

When Does Taser Use Become Torture?

Submission to the Thomas R. Braidwood, Q.C., Study Commission [on Police use of Conducted Energy Weapons in British Columbia]

Ted Palys, PhD
Professor
School of Criminology
Simon Fraser University

I thank the Commissioner for accepting this submission; I do not request an in-person appearance.

I am a Professor of Criminology at Simon Fraser University. My primary areas of expertise include research methodology, evaluation research, and the links between research and policy; I have taught courses at SFU in these areas for more than 25 years. I do not claim any particular expertise with respect to conducted energy weapons – commonly referred to as Tasers – or their use. I have done research with different police forces in my career (the RCMP and Vancouver Police Department), but do not claim any extensive expertise with respect to policing. My interest in Taser-use policy arises from my academic interests/expertise and my concerns as a citizen for the relationship that exists in our society among the State, its police, and the citizenry.

Part of my reason for writing at this time is the media attention being given to the question of whether Tasers are safe when used in the array of criminal justice contexts (e.g., federal, provincial and municipal police forces, transit security police). While this is an important question, I am concerned that an emphasis on the safety issue – which, at some level, is a purely scientific question – is being confounded with and diverting attention away from the more social/political question of whether/when/how we permit Taser use. It is this latter question I wish to address.

The Honourable Ujjal Dosanjh, current Member of Parliament and former Attorney General of the British Columbia, recently testified to the Commission that, when he was Attorney General of BC, he had approved Tasers with the understanding that they would be used only as a last resort:

I was told that it would be used absolutely sparingly. It would be used in situations where the person would be assaultive or combative, a threat to himself or herself, or to the police, or to some third person or persons.¹

However, as he also noted, there has been extensive “usage creep” since that time. Indeed, various security/policing authorities have provided the media with numerous examples: the Dziekanski homicide at the Vancouver airport; Kelowna RCMP taser-ing an elderly gentleman who refused to remain at the scene when he was being cited by an officer for double-parking; the

¹ *In the Matter of the Thomas R. Braidwood, Q.C., Commissions of Inquiry under the Public Inquiry Act*, Sbc 2007, c. 9; Transcribed proceedings, Day 6, p.51, lines 5-9.

Vancouver police jolting accused persons and offenders in custody – even in cases where they have been handcuffed – when they have been uncooperative; Translink security zapping Skytrain passengers who attempt to leave after being caught with no valid fare. These uses of electric shock offend our sensibilities because we cannot believe that such force – described by some as the most painful feeling they have ever experienced – is used not only for such trivial incidents as double-parking and avoiding a \$2.50 fare, but also because of how Taser policy seems to have changed from being a weapon of last resort to a way of securing compliance from uncooperative persons.

The implications of this use are frightening; Tasers and their predecessor – the cattle prod – are commonly used in third world countries by regimes that practice torture. To allow police in Canada to use Tasers or cattle prods for anything other than situations of extreme threat to the officer or a third party, invites the police to use the Taser as an instrument of fear and intimidation. Such a practice would be a violation of human rights and inconsistent with international standards to which Canada subscribes.

Canada is a signatory to the UN *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which was adopted by the UN General Assembly via resolution 39/46 on 10 December 1984. The convention describes torture in Article 1 as follows:

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Do Tasers cause “severe pain or suffering”? Yes. Is that pain and suffering inflicted “intentionally”? Yes. Are the police “public officials” who are using Tasers acting in their official capacities? Yes. Are Tasers currently being used in Canada for the purposes of punishing persons for non-cooperation and/or to intimidate or coerce persons to behave in a manner the police expect? If media accounts are accurate, yes.

I encourage the Commissioner to recommend that the Governments of British Columbia and Canada stop allowing police forces the use of the Taser for anything other than situations of extreme and tangible threat to an officer, the violent person him/herself, or to a third party. Taser use also should be forbidden when the prospective victim is already in custody (whether in a police facility or handcuffed) or unarmed. To allow otherwise opens the door to its abuse as an instrument of torture.