

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

Room 801  
Federal Courthouse  
701 West Georgia Street  
Vancouver, B.C.

February 24, 2009

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PROCEEDINGS AT  
HEARING (DAY 22)

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**COPY**

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|                               |                                      |
|-------------------------------|--------------------------------------|
| Commissioner:                 | T.R. Braidwood, Q.C.                 |
| Commission Counsel:           | A. Vertlieb, Q.C.                    |
| Associate Commission Counsel: | P. McGowan                           |
| Counsel for Zofia Cisowski:   | W. Kosteckyj, S. Whiteley, S. Parhar |

(ii)

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| Counsel for Vancouver Airport Authority:          | D. Stewart, C. Friesen; B. Ergun      |
| Counsel for B.C. Civil Liberties Association:     | G. Pastine, S. Dubinsky               |
| Counsel for Government of Poland:                 | D. Rosenbloom                         |
| Counsel for Corporal Benjamin Robinson:           | R. Harris                             |
| Counsel for Constable Gerry Rundel:               | T. Beaubier                           |
| Counsel for Constable Bill Bentley:               | D. Butcher                            |
| Counsel for Constable Kwesi Millington:           | R. Hira, Q.C.                         |
| Counsel for Public Service Alliance of<br>Canada: | C. Buchanan, B. Matthews              |
| Counsel for City of Richmond:                     | J. Goulden, M. Kleisinger, G. Trotter |
| Counsel for TASER International, Inc.             | D. Neave, J. Spencer                  |
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1  
Cst. Gerry Rundel  
Cross-exam by Mr. Beaubier (for Constable Rundel)  
(cont'd)

1 Vancouver, B.C.  
2 February 24, 2009  
3

4 THE COMMISSIONER: Good morning.  
5 THE REGISTRAR: The hearing is now resumed.  
6

7 CST. GERRY RUNDEL, a witness,  
8 recalled, warned.  
9

10 THE REGISTRAR: Witness, may I remind you, you are  
11 still under oath.

12 A Okay.

13 THE COMMISSIONER: Yes, good morning.

14 MR. BEAUBIER: Thank you, Commissioner; Beaubier for  
15 Officer Rundel.

16 Commissioner, I'd like to have the series of  
17 photographs that we were putting to the witness, 1  
18 through 9, marked as a full exhibit, please.

19 THE COMMISSIONER: Yes, all right.

20 THE REGISTRAR: It will be marked as Exhibit number 46.  
21

22 EXHIBIT 46: Copies - Group of nine still  
23 photographs with markings #1-4 by witness  
24

25 MR. BEAUBIER: And if that exhibit could be put to the  
26 witness, please.

27 A I have a copy.

28 MR. BEAUBIER: Okay.  
29

30 CROSS-EXAMINATION BY MR. BEAUBIER ON BEHALF OF  
31 CONSTABLE GERRY RUNDEL, continuing:  
32

33 Q Officer, on the day in question, and I'm referring  
34 to Exhibit 46 and page 1, the doors that are shown  
35 in that -- on the right-hand side of that  
36 photograph, are those the doors that you actually  
37 came through when you met with Mr. Dziekanski for  
38 the first time?

39 A Yes. And we're looking at those doors. We would  
40 have come through them as if we're looking out  
41 towards where we would have come in.

42 Q All right. Because when one looks at the  
43 Pritchard video that we've seen, it's a little  
44 hard to get a sense of the depth perception of the  
45 premises that we're looking at right here in the  
46 first photograph, photograph number 1. Will you  
47 describe it in a somewhat general sense the area

- 1 that is shown in Exhibit 46, photograph number 1,  
2 and address the issue of size and dimension, not  
3 in feet but just generally what one would see.
- 4 A Well, we're looking at as you come in through that  
5 doorway, that's a secured doorway that on the  
6 outside of that doorway would be a security guard  
7 that can regulate the opening and closing of that  
8 door. As you come in, if you look to the left  
9 there's a desk console area there. If you go  
10 across back to the right to the wall, my  
11 estimation of that would be somewhere between 12  
12 and 15 feet. And from where the photo is taken,  
13 it's really hard to tell, but that could be --  
14 that could be anywhere from 40 to 50 feet back, on  
15 a guess. It's quite a large area. Within this  
16 whole area outside of the photograph there's  
17 airline booths and that sort of thing, so it's a  
18 fairly large area.
- 19 Is that enough detail for you?
- 20 Q I think so, yes, thank you. Now, if you could  
21 turn to photograph number 3, please. I think it's  
22 fairly obvious, but just to be clear. As one  
23 looks at the photograph, the public area is onto  
24 the left of the -- or to the right of the  
25 photograph, rather, and you can see it behind the  
26 glass that's shown in the photograph.
- 27 A That's correct, it would be off to the right.
- 28 Q And you can see two, what appears to be two people  
29 standing there?
- 30 A Correct.
- 31 Q And the photograph is taken within the secure  
32 area, and the console to the left?
- 33 A Correct.
- 34 Q All right. The area where Mr. Dziekanski was  
35 standing when the Taser was applied, as I  
36 understand it, was when you look at the photograph  
37 to the left of the console and just right in front  
38 of it?
- 39 A Correct.
- 40 Q And are you able to estimate approximately where  
41 he was standing when his -- when he had moved from  
42 the luggage area, where the luggage is shown, to  
43 where he was actually facing you and just before  
44 the Taser was applied.
- 45 A My best recollection would say that he would have  
46 been approximately somewhere towards the centre of  
47 that console area, and perhaps one to two feet in

Cst. Gerry Rundel

Cross-exam by Mr. Beaubier (for Constable Rundel)

(cont'd)

- 1 front, just in front of it.
- 2 Q All right. So when you look at the console area,  
3 it's fairly long, and you'll see in addition to  
4 that, there seems to be a glass partition on the  
5 top of the -- of the console as one looks at it.  
6 Is that correct, is that your recollection? Am I  
7 correct in that assumption?
- 8 A Yes.
- 9 Q All right. And there also, as you look at the  
10 console, appears to be, going from the right to  
11 the left, a break in the console as though it were  
12 -- you could reach through. Am I correct in that  
13 assumption, as well?
- 14 A Correct.
- 15 Q Okay. Now, when you say he was standing in the  
16 middle of the console area, are you referring to  
17 the console area that's closest to the person  
18 that's taken this photograph?
- 19 A Yes.
- 20 Q All right. So if you could take your -- take a  
21 pen and mark with an "X", not where he was  
22 standing, but standing in relation to that  
23 console. Do you understand the question?
- 24 A Yeah. I did mark that with a "4" yesterday.
- 25 Q You did, yeah.
- 26 A Do you want an additional mark?
- 27 Q No, no, we don't need to do it twice, thanks.
- 28 A Okay.
- 29 Q Now, you will see the -- and again referring to  
30 photograph number 3, there's a broken small table,  
31 and we know it to be a computer on the ground with  
32 a -- it looks like a keyboard. When you came into  
33 the -- confronted Mr. Dziekanski for the first  
34 time, did you observe the debris that's shown in  
35 that photograph?
- 36 A I observed it. I don't -- I don't recall exactly  
37 what it was at the time, other than it was some  
38 broken debris --
- 39 Q Okay.
- 40 A And some hardware.
- 41 Q And the luggage that's shown there, is it your  
42 recollection that that luggage was in the same or  
43 relatively the same location where it's shown in  
44 the photograph when you were confronting Mr.  
45 Dziekanski?
- 46 A I can't say if it's in exactly the same location,  
47 but very close.

4

Cst. Gerry Rundel

Cross-exam by Mr. Beaubier (for Constable Rundel)

(cont'd)

1 Q All right. And photograph number 4 is simply a  
2 close-up shot of the debris that was shown in the  
3 previous photograph, do you agree?

4 A Sorry?

5 Q Yeah, the debris that's shown in the photograph  
6 number 4 is simply a close-up shot of the debris  
7 of photograph number 3?

8 A Yes.

9 MR. BEAUBIER: Thank you, Commissioner, those are my  
10 questions. I just have one other request and I'd  
11 like to move to have the two -- two statements of  
12 Officer Rundel marked as full exhibits. You'll  
13 recall Commission counsel indicated that they were  
14 his best recollection at the time, and we would  
15 therefore submit that they should be marked as  
16 full exhibits.

17 THE COMMISSIONER: I've been thinking about the marking  
18 of such statements, and I think they can be  
19 marked, but it will be remembered that they're not  
20 marked necessarily for the truth of everything  
21 that's in the statement. They're marked having to  
22 do with the fact that they explain the verbal  
23 evidence of the witness.

24 MR. BEAUBIER: Thank you, Commissioner.

25 THE COMMISSIONER: On that understanding they'll be  
26 marked.

27 MR. BEAUBIER: Mr. Commissioner, the statement of 14th  
28 of October taken at 5:00 a.m., the next exhibit,  
29 please.

30 THE REGISTRAR: The statement dated October 14th will  
31 be marked as Exhibit number 47.

32

33 EXHIBIT 47: Copy - Statement of Cst. Gerry  
34 Rundel dated Oct. 14, 2007

35

36 MR. BEAUBIER: And, Mr. Commissioner, the statement  
37 taken at 1221 hours by Corporal Brassington on the  
38 18th of October 2007, the next exhibit, please.

39 THE REGISTRAR: The October 18th statement will be  
40 marked as Exhibit number 48.

41

42 EXHIBIT 48: Copy - Statement of Cst. Gerry  
43 Rundel dated Oct. 18, 2007

44

45 MR. KOSTECKYJ: My name is Walter Kosteckyj, I am  
46 counsel for Zofia Cisowski.

47

1 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA  
2 CISOWSKI:  
3

4 Q Sir, can you please tell me your age.

5 A Today I'm 48 years old.

6 Q So when you had gone into training you had had  
7 other life experiences. You didn't go into  
8 training as a young recruit, as many do?

9 A That's correct.

10 Q And at the time that this event occurred you were  
11 out of training for two years; is that correct?

12 A That's correct.

13 Q And in fact I guess your training, you'd been out  
14 of training for really a year and a half because  
15 you'd had recruit field training for six months  
16 after you got out of training?

17 A You could -- you could say the field training six  
18 months, and then a year and a half as constable,  
19 yes.

20 Q Okay. And one of the questions I had was looking  
21 at your statement, is it possible that recruit  
22 field training can take longer than six months?

23 A I believe that could be possible. I'm not sure.

24 Q That wasn't the case, though?

25 A That wasn't the case with me.

26 Q All right. I want to talk to you a little bit  
27 about Depot, because that's where you received  
28 your training, correct?

29 A Correct.

30 Q And you were relatively fresh out of Depot, so the  
31 matters that you dealt with in Depot and the  
32 training that you received there were still fresh  
33 to you a year and a half out, were they not?

34 A I would say so.

35 Q All right. Now, just as an aid, sir, about the  
36 Cadet Training Program, I pulled down off the  
37 Internet an outline of that training program, and  
38 I just want to review it with you, some of it.

39 MR. BRONGERS: Mr. Commissioner, Jan Brongers for the  
40 Government of Canada. Just to be clear, because  
41 of course training changes over time, I'm a little  
42 bit concerned about putting what's on the Internet  
43 to the witness when of course his training may  
44 have been different. He took the training three  
45 or four years ago. We advised Commission counsel  
46 that we will be providing evidence about what  
47 training was in fact given at the relevant time.

- 1           So I'm just concerned that the proper documents be  
2           put to this witness.
- 3       THE COMMISSIONER: Well, I didn't understand that you  
4           were going to put documents to him. I understood  
5           you were going to use the documents as a basis for  
6           your questioning.
- 7       MR. KOSTECKYJ: That's basically what I'm doing.
- 8       THE COMMISSIONER: Yes. Well, all right, go ahead, and  
9           the witness will know whether or not that was his  
10          training or not.
- 11       MR. KOSTECKYJ: Yes.
- 12       MR. HARRIS: Do you have copies for other counsel?
- 13       MR. KOSTECKYJ: Absolutely.
- 14       Q     Sir, this is -- this is an overview generally,  
15           and, sir, I'm just going to review with you some  
16           of the things that are talked about in here and  
17           see if this is what you recollect from your  
18           training, as well, in terms of the objectives and  
19           so forth. For example, the largest part of the  
20           training program, 373 hours, it's indicated here  
21           went to Applied Police Sciences. Was that -- was  
22           that the largest portion of your training when you  
23           were in training, sir?
- 24       A     I don't recall the title "Applied Police  
25           Sciences". It may have had a different reference  
26           or different category assigned to it, so I'm  
27           really not sure what that's applying to.
- 28       Q     Okay. Well, let's just review some of the  
29           objectives that they talk about in the program and  
30           see if those are similar to what you understood  
31           the objectives were in your training. That in  
32           point number 1, a level of deportment, to talk  
33           about professional and social conduct consistent  
34           with the RCMP code of conduct, and pride in self  
35           and the RCMP necessary for collaborative policing.  
36           Do you see that?
- 37       A     Yes.
- 38       Q     And is that what you were -- was that one of the  
39           objectives you were taught that that's what they  
40           were trying to train you to, to become familiar  
41           with collaborative policing?
- 42       A     Again I don't recall them using that term, so it's  
43           misleading in the sense that it may have referred  
44           to it in a different way. I'm not sure. I'm not  
45           familiar with that term.
- 46       Q     Well, are you familiar with the term "community  
47           based policing"?

1 A Yes.

2 Q And they -- that's what they were trying to teach  
3 you about, wasn't it?

4 A We had some community based policing, yes.

5 Q And part of the notion of community based policing  
6 is the notion that the police are only as  
7 effective as the community that's prepared to  
8 support them when you're -- for example, when  
9 you're conducting an investigation, you need the  
10 community to help you out, so you've got to  
11 develop this relationship with the community,  
12 correct?

13 A That's -- that's part of the CAPRA, part of the  
14 training where you form partnerships with members  
15 of the community, yes.

16 Q All right. We're going to get into that because  
17 CAPRA's referred to here. So they talk about  
18 developing sensitivity and respect for diversity.  
19 Do you remember that being part of the training?

20 A I remember something similar to that, yes.

21 Q Okay. And that -- that they spent a lot of time  
22 talking about the exercise of discretion with the  
23 RCMP code of conduct, and commitment to community  
24 policing. Discretion is a big thing in policing,  
25 isn't it, sir.

26 A Discretion is a big part of policing, yes.

27 Q And they spend a lot of time talking to you about  
28 discretion and using discretion and basically  
29 knowing when to think and how to think out of the  
30 box basically, right?

31 A Discretion was part of the training, yes.

32 Q Yeah. It's a big part. It's referred to over and  
33 over again, isn't it, sir.

34 A As are many aspects of the training.

35 Q Yeah, but my question right now is about --  
36 specifically about the notion of discretion.  
37 You'll agree with me that that was referred to  
38 over and over in the training?

39 A It was referred to multiple times, yes.

40 Q Yeah. Okay. And they talked to you about the  
41 notion that -- and I'm looking particularly at  
42 number 6 on page 2:

43

44 To facilitate the acquisition of knowledge  
45 and skills for applying approved techniques  
46 using appropriate intervention and incident  
47 management, conflict avoidance and

1 resolution...

2

3 Do you see that?

4 A Yes, I do.

5 Q And they spent a fair bit of time with you on that

6 notion of learning how to avoid conflict, how to

7 resolve conflict, correct?

8 A Yes, I believe number 6 applies to the training in

9 regards to the IMIM.

10 Q Okay. So now do you recollect that when you

11 started your training, one of the basics, the

12 first things they did was they gave you a little

13 bit of history about the RCMP, didn't they?

14 A Yes.

15 Q And they gave you a little bit of history about

16 policing, didn't they?

17 A I do recall something about policing history, yes.

18 Q Yes. Well, do you recollect hearing about Sir

19 Robert Peel's principles of policing, the nine

20 principles of policing upon which all modern

21 police forces are based?

22 A I don't recall that.

23 MR. KOSTECKYJ: Well, let me pass up a list of those

24 and see if it refreshes your memory.

25 MS. ROBERTS: Mr. Commissioner, Helen Roberts for the

26 Government of Canada. We will be producing a

27 witness who can explain in great deal what the

28 training is. I'm not sure what the utility is of

29 having this police officer try and recall

30 everything he was taught at Depot, especially when

31 it doesn't appear to relate directly to Mr.

32 Dziekanski's death.

33 THE COMMISSIONER: I'm afraid that I can see the

34 connection, counsel.

35 MS. ROBERTS: All right. Well, he's given evidence he

36 doesn't recall having any such training, so I'm

37 not sure of the utility of continuing with the

38 line of questioning.

39 THE COMMISSIONER: Well, each question will have its

40 own answer.

41 MS. ROBERTS: Thank you.

42 MR. KOSTECKYJ:

43 Q Do you see that, sir?

44 A Yes, I have it in front of me.

45 Q And looking at these principles of policing, does

46 it raise for you a recollection of what you were

47 told were the fundamental principles of policing

- 1           that have long been used and adopted by the RCMP,  
2           that this is an underlying philosophy of the RCMP?  
3       A     I don't recall this.  
4       Q     Okay. Well, do you recollect, sir -- these two  
5           were pulled down off the Internet and I can advise  
6           you that they're also found on the website for the  
7           New Westminster Police Force, these same  
8           principles of policing. Do you remember -- do you  
9           remember these notions that the use of physical  
10          force "to the extent necessary to secure  
11          observance of the law or to restore order only  
12          when the exercise of persuasion, advice and  
13          warning is found to be insufficient." Do you  
14          recollect something along those lines?  
15       A     No, I do not.  
16       Q     Okay. Well, let's go on and talk about CAPRA,  
17           because you remembered that, right?  
18       A     Yes.  
19       Q     And that's on the next page of that first handout  
20           that I provided to you.  
21       A     What page am I?  
22       Q     Page 2 talks about CAPRA. And explains what that  
23           -- what CAPRA stands for, right?  
24       A     Yes.  
25       Q     And the "C" in CAPRA stands for Clients, correct?  
26       A     Correct.  
27       Q     And it talks about as an explanation on -- at  
28           paragraph "A", it talks about it being about  
29           CAPRA, about being client-centred. And it talks  
30           about a client-driven -- I'm looking at the second  
31           line on the -- the last full sentence on the  
32           bottom of the page.  
33       A     Okay.  
34       Q                   A client-driven approach recognizes that  
35                   individuals or communities seeking help,  
36                   victims of crime, witnesses and suspects as  
37                   clients all deserve a level of service that  
38                   is professional, ethical, lawful, sensitive  
39                   and respectful and consistent with the public  
40                   interest. A client-centred approach  
41                   emphasizes the importance of organizing  
42                   policing around the needs of the community  
43                   and individual clients rather than around  
44                   policing disciplines or functions.  
45  
46  
47           Do you recognize that, sir?

- 1 A I recognize it. Exact wording I don't recall, but  
2 the -- the general concept is correct.
- 3 Q Well, the general concept was that you were  
4 trained that suspects, as well as other people  
5 that you're interacting with, have to be treated  
6 as clients.
- 7 A Correct, they're clients, yes.
- 8 Q Yes. And you are supposed to use a degree of  
9 empathy when you're dealing with those people.  
10 That word was used a lot with you, wasn't it?
- 11 A Are you -- when are you referring to?
- 12 Q In your training, empathy.
- 13 A The word "empathy" was used in training, yes.
- 14 Q In fact, you were put into situations where you  
15 had to conduct certain exercises, and for example,  
16 dispute resolution between battling husbands and  
17 wives or spouses. Do you recollect that?
- 18 A We had scenarios such as, yes.
- 19 Q And the idea was you go in and you talk to that  
20 person and you become empathetic with them so you  
21 can understand what the problem is, right?
- 22 A That's correct.
- 23 Q That's a big part of your training, correct?
- 24 A Correct. May I also expand on that answer?
- 25 THE COMMISSIONER: Yes, indeed.
- 26 MR. KOSTECKYJ: Yes.
- 27 THE COMMISSIONER: You can expand any time you wish.
- 28 A That scenario-based training also included with  
29 that same approach similar circumstances,  
30 different scenario, where the client, the person  
31 that we were dealing with also acted in  
32 irrational, not -- you know, non-responsive to the  
33 approach, and where the use of force was  
34 necessary; in the scenario-based training.
- 35 MR. KOSTECKYJ:
- 36 Q Yeah. And one of the things was before you went  
37 to the use of force, you were supposed to exhaust  
38 your ability to negotiate and to deal with that  
39 person, and you went to the use of force and  
40 violence when all else failed; is that correct?
- 41 A If the opportunity presented itself, you can  
42 exhaust those means. If the opportunity calls for  
43 the use of force, then the use of force is used.
- 44 Q Yes. Well, let's talk about that for a second.  
45 The use of force is not ever mandatory, is it.  
46 It's permissive. Isn't that what you're taught?
- 47 A Define "permissive".

- 1 Q Well, you're allowed in certain circumstances to  
2 use force. You're not mandated to use force at a  
3 particular situation, except perhaps to save your  
4 life. That's -- but you're not mandated to do  
5 that. You are told you may use force in these  
6 circumstances.
- 7 A When necessary.
- 8 Q Yeah. Right?
- 9 A We may use force when necessary.
- 10 Q Right.
- 11 A Section 25 **Criminal Code**.
- 12 Q Well, and s. 25 also says that you have to use  
13 reasonable force, doesn't it.
- 14 A Correct, as much as force as is reasonably  
15 necessary. Correct.
- 16 Q All right. Now, when you go along, they talk  
17 about this integrated problem based approach. Do  
18 you see that?
- 19 A Okay, I'm not quite sure. Are we leaving the  
20 CAPRA model right now, or are we still...
- 21 Q Well, I think it's all part of the CAPRA model.  
22 Let's -- well, actually, let's go back and just  
23 make sure, because -- thank you for reminding me.  
24 "C" in the CAPRA model on page 2 talks about  
25 "Clients". We've discussed that a little bit,  
26 correct?
- 27 A Correct.
- 28 Q "A" is for "Acquiring and analysing information",  
29 correct?
- 30 A Correct.
- 31 Q That's so that when you come on a scene you  
32 analyze the scene and figure out what everything  
33 is going on and make sure that from an objective  
34 point of view you've got a true picture of what's  
35 going on, correct?
- 36 A Well, you're -- you're acquiring and analyzing  
37 right from the moment you get the dispatch ticket.  
38 So you've got to inquire and analyze that  
39 information included. You've got to -- unfamiliar  
40 with the environment, that's all part of the  
41 inquiry and analyzing also, prior to arriving.
- 42 Q Yeah, but look, you've been an officer not for  
43 that long, but even at this time in two years, you  
44 know that you get calls on the radio from a  
45 dispatch and you show up and it's a different set  
46 of circumstances from what you've gotten on the  
47 radio, right?

- 1 A Well, you have to go with the information that you  
2 have on the dispatch ticket, and you have to --  
3 you have to rely that it's somewhat accurate, as  
4 opposed to assuming that it's not. Of course,  
5 when you get on to the scene, you're going to  
6 assess again and you're continually assessing and  
7 analyzing.
- 8 Q That's right. When you get to the scene you're  
9 analyzing and trying to be objective, to make sure  
10 that the information you got in the dispatch  
11 actually makes some sense, correct?
- 12 A Well, objective also, but you've got to consider  
13 the risk factors, the environment, the nature of  
14 the call and public safety.
- 15 Q Yeah, all of those things. But you have to  
16 analyze for yourself what you're actually seeing,  
17 correct?
- 18 A You're continually analyzing, correct.
- 19 Q All right. And you are objectively looking and  
20 determining, based on what you're seeing  
21 objectively, as to whether the call makes sense or  
22 not, correct?
- 23 A You're continually acquiring and analyzing the  
24 information, including the dispatch ticket,  
25 continually throughout the process, from the time  
26 that you leave to the time that you are dealing  
27 with an individual, and it's ongoing, it doesn't  
28 stop.
- 29 Q Oh, no, I -- I appreciate that. Now,  
30 "Partnership", that's "P". Partnership refers to  
31 working both with the community and also means in  
32 dealing with other members of the RCMP, correct?  
33 Working in union, correct?
- 34 A Well, partnerships -- partnerships, from my  
35 understanding, was more related to the  
36 partnerships that you develop with organizations,  
37 community members, those partnerships that you  
38 develop outside of the RCMP. You could form  
39 partnerships within also, sure.
- 40 Q Yes. And these partnerships, getting back to  
41 that, are very, very important because underlying  
42 the RCMP's ability, this is what you're taught, is  
43 that the community has to support the work of the  
44 police. That's what community-based policing is  
45 about, correct?
- 46 A You want the members of the public and the police  
47 to form a partnership and work together, yes.

1 Q Because, for example, if you've got a bunch of  
2 hoodlums running around doing things, you need the  
3 public to be able help you to solve the crimes,  
4 correct? You can't solve them in a vacuum. You  
5 need the public's support, correct?

6 A Correct. We -- we do need the public's support,  
7 yes.

8 Q And one of the things that you're taught, and this  
9 is getting back to Peel's principles, is that in  
10 order to gain public support you look a lot more  
11 professional when you can deal with the problem  
12 through negotiation rather than having to resort  
13 to physical violence, correct?

14 A I -- if I may, I don't -- I'm not comfortable  
15 answering to Peel, anything about Peel, because  
16 I'm not familiar with it.

17 THE COMMISSIONER: All right.

18 MR. KOSTECKYJ:

19 Q Okay. Well, let's put it this way. You are  
20 taught, and it's brought up to you through the  
21 training that you do, that if you can solve a  
22 problem through negotiation, it makes you look a  
23 lot better in the public's eye than if you've got  
24 to resort to violence. Violence is a last resort.  
25 Force is a last resort, correct?

26 A When we come onto a scene, it starts with officer  
27 presence and verbal interaction with that person,  
28 so that ultimately is the initial contact, that is  
29 our goal to resolve a situation with that first  
30 interaction.

31 Q It's preferable to try to resolve through  
32 negotiation and through persuasion than it is to  
33 go to physical force?

34 A I beg to differ with your -- I'm not quite sure  
35 that negotiation is the appropriate word here.

36 Q Okay.

37 A When we're communicating with somebody, it's --  
38 it's not a negotiation. It's communication.  
39 Don't -- don't mix the two terms. Communication.

40 Q Well, you have somebody who's suicidal. You  
41 negotiate with that person, don't you?

42 A You communicate with that person.

43 Q Yeah. Well, isn't that a --

44 MR. HARRIS: Mr. Commissioner, I'm going to rise for a  
45 moment. The concern I have with this line of  
46 questioning is firstly it addresses all policing  
47 in general and all the clients present. Second,

1           it's a hypothetical that's very different than  
2           what the facts are of this hearing. This hearing  
3           involves a man, by this witness, who is combative.  
4           A person tried to take their --  
5       THE COMMISSIONER: The issue, sir, is whether or not he  
6           was combative.  
7       MR. HARRIS: Well, perhaps, yes, I agree, according to  
8           this officer's evidence and perception.  
9       THE COMMISSIONER: Indeed, that's right.  
10      MR. HARRIS: He was combative. The question posed is a  
11           suicidal hypothetical scenario involving a person  
12           that is not combative, and I fail to see how it's  
13           of assistance here when it's so broad and so far  
14           removed from what's -- the facts in here, or the  
15           fact patterns.  
16      THE COMMISSIONER: I have found that this witness is  
17           more than capable of looking after himself. I am  
18           going to allow the questions.  
19      MR. KOSTECKYJ:  
20      Q     Now, I don't know if we're just playing at words a  
21           bit, but when you're dealing with that kind of a  
22           person, who is your client, right?  
23      A     Yes.  
24      Q     Whether you are communicating with him, you are  
25           negotiating, correct?  
26      A     If you want to use the word "negotiate", I will  
27           use the word "communicate".  
28      Q     All right.  
29      A     Do we agree on that?  
30      Q     Now, let's move on to page 3 of that handout that  
31           I provided to you, because these are general --  
32      THE COMMISSIONER: If I may, I think, Officer, that one  
33           of the things you're trying to say is that the  
34           police authority is always present, and so that's  
35           why you're using the word communicate, and not  
36           negotiate.  
37      A     Well, communicating is -- is not just in words.  
38           Communicating is body language, tone of voice,  
39           just your general demeanour. To me that's not  
40           negotiating, that's all communicating.  
41           Negotiating just throws it right off track.  
42      THE COMMISSIONER: Yes, all right, thank you.  
43      MR. KOSTECKYJ:  
44      Q     Okay. Now, I'm going to talk to you a little bit  
45           about this "Integrated Problem-based Approach".  
46           In this outline of what they do at Depot now, they  
47           talk about:

1 Cadets learn by solving problems through  
2 research and information gathering and group  
3 problem solving exercises supplemented by  
4 lecture and/or demonstration performance, as  
5 appropriate.  
6

7 Did you go through that? Did you go through an  
8 integrated problem-based approach?

9 A That sounds familiar.

10 Q And did you do case studies where you had learning  
11 opportunities? It talks about problem -- I'm  
12 reading here:

13  
14 The problem-based, scenario approach provides  
15 the cadets with opportunities to learn the  
16 complexities of policing situations, to  
17 discuss alternative responses, to develop  
18 techniques for handling varied situations and  
19 to engage in cooperative problem solving.  
20

21 A Yes.

22 Q You do that kind of --

23 A That sounds familiar.

24 Q And you would do those things both on your own and  
25 with other cadets, correct?

26 A I recall doing classroom sessions on the  
27 blackboard or with other cadets and problem-based  
28 scenarios of --

29 Q And then they talk about these:

30  
31 Scenarios are designed to support incident-  
32 based approaches to service, protection,  
33 enforcement and prevention, but are also  
34 designed to promote a problem solving  
35 approach, emphasizing skills and techniques  
36 in the identification of problems, problem  
37 analysis and response, and evaluation and  
38 assessment.  
39

40 Did you go through coursework that did that, that  
41 integrated problem-based approach that's being  
42 referred to there?

43 A Again there's a lot of -- a lot of information in  
44 there, but similar, yes.

45 Q And it talks about "joint problem solving  
46 sessions", did you do those?

47 A If joint is referring to with other cadets, yes.

1 Q Okay. Now, if you go to page 3 -- sorry, page 4,  
2 it talks about "Applied Police Sciences" there.  
3 Did you have a course that was called Applied  
4 Police Sciences?  
5 A Again I don't recall if that was the title that it  
6 was given.  
7 Q Well, did you have a human relations course?  
8 A Again I don't recall.  
9 Q Do you recall having a law course?  
10 A We had courses on law, yes.  
11 Q Yeah. Well, it says here that the largest part of  
12 police training now is -- goes to Applied Police  
13 Sciences. Since you've left training, have you  
14 gotten bulletins that there's been a major change  
15 in police training?  
16 A Personally I have not received anything, no.  
17 Q So did you go to detachments and visit detachments  
18 and use CAPRA problem solving in order to be able  
19 to go through and deal with those kinds of issues?  
20 A In training?  
21 Q Yes.  
22 A The only detachment was a detachment that was  
23 within the Regina training facility itself. We  
24 did not -- I did not go to any outside detachments  
25 from Depot outside of the training facility.  
26 Q Okay. Well that seems to be a change because now  
27 they appear to be taking people to outside  
28 detachments, but --  
29 A Well, that -- that just --  
30 THE COMMISSIONER: You're getting a little far afield  
31 here now.  
32 MR. KOSTECKYJ: Yeah, I am.  
33 A I think that's clarifying why this information is  
34 not accurate for --  
35 Q Okay.  
36 A -- what I was trained.  
37 Q Okay. Well, let's talk -- let's talk a little bit  
38 about this. Did you deal with --  
39 A Commissioner, may I ask a question?  
40 THE COMMISSIONER: Yes.  
41 A This -- it really is getting to the point where I  
42 can see that there are differences.  
43 THE COMMISSIONER: Yes.  
44 A And if -- if I may request that this line of  
45 questioning just end with this document? I -- I'm  
46 just not sure where it's going and I'm already  
47 seeing that the training has changed.

1 THE COMMISSIONER: Yes, all right.

2 A From the time that I was there, and...

3 THE COMMISSIONER: Right. Well, that's your answer.

4 You'll have to deal with it on that basis.

5 MR. KOSTECKYJ: Yes.

6 Q Just incidentally, what -- what's the big change  
7 that you notice?

8 A Well, you --

9 THE COMMISSIONER: Well, just a moment. I don't think  
10 that this --

11 MR. KOSTECKYJ: Okay.

12 THE COMMISSIONER: -- is going anywhere.

13 MR. KOSTECKYJ: All right.

14 Q Let me move on to this. Do you remember in your  
15 training doing cross-cultural training?

16 A There was -- I don't know how much, hour-wise, but  
17 there was something to that effect, yes.

18 Q And one of those things was, for example, that  
19 when you're dealing with different cultural  
20 groups, for example, First Nations people, not  
21 everybody reacts in the same way, correct?

22 A Correct.

23 Q And do you recollect, for example, with First  
24 Nations people that when you're speaking with a  
25 First Nations person that that person might look  
26 down at the ground instead of looking you in the  
27 eye, and that's not a sign of disrespect but  
28 rather a sign of respect. Do you remember that,  
29 that kind of thing?

30 A Well, I don't remember that exact type of thing,  
31 no.

32 Q But that type of thing you were taught about,  
33 correct?

34 A I was taught that different ethnic groups have  
35 different ways of -- different gestures, different  
36 ways of -- certain -- certain hand signals, for  
37 example, might mean something in one culture and  
38 something else in another culture.

39 Q And so you had to be -- try to be attuned and pay  
40 attention to people from one culture or another,  
41 or from different parts of the world, correct?

42 A You have to learn to communicate with all  
43 cultures, all types of people, all types of  
44 behaviour, yes.

45 Q All right. Let's -- let's turn now to talk about  
46 what happened on the night of October the 14th.  
47 The four of you arrived at the airport after you

1 got a call, you were having lunch; is that  
2 correct?  
3 A That's correct.  
4 Q And were all four of you having lunch together?  
5 A That's correct.  
6 Q Why is it that you took four separate police cars?  
7 Why didn't you go -- why didn't you buddy up and  
8 go two to a car?  
9 A Everybody is assigned their own car, and it's just  
10 standard procedure that each officer has his own  
11 car.  
12 Q Well, wouldn't it make sense when you're going to  
13 a -- to a call together that that would give you  
14 the opportunity to discuss tactic and decide what  
15 you're going to do on the way?  
16 A No. Every officer has their equipment in their  
17 own car, they're signed into their computer. It's  
18 just standard to -- that's how -- you're assigned  
19 your own car, one -- one officer per car, with the  
20 exception if there's a training cadet where the  
21 cadet will be in with a senior officer on a  
22 training program.  
23 Q Okay. Now, you did indicate, and did I understand  
24 this correctly, that you didn't discuss the call  
25 between yourselves on the way in the one minute or  
26 two minutes it took to get to the airport. Is  
27 that accurate?  
28 A I didn't discuss the call with anybody.  
29 Q And I'm presuming that you would have heard  
30 anything that was called over the radio if anybody  
31 else was discussing it?  
32 A If it was -- if there was two officers over the  
33 radio I should have heard, it, yes.  
34 Q Okay. You don't have a recollection of hearing  
35 anything like that?  
36 A Of two officers?  
37 Q Any discussion.  
38 A En route from the detachment to the airport?  
39 Q Yes.  
40 A I don't have any recollection of that.  
41 Q Okay. Now --  
42 A With the exception of the E-Comm and an officer  
43 responding to E-Comm.  
44 Q Now, you personally never called in to E-Comm and  
45 advised them that you were responding to the call,  
46 did you?  
47 A No, I did not.

- 1 Q So E-Comm had no idea that you were there? That's  
2 a fair assessment?
- 3 A They had, I would say the point from when I left  
4 to arrival at the airport, they would not be aware  
5 that I was there at that point, yes.
- 6 Q Okay. Now, when you got to the airport, do you  
7 recollect seeing Mr. Dziekanski calling out the  
8 words "*Policja, policja*"?
- 9 A No, I do not.
- 10 Q Okay. Now, you said that a woman pointed -- as  
11 you were walking in a woman pointed him out to  
12 you, correct?
- 13 A Correct.
- 14 Q You didn't stop and chat to that woman?
- 15 A No, I did not.
- 16 Q When you gave the statement, you didn't describe  
17 this woman as being distraught in any way,  
18 correct?
- 19 A I don't recall what I put in my statement  
20 regarding that.
- 21 Q Okay. Do you still have your statement there,  
22 sir?
- 23 A No, I don't.
- 24 Q I'm taking you to page 11 of the statement given  
25 on October the 14th, 2007.
- 26 A Okay.
- 27 Q And tell me when you've found it, sir.
- 28 A Okay.
- 29 Q So you talked about when you first arrive at the  
30 scene, he's asking you about do you notice  
31 security dealing with him. And you say:  
32  
33 ... You know, there again, it was um... I  
34 don't recall.  
35
- 36 So you don't remember seeing security there,  
37 that's what you tell him at the time, correct?
- 38 A That's what I said at the time.
- 39 Q  
40 ...Like I say, when we walked in there, all I  
41 remember's focusing on this gentleman  
42 himself, and... nothing else, and stayin'  
43 focused on that.  
44
- 45 Correct?
- 46 A Correct.
- 47 Q So you weren't really paying attention to much

1 else in any other area of the airport. All you  
2 were doing was looking at him, correct?

3 A Well, I'm -- that's what I'm stating in the  
4 statement, but obviously I'm in tune to other  
5 things going on.

6 Q Well, we'll talk about that in a minute. And you  
7 go on, and he says: "Okay."

8  
9 So once... once we came in and... it was, it  
10 was a female who said, "That's him, he's over  
11 there", and...

12  
13 Okay.

14  
15 ...thought it was just... go from there.

16  
17 And he questions you:

18  
19 Go from there? Okay, during the... con-, or,  
20 during the... conversation that... you guys  
21 were having with him, does he speak at all?

22  
23 So the impression I'm getting is you didn't stop  
24 to speak to anybody. You never described this  
25 woman as being distraught, accurate?

26 A Well, the statement is what it is.

27 Q Well, is it also true? You didn't stop to talk to  
28 anybody?

29 A I didn't stop to talk to her.

30 Q Well, you never stopped to talk to anybody,  
31 correct?

32 A If I may expand on that answer.

33 THE COMMISSIONER: Yes, of course.

34 A The female was, as I've stated, I believe  
35 yesterday, that she had a very distressed tone of  
36 voice, panic tone of voice, and pointing to --  
37 pointing in his direction, to Mr. Dziekanski's  
38 location, "That's him over there." When I gave  
39 the statement, I'm just giving the statements of  
40 what she said. I didn't describe any further  
41 details of that. But my recollection is what I've  
42 just said now, and what I said yesterday, I  
43 believe.

44 MR. KOSTECKYJ:

45 Q Well, we've heard a number of witnesses, there's  
46 been a couple of airline employees, there have  
47 been Ms. Ashrafinia, there has been a limo driver

1 or a couple of limo drivers, and no one's  
2 indicated anybody stopped to talk to them. You  
3 never saw any of your other fellow members stop  
4 and talk to anybody on the way in, correct?  
5 MR. BUTCHER: At this point I'm going to object,  
6 because I don't think that's a fair summary of the  
7 evidence of Genevieve Deziel, who did recall some  
8 interaction with one of the officers.  
9 THE COMMISSIONER: Well, of course, the underlying  
10 point is the officer isn't there for what they  
11 said.  
12 MR. KOSTECKYJ: Yes, well, that's fine.  
13 Q Let me put it to you this way, sir. Besides this  
14 brief conversation you had with this woman, and we  
15 see you coming into the -- into the facility,  
16 correct?  
17 A That's incorrect. There was no brief  
18 conversation. It was just her panic voice telling  
19 me "He's over there" and pointing.  
20 Q Okay. So besides that, you didn't have a  
21 conversation with anybody else?  
22 A I believe I did not. I don't recall any  
23 conversation with anybody else.  
24 Q Okay. There were three members in front of you,  
25 correct?  
26 A Two members in front of me.  
27 Q Okay. And where was the other member?  
28 A At that -- at that time, I don't recall. I'd have  
29 to assume that he was behind me.  
30 Q All right. None of you said, "Let's speak to the  
31 people out there and get some background and find  
32 out what's going on," correct?  
33 A I didn't.  
34 Q And no one else directed anybody else to do that,  
35 either?  
36 A Nobody directed me to.  
37 Q Yeah. You weren't really paying attention to what  
38 was inside the secure area either, were you, sir?  
39 A I'm not sure what your question is. The secure  
40 area is quite a large area.  
41 Q Yeah. Well, the only thing you paid attention to  
42 was Mr. Dziekanski. You focused yourself on him  
43 and him alone?  
44 A Mr. Dziekanski drew my attention and that's who I  
45 was looking at, yes.  
46 Q Well, you were asked in your statement at page 9  
47 whether you observed any other people in the area.

1 I'm looking at the bottom of page 9 of your  
2 statement, sir. Do you see -- what I'm looking at  
3 is Sergeant Attew says to you:

4  
5 Okay. Were there any other people in that  
6 area? Cuz I know it's a... it's a glassed-  
7 off...

8  
9 And you go "Yeah..."

10  
11 ...petition area, so... there's other people  
12 obviously on the other side of the petition  
13 area. Was there anyone else in side the  
14 petition area than yourself...

15  
16 I'm presuming he's referring to the secure area.  
17 And your answer was:

18  
19 I really... don't remember who.

20  
21 Okay.

22  
23 I can't... you know, I was focused on... just  
24 him and the situation, so...

25  
26 'K.

27  
28 Yeah, I can't say.

29  
30 Correct?

31 A That is making reference to other people other  
32 than the officers, if that's what you're  
33 inferring.

34 Q Yeah, your officers. You're talking -- I'm  
35 talking about your other members, other police  
36 members, correct?

37 A I'm talking -- when I'm -- when I'm answering this  
38 question, I'm referring to other people, other  
39 than the officers.

40 Q Yeah. Other than the other police officers,  
41 correct?

42 A I don't -- I don't recall -- I'm just going to  
43 take a moment and read this again, okay?

44 Q That's fine.

45 A Oh, okay. If you back up a bit, this is making  
46 reference to after Mr. Dziekanski was tasered.

47 Q All right. Well, let's make reference to before

1 he was tasered. When you entered into the secure  
2 area did you even notice if there was anybody else  
3 in there?  
4 A I don't recall noticing anybody.  
5 Q At this stage you didn't have any -- any  
6 information from anybody that Mr. Dziekanski had  
7 been violent, correct?  
8 A That's incorrect. We had a couple of dispatch  
9 transmissions stating otherwise.  
10 Q Well, you had a dispatch that said that he had  
11 broken glass, correct?  
12 A I don't recall if it was broken glass or it was  
13 smashing glass, something to that effect.  
14 Q Well, there was no smashed or broken glass inside  
15 the area when you -- or anywhere around Mr.  
16 Dziekanski, was there?  
17 A If you're backing up to was he violent, the  
18 information on the dispatch ticket was giving me  
19 information that he possibly could be violent,  
20 yes.  
21 Q Okay. But I'm talking about what you observed.  
22 I'm not talking about what was on the dispatch  
23 ticket. You didn't see any broken glass, did you,  
24 sir?  
25 A I didn't see any broken glass.  
26 Q You didn't see any broken windows?  
27 A No.  
28 Q You didn't talk to anybody at the scene who said  
29 that they had -- they were in -- they were fearful  
30 of Mr. Dziekanski?  
31 A Other than the female that addressed me, no.  
32 Q Well, she didn't -- she didn't tell you she was  
33 fearful, did she?  
34 A Well, her voice, as I said, was distressed, which  
35 is indicating fear.  
36 Q Well, you didn't ask, "Has he hurt anybody?"  
37 A No.  
38 Q Do you recollect seeing that there were people  
39 standing near the door in his vicinity? You  
40 don't, do you, sir?  
41 A Other than a security guard, I don't recall.  
42 Q Okay. Now, do you recollect people, 'cause it's  
43 very loud on the tape, yelling at you as you were  
44 walking by, "He doesn't speak English, only  
45 Russian." Do you remember that?  
46 A I remember a voice saying "He doesn't speak  
47 English," yes.

- 1 Q Okay. More than one, I suggest to you.  
2 A My recollection is hearing it once.  
3 Q Okay. Do you remember people telling you "He's  
4 scared"?  
5 A I don't recall.  
6 Q All right. Now, today you're telling me that you  
7 think you recollect security being there. On  
8 October the 14th when you were asked as you were  
9 entering into the area, and I'm looking at page  
10 11, sir, you told Sergeant Atwall that you -- or  
11 sorry, Attew, that you didn't remember. I'm just  
12 taking you to the top. "Okay", so this is  
13 Sergeant Attew. Do you see this?  
14  
15 Um... So when you... when you first arrive at  
16 scene, um, there's uh Security there at that  
17 time? Dealing with him?  
18  
19 Your answer is:  
20  
21 ... You know, there again, it was um... I  
22 don't recall. Um... Like I say, when we  
23 walked in there, all I remember's focusing on  
24 this gentleman himself, and... nothing else,  
25 and stayin' focused on that.  
26  
27 Is that the answer you gave at the time?  
28 A At the time that's my answer. Since my memory has  
29 been refreshed with the video.  
30 Q No. What's happened is you've seen the security  
31 people on the video, but you didn't have a  
32 recollection of them being there at the time,  
33 correct?  
34 A I don't recall in my statement, again, it is what  
35 it is, and that's what I said in my statement.  
36 Q Well, in your statement you were pretty clear that  
37 you were just focused on him and you didn't notice  
38 the security guys, correct?  
39 A As I say, when I'm focused, I am still picking up  
40 on other things. I've said that previous, and  
41 it's obvious that the security guard was there in  
42 my line of vision, and my memory was refreshed.  
43 Q Okay. Now, let's talk about the observations you  
44 made at the scene. Did you see the broken chair?  
45 A I don't recall it being a -- like I said, it was  
46 -- I think I described it as demolished, or  
47 something to that effect, in my statement. Not

1 really knowing what it was, if it was a broken --  
2 it was broken chair or just -- just some material  
3 that had been destroyed, sitting on the floor  
4 there.

5 Q And you saw the desk there. It didn't appear to  
6 be damaged, did it, sir?

7 A Well, my recollection is I -- I thought it was the  
8 desk, the right-hand side of the desk where the  
9 computer area had been pulled out, or I -- I  
10 still, I have not had a close look even after the  
11 incident at that -- at that debris, so I still to  
12 this day really don't know what it was. But I had  
13 thought that the desk where it was located had  
14 been broken or smashed and my thinking was that  
15 that material - excuse me - the material on the  
16 floor might have been part of the desk.

17 Q All right. You didn't see anybody injured at the  
18 scene, no one was complaining of injury?

19 A No.

20 Q And in fact when you first walked in, you were  
21 asked about the tone of voice of Mr. Dziekanski,  
22 you were asked by Sergeant Attew, and you couldn't  
23 tell him what the tone of voice was, could you?

24 A Where -- you have to take me to that in the  
25 statement, please.

26 Q Well, page 11.

27 A And where are we?

28 Q At the bottom of the page, he -- this is Sergeant  
29 Attew:

30  
31 Go from there? Okay, during the... con-, or,  
32 during the conversation that... you guys were  
33 having with him, does he speak at all?

34  
35 And you say:

36  
37 He... muttered something that... we didn't  
38 understand, or I didn't understand. Um...  
39 Just a coupla... sentences in... some  
40 language, I believe he was Polish, but...

41  
42 Okay.

43  
44 And then you answered:  
45 ...don't know the language.

46  
47 Was his loud... like normal...

1                   ... I really don't recall.

2

3                   So he's asking you about whether Mr. Dziekanski's  
4                   being loud, and you don't have any memory of that  
5                   at five o'clock in the morning, correct?

6           A        I don't recall him being loud.

7           Q        Okay. And here you -- here you're telling the  
8                   sergeant:

9

10                   ... I really don't recall.

11

12                   Correct? Those are the words you use.

13           A        That's in reference to the level of his voice.

14           Q        Right. But then you're interrupted with a  
15                   telephone call and then he goes -- you go on, and  
16                   he apologizes and you say:

17

18                   No problem.

19

20                   Um... Okay. Um... so... normal... his voice,  
21                   sorry? Go back to his voice...

22

23                   I, I really don't recall if it was...

24

25                   ...raised or not?

26

27                   "If it was..." and then you're interrupted:

28

29                   ...raised or not?

30

31                   And your answer was:

32

33                   ... raised or not.

34

35                   And then you say, you go on to describe his  
36                   pacing. But in terms of his voice you don't  
37                   observe anything unusual about the tone of his  
38                   voice, do you?

39           A        Not his tone of voice, no.

40           Q        Now, you go on to say that he was pacing. When --  
41                   when you first came in, he gave you room to come  
42                   into the secure area, correct?

43           A        Well, I -- I'd -- he was moving. I don't know if  
44                   it was a conscious thought on his part that he was  
45                   actually to moving to give us room.

46           Q        Well, he stepped back from the door. Your counsel  
47                   showed you and took you slowly through the video

1 the other day, and you saw that he moved back so  
2 that there was no problem you walking through the  
3 door, accurate or not?  
4 A He moved back. I can't answer to the reason why  
5 he'd be moving back.  
6 Q Okay. Well, there was four of you trying to get  
7 through the door, correct?  
8 A Well, one after the other.  
9 Q Yeah. Four of you had to make your way into that  
10 room on the other side of the secure area, and the  
11 other side of the door into the secure area,  
12 correct?  
13 A Correct. And I think we've earlier demonstrated  
14 how large that area is.  
15 Q Yeah. But you had to go through a couple of  
16 doors. We've seen them on the video, opening and  
17 closing, and -- but we've seen those doors,  
18 correct?  
19 A Had to go through the doors, correct.  
20 Q The four of you.  
21 A That's correct.  
22 Q And there was ample room for the four of you to go  
23 through and to stand not far from the desk, at  
24 which point Mr. Dziekanski came closer to you,  
25 correct?  
26 A Mr. Dziekanski moved, I believe he moved towards  
27 us.  
28 Q Right. Do you recollect anything about -- or  
29 being asked for his passport?  
30 A No.  
31 Q Is it possible that that happened and you just  
32 didn't hear it?  
33 A It's possible I didn't hear it.  
34 Q So when Mr. Dziekanski was moving towards his bag  
35 after some words were spoken to him, he could have  
36 been responding to look for his documents,  
37 correct?  
38 A It's a possibility.  
39 Q Well, do you recollect at some later stage a man  
40 came out from -- a Border Services agent came out  
41 and helped identify and find Mr. Dziekanski's  
42 papers in his bag? Were you there for that?  
43 A At what -- what -- point in time are you referring  
44 to?  
45 Q I'm talking about after -- about two o'clock in  
46 the morning a Border Services agent by the name of  
47 Chapin came out and retrieved the papers out of

1 Mr. Dziekanski's bag or helped find those. Do you  
2 remember that?  
3 A I don't recall that.  
4 Q Do you remember identifying Mr. Dziekanski in some  
5 way through documents?  
6 A Me personally, no.  
7 Q Do you recollect somebody saying to you "We found  
8 the passport"?  
9 A No.  
10 Q Do you remember having conversations with the  
11 Border Services agent? This is at about two  
12 o'clock in the morning.  
13 A I do remember talking with a Border Service agent.  
14 I don't recall which agent. I recall talking with  
15 some YVR security guards, also. I don't recall  
16 who. And I don't recall the conversations.  
17 Q Okay. Well, see if I can refresh your memory  
18 about the Canadian -- or the Border Services  
19 agent. He would have come out and he indicated  
20 that he was just speaking with Mr. Dziekanski's  
21 mother, and he recognized Mr. Dziekanski. Do you  
22 remember that Border agent?  
23 A No, I do not.  
24 MR. KOSTECKYJ: Okay.  
25 MR. HIRA: I'm sorry, Mr. Commissioner, I hesitate to  
26 rise, and I don't know, maybe I'm wrong on this.  
27 But I don't recall a Border Service agent speaking  
28 to Mr. Dziekanski's mother.  
29 THE COMMISSIONER: I don't either.  
30 MR. BUCHANAN: Maybe for assistance, that was Border  
31 Service Agent Chapin who did receive the call and  
32 did go out in the IRL, and did testify to that  
33 earlier in the proceedings.  
34 THE COMMISSIONER: All right, I had forgotten that.  
35 Thank you.  
36 MR. HIRA: I think his evidence was that he went out  
37 and he gave a description to the police. But I  
38 don't recall a Border Service agent speaking to  
39 the mother.  
40 THE COMMISSIONER: Well, at any rate, the officer has  
41 said that he doesn't know anything about this.  
42 MR. HIRA: Fair enough.  
43 MR. KOSTECKYJ:  
44 Q I'm correct, sir, am I not, that after you went  
45 into the secure area initially to deal with Mr.  
46 Dziekanski, you left once to go get these hobbles  
47 to tie up his legs, correct?

- 1 A Correct.
- 2 Q And we saw you returning back into the secure area  
3 very shortly thereafter, correct?
- 4 A I believe it was approximately a minute.
- 5 Q To go get those hobbles.
- 6 A Correct.
- 7 Q And then you return into the secure area, correct?
- 8 A Correct.
- 9 Q And you don't leave again, you don't leave that  
10 secure area again until after the fire department  
11 arrives, is that accurate?
- 12 A I believe yesterday I testified something  
13 different than that, and my recollection with the  
14 contacts that I made at the time, and including  
15 Pritchard, I talked to several -- several people  
16 and was being approached by different people. So  
17 my recollection is as best I can give it right now  
18 is what I gave yesterday.
- 19 Q Okay. Well, did you ever go out through any other  
20 door besides the door that you entered into the  
21 secure area?
- 22 A No.
- 23 Q So if we watch the YVR tapes we should be able to  
24 tell pretty definitively when you came out of the  
25 area, correct?
- 26 A I think so.
- 27 Q All right. Now, let's talk about Mr. Dziekanski's  
28 physical appearance. You indicated that he was  
29 messed up, I think, unkempt. Those were the words  
30 you used the other day, correct?
- 31 A Correct. More referring to his facial features  
32 and hair, messed up hair and matted.
- 33 Q The way you described him at page 21 of your  
34 statement, Sergeant Attew talks about -- do you  
35 have that, sir?
- 36 A Yes, I do.
- 37 Q "Okay." And then your answer is:  
38  
39 Um... He didn't seem... responsive to us,  
40 um... He... he was messed up, like... just  
41 unkempt, sort of, and...  
42  
43 M-hm.  
44 ...sloppy, uh...  
45  
46 And then Sergeant Attew:  
47

1                   Okay.

2  
3                   ...and uh... h'... it's hard to say if he  
4                   looked hot; I mean, he wasn't...

5  
6                   (INDECIPHERABLE)

7  
8                   ...dripping sweat, or anything like that.

9  
10                  So he wasn't sweating profusely or anything, was  
11                  he, sir?

12         A         Not to my observation.

13         Q         And he -- you thought his clothes looked unkempt;  
14                  is that correct?

15         A         Yeah, I'm referring more to just I believe his  
16                  shirt might have been untucked, something to that  
17                  effect, he just didn't look like he was neatly  
18                  together. That's what I'm making reference to.

19         Q         Well, given that he had travelled for 30 hours, or  
20                  been awake for 30 hours, and he was unshaven, I  
21                  mean, is that what he looked like, somebody that  
22                  had been travelling for a long period of time,  
23                  hadn't had a chance to have a shower, hadn't had a  
24                  shave? Is that what he was looking like to you?

25         A         Well, I had no idea at that time that he'd been  
26                  travelling for 30 hours.

27         Q         Well, one thing you did know was he had luggage  
28                  with him.

29         A         The other thing that I knew also at the time was I  
30                  wasn't sure if he was coming or going. He was in  
31                  an area that the doors were open. I don't know  
32                  where he was prior to when we had contact with  
33                  him.

34         Q         Okay. Well, let's talk about that for a second.  
35                  He was on the secure side, correct?

36         A         When we arrived, correct.

37         Q         He had three bags.

38         A         Correct, if those three bags that I observed were  
39                  his.

40         Q         Well, it would have been easy to ascertain, all  
41                  you had to do was take a look at the luggage tag,  
42                  right?

43         A         That wasn't -- that wasn't assigned to me.

44         Q         No, okay. No one thought of doing that. No one  
45                  actually looked at the luggage, did they?

46         A         I didn't.

47         Q         You didn't see anybody else do it, either?

- 1 A I didn't observe anybody else do it.
- 2 Q Okay. So here's what you've got. You've got a  
3 guy that's on the secure side of the doors. He's  
4 got luggage beside him. He doesn't speak English,  
5 right?
- 6 A Right.
- 7 Q Did anybody think that maybe they should walk into  
8 the Customs Hall and see if anybody recognized  
9 this guy? Did any of the four of you think of  
10 that?
- 11 A I don't think the situation presented that.
- 12 Q Well, there was four of you. Why couldn't one of  
13 you have done that?
- 14 A If the opportunity presented itself and Mr.  
15 Dziekanski's behaviour allowed it, that would have  
16 happened.
- 17 Q Well, I'm just curious as to why one of you didn't  
18 gather some information. I mean, isn't that what  
19 we talked about with this integrated training, and  
20 working in partnership and checking out the scene,  
21 and all of that kind of stuff? Aren't you  
22 supposed to do that?
- 23 A As I said, if time -- if the opportunity and time  
24 presented itself, that would have happened.
- 25 Q Okay. Well, look, there were four of you,  
26 correct?
- 27 A Correct.
- 28 Q Why couldn't one of you had walked into the  
29 passenger area and got some intelligence on what  
30 was going on? Why couldn't you do that? Why did  
31 all four of you have to run over to Mr.  
32 Dziekanski? What was the urgency there?
- 33 A I can only answer myself. I made the decision  
34 myself to go over to Mr. Dziekanski.
- 35 Q And no one seemed -- and no one was acting in  
36 charge. Is that what you're telling me?
- 37 A We're on our way to a call. I'm making my own  
38 observations and making my own decisions at that  
39 time to go to Mr. Dziekanski.
- 40 Q Okay. Well, there's four of you. So there's no  
41 discussion between the four of you as you're  
42 walking in the door about you go and do this, you  
43 go and do that. No assigning of roles. Is that  
44 accurate?
- 45 A As I stated earlier, there was no discussions that  
46 I was aware of, no discussions that I was involved  
47 in.

- 1 Q Okay. Did you find out later that he had been in  
2 a verbal altercation with a -- with a limo driver?  
3 A Quite a bit later, not until the inquiry, I  
4 believe.  
5 Q Okay. I'm correct, then, that no one secured the  
6 scene where this was going on; is that correct?  
7 A I'm not sure of your question.  
8 Q All right. Well, no one walked into the Customs  
9 Hall and said, "Don't let anybody in. We've got a  
10 police situation out here."  
11 A I don't think time allowed that.  
12 Q Yeah. And no plan to do any of that, because no  
13 one spoke; is that correct?  
14 A I believe I've stated on several occasions  
15 previous that this incident happened very quickly.  
16 Q Okay. Now, when you went to the incident, you  
17 told us yesterday that you thought you were  
18 investigating a possible mischief or a causing of  
19 disturbance complaint; is that correct?  
20 A That's correct.  
21 Q Okay. While you were at Depot, you took courses  
22 in law, correct?  
23 A Correct.  
24 Q Powers of arrest?  
25 A Correct.  
26 Q When you can arrest, when you can't, correct?  
27 A Correct.  
28 Q Mischief, causing a disturbance, summary  
29 conviction offences, correct?  
30 A Correct.  
31 Q You're trained that you must release someone  
32 unless you find them committing a summary  
33 conviction offence, correct, actually find  
34 committing. Correct, sir?  
35 A I believe that's correct. And I believe, just to  
36 -- to expand on that, a mischief is a dual offence  
37 where it's summary or indictable, which means the  
38 powers of arrest are there without finding -- you  
39 don't have to find it being committed.  
40 Q Okay. That's your evidence, is that correct, you  
41 thought mischief might be a dual procedure  
42 offence?  
43 A Correct.  
44 Q Okay. Did it ever cross your mind you're going to  
45 need a translator?  
46 A I don't know if that thought crossed my mind, due  
47 to how fast everything happened.

Cst. Gerry Rundel

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

1 MR. KOSTECKYJ: Okay.

2 THE COMMISSIONER: Is this a convenient time to have a  
3 break?

4 MR. KOSTECKYJ: Yes.

5 THE COMMISSIONER: Just ten minutes, please.

6 THE REGISTRAR: The hearing is now recessed for ten  
7 minutes.

8

9

(WITNESS STOOD DOWN)

10

11

(PROCEEDINGS ADJOURNED FOR MORNING RECESS)

12

(PROCEEDINGS RECONVENED)

13

14

THE REGISTRAR: The hearing is now resumed.

15

16

CST. GERRY RUNDEL, a witness,  
recalled.

17

18

19

CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA  
20 CISOWSKI, continuing:

21

22

Q Constable Rundel, are you ready? Now, I'm just  
23 going to talk to you a little bit about the point  
24 where you enter and meet Mr. Dziekanski.

25

A Okay.

26

Q We've already discussed the fact that the four of  
27 you could get in and get past the door. He wasn't  
28 blocking your way in, correct?

29

A Correct.

30

Q He didn't run away. It was a very large area. He  
31 -- if he wanted to take off, we've seen the IRL.  
32 It's quite a large area, correct?

33

A Correct.

34

Q He didn't run off anywhere?

35

A Not at that time, correct.

36

Q He appears to tell you that he's trying -- wants  
37 to get something out of his bag, correct?

38

A He makes a motion, points towards his luggage at  
39 some point after the initial officer contact,  
40 correct.

41

Q Yeah. Where he may or may not have been asked for  
42 his passport?

43

A I'm not aware that he was asked for his passport.

44

Q Well, you're not saying he wasn't, either?

45

A No.

46

Q Okay. So he's told to back off and he does,

47

correct? He's given a hand signal, stop, right?

1 Don't go there.  
2 A Words and hand signal, stop.  
3 Q Yeah. And he obeys, correct? He stops going to  
4 his bag.  
5 A Well, he continues to get up and that's when as I  
6 described yesterday with the flick of the arm  
7 motion, then up and leaves.  
8 Q Let's talk about that flick of the arm motion.  
9 The arm motion was something like this  
10 (gesturing), and he moved his head, didn't he? Do  
11 you remember that?  
12 A I remember a very quick flick of the arm motion  
13 up.  
14 Q Yeah. Am I showing it the right way, arms up like  
15 that? Hands, palms shown towards you?  
16 A Once they were in that position, yes.  
17 Q Yeah. So, you know, in a lot of places in the  
18 world a lot of people think that that's the sign  
19 of surrender. Did you not take it that way?  
20 A Not at all.  
21 Q Hands up in the air, flat out, you didn't get the  
22 feeling that he was just stepping back because you  
23 were uncomfortable about him going to his bag?  
24 A Not at all. He did not stand up, hands up and  
25 stay still. There's a big difference --  
26 Q Yeah.  
27 A -- and fleeing.  
28 Q Well, he didn't flee. He stepped away about two  
29 steps, correct?  
30 A Well, it was more than that. I think we've seen  
31 on the video where he -- after he flicks the hands  
32 up and motions along the counter and continues on.  
33 It's more than two feet.  
34 Q I said a few steps. He took a few steps, correct?  
35 A Well, you're making -- you're making reference to  
36 a couple of feet, so I'm saying that it was more  
37 than a couple of steps.  
38 Q All right. Well, the Commissioner can be the  
39 judge of the video. We've all seen it. Now,  
40 let's talk about this. You didn't want him, or at  
41 least your fellow member didn't want him going  
42 towards the bag. That was making the member feel  
43 uncomfortable, correct?  
44 A Correct.  
45 Q So why could -- why wasn't it interpreted that Mr.  
46 Dziekanski was just stepping away so that you had  
47 room to get to his bag and he wasn't going to

1           interfere?

2       A     If I may, I believe I've described that quite in  
3           detail yesterday, and if I may, Commissioner, may  
4           I just kind of step outside and give an example  
5           that might also help out in a situation like this?

6       THE COMMISSIONER: All right, go ahead.

7       A     For example, I'll use a driving traffic situation  
8           where as an officer if I pulled somebody over to  
9           the side of the road, and for whatever reason I  
10          decide I want that person to step out of their  
11          vehicle, I would ask them to step out of their  
12          vehicle and they would step out of their vehicle,  
13          and they would stop at that point. Now, if  
14          somebody were to step out of their vehicle and  
15          then run, that's a totally different behaviour,  
16          and this is -- this is the comparison that I would  
17          make to Mr. Dziekanski where at first the person  
18          is doing as you ask, but it's the continuation of  
19          what they do afterwards that's making it non-  
20          compliant.

21       MR. KOSTECKYJ:

22       Q     Okay. Well, let's talk about that. He doesn't  
23           run away. He doesn't run across the room, right?

24       A     He leaves.

25       Q     Well, look, he steps --

26       A     He's -- I think, does that -- does that example  
27           help the Commissioner?

28       THE COMMISSIONER: Yes, I am understanding what you're  
29           saying.

30       A     Okay.

31       MR. KOSTECKYJ:

32       Q     Well, look, you know he can't speak English.

33           That's clear to you by this stage, correct?

34       A     Correct.

35       Q     He knows you don't want him to go into his bag.  
36           You're nervous about that. I'm talking about you  
37           collectively, you four members. You don't want  
38           him going in the bag, right?

39       A     It's a safety issue.

40       Q     Right?

41       A     It's a safety issue, yes.

42       Q     Right. And he can tell, he's sensing that, from  
43           you don't want him going into his bag, right?

44       A     He doesn't go into his bag, so he --

45       Q     He doesn't go into --

46       A     -- he understood.

47       Q     And in order for you to feel safe about -- or him

- 1           wanting you to look in his bag, why couldn't it be  
2           that he steps away so that you can look into his  
3           bag safely?
- 4        A     Because it wasn't him stepping away. It was him  
5           throwing his arms up, as I've described yesterday,  
6           indicating "The hell with you guys, I'm out of  
7           here," and then he left.
- 8        Q     Well, that's your interpretation, isn't it.
- 9        A     That's my observation.
- 10       Q     Yeah. Are you familiar with the hands up sign?
- 11       A     The hands up sign can mean a lot of different  
12           things.
- 13       Q     Yeah. Now, after he steps away, and he's got his  
14           back against the desk, no one person engages him  
15           in conversation, do they? Nobody steps up and  
16           takes the lead role in trying to talk to him,  
17           communicate with him?
- 18       A     Okay. Could you -- could you ask the question  
19           again? I'm not quite sure at what point you're  
20           at.
- 21       Q     Okay. So now he's put his hands up in the air and  
22           he's stepped away and he's standing in front of  
23           the desk, correct?
- 24       A     Well, it's not -- not correct, no, he -- after he  
25           swept his arms up in the -- in the motion, he  
26           fled to the counter and that was when he picked  
27           up the stapler, turned around, and took up the  
28           combative stance.
- 29       Q     All right. Well, let's talk about that for a  
30           second. The four of you walked in and you pretty  
31           much had him surrounded in a semicircle, correct?
- 32       A     Correct.
- 33       Q     He stepped -- however he got to the front of the  
34           -- whether your interpretation or mine is correct.
- 35       A     Well, I believe the video does speak for itself.
- 36       Q     Yeah. We'll let that stand for itself. When he  
37           got to the front and he stood at the very front of  
38           the -- of the desk, you followed him in a  
39           semicircle, correct?
- 40       A     It's happening very quickly. Followed same time,  
41           it's hard to say.
- 42       Q     Well, you had him surrounded.
- 43       A     And our distance, we maintained, as I said  
44           yesterday, I believe, I was six to eight feet  
45           away.
- 46       Q     Yeah, you maintained a safe distance, right?
- 47       A     Correct.

Cst. Gerry Rundel

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

1 Q But you had him -- you had him in a semicircle,  
2 right?

3 A If I may expand on that.

4 THE COMMISSIONER: Yes.

5 A The positioning was in a semicircle, as you say.  
6 It's all to do with safety issue. For training  
7 purposes, we're taught in training, this  
8 individual went quickly from uncooperative to  
9 resistant to combative, including picking up a  
10 stapler, which can elevate the level of  
11 aggression, indicating to me that this individual  
12 was a risk to the public, to myself, and to  
13 himself, and my other officers. There's a safety  
14 issue.

15 MR. KOSTECKYJ:

16 Q Well, he wasn't a risk to the public because  
17 there's no public in the area, right?

18 A There's public in the public area, which there's  
19 two doors that they have access to -- he has  
20 access to. There's an entrance to the baggage  
21 area where the airlines exit and at any time any  
22 number of people can come into that area. So the  
23 number of people that he could have access to is  
24 really -- I can't even guess a number. It's the  
25 possibility of additional people in that area or  
26 him getting out into the public area was a real  
27 factor.

28 Q Look, the question I asked you was the four of you  
29 surrounded him, correct?

30 A I believe I explained that and why.

31 Q Well, did you surround him or not?

32 A We positioned ourselves tactically

33 Q In a semicircle around him.

34 A In a semicircle, if that's how you want to  
35 describe it.

36 Q Well, that's what it was, wasn't it?

37 A More or less.

38 Q All right. Well, you've got life experience. You  
39 know that when somebody is in that situation they  
40 feel trapped. You know that.

41 A He had already taken up a combative position prior  
42 to that.

43 Q My question is, when you put somebody in that  
44 position you feel trapped, don't you?

45 A Somebody could.

46 Q If me and three of my friends come and stand  
47 around you in a semicircle and you've got your

1 back to the wall, are you going to feel like your  
2 space is getting invaded, that you're trapped?  
3 A I think circumstances would -- and environment,  
4 there's so many factors again that could determine  
5 that.  
6 Q Okay.  
7 A Not necessarily.  
8 Q Well, here's a guy who couldn't speak the  
9 language, you knew that. You knew that he was  
10 having trouble communicating. You knew he  
11 couldn't go into his bag to explain who he was.  
12 You knew all that, right?  
13 A Okay. Could you ask those questions one at a  
14 time?  
15 Q Yeah. Well, cumulatively, you knew he couldn't  
16 speak English.  
17 A Correct.  
18 Q You knew he couldn't communicate.  
19 A He could communicate.  
20 Q Oh, really? How was he going to do that?  
21 A You don't have to speak somebody's language in  
22 order to communicate.  
23 Q Well, how were you -- you said you didn't  
24 understand him in your statement. You had no idea  
25 what he was talking about.  
26 A I said I didn't understand his language.  
27 Q Yes.  
28 A His words.  
29 Q Well --  
30 A I've also stated that communication is more than  
31 words and language, it's body posture, position,  
32 tone of voice, hand gestures.  
33 Q Yes. Four guys standing around him, you're  
34 standing with your hand on your gun, that's where  
35 he -- that's where you had your hand, wasn't it,  
36 on your sidearm?  
37 A No, I did not.  
38 Q Okay. What -- were did you -- you had your hand  
39 on your waist, didn't you, sir?  
40 A I believe the video will show my hands are more  
41 towards my pepper spray and baton area.  
42 Q All right. So you --  
43 A Which is the opposite of my firearm.  
44 Q Okay. So you had your hand in the ready position,  
45 correct?  
46 A I had my hands near my tool belt, yes.  
47 Q All right. And so didn't it make sense that this

1 man might be frightened? Did you ever consider  
2 that that might be the case?

3 A No.

4 Q All right. Now, in your training, are you told  
5 that when you're dealing with somebody who's in  
6 distress that sometimes it's better for one  
7 officer to carry the load and try to calm that  
8 person down?

9 A I don't recall that aspect of training. I'm not  
10 sure what you're referring to.

11 Q Well, the one person, common sense. Doesn't it  
12 make sense for one person to try and communicate  
13 with a person in distress than with four?

14 A Every -- I'll state it again. Every situation is  
15 different. It's acquiring and analyzing the  
16 information and assessing the risk, the  
17 environment, and this was a high-risk situation  
18 based on the information we had. So one officer  
19 isn't going to go in there and try to communicate  
20 with this individual.

21 Q Well, if anybody had actually stopped to get  
22 intelligence, they would have found out that the  
23 guy had been in an argument with a chauffeur,  
24 right?

25 A As I said, if time permitted for that to happen,  
26 it would have happened.

27 Q Well, let's just assume that if somebody had  
28 stopped, they would have got that information,  
29 right?

30 MR. HIRA: Well, with respect...

31 THE COMMISSIONER: I think you're beginning to argue  
32 with the witness.

33 MR. KOSTECKYJ:

34 Q Now, do you think now in retrospect that this was  
35 a frightened man?

36 A Well, now that I've had the opportunity to look  
37 back at the video prior to us arriving, and  
38 information that has been since received, it's  
39 possible he was frightened, yes.

40 Q Now, let's talk a little bit about the Taser.  
41 When you walked in the doors and you were  
42 approaching Mr. Dziekanski, do you recollect any  
43 of your fellow members talking about using the  
44 Taser?

45 A No.

46 Q Does it mean that it didn't happen, or you just  
47 didn't hear that?

- 1 A It doesn't mean it didn't happen. I just didn't  
2 hear it.
- 3 Q Okay. One of the things, when Mr. Dziekanski was  
4 up against the desk facing you, the four of you  
5 standing there in a semicircle, no one ever made a  
6 command to him to put down the stapler, did they?
- 7 A Not that I recall.
- 8 Q There was no hand signal, there was no indication,  
9 there was no yelling at him, put it down, nothing  
10 like that happened, correct?
- 11 A Correct, time did not allow that.
- 12 Q Well --
- 13 A Again, everything was happening very fast.
- 14 Q Well, you've already told us you were standing  
15 back six to eight feet, correct?
- 16 A Correct.
- 17 Q That's a safe distance? You had room to react,  
18 correct?
- 19 A To react to what?
- 20 Q Well, you had your hand on the pepper spray. If  
21 you had to use it, you had time to react. Six to  
22 eight feet gave you some time to react if he was  
23 going to attack you.
- 24 A I had some time to react.
- 25 Q Right. The other members were also standing back  
26 six to eight feet in a semicircle around Mr.  
27 Dziekanski, correct?
- 28 A I don't know the exact distance, but more or less.  
29 I believe Constable Bentley was further back.
- 30 Q And did you -- did you know that Bentley had  
31 deployed his baton, or if he had?
- 32 A Not at that time.
- 33 Q You found out subsequently that he had deployed  
34 it?
- 35 A Correct.
- 36 Q So he'd deployed his baton, correct?
- 37 A Correct.
- 38 Q There was no discussion between the four of you  
39 right before the Taser was deployed, correct?
- 40 A Correct.
- 41 Q There was no pulling the Taser out and warning Mr.  
42 Dziekanski, "Stop, or you're going to get  
43 tasered," correct?
- 44 A I don't recall hearing anything.
- 45 Q Well, in your Taser training, is that a common  
46 thing? Do you give people warnings about the  
47 Taser?

- 1 A Again if -- if the situation allows that to happen  
2 time-wise, that -- that can be done and should be  
3 done. If the situation does not allow that  
4 because it's happening so fast you have to --  
5 every situation is different. Again we've looked  
6 at the video numerous times and saw how fast  
7 everything happened.
- 8 Q Yeah. We saw how quickly the Taser was deployed.  
9 It was deployed without warning, correct?
- 10 A I'm not aware of a warning.
- 11 Q Everyone was standing back what they considered to  
12 be a safe distance, six to eight feet in your  
13 case.
- 14 A Well, I can only speak for myself, where I was and  
15 my distance.
- 16 Q Yeah. And you could speak about Bentley because  
17 you said that he was further back than you were.
- 18 A He was further back than I was, whatever distance  
19 he felt safe at. That's up to him to decide and  
20 answer to.
- 21 Q Well, were you anticipating the Taser? Were you  
22 anticipating he was going to be Tasered?
- 23 A At the moment that he had the stapler in his hand  
24 and in the combative posture, it was a situation  
25 that I had been trained that I was expecting the  
26 Taser, yes.
- 27 Q Well, weren't you expecting that there'd be a  
28 warning? Weren't you expecting that somebody  
29 would say something before that happened?
- 30 A There was no time.
- 31 Q You're telling me that four officers standing a  
32 safe zone away from this fellow didn't have time  
33 to give him a warning?
- 34 A As I said yesterday, I feared for my safety, and  
35 at that point when I fear for my safety and I'm  
36 sure the other officers, they will speak for  
37 themselves, I can't answer for them, but due to  
38 the fact that it was happening so fast and that  
39 Mr. Dziekanski went from the resistant to the  
40 combative with an object, stapler, in his hand, we  
41 acted and responded appropriately in that  
42 situation.
- 43 Q Did you ever say in your statement that you were  
44 afraid for your safety? Do you remember that?
- 45 A I don't recall.
- 46 Q If it's there, I haven't seen it, but I'm sure  
47 somebody will point it out to me if it's there.

- 1 Now, I ask you about this because you had tools,  
2 you had pepper spray. You didn't pull it out of  
3 your belt, right?
- 4 A Correct.
- 5 Q So if you were afraid for your safety, why didn't  
6 you have your pepper spray at the ready?
- 7 A Because in the split-second timing that this was  
8 happening, I was aware that the Taser was going to  
9 be deployed, and I was keeping my hands free,  
10 ready to go and facilitate in the restrain and  
11 handcuffing of Mr. Dziekanski.
- 12 Q How were you aware that the Taser was going to be  
13 deployed if no conversation had been had about the  
14 Taser?
- 15 A Training.
- 16 Q Not at Depot.
- 17 A Not at Depot.
- 18 Q This is the course you took with Corporal Gillis?
- 19 A Correct.
- 20 Q How long was the Taser training course with  
21 Corporal Gillis?
- 22 A Two days.
- 23 Q And were you trained that you should use the Taser  
24 in those circumstances, or were you told that you  
25 could if you thought it was necessary?
- 26 A The training in a situation such as that was we  
27 were taught that the Taser was a less resistant --  
28 causing less harm on an individual than going in  
29 with batons and pepper spray. It's one of the  
30 lower levels of force to go in with the least  
31 amount of harm on the individual.
- 32 Q My question was were you told that you should use  
33 the Taser in that case or were you told you could?
- 34 A It's an option.
- 35 Q Yeah, okay. Were you told that numerous Taser  
36 jolts might be harmful?
- 37 A I recall in the training that a -- if a second  
38 deployment was required, it should not cause any  
39 additional harm.
- 40 Q Well, what about third, fourth and fifth  
41 deployments, what were you told about those, if  
42 anything?
- 43 A I'm not aware.
- 44 Q Well, you weren't told that multiple deployments,  
45 or more than two wouldn't be a good idea?
- 46 A Not that I recall.
- 47 Q When you were in training -- we saw this tape that

1 two members in Thompson, Manitoba, and that was at  
2 the first inquiry. During your training session  
3 did they show you these two members on a rural  
4 road in northern Manitoba, or a member and a  
5 rather large guy who wanted to fight with the  
6 member? Were you shown that? And the member  
7 basically negotiated with him or talked to him,  
8 communicated with him, explained to him about the  
9 Taser, and the whole thing ended. Did you see  
10 that when you were in your Taser training?  
11 A I've -- I've seen a number of videos, so I can't  
12 say if I've seen that one in particular or not.  
13 Q It doesn't come to your memory?  
14 A No.  
15 Q All right. Now, you indicated you were tasered.  
16 You were tasered once in training?  
17 A Correct.  
18 Q And you were tasered in the back?  
19 A In the chest.  
20 Q Okay. And were there members standing by you to  
21 support you?  
22 A Yes.  
23 Q Okay. Did your heart feel like it was racing?  
24 A I can't recall.  
25 Q Do you have any recollection?  
26 A I just remember it was quite a painful experience.  
27 Q Now, you didn't know, I take it from your  
28 statement, that Mr. Dziekanski was tasered more  
29 than twice, correct?  
30 A Correct.  
31 Q You thought that he was only tasered twice.  
32 A Correct.  
33 Q The second Taser deployment, to the best of your  
34 recollection, did that happen while he was still  
35 standing or when he was on the ground?  
36 A Best that I recall is that he was still standing  
37 on the second deployment.  
38 MR. KOSTECKYJ: Okay. I'm going to ask that there is a  
39 video with the five Taser jolts being shown. I'd  
40 like to see that played for the witness, and I  
41 have some questions for you.  
42 THE COMMISSIONER: For the record, is there any way we  
43 can identify what this is?  
44 MR. KOSTECKYJ: This is -- I understand that it was  
45 produced by the RCMP and it has a time sequence,  
46 shows where Mr. Dziekanski was and it's time  
47 sequence as to when the Taser discharges occurred.

1 I think my friends may be in a better position to  
2 tell you than I am.

3 MR. HIRA: Mr. Commissioner, Ravi Hira. I represent  
4 Officer Millington, of course. This is a DVD that  
5 was disclosed to us, I believe two weeks ago, and  
6 I stand to be corrected, it may have been three  
7 weeks ago. Regardless, what it has superimposed  
8 upon the Pritchard video number 2 are alleged  
9 timings of the Taser application. I don't know  
10 who imposed those or the circumstances thereof.  
11 In my respectful submission, playing that video  
12 without an understanding of what it really is, is  
13 inappropriate at this time. I certainly will be  
14 objecting to it, if it's played with respect to my  
15 client.

16 Of course, if there was some sort of  
17 explanation of the -- of the methodology of  
18 imposing this interpretation on the video, that  
19 may be another thing. I'm not saying it would be  
20 another thing, I'm saying it may be another thing.

21 THE COMMISSIONER: I'm a little concerned about this.  
22 It's artificial.

23 MR. KOSTECKYJ: Yes. I'm a bit of a loss, because it  
24 was -- it's been produced in these proceedings.  
25 I've assumed that it bore some accuracy, but I  
26 don't actually know who produced it. Maybe  
27 Commission counsel can assist me.

28 THE COMMISSIONER: Before you go there, from the  
29 evidence of Officer Rundel, so far, I have not  
30 understood that he sensed anything but the two  
31 Taser, and that -- now, you may want to as a  
32 background explore that, if you wish, but it would  
33 seem to me that this should not be shown until  
34 there's a little more information than that.

35 MR. KOSTECKYJ:

36 Q Well, I can tell you what -- and I'll speak to you  
37 about this, Constable Rundel. Had you known that  
38 Mr. Dziekanski was being continuously tasered,  
39 would you have not waited until after the tasering  
40 had stopped before you got on top of him and were  
41 trying to wrestle with him?

42 A No.

43 Q Well, isn't the purpose of using the Taser to  
44 avoid additional combat and to avoid wrestling  
45 around with somebody?

46 A Yes, and I'll expand on that. I mean, the fact  
47 that the training has taught us that when somebody

1 is -- when there's a deployment, and the actual  
2 current is going through, we can still, when you  
3 feel safe to do so, move in and start -- start to  
4 restrain the subject while the current is still  
5 flowing and should have no effect. So my view on  
6 that is regardless of when the current actually  
7 stopped, it was more of a when I felt it was safe  
8 to move in.

9 Q Well --

10 A And assist with the restraining.

11 Q Okay. Well, let's talk about that for a sec. You  
12 know that while he's being tasered, because you've  
13 experienced it, he has no control over his body,  
14 correct?

15 A Well, you do. There are situations and it was, I  
16 believe I have stated this earlier, that because  
17 on -- on the first deployment Mr. Dziekanski  
18 didn't go down. He remained with his fists in the  
19 combative mode, and I thought he was going to go  
20 to the floor. And in my opinion, in my  
21 observation, he appeared to be fighting through  
22 it, which training has taught us that there are  
23 people, individuals that can fight through it.

24 Q Well, you're only surmising that he got tasered  
25 the second time while he was standing. It could  
26 have been that he was tasered the second time when  
27 he was down on the ground.

28 A My -- my testimony has been that I clearly heard  
29 Corporal Robinson give the instructions on the  
30 second deployment while Mr. Dziekanski was still  
31 standing.

32 Q Okay. But if it turns out that there's evidence  
33 that he was tasered while he was down the second  
34 time, that's different from what you think  
35 happened?

36 THE COMMISSIONER: Well, I don't think this goes  
37 anywhere, Mr. Kosteckyj.

38 MR. KOSTECKYJ:

39 Q Okay. Well, let's talk about this, then, sir.  
40 Would you not have reacted differently if you knew  
41 that Mr. Dziekanski was being repeatedly tasered  
42 and tasered up to five times?

43 A No, I was -- I was operating in the trying to  
44 handcuff and restrain Mr. Dziekanski at that  
45 point. I was unaware of those additional  
46 deployments after the original two, and was just  
47 focused on trying to handcuff Mr. Dziekanski.

- 1 Q Well, I guess the point I make to you is this. If  
2 a man is being continuously tasered or being  
3 repeatedly tasered, up to five times, I would have  
4 thought you would have waited for the Taser to  
5 take its effect before you got into the position  
6 of having to wrestle around with somebody who's  
7 taking all this voltage.
- 8 A Well, I've, as you mentioned earlier and you  
9 brought it up, I have -- I have been tasered  
10 myself and it was for five seconds. And when that  
11 five seconds -- and it was a very painful  
12 experience. When those five seconds were over, I  
13 was as if I had not been shocked at all. I was as  
14 prior -- I was back in and energized, ready to go  
15 as if normal. No ill effects afterwards, and  
16 immediately afterwards.
- 17 Q Well, that's not what you observed with Mr.  
18 Dziekanski, is it.
- 19 A Well, I observed that on the first deployment, as  
20 my observations have stated, that he didn't go  
21 down when I was expecting him to. And four  
22 officers in good shape, and a Taser, and Mr.  
23 Dziekanski still was able to, I'll use the word,  
24 fight for over a minute.
- 25 Q Well, he was --
- 26 A And without -- without the Taser, I venture to say  
27 that, you know, it's -- it's unpredictable what  
28 could have happened without the Taser, but it  
29 would have been equally, if not even -- you know,  
30 it's four officers and a Taser and the struggle  
31 went on for over a minute.
- 32 Q Well, here's -- here's the point. You saw him  
33 laying on the floor and he was -- he kept going  
34 into the foetal position, didn't he, he kept  
35 curling up, didn't he?
- 36 A If -- if I'm correct in -- in my memory of that,  
37 of the video, I believe that was when he was still  
38 being -- while the Taser was still being deployed  
39 at that time.
- 40 Q Yeah, he wasn't --
- 41 A So that was in response to the current, I'm --
- 42 Q Yeah. Well, the whole time he was on the floor he  
43 wasn't punching anybody, he wasn't kicking  
44 anybody. He was in the foetal position. You were  
45 trying to wrestle his arms out from underneath him  
46 and bring them out behind his back, correct?
- 47 A I don't understand what your question is. I

1 recall moving in when it was safe to do so and  
2 then beginning the attempting to restrain him at  
3 that point, and I believe at that point he was on  
4 his chest with his arms locked underneath.  
5 Q He wasn't punching you.  
6 A He wasn't punching, he had his arms locked  
7 underneath his body.  
8 Q Okay. Now, you described him in your statement as  
9 having sort of superhuman strength, right? He was  
10 kind of like that, isn't that what you said?  
11 A I believe I used those words, yes.  
12 Q You talked about excited delirium in your  
13 statement, right?  
14 A Yes, I did.  
15 Q And that's at page 16, bottom of page 15 of your  
16 statement. You talk about -- Sergeant Attew says  
17 "... in the airports" -- well, it starts off a  
18 little earlier, to get the whole question in.  
19 Sergeant Attew:  
20  
21 Okay. Um... An'... just... because again,  
22 the area's a closed, uh... area, uh, with  
23 people around. Um... just knowing, from what  
24 I know from pepper spray in the  
25 (INDECIPHERABLE), do you guys carry... pepper  
26 spray,  
27  
28 And your answer is: "M-hm." And Sergeant Attew:  
29  
30 ... in the airports? Is that uh... something  
31 that... you, you learn in the airport, about  
32 whether or not to... use any (INDECIPHERABLE)  
33 or not.  
34  
35 And there's an indecipherable comment, and you go  
36 on:  
37  
38 Yeah, it's like anything, it, it's...  
39 judgment call, based on... you know, your  
40 environment...  
41  
42 Situation?  
43  
44 ...and the situation, and surroundings,  
45  
46 And he goes: "'K." And then you go on:  
47

- 1                   ...and uh... um... The, the taser training  
2                   also taught us about... "excited delirium",  
3  
4                   M-hm.  
5  
6                   ...which... it almost sounded... like this is  
7                   what was... being... um... the  
8                   characteristics were brought out in this  
9                   guy...  
10  
11                  Correct? You said that?  
12                  A        Correct.  
13                  Q        And you formed that opinion based upon the 20-  
14                          something seconds that you observed this guy, and  
15                          from the period of time that you talked to him to  
16                          the five or six seconds later when he was tasered,  
17                          you made that -- you made that judgment call, that  
18                          it was excited delirium?  
19                  A        This -- this was at October 14th, so this was at  
20                          five o'clock in the morning after I had time to  
21                          get additional information at what had happened,  
22                          and had -- so this is an afterthought of this, you  
23                          know, the characteristics that Mr. Dziekanski was  
24                          demonstrating, and due to the fact that he had the  
25                          superhuman strength. It was an afterthought of a  
26                          possibility that upon reflecting it could possibly  
27                          be an excited delirium case.  
28                  Q        Well, is this the superhuman strength when he's  
29                          laying on the ground and it takes you guys a  
30                          minute to wrestle him and put handcuffs on him?  
31                  A        That's what I was referring to, yes.  
32                  Q        While he's being tasered five times.  
33                  A        I was unaware of, as I said, I'm only aware of the  
34                          two Taser deployments.  
35                  Q        Did you also know from those discussions that you  
36                          had afterwards that people thought that he was  
37                          unsteady on his feet and that he was very weak and  
38                          tired and could hardly stand?  
39                  A        I don't recall that particular information.  
40                  Q        All right. You didn't hear from one of the  
41                          security guards that he had a hard time just  
42                          lifting the chair up?  
43                  A        No.  
44                  MR. KOSTECKYJ: Okay. I'm just going to ask you to go  
45                          to the third video at 48 seconds, but I think the  
46                          third video is very short.  
47                  Q        My question about this is, is this the period of

Cst. Gerry Rundel

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

1 time that Mr. Dziekanski is being searched by you.

2 You were discussing searching him the other day.

3 MR. LUNN: What time (indiscernible - away from  
4 microphone).

5 MR. KOSTECKYJ: It was around 48 seconds.

6 That's fine.

7

8 (VIDEO BEING PLAYED)

9 (VIDEO STOPPED)

10

11 MR. KOSTECKYJ:

12 Q I think I see you standing off just to the left on  
13 the screen, at least from my -- from where --

14 A Was that -- was that run full length?

15 Q That was the last of the -- this is after he's  
16 tasered.

17 A Okay.

18 Q This is after he's down. Is this the period of  
19 time where he's being searched, to your  
20 recollection?

21 A To my recollection the search happened shortly  
22 after that, the best that I can recall.

23 Q Okay. Now, after the search occurred, Mr.  
24 Dziekanski was back into a position of being face  
25 down on the floor; is that correct?

26 A I described observing I think quite clearly  
27 yesterday the body position that I had noticed Mr.  
28 Dziekanski in. I can give that description again  
29 if you like.

30 Q Well, maybe I can help you with the statement.  
31 I'm looking at page 19 of your statement. It's  
32 about the middle of the page, and this is Sergeant  
33 Attew:

34

35 Okay, okay; um... so... After he's tasered,  
36 and he's on the ground, he's still  
37 combative... um... is he... face down at that  
38 point in time? Like how do you manage to get  
39 him...

40

41 And your answer is:

42

43 He's down... he's down on his chest, with his  
44 head turned to the l-... left.

45

46 Do you see that?

47

A Yes.

Cst. Gerry Rundel

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

1 Q Is -- are you describing that in the moments after  
2 he's been searched, or is that --

3 A This is the moments after he was tasered.

4 Q Okay. And then we see him in this video on his --  
5 on his side and what appears to be being at least  
6 searched or patted down. Did you see that?

7 A Yeah. As I said, I'm not sure if that's the exact  
8 moment when he was being searched.

9 Q Okay. Do you want me to play that -- I know it's  
10 short. Would you like -- it's a short video, we  
11 can replay it.

12 A I don't think my answer is going to change.

13 Q Okay. Now, and then at page 25 of your statement,  
14 Constable Rundel, is asking you about a third of  
15 the way down, or maybe just above halfway:

16  
17 Uh, once EHS arrived, and... they... were  
18 lookin' at 'im, they, they --

19  
20 Sorry, I'll just go above that, "Uh ... when did  
21 the ... did those come off", he's referring to the  
22 handcuffs:

23  
24 Uh, once EHS arrived, and... they... were  
25 lookin' at 'im, they, they requested, well...  
26 he seems to be calmed down, can we take the  
27 cuffs off" An'...

28  
29 Sergeant Attew says "Okay." And you answer:

30  
31 ...so we did.

32  
33 And was he still prone down on his...

34  
35 And your answer is:

36  
37 He was still... still on his, uh, chest, yes.

38  
39 Sergeant Attew:

40  
41 Chest?

42  
43 Yeah.

44 Sergeant Attew:

45  
46 'K, with his head... in what position?

47

1                   To the s-, to the s-... left side.

2

3

To the left side?

4

5                   Do you see that?

6

A           Yes.

7

Q           So he was face down, correct?

8

A           No.

9

Q           Well, his face was turned to the side, he was chest down.

10

A           Rather than answering questions, I can describe his body position to you if, Commissioner, if you'd like me to do that again.

11

12

13

14

THE COMMISSIONER: Where are we going with this?

15

MR. KOSTECKYJ: Well, I just want to make sure that there's a consistency to the evidence about what position he was in, because I get the impression that it seems to be important, the ambulance -- the fire people indicated that he was, when they came in he was --

16

17

18

19

20

21

THE COMMISSIONER: Well, and there's quite a difference in times here. I mean, the first part is when they're trying to put the handcuffs on, and then the second part is after that. There's different positions throughout.

22

23

24

25

26

MR. KOSTECKYJ: Well, and I want to --

27

28

29

30

A           I can describe the last position that I saw him in prior to firefighters, which I described yesterday, if you'd like me to run through that again, I can do that.

31

32

THE COMMISSIONER: Is that what you want?

33

MR. KOSTECKYJ:

34

35

36

37

Q           We have your answer from yesterday. Now, let's talk about his level of consciousness. After he was taken down and after he was handcuffed, he stopped moving after he was restrained, is that a fair assessment?

38

39

A           Shortly after, yes.

40

41

Q           And you never saw him move again after that?

42

43

A           I had left for a minute or a little over a minute when I came back. I don't recall seeing him move after that.

44

45

Q           Well, do you recollect when Constable Bentley, I think it was, collapsed his baton fairly close to Mr. Dziekanski's head?

46

47

A           I only recall that on seeing it on the video. I don't recall seeing that as an observation that

1 morning.  
2 Q Okay. Well, you never saw him moving at all when  
3 the baton was collapsed right beside his head, did  
4 you, on the video?  
5 A I'd have to look at the video again.  
6 Q Okay. That's video 2, I think it's five minutes  
7 and 30 seconds.  
8 THE COMMISSIONER: Well, are we really gaining anything  
9 here? I mean, this is the witness's opinion as to  
10 what he sees on the video.  
11 MR. KOSTECKYJ: Okay. Well, let's --  
12 THE COMMISSIONER: He said he wasn't there when the  
13 baton was collapsed.  
14 MR. KOSTECKYJ:  
15 Q Sorry, were you present?  
16 A I don't recall if it was at a time that I was  
17 present or gone for the hobbles, but I don't  
18 recall making the observation.  
19 Q You don't remember seeing it?  
20 A Correct.  
21 Q All right. Now, I want to talk a little bit about  
22 this statement and the time that you gave it.  
23 This is the statement of October the 14th. You  
24 gave it back at the detachment, correct?  
25 A At the Airport detachment, correct.  
26 Q You were advised that Mr. Dziekanski had passed  
27 away?  
28 A At the time of the statement I had that knowledge,  
29 yes.  
30 Q And you were advised at that time that they were  
31 not investigating you or the other members for any  
32 **Criminal Code** violations, were you not?  
33 A I don't recall if -- if that was worded to me in  
34 that way, but I was not chartered and warned when  
35 I gave this statement, which would indicate that  
36 to me.  
37 Q Okay. And you spoke to your Division rep about  
38 the statement?  
39 A Yes.  
40 Q And when you gave the statement you recognized  
41 that the officers were trying to determine whether  
42 or not it was an appropriate use of force? I'm  
43 talking about Sergeant Attew.  
44 A I'm not understanding your question.  
45 Q Well, did you understand that the reason you were  
46 answering questions was because there was a  
47 question about whether there had been appropriate

1 use of force with Mr. Dziekanski?

2 A No, I did not -- I was just under the -- I was  
3 just giving a statement of the facts of the event  
4 and what had happened and my involvement in it.

5 Q And you didn't take from that that there was any  
6 investigation going on at this point?

7 A There is an investigation. IHIT's attending, so  
8 there is an investigation into the -- there's an  
9 in-custody death, so it's policy that RCMP has  
10 IHIT investigate that.

11 Q Okay. Now, you took a statement from Mr.  
12 Pritchard.

13 A Correct.

14 Q You took that statement according to the statement  
15 itself at 2:32 in the morning. I'm just going to  
16 -- I'll show it to you.

17 A Thank you.

18 Q It says at the beginning that it occurs at 2:32 in  
19 the morning. Do you see that?

20 A Yes.

21 Q Were you aware that Mr. Dziekanski had passed away  
22 when you took this statement?

23 A No.

24 Q I just notice the caption on the statement, it  
25 says:

26

27 This is a witness statement of Paul Pritchard  
28 on October 14th, taken at 2:32 by Constable  
29 Rundel of the Integrated Homicide  
30 Investigation Team.

31

32 Do you see that?

33 A Yeah, and obviously that's an incorrect statement.

34 Q You don't know where that came from, or how it  
35 came to be that you were described as being part  
36 of the IHIT Team?

37 A No, I don't.

38 Q Okay. At the time were you aware that Mr.  
39 Dziekanski had passed away?

40 A As I stated, I was not aware. I was aware that  
41 CPR was being performed and that the circumstances  
42 did not look good.

43 Q Well, you knew at some point that CPR was stopped,  
44 correct?

45 A No, I don't recall having that knowledge of when  
46 CPR was stopped.

47 Q Well, from what I can gather, that was stopped at

1           about 2:10 in the morning, so about 20 minutes  
2           before this statement.

3           A     It's not my recollection, but if that's -- if  
4           that's the case.

5           Q     You don't recollect being knowledgeable of that  
6           fact when you were talking to Mr. Pritchard?

7           A     No, I do not.

8           MR. KOSTECKYJ:   Okay. This might be a convenient time.  
9           I don't expect that I'll be that much longer with  
10          this witness.

11          THE COMMISSIONER:   Just before we break, Constable  
12          Rundel, would you have a look at your statement of  
13          October the 14th for a moment and turn to page 16  
14          for me. And if you'll look at the top there at  
15          16, it says:

16  
17                   ...the taser training also taught us about...  
18                   "excited delirium",  
19

20                   Do you see that?

21          A     Yes.

22          THE COMMISSIONER:   And then you go and list a number of  
23          things, the strength and so on. And then about  
24          two-thirds of the way down:

25  
26                   ...you know, were havin' a hard time getting'  
27                   his arms out and around,  
28

29                   Okay.  
30

31                   And then you say:

32  
33                   ...um... and taser is the... appropriate  
34                   treatment for that.  
35

36          A     Yes.

37          THE COMMISSIONER:   Now, do I understand you're saying  
38          that you were taught that the Taser is the  
39          appropriate treatment for excited delirium?

40          A     That's correct. It's a -- with somebody that's,  
41          in the training, with excited delirium the  
42          objective is to subdue them as quickly as possible  
43          with the least amount of force, and the Taser is,  
44          in training, is an option for a less level of  
45          force, even as opposed to baton and pepper spray.  
46          So that's how I'm referring to it in the  
47          statement.

Cst. Gerry Rundel

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

1 THE COMMISSIONER: All right. Were you taught that  
2 excited delirium may well be the forerunner or the  
3 precursor to in-custody death?

4 A I -- I don't recall that, that part. There was --  
5 there may have been a mention of -- I'm trying to  
6 go by from memory here, but...

7 THE COMMISSIONER: Yes.

8 A That was somebody that is suffering from excited  
9 delirium, that there's all these physiological  
10 characteristics that are going on within their  
11 body, and they're basically, for lack of a better  
12 word, they're on this downhill spiral towards  
13 expiring.

14 THE COMMISSIONER: Yes.

15 A And the -- the option is, according to the  
16 training, is to try to get this person, you know,  
17 as quickly as possible, with the lowest level of  
18 force as possible, in order to give this person a  
19 better chance of surviving.

20 THE COMMISSIONER: And one way is to use the Taser?

21 A Yes.

22 THE COMMISSIONER: All right. Okay, we'll break for  
23 lunch.

24 THE REGISTRAR: The hearing is now adjourned until 2:00  
25 p.m.

26

27 (WITNESS STOOD DOWN)

28

29 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

30 (PROCEEDINGS RECONVENED)

31

32 THE REGISTRAR: The hearing is now resumed.

33

34 CST. GERRY RUNDEL, a witness,  
35 recalled.

36

37 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA  
38 CISOWSKI, continuing:

39

40 Q Constable Rundel, it's Walter Kosteckyj, for the  
41 record, counsel for Zofia Cisowski. Constable, my  
42 friend asked you questions for the Commission  
43 yesterday about entries you made in your notebook;  
44 you recollect that?

45 A Yes.

46 Q Now, notebooks are particularly important to

- 1 police officers, aren't they?
- 2 A Yes.
- 3 Q In fact, while you're at Depot you take a course  
4 in notebooks, correct?
- 5 A Correct.
- 6 Q And you are taught that it's important to keep  
7 those notes and to be reflective and that you may  
8 reflect back upon those both in court and other  
9 proceedings, correct?
- 10 A Correct.
- 11 Q So you try to be particularly careful when you  
12 make notes in your notebook?
- 13 A There's different situations where like, for  
14 example, in this situation, I was, at some point  
15 after the incident, I had made -- made some notes  
16 and observations in my notebook as best I could  
17 recall at that time, and at some point after that  
18 I was informed that I would be given an interview,  
19 and because I was informed that I'd be given an  
20 interview, I made limited notes at that time.
- 21 Q I understand that. But you tried to be accurate  
22 in terms of the times you reflected the other  
23 information you put in your notebook. You're  
24 trained that way?
- 25 A Yes.
- 26 Q All right. Now, I wanted to talk to you a little  
27 bit about the breathing of Mr. Dziekanski. You  
28 indicated, at some point in your evidence  
29 yesterday, that you heard Mr. Dziekanski breathing  
30 and you described it as kind of a snoring noise;  
31 do you recollect that?
- 32 A Yes.
- 33 Q Now, nowhere in the two statements you gave did  
34 you make reference to that, do you?
- 35 A I believe I don't.
- 36 Q The reason I'm asking you about that is it does  
37 appear in one of the other officer's statements.  
38 Have you read the other officers' statements  
39 before giving evidence here today?
- 40 A No, I haven't.
- 41 Q You haven't read or discussed evidence with the  
42 other officers?
- 43 A No, I haven't.
- 44 Q All right. Now, you have a first aid certificate,  
45 or you did at that time?
- 46 A Correct.
- 47 Q You had a Level I first aid certificate?

Cst. Gerry Rundel

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

- 1 A I believe it was called standard enhanced.  
2 Q Okay. And I gather you -- did you take that  
3 before you had gone into the RCMP?  
4 A Yes.  
5 Q That was a requirement that you had to have?  
6 A Correct.  
7 Q And what is it that that entitles you to do, the  
8 standard enhanced first aid course?  
9 A It's just a basic introduction to breathing,  
10 bleeding, injuries, CPR, that nature of medical  
11 conditions.  
12 Q AED?  
13 A Pardon me?  
14 Q AED, the defibrillator, is that covered?  
15 A No.  
16 Q Okay. Incidentally, did you carry a pocket mask  
17 with you at this time?  
18 A I don't recall if I had a pocket mask at that  
19 time.  
20 Q Okay. Is that standard in case you have to give  
21 mouth to mouth to somebody, that the officers  
22 carry that as part of their kit?  
23 A I don't believe it's -- I'm -- I'm not sure if  
24 it's standard equipment. I believe -- I believe  
25 it is available for those officers who choose to  
26 carry it. I'm not sure if it's standard  
27 equipment.  
28 Q And you're not certain whether you carried one  
29 that night or not?  
30 A I can't remember if I had one that night or not.  
31 Q Okay. Do you recollect Mr. Dziekanski turning  
32 colour and turning blue?  
33 A No, I don't.  
34 Q You don't. Do you recollect other officers that  
35 night telling you, "Look, he's changing colour,"  
36 or, you know, "I'm not sure what's going on here,  
37 but the man's turning blue"? You don't recollect  
38 any of that?  
39 A No, I don't.  
40 Q Now, do you recollect the stapler being found by a  
41 security guard, Mr. Enchelmaier, I believe is his  
42 name?  
43 A Is this after the incident?  
44 Q Yeah, after.  
45 A No, I don't.  
46 Q And do you remember having discussions in a group  
47 with Mr. Enchelmaier and some security guards

- 1 about the stapler?
- 2 A No, I don't.
- 3 Q Are you saying it didn't happen or are you saying
- 4 you don't remember?
- 5 A I'm saying I don't remember having discussions
- 6 about a stapler.
- 7 Q Okay. Do you remember who seized the stapler or
- 8 what happened to it?
- 9 A No, I don't.
- 10 Q Okay. You don't recollect anybody in particular
- 11 seizing it or taking it into evidence?
- 12 A No.
- 13 Q Okay. Just going back to this -- the first aid
- 14 course, at your first aid course did you learn
- 15 anything about when somebody is making a snoring
- 16 sound breathing, as to what the significance of
- 17 that might be?
- 18 A Not that I recall.
- 19 Q Okay. Have you kept up your first aid course?
- 20 A No, I have not.
- 21 Q Okay. Now, as far as the stapler goes, there's no
- 22 question in your mind that what Mr. Dziekanski was
- 23 holding that day was a stapler, correct?
- 24 A That's correct.
- 25 Q And at the time, you were aware of the fact that
- 26 it was a stapler?
- 27 A I believe my evidence was that he picked up an
- 28 object that I later determined was a stapler.
- 29 Q Well, in your statement you said it was a stapler,
- 30 correct?
- 31 A Correct.
- 32 Q I think -- in your notes, I think, in your -- you
- 33 talked -- you made mention of a stapler as well,
- 34 correct?
- 35 A I believe I did, yes.
- 36 Q So the question I have for you is: At the time
- 37 when you saw this thing in Mr. Dziekanski's hand,
- 38 you knew it was a stapler?
- 39 A I'm not exactly sure at what point I made the
- 40 determination that it was a stapler.
- 41 Q Okay.
- 42 A I can't recall.
- 43 Q Well, I'm trying to get a sense of this because
- 44 there you were, you were standing in front of Mr.
- 45 Dziekanski. Now, you had a Kevlar vest on?
- 46 A Yes.
- 47 Q All of your fellow officers had Kevlar vests on?

Cst. Gerry Rundel

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

Cross-exam by Ms. Roberts (for Government of Canada)

1 A Yes.

2 Q You were all wearing gloves, I think, protective  
3 gloves?

4 A I believe I was.

5 Q You had your tool belt with both pepper spray,  
6 baton and you had your firearm?

7 A Yes.

8 Q And you had three other members your size -- one  
9 -- one member, I think, was a bit smaller, but the  
10 others were all about your size, were they not, or  
11 taller?

12 A Two members were smaller and two of us were what I  
13 would describe as larger.

14 Q Okay. Just in the context of all that, why is it  
15 that you felt you had to react so quickly?

16 A Commissioner, I feel I've answered this question  
17 several times. Would you like me to answer it  
18 again?

19 THE COMMISSIONER: Oh, I think you should.

20 A The situation went -- escalated very quickly. Mr.  
21 Dziekanski turned into -- his behaviour became  
22 resistant, which I've described several times.  
23 Immediately left, picked up the stapler, swung  
24 around, turned combative with the stapler clenched  
25 in his fist, adding to the elevation of the risk,  
26 adding to the elevation of public safety, officer  
27 safety, and his own safety. He had moved so  
28 quickly and everything was happening so fast, that  
29 the risk of him having the ability to keep fleeing  
30 or the ability to hurt us or the public or himself  
31 was a great risk. I believe I've explained that  
32 several times.

33 Q Well, being mindful, now, of the things that you  
34 now and being mindful of how you were dressed and  
35 the officers, do you believe, now, that you acted  
36 too quickly?

37 A No, I don't.

38 MR. KOSTECKYJ: All right. Those are my questions,  
39 thank you.

40 MS. ROBERTS: For the record, Helen Roberts, for the  
41 Government of Canada.

42

43 CROSS-EXAMINATION BY MS. ROBERTS ON BEHALF OF THE  
44 GOVERNMENT OF CANADA:

45

46 Q Constable Rundel, I have a few questions for you,  
47 starting with the call that came in, and I'll just

- 1 read from the transcript of the audio, and I think  
2 that was played yesterday, but just to bring us  
3 back to that, the dispatch said there was an  
4 intoxicated male throwing luggage around, and then  
5 said, "Report of a 55-year-old male at the  
6 arrivals reception lobby throwing luggage around,  
7 he's non-white, had dark hair and a white coat,"  
8 and then the update was that, "Male is now  
9 throwing chairs through glass windows in the same  
10 area." Those were the two pieces of information  
11 you had when you attended to the airport?
- 12 A Correct.
- 13 Q Had you had a call like that to the airport  
14 before?
- 15 A Not that I can recall at the time that I was  
16 there.
- 17 Q All right. So this was somewhat of an unusual  
18 call, then?
- 19 A somewhat unusual for the airport, yes.
- 20 Q All right. And it indicated to you some level of  
21 violence, did it?
- 22 A Yes.
- 23 Q Now, you were asked about the number of members,  
24 RCMP members who attended this call, and I'm not  
25 sure if you've given this evidence, I'm having  
26 trouble remembering, but would it be correct to  
27 say that different calls require a different  
28 number of police officers?
- 29 A Yes.
- 30 Q All right. And a call that requires some level of  
31 violence, ideally, would you have one member  
32 attend or more than one member, or what would be  
33 the best scenario?
- 34 A As many members as would be available at the time.
- 35 Q All right. And when you attended there, and I  
36 think Mr. Kosteckyj has covered this with you to  
37 some extent, you knew there was an intoxicated  
38 male in a public place; is that correct? Or you  
39 understood there was an intoxicated male in a  
40 public place?
- 41 A According to the dispatch?
- 42 Q Yes.
- 43 A Yes.
- 44 Q All right. And you understood, by the fact that  
45 you were being called, that somebody must have  
46 been disturbed by his behaviour?
- 47 A Yes.

- 1 Q All right. And you understood that there was some  
2 property damage?
- 3 A Yes.
- 4 Q All right. Was your primary goal, then, if all of  
5 that turned out to be true, to arrest this  
6 individual?
- 7 A Yes.
- 8 Q So your goal wasn't to go and observe him for a  
9 while, but it was to go and arrest him if this, in  
10 fact, turned out to be correct?
- 11 A Correct.
- 12 Q And you had three offences you could have arrested  
13 him for?
- 14 A Yes.
- 15 Q Property damage, causing a disturbance, drunk in a  
16 public place, possibly others?
- 17 A Yes, possibly.
- 18 Q All right. When you have the level of information  
19 that you have, which I've just read to you, is it  
20 possible to plan in advance what you're going to  
21 do when you actually get to the scene?
- 22 A With the limited -- I mean, it's a very short  
23 drive to the airport, so it's -- sorry, could you  
24 ask the question again?
- 25 Q Yeah, I was just saying, with the information you  
26 had from dispatch, was it possible to plan in  
27 advance what you would do when you got to the  
28 scene?
- 29 A Well, given the nature of the information that was  
30 received, there was time -- the opportunity for  
31 that just wasn't available because of the quick  
32 response that was needed due to that dispatch  
33 ticket.
- 34 Q All right. This was an offence in progress, from  
35 your perspective?
- 36 A Yes.
- 37 Q And for that reason, was it important to get there  
38 quickly?
- 39 A Yes.
- 40 Q When the four of you attended to that call, was it  
41 your understanding that you all had the same  
42 training?
- 43 A For the most part. Some -- some officers had  
44 received different training as far as courses and  
45 that sort of thing, but Depot training, yes.
- 46 Q All right. And you knew that all four of you had  
47 had the training with the conducted energy weapon,

- 1 the Taser? At least you believed all four had, I  
2 believe was your evidence?
- 3 A I believe I -- I believe that Millington, Robinson  
4 and myself, and I wasn't sure about Bentley.
- 5 Q All right. And you all had the same tools on your  
6 belts, the same required tools?
- 7 A Yes.
- 8 Q All right. And the only -- the only difference to  
9 that might be someone who might have some  
10 additional tools, but you would all have the same  
11 basic tools?
- 12 A The same basic tools.
- 13 Q All right. And you had been working together for  
14 - I haven't looked at everybody's time records -  
15 but say a year at the airport, the four of you?
- 16 A No. Millington was at the airport when I arrived.  
17 Robinson and Bentley arrived at some point later.  
18 So they would have been there less than a year.
- 19 Q All right. But you'd work together for a number  
20 of months, the four of you?
- 21 A Yes.
- 22 Q And had you been on the same watch together for a  
23 number of months?
- 24 A Yes.
- 25 Q And had you attended a number of calls together?
- 26 A Yes.
- 27 Q On the video - and I won't ask for it to come up,  
28 I think we've seen it a number of times - there's  
29 the point at which, in Mr. Pritchard's video, we  
30 see Mr. Dziekanski back away from you and then he  
31 seems to be square-backed to the desk or counter.  
32 Do you know the moment at which I'm referring to?
- 33 A Is this once he has the stapler in his hand?
- 34 Q That's correct.
- 35 A Okay.
- 36 Q So at that moment we see you react, and you've  
37 testified, I think, that your hand sort of, as a  
38 matter of training, goes over to the other side of  
39 your body?
- 40 A Correct.
- 41 Q Okay. We also see on the video - I don't know if  
42 you recall and perhaps I'll ask you first - did  
43 you see what Constable Bentley did at that point  
44 when Mr. Dziekanski swung around with the object?
- 45 A No.
- 46 Q All right. Did you notice on the video that  
47 Constable Bentley quickly moved away?

- 1 A On the video I observed that, yes.
- 2 Q All right. And we know what Constable Millington
- 3 did at that time; he deployed his Taser brief --
- 4 shortly afterwards?
- 5 A Yes.
- 6 Q All right. Do you know what Corporal Robinson was
- 7 doing at that point in time?
- 8 A Not exactly sure.
- 9 Q All right. But we do know from your evidence that
- 10 Corporal Robinson subsequently instructed
- 11 Constable Millington to deploy the Taser a second
- 12 time?
- 13 A Correct.
- 14 Q All right. So from that we may be able to take
- 15 that he condoned the first deployment, but we'll
- 16 ask him about that. But my question is that: At
- 17 the moment Mr. Dziekanski swung around with that
- 18 object, we know that three of you reacted to that
- 19 motion or to that behaviour.
- 20 A Correct.
- 21 Q All right. So given that you'd all had the same
- 22 training on use of force --
- 23 A Yes.
- 24 Q -- and observing the behaviours, it appears that
- 25 all -- three of the four of you, at least, reacted
- 26 in some way to that behaviour of Mr. Dziekanski's?
- 27 A After reviewing the video I'd agree with that,
- 28 yes.
- 29 Q All right. And you've said, a number of times,
- 30 that this was a very quick incident. Is it
- 31 unusual or is it common that you go to a scene and
- 32 things happen quickly?
- 33 A Unusual.
- 34 Q All right. Are you trained to deal with
- 35 situations that develop quickly?
- 36 A Yes.
- 37 Q All right. And are you trained to make quick
- 38 decisions about how to respond to those
- 39 situations?
- 40 A Yes.
- 41 Q And is that classroom training, or what kind of
- 42 training is that, just generally?
- 43 A It's classroom, practical, and experience.
- 44 Q Did you consider the object in Mr. Dziekanski's
- 45 hand to be a weapon?
- 46 A Yes.
- 47 Q Now, if you walked into an office and someone was

- 1 using a stapler, would you consider that to be a  
2 weapon?
- 3 A No.
- 4 Q What was it about the scenario you encountered  
5 that made you think that this object, later a  
6 stapler, could be a weapon?
- 7 A In the manner which Mr. Dziekanski took up the  
8 stapler into his hand and took up the combative  
9 stance, it was my observation that he had full  
10 intention of using this stapler as a weapon to  
11 assist in his possible use of force on us at that  
12 time.
- 13 Q You responded to some questions, I think from Mr.  
14 McGowan yesterday, about the sequence of events,  
15 and my understanding, and I'm going to ask you in  
16 case I misunderstood, is that your evidence was  
17 that the order in which you gave information in  
18 your statements might not have been the most  
19 accurate sequence; did I understand that  
20 correctly?
- 21 A That's correct.
- 22 Q All right. The testimony that you've given in  
23 court before the Commission, do you have the same  
24 concern that that might be out of sequence, or are  
25 you clear on the testimony that you're giving?
- 26 A I'm clear on the testimony that I'm giving.
- 27 Q All right. Are you clear as to whether Mr.  
28 Dziekanski produced the stapler before or after  
29 the first deployment of the Taser?
- 30 A I'm clear he had the stapler in his hand before  
31 the first deployment.
- 32 Q Thank you. Now, in this case, it took three or  
33 four RCMP members to handcuff Mr. Dziekanski. Is  
34 that common or is that unusual?
- 35 A That's very unusual, in my experience.
- 36 Q All right. Normally, how many members would it  
37 take to handcuff a suspect?
- 38 A I've -- I've handcuffed suspects myself. I've  
39 handcuffed suspects with another member. So I'd  
40 say it would be more common with one to two  
41 members, as opposed to three or four.
- 42 Q All right. Are you trained in any techniques that  
43 you can use when you're alone to handcuff  
44 somebody?
- 45 A Yes.
- 46 Q All right. I believe Mr. Kosteckyj just covered  
47 this. You had current first aid and CPR training

- 1 as at October 2007?
- 2 A Yes, it was current at the time.
- 3 Q All right. From your perspective, did you see a  
4 need for you to provide first aid or CPR to Mr.  
5 Dziekanski?
- 6 A No, I did not.
- 7 Q All right. And why was that?
- 8 A I -- I observed Mr. Dziekanski breathing, I  
9 believe it was -- I gave an estimate of  
10 approximately two minutes prior to firefighters I  
11 believe was my last observation of him, and I was  
12 not given any instruction otherwise. And the  
13 times that I made any observations of Mr.  
14 Dziekanski prior to that, Corporal Robinson was  
15 there monitoring Mr. Dziekanski.
- 16 Q Were you surprised that Mr. Dziekanski died?
- 17 A Yes.
- 18 Q Now, the incident, as I think everyone has  
19 emphasized, took place within a number of minutes,  
20 would that be fair to say?
- 21 A From what point to what point?
- 22 Q From the point that -- well, even from the time  
23 you got the dispatch until Mr. Dziekanski was  
24 handcuffed on the ground?
- 25 A Minutes, yes.
- 26 Q And the statement you gave on the first occasion  
27 took about a half an hour, according to the start  
28 and end times; is that correct?
- 29 A I'll trust you on that, yes.
- 30 Q All right. And the second statement took about 13  
31 minutes, if we look at the start and end times?
- 32 A Okay.
- 33 Q Does that sound about right? I invite you to look  
34 at them if you wish.
- 35 A I'm not -- I'm not sure the timeframe on the first  
36 and second statements, but if we want to clarify  
37 that we can.
- 38 Q Well, it might be -- well, let's put it this way,  
39 between the two statements, you spent less than an  
40 hour giving statements?
- 41 A Yes.
- 42 Q All right. And since that time, have you spent  
43 any time considering what happened and trying to  
44 remember?
- 45 A Yes.
- 46 Q And have you spent time preparing yourself and  
47 attempting to get it all organized in your mind so



1                   Airport staff... pointed out... to where he  
2                   was, which was... over on the... secure side  
3                   of... the International Arrivals, where...  
4                   everybody comes in.  
5

6                   Now, that reference to airport staff was -- did  
7                   you speak with airport staff, or is that a  
8                   reference to airport security?

9                   A     I believe that would be a reference to airport  
10                   security.

11                   Q     Thank you. Now, you were also cross-examined -  
12                   you can put the statement aside now, Officer, I'm  
13                   finished with that - you were also cross-examined  
14                   by my friend, Mr. Kosteckyj, regarding whether or  
15                   not this individual was arrestable, if he was  
16                   committing a summary conviction offence; do you  
17                   recall being cross-examined to that effect?

18                   A     Yes.

19                   Q     In your mind, was this individual arrestable?

20                   A     Yes.

21                   Q     And regardless of whether or not it's a summary  
22                   conviction offence, if he's actually committing  
23                   the offence he can be arrested, based on your  
24                   training?

25                   A     Yes.

26                   Q     And also if he can be arrested to ascertain his or  
27                   her identity?

28                   A     Yes.

29                   Q     Thank you. Now, I wonder whether we could go to  
30                   Pritchard video number 1, and I'm going to ask you  
31                   to tell Mr. Commissioner - and I'll tell you where  
32                   we'll go to there in a moment - to tell Mr.  
33                   Commissioner whether you see the object that has  
34                   been referred to as the stapler in the video.

35                   MR. HIRA: And I may ask for the video to be stopped  
36                   from time to time. The point where I'd like to  
37                   start video number 1 is at the 20-second mark,  
38                   please -- I'm sorry, at the start, I beg your  
39                   pardon -- no, the 20-second mark, please. And  
40                   I'll be proceeding to the 30-second mark.

41                   Q     And before we start, you'll agree with me that Mr.  
42                   Dziekanski is at the front end of the console,  
43                   that is, the part of the console that faces the  
44                   public area of the airport, correct?

45                   A     Yes.

46                   Q     And there's a woman that is to the left of the --  
47                   the -- the image, correct?

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Cross-exam by Mr. Hira (for Constable Millington)

1 A Yes.

2 Q And between the woman and Mr. Dziekanski, they are  
3 covering the ledge of perhaps a third or a half of  
4 the console, correct?

5 A Correct.

6 MR. HIRA: All right. Can we start playing it. I will  
7 ask you to stop on short notice, please.

8

9

(VIDEO BEING PLAYED)

10

11 MR. HIRA: Now, could you stop right there.

12

12 Q Do you see the stapler at all, at this stage, sir?

13

13 A That possibly could be the stapler (indicating).

14

14 I'm not sure.

15

15 THE COMMISSIONER: You know, I don't quite know where  
16 this goes. The officer wasn't there at this time  
17 and his evidence is clear that he didn't see Mr.  
18 Dziekanski pick up the stapler. So you're really  
19 just asking for an opinion as to what we're all  
20 looking at.

21

21 MR. HIRA: I've actually thought about this question  
22 from you, Mr. Commissioner, and my response to it  
23 is that the officer did see the stapler, itself.  
24 I'm trying to see whether he can identify the  
25 object that he thought was the stapler. It's a  
26 matter that goes to weight. I wasn't trying to  
27 spend a lot of time and effort on this.

28

28 THE COMMISSIONER: All right.

29

29 MR. HIRA: But I had considered this very point before  
30 I ask for the video to be played.

30

31 THE COMMISSIONER: Well, then your question put is: Is  
32 this similar or the same as the object you later  
33 saw?

34

34 MR. HIRA: That is --

35

35 THE COMMISSIONER: All right.

36

36 MR. HIRA: -- a better question, and I thank you for  
37 it.

38

38 Q Is that similar to the object that you saw? And  
39 if it isn't, that's fine.

39

40 A I would say it's similar, yes.

41

41 MR. HIRA: Okay, can you keep playing. Can you let me  
42 know when you reach the 30-second mark, please.

42

43 MR. LUNN: We're actually at 48 seconds.

43

44 MR. HIRA: All right, we can stop. Now, I wonder  
45 whether we could go to the start of the second  
46 video, and I'd like to play to the 38-second mark  
47 of that video, please. Now, if we could stop

44

45

46

47

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Cross-exam by Mr. Hira (for Constable Millington)

1           there for a moment -- no, keep going, I beg your  
2           pardon.  
3       MR. LUNN: That's 30 seconds.  
4       MR. HIRA: All right, Could you go to 38 seconds,  
5           please. Now, just stop right there.  
6       Q     Does the object appear there, sir?  
7       A     Yes, I believe that's the same object.  
8       Q     All right.  
9       MR. HIRA: Now, can we continue to 41 seconds, please.  
10      MR. LUNN: Would you like to play through or just  
11           (indiscernible - away from microphone).  
12      MR. HIRA: Please.  
13      MR. LUNN: This is 41.  
14      MR. HIRA: Keep going, to about 48.  
15      MR. LUNN: We're at 51, now.  
16      MR. HIRA: All right. Can we advance, now, to 0338 in  
17           the video. Mr. Commissioner, as you may recall,  
18           the officers enter at 0300, approximately.  
19      Q     And again, I'd like you to tell us whether you see  
20           that object at any point in time in the video, and  
21           you can interrupt, please, Officer.  
22      A     Okay.  
23      MR. HIRA: And I'd like to stop at 046 -- or 346, I beg  
24           your pardon.  
25      A     If you back up a bit, I believe the object was in  
26           view at that point.  
27      Q     Could you point it out?  
28      A     (Indicating).  
29      Q     Thank you.  
30      MR. HIRA: Could you go to 046, please.  
31      MR. LUNN: This is 046.  
32      MR. HIRA: thank you.  
33      Q     Now, Mr. Commissioner asked you a question  
34           yesterday with respect to the positioning of his  
35           arms, and I think that was at either 047 -- or 347  
36           or 348. Can you tell him -- tell him at all about  
37           the positioning of his arms, whether they're down  
38           or bent at this stage?  
39      A     I believe at this stage the arms will be bent up  
40           towards his chest.  
41      Q     Thank you.  
42      MR. HIRA: Could you proceed another second, please.  
43           Stop.  
44      Q     Do you have any comment about the position of his  
45           arms at this stage?  
46      A     I believe they're still bent up. There's  
47           indication that there's a slight -- it's hard for

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Cross-exam by Mr. Hira (for Constable Millington)

1 me to say at this angle, but they may have changed  
2 slightly.

3 Q All right. Now, you're, of course, six or eight  
4 feet away to his left; is that correct?

5 A At this point?

6 Q Yes.

7 A That would be fairly accurate, I would say.

8 Q And you have a clear view of his front and face?

9 A Yes.

10 Q Thank you.

11 MR. HIRA: That's all we need with the video at this  
12 stage.

13

14 (VIDEO STOPPED)

15

16 MR. HIRA:

17 Q Now, you -- I'd like to put some propositions to  
18 you with respect to your -- your understanding of  
19 the use of force training, and I'd like you to  
20 tell me whether you agree with them or not.

21 Would you agree that the primary objective of  
22 any intervention by the police is public safety?

23 A Yes.

24 Q Second, would you also agree that police officer  
25 safety is essential to public safety?

26 A Yes.

27 Q Would you agree with this proposition, that the  
28 role of the police in an intervention is to ensure  
29 that the public is safe, and to ensure that,  
30 police officer safety is essential to public  
31 safety?

32 A Yes.

33 Q In other words, if harm comes to the police  
34 officer, you are trained that they will not be of  
35 help to others?

36 A Correct.

37 Q Did those matters enter your mind at all on that  
38 eve -- on that early morning?

39 A Yes.

40 Q In what context?

41 A That if I feared for my safety, and it's, again,  
42 the training, if I'm put in a position where I'm  
43 at risk, then the public would also be at risk.

44 Q Now, just dealing with levels of intervention, the  
45 first level, as I understand it, is officer  
46 presence; is that a fair statement by me?

47 A That's fair.

- 1 Q The second level, as I understand it, is verbal  
2 intervention by the officer --
- 3 A Yes.
- 4 Q -- is that correct?
- 5 A Yes.
- 6 Q The third level is something called "empty hand  
7 control", correct?
- 8 A Yes.
- 9 Q And in empty hand control there are things such as  
10 soft physical restraint, joint locks, pain  
11 compliance, et cetera?
- 12 A Correct.
- 13 Q What about stuns? Would you agree with me that  
14 stuns fall within empty hand control, based on  
15 your training?
- 16 A And what kind of stun are you referring to?
- 17 Q I'm referring to a Taser, perhaps in push stun  
18 mode.
- 19 A Okay, yes.
- 20 Q Thank you. And then above empty hand control is  
21 something called "intermediate devices"?
- 22 A Yes.
- 23 Q And within intermediate devices come pepper sprays  
24 and conducted energy weapons, such as Tasers?
- 25 A Yes.
- 26 Q The level above intermediate devices is something  
27 called "hard hand controls"?
- 28 A Yes.
- 29 Q And that's blocks, or strikes? In other words, if  
30 somebody were to use -- if an officer were to use  
31 his or her fists, that would be hard hand  
32 controls?
- 33 A Yes.
- 34 Q And that's considered a higher force level than  
35 the Taser; is that correct?
- 36 A Correct.
- 37 Q And then, above empty hand controls, are carotid  
38 controls?
- 39 A Correct.
- 40 Q Choke holds?
- 41 A Correct.
- 42 Q And then there is something called "impact  
43 weapons", which includes the expendable -- sorry,  
44 the extendable baton that you carry in your tool  
45 belt?
- 46 A The baton is in impact weapons, yes.
- 47 Q And then, after that, you go to lethal force,

- 1           being your sidearm?
- 2       A     Yes.
- 3       Q     Now, just dealing with behaviours for a moment,  
4           based on your understanding and training, where a  
5           person is exhibiting verbal defiance and/or  
6           failing to follow directions, would you describe  
7           that as non cooperative behaviour?
- 8       A     Yes.
- 9       Q     Where a person is pulling away, pushing away,  
10          would you consider that as resistant behaviour?
- 11      A     Yes.
- 12      Q     Where a person is clenching fists, would you  
13          describe that as combative behaviour?
- 14      A     Depends how they're clenching their fists in what  
15          sort of an action.
- 16      Q     Okay. If they're clenching their fists with what  
17          appears, from your perspective, to be an intention  
18          to strike, I gather that's combative behaviour?
- 19      A     That would be combative behaviour.
- 20      Q     And again, it's all based on your perception?
- 21      A     Correct.
- 22      Q     And are you taught to be alert to something called  
23          "threat cues"?
- 24      A     Yes.
- 25      Q     And would those -- would those be things such as  
26          body tension, body position or stance?
- 27      A     Yes.
- 28      Q     Facial expressions?
- 29      A     Yes.
- 30      Q     And these are matters that may indicate a  
31          potential for harm from the subject, correct?
- 32      A     Could be a possibility, correct.
- 33      Q     And did you turn your mind to such threat cues on  
34          the early morning in question?
- 35      A     Yes.
- 36      Q     Now, in terms of gaining control of a subject,  
37          could you tell Mr. Commissioner what your training  
38          is in terms of how quickly you're supposed to gain  
39          control of a subject and what is the position that  
40          you're trained to have a subject in?
- 41      A     When trying to gain control?
- 42      Q     Yes. First of all, let's deal with it in another  
43          way. Do you have any train -- do you receive any  
44          training in terms of speed with which to gain  
45          control of a resistant, non compliant or combative  
46          subject?
- 47      A     Yes.

- 1 Q What is that?
- 2 A Well, even in -- even in Depot training, a lot of
- 3 the handcuffing techniques were done in a drill
- 4 form, as in trying to subdue the person as quickly
- 5 as possible and get the handcuffs on. So right
- 6 from Depot training.
- 7 Q So you are trained to subdue the person as quickly
- 8 as possible, correct?
- 9 A Correct.
- 10 Q And that is to avoid a protracted struggle with
- 11 the person?
- 12 A Correct.
- 13 Q To avoid injury to the person, correct?
- 14 A To the person, officer, correct.
- 15 Q And to get the handcuffs on as quickly as
- 16 possible, again for that reason?
- 17 A Correct.
- 18 Q And the positioning of the handcuffs, does it
- 19 matter whether they're in front of you or behind
- 20 you?
- 21 A We're trained to position handcuffs behind.
- 22 Q And why is that?
- 23 A That's more of an officer safety, public safety.
- 24 When handcuffs in the front, the person would
- 25 still have the ability to cause harm, be
- 26 resistant. It's just the way to restrain and
- 27 control the subject in a safe manner.
- 28 Q Now, in the video, you were taken to certain
- 29 points where your hands appear to be moving
- 30 towards the left side of your belt; do you recall
- 31 that?
- 32 A Yes.
- 33 Q Do you receive any training about something called
- 34 "muscle memory" or "instinctive actions"?
- 35 A Yes. Training is very repetitive in many ways for
- 36 that sort of an action.
- 37 Q You're trained to act quickly when you see a
- 38 threat cue present itself, correct?
- 39 A Correct.
- 40 Q Now, you have been repeatedly cross-examined by
- 41 various people about decisions made at particular
- 42 points in either the video or in your view of the
- 43 matter as it unfolded. Could you explain to me,
- 44 explain to the Commissioner how your decision-
- 45 making is going? Is it a sort of a point-by-point
- 46 decision-making, or what is it?
- 47 A It's a -- it's a -- to a certain extent it's

1 point-by-point, it's happening very quickly, and  
2 I'd have to say that a lot of -- a lot of it is  
3 due to the fact that we are trained to respond and  
4 react to -- to a behaviour, and it's -- it's, like  
5 I say, in Depot training and through experience it  
6 becomes -- it's just a quick -- a quick action  
7 that you respond quickly to a behaviour that is  
8 put in front of you by a subject.

9 Q All right. Now, just dealing with what happened  
10 with Mr. Dziekanski when he was on the floor, and  
11 trying to get the handcuffs on him. Was that a  
12 struggle for you?

13 A Yes.

14 Q What happened to your earpiece; do you know?

15 A Well, after the fact I had learned that it had  
16 fallen out during that struggle.

17 Q Did you know it had fallen out at all during the  
18 struggle? Do you know where it fell out?

19 A No.

20 Q And how did you feel, physically, after the  
21 struggle?

22 A I was exerted, tired.

23 Q Now, you gave a statement at the end of your  
24 shift; is that correct?

25 A Yes.

26 Q And how did you feel at the time that you gave  
27 your statement?

28 A Well, it was at the end of a 12-hour shift, very  
29 stressful situation, so I would have to say I was  
30 not feeling at my best.

31 Q Okay. Now, you've had, as you've told us, some  
32 time to reflect on this matter; is that correct?

33 A Yes.

34 Q And you've given your evidence as to whether or  
35 not you'd act in the same way already, have you  
36 not? In other words --

37 A I'm not sure of the question.

38 Q -- would you do anything differently?

39 A I -- I don't know, with the information we had and  
40 the situation we were faced with, I can't say we  
41 would have -- I would have done anything  
42 differently.

43 Q Now, but you've also reflected on the result here,  
44 correct?

45 A Correct.

46 Q And what, if anything, can you tell us about your  
47 views --

Cst. Gerry Rundel

Cross-exam by Mr. Hira (for Constable Millington)

Cross-exam by Mr. Harris (for Corporal Robinson)

1 MR. HIRA: And this may not be an appropriate question,  
2 Mr. Commissioner, but --

3 THE COMMISSIONER: I would doubt it.

4 MR. HIRA: But I think it would be useful to ask this  
5 question. There's just two more questions I have.

6 THE COMMISSIONER: Go ahead.

7 MR. HIRA:

8 Q Was this a result that was intended by you?

9 A No.

10 Q And what, if anything, do you have to say about  
11 the result?

12 A Well, due -- due to the fact -- I mean, it's  
13 obviously a very terrible outcome to -- to what --  
14 the call that we had to answer that morning. Now,  
15 I -- one can look back. I've looked back. And,  
16 you know, here we are, today, 14 -- 14 months  
17 later, and we had a in-depth IHIT investigation,  
18 we've had this inquiry going on for the last five  
19 or six weeks, we've obtained a lot of information.  
20 There have been a lot of people, a lot of agencies  
21 that dealt with Mr. Dziekanski right from the time  
22 that he left Poland, and I'm sure there isn't --  
23 I'm sure there isn't one person that's looking  
24 back and wondering, you know, if they could have  
25 done something differently.

26 But given the fact that we came in without  
27 all that prior knowledge and had to deal with the  
28 situation with the limited information we had, I  
29 can't -- I can't say that I could have done  
30 anything differently. I'm -- that's unfortunate,  
31 but that is how it is.

32 Q You regret what happened, of course?

33 A Of course.

34 MR. HIRA: Thank you. Those are my questions, Mr.  
35 Commissioner.

36

37 CROSS-EXAMINATION BY MR. HARRIS ON BEHALF OF CORPORAL  
38 BENJAMIN ROBINSON:

39

40 Q Constable, my name is Reg Harris. I'm counsel for  
41 Corporal Robinson. I'm going to cover several  
42 areas, touching on some of the examinations from  
43 other counsel as well as some of your evidence.  
44 I'll try and put it in the best order I can for  
45 you. If I don't achieve that, I apologize.

46 I'd like to first focus on leaving from the  
47 detachment or the sub-station to respond to this

1 particular incident. You were questioned about  
2 going in separate cars and not everyone attending  
3 in the same cars. First of all, to travel for all  
4 of you in the same car would have been  
5 impractical, given that the back seats of the  
6 cars, some of them don't even have seats, they're  
7 prisoner container areas, correct?  
8 A Correct. And you can't access the back seats.  
9 They're locked from the outside, so it's also  
10 difficult.  
11 Q Exactly. And you knew that your entire watch  
12 contingent was responding to this particular call;  
13 that is, all on duty officers in that area were  
14 responding to this event, correct?  
15 A Correct.  
16 Q And had there been the requirement for further  
17 police resources while there, an officer may have  
18 been required to leave the scene, one or two  
19 officers, correct?  
20 A Could you ask the question again, please?  
21 Q It's not uncommon for there to be overlapping  
22 calls; that is, you get on scene and another call  
23 develops, requiring some officers to leave,  
24 correct?  
25 A Correct.  
26 Q And as well, once on scene, it's not uncommon that  
27 an officer may be required to transport a  
28 prisoner --  
29 A Correct.  
30 Q -- from scene? So with all those in mind, I take  
31 it you don't quibble that it was a good decision  
32 that everyone travel in separate police units to  
33 the scene, correct?  
34 A It was a good decision.  
35 Q All right. Now, we've heard a lot of questioning  
36 about planning, or no planning, to put it that  
37 way. From your experience and your training, you  
38 understand that planning, there's methodical  
39 planning which happens at major incident-type  
40 calls, correct?  
41 A Yes.  
42 Q By way of example, a barricaded suspect or a  
43 robbery response, there's more methodical  
44 planning, correct?  
45 A Correct.  
46 Q All right. And usually in those types of calls  
47 you have a lot more information than you had

Cst. Gerry Rundel

Cross-exam by Mr. Harris (for Corporal Robinson)

- 1 present in this case, correct?
- 2 A Correct.
- 3 Q All right. And in responding and attending at the
- 4 airport at level 1, as you're going across the
- 5 meet-and-greet area, the first priority in a call
- 6 of that nature is to, first of all, isolate where
- 7 the problem is, identify where the problem is,
- 8 correct?
- 9 A Correct.
- 10 Q Respond to where that problem is and decide what
- 11 resources are required at that stage; would that
- 12 be reasonable?
- 13 A Yes.
- 14 Q And when I say "respond", I want to see if you
- 15 agree that that includes ensuring that the threat,
- 16 in some fashion, is contained to make sure that no
- 17 harm comes to the community?
- 18 A Yes.
- 19 Q All right. Now, at times, when you do attend a
- 20 call, there is -- time will give you the luxury of
- 21 identifying, "Well, we only need two officers
- 22 here," et cetera, would that be fair?
- 23 A That would be fair.
- 24 Q All right. This case -- well, let me even back up
- 25 for a moment. When responding on a group fashion,
- 26 though there are senior officers and supervisors,
- 27 a supervisor doesn't tell you every single step of
- 28 the way of what you must do, do they?
- 29 A No.
- 30 Q They don't tell you, for example, where to park
- 31 your car?
- 32 A No.
- 33 Q They don't tell you to get out of your car?
- 34 A No.
- 35 Q They don't tell you to walk across the meet-and-
- 36 greet area to the IRL doors?
- 37 A No.
- 38 Q Right. In fact, there are some things that you,
- 39 as a professional, as an RCMP officer, will go on
- 40 your initiative, based on your training and
- 41 understanding of appropriate responses, correct?
- 42 A Correct.
- 43 Q And that's what happened here; you responded based
- 44 on your training and understanding of an
- 45 appropriate response, given the limited
- 46 information you had?
- 47 A Correct.

- 1 Q Now, we've heard some evidence about the contact  
2 with Mr. Dziekanski, and when I say "contact", I  
3 mean the original approach. If I understand some  
4 of the principals involved, there's the contact  
5 officer, and can you explain to us what the  
6 contact officer is?
- 7 A A contact officer would be first -- first officer  
8 to approach an individual. I like to call it a  
9 meet-and-greet, just you're coming into the scene,  
10 you do have information, but you also want to come  
11 in with a calm demeanour and not -- not escalate  
12 the situation, obviously.
- 13 Q Of course. And it's that contact officer that has  
14 the principal dialogue with the subject?
- 15 A Correct. And contact officer can, you know, it  
16 can switch, it can be two. It's, you know,  
17 there's flexibility there.
- 18 Q Yes. And in this case, the, "Hey, Bud, what's up,  
19 Bud?" or words to that affect, that would be the  
20 low-key approach that you're referring to of a  
21 contact --
- 22 A Yes.
- 23 Q -- officer?
- 24 A Yes.
- 25 Q And the other officers are typically either cover  
26 or backup officers, correct?
- 27 A Correct.
- 28 Q And you would expect them to remain in the  
29 vicinity to observe and react should they see  
30 anything untoward occurring?
- 31 A Yes.
- 32 Q All right. And if not required, just depart from  
33 the scene?
- 34 A Or assist in other ways --
- 35 Q All right.
- 36 A -- yes.
- 37 Q And in this case, when you first entered in  
38 through the secure doors into the IRL, would you  
39 categorize your position as either a contact or  
40 cover officer at that stage?
- 41 A Cover.
- 42 Q All right. And I'm going to suggest to you that  
43 would be the same for Corporal Robinson, when he  
44 first went through the doors?
- 45 A You could say so, yes.
- 46 Q All right. Now, we've heard about Mr. Dziekanski  
47 motioning to his -- his bags and then Corporal

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Cross-exam by Mr. Harris (for Corporal Robinson)

- 1 Robinson stepping forward and saying, "No," and  
2 pointing; do you recall that?
- 3 A Yes.
- 4 Q All right. That would be behaviour that you would  
5 expect from a cover officer that's watching and  
6 sees something that causes concern, correct?
- 7 A Yes.
- 8 Q All right. And I take it, in reflection back, it  
9 would not be good police practices to have allowed  
10 Mr. Dziekanski to go into the luggage, given the  
11 luggage hadn't been checked, to your knowledge?
- 12 A Correct.
- 13 Q All right. The safe, prudent thing, is to have  
14 one of the officers go in and retrieve whatever he  
15 was looking for; would that be reasonable?
- 16 A Which I've done with my own experience, yes.
- 17 Q All right. Now, we've heard some questioning  
18 about that most situations, officers try and  
19 negotiate and engage in dialogue with combative  
20 subjects when feasible?
- 21 THE COMMISSIONER: This witness doesn't like  
22 "negotiate".
- 23 MR. HARRIS: Apologize.
- 24 Q Try and enter into discussion or conversation with  
25 combative subjects, if possible?
- 26 A You'll have to ask the question again, sorry.
- 27 Q All right. Well, let me rephrase it. When  
28 dealing with anyone, dialogue or verbal  
29 interaction is the first sort of level of contact  
30 that you're going to have with anyone?
- 31 A Correct.
- 32 Q All right. And if the individual becomes excited  
33 or agitated to some degree, you like to try and  
34 maintain dialogue?
- 35 A Correct.
- 36 Q And the effort in that dialogue is to try and calm  
37 and soothe the individual that you're dealing  
38 with?
- 39 A Yes.
- 40 Q All right. However, there are situations and  
41 events where you need to exclude dialogue  
42 completely and go immediately to action?
- 43 A Correct.
- 44 Q And those situations are typically dictated by  
45 subject behaviour?
- 46 A Yes.
- 47 Q Applying those principles to this case, you

- 1           witnessed - and correct me if I'm wrong - you  
2           witnessed the original attempt at dialogue?
- 3       A     Yes.
- 4       Q     All right. And that transitioned very quickly to  
5           officer reaction, officer action?
- 6       A     Based on Mr. Dziekanski's behaviour, yes.
- 7       Q     Exactly. In other words, as soon as Mr.  
8           Dziekanski adopted a combative stance, that's when  
9           the police, or the officers on scene, went to  
10          action position, correct?
- 11      A     Well, we actually went into position when he  
12          became resistant and then combative.
- 13      Q     All right. But that transition happened in, what,  
14          two or three seconds?
- 15      A     Correct.
- 16      Q     All right. Now, when dealing with a subject in a  
17          combative position, your training is to, one, get  
18          immediate control of the subject, if possible?
- 19      A     Correct.
- 20      Q     And if possible, it's to do so with the risk of  
21          minimal injury to officers, correct?
- 22      A     Officers --
- 23      Q     And the subject you're dealing with?
- 24      A     -- and the subject and obviously the public.
- 25      Q     All right. And from your training, you were  
26          informed that one of the ways of gaining immediate  
27          control or a device that assists you in achieving  
28          that is a conducted energy weapon, correct?
- 29      A     Correct.
- 30      Q     And that achieves that, from your training and  
31          knowledge, with -- almost immediately? It  
32          achieves the control almost immediately?
- 33      A     Yes.
- 34      Q     As well as it does so, from your training, with  
35          minimal injury?
- 36      A     Correct.
- 37      Q     All right. And your training, from your training,  
38          you also know that the impact weapon, such as the  
39          expandable baton, does not achieve the same -- let  
40          me rephrase this. The impact weapon has  
41          different, or can have different results on a  
42          subject, correct?
- 43      A     Correct. The training teaches that the C.W. is --  
44          would cause less injury as opposed to a baton or  
45          even hard strikes that could cause injury to the  
46          subject.
- 47      Q     And, in fact, a baton, or the expandable baton,

Cst. Gerry Rundel

Cross-exam by Mr. Harris (for Corporal Robinson)

- 1           doesn't provide instantaneous control?  
2       A     Correct.  
3       Q     All right. Now, in this case, when Mr. Dziekanski  
4           had the weapon in his hand, you officers, or the  
5           officers, first of all, had tactically deployed in  
6           response to that? And I'll --  
7       A     Tactically positioned? Is that --  
8       Q     Yes, that's what I mean.  
9       A     Okay.  
10      Q     And just for the understanding, what they've done  
11           is they've fanned out around him, correct?  
12      A     Correct.  
13      Q     All right. And that was in direct response to his  
14           combative behaviour?  
15      A     Correct.  
16      Q     And despite there being some distance between  
17           yourselves and Mr. Dziekanski, that does not mean  
18           that he was not a risk to you or the officers  
19           there?  
20      A     Correct.  
21      Q     All right. In fact, you, through your training,  
22           have learned that subjects, determined subjects,  
23           can cover about 23 feet before you can even  
24           respond or take defensive action?  
25      A     That sounds, yes, familiar.  
26      Q     All right. And that's something you learned in  
27           your training?  
28      A     Yes.  
29      Q     All right. Now, after the original deployment of  
30           the Taser, you testified about hearing Corporal  
31           Robinson saying words to the effects of, "Taser  
32           him again"?  
33      THE COMMISSIONER: "Hit him again."  
34      MR. HARRIS: "Hit him again." Thank you.  
35      A     Yes.  
36      Q     All right. And from your perspective, at that  
37           particular point in time, the Taser had not  
38           achieved the desired effect that you had expected  
39           from it?  
40      A     Correct.  
41      Q     All right. And from your perspective at this  
42           stage, Mr. Dziekanski had not been controlled?  
43      A     Correct.  
44      Q     And still required to be controlled?  
45      A     Correct.  
46      Q     All right.  
47      THE COMMISSIONER: You know, Mr. Harris, total leading

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Cross-exam by Mr. Harris (for Corporal Robinson)

- 1           does go to weight.  
2       MR. HARRIS: I have --  
3       THE COMMISSIONER: So far, I've never heard a question  
4           that the answer is simply, "Yes."  
5       MR. HARRIS: All right. Thank you. I'm mindful of  
6           that, yes.  
7       Q     You've had -- we've heard about your first aid  
8           training. You observed Corporal Robinson down  
9           around Mr. Dziekanski, when Mr. Dziekanski was  
10          down and handcuffed?  
11       A     Yes.  
12       Q     And can you tell us what you observed Corporal  
13           Robinson doing in relation to Mr. Dziekanski?  
14       A     At what point are you referring to?  
15       Q     All right. Did you observe him -- let me ask you  
16           this: Did you observe him monitoring Mr.  
17           Dziekanski when he was -- Mr. Dziekanski was  
18           handcuffed?  
19       A     After he was handcuffed?  
20       Q     Yes.  
21       A     Yes.  
22       Q     All right. And what did you see Corporal Robinson  
23           doing at that stage?  
24       A     Well, as I said, I believe I gave it as evidence  
25           yesterday, I had been instructed to go get  
26           hobbles. I was also, after I returned, I had been  
27           back and forth, dealing with different  
28           individuals, so in those times that I had gone  
29           back and forth I observed Corporal Robinson down  
30           to Mr. Dziekanski's left upper area and, in my  
31           view, monitoring. He was in a position where he  
32           would be able to hear Mr. Dziekanski breath.  
33       MR. HARRIS: All right. Could the witness be provided  
34           the photographs, which are marked Exhibit 46,  
35           please.  
36       THE REGISTRAR: Forty-six?  
37       MR. HARRIS: Yes, please.  
38       Q     The first photograph there, do you see yourself in  
39           that photo?  
40       A     I -- I believe that's myself to the far left.  
41       Q     All right. And do you see Corporal Robinson in  
42           that photograph?  
43       A     No, I don't.  
44       Q     All right. I'm going to direct you to just in the  
45           far left, down at your feet area.  
46       A     Yes.  
47       Q     Are you able to say who that is?

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Cross-exam by Mr. Harris (for Corporal Robinson)

- 1 A I believe those would be Mr. Dziekanski's feet.  
2 Q No --  
3 A Are -  
4 Q I'll just approach you and point out what I'm  
5 referring to, to make sure we've got the same  
6 photograph. It's hard to see in the light. That  
7 officer in uniform down at your feet --  
8 A Oh, sorry, I couldn't make him out earlier, yes,  
9 that's --  
10 Q The glare of the light.  
11 A It's Corporal Robinson.  
12 Q All right. And can you describe for us what, from  
13 your perspective, looking at that -- or let me ask  
14 it this way: Is that generally the position you  
15 recall Corporal Robinson remaining in during your  
16 time there?  
17 A Something similar. I can't -- I can't get a good  
18 perspective of where he's positioned himself in  
19 relation to Mr. Dziekanski, but I observed  
20 Corporal Robinson closer to the upper body, head  
21 area.  
22 Q All right.  
23 A So I'm not sure if that photo is showing that or  
24 not.  
25 Q Now, when Corporal Robinson is around Mr.  
26 Dziekanski, when Mr. Dziekanski is handcuffed on  
27 the ground, Corporal Robinson is giving you  
28 instructions and directions?  
29 A Yes.  
30 Q And what were some of those instructions and  
31 directions?  
32 A To -- originally, to go and get the leg  
33 restraints, or the hobbles. And after arriving  
34 back, I was -- I was dealing back with, like I  
35 say, a different -- different individuals from --  
36 YVR security guards, Canada Customs, I was back  
37 and forth. I -- I don't recall him giving me  
38 instructions as -- as opposed to I was just more  
39 directing myself and -- because I was being  
40 directed by people who were -- wanted to talk to  
41 me.  
42 Q All right. With regards to the Pritchard video,  
43 he gave you instructions about that?  
44 A Yes.  
45 Q And he wanted it seized, correct?  
46 A Correct. And again, I testified yesterday I, you  
47 know, the time -- I'm just back and forth dealing

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Cross-exam by Mr. Harris (for Corporal Robinson)

Cross-exam by Mr. Butcher (for Constable Bentley)

1 with different things with people and with the  
2 Pritchard video, but he did give me instructions  
3 regarding that, yes.

4 Q And did -- was it you that told Corporal Robinson  
5 about the video and the presence -- that there was  
6 a fellow there that had videotaped everything?

7 A Yes.

8 Q And it was after you communicating that  
9 information that Corporal Robinson wanted the tape  
10 seized and preserved?

11 A Yes.

12 MR. HARRIS: Thank you.

13

14 CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CONSTABLE  
15 BILL BENTLEY:

16

17 Q Just two areas, Officer. Do you have your  
18 statement of October the 14th with you?

19 A Yes.

20 Q Will you go to page 21 of 28, please. Mr.  
21 Kostecky put part of -- I'm sorry. Mr. Kostecky  
22 put part of this page to you, but I want to read a  
23 little further from the passage that he put to  
24 you. You were asked this, by Sergeant Attew, just  
25 about halfway down the page:

26

27 When you were wrestling with him, was he  
28 sweaty, or --

29

30 and you responded, you interrupted the question  
31 and said:

32

33 I could feel... the, the sweaty shirt, and...  
34 stuck with that, yeah.

35

36 Can you tell us what you remember about Mr.  
37 Dziekanski's sweaty shirt?

38 A Just that it was very damp, wet, hot.

39 Q Would you describe it as soaked?

40 A I can't say for sure.

41 Q The other question I wanted to ask is this: I  
42 take it that you have cooperated with the  
43 investigators in this matter whenever asked to do  
44 so?

45 A Yes.

46 Q You've provided statements whenever asked to do  
47 so?

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Cross-exam by Mr. Butcher (for Constable Bentley)

Cross-exam by Mr. Buchanan (for PSAC)

1 Q You freely were interviewed by Commission counsel?

2 A Yes.

3 Q And on each of the occasions that you've been  
4 questioned by investigators or by counsel, you  
5 have stated that you did see the stapler before  
6 Mr. Dziekanski was Tasered; is that correct?

7 A Yes.

8 MR. BUTCHER: Thank you. Those are my questions.

9 THE COMMISSIONER: Yes.

10 MR. BUCHANAN: I rise, but I am mindful of the time, if  
11 you wish to take a break now.

12 THE COMMISSIONER: I'm just wanting to see if we can  
13 finish this witness before the break.

14 MR. BUCHANAN: I have just a few questions. I'm not  
15 sure about my friends.

16 THE COMMISSIONER: Let's try.

17 MR. BUCHANAN: Okay, thank you. For the record, Chris  
18 Buchanan. I'm counsel for the PSAC.

19

20 CROSS-EXAMINATION BY MR. BUCHANAN ON BEHALF OF PUBLIC  
21 SERVICE ALLIANCE OF CANADA:

22

23 Q Good afternoon, Constable. I just have a couple  
24 of questions. Yesterday, you had indicated in  
25 your testimony that you had done a pat-down of Mr.  
26 Dziekanski.

27 A Could I stop you for a second?

28 Q Sure.

29 A I'm not -- I'm not quite sure who you're  
30 representing.

31 Q The Public Service Alliance of Canada.

32 A Okay, thank you.

33 Q You testified that you did a pat-down of Mr.  
34 Dziekanski. Do you recall that evidence?

35 A Yes.

36 Q Okay. I gather that took place after he'd been  
37 restrained and prior to the Richmond Fire  
38 Department arriving on scene; is that correct?

39 A Yes.

40 Q And I think you had indicated that a wallet was  
41 found?

42 A Yes.

43 Q And did you open up the wallet, or who opened up  
44 the wallet, if anybody?

45 A I don't recall opening the wallet. Best that I  
46 can recall, I -- I -- I don't really want to -- I  
47 believe it was Millington or Bentley that may have

Cst. Gerry Rundel

Cross-exam by Mr. Neave (for TASER International)

1 taken the wallet, but I really don't recall.

2 Q Do you recall at around the time the wallet was  
3 found that you first learned that Mr. Dziekanski  
4 was Polish?

5 A I don't recall when I actually learned he was  
6 Polish. I came into the scene knowing that he  
7 didn't speak English.

8 Q All right. Okay. And you may not recall this,  
9 but shortly after the wallet was found, do you  
10 recall any conversations about trying to find a  
11 translator?

12 A No, I don't.

13 Q Okay. And just so I'm clear, is -- at the time  
14 that after -- after Mr. Dziekanski was restrained  
15 and prior to the Richmond Fire Department had  
16 arrived, who was in control of the situation,  
17 which officer, if any specific officer?

18 A Control of...?

19 Q The situation. Was there an officer in charge at  
20 that point?

21 A Corporal Robinson.

22 MR. BUCHANAN: Okay, thank you. Those are my  
23 questions.

24 THE COMMISSIONER: Mr. Rosenbloom?

25 MR. ROSENBLUM: I will be some time, Mr. Commissioner.

26 THE COMMISSIONER: All right, let's take a break.

27

28 (WITNESS STOOD DOWN)

29

30 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

31 (PROCEEDINGS RECONVENED)

32

33 THE REGISTRAR: The hearing is now resumed.

34

35 GERRY RUNDEL, a witness,  
36 recalled.

37

38 THE COMMISSIONER: Yes?

39 MR. NEAVE: Thank you, Mr. Commissioner. David Neave  
40 for TASER International.

41

42 CROSS-EXAMINATION BY MR. NEAVE ON BEHALF OF TASER  
43 INTERNATIONAL:

44

45 Q Now, Constable, I'm going to ask you a few  
46 questions on two areas. Firstly, your training  
47 with respect to excited delirium, Mr. Commissioner

1 raised that issue with you in some of his  
2 questions. I'm going to explore that with you  
3 first.

4 A Excuse me. I'm having a hard time hearing you.  
5 Q My apologies.  
6 A No problem.  
7 Q The first area I'm going to explore with you is  
8 your training with respect to the -- with respect  
9 to excited delirium. Mr. Commissioner had asked  
10 you some questions about that --  
11 A Okay.  
12 Q -- this morning and I'm going to expand on those,  
13 so -- to assist Mr. Commissioner with those  
14 issues. I understand from your statement that  
15 during the course of your Taser training that  
16 included within that training package was training  
17 with respect to excited delirium; is that correct?  
18 A Correct.  
19 Q And am I correct that within that information that  
20 was provided to you, that you were informed about  
21 various factors or indicia which are known to be  
22 common to that condition?  
23 A Correct.  
24 Q One of those is the subject displays aggressive  
25 behaviour; is that correct?  
26 A Correct.  
27 Q And with your dealings in this case, that was  
28 demonstrated?  
29 A Correct.  
30 Q And with Mr. Dziekanski's, in particular with  
31 respect to the breaking of furniture, correct?  
32 A The information we received, yes.  
33 Q Yes. Either that you saw or that -- information  
34 that you were provided, and we'll go through those  
35 with respect to each of the criteria. The  
36 positioning, his stance about which you've given  
37 substantial amounts of information, that was  
38 aggressive in your view?  
39 A The combative stance.  
40 Q Yes.  
41 A That's what you're referring to? Yes.  
42 Q Taking up the combative stance --  
43 A Yes.  
44 Q -- would be one of the factors that you would  
45 agree would fall within aggressive behaviour; is  
46 that fair?  
47 A Yes.

- 1 Q And, of course, the taking of the stapler, about  
2 which you've also given substantial evidence?
- 3 A And the intent that he was showing that he had the  
4 intent to use that stapler for, yes.
- 5 Q One of the other factors, as I understand it, with  
6 respect to excited delirium that you would have  
7 received training on is an affinity for glass; is  
8 that correct?
- 9 A That is mentioned in the training, yes.
- 10 Q And from your understanding of the information  
11 that you were provided with respect to this  
12 incident, there are several examples, correct?
- 13 A Several examples of...?
- 14 Q Of Mr. Dziekanski showing an affinity for glass?
- 15 A A few, yes.
- 16 Q Let me help you out. The damaging of the computer  
17 screen, are you aware of that, Constable?
- 18 A Yes.
- 19 Q You were cross-examined about the radio  
20 transmission about the complaint being described  
21 as throwing chairs through glass.
- 22 A Correct.
- 23 Q One of the other factors about which you received  
24 training was that in excited delirium, the person  
25 displays an agitated -- is in an agitated state or  
26 is distressed; is that fair?
- 27 A Correct. Commissioner, may I ask a question?
- 28 THE COMMISSIONER: Yes.
- 29 A I'm not quite sure where the line of questioning  
30 is going here. I believe I -- I testified that a  
31 lot of the information that I had received  
32 regarding Mr. Dziekanski, I arrived at the  
33 possibility that he may have had excited delirium  
34 after the fact.
- 35 THE COMMISSIONER: Yes, I was aware that that was --
- 36 A Not going into the event. So I just want to make  
37 that clear, so I'm not quite sure where the  
38 questioning is going regarding that.
- 39 THE COMMISSIONER: Yes. And my question was whether he  
40 was trained on this aspect of the Taser use in  
41 connection with excited delirium.
- 42 MR. NEAVE: Yes. And --
- 43 THE COMMISSIONER: Not anything to do with the  
44 occurrences on the evening in question.
- 45 MR. NEAVE: And I appreciate that, Mr. Commissioner,  
46 and it is of no surprise that the questioning and  
47 the manner of which is for your convenience to

1 provide from this constable, based on the training  
2 that he received and the indicia about which he  
3 was trained to recognize that with respect to his  
4 -- either information that he was provided with  
5 going to the event or with respect to the events  
6 that he saw during the course of his interaction,  
7 that they identify a number of the indicia of  
8 excited delirium to support the conclusion that  
9 the constable has just referred to.

10 THE COMMISSIONER: Well, I didn't understand you  
11 reached a conclusion. I --

12 A Correct. I -- I stated that that possibility of  
13 excited delirium was made by me after learning  
14 additional information after the incident.

15 THE COMMISSIONER: For instance, I don't know what  
16 shattered glass has got to do with it.

17 MR. NEAVE: That --

18 THE COMMISSIONER: I mean, theoretically it may have  
19 something to do with it.

20 MR. NEAVE: It does, Mr. Commissioner. It is one of  
21 the hallmarks of the excited delirium syndrome.

22 THE COMMISSIONER: Well, yes, I understand that, but is  
23 that your discussion?

24 MR. NEAVE: Yes.

25 THE COMMISSIONER: An academic discussion on --

26 MR. NEAVE: No, it's not an academic --

27 THE COMMISSIONER: -- the hallmarks --

28 MR. NEAVE: No. It's not an academic discussion, Mr.  
29 Commissioner. What it is, rather, is from this  
30 witness, with the information that he was provided  
31 or with the information that he saw, that there  
32 are various factors that fall within each of the  
33 categories that are recognized to be indicia of  
34 excited delirium.

35 THE COMMISSIONER: Where does it go in the sense that,  
36 like, the glass was not shattered?

37 MR. NEAVE: It is an --

38 THE COMMISSIONER: So what's that got to --

39 MR. NEAVE: It is an affinity for glass, Mr.  
40 Commissioner, is my understanding. I think there  
41 is a distinction.

42 THE COMMISSIONER: Well, all right. Go ahead. I -- I  
43 can't quite see what this has got to do with what  
44 we're about. It may have something to do with  
45 medical evidence later on, but in terms of this  
46 witness and what he's testifying to, but go ahead.

47 MR. NEAVE: And that's exactly my point, Mr.

1 Commissioner. And you've hit on it absolutely  
2 correctly. What it does is exactly that. It goes  
3 to the medical evidence, but the practitioners  
4 that have provided their respective opinions about  
5 which we made our initial motion and which are  
6 tendered for the purposes for identification at  
7 the present time are only relying upon the  
8 evidence of others, including this constable,  
9 informing their view. And what I'm endeavouring  
10 to do is to run down the list of known indicia --  
11 THE COMMISSIONER: Well, I appreciate that, but go  
12 ahead. I --  
13 MR. NEAVE: From this witness.  
14 THE COMMISSIONER: I just -- I focused on the shattered  
15 glass, but go ahead.  
16 MR. NEAVE: Okay. Thank you.  
17 Q Constable, one of the other indicia of excited  
18 delirium about which you were informed in your  
19 training was the individuals frequently display  
20 superhuman strength, correct?  
21 A Correct.  
22 Q You've given evidence about that, your knowledge  
23 and your experience with Mr. Dziekanski on that  
24 issue?  
25 A Correct.  
26 Q One of the other indicia is sweating, where you --  
27 and you were informed about that during your  
28 training, as well?  
29 A Yes.  
30 Q And you've given evidence with respect to that.  
31 You also indicated earlier that you found his  
32 shirt to be hot, hot to the touch?  
33 A Warm, hot, sweaty, yes.  
34 Q And one of the other indicia about which you  
35 received training was that the people experiencing  
36 or suffering from excited delirium are breathing  
37 rapidly?  
38 A Yes.  
39 Q And you saw that with Mr. Dziekanski?  
40 A I can't say for sure, unless you're referring to  
41 after the restraint, which is different, but prior  
42 to, I can't say for sure.  
43 Q No. I'm referring to prior to. Thank you,  
44 Constable.  
45 I'm going to ask you some questions with  
46 respect to Mr. Dziekanski after the Taser  
47 deployment. You've indicated in your evidence

- 1 that you had difficulty in securing the handcuffs  
2 on Mr. Dziekanski, correct?
- 3 A Yes. There was a struggle.
- 4 Q And with respect to the right arm, which I believe  
5 is the arm that you endeavoured to place behind  
6 Mr. Dziekanski's back, you were assisted by one of  
7 the other officers in moving the hand from  
8 underneath the chest, around to the back; is that  
9 correct?
- 10 A Correct.
- 11 Q And it took both of you exercising -- well, in  
12 terms of you, it took you exercising considerable  
13 strength to accomplish that task, correct?
- 14 A Correct.
- 15 Q The struggle leading up to the application of the  
16 handcuffs was -- was approximately how long in  
17 your recollection?
- 18 A Well, interestingly enough, I -- in one of my  
19 statements I believe I said ten to 15 seconds.  
20 After reviewing the video, approximately a minute,  
21 maybe a little over a minute.
- 22 Q And after -- after the application of the  
23 handcuffs, after you get the handcuffs on, how  
24 long is it before you depart to get the hobbles,  
25 in your estimation?
- 26 A I think the video can show that, but I would guess  
27 15 to 20 seconds.
- 28 Q And how long does it take you to go out to your  
29 car, retrieve the hobbles and return?
- 30 A I believe it was a little over a minute.
- 31 Q And when you arrive back to the scene, you observe  
32 that Mr. Dziekanski is breathing, correct?
- 33 A I believe I -- I can't say for sure at that point.  
34 I can't say that observation. I know I testified  
35 that I confirmed him breathing at a later point.  
36 I can't say for sure.
- 37 Q Okay. And that was my -- I wasn't -- I was  
38 unclear as to whether it was when you first  
39 arrived back with the hobbles, or if it was at a  
40 period subsequent to that and you're talking that  
41 it was at a later time you made that observation?
- 42 A Correct.
- 43 Q So that's after the minute or so that it takes you  
44 to get out to the car and back. Do you recall how  
45 long you were there with -- with the hobbles in  
46 hand until you made that observation with respect  
47 to breath?

1 A Okay. I'm not sure of your question.

2 Q All right. You moved the -- I'm just trying to  
3 get an idea of timing. So you're back with the  
4 hobbles, correct, and you've told me now that you  
5 can't recall if at that particular point in time  
6 you recall that Mr. Dziekanski was breathing, that  
7 occurred sometime after, and I'm just trying to  
8 figure out what sort of time interval we're  
9 talking about.

10 A Well, all I can say best of my recollection is  
11 that at the point that I returned, I assumed he  
12 was breathing and as I testified yesterday, I  
13 observed him breathing approximately, my best  
14 estimate was yesterday two minutes prior to  
15 firefighters arriving.

16 Q Thank you. Now, I'm just going to ask you a few  
17 questions about the Taser deployment itself. Am I  
18 correct that in your training and with your  
19 experience of being tasered on one occasion that  
20 the application of the electricity when the Taser  
21 is in probe mode depends on a circuit being  
22 established between the Taser and the subject  
23 through the two wires; is that correct?

24 A More or less, yes.

25 Q And if the probes are not either attached to the  
26 person or attached in sufficient proximity to the  
27 skin, the charge is either ineffective or  
28 intermittent; is that fair?

29 A I believe if I remember correctly from the  
30 training that it's a total of two inches if -- for  
31 example, if each probe is lodged in a jacket and  
32 it's still within one inch of the skin, it should  
33 still have full effect. Anything over an inch may  
34 have a lesser effect.

35 THE COMMISSIONER: Mr. Neave, I want to be clear. I  
36 accept this as what Constable Rundel was taught.

37 MR. NEAVE: Yes.

38 THE COMMISSIONER: I do not accept it from Constable  
39 Rundel as being expert testimony in terms of these  
40 matters.

41 MR. NEAVE: It's not being proffered as expert  
42 testimony.

43 THE COMMISSIONER: All right. Thank you.

44 MR. NEAVE: It's being proffered for the exact purpose  
45 that you've referred to.

46 THE COMMISSIONER: All right. Thank you.

47 MR. NEAVE: Thank you. Those are my questions, Mr.

1 Commissioner.

2 CROSS-EXAMINATION BY MR. ROSENBLOOM ON BEHALF OF THE  
3 GOVERNMENT OF POLAND:

4

5 Q Good afternoon, Constable. My name is Don  
6 Rosenbloom and I represent the Government of the  
7 Republic of Poland. I have a number of questions  
8 to ask you.

9 Firstly, you've had 16 months to reflect on  
10 the incidents of the day and evening in question.  
11 You responded to Mr. Hira in examination that you  
12 wouldn't take anything back in terms of your  
13 conduct and the collective conduct of the  
14 officers.

15 A No, I didn't say I wouldn't take anything back.

16 Q Well, what would you take back?

17 A I said based on the knowledge that we had at the  
18 time, I wouldn't have done anything differently.

19 Q Okay. Now, as for the knowledge that you had at  
20 the time, you presumably reported all that to the  
21 investigating officers of IHIT when they  
22 interviewed you on the 14th of October,  
23 interviewed you again on the 18th of October,  
24 correct?

25 A As much detail as I could recall at that time.

26 Q Right.

27 A Not --

28 Q And as is typical in policing, one's memory is  
29 obviously most accurate as close or proximate to  
30 the events in question; would you agree with that?

31 A Yes and no. That's a fair statement; however,  
32 there are -- there are details that I failed to  
33 provide to the IHIT members that were -- that were  
34 either not said, the questions didn't trigger off  
35 the answers, so -- and my memory throughout the  
36 time, best I can compare it to is when you're --  
37 you know, you have your favourite song or a movie  
38 and all of a -- you just can't remember it and  
39 three days later it pops into your head. So  
40 memories do come back. That -- and that's the  
41 best I can describe it.

42 Q Well, your last contact with IHIT in terms of  
43 investigation was the statement that you gave on  
44 the 18th of October of 2007, correct?

45 A Correct.

46 Q So subsequent to that date, if anything had come  
47 to your mind that you felt caused you to want to

- 1 clear the record up in any way or manner, you  
2 would presumably know how to contact those people,  
3 correct?
- 4 A Correct.
- 5 Q And did you at any time approach the IHIT  
6 investigators to in any way clear up the record?
- 7 A I did not approach any or add any more details to  
8 any IHIT members.
- 9 Q So when you spoke a few moments ago about how  
10 one's memory is usually best proximate to the  
11 incident but sometimes subsequently you can recall  
12 things, have you had the experience since your  
13 last interview on the 18th of October of 2007 that  
14 in any way caused you to want to clear up the  
15 record?
- 16 A All I can answer on that is that the thought  
17 didn't even cross my mind because at that point we  
18 were being investigated criminally.
- 19 Q And because you were being investigated  
20 criminally, that led you to what direction? I  
21 didn't understand that.
- 22 A The possibilities of criminal implications or  
23 criminal charges were -- were out there, so based  
24 on that in my opinion for my own personal self,  
25 I'm not going to talk to anybody about anything  
26 regarding that matter.
- 27 Q I see. So because of the possibility of criminal  
28 prosecution, you decided that it was improper or  
29 inappropriate for you to communicate further with  
30 IHIT in terms of any changes in the version of  
31 events; is that correct?
- 32 A I can't -- I can't word it that way. All I can  
33 say is that the thought of adding any additional  
34 information after that point, based on what was  
35 taking place, didn't cross my mind.
- 36 Q Well, Officer, when you were investigated by IHIT  
37 on the 14th and the 18th of October 2007, you were  
38 never given the **Charter** warning by the  
39 investigator, were you?
- 40 A No.
- 41 Q And you were aware that because you hadn't been  
42 given that **Charter** warning that statements that  
43 you gave to the officers on those two occasions  
44 would never -- couldn't be used against you in a  
45 criminal prosecution?
- 46 A Correct.
- 47 Q And that being the case, you were aware that up to

1           any moment after the 18th of October, if you did  
2           go to the police to clear the record, it wasn't as  
3           if you would be in any way contradicting evidence  
4           that was admissible in a courtroom from the  
5           statements you'd given previously?

6           A     Okay. I'm not understanding --

7           Q     Sorry.

8           A     -- the question.

9           Q     The point I'm making is that at any time after the  
10          18th of October 2007 it wasn't as if anything at  
11          that point has been stated by you to the police  
12          that could implicate you in a criminal  
13          prosecution, because you had not been given the  
14          **Charter** warning.

15         MR. HIRA: Does this go to this witness' state of mind  
16           or is it -- or is it an expression of law? If  
17           it's the former, it's fine.

18         MR. ROSENBLOOM: The former.

19         Q     Do you have any response?

20         THE COMMISSIONER: I don't know what to say about all  
21           of this. You -- what you're getting at is did you  
22           have reasons to alter what you originally said.

23         A     Is that what you're asking?

24         MR. ROSENBLOOM:

25         Q     Yes. But you have stated that you didn't because  
26           of the concern or the cloud over you about  
27           criminal prosecution, correct?

28         A     Things had changed quite dramatically during the  
29           course of the incident with -- with -- I believe  
30           after the release of the video, things escalated  
31           as far as coverage and I'm not sure at which point  
32           -- I know that we gave statements on the morning  
33           of. I can't look back and remember at what point  
34           IHIT had turned it into an investigation that as a  
35           result of their investigation and their findings  
36           there were implications that we could be -- could  
37           be charged.

38           So I just wasn't thinking of -- like I said,  
39           I was in a state of mind that I'm not going to  
40           provide information to anybody that -- when  
41           there's an investigation going on. If they had  
42           come to me, requiring additional information and,  
43           for example, wanting a warned statement, for --  
44           you know, that would be something that I'd need to  
45           consult my counsel with.

46         Q     Now, it's trite to say that in any police incident  
47           that there are always scales of risk to your

- 1 safety, of -- from a very lesser level to a high  
2 level of risk, obviously. It's trite, correct?  
3 A Correct.  
4 Q Yes. And in terms of the incident that is the  
5 purpose of this inquiry, you clearly have  
6 statement in -- you did state in your statements  
7 to IHIT what were the levels of -- of risk that  
8 you believed you were encountering on that  
9 evening, correct?  
10 A I described the resistant, combative behaviour,  
11 correct.  
12 Q Yes. Put very generally, you described to the  
13 investigators in the two statements the level of  
14 risk that you believed you were experiencing in  
15 this investigation?  
16 A I'm not sure what you're asking.  
17 Q Well, you were being asked by these investigators  
18 what transpired that evening and obviously, you  
19 understood that part of their investigation was to  
20 determine the appropriate use of force by the four  
21 officers, correct?  
22 A I believe I stated earlier that I was being  
23 interviewed just to - excuse me - just to provide  
24 information in my version, an account of the  
25 incident.  
26 Q Yes. Yes. And in the course of giving that  
27 version of events, you obviously described the  
28 risk as you believed it to your safety. You've  
29 testified even today that you believe that your  
30 safety was at risk.  
31 A Yes.  
32 Q Yes. And then since giving those statements back  
33 in October of '07, you have had 16 months to  
34 reflect on things. You have seen the video  
35 repeatedly, I assume. And then you have testified  
36 here in this inquiry. And you would agree with  
37 me, would you not, that the testimony you have  
38 given at the inquiry yesterday and today is  
39 clearly a diminished level of risk, speaks to a  
40 diminished level of risk, as opposed to the  
41 statements that you gave on the 14th and 18th of  
42 October?  
43 MR. HIRA: With respect, that is pure argument. That  
44 is a submission that my friend --  
45 MR. ROSENBLUM: Okay.  
46 MR. HIRA: -- should make at the appropriate time.  
47 MR. ROSENBLUM:

1 Q Well, let me put it this way to you, Officer. In  
2 the statements, and I'm happy to lead you to the  
3 statements, October 14th and October 18th, you  
4 testify about the -- Mr. Dziekanski having his  
5 arms up in the air, waving his arms with the  
6 stapler above his head; you agree with that, that  
7 you have stated that in your statements; is that  
8 correct?

9 A Yes.

10 Q You have mentioned in your statements clenched  
11 fists above his head?

12 A I believe it was clenched fists in the air.

13 Q Yes. And motioning, with his -- above his head,  
14 motioning towards you?

15 A Yes.

16 Q Okay. Let's just stop there for a moment. Would  
17 you agree with me, Officer, that what you stated  
18 on the 14th of October 2007 regarding the motions  
19 or movements of Mr. Dziekanski and the testimony  
20 you have given yesterday and today are obviously  
21 on different levels of risk, speak to different  
22 levels of risk?

23 A I'm still not understanding your terminology of  
24 levels of risk. I don't really know what you're  
25 trying to --

26 Q Okay. Well --

27 A -- to ask.

28 Q I'm sorry. We have a set of facts as you report  
29 them in your statements on the -- the two  
30 statements in October of '07. We have a set of  
31 facts as you testified to them at this inquiry  
32 yesterday and today. Would you agree with me the  
33 facts as you testified to them this week clearly  
34 show that your safety or risk to your life was  
35 less with these facts than what you stated at the  
36 time to the officers in October of '07?

37 A I don't recall ever saying anything about risk of  
38 my life. I'm not --

39 Q Well, safety. Safety.

40 A Well, those --

41 Q You spoke of your -- you felt that your safety was  
42 at risk, correct?

43 THE COMMISSIONER: It's getting pretty close to  
44 argument.

45 MR. ROSENBLUM: Okay.

46 THE COMMISSIONER: You know, I know what you're saying,  
47 but it's so general and wide and I can certainly

1 understand such a submission at the end, but to  
2 get Constable Rundel to do that is difficult and I  
3 don't know really how helpful.

4 MR. ROSENBLOOM: Thank you.

5 Q Now, the -- you, of course, have testified you  
6 watched the video. When did you first see the  
7 video?

8 A Within a day or two after its release, I would  
9 say.

10 Q A day or two after the incident?

11 A After the video was released.

12 Q After it was released. I'm sorry. You did not see  
13 the video before it was released?

14 A I did not see the video before it was released,  
15 no.

16 Q And when you did watch it on the first occasions,  
17 first few occasions, was it with your fellow  
18 officers that were a part of the foursome that  
19 went to the airport?

20 A No.

21 Q Now, you were approached by the IHIT investigators  
22 on the days in question, and you stated yesterday  
23 that you really didn't put your mind to how  
24 important this was or how careful you had to be  
25 and I'm happy to refer you to the transcript, but  
26 that wasn't what was on your mind; is that  
27 correct?

28 A What's the question?

29 Q Okay. The question is when the IHIT people  
30 approached you for these two interviews, did you  
31 recognize the importance to be as accurate as  
32 possible in what you reported to them?

33 A I recognized that and I, given the circumstances,  
34 I think we've explained that several previous  
35 times, the long shift, the stress level and just  
36 due to the incident that I gave the best evidence  
37 and statement that I could at that time.

38 Q Did you at any time in the first of those  
39 interviews inform the investigating officer, the  
40 sergeant, that you weren't feeling up to it?

41 A Are you referring to corporal?

42 Q That is -- I'm sorry, your first statement, yes,  
43 to the corporal.

44 A Or -- to the interviewer or -- I'm not quite sure  
45 who you're referring to?

46 Q I'm speaking of the interviewer. Indeed, I was  
47 correct, Sergeant. Sergeant Attew.

Cst. Gerry Rundel

Cross-exam by Mr. Rosenbloom (for Government of Poland)

- 1 A Okay. I wasn't sure who you were referring to.  
2 Q Sorry.  
3 A And what's your question again?  
4 Q And the question is did you at any time during  
5 that interview at 5:00 a.m. on the morning of  
6 October 14th, inform the officer that you were  
7 fatigued or that you felt it inappropriate to be  
8 interviewed?  
9 A Not that I recall.  
10 Q Yes. And then your second interview, which is on  
11 the 18th or was on the 18th of October same year  
12 with -- with Corporal Brassington, by then you had  
13 four days from the incident.  
14 A Correct.  
15 Q And did you at any time during that interview  
16 inform the corporal that you weren't feeling up to  
17 being interviewed?  
18 A Not that I recall.  
19 Q No. Now, and you recognized that this was, of  
20 course, an investigation of a death while in  
21 police custody, correct?  
22 A Yes.  
23 Q And was this the first time you had been involved  
24 in an IHIT investigation regarding death in  
25 custody?  
26 A Yes.  
27 Q And -- but presumably you would join me in  
28 agreeing that when it comes to police  
29 investigation, an investigation of a death is  
30 probably the highest of priorities within police  
31 investigation?  
32 A It would be high, yes.  
33 Q Fair enough. And that being the case, you would  
34 agree with me that an investigation of a death  
35 requires all witnesses that are being investigated  
36 to provide the most truthful and accurate account  
37 of what they observed?  
38 A Correct.  
39 Q And you, recognizing that fact, have told me that  
40 subsequent to giving these statements, there have  
41 been aspects of it that maybe you would -- that  
42 you see differently since the incident in  
43 question?  
44 A Well, a lot of -- a lot of memories have been  
45 refreshed from, obviously, the video which I've  
46 stated I've viewed several times.  
47 Q Yes. And you stated that you first saw the video

- 1           shortly after it was publicly released?
- 2       A     Not in the full version. I just watched clips of
- 3           it.
- 4       Q     Okay. But at the time that you did first observe
- 5           the video, you weren't under criminal
- 6           investigation. You weren't concerned about the
- 7           criminality side of this in terms of your own
- 8           situation, were you?
- 9       A     Not that I recall at that time.
- 10      Q     So once you reviewed the video for the first
- 11           occasion or the first few occasions, did you have
- 12           any reason to approach your superiors of the IHIT
- 13           group to inform them that it appeared that some of
- 14           the things stated in your two statements were
- 15           inaccurate?
- 16      A     I -- as I stated earlier, I only watched portions
- 17           of the video, not the full version, so I didn't
- 18           really draw any conclusions to that effect, as far
- 19           as added details.
- 20      Q     Well, Officer, surely the portion of video that
- 21           you did view, and I'm speaking of the Pritchard
- 22           video, would have been the portion that related to
- 23           your intervention with Mr. Dziekanski and the
- 24           tasering and the taking him down on the ground?
- 25      A     Again, I really don't -- I don't recall which --
- 26           which portions of the video. I may have watched
- 27           once or twice portions of it. I don't recall.
- 28      Q     Once or twice over what period of time? How many
- 29           times would you estimate that you've seen the
- 30           video, other than in the company of your counsel?
- 31      A     Well, counting news footage, I would have a hard
- 32           time to estimate that. Maybe 20 to 30.
- 33      Q     Okay.
- 34      A     Portions and pieces and bits here and there.
- 35      Q     What I'm trying to get at, Officer, is on the
- 36           earlier viewings of the video, and you saw it on
- 37           television and you saw it through the -- through
- 38           your police force, was there any reason after
- 39           viewing that video --
- 40      MR. HIRA: The evidence isn't that he saw it through
- 41           his police force.
- 42      MR. ROSENBLOOM: All right.
- 43      Q     Did you observe it by it being provided to you by
- 44           the RCMP?
- 45      A     Sorry? What's your question?
- 46      Q     Did you ever have the video provided to you or
- 47           shown to you by the RCMP?

1 A By the RCMP?

2 Q Yes.

3 A Not that I recall.

4 Q So are you -- I'm just asking. Does that mean  
5 that the only way you saw this video was through  
6 media accounts?

7 A Media accounts and then counsel has had a copy  
8 provided to him that I have --

9 Q Yeah.

10 A -- reviewed.

11 Q I'm not interested in your viewing of it with  
12 counsel. I want to stay clear of that.

13 MR. BEAUBIER: Perhaps we should clarify when the  
14 witness got the IHIT statement.

15 THE COMMISSIONER: Well, I hope all this is going  
16 somewhere at the end of the day, Mr. Rosenberg  
17 (sic). I -- I'm in your hands, of course. I  
18 don't like interfering with cross-examination, but  
19 anyway, you're -- let's get to the next question.

20 MR. ROSENBLROOM:

21 Q So the point I am asking you is there comes a  
22 point, after viewing the video, where you conclude  
23 that Mr. Dziekanski never raised his hands or arms  
24 above his head with this Taser (sic), correct?  
25 Before being tasered. With the stapler.

26 Let me ask the question again. There comes a  
27 point, after viewing the video, where you  
28 recognize that before tasing, Mr. Dziekanski  
29 never raises the stapler with his hands over his  
30 head?

31 A I don't believe I ever said that in my statement  
32 that before he was tasered he raised the stapler  
33 above his head. I believe my evidence was that he  
34 swung around the counter at chest/head level with  
35 the stapler in his right hand, but not above his  
36 head.

37 Q All right. I wondered if you would be kind enough  
38 to go to you statement of the 14th of October. I  
39 would like to, in fact, go to the 18th of October.  
40 I would like you to go to page 5, if you have that  
41 in front of you, and I would like you to take the  
42 first paragraph and go down approximately ten  
43 lines to:

44  
45 ...coming through the doors would be to the  
46 right, on the other side of the doors  
47 and...he...then picked up a ...stapler

1                   ...turned around, he had both fists in the  
2                   air with the stapler... his hand, and was  
3                   motioning...

4

5           A       Which doesn't say over his head.

6           Q       All right. And so the first statement, going back  
7                   to the first statement of the October 14th --

8           A       Commissioner, may I ask a question?

9           THE COMMISSIONER: Yes?

10          A       I'm not quite sure of how the process of the  
11                   inquiry, but is it appropriate for Mr. Kosteckyj  
12                   and the Polish representative to be talking  
13                   together?

14          THE COMMISSIONER: Oh, yes.

15          A       Okay.

16          THE COMMISSIONER: We all talk to each other.

17          A       Okay. I -- I just wanted to clarify that, thank  
18                   you.

19          MR. ROSENBLOOM:

20          Q       Yes. And so in that first statement at page 5,  
21                   you say, if you would go down two-thirds of the  
22                   way down the page.

23          A       Okay. We're back to the first statement?

24          Q       First statement of the 14th, page 5. All right.  
25                   Two-thirds of the way down, Constable Rundel, you  
26                   say:

27

28                   ...for lack of a better word. He picked up a  
29                   stapler, and he started... clenching his  
30                   fists and... and, putting the stapler up  
31                   above his head, mo-motioning... making  
32                   motions with it, uh... towards us.

33

34                   And it goes on. You did say that, didn't you?

35          A       And I do recall addressing that yesterday, if you  
36                   would like -- I can explain that again.

37          Q       Mm-hmm.

38          A       We discussed the nature of the time of the -- the  
39                   interview was taken and my frame of mind at the  
40                   time, and a lot of these statements that were made  
41                   looking back at it, I can see they can be taken  
42                   out of sequence. And I referred to how everything  
43                   happened split-second. I think we -- I think we  
44                   went over that yesterday.

45          Q       What -- correct me if I'm wrong, your testimony  
46                   yesterday is that the motion of the arm going up  
47                   with the stapler above the head may have been

1 after tasing?

2 A Yeah. I clarified that yesterday.

3 Q Yes.

4 A And I also clarified that there was two motions,  
5 the one where he swung around with the stapler up  
6 in his chest/face area prior to tasing, prior to  
7 the first deployment, and then the second motion  
8 where it's up in his -- above his head during the  
9 second deployment.

10 Q Yes. And you recognized yesterday - correct me if  
11 I'm wrong - that the -- after viewing the video  
12 and observing the first tasing, that the motion  
13 of arm above the shoulders with the stapler was  
14 part of the involuntary act of collapsing from the  
15 Taser, correct?

16 A That motion of the arm with -- above the head with  
17 the stapler, as I said, was the second deployment,  
18 yes.

19 Q Yes. So he'd already been tasered on one occasion  
20 at that moment in time.

21 A Would you like me to repeat myself? The first  
22 motion, where he took the stapler from the desk,  
23 swung it across his chest/head area, took a  
24 combative stance, was prior to the first  
25 deployment of the Taser.

26 Q I appreciate --

27 A Somewhere between the first and second deployment  
28 is where his -- the second time his arm went up  
29 with the stapler and quite shortly afterwards, he  
30 went to the floor.

31 Q Yes. And when you observed between the first  
32 tasing and the second tasing his arm going up  
33 in the air with the stapler, you weren't concerned  
34 about your own safety at that moment, were you?

35 A I think the concern for safety was throughout the  
36 event. I'm not quite sure what your question is.

37 Q Well, when one observes in the video the precious  
38 moment as Mr. Dziekanski is tasered the first time  
39 and then appears to be involuntarily heading  
40 towards the ground and his arm flings up and the  
41 stapler goes out, at that moment, freeze-framing  
42 that moment when you see his arm go up with the  
43 stapler, you surely weren't concerned about your  
44 own safety, were you?

45 A I don't think you can -- due to the quickness of  
46 the event, the fear for safety is throughout the  
47 event. I don't know where you can say it starts

1           and stops. That's the best I can answer your  
2           question.

3           THE COMMISSIONER: I think on that we'll adjourn until  
4           tomorrow.

5  
6                           (WITNESS STOOD DOWN)

7  
8           THE REGISTRAR: The hearing is now adjourned until  
9           10:00 a.m. tomorrow morning.

10  
11                           (PROCEEDINGS ADJOURNED TO FEBRUARY 25, 2009  
12           AT 10:00 A.M.)

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