

# PART 1

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## EXECUTIVE SUMMARY AND RECOMMENDATIONS

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## PART 1: EXECUTIVE SUMMARY AND RECOMMENDATIONS

## **A. EXECUTIVE SUMMARY**

### **Introduction**

In October 2007, at the Vancouver International Airport, an officer of the Royal Canadian Mounted Police (“RCMP”) used a conducted energy weapon against Mr. Robert Dziekanski, who, after being subdued and handcuffed, died within minutes. Public reaction to this incident was immediate and intense, and at a more general level, concern was expressed about the deployment and use of conducted energy weapons by policing bodies in British Columbia. In response to this public concern, the provincial government appointed me in February 2008 to conduct two separate inquiries under the *Public Inquiry Act*. The first inquiry report, entitled *Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons in British Columbia*, included recommendations respecting the appropriate use of conducted energy weapons, including appropriate training and re-training. It was released on July 23, 2009.

### **The Commission of Inquiry**

This second inquiry report deals with the death of Mr. Dziekanski. My Terms of Reference (set out in Appendix A) were:

- to conduct hearings, in or near the City of Vancouver, into the circumstances of and relating to Mr. Dziekanski’s death;
- to make a complete report of the events and circumstances of and relating to Mr. Dziekanski’s death, not limited to the actual cause of death;
- to make recommendations the commissioner considers necessary and appropriate; and
- to submit a report to the Attorney General on or before a date to be determined by the Attorney General in consultation with the Commissioner.

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The Commission convened 61 days of evidentiary hearings at which 91 witnesses testified under oath or affirmation, followed by five days of closing oral submissions. Official participant status was granted to 16 individuals and organizations, all of whom were represented by counsel. Three of the 91 witnesses were senior employees of the Canada Border Services Agency and the Vancouver Airport Authority, who explained their policies, practices, and procedures respecting the handling of, and services provided to, arriving international passengers, especially those who do not speak English, and what changes have been made since October 2007.

### **Mr. Dziekanski's trip to Canada**

Mr. Dziekanski was born in Poland in 1967, and lived his entire life there. After his mother immigrated to Canada and settled in Kamloops, BC, he made the decision in late 2007 to do so as well. He spoke only Polish, had never flown before and, in the days preceding his departure, grew increasingly anxious. His trip was rescheduled once, and on the night before his departure, he was panicky. Friends described him as shaking, vomiting, and clinging to a heat radiator in the apartment. However, once he began the drive to the airport he settled down. He flew to Frankfurt and then Vancouver, and his behaviour on both flights was uneventful.

### **Mr. Dziekanski's arrival in Vancouver and clearance to enter Canada**

His flight arrived at Vancouver International Airport at about 3:15 p.m. on October 13, 2007, although he would not clear Canadian Immigration and exit the secure Customs Hall until 12:40 a.m. the next morning. As he approached the Primary Inspection Line, he was sweating profusely and had a disturbed look on his face. With some assistance from a Border Services officer, he was able to complete his Customs Declaration Card, and he proceeded through the Primary Inspection Line at 4:09 p.m. Because he was immigrating to Canada, he was required to proceed to Secondary Customs and Secondary Immigration. Because of the language barrier this was not explained to him, but the officer may have pointed behind her where he was to go.

For the next five-and-a-quarter hours, Mr. Dziekanski disappeared within the Customs Hall area. His mother, who drove from Kamloops with a friend to meet him, arrived at the Airport at about 1:20 p.m. When she realized that she would not be able to meet him at the luggage carousels in the secure Customs Hall (as she had promised him), she and her friend repeatedly sought assistance from a visitor information counsellor, customer service agents, and Border Services officers about a traveller from Poland who had never flown before and spoke no English. As time went by, she and her friend grew increasingly distressed, frustrated, and discouraged. A Border Services officer, after searching the Secondary Immigration area (but not the entire Customs Hall), told them that there was no way it would have taken this long for someone to get through Immigration. Without checking the computer, she also told them that in all certainty there was no landed immigrant from Poland there, and that they might as well go home. Some time after 10:00 p.m., Mr. Dziekanski's mother and her friend left the Airport and drove back to Kamloops.

At about 10:30 p.m. a different Border Services officer promptly processed Mr. Dziekanski through Secondary Customs and, realizing there was a language problem, escorted him to the Secondary Immigration office and then retrieved his two suitcases. Mr. Dziekanski was thirsty and appeared tired and frustrated, but was otherwise cooperative and compliant. An officer in Secondary Immigration found his immigration papers, paged Mr. Dziekanski's mother twice, then phoned her residence in Kamloops and left a message, and went into the public Meeting Area to try to locate his relatives. Using rudimentary Polish and hand gestures, she and another officer obtained enough information from Mr. Dziekanski to approve his application for immigration. She congratulated him on becoming a landed immigrant. When another officer found him still sitting in Secondary Immigration half an hour later, he escorted him out of the secure Customs Hall and wished him a good night.

### **Mr. Dziekanski's activities in the International Reception Lounge**

Mr. Dziekanski entered the semi-secure International Reception Lounge at 12:40 a.m. The Airport's closed-circuit video showed him pushing his luggage cart into the public

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Meeting Area, apparently looking around for someone. Members of the public and people working at the Airport used various words to describe his behaviours – unusual, upset, nervous, angry, distraught, and bizarre. He was sweating, appeared to be talking to himself, and at one point hit the glass doors with his hands in an attempt to get back into the lounge. He used his suitcases and a chair to form a barrier. Several people approached and talked to him, but could not communicate with him. None felt threatened by him, although several were reluctant to encroach on his “territory.” Much of this interaction was caught on a bystander’s video (the “Pritchard video”), which also showed Mr. Dziekanski smashing a small folding wooden table against a glass wall and throwing a computer on the floor, breaking it. However one characterizes his agitation and frustration, it was not directed at other people.

Several people who were in the public Meeting Area called 911 or the Airport’s Operations Centre about the disturbance. At 1:23 a.m., the Operations Centre called the RCMP about an apparently intoxicated 40-year-old male in the International Reception Lounge throwing suitcases and chairs around. The Airport’s own security personnel were also dispatched to the scene, but on their arrival they did not approach Mr. Dziekanski in accordance with their “observe and report” mandate. The four RCMP officers arrived at 1:28 a.m.

After the conducted energy weapon was deployed against Mr. Dziekanski, the Airport response coordinator took the prudent precautionary step of asking the Operations Centre to call an ambulance. When the coordinator was advised several minutes later that the ambulance had been upgraded to Code 3, he instructed the Operations Centre not to dispatch the Airport’s Emergency Response Services, although Airport policy required it. He also did not arrange for an automated external defibrillator to be brought to the scene, as required by Airport policy.

### **The response of the RCMP, Richmond Fire-Rescue, and BC Ambulance Service**

Corporal Robinson and Constables Bentley, Millington, and Rundel were in the RCMP’s Airport sub-detachment when the call was received. Cst. Millington responded, and

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the other three officers went as well, all in separate cars. They testified that they had no discussions en route to the Airport. Notwithstanding an e-mail between two senior officers suggesting that the four officers decided en route that if Mr. Dziekanski did not comply they would use a conducted energy weapon against him, I am satisfied that the four officers did not develop any such plan.

As the four officers approached the swinging glass doors that separated the public Meeting Area from the International Reception Lounge, they saw Mr. Dziekanski. Their descriptions paint a fairly consistent picture of a man who was unkempt and sweating, breathing heavily, disoriented, agitated, perhaps emotionally disturbed, and with a wide-eyed, glazed look. He was calm and cooperative when the officers first engaged him, with his hands at his side. There was debris on the ground, but no sign of broken glass.

Cst. Bentley, assuming the role of contact officer, took an appropriate first step by saying, "Hi, how are you, sir? How's it going, bud?" Owing to the language barrier, Mr. Dziekanski did not respond. At that point, Cst. Millington unilaterally intervened as contact officer, making hand gestures for Mr. Dziekanski to calm down, asking for "passport" and "identification," and miming writing with a pen. Although his intervention was not warranted, I am satisfied that it was well-intentioned and was a reasonable way of establishing whom they were dealing with. The Pritchard video shows Mr. Dziekanski making a very tentative downward movement toward the nearby luggage, which I am satisfied was his attempt to comply with Cst. Millington's demand to retrieve his travel documents.

As Mr. Dziekanski bent down (at 3:37 on the Pritchard video), Cpl. Robinson stepped in and took charge. He said, "No. Stop" in a stern, authoritative voice, and made a pointing gesture with his arm. Mr. Dziekanski stopped going toward his luggage. According to the Pritchard video he returned to a normal upright stance, with his arms at his side, engaging in eye contact with the officers. In my view he was complying with Cpl. Robinson's direction. It was not necessary for Cpl. Robinson to intervene at

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all, and even if it was, given the circumstances it was an inappropriately aggressive reaction.

At 3:41, Mr. Dziekanski then threw up his arms, lowered his head and turned away from the officers, moving toward a nearby counter. As he did so, Cpl. Robinson moved closer behind him with his arm outstretched, pointing toward the counter.

Mr. Dziekanski said, in translation (at 3:43): “Leave me alone. Leave me alone! Did you become stupid, *or* Have you gone insane? Why?” Although the officers described Mr. Dziekanski’s behaviour as defiant or resistant, I disagree. He took this action on his own initiative out of frustration, not in response to a command from any of the officers. He had not been told to stay where he was, so in moving away he was not acting contrary to a direction or command. If Cpl. Robinson wanted Mr. Dziekanski to put his hands on the counter, I am not satisfied that Mr. Dziekanski understood any such direction. As Mr. Dziekanski moved toward the counter, Cpl. Robinson followed close behind, pointing toward the counter. When he did so, the video shows that Mr. Dziekanski did in fact move to the counter, which I interpret as him acting in compliance with Cpl. Robinson’s direction.

Mr. Dziekanski reached the counter at 3:44, turned and faced Cpl. Robinson. At 3:45 Mr. Dziekanski shuffled backward a step, rotated to his right, and picked up a stapler off the counter. At 3:46 Cst. Bentley appeared to react to something he saw, and at 3:47 Cpl. Robinson pulled out his baton. The Pritchard video shows Mr. Dziekanski with his upper arms against his torso, but his lower arms and hands are not visible. At 3:49 he may have said, “Police, police.” Cpl. Robinson raised his left arm and pointed at Mr. Dziekanski, and one hears the snap of Cst. Millington deploying the conducted energy weapon in probe mode. I am satisfied that after Mr. Dziekanski picked up the stapler, he held it in his right hand, in front of him, and at or below his chest level. He did not brandish the stapler by either placing it above his head or motioning with it in an aggressive manner toward any of the officers. Further, I have concluded that Mr. Dziekanski did not step toward one or more of the officers while clenching the stapler. Attempts by Cst. Rundel and Cst. Bentley, during their testimony, to clarify

their statements to IHIT investigators and in their police notes were patently unbelievable after-the-fact rationalizations.

Cst. Millington and Cpl. Robinson gave three reasons for deploying the weapon: Mr. Dziekanski's combative nature or stance, his clenching the stapler in his raised fist, and his stepping toward the officers. They testified that they believed he intended to attack. In my view, Cst. Millington was not justified in deploying the weapon against Mr. Dziekanski, given the totality of the circumstances he was facing at the time. Similarly, Cpl. Robinson was not justified in instructing him to deploy the weapon. Further, I do not believe that either of these officers honestly perceived that Mr. Dziekanski was intending to attack them or the other officers. Neither officer carried out an appropriate reassessment of risk immediately before deployment of the weapon. They approached the incident as though responding to a barroom brawl and failed to shift gears when they realized that they were dealing with an obviously distraught traveller. I am equally critical of the policy and training paradigm that fosters such poor decision-making.

When the weapon was deployed, one probe lodged in Mr. Dziekanski's chest and the other in his shirt, which was flapping loosely against his body, causing the discharge of electrical current to be intermittent. During this six-second discharge, Mr. Dziekanski began screaming, with his arms flailing in front of him. He stumbled to his right, away from Cst. Millington, and fell to the floor. After a one-second break, Cst. Millington deployed the weapon a second time in probe mode, for five seconds. The current was again intermittent. Mr. Dziekanski was on the floor screaming, with his arms and hands held tightly against his chest, his body partially curled up, his legs thrashing, and his body moving around in a circular motion. In my view, the weapon's failure to immobilize Mr. Dziekanski during the first deployment was not a justification for deploying it a second time.

The other three officers then moved in, wrestled with Mr. Dziekanski, and eventually got his arms behind his back and handcuffed him. In my view, it was safe for these three officers to move in and restrain Mr. Dziekanski during the second deployment,

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and they acted unreasonably in not doing so then. During the struggle, Cst. Millington deployed the weapon a third time in probe mode. In my view, he did not adequately reassess the risk before deploying the weapon, and neither did Cpl. Robinson before ordering him to do so. I also am satisfied that during the struggle Cpl. Robinson applied force with his leg to Mr. Dziekanski's neck area when such force was not justified, given the totality of the circumstances he was facing at the time.

Cst. Millington also deployed the weapon twice in push-stun mode (for nine and six seconds, respectively, with intermittent current) against Mr. Dziekanski's upper back shoulder area for pain compliance purposes, to persuade Mr. Dziekanski to let the officers pull his arms behind his back and handcuff him.

The initial claims by all four officers that they wrestled Mr. Dziekanski to the ground were untrue. In my view they were deliberate misrepresentations, made for the purpose of justifying their actions.

Within five to ten seconds after being handcuffed, Mr. Dziekanski stopped kicking his legs, and he lay motionlessly while breathing heavily. When Cst. Bentley observed Mr. Dziekanski go unconscious, he requested an ambulance. When he saw Mr. Dziekanski's face turn blue shortly thereafter, he realized that they were facing a medical emergency, and promptly and prudently upgraded the ambulance call to Code 3. The RCMP officers and an Airport employee placed Mr. Dziekanski, while still handcuffed, on his side in a modified recovery position, but some time later he returned to the face-down prone position. I accept the evidence of the Richmond Fire-Rescue firefighters that, when they arrived, none of the four RCMP officers were attending to or monitoring Mr. Dziekanski.

Cpl. Robinson refused the firefighters' request to have the handcuffs removed, saying that he had been violent. In my view, his refusal was unjustified. The firefighters determined that Mr. Dziekanski was unconscious, saw no evidence that he was breathing, and could not get a radial or carotid pulse. They were surprised that the Airport's Emergency Response Service was not on scene, as they always arrived before the firefighters.

When two basic life support paramedics arrived, they immediately saw that Mr. Dziekanski's face was bluish, i.e., cyanotic. After repeated requests, the handcuffs were removed. When Mr. Dziekanski was rolled onto his back, his lips and tongue were blue, he was not breathing, and he had no carotid pulse. Although the paramedic thought that Mr. Dziekanski was dead, he ordered oxygen and chest compressions. The automated external defibrillator advised "no shock," which meant there was no heart rhythm (i.e., asystole). Within two minutes, two advanced life support paramedics arrived. They commenced intravenous treatment and medications, and endotracheal intubation. After 20 minutes of resuscitation attempts, Mr. Dziekanski was pronounced dead.

The RCMP's Integrated Homicide Investigation Team ("IHIT") officers took control of the scene, and the four RCMP officers made their police notes and returned to the Airport sub-detachment. Later that morning they were interviewed by IHIT investigators. They all testified that there was never any discussion between or among them about what had happened at the Airport, before giving their statements to the IHIT investigators. Taking into account the officers' opportunity to discuss the incident, an understandable motivation to present an account that would justify their conduct, and the similarities in their post-incident statements, I concluded that they did discuss the incident among themselves before they were interviewed by the IHIT investigators. While the evidence does not justify a conclusion that they colluded to fabricate a story, I am satisfied that their discussions resulted in them giving surprisingly similar accounts of the incident that tended to misrepresent what had happened, and tended to portray Mr. Dziekanski's actions in an unfairly negative light and their own actions in an unfairly positive light.

I also concluded that when Cst. Millington completed the conducted energy weapon usage report, he consistently and deliberately misrepresented and overstated Mr. Dziekanski's behaviours and actions in a manner prejudicial to Mr. Dziekanski, and chose self-serving language for the purpose of justifying his actions.

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The unprofessional manner in which Cst. Millington and Cpl. Robinson dealt with Mr. Dziekanski, and all four officers' less-than-forthright accounting for their conduct, have had repercussions that extend far beyond this one incident. Mr. Dziekanski's death appears to have galvanized public antipathy for the Force and its members. That is regrettable, because the most important weapon in the arsenal of the police is public support. This tragic case is, at its heart, the story of shameful conduct by a few officers. It ought not to reflect unfairly on the many thousands of other RCMP officers who have, through years of public service, protected our communities and earned a well-deserved reputation in doing so.

### **The cause of Mr. Dziekanski's death**

I considered the testimony and written reports of 14 medical experts – forensic pathologists, cardiologists, emergency department physicians, psychiatrists, an epidemiologist, and an electrical engineer. Despite a consensus that Mr. Dziekanski suffered an electrical death (i.e., a fatal cardiac arrhythmia that caused cardiac arrest), there was considerable debate and disagreement among these experts as to the process by which that fatal arrhythmia developed.

Two contradictory scenarios emerged from the evidence about when Mr. Dziekanski died. The “continued breathing” scenario postulates that he was last observed breathing about two minutes before the Richmond firefighters arrived, which means that he continued to breathe for at least 10 minutes after the time when the handcuffs were applied. The “cyanosis” scenario postulates that the evidence of Mr. Dziekanski's face being blue about 75 seconds after being handcuffed means that this cyanotic condition (i.e., inadequate oxygenation of the blood) must have been developing for some time, most likely because of heart failure. This would mean that Mr. Dziekanski's heart stopped pumping during the preceding 50 seconds – after he stopped struggling and before his face turned blue. I concluded (for the reasons discussed in Part 7) that the cyanosis scenario is the more likely sequence of events. Consequently, Mr. Dziekanski most likely died at most 75 seconds after he was

handcuffed and at most two minutes after the completion of the third probe-mode deployment of the conducted energy weapon.

The autopsy did not disclose an anatomical or toxicological cause of death, thus ruling out a heart attack, a chronic medical condition, a blunt trauma, or an internal injury. We will never know, with absolute certainty, what caused Mr. Dziekanski's death. The best we can do is draw inferences from the known facts, and reach conclusions about the most likely cause of death. The evidence gave rise to four possible causes of death:

- *Pre-existing heart disease plus accumulated stress* – it was suggested that Mr. Dziekanski's accumulated stress and agitation could have triggered a hyperadrenergic effect before the RCMP officers arrived, whereby his system was flooded with adrenaline and other catecholamines and that this reaction, coupled with his pre-existing medical condition, could have overwhelmed his heart, leading to cardiac arrest. I am not persuaded that this scenario adequately explains his death, for several reasons. I am not convinced that Mr. Dziekanski had alcoholic cardiomyopathy, that he was experiencing alcohol withdrawal, or that he was in a state of agitated delirium. In any event, these accumulated stresses and any pre-existing medical conditions did not cause, on their own, a fatal arrhythmia. When the four RCMP officers arrived, Mr. Dziekanski recognized them as such, engaged with them, and cooperated with their request for identification.
- *Weapon-induced direct capture of Mr. Dziekanski's heart* – although I am satisfied that the electrical current from a conducted energy weapon is capable of triggering ventricular fibrillation, I have concluded that it is unlikely to have happened in this case. The 70-second delay between the end of the third probe-mode deployment of the weapon and Mr. Dziekanski's lapse into unconsciousness is too long a time period. Also, it is not clear if the two probes were across the cardiac axis and, even if they were, it is not known whether they penetrated close enough to the heart for the electrical current to capture the heart.
- *"Sudden death during restraint" and/or "excited delirium"* – several medical experts testified about a phenomenon whereby a person exhibiting bizarre behaviour will sometimes die soon after being restrained, for no apparent reason. The person will typically act irrationally, be unaware of their surroundings, be hyperthermic, will often disrobe in public, be impervious to pain, and exhibit superhuman

strength. Almost always, the person will be intoxicated with an illicit stimulant such as cocaine and will have a history of serious mental illness. In my view, neither of these postulated conditions have any application to this case.

- *The hyperadrenergic state arising from the weapon deployment and physical altercation* – since the stress and fatigue that accumulated before, during, and after Mr. Dziekanski’s trip to Canada, and any pre-existing medical condition, did not collectively trigger his cardiac arrest, did his subsequent interaction with the RCMP officers (i.e., multiple deployments of the conducted energy weapon and physical wrestling) do so? From my analysis of the chronology, I concluded that Mr. Dziekanski’s interaction with the officers took 75 seconds, and he likely went into cardiac arrest within the next 25 seconds. I am satisfied that the hyperadrenergic response, which was significantly exacerbated by Mr. Dziekanski’s interaction with the RCMP officers, is the most likely cause of his death. Acidosis may have played a part as well. It would defy common sense to conclude, from all the evidence, that the physical altercation exacerbated the hyperadrenergic state that led to Mr. Dziekanski’s fatal cardiac arrhythmia, but that the multiple deployments of the conducted energy weapon played no part. It is beyond dispute that a single five-second deployment of the weapon causes intense, extreme pain, as well as emotional trauma. The evidence does not allow me to conclude, with mathematical exactitude, how much the weapon and the physical altercation contributed to the hyperadrenergic state that led, ultimately, to Mr. Dziekanski’s death. Unquestionably, they both contributed substantially to that tragic result. I consider it a reasonable inference to be drawn from all the evidence that the multiple deployments of the conducted energy weapon played a more prominent role.

### **The RCMP’s media response to Mr. Dziekanski’s death**

The RCMP’s IHIT took charge of the investigation, to determine whether any criminal charges should be laid arising out of Mr. Dziekanski’s death. During the three days immediately following the incident, a bilingual sergeant spoke to the media and issued news releases about the incident. It is not in dispute that some of the RCMP’s public disclosures about the Dziekanski incident, during the early stages of the criminal investigation, were factually inaccurate. When the RCMP became aware of these inaccuracies, the officer in charge of IHIT decided not to correct them, choosing instead to limit public statements to matters of process, not evidence. This poorly

managed media response to Mr. Dziekanski's death was widely reported and generated negative comment in the media, culminating in an official RCMP apology. In my view, three factors were principally responsible for this regrettable media response:

- *The rush to publish* – a well-intentioned desire to inform the public about what had happened at the Airport pre-empted the equally important goal of accuracy. In hindsight, it would have been preferable to avoid any detailed discussion of the circumstances at that early stage in the investigation.
- *The decision not to correct inaccuracies* – the factual inaccuracies, consistently self-serving, painted Mr. Dziekanski in an unfairly negative, and the officers in an unfairly positive, light. Although the officer in charge of IHIT erred in not correcting the inaccuracies right away, I am satisfied that his error was, at most, an error in judgement. My principal concern is that if there was RCMP-generated information in the public domain that might influence potential witnesses, better that it be *accurate* information.
- *The conflict of interest* – if this had been a brawl outside a bar involving two intoxicated patrons, initial inaccuracies respecting one patron's behaviour or the number of times a weapon was fired would have been understood for what they were – initial findings that were subject to change as more information became available. The extraordinarily different reaction in this case occurred because this was a police-related death, with the RCMP assuming responsibility for conducting the criminal investigation flowing from it and for releasing information to the media and public about the incident and the investigation. It was a case of the police investigating themselves, and many members of the public are understandably suspicious of such investigations, no matter how thorough and impartial they turn out to be. If the criminal investigation had been conducted by a body at arm's length from the RCMP, that body would have been, and would have been perceived by the public to have been, impartial. The public would have been much more likely to have accepted without suspicion what such an impartial body said about the incident.

## Recent changes at Vancouver International Airport

### *Canada Border Services Agency (CBSA)*

It is appalling that Mr. Dziekanski could have been cleared through CBSA's Primary Inspection Line efficiently, only to disappear within the cavernous Customs Hall for over five hours. I recommended that Border Services officers explain to each arriving

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international passenger, in a manner the passenger understands, where he or she must go and how to get there. I also recommended that CBSA implement a single integrated database system for tracking each arriving international passenger's progress through Secondary Customs and Secondary Immigration, and issue an alert if a passenger does not reach the next location within a predetermined period of time.

CBSA should do more to assist greeters who ask for help while awaiting arriving international passengers. Although federal legislation restricts passenger information that can be disclosed to greeters, an exception should be made in the case of greeters who are sponsoring immigrants. Border Services officers should be required to determine whether the passenger a greeter is concerned about has crossed the Primary Inspection Line and to make an entry in that passenger's computer file about the greeter.

CBSA officers should receive training, regularly updated, on what interpreter services are available to them and to arriving international passengers, and how to access such services. In addition, CBSA should provide its officers with adequate resources to ensure that arriving international passengers know where they have to go within the Customs Hall and how to get there, know what is being asked of them, know if a greeter has attempted to contact them, and are assisted in their own language if they appear to be confused or distressed.

### *Vancouver Airport Authority*

I am impressed with the Airport Authority's prompt and thorough review of its customer care services that it undertook following Mr. Dziekanski's death and the extensive changes that it has implemented, such as its International Arrivals Response Coordinator and Customs Hall Rover positions.

I unreservedly endorse the Airport Authority's attempt to introduce a Passenger Record of Entry and Exit system, and I urge implementation of the single integrated database system I recommended earlier. A digital Passenger Information Board should be installed in the Customs Hall, on which waiting greeters can place their name so

that arriving passengers are aware of their presence. Also, the Airport Authority's customer service agents should be permitted to page from the public Meeting Area into the Customs Hall, and *vice versa*.

The Airport's contracted security patrollers are often the first responders to medical and behavioural crises, and their current "observe and report" mandate is inadequate at such a large, busy, and prestigious international airport. The travelling public would be much better served if security patrollers received training in first aid and verbal de-escalation techniques, and were expected to actively assist members of the public who are in distress.

I commend the Airport Authority for recent improvements to its emergency and medical response services. However, one other medical emergency issue warrants attention. The Dziekanski case is an example of a safety and security incident evolving into a police use-of-force incident and then evolving further into a medical emergency incident. There was confusion about who was responsible for what in such situations. The travelling public would be well served if the Vancouver Airport Authority, RCMP, Richmond Fire-Rescue, and BC Ambulance Service worked together in formulating a plan of action for dealing with such incidents.

#### *Two-year review*

Finally, I recommended that within two years of this report being made public, the provincial Minister of Public Safety and Solicitor General report publicly on the extent to which the federal government and the Vancouver Airport Authority have implemented these recommendations.

#### **Postscript – police investigating themselves**

The Dziekanski incident was a case of the police investigating themselves, which gives rise to legitimate concerns about conflict of interest. The perception that investigators will allow loyalty to fellow officers to interfere with the impartial

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investigative process, even if not justified in a given case, can lead to public distrust and an undermining of public confidence in the police.

I agree with the Davies Commission of Inquiry's 2009 recommendation that British Columbia should establish a civilian-based investigative body, modelled on Ontario's Special Investigations Unit, to investigate all police-related incidents to determine whether criminal charges should be laid against a police officer. I recommended that this investigative body:

- should have province-wide jurisdiction (i.e., municipal police departments and the RCMP);
- should investigate police-related incidents involving death, serious harm, and possible contraventions of any *Criminal Code* provision, as well as the possible contravention of other federal and provincial statutes that, if the incident were investigated by a police officer, might in the minds of reasonable, informed members of the public undermine confidence in the police; and
- should be entirely civilian — no member should have served anywhere in Canada as a police officer. However during the initial five-year transitional period, former police officers may be employed, subject to several restrictions.

This civilian investigative body's investigators should have the status of police officers. They would become the lead investigative agency, take control of the incident scene, question witnesses, and be in charge of forensic analyses. A special prosecutor appointed under the *Crown Counsel Act* would make charge assessment decisions and, if criminal charges were approved, would conduct the prosecution.

## **B. SUMMARY OF RECOMMENDATIONS**

### CANADA BORDER SERVICES AGENCY

#### *Processing passengers*

1. I recommend that the Attorney General urge the federal Minister of Public Safety:

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- To require that Border Services officers at Vancouver International Airport's Primary Inspection Line explain to each arriving international passenger, in a manner the passenger understands, whether the passenger is required to proceed to Secondary Customs and/or Secondary Immigration and, if so, how to get there.
- To implement a single integrated database system for international passengers arriving at the Vancouver International Airport that:
  - creates a file for each passenger on arrival at the Primary Inspection Line;
  - records the time when the passenger clears the Primary Inspection Line;
  - records whether the passenger is expected to proceed to Secondary Customs and/or Secondary Immigration;
  - records the time by which the passenger is required to reach each Secondary location;
  - records the time when the passenger actually reaches, and subsequently clears, each Secondary location and the Point; and
  - issues an alert to all Border Services officers if a passenger does not reach the next Secondary location within a predetermined period of time.
- To impose a positive duty on specified Border Services officers to page and actively search for any passenger for whom an alert has been issued under the immediately preceding paragraph.
- Until the single integrated database system recommended above is in operation, to ensure that all Border Services officers at the Vancouver International Airport have prompt and easy access to both the Integrated Primary Inspection Line Database and the Field Operations Support System.

### *Communication between arriving passengers and greeters awaiting them*

2. I recommend that the Attorney General urge the appropriate federal minister or ministers:

- To implement a policy of inviting each prospective immigrant, when applying overseas for immigrant status, to consent in advance to their sponsor being informed when they do enter Canada.
- To impose a duty on a Canada Border Services officer at the Vancouver International Airport, who receives an enquiry from a greeter about an arriving international passenger:

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- To determine whether the passenger has crossed the Primary Inspection Line.
- If the passenger has crossed the Primary Inspection Line more than two hours ago, to page the passenger and to record in the passenger's file in the proposed single database system the particulars of the greeter, the greeter's relationship to the passenger, any special assistance that the passenger may require and, where appropriate, a message from the greeter to the passenger.
- If the passenger has not crossed the Primary Inspection Line, to make a note in the proposed single database system containing similar information.
- To impose a duty on a Border Services officer at the Vancouver International Airport, who deals with an arriving international passenger at Secondary Customs or Secondary Immigration, to inform the passenger:
  - of the details of any enquiry by a greeter that is recorded in the proposed single database system; and
  - how the passenger may communicate with the greeter.
- To install in the Customs Hall one or more closed-circuit TV monitors showing the greeters who are waiting in the public Meeting Area of the International Terminal Building, unless the minister is satisfied that there are legitimate security reasons for not doing so.

### *Interpretation services*

3. I recommend that the Attorney General urge the federal Minister of Public Safety to ensure that:

- CBSA officers at the Vancouver International Airport receive training, regularly updated, on what interpreter services are available to them and to arriving international passengers, and how to access such services.
- CBSA provide its officers at the Vancouver International Airport with adequate resources (e.g., interpreter services, printed multilingual forms, etc.) to ensure that arriving international passengers:
  - know where they have to go within the Customs Hall, and how to get there;
  - know what is being asked of them, when an officer is required to seek specific information, and are able to communicate such information to the officer;

- know if a greeter has attempted to contact them; and
- are assisted in their own language, if they appear to be confused or distressed.

## VANCOUVER AIRPORT AUTHORITY

### *Communication between arriving passengers and greeters*

4. I recommend that the Attorney General urge the federal Minister of Public Safety:

- To install, in the Vancouver International Airport's Customs Hall, a digital Passenger Information Board on which waiting greeters can place their name, so that arriving passengers are aware of their presence.
- To permit the Vancouver Airport Authority's customer service agents to page from the public Meeting Area into the Customs Hall, and *vice versa*.

### *Safety and security*

5. I recommend that the Vancouver Airport Authority:

- Revoke the current "observe and report" mandate applicable to its contracted security patrollers.
- Set minimum standards for security patrollers that include:
  - training in first aid (including CPR) and verbal de-escalation techniques; and
  - an expectation that they will actively assist members of the public who are in distress.

### *Emergency and medical response*

6. I recommend that the Vancouver Airport Authority, RCMP, Richmond Fire-Rescue, and BC Ambulance Service:

- Work together in formulating a plan of action for dealing with police use-of-force incidents at the Vancouver International Airport that evolve into medical emergencies.
- Train, with regular updates, their personnel on any such plan of action formulated by them, including live training exercises.

*Public report on implementation of these recommendations*

7. I recommend that, within two years of this report being made public, the provincial Minister of Public Safety and Solicitor General report publicly and in writing to the Legislative Assembly on the extent to which the federal government and the Vancouver Airport Authority have implemented the recommendations contained in this report, and if one or more recommendations have not been implemented, the reasons why.

**POSTSCRIPT – POLICE INVESTIGATING THEMSELVES**

8. I recommend that:

- a. British Columbia develop a civilian-based criminal investigative body, which I suggest be named the Independent Investigation Office (IIO).
- b. The IIO be mandated to investigate all police-related incidents occurring throughout the province, in which:
  - “police-related incidents” include, but are not necessarily limited to, incidents:
    - in which a person dies or suffers serious harm:
      - i. while in the custody or care of a municipal police officer or RCMP officer, or
      - ii. the death or serious harm could be seen to be the result of the conduct of any municipal police officer or RCMP officer, or
    - which involve possible contravention, by a municipal police officer or RCMP officer, of:
      - i. any provision of the *Criminal Code*, or
      - ii. any other federal or provincial statute that, if the incident were investigated by a police officer, might in the minds of reasonable, informed members of the public undermine confidence in the police.
  - “serious harm” means injury that:
    - creates a substantial risk of death,
    - causes serious disfigurement, or

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- o causes substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ.
- c. The IIO be accountable to the Ministry of Attorney General.
- d. The IIO be led by a director who is neither a current nor former police officer, appointed by Order-in-Council for a fixed, renewable term of five or six years.
- e. No member of the IIO shall have served anywhere in Canada as a police officer.
- f. Notwithstanding para.(e), during the first five years of operations, the IIO may include as members former police officers, provided that:
  - they have not served as a police officer in British Columbia within the preceding five years,
  - they take no part in any investigation relating to a law enforcement agency in which they were employed,
  - they constitute no more than a minority of the investigators who are assigned to a particular investigation, and
  - their employment with the IIO expires by the end of the five-year transitional period.
- g. To ensure the IIO's unquestioned authority to act, its essential powers be entrenched in legislation, such as:
  - the IIO director and investigators have the status of peace officers,
  - the chief constable or commanding officer of the RCMP of the jurisdiction in which a police-related death occurs must immediately advise the IIO of the incident,
  - pending arrival of the IIO at the incident scene, the chief constable or commanding officer of the RCMP must ensure that the scene is secured and that officers involved in the incident are segregated from each other,
  - officers involved in the incident must not communicate with each other about the incident, except as authorized by the IIO,
  - the IIO becomes the lead investigative agency, and the home police department or RCMP has no investigative responsibility or authority, except as granted by IIO,

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- a witness officer must promptly make himself or herself available for an interview with the IIO investigator, and must promptly deliver to the IIO all notes, reports, and other investigative materials relevant to the incident, and
  - a respondent officer may be – but is not compelled to be – interviewed by the IIO, and must in all cases promptly deliver to the IIO all notes, reports, and other investigative materials relevant to the incident.
- h. In every police-related incident assigned to the IIO, a special prosecutor be appointed in accordance with the *Crown Counsel Act*.
- i. The provincial Ombudsman have jurisdiction over the IIO.