

**FINAL SUBMISSION TO THE BRAIDWOOD  
INQUIRY ON BEHALF OF THE  
GOVERNMENT OF POLAND**

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## A. INTRODUCTION

Few legal proceedings in recent time have attracted as much public interest as this Inquiry into the circumstances surrounding the death of Mr. Robert Dziekanski, a citizen of Poland, after his encounter with four RCMP officers at Vancouver International Airport in the early hours of October, 14, 2007. The public has paid close attention to the widespread media coverage of the Inquiry proceedings, not only here in B.C., but across Canada and internationally.

Why has the general public taken such an interest in the Inquiry? The circumstances surrounding this incident have tugged away at the conscience of Canadians. As the Polish Ambassador said in his letter addressed to you, Mr. Dziekanski's death has become personalised in the minds of millions of people. It is difficult for anyone who watches the video of the incident to not conclude that the police acted improperly. This naturally leads to strongly-held views that justice must be done and that those responsible should be brought to account.

We will suggest that the evidence elicited at the Inquiry only reinforces one's first impressions from watching the video. In fact, we submit that the evidence heard here at the Inquiry reveals that there was blatant police wrongdoing at the scene, compounded by the officers' untruthful reporting of the incident both in their police statements and here at the Inquiry. Additionally there were misjudgements of senior officers, and an unwillingness by the RCMP at the highest levels to acknowledge error.

It takes a strong nation to have the courage to microscopically examine such deep problems within its institutions. But, as painful as this exercise might be, society is strengthened by engaging in such proceedings.

No nation should pretend that it is immune from institutional failure, whether it be in the police forces or otherwise. Poland wishes to praise Canada and British Columbia for pursuing such an exhaustive and courageous examination into this incident.

**B. TERMS OF REFERENCE**

Your Commission is mandated to “inquire into and report on the death of Mr. Dziekanski”. (*Purpose and Terms of Reference*, section 2(2).)

In part, the Terms of Reference state that the purpose of the hearing is to “provide Mr. Dziekanski’s family and the public with a complete record of the circumstances of and relating to Mr. Dziekanski’s death”. (Section 3(2)(a).)

Your mandate clearly directs you to “make a complete report of the events and circumstances” of October 14, 2007 relating to Mr. Dziekanski’s death, without limiting yourself “to the actual cause of death”. (Section 4(2)(b).) Furthermore, you are to make recommendations that you consider “necessary and appropriate”. (Section 4(2)(c).)

We are therefore aware of the broad mandate with which you have been provided. These expansive terms of reference afford you the opportunity to make numerous findings and recommendations that will have historic consequences, not only for Canada, but for all civilized nations.

**C. YVR AND CANADIAN BORDER SERVICE INVOLVEMENT**

The circumstances surrounding Mr. Dziekanski's presence at the airport from the time of his arrival until he cleared Immigration reveal that in October 2007 there were serious systemic problems with both the operations of YVR and the Canadian Border Service. An effective and efficiently functioning system would never have permitted these events to have occurred.

The Government of Poland chose to limit its involvement in these proceedings to the RCMP involvement. We wish to endorse the submission made by Mr. Kosteckyj in respect of the events before Mr. Dziekanski emerged into the public area of the terminal after clearing Canadian Immigration and receiving his Permanent Resident papers.

We do ask you to consider the following facts:

- Mr. Dziekanski arrived in the terminal building at 3.25 p.m. October 14th intending to be met by his mother, Mrs. Cisowki. For 7 hours he appears to have been completely unaccounted for while he was waiting in the secured area of the terminal.
- No one appears to have assisted Mr. Dziekanski while in the luggage area, even though he must have been there to be seen for many hours.
- No effort was made by anyone to secure a Polish interpreter.
- No one responded to Mrs. Cisowski's efforts to confirm that her son had arrived, and was still within the secure area of the terminal.

-- No one responded to Mrs. Cisowski's request that effort be made to communicate with her son and inform him that she was waiting for him in the public area.

-- No one responded to Mrs. Cisowski's request to the YVR staff that someone look for her son and assist him in clearing the immigration/customs procedures.

It is evident that these circumstances suggest a breakdown in effective operations. It is satisfying to hear of major operational changes announced by YVR management to ensure that such an unfortunate series of occurrences should not be repeated. Anyone who has recently arrived at the International Terminal should be impressed with the terminal's friendly welcome to foreigners, and with the many interpreting services apparently now there for the asking. This is at least one positive legacy from this tragic event.

**D. ROBERT DZIEKANSKI'S ENCOUNTER WITH THE POLICE**

It is our position that the four police officers who attended the incident at Vancouver International Airport in the early morning hours of October 14, 2007 used excessive force with fatal consequences to Robert Dziekanski. Indeed, we invite a finding that absolutely no force was called for in the circumstances. It is also our position that, after Mr. Dziekanski had been unnecessarily subjected to tasing, the officers showed a callous disregard for his medical condition as he lay dying on the floor. Their indifference was neither in conformity with police standards nor basic humanity. We ask that there be significant findings of misconduct in respect of the actions of all four officers on that fateful night.

When one has regard to the totality of the evidence before this Commission, it is undeniable that there are serious concerns about the credibility of the four officers. Their version of what happened on October 14 bears little resemblance to what is seen in the video. Most troubling, as we alleged during the proceedings, is that all four officers remarkably repeat many or most of the same material errors in their descriptions of the incident. Could this really be the result of four sets of identical honest errors? We submit that such similarity is not a coincidence; rather, as we alleged during cross-examination, we must suggest that the four officers collaborated to falsify the facts in defence of their conduct.

We will describe a number of crucial parts of the police officers' evidence which, we submit, must lead to the inescapable conclusion that the police officers fabricated their stories.

## **SUMMARY OF EVIDENCE**

It is useful to separate the incident into four phases:

- **Period 1**

The first contact between the police officers and Mr. Dziekanski until he moved to the counter.

- **Period 2**

Mr. Dziekanski's arrival at the counter until the initial tasing.

- **Period 3**

The continued tasing of Mr. Dziekanski until he was handcuffed.

- **Period 4**

The handcuffing of Mr. Dziekanski until his death.

Attached as Appendices to this submission are relevant references to IHIT statements and the testimony of the four officers at the Inquiry. Each Appendix refers to one of the periods defined above. The page references found under the IHIT statements are from the IHIT report numbering at the bottom right hand corner of each page. Excerpts from the testimony refer to the transcripts by date, page and line.

**PERIOD 1 - FIRST CONTACT BETWEEN THE POLICE OFFICERS AND MR. DZIEKANSKI UNTIL HE MOVED TO THE COUNTER**

Evidence given by the four attending police officers was that at no time from the dispatch call for their attendance at YVR until they encountered Mr. Dziekanski in the terminal did they ever discuss how they were going to handle the situation.

Yet the Prichard video provides evidence that mention was made of a taser before the officers entered the secure area. The Bent to MacIntyre email (Exhibit #177) would suggest that the officers decided enroute that if Mr. Dziekanski didn't comply they would "go to CEW". Chief Superintendent Bent testified at the Inquiry to the accuracy of his representations, having written the email shortly after his phone call with Superintendent Rideout who had provided him with the information. The Commission is left with the contradictory evidence of Superintendent Rideout who denies the conversation.

In any event, when the four officers arrived at the International terminal they made no effort to carry out even the most elementary assessment of the problem. They chose not to speak to witnesses present before vaulting over the railing, and they failed even to consult with the uniformed YVR security personnel who were present at the entrance door leading immediately into the secure area where Mr. Dziekanski was standing.

What they did all know, according to their testimony, is that Mr. Dziekanski did not speak English.

They testified that there was no time to obtain the assistance of an interpreter. But, as will be seen, there is no reasonable explanation for this claim, in that the situation was calm and completely non-confrontational upon their arrival.

They found a man standing beside his luggage on the inside of the doorway between the secure area and the public "Meet and Greet" reception area.

The officers, both in their initial statements and in their testimony at the Inquiry, tried to characterize Mr. Dziekanski as "aggressive", "agitated", "uncooperative" and "defiant" during this period from their arrival until he moved, in accordance with directions, to the counter. Only Cst. Bentley acknowledged that on first contact Mr. Dziekanski was in fact, as can be seen in the video, quite calm.

The officers claimed that Mr. Dziekanski was yelling during this time. Cst. Millington went so far as to suggest that he continued to yell when he backed away from the officers and headed to the counter. But the only evidence of yelling is Mr. Dziekanski's calling out "*Policia, Policia*" when he first saw the officers arrive into the "Meet and Greet" area.

The officers' description of Mr. Dziekanski's demeanour and their specific claim that he was agitated and yelling, could not possibly be further from the truth.

Through cross-examination and the viewing of the video the following information was elicited:

- Mr. Dziekanski was calm throughout this period;
- Cst. Millington asked Mr. Dziekanski to produce his passport and ID documents that were later found in his luggage;
- Mr. Dziekanski attempted to comply and started to bend down towards his luggage.
- Cpl. Robinson then ordered him to not approach his luggage. Once again, Mr. Dziekanski complied.
- Cpl. Robinson then pointed towards the counter and Mr. Dziekanski shrugged resignedly and complied by moving to the counter.

There was an alarming lack of communication among the officers at the scene, which led to fatal consequences. Cpl. Robinson testified that he was not aware at the time that Cst. Millington had asked for Mr. Dziekanski's papers (which explains Mr. Dziekanski's movement towards his luggage). The other three officers testified they were unaware that Cpl. Robinson had ordered Mr. Dziekanski to move to the counter (explaining his movements there). It is also significant that none of the other three officers, according to both their IHIT statements and their testimony, observed or heard Cpl. Robinson asking Mr. Dziekanski to put his hands on the counter (Cpl. Robinson acknowledged that in any event the order was meaningless because of the language issue). Yet each of these supposed commands happened in the presence of all four officers.

According to the officers' versions of events before the Inquiry began, Mr. Dziekanski was not responsive to their orders. They characterised Mr. Dziekanski's movement towards his luggage as "defiant", when in fact he

had been asked for his ID papers that were in his suitcases. They said that his turning away from them, shrugging his shoulders, and heading to the counter, was also an act of defiance. But again, as the evidence came out in the Inquiry, he had been ordered to move to the counter by a very clear command from Cpl. Robinson pointing him to that location. Cst. Rundell goes so far as to refer to Mr. Dziekanski's move to the counter as "fleeing". That officer even testified that Mr. Dziekanski "became resistant when he flipped up his arms and left towards the counter".

Cst. Bentley was confronted in cross-examination with the fact that Mr. Dziekanski had been ordered to the counter. Apparently he was unaware of this fact until he was shown the command on the video during cross-examination. He then acknowledged that Mr. Dziekanski's reaction with the shrug could be interpreted as an act of compliance and co-operation. When pressed during cross-examination, he could provide no other interpretation than compliance.

The only reasonable interpretation to be made of the events leading to Mr. Dziekanski's movement to the counter is that he was asked for his ID papers, then told not to get them and ordered to the counter. He shrugged in an act of resignation, and calmly headed over to the counter area as he had been directed.

There is not a single shred of evidence to suggest that during this period, from first contact until Mr. Dziekanski reached the counter, there was the slightest act of resistance or non-cooperation. To the contrary Mr. Dziekanski was calm with the police on first contact, and he complied or

tried to comply with every police command, even though those commands conflicted with each other.

**PERIOD 2 - MR. DZIEKANSKI'S ARRIVAL AT THE COUNTER  
UNTIL INITIAL TASERING**

During their testimony to this Commission there was a remarkable retreat by all four officers from the version of events they had provided to the investigators. Their initial version described Mr. Dziekanski as swinging the stapler up above his head, acting “combatively”, and trying to hit the officers with it. The officers claimed that he had been stepping forward and yelling. There was even the assertion that there had been a lot of “articulation” before the initial tasing. They claimed he was becoming “more and more violent” and that this led to the tasing.

But, as with the events of the First Period described above, the officers’ versions of events provided in their statements for this time period bears little or no resemblance to what actually happened.

The retreat by the officers in their testimony is stunning. They admitted that the stapler was never raised high, and in fact Mr. Dziekanski was clutching it at his chest. Not one officer suggested in testimony any serious movement forward or advancement by Mr. Dziekanski. The evidence is that all four officers were 6 to 8 feet away from the subject.

Cpl. Robinson conceded before this Commission that there was in fact no “articulation” or conversation with Mr. Dziekanski before he was tasered,

contrary to what Cpl. Robinson had indicated in his IHIT statement. At the Inquiry he claimed that the “articulation” was before Mr. Dziekanski reached the counter.

Contrary to RCMP policy no warning was ever given to Mr. Dziekanski before he was tasered. The suggestion that there was no time to provide the warning is preposterous. Although there was absolutely no justification to deploy the instrument in any event, if it had been necessary to do so, there was more than enough time for a warning to be given.

The video discloses that at no time did Mr. Dziekanski ever “brandish” the stapler, he never had it above his shoulders, he never swung it, he never took a posture of an attack, and he never was in the slightest way threatening with it.

The police officers’ evidence at the hearing was that Mr. Dziekanski was clutching the stapler at his chest. Such posture is obviously defensive in nature. Mr. Dziekanski was clearly, and understandably, in a defensive - a fearful - state of mind at that moment.

There is an interesting and significant observation made by Cst. Millington in his IHIT statement. He said “He seemed more paranoid than angry that’s what it seemed like he was. Paranoid, agitated than angry”.

Yet during his testimony Cst. Millington claimed to be unable to imagine how being encircled by four uniformed officers with their hands in the area of their holsters would lead anyone to be paranoid or nervous, “if they hadn’t

done anything wrong". In my cross-examination of the officer the following exchange took place (March 3, page 129, Line 5):

Q. You don't think so, officer. You don't think to be in a foreign country and to be backed up against a wall, in this case a counter, with four armed officers encircling you and with their arms down at their holsters, isn't traumatic?

A. No.

The officer was willing to concede during this exchange (p. 129, Line 19) that if a person did interpret the events in such a way as to cause fear, the person would naturally go into a defensive posture.

There is significant evidence corroborating that Mr. Dziekanski was in fact in just such a mental state, fearing for his life or well-being. On the enhanced audio of the video, we are able to hear the telling final words of Mr. Dziekanski as he was about to be tasered by Cst. Millington. Translated from Polish to English those words were:

"Leave me alone. Leave me alone. Did you become stupid? Why?"  
(see Exh. #33).

The translator testifies that "Did you become stupid?" could also be translated as "Are you crazy?"

Such comments are not made by a person about to attack the police. These remarks, in light of the video evidence, undeniably confirm that Mr. Dziekanski was in a state of fear and they give no indication of the slightest

intention of attacking the four armed police officers. His conduct was entirely defensive.

Furthermore, the video does not provide any evidence that Mr. Dziekanski was advancing on the officers before deployment. RCMP efforts to suggest that the video tape supports the allegation that Mr. Dziekanski was advancing on the officers by producing their witness Mr. Grant Fredericks totally failed as his evidence on this point was completely discredited through cross-examination and rebuttal evidence. More will be said in that regard further in the submission.

**PERIOD 3 - TASERING OF MR. DZIEKANSKI UNTIL HE WAS HANDCUFFED**

There are, once again, a number of remarkable aspects to the police officers' evidence in respect of this period.

First, the officer in charge, Cpl. Robinson, was not current with his Conducted Energy Weapon training, as he had last taken the course in 2003. Accordingly he was out of date with respect to training and RCMP directives regarding the CEW. Although he was not authorised to deploy the instrument, he nonetheless took command of the situation and gave the orders for taser deployment.

He testified that he recalled that there were medical issues surrounding multiple deployments.

And he could not say whether being uncertified to carry the weapon denied one the right to command the weapon's use.

Second, the officers unanimously informed the IHIT investigators that the first deployment did not take Mr. Dziekanski down. They testified that Mr. Dziekanski did not drop as they had expected based on training. Cpl. Robinson went so far in his IHIT statement as to say that the first deployment "wasn't having any effect".

Evidence before this Commission proves unequivocally that during the first deployment of 6 seconds Mr. Dziekanski was falling to the ground, and by the conclusion of the first cycle he had completely fallen. The second deployment was carried out while Mr. Dziekanski was writhing and screaming in pain on the ground.

Anyone viewing the video cannot be left with any impression other than that the first deployment was effective, caused Mr. Dziekanski great pain, caused him to immediately lose voluntary control of his body, and caused him to collapse to the ground. There is no doubt that he was totally on the ground at the time of the second deployment.

Finally, and very curiously, all officers provided statements that Mr. Dziekanski had to be wrestled to the ground. All officers had to retreat from such allegations when faced with the video. At no time did any officer come near Mr. Dziekanski until the taser deployment had had its effect and he had already fallen to the ground. One must ask how it is that all four officers told

investigators something so important, and yet so patently different from what had actually happened.

A key question before this Commission concerns the appropriateness of the multiple taser deployments. Once Mr. Dziekanski was on the ground as a result of the first deployment, it is hard to come up with any justification whatsoever for the second taser deployment, much less the ones that followed. In the absence of any plausible excuse offered by the officers that is consistent with what anyone can see on the video, one is forced to the disturbing conclusion that the multiple deployments were the result of panic, ignorance, or a decision to gratuitously inflict further pain on Mr. Dziekanski.

Even Cst. Bentley acknowledged in testimony that “perhaps” the second taser deployment was not necessary. The third, fourth and fifth deployments are even more difficult to justify or excuse.

The third attempted deployment (which may not have taken effect) was while three officers had already pinned Mr. Dziekanski to the ground where he had fallen after the first shock. There was indeed a struggle as Mr. Dziekanski’s spasms and writhing continued, but two things are obvious.

First, as is clear from the videotape, at no time does it appear that there was any likelihood whatsoever that Mr. Dziekanski would overpower the three officers. Moreover, not only was there a fourth officer, Cst. Millington, present, but a number of airport security officers were also nearby.

Second, the videotape discloses that there was diminishing exertion by Mr. Dziekanski during the period leading up to the handcuffing. The fourth and fifth deployments, using the stun mode procedure for durations of 9 seconds and 6 seconds were obviously unwarranted.

The RCMP Manual for the CEW (Exhibit 61) directs officers to:

“Avoid extended or repeated CEW applications where practical”.

The fact is that not even the first deployment of the taser was justified. But once it had been deployed, and Mr. Dziekanski was on the floor beneath three officers, repeated deployments were totally unjustified, and clearly contrary to RCMP policy.

#### **PERIOD 4 - HANDCUFFING OF MR. DZIEKANSKI UNTIL HIS DEATH**

The officers showed a reckless and callous disregard for the life of Mr. Dziekanski.

Their evidence is distressing in many respects.

First, Cpl. Robinson clearly placed his knee or shin on the back of Mr. Dziekanski's neck for 24 seconds. Although he denied pressing down on the neck, clearly the witness was not truthful when he was confronted with the obvious. Cpl. Robinson's repeated denial flies in the face of what can be seen in the video. Even Cst. Millington acknowledged this in his testimony. There is ample evidence that such conduct is contrary to RCMP policy, and

that the medical consequences are obvious. Both Cst. Millington and Cpl. Robinson acknowledged the potential harm to a person when pressure is applied to the neck area.

It is dumbfounding that Cpl. Robinson would deny this conduct when he had even stated to the IHIT investigators:

“...so hm, I said, I put him out, ‘cause I was the one positioned on top of him”. (IHIT Statement p. 684).

In fact Cpl. Robinson repeated this comment a second time in his statement.

When confronted with these statements in cross-examination, Cpl. Robinson testified that when he said “I put him out” in these statements he was somehow not saying that he had caused the unconsciousness. (See Transcript Mar. 25, p.59, Line 13). This evidence cannot be given the slightest credibility. Clearly the officer acknowledged to the IHIT investigators that the unconsciousness was as a result of how he had been positioned on Mr. Dziekanski’s body. No other reasonable interpretation can be made of his statements.

Next, this incident took place at an international airport where emergency services (E.R.S.) were readily available throughout the terminal, including defibrillators and oxygen. The officers had First Aid kits in their cruisers. Yet the officers testified of knowing little or nothing about the availability of these services. Staff Sergeant Wright, the officer in charge of the sub-detachment office at YVR, testified that his officers received no training on

the availability of the First Aid services at the airport. If in fact this is the case, it is a shocking indictment of the training program for officers assigned to the airport sub-detachment.

The First Aid certification of the commanding officer, Cpl. Robinson, had lapsed in 2002. Yet notwithstanding his lack of certification, he nevertheless chose to act as the only officer caregiver administering the inadequate First Aid measures taken at the scene.

The medical observations were in fact ominous. It was evident immediately following handcuffing that Mr. Dziekanski was unconscious. Cyanosis was also immediately noticeable at Mr. Dziekanski's face, and snoring and laboured breathing was heard. The officers acknowledged that Mr. Dziekanski was in serious medical distress. But ten minutes passed between when he became unconscious and when the first responders (Richmond Fire) arrived.

So what medical care was provided during this all important period of time? The ERS at the airport was never called (for which both the police and YVR officials must be blame), no one called for a defibrillator, and oxygen was never given.

Despite the fact that Cpl. Robinson claimed he was taking Mr. Dziekanski's pulse, Constables Rundell and Millington never saw anyone provide First Aid. Cpl. Robinson was not able to say how many times he took the pulse. Of all of the officers, only Cpl. Robinson testified that Mr. Enchelmaier also took Mr. Dziekanski's pulse. That evidence, and that of Mr. Enchelmaier, is

therefore suspect. If Mr. Enchelmaier had played any significant role in the medical care of Mr. Dziekanski, it is difficult to believe that the other officers present would not have noticed.

No officer ever checked Mr. Dziekanski's airways for obstruction, something expected to be carried out with any individual exhibiting cyanosis.

Unfortunately, one must conclude that there was virtually no care provided to Mr. Dziekanski during those critical minutes leading to Richmond Fire's arrival. And to add further insult, Captain Kirby Graham of the fire department testified that on his arrival three of the officers were 10 meters from Mr. Dziekanski, while the other was 5 meters away. (January 27<sup>th</sup> transcript, p. 49, line 43). The fire captain would have absolutely no motive to mislead this inquiry with inaccurate evidence.

The evidence concerning the refusal of the police officers to remove the handcuffs from Mr. Dziekanski, so that CPR could be conducted is as disturbing as any of the other matters before the Inquiry. Mr. Graham testified that when he arrived Mr. Dziekanski had no pulse. Clearly, CPR should have been carried out immediately, if not sometime earlier. The refusal by the police to remove the handcuffs from Mr. Dziekanski when requested to do so, in order to enable CPR to be conducted is completely inexcusable. The suggestion by attending officers that the cuffs had to be kept on because the officers were worried about Mr. Dziekanski regaining consciousness and fighting the officers is absurd. The man was unconscious, cyanotic, and had no pulse at that point. Even Cst. Bentley acknowledged that there was no reason not to remove the handcuffs.

All of this adds up to a reckless disregard by all four officers for the life of Robert Dziekanski.

**E. EVIDENCE OF GRANT FREDERICKS**

The four police officers testified that Mr. Dziekanski had “advanced” towards them shortly before he was tasered. However any ordinary watching of the videotape fails to support this claim. We suggest that the officers’ insistence that Mr. Dziekanski advanced towards them during their examinations and cross-examinations, despite the fact that no such movement can be seen when watching the videotape, was yet another instance in which their credibility was undermined.

No doubt in order to buttress their claim and to bolster their overall credibility, the report of Grant Fredericks was tendered, albeit very late in the Inquiry process (Exhibit 158). The bulk of Mr. Frederick’s report sets out his observations of things that he saw in the video that anyone else is equally able to observe and form conclusions about. The only relevant part of his report that purports to rely on expertise is that dealing with the alleged forward movement by Mr. Dziekanski.

At page 13 of his report Mr. Fredericks states that “Reverse Projection/Photogrammetry assists with a scientific analysis of positional changes by assessing the relationship between Dziekanski and fixed objects in the scene”. He then describes his method and results and concludes at page 15 with the claim that “This scientific analysis shows that Dziekanski is clearly moving away from the camera and toward the officers in the three seconds between Image A and Image B”.

However this conclusion was shown through cross-examination and the rebuttal evidence of Mark Hird-Rutter and Duane MacInnis to be completely unsupportable. It should be given no weight whatsoever.

First, Mr. Fredericks conceded that he has received no specialized education or certification in photogrammetry. He has only taken a few courses in that subject. His lack of expertise is evident in his claim that there are somehow different standards or methods in “his industry” of forensic video analysis than there are in other uses of photogrammetry. This is of course without foundation. The science of measuring photographs and drawing conclusions does not change simply because it is applied in a legal, or forensic context. Moreover, his statements that he was not doing “perspective photogrammetry” also shows his lack of expertise. Both rebuttal witnesses testified that, by definition, that was exactly what he was doing, albeit with a seriously flawed methodology (May 25, page 97; May 26, page 4).

Second, Mr. Fredericks himself indicated that all he did was measure pixels between two points associated with Mr. Dziekanski that he identified in each of Image A and Image B, and then calculated that there was a greater percentage change in the number of pixels between those two points than between two points on fixed objects in the same images.

What was clear however was that he did not have two fixed points on Mr. Dziekanski between which to count pixels. While the point on Mr. Dziekanski’s collar may have been fixed, the second point (which in his report he misdescribed as the bottom of Mr. Dziekanski’s jacket) was the point on the counter below which it is impossible to see Mr. Dziekanski’s

jacket. Any vertical movement by Mr. Dziekanski would of course result in a different point on his jacket being level with the counter – it was of “no fixed address”. Accordingly there is no way of knowing whether the measurements taken in Image A and Image B were between the same two points.

Moreover, even Mr. Fredericks conceded that the height of the camera is an important question. Even though in his report he seems to describe it as having three different heights (head height, between the collar and the shoulder blades, and at waist level) during testimony he insisted that what he really meant was the second of these options. However, he conceded, there is no way to be certain as to the height of the camera. Mr. Hird-Rutter and Mr. MacInnis provided graphic evidence as to the vital importance of this information and the effect that different camera heights would have on the conclusion, even if Mr. Fredericks’ flawed methodology was adopted.

We submit that great weight should be given to the evidence and opinions of Mr. Hird-Rutter and Mr. MacInnis in respect to the usefulness of Mr. Fredericks’ testimony. Mr. Hird-Rutter summarized his conclusion in the executive summary of his report (Exhibit 159A, page 3):

Using the measurements performed in Mr. Fredericks’ report it is not possible to determine if Mr. Dziekanski moved forwards or backwards using the Science of Photogrammetry.

In the “Conclusions” the standard practices used in photogrammetry are compared to the methodologies stated by Mr. Fredericks. The rigours of the Science of Photogrammetry have not been followed by Mr. Fredericks and it would be wrong to use his photogrammetry

based conclusions in determining the movement of Mr. Dziekanski.  
[Emphasis added.]

Mr. MacInnis concurred in the conclusion of his report (Exhibit 160A, page 7):

Mr. Fredericks' opinion that Mr. Dziekanski is moving "methodically" towards the police (and away from the camera) is not technically supportable ... [Emphasis added.]

The evidence of these two experts in photogrammetry was clear, unambiguous, and well-reasoned. It was not seriously challenged in cross-examination. Accordingly it is our submission that Mr. Fredericks' evidence should be entirely disregarded.

The fact is that it is not possible to scientifically conclude from the video that Mr. Dziekanski did or did not move forward. To determine that question each person is left with their own viewing of the videotape (and I must say once again that despite hundreds of viewings I am still unable to see any forward movement on the tape) and an assessment of the credibility of the officers' statements and testimony.

However, even if Mr. Fredericks' evidence of forward movement were accepted, which as set out above it clearly should not be, what would this evidence amount to in the context of this case?

During his cross-examination on May 25 the following exchange took place on page 82, starting at line 22:

Q. And with the approach that you have taken, having failed to establish a second point of reference on the body of Mr. Dziekanski, you are unable to come forward and tell us anything about the distance or movement of Mr. Dziekanski, other than you say he was moving forward?

A. As for instance, what else?

Q. Pardon me? That the only thing that you're able to do with the methodology that you have chosen is to inform this Commission that Mr. Dziekanski moves forward but you can't say by what distance?

A. Yeah, that's correct.

Q. It could be in inch?

A. I don't want to guess on how far he's moved forward. I don't -- I can't say.

Q. No. But it can be a very, very small distance?

A. Yeah, I -- I don't want to comment on how far. I don't think that would be fair. I couldn't really comment on that.

And at pages 93 and 94, starting at line 46:

Q. And so all we're left with is your subjective opinion that there has been some movement forward and you can't say how much?

A. Well, that'll be up to the Commissioner to decide but --

Indeed. But the question surely must be that as Mr. Dziekanski stood at the counter in those last few moments of his life, did he take any actions that warranted shooting him with the taser? He was clearly in a state of fear. Would it be so odd if he stepped nervously from side to side, shifting his

weight, looking at the officers who were surrounding him? If he shuffled forward an inch or three inches or even a foot, what of it? Was that really an indication of an impending attack on one of the officers such that they were justified in discharging the taser?

We submit that to be the real question, and say that the entire evidence of Mr. Fredericks amounted to nothing more than an unpersuasive red herring that was intended, unsuccessfully, to bolster the very questionable credibility of the four officers. Whatever effect it did have, it cannot be said to show any movement that would justify the use of the taser.

**F. POLICE OFFICERS' CREDIBILITY**

Among the most troubling aspects of this incident is the lack of credibility of the four police officers. Put bluntly, in light of all of the evidence in this case, we allege that there has been a self-serving collaboration by the officers to fabricate an untruthful version of events.

We do not make such an allegation lightly. Yet in reviewing the officers' IHIT statements and testimony before this Commission, one is forced to the conclusion that the officers colluded to concoct a story for the purpose of avoiding the consequences of their wrong-doing.

Upon what basis is such an allegation made? During cross-examination, I confronted the officers with a very curious fact. I asked each of the officers if they could explain why all of them had recounted erroneous versions of the incident that were almost identical on the crucial issues. They all acknowledged that as police officers they were professionally trained to be astute observers and recorders of incidents. They acknowledged that the innocence and guilt of citizens often depended on the accuracy of their accounts of the incidents in which they are involved.

But most troubling here is that all four officers advanced to the IHIT investigators an almost identical and fictional account of the most important aspects of the incident.

From a review of the evidence, particularly the IHIT statements, we established that the erroneous accounts all share the following similarities:

- (a) Mr. Dziekanski was agitated and resistant on the officers' arrival: all four officers.
- (b) Mr. Dziekanski was "resistant" when he walked away from the luggage: three officers.
- (c) Mr. Dziekanski was "yelling"; all four officers.
- (d) Mr. Dziekanski was swinging the stapler: all four officers.
- (e) Mr. Dziekanski had the stapler raised high: three officers.
- (f) Mr. Dziekanski advanced on the officers after going to the counter: three officers.
- (g) The first taser deployment did not take Mr. Dziekanski down: all four officers.
- (h) Mr. Dziekanski had to be wrestled to the ground after the first taser deployment: three officers.

Of course, none of these claims is true.

What is one to make of these unanimous or almost unanimous inaccuracies? One is forced to the conclusion that these officers intentionally misled the investigators, and to the extent that they denied fabricating their stories at this inquiry, they lied under oath.

The officers' conduct can be construed as nothing short of an intentional act to subvert the course of justice. We appreciate that it is beyond the reach of this inquiry to consider the possible Criminal Code offences that obviously arise from such conduct. But it is well within your mandate to rule that the four officers were not credible and that their evidence should be discounted.

**G. THE MISINFORMATION CAMPAIGN**

Another disturbing aspect to this matter relates to the RCMP's mishandling of their communications with the public.

There is now ample evidence before the Inquiry that beginning shortly after Oct. 14th the RCMP media spokespersons disseminated false information to the media, and in turn, to the public. This misinformation included statements that:

- (a) Despite efforts to calm Mr. Dziekanski down, he remained aggressive and confrontational.
- (b) When the police officers were trying to calm Mr. Dziekanski down, he continued to throw things around.
- (c) Mr. Dziekanski continued to yell and scream after the police officers' arrival.
- (d) The first taser deployment did not seem to have any effect.
- (e) There were only three officers involved.
- (f) There were only two deployments of the taser.
- (g) In respect to the number of deployments, Sgt. Lemaitre went so far as to publicly rebuke witness Sima Ashrafinia (who had said publicly that there had been 4 deployments) when he informed the media that she was wrong and that the RCMP would be proven right in stating that that there had been only two deployments.

All of these misrepresentations are inexcusable in that accurate facts were easily obtainable by watching the video which at that point was in the

custody of the police. As for the number of taser deployments, even Cst. Millington's notebook disclosed four deployments, and by the end of October the Baltzer report was available indicating that there had been five deployments.

Yet in the face of all this information, the force deliberately or negligently disseminated the misinformation and then chose not to correct the record for more than one year.

Sgt. Lemaitre testified to his discomfort as to how this situation was handled by the force. He in fact testified that he had been "frustrated" and "exasperated" that the record was not being corrected (see April 21, pages 71 & 74). He further conceded that it was absolutely better that the record be corrected earlier rather than later. (April 21, p. 76, line 33)

He claimed that his source for the misinformation was Cpl. Carr, and that it was IHIT's responsibility to set the record straight.

In turn Cpl. Carr claimed in evidence that although he was well aware of the errors presented by the RCMP to the media during the early days, he was instructed by Superintendent Rideout not to correct the record or to discuss the facts of the incident.

Yet despite this directive from the Superintendent, the RCMP held a press conference on Oct. 30 to advance information that was clearly intended to put the four officers in a favourable light in connection with the medical care provided after handcuffing.

So here we have the force failing to correct the record shortly after the incident because they had a policy not to speak further about the case, yet when they considered it to be in their own interest, for example on Oct. 30, they did just that.

Here is an exchange between myself and Cpl. Carr (April 22, p. 64, line 40):

Q. Would you not agree with me that the misinformation that was disseminated to the media during the early days --

A. Yes

Q. ---would have compromised the investigation?

A. It could have, absolutely. I would agree with you.

Yet, nothing was done about it.

The excuses provided to the Commission for initially misleading the public, and in turn failing to correct the record, are totally unconvincing. First, as said above, they broke their own rule on Oct. 30, when it was in their interest to do so. In fact on the same day Cpl. Carr described their failure to rectify the misinformation as an "oversight" in an interview with CBC. (Exh. 131 (I), p. 4). That was quite an oversight, especially with national and international attention focused on this tragic event.

The misinformation provided to the public was, at best, gross negligence (having not carefully reviewed the video), or more likely an intention to favorably spin the events of Oct. 14 with a reckless disregard for the truth.

The misconduct was then compounded when the RCMP deliberately decided to remain silent and to allow the fictional version, the one favourable to the four officers, to remain on the public record, knowing full well that the story was in all relevant respects, simply untrue.

## H. THE PRITCHARD VIDEO AND ITS SEIZURE

We suggest that the RCMP overtly attempted to suppress Mr. Pritchard's video from the public realm because the video did not present the force in a very favourable light and, more particularly, it contradicted the public statements that had been made by the RCMP concerning what had happened. This decision to withhold the return of the video to its rightful owner deserves the attention of the Commission, and, we submit, justifies a ruling of misconduct against Superintendent Rideout who acknowledges responsibility for the decision.

At the scene Mr. Pritchard reluctantly agreed to hand over the video on the clear understanding that it would be returned to him within 48 hours. The next day Cst. Mulhall telephoned Mr. Pritchard to say that the RCMP would not be returning the video. When pressed by Mr. Pritchard, the constable indicated that the video would be returned to him between 1 ½ to 2 ½ years later!

This led Mr. Pritchard to retaining lawyer Paul Pearson in Victoria to issue a demand letter for the return of Mr. Pritchard's private property. Mr. Pearson heard back from the police on Oct. 22 indicating the video would be returned immediately; later in the day Mr. Pearson heard further from the police that the superintendent had changed his mind and the tape would not be returned. Superintendent Rideout's justifications for suppressing the video aren't credible. Firstly he argued that the release of the tape could influence the witnesses with their statements. Yet almost all of the witnesses had been interviewed soon after the incident. Secondly the superintendent

suggested that the video should not have been released if a criminal investigation was being carried out. Yet in late October there was no criminal investigation to justify the retention of the original video.

A Supreme Court action was initiated on Oct. 25<sup>th</sup>, and the video was eventually returned Nov. 7<sup>th</sup> as the matter was about to be heard in the courts.

Superintendent Rideout acknowledged in testimony that but for the lawsuit the tape would not have been returned for one or two years. (Transcript, May 6, p. 78, Line 5).

The police handling of the decision to retain this video should be troubling to the Commission. Superintendent Rideout testified that although Mr. Pritchard voluntarily gave over the video and had received assurances that the video would be immediately returned to him, these factors were not a concern to him in deciding to withhold the video's return. He said in testimony: "I hadn't considered that, actually." (Transcript, May 6, p. 76, Line 15.).

What results from this incident can be nothing other than a growing public mistrust with the police. An effective police force depends on public support. The integrity of Canada's national police force must be jealously protected. An incident such as this undermines public confidence. A ruling of misconduct should be made against Superintendent Rideout.

## I. CONCLUSION

Robert Dziekanski was an immigrant to Canada for less than 60 minutes. At the end of that short time all of his dreams of a new life in Canada with his mother came to a fatal end. And following his death an examination of what happened reveals a dramatic trail of human and institutional errors, all of which contributed to his untimely death while lying at the feet of the four RCMP officers.

It is easy to imagine that, but for the public release of the video taken by Paul Pritchard, Robert Dziekanski's death would likely have garnered limited media coverage and, in turn, little public attention. Instead, millions of people have witnessed this man's death. This incident has touched each and every viewer who has watched the mere two minutes of Mr. Dziekanski's encounter with the police until he was rendered unconscious and subsequently died.

One mourns the tragic outcome of this incident. But another reaction quickly overwhelms the viewer of the video. One is left with a strong sense that Mr. Dziekanski's death was totally unnecessary, totally unjustified. Put bluntly, Mr. Dziekanski was the victim of incompetence, misconduct, and a reckless disregard for his life.

The exhaustive review of the incident carried out by this Inquiry has only corroborated this conclusion and magnified the series of fatal misjudgments and actions that caused Mr. Dziekanski's demise.

Everything that could go wrong during Mr. Dziekanski's eleven hours in Canada did go wrong. More effective YVR security in the airport luggage area would likely have prevented the tragic outcome. Mr. Dziekanski should never have been allowed to wait in this area of the airport for six hours.

The personnel of a well-functioning immigration and customs operation, having recognized the hours that it had taken for him to reach their counter, would have brought in an effective interpreter to assist an individual who clearly needed a helping hand. They would have learned that he was trying to find his mother. And, earlier in the day, they would have been responsive to a mother's frantic efforts to track down her son's whereabouts.

On the other side of the wall, in the Meet and Greet area, an efficient and caring YVR staff would have been more proactive to Mrs. Cisowski's pleas for help to find her son.

If it had not been for this indifference Mr. Dziekanski would be alive today.

Yet it is the RCMP involvement that is by far the most troubling. No reasonable interpretation of the conduct of the four officers can lead one to conclude anything but that they acted with, at best, gross misconduct.

For the four officers to approach Mr. Dziekanski, possibly with a pre-determined plan to taser him, without carrying out even an elementary assessment of the situation is inexcusable. Their failure to make the slightest accommodation for the fact they were dealing with a person who they knew could not speak English is inexcusable.

Their failure to deal with Mr. Dziekanski in a civilized manner when he exhibited a cooperative attitude is inexcusable.

Their willingness to deploy the taser without justification, without any reasonable perception of a threat to their safety, within twenty-two seconds of their meeting him is obviously inexcusable.

Their unnecessary repeated deployment of the taser is inexcusable.

Their reckless and callous disregard for Mr. Dziekanski's deteriorating medical condition and their failure to provide the most elementary First Aid is inexcusable. Cpl. Robinson's placing his knee on Mr. Dziekanski's neck for twenty-four seconds is inexcusable.

Cpl. Robinson's refusal to release the handcuffs from the back of Mr. Dziekanski when requested to do so by the first medical responders, thereby denying him critical medical attention, is inexcusable.

The RCMP media initiative of disseminating false information which attempted to cast the RCMP officers in a favourable light, and then deliberately failing to correct the public record, is inexcusable.

The RCMP effort to suppress the release of the Pritchard video without legal grounds or a sound rationale is inexcusable.

And finally, and most troubling of all, the self-serving misrepresentations made by the four officers in their notes and police statements, and then in

turn, while under oath at this inquiry concerning what happened that night, are also totally inexcusable.

Certain elements of wrongdoing particularly warrant Commission findings of misconduct. In particular, there should be findings of wrongdoing:

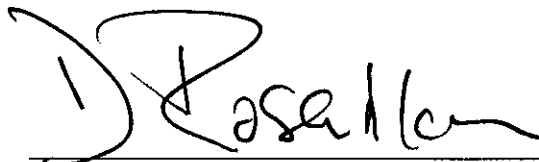
- (i) Against all four officers for their general mishandling of the incident (both before and after the taser deployment), including their overt and self-serving attempt to misrepresent the incident in their notes, police investigation statements and in testimony provided under oath at this hearing.
- (ii) In addition, against Cst. Millington for his unnecessary initial deployment of the taser when there was no discernible threat to the safety of the officers.
- (iii) In addition, against Cst. Millington for his unnecessary and dangerous further multiple deployments of the taser.
- (iv) In addition, against Cpl. Robinson for his commanding officer's responsibility for the overall conduct of this grossly mishandled incident, his unwarranted orders to deploy the taser, and for his reckless disregard as the primary caregiver for the life and safety of Mr. Dziekanski.

- (v) Against Sgt. Lemaitre, Cpl. Carr and Superintendent Rideout for disseminating false information to the public and deliberately failing to correct the record.
  
- (vi) In addition, against Superintendent Rideout for his attempted suppression of the Pritchard video without a legal basis or a sound rationale.

We are hopeful that as a consequence of this tragic event where one of my client's citizens unnecessarily lost his life, an opportunity arises to ensure that such an event never reoccurs. We anticipate that your report and recommendations will go a long way to meet those expectations.

As noted in the letter from Ambassador Ogrodzinski (which will be read into the record in oral submission), the Government of Poland expresses its appreciation to the Commission for this exhaustive inquiry into Mr. Dziekanski's death.

Respectfully submitted this 29<sup>th</sup> day of September, 2009.



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## Appendix 1

### THE FIRST CONTACT BETWEEN THE POLICE OFFICERS AND MR. DZIEKANSKI UNTIL HE MOVED TO THE COUNTER.

#### **Cst. Rundell**

##### *IHIT Statements*

Cst. Rundell stated that:

- Subject was aggressive and combative on early contact. (pp. 612)
- "...didn't seem... responsive to us" (p. 627)
- He didn't respond to Cpl. Robinson's words (p.638)
- He motioned "towards wanting to go to his suitcases, his suitcases ..." (p. 618)
- He was not responding to commands and "walking away". (p. 618)

##### *Testimony*

Cst. Rundell testified that:

- when Cpl. Robinson ordered Mr. Dziekanski not to go to his luggage, he complied. (Feb. 25<sup>th</sup>, p. 6, line 4).
- Mr. Dziekanski "flipped up his hands" and left the impression of "To hell with you guys, I'm outta here" (p. 6, line 9).
- Mr. Dziekanski's behaviour amounted to "defiance" (p. 6 line 41).
- Mr. Dziekanski was fleeing when he left the luggage area (p. 8, line 17).
- "That is not a co-operative person" (p. 8, line 19).

- “He became resistant when he flipped up his arms and left towards the counter” (p.9, line 5).

## **Cst. Bentley**

### *IHIT Statements*

Cst. Bentley stated that:

- Mr. Dziekanski appeared calm on first contact (pp. 647, 673).
- Mr. Dziekanski was “co-operative and calm” (p. 673).

### *Testimony*

Cst. Bentley testified that:

- In respect of Cpl. Robinson pointing to the counter: “I interpret him as giving him an order, or using body language or pointing to direct him somewhere” (Feb. 26, p. 78, Line 8).
- Mr. Dziekanski was ordered to go over to the counter, but only after he had thrown up his arms and walked away from them (Feb. 26, p.78, line 12).
- Mr. Dziekanski’s shrugging and putting his arms up in the air could be interpreted as an act of compliance and cooperation. He could provide no other interpretation. (Feb. 26, p. 83, Line 9)

## **Cst. Millington**

### *IHIT Statements*

Cst. Millington stated that:

When approached, Mr. Dziekanski was “in an agitated state” (p. 569).

- On arrival “...male was yelling and it wasn’t making any sense” (p. 561)

- “We tried to calm him down... and he backed away from us and was still yelling. He didn’t listen to anything we were saying” (p. 561)

### *Testimony*

Cst. Millington testified that:

- When Mr. Dziekanski had his hands in air, he interpreted this as “defiance” (March 3, p. 106, Line 22).
- (After watching video) Mr. Dziekanski was not manifesting “agitation” in his movements when Millington first saw him (Mar 3, p. 108, Line 1).
- Mr. Dziekanski became defiant when he “threw up his hands and turned away from us and moved towards the table” (Mar. 3, p. 108, Line 14).
- That was an act of “resistance” (Mar. 3, p. 108, Line 17).

### **Cpl. Robinson**

#### *IHIT Statements*

Cpl. Robinson stated that:

- Mr. Dziekanski was “very agitated” and “being quite aggressive” (p. 683).
- There was no time to get a Polish interpreter (p. 713).

#### *Testimony*

Cpl. Robinson stated that:

- On arrival he observed small movement of Mr. Dziekanski’s hands, which were “shaking a little bit” (March 25, p. 24, line 16).
- He acknowledges that Mr. Dziekanski was “calm” on first contact (March 25, p. 16, Line 10).

- He was not aware that Cst. Millington had asked Mr. Dziekanski for his passport and ID (p. 16, Line 18).
- When told not to go to the luggage, Mr. Dziekanski “complied” (p.16, line 28)
- He directed Mr. Dziekanski to the counter (p. 16, line 39).
- He verbally ordered him to put his hands on counter – but knew that was meaningless (p. 21, line 40).

## Appendix 2

### MR. DZIEKANSKI'S ARRIVAL AT THE COUNTER UNTIL THE INITIAL TASERING.

#### **Cst. Rundell**

##### *IHIT Statements*

Cpl. Rundell stated that:

- “He [Mr. Dziekanski] picked up the stapler, and he started...clenching his fists and...putting the stapler up above his head, mo-motioning...making motions with it, uh...towards us” (p. 611).
- Mr. Dziekanski demonstrated “combative behaviour” (p. 612).
- “He [Mr. Dziekanski]...had both fists in the air with the stapler...” (p. 639)
- Mr. Dziekanski was “...motioning towards us in an...aggressive combative style...” (p. 639).
- “He [Mr. Dziekanski] was clearly demonstrating combatative (ph) behaviour” (p. 641).

##### *Testimony*

Cpl. Rundell testified that:

- Mr. Dziekanski brought the stapler down to his chest area. (Feb. 25, p. 14, Line 14).
- Dziekanski put his left foot forward, but agrees that this is not visible on the video (Feb. 25, p.17, Line 34).

## **Cst. Bentley**

### *IHIT Statement*

Cst. Bentley stated that:

- Mr. Dziekanski swung stapler out in a fast motion, almost as if he was trying to hit “myself and Corporal Robinson” (p. 649).
- “...He [Mr. Dziekanski] kind of swung it at us” (p. 662).
- “He [Mr. Dziekanski] ah had taken a stapler out, attempted to ah, hit myself with it and ah, you know he was getting more and more violent” (p. 1568).
- We tried to engage him with verbals to try and calm him down “...which wasn’t working....” (p. 1569)
- “...he [Mr. Dziekanski] swung it at me and then I deployed my baton....” (p. 674)
- “...because he [Mr. Dziekanski] just swung the stapler at me and I didn’t want, you know my eye to get knocked out or be injured” (p. 674).

### *Testimony*

## **Cst. Millington**

### *IHIT Statement*

Cpl. Millington stated that:

- Mr. Dziekanski moved towards officers with the stapler. (p. 570)
- “...within seconds he [Mr. Dziekanski] took the stapler and then started moving towards us” (p. 579).
- “....and had it raised high and then started advancing towards us” (p. 581).

- “He [Mr. Dziekanski] seemed more paranoid than angry that’s what it seemed like he was”. “Paranoid, agitated than angry”. (p. 580).

### *Testimony*

Cst. Millington testified that:

- The encirclement of four officers with their hands in the area of their holsters would not lead someone to be paranoid or nervous if they hadn’t done anything wrong (Mar. 3, p. 128, Line 16).
- It would not be traumatic to be a foreigner encircled by four officers with their hands at their holsters. (Mar. 3, p. 129, Line 6).
- Did not give warning as required. There was no time (p. 131, Line 40).
- Dziekanski says: “Leave me alone, leave me alone. Did you become stupid?” (p.132, Line 38).

### **Cpl. Robinson**

#### *IHIT Statement*

Cpl. Robinson stated that:

- “...at that point he [Mr. Dziekanski] grabbed the stapler and tried to hit us with it” (p. 683).
- Mr. Dziekanski was swinging stapler (p. 683, 690).
- Mr. Dziekanski was “yelling” at that point. (p. 691).
- Mr. Dziekanski stepped forward and was swinging the stapler (p. 692).
- Mr. Dziekanski “...attempt[ed] to hit us...” (p. 692).
- Mr. Dziekanski took a “...step forward, swing, step back...” (p. 693).

- When Mr. Dziekanski grabbed the stapler “there was a lot of articulation on our part...” (p. 714).

*Testimony*

Cpl. Robinson testified:

- In accordance with his lawyer, Mr. Harris’ letter of March 2, 2009, “swinging” was changed to “brandishing” (March 25, p. 2, Line 13).
- Mr. Dziekanski’s “articulation” was conceded to be before he picked up the stapler (March 25, p.36, Line 27).
- Mr. Dziekanski never had the stapler above his head or shoulders before he was tasered (March 25, p. 37, Line 28).
- When he referred to the stapler as being “up high” in his statement at IHIT p. 692, he did not mean above the shoulders (March 25, p. 40, Line 44).

**Appendix 3**

THE CONTINUED TASERING OF MR. DZIEKANSKI UNTIL HE WAS  
HANDCUFFED.

**Cst. Rundell**

*IHIT Statements*

Cst. Rundell stated that:

- Cpl Robinson, Bentley, and myself ... “wrestled him [Mr. Dziekanski] to the ground” (p. 612)
- Mr. Dziekanski had to be “...wrestled to ground” (p. 612)

*Testimony*

Cst. Rundell testified that:

- Mr. Dziekanski was still standing after first taser deployment (Feb. 25, p. 19, Line 39).

**Cst. Bentley**

*IHIT Statement*

Cst. Bentley stated that:

- After the first deployment, his impression was that Mr. Dziekanski was just trying to fight through it “like he was going to continue fighting (p.654)
- Mr. Dziekanski was wrestled to the ground, but it did not take much force to take him down (p. 655).

*Testimony*

Cst. Bentley testified that:

- He has come to appreciate that the second tasing was when Mr. Dziekanski was on the ground (Feb. 26, p. 85, Line 4).
- He now realises that officers never wrestled Mr. Dziekanski to ground. (Feb. 26, p. 85, Line 31).
- The second tasing was “perhaps” not necessary. (Feb. 26, p. 85, Line 46.)

### **Cst. Millington**

#### *IHIT Statement*

Cst. Millington stated that:

- “Members had to wrestle him [Mr. Dziekanski] to the ground” (p. 564)
- At that point he pulled out the taser...and shot him [Mr. Dziekanski]. He shaked a little bit but didn’t fall down. (p. 570).
- “I believe that I cycled it twice, when he [Mr. Dziekanski] was standing...” (p. 582).

### **Cpl. Robinson**

#### *IHIT Statements*

Cpl. Robinson testified that:

- After the initial deployment of taser, Mr. Dziekanski “still was standing at that time” (p.683)
- After the initial deployment, Mr. Dziekanski “didn’t drop” (pp. 693-694).
- Mr. Dziekanski had to be physically brought down. (p. 695).
- The first deployment “wasn’t having any effect” (p. 711).

*Testimony*

Cpl. Robinson testified that:

- He was not certified to use taser, having last taken the CEW course in 2003 (March 23, p. 8).
- He recalls from the course that there were medical concerns about repeated tasing. (March 25, p.11)
- Mr. Dziekanski was “fighting through” the taser (March 25, p.52, Line 9)
- He knows now that the second deployment when Mr. Dziekanski was already on the ground (March 25, p. 53, Line 11).
- The first deployment had some effect, but, he said, not an instantaneous effect as he expected (March 25, p.55, Line 32).
- The second command to deploy was when Mr. Dziekanski was still holding the stapler. (March 25, p. 56, Line 10).

## **Appendix 4**

### THE HANDCUFFING OF MR. DZIEKANSKI UNTIL HIS DEATH.

#### **Cst. Rundell**

##### *IHIT Statements*

Cst. Rundell stated that:

- He does not remember anyone assisting with First Aid, and he makes no mention of Mr. Enchelmier (p. 631).

##### *Testimony*

Cst. Rundell testified that:

- Richmond Fire asked that the handcuffs are removed, but the police officers refused (Feb. 25, page 35, Line 13).

#### **Cst. Bentley**

##### *IHIT Statement*

Cst. Bentley stated that:

- He called for “Code three” as Mr. Dziekanski’s skin colour started turning bluish (pp. 644 and 658).
- After tasing Mr. Dziekanski became unconscious (p. 651).
- He kept seeing Robinson checking Mr. Dziekanski’s pulse (p. 658).

##### *Testimony*

Cst. Bentley testified that:

- Mr. Dziekanski was in a state of serious “medical distress” when Bentley observed the bluish skin colour (Feb. 26, page 96, Line 36).
- There was no reason not to remove the handcuffs (Feb. 26, p.101, Line 45).

**Cst. Millington**

IHIT Statement

Cst. Millington stated that:

- Mr. Dziekanski turned blue right after handcuffing (p. 590).

Testimony

Cst. Millington testified that:

- He recognised that Dziekanski was in serious medical distress, he was medically compromised (March 4, p. 20, Line 23).
- He never noticed laboured breathing, but if he had, he “may” have placed Mr. Dziekanski on his back and checked his airways (March 4, p. 22, Line 34).
- He never saw anyone check Mr. Dziekanski’s breathing (March 4, p. 21, Line 32).
- He never saw Robinson check Mr. Dziekanski’s pulse (March 4, p. 23, Line 21).
- He never saw anyone else take Mr. Dziekanski’s pulse (March 4, p.29, Line 16).
- He did not expect a downturn in Mr. Dziekanski’s medical condition between handcuffing and EHS arrival (March 4, p. 28, Line 12).

- He acknowledges that officers never prepared for CPR (March 4, p. 30, Line 45 et. seq.)
- He saw Cpl. Robinson's knee on Mr. Dziekanski's neck in the video, and stated that that is contrary to RCMP training (March 4, p. 34, Line 2).
- He knows the medical consequences of placing a knee on someone's neck (March 4, p. 34, Line 43).
- In these circumstances the person's pulse should be taken every few seconds, or every 20 or 30 seconds (March 4, p. 36, Line 9).

## **Cpl. Robinson**

### *IHIT Statement*

Cpl. Robinson stated that:

- Mr. Dziekanski started to snore (p. 684).
- "...so hm, I said, I put him out, as I was the one positioned on top of him?" (pp. 684, 699).
- "...cause I'm the one applying pressure to the top part." (p. 699).
- Mr. Dziekanski had blue discoloration and faint breathing (p. 685)
- Mr. Dziekanski was snoring (p. 699).

### Testimony

Cpl. Robinson testified that:

- His First Aid certification lapsed in 2002 (March 25, p. 8, Line 6).
- "I put him out", but this did not mean that he was responsible for Mr. Dziekanski's state of unconsciousness. (March 25, p. 58-59)

- He acknowledges that applying pressure with the knee on someone's neck could cause potential harm (March 25, p. 60, 62, Line 17).
- Acknowledges that knee was applied for 24 seconds. (March 25, p.65, Line 32).
- He was not aware that airport had defibrillators (March 25, p. 67, Line 18).
- Mr. Dziekanski was snoring (March 25, p. 69, Line 21).
- Mr. Dziekanski's breathing was faint, laboured (March 25, p. 69, Line 42).
- One of Mr. Dziekanski's ears turned blue (March 25, p. 70, Line 5).
- He suggested that the blue colour was from bruising (March 25, p.71, Line 30).
- He knew that Mr. Dziekanski's situation was a "serious medical condition" (March 25, p. 72, Line 18).
- Mr. Enchelmaier checked his pulse "or did it once" (March 25, p. 73, Line 44).
- He didn't check Mr. Dziekanski's airways. (March 25, p. 74, Line 44).
- He was instructed in his First Aid course that one is suppose to check airways (March 25, p.74, Line 47).
- He refused to take cuffs off at the request of Richmond Fire (March 25, p.81, Line 4).



*Ambassador of the Republic of Poland to Canada  
Ambassadeur de la République de Pologne au Canada*

Ottawa, 25 September 2009

**Thomas R. Braidwood, Q.C.**  
Braidwood Hearing and Study Commission  
980 - 1500 West Georgia Street  
Vancouver, B.C. V6G 2Z6

*Dear Mr. Commissioner,*

Our Government wishes to take this opportunity to express our sincere appreciation for your decision to allow the Polish Government to participate in this historic inquiry. We also wish to say that the decision by the government of British Columbia to establish this inquiry, as well as the manner in which you and your Commission staff conducted these proceedings are matters in which Canadians should take pride, despite the difficulty in confronting such a painful incident.

The release of the video recording of the death of our national, Robert Dziekanski at the Vancouver International Airport, while difficult to watch, has personalized this tragedy to millions of citizens in Canada, in Poland and, indeed, in the rest of the world. There has been intense public interest in your proceedings. This arises from the viewers' instinctive reaction that justice must be achieved, responsibility determined, and wrong-doers be made accountable through criminal prosecution.

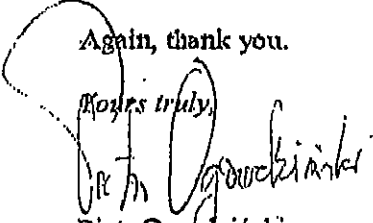
Our Government has already expressed its disappointment that the British Columbia Criminal Justice Branch announced on December 12, 2008, that no criminal charges would be laid. Nonetheless, as stated above, we are most appreciative that the government of British Columbia established this Inquiry so that an in-depth review of the incident could be carried out.

We are confident that your findings and recommendations will contribute significantly, both domestically and internationally, to understanding how a fairly minor event can escalate to such a tragic end.

We also acknowledge and appreciate the courtesies you accorded to our legal counsel, Don Rosenbloom, throughout the many months of hearing.

Again, thank you.

*Yours truly,*

  
Piotr Ogródziński