

**Report of the Advisory Panel
to the Minister of Justice
on the use of the
Conducted Energy Device
by Law Enforcement Agencies
In Nova Scotia**

June 30, 2008

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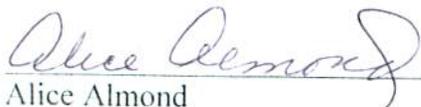
The Honourable Cecil P. Clarke
Minister of Justice and Attorney General of Nova Scotia

Mr. Minister:

On March 5, 2008 we were appointed as an advisory panel to review the *Nova Scotia Conducted Energy Report* and provide advice to you regarding the use of these devices by law enforcement agencies in this province.

We are pleased to provide this report on our findings and recommendations.

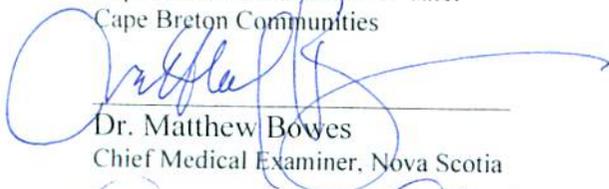
Respectfully submitted,



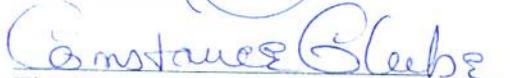
Alice Almond
Cape Breton Association for Safer
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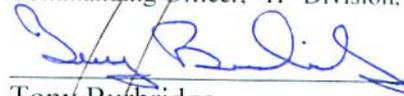
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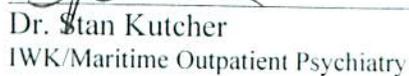
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Executive Summary

Law enforcement officers are seen by the public as key to maintaining safe, peaceful communities. Public confidence in police and other law enforcement agencies is essential; citizens must believe that officers are justified in their actions, particularly when force is used. In recent months, concerns have been raised about the use of conducted energy devices¹ (CEDs) by law enforcement agencies, and public confidence has been shaken with media reports of deaths proximal to the use of this weapon. Government agencies have responded by initiating reviews of the safety of these devices and the circumstances in which they are being used.

On December 7, 2007 Minister of Justice Cecil P. Clarke outlined a two-step process for a ministerial review of CED use and policies in Nova Scotia. In the first phase, he directed that local and cross-jurisdictional research be completed, to include data on policies and procedures respecting CED use in Nova Scotia and a review of research currently underway in other jurisdictions. The report of that investigation – *Nova Scotia Conducted Energy Device Review* – was released on March 5, 2008.

As part two of the process, the Minister struck an advisory panel with a mandate to review the report (i.e. examine the current policies and procedures governing CED use; the use of CEDs by law enforcement agencies; and the results of jurisdictional reviews outlined in the report) and provide advice to the Minister regarding the use of CEDs by law enforcement agencies in Nova Scotia.

The panel considered the following issues raised by the findings of the *Nova Scotia Conducted Energy Device Review*:

Is the authorized use of CEDs by the law enforcement community in Nova Scotia appropriate?

Should limits be placed on its use?

- Who should be authorized to use CEDs?
- Should CED use be prohibited in certain circumstances or against certain individuals?
- Should there be limits on multiple use?

Are CEDs appropriately placed in the use of force continuum?

Are the current standards governing the training and re-certification of law enforcement officers pertaining to the use of CEDs in Nova Scotia appropriate?

What specific information should be collected and what reports should be provided to improve accountability in the use of CEDs?

- Is the current reporting of CED use adequate to ensure accountability?
- Is the information gathered sufficient to guide policy?
- Is there a need for a central repository of data?

¹ Also referred to as conductive energy weapons (CEW), electronic control devices (ECD), stun gun or TASER®

- Is the Provincial Governance Standard regarding CEDs adequate?
- Are there any gaps where monitoring policy or protocol compliance on the CEDs should be enhanced?

In its deliberations, the advisory panel was limited to a consideration of the information available to date. The panel is aware that the science regarding the impact of CEDs is evolving and that provision must be made for governments to consider new research as it becomes available. The panel is also aware that a number of reviews are currently in progress, in Canada and internationally. These reviews can be expected to contribute to a greater understanding of the use of force by law enforcement agencies and assist in developing and refining policy.

Safety of the Conducted Energy Device:

Laboratory research on human subjects has demonstrated no clinically significant or lasting changes in cardiovascular or metabolic function, but the validity and reliability of the findings have been challenged on methodological grounds. Some researchers have reported serious repercussions of CED deployment in studies using pigs, but again, there has been much debate about the relevance of pig studies for the impact of CEDs on humans in real-world situations.

On the basis of the information currently available, it would appear that the risk of death or serious injury associated with the use of the CED is low. The panel is concerned about the quality of some of the research in that it does not meet the test of being independent and methodologically sound. The panel is mindful that future research findings may challenge the conclusions that it has drawn and urges that a process be put in place to systematically evaluate subsequent scientific studies as they become available and ensure that they form a critical part of an ongoing evaluation of policy respecting CED use. Accordingly:

Recommendation 1:

The panel recommends that a panel of scientific experts be appointed by the Minister of Justice with a mandate to critically and systematically review the new scientific evidence regarding the safety of the CED on an annual basis; summarize the information in a format that would be useful to policy-makers, law enforcement organizations and the public; and make recommendations to the Minister regarding any policy changes that should be considered in the light of new evidence.

Recommendation 2:

The panel further recommends that federal/provincial/territorial Ministers responsible for Justice address the current deficiencies in research and evaluation capacity to inform policy regarding the use of force by law enforcement. Either through the establishment of a new body or the enhancement of an existing body, it is recommended that jurisdictions invest in research and science to determine the impact of use of force devices and tactics. The effort should be national in scope, with links to international bodies involved in similar initiatives. The panel notes that the credibility of this body will depend on its autonomy, independence and scientific expertise.

With the science regarding the impact of the CED still evolving, the panel is aware that some have advocated a moratorium on its use pending greater certainty. It is the view of the panel (weighing the science currently available and acknowledging the risks inherent in any use of

force) that there are specific instances where the use of the CED is warranted and circumstances where it is not warranted, and that a ban on its use would increase risk to the public and law enforcement personnel.

Data regarding the use of Conducted Energy Devices:

Good information is essential for the development and evaluation of policy. The panel determined that many questions relevant to policy formulation cannot be answered because there is no central repository of data and, consequently, no comprehensive analysis of CED incidents and trends. Furthermore, this lack of data prevents the Minister of Justice from exercising his legislated oversight of law enforcement agencies with respect to the use of force.

Recommendation 3:

The panel recommends that a provincial database be created within the Department of Justice to permit a comprehensive review of use of force incidents, including CED use. The database must be sufficient to permit a trend analysis of incidents (when and how the device was used and in what circumstances); assessment of the risk logic of the officer (risk factors considered, availability of other force options); characteristics of the subjects; the mode of CED use (presentation only, use of probes, multiple use, duration of use); and outcomes. The database should be constructed in consultation with policy-makers, law enforcement agencies and civilian law enforcement oversight bodies, and with the input of experts in large database construction. The panel is recommending that data related to all use of force incidents be collected in a uniform reporting format in order that the relative frequency of use of the various methods can be compared among agencies and over time. The database should be accessible to independent researchers.

Recommendation 4:

The panel further recommends that information on use of force incidents in all provinces/territories be submitted to a central body (e.g. the Canadian Centre for Justice Statistics) in a form that will permit the construction of a standardized national database in order to allow the generation of more meaningful research and permit cross-jurisdictional comparisons of CED use. The panel believes it is important to receive input from a variety of experts when designing the data collection format and processes in order to ensure that the data will meet the requirements of a variety of audiences with an interest in the use and impact of the CED.

Assessment of use of force devices:

The technology of use of force devices is continually evolving as law enforcement agencies seek more effective means of dealing with non-compliant subjects. The panel is concerned with what appear to be inadequate processes for the evaluation of these devices.

Recommendation 5:

The panel recommends that the Province establish standards for all use of force devices and prescribe by regulation the devices that may be used by law enforcement agencies. It is further recommended that the Province monitor emerging use of force

technologies (including new versions of CEDs) to determine whether they should be accepted for use by law enforcement agencies.

The panel is aware that there are presently no globally accepted safety parameters established for the CED. Accordingly:

Recommendation 6:

It is recommended that federal, provincial and territorial authorities responsible for law enforcement establish a mechanism to ensure an independent, rigorous assessment of the risks and benefits of any device to be used by law enforcement that has the potential for causing harm.

Appropriate use of the CED:

The panel is concerned about the variation among law enforcement agencies in the circumstances in which individual policies authorize the use of CEDs.

The National Use of Force model, adopted by municipal police agencies (and with minor modification by the RCMP, Sheriff Services and Correctional Services), gives law enforcement officers considerable latitude in determining when a CED may be employed. The CED is considered an *intermediate weapon* that can be used to respond to subject behavior ranging from ‘active resistance’ to that posing a ‘risk of grievous bodily harm or death’.

The panel maintains that the use of CEDs must be considered in the context of use of force by law enforcement generally. While there is certainly support for the use of the device in situations where suspects are behaving in an aggressive, combative manner and evidently posing a risk of death or grievous bodily harm to themselves, officers or other persons, there is concern about the use of the CED as a compliance tool – in situations where subjects are not actively resisting and where less intrusive means would likely have been successful.

The panel is of the view that the current Provincial Governance Standard outlining the parameters for the use of the CED by municipal police agencies is unacceptably vague, and believes that the institution of more objective provincial usage standards would lead to greater uniformity and provide more clarity, direction and certainty. However, the panel believes that standards must be based on an analysis of utilization data that does not currently exist, as well as a comprehensive review of best practices related to CED standards.

Recommendation 7:

The panel recommends that the Department of Justice immediately commit to a full policy review to include an examination of the nature of CED use in the province and an analysis of ‘best practices’ with a view to establishing a more prescriptive set of provincial use of force standards and procedures.

Recommendation 8:

In the interim, until the policy review is completed, the panel recommends that the use of the CED be restricted to situations of ‘violent or aggressive resistance or active threat that may cause serious injury to the law enforcement officer, the subject or the public.’

Excited Delirium:

The panel gave some consideration to the phenomenon referred to as ‘excited delirium’ (ED) because of the debate that is currently in the public domain regarding the use of CEDs on individuals displaying agitated, aggressive, irrational conduct. It is recognized that law enforcement officers are often first responders to situations involving individuals suffering from mental or medical illness (including drug abuse) and the appropriate first contact response to these individuals is of great concern to them.

Law enforcement officers need guidance (policy and training) in how to respond tactically, with the goal of placing the disturbed individual in the medical system as soon as possible. The panel does not believe it is useful to stipulate the specific diagnosis of ED in policy, but rather to define the behavior (i.e. agitated, aggressive, irrational conduct) as requiring immediate medical attention.

The panel believes there is an urgent need for more research in this area: to study the phenomenon referred to as ED and its role in in-custody deaths; to determine the risks associated with various means of restraining individuals displaying ED symptoms; and, on the basis of the research results, to develop a training program for law enforcement officers to guide them in their response to individuals suffering from mental illness.

Recommendation 9:

It is recommended that the Province establish a panel of mental health and medical experts to address the issue of excited delirium and submit a separate and detailed report to the Ministers of Justice and Health.

Training:

The panel is concerned that there are significant variations in training among law enforcement agencies and that training standards appear to be arbitrary. Some agencies provide training in the use of CEDs in isolation from other use of force tactics, while other agencies provide comprehensive use of force training during the same training program. There is also concern that training curricula developed by the manufacturer TASER International are being implemented without adequate scrutiny.

The provincial Department of Justice is responsible for setting training standards. Therefore, *the panel recommends that:*

Recommendation 10:

The Department of Justice establish a provincial use of force training standard; ensure that all CED operators are certified according to this standard; and conduct audits to ensure adherence to the standard.

Recommendation 11:

Training standards for certification and recertification be uniform, based on best practices (evidence-based), with variations based on the differing operational requirements for police agencies, sheriffs and correctional officers. Training should address all use of force strategies simultaneously, using a scenario-based model focusing on decision-making so that officers routinely consider all possible alternatives when responding to incidents.² The training should include communications skills to reinforce the importance of officer presence and verbal interaction in defusing many potentially volatile incidents. The training should also address the special approaches to be taken with people apparently suffering from mental disorders. Training should be based on the provincial use of force policies, not taken directly from the manufacturer's curricula without adequate vetting.

Recommendation 12:

Accreditation of use of force instructors be based on provincial standards, not merely on the basis of criteria established by the manufacturer.

Recommendation 13:

Supervisors responsible for assessing the use of CEDs by officers under their supervision be certified in the use of CEDs according to provincial standards.

Public accountability:

Law enforcement officers work in a volatile environment. Situations can escalate very quickly and the officer must respond appropriately based on his/her perception of the situation and the context of rules and regulations governing that response. Although the public accepts that it may be necessary for law enforcement agents to resort to force in some circumstances, it is essential in a free and democratic society that the public be assured that tight controls are exercised over the use of force and that independent oversight of such incidents be guaranteed.

The accountability framework envisioned by the panel requires, in the first instance, that use of CEDs be monitored by individual law enforcement agencies. The panel is aware of steps that have been taken by law enforcement agencies to review use of force incidents internally. The current practice of supervisor review and referral of CED incident reports to specialized trainers for review and remedial training (if deemed required) appears to be an appropriate internal governance process.

According to the provisions of the *Nova Scotia Police Act*, the provincial Department of Justice, through the Public Safety Division, has overall responsibility for law enforcement in the province: setting standards for policing (including those related to the use of force and training) and auditing adherence to the standards. It is the view of the panel that the Department of Justice must play a stronger role in the use of force accountability framework.

² The panel suggests that the Department of Justice consider acquiring use of force simulators to be used in scenario-based training for law enforcement officers.

Recommendation 14:

The panel recommends that the position of Use of Force Coordinator be established within the Department of Justice, with responsibility for:

- *establishing core standards that clearly provide the parameters for use of force by law enforcement agencies (to include how, when and by whom the device may be deployed; training requirements; reporting obligations; and delineation of authorized weapons and devices);*
- *conducting process audits to ensure compliance with the standards; and*
- *monitoring the use of force by law enforcement agencies, with the assistance of the database described earlier in this report.*

The panel is concerned about the lack of civilian oversight of CED use by law enforcement. Because of the extraordinary powers given to law enforcement officers, it is essential that use of force be subject to scrutiny by a civilian body, independent of law enforcement agencies. This body must assure the public that exercise of force (all use of force, not only CED use) is reasonable, based on a set of standards governing the use of force.

As the third element of the accountability framework, the panel envisions a civilian oversight process³ which would expand upon the complaints-driven mechanism of the Nova Scotia Police Complaints Commission.

Recommendation 15:

The panel recommends the establishment of a provincial Law Enforcement Review Commission, to expand upon the current Nova Scotia Police Complaints Commission, with the authority to:

- *review, investigate or conduct a hearing into complaints regarding the use of force by law enforcement officers;*
- *audit or review the adequacy of law enforcement agency policies, procedures, guidelines and training programs regarding the use of force;*
- *cooperate and collaborate with other law enforcement civilian oversight bodies in joint investigations regarding the use of force, and submit an annual report to the Legislature through the Minister of Justice; and*
- *report to the public on the use of force on an annual basis and encourage that the report be made available to relevant interest groups.*

Informing the public:

Few police-citizen interactions have had a more powerful impact on public opinion than the tragic incident at the Vancouver airport involving the use of a CED by police. Although it is maintained that many uses of a CED have produced positive outcomes for law enforcement agencies and the community, the information regarding CED use is perceived by many citizens to be negative, biased and conflicting.

The panel is of the view that this prevailing attitude will only change when the public believe they are receiving independent, unbiased information from a credible source. As part of its role,

³ In developing this model for CED oversight, government may give consideration to an oversight and review mandate extending to matters beyond the use of force. Defining the full scope of this body is beyond the mandate of the advisory panel.

the Law Enforcement Review Commission will provide information to the public on a regular basis through an annual report on the use of force by law enforcement agencies.

Elements required for a comprehensive use of force policy:

In summary, the panel considers the following components as necessary for the appropriate use of CEDs by law enforcement agencies in Nova Scotia:

- Establishment of uniform provincial use of force standards by the Department of Justice so that law enforcement agencies are properly informed regarding approved devices, principles governing the use of force, specific policy and procedures regarding the application of force, and reporting requirements. These core standards are to be based on best practices as determined through thorough research.
- Training to be delivered according to a provincial use of force training standard determined by the Department of Justice. Training standards for certification and recertification should be uniform, based on best practices. The training curriculum should address all use of force strategies simultaneously using a scenario-based model focused on decision-making. Accreditation of use of force instructors should be based on provincial standards as opposed to criteria established by device manufacturers.
- Collection of information regarding the use of force by all law enforcement agencies, submitted in a uniform format determined by the Department of Justice. A provincial use of force database should be established to allow for independent review of use of force incidents. The database must be sufficient to permit a trend analysis of incidents (when and how the CED was used and in what circumstances); characteristics of subjects; mode of CED use (presentation only, use of probes, multiple use, duration of use); and outcomes. The database should be constructed with input from a variety of experts, law enforcement agencies, policy-makers and the public in order to ensure the data will meet the requirements of a variety of audiences with an interest in the use and impact of the CED.
- Ensuring public accountability for the use of force through independent oversight of use of force incidents. Reports should be provided to the public on a regular basis so that it is known how force is being applied, under what circumstances and against whom.
- Ongoing research on the safety of devices used by law enforcement and the impact of current policies. Government must invest in research and science in order to ensure that policies are evidence-based. The research efforts should be national in scope, with links to international bodies involved in similar initiatives.

Recommendation 16:

Given the growing public concern regarding the use of CEDs by law enforcement officers, the increased utilization of the devices and the lack of clarity of policies governing its use, the panel urges that the provincial government move to implement these recommendations as soon as possible.

INTRODUCTION:

On December 7, 2007 Minister of Justice Cecil P. Clarke outlined a two-step process for a ministerial review of conducted energy device (CED) use and policies in Nova Scotia.

In the first phase, he directed that local and cross-jurisdictional research be completed, to include data on policies and procedures respecting CED use in Nova Scotia and a review of research currently underway in other jurisdictions. The report of that review - *Nova Scotia Conducted Energy Device Review* - was released on March 5, 2008.

As part two of the process, the Minister of Justice struck an advisory panel with a mandate as follows:

Review the *Nova Scotia Conducted Energy Device Review* report; i.e. examine the current policies and procedures governing CED use; the use of CEDs by law enforcement agencies; and the results of jurisdictional reviews outlined in the report;

Attend a one-day meeting to discuss the findings and key issues emerging from the report; and

Provide advice to the Minister regarding the use of CEDs by law enforcement agencies in Nova Scotia.

Members of the advisory panel appointed by the Minister:

Alice Almond
Member of the Cape Breton Association
for Safer Cape Breton Communities

Ian Atkins
Assistant Commissioner
Commanding Officer "H" Division, RCMP

Dr. Matthew Bowes
Chief Medical Examiner, Nova Scotia

Tony Burbridge, Deputy Chief, Halifax Regional Police and
Chair of the Conducted Energy Device Steering Committee,
Canadian Association of Chiefs of Police

The Honourable Constance Glube
Retired Chief Justice of Nova Scotia

Dr. Stan Kutcher, IWK/Maritime Outpatient Psychiatry,
WHO Collaborating Centre in Mental Health Training and Policy Development,
Dalhousie University

Christopher Murphy
Chair, Department of Sociology and Social Anthropology,
Dalhousie University

The advisory panel met on four occasions during the period March 27 – June 23. For two of these meetings, presentations and technical advice regarding the CED were provided by Sergeant Dean Stienburg, Training Division, Halifax Regional Police and Inspector Troy Lightfoot, OIC Policy, Training and Development, RCMP.

Context of the Review:

As the number of CEDs in use has increased, concerns have been raised and a debate has ensued in Canada and elsewhere regarding the positive and negative implications of the use of this device. Over the past six months, reviews of CEDs have been completed by the RCMP (November 2007); Commission for Public Complaints Against the RCMP (interim report- December 2007; final report- June 2008); the Quebec Standing Advisory Committee on the Use of Force (December 2007); and the House of Commons Standing Committee on Public Safety and National Security (June 2008).

Other reviews are in progress, including: Canadian Police Research Centre review of health and safety issues, policy, training, reporting and research (August 2008), and the United States National Institute of Justice study of in-custody deaths due to use of CEDs (Fall 2008). The Braidwood Inquiry, currently underway in British Columbia, has heard from a number of experts and interested parties in its examination of the use of CEDs in that province and is expected to make recommendations by the fall of 2008.

Issues addressed by the Advisory Panel:

The panel considered the following issues raised by the findings of the *Nova Scotia Conducted Energy Device Review*:

Is the authorized use of CEDs by the law enforcement community in Nova Scotia appropriate?

Should limits be placed on its use?

- Who should be authorized to use CEDs?
- Should CED use be prohibited in certain circumstances or against certain individuals?
- Should there be limits on multiple use?

Are CEDs appropriately placed in the use of force continuum?

Are the current standards governing the training and re-certification of law enforcement officers pertaining to the use of CEDs in Nova Scotia appropriate?

What specific information should be collected and what reports should be provided to improve accountability in the use of CEDs?

- Is the current reporting of CED use adequate to ensure accountability?
- Is the information gathered sufficient to guide policy?
- Is there a need for a central repository of data?

- Is the Provincial Governance Standard regarding CEDs adequate?
- Are there any gaps where monitoring policy or protocol compliance on the CEDs should be enhanced?

In its deliberations, the advisory panel was limited to a consideration of the information available to date. The panel is well aware that the science regarding the impact of CEDs is evolving and that provision must be made for governments to consider new research as it becomes available. Other reviews currently underway can be expected to generate conclusions and recommendations that will contribute to a greater understanding of the use of force by law enforcement agencies.

Throughout the process of considering matters related to its mandate, the panel was concerned about the lack of data regarding key aspects of CED use. As a result, the panel was unable to formulate conclusions regarding all of the issues raised in the *Nova Scotia Conducted Energy Device Review* and instead offers recommendations regarding processes that should be put in place to gather information necessary to develop sound policy.

Background:

Conducted energy devices (CEDs) are part of a class of electrical weapons⁴ that deliver high voltage, low current power into a subject in order to temporarily incapacitate the individual. The CED used most frequently by law enforcement officers is known as the TASER®⁵. The electric shock can be delivered either by pressing the device directly against a person's body (so-called *touch stun* or *push stun* mode) or through probes which are fired at a distance (up to 35 feet) that attach to clothing or penetrate the skin (*probe* mode).

While earlier forms of the CED were available in the 1970s, it was not until 1999 that TASERs came into usage in Canada. TASER International indicates that its devices are used by more than 12,000 law enforcement agencies; by more than 300,000 officers in 45 countries. In Nova Scotia, 850 police officers, sheriffs and correctional officers are trained to use CEDs and there are a total of 183 devices (97-M26; 86-X26) in use⁶. The use of CEDs by law enforcement agencies in this province has increased 80% over the past three years, from 101 times in 2005 to 182 times in 2007 and the number of devices in use has increased 103% during the same period.

The CED is but one of a broad range of devices and tactics used by law enforcement when they are attempting to subdue an uncooperative subject. The options available to officers are generally described in a 'use of force continuum', ranging from the presence of the officer through to the use of lethal force. Use of force models "stress the central importance of continuous monitoring of a subject's behavior in the context of an environment that is always in flux and the requirement to apply the least amount of force necessary to gain compliance of the subject while minimizing the risk of harm to the subject, law enforcement officers and others"⁷.

The use of force by law enforcement is expected to be guided by the principles of reasonableness and proportionality. This approach is confirmed in Section 25(1) of the Criminal Code of Canada which prescribes that a law enforcement officer may use as much force *as deemed necessary* for the enforcement and administration of the law. The onus is on the officer to show that, in any particular situation, the degree of force was justified and not excessive.

In recent years increasing concern has been expressed regarding the use of the CED by law enforcement officers. In October 2007, four members of the RCMP Richmond BC detachment, in attempting to subdue an individual behaving in an erratic manner at the Vancouver International Airport, deployed a CED. Almost immediately following the impact of the device, the individual lost consciousness and subsequently died.

In November 2007, Howard Hyde, an individual suffering from schizophrenia, died in custody thirty hours after he was exposed to a CED application by Halifax Regional Police officers in attempting to subdue him. While no causal connection has been established between the CED

⁴ The CED is variously referred to as a device or weapon. The June 2008 report of the House of Commons Standing Committee on Public Safety and National Security refers to the CED as a 'taser gun' which denotes a firearm. Clarification is required regarding the categorization of the weapon.

⁵ In Nova Scotia only TASER Models M26 and X26 are used.

⁶ Nova Scotia (2008) *Conducted Energy Device Review*. p.30 (hereinafter *CED Review*)

⁷ *CED Review* p.14

use and the death of Mr. Hyde⁸, the event created concern regarding the use of CEDs and prompted the Nova Scotia Minister of Justice to order a review.

These and other well-publicized incidents have fueled public fear and anger. It is not known to what extent these sensational cases reflect overall usage patterns, but it is clear that the public are demanding more information about the safety of the devices and the situations in which this powerful weapon is being deployed.

The development of sound public policy regarding the use of force by law enforcement, and the public confidence this inspires, require a considered and thorough examination of these key issues.

Safety of the Conducted Energy Device (CED):

Physiological impact of the CED:

The panel is aware that the body of research regarding the safety of CEDs has grown steadily in recent years⁹. Much of that research has concluded that the risk of serious injury associated with the use of the device is low; typical injuries are minor burns and abrasions that heal within two to three days and do not require hospitalization¹⁰. In a recent multidisciplinary study of 962 field applications of the CED in the United States during the period 2005-2007, no or minimal injury (injuries requiring outpatient care or no care) occurred in 99.7 percent of subjects¹¹. TASER International estimates there have been 680,000 voluntary training exposures, with no deaths resulting.

Laboratory research on human subjects has demonstrated no clinically significant or lasting changes in cardiovascular or metabolic function¹². However, some researchers have debated these findings and have been critical of the results on the grounds that the sample sizes are too small to draw definitive conclusions and that the research has been conducted in laboratories (and thus does not properly reflect real world situations). Another significant criticism is that the majority of studies have been conducted on healthy individuals and may not be reflective of the impact of the devices on vulnerable populations; for example, the frail, those suffering from serious mental and physical health conditions, and those under the influence of alcohol or other substances. Concerns have also been raised that much of this research has been funded by TASER International.

Researchers have reported potentially serious metabolic derangements in pigs that have been exposed to prolonged discharges from CEDs¹³. However, there has been much debate about the

⁸ The matter is currently under investigation by the Medical Examiner's office.

⁹ Much of the research is still in its early stages and new information can be expected in the future that will provide greater clarity regarding the issue of safety.

¹⁰ Stuart, B. and Lawrence, C. (2007) *Report on Conducted Energy Weapons and Excited Delirium Syndrome*. RCMP. p.3

¹¹ Bozeman, W. et al (2007) *Injury Profile of Electrical Conducted Energy Weapons*. *Annals of Emergency Medicine*. 50(3)

¹² A number of recent human studies are reported in *AcadEmergMed* (2007) 14(5).

¹³ For example, Dennis, A. et al (2007) *Acute effects of TASER X26 discharges in a swine model*. *Journal of Trauma Injury Infection and Critical Care*. 63(3):581-590 and Nanthakumar, K. et al (2006) *Cardiac electrophysiological consequences of neuromuscular incapacitating device discharges*. *Journal of American College of Cardiology*, 48(4):798-804.

relevance of pig studies to the impact of the CED on humans¹⁴. Although pigs are thought to be similar to humans for the purposes of some physiological studies, some scientists have raised objections to the use of pigs in the specific context of this area of research.

While to date there has been no medical research to establish a causal relationship between CED use and mortality, the panel notes that the science regarding the impact of CEDs is still evolving.

Safety of the CED relative to other use of force options:

The CED exists along a continuum of devices and tactics that are applied to people against their will (in order to subdue them or bring them into custody) and are known to potentially cause harm. Risk of death and other serious injury associated with CED use (based on available research^{15,16}) appears to be low. The 2007 report of the RCMP and the Ontario Police College indicated there have been approximately 270 deaths worldwide proximal to the use of a CED, including 17 deaths in Canada since 1999¹⁷. Following a review of the relevant medical literature, the authors concluded that “despite an ongoing body of independent analysis, no researcher has proven either a causal relationship between a conducted energy weapon (CEW) and in-custody death, or a viable physiologic method for a CEW application facilitating in-custody death.”¹⁸ To date in Canada, no report of a coroner or medical examiner has listed the CED as a cause of death or a contributory factor.

The panel is aware, however, that the safety of CED use cannot be guaranteed, just as the safety of any intervention by law enforcement personnel requiring the use of force cannot be ensured. But the key issue for policy-makers is one of balancing the risks and benefits (to the officer, subject and public), both unique to the CED and relative to other use of force options (both lethal and less-than-lethal).

CED use is undoubtedly safer than the use of deadly force. However, the safety of the CED relative to other ‘intermediate devices’ (e.g. the baton and oleoresin capicum (OC) spray) is subject to debate. So too is the issue of whether the risk of injury or death to suspects, law enforcement officers or bystanders would be greater or less if the CED were removed from the array of responses available to law enforcement.

The role of the CED in reducing injuries to both law enforcement officers and citizens has been cited in the literature¹⁹, but critics have noted that most of these statistics derive from weak

¹⁴ Many of the pig studies have been conducted with electrical discharge directly to the chest cavity or heart; in some studies the current is applied for an extended period (e.g. 40 seconds). These conditions would not apply when CEDs are used by law enforcement officers in real world situations.

¹⁵ Bozeman, W.P. et al. (2007) *Injury Profile of TASER Electrical Conducted Weapons*. Presented at the meeting of the American College of Emergency Physicians Research Forum. Seattle, WA.

¹⁶ Home Office Scientific Development Branch (2005) *The X-26 TASER – a review of the experimental and operational data related to an assessment of the medical implications of use*. DSTL/PUB20752.

¹⁷ These numbers are approximations, many derived from media reports, as there is no central repository for collecting this information. Recent media reports suggest a total of 21 deaths in Canada.

¹⁸ Stuart, B. and Lawrence, C. (2007) *Report on Conducted Energy Weapons and Excited Delirium Syndrome*. RCMP. P.3

¹⁹ The TASER International website reports studies noting injury reductions ranging from 24%/suspects, 23% /officers in Columbus Ohio to 68%/suspects, 93%/officers in Cape Coral Florida following the adoption of the CED by law enforcement agencies.

research designs (e.g. failing to control for other relevant factors) that reduce confidence in the validity of results²⁰. It is important to note that there is always potential for injury (to subjects, law enforcement officers and bystanders) when these officers deal with non-compliant subjects. When viewed in the context of other use of force tactics, the CED has been reported as resulting in fewer injuries. A study conducted in the United Kingdom concluded that the CED has “a lower injury potential than the current use of unarmed defensive tactics, baton strikes and deployment of police dogs”.²¹ A recent study of use of force by law enforcement agencies in South Carolina and Florida concluded that “officers and citizens are at greatest risk from injury when they engage in physical struggles, particularly when the suspect is actively or violently resisting arrest, and that CEDs and OC spray reduce the probability of injury.”²²

On the basis of the information currently available, it would appear that the risk of death or serious injury associated with the use of the CED is low. The panel is concerned about the quality of some of the research in that it does not meet the test of being independent and methodologically sound. The panel is mindful that future research findings may challenge the conclusions that it has drawn and urges that a process be put in place to systematically evaluate subsequent scientific studies as they become available and ensure that they form a critical part of an ongoing evaluation of policy respecting CED use. Accordingly:

Recommendation 1:

The panel recommends that a panel of scientific experts be appointed by the Minister of Justice with a mandate to critically and systematically review the new scientific evidence regarding the safety of the CED on an annual basis; summarize the information in a format that would be useful to policy-makers, law enforcement organizations and the public; and make recommendations to the Minister regarding any policy changes that should be considered in the light of new evidence.

Recommendation 2:

The panel further recommends that federal/provincial/territorial Ministers responsible for Justice address the current deficiencies in research and evaluation capacity to inform policy regarding the use of force by law enforcement. Either through the establishment of a new body or the enhancement of an existing body, it is recommended that jurisdictions invest in research and science to determine the impact of use of force devices and tactics. The effort should be national in scope, with links to international bodies involved in similar initiatives. The panel notes that the credibility of this body will depend on its autonomy, independence and scientific expertise.

With the science regarding the impact of the CED still evolving, the panel is aware that some have advocated a moratorium on its use pending greater certainty. It is the view of the panel (weighing the science currently available and acknowledging the risks inherent in any use of force) that there are specific instances where the use of the CED is warranted and circumstances

²⁰ Adams, K and Jennison, V. (2007) *What we do not know about police use of Tasers*. Policing. 30(3), 447-465.

²¹ Bleetman, A. and Steyn, R. (2003) *The Advanced Taser: A Medical Review*. University of Birmingham. www.taser.com/research/science/documents/Bleetman%20Taser%20safety.pdf

²² Smith, M.R. et al (2007) *The impact of conducted energy devices and other types of force and resistance on officer and suspect injuries*. Policing. 30(3):423-446.

where it is not warranted, and that a ban on its use would increase risk to the public and law enforcement personnel.

Data regarding the use of Conducted Energy Devices:

Good information is essential for the development and evaluation of policy. How is the CED currently being used – in what situations – and against which persons? What injuries have resulted – to law enforcement officers, suspects, citizens? Has there been an increase or decrease in the use of the CED relative to other use of force options? Many questions relevant to policy formulation cannot be answered because there is no central repository of data and, consequently, no comprehensive analysis of CED incidents and trends.

According to the provisions of the *Nova Scotia Police Act*²³ the Minister of Justice is responsible for ensuring “an adequate and effective level of policing” throughout the province. In order to discharge this responsibility, the Minister requires information regarding the operation of policing agencies, including the use of force. Currently, information concerning each CED incident is collected by individual law enforcement agencies (police, sheriffs and correctional services) but there is no central repository. Therefore, the Minister is not in a position to exercise legislated oversight of law enforcement agencies with respect to the use of force.

Recommendation 3:

The panel recommends that a provincial database be created within the Department of Justice to permit a comprehensive review of use of force incidents, including CED use. The database must be sufficient to permit a trend analysis of incidents (when and how the device was used and in what circumstances); assessment of the risk logic of the officer (risk factors considered, availability of other force options); characteristics of the subjects; the mode of CED use (presentation only, use of probes, multiple use, duration of use); and outcomes. The database should be constructed in consultation with policy-makers, law enforcement agencies and civilian law enforcement oversight bodies, and with the input of experts in large database construction. The panel is recommending that data related to all use of force incidents be collected in a uniform reporting format in order that the relative frequency of use of the various methods can be compared among agencies and over time. The database should be accessible to independent researchers.

Recommendation 4:

The panel further recommends that information on use of force incidents in all provinces/territories be submitted to a central body (e.g. the Canadian Centre for Justice Statistics) in a form that will permit the construction of a standardized national database in order to allow the generation of more meaningful research and permit cross-jurisdictional comparisons of CED use. The panel believes it is important to receive input from a variety of experts when designing the data collection format and processes in order to ensure that the data will meet the requirements of a variety of audiences with an interest in the use and impact of the CED.

²³ RSNS. 2004, c.31, s.1

Assessment of use of force devices:

The technology of use of force devices is continually evolving as law enforcement agencies continue to seek more effective means of dealing with non-compliant subjects. The panel is concerned with what appear to be inadequate processes for the evaluation of these devices. Under the *Nova Scotia Police Act*, the governor-in-council may make regulations prescribing requirements respecting equipment used by police agencies. But such regulations have not been promulgated in Nova Scotia and, as a result, decisions respecting the type of devices to be used are left to individual law enforcement agencies.

In view of the nature of these devices, and their capacity to inflict pain or other harm on individuals, it is essential that government, as the civilian authority, (and not the police) be responsible for assessing and regulating the CED (as well as other use of force devices and tactics).

Recommendation 5:

The panel recommends that the Province establish standards for all use of force devices and prescribe by regulation the devices that may be used by law enforcement agencies. It is further recommended that the Province monitor emerging use of force technologies (including new versions of CEDs) to determine whether they should be accepted for use by law enforcement agencies.

The panel is aware that there are presently no globally accepted safety parameters established for the CED²⁴. Accordingly:

Recommendation 6:

It is recommended that federal, provincial and territorial authorities responsible for law enforcement establish a mechanism to ensure an independent, rigorous assessment of the risks and benefits of any device to be used by law enforcement that has the potential for causing harm²⁵.

Appropriate use of the CED:

The *CED Review* notes that the use of CEDs by law enforcement agencies in this province has increased substantially (80%) over the past three years from 101 times in 2005 to 182 times in 2007, and the number of devices in use has increased 103% during the same period. No information was provided in the review regarding the nature of the situations in which the device was used, nor the increases in the number of officers certified to use the CED over the three year period, nor global changes in other use of force devices or tactics. Accordingly it was not possible for the panel to conclude whether or not overall CED use in Nova Scotia is appropriate, nor which proportion of the usage is appropriate and which is inappropriate.

²⁴ i.e. no scientifically tested, independently verified and globally accepted safety parameters.

²⁵ This task could be undertaken by the body charged with research into the safety of use of force devices and tactics, described in a previous section of this report.

There is considerable variation among agencies in the circumstances in which individual policies authorize the use of CEDs.

The National Use of Force model, adopted by municipal police agencies (and with minor modification by the RCMP, Sheriff Services and Correctional Services) in Nova Scotia, gives law enforcement officers considerable latitude in determining when a CED may be employed. The CED is considered an ‘intermediate weapon’ that can be used to respond to subject behavior ranging from active resistance to that posing a risk of grievous bodily harm or death.

The Provincial Governance Standard indicates the CED

“is only to be discharged in the execution of police officer duty, and where risk from aggression, violence *or other reasonable conditions* exist given the articulation of circumstances are in the interests of public or officer safety” and “in keeping with *police agency approved* use of force policy and training”.

The 2007 report of the Commissioner for Public Complaints Against the RCMP states that “the CEW²⁶ has a role in specific situations that require less than lethal alternatives to reduce risk of injury or death to both the officer and the individual when use of force is required. In other words, it is an option in cases where lethal force would otherwise have been considered”.²⁷

Amnesty International has expressed concern that “there have been a disturbing number of cases (in Canada) where police officers have used tasers inappropriately when there was no serious risk either to themselves or others present”.²⁸ Amnesty acknowledges that it is appropriate that police extend their use of non-lethal weapons to avoid deaths or injuries from more lethal weapons. However the organization states that “electro-shock weapons are particularly easy to abuse as they are portable, simple to deploy and have the capacity to inflict severe pain at the push of a button, often without leaving marks”. Concerns have been raised that the CED is being used more frequently in situations where less intrusive use of force tactics could be used. The CED is a very versatile weapon: it can be used from a distance, it is usually immediately effective (when operated correctly) and its effects are generally short-lived. Some question whether it is this very versatility that has led to overuse or misuse (e.g. multiple or prolonged firing of the CED at a subject).

Recent Canadian reports have addressed this issue by clarifying when the CED should be used. For example, the 2007 Quebec report²⁹ recommends that police officers may use CEDs in order to:

- Control an individual whose resistance presents a significant risk for his or her own safety, that of the officers or another person; or to
- Protect themselves or another person from an imminent threat of bodily harm.

The interim report of the RCMP Public Complaints Commissioner recommended that the RCMP immediately restrict the use of the conducted energy weapon by classifying it as an ‘impact

²⁶ ‘conducted energy weapon’ – terminology used by the RCMP, synonymous with ‘conducted energy device’

²⁷ Commission for Public Complaints Against the Royal Canadian Mounted Police. *RCMP Use of the Conducted Energy Weapon: Interim Report*. Ottawa: 2007, p.2

²⁸ Amnesty International. *Canada: Inappropriate and excessive use of tasers*. AI index:AMR 20/002/2007.

²⁹ Standing Advisory Committee on the Use of Force. (2007) *Analysis and recommendations for a Quebec police practice on the use of conducted energy devices*. Quebec. www.msp.gouv.qc.ca/police/publicat/Taser/rapport_Taser.pdf.

weapon' in the use of force model and allow its use only in those situations where an individual is behaving in a manner classified as being 'combative' or posing a risk of 'death or grievous bodily harm' to the officer, themselves or the general public.

The guidelines developed by the Police Executive Research Forum³⁰ state that "CEDs should only be used against persons who are actively resisting or exhibiting active aggression, or to prevent individuals from harming themselves or others".

The 2005 report of the Canadian Police Research Centre concluded "it would be unwise and counter-productive for any police service or government body to develop policies and procedures that *explicitly specify* in what kinds of circumstances a CED may or may not be used".³¹ This is because the variety and complexity of the circumstances that may confront an officer make it impossible for any policy to encompass every scenario.

The panel is aware that there are differing views regarding where the CED should be situated on the use of force continuum.

The panel is of the view that the use of CEDs must be considered in the context of use of force by law enforcement generally. With the risk of death or serious harm inflicted as a result of CED use being low, there is support for the use of the device in situations where suspects are behaving in an aggressive, combative manner and evidently posing a risk of death or grievous bodily harm to themselves, law enforcement officers or other persons.

The panel is also of the view that because the CED is used as an alternative to other forms of 'less than lethal' force, mortality or serious injury is not the only outcome of CED use that should be of concern. The application of force can result in many types of physical and psychological trauma and should never be used casually. In this context, the panel is concerned about the issue of so-called usage creep – particularly the use of the CED as a compliance tool in situations where subjects are not actively resisting the officer and where less intrusive means would likely have been successful. It should be reiterated that, in the absence of comprehensive data regarding CED use, the panel was unable to determine definitively the extent of 'usage creep' in Nova Scotia.

The panel considered the issue of whether law enforcement officers are given adequate guidance in current policy to enable them to make appropriate decisions regarding the use of the CED. Policies governing the use of lethal weapons explicitly specify the circumstances in which they may be deployed. By contrast, current policy classifies the CED as an 'intermediate weapon' that may be used in a very broad set of circumstances to subdue subjects displaying behaviours ranging from 'active resistance' to 'risk of grievous bodily harm or death'. The panel is concerned that the breadth of this categorization offers insufficient guidance to law enforcement officers and, in providing so much room for individual interpretation, encourages usage creep.

³⁰ Cronin, J.M. and Ederheimer, J.A. (2006) *Conducted Energy Devices: Development of Standards for Consistency and Guidance*. US Dept. of Justice Office of Community Oriented Policing Services and Police Executive Research Forum. Washington.

³¹ Manojlovic, D., Hall, C., Laur, D., Goodkey, S., Laurence, C., Shaw, R., St-Amour, S., Neufeld, A. and Palmer, S. *Review of Conducted Energy Devices*. Canadian Police Research Centre: 2005. p.vi

The panel is aware that the public perceive the CED to be a powerful, aggressive device and demand assurance that it will not be used by law enforcement officers on subjects who do not appear to pose a serious danger to the public, law enforcement agents or themselves. There was considerable concern about the variation in policies and CED usage among the various law enforcement agencies in Nova Scotia, and the implications of a very broad Provincial Governance Standard that permits significant variation in practice³².

The panel is of the view that the current Provincial Governance Standard is unacceptably vague and that the institution of more objective provincial usage standards would lead to greater uniformity and provide more clarity, direction and certainty. However, the panel believes that standards must be based on an analysis of utilization data that does not currently exist, as well as a comprehensive review of best practices related to CED standards.

Recommendation 7:

The panel recommends that the Department of Justice immediately commit to a full policy review to include an examination of the nature of CED use in the province and an analysis of ‘best practices’ with a view to establishing a more prescriptive set of provincial use of force standards and procedures.

The panel has previously recommended that a process be instituted immediately to collect information that would permit an analysis of CED usage, in the context of other use of force strategies.

Despite the acknowledged absence of meaningful data to inform policy, there are concerns that the Provincial Governance Standard, as it is currently written, is inadequate to guide the actions of law enforcement officers.

Recommendation 8:

In the interim, until the policy review is completed, the panel recommends that the use of the CED be restricted to situations of ‘violent or aggressive resistance or active threat that may cause serious injury to the law enforcement officer, the subject or the public’.

Excited delirium:

The panel gave some consideration to the phenomenon referred to as ‘excited delirium’ (ED) because of the debate that is currently in the public domain regarding the use of CEDs on individuals displaying agitated, aggressive, irrational conduct. Some law enforcement policies, notably those of the RCMP, make specific reference to ED and detail special procedures to be followed when dealing with individuals purportedly suffering from ED.

³² *The CED Review* noted, for example, that there are significant differences in the various operational procedures regarding prior notification of supervisors; situations in which the CED may/may not be used; response to individuals suffering from ‘excited delirium’; involvement of medical personnel post-deployment of the CED; multiple use of the CED.

The panel is aware that the term ED itself is controversial: that there is disagreement in the medical community about the diagnosis of ED and that there is little scientific literature regarding the impact of the CED on individuals displaying ED symptoms.

Frequently it is impossible for law enforcement officers to distinguish between various types of behaviours; i.e. a subject who is merely aggressive and belligerent from one who is in a psychotic, drug-induced or delirious state. The panel believes it is inappropriate to expect these officers to ‘diagnose’ a psychiatric or medical condition at the scene of an incident. Officers must respond to the behavior rather than attempt to diagnose a psychiatric or medical illness.

It is recognized that law enforcement officers are often first responders to situations involving individuals suffering from mental or medical illness (including drug abuse) and the appropriate first contact response to these individuals is of great concern to them.

Law enforcement officers need guidance (policy and training) in how to respond tactically, with the goal of placing the disturbed individual in the medical system as soon as possible. The panel does not believe it is useful to stipulate the specific diagnosis of ED in policy, but rather to define the behavior (i.e. agitated, aggressive, irrational conduct) as requiring immediate medical attention.

The panel is aware that the Mental Health Mobile Crisis Team³³ (composed of a mental health professional and a police officer) is available to respond to emergency calls in the area policed by Halifax Regional Police from 1:00 p.m. until 1:00 a.m. daily. The team also provides a 24/7 phone triage and assistance service throughout the Capital District Health area. In rural areas throughout the province it is suggested that a 7/24 1-800 assistance number could be established where police officers can obtain real-time advice when responding to a mental health crisis.

As with many issues related to the use of CEDs, the panel believes there is an urgent need for more research in this area: to study the phenomenon referred to as ED and its role in in-custody deaths; to determine the risks associated with various means of restraining individuals displaying ED symptoms; and, on the basis of the research results, to develop a training program for law enforcement officers to guide them in their response to individuals suffering from mental illness.

Recommendation 9:

It is recommended that the Province establish a panel of mental health and medical experts to address the issue of excited delirium and submit a separate and detailed report to the Ministers of Justice and Health.

Training:

The skills required to deal with uncooperative subjects are complex, ranging from the ability to exercise good judgment in appraising situations; decision-making to determine which response would likely be most effective (weighing the environmental context, the characteristics of the subject(s) and the law enforcement officer’s own capabilities); and the technical mastery of skills

³³ This is a joint operation of the Department of Health, Capital District Health Authority, Izaak Walton Killam Health Centre and the Halifax Regional Police.

ranging from communication through to use of weaponry. The quality of training a law enforcement officer receives as a recruit and throughout his/her career is key to determining whether or not the officer will perform their duties appropriately and effectively.

The Provincial Governance Standard for municipal police agencies requires that CED operators receive training from a “recognized and certified police or subject matter instructor specific to the police agency-approved CED” and that recertification is “not to exceed every 36 months”. CED operators for Sheriff Services receive eight hours of training and are required to be recertified “at least every 36 months at the discretion of the Director of Sheriff Services”. Correctional Services CED operators receive sixteen hours of training, with refresher training of four hours every six months, followed by an 8-hour recertification course annually.

A detailed analysis of the content and effectiveness of the training curriculum was beyond the scope of the panel’s work. However, the panel is of the view that the content of training programs must be evidence-based; i.e. founded on research that demonstrates what content, length, delivery style and refresher frequency are most effective. Furthermore, persons with mental health disorders have unique needs and training should address appropriate responses to these needs.³⁴

Accordingly, the panel is concerned that there are significant variations in training among law enforcement agencies and that training standards appear to be arbitrary. Some agencies provide training in the use of CEDs in isolation from other use of force tactics, while other agencies provide comprehensive use of force training during the same training program. There is also concern that training curricula developed by the manufacturer TASER International are being implemented without adequate scrutiny.

The provincial Department of Justice is responsible for setting training standards and therefore *the panel recommends that:*

Recommendation 10:

The Department of Justice establish a provincial use of force training standard; ensure that all CED operators are certified according to this standard; and conduct audits to ensure adherence to the standard.

Recommendation 11:

Training standards for certification and recertification be uniform, based on best practices (evidence-based), with variations based on the differing operational requirements for police agencies, sheriffs and correctional officers. Training should address all use of force strategies simultaneously, using a scenario-based model focusing on decision-making so that officers routinely consider all possible alternatives when responding to incidents.³⁵ The training should include communications skills to reinforce the importance of officer presence and verbal interaction in defusing many potentially volatile incidents. The training should also address the special approaches

³⁴ The panel was aware that there are mental health training programs available and that these are provided to some law enforcement officers. However, they are not shared among all law enforcement agencies.

³⁵ The panel suggests that the Department of Justice consider acquiring use of force simulators to be used in scenario-based training for law enforcement officers

to be taken with people apparently suffering from mental disorders. Training should be based on the provincial use of force policies, not taken directly from the manufacturer's curricula without adequate vetting.

Recommendation 12:

Accreditation of use of force instructors be based on provincial standards, not merely on the basis of criteria established by the manufacturer.

Recommendation 13:

Supervisors responsible for assessing the use of CEDs by officers under their supervision be certified in the use of CEDs³⁶ according to provincial standards.

Public accountability:

The demanding environment in which law enforcement officers function was acknowledged in the *CED Review*:

“Law enforcement officers work in a very volatile environment. Situations can escalate very quickly and the officer must respond appropriately based on his/her perception of the situation and in the context of rules and regulations governing that response. When confrontations occur, the best outcome is one in which the situation is brought under control and no one is injured. However, the nature of law enforcement work is such that risk of harm to officer, subject, or bystanders can never be completely eliminated.”³⁷

Article 4 of the United Nations Statement of Basic Principles states that:

“law enforcement officers, in carrying out their duty, shall as far as possible apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result”.

Although the public accepts that it may be necessary for law enforcement agents to resort to force in some circumstances, it is essential in a free and democratic society that the public be assured that tight controls are exercised over the use of force and that independent oversight of such incidents be guaranteed.

The Provincial Governance Standard for municipal police officers requires that officers discharging a CED must file a written report with the police agency as soon as reasonably possible and the report is to be reviewed by a supervisor.

All police agencies require the completion of a report following any use of a CED; the Controlled Response Report (municipal police agencies) and Form 3996 (RCMP). Correctional Services staff are required to complete a Taser Operator Report, and the Sheriffs an Incident Occurrence Report.

³⁶ For example, it is the policy of RCMP 'H' Division that the reviewing supervisor be certified, as well as the supervisor who authorizes others to deploy the CED.

³⁷ *CED Review* p.9

Reports are reviewed by supervisors. In some municipal police agencies reports are also examined by CED trainers to identify whether remedial training is required. Following the review by the supervising officer to audit CED use relative to policy, the RCMP require that CEW reports be submitted to a CEW Master Instructor (to determine adherence to national policy, proper articulation of grounds and identification of training deficiencies), after which they are forwarded to Ottawa for inclusion in the national database and review by the National Use of Force Unit.

Following the deployment of a CED by Correctional Services staff, the on-duty captain of the correctional facility conducts an operational debrief and reviews all staff reports. The superintendent of the facility conducts a full investigation and submits the report of the investigation to the Master Trainer and the Director, Correctional Services in Halifax.

Sheriff Services requires that an Incident Occurrence Report be submitted to a Sheriff Supervisor following the deployment of a CED.

The Provincial Governance Standard does not require municipal police agencies to file reports with the provincial Department of Justice and there is currently no capacity to prepare an annual report on the use of CEDs by law enforcement officers in Nova Scotia.

The Department of Justice Public Safety Division is mandated to determine compliance with Provincial Governance Standards through a system of audits, reviews and inspections. To date, no audits have been completed regarding the use of CEDs.

The accountability framework envisioned by the panel requires, in the first instance, that use of CEDs be monitored by individual law enforcement agencies. The panel is aware of steps that have been taken by law enforcement agencies to review use of force incidents internally. The current practice of supervisor review and referral of CED incident reports to specialized trainers for review and remedial training (if deemed required) appears to be an appropriate internal governance process.

According to the provisions of the *Nova Scotia Police Act*, the provincial Department of Justice, through the Public Safety Division, has overall responsibility for law enforcement in the province: setting standards for policing (including those related to the use of force and training) and auditing adherence to the standards. It is the view of the panel that the Department of Justice must play a stronger role in the use of force accountability framework.

Recommendation 14:

The panel recommends that the position of Use of Force Coordinator be established within the Department of Justice, with responsibility for:

- *establishing core standards that clearly provide the parameters for use of force by law enforcement agencies (to include how, when and by whom the device may be deployed; training requirements; reporting obligations; and delineation of authorized weapons and devices);*
- *conducting process audits to ensure compliance with the standards; and*

- *monitoring the use of force by law enforcement agencies, with the assistance of the database described earlier in this report.*

The panel is concerned about the lack of civilian oversight of CED use by law enforcement. Because of the extraordinary powers given to law enforcement officers, it is essential that use of force be subject to scrutiny by a civilian body, independent of law enforcement agencies. This body must assure the public that exercise of force (all use of force, not only CED use) is reasonable, based on a set of standards governing the use of force.

The panel is aware that a citizen with a concern regarding the behavior of a police officer (including allegations of misuse of force) may lodge a complaint with the Nova Scotia Police Complaints Commission (for municipal forces) and with the RCMP Public Complaints Commission (for RCMP detachments). As reported in the CED Review, there have been two complaints associated with the use of a CED by municipal police officers since 2004, and four complaints lodged in connection with the RCMP use of CEDs in Nova Scotia.³⁸ While it is important that citizens have recourse to an independent body to investigate complaints, the panel does not believe a complaints-driven process is sufficient to ensure an appropriate level of civilian oversight of use of force by law enforcement.

As the third element of the accountability framework, the panel envisions a civilian oversight process³⁹ which would expand upon the complaints-driven mechanism of the Nova Scotia Police Complaints Commission.

Recommendation 15:

The panel recommends the establishment of a provincial Law Enforcement Review Commission, to expand upon the current Nova Scotia Police Complaints Commission, with the authority to:

- *review, investigate or conduct a hearing into complaints regarding the use of force by law enforcement officers;*
- *audit or review the adequacy of law enforcement agency policies, procedures, guidelines and training programs regarding the use of force;*
- *cooperate and collaborate with other law enforcement civilian oversight bodies in joint investigations regarding the use of force, and submit an annual report to the Legislature through the Minister of Justice; and*
- *report to the public on the use of force on an annual basis and encourage that the report be made available to relevant interest groups.*

³⁸ CED Review p.33.

³⁹ In developing this model for CED oversight, government may give consideration to an oversight and review mandate extending to matters beyond the use of force. Defining the full scope of this body is beyond the mandate of the advisory panel.

Informing the public:

Law enforcement officers are seen by the public as key to maintaining a safe, peaceful society. Public confidence in the police and other law enforcement agencies is essential; citizens must believe that officers are justified in their actions, particularly when force is used.

Few police-citizen interactions have had a more powerful impact on public opinion than the tragic incident at the Vancouver airport involving the use of a CED by police. Although it is maintained that many uses of a CED have produced positive outcomes for law enforcement agencies and the community, the information regarding CED use is perceived by many citizens to be negative, biased and conflicting.

The panel is of the view that this prevailing attitude will only change when the public believe they are receiving independent, unbiased information from a credible source. As part of its role, the Law Enforcement Review Commission will provide information to the public on a regular basis through an annual report on the use of force by law enforcement agencies.

Elements required for a comprehensive use of force policy:

In summary, the panel considers the following components as necessary for the appropriate use of CEDs by law enforcement agencies in Nova Scotia:

- Establishment of uniform provincial use of force standards by the Department of Justice so that law enforcement agencies are properly informed regarding approved devices, principles governing the use of force, specific policy and procedures regarding the application of force, and reporting requirements. These core standards are to be based on best practices as determined through thorough research.
- Training to be delivered according to a provincial use of force training standard determined by the Department of Justice. Training standards for certification and recertification should be uniform, based on best practices. The training curriculum should address all use of force strategies simultaneously using a scenario-based model focused on decision-making. Accreditation of use of force instructors should be based on provincial standards as opposed to criteria established by device manufacturers.
- Collection of information regarding the use of force by all law enforcement agencies, submitted in a uniform format determined by the Department of Justice. A provincial use of force database should be established to allow for independent review of use of force incidents. The database must be sufficient to permit a trend analysis of incidents (when and how the CED was used and in what circumstances); characteristics of subjects; mode of CED use (presentation only, use of probes, multiple use, duration of use); and outcomes. The database should be constructed with input from a variety of experts, law enforcement agencies, policy-makers and the public in order to ensure the data will meet the requirements of a variety of audiences with an interest in the use and impact of the CED.

- Ensuring public accountability for the use of force through independent oversight of use of force incidents. Reports should be provided to the public on a regular basis so that it is known how force is being applied, under what circumstances and against whom.
- Ongoing research on the safety of devices used by law enforcement and the impact of current policies. Government must invest in research and science in order to ensure that policies are evidence-based. The research efforts should be national in scope, with links to international bodies involved in similar initiatives.

Conclusions:

In the context of its analysis of the findings of the *Nova Scotia Conducted Energy Device Review* and the formulation of the *elements required for a comprehensive use of force policy*, the panel offers the following responses to the key issues it was asked to consider.

Is the authorized use of CEDs by the law enforcement community in Nova Scotia appropriate? Is the Provincial Governance Standard regarding CEDs adequate?

With the science regarding the impact of the CED still evolving, the panel is aware that some have advocated a moratorium on its use pending greater certainty. It is the view of the panel (weighing the science currently available and acknowledging the risks inherent in any use of force) that there are specific instances where the use of the CED is warranted and circumstances where it is not warranted, and that a ban on its use would increase risk to the public and law enforcement personnel.

The panel is concerned about the variation in policies and CED usage among the various law enforcement agencies in Nova Scotia, and the implications of a very broad Provincial Governance Standard that permits significant variation in practice.

The panel is of the view that the current Provincial Governance Standard is unacceptably vague and that the institution of more objective provincial usage standards would lead to greater uniformity and provide more clarity, direction and certainty.

Should limits be placed on its use?

- ***Who should be authorized to use CEDs?***
- ***Should CED use be prohibited in certain circumstances or against certain individuals?***
- ***Should there be limits on multiple use?***

Many questions relevant to policy formulation cannot be answered because there is no central repository of data on CED use. No information was provided in the *Nova Scotia CED Review* regarding the nature of situations in which the device has been used, nor the increases in the number of law enforcement officers certified to use the CED over the three year period examined, nor global changes in other use of force devices or tactics. Accordingly it is not possible for the panel to conclude whether or not overall CED use in Nova Scotia is appropriate, nor which proportion of the usage is appropriate and which is inappropriate.

The panel is recommending that a provincial database be established within the Department of Justice to permit a comprehensive review of use of force incidents, including CED use. This information is essential for the development and evaluation of policy, including the nature of limits to be placed on the use of CEDs.

Are CEDs appropriately placed in the use of force continuum?

The CED is considered by all Nova Scotia law enforcement agencies to be an ‘intermediate weapon’ on the use of force continuum. This classification permits CED use in a broad range of circumstances from subjects displaying ‘active resistance’ to those posing a ‘risk of grievous bodily harm or death’.

The panel is concerned that the breadth of this categorization offers insufficient guidance to law enforcement officers and, in providing so much room for individual interpretation, encourages usage creep. The panel is aware that the public perceive the CED to be a powerful, aggressive device and demand assurance that it will not be used by law enforcement officers on subjects who do not appear to pose a serious danger to the public, law enforcement agents or themselves.

While the panel is concerned about the broad nature of the current standard, there was an acknowledgement that any new standard must be based on an analysis of CED utilization data that does not currently exist, as well as a comprehensive review of best practices. This was clearly outside the scope of the mandate provided to the panel. Accordingly the panel is recommending that the Department of Justice immediately conduct a full policy review to evaluate the current standard.

Such a review will take time and many panel members were concerned about the inadequacy of the current Provincial Governance Standard in guiding the actions of law enforcement officers. Therefore, in the interim, until the policy review is completed, the panel recommends that the use of the CED be more narrowly prescribed; i.e. to situations of ‘violent or aggressive resistance or active threat that may cause serious injury to the law enforcement officer, the subject or the public’.

Are the current standards governing the training and re-certification of law enforcement officers in Nova Scotia appropriate?

The panel is concerned that there are significant variations in training among law enforcement agencies and that training standards appear to be arbitrary. Some agencies provide training in the use of CEDs in isolation from other use of force tactics, while other agencies provide comprehensive use of force training during the same training program. There is also concern that training curricula developed by the manufacturer TASER International are being implemented without adequate scrutiny.

A detailed analysis of the content and effectiveness of the training curriculum was beyond the scope of the panel’s work. However, the panel is of the view that the content of training programs must be evidence-based; i.e. founded on research that demonstrates what content, length, delivery style and refresher frequency are most effective. Accordingly, the panel recommends a process for establishing a provincial use of force training standard.

What specific information should be collected and what reports should be provided to improve accountability in the use of CEDs?

- ***Is the current reporting of CED use adequate to ensure accountability?***
- ***Is the information gathered sufficient to guide policy?***
- ***Is there a need for a central repository of data?***
- ***Are there any gaps where monitoring policy or protocol compliance on the CEDs should be enhanced?***

Information:

Good information is essential for the development and evaluation of policy. Throughout the process of considering matters related to its mandate, the panel was concerned about the lack of information regarding key aspects of CED use.

According to the provisions of the *Nova Scotia Police Act*, the Minister of Justice is responsible for ensuring “an adequate and effective level of policing” throughout the province. As a result of the lack of information, the panel has concluded that the Minister is not in a position to exercise legislated oversight of law enforcement agencies with respect to the use of force.

The panel is recommending that a provincial database be created within the Department of Justice immediately to gather information from law enforcement agencies which will permit a comprehensive review of all use of force incidents. The panel recommends that the database be constructed with input from a broad range of experts and that it be accessible to independent researchers, in order to expand the current knowledge base regarding the use of force. The panel is also recommending that information on use of force incidents in all provinces/territories be submitted to a national database in order to allow the generation of more meaningful research and permit cross-jurisdictional comparisons of CED use.

Public Accountability:

Although the public accepts that it may be necessary for law enforcement agents to use force in certain circumstances, it is essential in a free and democratic society that the public be assured that tight controls are exercised over the use of force and that independent oversight of such incidents be guaranteed.

The panel has concluded that the current accountability framework is inadequate.

The current practice of law enforcement agencies to review use of force incidents internally (by supervisors and specialized trainers) appears to be an appropriate internal governance process. However, the panel is recommending that the Department of Justice play a stronger role in the use of force accountability framework. Accordingly, it is recommended that the position of Use of Force Coordinator be established immediately with a mandate to establish core standards, conduct audits to ensure compliance and monitor the use of force by law enforcement agencies.

As the third element of the accountability framework, the panel envisions a civilian oversight process (provincial Law Enforcement Review Commission) which would expand upon the complaints-driven mechanism of the Nova Scotia Police Complaints Commission.

Recommendation 16:

Given the growing public concern regarding the use of CEDs by law enforcement officers, the increased utilization of the devices and the lack of clarity of policies governing its use, the panel urges that the provincial government move to implement these recommendations as soon as possible.

APPENDIX

List of Recommendations

The advisory panel recommends the following:

Safety of the Conducted Energy Device (CED):

Recommendation 1:

A panel of scientific experts be appointed by the Minister of Justice with a mandate to critically and systematically review the new scientific evidence regarding the safety of the CED on an annual basis; summarize the information in a format that would be useful to policy-makers, law enforcement organizations and the public; and make recommendations to the Minister regarding any policy changes that should be considered in the light of new evidence.

Recommendation 2:

Federal/provincial/territorial Ministers responsible for Justice address the current deficiencies in research and evaluation capacity to inform policy regarding the use of force by law enforcement. Either through the establishment of a new body or the enhancement of an existing body, it is recommended that jurisdictions invest in research and science to determine the impact of use of force devices and tactics. The effort should be national in scope, with links to international bodies involved in similar initiatives. The panel notes that the credibility of this body will depend on its autonomy, independence and scientific expertise.

Data regarding the Use of CEDs:

Recommendation 3:

A provincial database be created within the Department of Justice to permit a comprehensive review of use of force incidents, including CED use. The database must be sufficient to permit a trend analysis of incidents (when and how the device was used and in what circumstances); assessment of the risk logic of the officer (risk factors considered, availability of other force options); characteristics of the subjects; the mode of CED use (presentation only, use of probes, multiple use, duration of use); and outcomes. The database should be constructed in consultation with policy-makers, law enforcement agencies and civilian law enforcement oversight bodies, and with the input of experts in large database construction. The panel is recommending that data related to all use of force incidents be collected in a uniform reporting format in order that the relative frequency of use of the various methods can be compared among agencies and over time. The database should be accessible to independent researchers.

Recommendation 4:

Information on use of force incidents in all provinces/territories be submitted to a central body (e.g. the Canadian Centre for Justice Statistics) in a form that will permit the construction of a standardized national database in order to allow the generation of more meaningful research and permit cross-jurisdictional comparisons of CED use. The panel believes it is important to receive input from a variety of experts when designing the data collection format and processes in order to ensure that the data will

meet the requirements of a variety of audiences with an interest in the use and impact of the CED.

Assessment of Use of Force Devices:

Recommendation 5:

The Province establish standards for all use of force devices and prescribe by regulation the devices that may be used by law enforcement agencies. It is further recommended that the Province monitor emerging use of force technologies (including new versions of CEDs) to determine whether they should be accepted for use by law enforcement agencies.

Recommendation 6:

Federal, provincial and territorial authorities responsible for law enforcement establish a mechanism to ensure an independent, rigorous assessment of the risks and benefits of any device to be used by law enforcement that has the potential for causing harm.

Appropriate Use of the CED:

Recommendation 7:

The Department of Justice immediately commit to a full policy review to include an examination of the nature of CED use in the province and an analysis of ‘best practices’ with a view to establishing a more prescriptive set of provincial use of force standards and procedures.

Recommendation 8:

In the interim, until the policy review is completed, the use of the CED be restricted to situations of ‘violent or aggressive resistance or active threat that may cause serious injury to the law enforcement officer, the subject or the public.’

Excited Delirium:

Recommendation 9:

The Province establish a panel of mental health and medical experts to address the issue of excited delirium and submit a separate and detailed report to the Ministers of Justice and Health.

Training:

Recommendation 10:

The Department of Justice establish a provincial use of force training standard; ensure that all CED operators are certified according to this standard; and conduct audits to ensure adherence to the standard.

Recommendation 11:

Training standards for certification and recertification be uniform, based on best practices (evidence-based), with variations based on the differing operational requirements for police agencies, sheriffs and correctional officers. Training should address all use of force strategies simultaneously, using a scenario-based model focusing on decision-making so that officers routinely consider all possible alternatives

when responding to incidents.⁴⁰ The training should include communications skills to reinforce the importance of officer presence and verbal interaction in defusing many potentially volatile incidents. The training should also address the special approaches to be taken with people apparently suffering from mental disorders. Training should be based on the provincial use of force policies, not taken directly from the manufacturer's curricula without adequate vetting.

Recommendation 12:

Accreditation of use of force instructors be based on provincial standards, not merely on the basis of criteria established by the manufacturer.

Recommendation 13:

Supervisors responsible for assessing the use of CEDs by officers under their supervision be certified in the use of CEDs according to provincial standards.

Public Accountability:

Recommendation 14:

The position of Use of Force Coordinator be established within the Department of Justice, with responsibility for:

- *establishing core standards that clearly provide the parameters for use of force by law enforcement agencies (to include how, when and by whom the device may be deployed; training requirements; reporting obligations; and delineation of authorized weapons and devices);*
- *conducting process audits to ensure compliance with the standards; and*
- *monitoring the use of force by law enforcement agencies, with the assistance of the database described earlier in this report.*

Recommendation 15:

A provincial Law Enforcement Review Commission be established, to expand upon the current Nova Scotia Police Complaints Commission, with the authority to:

- *review, investigate or conduct a hearing into complaints regarding the use of force by law enforcement officers;*
- *audit or review the adequacy of law enforcement agency policies, procedures, guidelines and training programs regarding the use of force;*
- *cooperate and collaborate with other law enforcement civilian oversight bodies in joint investigations regarding the use of force, and submit an annual report to the Legislature through the Minister of Justice; and*
- *report to the public on the use of force on an annual basis and encourage that the report be made available to relevant interest groups.*

⁴⁰ The panel suggests that the Department of Justice consider acquiring use of force simulators to be used in scenario-based training for law enforcement officers.

Recommendation 16:

The provincial government move to implement these recommendations as soon as possible, given the growing public concern regarding the use of CEDs by law enforcement officers, the increased utilization of the devices and the lack of clarity of policies governing its use.