

**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.

May 6, 2009

PROCEEDINGS AT
HEARING (DAY 48)

ORIGINAL

McEachern & Associates
2390 Kensington Avenue
Burnaby, B.C. V5B 4E2
Phone: (604) 299-3595; Fax: (604) 299-3545
Toll-free: 1-866-366-2202

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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)

Counsel for Government of Canada:	J. Brongers, H. Roberts
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 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
Registrar:	L.N. Giles
Court Recorder:	P. Kealy, C.V.R., C.M.
Transcriber:	P. Neumann

1
Supt. Wayne Rideout
In chief by Mr. Vertlieb

Vancouver, B.C.
May 6, 2009

1
2
3
4 THE REGISTRAR: The hearing is now resumed.

5 THE COMMISSIONER: Good morning, all.

6 MR. VERTLIEB: The next witness is Superintendent Wayne
7 Rideout. Oh, there he is. Thank you.

8 THE REGISTRAR: Good morning, sir.

9 THE WITNESS: Good morning.

10 THE REGISTRAR: Before you are seated, do you wish to
11 be sworn?

12 THE WITNESS: Yes, please.
13

14 SUPT. WAYNE RIDEOUT, a
15 witness, sworn.
16

17 THE REGISTRAR: Will you state your full name, please.

18 A My name is Wayne Eric Rideout. I am a peace
19 officer and a member of the Royal Canadian Mounted
20 Police.

21 THE REGISTRAR: Thank you, you may be seated. Counsel.

22 MR. VERTLIEB: Thank you, Mr. Giles.
23

24 EXAMINATION IN CHIEF BY MR. VERTLIEB:
25

26 Q Superintendent, please take us through your
27 background with the RCMP.

28 A Yes, Mr. Commissioner. I currently have 27 years
29 of service with the Royal Canadian Mounted Police,
30 from the spring of 1992 to June of 2008. I have
31 been with the Major Crime -- various Major Crime
32 Sections throughout the Lower Mainland. And from
33 the June of 2003 until June of 2008, I was a
34 member of the Integrated Homicide Investigation
35 Team, the last four-and-a-half years of that as
36 the Officer in Charge of the Integrated Homicide
37 Investigation Team.

38 Q When did you achieve the rank of Superintendent?

39 A In the spring of 2007.

40 Q And just so we understand the hierarchy, what
41 person would be above you in rank in British
42 Columbia?

43 A The next rank in the Royal Canadian Mounted Police
44 above Superintendent is Chief Superintendent.

45 Q And who was that in '07 and '08?

46 A Well, there's a number of them, sir, in the
47 province. My direct supervisor at the time was

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1 Chief Superintendent Dale McGowan.
2 Q M-c-capital-G, McGowan?
3 A That's correct.
4 Q And who is next above the Chief Superintendent in
5 rank?
6 A Assistant Commissioner.
7 Q And who was that at the time '07-'08?
8 A Assistant Commissioner Peter German was the
9 Assistant Commissioner and District Officer, the
10 Officer in Charge of the Lower Mainland District.
11 Q And the person in charge of "E" Division in '07
12 and '08, please, who was that?
13 A The Commanding Officer is Deputy Commissioner Gary
14 Bass.
15 Q And I just want to ask you about Al Macintyre, his
16 rank, please, in '07-'08.
17 A His position at that time, sir, I'm not sure
18 exactly when he went into that position but it
19 currently and for some time has been the Criminal
20 Operations Officer for the Province of British
21 Columbia.
22 Q Would he be below or above Gary Bass?
23 A One below, sir.
24 Q These are names that appear in e-mails that we're
25 going to mark as an exhibit shortly, that's why I
26 want to take you through that.
27 A Yes, sir.
28 Q So you were in charge of IHIT and your rank was
29 Superintendent at October of 2007?
30 A That's correct.
31 Q We've heard about a briefing that took place at
32 Richmond detachment in the morning of October 14,
33 in other words, shortly after Mr. Dziekanski
34 passed away. You're familiar with the briefing
35 that took place, although you were not at that
36 briefing; is that correct?
37 A That is correct, sir.
38 Q You have never spoken to the four police officers
39 involved in the Dziekanski incident who attended
40 at the airport?
41 A I have not spoken to them or met them.
42 MR. VERTLIEB: Now, I wanted to ask you about these e-
43 mails, and maybe this is a good time to mark them.
44 Just for your benefit, Mr. Commissioner, late
45 yesterday we received a series of e-mails from Ms.
46 Roberts and we have them in chronological order,
47 we believe that we've been able to do that, and

1 our office, your staff has numbered the pages at
2 the bottom just to make it easier for reference.
3 So we have those here for you. Unfortunately,
4 when they were sent out to all of our colleagues,
5 because it was late in the day and they were given
6 in hardcopy and not easily -- we had to scan them,
7 your people had to scan them, my colleagues of the
8 bar wouldn't have the page numbers on. We've
9 tried to accommodate as best we can in the very
10 short working time, but we'll just have to deal
11 with this the best way we can.

12 MS. ROBERTS: Mr. Commissioner --

13 MR. VERTLIEB: So I have two copies of the e-mails, one
14 for the -- for Mr. Giles and one for you, Mr.
15 Commissioner.

16 MS. ROBERTS: Mr. Commissioner, not all of these e-
17 mails are directly relevant to the areas on which
18 you advised you wished to hear from Superintendent
19 Rideout. I'd ask that we only mark those e-mails
20 that are referred to during his evidence and that
21 are relevant to what you wish to hear from. I
22 have no objection to you viewing them, but once
23 they're marked an exhibit, of course, they go into
24 the public domain, and not all of them are
25 strictly relevant. I have been generous in terms
26 of what I produced to my -- my friend, Commission
27 counsel.

28 THE COMMISSIONER: All right, thank you very much, Ms.
29 Roberts. We'll take the usual course we do in the
30 trial procedure.

31 MR. VERTLIEB:

32 Q So now we want to just talk about the media
33 approach to the case. We've heard from Sergeant
34 Lemaitre, and you know that he was here and gave
35 evidence to the Commissioner.

36 A Yes, I do.

37 Q And you know that Corporal Carr was also here and
38 gave evidence. You know that.

39 A Yes, I do.

40 Q What was the reason that Corporal -- that Sergeant
41 Lemaitre was involved initially, as far as your
42 understanding goes?

43 A Well, my understanding, which of course I had
44 learned later, was that Corporal Carr had
45 contacted Sergeant Lemaitre because the incident
46 had occurred at the YVR International Airport, and
47 because of the potential profile of the airport

1 incident, felt it perhaps was worthy of calling in
2 the "E" Division Communications in person.
3 Q And then we heard from Corporal Carr that after a
4 couple of days IHIT took back the media side of
5 the case, and he used his own language, but it
6 came through clearly to us here in the hearing
7 room that Corporal Carr, as a member of IHIT, was
8 going to take over all media. That was under your
9 direction?
10 A Yes, it was.
11 Q Now, what was -- was the reason for that because
12 it was impractical for Lemaitre being in Vancouver
13 to deal with IHIT in Surrey, or is that one of the
14 factors?
15 A That would not be my understanding of the primary
16 reason for that, sir.
17 Q Well, let me just put it this way. Corporal Carr
18 told us, as I understand it, I could be wrong but
19 I think I've got it correctly, there were two
20 reasons that IHIT took over the media approach and
21 taking away, as it were, from Sergeant Lemaitre.
22 One was it was impractical because Lemaitre is in
23 Vancouver and IHIT's in Surrey. Now, is IHIT in
24 Surrey?
25 A That's correct, yes.
26 Q Okay. Second thing is there was a desire to stop
27 media release on evidentiary issues and facts, and
28 start the media approach based on the process.
29 A The latter part of your comments are correct, sir.
30 We as a homicide unit do not, should not, or have
31 a duty to not discuss evidence in the course of
32 our media releases. Corporal Carr is attached to
33 IHIT as our spokesperson and, in my view, should
34 have been the primary media point person on this
35 case. So when I became aware that releases were
36 taking place through other sources, I put a stop
37 to it.
38 Q Okay. And you became aware then very early on
39 that there had been incorrect information provided
40 to the public?
41 A Yes.
42 Q Did that concern you?
43 A Yes.
44 Q So what did you do about that?
45 A We analyzed the situation or I analyzed the
46 situation with respect to the information that had
47 been released. That information should not have

1 been released into the public domain at that time,
2 and I'd like to explain the reasons why that is
3 important, if that's all right.

4 Q Please.

5 A Early -- in the early stages of any investigation
6 we are gathering information, we are gathering
7 evidence, we are trying to collectively as a group
8 of investigators find out what has taken place,
9 what has happened, and piece that together. It is
10 on a very rare occasion that we have a good handle
11 on that information early on. It takes days, it
12 takes weeks to really accumulate and get an
13 understanding of what has taken place. It is not
14 good practice to be releasing specific pieces of
15 information both for -- that may ultimately result
16 in criminal prosecution but we rarely have our
17 facts straight early on. And that is really a
18 standard protocol that is applied by IHIT in all
19 cases, that we don't talk about that evidence and
20 we certainly don't make comments around specific
21 evidence early on.

22 Q Having had the evidence, though, commented on, and
23 having some of those statements from a person in
24 authority, such as Sergeant Lemaitre, be
25 incorrect, I'd like you to tell us your decision-
26 making process, either up the line or down the
27 line, about correcting that information.

28 A Certainly, sir, and my answer will be somewhat
29 multi-faceted, but if you'll allow me. The
30 structure that exists in this -- this province and
31 elsewhere in the country is one we refer to as a
32 major case management protocol. While I was not
33 the original team commander, I certainly became
34 the team commander of this investigation
35 approximately one month after the investigation
36 commenced. A team commander is a person with
37 investigative oversight, management oversight of a
38 specific investigation. That individual is
39 responsible for what we refer to as the speed,
40 flow and direction of the investigation, and the
41 continuity, containment, the guardianship of
42 evidence for presentation to whatever oversight
43 body that case may go to.

44 In this case, of course, our first thought
45 process was advancing this case as it unfolded to
46 a Crown counsel and perhaps a criminal court. So
47 we, as -- as when we were tasked with this

1 investigation, IHIT's responsibility was to
2 conduct an independent investigation of the death
3 at YVR, the death of Robert Dziekanski at YVR.
4 That inherently puts us in a somewhat of a
5 difficult position with respect to media. We must
6 provide information to the public. The public is
7 -- public and media are extremely, if you will for
8 a lack of a better term, hungry for information.
9 But at the same time we must guard evidence, we
10 must protect that evidence for presentation to a
11 court for a prosecutor, and can be and have been
12 criticized for the release of specific pieces of
13 information and evidence that could be the subject
14 of cross-examination review, answer and defence at
15 a criminal trial. So we find ourselves in a
16 somewhat of a difficult position. Again we can be
17 criticized for lack of information, but we can be
18 equally criticized for providing too much
19 information, particularly when it comes to
20 evidence.

21 So the debate became early on was that
22 information had in fact been provided, primarily
23 in this case my understanding was that two cycles
24 of the CEW were -- there was two cyclings of the
25 CEW was the information originally supplied by
26 Sergeant Lemaitre.

27 It was my view early on that we had very
28 little information, and I think that the -- the
29 inherent nature of the application of the CEW, the
30 application of the device, that is designed to be
31 less lethal, to take people into custody in a way
32 that's not in fact meant to harm them, presented
33 some interesting debates and interesting challenge
34 with respect to evidence. So if I can be -- if I
35 can clarify, the actual -- the device itself and
36 the application of that device, really became the
37 centre of any contentious issues or any issues
38 with respect to whether criminal charges were
39 warranted in this case. My point is this, is that
40 the -- the number of cycles, whether the
41 application of those cycles, whether they were in
42 contact or not, whether the use of force was
43 justified or not and what the cause of death were,
44 were highly relevant to the criminal prosecution
45 and the decision on criminal charges. Therefore
46 my decision was that it was -- the actual number
47 and the issues pertaining to the application of

- 1 the device were central to any potential criminal
2 prosecution and there was no way to provide that
3 information without getting into lengthy media
4 debates on that, potentially damaging any criminal
5 prosecution.
- 6 And I hope in that I've answered your
7 question. It was fairly...
- 8 Q And that's a decision you made in consultation
9 with your superiors?
- 10 A I made the decision and I advised my superiors,
11 sir. Certainly there was consultation. There was
12 discussion in general terms about what types of
13 things would be in the media. But as the major
14 case manager, as the team commander, it was
15 ultimately my decision to guard evidence.
- 16 Q I understand that, but just in reviewing some of
17 your e-mail correspondence, there's e-mail
18 correspondence between you and Peter German.
19 You've already told us who he is.
- 20 A Yes.
- 21 Q There's reference to Al Macintyre, you've told us
22 who he is.
- 23 A Yes.
- 24 Q There's reference to Gary Bass, you've told us who
25 he is.
- 26 A Correct.
- 27 Q So the point is, is that when you were doing this,
28 you were clearing your approach with the people
29 above you in the RCMP.
- 30 A I don't agree that I was clearing it with them. I
31 was telling them what my approach and my position
32 on it was, and they agreed with that position.
- 33 Q Right. And stands to reason that as your -- those
34 gentlemen being your superiors, if they disagreed,
35 they could tell you to do something else?
- 36 A It would be a difficult position, in my view, sir,
37 as the major case manager, yes, the RCMP is a --
38 is an organization, everybody has a superior like
39 any -- like any other organization, but if I'm
40 making the calls with respect to the integrity of
41 evidence and process, then ultimately it's a very
42 difficult call for someone above me to start
43 changing that.
- 44 Q Now, Corporal Carr, a number of times, told us
45 about protecting the investigation. Those of us
46 who have done criminal law understand the concept
47 of holdback evidence. And you're familiar with

1 that term, aren't you, holdback evidence?

2 A Yes, I am, sir.

3 Q And that's obviously in some cases you would hold
4 back, for example, the nature of the weapon
5 involved. You wouldn't -- you might not in a
6 certain case want that in the public domain,
7 right?

8 A Absolutely correct.

9 Q You might hold back evidence concerning the
10 clothing that someone was wearing, right?

11 A Possibly.

12 Q Was there any holdback evidence in this case that
13 was of concern to you?

14 A No.

15 Q Can you help us understand what was the concern
16 for the investigation that was a recurring theme
17 about the media approach and not correcting
18 misinformation?

19 A Yes. I think when we talk about the integrity of
20 the investigation, we must talk about integrity of
21 investigation and process. It's the position of
22 the -- the investigators collect the information
23 and the evidence for presentation at, in this case
24 it would have been originally prosecutors to
25 criminal court, or possibly to Coroners court, or
26 subsequently to this Commission. The collection
27 of evidence, particularly early on was, well for
28 example, on the 31st of October I learned that the
29 CEW download had revealed five cyclings of the
30 CEW. I believe it was 31 seconds of electrical
31 current over 40 -- approximately a 45-second
32 period. That does not, in my view, speak to all
33 the facts.

34 At that stage of the investigation I was not
35 in a position to talk about how many of those
36 contacts had been made. There was some evidence
37 to suggest that CEW was not properly performing,
38 at least at that stage. There was some evidence
39 to suggest that -- or that at least two of the
40 five CEW cyclings were in what we refer to as push
41 stun mode. And it's my understanding -- and I am
42 not an expert in the CEW. It is my understanding,
43 sir, that the effects of the CEW in push stun mode
44 are dramatically different than they are in what
45 we refer to as probe mode.

46 So that information is available to us that
47 it's been cycled, but in no way does it speak to

1 how many applications were in contact with Mr.
2 Dziekanski, in no way does it speak to did that in
3 fact cause his death, or was it a factor in his
4 death, and no way does it speak to was the
5 application of that less than lethal device, was
6 it warranted, was it justified, is it -- is it
7 appropriate under the policy, et cetera. And that
8 information that I refer to, the findings of the
9 pathologist -- oh, sorry, the other component that
10 I thought was worthy and important was as I viewed
11 the videotape, I was -- I really wanted to know
12 about Mr. Dziekanski's state prior to the police
13 officers' arrival. You know, I'm sure we've all
14 seen that he was sweating and behaving in a manner
15 that I didn't quite understand and I had questions
16 about that.

17 So in my view, discussing the -- just the
18 cyclings of the CEW without factoring in all the
19 other components, really only paints a partial
20 picture, a very partial picture, and has the
21 potential to contaminate or to disrupt that
22 investigative process, that investigative
23 integrity that we are tasked with being the
24 guardians of.

25 Q Now, at that point that you're discussing your
26 decision-making process, you realize, of course,
27 that the people that were being investigated were
28 the RCMP officers, right? They were the subjects
29 of any potential investigation.

30 A Yes.

31 Q Right. It wasn't Mr. Dziekanski or anybody else?

32 A Well, we investigated all the circumstances, but
33 the four persons that -- I would have to agree,
34 the four persons that were subject of
35 investigation would have been the four officers.

36 Q And so by that -- in that context, you know, of
37 course, that statements had already been taken
38 from those four police officers?

39 A That's correct, sir.

40 Q And there was apparently no interest in any of the
41 things you've told us about re-interviewing those
42 officers. You were content with the written
43 statements or the statements that had been taken.
44 You were content with that?

45 MS. ROBERTS: Mr. Commissioner, you've ruled that you
46 don't wish to hear from Superintendent Rideout on
47 that point, remind my friend, the decisions made

10
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1 during the course of the investigation were not to
2 be discussed.
3 THE COMMISSIONER: Yes. I don't want to get into the
4 investigation.
5 MR. VERTLIEB: No, I know that. I know.
6 Q But my point is the four officers had already been
7 interviewed, right?
8 A They had.
9 Q Okay. And as far as you were concerned, they were
10 the -- whoever was being investigated was going to
11 be the -- it could only be those -- one of those
12 or more of those four officers, right?
13 A Not exactly, sir. I think we --
14 Q Who else?
15 A -- we looked at many aspects. We took again part
16 -- our investigation could at first be criminal,
17 and then our information would flow to a coroner
18 and a coroner's inquest. It's my understanding
19 that the coroner would examine through the
20 information provided by us many factors pertaining
21 to this case, and that included a variety of
22 different things, I think, I believe some of which
23 have been examined here.
24 Q So maybe I'm asking it inelegantly. You are
25 saying that you knew there was misinformation in
26 the public domain and you made a decision not to
27 correct it, and it's not just the two Taser shots.
28 You understand there's more issues of
29 misinformation than just that?
30 A Yes.
31 Q Okay. But the concept of protecting the
32 investigation is the context of an investigation
33 of potential criminal charges against those four
34 RCMP. That's the nature of your investigation?
35 A No. I would say that that is a -- probably the
36 primary, that's the -- sorry, the primary one, but
37 we are also tasked with supplying our
38 investigative material to the B.C. Coroners
39 Service. So there's a dual role there. It's a
40 sudden death investigation, and if the facts that
41 we uncover, we are an evidence-led group. We
42 follow the evidence as it unfolds. If the
43 evidence suggests criminality, we go down that
44 road. If the evidence does not, it ultimately
45 falls to the coroner and it becomes the coroner's
46 jurisdiction.
47 Q Okay. But the question is how would it make any

1 difference whether you corrected the Taser shots
2 of two to five, and you knew there were five --
3 within a month and a half you knew from Baltzer
4 that there had been five shots, right? You knew
5 that.
6 A Within about the 31st of October is when I knew,
7 sir, yes.
8 Q Right, I said a month and a half.
9 A Yeah.
10 Q That's right. But how would correcting that have
11 any relationship to the four police? They knew --
12 I mean, you already had their statements.
13 A I--
14 Q They would have known what they did with the
15 Taser.
16 A Sorry.
17 Q Can you help us understand that?
18 A Yes. I believe that the potential criticism was
19 that if those four officers were ultimately
20 charged and proceeded to trial, the criticism
21 would or could have come from the Crown, the
22 courts or their defence, because much of the
23 information would have been debated, discussed, in
24 a public domain. The media would have gone and
25 discussed it at great length, and it really was
26 only part of the information. Our -- it's my
27 belief that our responsibility is to investigate
28 all aspects of this and provide the totality of
29 the evidence to the triers of fact.
30 Q Just so we're clear on the subject of your own
31 knowledge, you have provided us with your notes
32 from a meeting of October 15, 2007, and in those
33 notes you refer to the member deploying the Taser
34 once, and then the second attempt, no electricity
35 going through, and then you say in your notes:
36
37 Three members wrestled him to the ground.
38
39 And then you say in your notes:
40
41 Corporal Robinson directs contact stun.
42
43 These are your own notes, right?
44 A That's correct, sir.
45 Q And you're being briefed by somebody below you in
46 IHIT?
47 A Myself, and in that particular meeting, an

1 observer for the Commission for Public Complaints
2 was present, and we were being briefed for the
3 first time on what -- what our investigators had
4 uncovered at that time.

5 Q And who was briefing you?

6 A Staff -- or Sergeant Attew at the time, and
7 Corporal Brassington.

8 Q Okay. Now, you had this language in this report
9 in your own writing:

10 Three members wrestled him to ground.
11

12

13 Where did you get that language?

14 A That was information that was relayed to me.

15 Q All I was suggesting is even early on your own
16 notes would suggest there was more than two
17 deployments, right?

18 A Yes.

19 Q Okay. And I don't mean to --

20 A My notes indicate deployment and a push stun, and
21 one failed attempt.

22 Q Well, your notes say:

23

24 Deploys Taser once and then second attempt no
25 electricity.
26

27 Right?

28 A Which would indicate a failure, yes, sir.

29 Q All right. So that's two, plus then the contact
30 stun. That's a minimum three, right?

31 A Again I don't think it's -- the failure, again, if
32 it doesn't work, it's debateable whether that's a
33 tasering or a cycling.

34 Q Now, by the end of the year there was still no
35 correction of any misstatements to the media and
36 you were still in charge of IHIT, correct?

37 A That's correct, yes.

38 Q And by that point in time, though, you had taken,
39 just from a list of the people we've seen and
40 witness statements, there were about 35, 36
41 witness statements taken by the end of '07?

42 A I don't know the exact number, but that sounds
43 approximately correct.

44 Q Plus all of the statements from the police and
45 each of them, each police officer had at least two
46 statements. You knew that?

47 A That's correct.

1 Q So I'm just wondering, what was left to do as at
2 the end of '07 when you had all these statements
3 from all these individuals, and I can take you
4 through each one if you want, I don't mind doing
5 that, but there are about 35 or so.

6 A I don't think it's necessary, sir.

7 Q Okay.

8 A I don't disagree.

9 Q You still maintained the decision to not correct
10 any of the media misinformation?

11 A Yes. And I can explain the reason for that at
12 that particular period of time, if you like.

13 Q Please.

14 A The pathology report was not received until late
15 February of 2008. The use of force report was not
16 received until several weeks or again the exact
17 date I don't have before me, but some time
18 thereafter. We were also again investigating or
19 attempting to investigate Mr. Dziekanski's state
20 of health or why he may have been behaving the way
21 he was at the airport. Those results did not come
22 until the early spring of 2008. When we had those
23 in our possession, we in the quickest possible
24 manner submitted our findings to the Crown
25 attorney, the Crown counsel, which is the absolute
26 normal course of action with any of our
27 investigations for decision, and of course that
28 decision took some time. Our position at that
29 point was that once Crown made a decision on
30 whether charges would be laid or not, if they
31 decided that no charges would be laid, we would
32 then make our announcements, and if charges were
33 to be laid we would make no further announcements
34 and wait for the trial.

35 Q Did you turn your mind to the impact of -- of
36 leaving the incorrect information in the public
37 domain in terms of impairing the investigation?

38 A There's no question it was on my mind. And as you
39 review the e-mails, you see it was -- you'll see
40 it's a common thread of discussion and concern and
41 a recognition of the need, that that information
42 needed to get it back out into the public at the
43 earliest possible opportunity. But again that
44 always remained a balance between the need to
45 gather all the evidence and potentially present it
46 to a criminal court.

47 Q Okay. Dealing with the Pritchard video, you were

1 involved with the events around the release of
2 that?

3 A Yes, sir, I was.

4 Q And the e-mail track covers e-mails between
5 yourself and Dale McGowan, who would be a
6 superior, and Al Macintyre and Peter German?

7 A Yes.

8 Q There was concern about the release of the
9 Pritchard video?

10 A Yes.

11 Q Was there concern about the media response to
12 those issues?

13 A There was discussion regarding it. There was
14 absolutely no question in our minds that it was
15 going to be a very powerful -- or had very
16 powerful media interest and would get considerable
17 play.

18 Q Okay. So let's just look at an e-mail you wrote
19 October 31. It's page 14 for your assistance, Mr.
20 Commissioner, and hopefully you'll find it, too
21 Superintendent. It's October 31 at 11:43 in the
22 morning, and it's from you to Peter German and
23 Dale McGowan.

24 A Yes.

25 Q Do you see that?

26 A Yes, I do.

27 Q You're writing them:

28
29 The following is submitted for your
30 information. We are being forced into a
31 position as a result of a civil procedure
32 actioned by the lawyer for a witness.
33

34 That witness is Pritchard, right?

35 A Yes, sir.

36 Q

37
38 IHIT has been attempting to expedite this
39 investigation in response to this civil
40 action in an effort to determine if any
41 information exists to suggest criminal
42 offences have occurred.
43

44 This investigation commenced with full
45 cooperation from all involved. It was
46 conducted in "a search for the truth"
47 posture. IHIT conducted the investigation in

1 order to provide same to the Coroner, IOR...

2

3

What is IOR?

4

A IOR, sir, is an internal process, an independent
5 officer review that will examine the event
6 internally with respect to making changes if -- if
7 required, examining policy, those types of things.

8

Q Okay. So that's an -- that's an RCMP person?

9

A Yes, it is, sir.

10

Q

11

...and was and remains prepared to initiate a
12 criminal investigation, should information be
13 uncovered to suggest that it should be.

14

15

As you know, legal counsel for a witness to
16 the event, who video taped much of the
17 activity of the deceased prior to police
18 arrival and then deployment of taser has
19 asked for the tape back. IHIT took the
20 position that release of the tape could
21 compromise the integrity of ongoing witness
22 interviews and investigative efforts.

23

24

Stopping there a moment. Can you tell us which
25 ongoing witness interviews you were talking about?

26

A It was my understanding, sir, at the time that
27 there were a number of outstanding interviews of
28 witnesses at the airport, and IHIT had -- I'm
29 talking about bystanders. We had already, of
30 course, interviewed the involved RCMP officers,
31 and IHIT had put out a request to the media asking
32 for any other persons who had potentially seen the
33 event to come forward, that included people on the
34 aircraft, et cetera. Our position with respect to
35 the interviewing of all persons was that it was
36 critical to interview them prior to release of
37 that video.

38

Can I explain -- would you like me to explain
39 why that's important?

40

Q Well, I was just going to say, from our notes we
41 have indication that 30 people had already been
42 interviewed by the end of October, and this e-mail
43 is October 31, which is the last day of October,
44 and there were only six interviews after that
45 date.

46

A Again, sir, I don't know if that's -- that is

47

1 possible. We did make every effort to get as many
2 witnesses interviewed as quickly as possible.
3 Q Okay. So but there's no one individual witness
4 that you can say here today we needed to speak to
5 Mary Jones or John Smith. There was nobody that
6 was in your mind that you're talking about in this
7 comment here you're making about --

8 MS. ROBERTS: Again, Mr. Commissioner --

9 MR. VERTLIEB:

10 Q -- about witness interviews.

11 MS. ROBERTS: -- he wasn't the team commander at the
12 time. He's not in -- he's not here to testify
13 about what witnesses were interviewed when. He's
14 given his explanation that it was his
15 understanding there were witnesses still to be
16 interviewed and they were hoping members of the
17 public would come forward. I don't think
18 examining who was interviewed and who was yet to
19 be interviewed is of any assistance here.

20 MR. VERTLIEB: I'll move on. I'll just -- I'll
21 continue reading, Mr. Commissioner.
22

23 We also are alive --
24

25 THE COMMISSIONER: Excuse me. Excuse me. Just before
26 you do, you were going to tell us how the
27 videotape would or potentially could interfere
28 with the interview of witnesses?

29 A Yes. Mr. Commissioner, one of the unique dynamics
30 around investigating deaths, or investigations of
31 -- involving police officers is understanding, I
32 suppose the best way to say it is, the subject of
33 an object of examination of the facts. It is
34 important, the -- the Pritchard video was highly
35 valuable to this investigation. There's no
36 question it provided, if you will, the anchor from
37 which this investigation based its findings. That
38 said, it was extremely important to us to
39 interview witnesses who were present and observed
40 the event in real time, and their recollections
41 were fresh and true based on their memory, rather
42 than what they would have reviewed on TV through
43 the video.

44 It's important for us to understand what they
45 felt, what they saw, what they heard, based on
46 their own instincts, their own observations. And
47 because it's important to understand what was

1 actually taking place on the ground, and perhaps
2 that spoke to some of the decisions or what was
3 observed by the four RCMP officers involved. So
4 we have to examine these types of cases both ways.
5 What -- objectively what has actually taken place
6 and, to a degree, subjectively what were people
7 seeing and believing and hearing at the time of
8 the event. To capture that after the video was
9 released and watched endlessly, we would have lost
10 that particular aspect in the investigation.

11 MR. VERTLIEB:

12 Q So continuing with that e-mail, this is yours
13 again to German and McGowan:

14
15 We also are alive to the fact that
16 information could come to light from
17 outstanding investigative avenues that could
18 impact the status of the investigation.
19

20 What did you mean by that? What does that mean?

21 A Well, I guess in simplest terms, sir, we don't
22 know what we don't know. We're early on in an
23 investigation and these things take time to
24 unfold. We need to understand a lot of the
25 different factors that come together and what has
26 -- what turned out to be a fairly complicated
27 investigation, or the issues were complicated.
28 And as we moved forward through a case, there --
29 we don't know if a witness is going to come
30 forward. We don't know what the pathologist is
31 going to say. We don't know what the use of force
32 experts are going to say. There's many things
33 that we don't yet know. And, you know, the
34 correct course of action, the proper investigative
35 course of action is to gather all the facts before
36 we comment on the specifics.

37 Q You mentioned pathology, but of course the autopsy
38 had already been conducted. Right?

39 A But the report was not issued until the end of
40 February.

41 Q Okay. So then you say:

42
43 As part of a professional police
44 investigation we hope to have the ability to
45 commence a criminal investigation if
46 warranted without the tape being in the
47 public eye. Yesterday the coroner in

1 contradiction to his request of last week
2 sent IHIT a letter indicating they took no
3 issue with the release of the video and it
4 should not be held under the coroners act.
5 We are left in a difficult situation.
6

7 What was the difficult situation?

8 A I was not at that time prepared to say that the --
9 the actions of the four members, based on the
10 information that I had in my possession at the
11 time, I was not in a position to say that the four
12 members had committed a criminal offence. With
13 the Coroner not requesting that the video be
14 retained for their purposes, I no longer had
15 statutory authority to hold it. In other words,
16 there was no criminal or no provisions under the
17 **Criminal Code** to retain it, unless I was prepared
18 to say that I was investigating a criminal
19 offence. We operated using statutory authority
20 and the law to be our guide.

21 Q

22
23 We are left in a difficult situation. In my
24 opinion we should not call our investigation
25 criminal to satisfy issues pertaining to the
26 video. However, if we do not we must release
27 the video.
28

29 And here's the sentence I wanted to ask you about.

30
31 To date we had not seen this investigation as
32 criminal.
33

34 A Correct.

35 Q So how -- with that comment:

36
37 To date we had not seen this investigation as
38 criminal.
39

40 You mean the investigation concerning Mr.
41 Dziekanski's death, right?

42 A Yes.

43 Q And it must, as we've already discussed, relate to
44 issues around the four police officers. We've
45 covered that.

46 A Yes.

47 Q But you're saying here in this e-mail we hadn't

1 seen it as criminal, but --
2 A But I also say "to date", sir, because we were not
3 done, was the point.
4 Q No, I understand, but if the theory was we didn't
5 want to be prejudicing the investigation, knowing
6 there could be criminal consequences, I just
7 wanted you to explain that sentence, because it's
8 your own words we had that you say:

9
10 To date we had not seen this investigation as
11 criminal.

12
13 What did you see it as?
14 A At that point, sir, we were investigating the
15 sudden death of Mr. Robert Dziekanski, and we were
16 alive to the possibility that it could become
17 criminal, depending on what the pathologist and
18 the use of force expert said. So that information
19 was not before us at the time I wrote this e-mail.
20 And we were conscious of that throughout this
21 investigation, that at any time facts could --
22 could come into our possession that would change
23 the direction or solidify the direction of this
24 investigation. But we must be evidence-led. We
25 must, in order to justify our actions in a
26 criminal court have some basis for it at any given
27 moment in time.

28 Q Okay. Now, just going to some language in another
29 e-mail a couple of days later, and this is page
30 30, Mr. Commissioner, and Superintendent Rideout.
31 So it's an e-mail, November 2, 2007, at 7:56 a.m.,
32 and it's again from you to your superiors, German
33 and McGowan. The last paragraph on that page.
34 It's page 30, if you have that. So:

35
36 On 2007-10-30 --

37
38 - so that's October 30 -

39
40 -- the coroner in an unprecedented move and
41 in contradiction to his request of last week
42 sent IHIT a letter indicating they took no
43 issue with the release of the video and it
44 should not be held under the coroners act.

45
46 Now, why did you use that "unprecedented" term?
47 Why would you say "unprecedented move"?

1 A Because it had never been my experience that the
2 Coroner had publicly released information or
3 evidence that would be used in -- in their
4 proceedings.

5 Q "This" -- you continue:

6
7 This left no legal basis for the video to be
8 held.

9
10 And you've already told the Commissioner about
11 that a moment ago. And then you say:

12
13 The actions of the coroner left the IHIT
14 investigative team working on their behalf in
15 a difficult and embarrassing position.

16
17 Now, what was embarrassing, what was difficult?

18 A Because the statutory authority in which we
19 thought we were operating under, was one under the
20 **B.C. Coroners Act**, and clearly they had considered
21 that as an option and had decided against it.
22 They sent me a letter on that -- with respect to
23 that, and I abided by their wishes.

24 Q But why -- why the use of the word "embarrassing"?

25 A Because we had already taken the move to say we
26 were retaining the video at that time. We had
27 already made the move to say we were retaining the
28 video.

29 Q Now, then, the next e-mail that comes out is
30 November 5, 10:01, and this is still discussing
31 the video, and this is one from Dick Bent to
32 McGowan. We know who McGowan is. Who is Dick
33 Bent?

34 A Sir, he is the Deputy Criminal Operations Officer
35 for the Province of British Columbia. Can you
36 refer me to the e-mail, sir?

37 Q It's 32. The bottom. And then it says:

38
39 Dale, as I understand it we expect the video
40 to be released later this week. We were
41 talking about our communication strategy and
42 want to get our powder dry.

43
44 Can we get a synopsis of what the members'
45 accounts were. Especially, why the CEW
46 member went to taser right away. The
47 explanation is important in this case.

1 I know IHIT is a bit strapped but it's
2 important that we have an update by mid day
3 tomorrow if possible.

4
5 So tell us about that e-mail.

6 A Well, of course, I'm just copied on that e-mail,
7 sir, that's a communication between two others.

8 MR. VERTLIEB: Right.

9 MS. ROBERTS: Could Mr. Vertlieb be more specific? As
10 he's just pointed out, he's not a party to this e-
11 mail. What would you like him to say about it?

12 MR. VERTLIEB: Well, there's obviously discussion about
13 the release of the video that was going to happen
14 later in the week.

15 MS. ROBERTS: That's why it was produced. The rest of
16 the e-mail isn't relevant to the release of the
17 video, but I didn't edit it.

18 MR. VERTLIEB:

19 Q Well, if -- and I may continue, we're talking
20 about our communication strategy, and you were
21 obviously as well involved in the communication
22 strategy?

23 A Yes.

24 Q Thank you. So then the language:

25
26 Can we get a synopsis of what the members'
27 accounts were. Especially, why the CEW
28 member went to taser right away. The
29 explanation is important in this case.

30
31 When you read that, you agreed with that comment,
32 I'm sure?

33 MS. ROBERTS: Again, I'm not sure how that's relevant
34 to the issue of returning Mr. Pritchard's video.

35 THE COMMISSIONER: I think maybe that might be right,
36 Mr. Vertlieb.

37 MR. VERTLIEB: The concern that I'm asking about, or
38 the area of questioning, Mr. Commissioner, is just
39 the communication strategy around the video, and
40 the way Superintendent Rideout handled it, and my
41 question was going to be what then happened from
42 this, about the -- why the member tasered right
43 away, the explanation is important. Did he
44 participate in preparing an explanation and what
45 happened as a result of this e-mail. It's just
46 part of the e-mail chain.

47 THE COMMISSIONER: Yes. Yes, all right, go ahead.

1 MR. VERTLIEB:

2 Q Can you help us with that, Superintendent?

3 A Sir, I'd have to look at the following e-mails,
4 but I don't believe I ever -- we provided -- we
5 prepared a media strategy to coincide with the
6 release of the video, but it did not speak to
7 those questions being asked by Chief
8 Superintendent Bent relative to why they went to
9 the CEW right away. Of course, the explanation is
10 most important in this case, but that again forms
11 part of the larger and the investigation that went
12 on for several months.

13 Q Now, then, just going to the next e-mail, page 33,
14 this is November 5, and you're in the loop. A
15 couple of questions I wanted to ask you, it says:

16
17 Good morning Dale.

18
19 So that's Dale Carr presumably.

20 A No, sir, I believe that's again -- that's I'm
21 copied on a message between Al Macintyre and Dale
22 McGowan, so --

23 Q Oh, I'm sorry, okay.

24 A Yeah.

25 Q Fine. Dale Carr is copied on that at the bottom,
26 right, and so, fine. So "Dale" means "Dale
27 McGowan", right?

28 A I believe so in this case, yes.

29 Q So then:

30
31 During a short meeting this AM, the Deputy
32 asked about our strategy on the release of
33 the video to the owner, which we can assume
34 is about minutes away from the release of the
35 video by the owner to the media.

36
37 Who is "the Deputy"?

38 A That would be Deputy Commissioner Bass.

39 Q Okay. And then saying:

40
41 We want to know what the strategy is that
42 Dale Carr plans on using following the
43 release. Is this a good time to release the
44 911 call from YVR to the ECOMM?

45
46 How does now discussion come into play about the
47 9-1-1 E-Comm calls. What was the reason that's

- 1 now merging into this e-mail track?
- 2 A I think there was over the course of the -- from
3 this period forward, there's a number of
4 discussions that talk about what can be released,
5 what should be released, what would make sense to
6 be released. The position that I maintained
7 throughout was that we shouldn't be discussing the
8 specifics of that case at that time. And I think
9 if you move through the e-mails, you'll see that
10 there's a number of issues that are suggested and
11 ultimately declined as options with respect to
12 what can be released.
- 13 Q And maybe to mention that's an e-mail from Al
14 Macintyre.
- 15 A That's correct, sir.
- 16 Q Now, Sergeant Lemaitre is carbon copied in this,
17 correct?
- 18 A Yes, he is.
- 19 Q We had the understanding that he was out of the
20 media loop on this case after the first two days.
21 Was he still involved in the media discussions?
- 22 A At some point approximately a month into the
23 investigation, and I couldn't be sure about the
24 exact dates, the position of "E" Division
25 communications was to speak about the -- the more
26 global aspects of CEW, of other questions that
27 were being asked by the media, and that Corporal
28 Carr would speak to issues pertaining to
29 specifically IHIT and the IHIT investigation. So
30 it would be not unreasonable for him to have been
31 copied on some of these e-mails, and there were
32 other types of media events, or media discussions
33 and releases taking place at the same time as our
34 investigation was ongoing. They simply were not
35 on the actual contents of our investigation.
- 36 Q So I think that leads us to the next e-mail,
37 November 5, 2007 at 10:26. This is from you to Al
38 Macintyre and Dale McGowan:
- 39
- 40 Hello
- 41
- 42 Dale CARR will essentially hold --
- 43
- 44 THE COMMISSIONER: What page number?
- 45 MR. VERTLIEB: I'm sorry. I'm sorry, Mr. Commissioner,
46 36. Sorry.
- 47 Q Do you have that, Superintendent?

1 A Yes, I do, sir.

2 Q You said:

3

4 Dale CARR will essentially hold the line.

5

6 What do you mean, "hold the line"?

7 A That is, I suppose, a slang term by me that really

8 refers to that we are not changing our position,

9 that Dale will not be speaking -- Dale Carr,

10 Corporal Dale Carr will not be speaking to the

11 specifics or the evidence that is being before the

12 IHIT investigation, and that whatever other

13 strategy is taking place, and I'd have to, if you

14 allow me to read the e-mail, I could --

15 Q Please.

16 A -- probably answer a little further. As I say

17 here:

18

19 It was and is the position of IHIT that we

20 must always protect the integrity of the

21 investigations we conduct. In this case all

22 facts pertaining to this incident will become

23 the subject of sworn testimony at a coroners

24 inquest. We believe that at the inquest the

25 entire video will be played by the coroner as

26 well the results of the complete

27 investigation will become known. It is our

28 intention to complete our investigation and

29 present evidence in that public forum under

30 oath rather than in the media.

31

32 Q And then the next paragraph:

33

34 "E" Div Media will be prepared for any

35 response regarding taser or use of force

36 again in general non specific terms.

37

38 That's "E" Division, that would be Lemaitre?

39 A Lemaitre and the group that supports Lemaitre,

40 that's correct, sir.

41 Q And then you say:

42

43 Any justification of actions on the video or

44 specific response to the video could be

45 viewed as impartial. We are between a rock

46 and a hard place on this.

47

1 A Correct.

2 Q What does that mean, that last paragraph:

3

4 Any justification of actions on the video...

5

6 A The -- we are the police, we are a police
7 organization investigating the actions of the
8 police. Obviously that is the subject of much
9 debate and sometimes criticism, as are the public
10 releases made by the police while investigating
11 the police. Our position is that it's extremely
12 difficult as the investigative body to speak about
13 the event and the specifics of the event, without
14 appearing to be biased. As we get into evidence,
15 we inherently are drawn into a discussion or
16 debate about that evidence that we cannot
17 participate in as the -- as the investigative
18 body, and that's the purpose of that statement.
19 So we are criticized if we release information,
20 and we're criticized when we do not.

21 Q You understand though, sir, that part of the
22 criticism is the releasing of incorrect
23 information, which is what I've been asking you
24 about here.

25 A Absolutely, sir.

26 Q Okay. And then page 43, there's an e-mail from
27 Pierre Lemaitre and the subject is -- I can't
28 quite read it. Can you help me with that, page
29 43?

30 A Yeah, there's a -- the only content of the e-mail
31 that I see, sir, is that it:

32

33 Looks good to me.

34

35 And there's a long caveat.

36 Q And this is relating -- what is:

37

38 CPC Investigation Into Taser Death at
39 Vancouver Airport.

40

41 A That's the Commission for Public Complaints.
42 We're engaged in a simultaneous -- actually,
43 they're engaged in two investigations with respect
44 to this event, and I believe this message which
45 was copied to me, was with respect to some media
46 discussions or discussion around media pertaining
47 to CEW itself, rather than the event.

1 Q Now, I want to go to an e-mail, still in the year
2 2007, December 12, page 73. It's an e-mail from
3 you to Tim Cogan, Peter German, Dale McGowan.

4 A That's right.

5 Q Do you see that, Superintendent?

6 A Yes, I do.

7 Q Who's Tim Cogan?

8 A Tim Cogan is a superintendent in Ottawa at our
9 National Headquarters, and he at the time had a
10 position that -- that saw him involved in media
11 communications, things of that nature.

12 Q So you're -- not only are you dealing with people
13 above you in British Columbia, you're also dealing
14 with people in Ottawa and the RCMP?

15 A Yes, it evolved that way over the course of time.

16 Q Fine. So this is an e-mail still in the year
17 2007. Just turn to the last page, it's 75. I
18 want to ask you about this paragraph. I'll read
19 the paragraph, and this is your e-mail:

20
21 The current dilemma faced by the
22 investigative team surrounds the
23 discrepancies around the number of CEW
24 cycles. The initial media release suggested
25 two. We now know that the device was cycled
26 five times. The release of the CEW download
27 report on its own, in my opinion does not
28 accurately or fully explain that the deceased
29 in this occurrence may have received partial
30 contact or no contact at all during one or
31 more of those five cycles. More important,
32 in my view, we do not have all the
33 information. Key material such as the
34 pathologists findings and the use of force
35 report will ensure full understanding of the
36 evidence. In waiting to make any further
37 announcement with respect to the number of
38 CEW cycles, we will have "followed the
39 evidence" and will be able to speak from a
40 place of confidence. This will come at a
41 cost.

42
43 The question I wanted to ask you is about that
44 last sentence, then. What is the cost that you're
45 referring to?

46 A I think the position that we took, sir, which was
47 to the degree possible, protect the evidence,

- 1 protect the -- evidence and process for potential
2 criminal investigation and any other oversight
3 reviews that followed was -- the cost was, of
4 silence, with respect to the specifics was very
5 damaging with respect to the media, what the media
6 was saying with no response and the RCMP paid a
7 cost for that from a public relations standpoint.
- 8 Q Following that e-mail of yours to German and
9 McGowan -- incidentally, is Cogan above you in
10 rank?
- 11 A He may be now, sir, but I think at the time we
12 were both superintendents.
- 13 Q Can you tell us following your e-mail, what
14 happened in reply to that commentary from you?
- 15 A With -- I'm sorry, sir, with respect to an e-mail,
16 or are you referring to an e-mail or just in
17 general terms?
- 18 Q No, after this e-mail that you wrote, it was quite
19 a lengthy e-mail. You go through a number of
20 concerns and facts around where the case is at.
- 21 A Well, sir, we stayed to the media strategy that I
22 had requested, and if not demanded, which was to
23 not speak about the specifics with respect to the
24 case, and then to advance that to the Crown
25 prosecutor for decision.
- 26 Q So let me ask you about this question of area of
27 interest. If your concern was the release of the
28 video might taint witnesses yet to be interviewed,
29 were you though not concerned that leaving
30 incorrect information could have an even greater
31 effect in the terms of tainting all the evidence
32 of people that had been interviewed?
- 33 A I'm sorry, sir, could you repeat that, please?
- 34 Q Well, your concern is tainting evidence from
35 people who are yet to be interviewed, and there
36 was -- admittedly there were a few that were left
37 to be interviewed because you've conducted -- I'm
38 just looking at our list. We know that the
39 airport -- one of the airport pursers on board the
40 plane was interviewed in September '08.
- 41 A Right.
- 42 Q And I think there was one other person in '08, but
43 certainly by the end of '07 you had interviewed
44 almost everybody from the material that's been
45 disclosed.
- 46 A Yes, sir, I would agree with that.
- 47 Q Okay. In December you'd interviewed Jorssen, who

1 was the -- who worked at RCMP as -- in the finance
2 department.

3 A Yes.

4 Q So by the end of '07, it would appear that you had
5 essentially interviewed almost everybody that you
6 needed to interview. So just tell us how you
7 dealt with your concern about tainting any future
8 interviews against the concern about leaving all
9 the people who had been interviewed with wrong
10 information that had been disseminated in the
11 public arena.

12 A The statements that were taken after the initial
13 media release largely spoke to what people
14 observed, the behaviour of Mr. Dziekanski prior to
15 the attendance of the police officers, and then
16 what they observed as the police officers
17 approached and made contact with Mr. Dziekanski,
18 and of course the altercation and arrest and the
19 aftermath of the event. It was my belief that
20 with respect, at least, to the cyclings, the media
21 release that there had been two, rather than five,
22 would not really contaminate that particular
23 evidence, and that what I was looking for was what
24 they actually observed and saw in its -- in the
25 most pristine form possible. So I didn't see that
26 a public announcement correcting that and then re-
27 interviews was likely to in any way change what
28 they were able to provide. The video and the
29 actual data that would be obtained from the CEW
30 device in conjunction with the use of force expert
31 was the best evidence that could be gathered with
32 respect to that issue.

33 Q Just look at -- Mr. Giles, will you please show
34 the Superintendent Exhibit 98. And while Mr.
35 Giles is getting that for you, it's really not
36 just the number of Tasers, though. There was
37 other information and you and I both had that
38 brief discussion earlier.

39 A That's correct, sir.

40 Q So for example, and we'll get you 98, this is the
41 media release, October 14, and this was in the
42 public domain. So just looking at that, a third
43 of the way down:

44
45 Three officers attempted to speak with the
46 man, who continued to ignore their commands.
47 The male remained violent and agitated. When

1 attempted to grab something off a desk, the
2 RCMP member used a conducted energy weapon
3 (taser) in order to immobilize the violent
4 man. The man fell down but continued to
5 flail and fight. The officers then held the
6 man down on the ground and placed handcuffs
7 on him. He continued to be combative,
8 kicking and screaming. He then became
9 unconscious.

10
11 Now, were you worried that this -- this kind of
12 commentary, uncorrected, as it were, might in some
13 way affect the independent investigation with
14 these witnesses who were independent from the
15 RCMP?

16 A First let me say that that's far too much
17 information for release, in my opinion, and I
18 would not like to see that kind of detail,
19 particularly that early on. But again I was
20 looking for the observations of the eyewitnesses.
21 Those statements were taken after this release,
22 and we used them in conjunction with all the
23 evidence to form a picture. There were certainly
24 -- it is certainly a possibility that -- that
25 perhaps one or two could potentially be
26 influenced. But I think if you look at the -- the
27 statements that were obtained, we -- we got a wide
28 variety of observations from the eyewitnesses. We
29 -- many of the civilian eyewitnesses that were
30 present saw a multitude of different things with
31 respect to that event, and I think that that fact
32 in itself is critically important in this case.

33 Q You had seen the video, the Pritchard video?

34 A Many times, sir.

35 Q Many times. Did you have the impression as set
36 out in Exhibit 98 that the man, obviously
37 Dziekanski, continued to ignore their commands?
38 Was that the impression you formed watching that?

39 MS. ROBERTS: Well, again, Superintendent Rideout isn't
40 being brought here to testify about his impression
41 of what he saw in the video.

42 MR. VERTLIEB: Okay.

43 Q The question really is, when you look at Exhibit
44 98, you can see a number of areas of potential
45 misinformation, and the concern for tainting the
46 impressions independent people might have.

47 A I see a number of differences in --

- 1 Q Right.
- 2 A -- in that statement from what actually occurred,
3 sir. There's no question about it.
- 4 Q Did this not then make you feel compelled to
5 reconsider the decision not to correct the
6 misinformation?
- 7 A No, sir, it -- I -- my belief at the time was that
8 we needed to protect the facts that we were
9 uncovering, and that we were examining and we were
10 gathering for potential presentation in a criminal
11 court, and I didn't see any way in which we could
12 alter that at the time -- alter or take back what
13 had already been said.
- 14 Q But we covered an e-mail a few minutes ago where
15 you said to date the investigation had not been
16 criminal in nature.
- 17 A That was very early on in the investigation. As
18 that advanced it was clear to me that that -- this
19 investigation, the results that we were
20 determining would have to go to a Crown prosecutor
21 for review.
- 22 Q There was a media release by Corporal Carr at the
23 end of November dealing with first aid response of
24 your four RCMP officers, and that contained facts.
25 You are familiar with that release, aren't you?
- 26 A Yes, I am, sir.
- 27 Q Now, that's not a discussion of process, is it?
- 28 A No, that goes beyond that.
- 29 Q Okay. You made the decision to have that
30 information released?
- 31 A I did.
- 32 Q And how was that not going to have the same impact
33 that you were concerned about with the release of
34 other areas that we've covered?
- 35 A Well, sir, it's clear to me that with the benefit
36 of hindsight that potentially could have had --
37 been the subject of criticism by the criminal
38 courts or defence counsel. If the officers were
39 charged with some offence relating to the post-
40 arrest care of Mr. Dziekanski, although I have to
41 tell you that, based on the information, I don't
42 know what that charge would have been. But there
43 was -- there is -- it's clear that there is some
44 specific facts that are laid out in that release
45 that was authorized by me and that speaks to the
46 fact that a pulse was being monitored by a number
47 of individuals, police officers and security

31
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1 staff, and that the handcuffs were requested to be
2 removed and were not initially removed, then they
3 were removed shortly thereafter.

4 MR. VERTLIEB: We haven't yet marked your handwritten
5 notes, and I'm going to have a copy marked now.

6 MS. ROBERTS: Mr. Commissioner, perhaps Mr. Vertlieb
7 and I can discuss this over the break and see what
8 pages have been referred to and really need to be
9 marked as an exhibit.

10 THE COMMISSIONER: Yes, I think that's a good plan.

11 MR. VERTLIEB: Okay. Then maybe this is an appropriate
12 time to do that, then.

13 THE COMMISSIONER: All right. We'll take the morning
14 break.

15 THE REGISTRAR: The hearing will recess for ten
16 minutes.

17
18 (WITNESS STOOD DOWN)

19
20 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
21 (PROCEEDINGS RECONVENED)

22
23 SUPT. WAYNE RIDEOUT, a
24 witness, recalled.

25
26 EXAMINATION IN CHIEF BY MR. VERTLIEB, continuing:

27
28 Q I want to just have you look to your handwritten
29 notes, and the date that I have, there was two
30 areas of your notes, one is November 29, 2007 at
31 15:35. Your pages aren't numbered, so I can't
32 help you with the page number, but I can give you
33 the date, November 29, 2007, or possibly 28, I
34 can't read your writing clearly. Is that a 29 or
35 28, November --

36 A It's 29th, and I'm not surprised you can't read
37 it, sir.

38 Q That's all right. No, it's fine, thank you.
39 15:35, can you read that note to us.

40 A

41
42 Dale Carr. Decision to issue proactive
43 release on --

44
45 - there's some areas that have been vetted -

46
47 -- and speak "carefully" about RCMP and --

1 - it says -

2
3 -- security monitoring of Dziekanski.

4
5 Q You've got "carefully" in quotes.

6 A Yes.

7 Q "Proactive release", so what do you mean,
8 proactive release, speak carefully?

9 A Speak carefully refers to the content of the
10 release will have to be careful, and with respect
11 to evidence and the terminology. And proactive
12 means that we will issue a release rather than
13 respond to questions posed by the media.

14 Q And there's something vetted. I'm not going to
15 ask you what it is, but that vetting is by your
16 lawyer, Ms. Roberts?

17 A Correct.

18 Q Okay. Now, then go to the next note, please,
19 which is December 12, '07, 15:00. Do you have
20 that?

21 A I -- no, one moment, please, sir. I'm sorry,
22 December...?

23 Q 12, 12-12-07, 15:00.

24 A Is that the date referred to in small writing on
25 the top of the page, sir?

26 Q Yes.

27 A Yes, I have it.

28 Q Thank you. Now, I won't take you through it all,
29 but let's start at the main paragraph:

30
31 The investigation is ongoing.

32
33 Just read -- I can't read your next word, please
34 help me.

35 A

36
37 The investigation is ongoing. Currently no
38 cause of death, no pathologist report and no
39 use of force. These are critical components.
40 CEW download report alone will cause alarm
41 and look bad but it does not itself provide
42 much real evidence unless spoken to by an
43 expert. Also we must be sure what those
44 experts will say as we do not want to advise
45 mother and public, answer questions and be
46 found to be wrong later. We must continue to
47 follow the evidence despite the fact there

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1 [may be] public criticism and accusations
2 that the police were hiding things. As
3 stated in e-mail, our investigation has
4 numerous time stamps and it is very clear
5 what we new and when we new it and we can
6 account for same.

7

8 Q Keep going, the last paragraph.

9 A

10

11 My recommendation is to complete substantive
12 portions of investigation, immediately advise
13 deceased's mother of all we know and issue a
14 press statement. It should all be done when
15 we are ready to present our findings to
16 Crown.

17

18 Q And so this is near the end of the year 2007.

19 A That's correct, sir.

20 Q And you were hoping to be able to correct
21 misstatements as part of this overall advice to
22 deceased's mother and the community generally?

23 A Yes. That was prevalent throughout the
24 investigation, and regrettably the -- our original
25 estimation for completion of the investigation and
26 submission to Crown was January of 2008. The
27 submission to Crown did not actually happen until
28 late March of 2008.

29 Q And in March '08 when the submission to Crown
30 went, there was still no correction of any of the
31 issues around misinformation?

32 A No, at that point, sir, we were waiting for Crown
33 decision, which took many months.

34 MR. VERTLIEB: Okay. This string of e-mails that we
35 had earlier, and there was comment from Ms.
36 Roberts about not having them all marked, I want
37 you to just have a look at that, and I want you to
38 tell me if any of those e-mails, and these are the
39 redacted e-mails by counsel for the RCMP, contain
40 any information other than issues around the
41 release of the Pritchard video and issues around
42 media communications.

43 MS. ROBERTS: Mr. Commissioner --

44 MR. VERTLIEB: Because it's my understanding, just so
45 you know the reason I ask you that, having read
46 them all, they fit into the areas of concern that
47 the Commissioner has indicated he wishes to

1 review. Your lawyer, Ms. Roberts, has gone
2 through it, presumably, and made a number of
3 blackouts, that's obvious to us, and I don't
4 quarrel with that. But it seems to me this stack
5 of documents contains information relating to the
6 video and the media approach to this case. If
7 there's something in here that's not, then it
8 ought not to be marked, in my view, but otherwise
9 it would be my belief, Mr. Commissioner, that it
10 should be marked.

11 MS. ROBERTS: Mr. Commissioner, I don't think it's
12 appropriate for a witness to comment on editing
13 that's been done and selection that's been done by
14 counsel. Mr. Vertlieb and I can discuss that. If
15 there are e-mails that have been referred to in
16 evidence that you think would be helpful to you, I
17 have no objection to them being marked as
18 exhibits. Mr. McGowan suggested during the break
19 that we do that after all counsel have examined
20 Superintendent Rideout so that we can see at that
21 point in time how many, if -- if 99 percent of
22 them, then at that point it would seem logical to
23 mark them all. But if it's only two or three e-
24 mails, we could certainly extract those and simply
25 mark this.

26 THE COMMISSIONER: Yes. I think I agree with that
27 approach. I mentioned earlier that we should
28 follow quite closely the ordinary trial procedure,
29 which means those things that are referred to
30 directly should only be marked. So I think that
31 will -- that suggestion will be adopted.

32 MR. VERTLIEB: What I was trying to -- and I respect
33 the commentary, of course, Mr. Commissioner.
34 Q Superintendent Rideout, you've gone through this
35 entire brief of material that's stapled in front
36 of you, right?

37 A Yes, I have.

38 Q And where you thought or your counsel thought
39 areas had to be redacted, that's been done?

40 A Yes.

41 Q So is there any information -- just answer this
42 question, and I want to have the evidentiary
43 foundation and then we can argue about it later,
44 because I don't think Ms. Roberts fully
45 understands the position Mr. McGowan was
46 expressing, but we don't need to discuss that
47 right now. Is there any information in this stack

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

1 of material that doesn't -- that does not relate
2 to the video release, or the media communication
3 strategy by the RCMP relating to the Dziekanski
4 matter?

5 MS. ROBERTS: I'm sorry if I wasn't clear earlier.
6 Superintendent and I -- Superintendent Rideout and
7 I went through a very large stack of e-mails and
8 extracted these as potentially relevant, as we
9 would in a civil action. That does not
10 necessarily make each e-mail, or each part of each
11 e-mail relevant to the question. We have erred on
12 the generous side. And it's a matter of judgment
13 as to whether they're relevant or not, and I don't
14 think a witness should be asked to comment on
15 that.

16 THE COMMISSIONER: No, I think we'll proceed with the
17 evidence.

18 MR. VERTLIEB: That's fine. Thank you, Mr.
19 Commissioner. Oh, I'm sorry, one last thing.
20 Sorry. Sorry. Thank you. I had one note here.

21 Q Dr. Lee, when he was here, told us that he was
22 pretty sure that he did a draft report to the
23 RCMP, and he's the pathologist. You know who I
24 mean, right?

25 A Yes, I do.

26 Q And he said he was pretty sure, he didn't say 100
27 percent certain, but he told us about doing a
28 draft report, which he would normally not do. Do
29 you remember seeing something in draft, or having
30 discussion with Dr. Lee about his pathological
31 findings?

32 A No.

33 MR. VERTLIEB: Thank you.

34 THE COMMISSIONER: Who's next?

35 MS. ROBERTS: Mr. Commissioner, for the record, Helen
36 Roberts for the Government of Canada. Given that
37 I have a right of re-examination, I only have two
38 questions at the present time.

39
40 CROSS-EXAMINATION BY MS. ROBERTS ON BEHALF OF
41 GOVERNMENT OF CANADA:

42
43 Q Sir, what was your main concern in conducting or
44 overseeing the investigation of Mr. Dziekanski's
45 death?

46 A My main concern was the independence of our
47 investigation and the integrity of evidence and

1 process, to finding the truth at the end of the
2 day and being able to present the collective
3 material to whoever was to oversee this, and in
4 this case there were many different oversight
5 bodies that our investigation would be supplying
6 information to.

7 Q All right. My second question is, knowing what
8 you know now and looking back in hindsight with
9 respect to the return of Mr. Pritchard's video and
10 with respect to the media releases, is there
11 anything you would do differently or anything you
12 didn't consider then that you would consider in
13 the future?

14 A Yes, I think it's fair to say with the benefit of
15 hindsight that with respect to the media strategy
16 on the correction of information, I think -- and
17 you used the term, or my term "between the rock
18 and a hard place" was highlighted today from one
19 of my e-mails. I feel very strongly that that was
20 the case, that when we say -- we talk about
21 evidence we are criticized, and when we don't talk
22 about evidence we're criticized. I think,
23 however, with the benefit of hindsight and the --
24 a number of months that have gone by of criticism
25 of the RCMP, I think that perhaps the strategy
26 that I should have undertaken was to -- I did do a
27 number of interviews after the event. I should
28 have carried on with those. And I think at some
29 point following the 31st of October perhaps the
30 correct course of action may have been to go
31 before the media, issue a -- some kind of
32 statement that said that I was aware that
33 incorrect statements had been made to the media,
34 but I would not discuss the nature of what they
35 were and I would not discuss evidence as we
36 advance forward.

37 Now, I am not 100 percent confident in saying
38 that that would have resulted in any difference,
39 because I believe the media would, by the nature
40 of what they do, carry on and discuss it at great
41 length. So it's a Catch-22, but I think that
42 perhaps there was room to at least state that --
43 or comment on the fact or advise that we had said
44 things that were incorrect, that we now knew were
45 incorrect, and but we were unprepared or not
46 prepared to discuss the nature of what they were.

47 MS. ROBERTS: Thank you.

1 MR. KOSTECKYJ: Walter Kosteckyj, counsel for Zofia
2 Cisowski.

3

4 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA
5 CISOWSKI:

6

7 Q Superintendent, you indicated that you didn't want
8 to discuss specifics because, for lack of a better
9 term, you didn't want to obstruct the
10 investigation. You didn't want people to change
11 their stories or to put words in their mouths,
12 correct?

13 A Not just that, but that is part of it.

14 Q But that was a big part of it.

15 A Investigation and the future processes, sir.

16 Q Right. Now, let's talk about the future process.
17 There was a Coroner's inquest, you're aware,
18 scheduled for May of 2008.

19 A Correct.

20 Q And I among others was a participant in that.
21 Now, you were -- you were aware that that
22 Coroner's inquest didn't get postponed until
23 either late March or early April of 2008, correct?

24 A That's right.

25 Q So up until March or April of 2008 there was no
26 criminal investigation. There wasn't a criminal
27 investigation.

28 A Yes, there was, sir.

29 Q Well, isn't that the reason the Coroner's inquest
30 was delayed was because it had now become a
31 criminal investigation? That was the reason
32 given, as I understood it.

33 A At the mid-fall, perhaps, mid-November of 2007, I
34 wrote a letter to the B.C. Coroners Service
35 indicating that I was conducting a criminal
36 investigation and that I would be submitting the
37 results of my investigation to the Crown
38 prosecutor for determination on whether charges
39 were warranted and would be undertaken. They were
40 advised that in November of 2007. So the posture
41 of our investigation at that point became criminal
42 in nature. But my understanding with respect to
43 the postponement of the Coroner's inquest, based
44 on the information I had, was that it was also
45 postponed with -- because this Commission was to
46 carry on, as well, and was going to take
47 precedence over the Coroner's inquest.

1 THE COMMISSIONER: I have to say I confirm that.

2 MR. KOSTECKYJ: All right.

3 Q Now, you're aware of a witness by the name --
4 well, first of all, let's talk a little bit about
5 this. You became aware that the Taser had been
6 deployed five times, not twice as reported, in
7 October of 2007 -- October 31st, 2007.

8 A Cycled five times, yes, sir.

9 Q Yes. And you discussed for a period of six weeks
10 the release of that information, which, as I
11 understand it, culminated in your e-mail of the
12 12th of December 2007, which is found on page 73
13 of your e-mail disclosures.

14 A I wouldn't say that it culminated there, sir, but
15 that was, if you will, the -- the entrenchment of
16 our course of action with respect to the media.

17 Q Right. And if I take -- that is your e-mail,
18 correct, sir?

19 A Yes, it is, sir.

20 Q And who -- sorry, who is Mr. Cogan, Tim Cogan?

21 A He's a superintendent with the RCMP at National
22 Headquarters in Ottawa.

23 Q All right. And you've explained who Mr. -- who
24 Peter German was, he was a Deputy Commissioner,
25 correct?

26 A Assistant Commissioner, sir.

27 Q Assistant Commissioner. And I note, and counsel
28 for the Commission took you through to this, the
29 questions that remained outstanding were do you
30 advise the mother of these facts, correct?

31 A Yes.

32 Q And then your concern was that if you advised the
33 mother, do you do a press conference.

34 A Or are we forced to do a press conference.

35 Q Yes.

36 A Because our feeling was that it would -- the
37 communication of those facts, pre-Crown-charge-
38 approval or not, would ultimately and within
39 minutes result in a press conference.

40 Q Right. Now, you were aware of a witness by the
41 name of Sima Ashrafinia, correct?

42 A Yes, I am.

43 Q And you know that Ms. Ashrafinia came forward on
44 the day after Mr. Dziekanski died and said that
45 she heard at least four deployments of the Taser.
46 You're aware of that?

47 A I am not specifically aware. It's entirely

- 1 possible, sir, but I don't have the content of the
2 statement in my mind.
- 3 Q Okay. Well, have you reviewed the statements that
4 were made by Corporal Lemaitre?
- 5 A Yes.
- 6 Q Well, you'll recollect that Corporal Lemaitre made
7 a press announcement a day or two later where he
8 was referring to -- and it's in evidence, but Ms.
9 -- I suggest to you that Ms. -- he was responding
10 to the evidence of Ms. Ashrafinia, or the press
11 accounts that Ms. Ashrafinia was putting forward,
12 and said that he could state, I can't remember if
13 his term was categorically, or he was on the
14 record that there were only two deployments. You
15 were aware of that?
- 16 A I was aware that he was speaking about evidence,
17 and on the 16th of October directed that that
18 cease.
- 19 Q Yes.
- 20 A So I would be surprised if that took place after
21 the 16th of October.
- 22 Q Well, besides the considerations that you
23 expressed about advising the mother on December
24 the 12th, did it ever cross your mind that other
25 witnesses might change their story or consider
26 that what they heard or saw was wrong because of
27 what Sergeant Lemaitre had said?
- 28 A It did cross my mind, but again we had the benefit
29 of this very powerful video that told a -- if you
30 will, was the anchor of our investigation, and we
31 had already canvassed the witnesses that we knew
32 about.
- 33 Q Well, the state -- you understood that the
34 statement of Sergeant Lemaitre was criticizing
35 what Ms. Ashrafinia was saying and had said
36 publicly. Did you not know that, sir?
- 37 MS. ROBERTS: I think he's given evidence he's not
38 aware of what particular statements Ms. Ashrafinia
39 gave or exactly what Corporal -- then Corporal --
40 Sergeant Lemaitre said to the media. His evidence
41 is he became aware that evidence was being
42 discussed and he asked that it be stopped.
- 43 MR. KOSTECKYJ: All right.
- 44 Q Well, is that, sir, is that --
- 45 A That's my evidence, sir, yes.
- 46 Q All right.
- 47 A That I didn't want any type of evidence being

- 1 discussed.
- 2 Q Well, did you understand that not coming forward
3 with the truth, the fact that there had been five
4 deployments, might cause other witnesses not to
5 come forward?
- 6 A I don't see how that's -- that's a factor, sir, I
7 don't understand how the -- the nexus to your
8 question.
- 9 Q Well, Ms. Ashrafinia, who came forward with
10 evidence, was being told by the RCMP that that
11 evidence was incorrect.
- 12 A I accept what you're saying. Again I don't have
13 the benefit of the specifics there. But we were
14 collecting that evidence through separate and
15 independent sources in that the CEW device is
16 equipped with the ability to tell us exactly how
17 many times that device is cycled.
- 18 Q Right.
- 19 A The analysis of the video would be, in my view,
20 the combination of the CEW download report and the
21 analysis of that video was the best way to examine
22 the number of times that CEW was deployed.
- 23 Q But my question --
- 24 A Eyewitnesses would be unlikely to give that,
25 particularly civilian eyewitnesses.
- 26 Q Okay. Well, there was an eyewitness that came
27 forward and said four deployments at least I
28 heard. Now, the point that I'm making to you,
29 sir, is simply this. By maintaining
30 misinformation, did you not understand that you
31 were affecting potential witnesses that were out
32 there and affecting what they may have seen or
33 heard?
- 34 A I disagree, sir. We had collected the statements
35 to that point and we had them in our possession.
36 If those witnesses saw the video or came to a
37 different conclusion, then I would expect that
38 that material or that difference would be examined
39 at this process, trial process and/or Coroner's
40 inquest.
- 41 Q Yeah, but did you ever consider that there may
42 have been witnesses that may have seen or heard
43 and decided not to come forward because of the --
44 because of the misinformation?
- 45 A I don't believe that that was a factor in this
46 case.
- 47 Q It never crossed your mind.

- 1 A Correct.
- 2 Q Now, you wanted to protect the integrity of the
3 investigation and you didn't want to look like you
4 were in a conflict. That's essentially what you
5 told Ms. Roberts when you were re-examined?
- 6 A I said investigation and process.
- 7 Q Process. And you said you wanted to protect the
8 integrity of the investigation.
- 9 A Correct.
- 10 Q And the reason was because you were in fact
11 investigating your own members?
- 12 A That's correct.
- 13 Q You didn't want to be seen in a conflict.
- 14 A We didn't want to be seen to be debating,
15 analyzing and providing opinion on the evidence
16 that was being uncovered. It's not our role.
- 17 Q And you didn't want to be an apologist for the
18 four members.
- 19 A That's got nothing to do with it, sir.
- 20 Q Yeah, but you didn't want to be in a position of
21 sitting there and being explaining or
22 rationalizing what they were doing, correct?
- 23 A We would not want to be caught in a position where
24 we were defending or rationalizing any of their
25 actions.
- 26 Q Right. So on November -- and I got a copy of this
27 actually early this morning, because it came in
28 late last night, of your e-mail, so I don't have
29 all of the pages listed. But the page that I'm
30 looking for is dated -- this is in your e-mail
31 disclosure of last night, the 28th of November
32 2007, 10:23, you received an e-mail from Peter
33 German.
- 34 A 10:23 is the date of the e-mail, sir?
- 35 Q No, that's the --
- 36 THE COMMISSIONER: Page 53.
- 37 MR. KOSTECKYJ: Page 53.
- 38 A Yes, sir.
- 39 Q Do you see that?
- 40 A Yes, I do.
- 41 Q Okay. You were being advised there -- you
42 recollect getting this?
- 43 A Yes, I do.
- 44 Q And you were being advised by Peter German that
45 information had come to his attention that there
46 had been a Freedom of Information request,
47 correct?

1 A I think, sir, if my recollection is correct, that
2 the -- the information had come to me, and that I
3 had ultimately advised him. And this e-mail
4 speaks to him fanning that information out back to
5 me and to others, including John Ward and Dale
6 Carr.

7 Q Well, this is written to your attention and to
8 Dale Carr's attention and John Ward, and remind me
9 who is John Ward?

10 A John Ward at the time was attached to the "E"
11 Division Media Section.

12 Q All right. So as I look at this, it's written
13 from Peter German to you, correct?

14 A Yes, it is.

15 Q And it says:

16

17 I am advised that Richmond will soon be
18 replying to an FOI request...

19

20 That's Freedom of Information request, right?

21 A Yes, it is.

22 Q

23

24 ...for their Fire Rescue incident.

25

26 A Yes.

27 Q So he's advising you of that?

28 A In -- in this e-mail, that's what it appears to
29 be. I don't believe that Peter German was the
30 first one to be advised of that. I believe I was.

31 Q Okay. Well, who advised you?

32 A I believe that I became aware of it through the
33 Officer in Charge of Richmond detachment.

34 Q Okay. So and did you then call Richmond
35 detachment or have -- or, sorry, have Richmond
36 called. I'm talking about the City of Richmond,
37 and ask them to delay the disclosure of that FOI
38 release?

39 MS. ROBERTS: Mr. Commissioner, I don't think this is
40 one of the topics on which you indicated you
41 wished to hear from Superintendent Rideout.

42 THE COMMISSIONER: The relevancy of this to the issues
43 at hand escapes me at the moment.

44 MR. KOSTECKYJ: Well, I think I can connect the dots
45 here. But essentially, this is a -- the witness
46 has said that he was not going to release facts.
47 They were only going to talk about process,

1 essentially. Here we -- I am -- we saw a release
2 of a news release from Corporal Dale Carr on
3 November the 30th which relates specifically to
4 this incident. And it goes to the -- it goes to
5 issues relating to media releases and the control
6 of that, and the conflict that the RCMP were
7 placed in and through protecting both the members,
8 and at the same time carrying on this
9 investigation.

10 THE COMMISSIONER: Yes, and I understand the officer
11 indicated that he thought that this part of the
12 incident that unravelled would not impact on the
13 investigation as to the core investigation, namely
14 the events of the use of force against Mr.
15 Dziekanski.

16 MR. KOSTECKYJ: Okay.

17 Q Well, can you tell me how releasing -- you know
18 what I'm speaking of now, this is about the
19 handcuffing issue.

20 A I do know what you're talking about, yes, sir.
21 But it's more than just handcuffing.

22 Q Right. And the giving of assistance to -- there
23 was going to be a release from Richmond further to
24 an FOI request, Freedom of Information request.

25 A That's -- that's correct, yeah.

26 Q And you authorized Corporal Carr to make the
27 release that we've already talked about in these
28 proceedings. It was dated November the 30th,
29 2007.

30 A I did. Yes, I did.

31 Q How does the release of the information which
32 basically says the police officers acted
33 appropriately, I mean, that's the tenor of that
34 release.

35 A That's not what it says, sir.

36 Q Well, what was the point of it?

37 A The -- it was a judgment call on my part. The --
38 the Richmond Fire Department arrived at the scene
39 and there was -- their reports indicated no pulse.
40 At the moment in time in which I authorized this
41 release, our investigation surrounding this
42 particular component of the case was stable, in
43 other words, we had collected the statements, we
44 had the facts before us, but there was no further
45 investigation taking place with respect to that.
46 It was my belief that the -- the facts which were
47 not obvious or available by viewing the video,

1 which was out constantly and continuously in the
2 public eye, did not accurately portray the fact
3 that Mr. Dziekanski did have signs of life
4 following the handcuffing, and that the likely
5 media posture following the release of the Fire
6 information would be that they simply stood by and
7 -- and did nothing, when in fact there was
8 certainly evidence in our possession at the time
9 that there was a pulse and there was sounds of
10 breath for the eight minutes it took for the
11 ambulance to arrive.

12 Q That's based on your weighing of the evidence from
13 the police officers?

14 A That's based on my -- not just the police
15 officers, but the security personnel at scene and
16 one of the EHS personnel in my review of the
17 statement indicated that there was a breath, at
18 least one breath sound that they were -- were able
19 to monitor. So it, again a very -- a very
20 judgmental, you know, I made a judgment to make
21 that release and to provide that information,
22 recognizing what was likely about to take place
23 with respect to the media.

24 Q But wasn't that in direct response to this e-mail
25 from Peter German of the -- of November the 28th?

26 A My release was in response to him?

27 Q Yes.

28 A In contravention of him or in -- or by his -- I'm
29 sorry, I don't...

30 Q Well, you were directed, basically, by Peter
31 German on the 18th of November that this is coming
32 forward, and it was essentially deal with it,
33 right?

34 A Absolutely not, sir. The decisions with respect
35 to that release were mine.

36 Q Now, explain to me what the difference was between
37 your decision to release that information but not
38 the five deployments of the Taser.

39 A Sir, my reasoning behind releasing one and not the
40 other was, as I said to you earlier, the cycling
41 of the CEW, it's -- the evidence that would
42 support or suggest that it in fact made contact
43 with Mr. Dziekanski, the appropriate use of its --
44 use of it as a less than lethal device, and his
45 arrest, the cause of death, the use of force
46 report, were still fluid and yet to be obtained.
47 The information pertaining to whether Mr.

- 1 Dziekanski had a pulse and anybody monitored for a
2 period of time, was in our possession, and I did
3 not foresee that those particular issues would
4 result in a criminal prosecution. In other words,
5 one was -- one was stable information in your
6 possession and one was still fluid.
- 7 Q Well, what did you make that determination that
8 wouldn't result in a criminal investigation?
- 9 A No, it was a criminal investigation, but --
- 10 Q I see.
- 11 A -- I did not foresee that based on the facts, as I
12 understood them, that -- it was possible that
13 Crown could, I'm not aware of what that charge
14 might be, based on the circumstances, but that
15 again we were in possession of the facts, and
16 there were no further investigative avenues
17 underway with respect to that particular piece of
18 information.
- 19 Q But as of November 2007 there was no reason, from
20 a point of view of protecting or gaining
21 information from witnesses who may have witnessed
22 the event, for them not to -- for people not to
23 know about the fact that there were five
24 deployments.
- 25 A I disagree, sir. I think that that is a matter of
26 -- or for discussion in a courtroom or review
27 process, that there are many, many implications
28 and many factors that relate to the application of
29 the CEW that are not obvious and need to be
30 considered. And that includes the things, as I've
31 said, how many have been in contact with the
32 individual, how many failed, what is the
33 difference between push stun and probe stun. They
34 are different, I'm told, substantially different
35 on the effects of the body. I think it's highly
36 relevant what the cause of death was at the time.
37 Did Mr. Dziekanski in fact die as a result of the
38 CEW? My information --
- 39 Q Well, that's not --
- 40 A My information is that he did not, so that
41 discussion, one discussion evolves into another
42 very, very quickly. So I believe that the -- in
43 the protection of the process is that that needed
44 to be examined in its entirety, but not
45 necessarily by us, by a reviewing process of some
46 kind.
- 47 Q How could the process not be protected by you

Supt. Wayne Rideout

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

Cross-exam by Mr. Butcher (for Const. Bill Bentley)

1 simply telling the media exactly what you told me,
2 there were five deployments but we don't know what
3 the effects of those were.

4 THE COMMISSIONER: I think this has been done over and
5 over. I think the answer is here.

6 MR. KOSTECKYJ:

7 Q Now, sir, you were in a hopeless conflict of
8 interest, I'm going to suggest to you. You were
9 on the one hand investigating your own members,
10 and at the same time in a position where you had
11 to make press releases to explain the actions of
12 those members.

13 A I don't agree, sir, that we were in a conflict of
14 interest. I agree, I would state that what we
15 were in was in a very difficult position with
16 respect to public relations for the RCMP, but we
17 chose, and the RCMP supported a position, which
18 was to maintain the integrity of process and
19 investigation at the expense of its own public
20 relations.

21 Q Yes. But you were prepared to determine what was
22 released and what wasn't at the same time
23 investigating the events?

24 A That was my job at the time, yes.

25 Q And you were in a conflict.

26 A I was in a difficult position. I don't believe
27 it's a conflict.

28 Q You were in a conflict between your duty to the
29 RCMP and protecting what --

30 A I think I've answered that, sir. You've asked me
31 if I was in a conflict. I said I don't believe I
32 was in a conflict.

33 MR. KOSTECKYJ: Thank you.

34

35 CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CONSTABLE
36 BILL BENTLEY:

37

38 Q Superintendent, my name is David Butcher, I am
39 counsel for Constable Bill Bentley, one of the
40 police officers involved in this matter.

41 I'm going to ask you first some questions
42 about your background in homicide cases and the
43 mandate of IHIT. Can you please tell us what the
44 mandate of IHIT is?

45 A The mandate of IHIT is to investigate on behalf of
46 the RCMP detachments in the Lower Mainland and
47 between -- depending on the time, three and four

- 1 municipal police departments, all homicide
2 investigations, all unexplained or sudden deaths,
3 or suspicious sudden deaths, and investigations
4 that involve the application of force resulting in
5 serious bodily injury or death involving police
6 officers, on behalf of the collective participants
7 of IHIT.
- 8 Q And currently which are the municipal forces that
9 are part of your unit?
- 10 A Again, I am not the Officer in Charge any longer
11 of IHIT. I have since transferred on, but the
12 current partners are all the RCMP detachments, the
13 Port Moody Police Department, the Abbotsford
14 Police Department and the New Westminster Police
15 Department. At one time West Vancouver was a
16 participant, as well.
- 17 Q And from east to west?
- 18 A From Pemberton/Whistler to Hope and Boston Bar on
19 the other side of the jurisdiction, including the
20 seven large municipal RCMP detachments in the
21 Lower Mainland, and the Sunshine Coast.
- 22 Q When you were in charge of IHIT, how many homicide
23 investigators were under your supervision?
- 24 A Investigators? I'm sorry, investigators, or
25 investigations?
- 26 Q Sorry, when you were in charge of IHIT, how many
27 homicide investigators were under your
28 supervision?
- 29 A We began with 46 and grew through my time there to
30 84 detectives in eight investigative teams.
- 31 Q How many homicide investigations have you had a
32 significant role as a lead investigator or file
33 coordinator or as a team commander, or whatever
34 term is being used from time to time?
- 35 A Sir, again beginning as a detective in 1992 and at
36 various ranks, I stayed within in the
37 homicide/major crime field. During my tenure at
38 IHIT we -- at the time I left, 240 homicide
39 investigations. That does not include officer-
40 involved and unexplained sudden deaths. During my
41 period of time that preceded that, I would have to
42 say 100 to 200, I investigated crime scenes,
43 remains in Kosovo in 2000. So the numbers are in
44 one form or another in the hundreds.
- 45 Q And how many officer-related deaths have you
46 investigated?
- 47 A I would be guessing. The number is considerably

1 less, between 10 and 20, somewhere in that range.

2 Q As far as you know, have you been involved in as
3 many investigations of that kind as anybody else
4 in the province?

5 A Anybody else that's currently serving, anyway.

6 Q I'm going to ask you some questions about some
7 comments that you made during your questioning by
8 Mr. Vertlieb to justify the withholding of the
9 video from the media. Firstly you said that there
10 must be a subjective and objective examination of
11 the facts. I wonder if you can tell us what you
12 mean by those two things?

13 THE COMMISSIONER: Well, you know, again I hesitate to
14 interrupt, but unless you're bringing up something
15 new, this has been gone over very clearly.

16 MR. BUTCHER: Well, I have some specific questions to
17 ask this witness that relate specifically to
18 issues that have arisen with respect to my client.

19 THE COMMISSIONER: Well, that's certainly a totally
20 different matter. Go ahead with that.

21 MR. BUTCHER: Thank you.

22 A Sir, with respect to issues pertaining --
23 surrounding the investigation of matters involving
24 the police and the application of force, the
25 approach we take is to understand what actually
26 took place, but it's also equally important to
27 understand what the officers perceived at the time
28 they were effecting their powers of arrest. They
29 have -- there are provisions under s. 25 and 26 of
30 the **Criminal Code** that need to be addressed when
31 we're examining these issues. And the subjective
32 examination, what they saw, what they felt, what
33 they -- what they believed is highly relevant to
34 understanding whether they have gone beyond the
35 provisions of s. 25 and 26 of the **Criminal Code**.

36 Q You also told us that it was extremely important
37 to interview witnesses who were present to get
38 their evidence from memory based on what they saw
39 in real time. Can you tell us about that. Why --
40 why do you think that?

41 A I was very fearful of once the video was shown
42 that we would get, if there were 30 witnesses, and
43 again I'm -- that's an approximate number, we
44 would get 30 versions that echo the video view, if
45 you will, the camera view.

46 What I hoped to obtain or what I wanted was
47 what each witness actually saw from the angle in

1 which they actually saw it. That angle would be
2 different in all cases, and perhaps not dissimilar
3 to the angle that the officers had perhaps
4 perceived the event. I wanted to know what they
5 felt. I wanted to know what they feared and I
6 wanted to know their level of anxiety with respect
7 to the event. And I can tell you that there is a
8 broad base of information that's contained within
9 those statements, including the Pritchard video,
10 Mr. Pritchard himself, who actually videoed this,
11 but perceived it a different way. His statement
12 is different than what he subsequently reports
13 after review of that video.

14 I think it's a very sound and required
15 investigative process, and I think we would have
16 been highly criticized to utilize or have allowed
17 review of that video before taking those
18 statements.

19 Q I take it, then, that it's your view that it's
20 good practice that eyewitnesses provide their own
21 untainted, unassisted, subjective report of
22 events.

23 A I refer to it as true memory. What I'm after is
24 their true memory, their true recollection of
25 events. Because it is important and would be
26 obviously the subject of extensive cross-
27 examination by any defence counsel in a criminal
28 trial would be chipping away at the value of their
29 evidence, because they would allege that that
30 evidence was derived from reviewing the video,
31 rather than what they actually saw.

32 Q I take it that from your, and if I may describe it
33 this way, vast experience in homicide
34 investigations, you are very aware that the
35 subjective reports of witnesses are often very
36 different from the objective facts.

37 A That's correct, not just witnesses.

38 Q Well, I was going to move on to that. It's your
39 experience tells you that eyewitness evidence can
40 be very unreliable.

41 A Referred to as the fallibility of eyewitness
42 testimony, yes, sir.

43 Q And the average person misses a lot of what
44 happens, particularly in a stressful event?

45 A Correct.

46 Q That also applies to police officers who have been
47 involved in stressful events.

1 A Yes, it does.

2 Q And it would be your experience that the officers
3 who have been involved in a high stress event
4 often provide evidence that can be fragmentary and
5 even unreliable.

6 A Yes.

7 Q And would it be your experience that it is
8 particularly difficult for officers to remember or
9 relate some peripheral aspects?

10 MS. ROBERTS: I'm sorry, Mr. Commissioner, this goes
11 beyond -- to a certain point Mr. Butcher was
12 exploring the reasons that Superintendent Rideout
13 had given for his decision-making. I fear we've
14 gone a little beyond that point and we weren't
15 presenting Superintendent Rideout as an expert in
16 these areas.

17 MR. BUTCHER: Well, I understand that. But he was the
18 man in charge of this investigation and he's also
19 a man who can assist the Commission --

20 THE COMMISSIONER: You've been able to link it. Go
21 ahead.

22 MR. BUTCHER: Thank you.

23 Q Is it your experience that officers have some
24 difficulty in accurately relating stressful events
25 that they have been involved in?

26 A Some do, yes.

27 Q Is it unusual in these kind of matters?

28 A No, it's not.

29 Q And are you able to tell us about this, whether or
30 not officers have particular difficulty with
31 relating matters that they were not directly
32 involved in, in an incident?

33 A I think it depends, sir, on when you say they're
34 not directly involved, if they're bystanders or
35 form more of an objective position within what's
36 taking place, the accuracy level tends to go up if
37 they are involved in a collateral way. I think
38 that they get some of the tunnel vision that we
39 sometimes see or they lose that objectivity or
40 ability to provide comprehensive witness accounts
41 and can provide, as you say, fragmented accounts
42 of the event.

43 Q Now, does -- does tunnel vision arise because in a
44 critical incident an officer may be focused on
45 their own role and not on what others are doing
46 within that critical incident?

47 THE COMMISSIONER: I think you're going beyond it now,

1 Mr. Butcher. I can't see the link any more.

2 MR. BUTCHER: Okay. Thank you, those are my questions.

3 THE COMMISSIONER: By the way, a lot of that's common
4 sense.

5 MR. BUTCHER: But we also need some evidence on it.

6

7 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CONSTABLE

8 KWESI MILLINGTON:

9

10 Q Officer, My name is Ravi Hira. I am counsel for
11 Officer Kwesi Millington. First, you gave
12 evidence that Sergeant Attew and then Corporal
13 Brassington were the lead investigators.

14 A Sergeant Attew was the accredited team commander
15 that originally took his team out to investigate
16 this case. He was assigned four days later to the
17 investigation of the Surrey Six homicides and
18 simply could not carry on in both roles.

19 Q So Brassington was the lead investigator, is
20 that --

21 A Primary investigator, and I took over the role as
22 team commander in approximately a few weeks later.

23 Q So just dealing with some questions that you were
24 asked by Mr. Vertlieb regarding Dr. Lee, would the
25 primary investigator be the person that would be
26 dealing with Dr. Lee?

27 A No.

28 Q It would be you?

29 A Unlikely, no. Dr. Lee would -- typically in a
30 homicide investigation, the person tasked with
31 exhibit care and control also maintains continuity
32 of the deceased through the autopsy process and is
33 the one that typically has the contact with the
34 pathologist.

35 Q And we know in this particular case it was then
36 Constable and now Corporal Paul Hoivik.

37 A Oh, I was unaware that he had been promoted, but
38 yes, Hoivik was the one.

39 Q And so if Dr. Lee provided a draft report or
40 discussed a draft report, it would be with
41 Corporal Hoivik and not with you?

42 A If he discussed it, it would be with him. If he
43 had a written report, I would expect to have seen
44 it.

45 Q And you certainly haven't seen that?

46 A I have not.

47 MR. HIRA: Thank you. Now, in going through these e-

1 mails, and I'm looking at -- I think the quickest
2 way to do this is to deal with it compendiously,
3 Mr. Commissioner, so that I'm asking one question
4 as opposed to 20.

5 THE COMMISSIONER: I hope you'll bear in mind that this
6 is supposed to help me in my task.

7 MR. HIRA: Well, I'm trying to identify certain e-
8 mails, Mr. Commissioner, so that -- so the marking
9 process will be a little easier, may I suggest
10 that. And I appreciate what you're saying, Mr.
11 Commissioner.

12 Q In going through these e-mails, starting with
13 October 30, 2007, page 5, the third full
14 paragraph:

15
16 There are still a number of witnesses yet to
17 be interviewed...

18
19 A Yes.

20 Q Then going through to page 13, another October 30
21 e-mail, again referring to witnesses to be
22 interviewed.

23 A Yes.

24 Q You were taken by Mr. Vertlieb to the e-mail found
25 at page 14, which again makes references to
26 witnesses to be interviewed and further reports to
27 get, including the CEW report, the pathologist's
28 report, the use of force report, et cetera. You
29 see that?

30 A I was going to agree with you, sir, but if you
31 could -- I apologize, if you could --

32 Q That's okay. If you could go to the third
33 paragraph. Mr. Vertlieb took you all the way down
34 to the -- to just before the sentence:

35
36 We have been outstanding on the following:

37
38 A I'm sorry, sir, you'll have to -- I'm obviously on
39 the wrong page.

40 Q Page 14, October 31.

41 A Okay. I have the page, I'm just trying to catch
42 up to you on the sentence.

43 Q May I approach you and point it out.

44 A Sure. Yeah. Sorry.

45 Q That's okay. I'm referring to that sentence.

46 A Okay.

47 Q

1 We have been outstanding on the following:

2

3 A Yes.

4 Q Then going to the next e-mail, which is page 30
5 and 31, November 2, 2007, again Mr. Vertlieb took
6 you to the bottom of page 30. You again in that
7 e-mail are concerned about the status of the
8 investigation; is that correct?

9 A Yes.

10 Q Going to page 30 -- sorry, page 73, December 12,
11 2007, the third full paragraph, which refers to
12 the "search for truth posture".

13 A Yes.

14 Q Page 74, which is the same e-mail, sets out the
15 processes underway from (a) to (h).

16 A Correct.

17 Q Page 76, a December 14, 2007 e-mail that again
18 deals with in the second paragraph "a thorough and
19 unbiased investigation".

20 A Correct.

21 Q Page 80, the first e-mail there, which seems to
22 address the necessity to honour the ongoing
23 process, in the second line.

24 A Yes.

25 Q "Honour other ongoing processes".

26 A Correct.

27 Q And finally page 90, December 18, 2007, second
28 full paragraph, amongst others, dealing with a
29 thorough and unbiased investigation.

30 A Yes.

31 Q Throughout this process that's what you were
32 trying to do, which is protect not only the
33 investigation but the other processes that were
34 underway?

35 A That's correct.

36 Q Now, the last e-mail that I want to take you to,
37 and when you talk about -- before we get to the
38 last e-mail, when you talk about protecting the
39 other processes, you've alluded to that, which is
40 criticism, by the release of investigative
41 information.

42 A Yes.

43 Q Criticism by the Crown, the defence and the
44 courts, correct?

45 A And others.

46 Q Thank you. Now, the last e-mail that I wish to
47 take you to is page 34, a November 5 e-mail,

Supt. Wayne Rideout

Cross-exam by Mr. Hira (for Const. Kwesi Millington)

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

1 10:18, you write:
2

3 I am not sure if you have forwarded this,
4 however we will not be releasing the video to
5 the involved member. We feel that it would
6 be inappropriate in an impartial
7 investigation.
8

9 Who is the "involved member"?

10 A There was concern -- the member, sorry, to answer
11 your question, it's the four involved members,
12 or --

13 Q Thank you.

14 A -- it probably should have said all four. And the
15 thinking was that the release of that video and
16 their viewing of it would be traumatic for them, a
17 well, and there was some concern should that be
18 released, my position was that was not the role of
19 the IHIT investigation and that we should not
20 participate in that.

21 Q And also that it would impair your investigation;
22 is that correct?

23 A Well, it could, although I had really no
24 expectations that once that video was ultimately
25 released publicly that that would not occur on its
26 own. It just wouldn't be us doing it, because
27 that was not our job, not our function.

28 Q And so when you write, "We feel that it would be
29 inappropriate in an impartial investigation", your
30 concern was that you had their statements, it was
31 not time to review the video with them.

32 A Correct. Our investigation was ongoing and if
33 there were going to be a review, there would be --
34 have to be some determination on criminality maybe
35 for that.

36 MR. HIRA: Thank you. Those are my questions.
37

38 CROSS-EXAMINATION BY MR. ROSENBLOOM ON BEHALF OF THE
39 GOVERNMENT OF POLAND:
40

41 Q Superintendent, my name is Don Rosenbloom and I
42 appear on behalf of the Government of the Republic
43 of Poland. I have some questions for you.

44 I gather that you have informed us in your
45 testimony today that in March of 2008 your IHIT
46 report went to the Crown counsel; is that correct?

47 A Yes. The initial -- the initial report went to

1 Crown counsel. We wanted, recognizing the urgency
2 to get that forward, we advanced the, what I would
3 refer to as the substantive portion of it. But we
4 did follow up over the course of months with
5 material that was arriving, so there was about
6 four or five different submissions. So
7 outstanding reports from experts and/or
8 translations from other -- in other languages took
9 some time to get, and they were -- they were
10 provided in follow-up submissions to Crown. But
11 the initial report went in in March.

12 Q Yes. And so the report that would be provided to
13 all of us through the disclosure of documents,
14 would be the report that went to them in March of
15 2007 -- excuse me, 2008.

16 A No, I believe you would have had the final
17 version. So there was -- there was additional
18 submissions that would include the original
19 material plus the additional material. My belief
20 is that you were provided the final draft, the
21 final product included all our submissions to both
22 the Crown and subsequently the Coroner. You
23 should --

24 Q The --

25 A You should have the -- all the material.

26 Q During the lunch break I will confirm that
27 situation with the Commission counsel. I also
28 gather from your evidence that the investigation
29 at your end moved from a fact-finding
30 investigation to a criminal investigation in mid-
31 November of 2007.

32 A That's correct, sir.

33 Q All right. Now, you have already informed us that
34 you were aware of the misinformation that had been
35 given out through media relationship between the
36 14th of October and the 16th of October.

37 A That's correct.

38 Q And you have spoken generally to what that
39 misinformation was, and I don't intend to belabour
40 the matter with you and go over it again.
41 Sergeant Lemaitre testified here in these
42 proceedings about being concerned about this
43 misinformation being disseminated. He spoke about
44 how he had participated in, as he put it, animated
45 conversations about his concern about this
46 misinformation. Were you ever part of any meeting
47 where he expressed those concerns?

- 1 A The only meeting that I was at with Sergeant
2 Lemaitre was on the 16th, when I -- I was going to
3 say requested, but insisted that they ceased
4 discussing evidence. And I don't recall that to
5 be particularly animated. Now, to be fair, and
6 thorough, there were ongoing communications with
7 "E" Division Communication either with him or
8 through Corporal Carr that discussed their desire
9 to become more proactive in their media
10 strategies.
- 11 Q And being more proactive, you're also speaking of
12 the RCMP intervening to inform the media of the
13 misinformation, is that fair to say?
- 14 A I think that's fair to say, yes.
- 15 Q And so you've spoken about the balances that you
16 have to grapple with, in particular with this
17 file, when it came to media relations. As you had
18 to weigh those balances, balance those issues, you
19 were aware that your media relations officers were
20 concerned with the fact that their integrity was
21 on the line to the extent of having given
22 misinformation to the public?
- 23 A That's correct.
- 24 Q Now, Corporal Carr was taken off these -- this
25 file, on the 16th of October. Was that because
26 you were --
- 27 A Sergeant Lemaitre, I'm sorry, to correct you
28 halfway (indiscernible - overlapping speakers).
- 29 Q Excuse me, I meant Sergeant Lemaitre was taken off
30 the file on the 16th of October. Was that at your
31 initiative?
- 32 A No, my only direction was that IHIT and Corporal
33 Carr, who was the IHIT spokesperson, would be the
34 person that would discuss the IHIT investigation.
35 So it had nothing to do with Sergeant Lemaitre.
36 It had nothing to do with, you know, removing him.
37 I wanted my own spokesperson to be the person
38 discussing the case. Corporal Carr, because of
39 his constant and continuous proximity to IHIT
40 investigations, is very familiar with the style of
41 our releases, our approach around investigation
42 and process and it made more sense.
- 43 Q Were you disappointed that Sergeant Lemaitre had
44 spoken to the facts of this incident between the
45 14th and 16th of October?
- 46 A No, I wasn't disappointed. I think that there has
47 been direction by both myself to try to be as

- 1 transparent as possible on these cases, to try to
2 be as cooperative with the media as is possible.
3 I think where -- where it went wrong was that was
4 interpreted to include evidence and was not --
5 that was not meant to be the case. Evidence was
6 not to be part of that.
- 7 Q Now, you -- we spoke about this balance a moment
8 ago, that you had to make certain judgment calls,
9 and you have testified that you were aware of the
10 concern of your media officers in respect to the
11 misinformation. My question to you is this. Did
12 you impose this -- this policy of clamming up on
13 information to the media by way of any written
14 document?
- 15 A No, that occurred during a meeting on the 16th.
- 16 Q All right. And there is no paper trail that any
17 of us can look at in terms of the rules that you
18 imposed on the media officers at that meeting on
19 the 16th?
- 20 A No, there's not, sir. There is a general accepted
21 practice within what we referred to as major case
22 management philosophy, that the team commander or
23 the person responsible for the investigation
24 really has final say on media releases, because we
25 need to be assessing the effect that they will
26 have on our investigation. So that is part of an
27 embedded structure within the investigative
28 practice, but in this case there is no e-mail
29 communication saying stop. There was-- I actually
30 went to headquarters and had a meeting and said
31 "Cease, cease discussing evidence."
- 32 Q You said "Cease".
- 33 A "Cease discussing evidence," yes.
- 34 Q But in spite of that, and there's been reference
35 made both by Commission counsel and by Mr.
36 Kosteckyj, that you chose to violate that order to
37 cease when it came to your media relations on
38 October the 30th; is that fair to say?
- 39 A I think it's fair to say based on the information
40 before me, I certainly did move away -- move away
41 from that, and I discussed what some of the facts
42 of the case pertaining to a very small component
43 of it, that's the post-care of Mr. Dziekanski
44 following his handcuffing, that's true.
- 45 Q Okay. Just to correct the record - my friend
46 corrects me - the event in question is November
47 30th that I speak of.

1 A Yes.

2 Q The press relations on November 30th.

3 A Yes, that's correct.

4 Q Now, you say that small portion. Did you believe
5 at that moment that that small portion dealing
6 with the post-handcuffing medical care of Mr.
7 Dziekanski was not a criminal -- ongoing criminal
8 matter?

9 A No, I couldn't -- I couldn't say that. I think
10 that that was something that we would expect the
11 Crown to review and could potentially make an
12 assessment on.

13 Q Well, that being the case, why was it that you'd
14 chosen that particular occasion on the 30th of
15 November to go public with your version of the
16 history of the event post-handcuffing, when it
17 fact it violated this cease order.

18 A I think that it was a judgment call on my part at
19 the time, sir, and I think that it did step
20 outside of -- to a degree some of the practices
21 that are -- that we expect, and I think that
22 perhaps that that, while I did it for reasons that
23 I think were there to relieve all parties
24 concerned of this belief that the officers just
25 stood there as Mr. Dziekanski passed away, it was
26 from a degree of compassion and a degree of
27 understanding. But it does, in fact, as you
28 suggest, violate the practice and the best
29 practice.

30 Q Well, Superintendent, you'd agree with me that the
31 press release of November the 30th was placing
32 your officers and the Force in a favourable light;
33 is that not fair to say?

34 A Well, I don't think any release in this case ever
35 placed anybody in a favourable light.

36 Q What do you mean by that?

37 A I think that there is, this case, the nature of
38 this case, the tragedy of this case is there is no
39 such thing as a positive light on any of this. I
40 think what it did was serve to explain the fact
41 that Mr. Dziekanski, by the evidence before us,
42 had a pulse, and that he was breathing, and that
43 he did not sit there for eight minutes while the
44 ambulance arrived, and so it served to put some
45 facts before the media that I suspect they would
46 have taken a slightly different approach to their
47 media releases had we not done it.

1 Q Let me put it another way. It was a defence of
2 the Force in respect to the medical care issues
3 after handcuffing; is that not fair to say?

4 A It was the submission of the facts that we had
5 before us, and I think if you look at that
6 release, it doesn't take a position, or it's not a
7 defensive one, it's a submission of the facts.

8 Q Well, Superintendent, let me take you on, on that
9 very issue of whether the release did in fact
10 fairly state the facts as you knew them at the
11 time. Were you aware, Officer, the three days
12 prior to the release -- excuse me, a month -- over
13 a month before the release of that press release,
14 one of your IHIT investigators, Constable Mulhall,
15 interviewed Kirby Graeme of the Richmond Fire
16 Department?

17 A I know that Kirby Graeme was interviewed. I don't
18 disbelieve that it was Constable Mulhall, but...

19 Q Okay. Taking my word for a moment that it was,
20 are you aware that Kirby Graeme informed the IHIT
21 investigators in that interview of October 27th,
22 2007 that on his arrival to attend this first
23 response, to attend this incident, that he
24 observed the Mounties standing within probably ten
25 metres of the patient, and then he went on and
26 said a lot of security, excuse me, they were on
27 the scene -- just allow me a moment here, please.
28 He said in part:

29
30 There was -- I did notice when I did get on
31 the scene that there was a lot of security
32 people.

33 MULHALL: Yeah.

34 GRAEME: And I think there was at least four
35 Mounties standing by within probably ten
36 metres of the patient. Uh, nobody --
37

38 And then there's a cell phone interruption. Then
39 he says:

40
41 -- uh, so like I say, there was a lot of
42 security and uh, the YVR security a -- as
43 well as the Mounties --

44 MULHALL: Okay.

45 GRAEME: -- were -- were on scene, so.

46 MULHALL: Uh, maybe I'll just go through and ask
47 you a couple things. When you said you f --

1 you guys first arrived uh --

2
3 I'm sorry, this is not the passage I want. The
4 passage I want -- if you'll allow me two seconds.

5 In this statement, and during the break I'll
6 give you an opportunity to review it, Constable --
7 Mr. Graeme, Chief Graeme, indicates that when he
8 arrived nobody was doing anything in respect to
9 the monitoring of the patient -- of the -- of the
10 -- of Mr. Dziekanski. The question I have for
11 you: Were you aware that on October 27th your
12 IHIT investigators were aware that a witness was
13 indicating that on their arrival none of the
14 officers or anyone else was monitoring Mr.
15 Dziekanski?

16 A Yes.

17 Q Knowing that that information had been provided to
18 your IHIT investigators, why did you approve a
19 press release on November the 30th where you said
20 nothing to the media about the fact that there
21 were -- there was a witness, at least one witness,
22 that had indicated to your investigators that
23 nobody was monitoring Mr. Dziekanski at the time
24 of their arrival?

25 A The purpose of that release was simply to get the
26 facts or the information that was before us that
27 he had not died immediately following the
28 handcuffing and that he had a pulse for a period
29 of time and was breathing, with respect to the
30 various opinions as to when that occurred, that
31 again forms the cumulative submission that we
32 made. We have witness statements from, I
33 think/believe several firefighters, several EHS
34 personnel, and several other people. So it was
35 really just to advise that there was signs of life
36 for a period of time, that the -- the officers
37 called the -- the fire department and that they --
38 they did not in fact take the handcuffs off at
39 first request, they did it at second request. So
40 we didn't -- again we didn't get into a big debate
41 and discussion about all the evidence, just simply
42 to put those -- those facts forward.

43 Q But you speak in this media advisory of the 30th
44 of November that though your investigation is not
45 complete, the investigators can say, based on
46 current information, the following. You then
47 speak to the deployment of the taser and you speak

1 to Richmond Fire requesting the handcuffs to be
2 removed. And then you say:
3

4 It is important to understand investigators
5 have learned that based on the continuous
6 monitoring of Mr. Dziekanski it was the
7 opinion of officers and the YVR security
8 member at the incident that Mr. Dziekanski
9 was breathing and had a pulse. However, he
10 was unconscious the entire period while
11 awaiting emergency medical personnel to
12 attend.
13

14 I'm saying, Superintendent, was it not incumbent
15 upon you and your division, the IHIT office, to
16 inform the media that there were contradictory
17 opinions of witnesses regarding the quality of
18 care that had been provided to Mr. Dziekanski at
19 the time of their attendance?

20 A I think that's the inherent debate about releases,
21 that you begin to get into the he said/she said
22 kind of debate within the release itself. My
23 opinion and my judgment at the time was simply to
24 put the facts out about the fact that he was in
25 fact breathing and had a pulse. I did not
26 consider that as a component of the release.

27 MR. ROSENBLoom: I have further questioning but it may
28 be the appropriate time for lunch.

29 THE COMMISSIONER: Are you able to give any indication
30 as to how much further you might be?

31 MR. ROSENBLoom: I am --

32 THE COMMISSIONER: We have one more witness.

33 MR. ROSENBLoom: I would say approximately an hour, 45
34 minutes to an hour.

35 THE COMMISSIONER: All right, thank you, Mr.
36 Rosenbloom. We may sit late today, then.

37 MR. ROSENBLoom: Thank you.

38 THE REGISTRAR: The hearing is now adjourned till 2:00
39 p.m.
40

41 (WITNESS STOOD DOWN)
42

43 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

44 (PROCEEDINGS RECONVENED)
45

46 THE REGISTRAR: The hearing is now resumed.
47

1 SUPT. WAYNE RIDEOUT, a
2 witness, recalled.

3
4 MR. ROSENBLROOM: Thank you.

5
6 CROSS-EXAMINATION BY MR. ROSENBLROOM ON BEHALF OF THE
7 GOVERNMENT OF POLAND, continuing:

8
9 Q Superintendent, would you agree with me in
10 following up from my series of questions to you
11 just before the break, that it was an error on the
12 part of the RCMP to issue a press release on
13 November 30th that did not give a balanced summary
14 of the evidence known to the RCMP regarding
15 medical care?

16 A I don't believe it was an error, sir. I think it
17 was something that I hadn't considered doing in
18 the course of that release, and that media
19 releases are always a bit of a -- I was going to
20 say subjective, in that you put in what you think
21 is relevant to the issue at hand, but it's not an
22 exercise in swearing an affidavit, or providing a
23 full and comprehensive material, because that's
24 not the purpose of a release. The purpose of the
25 release was simply to put out some simple facts
26 that were known to the investigation.

27 Q But a press release is a calculated statement. It
28 is a statement where the press release is drafted,
29 it is reviewed by individuals before it is played
30 out in the public forum.

31 A It is a drafted release. It is something that is
32 reviewed before put out in to the public forum,
33 yes.

34 Q So it's calculated. It isn't as if it's a scrum
35 where someone might make a mistake, an error, by
36 unintentionally?

37 A I think that's a fair statement, yes.

38 Q And that being the case, you'd agree with me, and
39 this has been spoken to by Corporal Carr and
40 Sergeant Lemaitre, that the integrity of the RCMP
41 is always at stake when information is being
42 provided to the media; is that fair to say?

43 A Well, I think that's a pretty broad statement,
44 sir. Information goes from the RCMP to the media
45 on a daily basis, if not an hourly basis. I think
46 that it is our goal always as the RCMP to put out
47 the best information we can when we can. I think

1 that from time to time information does get out
2 that's incorrect. I don't think this is the first
3 case in which misinformation, or incorrect
4 information is a better term, has gotten out.
5 Q But we're all human, Superintendent, but would you
6 not agree with me and recognize that the press
7 statement given to the media on November the 30th
8 did not inform the press that there was a
9 statement given to the IHIT investigators in
10 October that clearly indicated that the RCMP had
11 not proper medical attention to this man at the
12 time of their attendance.
13 A Well, no, you're -- I don't agree with you in the
14 statement the way you framed it. I will agree
15 that it did not include the contents of the
16 statement from that individual. But I think the
17 remaining parts of that statement are not for
18 anyone to say, whether they didn't receive the
19 proper medical attention. We did not include the
20 information from I believe it's the fire captain.
21 Q Yes.
22 A That's not -- not included in that statement.
23 Q And the fire captain had indicated to your
24 investigators that on his arrival none of the four
25 police officers, nor anyone else, was attending to
26 Mr. Dziekanski.
27 A I believe that's correct, sir.
28 Q And you knew that.
29 A Yes.
30 Q And you approved the press release.
31 A I did.
32 Q And you agree with me that that it would have been
33 a critical bit of information to provide to the
34 media to balance out the other comments that you
35 were making in that press release?
36 A I don't agree that it belonged in the press
37 release. I do not.
38 Q Now, it's my impression, Superintendent, and I'd
39 like your reaction to my impression, that it seems
40 to me that you chose to violate your cease order
41 with the media when it was self-serving to your
42 interest, but that when you did choose to violate
43 that order, you chose to simply give a summary of
44 facts as they were in your interest. Would you
45 agree with that?
46 A I do not, sir. I do not believe that that release
47 was self-serving to our interest. That release

1 was there to present facts that were absent and
2 were being, our belief, going to be made
3 available, one-sided, with respect to the concept
4 that there was no treatment and that Mr.
5 Dziekanski was simply left to -- on the floor of
6 YVR. So, no, I don't agree.

7 Q Well, but Officer, we've been in these proceedings
8 a long time and I don't want to take up any more
9 time than is necessary. Surely, you recognize
10 that the release of November 30th was self-serving
11 in that it was in support of the reputation of the
12 RCMP in informing the public that the RCMP took
13 the position that there had been proper medical
14 care.

15 MR. HIRA: Mr. Commissioner, isn't that --

16 A No, I don't agree.

17 MR. HIRA: -- a matter for argument?

18 THE COMMISSIONER: The answer is he doesn't agree.

19 MR. ROSENBLROOM:

20 Q Now, Corporal Carr testified in these proceedings,
21 and in his testimony, speaking about this very
22 issue of the misinformation, he stated in
23 testimony, and I'm referring to the transcript of
24 his testimony, and it's at page 64 of the
25 transcript of April 22nd of this year, he said,
26 and I quote -- I'll first give my question to put
27 it into context, and it was my questioning of him.
28 Question at line 27:

29
30 Well, I'll come back to that in a moment.

31 You spoke this morning about the fact that
32 the policy or direction from Superintendent
33 Rideout was motivated...

34
35 I'm sorry, if you want it in front of you.

36 MS. ROBERTS: Sorry, which line did you (indiscernible
37 - overlapping speakers).

38 MR. ROSENBLROOM: It is line 27.

39 A Thanks.

40 MR. ROSENBLROOM: Thank you.

41
42 Q Well, I'll come back to that in a moment.

43 You spoke this morning about the fact that
44 the policy or direction from Superintendent
45 Rideout was motivated by the fact that you
46 did not want to compromise the investigation,
47 correct?

1 A Yes.

2 Q Yes. Would you not agree with me, Officer,
3 that the delivery to the media of
4 misinformation during those early days, in
5 itself, would compromise the investigation?

6 A Would I not agree with you which? I'm --

7 Q I'll do it again.

8 A I'm sorry.

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

12 A Yes.

13 Q -- would have compromised the investigation?

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

16

17 Q Do you agree with that comment?

18 A I do not.

19 Q Why do you say that?

20 A As I think I've already talked about earlier this
21 morning, the -- I prefer the term "incorrect
22 information". I think "misinformation" has a
23 tendency to suggest that it was an intentional
24 effort at misinformation. It was not. I believe
25 that the -- the information -- the investigation
26 would not be compromised because of the strategies
27 that we were undertaking. We had secured
28 statements about what the witnesses had observed,
29 and we felt strongly that we could rely on the
30 video and the CEW download report to provide us
31 with the accurate information that we were looking
32 for, rather than what perhaps witnesses may have
33 derived from the media.

34 Q Well, let me explore this a little further, and my
35 friend, Mr. Kosteckyj here, also went into this
36 issue with you. And it really comes down to an
37 issue of intimidating witnesses who had already
38 given interviews to you, or were in the process of
39 giving interviews to you. In an interview that
40 took place with Corporal Carr on October the 30th,
41 2007, and it was an interview with CTV reporter
42 Mi-Jung Li. And the transcript -- I had
43 transcripts prepared of these interviews, and I
44 will be applying to have these transcripts put
45 into evidence at the conclusion of my cross-
46 examination of you. All counsel have been
47 provided with these transcripts. And in this

1 transcript, Corporal Carr says at page 3, at line
2 4, speaking of Ms. Ashrafinia, I believe is the
3 pronunciation of it, speaking of her having
4 informed the press that there were four
5 deployments of the Taser, he says in part:
6

7 This woman was also under the impression that
8 the individual was tasered four times. I can
9 go again on the record and tell you that is
10 incorrect. Only one officer was in
11 possession of the conducted energy weapon.
12 It was an officer that was trained and
13 authorized to carry that. There were two
14 pulses, we call it, delivered to the subject,
15 to no avail. So he was tasered twice with
16 the same conducted energy weapon.
17

18 It then goes on, it's actually Eric Rankin that
19 was doing this interview, I'm sorry, not Mi-Jung
20 Lee. It goes on:
21

22 ERIC RANKIN: And yet she's quite adamant that she
23 saw this man react at least four times to
24 jolts.
25

26 And also it's Corporal -- Sergeant Lemaitre that's
27 doing this interview, not Corporal Carr, to
28 correct myself. Sergeant Lemaitre goes on:
29

30 Well, I have actually spoken to the
31 investigators from IHIT, and I have also
32 witnessed individuals being tasered before,
33 and I can assure you that if you are tasered,
34 you're going to be screaming for a few
35 minutes, and it might just be interpreted by
36 an individual as continual tasering or
37 intermittent tasering. We know for a fact
38 that there were two pulses, and the
39 investigation will show that, and certainly
40 during the coroner's inquest, etc.
41

42 Now, that was on --

43 A Sir, can I ask the date and time of that
44 particular interview, I'm sorry?

45 Q Yes, I'm sorry. I may have misled you. It is --
46 I'm sorry, it's October 16th, and I said November
47 30th -- October 16th. Now, that being the case,

- 1 and getting back to the line of questioning that
2 my learned friend pursued with you this morning,
3 do you not believe that kind of statement sitting
4 out in the public realm intimidates witnesses when
5 the RCMP go public and contradict statements that
6 have been made by a witness?
- 7 A No. I don't believe that statement should have
8 been made. I am -- I think I've been clear on
9 that as of the 16th I shut all of that kind of
10 talk down. That said, the investigation was
11 relying upon not so much the witnesses with
12 respect to the number of cycles, but the download
13 and the analysis of the videotape and the officers
14 who were cycling the device. I don't believe
15 that's -- that's going to create intimidation. We
16 are taking from the witnesses what they know, what
17 they've observed and I don't see it as
18 intimidation at all.
- 19 Q But, Superintendent, this witness was rebuked in
20 public, wasn't she, by the RCMP.
- 21 A I don't disagree, sir, that that interview should
22 not have taken place.
- 23 Q Yes. And will you agree with me that she was
24 rebuked publicly in the public -- in the public
25 forum.
- 26 MS. ROBERTS: That's a matter for argument, Mr.
27 Commissioner. Superintendent Rideout was not
28 present during that press conference. He's made
29 it clear that he wouldn't approved that, so Mr.
30 Rosenbloom is free to make that argument at the
31 conclusion of the inquiry.
- 32 THE COMMISSIONER: No, I think this is argumentative.
33 I mean, the Superintendent wasn't there, and you
34 ask him his opinion on something.
- 35 MR. ROSENBLOOM: Where this goes, Mr. Commissioner, is
36 knowing the opinion of the Superintendent in
37 respect to this episode, why did he not choose to
38 correct the record if only in the public interest,
39 and that is why I am going in this direction.
- 40 MS. ROBERTS: In that case Mr. Rosenbloom should be
41 asking the Superintendent if he was aware of this
42 interview before it was put to him today.
- 43 MR. ROSENBLOOM:
- 44 Q Were you aware of it?
- 45 A No. I knew there were a number of interviews that
46 had taken place, some talk shows that had taken
47 place. The specifics of the interview, the

1 debate, I was unaware of.

2 Q But you were aware that your media officers had
3 disputed in a public forum the evidence of this
4 witness.

5 A I don't -- can't say that I was aware specifically
6 of that, sir.

7 Q This seems pretty simple to me, and let me ask you
8 for your response. Isn't the truth less
9 prejudicial to an investigation than to leave
10 untruths out there in the public?

11 A Well, the truth is the goal in all of this.

12 Q And if the truth is the goal of all this, and
13 knowing as you did at a point of time that there
14 were untruths spoken by the RCMP to the media and
15 in turn to the public, wasn't it in the interest
16 of the investigation to have the truth clarified
17 with the media?

18 A I think as I've said earlier today, sir, that it's
19 clear with the benefit of hindsight that it may
20 have been appropriate to speak to the media in
21 form of a press conference saying that mistakes
22 had been -- errors had been made in the
23 information that was provided. I still do not
24 believe, and would not authorize the release of
25 any specific information at the beginning of an
26 investigation because the truth, in my view, comes
27 from the cumulative effect of the evidence,
28 knowing everything about the case, and there is --
29 we cannot try this in the media. This needs to be
30 tried in a process, whether it be a Coroner's
31 inquest, a criminal court, a CPC inquiry,
32 Commission for Public Complaints inquiry. The
33 proper process does not exist when we start trying
34 things in the media in small sound bites. It must
35 be the cumulative effect, people must have a
36 chance to answer, challenge evidence, that's the
37 process that exists in this country.

38 Q Yes. And I appreciate your comments when you say
39 that maybe certain aspects of the media program
40 were inappropriate in the early stages. What I'm
41 trying to ask you is once recognizing that there
42 were these untruths, for want of a better term,
43 spoken by the Force to the public, was it not in
44 the interest of the investigation to at least
45 clear up the record and inform the public of what
46 was truthful? Wasn't that far less prejudicial to
47 the investigation?

1 A I don't believe so, sir.

2 Q You don't. In -- during an interview that
3 Corporal Carr gave, and this was an interview on
4 November 30th, and he gave this interview to Ian
5 Hanomansing, and again is provided by way of DVD
6 from the Commission, and also I had official court
7 reporter transcripts prepared of it. And I'm
8 referring to page 4, and maybe your counsel will
9 want to put this in front of you.

10 MS. ROBERTS: Is there a page or a line number?

11 MR. ROSENBLUM:

12 Q And it is line number 19 where Corporal Carr is
13 speaking, and actually I'll start right at the top
14 of the page, Superintendent, line 2.

15
16 But one of your colleagues, Pierre Lemaitre,
17 said in an interview in French with Radio-
18 Canada that he had been given wrong
19 information by the officers at the scene...

20

21 A Can I stop you, sir, I'm sorry, I'm --

22 Q I'm sorry.

23 A I've lost you already. I have a --

24 Q I'm at the interview of Corporal Carr with Ian
25 Hanomansing, and I'm at page 4.

26 A Oh, I'm sorry.

27 Q I'm right at the top of the page, right here.

28 A Thank you.

29 Q I'll start again. The reporter said, and I quote:

30

31 But one of your colleagues, Pierre Lemaitre,
32 said in an interview in French with Radio-
33 Canada that he had been given wrong
34 information by the officers at the scene,
35 that's why his initial accounting of what
36 happened when he spoke publicly was different
37 from what he saw in the video, and yet
38 neither he nor anyone else with the R.C.M.P.
39 ever corrected the record before the public
40 saw the video.

41

42 Corporal Carr responds:

43

44 Well, certainly I haven't seen Mr. Lemaitre's
45 -- or Sergeant Lemaitre's interview. I don't
46 know what he said, and I'm not going to try
47 to contradict what he said. To say that the

1 officers gave us wrong information, I can
2 tell you that our officers, the investigators
3 on this and our officers are not about trying
4 to hide anything, they're not about trying to
5 give wrong information. It's the information
6 they knew at the time.
7

8 And this is where I want you to focus. He carried
9 on:

10
11 Did we perhaps err in not correcting
12 something that we saw, that could have been
13 the case. That will be uncovered throughout
14 this investigation. But bear in mind, this
15 was evolving every day, and there were heavy,
16 heavy demands on my time and on Sergeant
17 Lemaitre's time and -- you know, it's just
18 probably something that was an oversight more
19 than a big conspiracy that we were out to lie
20 to the public. That is the furthest,
21 absolutely furthest thing from my mind.
22

23 Now, in fairness to you, Superintendent, I put
24 this passage to Corporal Carr and he testified
25 that the word "oversight" was an -- I don't
26 remember his exact words, but was inappropriate
27 that he should not have used that word.

28 My question to you, sir, is were you aware
29 that he did speak to the media on that date and
30 speak of the lack of effort by the RCMP to correct
31 the untruths as simply being an oversight?

32 A I'd just like to ask is this a full transcript, or
33 this is -- this part of an addition -- an
34 interview he did with respect to the 30th of
35 November release?

36 Q This is a transcript of the interview and it's an
37 excerpt of that interview. You'll see that
38 actually on the first page of it.

39 A Because my expectation would be that this
40 interview was probably done resulting from the
41 authorized release of the 30th of November, the
42 one that you've been talking to me about.

43 Q Yes. Yes.

44 A And this forms a part of that. So, no, my
45 expectation of him on that day would have been to
46 speak to the authorized media release and not to
47 make -- I was not aware of these comments or that

1 that would be part of this.

2 Q Yes. Now, I find it curious, Superintendent, that
3 Corporal Carr in that passage makes no mention
4 whatsoever to the order given by yourself to the
5 media that they were not to speak about the facts
6 of the case, but to limit themselves to process.
7 You agree that from at least that passage, there
8 is no mention of that?

9 A I agree.

10 Q Do you have any explanation why that is?

11 A No.

12 MS. ROBERTS: With respect, that would be speculation.
13 He's already said he wasn't aware of those
14 comments being made. He's already said he didn't
15 authorize those comments. I'm not even sure he
16 was aware -- well, he wasn't aware those comments
17 were made. So to ask him why they were or weren't
18 made, or why something was or wasn't said is pure
19 speculation.

20 MR. ROSENBLROOM: I agree with my friend.

21 Q I'm going to suggest to you, Superintendent, that
22 the reason he never mentioned your cease order,
23 and I'll call it a cease order, was because no
24 such policy existed at that time. Do you deny
25 that?

26 THE COMMISSIONER: Just a minute. I'm sorry, you're
27 switching from "policy" to "order"?

28 MR. ROSENBLROOM: I'm interchanging the term.

29 Q Your cease order, do you understand what I speak
30 of when I use the term "cease order"?

31 A My cease order to stop talking about evidence.

32 Q That's right.

33 A Yes.

34 Q I'm going to suggest to you that that cease order
35 never existed at the time that Corporal Carr gave
36 that interview on November 30th.

37 A That's absolutely incorrect.

38 Q All right.

39 MS. ROBERTS: Well, both Corporal Carr and Sergeant
40 Lemaitre have testified that that was the result
41 of the meeting on October 16th. I don't know how
42 my friend can suggest that that direction wasn't
43 given?

44 MR. ROSENBLROOM: I have a right to --

45 THE COMMISSIONER: Well, he's suggested it and he's got
46 an answer.

47 MR. ROSENBLROOM: Exactly.

1 Q Moving to another subject. In the material that
2 was provided to us last night - I might add at
3 6:00 p.m. at night - there is a passage from your
4 notebook and the copies that were provided to us
5 last night did not have numbered pages, so I'll --
6 to speed this up, I'll just show you what I have
7 here. It's one page --

8 MR. BUTCHER: What date?

9 MR. ROSENBLROOM: Pardon me?

10 MR. BUTCHER: A date.

11 MR. ROSENBLROOM: A date, there's a good question.

12 A I know what you're referring to, sir.

13 MR. ROSENBLROOM: I know, but Mr. Butcher's also
14 entitled to know date. Do you have -- know the
15 date of this?

16 A Oh, I'm sorry.

17 MR. HIRA: Try December 6th, 2007.

18 MR. ROSENBLROOM: It looks like December 12th. No, no,
19 it doesn't, I'm sorry.

20 MS. ROBERTS: It's December 6th, 2007, it's the third
21 page of those notes.

22 A That's correct.

23 MR. ROSENBLROOM:

24 Q Okay. You have that?

25 A Yes, I do.

26 Q There is reference here about five lines down, and
27 in your handwriting:

28

29 Millington gave statement on 5th in which he
30 states three deployments...

31

32 And it goes on from there.

33 A Right.

34 Q Now, here at the Commission we have been provided
35 with three statements from Constable Millington.
36 Where -- do you know of a statement of the 5th?

37 A No, sir, that's a mistake on my part. That should
38 read the 15th.

39 Q Thank you. I'd now like to turn to the matter of
40 the Pritchard video, if I may. There is a body of
41 evidence already before this inquiry relating to
42 Mr. Pritchard's video, and in particular there are
43 affidavits of Mr. Pritchard where he attests to
44 the events that followed the giving up of the
45 video and the return of the video. And there is
46 an affidavit that I have provided to the
47 Commission. I'm not sure whether it's been filed

1 yet or not -- and it is not, but has been provided
2 to all counsel and I'll be asking that that also
3 be filed into the body of evidence at the
4 appropriate time, from a Paul Pearson, a lawyer,
5 who was representing Mr. Pritchard. And I
6 wondered firstly, I want to review the facts of
7 those affidavits in a very general way. If you
8 dispute any of it, I'm happy to refer you directly
9 to the affidavits.

10 Firstly, you agree with me Mr. Pritchard
11 voluntarily gave up the video to your officers.

12 A That's my understanding.

13 Q And you would agree with me that when I speak of
14 video, I'm going to be speaking of the video
15 camera and the memory stick, the whole package,
16 all right? And you agree with me, would you not,
17 that he gave it up voluntarily under the clear
18 understanding that the camera and memory stick
19 would be returned within 48 hours.

20 A I don't -- aware of the timeframe, but I certainly
21 am under the understanding that he -- it was
22 agreed that it would be returned.

23 Q And you knew that it -- he agreed on the basis
24 that it would be returned within a very short
25 period of time?

26 A I believe that's correct, sir.

27 Q Thank you. The next day, again these are facts
28 known to us through these affidavits, Constable
29 Pat Mulhall telephoned Mr. Pritchard and informed
30 him that the police had changed their mind and
31 that the video would not be -- would not be
32 released back to Mr. Pritchard. You're aware of
33 that?

34 A That's correct.

35 Q Then Mr. Pritchard, during that telephone call
36 with Constable Mulhall on the next day, being
37 October the 15th, asked the constable when he
38 might get it back, and the constable informed him
39 that, and I quote from the affidavit:

40
41 ...it would take between 1 1/2 to 2 1/2 years
42 to return the footage to [him].
43

44 Now, you're aware of that?

45 A I'm aware that that's what Mr. Pritchard is
46 alleging. It may well be true. I simply don't
47 know what the conversation was.

- 1 Q Well, it may interest you to know that the
2 Pritchard affidavit has been part of these
3 proceedings for months now and there's never been
4 any affidavit to the contrary. All right?
- 5 A Okay.
- 6 Q Appreciating that, now --
- 7 A But I want to be clear that I am not aware of that
8 conversation.
- 9 MR. ROSENBLOOM: I appreciate that.
- 10 MS. ROBERTS: With all due respect, there was no
11 invitation to respond to the Pritchard video. It
12 is untested evidence, and, yes, it is here. So I
13 think that's unfair to suggest that there should
14 have been some kind of affidavit response to it.
- 15 MR. ROSENBLOOM: Oh, wait a moment here. Wait a
16 moment. Commission --
- 17 THE COMMISSIONER: Just a moment now. I don't want
18 to --
- 19 MR. ROSENBLOOM: Well --
- 20 THE COMMISSIONER: Just a moment. I don't want to get
21 into this, Mr. Rosenbloom and Ms. Roberts. Just
22 put your next question, see where it goes.
- 23 MR. ROSENBLOOM:
- 24 Q There again, by way of the affidavit, it's a
25 demand letter from Mr. Pearson, and I know you're
26 aware of this, of October the 19th, correct?
- 27 A Yes.
- 28 Q And it was calling for the return of the video by
29 October 24th, correct?
- 30 A Yes.
- 31 Q The evidence by way of affidavit is that Constable
32 Mulhall then in a telephone call on October 24
33 informed counsellor Pearson that the video would
34 be returned on October 24th. You're aware of
35 that?
- 36 A I was not aware of that.
- 37 Q All right. Then the evidence in terms of the
38 affidavit is that Constable Mulhall later called
39 lawyer Pearson, and informed him that the police
40 would have to retract that agreement. Are you
41 aware of that?
- 42 A Yes.
- 43 Q And because the superintendent was not prepared to
44 release the video while there was an ongoing
45 investigation.
- 46 A Correct.
- 47 Q Okay. And that the RCMP would advise of any

1 changes.

2 A That may have been said.

3 Q All right.

4 A I don't know.

5 Q And then we have the writ issued on October 24th
6 and served on October 30th, and the video was
7 returned on November 7th, and that's all according
8 to your understanding?

9 A That's correct.

10 Q All right. Now, my question to you is this,
11 Superintendent. Why was the -- what was the RCMP
12 justification for the position that the tape would
13 not be returned for a year and a half to two-and-
14 a-half years?

15 A Well, again with the -- I can't speak to the time
16 reference, but my -- my understanding or my belief
17 around the was that if this was going to be a
18 criminal prosecution, that this tape would become
19 evidence in a trial, and I can only assume that
20 the time reference would have been that that's how
21 long it would typically take for a trial to get
22 underway.

23 Q And so you are -- and you had involvement in this
24 decision-making, did you not?

25 A I -- yes, I did.

26 Q In fact, at the end of the day, the buck ended on
27 your desk in terms of making those decisions?

28 A Correct.

29 Q So it was your approach at that time around this
30 period where Mr. Pearson was informed of the
31 position, that the video would not be returned to
32 its lawful owner until the whole criminal process
33 was completed; is that correct?

34 A It's -- can I explain?

35 Q Yes, of course you can.

36 A It's quite common in criminal investigations and
37 investigations in which matters may go to trial,
38 to seize evidence and to hold it for presentation
39 in court. That's quite a common practice. It
40 happens in almost every homicide case or major
41 crime investigation that takes place. That was
42 the approach. This was a clearly highly valuable
43 piece of evidence, and again I think as I said
44 before, was the foundation of much of the IHIT
45 investigation, certainly the anchor point. My
46 view was originally that as a piece of evidence
47 for presentation in a criminal court, the same

1 rules applied that I've spoken about extensively
2 today, that that is the -- the process is
3 admissibility is ruled at a criminal court, the --
4 the defence counsel, the Crown argue about its
5 admissibility. They argue about its meaning.
6 There's a discussion about it, and that's the
7 process that's underway.

8 Where we ran into difficulty with that
9 particular philosophy was that at the time in
10 which the demand letter was issued, we were still
11 not in a position to say 100 percent that this
12 matter was in fact criminal in nature, and
13 therefore that those arguments no longer were
14 based in any statutory authority.

15 Q Did the undertaking given to Mr. Pritchard at the
16 time he voluntarily gave up the video, of any
17 relevance in your decision-making?

18 A I hadn't considered that, actually.

19 Q When you made a decision to return the video, are
20 you telling us that you had no intention to embark
21 upon a criminal investigation?

22 A No, I was conducting an investigation at that time
23 in the early stages, really to determine if a
24 criminal offence existed. Those were the early
25 stages, as I discussed earlier. We were still
26 finding out facts, finding out information. As I
27 said earlier, approximately mid-November, I wrote
28 the Coroners Service and I notified them that I
29 was embarking on a criminal investigation.

30 Q If I may ask you this. How -- how does one move
31 from the transition of a fact-finding
32 investigation to a criminal investigation?

33 A Certainly. I think it's highly relevant in this
34 case.

35 Q Yes.

36 A We are -- we are tasked with an investigation.
37 When we arrive at the scene, we start gathering
38 evidence. And it -- it is amassed over the course
39 of the first minutes, hours, days, months of an
40 investigation. If we are operating as we should,
41 being evidence-led, and looking at the facts as we
42 know them, we are -- we are ruled and dictated by
43 the facts before us, and the laws that we must
44 operate within. That is in most cases such as
45 this, it is within the **Criminal Code of Canada** or
46 potentially under the **B.C. Coroners Act**, under the
47 direction of the B.C. Coroners Service.

1 In a case that is a sudden death that is not
2 overtly obviously criminal, some cases that the
3 Integrated Homicide Team investigates, it's quite
4 obvious that it's a criminal act to begin with.
5 But this case was complicated by what I would say
6 was the obvious need to take Mr. Dziekanski into
7 custody. I think it's fair to say that that was
8 driven by his physical and mental state at the
9 time. He was committing criminal acts at the
10 airport. We now know or believe that they were
11 driven by other factors, but that the arrest was
12 inherently lawful. And that the acts of the --
13 the manner in which that arrest was made, while
14 shocking to many people, was the application of a
15 device that is actually designed to be less than
16 lethal and to take people into custody without
17 harming them.

18 So to automatically move to a position where
19 you automatically investigate members for assault
20 and/or other criminal offences, that's not
21 evidence-led. That is -- that is jumping beyond
22 the evidence and suggesting automatically that --
23 that they've done something wrong, when the
24 evidence doesn't necessarily lead you there. So
25 you must move through the evidence, you must move
26 through the facts until such time as you get to a
27 place where you say, okay, there is sufficient
28 evidence to suggest that they have gone beyond the
29 provisions of s. 25 of the **Code** and they've
30 committed an offence, or they have not. And in my
31 view, the proper way to investigate these cases is
32 with that tack in mind. And at any time along the
33 way if the evidence supports a criminal offence,
34 we -- we operate that way, and then of course when
35 interviewing accused persons, you must then issue
36 warnings and **Charter** rights, you must take
37 different -- make different steps. But we don't
38 automatically take the posture that it is a
39 criminal investigation. It's almost an
40 investigation to see if there's a criminal offence
41 being committed.

42 Q Did you not believe around the time you returned
43 the video that you may well be embarking upon a
44 criminal investigation?

45 A I felt it was possible the entire way through.
46 However, I was not sufficiently confident at the
47 time that the demand letter came in to say that we

Supt. Wayne Rideout

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

Cross-exam by Ms. Pastine (for B.C. Civil Liberties Association)

1 were conducting a criminal investigation, and felt
2 that I could not support an application before a
3 judge to hold onto it, so I abandoned that effort
4 and let -- and returned it.

5 Q I'm going to suggest to you, Superintendent, that
6 had Mr. Pritchard not initiated Supreme Court
7 action, you would not have been returning the
8 video to him within that year or the next year.

9 A I would have to agree with that, sure.

10 Q We have spent time in this Commission reviewing
11 statements that were given to you in Poland and
12 reviewing -- not reviewing, seeing evidence given
13 by video link in these proceedings, and this
14 evidence related to questions being asked of these
15 witnesses in Poland as to Mr. Dziekanski's
16 drinking, whether he drank in the house, whether
17 he drank outside the house, what he drank, whether
18 his girlfriend drank, whether he smoked, whether
19 the police ever attended his house. My question
20 is this. Once you determined that there was a
21 criminal investigation embarked upon in respect to
22 the four officers, and you've told me that
23 commenced around mid-November of 2007, did you
24 ever carry out a similar investigation of the four
25 officers?

26 MS. ROBERTS: I have to object, Mr. Commissioner.
27 You've made it clear you're not interested in why
28 or how IHIT investigated this matter, and that
29 question goes directly to it.

30 THE COMMISSIONER: That seems to be so, Mr. Rosenbloom.

31 MR. ROSENBLUM: I have no further questions, thank
32 you.

33
34 CROSS-EXAMINATION BY MS. PASTINE ON BEHALF OF B.C.
35 CIVIL LIBERTIES ASSOCIATION:

36
37 Q Superintendent, I'm Grace Pastine. I represent
38 the B.C. Civil Liberties Association. I have a
39 few questions for you that draw on the e-mails
40 that were disclosed to us last night. From the
41 early stages of the investigation, you were aware
42 that there would be widespread media attention to
43 the event?

44 A Correct.

45 Q And a number of your e-mails attest to that, and
46 I'd just like to draw your attention to a few of
47 those. At page 13, there's an e-mail from Dale

Supt. Wayne Rideout
Cross-exam by Ms. Pastine (for B.C. Civil Liberties
Association)

1 McGowan, Chief Superintendent at the time, and who
2 at the time you stated was your direct supervisor.
3 And he in that e-mail to you, he notes that there
4 will be "much in the way of media attention". Do
5 you see that, it's the last paragraph.

6 A Yes. Yes, I do.

7 Q And could you just please read that last paragraph
8 for the Commission.

9 A

10
11 Please keep Division up to date...

12
13 Is this the passage you're referring to?

14 Q Yes, thanks.

15 A

16
17 Please keep Division up to date on the
18 decisions made as any direction on this file
19 will obviously garner much in the way of
20 media attention and possibly impact the way
21 we do business.

22

23 Q And throughout the course of the investigation, or
24 at least at certain points in the investigation,
25 the RCMP monitored the media coverage of the
26 event?

27 A I believe so, yes.

28 Q And to that end I'll direct your attention to page
29 47. These are e-mails that you were copied on, is
30 that correct, at page 47 through 48?

31 A That's correct.

32 Q And at page 48, Sonya Cermak, the Communications
33 Research Specialist indicates that she has been
34 monitoring the media reports of the incident. Do
35 you see that?

36 A Yes, I do.

37 Q And she states in that e-mail:

38

39 After looking through hundreds of articles on
40 this high-profile incident, I have decided to
41 divide the coverage three ways: Local,
42 National and International. Some of these
43 may be repetitive, but the idea is for you to
44 see how much attention this incident is
45 getting worldwide.

46

47 A Yes.

1 Q And that was an e-mail that you were -- that was
2 written on October 24th, 2007?

3 A That's correct.

4 Q Now, as in December of 2007, you indicated in an
5 e-mail that has already been drawn to the
6 Commissioner's attention, but the e-mail is at
7 page 73. And you noted that the matter has and
8 will continue to be tried in the media.

9 A Correct.

10 Q You also realized that there was heavy media
11 criticism of the police.

12 A Yes.

13 Q And it was also in your mind that the incident
14 could affect the public's perception of whether
15 Tasers were safe or not.

16 A Yes.

17 Q And I'd just like to draw your attention to page
18 16. This is an e-mail sent on October 31st, 2007.
19 You've sent the e-mail to Dale Carr. And in that
20 e-mail you said -- I'm at the second line.

21 A I don't believe I sent that one. On page 17?

22 Q Yes. Oh, I'm sorry, 16.

23 A Yes, go ahead.

24 Q You said:

25

26 We must maintain independence from any
27 position on the taser. That being said the
28 negative impact on the use of police taser
29 could be significant. Likely at a national
30 level.

31

32 A Correct, I said that.

33 Q So throughout the investigation, you were aware
34 that there was considerable media attention and
35 that there could be an effect on the use of Tasers
36 at the -- the RCMP's use of Tasers?

37 A I think that's fair.

38 Q I'd like to draw your attention to page 38, and
39 this is an e-mail from John Ward. I believe you
40 stated earlier who John Ward was. Would you mind
41 repeating that?

42 A John Ward was either a Sergeant or Staff Sergeant
43 at our "E" Division Communications Section, I
44 believe a Staff Sergeant, during the period in
45 which this investigation was undertaken.

46 Q And in this e-mail in which you were copied, he
47 expresses his concern that, quote:

1 ...various groups that continue to pillory us
2 will use our silence against us.

3

4 End quote. Do you see that?

5 A Could you refer me maybe halfway down the page,
6 approximately where is that passage?7 Q That is at the end of the first paragraph at the
8 top of the page.

9 A Yes, I see it.

10 Q Now, you have testified that you made a -- that in
11 hindsight there are a number of things you might
12 have handled different -- differently when it came
13 to media strategy.14 A I think I -- I don't know if I said a number, but
15 there are some things I would do differently, or
16 could do differently.17 Q So there were some things that you would do
18 differently.19 A Well, I believe the one that I spoke of was the
20 concept of going back to the media and saying that
21 incorrect information had been released, but
22 leaving it at that, not talking about the
23 evidence. I'm not sure what the other one was at
24 this point. Perhaps you could remind me.25 MS. PASTINE: It's not necessary to go into the details
26 of that.

27 THE COMMISSIONER: There's not another one.

28 A Thank you.

29 MS. PASTINE:

30 Q Your superiors, they were supportive of your
31 handling of the media strategy?32 A My superiors were supportive of the position I
33 took on the media strategy.34 Q And I'd just like to draw your attention to page
35 69. This is an e-mail you were copied on from Al
36 Macintyre, your superior, and at the end of this
37 e-mail he's the Criminal Operations Officer for
38 B.C., as I understand it from your testimony
39 earlier?

40 A That's correct.

41 Q He states that at the last paragraph:

42

43 Lastly, this has been a most difficult case
44 to deal with as it applies to the media and I
45 just wanted to thank you all (and those not
46 mentioned) for the professional and dedicated
47 way you have attended to your duties. Good

1 job and thanks for that.

2

3 A I think it's important to point out there that he
4 is addressing that to Tim Cogan, John Ward and
5 Dale Carr, and there's many others that are
6 c.c.'d, but he's directing that to the media
7 people themselves, not to myself. He's copying
8 me.

9 Q Thank you for that clarification. You testified
10 earlier today that at some point in the
11 investigation RCMP National Headquarters became
12 involved in monitoring the media response.

13 A That's correct.

14 Q And when did that occur?

15 A I believe that was in late November or early
16 December of 2007. That's an approximation.

17 Q And at that point did they give you instructions
18 on media strategy?

19 A No. By that time the actual strategy pertaining
20 to evidence was entrenched. And there were
21 conversations as time continued with respect to
22 releases later, in particular the release of 18th
23 of December 2008. So there was considerable
24 conversation with them pertaining to that release,
25 after Crown made their decision. But there was
26 not a lot of conversation with any -- pertaining
27 to any releases prior to January 1st of 2008. So
28 in the first three months of this investigation,
29 they were not engaged in that discussion.

30 Q And after January 1st, 2008, who was involved in
31 monitoring the response?

32 A That would be a very difficult question for me to
33 answer here because there were so many people at
34 different times at different places. It's a
35 fairly big communications branch in Ottawa, and
36 there were a variety of people I talked to and
37 others talked to over the course of close to a
38 year. I -- Tim Cogan would be one that was in the
39 -- and Mark Richer another, but there were many.

40 Q And do you remember any of the other names, other
41 than Tim Cogan and Mark Richer?

42 A I don't, not off the top of my head.

43 MS. PASTINE: Thank you.

44 MS. ROBERTS: I have two very brief matters in re-
45 examination, Mr. Commissioner.

46

47

1 CROSS-EXAMINATION BY MS. ROBERTS ON BEHALF OF THE
2 GOVERNMENT OF CANADA, continuing:
3

4 Q You were asked about the press release with
5 respect to the monitoring of Mr. Dziekanski, and
6 you were asked -- it was pointed out to you that
7 it didn't include any reference to the fire
8 captain's evidence.

9 A Yes.

10 Q Can you please tell us why you were issuing the
11 press release?

12 A Why?

13 Q Yes.

14 A Why I was wanting one? I'm sorry, why I was
15 issuing one?

16 Q Yes.

17 A Well, I felt that it was important to, because
18 those facts were in place and we had that
19 information before us, to at least put information
20 out that would indicate that Mr. Dziekanski had a
21 pulse and was breathing during that eight-minute
22 period in which everyone waited for the ambulance
23 to arrive.

24 Q Sorry. My question wasn't very clear. Why in
25 particular at that time did you discuss or decide
26 to issue a release?

27 A Oh, I'm sorry. Because of the request it was our
28 belief that there would have been a -- press
29 activity, media discussion about that point, about
30 that issue.

31 Q Was it your understanding, then, and the reason
32 for the release --

33 MR. ROSENBLUM: Go ahead, finish your question.

34 MS. ROBERTS: No, I take your point. I'll reword it.

35 MR. ROSENBLUM: Thank you.

36 MS. ROBERTS:

37 Q When you say you anticipated media discussion on
38 that point, why was that?

39 A Well, there had been an access of information
40 request and it was -- it was my belief that the --
41 part of that information from the Fire Department
42 would be the subject of release, but the remainder
43 of the information was contained within our
44 investigative file.

45 Q And what information did you anticipate would be
46 released from the Fire Department?

47 A That when they got there, there was no pulse.

1 Q Thank you. The other question, another question
2 you were asked was about the return of Mr.
3 Pritchard's video. And you've testified that had
4 it been a criminal investigation, you would have
5 held the video, is my understanding correct?

6 A That would have been my initial instincts to do
7 that. Of course, that would have come through
8 some consultation with Crown and others, but that
9 would have been my instincts, yes.

10 Q And are there any formal steps you would have
11 needed to take in order to retain the video for a
12 criminal investigation?

13 A We would have had to take that to a justice for
14 permission to retain, and we commonly refer to it
15 as 5.2 procedure, and they must -- they must
16 approve the retention of that item.

17 Q And what would you have to say to a justice in
18 order to support that application?

19 A You would have to justify the reasons for
20 retaining it, and have some explanation as to the
21 manner in which it was seized and the authority
22 which it was seized under.

23 Q Right. Would you have to have a belief in any
24 particular point of view at that point in time?

25 A Yes, you would.

26 Q And what would that have to be?

27 A It would have to have been that there was a
28 criminal offence that we were -- an actual offence
29 that we were investigating, rather than we were
30 investigating for the purposes of determining if a
31 criminal offence had occurred.

32 Q Right. And short of having an order from a
33 justice, I think you've mentioned the **Coroners**
34 **Act**, is that something that would give you
35 authority to keep an exhibit?

36 A Assuming that the Coroner agreed, yes.

37 MS. ROBERTS: Thank you.

38 THE COMMISSIONER: Inspector, thank you very much for
39 your time. It's very much appreciated.

40 A Thank you.

41

42 (WITNESS EXCUSED)

43

44 MR. ROSENBLUM: I just have a housekeeping matter --
45 finished with the superintendent, thank you. I
46 would request of Commission counsel if the press
47 releases that have been referred to, and in

1 particular the press release referred to in the
2 examination of the superintendent, a press release
3 of November 30th, 2007 be marked as an exhibit.
4 And I also am requesting from Commission counsel
5 that the three transcripts of interviews that were
6 conducted with Corporal Carr, in the case of
7 November 30th, in the case of Carr again with Mi-
8 Jung Lee on October 30th, and the transcript of
9 the interview with Sergeant Lemaitre with CBC
10 reporter Rankin on October 16th, 2007, all of
11 which has been provided to all counsel some time
12 ago, that all those documents be marked as
13 exhibits. Thank you.

14 MR. VERTLIEB: Mr. Rosenbloom has asked that that be
15 done, and we have agreed. We will make sure we
16 have copies of those three transcripts.

17 THE COMMISSIONER: Just a moment, what is your
18 position?

19 MR. VERTLIEB: I'm sorry.

20 MS. ROBERTS: I may have overlooked it, but I did not
21 get a copy of the transcript of an excerpt of an
22 interview with Mi-Jung Lee, and I've checked with
23 some of the other counsel. They don't appear to
24 have it either. So I'd like to see that first.
25 I'm not sure there were actually any questions and
26 answers about that transcript, so I don't see the
27 need to mark that particular transcript.

28 MR. ROSENBLUM: If it hasn't been referred to by any
29 of us in our exchanges, I don't have a problem in
30 not (indiscernible - away from microphone) --

31 THE COMMISSIONER: Turn on your microphone.

32 MR. ROSENBLUM: -- an exhibit, I can't remember. I
33 just can't remember. But maybe through
34 consultation after we break we can try to
35 determine that, and I think my friend's point is
36 well taken, if it hasn't been referred to.

37 THE COMMISSIONER: all right. Well, we'll deal with
38 this in the morning.

39 MR. VERTLIEB: That's fine.

40 MR. HIRA: The other matter, Mr. Commissioner, is I
41 compendiously referred to a series of e-mails by
42 page number, and maybe those page numbers can be
43 marked as an exhibit.

44 MS. ROBERTS: Mr. Commissioner, I've managed to compile
45 a list of the e-mails that were referred to this
46 morning, and I've got some additions to it and I
47 was hoping to work that out with Commission

1 counsel and have those marked in due course.

2 THE COMMISSIONER: All right, thank you very much.

3 MR. VERTLIEB: Just while we're on this, I do have
4 copies now, if you wish, Mr. Commissioner, for you
5 of the IHIT media releases that have been referred
6 to, and we have them starting October 15 and
7 ending November 30. And so we have those
8 available. We could mark those now. As well I
9 have the Paul Pearson affidavit that Mr.
10 Rosenbloom asked about, and we have copies that we
11 could mark now, and I wouldn't mind marking -- I'd
12 actually like to mark them so they're before you
13 and they're out of our way, if you don't mind, and
14 we'll sort out the other issues.

15 While I'm asking for marking -- I'm sorry.

16 MS. ROBERTS: Mr. Commissioner, I'd like an opportunity
17 to consider the Pearson affidavit and whether
18 we're agreeable to having that come in or whether
19 Mr. Pearson should come and respond to questions
20 about it. I can let Mr. Vertlieb know that in
21 short order.

22 THE COMMISSIONER: Yes, all right. I might say that my
23 impression was is that there was nothing
24 controversial in that affidavit, but I haven't
25 read it.

26 MS. ROBERTS: I just can't remember offhand, I just
27 wanted a chance to look at it.

28 THE COMMISSIONER: Yes.

29 MR. VERTLIEB: Okay. So then let me just at least move
30 the media releases from my desk to Mr. Giles'
31 desk.

32 THE COMMISSIONER: All right. We'll mark them.

33 MR. VERTLIEB: And --

34 THE REGISTRAR: The media release dated October 15th,
35 2007 will be marked as Exhibit 123.

36
37 EXHIBIT 123: IHIT Media Advisory on file
38 2007-LMD-36374 dated Oct. 15/07
39

40 MR. VERTLIEB: And as you know, Mr. Commissioner, and
41 my colleagues here, at different times some of the
42 participants have wanted witnesses to be canvassed
43 and called by the Commission. In that regard
44 TASER had asked us to seek a report from Dr.
45 Bozeman at Wake Forest University, and we did
46 contact him and obtained a report from him that's
47 been circulated. And I would like to mark the

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1 Bozeman report, it's dated April 22, 2009, and we
2 have his *curriculum vitae* with that and we can
3 mark them "A" and "B", however you prefer, but I
4 would like to have those marked now so they are
5 part of the record.

6 THE COMMISSIONER: All right. They will be the next
7 exhibit.

8 THE REGISTRAR: The letter dated April 22nd, 2009 will
9 be marked as Exhibit 124, and the *c.v.* will be
10 marked as 124A.

11 THE COMMISSIONER: Thank you, Mr .Giles.

12

13 EXHIBIT 124: William P. BOZEMAN letter dated
14 April 22, 2009

15

16 EXHIBIT 124A: Biographical Sketch of William
17 P. BOZEMAN, M.D.

18

19 MR. VERTLIEB: And maybe this would be a good time for
20 the afternoon break.

21 THE REGISTRAR: Recess for ten minutes.

22

23 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

24 (PROCEEDINGS RECONVENED)

25

26 THE REGISTRAR: The hearing is now resumed.

27 MR. McGOWAN: Yes, Mr. Commissioner, Inspector
28 Lightfoot is the next witness. He's in the box
29 already.

30 THE REGISTRAR: Good afternoon, sir. I see you wish to
31 be sworn.

32 THE WITNESS: Yes.

33

34 INSP. TROY LIGHTFOOT, a
35 witness, sworn.

36

37 THE REGISTRAR: Would you state your full name, please?

38 A Kevin Troy Lightfoot, I am a member --

39 THE REGISTRAR: I'm sorry --

40 A Kevin Troy Lightfoot, I'm a member of the RCMP
41 stationed in Ottawa and I have 23 years service
42 approximately.

43 THE REGISTRAR: Thank you, you may be seated. Counsel.

44

45 EXAMINATION IN CHIEF BY MR. McGOWAN:

46

47 Q Sir, you understand you're here at the request of

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- 1 your counsel, Ms. Roberts, to address policy
2 issues related to the RCMP, both at the time of
3 this incident and developments subsequent to that.
- 4 A Yes.
- 5 Q Okay. You joined the RCMP in 1985?
- 6 A That's correct.
- 7 Q Okay. I'm going to spend just a few minutes
8 tracing your involvement with the Force since that
9 time up until your present position. You were
10 first stationed in Prince George after Depot until
11 1995?
- 12 A Yes.
- 13 Q Okay. Where you -- following which you went to
14 the Salmo detachment, where you remained until
15 1997?
- 16 A That's correct.
- 17 Q Okay. You were promoted to Corporal in 1997 and
18 joined the ERT Squad in Ottawa?
- 19 A Correct.
- 20 Q That's the Emergency Response Team?
- 21 A That's correct.
- 22 Q In 2001 you were promoted to Sergeant and spent
23 some time at the National Criminal Operations
24 Centre?
- 25 A Correct.
- 26 Q Okay. In 2004 you became the Detachment Commander
27 of a detachment in Labrador?
- 28 A Correct.
- 29 Q And in 2006 you went back into the policy stream
30 in Ottawa and you were in charge of an Operational
31 Policy Section?
- 32 A That's correct.
- 33 Q Okay. And you'll have to forgive me if I don't
34 get this quite right, but currently you're the
35 Officer in Charge of Use of Force and Operations
36 Programs in Ottawa?
- 37 A That's correct.
- 38 Q Okay. I think it might have a bit of a longer
39 name, but does that...
- 40 A No, that's -- that's it.
- 41 Q Okay, perfect. And at present you report to
42 Superintendent Strachan?
- 43 A That's correct.
- 44 Q Okay. Now, you have brought some materials with
45 you today, some policies and various iterations of
46 the policies?
- 47 A Yes, I have.

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- 1 Q Perhaps just tell the Commissioner what you have
2 in your package.
- 3 A I have here, Mr. Commissioner, I have a copy of
4 the present policy. I have copies of the 2007
5 policy. I have copies of the Bulletin in 2007. I
6 also have some of my own notes. I have the
7 supporting document for the Incident Management
8 Intervention Model, and I have the old model as
9 well in my possession. And that's about it.
- 10 Q Okay.
- 11 A Iterations of policy and...
- 12 Q So you have various iterations of both the Taser
13 Policy and the Use of Force Policy, that being the
14 IMIM model and the accompanying text?
- 15 A That's correct.
- 16 Q Okay. And I had understood that you were going to
17 bring a package of those together, such that we
18 could file them as essentially a chronology of
19 those documents that would be, perhaps, of use to
20 the Commission going forward.
- 21 A I believe counsel has --
- 22 Q Okay.
- 23 A -- provided that.
- 24 Q Okay, perfect. Thank you. Perhaps we can just --
25 I'll take you through your evidence, and at the
26 end perhaps we can just mark this. There's just a
27 single copy, and I don't intend to refer you to
28 the specific documents, although if you need to go
29 to them, you feel free to do so. You understand
30 that?
- 31 A Yes.
- 32 Q Okay. Let's talk first of all about the Taser
33 policy. When was the first Taser policy put in
34 place with the RCMP?
- 35 A The first conducted energy weapon policy was in
36 place in 2001.
- 37 Q Okay. And were modifications made throughout to
38 that policy subsequent to 2001 and right up until
39 quite recently?
- 40 A Yes.
- 41 Q Okay. There was a policy in place, I take it, in
42 October 2007?
- 43 A Yes, there was.
- 44 Q And what -- what is the date on that policy?
- 45 A 2007-08-08.
- 46 Q Okay. So it came into force in August.
- 47 A That's correct.

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- 1 Q And that's contained in the package of materials
2 we have here?
- 3 A Yes.
- 4 Q Okay. That policy was not the one in place in the
5 summer of 2007 before August, however, is that
6 right?
- 7 A I'm sorry?
- 8 Q There would have been changes made to the policy
9 in place, that was in place, for example, in July
10 of 2007?
- 11 A There were changes.
- 12 Q Okay.
- 13 A Yes.
- 14 Q Now, does the Force have a policy or a practice in
15 place to ensure that uniform and frontline members
16 are advised of changes to policy?
- 17 A Yes, we do.
- 18 Q Okay. Tell the Commissioner what that practice
19 is.
- 20 A Well, generally speaking in my section when there
21 is a change forthcoming, when there's going to be
22 a publication, we let the individuals involved in
23 the development, the subject matter experts, and
24 CROPS in each division know that there will be a
25 pending release. Also the Policy and Publications
26 Section will send out an e-mail or e-news, sorry,
27 it's called, through our InfoWeb advising that
28 there will be a change and provide a link to the
29 policy.
- 30 Q Okay. And is there a duty upon uniformed officers
31 and frontline members to ensure that they keep up
32 to date on changes to policy with respect to force
33 options they employ?
- 34 A There are -- there are requirements for commanders
35 to ensure that their people are kept up to date.
- 36 Q And are you confident that the procedures that are
37 in place would transmit notification of any change
38 in policy, whether it be a use of force generally
39 or more specific in this case, to the Taser, to
40 the uniform members when those are implemented?
- 41 A Well, I could only speculate, but I would hope
42 that they would do that.
- 43 Q Okay. Now, from the time of this incident in
44 October 2007 to present, I understand there's been
45 a number of changes to the CEW policy that the
46 RCMP has.
- 47 A That's correct.

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1 Q Okay. And I take it there's various reasons for
2 those changes.

3 A Correct.

4 Q Okay. Was a review done of the policy, the CEW
5 policy in light of the incident that happened
6 here, with that incident in mind to assess the
7 policy in that context?

8 A There were --

9 MS. ROBERTS: Mr. Commissioner, if I might, we've
10 produced Inspector Lightfoot to talk about the
11 policy that existed and any new policies, but not
12 to explain the changes in the policies or why they
13 were changed. There's two reasons for that. One
14 is that we don't believe it's relevant why the
15 changes were made. It's certainly relevant that
16 there have been changes. It goes to the operation
17 or management of a federal agency, and also
18 Inspector Lightfoot is unable to pinpoint the
19 reason for any particular change, given a wide
20 ranging process that's gone through every time
21 policy is changed. So I'd ask that he not be
22 asked about the reasons for any changes.

23 THE COMMISSIONER: Well, of course, what you say is
24 correct in terms of federal government policy, and
25 I must accept that.

26 MR. MCGOWAN: Yes.

27 THE COMMISSIONER: And if the witness, in addition to
28 that, doesn't have the specific information, well,
29 then, of course that would go to it, also.

30 MR. MCGOWAN: Well, I certainly didn't understand him
31 not to have any specific information. Mr.
32 Commissioner, just so it's clear for you, my
33 intention is not to stray into an assessment of
34 the policy, other than to attempt to understand
35 the changes, and sometimes an assessment of those
36 reasons are of assistance, but if it's not an area
37 my friend is happy to have the witness answer,
38 then I suppose we'll just have to see what we can
39 make of it on our own.

40 Q Have you changed the policy since October 2007
41 with respect to multiple deployments, for example,
42 sir? Whether or not it had anything to do with
43 this case.

44 A Yes, we did.

45 Q Okay. Tell the Commissioner about that change,
46 please.

47 A There were a number of areas, and again you have

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1 to take this in totality of what's written here,
2 the context of all the policy when we look at
3 this. We did enhance and modify this area. I'm
4 just going to refer to the policy, Mr.
5 Commissioner. In 3.1.3 we removed a certain part
6 of that policy. We added other parts, however, to
7 strengthen it, such as:

8
9 All members must recognize that any use of
10 force entails risk.

11
12 Along with that we added other clauses critical to
13 the policy:

14
15 3.1.4. Acutely agitated or delirious persons
16 may be at a high risk of death. If an
17 individual is in an acutely agitated or a
18 delirious state, and whenever possible when
19 responding to reports of violent individuals,
20 request the assistance of emergency medical
21 services. If possible bring medical
22 assistance to the scene.

23
24 We went on to further modify and add a clause.
25 Now, part of this clause was in the previous
26 iteration, and I'll tell you where the amendments
27 were.

28
29 Members should make every effort to take
30 control of the subject as soon as possible
31 following deployment of a CEW --

32
33 - so we added "following deployment of a CEW",
34 that clause -

35
36 -- and if possible during the CEW deployment.

37
38 Before it read during the CEW probe deployment.
39 So we wanted to make it inclusive, we made it CEW
40 deployment so it would take into account probe and
41 push.

42 Q Okay. Does that relate to multiple deployments,
43 because my question was about --

44 A Yes.

45 Q -- multiple deployments. Okay, fair enough.

46 A We went on to add another clause, Mr. Commissioner
47 and a note that says:

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1 The CEW is not intended as a restraint
2 device.
3

4 Q Thank you. Now, I think you may have just
5 answered my next question, which is subsequent to
6 this incident, was the policy changed in any way
7 to reflect the expected response of other officers
8 present who did not have possession of a Taser?
9 And I think you just read about the attempt to
10 take somebody to control the subject. Is that --
11 is that a change that happened since October of
12 2007?

13 A Part of the -- as I said earlier, part of the
14 clause was changed. Part of it was there before.

15 Q Okay.

16 A But we strengthened it by being inclusive of all
17 deployments.

18 Q Okay. With respect to the Taser challenge, has
19 that changed since October of 2007?

20 A Yes, it was removed.

21 Q So you now instruct officers by way of the policy
22 not to give the challenge, is that what I take
23 your answer to mean?

24 A The answer is that with this policy, there is no
25 challenge. It's not to say that there isn't a
26 challenge that we use for policing. We do have a
27 challenge and we do talk about dialoguing with
28 individuals on our IMIM instruction. And "Police.
29 Stop!" is a challenge that we use and is taught to
30 our members.

31 Q Okay.

32 THE COMMISSIONER: Excuse me. Displaying the weapon
33 and then saying "Police. Stop!"

34 A You could do that, Mr. Commissioner.

35 MR. MCGOWAN:

36 Q Is that a matter specifically addressed in the
37 policy?

38 A Again we removed the specific challenge. It's not
39 in this policy.

40 Q Okay, fair enough. Has there been any addition to
41 the policy or change to the policy since the
42 policy that was in place at the time of this
43 incident regarding communication between officers
44 about the use of the Taser?

45 A No.

46 Q Has there been any change to the training in that
47 regard?

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1 A Not to my knowledge.

2 Q I'm speaking specifically about a requirement, if
3 there is one now, either trained or in policy,
4 that one officer inform other officers presents
5 that the Taser is going to be used.

6 A There is a, I should say, a warning of sorts that
7 we do train to say if the CEW will be used. It's
8 "Taser, Taser, Taser".

9 Q Has that practice changed since the time of this
10 incident?

11 A Not to my knowledge.

12 Q Fair enough. Has the policy changed, the Taser
13 policy changed insofar as it makes reference to
14 excited delirium?

15 A Yes, that's correct. It was -- that was removed,
16 that section was removed, along with the
17 definition.

18 Q Have there been additions or subtractions from the
19 policy insofar as medical aftercare are concerned
20 since the time of this incident?

21 A Yes. Maybe I can read those to you. I think I've
22 already read 3.1.4, which does address part of
23 that:

24
25 Acutely agitated or delirious persons may be
26 at a high risk of death. If an individual is
27 in an acutely agitated or delirious state,
28 and whenever possible when responding to
29 reports of violent individuals, request the
30 assistance of emergency medical services. If
31 possible bring medical assistance to the
32 scene.

33
34 Now, again, this has to be taken into context with
35 other parts of this policy. We talked -- we have
36 the note that:

37
38 The CEW is not intended as a restraint
39 device.

40
41 As well, aftercare, deployment aftercare, we have
42 enhanced one clause and changed some of the
43 clauses in it. And I'll read it to you, Mr.
44 Commissioner:

45
46 5.2. Ensure the individual receives medical
47 assistance if the individual has any apparent

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- 1 injuries requiring medical treatment, the
2 individual is in distress, or the individual
3 requests medical assistance. See ch. 19.2
4 for policy related to assessing
5 responsiveness/medical assistance.
6
- 7 Within that clause there are parts of it that were
8 added.
- 9 Q Okay.
- 10 A There was parts of this before.
- 11 Q Thank you, Officer. Has the policy or training
12 changed since this incident as it relates to
13 educating officers about any potential health or
14 medical risks associated with the deployment of
15 the Taser?
- 16 A Well, this -- Mr. Commissioner, this policy forms
17 part of the training, so it is read to the
18 participants on the course, and forms part of the
19 training. So they are given this and read this to
20 highlight these areas that I've just spoken about.
- 21 Q Okay. In terms of potential medical consequences,
22 associated with the deployment of the device, if
23 any, has anything changed in what's contained in
24 the policy? Are there changes since October 2007?
- 25 A Sorry, I think that's what I just answered, wasn't
26 that?
- 27 Q Okay. Perhaps I -- perhaps I didn't understand
28 you. I was asking you, I suppose, first of all
29 about aftercare, and second of all about training
30 to the members or information for the members
31 about potential consequences of the deployment of
32 the device.
- 33 A Okay.
- 34 Q First of all, let's talk about the medical
35 aftercare. You've -- that's what you were
36 answering a moment ago?
- 37 A Right.
- 38 Q Okay. In terms of whether any information is now
39 communicated in the policy about any potential
40 medical consequences --
- 41 A Well, as far as --
- 42 Q -- is there any -- has there been anything added
43 in that regard?
- 44 A Not to my knowledge, but it would probably be
45 beneficial to have the trainer/instructor to speak
46 to those issues.
- 47 Q Insofar as the policy is concerned, though, you're

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- 1 not aware of any addition?
2 A Not to my knowledge.
3 Q Fair enough. Have the reporting requirements
4 changed?
5 A Yes, they have.
6 Q Tell the Commissioner about that, please, just in
7 a summary fashion.
8 A Okay. What we've done is added a whole new section
9 in this policy, 6.4, which gives Division and
10 Criminal Operations Branch, which I am in, an onus
11 to do certain things. And those onuses entail
12 that we will have those reports reviewed at the
13 division level, as well as at the national level,
14 to determine if they were aligned with policy and
15 directives.
16 Q Okay. Recertification requirements have gone from
17 three years to one year since the --
18 A That's correct.
19 Q -- time of this incident?
20 A That's correct.
21 Q Have there been any changes regarding -- aside
22 from that recertification, regarding which
23 officers are permitted to qualify for use of a
24 Taser, in terms of years of service or rank, or
25 anything of that sort?
26 A Nothing of that sort. I mean, there are some --
27 some minor changes related to that clause that
28 speak to our tracking systems for who has taken a
29 course.
30 Q Now, I understand that the IMIM model, that's the
31 circle that we've all seen, has changed recently.
32 And am I -- is there -- or is there still a
33 category called "Impact weapon" on that?
34 A There's no wording as such on the new model, no.
35 Q And when was that category removed?
36 A This was approved back in 2008, the new model, May
37 2008.
38 Q Okay. Is there any identification in the new
39 Taser policy regarding at-risk populations or
40 particular subjects that may be at increased risk
41 to negative consequences associated with the
42 deployment of a Taser?
43 A Yes, 3.1.4 talks about "acutely agitated or
44 delirious persons".
45 Q Was there a policy at the time of this incident
46 regarding recertification upon expiry with respect
47 to someone who had held authority to use a Taser,

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- 1 had passed the course, but the three years -- the
2 three years were up. What was the situation with
3 respect to an individual like that, a uniform
4 member?
- 5 A Can you be more specific? I'm not sure what --
6 it's three years -- it was three years at that
7 time.
- 8 Q It was three years. Was there a requirement that
9 efforts be made to re-qualify before the
10 conclusion of the three years? Was there a policy
11 with respect to that at all?
- 12 A That is a divisional responsibility, Mr.
13 Commissioner, to ensure that there --
- 14 Q Not -- sorry, not something you have a policy with
15 respect to from your end?
- 16 A No, Mr. Commissioner.
- 17 Q Okay. Now, sir, I'm going to ask you a few
18 questions about the IMIM and specifically changes
19 to the model since the time of this incident, so
20 it might be an appropriate time to mark these
21 exhibits and have them placed before the
22 Commissioner. I've got in my hands here, five
23 sets of documents. The first one is titled
24 "Operational Manual Bulletin" and it's dated 2007-
25 12-14. Do you see that? Perhaps I'll show it to
26 you.
- 27 A Yes. Yes, I -- yes.
- 28 Q Perhaps I'll just stand by you so we can quickly
29 get through these.
- 30 A Okay.
- 31 Q This is a bulletin that was sent out regarding
32 changes to policy in December of 2007?
- 33 A That's correct, yes.
- 34 Q This next document in the package is one of the
35 iterations of 17.7 from the Operations Manual
36 dated 2009-02-03, and that's the Taser policy
37 that's presently in effect?
- 38 A That's correct.
- 39 Q The next document in this package is the Taser --
40 well, it's another, it looks like perhaps it's
41 another conducted energy weapon amended even more
42 recently. Does that say 2009-03-20?
- 43 A Yes, that is the divisional -- that's the "E"
44 Division policy.
- 45 Q So that's specific to "E" Division.
- 46 A Yes, specific to B.C.
- 47 Q Specific to British Columbia. And that is to be

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- 1 read in conjunction with the previous one?
2 A It should be, yes.
3 MR. MCGOWAN: Okay.
4 THE COMMISSIONER: A little louder, gentlemen.
5 MR. MCGOWAN: I'm sorry.
6 Q What we've got here, then, is the first is a --
7 since the time of this incident, there was an
8 operational manual bulletin which modified the
9 policy, December 15th, '07. There are then the
10 Taser policies that are in effect now, the
11 national one, 17.7 from February 3rd of this year,
12 and the "E" Division, the manual specific --
13 policy manual relating to the Taser specific for
14 British Columbia to be read in conjunction with
15 that, and that's from March 20th of this year.
16 Have I got -- have I summarized that correctly?
17 A Yeah, that's correct. Yeah.
18 Q Finally we have 17.1, which is the Incident
19 Management Intervention Model, and this is not yet
20 published and not yet in force, but soon to come
21 into force?
22 A That's correct.
23 Q Okay. And that's a modification to what
24 previously existed --
25 A That's --
26 Q -- essentially consistently from 2000 when the
27 IMIM first came in?
28 A There was an earlier iteration. I'd have to -- I
29 think it was 2006.
30 Q Okay.
31 A Was the published -- yes, or 2005, Mr.
32 Commissioner, was...
33 Q Okay. And finally you have here -- well, perhaps
34 tell the Commissioner what this final document is.
35 A We refer to this document as the supporting
36 document. It explains the IMIM model and parts of
37 it.
38 Q Okay. And the very first page of this explanation
39 document is the model or the wheel which is
40 frequently referred to when speaking of force
41 options and use of force?
42 A Yes.
43 Q Okay. And you just call that the IMIM model?
44 A That's correct.
45 Q Okay. And that came into -- it's dated February
46 12, 2009?
47 A Yes, that's the published date of the document.

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1 Q Is that -- is that in force now?

2 A Yes. We -- we have the training on line now, and
3 it is out there. But again you must understand,
4 we just can't flip a switch and not everyone's
5 going to have it overnight, that this will take
6 time for everyone to take the training and use
7 that model, so...

8 Q Okay. So while the supporting documentation has
9 been changed, you still haven't quite got the --

10 A We're waiting for the policy to --

11 Q -- IMIM published.

12 A -- be published, that's correct.

13 MR. MCGOWAN: Fair enough. Mr. Commissioner, I'm going
14 to suggest that those be marked collectively as
15 the next exhibit, and perhaps "A" through "E".

16 THE COMMISSIONER: Yes, all right.

17 THE REGISTRAR: They will be marked as Exhibit number
18 125. The December 14th document, Operational
19 Bulletin will be marked "A", Operational Manual
20 February 3rd, 2009 will be "B", "E" Division
21 Policy March 20th will be marked "C", Management
22 Intervention Model 17.1 will be marked "D", and
23 the explanation document, February 12th, '09 will
24 be marked "E". That's 125 A through E.

25 MR. MCGOWAN: All right.

26 THE REGISTRAR: Thank you.

27

28 EXHIBIT 125A: Operational Manual Bulletin -
29 QM-478 dated Dec. 18, 2007

30

31 EXHIBIT 125B: Operational Manual - Sec. 17.7
32 C.E.W., Amended Feb. 3, 2009

33

34 EXHIBIT 125C: "E" Div., Operational Manual -
35 Sec. 17.7 C.E.W., dated Mar. 20, 2009

36

37 EXHIBIT 125D: Operational Manual - Sec. 17.1
38 Incident Management Intervention Model

39

40 EXHIBIT 125E: The Incident Management
41 Intervention Model dated Feb. 12, 2009

42

43 MR. MCGOWAN:

44 Q Now, as I said, the very first page of this, the
45 "E" document, lettered "E", which is the IMIM
46 supporting document, has the model on it, which is
47 the circle, and there have been a few changes to

1 this circle recently, is that right?

2 A That's correct.

3 Q Okay. For example, since the time of this
4 incident, "Resistant" has been bifurcated into
5 "Passive" and "Active Resistant"?

6 A Actually, what's happened there is that we had
7 "Non-cooperative" prior, which was changed to
8 "Passive Resistant" behaviour. And "Resistant"
9 behaviour has been changed to "Active Resistant".

10 Q Okay, fair enough. The next one "Combative" has
11 been changed to "Assaultive"?

12 A That's correct.

13 Q Okay. You've added since the time of this
14 incident an additional ring there all the way
15 around, it looks like a cream-coloured ring, which
16 just says "Perceptions"?

17 A Yes. Just before we go on, we've also changed the
18 "Grievous Bodily Harm or Death", it used to be
19 "Death Grievous Bodily Harm".

20 Q Okay, fair enough".

21 A And yes, we do have another ring, which speaks to
22 perceptions and tactical considerations.

23 Q I'm sorry, so that's been -- tell the Commissioner
24 about the addition of that.

25 A Well, it's the filter between what we observed and
26 how we in our minds would formulate what is
27 happening. So it's our perception of the event.
28 Tactical considerations would form part of that,
29 your perception at the time of how you might
30 respond. So it's situated between your --

31 Q I'm sorry to -- I'm concerned now that my question
32 is leading you into an area that concerns my
33 friend, so I wouldn't want to do that. I'm not
34 sure if perhaps she wants you to continue your
35 answer or if it's causing her some concern. It
36 sounded like you may have been giving a bit of an
37 explanation there.

38 THE COMMISSIONER: No, go ahead.

39 MR. MCGOWAN: Is that --

40 MS. ROBERTS: I thought he was describing the change.
41 We have no objection to that.

42 MR. MCGOWAN: Fair enough. I just didn't want to have
43 him straying into an area that was of concern.

44 Q Carry on, then, Officer.

45 A Sure. So again it's a filter, if you will,
46 between behaviour and potential intervention
47 responses.

- 1 Q Thank you. Now, the -- we've already spoken about
2 the "Impact Weapon" has been removed, that
3 category.
- 4 A Yes.
- 5 Q And those impact weapons would now be subsumed in
6 the "Intermediate Weapons"?
- 7 A That's correct. We call them kinetic energy
8 weapons now.
- 9 Q I'm sorry
- 10 A Kinetic energy weapons is the term we use.
- 11 Q Okay, fair enough. And the "Soft Control" has
12 moved a little bit backwards into the
13 "Communications" area?
- 14 A Yes, that's correct.
- 15 Q Okay. And the "Intermediate Weapons" and "Hard
16 Control" now coexist within the "Lethal Force"
17 area, as well?
- 18 A That's correct.
- 19 Q Is that then generally -- does that cover most of
20 the major changes to the wheel?
- 21 A One major change that was left out was the
22 "Communication". It used to be "Verbal
23 Intervention" and now it's "Communication" so it's
24 representative of all communication.
- 25 Q Okay. Now, one of the things that I wanted to ask
26 you about was the placement of the Taser on this
27 -- I won't call it a continuum, but on this mode,
28 and the subject behaviour required to trigger it
29 is an available option. We've heard some evidence
30 that at the time of this incident, resistant
31 behaviour was the minimal subject -- minimal level
32 of subject behaviour that triggered an
33 intermediate weapon as an option, not mandated,
34 certainly, but as an option. Does that accord
35 with your understanding of the situation in
36 October 2007?
- 37 A I must say I don't know much about the case
38 itself, so I can't really comment on the case.
- 39 Q No, I'm simply asking you about the -- about the
40 policy --
- 41 A Yes.
- 42 Q -- and the model as of October 2007.
- 43 A Yes. There's a couple of things I have to say
44 here, is that behaviour unto itself is not the
45 threshold for determining what intervention you
46 will use. It is part of your assessment. So if
47 you look at the model, it would show that "Active

- 1 Resistant" is where "Intermediate Weapon" lies,
2 relatively speaking. However, the totality of the
3 situation along with all of this will determine
4 your response. It's very difficult to take and
5 make something -- life isn't linear, and that's
6 the issue. And we've done the best we can with
7 the model to make it representative of the
8 majority of cases. So majority of cases, you may
9 have somebody that at the time was actively
10 resistant and you could use an intermediate weapon
11 upon them, but again you had to take into
12 consideration the totality of the situation and
13 circumstance, that's the teaching of the IMIM.
- 14 Q Yes. No, I understand that, Officer.
- 15 THE COMMISSIONER: Officer, that was always the case,
16 was it not?
- 17 A That's correct.
- 18 MR. MCGOWAN:
- 19 Q And it continues to be the case today, of course?
- 20 A That's correct.
- 21 Q Let me see if I can ask this question in a way
22 that doesn't cause you concern about the way I'm
23 characterizing it. What I'm trying to get at,
24 Officer, is whether there's been a change in the
25 threshold, and I know the word "threshold"
26 sometimes makes officers uneasy, so I don't want
27 to put words in your mouth. But what I'm trying
28 to get at is we've understood that in October of
29 2007 the possibility of a Taser was triggered in
30 response to, at a minimum, resistant behaviour.
31 What's the threshold today? What's the minimal
32 subject behaviour that brings it into play as an
33 option in terms of the model and the text
34 associated with the model?
- 35 A Again I can't narrow it down to one behaviour,
36 because behaviour in itself is not a sole
37 determinant for use of any intermediate weapon.
38 What I can say is that we have placed a
39 restriction on our conducted energy weapon
40 deployments, and it says that in a nutshell, I'm
41 paraphrasing, the presence of threats to officer
42 and public safety. So we have further restricted
43 the use by placing that in the deployment
44 category.
- 45 Q And where do we find that in this document?
- 46 A That is in -- it's not in the IMIM, it's in the
47 CEW policy.

Insp. Troy Lightfoot

In chief by Mr. McGowan

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

1 Q Okay, thank you. The definition of "Assaultive",
2 is it essentially the same as what would have been
3 "Combative" in October of 2007?

4 A Yes.

5 Q And what is now "Active Resistant", is that
6 essentially the same as what would have been
7 "Resistant" in October of 2007?

8 A Fairly so, yes.

9 Q Okay. And any differences in the definition will
10 be captured in the text of this document?

11 A Yes.

12 MR. MCGOWAN: Thank you, Officer, those are the
13 questions I had.

14 MS. ROBERTS: Mr. Commissioner, I'm not really sure --
15 sorry, Helen Roberts for the Government of Canada,
16 for the record. I'm not really sure how to
17 proceed. I can take Inspector Lightfoot through
18 each and every change, but I notice the time and
19 I'm not sure that all the changes would be
20 relevant or of interest to you. I think it might
21 be more useful if other counsel went ahead first,
22 and then if there's something that isn't covered,
23 I could stand up at the end. Because other than
24 that, I'd be repeating to some extent what Mr.
25 McGowan has done, and I may be covering things
26 that are of no interest to you. So I'm in your
27 hands. Given the time, I just wonder what the
28 best way to proceed is.

29 THE COMMISSIONER: Yes, all right, let's try that.

30 MR. KOSTECKYJ: Walter Kosteckyj, counsel for Zofia
31 Cisowski.

32

33 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA
34 CISOWSKI:

35

36 Q Sir, I'm going to take you first of all, or ask
37 you about this Incident Management Intervention
38 Model, which I think is Exhibit E of the new
39 exhibits. In the preamble it talks about the fact
40 that the model -- do you see that, sir?

41 THE COMMISSIONER: Is there a page number?

42 MR. KOSTECKYJ: It's the very first page, page 2 it
43 shows.

44 A Page 2.

45 Q Do you have it, sir?

46 A Yes.

47 Q Now, incidentally, did -- were you involved in the

1 writing of this document?

2 A I was involved in some of the creation.

3 Q Sorry?

4 A I was involved in some of the creation of this.

5 Q Okay. You are the National Use of Force
6 Coordinator for the RCMP?

7 A I am the Officer in Charge of the Use of Force
8 Section.

9 Q Okay. And I take it you've been Taser trained?

10 A Yes, I have.

11 Q And your Taser training is current?

12 A No, it's not.

13 Q All right. When were you -- when were you last
14 certified?

15 A 2004.

16 Q Okay. Now, let's talk about this IMIM that we
17 keep hearing about. It says here that this is
18 really just a teaching tool. It's not policy or
19 law and shouldn't be considered a justification
20 model on its own, correct?

21 A Correct.

22 Q That's always been the case, hasn't it?

23 A Sorry, that --

24 Q Even prior to 2007 that was the case? The IMIM is
25 really a teaching tool?

26 A It's a risk assessment model and a teaching tool.

27 Q Right.

28 A Yes.

29 Q But it's never substituted for common sense or
30 been a policy unto its own?

31 A We rely on the law to determine what is
32 reasonable.

33 Q Right. And you tell -- and you tell people that
34 now and you told them that then?

35 A When I was involved in that type of training, yes.

36 Q All right. And that was back before 2007.

37 A That's correct.

38 Q All right. Now, there were a number of
39 recommendations which were made by the Police
40 Complaints Commissioner, you're aware of that?

41 A Yes, I am.

42 Q And I just want to ask you whether -- I'm just
43 going to go through these with you and I would
44 like to know which of these changes, if any, have
45 been introduced.

46 The first change was that the conducted
47 energy weapon be reclassified as an impact weapon,

1 and only be used in situations where an individual
2 is combative. Has that been done?
3 A Not to the letter, no, but I can give you an
4 explanation in regards to that.
5 Q Well, is this the same explanation you gave to the
6 Commissioner back last June?
7 A I can tell you that we spoke to Mr. Kennedy in
8 regards to this -- that recommendation.
9 MS. ROBERTS: Mr. Commissioner, we're getting into the
10 why changes have or have not been made. I had no
11 problem when Mr. Kosteckyj simply wanted to know
12 if a change had been made, and certainly we're
13 prepared to have Inspector Lightfoot answer if a
14 change is made or not. But as to why or why not,
15 we're again intruding on that dangerous territory.
16 MR. KOSTECKYJ: I didn't ask for that answer. The
17 Inspector offered it, so that he asked to be able
18 to explain it, so...
19 THE COMMISSIONER: Well, let's try again.
20 MR. KOSTECKYJ: All right.
21 Q There were two reports that were done by Mr.
22 Kennedy. There was an interim report, which was
23 prepared last year, correct?
24 A Yes.
25 Q And then there was a final report which I think he
26 did in June of last year, correct?
27 A Correct.
28 Q And I think his interim report was back actually
29 in -- about November 2007?
30 A Correct.
31 Q And in his interim report, he had suggested that
32 the conducted energy weapon be classified as an
33 impact weapon and that it should only be used in
34 dealing with individuals which were combative and
35 posing a risk of death or grievous bodily harm,
36 correct?
37 A I'd have to read the -- I'd have to see the
38 recommendation to be --
39 Q Okay.
40 A -- to see, you know, it's specifically like that.
41 I don't know if it was worded like that or not.
42 Q I only have the one copy, sir, so --
43 A You're referring to --
44 THE COMMISSIONER: Pardon me, but may I ask where
45 you're going with all of this? What's the point
46 of all this?
47 MR. KOSTECKYJ: Well, recommendations have been made,

1 and I'd like to know which of those
2 recommendations has been -- has been incorporated
3 in those documents.

4 THE COMMISSIONER: All right.

5 MS. ROBERTS: Mr. Kosteckyj can find that out by
6 reading the document. I'm not sure how it assists
7 Mr. Commissioner to have this witness say yes or
8 no to each of these questions.

9 MR. KOSTECKYJ: Well, I understood that the witness was
10 here to explain what the changes were, what the
11 position was then and what it is now, and I'm just
12 curious, based upon -- rather than going through
13 the document, we have the witness here as to
14 whether these -- which of these recommendations
15 have been brought into being.

16 THE COMMISSIONER: All right, go ahead.

17 A From my perspective, the restriction that we
18 placed on the use of the conducted energy weapon
19 with including threats to police and public safety
20 met that recommendation.

21 MR. KOSTECKYJ:

22 Q Okay. I guess the simple question is this. Have
23 you instructed, or is it in the policy that you
24 don't use a Taser unless an individual is
25 combative or posing a risk of death or grievous
26 bodily harm?

27 A That is not in the policy.

28 Q No. Okay. Is it in the policy that the RCMP
29 immediately instruct its members who deploy a
30 conducted energy weapon to seek immediate medical
31 attention in all circumstances?

32 A Where possible, it is.

33 Q Okay. Other than what you've told us in your
34 examination in chief, besides the fact that people
35 who are in an excited state or a delirious state,
36 have you put -- have you advised or changed your
37 policy about other people that might be at risk,
38 elderly, children, is there any change or any
39 warning given about the Taser in those
40 circumstances?

41 A We have not included a clause with respect to
42 those groups. Part of those groups are spoken to
43 in our training.

44 Q Okay. The fourth recommendation was that no one
45 with less than five years of operational
46 experience should be using a Taser. Has that been
47 implemented?

Insp. Troy Lightfoot

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

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

1 A No, it's not. We're still in dialogue with the
2 CPC on that issue.

3 Q Okay. Do you provide the Commission for Public
4 Complaints with unvetted copies of all Form 3996s
5 on a monthly basis?

6 A We do provide them unvetted copies.

7 MS. ROBERTS: Mr. Commissioner, I don't know how that
8 assists you to know whether certain forms are
9 provided to the Chair of the Public Complaints
10 Commission. I can't imagine how that could be
11 relevant to your report on Mr. Dziekanski's death.

12 MR. KOSTECKYJ: Well, I presume my friend asked for
13 this witness to be here. I'm just trying to get
14 to the sense of what evidence this has, but those
15 are my questions.

16 THE COMMISSIONER: Everybody done?

17

18 CROSS-EXAMINATION BY MS. ROBERTS ON BEHALF OF THE
19 GOVERNMENT OF CANADA:

20

21 Q Inspector -- Helen Roberts for the Government of
22 Canada. Inspector, I'd like to just take you
23 through this very, very briefly to get an overview
24 of the changes that were made. We had the August
25 2007 CEW Conducted Energy Weapon policy as part of
26 Corporal Gillis's evidence and an exhibit at that
27 time. Chronologically, the operational manual
28 bulletin of December 2007, was that the first
29 change made after October 2007?

30 A Yes.

31 Q All right. And what was -- what was the change
32 made in that bulletin?

33 A To paraphrase, basically it defined active and
34 passive resistant behaviour, and told members when
35 to use the conducted energy weapon relative to
36 active resistant behaviour.

37 Q All right. And were members instructed to -- how
38 were they -- for which type of behaviour were
39 members instructed they could use the conducted
40 energy weapon?

41 A To be specific I'll read the bulletin.

42

43 Effective immediately, members will only use
44 the Conducted Energy Weapon (CEW) in either
45 push stun or probe mode on persons who are
46 displaying **Active Resistant Behaviour** and
47 higher categories of behaviour, e.g.

1 situation.

2

3 So that in itself would heighten reporting that if
4 there's reference to the device.

5 Q All right. Section 3 then deals with
6 "Deployment", and I think you've already testified
7 to this. There's been an addition in 3.1.1 in
8 that the conducted energy weapon must only be used
9 "in response to a threat to officer or public
10 safety".

11 A That's correct.

12 Q All right. And that wasn't in the old policy.

13 A No.

14 Q All right. And section 3.1.2:

15

16 All members must recognize that any use of
17 force entails risk.

18

19 Was that in the old policy?

20 A No, that's added.

21 Q All right. And then you've got a section 3.1.4
22 that you've already referenced about:

23

24 Acutely agitated or delirious persons may be
25 at a high risk of death.

26

27 Was that in the old policy?

28 A No.

29 Q All right. And in section 3.1.5, I think you've
30 already highlighted this, that the change was
31 members should make every effort to control the
32 subject not only during but also following the
33 deployment of the CEW.

34 A That's correct.

35 Q All right. And you've also referred to the "NOTE"
36 that:

37

38 The CEW is not intended as a restraint
39 device.

40

41 Is that new?

42 A Yes.

43 Q All right. Section 4 deals with "Voluntary
44 Exposure". That's during the course of training?

45 A Yes.

46 Q So that's not relevant here. Section 5 deals with
47 "Deployment Aftercare".

- 1 A Yes.
- 2 Q And you've touched on this to some extent. Has
3 the policy about medical assistance been narrowed
4 as to when members should seek it, or has it been
5 widened?
- 6 A It's been widened.
- 7 Q All right. And section 6 deals with "Reporting
8 and Accountability". Have the changes, if any, to
9 that section reduced or increased the requirement
10 to report and account for the use of the CEW?
- 11 A It's increased it.
- 12 Q All right. And there have been changes, I take
13 it, to other sections, but they don't seem
14 particularly relevant to this inquiry. Section 7
15 deals with --
- 16 A "Maintenance and Control".
- 17 Q -- maintenance and control of CEWs, and section 8
18 deals with downloads. Section 9 deals with
19 testing of the devices.
- 20 A Yes, there have been.
- 21 Q And some of those have been changed as well.
- 22 A To some extent.
- 23 Q Chronologically then, the next policy would be
24 Exhibit 125C, and that's the "E" Division policy
25 about conducted energy weapons?
- 26 A Correct.
- 27 Q All right. And this was brought out after the
28 national policy that we just looked at that came
29 out in February 2009.
- 30 A Correct.
- 31 Q Is that common to have "E" Division or any
32 division change their policy after a national
33 policy change, or is that unusual?
- 34 A No, not unusual at all.
- 35 Q All right. And have you reviewed the "E" Division
36 policy?
- 37 A I did see it.
- 38 Q All right. Does it detract from the national
39 policy, add to the national policy, or what does
40 it do?
- 41 A It generally -- they generally add, that one adds
42 as well. It's more specific to local needs.
- 43 Q And it has sections about training and reporting,
44 you noticed that?
- 45 A Yes.
- 46 Q And the policy provisions under there are in
47 addition to the training and reporting

1 requirements in the national policy, as I read it?
2 A Yes.
3 Q Thank you. And you've also provided the Incident
4 Management Intervention Model Policy that is not
5 yet published.
6 A Yes.
7 Q That's Exhibit 125D. What is your understanding
8 of when that will be published?
9 A We're hopeful that by the end of this week it will
10 be published.
11 Q All right. And once that is published, how is
12 that communicated to the RCMP members across the
13 country?
14 A Well, as explained earlier during the questioning,
15 we've already advised divisions through their
16 CROPS officers and their subject matter experts
17 that this is pending, it will be published
18 shortly, and there'll be an e-news that will come
19 out advising everybody as well.
20 MS. ROBERTS: All right.
21 THE COMMISSIONER: Is the "E" Division policy in
22 addition to the federal policy?
23 A Yes, it's to address local -- local needs.
24 THE COMMISSIONER: In addition.
25 A In addition.
26 MS. ROBERTS:
27 Q So that RCMP members in "E" Division are expected
28 to follow both the national policy and the "E"
29 Division policy?
30 A Yes.
31 Q And Mr. McGowan has taken you through some of the
32 key changes to the Incident Management
33 Intervention Model.
34 A Yes.
35 Q In Exhibit 125E.
36 A Yes.
37 Q Does that model look more like the model used by
38 the National Chiefs of Police now?
39 A It's very similar to the NUFF, yes.
40 MS. ROBERTS: Thank you, I think those are all my
41 questions.
42 THE COMMISSIONER: Well, that seems to be everything.
43 Thank you very much, you've come a long way, most
44 helpful.
45 A Thank you very much.
46
47 (WITNESS EXCUSED)

1 MR. VERTLIEB: The only matter remaining today is to
2 deal with Dr. Kerr, the circumstances relating to
3 Dr. Charles Kerr, scheduled to give evidence
4 tomorrow. Mr. Neave has asked, in a totally
5 reasonable way, I might add, to be here to make
6 submission to you about our plan to call Dr. Kerr.
7 Just to give you the outline, Dr. Kerr is an
8 electrophysiologist and cardiologist, and you
9 will remember him because he came and made a
10 lengthy presentation to you on May 20, 2008.

11 He at that time prepared a paper, a
12 submission, and he spoke about the issues around
13 Taser and the ability to impact on a person's
14 heart. And I have his submission that he made to
15 you here. But he spoke about the pain being
16 inflicted by Taser discharge could likely increase
17 the adrenalin-like chemicals and increase
18 sympathetic nerve discharge in the body. He spoke
19 about the concern for people in an agitated state
20 and dealing with adrenalin and sympathetic nervous
21 system issues. So he spoke about the concerns
22 that he had where Taser might be able to cause a
23 ventricular fibrillation or tachycardia. I don't
24 want to go through it at length, but I just want
25 to tell you that you've heard about Dr. Kerr and
26 heard his views.

27 Now, in the course of this Commission, we
28 wrote to all counsel on March 3, and I'll just
29 pass that up to you. And if you turn to the
30 second page, this was a letter sent to counsel
31 just to give them an indication of witnesses that
32 we were contemplating, and as it relates to Dr.
33 Kerr, the third paragraph:

34 The Commission has also consulted doctors...

35 And a number mentioned, and Dr. Kerr, you'll see.
36 We say:

37 It is our understanding that these doctors
38 are in the process of reviewing materials.
39 The Commission has not received opinions from
40 any of these doctors. We anticipate their
41 opinions will canvass many of the same issues
42 addressed by the doctors who provided
43 opinions to IHIT. Based on some very
44 preliminary discussions we've had with some
45
46
47

1 of these experts. We anticipate there may be
2 evidence presented that suggest Mr.
3 Dziekanski was not in a delirious state.

4
5 And more importantly to this point:

6
7 We also anticipate that some of the medical
8 evidence may identify the deployment of the
9 Taser against Mr. Dziekanski as having a
10 contributory role in his death.

11
12 Now, as it relates to Dr. Kerr, he reviewed Dr.
13 Chambers' report, and you know Dr. Chambers, of
14 course, because he also came and gave a lengthy
15 presentation to you. Dr. Kerr has confirmed Dr.
16 Chambers' comments from the cardiology standpoint,
17 and Dr. Chambers' report is very extensive.

18 In the unfolding of the narrative, Dr.
19 Chamber's report has come in recently and as a
20 result Dr. Kerr's opinion came dated May 5 and
21 went out to all the counsel late yesterday
22 afternoon. And Dr. Kerr's report is not lengthy,
23 it's three pages or so, three pages and a bit.
24 And he confirms the cardiology comments that Dr.
25 Chambers makes.

26 Now, Mr. Neave had e-mailed earlier today and
27 wanting to stand Dr. Kerr down, and I understand
28 Mr. Neave's request, and I don't think that he's
29 unreasonable in his concern. But the problem is,
30 as we've had with so many witnesses in the course
31 of an inquiry of this nature that's been going for
32 some time, and you've heard me speak a number of
33 times about witness scheduling and ongoing
34 problems, we have had reports come in shortly
35 before witnesses would come to give evidence. And
36 it's just a fact of life that it's something that
37 just unfolds, not intentionally so, but that's the
38 way the matter has gone.

39 Dr. Kerr is away after tomorrow until the
40 18th of May he's in the United States. And so
41 he's gone to great lengths to accommodate your
42 inquiry by changing his plans the day before he
43 leaves to be able to come tomorrow afternoon, and
44 the plan is that he would be here around three
45 o'clock. And then he has agreed that he would sit
46 as late as you, Mr. Commissioner, wish him to sit
47 so we can finish his evidence.

1 Mr. Neave understands that but was hoping
2 perhaps that Dr. Kerr could come next week, and I
3 don't think Mr. Neave fully understands that Dr.
4 Kerr just is simply not in the country, and there
5 are just problems around it. So perhaps Mr. Neave
6 wishes to speak and perhaps hearing that, we might
7 have some further discussion.

8 MR. NEAVE: For the record, Mr. Commissioner, David
9 Neave for TASER.

10 And I just want to start my submission by
11 saying I place no fault on my friend with respect
12 to the delivery of the material, but it is my
13 respectful submission that the delivery of the
14 material at six o'clock last night places my
15 client in a -- in extreme prejudice, and in
16 preparing for a lengthy cross-examination of Dr.
17 Kerr, on a new thesis, and this is this
18 ventricular tachycardia point that has not been
19 canvassed at any length before the Commission.
20 Indeed, my quick look at the evidence from start
21 to beginning -- or start to end, or where we are
22 today, shows that -- that it's mentioned on a
23 handful of occasions, and I do not recall it being
24 put to, for example, the pathologist, Dr. Lee. I
25 don't recall Dr. Butt talking about this thesis,
26 and it's replete in now Dr. Tseng's new thesis
27 that we received yesterday.

28 And just by way of background, I just want to
29 fill you in on where we are and when we got the
30 material. Dr. Tseng is scheduled to testify on
31 Friday. I -- and I'll take you through some
32 correspondence in a moment, but we received Dr.
33 Tseng's report yesterday morning at 9:25. We
34 received Dr. Chambers' report yesterday at 1:40,
35 and I received Dr. Kerr's report yesterday just
36 before 6:00 p.m. Dr. Kerr, on my instruction,
37 from my learned friend, is scheduled to appear
38 tomorrow at 3:30, and I understand that's been
39 backed up now till three o'clock.

40 The issues that are raised by Dr. Kerr, and
41 you'll recall in the first study commission I
42 raised with you an issue with respect to Dr. Kerr
43 and Dr. Chambers' evidence, in that they had no
44 hands-on or Taser-related work, and you will
45 recall that the result of that was that Drs.
46 Swerdlow, Penescu and Ho be called, and that was
47 done and they've testified, and Dr. Ho will be

1 testifying next week.

2 This new issue, I say new issue of
3 ventricular tachycardia, is a complex issue and
4 one that requires substantial work on my part to
5 get ready for cross-examination. And with
6 respect, it's prejudicial to my client to cause
7 that evidence to be called within -- if we count
8 today and tomorrow, two days, to prepare for that
9 cross-examination, and I can tell you I would
10 anticipate that with Dr. Kerr, as with Dr. Tseng,
11 I will be some time.

12 And none of this is of my client's making.
13 My friend's quite correct, on the 3rd of March in
14 the letter that he showed you, he raised -- raised
15 the issue. And on the 12th of March we wrote back
16 to Commission counsel requesting that:

17
18 ...we be provided with any additional expert
19 reports as soon as possible to avoid the
20 necessity of an adjournment application in
21 order to deal with complex medical issues and
22 the potential for rebuttal witnesses
23 consistent with your direction of the 19th of
24 February.

25
26 And you will recall on the 19th, Mr. Commissioner,
27 that you gave a direction with respect to, you
28 know, let's get the witnesses organized, let's get
29 their materials out, so that -- so that the
30 schedule has some endpoint in sight, that we're
31 not then producing witnesses at the end, that
32 there's going to be rebuttal evidence required,
33 and your comment, in effect, was there has to be
34 an end to it. And you were very concerned about
35 that.

36 So we wrote on the 12th. We followed again
37 on the 6th of April with another letter requesting
38 those opinions and again alerting my friend to an
39 adjournment issue. And so we are here today,
40 having received Dr. Kerr's opinion last night, and
41 having to prepare for a cross-examination on very
42 complex medical issues for tomorrow and, quite
43 frankly, that's unfair, in my respectful
44 submission, and I appreciate Dr. Kerr's schedule,
45 and I know that we have made -- I know that
46 Commission counsel have certainly gone out of
47 their way to make arrangements for telephone

1 connections and to have that evidence presented
2 telephonically or by video. Either of those
3 circumstances would be acceptable to me. It's not
4 as good as having the witness here before you, but
5 with respect, to proceed tomorrow in an expedited
6 fashion at between 3:00 and 3:30 in the afternoon
7 till we're finished doesn't allow me sufficient
8 time to prepare adequately for a complex cross-
9 examination.

10 So I'm in your hands. I appreciate my
11 friends are working diligently with respect to
12 scheduling on what must be -- and I appreciate is
13 a horrendous task. But scheduling ought not to
14 interfere with fairness in the process. That
15 ought to be the overriding factor, and in my
16 respectful submission, that mandates that Dr.
17 Kerr's evidence be scheduled at a time that the
18 participants, and I can't speak for my friends,
19 but certainly for my client, that we can prepare
20 adequately for that examination. Thank you.

21 THE COMMISSIONER: Anything further, Mr. Vertlieb?

22 MR. VERTLIEB: Well, I totally understand the comments
23 Mr. Neave makes, Mr. Commissioner, and he
24 understands, as we all do, the timing pressure.

25 The one thought I had just hearing it, is
26 that -- and it's a thought, is if we even start
27 with Dr. Kerr and go as late as we can on
28 Thursday, and then put him over to finish, it
29 could be that once Mr. Neave spends an hour or so
30 with him, he might have a better sense of the
31 issues, and then put Dr. Kerr over for
32 continuation the following week. The one thing
33 that I did speak with him about, because I knew
34 Mr. Neave's comments, and I did fully understand
35 and appreciate them, and we are trying to
36 accommodate everybody as best we can, of course.
37 But Dr. Kerr can be available to do a telephone
38 conference next Thursday. It's the one day next
39 week that he can make himself available. The
40 worry about just simply putting it all over to
41 then is I'm not sure how long it would be, and
42 he's at a -- as it turns out, apparently a
43 cardiology conference, which he wishes to attend,
44 obviously, and so I was thinking if we started
45 tomorrow and went as far as we could. If Mr.
46 Neave then needs to put him over to continue...

47 THE COMMISSIONER: Well, what I'm thinking about, well,

1 first of all, as they often say "justice and
2 efficiency are not often on speaking terms". But
3 having said that, I think he could be called as
4 scheduled and then, Mr. Neave, you will have the
5 election as to whether you even want to begin your
6 cross-examination and at least we'll use up that
7 time and hear what he says in chief. And if you
8 feel that you could do some cross-examination,
9 I'll leave that to you. If you don't want to
10 begin at all, well, I understand that, and we can
11 impose upon the doctor to see if we can do it on
12 the Thursday.

13 MR. NEAVE: All right. And, Mr. Commissioner, I
14 appreciate that, that's -- I had also thought of
15 that prospect from my friend with respect to
16 breaking his evidence. The concern I do have,
17 though, is actually that, is breaking the
18 evidence. In an ideal world, the cross-
19 examination follows. I appreciate the scheduling
20 issue, but I think that's a more fair way for it
21 to unfold. And certainly I wouldn't want to, in
22 any event, commence a cross-examination and break
23 it and start again in a week. I think that's not
24 only inefficient, but difficult to manage.

25 THE COMMISSIONER: All right. We'll take the Canadian
26 compromise, then, in chief only.

27 MR. NEAVE: Thank you, Mr. Commissioner, I appreciate
28 that.

29 MR. VERTLIEB: So, Mr. Commissioner, that concludes the
30 session for today.

31 THE REGISTRAR: The hearing is now adjourned for today
32 and will resume at ten o'clock tomorrow morning.
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34 (PROCEEDINGS ADJOURNED TO MAY 7, 2009 AT
35 10:00 A.M.)
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