater margin of safety as documented in the Alfred studies.

That's one of the studies they used as part of their report.

They also recommended excited delirium training:

The phenomena of Excited Delirium still appears to be under recognized in the policing community. Although relatively rare, changes in patterns of drug abuse make it likely officers will encounter victims of Excited Delirium more frequently.

Again they recommended more training and a standardized lesson plan.

On restraint protocols they said:

Although medical evidence remains inconclusive, there does appear to be a linkage between restraint positions and enhanced risk to arrested subjects.

That was the interim report. The final report....

I hope I'm not going too quickly.

● (1545)

The Chair: It's okay.

Commr Dirk Ryneveld: The final report was produced on June 14, 2005. It too is published on our website in its entirety, including a couple of letters by some experts, some doctors—an emergency room physician, and Dr. John Butt, who is not only a coroner but a forensic pathologist.

That report, in my respectful view, is a very thorough one, which made recommendations that, in conjunction with the interim recommendations I've just bulleted for you, if implemented, may well have prevented some of the problems that have subsequently arisen. If you look at the fact patterns of some of the anecdotal reporting of incidents that have happened since, had some of these recommendations been followed, it is speculative on my part, but my guess is that we may not have had the frequency of them.

They said:

There will be situations, particularly in areas where back-up officers may be distant or unavailable

—and let's face it, not everybody is in a large centre—

where multiple applications are necessary to control violent subjects. Training protocols, however, should reflect that multiple applications, particularly continuous cycling of the TASER for periods exceeding 15-20 seconds, may increase the risk to the subject and should be avoided where practical. Conventional use-of-force theory dictates that officers abandon any particular tactic after it has been employed several times without achieving the desired result.

In other words, don't keep using it.

Conversely, recognizing that a prolonged struggle heightens the risk to both the officer and the subject, it may be appropriate to use a TASER as soon as it becomes clear that physical control will be necessary and that negotiation is unlikely to succeed.

And here is the caveat:

A single TASER application made before the subject has been exhausted, followed by a restraint technique that does not impair respiration, may provide the optimum outcome.

The report makes a number of recommendations, along with the reasoning behind them, but briefly stated, they are summarized on pages 34 and 35 of the report.

1. With respect to CED's, including the TASER, we are recommending, subject to the situational factors, that they not be used against subjects who are demonstrating only passive resistance.

Many of you will have heard the anecdotal reports of, "Drop the beer, sir." "No?" Zap. Those are passive resistance things. They ought not be used in those situations.

2. For subjects who are displaying active resistance, those who are resisting an officer's efforts to take them into custody without attacking the officer, where an officer believes the use of a CED is appropriate we [believe] the CED's [should] be used in a push stun mode only.

I suspect you're pretty alive to the issue that the taser can be used both in the stun mode, which is sort of a cattle prod situation, and the probe, which fires up to 21 feet with two prongs that insert in the skin.

3. In situations where officers are confronted by active resistance, assaultive resistance, or the threat of grievous bodily harm or death, where an officer believes that the use of a CED is appropriate we are recommending that CED's be used in either a push stun or probe deployment mode.

So they're setting out some guidelines for use along what I would call and what has been known as the use-of-force continuum. You've probably seen that with the police use.

In my view, one of the most significant aspects of this report was the fact that it had been subjected to peer review by a medical review panel. That was one of the things that Chief Battershill and I discussed. I didn't want just a police-initiated report. I wanted whatever came out of this to have been subjected to peer review that included a multi-discipline panel. So a multi-discipline panel of experts reviewed this report.

• (1550)

They included a forensic pathologist, an exercise physiologist, a cardiologist, a forensic psychiatrist, the vice-chief of emergency medicine, a neurologist, a trainer with the Ontario Police College, the district superintendent for the British Columbia Ambulance Service, the executive director of the Canadian Police Research Centre, and an advanced life support paramedic.

The Chair: May I just interrupt for a minute? How much longer do you think you will have, because you've twice gone over your time?

Commr Dirk Ryneveld: If I can do it in two minutes, I will.

The Chair: Okay.

Commr Dirk Ryneveld: Dr. Butt, who is the forensic pathologist, said that one of the conclusions he drew from his reviews of the studies then available was that more than one expert in the field of cardiology and electrophysiology has been consulted about the issue of the taser shock being capable, or potentially so, of producing fatal arrhythmia of the heart called ventricular fibrillation. He says:

There seems to be general agreement that in but one or two circumstances, most notably persons with pacemakers, the electrophysiology of the normal heart would not be affected by discharge of the Taser shock/energy when the weapon is used properly.

There are two more things I want to say. It must be remembered that in my role as police complaints commissioner, I do not have the power or the jurisdiction to ban, approve, or otherwise regulate the use of weapons in the province; I can just make recommendations. That's the sole jurisdiction of the Solicitor General and/or the Attorney General.

In conclusion, having said I am not in a position to approve the taser, I am nevertheless not advocating a moratorium on its use at this time. Apart from anecdotal accounts of inappropriate use of the taser in situations where it ought not to have been used, there is not, to my knowledge, a body of evidence that directly connects taser use

with resultant death as its sole cause. In my opinion, what is required is further study, further independent testing, and training.

Because I've gone over time, I'll try to fit some of the rest of it into your questions. I hope they'll be responsive.

Thank you very much.

The Chair: I appreciate that. We're under a time constraint today. We've got votes at 5:15 and we've got a couple of items of business before then, so I'm trying to keep things moving.

Mr. Kennedy, please.

Mr. Paul E. Kennedy (Chair, Commission for Public Complaints Against the Royal Canadian Mounted Police): Thank you very much, Mr. Chair.

I'm going to shoot into an eight- to ten-minute window.

I certainly am, with my colleague, pleased to be here with you today. Mr. MacDonald is my director of strategic policy and research.

I would first like to take a few minutes to talk about the conducted energy weapon and our role in providing advice to the Minister of Public Safety on this issue.

I certainly want people to note that while I'm concerned with the issue of the conducted energy weapon as it's used as a force tool, I in fact will refer to it as the taser, a brand name, during my address, just for the sake of ease of reference and of course based on the fact that the RCMP employs that particular model.

I would then like to turn to how the commission has historically addressed complaints and appeals related to specific instances where RCMP members have used the taser and some of the challenges we've experienced.

Finally, I would like to address systemic issues within the RCMP, as highlighted in my 2007 interim taser report.

In November of last year, the Minister of Public Safety approached the commission and requested a review of the RCMP's taser protocols, implementation, and compliance. This request was the first time, to my knowledge, in the commission's recent history that a minister solicited our advice and assistance on a policing policy issue.

The Commission for Public Complaints Against the RCMP was created by Parliament in October 1988. Historically, the bulk of the commission's work contains the intake of public complaints and the examination of appeals.

The government in fact recently provided the commission interim funding, which was used in part for the creation of a new strategic policy and research division. While focusing on our core business activities, the commission is now in a position to examine in greater depth systemic policing issues, and tasers are one example.

The value-added of the commission's involvement in such systemic policing matters is that we ask the questions that the police typically do not. This is not due to a singular unwillingness to address issues but because the commission, as a civilian oversight body, brings a different perspective to policing issues.

In looking at the issue of tasers, I want to be very clear. The taser is a pain-inducing weapon whose application to the human body, unlike a service handgun or baton, leaves very little residual evidence of use. The device causes intense pain.

Law enforcement and Taser International speak of the fact that the taser renders subjects incapacitated and unable to fight back. While this may be true, this is a thoroughly sanitized description of what happens to someone who is subjected to the taser. What is missing from the debate and what concerns the commission is that a pain compliance technique is being wholeheartedly advocated without a full appreciation of the impact on the human body or a full understanding of the circumstances in which RCMP members are using the device.

Despite my concerns about the inducement of pain, the commission recognizes that police work sometimes involves violent encounters with people in order to gain control of a situation. This reality must be situated within the broader context of public support, accountability, and transparency.

The commission is not at this time recommending a moratorium on taser use by the RCMP. Rather, it is our position that the use be restricted to only those situations where the individual is combative or poses a significant risk of death or grievous bodily harm.

There are numerous reviews and inquiries occurring across the country at this time on law enforcement's use of tasers. Our count is approximately 10. This indicates a serious public concern with this weapon.

The commission has been addressing the issue of taser use by the RCMP since its introduction in late 2001. We have received 144 complaints related to taser use, with an additional 21 appeals relating to the deployment or threat of deployment of a taser.

● (1555)

In the 21 appeals processed, the commission has made adverse findings in cases where members failed to properly assess the behaviour being presented to them and then inappropriately categorized the behaviour as more threatening than it actually was. This inappropriate categorization has the result of elevating the level of intervention beyond what was acceptable according to the RCMP's use-of-force model. This is the commission's main concern.

Since the introduction of the taser in 2001, the commission has seen a policy shift that allows for the use of the weapon in circumstances far less constraining than what was originally proposed. In addition, we have seen situations in which members have deployed the taser outside of the permissible usage scenarios provided for in policy. The commission refers to this expanded and less restrictive use as usage creep. It has resulted in cases wherein individuals who have exhibited behaviours that were clearly non-combative and that could not be classified as actively resistant have been tasered.

I'd like to point out that the commission only receives about one-half of all complaints lodged against the RCMP members annually, because you can file a complaint directly to the RCMP and they can make a resolution. Unless it's appealed, we wouldn't see it. My 144 number shows what we have received. It makes it difficult for the commission to fully appreciate the size and scope of any problem.

Additionally, the commission is aware that the public at large may not fully understand what their rights are with respect to filing a complaint or requesting an appeal. To address this issue, we are making community outreach a priority. We've in fact embarked on a quasi-internal audit of all RCMP-completed complaint records to determine whether complaints, especially use-of-force complaints, are being disposed of in an appropriate manner. We're doing that for the past calendar year.

I can tell you this. I have seen situations where use-of-force complaints, including improper use of tasers, have been informally settled by the RCMP. The thing is, if it's informally settled, the person is not advised of the right of appeal because they mutually agree, so we don't show up, or in some cases the complaint is withdrawn, so it doesn't show up statistically. This, in my view, is inappropriate, as use-of-force complaints are serious allegations and must be processed formally and include the right to seek review by the commission.

You'll note in the material that I think has been handed out to you the use-of-force model the RCMP uses. On it, you'll see our interpretation of where the taser is currently positioned, and you'll see examples of use and where the commission believes the taser should be situated.

For ease of comprehension, you can look at this as being the face of a clock that proceeds from one o'clock through to twelve o'clock. You start off with the least form of intervention, officer presence; moving to verbal interventions; to empty or soft hand, where you direct someone; then they can move to arm locks, at empty hand control. You can have, as you move up, OC pepper spray, taser, batons. Of course, lethal force would be the use of a gun. Then you return, right back to the top of the clock again.

If you look at this particular diagram, you'll note the placement of the RCMP's new policy, which then was modified following our interim report of December 2007. It's at about seven o'clock on the dial. It says, "Previous RCMP policy". You'll see where it is in terms of use-of-force intervention, and you'll see "Active" resistance and "Passive" resistance. Then you'll see, right above it, "Current RCMP policy".

You'll notice that both boxes are attached to the same line. In other words, it's my belief that since receipt of my interim report, there has been little difference in the placement of taser use by the RCMP.

● (1600)

When you look at the document where it shows green over here, right after the blue, you'll see a green line. Those are examples, from there on, in which we have seen the taser deployed; in other words, immediately following a verbal intervention without recourse to any other technique. Even under RCMP policy it's supposed to be over here, after you've tried other techniques, such as soft-hand techniques. I've recommended that it be up here, almost about eight o'clock or nine o'clock on the dial, where it would be for a combat situation or a situation in which you would give consideration to using a baton. Instead, it is down here with a mix of other devices.

In my opinion, the RCMP has not gone far enough in implementing my first and second recommendations on where it be placed, and of course on the training and advice to members. This in fact is a significant issue for me.

Central to the debate of RCMP taser use is that employment 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.

My interim report made a number of recommendations that encompass broadly three categories. First, the RCMP needs to coordinate and strengthen its efforts related to data collection and analysis of taser use. The RCMP needs to empirically justify policy shifts with respect to taser use, especially when that shift loosens the restriction on deployment.

Third, the RCMP needs to clarify to its members and to the public when it is permissible to deploy the weapon. The commission will release its final taser report in early June of 2008. It's important to know that the final report will not address the medical concerns surrounding taser use. We are cognizant of the wider medical debate, but the commission's mandate and expertise prohibit this kind of specialized analysis. And you'll see if you read the studies, they're all over the place.

Our final report will focus on the following: best practices of law enforcement both nationally and internationally; a comparative analysis across the country of other police forces and their placement of the taser in their use-of-force model; an in-depth analysis of RCMP taser usage reports; and of course the testimony we're hearing today. We'll be tracking that as well.

By the way, I want to underline that the RCMP's cooperation and openness with us have been commendable, both for the interim report and during this stage here, and that relationship is key to our being able to fulfill our mandate.

•(1605)

The Chair: Thank you very much.

We'll go over to the official opposition, the Liberal Party, for a seven-minute round of questions and comments.

Mr. Dosanjh, you've indicated you want to lead off.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you.

Thank you very much, all three of you, for being here. Since we don't have too much time, I will get right into it.

I understand from Commissioner Ryneveld's remarks that the Victoria force in the interim report and the final report essentially recommended the same policy the RCMP currently has, the intermediate use of...

If I'm correct, the question I have is for Commissioner Kennedy. You made these recommendations pursuant to a request from the minister. You obviously took into account what you felt were important information and principles, and essentially the RCMP have not done anything on the first two, the most important recommendations you made. What do you intend to do about that?

Mr. Paul E. Kennedy: Well, like my colleague's, my job is to review and to make recommendations. My recommendations are not

binding. Hopefully the document can be persuasive enough that when my final document comes out, the RCMP will look at it and see its merits, and that will cause them to examine their position.

In addition to their being an audience, clearly the minister is an audience for me, because like my counterpart in B.C., the Minister of Public Safety, under the statute, in subsection 5(1), can issue direction to the RCMP. The Commissioner of the RCMP has control and management, but the minister can in fact, if he chooses, issue a directive as to where the device should be placed.

So this is an issue, and I will certainly keep speaking publicly. I'll make my documents public. This is not going away, and at the next unfortunate tasing incident in which someone is killed, we're going to have a firestorm on our hands if no action has been taken. And we haven't seen the end of YouTube. These days everyone has a cellphone that can take films, and you're going to see more of these captured on YouTube.

My concern is that if we don't take appropriate action, there will be an erosion of public confidence in the police, which we can't take. The police need public support.

Hon. Ujjal Dosanjh: Correct me if I'm wrong, Commissioner Ryneveld, but if I remember correctly, when Victoria adopted the use of the taser, it at least assured me at that time that it would be used as a replacement for lethal force—at least in the conversations I had. I have no notes to back up anything; I didn't keep any of that information with me. That is essentially what Commissioner Kennedy is now recommending, but not what was recommended by your study or the Victoria Police study.

The problem I have, my concern, is that I agree with Commissioner Kennedy that there has been usage creep, and that the RCMP in particular has been absolutely negligent in the way they have allowed that usage creep to happen. They have not educated the public, and they seem to be acting totally imperviously to the recommendations you made upon being requested by the minister.

I just want to put that on the record, because I believe that's absolutely irresponsible for the RCMP to do. They are a police force that deals with the public, and obviously they need to deal with issues that are important to public safety.

I come to my question to you, which is on the medical aspects of it. You say you have not been asked—that's not your mandate—but that is an important question. In fact, you have the authority to ask that question of yourself and examine the medical aspects of this issue. I would ask you to seriously consider doing that, because nobody else seems to be doing it. We've asked the minister to order a comprehensive national review on these issues and he hasn't done so.

So I would urge you to think about it and tell me if that is within your purview—to ask that question of yourself and then do the study.

•(1610)

Mr. Paul E. Kennedy: If I could respond, I'm not indifferent to the medical issue, but the documents I've seen are all over the place. What is a factor for me is the impact on people, and there are identified at-risk groups. The at-risk groups would be those who have mental health issues and those who have a lifestyle where they're using drugs, particularly methamphetamine and cocaine. These seem to be the ones who may lend themselves to more frequent encounters with the police. They may, in fact, be the ones who are tasered more often. And because of their lifestyle, they tend to have underlying health challenges. So they tend to be the ones who show up statistically, more often than you would think, in terms of being tasered, and they are also the ones who suffer what is called excited delirium.

I've adopted the default position, without being a doctor, that for me there's enough there in terms of proximal death from a taser application to these high-risk people, where they die sometimes within seconds and minutes, that an average person would say there might be a problem here. I don't think it's fair to put the onus upon counsel for the deceased or someone to bring to an absolute level of perfection of proof that this device caused the death.

I'm working from the assumption that there is a material risk to it, but it is less than the risk associated with someone discharging a firearm at you, and it may be more commensurate with the risk of a person deploying a baton. Police use violence, so that's the view I've taken.

I've identified the high-risk groups as ones, if you look at the cluster of excited delirium, that a police officer would recognize, and unless that individual is posing a physical risk to the officer or to a member of the public or to themselves, don't taser them.

The current policy is crafted almost to suggest that officers should use the tasers in probe mode to put that person down so they can receive medical treatment. Police officers are not doctors, and we're imposing on them one heck of a burden in using a force device that results in death. If the medical response is to do that, I say give it to the paramedic or give it to the doctor, and let them prove that it's a proper medical device.

When the officer uses the device, it should be for public safety issues.

The Chair: Thank you. That's a seven-minute round.

The Bloc Québécois is next.

Ms. Thi Lac.

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good day. Thank you for coming here this morning. I have several questions for the witnesses. My first one will be directed to Mr. Ryneveld.

You stated earlier that tasers can be used in either stun mode or probe deployment mode. A number of deaths have occurred recently, although it has yet to be determined if the deaths were directly caused by the taser deployment or whether the victims likely had health problems. While not direct, the link may be indirect.

Have you compiled any statistics on the number of deaths directly linked to taser deployment, whether in stun mode or probe mode?

[*English*]

Commr Dirk Ryneveld: If I may, the problem with statistics is that there is no national way of recording all of these things. As a matter of fact, in studies I've read lately, the suggestion is that—especially in the 2004-05 study—the actual amount that's been reported is probably one-tenth of actual use.

I don't have up-to-date statistics on how many deaths have been proximal, but no one has directly linked the deaths with the use of the taser. They often are attributed to pre-existing situations such as excited delirium or other forms of stressors. Some medical reports will tell you that with an electrical charge, basically if you're breathing a few minutes later, any death wasn't related to the electrical charge.

To answer your question directly, I don't have those statistics available.

One thing I do want to say in response to your question is that when you ask about stun mode and probe mode, policing has changed over the years. In the olden days the officers were more upfront and physical with the subject because there wasn't danger from AIDS or there wasn't danger from a number of other things. Now the officers are using distance kinds of applications to subdue subjects more readily. You can understand from a common-sense point of view that it might be for officer safety.

•(1615)

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac: You stated that a number of tests needed to be carried out. Most tests were ordered and paid for by TASER International. Last week, when I asked an RCMP official if the force had conducted independent tests, I learned that the last tests were done in 2001-2002.

Are you aware of any more recent independent studies, aside from those done by TASER International?

[*English*]

Commr Dirk Ryneveld: Are you talking about the taser itself—the output, the amount of zap, as it were? We have been trying since our report—for over two years—to find an independent laboratory capable of doing that. We have been pushing almost on a monthly basis: “When are you going to do it?” The national police research council, I believe, just told us on Friday that within two weeks they will be in a position to actually do an independent test.

There was an interim test done by an agency called Intertek that suggested the taser output was many, many times higher than the advertised amount by Taser International. However, Taser International then hired another agency, called, I think, Exponent, Inc., that then called their testing methods into question, and Intertek backed off and basically said, “We used different criteria, so it would be misleading to use our results.”

We have been unable to find an independent laboratory, and we've been pushing. I don't have a budget of my own to do that, but the police research council have assured us that within two weeks they'll be able to test it.

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac: As everyone knows, real life situations are very different from controlled situations. The program "Enquête" reported that testing on RCMP members had been suspended because of the high risk they faced. Last week, when I spoke to RCMP officials, I was told that testing had resumed, but in a controlled manner, that is officers were monitored and the tasers were not aimed at any body joints. That's not how things happen in real life. Furthermore, most police officers are in good physical condition.

The fact that we cannot conduct tests on people who may have ingested some illegal substances makes the results even harder to interpret. We cannot ask people to ingest illegal substances just to get them to react in a particular way.

Do the studies that you have confirm my assumptions?

[*English*]

Commr Dirk Ryneveld: Well, I think the studies are all over the map. In terms of the results by trainers, for example, some of them say there are no problem. Some of them.... There have been people who have urinated, and some people have lost complete control. There are others who are concerned about the dangers after tasing, such as if it makes you drop to the floor, you're going to have subsequent injuries.

But you're right, the kind of people who are supposed to be tasered, even within Mr. Kennedy's proposal, are the ones you would otherwise have to resort to lethal violence on—pull your gun and shoot them. It is a weapon, and obviously it's a weapon designed to stop people from behaving in such a way as to present a public risk, to the officer, themselves, or other members of the public. The police argument that a lot of lives have been saved by use of the taser is because it was used as an alternative to lethal force.

On your question, though, the subjects in the test results are usually in good shape. Yet there have been complaints by them about burning sensations and other things like that.

The people that police officers find they need to taser are out of control; they are going to do harm. You don't know if they're mentally ill. You don't know if they're on drugs. You don't know whether they have some other predisposition. Yet you can't prevent them.... I mean, what's the alternative? Shooting them? There's definite predictability that there's going to be harm then.

The low incidence of after-tasing adverse effects, by common sense, leads me to think that a taser is a better alternative to lethal force.

• (1620)

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac: Thank you very much.

[*English*]

The Chair: Thank you.

We'll have to move on now.

Ms. Priddy, please.

Ms. Penny Priddy (Surrey North, NDP): Thank you very much, and thank you, gentlemen, for being here.

I don't know whether it's coming from British Columbia or not, but tasers, long before the incident at the airport, have been very much in the forefront of the public's mind in terms of their use, and so on.

What I've heard people say today I think is very consistent with what I at least gathered from the witnesses who appeared before us, although they didn't state it in quite that way, and the questions raised by the public about the incredible inconsistency in how tasers are used, recorded, followed up on, decided to be used, and so on, across the country.

As Mr. Kennedy said, people are fairly quick to criticize, perhaps, the RCMP, perhaps in general, but this has eroded confidence enormously, certainly in my province. I say with great pride that I come from a city of 400,000 that is still policed by the RCMP. We've been very pleased with that. But I also know how little faith, in many places, people have. So there is incredible inconsistency in recording, usage, charting, follow-up, all of that, and that has been confirmed by you here today.

The other thing we have not spoken of here is when people read in the paper—and I think we just had one example locally—that an RCMP officer had been charged or there was a complaint and it was found to be fine. I don't doubt that might be the case, but the question of oversight does come up in terms of who is overseeing or overseeing the evaluation. Well, yes, it might be somebody from another police force, but that doesn't necessarily always give the public the greatest sense of confidence—as it doesn't with any profession, by the way—when people of the same profession are reviewing each other. We see that with physicians and many other professionals.

I have several questions that I will leave with you.

I'm very concerned about Mr. Kennedy's comments in two respects. One of them is that nobody has any ability to actually ensure that these recommendations are carried out. We might think the recommendations are great and might be exactly what should be done, and so what? That does worry me.

Also, the health piece worries me. We have found, as Mr. Kennedy has spoken to, that there's a dearth of health research out there. What is there is all over the place. The piece I haven't found in health research is that we all have very different pain thresholds. If somebody has a very low pain threshold, that person is going to have a much more severe reaction to a taser. I don't know what the long-term effects of that kind of really severe pain will be to somebody with a very low pain threshold, because they're getting the same amount of electricity. So the fact that the medical part sits over here and nobody yet has done that worries me quite a bit, because those are the concerns that people raise, or those deaths or those people who have health consequences.

First of all, the interim recommendations have been made. When do you think they should have been acted upon?

Secondly—I'm afraid part of this is medical and part of it is training—did I hear correctly that the Toronto police force must retest every year? The police force in Toronto has to retest or requalify every year, so that would still be an inconsistency with police forces. I would be curious at some stage, and I don't have to have that answer today, why you picked two years when another police force that seems to have handled theirs well picked one year.

Thirdly, around accountability to the public, regarding the quarterly reports you're recommending go to this variety of people, is there any reason they could not be up on a website? Obviously there are no names or places attached. I don't want the public, who are very concerned about this, to have to apply under freedom of information in order to receive more information. So is there any reason that could not be more publicly available? I would certainly recommend that it should be.

• (1625)

The Chair: Ms. Priddy, there are only two minutes left for the answers.

Ms. Penny Priddy: Okay.

And why is there a sunset clause of three years on quarterly reports?

The Chair: Okay. Try to be more concise in the answer.

Mr. Paul E. Kennedy: I'll be very concise.

I don't have the power to make binding recommendations. In fact, in the legislative model I said I shouldn't, because I think the police can figure out how to do it. They might think of a better way of doing things than I would. If they don't do it, I indicated at the outset that the minister himself can say to do it, and it's done, and that applies right across the country, federally and provincially.

On the health aspect, you are quite right. I've approached this as a pain/compliance device—pain is subjective, it is quite clear. I've recommended that they do research on pain. It's oblivious...in many presentations I see no reference to pain when they talk about people being immobilized. Pain, surely, has to be looked at.

There is a case, *R. v. Hannibal*, where Judge Challenger talks about that and says the challenge with this device is that when you apply it you do not moderate the pain. In other words, it is on full each time you use it. If you grab someone in a thumb lock or arm lock—and we have police officers or former police officers here—you can moderate the level of pain. When I take that and use the device on you, you get the full blast each time.

The other thing is that when I crafted those recommendations, I crafted them on the basis that they could be acted upon immediately. They weren't crafted that you'd have to take the fullness of time to do it. It was an interim report; I put action items in. They could have been done right away, of course.

The other one is that, in terms of certification, they went from one year to three years. Obviously, I thought about one year myself. In 2005, the Auditor General did a report on the RCMP's training, and they were miles behind in their training. I know they have a huge challenge on them right now. I didn't think it was reasonable to increase the burden by saying to do it annually when they were behind in all sorts of other training and recertification. That's why I

picked two. The other thing is that the major policy changes seem to appear on a two-year cycle, and I thought that would capture it.

On quarterly reports, I agree there is a need for transparency; we have to do more to get the public's trust. I think documents like that, since there's no personal information, should be put on the web. We put our stuff on the web as much as we can.

Ms. Penny Priddy: Thank you. My questions were long; I knew the answers could be short.

The Chair: Thank you very much.

We'll now go over to the government side. Mr. MacKenzie, please.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair. Thank you to the members.

Mr. Ryneveld, although I haven't had a chance to read your whole report, I am impressed with its thoroughness. Talking about the medical people, you have a lot of information in here from the medical community. Sometimes I get the feeling we don't want to read what's already been done and we want to reinvent the wheel, so I do really appreciate that.

Mr. Kennedy, I had a couple of concerns about statements you made, and I'm concerned that they are a bit misleading. I think in one of them you said, "The next time someone's killed with one of these", and then another time I think you said something about the taser causing death. I don't think those statements are accurate, if I heard them correctly. If that's not what you meant, that's fine, just tell us, but that's what I thought I heard you say. I'd just like a comment on that, if you will.

• (1630)

Mr. Paul E. Kennedy: I'd have to go back to look at what I said, but I'll tell you what I intended to say. My concern is that if we don't take some action to address the public concern and the fact situations we're confronted with, another unfortunate incident will occur where a taser will be deployed and you will have a death proximal to that... The public concerns, therefore, will draw the parallel between the two and indicate that there has been no movement and we could have done something to avoid it. From that, I'm not indicating the taser caused the death, but we will have the phenomenon we have now.

Mr. Dave MacKenzie: Having been around this field a little while, I know we also had deaths as a result of positional asphyxia. We've had deaths that have occurred after the use of pepper spray. Are we not looking at the same kind of thing? Are we only looking at it from that perspective? As opposed to the whole use of force, you're only looking at tasers.

Mr. Paul E. Kennedy: Clearly, I recognize the taser as an instrument that the police can use; that's why I haven't called for a moratorium. I've called for a positioning of the taser on this device, and I can indicate that most of the complaints we receive are where the taser is being used in touch-stun mode as opposed to deployment. We have, obviously, where they're used in the prong.... A lot of the complaints are coming on touch-stun.

When I had that chart where the floor...there's a floor. Even if the RCMP's policy floor now is here, the touch-stun, which is the red line, is dropping right over here, the passive resistance. They've tried to clarify that.

What you have, and what you're going to have as an increasing problem I think, is more uses of that. We have a significant turnover—

Mr. Dave MacKenzie: I'm a bit familiar with the use-of-force continuum, and I think you indicated that the police officer has to go through the whole circle to get there.

Mr. Paul E. Kennedy: No. Obviously it's a dynamic situation. A lot of these can be used in parallel. Clearly, if you're up in the high end in terms of a combative situation, the officer is using everything available to him. I'm of the view that if at that stage he wants to beat him over the head with the taser, he's welcome to it, because you are into a life-or-death situation.

What I've indicated to you is that when you have a passively resisting person and you have verbal...and you see a person moving immediately to the taser, you have a problem. The case I have in my last annual report is just that: a tasing of a woman who's handcuffed behind her back in a police station, who is resisting by not moving ahead when she's told to go into the cell, and she's tasered twice by the officers. That clearly is a case—

Mr. Dave MacKenzie: But that's not a problem with the taser. I think that's the whole point, that somehow we've got off base and are blaming the taser. It's not a problem with the taser. If the police officer had physically used too much force, that's still wrong.

Mr. Paul E. Kennedy: That's why I haven't said we should get rid of the taser; I haven't said "moratorium". I asked where it's placed, so the officer knows according to policy and his training when he should use that particular technique. That's the issue, and you are quite right, it's officers' behaviour. On the first one I think they were confused, because it just said "resistive" and it wasn't clear whether it was active or passive.

Mr. Dave MacKenzie: Surely that's an issue of training and not—

Mr. Paul E. Kennedy: It's clarity as to where it is.

Mr. Dave MacKenzie: It's not where it falls on the use-of-force continuum. That's a training issue.

Mr. Paul E. Kennedy: No, these things are all woven together.

Mr. Dave MacKenzie: It's in the training.

The other thing is, I think I read in Mr. Ryneveld's report that he's got the medical evidence concerning excited delirium having been identified as deaths not only in policing but also in hospitals and psychiatric facilities.

Surely when we talk about medical people, there are some other sources of evidence of the death. It seems to me when I read some of the other reports that have been done where there has been, to me, a broad spectrum of medical evidence, that the excited delirium deaths—and I go back to the positional asphyxia, oleoresin capsicum spray, carotid artery restraint—may have been part of that whole thing. But there's got to be good medical evidence out there. I don't know that we need to reinvent the wheel, is what I'm saying.

Could you tell us what you ended up with as a result of those medical people examining that initial report or the final report that was done?

• (1635)

Commr Dirk Ryneveld: Thank you.

They recommended more study, and they also indicated, as you have outlined, that there certainly are a lot of situations where people who exhibited the symptoms had the same symptoms when the taser was applied and there was a subsequent death. These people are dying in hospitals and elsewhere without application of the taser.

So the question is, is there a correlation between the use of the taser and these pre-existing symptoms? Would these people have died anyway, but for the taser? That's a question that has not been answered yet, and the experts in the interim report and in the final report have recommended training, as you say, further study, testing of the instruments, national standards to be set. I tend to agree with you that some of the issues that are being raised are not necessarily the problem with the taser. We'll find out whether it's a problem once it's been tested and when there's more medical evidence.

The biggest problem, in my respectful view, is the inappropriate use of the taser in situations where it was never intended to be used. When the honourable member, Mr. Dosanjh, mentioned that when he approved it in British Columbia, I believe in 1999, which was its first use, the idea was that it be used for less-than-lethal force, in other words as an alternative to lethal force. I'm not surprised he indicates that's the basis upon which it was approved in British Columbia.

But over time, it has become used more frequently for less and less serious incidents because it's been a convenient come-along tool, as it were. You understand the temptation for inappropriate use. It works and it works very effectively, but there is that risk area for certain people that brings this matter to the public's attention.

If YouTube showed police officers shooting somebody, it would also cause an outcry. We equip police officers with lethal weapons for a purpose. If a taser is one of those, where does it fit in the use-of-force continuum? That's the issue.

Mr. Dave MacKenzie: Thank you.

The Chair: Okay, thank you.

We've completed our first round.

I have a question. I'm going to use the chair's authority to ask this. It builds on previous testimony we've heard from other witnesses, and I would just like a brief response from you.

It seems like there's a difference in the level of use of the taser among police forces. Would you, in your opinion, feel that it might be helpful to have some civilian oversight over police activities?

Commr Dirk Ryneveld: Well, with respect, sir, that's exactly what my agency is supposed to do for municipal forces. But whenever you have police investigating the police or police recommending to the police, public confidence is only there, as Honourable Member Priddy mentioned, if there is effective civilian oversight with sufficient authority to effect it. It's not enough to simply make a recommendation and say I wonder what's going to happen to this. You need to have sufficient authority to carry it out effectively.

In British Columbia right now I have a white paper with recommendations to enhance our authority. If we're going to stay in that province with police investigating themselves, they had better give enhanced powers to the oversight agency to ensure public confidence that somebody is minding the shop.

The Chair: Mr. Kennedy, do you have an opinion on that?

Mr. Paul E. Kennedy: Clearly, as I pointed out in my opening submission, civilian oversight brings a different perspective. You can be what they call acculturated. I understand that if you're a police officer, you're going to get in and do things as your peers who are in a similar position do and have their perspective. Our value should be to bring the perspective of a broader community.

Should there in fact be a level of oversight? Clearly. Your comment is whether there is a different level of use among police. Yes, there is. I think Toronto appeared before you. You look at who they give it to. It's a front-line sergeant. We deal with RCMP constables fresh out who have it. They're going to train them out at Depot Division on taser use. The front-line sergeant is going to have experience using various things and judgment.

The other thing is having specialized teams and fewer devices. The RCMP has almost 3,000 devices and over 9,000 members trained. You have a large base; therefore, you're going to have a dynamic in place. We would like to do on a regular basis what we're doing now, which is get that data and look at it and then provide advice back to the RCMP. Is it a problem in stun use or taser use? Is it a problem in a locale? Is it a problem with an individual officer? You have to know that, because it comes down to individual behaviour.

• (1640)

The Chair: Okay. Thank you very much.

We'll go to our five-minute round now.

We'll go to Ms. Barnes, please.

Hon. Sue Barnes (London West, Lib.): Thank you.

I think there is a big difference between policy that could be developed and stated by a minister and training. They are two separate things. One has been acted upon. And we're hopeful that some of your recommendations will change the training.

With respect to training, the Toronto Police Services Board told us they do eight hours of training. Do any of the organizations in B.C. do eight hours of training, or is it less than that? They said it was double the rest of Ontario in hours.

Commr Dirk Ryneveld: To be truthful, I can't tell you how many hours are devoted to it, but the Justice Institute of British Columbia trains new recruits, and also there are regular updates. It's an incremental training time, so I don't know how many hours are dedicated.

Hon. Sue Barnes: Does every police force use tasers in British Columbia?

Commr Dirk Ryneveld: Not every police force, but its use is increasing and—

Hon. Sue Barnes: I have only five minutes, so I'm really trying to get to a lot of questions.

We've heard that you can use the taser multiple times on the same subject, and that was a policy change by the RCMP.

Could you comment on what your findings were in this area of more than one use of the taser on the same individual?

Mr. Paul E. Kennedy: Clearly, it is a concern, and it has come out in a number of documents in terms of what is called cycling or multiple uses. I think one of the directives was that it shouldn't be any more than 15 seconds. Each one is a five-second blast, but you keep pulling the trigger, which is cycling, so it's another five, another five, and another five. That clearly is a problem, and people have looked at it and cautioned against cycling, and they've put a maximum period of time on it.

By the way, on your other comment, the RCMP does 16 hours of training, and the instructors get four days of training. Recertification, I think, is four hours.

Hon. Sue Barnes: We know Taser, the company, has been involved in a lot of litigation. You mentioned the study that showed there were concerns about some of the effects, and then they backed off that. That seems to be a bit of a pattern with the company, from what we've heard before. Their litigation is not just a defence of tasers; they also go after people and companies.

Mr. Kennedy, were you aware of the study that was referred to by the Office of the Police Complaints Commissioner when you did your review?

Mr. Paul E. Kennedy: Do you mean in the Alfred report?

Commr Dirk Ryneveld: No, the Intertek and Exponent studies.

Mr. Paul E. Kennedy: We looked at my colleague's report when we did our reports, but I can't recall that one in terms of the device.

We know there are issues with the device itself. A competitor sometimes says it's a defective product, that when they discharge the weapon and it's going through, it's not performing as per specs; that variation might be causing a problem. These are companies that manufacture conducted energy weapons talking about each other's products.

Hon. Sue Barnes: Can either of you tell me of another product out there being used when you say, "Realistically this needs more study"?

Mr. Paul E. Kennedy: I think Taser International is the dominant occupier of this area. In my particular case, their device is used by the RCMP entirely.

Hon. Sue Barnes: I think you misunderstood my question. Both of you have said this is something that needs more study here in Canada—independent study, not studies done by Taser or presented by Taser. Is there any other product on the Canadian market where you'd be saying that, still using the device, and not putting it on hold?

Mr. Paul E. Kennedy: The answer to that is probably no.

Hon. Sue Barnes: What about you, Mr. Ryneveld?

Commr Dirk Ryneveld: I can't think of one offhand, but that doesn't mean it doesn't exist. It's very common that in a particular area the people who are the experts in the field are the ones who provide the studies and statistics. It's very difficult sometimes to get independent experts, because they've already been consulted by the manufacturer.

• (1645)

Mr. Paul E. Kennedy: This is a bit of a loop we get ourselves into through the Gordian Knot of whether the device causes death. At the end of the game, do you know how often? What's the material risk? I prefer to approach it on the basis that we've already authorized police officers to use guns that cause death. They're taught to shoot to the centre mass, so you're likely to die or be seriously injured.

My operating assumption is that the taser causes, at the very minimum, pain, and for some high-risk people there may be the risk of death. When I juxtapose it to a gun, the gun obviously is much more lethal than that, so for that reason I put the taser in with the baton. My assumption isn't that it's perfect and flawless. It may cause death, but statistically it's going to cause death less often. As long as you use it in circumstances where it's justifiable....

Hon. Sue Barnes: Yes, but my point here is that when we see that they're not using it in lieu of a gun, they're using it in lieu of an earlier intervention...that's not happening with the RCMP. So that argument is totally false, I'm afraid.

Commr Dirk Ryneveld: I think you would find that in the drug world there are probably products that were tested, presumed safe, and subsequently found not to be as safe as expected. You have experts again, usually through the drug industry, who are....

You asked me for an example, and the only thing that comes to mind is in the drug industry.

Hon. Sue Barnes: My own example of the drug industry is that they never put something out on the market while it is being tested, and when there is a problem they stop the usage and do recalls.

The Chair: Thank you.

We'll now go to the Bloc Québécois and Monsieur Ouellet.

[*Translation*]

Mr. Christian Ouellet (Brome—Missisquoi, BQ): Thank you very much, Mr. Chairman.

I'm somewhat surprised to hear you say that if a person is tasered and does not die on the spot, then the taser is not likely responsible for that person's death, if it occurs later. A person could go out and shovel snow—we have had a lot of snow—and die three hours later. You would argue that shovelling snow had nothing to do with that person's death, that he would have died anyway. I find your argument somewhat fallacious.

Getting back to the use of the taser, you maintain that without the taser, officers would have to resort to using a firearm. That's what you said. I lived in England. Police officers did not carry weapons and still managed to make arrests. So then, a firearm is not a requirement for making an arrest. Are tasers really necessary then?

Moving on to a more delicate subject, does this have anything to do with the officers, the people on duty...? Personally, I'm a feminist, but I have heard that in many police forces, many women...

[*English*]

The Chair: Excuse me, I'll have to ask you to take your conversation behind the curtains, as the Speaker says.

Go ahead, sir.

[*Translation*]

Mr. Christian Ouellet: Thank you. Let me reiterate my position.

Apparently, many women prefer to use a taser, otherwise they would have to engage in physical combat. It seems this is one of the reasons why the taser was introduced. Male police officers began to wonder why they couldn't use it as well, since it is a lot less taxing than having to use physical force.

Could this be one possible reason for using a taser?

[*English*]

Commr Dirk Ryneveld: If I may respond to your first suggestion that my argument about the proximal time of death after deployment of the taser was fallacious, sir, I'm not a medical expert. This is not what I am saying; I am saying what is in the studies in the report. The doctors, the cardiologist, and these people have said in these reports that if there isn't death within minutes of electrical shock, any subsequent death is likely not attributable to the electric shock that was applied. That's not me. I have to rely on other experts, and it's clear I'm not a doctor.

On the weapons used for arrest in England, in Canada we do give our police officers guns. What we're trying to do is provide them with yet another tool to make the situation safer to the public. That is deployment of a taser, which has a less likely lethality rate than if they have to shoot their weapon. If they shoot their weapon, the chances are there is going to be serious bodily harm or death. With use of the taser there is less than 1% risk, and then only to a particular susceptible individual.

• (1650)

Mr. Paul E. Kennedy: I can respond to your general question on whether the taser is necessary. If you look at the history of policing, police through their history, starting with Bobby Peel in the 1820s, clearly used different tools. They didn't always start out with weapons. They started out with batons and things like this. There has been evolution of what they used or didn't use over a period of time. Until about 2001—certainly it was December 2001 for the RCMP—they didn't use the taser in Canada; they used other techniques.

That doesn't mean you should stick to the status quo. You evolve. It is there. It is a tool. The issue is whether it is an appropriate tool.

You talked about the United Kingdom. I believe the Royal Ulster Constabulary for a long time didn't have....

That's a Canadian example—

[*Translation*]

Mr. Christian Ouellet: Can you confirm that firearms were involved more often in arrests before tasers were introduced? You cannot confirm this.

[English]

Mr. Paul E. Kennedy: The problem I have is we don't have any empirical data. I'm quite prepared to let the data lead me to a conclusion. It has been said that the use of the taser results in less injury to officers and to members of the public. I haven't seen the empirical data as to the number of instances prior to taser use, in terms of harm to the officer and the public, and after taser use. It's not there. It's said as a statement that everyone agrees with, and I believe even the representative from Taser International said that, logically, if I'm there and I don't make contact, if I taser you and you fall to the floor...I'm not hurt; you get up, you're not hurt, except for that momentary incapacitation, and everything is okay. But I don't know if it follows.

In CAPRA, the model the police have, an officer can consider the size of the individual, the skill set, the number of individuals, and the degree of violence, and that tells them whether they should use it. So a woman who could be overpowered by a much larger man clearly would have recourse to something like a taser.

The Chair: Thank you.

We'll have to go now to the government side.

Mr. Mayes, do you have some questions?

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Thank you, Mr. Chair.

I'd like to direct this question to Mr. Kennedy, please.

In classifying the taser, would you say it's an intermediate-level force tool, or would you say it's an impact force weapon, and if so, why?

Mr. Paul E. Kennedy: My recommendation at this stage, based on the information we have, is that in the RCMP model a taser should be put up in the same category as an impact weapon and not an intermediate....

And by the way, what's important to bear in mind, because people say we classify it the same way other police forces do, who put it as an intermediate weapon.... In fact, if you look at the definitions of "intermediate" and "resistant", police forces use different criteria; they don't all match up. Some of them, like Toronto, will have it classified as an intermediate weapon, saying use it on assaultive and above. So they call it intermediate, but it's not the same definition. If you look at Northern Ireland, they call it "potentially lethal". So when you start looking around, you will find that the categories are there, but they don't necessarily mean the same thing, and police forces don't all treat them the same.

I'm indicating what our state of knowledge is right now, in terms of the movement of the RCMP away from the language they used when it was introduced in 2001, where it was described at that time as "a less lethal means for controlling suspects and averting injury to members, suspects and the public" and that it could only be used to "subdue individual suspects who resist arrest, are combative or suicidal". That's how it was started in 2002 when they put it in. There was no proper data analysis, and yet, in 2004, it changed and you could use the taser for all sorts of other things. All I'm saying is that if we look at the data, and the data indicate it's appropriate to move it down to an interim...with an appropriate description, fine.

But there was nothing there that justified that movement; there was no factual basis on which it was done.

So I'm saying, yes, it should at this stage be moved to be for combative persons, subject to further research; and then you either keep it there or move it down. But if you don't have that bright line to an officer, saying that if the person isn't combative, don't use it, you are going to find the floor falling away from under your feet, and it will be used not only in active aggressive but also passive aggressive situations, which include, by the way, flight—mere flight. Other jurisdictions said that flight alone was not a factor for using a taser, that you also had to look at the gravity of the offence you were arresting people for. None of those factors is in the RCMP model.

• (1655)

Mr. Colin Mayes: But that's the challenge here, because in some earlier discussions there was talk about low and high pain tolerance. And for an arresting officer looking at a subject of interest, standing there, and trying to assess who has pain tolerance.... I mean, they didn't do that with the baton. I'm sure if they're arresting Mr. Cullen or me, they wouldn't be able to determine who had the best pain tolerance for a baton. So how practical can that be? That's the thing that would concern me.

If anything needs to be there, just use some common sense in the application of this device. So how are you going to determine how you're going to put some guidelines for the use of this tool?

Mr. Paul E. Kennedy: I didn't include pain tolerance as a factor in whether or not you deploy the taser. The officer uses his normal judgment, in terms of, is the individual going to be violent or combative? Just what is there—because it is designed for a particular purpose. You don't look at a person who's done nothing and say, "I wonder what your pain tolerance is? I think it's pretty high, so I'll hit you with it." There has to be a proportionality to the event.

The pain is relevant to the fact that it is a weapon. In my interim report there are quotes from the Hannibal case, which Judge Challenger looked at, and which had expert-led testimony. There's also the Amnesty International report, which has comments from officers who have been tasered. This wasn't described as a tonic. I saw some of the testimony at this committee about it being a brisk shot, that you're up and then you're ready to go again, just as if you've been to the gym. But the officers describe it as intense pain. What officers? These are police officers. They've been punched a hundred times. These are officers, not people who are inexperienced in terms of physical encounters, who said, having been tasered once, they'd never want to be tasered again.

So it is a weapon. Assuming it's a weapon, then you treat it as such, but where do you place it? I'm saying that if in your mind as an officer you can ask, would I use my baton, then we're in that category in which you can use your taser. And I'm not saying use your baton before you use your taser, because clearly you don't want to have to close with the person. But if it is at that level where you think there's going to be violence toward you or other people—and you can anticipate that, as you don't wait for the first punch—use your common-sense judgment.

Mr. Colin Mayes: The applications are interesting. I spoke with an officer who said there was a particular subject who'd been tasered before. As soon as the officer pulled out the taser gun, this fellow just dropped what he was doing and stood still and that was it. If the taser didn't have the punch to make a good first impression, the person would not have done that.

Mr. Paul E. Kennedy: I'm quite happy to have that punch. I'm not talking about that. I'm talking about when it should be used.

Commr Dirk Ryneveld: The notoriety of the taser may also have an unexpected positive effect. When people see the taser come out, they may become compliant before it's necessary to deploy it.

I don't think Mr. Kennedy and I are in disagreement about where this taser should be used. Part of it has to do with the definition of less than lethal force. If you're going to use your baton, you can break bones and do all kinds of nasty things to people. The taser may be preferable in those circumstance. We're not going to judge this that finely.

Officers have to make common-sense judgments about what to do to control the situation. If it requires assertive, hard behaviour such as a baton or a taser affords, I'm not going to be so judgmental as to tell them they should have pulled their baton first and then gone for the taser. I'm sorry, that's micromanaging. It's split second stuff, and we have to let our police officers do their job.

• (1700)

Mr. Colin Mayes: Thank you.

The Chair: Ms. Brown.

Ms. Bonnie Brown (Oakville, Lib.): Thank you, Mr. Chair.

Mr. Kennedy, you produced this interim report. Did you brief the minister on it, and if so, how much face time did you get with the minister?

Mr. Paul E. Kennedy: No, I didn't brief the minister on it. However, I did provide an executive summary. The document is in very plain language, and I gave an action plan in three or four pages that spoke for itself.

Ms. Bonnie Brown: When you present your final report, are you going to ask to face the minister and brief him on your final report?

Mr. Paul E. Kennedy: I would enjoy doing that, and I will do it, because the minister has asked for this. The first one was an interim report, but I want to have all my details, and I will sit down and take the minister through it.

Ms. Bonnie Brown: Am I correct in hearing you say that you have no indication that the RCMP has implemented the recommendations in the interim report? Is that correct?

Mr. Paul E. Kennedy: There are 10. They have implemented a number of them, some partially. There are two that are the most important. The first one deals with where you position it. This hasn't been acted upon. They have a coordinator for the use of force. I believe they are finishing up their first quarterly report, and I haven't seen it. Maybe they're not finished yet. At any rate, I don't have the content to see if it meets our standards or not. But they have done a number of things in part, and I'll have to wait until it plays out.

Ms. Bonnie Brown: You commented that they did not implement the two most important recommendations. Then, at the end of your presentation, you said the RCMP were very cooperative. To me, those two things are totally exclusive.

Mr. Paul E. Kennedy: No.

Ms. Bonnie Brown: Either they were cooperative or they weren't.

First of all, they couldn't be cooperative in giving the statistics because they didn't collect any.

Mr. Paul E. Kennedy: They were cooperative in that they produced what we asked for, if they had it. We are now taking some of the data and we're going to reformat it, re-input it, and design a computer program so that we can do a proper analysis of it. To that extent, they certainly have been open and cooperative with us. Clearly, there is no obligation in law for them to follow my recommendations.

Ms. Bonnie Brown: Unless the minister tells them to.

Mr. Paul E. Kennedy: Yes.

I certainly would have preferred to see some movement on this. There was marginal movement in redefining active and passive resistance, but there wasn't substantial movement in—

Ms. Bonnie Brown: They were cooperative in that they made nice with you, but they didn't conform to your recommendations.

Mr. Paul E. Kennedy: Be aware that this is a dynamic relationship. I am a review body, an oversight body, and my job is to identify the problem and bring it to the public's attention. I will pursue this with vigour. But I don't assume they're going to come back and say, "Yes, sir, no, sir, three bags full, sir". I can tell you I will not go away—I will at the end of my term, but until then I will not go away. Otherwise I have failed to do my job. I will articulate my concerns, and they should articulate their response and say why they haven't complied.

Ms. Bonnie Brown: Thank you.

This whole question of medical professionals agreeing to a cause of death—the fact that we have a hard time getting medical professionals to say, “Yes, this man died 10 hours later because of a taser”—is never going to happen. The reason is that in the health field they will not report when they give somebody, say, an injection of a drug and that person dies five minutes later. They will not report that and say it was the drug; they will say the person died because their heart stopped.

Mr. Paul E. Kennedy: I agree entirely.

Ms. Bonnie Brown: So you will never, ever get medical proof that tasers kill people.

Mr. Paul E. Kennedy: And that is why I have not pursued that particular line of argument, because it becomes a battle of experts. As a lawyer—I've been to court—you can get experts who will say whatever can be said. You're not going to have that clarity of purpose.

I fall back on what I think should be common sense. To me, following Mr. Ouellet's observation, if I'm out shovelling snow and come back in and two hours later I'm dead on the floor, at my age you might conclude there's a connection. When it's seconds or minutes from use to death, without any evidence, I will operate on the assumption that there may in fact be a connection.

• (1705)

Ms. Bonnie Brown: If I can encourage you in your conclusion about the public's trust, I think we're already there. I think the Robert Dziekanski case on TV has scared the public. It has really frightened them about these tasers, and that's why I think it's so important that we move quickly on it. I'm hoping that when you produce your final report...the parliamentary secretary, I'm sure, could provide you with time with the minister. I can't think of anybody more important.

The Chair: We'll have to wrap it up here.

Let's go over to Mr. Norlock, please, for five minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): The first question is with regard to deaths, as both of you deal with police departments, as both of you are probably very, very familiar with what happens to a person after they've died in custody or during the course of a police intervention. Is there not, 100% of the time, a post-mortem?

A witness: [*Inaudible—Editor*]

Mr. Rick Norlock: There is.

Wouldn't you say that almost 100% of the time if there's an application of force that caused the death, that's reported in the post-mortem?

A witness: [*Inaudible—Editor*]

Mr. Rick Norlock: Thank you.

Thank you for coming, the three of you.

I think you are probably aware of this, Mr. Ryneveld, and probably Mr. Kennedy too, but I'll start with you, Mr. Ryneveld.

In 2004 Mr. Fred Dawe, who's president of the B.C. Schizophrenia Society, made the statement that “[...] the society believes more mentally ill people would die at the hands of police if they

didn't have the stun gun.” It was reported in the *Vancouver Sun* on July 24, 2004, that the B.C. Schizophrenia Society has endorsed the use of tasers since 1999. The society said:

The schizophrenia movement across this country believes in the Taser, [...] We support the appropriate use of the Taser as a life-saving means of force in emergency police interventions.

Were you aware of that, sir?

Commr Dirk Ryneveld: Yes, I was aware of that fact, along with a number of other reports about it, both in support of and against it.

Mr. Rick Norlock: Were you, Mr. Kennedy?

Mr. Paul E. Kennedy: Yes, and as a matter of fact, I've currently launched my own chair-initiated complaint dealing with a situation where officers were arresting a gentleman under the Mental Health Act. He was suffering from schizophrenia. It unfortunately resulted in his death, which is very unfortunate.

I think it is true, but the key words are, as you've just said, “its appropriate use”. We'll be looking at that particular case and looking at the broader issue.

Police have evolved. I have a great deal of sympathy. There was a study recently out of the City of Vancouver where they found that 38% of officers' calls were related to people with either mental health issues or drug issues, and in the East Hastings area it was up to 50%. Because of the way policing has evolved and society has evolved, the police are first-line responders for many health issues. Unfortunately, I think some of these deaths are on police cards that might be more appropriately housed on the health side.

You can try to find a model where you intervene with someone who's in a health crisis, where it's not the first tool. It's the tool you use before you shoot somebody.

I practise in Toronto. Certainly through the seventies we had people who were suffering from mental health problems, who came down with a garden shear in their hand, approached the officer, and they were shot and killed. Everyone cried out for some kind of less than lethal device, but that's at the high end.

Clearly there is a use in all circumstances. The case is, what's the appropriate use, and let's try to minimize, if we can, the violence.

Mr. Rick Norlock: Absolutely.

Commr Dirk Ryneveld: I would like to comment on that last question.

We have a case that is currently under investigation. Again, it's a Vancouver Granville Street incident, which happened some months ago. The officers met a mentally ill person who came at one of the officers with what was perceived to be a weapon, and he was shot to death. The reaction from the public, along with all the complaints to my office, was to ask why they didn't taser him.

Mr. Rick Norlock: I have a couple of other quick questions.

This is primarily for Mr. Ryneveld. Are you aware of the Ontario civil oversight body for policing in the province of Ontario and the methodology of its implementation should a member of the public have a complaint against the police?

Commr Dirk Ryneveld: There are various organizations within the province of Ontario for oversight. One is for the Ontario Provincial Police, of course, but the other is the SIU model, where members of the Attorney General's ministry investigate complaints for serious bodily harm and death cases. That's done by a totally independent body. The rest of the complaints are handled by police officers, etc., and they report to the oversight individual.

• (1710)

Mr. Rick Norlock: Mr. Kennedy, do you think that would be an appropriate model across Canada?

Mr. Paul E. Kennedy: In terms of the RCMP, I've already advanced the legislative model that I think is appropriate.

I think the real distinction between the model vis-à-vis the RCMP and what we see provincially is the special investigative unit, SIU, which investigates serious injury, death, and shootings, such as in that case. They're actually acting as police officers doing investigations of police officers.

I have a separate initiative I'm looking at, which is the issue of police investigating the police. That's what gave rise to the SIU model in Ontario. Can the police objectively do it? My colleague has a model where you can ask another police force to do it. We've observed the programs we've put in place to ensure impartiality. There are many ways of looking at this issue. Whether every one evolves to an SIU model, I'm not sure.

Other than SIU, the rest is to have an organization as per Judge LeSage's recommendations for civilian oversight.

Mr. Rick Norlock: I have one last quick question—I suppose there could be two.

I know Mr. Ouellet asked a question with regard to guns. We know that some police forces in the world—very few—don't carry

guns. Would you not say that a society evolves when the police don't carry weaponry or whatever? Society seems to manage.

Would either of you gentlemen believe in taking away the taser from police forces and make a recommendation, right now, that we should stop using tasers until someone has enough authority to say to use them? Would either of you two gentlemen recommend that right now?

Commr Dirk Ryneveld: I have not advocated for a moratorium on its use. I believe it has its place, but it has been used inappropriately at times, and that casts aspersions on the proper use. I would like to see it regulated, trained on, and enforced better.

Mr. Rick Norlock: Mr. Kennedy.

Mr. Paul E. Kennedy: I likewise haven't called for a moratorium on it. I think it fits with appropriate training and use. We have to bear in mind, and it may flow from the poor training, poor use, and some of the bad examples we have seen, that there is an impact on the public's acceptance.

Somehow it does provoke a response from the public that is different from a baton and a gun, believe it or not. You don't have the same outcry as to a taser. The military can blow each other to tiny little atoms, but you're not allowed to use poison gas; you're not allowed to blind someone. There is a hidden element that we have to get our minds around as well, which is public acceptance of the appropriateness.

Mr. Rick Norlock: Thank you.

The Chair: We're out of time.

We thank our witnesses very much, and we appreciate your testimony here.

We're going to suspend for 30 seconds to clear the room. We will come back immediately and go in camera.

[Proceedings continue in camera]

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