

PART 5

MR. DZIEKANSKI'S ACTIVITIES IN THE INTERNATIONAL RECEPTION LOUNGE

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PART 5: MR. DZIEKANSKI'S ACTIVITIES IN THE INTERNATIONAL RECEPTION LOUNGE

A. INTRODUCTION

In this part of the report, I will review the testimony of approximately 20 people, such as Airport employees and contractors, and friends and relatives waiting for passengers, who observed and/or interacted with Mr. Dziekanski after he entered the International Reception Lounge (at 12:40 a.m.) and until the four RCMP officers arrived (at 1:28 a.m.). In some cases, I will include their testimony about what they observed after the RCMP officers arrived.

I will set out all the testimony of each witness in one place even though it spans numerous sequential events, rather than try to blend the testimony of all witnesses together in one seamless chronology. Imprecision about exactly when specific events happened make a seamless chronology impractical.

B. INITIAL ATTEMPTS TO ASSIST MR. DZIEKANSKI

Mr. Dziekanski passed through the Point at approximately 12:40 a.m. He is next seen on the Airport closed-circuit TV³³ at 12:54 a.m., exiting the swinging glass doors from the International Reception Lounge and pushing his suitcases on a luggage cart along the walkway into the public Meeting Area. He appears to be looking for someone, and then moves into a seating area hidden from view. Three minutes later he stands up and pushes his luggage cart across the waiting area to the corner nearest the glass doors into the International Reception Lounge, where he is again hidden from view.

At 1:04 a.m. Joginder Dhari, a cart attendant responsible for collecting empty luggage carts from around the Airport and returning them to the Customs Hall, is seen bringing some carts out of the International Reception Lounge through a different

³³ On October 14, 2007, Nancy Baggio, at that time an Operations shift supervisor for the Vancouver Airport Authority, made copies of relevant closed-circuit TV footage and audio recordings, which I will frequently refer to during this section of my report. Most of the time references are taken from the footage of one closed-circuit TV that was mounted near the bottom of the escalators in the public Meeting Area, showing that area and, at a distance, the swinging glass doors that arriving international passengers come through after exiting the International Reception Lounge.

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door. Three minutes later Mr. Dziekanski is seen lifting several suitcases over the handrail that separates the seating lounge in the public Meeting Area from the walkway that arriving passengers take after exiting the International Reception Lounge. It appears that Mr. Dziekanski placed the suitcases onto the walkway near the swinging glass doors and then crossed over the railing himself. He is seen making gestures near or against the glass doors. Mr. Dhari and another person are seen watching Mr. Dziekanski, and then at 1:08 a.m. Mr. Dhari is seen walking up the walkway to the glass doors.

Mr. Dhari told me that when he first saw Mr. Dziekanski, he (Mr. Dziekanski) was in the middle of the public Meeting Area wandering around looking for something. Mr. Dhari thought he needed help, so he went up to him and asked what he needed.

Mr. Dziekanski did not understand and did not respond. Mr. Dziekanski appeared healthy and strong, but seemed nervous and was making noises to himself. He was hitting the glass doors with his hand, trying to open them. Mr. Dhari agreed that Mr. Dziekanski's behaviour seemed bizarre, but Mr. Dziekanski did not threaten him, and Mr. Dhari was not afraid of him. Mr. Dhari suggested to a limousine driver (likely Mr. Meltzer) that he call security, which the driver did. Security officers came and talked to Mr. Dziekanski, but they could not help and they called the police. Mr. Dhari saw Mr. Dziekanski throw a chair against a wall and, after the police arrived, watched them use the conducted energy weapon. The officers wrestled with Mr. Dziekanski and put handcuffs on. At one point, one of the officers put his leg on Mr. Dziekanski's neck. Mr. Dhari is seen leaving the area at 1:34 a.m.

At 1:10 a.m. **Lorne Martin Meltzer**, a self-employed corporate valet, is seen walking along the public Meeting Area walkway toward the swinging glass doors. He told me that he was expecting to meet a client in the International Reception Lounge, who was arriving on a Cathay Pacific flight from New York. He saw Mr. Dziekanski on the public Meeting Area side of the doors. He appeared angry and distraught, and was smashing a chair against the glass doors, trying to get back into the secure area. Mr. Meltzer realized there was a language barrier. He told Mr. Dziekanski to "hold on" and pulled

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out and swiped his access card, and the doors opened. However, Mr. Dziekanski would not let him past. Mr. Meltzer got angry and, standing about 18 inches away, said in a loud voice, "Look, you fuckin' asshole, I need to get through here." Mr. Dziekanski calmed down, but Mr. Meltzer could still not get past him — Mr. Dziekanski had used suitcases and chairs to form a barrier. Mr. Meltzer hopped over the handrail and asked if any of the other people waiting for passengers spoke other languages. One woman (Ms. Ashrafinia), fluent in several languages, went over and spoke to Mr. Dziekanski. Mr. Meltzer called 911, but was put on hold, so he hung up. At 1:15 a.m. he went up the escalator to where a security guard was stationed, and told him that there was a man freaking out and that they needed to get someone down there quickly. After he returned downstairs (at 1:18 a.m.), a security guard approached and Mr. Meltzer told him about the flight arriving from New York and that it would be a good idea to alert Customs, so they could divert the arriving passengers away from the International Reception Lounge. At about 1:28 a.m. Emergency 911 returned his call, and he explained the situation and said that police were needed. The operator told him that officers were already on their way, at which point he saw them arriving. He told the officers that Mr. Dziekanski did not speak English and that he was freaking out. Mr. Meltzer told me that he did not personally feel any threat from Mr. Dziekanski. He was sweating, pacing, talking to himself, and upset, but "he wasn't outwardly attacking people or mad at people. He was just — just distraught, just tired."³⁴ However, he agreed that in one of his statements to the police he said that on a scale of one to ten, when ten is attacking another person, Mr. Dziekanski was at a nine. In his testimony he said:

- Q And so you weren't thinking that he was actually about to attack you, but he was just a little bit below that level.
- A I would say so.³⁵

³⁴ Transcript, February 3, 2009, p. 51.

³⁵ Transcript, February 3, 2009, p. 112.

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After being referred to a portion of one of the statements he made to the police in which he described Mr. Dziekanski as pacing back and forth, screaming, and acting aggressively, there was the following exchange:

- Q And two points I'm going to suggest come out of that. One was that you thought this man was assuming some sort of territoriality over the space that he was occupying.
- A Correct.
- Q And you didn't want to go into that space because you were concerned about what might happen if you did?
- A Under the circumstances, correct, I was, like I — like I said in earlier testimony yesterday, I was in a suit and tie and I was still there in a professional level, and the way he had his suitcases lined up across like a border, I just didn't want to, like I said, I didn't want to cross that line, yes.
- Q And the second point that I'm going to suggest comes from that is that events unfolded very, very quickly.
- A Correct.
- Q And in the time that you were dealing with him there appeared to be a change in his demeanour?
- A Correct. Yeah, for a bit, yes.³⁶

Mr. Meltzer agreed that in his statement to IHIT investigators, he had said that Mr. Dziekanski made a motion like he was going to go toward an officer while he held the stapler up in the air.

In his testimony, **Servideo Agraviador**, a Securiguard access control point guard at elevator 40, told me that the man who came to his station (clearly Mr. Meltzer) told him that there was a man in the International Reception Lounge making trouble and throwing a chair. The man causing trouble did not speak English, might be Russian, and must be stopped because he (Mr. Meltzer) could not get into the lounge to meet a passenger. Mr. Agraviador used his radio to call the Security Operations Centre, which included the following exchange:

³⁶ Transcript, February 4, 2009, p. 2.

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Guard I received a report that in IRL there is a guy who are [*sic*] making trouble there....

SOC What kind of trouble is there, physical trouble or just arguing?

Guard He said to me that he was throwing chairs.

SOC Copy that. We'll inform police.³⁷

Jame Glenn Canzon was on contract to clean several bank offices and bank machines at the Airport. He is seen on the closed-circuit video passing through the glass doors into the International Reception Lounge at 1:17 a.m., and leaving through the other door at 1:28 p.m. He told me that he was going into the International Reception Lounge to clean the currency exchange office at the far end. He saw Mr. Dziekanski inside the lounge, standing near the swinging glass doors. The doors were closed. Mr. Canzon told Mr. Dziekanski that he needed to get in. Mr. Dziekanski spread his arms out like a T and said something that Mr. Canzon did not understand. Mr. Canzon swiped his card to open the doors, then pushed his cart through and passed by Mr. Dziekanski. He told me that Mr. Dziekanski's hair was sweating, perspiration was running all over his face, and he was making loud "rrr, rrr, rrr" sounds, but he felt he was harmless, "I'm not afraid 'cause he didn't do anything against me."³⁸

Ms. Sima Ashrafinia arrived at the International Arrivals public lounge at 1:09 a.m., to meet her husband who was arriving on the Cathay Pacific flight from New York. When she first saw Mr. Dziekanski, he was in the public area, grabbing his luggage, and talking loudly to himself. He then lifted his luggage over the handrail dividing the lounge from the walkway that arriving passengers use after exiting the secure area, stepped over the railing, and tried to open the one-way swinging doors that are used by arriving passengers exiting the International Reception Lounge. An angry-looking man (Mr. Meltzer) started shouting loudly at Mr. Dziekanski in English that he was expecting his passenger any minute, using the F-word. This caused Mr. Dziekanski to begin shouting in return, and she observed that his face was upset, his breathing was fast, and he had sweat on his forehead. On a scale of one to ten, Mr. Dziekanski had

37 Exhibit 26, p. 1.

38 Transcript, February 3, 2009, p. 19.

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been at level three before Mr. Meltzer's intervention, but went up to level nine afterward. She said to Mr. Meltzer, "He doesn't understand what you're saying. You're provoking him. Why don't you get the security?" Mr. Meltzer then backed off, and she saw him going up the escalator.

She initially thought Mr. Dziekanski was speaking Russian or Czech. She said "Russia," and then a few words in Turkish and then Italian, but he did not respond.³⁹

Mr. Meltzer came back down the escalator and walked toward Mr. Dziekanski.

Mr. Meltzer told her that he couldn't find any security. He shouted at Mr. Dziekanski to move, then put his hand inside his suit jacket. Mr. Dziekanski clenched his fist, but relaxed when Mr. Meltzer pulled out his access card and scanned it, which caused the one-way swinging doors to open, and Mr. Dziekanski moved through into the secure area and dragged his luggage with him. She saw him pick up several objects from a counter just inside the swinging doors, including a keyboard and some binders. A cleaner (Mr. Canzon) passed through the swinging doors with his cart and went past Mr. Dziekanski, who barely noticed him — Mr. Dziekanski was minding his own business. She could see that Mr. Dziekanski was getting more and more frustrated, taking short fast steps, looking around at anything and nothing, and shouting. Using hand gestures and sign language, she persuaded him to put down a keyboard. At one point she was about one metre away from Mr. Dziekanski when he was holding a chair, but she felt comfortable and did not feel that he was going to hit her. A security person wearing a yellow jacket arrived. Mr. Dziekanski kept saying "polisa" or "politzia," but she wasn't sure whether he meant "police" or "please."

Ms. Ashrafinia saw four police officers arrive together. She and several other bystanders shouted to them, "He doesn't speak English." She also told an officer that Mr. Dziekanski was drunk and that he was asking for the police, and she heard Mr. Meltzer tell the police that he was out of control. She heard the lead officer turn backward and say something about "TASER[®]," and another officer responded "Okay"

³⁹ Another witness, **Marija Bosnjak**, an Alaska/Horizon Airlines customer service agent, asked Mr. Dziekanski in Croatian if he spoke Russian. He looked at her as if he was looking for someone to help him, but he did not respond.

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or “Yes.”⁴⁰ When the four officers moved into the secure area and formed a half-moon around Mr. Dziekanski, he looked relieved. One of the officers made a hand gesture and said to Mr. Dziekanski, “Get down, get down” and took a step toward him. Mr. Dziekanski lifted both his arms in the air with his palms open and then turned away from the officers. When she next had a good view, she saw Mr. Dziekanski’s hand go up, and he was holding a stapler, but he did not make a movement with it toward the officers. She then heard a buzz of electricity, saw Mr. Dziekanski cry out in pain, bend forward, and walk along past the counter. She heard two more sounds like electricity, and then Mr. Dziekanski was down on the ground in a fetal position, moaning as if in pain. She initially thought they had shot Mr. Dziekanski, but when she saw the wires coming out of the tip of the weapon she realized that they had TASERed him.

She moved away from the scene and met up with her husband. When they returned to the scene a few minutes later, she saw Mr. Dziekanski lying on his back with his shirt ripped open. He had turned blue, and he was not moving or breathing. Before she and her husband left, she went up to an officer, said she had seen the events and offered to be interviewed, but the offer was declined.

Ms. Ashrafinia told me that when she watched an RCMP officer (Sgt. Lemaitre) say during a TV interview the next day that Mr. Dziekanski had been violent and that the officers had tried to calm him down, that wasn’t what she had seen:

Q You weren’t happy with the report that you heard from ...
Sergeant Lemaitre, and you wanted —

A Yes.

Q — the record to be straight?

A Yes. Because that wasn’t true. That wasn’t true at all. He wasn’t, like, what they call — he wasn’t I didn’t feel he’s violent, and he wasn’t violent. And two officers TASERed

40 Another witness, **Alison Kula**, an Alaska/Horizon Airlines lead customer service agent, told me that one of the officers said to another officer, “Do you have your TASER out” or “Do you have your TASER ready?” but did not hear any response.

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twice, I'm hundred percent sure, at least four shots of that electricity.⁴¹

She acknowledged that she told the police several days after the incident, when asked about the officer's use of a conducted energy weapon, that they "think they have no other choice because he's out of control." She explained her statement as follows: "The reason I said that, I thought they are following their standard operation procedures. That's what they're supposed to do. That's what I meant."⁴² When asked what she meant by her statement to the police, "I mean he deserved the TASER," she answered that in the context of the overall series of questions she was asked, she was really questioning whether Mr. Dziekanski deserved the weapon.

Alison Kula, an Alaska/Horizon Airlines lead customer service agent, described many of the same events as Ms. Ashrafinia. In addition, she told me that after the police arrived, one of the officers, in a very harsh tone, demanded Mr. Dziekanski's passport. She heard at least two conducted energy weapon discharges, and then he fell to the ground shaking. Three officers wrestled him on the ground, and after they handcuffed him, two of the officers moved away and the third continued to kneel by his legs. Mr. Dziekanski was lying on his front with his hands behind him, a little bit on his side, with his face turned away from her. She did not see him make any movement, but could not tell whether he was breathing.

About 30 seconds after the handcuffs were applied, she saw Mr. Dziekanski's hands go a bit purple. They turned very dark purple, then faded and started to turn blue and got very blue. Some time later, a man in a dark outfit came up, placed his fingers on Mr. Dziekanski's neck as though he were checking his pulse (but did not put his face near Mr. Dziekanski's face) and then walked away. After the firefighters and paramedics had arrived and the handcuffs were removed and Mr. Dziekanski was rolled

41 Transcript, February 4, 2009, p. 87.

42 Transcript, February 5, 2009, p. 37.

over, “[H]e was lifeless. They had to assist him in everything. There was no movement at all.”⁴³

Ms. Kula agreed that she called 911 because she did not think that Mr. Dziekanski should be in the semi-secure International Reception Lounge, and in light of his throwing the wooden table against the glass doors and breaking it, he was a hazard to Airport property – she did not think he was a hazard to the public. She also agreed that she considered going back through the lounge into the Customs Hall, in order to access her computer to see if she could find an interpreter. However, Mr. Dziekanski was holding his suitcases and moving them to block anyone from getting through the swinging glass doors, and she did not want to aggravate him. Although she testified that his smashing of the computer and wooden table caused her concern and alarm, and she did not want to encroach on his area, she also told me that she did not fear him – if he had wanted to hurt her, he could have thrown the chair at her.

Genevieve Deziel, an Alaska/Horizon Airlines customer service agent, described many of the same events as Ms. Kula.⁴⁴ She told me that within a minute of being handcuffed, Mr. Dziekanski’s face turned from white to blue, and his hands turned blue. She agreed that in her statements to the police, she had described Mr. Dziekanski’s handling of the chairs as “aggressive” and that she had called 911 so that some authority figure would come and help Mr. Dziekanski out. She told me that when the officers first arrived, they used their hands and gestures to try to get him to calm down and to control the situation.

Robert Jorssen arrived at the International Arrivals area at about 1:27 a.m. to meet a relative who was arriving on the Cathay Pacific flight from New York.⁴⁵ Mr. Dziekanski was, before the police arrived, red in the face, very agitated, and very upset. When the officers arrived, they walked casually toward the swinging glass doors. In response

43 Transcript, February 6, 2009, p. 12.

44 See also the testimony of Marija Bosnjak, another Alaska/Horizon Airlines customer service agent: Transcript, February 5, 2009, p. 42ff.

45 Mr. Jorssen is, coincidentally, a civilian employee of the RCMP, and executive director of Corporate Management for the RCMP’s “E” Division. He told me that he does not personally know, and has never talked to, any of the four RCMP officers involved in this incident.

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to their arrival, Mr. Dziekanski stepped back toward the counter. Mr. Jorssen saw Mr. Dziekanski pick up a black object from the counter. He had it up in the air, did not advance toward the officers, and then moved away. At that point the officer deployed the weapon against him, and Mr. Jorssen heard two deployments before Mr. Dziekanski fell to the ground. At least three officers moved in and struggled with him in order to handcuff his hands behind his back. A few seconds later Mr. Dziekanski stopped making any movement. A man, Mr. Jorsen thought was an officer, moved in and took Mr. Dziekanski's pulse on his neck and wrist (but did not put his face close to Mr. Dziekanski's face), and Mr. Jorssen noticed that Mr. Dziekanski's hands were turning white.

C. THE AIRPORT'S OPERATIONS AND SECURITY RESPONSE TO CALLS FOR ASSISTANCE

1. Calling for RCMP and BC Ambulance Service attendance

Douglas Byl, a Securiguard employee working in the Airport Operations Centre, took the call from Mr. Agraviador, the elevator 40 guard, about a man making trouble and throwing chairs in the International Reception Lounge. He told me that Securiguard has a contract with the Vancouver Airport Authority to provide security services throughout the Airport. Patrollers do not carry weapons or restraining devices, and their role is to observe and report, but not to engage physically with a person who is violent or is damaging property. When Mr. Byl receives information about a person acting violently, his normal practice is to inform the Airport Operations Centre staff (they share the same office), which decides whether or not to call the RCMP. Gregory Sambrook (the operations shift manager that night), who was present in the centre, told Mr. Byl that he would contact Mr. Byl's Securiguard supervisor, Mr. Enchelmaier.

The Vancouver Airport Authority's airport operations officer on duty during the Dziekanski incident was Carla Hanson. Seated near her was Heather Staller (acting as baggage and gate scheduler that evening) who assisted her with some of the calls.

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Ms. Hanson told me that she first heard about the incident when Mr. Byl (seated behind Ms. Hanson at Securiguard's Security Operations Centre desk) received a radio communication at 1:18 a.m. from the elevator 40 security guard (Mr. Agraviador), who told him that he had received a report that there was a man in the International Reception Lounge throwing chairs and causing trouble. Mr. Sambrook (operations shift manager) and **Bob Ginter** (Airport response coordinator) were standing nearby, and one of them told her not to call the RCMP yet, because they only had third-hand information about the incident. About a minute later Ms. Hanson received a call on an Airport courtesy phone from a woman who told her that there was a man, who didn't seem to speak English, who was really drunk and really aggressive, throwing suitcases and furniture around. The woman described him as a man in his forties or fifties, non-Caucasian, with dark hair, and wearing a white coat.

Ms. Hanson immediately, on her own initiative, called the RCMP (at 1:23 a.m.) and reported that they had an apparently intoxicated 40-year-old male in the International Reception Lounge throwing suitcases and chairs around. He was non-white with dark hair, wearing a white coat, and the woman who had called in was worried that the man was going to hurt someone. The dispatcher said they would be on their way.

Ms. Hanson told me that Messrs. Sambrook and Ginter left the centre to go to the International Reception Lounge. At 1:26 a.m. Ms. Staller called Mr. Ginter to update him, which included the following exchange:

Staller	Just an update from the patrollers down there – apparently he is now breaking computers in the area down there too.
Ginter	Exciting job for the Gendarmes.
Staller	And apparently the passengers are getting concerned too – he's throwing chairs through glass ... so it may be getting a little dangerous.

At 1:28 a.m. Mr. Ginter sent a radio message back announcing that the RCMP was on the scene. At 1:29 a.m. he sent another message, which Ms. Staller handled:

Ginter	Can you call ambulance they might need that, the gentleman has been TASERed by the RCMP.
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Staller Copy. Bob, do you want us to let ERS [the Airport's Emergency Response Services] know or no just give ambulance a call?

Ginter Just ambulance.⁴⁶

At 1:31 a.m. Ms. Hanson called the BC Ambulance Service, requesting that they attend in response to an intoxicated male in his fifties who had been throwing stuff with glass, and had been TASERed. When she asked if they would be sending one unit on a routine call, the Ambulance Service asked for confirmation that he was conscious and breathing. Ms. Hanson radioed Mr. Ginter, who told her that he understood that the man was conscious and breathing, adding, "We're just getting a head start on things. I don't know if we are going to need it or not, but I think they might."⁴⁷ Ms. Hanson relayed to the Ambulance Service that the man was conscious and breathing. Ms. Hanson told me that it was her duty to call Emergency Response Services in the case of a Code 3 emergency, but not for a routine ambulance call like this.

At 1:35 a.m. the BC Ambulance Service phoned Ms. Hanson and advised her that, because the police on the scene were saying that the man was now unconscious, they were upgrading the call to Code 3 and were sending two units, and the fire department was responding as well. Seconds later, Ms. Hanson and Mr. Ginter had the following radio exchange:

Ginter Can you check with maintenance to see if anyone speaks Polish?

Hanson Yes, actually I think they do, but just so you know, ambulance has upgraded it, so I don't know if you guys want to turn down your radios before I do an announcement [i.e., for Emergency Response Services to respond].

Ginter Don't do an announcement; just have ambulance come.

Hanson Is Greg [i.e., Mr. Sambrook] OK with that 'cause they did just say that it was a Code 3?

46 Exhibit 26, p. 14.

47 Exhibit 26, p. 16.

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Ginter Yeah, we're fine.
Hanson Roger.⁴⁸

Ms. Hanson told me that she was surprised by Mr. Ginter's instruction not to call Emergency Response Services — when a call is upgraded to Code 3, her understanding was that she was required to dispatch Emergency Response Services. That was why she asked "Is Greg OK with that?" and when there was a little pause before Mr. Ginter responded, "Yeah, we're fine," she took that to be Mr. Ginter talking to Mr. Sambrook.

Ms. Staller was asked about a series of e-mails she exchanged with Andrew Caldwell, the acting supervisor of the Airport's Emergency Response Services, during the Dziekanski incident. I think it is fair to characterize these e-mails as primarily personal in nature, not official communications between the Airport's Operations Centre and Emergency Response Services. However, I make reference to them because they show that Emergency Response Services was aware of the incident as it unfolded and was apparently ready and able to respond if called upon to do so. The relevant e-mail exchanges are as follows:

Staller (1:26 a.m.) There is a report of a guy in the IRL [International Reception Lounge] right now going crazy throwing chairs and suitcases.
Caldwell (1:28 a.m.) Thanks for the info.... Keep me posted.
Staller (1:29 a.m.) Sounds like we have a good one on our hands now ... passengers are hiding from this guy he is breaking glass and throwing chairs at people and breaking computer screens! Greg [Sambrook] and Bob [Ginter] are down there.
Caldwell (1:30 a.m.) Let us know if anyone gets hurt.
Staller (1:31 a.m.) Calling BCAS [BC Ambulance Service] right now ... the guy was just TASERed by the RCMP.
Caldwell (1:31 a.m.) Is that Code 3?
Staller (1:32 a.m.) Bob [Ginter] just asked Carla [Hanson] to call BCAS, she is on the phone right now.... so no not Code 3 it's routine right now.

48 Exhibit 26, p. 22.

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Caldwell (1:32 a.m.) Thanks for the heads up.

Staller (1:37 a.m.) Here it comes Code 3.

Staller (1:38 a.m.) Stand by.... There isn't going to be a Code 3 call ... sorry.

Ms. Staller told me that she alerted Mr. Caldwell, as a courtesy, that the ambulance call had been upgraded to a Code 3: "I was just letting him know while Carla was still on the phone, get their equipment and get ready to go as a courtesy to a coworker,"⁴⁹ because she fully expected that Emergency Response Services would be sent to the scene. She was surprised when they were not called. She told me that she and Ms. Hanson both agreed that it would be wise to get Mr. Sambrook to confirm the decision not to call out Emergency Response Services.

Ms. Staller told me that if the Airport Operations Centre is notified that a passenger has passed out or has suffered a heart attack, the protocol requires her to first call the BC Ambulance Service. She must wait until BC Ambulance Service designates it as a Code 3 before she is allowed to alert the Airport's Emergency Response Services.

Ms. Hanson's understanding was slightly different. While she agreed that her instructions in October 2007 were not to call Emergency Response Services for routine medical matters, she went on:

Q Did you have discretion to call ERS for routine medical if you thought it was appropriate?

A It's not unheard of. It is possible.⁵⁰

2. Attendance at the International Reception Lounge

Lance Rudek, a Securiguard patroller, is seen on the Airport closed-circuit video coming down the escalator into the public Meeting Area at 1:26 a.m., with a colleague, Sidharth Arora.⁵¹ He was unable to communicate with Mr. Dziekanski, who appeared very stressed, very sweaty, and very pale. When he told Mr. Dziekanski to

49 Transcript, February 12, 2009, p. 8.

50 Transcript, February 11, 2009, p. 38.

51 Mr. Arora did not have as detailed a recollection of events as did Mr. Rudek, but his testimony was generally consistent with Mr. Rudek's testimony.

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put things down, Mr. Dziekanski gave him a dead stare. Mr. Dziekanski threw a computer on the ground, and when Mr. Rudek tried to get him to calm down, Mr. Dziekanski picked up a small folding wooden table and threw it against a window, breaking the table. He realized that the RCMP was on the way and he decided that, as long as Mr. Dziekanski was alone in the International Reception Lounge and was not hurting anyone, he would not intervene. At the same time, his main concern was the security of people and the facility. He was hesitant to go into the lounge where Mr. Dziekanski was. He told me he would not be comfortable if Mr. Dziekanski came out of the lounge. When the RCMP arrived, Mr. Rudek told one of them, as they were walking toward the swinging glass doors, that the man did not speak English, and the officer nodded.

Mr. Rudek saw the officers make hand gestures that he interpreted to mean that they were trying to get Mr. Dziekanski to calm down. He thought they were trying to defuse the situation. Mr. Dziekanski had a stapler in his hand. He waved it around at the officers. He then held it out directly in front of him and started pressing it and staples started coming out (or he made an attempt to squeeze the staples out). Mr. Dziekanski backed up, which Mr. Rudek interpreted as backing off to make space or to put up a fight. Moments later, the conducted energy weapon was used against Mr. Dziekanski. As the officers were restraining Mr. Dziekanski, Mr. Rudek saw him lying on his stomach on the floor with his head turned and his hands cuffed behind his back. When the officers moved away from Mr. Dziekanski, Mr. Rudek saw that Mr. Dziekanski's hands looked a little reddish or bluish.

Mr. Rudek was aware that a Cathay Pacific flight was scheduled to arrive soon. He left the scene and went into the Customs Hall, to advise people working there that there was an incident in the International Reception Lounge which arriving passengers should not see, and that they should either be held in the Customs Hall or re-routed elsewhere. When he returned to the scene, Richmond firefighters were there.

Fabian D'Sa was the third Securiguard patroller on duty during the Dziekanski incident. The RCMP officers were already on the scene when he arrived at the

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International Terminal's public Meeting Area. He walked up to the swinging glass doors, and saw Mr. Dziekanski on the ground with three police officers on top of him:

- Q Okay. So you saw him on the ground. When you first saw him, where were the police officers?
- A One had his back towards me and his one knee on Mr. Dziekanski's neck. The second person was — two other officers were facing me. One near his head, holding his shoulder down as well on the other side, and the third officer was trying to handcuff him.⁵²

Mr. D'Sa moved into the International Reception Lounge. Mr. Dziekanski was, based on Mr. D'Sa's previous training, in a takedown position, and one officer had his knee on Mr. Dziekanski's neck and back area on the right-hand side. He was on his stomach and was resisting attempts to handcuff him, but there was not as much activity as earlier. Mr. D'Sa then went outside the terminal to meet the Richmond Fire Department and BC Ambulance Service units. He told me that he was familiar with the Airport's Emergency Response Services, and was surprised that they were not at the scene.

Trevor Enchelmaier, Securiguard's shift manager, told me that he arrived at the International Terminal's public Meeting Area at about 1:29 a.m. He entered the International Reception Lounge through the swinging glass doors. He saw four RCMP officers, with Mr. Dziekanski on his stomach on the ground and with his hands cuffed behind his back. Mr. Dziekanski was flailing his legs around and banging them extremely hard on the ground, and Mr. Enchelmaier thought it must have been hurting him. To prevent him from hurting himself or kicking other people, Mr. Enchelmaier moved in, trapped Mr. Dziekanski's legs with his legs, and held them with his hands. He heard one of the officers say something like "he's out of it," and he realized that Mr. Dziekanski had stopped kicking, so he released his legs and stood up. Mr. Dziekanski was not moving at this time, and Mr. Enchelmaier did not observe him make any movements subsequently. Mr. Enchelmaier gave the following testimony about Cpl. Robinson's actions, when Mr. Dziekanski stopped moving:

⁵² Transcript, February 16, 2009, pp. 49-50.

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Q I'm going to suggest to you that your memory is that Corporal Robinson, when Mr. Dziekanski stopped moving, he was right beside Mr. Dziekanski, leaning over and conducting an assessment of him.

A Yes, sir.

Q And that remained consistent until a higher level of responders attended, that is the Fire.

A To my recollection, yes, best of my recollection.

Q All right. And you say to your recollection. I take it, though you were busy with tasks, you always had some attention on Mr. Dziekanski to ensure that he was being properly cared for, consistent with your level of training?

A Whenever I looked over in that area, there was always an officer there.

Q All right. And I'm going to suggest to you that officer was always Corporal Robinson.

A That's — yes, that's correct.⁵³

Mr. Dziekanski was lying on his stomach with his legs straight out behind him, with his hands cuffed behind his back. The officers seemed concerned as to whether Mr. Dziekanski was conscious. Mr. Enchelmaier told me that within seconds of Mr. Dziekanski going unconscious, Cpl. Robinson (with Mr. Enchelmaier's assistance) moved Mr. Dziekanski into the recovery position, which meant rolling him partially onto his side, with one leg up and his head turned to the side. Because of the handcuffs, his hands and arms could not be repositioned. At about this time (Mr. Enchelmaier could not remember if it was before or after Mr. Dziekanski was placed in the partial recovery position), Mr. Enchelmaier heard one of the RCMP officers call dispatch to upgrade the ambulance call to Code 3. He also observed Cpl. Robinson check Mr. Dziekanski's carotid pulse (with his gloves on, which Mr. Enchelmaier knew would not be very effective) and check whether Mr. Dziekanski was breathing, by placing his ear close to Mr. Dziekanski's mouth and checking his chest.

⁵³ Transcript, February 17, 2009, p. 41.

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Mr. Enchelmaier, who was trained in first aid, knelt down behind Mr. Dziekanski's neck and checked his carotid artery for a pulse for possibly 10 seconds. He felt a very strong, fast pulse, like you would expect from someone who had been running. He told Cpl. Robinson that he could feel a pulse, and Cpl. Robinson confirmed that he heard breathing. It appeared clear that Mr. Dziekanski was unconscious.

According to Mr. Enchelmaier, he checked Mr. Dziekanski's carotid artery again several minutes later for a pulse. When asked for how long, he stated, "Possibly the same again, 10 to 20 seconds possibly."⁵⁴ This time the pulse was still strong, but slower, as you would expect with a person at rest. He also checked his breathing by placing his ear several inches from Mr. Dziekanski's mouth, and by observing his chest. It was not heavy breathing, but was consistent with a person at rest. He did not see any movement by Mr. Dziekanski. He confirmed these findings with Cpl. Robinson.

He testified that several minutes later, about two minutes before the firefighters arrived, he checked Mr. Dziekanski again for approximately the same amount of time: 20-30 seconds. His carotid pulse was clear and slow, and his breathing was slow, low breathing. Mr. Dziekanski's eyes were closed throughout his dealings with him.

Mr. Enchelmaier told me that it took 10-30 seconds to take each pulse, and each pulse had a regular rhythm. When the firefighters arrived they asked the officers to remove the handcuffs, but they were not removed. It was only when the Ambulance Service arrived and emphatically requested removal a second time that they were removed. It was also only after the firefighters and BC Ambulance Service arrived that Mr. Enchelmaier noticed a change in Mr. Dziekanski's colour – going from blue to a grey colour.

3. The decision not to dispatch Emergency Response Services

Robert Ginter, the Airport response coordinator on duty that night, described his responsibilities as follows:

⁵⁴ Transcript, February 16, 2009, pp. 92-93.

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[T]o oversee the operation of the entire Airport, both airside, groundside and in the terminal building. There were regulatory requirements that we were to do, inspections that we have to undertake. It was also to be out and about, to respond to operational concerns and to represent the Airport to resolve those concerns, whether it be a safety issue, an equipment breakdown, a customer service concern, security incident, aircraft emergency. It was sort of an all-encompassing role.⁵⁵

He was in the Airport Operations Centre when Mr. Byl received what Mr. Ginter considered a very confusing call from the elevator 40 guard, about a disturbance in the International Terminal Building. Ms. Hanson was hesitant to call the RCMP until she had more detailed information. Mr. Ginter instructed her not to call the RCMP, but to wait for a moment, expecting that additional calls with more information would come in. Moments later another call came in with more detailed information indicating violence, and she called the RCMP. Mr. Ginter went into the office of the operations shift manager (Mr. Sambrook) and explained the situation, and the two of them left the Operations Centre to go down to the International Reception Lounge. En route, Mr. Sambrook called Mr. Enchelmaier to ensure that security personnel had been dispatched, and they also received an update that the man was attempting to throw chairs through the glass wall, breaking things.

When they reached the top of the escalators (at 1:28 a.m.), they saw the RCMP officers arriving and going into the International Reception Lounge. Messrs. Ginter and Sambrook stayed outside the lounge, but could see what was happening inside the lounge. Mr. Dziekanski was very irritated, and the RCMP officers were trying to calm him down. He moved suddenly to his right and made a motion across the tourism information counter. Mr. Ginter saw a black object in Mr. Dziekanski's hand, which he appeared to be waving; Mr. Sambrook thought it might be a knife. It was his recollection that after grabbing the item Mr. Dziekanski moved toward the RCMP officers. Shortly thereafter, Mr. Ginter heard the crackling sound of the conducted energy weapon. The four officers were engaged with Mr. Dziekanski, trying to hold him down, pin his arms, and put handcuffs on. The weapon did not seem to

⁵⁵ Transcript, February 17, 2009, p. 49.

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incapacitate Mr. Dziekanski, who was extremely active and very vocal, and who appeared to be the aggressor. Mr. Ginter told me that he had never seen anything remotely close to this before. It was a traumatic visual experience, and he was stunned.

At 1:29 a.m. Mr. Ginter radioed the Operations Centre, and asked Ms. Staller to call an ambulance as a precautionary measure. He explained why:

Both the potential for a medical problem and the violent nature of the confrontation. I assumed, given the violent nature of the confrontation, that the RCMP would want medical assistance to do an assessment prior to taking the person into custody.⁵⁶

He told me that he decided not to dispatch the Airport's Emergency Response Services because of the violence (this was the most violent thing he had ever seen), which made it an unsafe site.

At 1:32 a.m. Mr. Ginter moved into the International Reception Lounge to assess the situation, having formed the opinion that the RCMP officers had Mr. Dziekanski under control and that it was safe to enter. He wanted to assess property damage and was concerned about the imminent arrival of the Cathay Pacific flight that was due in at 1:30 a.m. Several minutes later, Mr. Enchelmaier told him that Mr. Dziekanski had a pulse and was breathing, but had lost consciousness. Mr. Ginter thought otherwise. In his view he was still conscious, but had simply surrendered to the officers realizing that he was now in custody. He did not make any further observations of Mr. Dziekanski, because Mr. Dziekanski was under the care and control of the RCMP officers.

At 1:37 a.m., having just heard that the incident had been raised to Code 3, Ms. Hanson called Mr. Ginter. He had just learned from one of the RCMP officers that they had determined through documentation that Mr. Dziekanski was Polish, so he asked her to check with maintenance to see if anyone spoke Polish. She said she would, and their conversation continued:

⁵⁶ Transcript, February 17, 2009, pp. 76-77.

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- Hanson Just so you know, ambulance has upgraded it, so I don't know if you guys want to turn down your radios before I do an announcement.
- Ginter Don't do an announcement, just have ambulance come.
- Hanson Is Greg OK with that 'cause they did just say that it was a Code 3?
- Ginter Yeah we're fine.⁵⁷

Mr. Ginter told me that the announcement Ms. Hanson intended to give would have been broadcast to everyone with radios, advising them of the situation and location. It would have meant that there was a Code 3, which would have meant that the Airport's Emergency Response Services would have been dispatched. He did not hear the RCMP radio call that Mr. Dziekanski was unconscious and to upgrade the ambulance call to Code 3, he did not know why the call had been upgraded and he did not enquire as to the reason for the upgrade, as shown in the following exchange:

- Q Were you at all curious as to why the call had been upgraded?
- A I was — I don't know if curious is the right word, but it seemed strange to me given the circumstances, the calm nature of the scene, the people going about their business, no sense of any indication of medical distress by anyone on scene.
- Q Had you seen anybody interacting with Mr. Dziekanski?
- A The RCMP were — every time I observed Mr. Dziekanski, the RCMP were monitoring him.
- Q Did you see any RCMP officer appear to check his pulse or breathing at any point?
- A I never — I did not observe that.
- Q Did you see any other person appear to check his pulse or breathing at any point?
- A I did not.⁵⁸

⁵⁷ Exhibit 26, p. 22.

⁵⁸ Transcript, February 17, 2009, p. 84.

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He agreed that by instructing Ms. Hanson not to make an announcement, he was effectively telling her not to dispatch Emergency Response Services. It was a quick decision. The situation appeared to be under control and an ambulance was on the way, and from his experience, the response time of the Richmond Fire Department (which would be responding to the Code 3) was very similar to that of Emergency Response Services. He told me that when Emergency Response Services responds to a call in the International Terminal Building, they must drive across the main apron, park at aircraft Gate 52, and walk across the roadway and down a path to a secure door into the building. They cannot open that door and have to wait for security people to release the door and then, once inside, ensure that the door is secure again. He added:

And it's in context of my role as an Airport Response Coordinator, is to take a large overview. From the outset I considered this a police incident of a violent nature, that the response was initiated for medical assistance. We had virtually our entire Security Department and Operations Department on scene. And the situation appeared to be under control. So when the call came to upgrade, I felt I had — we had all our resources here. There was nothing left behind if ERS came as well. We would not have the ability to respond to any additional potential incident that may occur....

If there was to be another medical call, if there was to be a fire alarm, if there was to be an aircraft incident, we were all at one location. And part of what the role of the Response Coordinator was to try and keep a larger — a view of the larger picture, to make sure you had the appropriate resources responding but don't undermine the safety and security of the rest of the Airport.⁵⁹

Mr. Ginter acknowledged that the Airport had a mandatory standing order that Emergency Response Services be dispatched when there was a Code 3 medical and that the policy does not specifically give him discretion not to dispatch. He told me that there would have been at least four members on duty at Emergency Response Services that morning, and that when they respond to a Code 3 medical emergency they typically send two members.

⁵⁹ Transcript, February 17, 2009, p. 85.

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Mr. Ginter was also asked whether he checked with Mr. Sambrook, before ordering Ms. Hanson not to make an announcement:

Q You were asked about Mr. Sambrook. Do you actually speak with him in that slight pause we hear between the question, "Is Greg OK with that?"

A I did not.

Q Did you know if Greg was okay with that?

A I did not ask him. I don't know.

Q So when you say, yes, we're fine, what you meant is yes, I'm fine?

A "We're" as in the scene is fine.⁶⁰

Mr. Ginter agreed that the Airport's medical emergency standing order required him to obtain the automated external defibrillator in response to any Code 3. He did not do so in this case and explained his reasons:

Q Did you make any attempt at all to get an AED brought to the area where Mr. Dziekanski was?

A I did not. My training on the AED, it was made very explicit to me that the AED was only of use — was used on certain circumstances which was referred to as Code Blue by the instructor. That's someone who is unconscious and no pulse. I believed Mr. Dziekanski was conscious and never considered the AED.

Q Did it cross your mind that it might be a precautionary measure in case the situation deteriorated?

A It did not cross my mind.⁶¹

Mr. Ginter told me that it was only about one minute before arrival of the Richmond Fire Department that he realized that Mr. Dziekanski was unconscious. He stated:

Q When you realized that Mr. Dziekanski was unconscious, what was your first thought?

A Holy shit.

60 Transcript, February 17, 2009, p. 87.

61 Transcript, February 17, 2009, p. 96.

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- Q And why – why did you feel that?
A Because of the call I'd made previously about not having ERS respond.
- Q Okay. And you've had that thought more than once since then.
A More than once. I've relived this many a time.

The first thing Mr. Ginter did was go curbside to make sure that there was no impediment or barrier to the arrival of the firefighters, and to ensure that the security escort was there. When he heard the sirens, he felt a great sense of relief.

At 1:44 a.m. Mr. Caldwell from the Airport's Emergency Response Services called Mr. Ginter, enquiring whether the Richmond Fire Department was on scene for a Code 3 medical. Mr. Ginter responded, confirming that it was, for a police incident. Mr. Caldwell asked Mr. Ginter to call him on his cell phone when he had a chance, and Mr. Ginter agreed to do so. Mr. Ginter summarized the conversation that they had when he called Mr. Caldwell back:

During that conversation, Mr. Caldwell was frustrated that he had not been called – called out because of the medical. I discussed with him that it was a police incident, and he was obviously frustrated and didn't understand why he wasn't called.⁶²

Andrew Caldwell was the acting supervisor at the Airport fire hall during the Dziekanski incident. He told me that Emergency Response Services was established in 2004. They provide firefighting and medical first response, as well as snow clearing, grass cutting, and general airfield maintenance. They are trained to the same standards as the Vancouver and other Lower Mainland fire departments, with additional training specific to airside aircraft emergencies. There is a minimum of five members on duty at any time, who rotate duties – three to drive the emergency vehicles and two for medical response. Personally, Mr. Caldwell is trained as a Level 2 firefighter and as a Level 3 first responder with a spinal endorsement and an

⁶² Transcript, February 18, 2009, p. 2.

automated external defibrillator endorsement. He is trained in, and instructs in, cardiopulmonary resuscitation.

He told me that there were five members on duty that night. They normally respond only to Code 3 calls, but will respond to routine calls if dispatched. They are always dispatched when a Code 3 is declared — he could not recall any other Code 3 incident when Emergency Response Services was not called out. In a timed test, they were able to reach the International Reception Lounge four minutes and twenty seconds after receiving the dispatch. On that route, they have to go through a primary security line door at Gate 52, which means having to call the Security Centre, where someone can unlock the electronic magnetic lock remotely. Sometimes there can be delays in getting this door opened.

On this night, he learned that a Code 3 had been declared. His group was anticipating being called out, and they were ready. He described the conversation he later had with Mr. Ginter:

When he phoned me on the cell phone, he — I asked him why we hadn't been called out. He told me on the telephone that, based on his assessment at the scene, more responders weren't required, and he sounded quite remorseful and upset at what he had just witnessed. So at that point, I just asked if he was okay and if he needed anything from us, and that we would take care of any responsibilities or anything that came up in the airfield later on for the rest of that shift.⁶³

Mr. Caldwell told me that the worst thing that can happen to trained emergency responders is not getting an opportunity to make a difference in an area that they are responsible for. He added that in this instance, "Nobody believed they could have made a difference. I believe we all would like the opportunity to try and make a difference."⁶⁴

Gregory Sambrook was the senior Airport Operations official on duty that night, serving as operations shift manager. He overheard Ms. Hanson's phone conversation

63 Transcript, February 18, 2009, p. 74.

64 Transcript, February 18, 2009, p. 79.

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about a disturbance, and he accompanied Mr. Ginter down to the International Reception Lounge. It was late at night, and because he had heard about throwing chairs, breaking glass, and a disturbance, he thought something dangerous might be happening and he wanted to make sure that Mr. Ginter would be safe. As they descended the escalator he saw Cpl. Robinson and other RCMP officers arriving at the International Terminal's public Meeting Area. He initially went into the waiting area, then hopped over the railing and stood by the swinging glass doors for three to five minutes, to prevent anyone from entering the International Reception Lounge. At about this time he and Mr. Ginter had a conversation in which they agreed that Emergency Response Services should not attend. When asked why, Mr. Sambrook told me, "Safety and security. This was a police situation. There wasn't a need to have ERS there and if ERS did attend, what would happen if they got hurt?"⁶⁵

Mr. Sambrook then entered the lounge area, where he saw Mr. Dziekanski on the ground handcuffed, moaning and making noises. He considered this to be a crime scene, and began thinking about how it would impact on Airport operations. He walked through the lounge into the Customs Hall and told officers there to re-route arriving passengers, and he then returned to the lounge.

Mr. Sambrook knew that an ambulance had been called, but he did not realize that it had been upgraded to Code 3 until he saw the Richmond Fire Department crew arrive. This surprised him, because he thought that the situation was under control. He had no recollection of hearing Mr. Ginter tell Ms. Hanson not to make an announcement that would have dispatched Emergency Response Services, and had no recollection of Mr. Ginter consulting him before Mr. Ginter told Ms. Hanson, "Yeah we're fine." He did not realize, until after the Richmond Fire Department left the scene, that Emergency Response Services had not been dispatched. He was asked whether Mr. Ginter had the authority to override the medical emergency protocol:

⁶⁵ Transcript, April 14, 2009, p. 54.

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- Q The question is, did Mr. Ginter, given his position, have the authority alone to override the standing orders set out in "Medical Emergency?"
- A It was my understanding, in the position Mr. Ginter was in, that he could supercede that if he thought it was necessary, using his field judgment based on the decisions of safety and security of the area, himself and anything else that may be brought into the decision-making process.⁶⁶

Contrary to Mr. Caldwell's recollection, Mr. Sambrook told me that he could recall other instances when Emergency Response Services did not respond to Code 3 medicals, but could not recall specifics. In his view, on this night they were dealing with a police scene that the police were managing, and he did not see a need for him to make a call to have Emergency Response Services attend. He supported Mr. Ginter's decision.⁶⁷ However, he adopted what he had told an RCMP investigator later – that he regretted that Emergency Response Services was not called.

Mr. Sambrook was asked about the policy requiring a person in Mr. Ginter's position to bring an automated external defibrillator to Code 3 medical calls, or arrange for one to be brought.⁶⁸ He did not recall one being brought to the scene in this case, nor did he recall any discussion about it. He thought that, in October 2007, a defibrillator would have been stored at the International Terminal's information counter at the top of the escalators.

Karol Vrba, an Airport airfield operational specialist stationed at the Airport fire hall, told me that he went up to the Airport Operations Centre sometime after 1:00 a.m. to obtain a form he required in order to record which aircraft were berthed overnight at the Airport. When he entered the centre, Carla Hanson was speaking on the

66 Transcript, April 14, 2009, p. 45.

67 According to the "Medical Emergency" section of the Airport's *Emergency Management Plan* (Exhibit 83), the Operations Officer's duty in the case of a medical emergency is to call the BC Ambulance Service and, when that emergency involves a Code 3 ill person, to call Emergency Response Services. For Code 3 medical emergencies, the supervisor of Emergency Response Services "will determine whether ERS will provide a first response" (p. 4).

68 According to the "Medical Emergency" section of the Airport's *Emergency Management Plan* (Exhibit 83), it is the duty of the Airside or Terminal Duty Manager to respond with an automated external defibrillator to Code 3 medical calls, or to arrange for a defibrillator to be brought to the location of the ill person (p. 6).

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telephone. He obtained the form from Heather Staller and asked what was going on. Ms. Staller told him that there was a man, probably speaking Russian or some other language, in the International Terminal causing a disturbance. He responded: "You know I speak Russian. So if you need me, you can reach me on my radio."⁶⁹ She told him not to worry about it, and to carry on with his recording of aircraft.

After Mr. Vrba completed his recording of aircraft, he returned to the Airport Operations Centre at around 2:00 a.m. He saw that people were overwhelmed and shocked. When he asked what was going on, they told him that Mr. Dziekanski was TASERed and had died. He told them: "Why didn't you call me on my radio? I told you I can help."⁷⁰ He stayed there talking about the incident for about an hour and then went back to the fire hall. He told the crew there what had happened. They were all shocked, because it appeared to him that no one knew anything about the Dziekanski incident.

Ms. Hanson and Ms. Staller both told me that they had no recollection of Mr. Vrba coming into the Operations Centre to pick up an aircraft parking form that morning, but did remember him coming in later to drop off the completed form.

D. FINDINGS OF FACT AND CONCLUSIONS

Before making any findings of fact or reaching any conclusions, I gave careful consideration to the written and oral closing submissions of counsel for the participants. Having done so, I reached several conclusions.

First, the initial closed-circuit video record we have of Mr. Dziekanski after he was allowed to enter Canada was taken at 12:54 a.m., up to 14 minutes after he cleared the Point. He is seen pushing his suitcases in a luggage cart through the swinging doors from the International Reception Lounge into the public Meeting Area. He

⁶⁹ Transcript, February 10, 2009, p. 92. In his examination-in-chief, Mr. Vrba testified that he also told her that he spoke Polish, but during cross-examination he told me that the first time he mentioned that he spoke Polish was during a subsequent conversation with her sometime after 2:00 a.m.

⁷⁰ Transcript, February 10, 2009, p. 93.

appears to be looking for someone, presumably his mother. People who interacted with him at this time 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, and although he made some statements in what we now know to be Polish, he did not respond verbally when people spoke to him, likely because no one communicated to him in Polish. Significantly, none of the people who approached and/or spoke to Mr. Dziekanski felt threatened by him, although several were reluctant to encroach on his “territory.” However one characterizes his agitation or frustration, it was not directed at other people.

Second, Mr. Dziekanski did, without question, destroy two items of Airport property. The Pritchard video shows him smashing a small folding wooden table against the glass wall adjacent to the swinging glass doors (breaking the table), and throwing a computer monitor on the floor, breaking it.

Third, I commend several members of the public and other people working at the Airport for making an effort to try to communicate with Mr. Dziekanski and calm him down. They could tell he was in distress, and responded with concern and compassion. I particularly acknowledge Ms. Ashrafinia for her actions, her empathy, and her kindness.

Fourth, when I compare the testimony of some of these witnesses to their statements to the RCMP soon after the event, I am left with the impression that they initially perceived Mr. Dziekanski's behaviour as more extreme and perhaps more dangerous. Their view of events softened by the time they gave evidence at our public hearings, perhaps out of sympathy for Mr. Dziekanski and his untimely death. I credit counsel for several participants, who highlighted these differences during cross-examination, for providing a more complete and balanced view of events. Nevertheless, the evidence satisfies me that these witnesses were neither afraid of nor felt threatened by Mr. Dziekanski.

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Fifth, those in the Airport's Operations Centre acted promptly and appropriately in ascertaining the nature of the disturbance in the International Reception Lounge, in calling the RCMP for assistance, and in dispatching security personnel to the area. The security personnel who attended the scene acted in accordance with their limited mandate to "observe and report."

Sixth, the Airport Authority's airport response coordinator, Robert Ginter, candidly acknowledged in testimony that when he saw Cst. Millington deploy the conducted energy weapon against Mr. Dziekanski, it was a traumatic visual experience and he was stunned. Nevertheless, he promptly recovered enough to radio the Operations Centre and ask Ms. Staller to call an ambulance as a precautionary measure. I commend him for doing so.

Seventh, I cannot be so complimentary respecting his decision not to dispatch the Airport's Emergency Response Services. After the RCMP officers realized that Mr. Dziekanski had lapsed into unconsciousness and requested that the ambulance call be upgraded to Code 3, Ms. Hanson conveyed this information to Mr. Ginter, and told him that (in accordance with Airport policy) she was about to make a Code 3 announcement that would automatically result in Emergency Response Services being dispatched to the scene. He told her not to make the Code 3 announcement. Ms. Hanson expressed surprise at this and asked him, "Is Greg OK with that 'cause they did just say that it was a Code 3?" Mr. Ginter paused and then replied, "Yeah we're fine." Ms. Hanson told me that this pause and his response, "we're fine" satisfied her that Mr. Ginter had conferred with Mr. Sambrook. I am satisfied that when Mr. Ginter said "we're fine," he intended to cause Ms. Hanson to believe that he had conferred with Mr. Sambrook and that the two of them were in agreement not to dispatch Emergency Response Services. I do not accept Mr. Ginter's testimony that when he said "we're fine," he meant "the scene is fine."

In his testimony, Mr. Ginter told me that he did not confer with Mr. Sambrook before saying "we're fine," and acknowledged that he was solely responsible for the decision. He advanced several reasons for his decision: this was a violent incident and a

potentially unsafe site, the incident was now under control, an ambulance was already on the way, and the response time of Emergency Response Services and the Richmond Fire Department would have been about equal. Finally, he told me that if Emergency Response Services attended, virtually all of the Airport Authority's resources would be at one scene, without the ability to respond to another medical, fire, or aircraft emergency.

I find none of his explanations convincing or even credible. With four RCMP officers on the scene dealing with Mr. Dziekanski, it is difficult to see how the safety of Emergency Response Services was at risk, and even if it was, that hardly justifies his decision to keep them entirely away from the scene of a Code 3 medical emergency. Mr. Ginter did not have the same concerns for safety when he called for an ambulance to attend.

His other explanations imply his belief that he had discretion not to dispatch Emergency Response Services in the face of a Code 3 medical emergency. He acknowledged that the written policy did not explicitly grant him discretion. I conclude that he improperly directed Ms. Hanson not to dispatch Emergency Response Services, when he knew or should have known that he had no discretion to override the written policy.

I am particularly troubled by his explanation that calling out Emergency Response Services to this incident would leave the Airport unable to respond to another medical, fire, or aircraft emergency. That is inconsistent with his own knowledge that Emergency Response Services had at least four personnel on duty at any time and that only two would respond to this type of call. Of even more concern is the rationale behind this explanation — don't dispatch Emergency Response Services to a call because, if you do so, there will be no capacity to respond to another call. If that were the operative principle, Emergency Response Services could *never* be dispatched. In short, Emergency Response Services were ready, willing, and able to respond to this Code 3 medical emergency, and were highly qualified first responders. I cannot say

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whether the outcome would have been different had they been promptly dispatched,⁷¹ but I do share Mr. Caldwell's sentiment that in an emergency they would like to try to make a difference.

Before moving on, I want to make an additional observation about whether a person in Mr. Ginter's position had discretion to override the written Airport policy in a Code 3 medical emergency situation. Notwithstanding Mr. Ehrenholz's policy testimony to the contrary, I am firmly of the view that no such discretion existed at that time. The policy did not specifically give the Airport response coordinator any such discretion, but *did* give discretion to the supervisor of Emergency Response Services (e.g., Mr. Caldwell) as set out in Exhibit 83, p. 4. This was, in my view, a sound policy. Upgrading a routine ambulance call to Code 3 is a decision properly left to medical professionals – in this case the RCMP officers requested an upgrade and the BC Ambulance Service made the upgrade based on the medical symptoms described to them. Once a Code 3 has been announced, a lay employee of the Airport should have no authority to override that medical decision, as Mr. Ginter did in this case. Dispatching Emergency Response Services should be automatic, and only someone with appropriate medical qualifications should have the authority to override that dispatch. The Airport's written policy gave that discretion to the supervisor of Emergency Response Services where, in my view, it properly rested. Even if Mr. Ginter did have the discretion to override the written policy, I am satisfied that Mr. Ginter unreasonably exercised his discretion.

Eighth, Mr. Ginter told me that it did not cross his mind to obtain an automated external defibrillator after the call was upgraded to Code 3, even though he was aware that the Airport's emergency medical standing order required him to do so, or to arrange for a defibrillator to be brought to the scene. He told me that his training made it very explicit that a defibrillator was only of use when someone is unconscious

71 Ms. Hanson advised Mr. Ginter of the upgrade to Code 3 at 1:37 a.m. Mr. Caldwell testified that on a test run it took 4:20 to reach the International Reception Lounge after receiving a dispatch, which would mean that in this incident they might have arrived by 1:41:20 a.m. The first firefighters arrived curbside at 1:41:36 a.m.

and has no pulse, and he added: "I believed Mr. Dziekanski was conscious and never considered the AED." I fault Mr. Ginter's response for the following reasons — he had no discretion to override the Airport policy, he had no reason to disagree with Mr. Enchelmaier's assessment that Mr. Dziekanski was unconscious, and in any event it was not up to him to make a medical assessment. The policy is clear that an automated external defibrillator must be brought to the scene of *all* Code 3 medical calls. It is not up to a layperson in Mr. Ginter's position to make a medical assessment as to whether a defibrillator is needed, but simply to take steps to get one to the scene. In my view, the policy is sound. Hopefully a defibrillator will not be needed, but if it is, seconds count, and it is far better to have one already on the scene if the patient goes into fibrillation. If Mr. Ginter had acted promptly, a defibrillator might have been on the scene several minutes before the first firefighters arrived.⁷²

Ninth, Mr. Sambrook told me that he had no recollection of Mr. Ginter telling Ms. Hanson not to dispatch Emergency Response Services; indeed, he did not know that the call had been upgraded to Code 3 until he saw the Richmond Fire-Rescue crew arrive. He told me that in his view Mr. Ginter had discretion (using his field judgement) not to dispatch Emergency Response Services in a Code 3 medical emergency, and he supported Mr. Ginter's decision.

I accept Mr. Sambrook's testimony that he did not know, until the firefighters arrived, that the call had been upgraded to Code 3. That being so, the only question that remains is whether he should have played a more hands-on role in supervising Mr. Ginter's response to the event. In other words, if he had stayed with Mr. Ginter, he would have been in a position to learn that a Code 3 had been called, and then to decide whether or not to overrule Mr. Ginter's decisions not to dispatch Emergency Response Services and not to obtain an automated external defibrillator.

⁷² Ms. Hanson advised Mr. Ginter at 1:37 a.m. that the call had been upgraded to Code 3. If Mr. Ginter had immediately gone up to the information desk at the top of the escalators (where Mr. Sambrook testified that he believed an automated external defibrillator was stored), he might possibly have brought it back to the scene by 1:40 a.m. The first fire truck arrived curbside at about 1:41:36 a.m.

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Based on the evidence before me, I do not think I can impose a duty on Mr. Sambrook to perform such a tight supervisory role. On the one hand, Mr. Sambrook was required to "monitor the incident and ensure a timely response has been initiated."⁷³ On the other hand, Mr. Ginter was responsible for responding to these types of incidents on behalf of the Airport Authority. In his testimony he accepted that responsibility, and he accepted sole responsibility for the decisions not to dispatch Emergency Response Services and not to obtain a defibrillator. In my view, responsibility and accountability end there. Having said that, I repeat what I said earlier that in my view Mr. Ginter did not have discretion not to dispatch Emergency Response Services in a Code 3 medical emergency. Mr. Sambrook's after-the-fact support for Mr. Ginter's actions in this case indicates a serious misunderstanding of the Airport Authority's written policy on an important matter.

⁷³ Exhibit 83, p. 8.