

**THOMAS R. BRAIDWOOD, Q.C., COMMISSION OF INQUIRY  
INTO THE DEATH OF ROBERT DZIEKANSKI**

---

**WRITTEN SUBMISSIONS OF  
CORPORAL DALE CARR**

---

**SUGDEN, McFEE & ROOS LLP**  
Barristers and Solicitors  
700 - 375 Water Street  
Vancouver B.C. V6B 5N3

**E. DAVID CROSSIN, Q.C.**  
**EMILIE E. A. LeDUC**  
Counsel for Corporal Dale Carr

## Table of Contents

	<b>Page</b>
A. INTRODUCTION	1
B. TERMS OF REFERENCE AND JURISDICTIONAL BOUNDARIES	2
C. ANALYTICAL FRAMEWORK: LAW AND POLICY	5
D. SUMBISSIONS	8
i. The Officers, Their Ranks and Positions	8
ii. The Provision of Information to Sergeant Lemaitre	9
iii. The Decision Not to Correct the Inaccurate Information	17
iv. The November 30, 2007 Media Advisory	20
v. Conclusion	22

## A – INTRODUCTION

1. It is submitted that the standards of propriety, professionalism, and reasonableness against which this Commission must measure Corporal Carr's actions are those standards established by the legal principles and policy which govern Corporal Carr in his position as member of the R.C.M.P.; and, in particular, in his position as a media relations officer within that organization.
2. In order to make findings of misconduct against Corporal Carr, the Commissioner must be satisfied that Corporal Carr engaged in improper or unprofessional behavior or bad management in his role as a member of the R.C.M.P. in relation to the events and circumstances of and relating to Mr. Dziekanski's death.

*Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440 at para. 53, 151 D.L.R. (4th) 1 (Cory J., for the Court) [*Krever*]<sup>1</sup>

OIC 92/2008 (re Thomas R. Braidwood Commission of Inquiry), s. 4(2)(b)

3. It is evident that the R.C.M.P. is a hierarchical, paramilitary organization and its members are bound by rules regarding command structure and confidentiality. In our submission, at all times during the investigation into the circumstances of Mr. Dziekanski's death Corporal Carr conducted himself in good faith, and he properly followed R.C.M.P. protocol and procedure. There is no reasonable evidentiary basis to safely conclude Corporal Carr is guilty of wrongful conduct.

---

<sup>1</sup> We have not reproduced the referenced authorities as they are before the Commission.

## **B - TERMS OF REFERENCE AND JURISDICTIONAL BOUNDARIES**

4. It is submitted that the Commissioner – after his review of the whole of the evidence in the light of the Terms of Reference and governing legal authorities – may find it unnecessary to make any findings in relation to Corporal Carr’s conduct in order to carry out the mandate of the Commission.

5. The Commissioner is empowered by the *Public Inquiry Act*, S.B.C. 2007 to make findings of misconduct against a person, or to make a report that alleges misconduct, if such findings fall within the Terms of Reference and are necessary to “effectively and efficiently” fulfill the mandate of the commission. This reflects the statements of the Supreme Court of Canada in *Krever*, where Cory J. (for the Court) wrote that the principal focus of a public inquiry is not to make findings of misconduct, and that a commission of inquiry should only make findings of misconduct against a person in those circumstances where such findings are required to carry out the mandate of the inquiry.

*Public Inquiry Act*, S.B.C. 2007, c. 9, s. 21(1)(d)

*Krever*, at para. 53

see also: *Rigaux v. British Columbia (Commission of Inquiry into the Death of Vaudreuil – Gove Inquiry)*, 51 B.C.L.R. (3d) 228, 155 D.L.R. (4th) 716

6. The Province of British Columbia established two commissions of inquiry following the death of Mr. Robert Dziekanski at the Vancouver International Airport (the “Airport”): the first to inquire into and report on the use of conducted energy weapons (“CEW’s”) by constables of police forces of B.C. and authorized persons other than the R.C.M.P.; and, the second to inquire into and report on the death of Mr. Dziekanski.

**OIC 92/2008 (re Thomas R. Braidwood Commission of Inquiry), s. 2**

7. The Terms of Reference for the second inquiry are:

(2) The terms of reference of the inquiries to be conducted by the hearing and study commission under 2(2) are as follows:

(a) to conduct hearings, in or near the City of Vancouver, into the circumstances of and relating to Mr. Dziekanski's death;

(b) to make a complete report of the events and circumstances of and relating to Mr. Dziekanski's death, not limited to the actual cause of death;

(c) to make recommendations the commissioner considers necessary and appropriate;

(d) to submit a report to the Attorney General on or before a date to be determined by the Attorney General in consultation with the Commissioner.

**OIC 92/2008 (re Thomas R. Braidwood Commission of Inquiry), s. 4(2) [emphasis added]**

8. The Commissioner has been mandated to make a complete report of the events and circumstances of Mr. Dziekanski's death. The Commissioner has articulated the Commission's mandate in his ruling dated June 9, 2009 wherein he stated: "We are embarked on a narrowly-focused inquiry into the events at the Vancouver International Airport on October 13/14, 2007, leading to the death of Mr. Dziekanski".

**Ruling of Thomas R. Braidwood, Q.C., Commissioner, June 9, 2009,  
at para. 51**

9. Further, it is submitted that it appears to be common ground that as a Provincial board of inquiry, the Commission does not have jurisdiction to inquire into the administration, management, or operations of the R.C.M.P.; nor to make findings of misconduct against any member, including Corporal Carr, as a proxy for the policies and procedures of the R.C.M.P.

*A.G. of Que. And Keable v. A.G. of Can. et al.*, [1979] 1 S.C.R. 218, 1978 CanLII 23 (S.C.C.) (headnote) and at 242

*O'Hara v. British Columbia*, [1987] 2 S.C.R. 591, 1987 CanLII 45 (S.C.C.)

*Scowby v. Glendinning*, [1986] 2 S.C.R. 226

10. In addition, the Commissioner has concluded he does not consider an inquiry into the R.C.M.P.'s investigation into Mr. Dziekanski's death to be part of his mandate. The Commission has heard evidence in relation to the information that the four attending R.C.M.P. officers who were involved in the confrontation subsequently provided to the Integrated Homicide Investigation Team ("IHIT"). The reception of this evidence was not for the purpose of inquiring into the R.C.M.P. investigation, but, rather, for the purpose of aiding the Commission in assessing the credibility of the four officers with respect to their accounts of the events and circumstances of and relating to Mr. Dziekanski's death.

**Ruling of Thomas R. Braidwood, Q.C., Commissioner, June 9, 2009, at para. 49**

11. Corporal Carr had a role in the R.C.M.P. investigation into the death of Mr. Dziekanski as a media relations officer. Corporal Carr was not involved in the events at the Airport which lead to Mr. Dziekanski's death. It is submitted that while the Commissioner has received the evidence of Corporal Carr with respect to the dissemination of information, the Commissioner may find it unnecessary to make findings in relation to Corporal Carr's conduct. Corporal Carr's conduct in the days, weeks, and months after the fact arguably does not add to an understanding of the actual events and circumstances leading to Mr. Dziekanski's death; nor does it appear the conduct of Corporal Carr can form the foundations for recommendations aimed at avoiding a repetition of this event.

## **C – ANALYTICAL FRAMEWORK: LAW AND POLICY**

12. Corporal Carr's conduct must be governed and assessed within the framework of the legal and professional obligations particular to both his status as a member of the R.C.M.P. and to his position as a media relations officer within that organization. All members of the R.C.M.P. are bound by rules regarding command structure, loyalty, and confidentiality; and members are guided in their duties and obligations by the policies and procedures set out in the R.C.M.P.'s Operational Manual and policy guides.

13. The R.C.M.P. is a hierarchical organization and its members are required to obey every lawful order of a superior member, or instruction received as such.

***Royal Canadian Mounted Police Regulations, 1988, SOR/88-361  
[RCMP Regulations 1988], Part III "Code of Conduct", s. 40***

***Royal Canadian Mounted Police Act, R.S., 1985, c. R-10 [RCMP Act],  
s.14 and Schedule***

14. Members of the R.C.M.P. are also subject to a codified duty of loyalty: unless authorized by law, members are prohibited by regulation from publicly criticizing or complaining about the administration, operation, objectives or policies of the R.C.M.P.

***RCMP Regulations 1988, Part III "Code of Conduct", s. 41***

***RCMP Operational Manual, s. 27.1 – Media Relations, Art. 1.3***

15. Further, members of the R.C.M.P. are required to comply with strict rules regarding confidentiality. For example, each member of the R.C.M.P. is required by statute to take the Oath of Secrecy before commencing his or her duties.

***RCMP Act, s.14 and Schedule***

16. The hierarchical nature of the R.C.M.P. and the organization's rules regarding command structure, loyalty and confidentiality, are also reflected in the R.C.M.P.'s policies and procedures governing media relations.

17. For example, the R.C.M.P. Operational Manual and Spokesperson's Guide direct that if an incident is determined to be of more than local or routine in scope, the divisional media relations officer is to be involved in establishing and carrying out the media strategy with respect to that incident.

***RCMP Operational Manual, s. 27.3 – Media Inquiries, Art. 1.1-1.3.***

***The RCMP and the Media: A Spokesperson's Guide, p. 15***

18. R.C.M.P. policy directs that members are to be open and honest with the media and to provide the media with prompt, courteous and impartial service.

***The RCMP and the Media: A Spokesperson's Guide, p. 1***

***RCMP Operational Manual, s. 27.1 – Media Relations, Art. 4.1***

19. This policy, however, is to be balanced and considered against other R.C.M.P. policies, such as those directing that: members are not to express personal opinions and are not to criticize the R.C.M.P.; members are to protect the integrity of criminal investigations; members are not to discuss ongoing investigations; members are not to release information that interferes with investigations; members are not to release information that results in publicity that could affect the course of a trial; members are not to compromise the confidentiality or privacy of an investigation; and members are not to release information that would compromise investigations or individual rights.

***The RCMP and the Media: A Spokesperson's Guide, p. 1-2***

***RCMP Operational Manual, s. 27.1 – Media Relations, Art. 1.1 – 1.3 and 4.1***

20. It is clear on the evidence that final authority with respect to what information is issued in media releases lies with the team commander or the officer in charge of the investigation: media relations officers are required to have the approval of the officer in charge before releasing any

information. This structure is in place for obvious reasons; the officer in charge must assess the effect the release of information will have on an investigation.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 10, l. 23-29**

**Cpl. Carr in cross-examination by Ms. Roberts, April 22, 2009, p. 37, l. 7-15**

**Supt. Rideout in cross-examination by Mr. Rosenbloom, May 6, 2009, p. 57, l. 20-28**

21. Media relations officers are not privy to all the details of an investigation. Investigators, not media relations officers, make the decisions about what information is to be provided to the public, and then supply that information to the media relations officers for release.

**Cpl. Carr in chief by Mr. Vertlieb, p. 25, l. 6-13**

**Cpl. Carr in cross-examination by Mr. Rosenbloom, p. 61, l. 6-13**

**Sgt. Lemaitre in chief by Mr. Vertlieb, p. 46, l. 32-36**

22. As with all R.C.M.P. members, media relations officers are required to obey every lawful order of a superior member, or instruction received as such. This, of course, also includes orders or instructions received as such in relation to specific media strategies.

**D – SUBMISSIONS**

23. It is respectfully submitted the evidence demonstrates that at all times during the investigation into the circumstances of Mr. Dziekanski's death, Corporal Carr carried out his duties in good faith and followed R.C.M.P. protocol and procedure.

**i. The Officers, Their Ranks and Positions**

24. In October 2007, Corporal Carr was the full-time media relations officer attached to the IHIT.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 4, l. 17-20**

25. In October 2007, Sergeant Lemaitre was the Acting Non-Commissioned Officer in Charge of "E" Division Strategic Communications. Sergeant Lemaitre was the most senior R.C.M.P. media officer in the Province of British Columbia: he was superior to Corporal Carr in both rank and position.

**Sgt. Lemaitre in cross-examination by Mr. Kosteckyj, April 21, 2009, p.54, l. 19-23**

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 29, l. 28-31**

**Cpl. Carr in cross-examination by Mr. Kosteckyj, April 22, 2009, p. 41, l. 35-46**

26. Superintendent Rideout was the officer in charge the IHIT from June 2003 through to June 2008. He became the team commander of the investigation into the death of Mr. Dziekanski approximately one month after the investigation began.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 33, l. 38**

**Supt. Rideout in chief by Mr. Vertlieb, May 6, 2009, p. 1, l. 28-37; p. 2, l. 28-30; p. 5, l. 33-36**

**Supt. Rideout in cross-examination by Mr. Hira, May 6, 2009, p. 51, l. 11-22**

27. There is no doubt that beginning in October 2007, and throughout the investigation, Superintendent Rideout and other senior R.C.M.P. officers discussed, shaped, and / or directed the R.C.M.P.'s media response to the investigation into Mr. Dziekanski's death. These senior officers included: Assistant Commissioner Al MacIntyre; Chief Superintendent Dale McGowan, the Operations officer for the Lower Mainland District; Inspector Bill Fordy, the Operations Officer for IHIT; Staff Sergeant John Ward, the Staff Sergeant in charge of "E" Division Communications; as well as senior staff at National Headquarters.

**Supt. Rideout in chief by Mr. Vertlieb, May 6, 2009, p. 13, l. 38-46; p. 14, l. 4-17**

**Supt. Rideout in cross-examination by Ms. Pastine, May 6, 2009, p. 82, l. 9-29**

**Supt. Rideout in cross-examination by Mr. Kosteckyj, September 22, 2009, p. 83, l. 6-20**

**Assistant Commissioner Al MacIntyre in chief by Mr. McGowan, September 22, 2009, p. 49, l. 38-41**

**Chief Supt. Dick Bent in chief by Mr. Vertlieb, September 22, 2009, p. 10, l. 13-29; p. 11, l. 44-46**

**Chief Supt. Dick Bent in cross-examination by Mr. Kosteckyj, September 22, 2009, p. 24, l. 3-15 and 21-42**

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 25, l. 18-47; p. 26, l. 1-41**

**Exhibit 138: *Series of Emails between Supt. Wayne Rideout and other RCMP parties***

**Exhibit 176: *Email dated Nov. 5/07 – BENT to McGOWAN***

**Exhibit 177: *Email dated Nov. 5/07 – BENT to MacINTYRE***

**Exhibit 179: *Email dated Nov. 5/07 – from MacINTYRE to McGOWAN and CARR to MacINTYRE "et al"***

**ii. The Provision of Information to Sergeant Lemaitre**

28. In our submission, the evidence does not support the proposition that Corporal Carr unreasonably provided Sergeant Lemaitre with inaccurate information about the incident involving Mr. Dziekanski at the Airport on October 13 and 14, 2007. Corporal Carr acted in

good faith and in accordance with R.C.M.P. policy and procedure in providing certain information to Sergeant Lemaitre concerning the investigation into the circumstances of Mr. Dziekanski's death. In addition, it is reasonable to conclude Corporal Carr was not Sergeant Lemaitre's sole source of information regarding the circumstances of the investigation into Mr. Dziekanski's death, nor, of course, did Corporal Carr supply or vet every statement made by Sergeant Lemaitre to the media during the initial media briefings on October 14th through 16th, 2007.

29. At approximately 2:30 a.m. on October 14, 2007, Corporal Carr received a call from Sergeant Attew, the initial team leader from the IHIT, who explained that there had been an in-custody death involving the use of a CEW at the Airport.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 4, l. 25-36; p. 6, l. 1-4**

30. Corporal Carr recognized that an in-custody death of a man at the Airport would likely garner attention at the provincial, national, and even international level. In accordance with R.C.M.P. policy and procedure, Corporal Carr involved "E" division headquarters by notifying Sergeant Lemaitre of the incident and by asking that Sergeant Lemaitre join Corporal Carr in Richmond to assist in dealing with the matter.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 5, l. 39-47; p. 6, l. 12-20**

***RCMP Operational Manual, s. 27.3 – Media Inquiries, Art. 1.1-1.3***

***The RCMP and the Media: A Spokesperson's Guide, p. 15***

**Sgt. Lemaitre in cross-examination by Mr. Kostcky, p. 54, l. 12-13**

31. At approximately 4:30 a.m., Corporal Carr arrived at the Airport. There, he surveyed the area in which the incident had occurred. He saw Corporal Paul Hoivik and observed forensic identification R.C.M.P. officers working in the area. The four R.C.M.P. officers involved in the incident with Mr. Dziekanski were no longer at the scene.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 6, l. 40-46; p. 7, l. 11-16 and 29-36**

32. Corporal Carr left the scene, stopped at the Airport detachment, and then carried on to the Richmond R.C.M.P. detachment, where he arrived at approximately 6 a.m.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 7, l. 36-42**

33. Sergeant Lemaitre met Corporal Carr at the Richmond detachment shortly before 6:30 a.m. and accompanied Corporal Carr into the boardroom which was functioning as the briefing room, or command centre, of the IHIT investigation into Mr. Dziekanski's death.

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 32, l. 6-22**

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 18, l. 23-24; p. 9, 24-27; p. 8, l. 39-47**

34. Sergeant Lemaitre sat beside Corporal Carr in the briefing room.

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 33, l. 27-31**

**Sgt. Lemaitre in cross-examination by Mr. Harris, April 21, 2009, p. 61, l. 14-16**

**Cpl. Carr in cross-examination by Mr. Kosteckyj, April 21, 2009, p. 44, l. 33-38**

35. The atmosphere in the briefing room that morning was "very dynamic" as the IHIT established its command centre. There were approximately twelve people in the room, including members of the IHIT and a civilian electronic file administrator.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 18, l. 9-15 and 23-31; p. 12, l. 16-18; p. 9, l. 36-43**

36. At some point during the briefing, Corporal Robinson entered the room and spoke with another officer. The evidence is not clear as to whether Corporal Robinson spoke to the entire

room. Both Corporal Carr and Sergeant Lemaitre gave evidence that they have never formally met Corporal Robinson nor any other of the officers who were involved in the confrontation with Mr. Dziekanski.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 16, l. 17-21; p. 8, l. 31-33; p. 9, l. 45-47; p. 13, l. 11-40**

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 33, l. 8-14 and 39-44; p. 41, l. 19-20**

**Cpl. Carr in cross-examination by Mr. Kosteckyj, April 22, 2009, p. 45, l. 8-13; p. 47, l. 27-39**

**Cpl. Carr in cross-examination by Mr. Harris, April 22, 2009, p. 52, l. 12-28; p. 54, l. 23-32**

37. While in the briefing room, Corporal Carr very quickly looked at the Pritchard video on Mr. Pritchard's camera monitor, and then watched approximately one minute of the Pritchard video on a laptop monitor with Sergeant Lemaitre.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 17, l. 22-46**

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 34, l. 13-26**

38. At 7:23 a.m. Corporal Carr was briefed on the events at the Airport involving Mr. Dziekanski. Corporal Carr took notes of this briefing which state:

- throwing stuff around @ info booth
- male agitated
- grabbed computer
- YVR Security attempted to intervene
- police RCMP arrived (four mbrs)
- swinging article @ MBRS
- MBRS attempt to control verbally
- Non compliance
- CEW used
- Once on ground continued to fight
- Monitored – security w/ first aid. First aid
- 4 sep vehicles – 4 mbrs attend

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 12, l. 2-10**

**Exhibit 99: *Handwritten Notes of Corporal Dale Carr***

39. Corporal Carr gave evidence that he writes notes during briefings so that he can take those notes to the team commander, discuss the information contained in his notes with the team commander, and obtain directions from the team commander about whether or not the information may be released. On October 14, 2007, in accordance with his normal practice and R.C.M.P. policy, Corporal Carr reviewed his briefing notes with Sergeant Attew, the team commander at the time, and obtained approval to share the information contained in those notes with the media.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 12, l. 2-10; p. 10, l. 23-29; p. 19, l. 25-30**

**Cpl. Carr in cross-examination by Ms. Roberts, April 22, 2009, p. 37, l. 7-15**

40. Corporal Carr then discussed the information in his notes with Sergeant Lemaitre.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 19, l. 25-30; p. 22, l. 33-42**

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 35, l. 46-47 and p. 36, l. 1**

41. Sergeant Lemaitre did not take any notes during his conversations with Corporal Carr the morning of October 14, 2007 and Sergeant Lemaitre was not provided with a written script for his media appearances.

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 32, l. 31-33; p. 41, l. 25-26**

42. Shortly before 8 a.m., Corporal Carr and Sergeant Lemaitre left the Richmond detachment in separate vehicles and went to the Airport to meet with the media.

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 37, l. 6-14 and 25-30**

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 19, l. 31-33**

43. Upon arrival at the Airport, Corporal Carr and Sergeant Lemaitre briefly discussed the information which had been approved for release. From this point through to when Sergeant

Lemaitre ceased to be the spokesperson on October 16, 2007, Corporal Carr did not update or provide Sergeant Lemaitre with any additional information.

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 34, l. 8-12;  
p. 50, l. 1-6**

**Sgt. Lemaitre in cross-examination by Ms. Roberts, April 21, 2009,  
p. 51, l. 34-37**

44. Sergeant Lemaitre was the lead R.C.M.P. spokesperson with respect to the investigation into Mr. Dziekanski's death for approximately the first 48 hours of the investigation: October 14, 2007; October 15, 2007; and the morning of October 16, 2007.

**Cpl. Carr in cross-examination by Mr. Rosenbloom, April 22, 2009,  
p. 56, l. 24-36; p. 42, l. 4-6.**

**Sgt. Lemaitre in cross-examination by Mr. Rosenbloom, April 21,  
2009, p. 62, l. 42-47; p. 65, l. 19-25.**

45. Around 8 a.m. on October 14, 2007, Sergeant Lemaitre began speaking with the media, first in scrums at the Airport and later in interviews with individual media outlets. Sergeant Lemaitre also prepared and posted a media release on the R.C.M.P. website.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 20, l. 7-39**

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009 p. 37, l. 6-38; p.  
32, l. 34-37**

**Exhibit 98: RCMP Media/Communications Release dated October  
14, 2007**

46. During this period, Corporal Carr assumed a support position. Corporal Carr accompanied Sergeant Lemaitre to the initial Airport scrums on October 14, 2007, and answered phone calls and scheduled interviews while Sergeant Lemaitre spoke with the media.

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 33, l. 27-31  
and 45-47; p.32, l. 24-26; p.34, l. 1-13.**

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 22, l. 33-42; p.  
19, l. 25-46; p. 20, l. 1-39**

47. It was later discovered that statements made by Sergeant Lemaitre to the media regarding the number of times the CEW was deployed were inaccurate.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 43, l. 31-35; p. 34, l. 33-37**

**Sgt. Lemaitre in cross-examination by Mr. Kosteckyj, April 21, 2009, p. 56, l. 12-14**

**Sgt. Lemaitre in cross-examination by Mr. Rosenbloom, April 21, 2009, p. 69, l. 34-44**

48. Corporal Carr was Sergeant Lemaitre's IHIT contact for information, and it is Sergeant Lemaitre's recollection that the information he disseminated was provided to him by Corporal Carr on the morning of October 14, 2007. Sergeant Lemaitre indicates, however, that it may be possible that he heard part of the briefing while sitting beside Corporal Carr in the command centre that morning.

**Sgt. Lemaitre in cross-examination by Ms. Roberts, April 21, 2009, p. 52, l. 22-23; p. 50, l. 11-14; p. 51, l. 34-37**

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 33, l. 27-31 and 45-47; p. 32, l. 16-22; p. 34, l. 5-12; p. 36, l. 40-47**

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 18, l. 13-17 and 23-24; p. 12, l. 16-18**

**Sgt. Lemaitre in cross-examination by Mr. Harris, p. 61, l. 14-16**

49. In addition, of course, Sergeant Lemaitre watched approximately one minute of the Pritchard video while at the command centre, and gave evidence that the impressions he obtained from his viewing of the Pritchard video may have informed his choice of words when speaking with the media about the nature of Mr. Dziekanski's behavior.

**Sgt. Lemaitre in chief by Mr. Vertlieb, April 21, 2009, p. 34, l. 13-22.; p. 41, l. 4-10 and 21-26**

50. Sergeant Lemaitre gave evidence that he did not vet with Corporal Carr the answers Sergeant Lemaitre gave to questions posed by the media before answering those questions. Sergeant Lemaitre further acknowledged that, in response to media questions, he provided information to the media which Corporal Carr had not told Sergeant Lemaitre to disseminate, such as statements addressing speculation that Mr. Dziekanski may have been under the

influence of drugs or alcohol and statements addressing the IHIT's authentication of Mr. Dziekanski's identification.

**Sgt. Lemaitre in cross-examination by Ms. Pastine, p. 77, l. 5-9; p. 78, l. 9-16; p. 80, l. 26-39**

51. Sergeant Lemaitre recalls that he received the information with respect to the number of times the CEW was deployed from Corporal Carr. Corporal Carr is not certain that he gave that information to Sergeant Lemaitre. Corporal Carr's notes do not refer to the number of times the CEW was deployed. Corporal Carr gave evidence that the number of deployments may have been something he and Sergeant Lemaitre heard in the briefing at the command centre.

**Sgt. Lemaitre in cross-examination by Mr. Kosteckyj, April 21, 2009, p. 56, l. 28-30**

**Exhibit 99: *Handwritten Notes of Corporal Dale Carr***

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 27, l. 35-45**

52. The evidence shows that Sergeant Lemaitre was present in the briefing room, watched part of the Pritchard video, formed his own impressions of the incident, and provided statements and editorial comments to the media which were not supplied or vetted by Corporal Carr.

53. In any event, even if the Commissioner finds that Corporal Carr was the sole source of Sergeant Lemaitre's information and depiction of events, at the time of the initial press briefings neither Corporal Carr nor Sergeant Lemaitre knew that the information given to the media by Sergeant Lemaitre with respect to Mr. Dziekanski's behavior or the number of times the CEW was deployed was inaccurate. Corporal Carr and Sergeant Lemaitre did view short segments of the Pritchard video; however, neither Corporal Carr nor Sergeant Lemaitre viewed the entire video in sequence and neither had the benefit of watching the video more than briefly on a very small screen or camera monitor. On October 14, 2007, Corporal Carr and Sergeant Lemaitre were given information by investigators who were in the very early stages of a complex

investigation, and, as Sergeant Lemaitre explains, facts often change over the course of investigations.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 27, l. 25-30**

**Sgt. Lemaitre in cross-examination by Ms. Roberts, p. 52, l. 5-18**

**Sgt. Lemaitre in chief by Mr. Vertlieb, p. 44, l. 18-25**

54. Moreover, the evidence indicates that at the time of the initial press interviews and release, the information that Mr. Dziekanski had become combative when the R.C.M.P. members approached him and the information that the CEW had only been utilized two times was received by others within the R.C.M.P. organization, including senior officers.

**Briefing Note to the Commissioner, October 16, 2007**

**Briefing Note to the Solicitor General of B.C., October 15, 2007**

55. Throughout the fall of 2007, internal R.C.M.P. communications between senior officers describe Mr. Dziekanski as “combative”, and reflect the view that Mr. Dziekanski was “resistant” when the four attending members approached him.

**Exhibit 138: *Series of Emails between Supt. Wayne Rideout and other RCMP parties* (see: email from Supt. Rideout to Dale McGowan, Peter German, and Tim Cogan: 2007-12-12 at 14:45:44)**

56. It is submitted that on the whole of the evidence, it would be dangerous to conclude Corporal Carr acted in a way such as to attract a finding of misconduct.

**iii. The Decision Not to Correct the Inaccurate Information**

57. Superintendent Rideout was the officer in charge of the IHIT in October 2007, and became the team commander of the investigation into the death of Mr. Dziekanski. Superintendent Rideout oversaw and managed the investigation and was responsible for the

progress of the investigation and for the containment and guardianship of evidence pertaining to the investigation.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 33, l. 38**

**Supt. Rideout in chief by Mr. Vertlieb, May 6, 2009, p. 1, l. 28-37; p. 2, l. 28-30; p. 5, l. 33-36**

58. On the morning of October 16, 2007, Corporal Carr and Sergeant Lemaitre attended a meeting at the "E" division media office.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 24, l. 19-21 and 28-31**

59. By this time, Corporal Carr and his superiors realized that there had been mistakes in Sergeant Lemaitre's statements to the media.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 43, l. 31-35**

60. At the meeting, Superintendent Rideout directed that Corporal Carr take over all media contact with respect to the ongoing investigation of Mr. Dziekanski's death. Corporal Carr would remain the R.C.M.P. spokesperson on the matter through to December 2008.

**Supt. Rideout in chief by Mr. Vertlieb, May 6, 2009, p.4, l. 7-10**

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 23, l. 23-35**

61. Also at the October 16, 2007 meeting, Superintendent Rideout ordered that there would be no discussion of evidence with the media, and directed that Corporal Carr was to only report to the media with respect to process. Superintendent Rideout gave the following evidence about the October 16, 2007 meeting:

- A. [...] I actually went to headquarters and had a meeting and said "Cease, cease discussing evidence."
- Q. You said "Cease".
- A. "Cease discussing evidence," yes.

Superintendent Rideout later referred to this instruction as his “cease order to stop talking about evidence”.

**Cpl. Carr in cross-examination by Mr. Kosteckyj, April 22, 2009, p. 44, l. 13-17**

**Cpl. Carr in cross-examination by Mr. Rosenbloom, April 22, 2009, p. 63, l. 1-6; p. 65, l. 29-41**

**Supt. Rideout in cross-examination by Mr. Rosenbloom, May 6, 2009, p. 57, l. 29-33; p. 71, l. 29-33**

**Supt. Rideout in cross-examination by Mr. Kosteckyj, May 6, 2009, p. 39, l. 16-18**

62. Superintendent Rideout decided not to correct the inaccurate information until the investigation was complete and the file had been submitted to Crown counsel or to the appropriate oversight body. Superintendent Rideout instructed Corporal Carr that this was the approach Corporal Carr was to take with respect to the media relations concerning the IHIT’s investigation into Mr. Dziekanski’s death.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 33, l. 25-31**

**Cpl. Carr in cross-examination by Mr. Rosenbloom, April 22, 2009, p. 60, l. 40-43.**

**Supt. Rideout in cross-examination by Ms. Roberts, May 6, 2009, p. 35, l. 46-47 and p. 36, l. 1-6**

**Cpl. Carr in cross-examination by Mr. Rosenbloom, April 22, 2009, p. 63, l. 1-6; p. 65, l. 29-41**

63. Corporal Carr spoke with Superintendent Rideout with respect to correcting the inaccurate statements which had been given to the media. Superintendent Rideout directed Corporal Carr to “hold on” and Superintendent Rideout reiterated that the R.C.M.P. would not talk about evidence with respect to the ongoing investigation and that the inaccuracies would be corrected eventually.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 34, l. 33-47; p. 35, l. 1**

64. As media relations officer, Corporal Carr is not privy to all of the information on a file: Corporal Carr is not in the position of a team commander to assess the scope and direction of an

ongoing investigation and to decide how best to protect that investigation. Corporal Carr acted in good faith in carrying out Superintendent Rideout's instructions and in accepting Superintendent Rideout's rationale that the investigation needed to be protected and that a piecemeal correction of information may have caused more confusion.

**Cpl. Carr in chief by Mr. Vertlieb, April 22, 2009, p. 25, l. 6-13, p. 33, l. 38-43**

**Cpl. Carr in cross-examination by Mr. Rosenbloom, April 22, 2009, p. 61, l. 6-13; p. 64, l. 21-25; p. 65, l. 29-41; p. 68, l. 10-31**

**Cpl. Carr in cross-examination by Mr. Kosteckyj, April 22, 2009, p. 43, l. 4-30**

65. In hindsight, there can be reasonable differences of opinion as to whether Superintendent Rideout's judgment with respect to not correcting the information was prudent or necessary; but there can be no quarrel it was lawfully given with attendant obligations on the part of Corporal Carr.

**iv. The November 30, 2007 Media Advisory**

66. The evidence shows that on November 30, 2007 Corporal Carr released a media advisory (the "Media Advisory") which stated that the R.C.M.P. and YVR Security continually monitored and assessed Mr. Dziekanski throughout the time it took medical personnel to arrive.

**Cpl. Carr in cross-examination by Mr. Rosenbloom, April 22, 2009, p. 63, l. 7-29**

**Exhibit 132: *Transcript excerpt of interview with Cpl. Dale CARR and Ian HONOMANSING, Nov. 30/07***

67. As he had throughout the investigation, Corporal Carr appropriately followed R.C.M.P. procedure and protocol with respect to the release of the Media Advisory: at the time the Media Advisory was released, Corporal Carr was acting with an honest belief in the accuracy of the information contained in the Media Advisory and on the directions of a superior officer.

68. At the time of the Media Advisory and the subsequent press conferences, Corporal Carr believed the information contained in the Media Advisory was accurate. The investigative team, from which Corporal Carr receives all of his information, had told Corporal Carr that the R.C.M.P had continuously monitored and assessed Mr. Dziekanski. The investigative team also had evidence that the officers at the scene observed a pulse and sounds of breath during the eight minute wait for the ambulance.

**Cpl. Carr in cross-examination by Mr. Rosenbloom, April 22, 2009, p. 69, l. 43-47; p. 70, l. 1-2 and 19-38**

**Supt. Rideout in cross-examination by Mr. Kosteckyj, May 6, 2009, p. 44, l. 7-11**

69. At the time the Media Advisory was issued, Corporal Carr was aware that Mr. Dziekanski had become unconscious after being handcuffed, but Corporal Carr was not aware that the officers at the scene had observed Mr. Dziekanski experience laboured breathing; nor was he aware that Mr. Dziekanski had turned bluish.

**Cpl. Carr in cross-examination by Mr. Rosenbloom, April 22, 2009, p. 69, l. 43-47; p. 70, l. 1-9 and 19-38**

70. Superintendent Rideout made the decision to release the information in the Media Advisory ahead of the release of information by the Richmond Fire Department after consulting with other senior R.C.M.P. officers, including Assistant Commissioner Al MacIntyre and Assistant Commissioner Peter German, with respect to media strategy. Superintendent Rideout reviewed the Media Advisory, approved its contents, and authorized its release.

**Supt. Rideout in chief by Mr. Vertlieb, May 6, 2009, p. 13, l. 38-46; p. 30, l. 22-23, l. 29-31 and 44-46; p. 44, l. 30-35**

**Exhibit 138: *Series of Emails between Supt. Wayne Rideout and other RCMP parties* (see e.g. email from Peter German to Wayne Rideout, John Ward, and Dale Carr: 2007-11-28 at 14:10:23)**

**Supt. Rideout in cross-examination by Mr. Kosteckyj, May 6, 2009, p. 43, l. 26-30**

**Cpl. Carr in cross-examination by Mr. Rosenbloom, April 22, 2009, p. 64, l. 3-10; p. 70, l. 13-17**

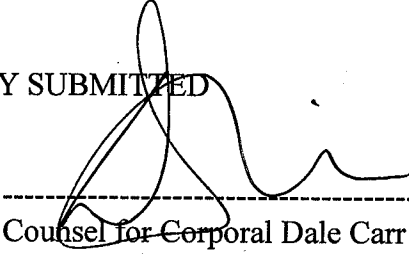
71. With respect, it is simply not open on the evidence to conclude Corporal Carr is guilty of misconduct in relation to this issue. When he released the Media Advisory and conducted interviews in relation to it, Corporal Carr was acting in good faith and was properly and responsibly carrying out the direction of his superior officer.

v. **Conclusion**

72. It is submitted that the proposed findings are not supported by the evidence. What the evidence does establish is that during his involvement as a media relations officer in relation to investigation into the death of Mr. Dziekanski, Corporal Carr not only carried out his duties reasonably and in good faith, but also appropriately followed the directions of senior R.C.M.P. members and R.C.M.P. protocol and procedure.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: September 29, 2009

  
-----  
Counsel for Corporal Dale Carr