

**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.

June 19, 2009

PROCEEDINGS AT
HEARING (DAY 59)

COPY

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PROCEEDINGS AT
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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. Parhar

(ii)

Counsel for Government of Canada:	J. Brongers, H. Roberts
Counsel for Vancouver Airport Authority:	D. Stewart, C. Friesen
Counsel for B.C. Civil Liberties Association:	G. Pastine
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 Canada:	C. Buchanan
Counsel for City of Richmond:	J. Goulden
Counsel for TASER International, Inc.:	D. Neave, J. Spencer
Counsel for Superintendent Wayne Rideout:	Alexander Pringle
Counsel for Corporal Carr:	E. David Crossin, Q.C.
Registrar:	L.N. Giles
Court Recorder:	P. Kealy, C.V.R., C.M.
Transcriber:	P. Kealy

Vancouver, B.C.
June 19, 2009

1
2
3
4 THE REGISTRAR: Order. This hearing is now resumed.
5 THE COMMISSIONER: Counsel, by way of opening today, I
6 would like to begin by commenting on the role that
7 the Honourable Mr. Justice Silverman played in
8 expediting matters so our closing proceedings
9 could commence today.

10 I was informed that His Lordship sat late,
11 nearly till nine o'clock on Friday evening, and by
12 reason of working over the weekend was able to
13 give reasons for judgment at nine o'clock Monday
14 last. I would just like to pause to say that that
15 activity is greatly appreciated.

16 Yes, counsel.

17 MR. VERTLIEB: Thank you, Mr. Commissioner. Mr.
18 Commissioner, a matter has now arisen that needs
19 to be explained in some detail and then discussed
20 with you.

21 This past Tuesday, June 16, counsel for the
22 Department of Justice, Mr. Brongers, provided me
23 with a copy of an e-mail dated November 5, 2007.
24 The e-mail was written by Dick (Richard) Bent,
25 Chief Superintendent, Deputy Criminal Operations
26 Officer, RCMP, E Division. It was addressed to Al
27 Macintyre, Assistant Commissioner, Criminal
28 Operations Officer, RCMP, E Division.

29 The e-mail refers to Wayne Rideout, who is an
30 RCMP superintendent, who was at that time the
31 officer in charge of the Integrated Homicide
32 Investigation Team, which was conducting the
33 criminal investigation arising out of Mr.
34 Dziekanski's death.

35 I'd like to read the e-mail to you:

36
37 From: Dick (Richard) BENT
38 To: MACINTYRE, Al
39 Date: 2007-11-05 13:46
40 Subject: Media Strategy - Release of the YVR
41 video.
42

43 Al, spoke with Wayne Rideout today about our
44 strategy for the release of the video. He
45 had a couple of concerns. First, he didn't
46 think we should be providing any explanation
47 for what was transpiring but instead just say

1 the Inquest will take evidence under oath
2 etc. I went through the rationale and said
3 we need to have an explanation otherwise our
4 detractors will put their own spin.
5

6 Second, as we're going to have someone speak
7 to this, he suggested that it should be
8 someone other than Dale Carr otherwise we may
9 lose the perception of independence. He
10 would rather have someone separate from IHIT
11 do this. We both think a Use of Force expert
12 would be ideal. Gregg Gillis has not been
13 involved in this investigation so is
14 independent. I suggest we have Gregg do the
15 narrative of what is happening.
16

17 Finally, spoke to Wayne and he indicated that
18 the members did not articulate that they saw
19 the symptoms of excited delirium, but instead
20 had discussed the response en route and
21 decided that if he did not comply that they
22 would go to CEW. He has asked investigators
23 for a synopsis and should have it by noon
24 tomorrow.
25

26 In Mr. Brongers' letter of June 16 to me, he
27 explains that it was through oversight by the
28 Department of Justice counsel that this document
29 was not disclosed to your Commission so late in
30 its proceedings.
31

32 I want to read the letter:
33

34 June 16, 2009
35

36 Art Vertlieb, Q.C.
37 Commission Counsel
38 Braidwood, Q.C., Commissions of Inquiry
39

40 Dear Mr. Vertlieb:
41

42 Re: RCMP Media Strategy Documents
43

44 Further to our telephone conversation, this
45 is to advise you that it has recently come to
46 our attention that the Department of Justice
47 (DOJ) is in possession of documents that are

1 responsive to your earlier request for
2 records relating to the RCMP's media strategy
3 in respect of Mr. Dziekanski's death.
4

5 By way of explanation, the RCMP provided DOJ
6 with a CD-ROM just prior to the scheduled
7 testimony of Sgt. Lemaitre and Cpl. Carr that
8 contained these documents. By pure
9 oversight, DOJ counsel did not open the
10 CD-ROM and therefore was unaware of what it
11 contained until yesterday when it was brought
12 to the specific attention of DOJ counsel by
13 the RCMP.
14

15 Had we been aware of these documents, they
16 would have been produced immediately. In
17 order to remedy this situation, we are
18 reviewing all of the material on the CD-ROM
19 and will provide to you all responsive
20 records that are not subject to privilege as
21 soon as possible.
22

23 From our initial review, it is our opinion
24 that the records are of only marginal
25 relevance in the sense that they do not
26 provide significant information about the
27 RCMP media relations issues canvassed with
28 Sgt. Lemaitre, Cpl. Carr and Supt. Rideout
29 while they testified. Nevertheless, out of
30 an abundance of caution and in keeping with
31 Canada's support for the Inquiry, we felt it
32 important to provide this material to you as
33 soon as possible notwithstanding the
34 unfortunate timing.
35

36 As I advised you on the telephone, however,
37 there is one particular document we would
38 like to draw to your attention: an e-mail
39 dated November 5, 2007 from C/Supt. Dick Bent
40 to A/Comm Al Macintyre titled "Media Strategy
41 - Release of the YVR Video". A copy is
42 attached.
43

44 While the e-mail contains no information that
45 is directly relevant to the media relations
46 issues canvassed by the Inquiry during the
47 hearings, it does contain the following

1 sentence:
2

3 "Finally, spoke to Wayne and he
4 indicated that the members did not
5 articulate that they saw the symptoms
6 of excited delirium, but instead had
7 discussed the response en route and
8 decided that if he did not comply that
9 they would go to CEW."

10
11 As you know, the evidence before the Inquiry
12 was to the effect that the RCMP members had
13 no "plan" of any kind with respect to the
14 call they responded to on October 14, 2007.
15 However, if the Commission is interested in
16 obtaining further information about this
17 e-mail, we would be pleased to discuss with
18 you how best this can be accomplished.
19

20 Thank you for your understanding and please
21 accept our sincere apologies for this
22 oversight.
23

24 Yours sincerely,
25 Jan Brongers
26 General Counsel,
27 B.C. Regional Office
28

29 And I should tell you that the phone call referred
30 to was that afternoon at about 2:30 p.m., June 16,
31 and that letter was sent shortly after.

32 Now, I should say as well, Mr. Commissioner,
33 that if counsel from the Department of Justice
34 wishes to make further comment, counsel should
35 feel free to do so when I am finished.

36 Mr. Commissioner, let me point out what I
37 consider to be the significance of the e-mail in
38 the context of these hearings.

39 Since I received this e-mail, I've reviewed
40 the relevant testimony before you of the four RCMP
41 officers who attended the Mr. Dziekanski incident.
42 From that review, I think it is open to you to
43 conclude, number one, they had no discussions with
44 each other while en route to the airport.

45 Number two, they did not develop a plan of
46 action before arriving at the airport.

47 Number three, the conducted energy weapon was

1 deployed in accordance with RCMP policy and their
2 training.

3 On its face, the e-mail appears to tell a
4 significantly different story. Number one, the
5 officers did have discussions with each other
6 while en route to the airport.

7 Next, they did formulate a plan of action
8 before arriving at the airport.

9 And third, they were contemplating deployment
10 of the conducted energy weapon if Mr. Dziekanski
11 did not comply, which might not be in accordance
12 with RCMP policy and training.

13 And I refer there to the contents of the
14 e-mail with the words: The members "instead had
15 discussed the response en route and decided that
16 if he did not comply that they would go to CEW."

17 The other relevance of this e-mail, Mr.
18 Commissioner, is that it indicates that by
19 November 5, 2007, three weeks after Mr.
20 Dziekanski's death, the officer in charge of IHIT
21 and two of the most senior officers in E Division
22 had information suggesting that the four officers
23 developed a plan en route to the airport to use
24 the conducted energy weapon against Mr. Dziekanski
25 if he did not comply.

26 As far as I'm aware, there is nothing in the
27 other materials this Commission has received from
28 the RCMP to this effect.

29 Mr. Commissioner, let me make it very clear.
30 The statements contained in the e-mail are
31 hearsay. Chief Superintendent Bent is telling his
32 superior what Superintendent Rideout told him. At
33 this point in time, I have no way of knowing if
34 the statements are accurate and, if they are, the
35 source of the information or why this information
36 was not disclosed to this Commission much earlier.
37 But it did come from a very senior officer.

38 Having said that, I am satisfied that the
39 statements contained in this e-mail must be
40 investigated. Mr. Commissioner, as I said at the
41 outset of this inquiry, underlying any discussion
42 is the question of the need to get to the truth of
43 what happened and to determine the events and
44 circumstances surrounding the death of Mr.
45 Dziekanski.

46 Subject to your direction, I propose, as
47 Commission counsel, to take the following actions.

1 First, inquire into the circumstances
2 surrounding the drafting of this e-mail.

3 Next, determine whether there is any other
4 documentary evidence or e-mail within the
5 possession of the RCMP relevant to this issue.

6 Next, convene additional evidentiary hearings
7 to hear from officers Rideout, Bent and Macintyre
8 respecting this matter.

9 And, depending on the outcome of those
10 actions, and in the interest of fairness, either
11 recall the four RCMP officers or give them an
12 opportunity to respond.

13 I wish to speak to the timing of the
14 disclosure. The RCMP provided it and apparently
15 numerous other documents to the Department of
16 Justice just prior to Sergeant Lemaitre and
17 Corporal Carr testifying before you in late April.

18 You will remember that their testimony
19 related to the RCMP's media relations activities
20 following Mr. Dziekanski's death. While this
21 e-mail does relate to the media relations issue,
22 it goes well beyond that and deals with a crucial
23 aspect of this Commission's inquiries: conduct of
24 the four RCMP officers prior to and during Mr.
25 Dziekanski's death.

26 It has relevance far beyond the media
27 relations issue and should have been disclosed
28 much earlier, certainly before the four officers
29 testified in February and March.

30 As a result, I have a concern as to whether
31 or not the Commission has in fact received full
32 disclosure of all information in the possession of
33 the RCMP that may bear on the issues in this
34 inquiry.

35 I'm going to suggest to you that you may wish
36 to have the benefit of some clear and unequivocal
37 evidence from a very senior member of the RCMP
38 that all reasonable steps have been taken by the
39 RCMP to locate any material of any kind that may
40 be relevant to the issues before you and to
41 further confirm that all relevant information has
42 finally been provided.

43 Mr. Commissioner, this is what late
44 disclosure does. It results in a complete
45 disruption of the process, which, as you know,
46 Mr. Commissioner, you and your counsel have taken
47 every possible step to prevent from occurring. We

Submissions by Mr. Vertlieb

Submissions by Ms. Roberts (for Government of Canada)

1 do not want this to happen again. We will need
2 complete disclosure and complete assurances of
3 complete disclosure.

4 Closing oral submissions are scheduled to
5 begin today and continue until next Tuesday and
6 Wednesday. With great reluctance, I have come to
7 the conclusion that closing submissions should be
8 postponed until your counsel's investigations are
9 complete and any necessary additional evidentiary
10 hearings are held. If others take a different
11 view, I've advised them that they should make
12 their submissions to you this morning.

13 I wish to be sure that before we reconvene,
14 we have all of the information necessary to allow
15 you to do the important work you've been asked to
16 do and have been faithfully doing since January of
17 this year.

18 That's all I wish to say at this time. Thank
19 you.

20 MS. ROBERTS: Mr. Commissioner, as we are all now
21 aware, counsel for Canada -- we have overlooked
22 providing documents earlier in response to a
23 request from Commission counsel for documents
24 relating to the RCMP media strategy. Mr. Brongers
25 and I learned about this omission on Monday. We
26 advised Commission counsel, as you've heard, on
27 Tuesday and we, in fact, provided those documents
28 to Commission counsel on a CD-ROM on Wednesday.

29 On behalf of the Government of Canada, I
30 would like to sincerely apologize.

31 THE COMMISSIONER: Ms. Roberts, do you want some time?

32 MS. ROBERTS: No, sir, I'd like to get this done.

33 THE COMMISSIONER: All right. Thank you.

34 MS. ROBERTS: Thank you. I would like to apologize to
35 you, Mr. Commissioner, to Commission counsel, to
36 counsel for all the participants and to the
37 participants themselves for the inconvenience this
38 has caused.

39 Canada continues, as it has all along, to
40 fully support the work of this Commission, and I
41 do say it was by oversight that this occurred.

42 I would like to add that both the Canada
43 Border Services Agency and the RCMP have been
44 fully cooperative in providing documents to us for
45 disclosure purposes. In this, they have, of
46 course, been guided by counsel, and any concerns
47 about document production and timing properly lie

1 with counsel and not these agencies.

2 As you've heard, one of the documents that
3 was overlooked was an RCMP e-mail that we
4 anticipated would be of interest to the
5 Commission. That was the e-mail from Chief
6 Superintendent Bent to Assistant Commissioner
7 Macintyre. If it's of interest, I can explain the
8 reporting structure of the RCMP, but I won't for
9 the moment.

10 The e-mail, as you've heard, was provided
11 separately to Commission counsel and to counsel
12 for all of the participants on Tuesday. We
13 searched the disk that we had been provided by the
14 RCMP and we did not locate any other e-mails that
15 contained similar information. It is, as you have
16 heard, the third paragraph of the e-mail that is
17 of interest. Mr. Vertlieb has read that out and I
18 won't repeat it.

19 The Wayne referred to in the e-mail is of
20 course Superintendent Rideout, from whom you heard
21 earlier, and the CEW is of course a conducted
22 energy weapon or Taser.

23 As a result of reviewing this e-mail, we
24 contacted and interviewed both Chief
25 Superintendent Bent and Assistant Commissioner
26 Macintyre to find out what they knew about the
27 e-mail, and I am able to report as follows.

28 Chief Superintendent Bent explained that the
29 e-mail was sent because Deputy Commissioner Bass,
30 who's the head of the E Division of the RCMP, had
31 asked whether the members had used the conducted
32 energy weapon because they believed Mr. Dziekanski
33 was exhibiting signs of excited delirium. That
34 was the beginning of the e-mail chain. Chief
35 Superintendent Bent understood that the question
36 was being asked because RCMP policy at that time
37 suggested the use of CEWs, or conducted energy
38 weapons, might be appropriate to restrain persons
39 who were exhibiting signs of excited delirium so
40 that restraint could be effected as soon as
41 possible and medical attention then sought.

42 Chief Superintendent Bent then sent an e-mail
43 through the chain of command down the line to
44 Chief Superintendent McGowan asking for a synopsis
45 of the accounts given by the four members who
46 attended the airport and especially why the CEW
47 member - that would be in this case Constable

1 Millington - went to Taser right away. He then
2 evidently spoke with Superintendent Rideout, who
3 advised the members did not report observing signs
4 of excited delirium. His e-mail then goes on to
5 indicate that he understood Superintendent Rideout
6 to say that the members, as we've heard, had
7 discussed the response en route and decided that
8 if he did not comply, they would go to CEW.

9 At this time, Chief Superintendent Bent has
10 no recollection of the conversation with
11 Superintendent Rideout that is referred to in the
12 e-mail. He advises that given the flurry of
13 activity at the time - and this was in the time
14 leading up to the return of Mr. Pritchard's video
15 and discussions about what, if anything, the RCMP
16 would say about it in the media - he tells me now
17 that it's entirely possible that he misunderstood
18 what was said to him. He has, as a result of
19 these inquiries, checked other e-mails sent and
20 received around that time, and he had no other
21 e-mails that shed any light on this.

22 He has also checked and has no notes of any
23 conversation with Superintendent Rideout. He has
24 also checked and has told me that he did not
25 receive any other information suggesting the
26 members had formulated a plan to use the conducted
27 energy weapon prior to arriving at the airport.

28 That is the recollection and the evidence of
29 Chief Superintendent Bent at this time with regard
30 to the e-mail.

31 I've also interviewed Assistant Commissioner
32 Macintyre and he has advised as follows. Again,
33 it is his evidence that the question originated
34 with Deputy Commissioner Bass. He passed on the
35 question to Chief Superintendent McGowan and
36 copied others, including Chief Superintendent
37 Bent. He did receive the e-mail that's been
38 discussed from Chief Superintendent Bent.

39 He has also checked his e-mails and notes and
40 materials, and he received no other information
41 suggesting that the members had discussed a
42 response en route or that they had a plan. He has
43 checked, and he did not respond to this e-mail
44 from Chief Superintendent Bent.

45 I understand that Superintendent Rideout was
46 also interviewed and I understand that Mr. Pringle
47 will speak to Superintendent Rideout's

1 recollection.

2 As you are aware and as Mr. Vertlieb has
3 pointed out, the four RCMP members who attended
4 the airport all testified that they did not
5 formulate a plan prior to their encounter with
6 Mr. Dziekanski. Indeed, they were criticized for
7 not formulating a plan. The only thing that was
8 said was Constable Bentley's question as to
9 whether any of the officers was carrying a Taser
10 and Constable Millington's response.

11 As a result of discovering this e-mail - or
12 our discovering it - the IHIT file has been
13 searched and there is no evidence in the IHIT file
14 that the members formulated a plan to use the
15 Taser prior to the encounter with Mr. Dziekanski.

16 It is our conclusion from these interviews
17 that Chief Superintendent Bent must have
18 misunderstood information provided to him by
19 Superintendent Rideout.

20 However, if you wish to hear from Chief
21 Superintendent Bent and/or Assistant Commissioner
22 Macintyre, we have asked them to stand by so as
23 not to delay the inquiry unnecessarily. They are
24 available to attend the inquiry to testify about
25 the e-mail on ten minutes' notice. They will,
26 however, not be able to testify today about other
27 matters without an opportunity to prepare and
28 consult counsel.

29 With regard to the issue of document
30 disclosure generally, once Canada submitted an
31 application for and was granted participant
32 status, Canada provided RCMP documents to
33 Commission counsel. It shared the reports to
34 Crown counsel that have been prepared and the
35 evidence generated by the IHIT investigation,
36 including statements, photographs, videotapes,
37 expert reports, and records seized from other
38 agencies.

39 It was my understanding - and this has been
40 fortified by comments that you have made during
41 the inquiry and in your recent ruling and response
42 to the members' lawyers' application - that it is
43 not part of your mandate to examine the IHIT
44 investigation itself. For that reason, documents
45 generated by the IHIT investigators during the
46 course of the investigation, such as e-mails, task
47 reports and notebook entries, were not shared with

Submissions by Ms. Roberts (for Government of Canada)
Submissions by Mr. Pringle (for Superintendent Wayne Rideout)

1 Commission counsel, except in the case of
2 Constable Hoivik, the exhibit officer, where
3 Commission counsel expressly requested his notes,
4 and these were produced as they were relevant to
5 his evidence about the seizure of exhibits and his
6 sketch of the scene.

7 In addition to the evidence generated by the
8 IHIT investigation, Commission counsel requested
9 and were provided with the media advisories
10 prepared by Sergeant Lemaitre and Corporal Carr,
11 the notes made by Corporal Carr, and the notes and
12 e-mails of Superintendent Rideout. It was
13 strictly by oversight that they were not provided
14 earlier with the other RCMP media strategy
15 documents.

16 It is our understanding that we have now
17 provided the Commission with all of the CBSA and
18 RCMP documents that are relevant to your mandate.
19 That being said, we welcome hearing from
20 Commission counsel if you feel there are other
21 kinds of documents that would be of assistance to
22 you in preparing your report. Canada is now and
23 has always been fully supportive of the inquiry
24 and will do its utmost to assist you.

25 Thank you.

26 MR. PRINGLE: Mr. Commissioner, my name is Alec Pringle
27 and I'm representing Superintendent Rideout. And
28 I was hoping that I wouldn't have to introduce
29 myself in circumstances such as this, but I'm
30 ready to deal with this situation.

31 THE COMMISSIONER: Mr. Pringle, I think that as a
32 formality I should grant you status.

33 MR. PRINGLE: Oh, thank you, sir.

34 As you've heard, sir, this e-mail is hearsay.
35 Mr. Vertlieb has pointed that out. My client,
36 Superintendent Rideout, was not copied on the
37 e-mail and was not aware of its existence until
38 last Friday. And this e-mail is a
39 misunderstanding. After I became aware of Mr.
40 Brongers' letter, I consulted with Superintendent
41 Rideout and obtained a response from him which I
42 forwarded on to the Commission, and I'd like to
43 read Superintendent Rideout's response after he
44 had a chance to review this e-mail. He states as
45 follows:

46
47 I had not seen Chief Bent's E mail until last

1 Friday 2009-06-17. I was made aware of the
2 E mail through senior managers who had been
3 contacted by DOJ. I have again reviewed my
4 archived E mails pertaining to this case and
5 I do not have this E mail in my possession.
6 The E mail was not sent to me or copied to
7 me.
8

9 With respect to the information contained
10 within the E mail I had several conversations
11 with Chief Bent during this period. That said
12 neither myself or the IHIT investigation has
13 or has ever had any information that suggests
14 that the four involved members had a plan
15 while en route to YVR prior to their
16 encounter with Mr. Dziekanski. Neither myself
17 or the IHIT investigation has or has ever had
18 any information that suggests that the four
19 involved members discussed using the CEW at
20 any point prior to arrival at the airport.
21 There is some information that one involved
22 member use the term "do you have a taser" as
23 they approached Mr. Dziekanski at the
24 airport. The exact words used are uncertain.
25 This information exists within the
26 investigation and I believe is in evidence at
27 the Commission.
28

29 I did not produce as described in Chief Bents
30 E mail a synopsis of the members actions.
31

32 In my view the information contained in Chief
33 Bent's E mail and attributed to me is a miss
34 understanding of a conversation I had with
35 him and it does not represent what I
36 understood to be correct at the time and what
37 the investigation ultimately determined
38

39 Mr. Commissioner, we all know about e-mails, how
40 people - this is an internal e-mail - how people
41 quickly do them and push the "send" button. This
42 e-mail, unfortunately, is just simply a
43 misunderstanding. I'm prepared to produce
44 Superintendent Rideout today if you would like. I
45 also can get him down here shortly, if you would,
46 and clear up this matter and not delay this
47 matter.

Submissions by Mr. Pringle (for Superintendent Wayne Rideout)

Submissions by Mr. Hira (for Cst. Kwesi Millington)

1 This is hearsay, and you've heard what
2 Superintendent Rideout will say about it. And you
3 know, what's in that last paragraph of the e-mail
4 is just inconsistent with everything else you've
5 heard. And I appreciate one has to have a concern
6 after receiving an e-mail like this, but one also
7 has to recognize that e-mails such as this that
8 are internal are done quickly and perhaps
9 sometimes without realizing that it could be
10 something that is more significant than it is.

11 And I respectfully suggest that if you would
12 like, we could have Superintendent Rideout and
13 Chief Superintendent Bent appear and clear this
14 matter up. Thank you.

15 THE COMMISSIONER: Thank you, Mr. Pringle.

16 MR. HIRA: Mr. Commissioner, after receiving the e-mail
17 on late Tuesday afternoon, I naturally sought
18 instructions. I'd like to read to you an e-mail
19 that I sent at 2:48 p.m. on January (sic) the 17th
20 to my colleagues, and I have one comment after
21 reading the e-mail.

22
23 Dear Colleagues,

24
25 I now have instructions.

26
27 Chief Superintendent Bent must be mistaken.
28 No such conversation occurred.

29
30 I am opposed to the tendering of the e-mail.
31 Should the Commission wish to pursue this
32 implausible tangent of the 4 police officers
33 formulating a plan to use the taser as soon
34 as possible, viva voce evidence will have to
35 be adduced. I look forward to receiving the
36 ECOMM transmissions supporting the plan. No
37 doubt the synopsis referred to in the e-mail
38 will be produced.

39
40 At the very least the Commission will have to
41 reopen hearings and evidence from Chief
42 Superintendent Bent, Superintendent Rideout,
43 the IHIT investigator who developed this
44 information, Richmond RCMP communications,
45 and the 4 officers will be required. At the
46 end of this fanciful exercise, the obvious
47 will be evident: Chief Superintendent Bent

Submissions by Mr. Hira (for Cst. Kwesi Millington)
Submissions by Mr. Butcher (for Cst. Bill Bentley)

1 is mistaken.
2

3 And I now want to make another comment, which
4 is to examine the four plausible ways that this
5 plan could have been formed.

6 One, at 1:26, at the time of the
7 transmission, the four officers got together and
8 said, "Let's use a Taser as soon as possible."

9 Two, while in their cars, they got on the
10 radio and said the same, in which case we should
11 have the radio transmissions.

12 Three, in the course of this short minute- to
13 two-minute drive, the four officers were able to
14 get on a cell phone, have a four-way cell phone
15 conversation, and form this plan.

16 Four, somewhere along the line, they met in
17 the short drive and formed this plan.

18 And where the plan falls apart is the moment
19 they enter the terminal, Officer Millington says
20 something to the effect, "Does somebody have a
21 Taser?" It just makes -- sorry, Officer Bentley
22 says, "Does somebody have a Taser?" It just makes
23 no sense, in my submission.

24 What is happening here is that reputations
25 are being damaged.

26 MR. BUTCHER: Mr. Commissioner, the e-mail is at least
27 double hearsay. I provided the e-mail to my
28 client upon receipt and spoke to him shortly
29 thereafter. He also says simply that Chief
30 Superintendent Bent's comments are not accurate,
31 and he absolutely denies being a party to any such
32 conversation or plan. He stands by his evidence.

33 As Commission counsel has now raised this
34 matter in the public forum, there is now a dark
35 cloud over my client and all of the other officers.
36 I now would welcome Commission counsel's
37 investigations and would ask that the RCMP deliver
38 the whole file, every piece of paper, every
39 electronic record in the file to Commission
40 counsel and that Commission counsel then deliver
41 those materials to all other counsel, at least
42 counsel for the officers, so that we, for the
43 officers, can address this issue head on and prove
44 definitively for all time that Chief
45 Superintendent Bent is wrong. We ask for that
46 opportunity. I at least ask for that opportunity.
47 It would be my view that that is not something

Submissions by Mr. Harris (for Cpl. Benjamin Robinson)

Submissions by Mr. Beaubier (for Cst. Gerry Rundel)

Submissions by Mr. Rosenbloom (for Government of Poland)

Submissions by Mr. Kosteckyj (for Zofia Cisowski)

Ruling

1 that can take place quickly and that we should not
2 rush to calling these officers but we should
3 approach this carefully and diligently. Thank
4 you.

5 MR. HARRIS: Mr. Commissioner, I echo my learned
6 friend, Mr. Butcher's, comments. I too have had a
7 conversation with my client. He adamantly denies,
8 one, being a party to any such plan as suggested,
9 and two, he adamantly denies any knowledge of any
10 such plan, and three, he stands by the evidence
11 that he provided under oath before you, Mr.
12 Commissioner. Thank you.

13 MR. BEAUBIER: Mr. Commissioner, I would echo Mr.
14 Butcher's position and state for the record I have
15 also spoken to my client. He adamantly denies any
16 such allegation with respect to this e-mail. He
17 made the comment that he has no idea where Officer
18 Bent would get this information. He stands by his
19 evidence. Thank you.

20 THE COMMISSIONER: Anybody else?

21 MR. ROSENBLOOM: Mr. Commissioner, simply, on behalf of
22 my client, to indicate that my client fully
23 supports the submission of Commission counsel as
24 he has made his proposal to you. Thank you.

25 MR. KOSTECKYJ: I also support the submission made by
26 Commission counsel at this point.

27 THE COMMISSIONER: Well, gentlemen, I'm obviously
28 appalled, and I'm going to need a little time.
29 Accordingly, we'll stand down for a bit. I can't
30 tell you how long, just to be at the ready. I
31 don't think it will be more than half an hour or
32 so. We'll adjourn, then.

33 THE REGISTRAR: The hearing will now adjourn briefly.

34
35 (PROCEEDINGS ADJOURNED)

36 (PROCEEDINGS RECONVENED)

37
38 THE REGISTRAR: This hearing is now resumed.

39 THE COMMISSIONER: I have before me an application by
40 Commission counsel to postpone the closing oral
41 submissions that were scheduled to begin this
42 morning.

43 At the outset I want to comment on the timing
44 of the disclosure of this e-mail. Without
45 expressing any views about the content of the
46 e-mail, I find the delay in disclosing this
47 material to the Commission to be appalling. It

1 was evidence that was highly relevant to the
2 examination of the four RCMP officers who attended
3 the scene at the airport. At the very least, it
4 should have been disclosed to the Commission
5 before those four officers testified.

6 I have listened with interest to the
7 submission of Ms. Roberts and counsel for other
8 participants. I accept Ms. Roberts' apology for
9 the late disclosure of the e-mail. Explanations
10 have been given respecting the contents of the
11 e-mail and the circumstances surrounding its
12 drafting. I am satisfied that contents of this
13 e-mail go to the heart of this inquiry's work.

14 I make no comment on the accuracy of the
15 statements contained in the e-mail. As several
16 counsel have observed, the statements are hearsay.
17 Having said that, I am satisfied that the contents
18 of this e-mail must be investigated as Mr.
19 Vertlieb has proposed. This will take time.
20 Clearly we cannot proceed today with closing
21 submissions.

22 I note that counsel for several participants
23 urge a thorough investigation of this matter. I
24 agree. I agree with Mr. Vertlieb that further
25 evidentiary hearings may be required, at which
26 officers Rideout, Bent, Macintyre, and possibly
27 others will be required to testify. It must be
28 obvious to all that I make this ruling with the
29 very greatest of reluctance, most particularly
30 having regard to the time and effort that is put
31 in to make sure that these proceedings proceed in
32 a timely and efficient manner.

33 For these reasons, I order that, one, the
34 closing submissions scheduled to begin today be
35 postponed, that Mr. Vertlieb conduct the
36 investigations he considers necessary and
37 appropriate, and further, evidentiary hearings to
38 begin on Tuesday, September the 22nd, 2009, and if
39 counsel can arrange an earlier date, that would be
40 appreciated.

41 I make this late date because of the
42 submissions of Mr. Vertlieb and also because, of
43 course, we all here thought that we had a set
44 schedule. And I know perfectly well that people
45 have made plans over the summer, and indeed plans
46 concerning their practice.

47 Accordingly, I make those orders.

1 MR. VERTLIEB: Thank you, Mr. Commissioner. Just a
2 couple of points. One, I just want to be clear to
3 everybody here that even -- and I thought it was
4 apparent from the discussion I had earlier with
5 you, Mr. Commissioner. But even if Department of
6 Justice had provided the material immediately when
7 they got it in April, it didn't change the
8 underlying problem that you adverted to. I just
9 wanted to make that comment.

10 And secondly, in terms of written
11 submissions, what I would like to do, with your
12 leave of course, is to return the written
13 submissions that we had received from counsel, who
14 had dutifully prepared those submissions in
15 pursuance of your closing argument instructions.
16 So if you don't mind, I'd like to return those
17 because they obviously should not be dealt with in
18 a formal way.

19 And other than that, that would take care of
20 the matters for today, Mr. Commissioner.

21 THE COMMISSIONER: Yes. And when we return, we'll have
22 to make some provision for the submissions to be
23 exchanged as prior. Very difficult to do that at
24 this early stage.

25 MR. VERTLIEB: Mr. Commissioner, I'm sure that -- we've
26 had the cooperation of all counsel. They've
27 worked very hard together in a good way. I'm sure
28 we can work that out. If we can't, then we can
29 come before you and work through something.

30 THE COMMISSIONER: Well, yes. And even Judge
31 Silverman.

32 MR. VERTLIEB: Agreed.

33 THE REGISTRAR: Mr. Commissioner, I will have to
34 discuss with the Federal Court and reserve this
35 courtroom.

36 THE COMMISSIONER: Yes. That is another problem we're
37 going to face as to where we will be able to
38 reconvene. The powers that be have been very
39 cooperative in allowing us to use these premises.
40 As probably counsel are aware, I'm very conscious
41 of the amount of public funds that are being spent
42 here. And fortunately there is no money flowing
43 in order to pay for any rent here, but that would
44 not be the case if we have to convene elsewhere.
45 So I'll leave that for the moment. And of course
46 counsel will be informed.

47 THE REGISTRAR: The hearing is now adjourned until

Tuesday, September 22nd, 2009.

(PROCEEDINGS ADJOURNED TO SEPTEMBER 22, 2009)

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