

**IN THE MATTER OF THE THOMAS R. BRAIDWOOD, Q.C.,
COMMISSIONS OF INQUIRY UNDER THE *PUBLIC INQUIRY ACT*,
SBC 2007, c. 9**

Wosk Centre for Dialogue
Strategy Room 320
580 West Hastings Street
Vancouver, B.C.

May 15, 2008

PROCEEDINGS AT
FORUM (DAY 9)

ORIGINAL

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Commissioner:	T.R. Braidwood, Q.C.
Commission Counsel:	A. Vertlieb, Q.C.
Associate Commission Counsel:	P. McGowan
Court Recorder:	P. Kealy, C.V.R., C.M.
Transcriber:	P. Kealy

1
Walter Kosteckyj, counsel for Zofia Cisowski
(Interested groups and individuals presenter)
Questions by Mr. Vertlieb

2 Vancouver, B.C.
3 May 15, 2008

4 THE COMMISSIONER: Good morning, everybody. I
5 understand we're ready to go ahead. Welcome.
6 Yes, counsel.

7 MR. VERTLIEB: Thank you, Mr. Commissioner. The first
8 presenters will be Mr. Kosteckyj and his client.
9

10 WALTER KOSTECKYJ AND ZOFIA
11 CISOWSKI, Interested groups
12 and individuals presenters.
13

14 MR. VERTLEIB: Mr. Kosteckyj, you've sat here for a
15 number of the days so you understand that we will
16 just help with the introduction.

17 A Yes.

18 MR. VERTLIEB: And the you can present along with your
19 client as you see fit.
20

21 QUESTIONS BY MR. VERTLIEB:
22

23 Q Just tell us a bit about your background. Before
24 you became a lawyer what was your career, in part?

25 A Well, I had a varied number of careers. I was at
26 one time a paper mill worker, I was a teacher and
27 a police officer.

28 Q And a police officer in what force?

29 A I was a member of the RCMP and very proud of my
30 service.

31 Q Where did you serve?

32 A I served principally in what is known as
33 F Division, which is Saskatchewan.

34 Q What years were you a member of the RCMP?

35 A I was a member of the RCMP for approximately three
36 years prior to attending law school. It's hard
37 for me to think of what the exact year is off the
38 top of my head here.

39 Q And in terms of your university, then, tell us
40 where you've gone to school.

41 A Well, initially, after high school I went to UBC,
42 which I got my undergraduate degree and then I
43 went back and worked for a period of time, both as
44 a mill worker and as a teacher while I was
45 actually waiting to gain entry into the RCMP. In
46 those days it was quite a long process,

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(Interested groups and individuals presenter)
Questions by Mr. Vertlieb
Presentation

1 investigating backgrounds and so forth. And then
2 after I served, my intention actually was stated
3 that I wanted to go to law school and serve in the
4 RCMP in that capacity, but that didn't prove to be
5 possible and that was the reason that I went off
6 and went on to law school at the University of
7 Saskatchewan on my own.

8 Q In what year did you graduate law school?

9 A I graduated in 1982 and then I worked for a year
10 with the Chief Justice of Saskatchewan before
11 coming here and commencing my career here.

12 Q And you are in private practice in Vancouver?

13 A I am, and I have been since 1984.

14 Q Would you mind just giving the Commissioner a few
15 brief words of introduction about your client,
16 just because you would understand her background
17 and she, I'm sure, would be comfortable discussing
18 that as much as you would like to have her
19 discuss.

20 A I'd be happy to do that. She is 61 years of age.
21 She emigrated to Canada from Poland approximately
22 nine years ago. She in Poland worked initially as
23 a carpenter and was trained in that profession and
24 enjoyed it very much. She subsequently went on to
25 do a number of other jobs, which would be clerical
26 and working in stores and the like. And during
27 that course of time, she was a single mother and
28 raised her son Robert.

29 Upon coming to Canada, she's worked
30 principally as a caretaker and in the janitorial
31 business.

32 Q And Mrs. Cisowski lives in Kamloops?

33 A She came to Kamloops originally and that's where
34 she makes her home.

35 Q And both you and your client know that you're
36 welcome to make any presentation that you both
37 would like to make.

38 A Thank you very much. I will speak first and my
39 client may have a few words at the end.

40 THE COMMISSIONER: Handle it any way you wish.

41

42 PRESENTATION BY MR. KOSTECKYJ:

43

44 A All right. I am, as I said, counsel to Mrs.
45 Cisowski, and I am here of course to present her
46 submissions and her views on conducted energy

Walter Kosteckyj, counsel for Zofia Cisowski
(Interested groups and individuals presenter)
Presentation

1 weapons.

2 We want to thank you, Mr. Commissioner, for
3 the prompt way in which this has been put together
4 and put in place at a time when there was some
5 time available, and I know how difficult it can be
6 to assemble witnesses. And I also wish to
7 publicly thank your counsel for extending all of
8 the professional courtesies that they have to my
9 client and to myself.

10 My client would also like to thank
11 specifically the people of British Columbia who
12 have been so supportive of her. And she would
13 also like to thank the people of Canada who have
14 written to her, and most specifically the people
15 of Kamloops, who locally have helped her so very
16 much and been supportive in this difficult time.
17 And in addition she wants to thank the media
18 because in her mind many of the issues that have
19 been involved in investigating and getting to the
20 truth of many of these matters have resulted
21 because of the tenacity of the media in
22 particular.

23 When Zofia immigrated to Canada, her goals
24 were simple. They were goals which were shared by
25 almost all other immigrants. She wished to learn
26 the language and she hoped, at one point after
27 getting settled, to reunite her family, and that
28 was what she was working to.

29 She never expected to be making a
30 presentation at a commission with national media
31 attention. But then again, she didn't expect that
32 she would be celebrating last Christmas on her own
33 or that she would be laying flowers at an
34 international airport in celebration of her son's
35 birthday or that she would pass last Mother's Day
36 alone, although she would certainly like to thank
37 all those well-wishers who celebrated that event
38 with her and the flowers and the cards that she
39 received.

40 Zofia's primary focus is really on the
41 inquiry which is yet to come, the second part of
42 this inquiry, the search for what actually
43 happened with respect to her son. And she looks
44 forward to starting that inquiry once the
45 prosecution has finished with their work. That is
46 not to say that she doesn't have strong views

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Presentation

1 about what is happening here.

2 There should be no mistake. In Zofia's mind,
3 if there had been no Taser available to the four
4 RCMP officers who confronted her son at the
5 International Airport, he would be alive today.
6 She quite simply submits that there should be a
7 moratorium on conducted energy weapons, including
8 the Taser and other so-called stun guns.

9 Although the inquiry is in its early stages,
10 it is submitted that the case has already been
11 made out that Tasers have been deployed at too low
12 a level on the continuum of force. Usage creep,
13 as Mr. Kennedy described in his report in
14 November, is rampant.

15 Last week we heard from Constable Messine,
16 who explained the use of force model and set out
17 to convince this inquiry that Taser was being used
18 appropriately. It is interesting that he showed
19 us the same videos in the use of Taser that were
20 being used by TASER International. He went on to
21 argue that the Taser was never introduced as an
22 alternative to lethal force and that it was always
23 meant to be an intermediate weapon.

24 After that, we heard from Mr. Kevin Begg,
25 assistant deputy minister to the Ministry of
26 Public Safety and the Solicitor General. Here was
27 a man who had infinite experience, background, and
28 he gave a very opposite story, in my view. He
29 talked about the fact that he expected the Taser
30 to be used in combative situations and he endorsed
31 the view held by Mr. Kennedy and what he said
32 about the Taser, and that was that it just had to
33 be reclassified and moved to a different level on
34 the continuum of force and needed to be used only
35 in those circumstances where somebody was being
36 combative or posing a risk of death or grievous
37 bodily harm.

38 Contrary also to the view expressed by
39 Constable Messine was that of the former attorney
40 general of the province and the individual who
41 approved the use of the Taser in the first place,
42 Mr. Ujjal Dosanjh, the Honourable Mr. Ujjal
43 Dosanjh. He, having the background that he had,
44 also agreed with the recommendations that Mr. Begg
45 talked about and which were reflected in the
46 Kennedy report.

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(Interested groups and individuals presenter)
Presentation

1 We've since heard from Dr. Webster, the
2 psychologist in crisis management and police
3 procedure, who confirmed that in his view, the
4 Taser was also being used too quickly and, once
5 again, that reclassification was necessary.

6 There is, in our submission, no issue that
7 reclassification, proper ordering of the Taser on
8 the continuum of force, is the very least that is
9 necessary. We are here, however, to advocate a
10 much stronger position. My client submits that
11 the issues regarding the Taser are so overwhelming
12 that a complete moratorium must be put in place.
13 And that moratorium should stay in place until the
14 concerns raised over the safety of this weapon
15 have been answered and all the proper training and
16 reporting concerns have been answered, and at the
17 very least that a proper civilian authority is put
18 into place to oversee those issues.

19 Mr. Dosanjh went so far as to say that when
20 he was briefed on two or three separate occasions,
21 he had been given three principal assurances. He
22 was told that the Taser was absolutely safe, that
23 it would reduce the requirement for deadly force,
24 and that the conducted energy weapons and
25 specifically the Taser - because there is no other
26 conducted energy weapon in use - had been
27 thoroughly researched. In fact, he made a point
28 of telling the inquiry that he was told that the
29 Taser had been over-researched. That's what he
30 had been told. And most importantly, he was told
31 that it would be used sparingly and only in those
32 situations where there was assaultive or
33 threatening behaviour.

34 Without overstating it, Mr. Dosanjh made it
35 clear these things had been misrepresented to him,
36 and if the facts that we know now were in evidence
37 then, the Taser would not have been approved.

38 It is time to put the genie back in the
39 bottle and to start from square one. The
40 advocates for the Taser need to prove that the
41 weapon is safe by thorough research and that it
42 will be used in the right circumstances and that
43 those safeguards exist and that people can rely
44 upon them.

45 Right now we don't know what the long-term
46 effects of Taser use might be.

Walter Kosteckyj, counsel for Zofia Cisowski
(Interested groups and individuals presenter)
Presentation

1 There is an additional problem, and that is
2 the problem of harmonizing the use by municipal
3 forces and the RCMP, because in British Columbia
4 we are policed by both. And principally it would
5 seem that we are policed by the RCMP because quite
6 frankly it's cheaper.

7 Mr. Dosanjh pointed out that there were
8 contract negotiations coming forward and that one
9 of the things that the government should think
10 about doing is negotiating civilian control over
11 how the RCMP employ their use of force. And it
12 seems that until that is done, it might be an
13 appropriate time to put a moratorium in place.

14 Yesterday you heard from the various police
15 chiefs. An observer who I spoke to used a
16 military term, and part of it uses the word
17 "cluster." In short, the point that he was making
18 to me is that here you had the various chiefs of
19 police from all of the various municipalities and
20 they couldn't agree on when they use the Taser.
21 There's no uniform place. In Port Moody, for
22 example, I'm advised that there's no policy
23 whatsoever. In other jurisdictions it varies on
24 the continuum of force from being used at the
25 officer's discretion, as in Delta, to the point
26 where there at least seems to be some policy in
27 place.

28 Until usage is harmonized and until there's a
29 plan in place and until there's appropriate
30 civilian oversight, this weapon has to be shelved.

31 Let's talk about safety. You've heard from a
32 number of experts, the most (indiscernible) of
33 which, in my opinion, were Dr. Reilly, the
34 electrical engineer, Professor Webster, also who
35 had the electrical background, and from Dr. Tseng,
36 the cardiologist, who has no axe to grind in this
37 matter. He represents nobody's interests. He's
38 associated with a hospital, a cardiologist.

39 The first two witnesses talked about the fact
40 the weapon is not completely safe. They indicated
41 there was low risk of death but it also seemed
42 that there had not been sufficient research. They
43 said that. And certainly, and everyone agrees to
44 this, there has never been sufficient research on
45 people, humans.

46 Dr. Tseng seemed to go much further and said

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1 the probe should not be shot in the chest at all,
2 that that was dangerous. And of course, as I say,
3 the long-term effects of Taser use have never been
4 studied.

5 And this is a weapon that, we should not
6 forget, gives someone a jolt that is 100 times
7 more powerful than the pain threshold of a human.
8 That aspect has never been tested. And then of
9 course there's a risk of orthopaedic injury.

10 In our submission, the most recent review,
11 which was conducted and publicized in the *Canadian*
12 *Medical Association Journal* by Dr. Nanthakumar,
13 Dr. Massé, and a group of professional engineers
14 and professors, makes the point best, and we
15 commend that article for your consideration as
16 being the latest and most authoritative review,
17 and that article is of course peer reviewed, once
18 again, by people who have no axe to grind.

19 In short, and in their conclusion to that
20 report, they say the evidence is inconclusive on
21 the research that's been done and that further
22 research needs to be done in order to resolve the
23 conflicting theoretical and experimental findings.
24 They talk about the fact that proper research
25 could ensure the design of devices with electrical
26 pulses that cannot stimulate the heart.

27 In short, there are no standards in
28 existence. In almost every other type of
29 electrical device, there are standards which are
30 set. In Canada those standards are generally set
31 by the Canadian Standards Association. That at
32 the very least is an independent body which
33 employs multiple stakeholders and it might be, in
34 my submission, an appropriate place to conduct the
35 oversight that might be needed to test and approve
36 these conducted energy weapons.

37 We know that if you put a toilet basin in
38 your home or use an electric light switch that is
39 not approved by Canadian Standards Association,
40 you may vitiate your insurance and you're
41 certainly going to have a problem with your
42 warranty. But here is a totally unregulated
43 weapon which has never been reviewed or
44 standardized in any way. And we know that no
45 study had been undertaken in Canada and we were
46 advised by Professor Webster, the gentleman with

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1 the engineering background on the first day in his
2 presentation, that no such standards exist in the
3 United States, and in fact he made a very simple
4 point, and that was that the lowly electric fence
5 has a set of standards, but not the Taser.

6 It would make sense that an association like
7 the Canadian Standards Association that deals
8 specifically with the setting of standards should
9 have a look, at the very least, at this weapon
10 before it is used. And that should have been done
11 to begin with, and it should be shelved until it's
12 done now.

13 Let's talk about something as simple as
14 calibration. It should be of deep concern that
15 there is no calibration method in existence for
16 determining the output of the current CEWs in use,
17 and that means the Taser because there aren't any
18 others. Simple radar guns, breathalysers, can and
19 must be calibrated routinely to be used and
20 accepted in court. You were told by Constable
21 Messine that the only test that is conducted on
22 the Taser is the simple spark test. That's like
23 touching your battery. In short, you pull the
24 trigger and see if the instrument sparks. There
25 is no way to test whether the weapon is working
26 properly and putting out the required amount of
27 power, an acceptable amount, but there's no
28 standard for that either.

29 Of more concern is we were told by Mr. Reilly
30 during his presentation that these Taser guns have
31 been manipulated to increase the power output
32 during the testing process. That raises the
33 concern that if they can be manipulated during the
34 course of testing, why can they not accidentally
35 be manipulated by being dropped, mistreated, or
36 just through the simple reflection of time that
37 things just don't work the same way that they used
38 to?

39 Until a calibration method is put in place,
40 what safety can the Canadian public rely upon?

41 Let's talk about the testing. To date, most
42 of the tests have been performed on swine. There
43 are critics of that, including Taser. But by the
44 same token, they rely on portions of the swine
45 tests, it seems, that are convenient. Professor
46 Webster was clear on certain things. Multiple

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1 stuns were more dangerous than a single stun. But
2 most importantly, there were random findings, and
3 in some cases swine that were Tasered for the
4 first time died but those that were stunned a
5 number of times did not. In short, there is
6 little known. That report of Dr. Nanthakumar that
7 I commended to your attention earlier makes the
8 same consideration.

9 It is significant that Dr. Webster talked
10 about a study that was conducted by a group he
11 referred to as Dennis et al., and it's in his
12 material. In this study, EKGs were taken from an
13 animal before the discharge, and after the Taser
14 discharge it showed sustained ventricular
15 tachycardia after the discharge followed by
16 ventricular fibrillation approximately three
17 minutes later. That seems strikingly similar to
18 what happened to Mr. Dziekanski, from what we
19 know.

20 The lack of statistical data is overwhelming.
21 You had Dr. Christine Hall here to give a
22 presentation, an emergency room physician. She is
23 in the preliminary stages and wanting to do
24 research. This has been ongoing for a couple of
25 years now, and she talked about this grant that
26 she has for \$100,000, but that is not yet in
27 place, hasn't been started. She's been collating
28 information from other sources. And
29 interestingly, Constable Messine, who was here
30 from Victoria City Police, he relies on this
31 expert, he said in his discussion about excited
32 delirium, yet she is not an expert in that field.
33 You've heard from other experts in that field.

34 One of the reasons there is no data is that
35 the police themselves have either neglected or
36 refused to keep it. Moreover, the data they do
37 have has been restricted in its access. The CBC
38 reported, for example, that since 2005, the
39 freedom of information request regarding Tasers
40 directed to the RCMP had come back unanswered or
41 severely restricted. Constable Messine provided
42 little comfort, suggesting the process was now
43 being put into place. A template is now being
44 prepared. And the consequence is we will get the
45 research data somewhere down the road.

46 The evidence that has been gathered from

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1 police sources on the template that is being put
2 into existence seems to suggest that it is
3 inadequate. The template that is being considered
4 has to be filled out and the information gathered,
5 and much of it will be subjective.

6 Mr. Reilly pointed out that the information
7 that really needs to be addressed was the
8 following: height, weight, number of shots,
9 number of Tasers deployed, location of darts on
10 the body, observed reaction, and should include a
11 chart of the body. They're not talking about
12 anything close to that. It may not even be
13 reliable to have police officers filling out this
14 information. This is more in the nature of
15 something that is done by research scientists.
16 And until a proper research model is set up, that
17 information won't be collected.

18 There will always be questions about the
19 safety of the Taser, and until the onus of proving
20 the safety is done, as Mr. Dosanjh insists, it
21 ought to be shelved.

22 Let's talk about the protection of life,
23 because that is the argument that the police
24 always bring to the table. It was argued by the
25 police and by TASER International that Taser saves
26 lives and prevents injury. Mr. Smith from TASER
27 International's presentation to Parliament, and
28 his, I would say, sales pitch that he provided
29 here, referred to the Vancouver City Policy
30 Department as a department whose experience
31 validated that claim. As your counsel,
32 Mr. Vertlieb, pointed out, when he questioned
33 Mr. Smith about that, there don't appear to be any
34 such statistics. Yet, this is what they rely
35 upon.

36 This evidence seems anecdotal and requires
37 closer scrutiny. It seems analogous to the notion
38 that two officers working together in a car are
39 safer than one. Common sense seems to support
40 that contention. In a recent book I've been
41 reading, *Blink*, the author, Malcolm Gladwell,
42 quotes from a security expert, Gavin de Becker.
43 He talks about your natural fear instinct. And
44 studies have proven that one officer working alone
45 is no less safe than if he's working with a
46 partner - but that's because they actually did

1 statistics - and that actually complaints go down
2 when officers work alone. The explanation that is
3 given is that officers working alone take more
4 time to analyze a problem and thus deal with it
5 better.

6 If better decisions had been made, if there
7 had been no Taser present on October the 14th, we
8 submit that it would have. Officers need to
9 create time in dealing with situations. That is
10 what the psychologist, Dr. Webster, told you. The
11 Taser takes their time away. They go to it
12 because they have no -- they're trained in that
13 way.

14 It should be of concern that to date there
15 has been no voluntary compliance by any of the
16 police forces in spite of both the public and
17 political questioning of the use of Tasers.
18 Although the inquiry cannot look into the
19 behaviour of the RCMP, we should be mindful of
20 this fact, that the civilian oversight authority,
21 Mr. Kennedy, made recommendations in November of
22 2007, and those recommendations included moving
23 the Taser up on the continuum of force, and it was
24 recommended that CEWs not be deployed except in
25 exceptional circumstances where bodily harm was
26 imminent. To date, those recommendations have not
27 been followed. The RCMP appear to be waiting for
28 more formal direction. And I know that there is
29 another report coming from Mr. Kennedy which is
30 due out in June.

31 Mr. Begg talked about the Oppal inquiry which
32 took place. He talked about the fact that there
33 was a change in the professional police model to a
34 community-based police model. In short, that was
35 a change from the police being self-regulated to
36 the point where they were subject to civilian
37 oversight.

38 Here you had an assistant deputy minister set
39 out to be what he viewed to be an appropriate view
40 of the usage. He talked about section 40 of the
41 **Police Act** and he talked about this paper that had
42 been circulated between himself and the various
43 police chiefs. And at the end of the day, what
44 you were hearing from Mr. Begg is that in spite of
45 the oversight that is being exercised by
46 government authority, the police chiefs don't seem

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1 to be listening. They can't come to the table and
2 can't agree. And it appears from what Mr. Begg
3 was saying, they've got to go back and get
4 stronger authority under the **Police Act** to bring
5 those changes into being because they don't
6 voluntarily comply. They didn't even comply with
7 the promises they made to Mr. Dosanjh.

8 It is contended that a moratorium on the
9 Taser is and will restore confidence in the
10 justice system and give appropriate time to
11 consider the safety issues as well as complete
12 necessary training that experts like Mr. Webster
13 and Mr. Begg put into place.

14 It should be of major concern that when one
15 of the police forces in this province is invited
16 to present, that being the transit police, they
17 don't take the opportunity to come and reassure
18 the public about what their role is and how
19 they're going to use the Taser. They avoid the
20 public scrutiny. And this is under the model that
21 we understand and we are told by the assistant
22 deputy minister exists here, and that is
23 community-based policing that has been in effect
24 since Mr. Oppal's inquiry.

25 It's submitted there needs to be a return to
26 basic principles. There are nine of them. I've
27 listed them there for you. Essentially they come
28 down to this: The police are the public and the
29 public are the police, and that the ability of the
30 police to perform their duties is dependent upon
31 public approval and approval of police actions.
32 The police must secure the willing cooperation of
33 the public in voluntary observance of the law.
34 And point 4, the degree of cooperation of the
35 public that can be secured diminishes
36 proportionately to the necessity of the use of
37 physical force.

38 Point 6: Police use physical force to the
39 extent necessary to secure observance of the law
40 or to restore order only when the exercise of
41 persuasion, advice, and warning is found to be
42 insufficient, what Dr. Webster talked about. I
43 didn't make these things up. These principles
44 were enunciated in 1829 by Sir Robert Peel. They
45 formed the basis upon which every police force
46 trains its members. If you want to find those

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1 principles, you can simply go to the New
2 Westminster Police site and located right on the
3 front of their website are those nine principles.
4 They are the founding principles of peace officers
5 in any democratic society. But these principles
6 were meant to be more than words on a page. They
7 have to be implemented.

8 As I say, the transit police chose not even
9 to appear before a public inquiry and take the
10 opportunity to regain the public trust. Where is
11 that in those principles? What can be said about
12 an organization that so woefully fails to
13 understand its duty?

14 It is suggested by the police that they are
15 facing more difficult times now than they ever
16 have before and this weapon is crucial. Well,
17 think of what it was like to be a metropolitan
18 police officer in 1829 in London when there had
19 never been a police service. Now, previous to
20 that there may have been a couple of police
21 services, one in Glasgow, but in London, the
22 centre of the British Empire, these guys were out
23 there and they had no Tasers. Now, albeit it's a
24 different time and place, but it wasn't so long
25 ago that the RCMP patrolled the Prairies and often
26 one officer -- and names like Sam Steele come to
27 mind, people that made the force famous, and they
28 didn't make the force famous because of how they
29 dealt with weaponry or how they took people into
30 arrest. They did it because they were respected.

31 It seems to me that one police officer was
32 sent when Running Bull came north from the United
33 States after -- I believe it was their Sixth
34 Cavalry chased him and delivered him.

35 THE COMMISSIONER: Actually two came but one remained
36 in camp to cook breakfast.

37 A The point I'm making is a simple one. They
38 weren't afraid to come before a public inquiry.
39 They weren't afraid to do police work the way it
40 was meant to be done.

41 The model of interaction that Mr. Webster
42 proposes, and which includes assess, plan and act,
43 needs to be returned to. The conducted energy
44 weapon has become an easy answer to dealing with
45 any stressful situation. Mr. Webster made the
46 point in his presentation, which was essentially

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Presentation

1 this: Police need to use time that's supportive
2 to them in a crisis. There are so many studies on
3 this it is overwhelming. The Taser seems to be
4 reducing the thinking time. In the Dziekanski
5 case, there was no need to rush and move to the
6 Taser. It was easily available. And so four
7 police officers, rather than take the time to
8 defuse the situation, resolved that confrontation
9 and embarrassed the country.

10 They embarrassed a person who is a pro-police
11 person like Mr. Webster and they embarrassed their
12 members that are working on the street. But more
13 embarrassing is the fact that all of the police
14 forces that have appeared before you are not
15 prepared to make that change. They're not
16 prepared to listen to what the experts are telling
17 them, not prepared to listen to the public, and
18 they say, "We will if you give us some indication
19 of how to go about this." I say, shelve it until
20 everything is put in place.

21 Under the current use of force model, for
22 example, when I look at it, I see no consideration
23 given to age, sex, size, skill level, whether
24 multiple officers are present at the scene, and
25 whether there are multiple subjects to be dealt
26 with. In short, until there's been a complete
27 revamping of the confrontational continuum which
28 allows for the use of the weapon, this thing ought
29 to be shelved.

30 The entire issue surrounding the Taser is a
31 cruel hoax on the Canadian public. The police
32 chiefs that were here yesterday, I read the quote
33 in the paper, let us keep the Taser as an
34 intermediate weapon and give us some better
35 direction. That was the quote in the paper this
36 morning. They've had since 1999 to get direction
37 and provide direction and they've been given it by
38 no less than a deputy minister. But they can't
39 even agree on a uniform policy.

40 There is a vicious circle in this whole Taser
41 issue and it boils down to this: There is
42 essentially one manufacturer that sets the
43 standards. The same manufacturer trains the
44 police. They go back and train their members the
45 way they were trained by TASER International.
46 There is a time for the police to take control of

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1 their own training. They've turned over the
2 policing and the training to a non-certified --
3 and when I say non-certified, they don't have any
4 standing in Canada as a police agency. Police
5 officers, including their commanders, still
6 believe Tasering someone in the so-called state of
7 excited delirium is a life-saving step.

8 You've heard that only a clinician in a
9 hospital can even determine what delirium is.
10 This fallacy is what they operate under, and I
11 have heard this from the highest ranking
12 authorities in the RCMP, for example. There's a
13 self-fulfilling prophecy that all of those who
14 have died as a result of this weapon - and I'm not
15 going to relive the statistics; you've heard
16 enough of them - suffered from the same symptoms.
17 In Mr. Dziekanski's case, the same was true. The
18 police gave one version at the beginning.
19 Corporal Lemaître delivered that. But the tape
20 showed something entirely different.

21 I can tell you that the people who heard --
22 THE COMMISSIONER: Let me just pause you for moment. I
23 very much appreciate your comments. You're making
24 a very forceful, informative presentation. But
25 the difficulty in getting into the detail of what
26 happened at the airport puts an onus on me to
27 consider whether or not to have others to rebut
28 it, and this is not the time or place.

29 A I appreciate that. The only point I make is this,
30 and let me be more general than the Dziekanski
31 case. There is a tendency for the police officers
32 that subjectively are trained by TASER to observe
33 that they can use the Taser in certain symptoms to
34 see those in all the cases where they use them.
35 There's an over-simplification --

36 THE COMMISSIONER: Well, somebody said, if your only
37 weapon is a hammer, the world appears to be a
38 nail.

39 A That's exactly right. And that's the point I
40 make. That's my submission.

41 Ms. Cisowski would like to speak briefly.

42 THE COMMISSIONER: Yes.

43 MS. CISOWSKI: Not too long today.

44 THE COMMISSIONER: Well, you take your time.

45 MS. CISOWSKI: Good morning. Thank you, Mr.

46 Commissioner, for inviting me here. I welcome the

Walter Kosteckyj, counsel for Zofia Cisowski
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Questions by Mr. Vertlieb (cont'd)

1 B.C. public inquiry conducted under your
2 supervision. Especially I am looking forward to
3 the second part of this inquiry, which will focus
4 on facts related to the death of my son, Robert
5 Dziekanski.

6 Mr. Commissioner, my confidence and faith in
7 RCMP and Canadian authorities are shattered. I
8 was shocked and distressed to learn how my son
9 died after the tape held by the police was
10 released to public, and the story was very
11 different than I was told by the authorities.

12 I want justice, truth and accountability. I
13 know that my son would not die if he would not be
14 Tasered. And I know that he did not deserve the
15 treatment he encountered at the Vancouver Airport.

16 I hope and I put all my trust in you, Mr.
17 Commissioner, that in your final report you will
18 come up with proper recommendations so another
19 mother would have no experience so much pain and
20 suffering like I do.

21 Thank you very much.

22 THE COMMISSIONER: Thank you very much.

23 Counsel, are you going to have any questions?

24 MR. VERTLIEB: I just wanted to ask one area, Mr.
25 Commissioner.

26
27 QUESTIONS BY MR. VERTLIEB, continuing:
28

29 Q Mr. Kosteckyj, the part of your presentation when
30 you referred to Mr. Kennedy's recommendations --
31 he's the complaints commissioner for the RCMP.

32 A Yes.

33 Q And you referenced his report, which I gather
34 you've seen. And you talk about RCMP not
35 following those recommendations. What's your
36 reason for saying that?

37 A Well, one is that I understood they made, (a)
38 there was a public announcement made shortly after
39 the report was put down that they were going to
40 wait until there was a final report before they
41 implemented any changes. I understood that they
42 were also awaiting -- that they were conducting
43 their own study perhaps internally. And there has
44 been no public pronouncement of the fact that they
45 were prepared to follow those recommendations. On
46 those three bases, I have come to that conclusion.

17

Walter Kosteckyj, counsel for Zofia Cisowski
(Interested groups and individuals presenter)
Questions by Mr. Vertlieb (cont'd)

1 Q The representatives of the RCMP we expect to be
2 here next week so we may follow that up at that
3 time.

4 A I hope I'm proved wrong.

5 MR. VERTLIEB: I'd like to thank both of you very much
6 for coming. We know how difficult this is for you
7 and we very much appreciate you being here with
8 us. Thank you.

9 A Thank you.

10 THE COMMISSIONER: Thank you very much for a very
11 forcible presentation and a summary of many of the
12 elements in this case. I assure your client that
13 we'll do our best.

14 A She knows that.

15 THE COMMISSIONER: All right, we'll have a ten-minute
16 break.

17

18 (PRESENTERS EXCUSED)

19

20 (PROCEEDINGS ADJOURNED)

21 (PROCEEDINGS RECONVENED)

22

23 THE COMMISSIONER: All right, I understand we can
24 commence. Yes, counsel.

25 MR. MCGOWAN: We can, Mr. Commissioner. The next
26 presenter is Ms. Hilary Homes. She is here on
27 behalf of Amnesty International.

28

29 HILARY HOMES, Interested
30 groups and individuals
31 presenter.

32

33 MR. MCGOWAN: Ms. Homes, as we've done with all the
34 presenters, I'll spend just a few minutes
35 introducing you to the Commissioner and reviewing
36 your background for his benefit.

37 A Sure.

38

39 QUESTIONS BY MR. MCGOWAN:

40

41 Q You were born in Iowa and moved as a child to the
42 Ottawa area; is that correct?

43 A I did indeed, yes.

44 Q And you've lived there most of your life and
45 continue to live there now?

46 A I do.

Hilary Homes (Interested groups and individuals
presenter)

Questions by Mr. McGowan

1 Q Now, I understand that after completing some
2 university studies in Ottawa, you started with
3 Amnesty International some 20 years ago?

4 A In January 1988 as a part-time employee, yes.

5 Q And you've been with them consistently for the
6 past 20 years?

7 A I have.

8 Q Your current position is campaigner on
9 international justice, security and human rights;
10 is that correct?

11 A That is correct.

12 Q I wonder if you'd spend just a moment and give the
13 Commissioner a brief overview of your history with
14 Amnesty International.

15 A Sure. Twenty years, so it will be very brief. I
16 did leave my studies to work for Amnesty. I had
17 started their youth program as a volunteer and I
18 continued to develop and expand that program,
19 first as a paid contractor. Shortly afterwards I
20 became a full-time employee. In the mid-'90s I
21 became involved on the international level of
22 Amnesty in the same sort of capacity, so founding
23 an international youth committee and a network,
24 and I chaired that committee for four years, was
25 on it for another year, and also moved on to be on
26 an international standing committee on research
27 and action. That's a committee that you're
28 appointed to by the international executive of
29 Amnesty. And I think the most relevant thing I
30 did there was develop the organization's
31 international policy on engagement with law
32 enforcement officials. I've attended our
33 International Council meeting twice as a delegate
34 and twice as a staff and resource person. And
35 I've been in my current position as the campaigner
36 on international justice, security and human
37 rights since about 2001.

38 Is that -- would you like --

39 Q Yes, that's just fine, Ms. Homes.

40 A Twenty years in brief, yes.

41 MR. MCGOWAN: I can tell you that both counsel and the
42 Commissioner have reviewed the materials that
43 you've submitted to us. I understand you have a
44 few comments you'd like to make orally to expand
45 on those.

46

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1 PRESENTATION BY MS. HOMES:

2
3 A I do indeed. And thank you for the opportunity to
4 make a presentation to this inquiry.

5 I would like to start with a few comments
6 about what kind of organization Amnesty
7 International is and the perspective from which we
8 approach this particular issue.

9 As people no doubt know, we're an
10 international human rights organization. We've
11 grown into a very complex one since the early
12 '60s. But in brief, what we currently do is
13 document and study human rights violations and
14 human rights abuses at the level of what we call
15 grave abuses, so at quite a high threshold. We
16 engage in a broad range of research and action
17 addressing specific human rights violations and
18 abuses against individuals as well as broader
19 patterns. We look at laws, regulations and
20 mechanisms for human rights promotion and
21 protection. We look at both the operational and
22 political levels, the conditions which create
23 vulnerabilities and vulnerable and marginalized
24 groups, roles, attitudes and behaviours of various
25 social actors. And in that context I'm talking
26 about both social actors that are close to human
27 rights violations and abuses or human rights
28 protection as well as those that are more distant,
29 so media ethics, media education and so on.

30 The basis for our work is international law
31 and standards, such as treaties produced by the
32 U.N. system, such as principles by the U.N. system
33 and other regional systems.

34 The scope of our policy is also
35 international. Understanding the context in which
36 violations take place is vital, and we focus on a
37 common standard for accountability and not a
38 country-by-country or conditional one. And I say
39 this because some of the remarks I would make
40 today if I was sitting in the United Kingdom, if I
41 was sitting in South Africa, if I was sitting in
42 Russia, that commentary would be consistent. The
43 particular human rights concerns in a country may
44 vary but the policy approach we bring to it is
45 consistent internationally.

46 I'd also like to address two

1 on violence and Aboriginal women, we spoke with a
2 number of police officers about approaches and
3 procedures for missing persons and what kind of
4 recommendations we could in turn be making to
5 government which would help police get the
6 resources and structures they need.

7 And in my own work on Amnesty's policy on
8 engagement with law enforcement officials, I found
9 that dialogue with and advice from current and
10 former police officers in Canada, the United
11 Kingdom and South Africa, just to name a few, was
12 invaluable.

13 Secondly, I'd like to be really clear that
14 Amnesty International is not opposed to the use of
15 force by police. What we're concerned about is
16 the misuse of force, and our measuring stick for
17 this includes both general human rights treaties,
18 things like the *Convention Against Torture*, for
19 example, as well as international standards that
20 specifically address this question. One I'll be
21 mentioning quite a few times is the *Basic*
22 *Principles on the Use of Force and Firearms by Law*
23 *Enforcement Officials*.

24 The underlying concept here is for law
25 enforcement officials to use the least amount of
26 force necessary to resolve a situation. And when
27 we're thinking about safe resolution in that
28 context, the people to think about are the
29 officers themselves, bystanders, and of course the
30 person or persons that are the object of police
31 actions. Fast resolution of a situation is not
32 necessarily equivalent to the safe resolution of a
33 situation. I know that's a point that a number of
34 presenters have made. I cannot stress it enough.

35 Ongoing assessment of an evolving situation
36 is also vital, so use of force should escalate and
37 de-escalate as a specific situation requires.
38 This can only be achieved if police have access to
39 a broad range of techniques and equipment, and
40 this includes self-defence equipment such as
41 shields, helmets and so on, as well as training in
42 both assessing situations and the proper use of
43 that police equipment.

44 A human rights-based approach to use of force
45 is often summed up with the following principles.
46 I went into detail on these in our written

1 submission. I'm just going to mention them
2 briefly here. That is that the use of force must
3 be proportionate to the lawful objective being
4 pursued and to the seriousness of the offence. As
5 the situation changes, so must the evaluation of
6 what is proportionate use of force.

7 Secondly, both the objective, such as arrest,
8 and the means of achieving it must be lawful.
9 Adequate reporting and review procedures are
10 required to ensure internal, legal and public
11 accountability for the use of force.

12 And lastly, necessity. Force should not be
13 the first resort but rather an exceptional measure
14 based on ongoing assessment of the evolving
15 situation.

16 It's notable that article 4 of the U.N. Basic
17 Principles states that, and again I will quote:

18
19 Law enforcement officials, in carrying out
20 their duty, shall, as far as possible, apply
21 non-violent means before resorting to the use
22 of force and firearms. They may use force
23 and firearms only if other means remain
24 ineffective or without any promise of
25 achieving the intended result.
26

27 And again, what I stress here, and I'll be
28 stressing it a few times, is our approach to use
29 of force is informed by a human rights perspective
30 based on international standards. And what I just
31 quoted, that is the key international standard.

32 So use of force decisions made by police in
33 what are often very challenging and difficult
34 circumstances need to be well informed decisions.
35 No use of force or use of a particular piece of
36 equipment can be 100 percent predictable. We know
37 that. Nor is it going to look pretty. It can be
38 very easy for a bystander to misinterpret what is
39 going on, and police are sensitive to that. And I
40 think the incident in the Vancouver Airport
41 actually illustrates that quite well. What it is
42 essential to understand here is the multiple risks
43 involved and determining whether those are
44 acceptable risks. Our preference as a human
45 rights organization is that that analysis should
46 happen before the equipment is ever deployed.

1 Amnesty International's fundamental concern
2 about conducted energy devices such as Tasers is
3 that the technology has moved forward in advance
4 of adequate independent testing, study, and
5 accountability. We are concerned in general about
6 the evolution of stun and electroshock devices or
7 weapons over the past decades. We have documented
8 numerous cases of serious abuses involving
9 electroshock weapons around the world.

10 Early electroshock weapons such as stun guns
11 and batons have been on the market since about the
12 1970s. Since then the industry has introduced
13 increasingly high voltage stun guns and batons and
14 also such variants as stun shields, electroshock
15 belts, and of course the dart-firing Taser guns
16 that we're talking about at this inquiry.

17 Some of these devices are dangerous and
18 unpredictable simply because of the poor quality
19 and standards, and others because of their design
20 and purpose. This latter group includes equipment
21 such as remote control electroshock stun belts.
22 These are strapped onto prisoners while they're
23 being transported or during hearings, sometimes
24 even when they're meeting with their lawyers.
25 It's buckled around a prisoner's waist and it's
26 operated by the guard through a remote control.
27 The belt delivers a 50,000-volt shock through the
28 kidneys for about eight seconds, and once it's
29 engaged it cannot be stopped. Such belts invite
30 abuse because the user of the remote control can
31 inflict severe pain at the click of a button and
32 leave few if any visible marks even when the
33 victims are shocked repeatedly. Their use is
34 degrading and can result in torture by remote
35 control. It's notable that the U.N. Committee
36 against Torture has called for the abolition of
37 stun belts, and similar concerns exist about newer
38 devices such as stun sleeves that are worn on an
39 arm or a leg, and again, this is when the prisoner
40 is already under restraint.

41 When referring to electroshock equipment, or
42 in fact any police or military equipment or
43 weapons, Amnesty makes a clear distinction between
44 when we call for a ban and when we call for a
45 moratorium. We only call for a ban, by which I
46 mean abolishing the device or weapon, ending its

1 use, when the equipment in question has no other
2 purpose than to enable a human rights violation,
3 such as cruel, inhuman or degrading treatment or
4 punishment, torture, or indiscriminate harm. Any
5 electroshock device worn on the body falls into
6 this category, and so would something like a
7 spiked baton or a serrated handcuff, which is a
8 handcuff with a barb on the inside. Yes, you
9 could say it's a restraint device, but its purpose
10 is to inflict pain, not to restrain.

11 We call for a moratorium, in other words
12 suspend the use, in cases where the equipment has
13 a legitimate objective but there are nonetheless
14 concerns about either the design of the equipment
15 or the patterns of use. And for us, that's the
16 category that conducted energy devices such as the
17 Taser fall into. They have a legitimate purpose,
18 particularly in a stand-off situation. While
19 there may be specific situations where use of a
20 Taser has lessened harm or indeed saved a life,
21 this does not absolve the device or the user from
22 any problems that exist.

23 In the Canadian context, Amnesty
24 International is concerned about the expanding use
25 of Tasers despite a number of things, and I'll
26 list a few here. Reports of both excessive use of
27 force involving Tasers and deaths in custody
28 following use of a Taser. Amnesty issued reports
29 on Canada in 2004 and 2007, each of which
30 contained a sampling of the cases of concern. I'm
31 not going to go into any details of those cases
32 here. The reports were submitted with our written
33 brief. I also understand from the comments
34 earlier that it's actually not wise to go into the
35 details of the cases, so I'll leave them there.

36 We're also concerned about inadequate
37 oversight and public disclosure of information on
38 use of Tasers by police forces across Canada, the
39 lack of comprehensive data regarding the use of
40 Tasers in Canada across jurisdictions, the lack of
41 consistency in training and retraining, guidelines
42 or approaches to use of force and reporting across
43 police jurisdictions in Canada as well as other
44 agencies considering the use of the Taser, such as
45 the corrections system.

46 Improvements made in one jurisdiction are not

1 automatically considered by or applied to other
2 jurisdictions. The previous speaker actually made
3 that point extremely well. We're also concerned
4 about communication problems amongst the police
5 themselves as well as between police and other
6 agencies when assessing situations where force
7 options might potentially be used.

8 The debate surrounding Tasers is often
9 isolated from the broader policing context. Other
10 issues to consider include things like the impact
11 of the increasing use of Tasers on other use of
12 force options, mental health crisis intervention,
13 urban versus rural settings and so on. And I'm
14 very glad to see that a number of those issues are
15 being examined as part of this public inquiry.

16 And last but certainly not least, we're very
17 concerned that there has not been adequate,
18 comprehensive study into the use and effects of
19 Tasers, including the use of Tasers in combination
20 with other use of force options.

21 The very thing that makes a conducted energy
22 device like a Taser attractive is the same thing
23 that raises concerns. It's fast and it's
24 relatively easy to use. The speed with which a
25 Taser can be deployed, namely multiple shocks in a
26 very short timeframe, also raises concerns about
27 adequate reassessment of ongoing threat levels in
28 contexts where Tasers are deployed. I mention
29 this because of the earlier comments made about
30 the framework that we bring as a human rights
31 organization to how use of force is applied.
32 You're always aiming at the minimum use of force
33 and you need to be re-evaluating that as a
34 situation changes.

35 Recent studies have also expressed concerns
36 about what has come to be known as usage creep,
37 the use of the Taser in lower risk situations
38 where individuals are not actively resisting.
39 Placement in the so-called intermediate category
40 along with materials such as pepper sprays has led
41 some to conclude that this essentially authorizes
42 the use of the Taser at too low a threshold.

43 Increasingly, the Taser appears to have been
44 deployed simply too often and too soon. Amnesty
45 International believes that using powerful
46 electroshock weapons against those already

1 restrained; disturbed, intoxicated, but non-
2 dangerous individuals; unruly children; and people
3 who are non-compliant but who do not pose a
4 probable threat of serious injury to themselves or
5 others, is an excessive use of force which may in
6 some circumstances also constitute torture or
7 other cruel, inhuman or degrading treatment.

8 We have a particular concern, and it's
9 similar to what I described earlier about the
10 electroshock devices worn directly on the body,
11 about devices that use the direct or touch-stun
12 mode. And of course a Taser has the dart-firing
13 mode that can be switched to the touch-stun mode.
14 This is not an appropriate means for pain
15 compliance, and can all too easily result in
16 arbitrary or excessive use of force.

17 This area of concern is often overshadowed by
18 the question of whether or not Tasers can kill
19 people under certain circumstances. The
20 connection between Tasers and excessive force
21 merits examination beyond questions of training
22 and accountability.

23 Much of the current debate on Taser use
24 reflects the divide between those who claim, on
25 the one hand, that there is not evidence to prove
26 the danger of Tasers, while others argue there is
27 insufficient data to prove that they can be used
28 safely, taking into account, of course, that risks
29 are inherent in any use of force. What we feel is
30 lost in this context is that there is simply not
31 enough independent information on the use and
32 effects of Tasers.

33 While international human rights standards
34 support the development of a range of use of force
35 options, they also require that equipment is
36 carefully evaluated on an ongoing basis. The
37 degree of tolerable risk involving Tasers, as with
38 all weapons and restraint devices, must be weighed
39 against the threat posed.

40 In its 2005 study - and I'm sure some people
41 either have or will be referring to this study -
42 the Canadian Police Research Centre starkly noted
43 that:

44
45 There is no known scientifically tested,
46 independently verified, and globally accepted

1 conducted energy device safety parameters.
2

3 They further noted, and again I'll quote, that:
4

5 By comparison, there are many policing tools
6 and equipment that have an accepted range of
7 safety parameters, such as body armour, OC
8 spray concentrations, and police vehicle
9 specifications. In terms of conducted energy
10 devices, what is known is limited to the
11 testing of the Taser M26 and X26. If a new
12 conducted energy device were to be
13 introduced, police services and the
14 authorizing agencies could only rely on
15 manufacturer claims.
16

17 And why this statement is so important is that
18 it's talking about a category of weapon, that we
19 don't have those globally accepted parameters for
20 a category of weapon that is called conducted
21 energy device or conducted energy weapon. What
22 has been looked at is a specific product by one
23 company.

24 Recent studies have concluded that Tasers are
25 generally safe when used on healthy individuals,
26 while at the same time calling for further study
27 into the use and effects on vulnerable groups.
28 This includes individuals who may be suffering
29 from serious physical and mental health
30 conditions, the effects of intoxication and drug
31 use, children, pregnant women, among others. Many
32 studies also point out that the majority of cases
33 in which concerns are expressed about the use and
34 effect of Tasers - so injuries, excessive use of
35 force, death following use of a Taser, and so
36 on - involved the very same vulnerable
37 individuals. Again, this raises concerns about
38 the adequacy of information about the effects of
39 Tasers that is available to police officers who
40 must make complicated use of force decisions.

41 Amnesty's main recommendation continues to be
42 to suspend all transfers and use of Tasers and
43 other similar electroshock weapons pending a
44 rigorous, independent and impartial study into the
45 use and effects. And what constitutes an adequate
46 study was outlined in our written submission so

1 I'm not going to repeat it here.

2 Why this continues to be our position after
3 all these years comes back to the ongoing lack of
4 knowledge around the use and effects of conducted
5 energy devices such as Tasers on vulnerable
6 groups. Central to human rights protection is
7 looking out for the vulnerable in society without
8 discrimination, whether we like them or not and
9 even if they themselves are breaking the rules.
10 When the available information is not definitive
11 either way, we say it's better to pull the device
12 from use. Study, re-evaluate, adapt, and then
13 redeploy.

14 So to be very clear, we're for a moratorium.
15 In the absence of a moratorium, we have quite a
16 few recommendations that were outlined in our
17 written submission. What I'll do here is
18 highlight four of them.

19 Departments using Tasers should strictly
20 limit their use to situations where the next
21 alternative would be the use of deadly force.
22 I'll give a few examples: armed standoffs,
23 instances in which a police officer faces a life-
24 threatening attack or injury or threat of attack
25 with a deadly weapon, or the target presents an
26 immediate threat of death or serious injury to
27 themselves or others. In such circumstances,
28 Tasers should be used only when less extreme
29 measures are ineffective, without any reasonable
30 expectation that they will achieve the intended
31 result. Tasers should not be used as a routine
32 weapon to enforce compliance in the absence of
33 threat of serious injury or death of a subject, a
34 member of the public or of a law enforcement
35 officer.

36 Unarmed suspects should not be shot with a
37 Taser for arguing back, being discourteous,
38 refusing to obey an order, resisting arrest, or
39 fleeing a minor crime scene unless they pose an
40 immediate threat of death or serious injury that
41 cannot be controlled through less extreme
42 measures.

43 Repeated shocks should be avoided unless
44 absolutely necessary to avoid serious injury or
45 death. And Tasers should only be used in the
46 stun-gun mode, so the direct or touch-stun mode,

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1 as backup to dart-firing Tasers, and only when no
2 other options are available to an officer and
3 there is, again, an immediate threat of death or
4 serious injury to the officer, the suspect or
5 another person. The stun-gun function, that
6 direct touch function, should never be used to
7 force a person to comply with an order given by an
8 officer where there is no immediate threat to the
9 life or safety of the officer or others.

10 I'd like to conclude by returning to the
11 international perspective that I started with. As
12 human rights workers, we set the bar for the
13 minimum standards high. And so we should, because
14 if we do otherwise, it would be to accept the dire
15 conditions under which so many people still live
16 as inevitable. We can and we must do better.

17 Canadians are often seen as playing a
18 leadership role when it comes to human rights
19 protection and promotion. What Canadian police
20 officials and oversight bodies do here in Canada
21 has an effect beyond our borders, and not just
22 when people are deployed as part of U.N. civil or
23 other reconstruction operations.

24 When preparing for presentations like this
25 one, I tend to pick up documents such as the *Human*
26 *Rights Evaluation* of the Police Service of
27 Northern Ireland's proposed introduction of the
28 Taser that was done in May 2007, a document I
29 highly recommend you reading, by the way, if you
30 haven't done so already. And suffice to say,
31 others will do the same with the report of this
32 inquiry.

33 Thank you. That's all of my remarks for now.

34 I'd be happy to answer any questions you have.

35 THE COMMISSIONER: Thank you. Counsel, do you have any
36 comments?

37 MR. MCGOWAN: I do have a couple of brief questions,
38 Mr. Commissioner. They won't take long.

39
40 QUESTIONS BY MR. MCGOWAN, continuing:

41
42 Q Ms. Homes, you spent a portion of your
43 presentation discussing remote control stun belts.

44 A Mm-hmm.

45 Q You're not suggesting those are in use in British
46 Columbia?

Hilary Homes (Interested groups and individuals presenter)

Questions by Mr. McGowan (cont'd)

- 1 A No. It was merely to illustrate that this is part
2 of a broader category of devices, some of those
3 devices, we feel, should be banned, and why. I
4 think it's important to make it clear, because in
5 some of the commentary in the media and elsewhere,
6 people have confused our position with a ban
7 versus a moratorium, and I just wanted to be very
8 clear about the category and the characteristics
9 of the devices in that category for which we call
10 for a ban. No, they are in use in the States but
11 not in Canada, and never should be, just to be
12 really clear.
- 13 Q We have your position on that. You're advocating
14 a moratorium pending further research on the
15 Taser --
- 16 A We are indeed.
- 17 Q -- M26 and X26, correct?
- 18 A Mm-hmm. Actually I'd say the full category of
19 weapon, but I recognize those are the ones used in
20 Canada.
- 21 Q Well, that's what we're here talking about today,
22 the ones that are used in British Columbia.
- 23 A Mm-hmm.
- 24 Q How long do you think this research would take?
- 25 A If there was -- that's a very hard question to
26 answer because the commitment hasn't simply been
27 there for that breadth of study. You know, we
28 would hope it would be done in a matter of a few
29 years, not however -- it's been eight or nine
30 years now since the device was deployed in Canada.
31 We certainly would hope it would be a great deal
32 faster than that.
- 33 Q Regardless of how enthusiastically it was
34 approached, it's a lengthy process that you're
35 advocating for?
- 36 A It's not a short one, no.
- 37 Q Now, you gave us a couple of scenarios involving
38 violent and potentially armed suspects. We had
39 some officers here yesterday from our local police
40 forces in British Columbia, and they explained to
41 the Commissioner, gave accounts of incidents they
42 were involved in. Some of those cases involved
43 subjects possessing and brandishing knives or
44 other sharp objects.
- 45 A Mm-hmm.
- 46 Q Those incidents were resolved by the use of a

Hilary Homes (Interested groups and individuals presenter)

Questions by Mr. McGowan (cont'd)

- 1 Taser, not the use of a firearm. I'd be
2 interested in your thoughts on the effect of your
3 moratorium, which, as I understand it, would be to
4 eliminate that possibility for a period of some
5 years in circumstances such as those we heard
6 about yesterday.
- 7 A Yeah. I mean, we are saying that if you don't
8 have a moratorium, the only time you should be
9 using it is at that point of imminent threat.
10 What it does is it puts police in simply the
11 situation they were in before, before they had the
12 Taser in their collection of weapons. I think
13 it's important to recognize there is a breadth of
14 options available in what people tend to call the
15 intermediate force category. They would simply
16 return to the decision-making they had prior to
17 the introduction of the Taser.
- 18 Q Are you suggesting that's a preferable scenario
19 for the next period of years while research is
20 occurring?
- 21 A That is our position.
- 22 Q We've heard reference from some of our presenters
23 to numbers compiled by Amnesty International, and
24 we've seen reference to them in our research as
25 well, referring to the number of people who have
26 died in circumstances proximate to Taser use in
27 North America.
- 28 A What we refer to as death following -- death
29 following use of a Taser in a policing incident,
30 yes.
- 31 Q What number are you up to now in North America?
- 32 A I'm not sure of the exact number in the States
33 because that is a jurisdiction where the Taser is
34 deployed more widely, but it is around 300. In
35 Canada it is at least 19. There is one case in
36 Quebec where some people count the death following
37 use. We are currently not.
- 38 Q And what is the source of your information?
- 39 A Some of the initial information comes to us
40 obviously through media stories but we do evaluate
41 the cases individually. Our research is based in
42 our international office in London, England.
- 43 Q What material have you compiled with respect to
44 the deaths in British Columbia?
- 45 A You mean how many were here?
- 46 Q No. What supporting material have you compiled?

Hilary Homes (Interested groups and individuals
presenter)

Questions by Mr. McGowan (cont'd)

1 A Some of that material, it starts out, as I
2 mentioned before, with hearing about the cases
3 through the media. That's the same way a lot of
4 people hear about them. Our international
5 secretariat then does follow up directly with
6 police forces on occasion, with the family, with
7 the lawyers and so on. It can be quite a variety
8 of sources.

9 MR. MCGOWAN: Those are my questions, Mr. Commissioner.

10 THE COMMISSIONER: Well, you've come all the way from
11 Ottawa and we very much appreciate your effort and
12 your submission to us.

13 A I appreciate the opportunity.

14 THE COMMISSIONER: Thank you so much. And we have all
15 your written material.

16 A Yes. And I have a copy for the person taking the
17 notes as well.

18

19 (PRESENTER EXCUSED)

20

21 THE COMMISSIONER: Counsel, where are we at now?

22 MR. MCGOWAN: Mr. Commissioner, we have one more
23 presenter. He's a concerned member of our
24 community who'd like to address you.

25 THE COMMISSIONER: All right. Can we move right into
26 that?

27 MR. MCGOWAN: We can, Mr. Commissioner. Yes, I think
28 we can move right into that.

29 THE COMMISSIONER: Thank you very much, Ms. Homes.

30 MR. MCGOWAN: The next presenter - and I'm not sure if
31 he's here yet. I haven't seen him - is a Mr.
32 Randy Puder. I'm not seeing anybody stand up. I
33 wonder if we might just stand down for five
34 minutes to make inquiries.

35 THE COMMISSIONER: Five minutes.

36

37 (PROCEEDINGS ADJOURNED)

38 (PROCEEDINGS RECONVENED)

39

40 THE COMMISSIONER: I understand we can commence.

41 MR. MCGOWAN: We can, Mr. Commissioner.

42 THE COMMISSIONER: Yes, counsel.

43 MR. MCGOWAN: Our next presenter is a Mr. Randy Puder.
44 He is a concerned member of the community who has
45 some thoughts he'd like to share with the
46 Commission. He also has a background as a family

Randy Puder (Interested groups and individuals
presenter)
Questions by Mr. McGowan

1 mental health advocate.

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RANDY PUDER, Interested groups
and individuals presenter.

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MR. MCGOWAN: Mr. Puder, I'll just spend a couple of
7 moments introducing you to the Commissioner with a
8 few questions about your background.

9

10 QUESTIONS BY MR. MCGOWAN:

11

12 Q You were raised in Vancouver, British Columbia?

13

14 A Yes, I was.

15

16 Q You've lived here most of your adult life?

17

18 A Yes, I have.

19

20 Q And you graduated high school and spent some time
21 at Simon Fraser University?

22

23 A Yes, I did.

24

25 Q Following which you founded a small technology
26 company in this city; is that correct?

27

28 A Yes, I did.

29

30 Q And that's your own company which you're running
31 today?

32

33 A Yes.

34

35 Q I wonder if you'd tell the Commissioner just a
36 little bit about your business.

37

38 A My business is electronic systems integration.
39 Essentially what that means is I design house
40 networks, home networks, infrastructure in
41 buildings that interconnect and integrate home
42 systems, security systems, electronic devices,
43 satellite systems to all work in a unified
44 fashion.

45

46 Q Thank you. And I wonder if you'd just briefly
47 tell the Commissioner --

48

49 THE COMMISSIONER: You can't help me with the computer
50 on my boat, I guess.

51

52 A Yes, I can, Your Honour, but I'd have to send an
53 invoice to the inquiry for that.

54

55 MR. MCGOWAN:

56

57 Q Tell the Commissioner just briefly about your
58 background connected with mental health and how it
59 was you got interested in that area.

60

61 A May I read from my presentation?

62

63 MR. MCGOWAN: Sure. If that's covered in your
64 presentation, I'll invite your presentation now.

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Randy Puder (Interested groups and individuals
presenter)
Presentation

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PRESENTATION BY MR. PUDER:

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A Okay. Essentially my background in mental health care is as a family caregiver to my late mother, who suffered from a bipolar illness, and also as a caregiver simultaneously to two aging grandparents, who suffered from dementia, Alzheimer's. From a family perspective and caregiver perspective, I have, I think, a unique insight into various antipsychotic medications and how family members react under their influence.

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THE COMMISSIONER: Yes, all right. You just present it any way you see fit.

14

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A Thank you, Your Honour.

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Good morning, Your Honour and counsel and Commission staff. You know my name, Randy Puder, and I have three parts to my presentation: my background and brief caregiver experience, a business tradeshow experience in January 2008 in Las Vegas, Nevada, and a conflict of interest that I perceive in police training.

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First I'd like to say I very much subscribe to Robert Peel's mantra that the police are the community and the community are the police. I deeply care for my community and I've been actively engaged for many years on important and sometimes sensitive community health care issues, issues that affect us all eventually in one way or another.

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I continue to have respect and admiration for the role of our police departments in Canada. The police have always had a unique and difficult job. Some may argue the job is increasingly complicated and challenging. I agree.

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Whether challenged by the constraints of our legal system, essentially checks and balances, active civilian oversight, finite resources or the sometimes conflicting strategies of various other government frontline services, the job of our police is becoming more complex every year. We as a community should always support our police and offer our praise and commendations when they do their jobs well. But when there are apparent problems in our communities that police are experiencing or even creating, it is contingent

Randy Puder (Interested groups and individuals
presenter)
Presentation

1 upon the public to inquire and assist in deciding
2 upon the most suitable course of remediation.

3 We must carefully and thoughtfully scrutinize
4 difficult issues in policing. It is also the
5 responsibility of the police to assist in this
6 endeavour when a community is engaged. That is
7 why I'm here today, Your Honour. I hope to offer
8 some meaningful insights that will assist this
9 Commission in making informed recommendations as
10 soon as possible. I trust our political leaders
11 will heed those recommendations that you make and
12 make the necessary legal, medical and ethical
13 changes I believe are needed now.

14 As Commission counsel mentioned, I was raised
15 in Vancouver, lived most of my adult life in
16 Vancouver, founded my business technology firm and
17 have cared for family members suffering various
18 mental health ailments. I participated in
19 developing the Vancouver Coastal Health
20 Authority's ten-year strategic plan on mental
21 health and addictions, and my input was as a
22 family caregiver.

23 I was invited by the Mayor to directly
24 contribute to Project Civil City. I've also
25 collaborated with some of my community leaders on
26 how best to create an action plan and solve the
27 crisis of homelessness, untreated mental illness
28 on our streets, and addiction.

29 Finally, I've made several presentations, I
30 believe four, to the Vancouver Police Board
31 requesting specialized crisis response units which
32 they call Car 87 and better overall training for
33 first responders to mental health care
34 emergencies.

35 I've even asked the Vancouver Police Board to
36 request a complete review of the training of the
37 Justice Institute of British Columbia. I was
38 advised by the police that they are the experts in
39 their field and that the review is being done by
40 them.

41 I am also on the board of directors of the
42 Mental Health Care Organization. However, today I
43 am speaking on behalf of myself and my personal
44 experiences.

45 Lastly, I should mention that my late brother
46 Gil was the first use-of-force coordinator in this

Randy Puder (Interested groups and individuals
presenter)
Presentation

1 province. Between 1990 and 1993, he essentially
2 redesigned the overall training systems of the
3 Justice Institute of B.C. He contributed and
4 introduced many notable improvements to police
5 departments in B.C. These include OC pepper
6 spray, the ASP collapsible baton, which I'm sure
7 many are familiar with, and even use-of-force
8 reporting forms for many police departments.

9 I think, however, his most important
10 contribution to policing was to try and instil two
11 important philosophies: keep in top physical
12 shape your entire career and practise and train
13 often, and understand that the minimum use of
14 force must be used to gain control of a suspect,
15 that force to be used to effect an arrest must be
16 proportionate to the resistance from the suspect.

17 In January of this year, I travelled to Las
18 Vegas to attend the International Consumer
19 Electronics Show. I've attended this show many
20 times over the years for business networking,
21 training opportunities and product information.
22 One example of my business application, Your
23 Honour, as I explained, would be designing home
24 entertainment systems, integrating security data,
25 satellite, making it all work properly. I've
26 installed hundreds of systems in single and multi-
27 family homes throughout the city.

28 On my last day at the tradeshow, I was
29 surprised to walk by the TASER International
30 booth. At this booth they were marketing their
31 new purse-size consumer product, which is
32 different than the police product, I understand.
33 Your Honour, I even have an instructional DVD for
34 your use, if you care to have it.

35 It was excellent marketing, complete with
36 Playboy Bunnies signing photos, beautifully
37 designed brochures, and attentive TASER staff.
38 The product was well positioned and, excuse the
39 pun, gained maximum target impact to the target
40 audience.

41 I realized the model being marketed was not
42 the police issue model. However, I believe there
43 were similarities in the technology and the
44 application. The marketing also suggested this.

45 I was approached by a polite TASER
46 representative. He identified himself as the

Randy Puder (Interested groups and individuals
presenter)
Presentation

1 international sales manager responsible for
2 Canadian police departments. He explained the
3 technology well and the market they were targeting
4 in the United States. I asked if any other
5 devices had been tested on individuals who have
6 legal, prescribed, antipsychotic medications in
7 their systems. His answer was unequivocally no.

8 I explained then that in addition to my
9 business reasons for being in Las Vegas, I had
10 been a family caregiver and had a keen interest in
11 advocating for improved mental health care. I
12 also explained that in my opinion the device
13 should be more thoroughly tested and researched in
14 Canada. I explained that this only seemed logical
15 that if the police in Canada also acknowledged,
16 both with the current Vancouver Police report and
17 the Kirby Senate report on mental health as
18 examples, if the police acknowledge they are
19 increasingly coming into contact with the mentally
20 ill and disturbed individuals, then definitely
21 devices should be tested on subjects who are
22 medicated with prescribed amounts of some of the
23 more common antipsychotic medications.

24 During our discussion there was also some
25 commentary regarding the tragic incident at
26 Vancouver Airport, which I found disturbing and
27 premature. Your Honour, suffice it to say the
28 great debate began.

29 My subsequent recommendation to the
30 Commission is as follows. Until this device, the
31 Taser, is tested in Canada by Canadian medical
32 practitioners, it should immediately be put on the
33 shelf, so to speak, by our Solicitor and Attorney
34 Generals and all Canadian police departments.

35 Until such time as medically rigorous,
36 transparent, and unbiased research has been
37 completed by Canadian medical authorities, I
38 believe there should be a moratorium on the use of
39 the device.

40 We are not the United States. Policing a
41 Canadian society requires different laws and an
42 entirely different model of policing and training
43 systems.

44 The final part of my presentation is
45 regarding a conflict of interest that I'm aware
46 of. I became aware of this situation many years

Randy Puder (Interested groups and individuals
presenter)
Presentation
Questions by Mr. McGowan (cont'd)

1 ago and I believe the Commission should be made
2 fully aware of the situation. I will summarize.

3 A private company in Vancouver owned by two
4 serving Vancouver Police officers has operated in
5 the police training and consulting field for over
6 15 years. One of the members is serving in a
7 senior position in the Vancouver Police Department
8 and one is serving at the Justice Institute of
9 B.C. In each situation, I believe there is a
10 perceived and possible conflict of interest. Both
11 of these officers have had and likely still have
12 considerable influence on public policy,
13 especially use of force coordination and training
14 in this province and other places.

15 On their corporate website, one of these
16 officers lists his qualifications as being
17 "certified M26 and X26 Taser instructor, TASER
18 International." Many years ago there was a
19 concern, carefully and fully articulated by my
20 brother, questioning the rapid escalation of force
21 options models that these officers were employing,
22 and to this day, it's my belief, are advocating.
23 This model was contrary to the then accepted use
24 of force model. I believe it's reasonable and
25 prudent to question how this situation can
26 continue to exist at both our police academy and
27 within a major police department.

28 Your Honour, respectfully, an inquiry such as
29 this may want to look at this question.

30 Thank you very much.

31 MR. MCGOWAN: Thank you, Mr. Puder.

32
33 QUESTIONS BY MR. MCGOWAN, continuing:
34

35 Q You make reference to a company which you see at
36 the root of a potential conflict of interest.
37 What company are you speaking of?

38 A The company name is DTI Defensive Tactics
39 Incorporated.

40 Q You made reference, sir, to a conversation you had
41 at a trade show where TASER products were being
42 marketed. What, if any, representations were made
43 to you by the company representative regarding the
44 safety of the products?

45 A I was told that -- essentially it was a very busy
46 trade show environment. I was wearing a name

Randy Puder (Interested groups and individuals
presenter)
Questions by Mr. McGowan (cont'd)

1 identification tag that said "Randy Puder,
2 Vancouver, British Columbia," so the gentleman
3 knew who I was, I hope. I asked the question
4 first, "Has the device been tested on any human
5 being under the influence of prescribed
6 antipsychotics," and his answer was no. And the
7 conversation changed to focus a bit on Vancouver
8 Airport, and I said, "Well, what about the
9 situation at Vancouver Airport?" And the answer
10 that I got, and I quote, "Dziekanski would have
11 died anyways." And I didn't know what the
12 gentleman meant. We started arguing a bit. I
13 forget, you know, exactly the nature. But there
14 was quite a debate, argument over that, and I felt
15 quite strongly that -- I asked how they arrived at
16 that, and there was no real support to make that
17 statement. I was shocked actually. Which is why
18 I'm here today.

19 MR. MCGOWAN: Thank you, Mr. Puder. I don't have any
20 further questions, Mr. Commissioner.

21 THE COMMISSIONER: Well, thank you very much for
22 coming. Your background obviously shows, and I
23 congratulate you on your incredible civic
24 responsibility. Thank you for coming.

25 A Thank you, Your Honour.

26
27 (PRESENTER EXCUSED)

28
29 THE COMMISSIONER: I think that concludes today. I
30 think that's all we have.

31 MR. VERTLIEB: Yes, that's correct, Mr. Commissioner.
32 Do you want me just to give you a quick outline
33 for tomorrow morning?

34 THE COMMISSIONER: Yes, please.

35 MR. VERTLIEB: We anticipate, at the request of TASER,
36 to have Dr. Ho come, and we have asked Dr. Joseph
37 Noone, who is a psychiatrist in our province, to
38 come as well and present. And there's a
39 possibility that the chief of the transit police
40 will be here tomorrow morning if we can arrange
41 that, as the last presenter in the morning.
42 Depending on our timing, we may ask to sit past
43 12:30 so we can finish the morning session and not
44 carry over into the afternoon.

45 THE COMMISSIONER: All right. Thank you very much.
46 Adjourned until tomorrow at 10:00.

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Proceedings

(PROCEEDINGS ADJOURNED TO FRIDAY, MAY 16,
2008, AT 10:00 A.M.)

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