

## PART 8

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# THE RCMP'S MEDIA RESPONSE TO MR. DZIEKANSKI'S DEATH

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## A. INTRODUCTION

In this part, I will discuss some aspects of the RCMP's response to Mr. Dziekanski's death – in particular, the information its officers released to the public about what had transpired at the Vancouver International Airport.

I am satisfied that my Terms of Reference are broad enough to cover these activities. Paragraph 4(2)(b) instructs me "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." In my view, these activities are "events ... relating to Mr. Dziekanski's death."

However, I do not believe that my mandate extends to an examination of the investigation carried out by the RCMP's Integrated Homicide Investigation Team into whether anyone should be charged with a criminal offence arising out of these events. I would have required much more specific authorization to embark on such an inquiry.

## B. THE RCMP'S PUBLIC STATEMENTS ABOUT THE EVENT

### 1. Sergeant Pierre Lemaitre

#### *a. His initial briefing and media interviews*

In October 2007 Sgt. Pierre Lemaitre was acting non-commissioned officer-in-charge of Strategic Communications for the RCMP in British Columbia. He was the senior media relations officer for the entire province. The purpose of the media program is, in his words:

[T]o get the facts, information that we have out to the public, and that's usually via the media, be it print, television or radio. We try to be proactive in our media releases to keep the public informed. We have a fairly up-to-date media website that we use to get that information out.<sup>266</sup>

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<sup>266</sup> Transcript, April 21, 2009, p. 30.

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According to Sgt. Lemaitre, at approximately 4:30 a.m. on Sunday, October 14, 2007, he received a phone call from Cpl. Dale Carr of the RCMP's Integrated Homicide Investigation Team (IHIT). IHIT is a team of RCMP officers who investigate all homicides and in-custody deaths arising in areas policed by the RCMP, as well as in several Lower Mainland municipalities policed by municipal police forces. Cpl. Carr was the official spokesperson for IHIT.

Cpl. Carr told Sgt. Lemaitre that there had been an incident at the Vancouver International Airport in which a man causing a disturbance had had a confrontation with some RCMP officers, a conducted energy weapon had been used, and the man had died. Although normally IHIT would handle media relations, Cpl. Carr asked Sgt. Lemaitre to become involved because there would be international interest in this event and because Sgt. Lemaitre was bilingual. Sgt. Lemaitre agreed to meet him at the RCMP detachment.

They met at 6:30 a.m., and Cpl. Carr took Sgt. Lemaitre to a briefing room in the detachment building, where about a dozen IHIT officers were working on laptops. Cpl. Robinson was one of the officers there. Sgt. Lemaitre asked Cpl. Carr what he wanted him to report publicly. Cpl. Carr told him what information he had cleared with his superiors that could be released, which Sgt. Lemaitre summarized for me as follows:

- Q            So what were you being instructed factually by Corporal Carr?
- A            That a man of unknown origin had caused a disturbance in the waiting area at YVR. He had entered past some glass doors; he had been banging on glass; had thrown a computer to the ground. Members arrived, they attempted to calm him down, communicate with him, and at some point they deployed their TASER, struggled with him, and as we now know, the man unfortunately passed away.<sup>267</sup>

Sgt. Lemaitre also viewed on a laptop computer about one minute of the Pritchard video: "The sequence that I can recall is the sequence where Mr. Dziekanski is

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<sup>267</sup> Transcript, April 21, 2009, p. 36.

TASERed, and what I saw were three members struggling with him."<sup>268</sup> After about 45 minutes the two of them left, in separate cars, for the Airport, where Sgt. Lemaitre had several interviews with the media.

Sgt. Lemaitre told me that he believed that Cpl. Carr was the sole source of all the information about the event that he used for his news release and during media interviews. He did not speak to any of the RCMP officers involved or to any of the other IHIT investigators. He had no recollection of Cpl. Robinson or any of the IHIT officers (other than Cpl. Carr) providing him with a briefing at the detachment.

*b. His written news release*

After the media briefing at the Airport, Sgt. Lemaitre prepared a written news release, which he posted on the RCMP's website.<sup>269</sup> It states in part:

At approximately 1:28 a.m. RCMP officers who work at YVR were called because a man in his 40's was in the international arrival area at Vancouver International Airport. He was sweating profusely, behaving irrationally, throwing chairs, tipping his luggage cart over, pounding on glass windows, and yelling. The security personnel at YVR attempted to have a dialogue with this man, to no avail. He grabbed a computer off a desk and threw it to the ground. Then they called the RCMP.

Three officers attempted to speak with the man, who continued to ignore their commands. The male remained violent and agitated. When [he] attempted to grab something off a desk, the RCMP member used the conducted energy weapon (TASER) in order to immobilize the violent man. The man fell down but continued to flail and fight. The officers then held the man down on the ground and placed handcuffs on him. He continued to be combative, kicking and screaming. He then became unconscious. His vital signs were monitored while waiting for emergency medical personnel. EMS arrived and continued to monitor and provide aid to the male. Moments later, he died.

*c. His subsequent media interviews*

On October 15 and 16, Sgt. Lemaitre gave further English-language interviews and, subsequently, a French-language TV interview with Radio-Canada. In all these

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<sup>268</sup> Transcript, April 21, 2009, p. 34.

<sup>269</sup> Exhibit 98. Supt. Rideout told me that in his view Sgt. Lemaitre's October 14 written news release contained far too much detailed information for that early in the investigation.

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interviews, he relied on the information that Cpl. Carr had initially given to him. He had received no other details of the incident and had viewed about one minute of the Pritchard video only once. Several statements in these interviews are noteworthy:

- *October 15 with CTV* – Sgt. Lemaitre stated that “chairs were flying,” that the “violence was escalating,” and that Mr. Dziekanski was “combative.” He told me that he must have obtained these descriptions from Cpl. Carr, who was his sole source of information.
- *October 16 with CBC* – in response to a witness’s statement to the media (Ms. Ashrafinia) that the conducted energy weapon had been deployed against Mr. Dziekanski four times, Sgt. Lemaitre stated: “I can go again on record and tell you that that is incorrect.... So he was TASERed twice with the same conducted energy weapon.”<sup>270</sup> This assertion is inconsistent with Cpl. Millington’s notes, made early in the morning of October 14, to the effect that he deployed the weapon four times. Sgt. Lemaitre told me that he was not aware of this information when he gave this interview. However, when he later learned the true number of times that it had been deployed, he would have loved to correct the public record, but by then Cpl. Carr of IHIT was in charge of media relations for this investigation: “[I]t was not my place nor my role to either demand or to independently go to the media and correct my past statements.”<sup>271</sup>

During the same interview, Sgt. Lemaitre was asked whether there was a video of the incident at the airport:

- Q Given that the world [indecipherable] cams all over the place, is there airport video that’s been reviewed as well?
- A Very interesting question. That was probably the first or second question our IHIT investigators asked for when they arrived at the airport. I can tell you that there was no video camera in that area at the airport.<sup>272</sup>

He told me that what he meant was that there was no closed-circuit video of the secure area, which was true. However, although he knew of the existence of the Pritchard video, he did not make any reference to it. He stated:

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270 Exhibit 132, p. 3.

271 Transcript, April 21, 2009, p. 45.

272 Exhibit 132, p. 7. Sgt. Lemaitre made a similar statement during a CTV interview: Exhibit 131, Disc C.

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Q But in the course of answering that, you made no mention on that interview of the existence of the Pritchard video.

A Again as I mentioned earlier in discussions with you, there is certain information that's cleared to release to the public, and when the investigators give you that information, that's what you go with. Again, I was aware of the existence of this video, so it's part of the greater investigation. So I am confident that in time when they deem it appropriate that, you know, that's part of the evidence of the investigation.

Q Okay. Did someone tell you not to disclose the fact that there was a Pritchard video?

A No, sir.<sup>273</sup>

*d. Transfer of media responsibilities to Cpl. Carr*

Sgt. Lemaitre told me that after his October 16 interviews, responsibility for RCMP media relations was transferred to Cpl. Carr, a member of IHIT. Sgt. Lemaitre was confident that Cpl. Carr would release updated information in a timely manner. When it became publicly known that some of the information he had released was incorrect, the media criticized him. He was anxious to set the record straight and had discussions with communication strategists who he worked with, as well as some pretty animated discussions with his superior, Staff Sgt. John Ward. He accepted that in homicide investigations IHIT is in control and calls the shots, and that he had to have faith that in time the information was going to come out.

Sgt. Lemaitre acknowledged that when he was interviewed in French in November 2007 by Radio-Canada about another matter, a question came up about the Dziekanski matter. He took the opportunity to set the record straight and inform the public that he had misrepresented the facts in his October interviews, but that Cpl. Carr had subsequently corrected some of the inaccuracies. He would have done the same in an English-language interview if a reporter had raised the issue, but it was not up to him to call a press conference to do so.

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<sup>273</sup> Transcript, April 21, 2009, p. 46.

## 2. Corporal Dale Carr

### *a. The briefing at the Richmond RCMP detachment*

Cpl. Dale Carr was transferred to IHIT as an investigator in September 2006 and took on full-time media relations for IHIT in January 2007. Several years earlier he had completed a one-week media relations training program at "E" Division Headquarters in Vancouver.

Staff Sgt. Attew, the team leader in this investigation, alerted him to the Dziekanski incident at about 2:00 or 2:30 a.m. on Sunday, October 14. Cpl. Carr soon realized the media interest that would develop over an in-custody death at an international airport after the RCMP had deployed a conducted energy weapon. On his way to the Airport, he decided that this was not a routine IHIT incident, but was one that had a divisional (i.e., provincial) significance. For that reason, he phoned Sgt. Lemaitre and advised him of the incident, and they agreed to meet in Richmond. The fact that Sgt. Lemaitre was bilingual was an additional, but not the principal, factor in involving him.

Cpl. Carr went first to the International Arrivals area of the terminal, to get a good mental picture of the scene of the incident. He then went to the RCMP's Airport detachment, mistakenly believing that the IHIT team would be working out of that facility. He then drove to the Richmond RCMP detachment and went into the command centre that members of IHIT were setting up.

At 7:23 a.m. a briefing began. With respect to Cpl. Robinson's involvement in the briefing, Cpl. Carr told me:

I don't recall if he spoke to the entire room or if — I recall him coming in, speaking to one individual. That's my recollection, and I don't recall if he actually addressed the entire room with the incident, or if somebody else did that. I would have been sitting at a table basically taking notes and just listening. I didn't really pay much attention to who was actually speaking, and I didn't make note of it either.<sup>274</sup>

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274 Transcript, April 22, 2009, p. 13.

The notes he took of the briefing<sup>275</sup> state in their entirety:

- Throwing stuff around @ Info Booth
- Male agitated
- Grabbed computer
- YVR Security attempted to intervene
- Police RCMP arrived (four mbrs)
- Swinging article @ mbrs
- Mbrs attempt to control verbally
- Non-compliance
- CEW used
- once on ground continue to fight
- Monitored — Security with First Aid
- 4 Sep vehicles — 4 mbrs attend

Cpl. Carr was not sure whether Sgt. Lemaitre attended the briefing. Cpl. Carr watched the Pritchard video twice. The first viewing was on a very small screen (perhaps Mr. Pritchard's camera), up to the point when Mr. Dziekanski fell to the ground. The second viewing, with Sgt. Lemaitre for about a minute, was on a laptop. Cpl. Carr confirmed with Staff Sgt. Attew that they were authorized to release the information contained in his notes.

He told me that he and Sgt. Lemaitre discussed strategy on how they should handle this incident. "Based on some experiences we've had in the past, we thought that it would be best to get as much information out about the incident as we could in a timely manner so that that information is out there and then shared with the community."<sup>276</sup> They then left for the Airport to meet the media.

***b. The media interviews at the Airport***

Sgt. Lemaitre was the lead spokesperson, and conducted four interviews at various venues at the Airport. Each interview took about 15-20 minutes. Cpl. Carr was standing near Sgt. Lemaitre, but was not paying much attention to what was being

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275 Exhibit 99.

276 Transcript, April 22, 2009, p. 16.

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said, as he was handling numerous calls from reporters and facilitating other interviews.

Cpl. Carr acknowledged that he later became aware that some of the information released by Sgt. Lemaitre during the media interviews (e.g., the number of weapon deployments) was inaccurate. He told me that he could not be certain that he gave such information to Sgt. Lemaitre, because it is not in his notes, and it is possible that this was information that they heard during the briefing. With respect to Sgt. Lemaitre's non-disclosure of the existence of the Pritchard video, Cpl. Carr told me: "It was evidence, police evidence in an investigation. I very commonly never talk about all of our evidence that we have gathered... Unless it was asked of us directly, we're not going to talk about that type of thing."<sup>277</sup>

He acknowledged that he learned a lot from this experience, such as not to be in such a hurry to meet deadlines imposed by the media. Since then, he sets out on paper the information he intends to release to the media, has the team leader review it, and then sticks to the script during interviews.

### *c. Transfer of media relations to IHIT*

On October 16, Cpl. Carr and Sgt. Lemaitre attended a meeting at "E" Division Headquarters with Superintendent Wayne Rideout (the officer in charge of IHIT) and an employee from the "E" Division media office. Supt. Rideout decided that IHIT would take back media relations in the Dziekanski matter, for two reasons. First, it was impractical to have Sgt. Lemaitre, based in Vancouver, handle media relations for IHIT, based in Surrey. Second, Supt. Rideout wanted to stop all communication of *evidence* out to the community and limit media relations to matters of *process*.

On October 30, 2007, Cpl. Carr issued a media advisory explaining why the RCMP was not willing to release the Pritchard video at that time — it was vital evidence and its release could compromise the investigators' goal of conducting a fair and unbiased investigation. There were still some witnesses who had not yet been interviewed, and

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<sup>277</sup> Transcript, April 22, 2009, p. 28.

investigators were concerned that release of the video would compromise what those witnesses had to offer. He explained to me:

[O]ur goal as investigators is to get what a person saw and not what they're told. By releasing that video to the community, we're essentially telling them what they're seeing, and it could change, in their mind, what they saw.<sup>278</sup>

Cpl. Carr told me that in the weeks after the incident, he took steps to attempt to correct the misinformation that had been provided to the public. However, Supt. Rideout instructed him not to do so. The information would be corrected eventually, but while the investigation was in fact-finding mode they were not going to release and speak about the evidence.

Cpl. Carr was referred to his November 30, 2007, press release, which challenged the perception that the RCMP officers did not administer first aid to Mr. Dziekanski after deployment of the conducted energy weapon. When it was suggested to him that this was an example of the RCMP speaking about the facts of the case, not just process, he stated:

A Well, I can tell you that based on some consideration, careful consideration over whether to respond to the fire department's accusation that we did absolutely nothing, which was our belief that that was not the case, it was reviewed and it was felt – and approved by Superintendent Rideout that I could go ahead and speak to that individual piece of information.

Q So the superintendent's directive to you around October the 16<sup>th</sup> wasn't a hard and fast rule, was it?

A Well, it was his instructions to me that we would stick to process and not talk about the evidence. From time to time that was reviewed for certain instances, I suppose.<sup>279</sup>

*d. The RCMP apology*

On April 22, 2009, immediately before Cpl. Carr testified at our evidentiary hearings, RCMP Sgt. Tim Shields, the officer in charge of Strategic Communications for

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<sup>278</sup> Transcript, April 22, 2009, p. 31.

<sup>279</sup> Transcript, April 22, 2009, p. 64.

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"E" Division, made a statement to the media outside our hearing room, apologizing to the public about how the media relations were handled in the Dziekanski matter.

Cpl. Carr was asked whether he also was of the opinion that an apology to the public was in order. He responded:

I'm certainly sorry that — absolutely sorry that misinformation got portrayed and we're here today to try and sort that out. Absolutely. It's never been my intention, ever, ever, to mislead the public. I'm not a liar. I don't intend to lie to anybody ever, and absolutely I'm sorry that this has gotten to the point that it is today.<sup>280</sup>

### 3. Superintendent Wayne Rideout

#### *a. The decision to postpone correcting inaccurate information*

In October 2007 Supt. Rideout was the officer in charge of the RCMP's Integrated Homicide Investigation Team, based in Surrey, BC, and in mid-November he took charge of this investigation as team commander. He told me that it was at his direction that IHIT took back media relations in the Dziekanski case on October 16, primarily to ensure that disclosures to the media were limited to matters of process, not evidence. He was aware that by then the media had been provided with some incorrect information, but he made the decision not to correct that information at that time. His primary goal was to conduct an independent investigation into Mr. Dziekanski's death, culminating in a brief to Crown Counsel. He appreciated the media's hunger for information, but at the same time had a duty to guard evidence, adding:

So we find ourselves in a somewhat of a difficult position. Again we can be criticized for lack of information, but we can be equally criticized for providing too much information, particularly when it comes to evidence.<sup>281</sup>

By way of example, Supt. Rideout referred to Sgt. Lemaitre's initial public statement that the conducted energy weapon had been deployed against Mr. Dziekanski twice. Supt. Rideout learned on October 31, 2007, that the weapon had been discharged five

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<sup>280</sup> Transcript, April 22, 2009, p. 75.

<sup>281</sup> Transcript, May 6, 2009, p. 6.

times, for a total of 31 seconds. In his view, this evidence went to the heart of IHIT investigation:

My point is this, is that the — the number of cycles, whether the application of those cycles, whether they were in contact or not, whether the use of force was justified or not and what the cause of death were, were highly relevant to the criminal prosecution and the decision on criminal charges. Therefore my decision was that it was — the actual number and the issues pertaining to the application of the device were central to any potential criminal prosecution and there was no way to provide that information without getting into lengthy media debates on that, potentially damaging any criminal prosecution.<sup>282</sup>

Even at the end of 2007, when most potential witnesses had been interviewed, Supt. Rideout was still unwilling to speak to the media about evidence. He told me that they had not yet received the pathology report or the use-of-force report, and officers were still investigating Mr. Dziekanski's state of health. He was concerned about the impact of leaving incorrect information in the public domain, but in reference to a series of e-mails he sent or received during this time period, he added:

And as you review the e-mails, you see it was — you'll see it's a common thread of discussion and concern and a recognition of the need, that that information needed to get it back out into the public at the earliest possible opportunity. But again that always remained a balance between the need to gather all the evidence and potentially present it to a criminal court.<sup>283</sup>

As to whether he took directions from his superiors on this issue, he was equally adamant:

I made the decision and I advised my superiors, sir. Certainly there was consultation. There was discussion in general terms about what types of things would be in the media. But as the major case manager, as the team commander, it was ultimately my decision to guard evidence.<sup>284</sup>

Supt. Rideout said that with the benefit of hindsight, it would have been preferable for him in November 2007 to have issued a statement to the effect that he was aware

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282 Transcript, May 6, 2009, pp. 6-7.

283 Transcript, May 6, 2009, p. 13. The e-mails are found at Exhibit 138.

284 Transcript, May 6, 2009, p. 7.

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that incorrect statements had been made to the media, but that he would discuss neither the nature of what they were nor the evidence as the investigation proceeded.

### *b. The return of the Pritchard video to Mr. Pritchard*

Supt. Rideout told me that the Pritchard video was highly valuable to this investigation. "There's no question it provided, if you will, the anchor from which this investigation based its findings."<sup>285</sup> In his view it was critical to interview all witnesses who had observed the incident, before the video was returned to Mr. Pritchard:

It was extremely important to us to interview witnesses who were present and observed the event in real time, and their recollections were fresh and true based on their memory, rather than what they would have reviewed on TV through the video.<sup>286</sup>

He explained that IHIT retained possession of the Pritchard video (in spite of Mr. Pritchard's initiation of legal proceedings to recover possession) under the authority of the *Coroners Act*, at the request of the coroner. However, on October 31, 2007, Supt. Rideout drafted an e-mail that stated in part, "Yesterday the coroner in contradiction to his request of last week sent IHIT a letter indicating they took no issue with the release of the video and it should not be held under the *Coroners Act*."<sup>287</sup> Supt. Rideout told me that the only other legal justification for retaining the video would be under the *Criminal Code*, but that would require satisfying a justice that IHIT was investigating an actual criminal offence. At this stage, they were investigating only for the purpose of determining if a criminal offence had occurred.

In anticipation of the return of the video to Mr. Pritchard and its likely release to the media (which happened on November 7, 2007), Supt. Rideout confirmed in an e-mail to his superiors that IHIT would maintain its position of not discussing evidence in public. He agreed that the team was faced with a difficult and embarrassing situation, and was between a rock and a hard place, adding:

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285 Transcript, May 6, 2009, p. 16.

286 Transcript, May 6, 2009, p. 16.

287 Exhibit 138, p. 2.

We are the police; we are a police organization investigating the actions of the police. Obviously that is the subject of much debate and sometimes criticism, as are the public releases made by the police while investigating the police. Our position is that it's extremely difficult as the investigative body to speak about the event and the specifics of the event, without appearing to be biased. As we get into evidence, we inherently are drawn into a discussion or debate about the evidence that we cannot participate in as the investigative body, and that's the purpose of that statement. So we are criticized if we release information, and we're criticized when we do not.<sup>288</sup>

*c. Challenging firefighters' suggestions that Mr. Dziekanski had stopped breathing*

Supt. Rideout was referred to a November 28, 2007, e-mail he received from a superior,<sup>289</sup> indicating that the Richmond Fire Department would soon be replying to a freedom of information request for release of its Fire-Rescue incident report.

Supt. Rideout believed that the contents of the incident report would question whether Mr. Dziekanski was breathing when the firefighters arrived, with the likely resulting media posture that the four RCMP officers simply stood by and did nothing. He told me that he authorized Cpl. Carr to publish a news release on November 30 challenging such suggestions, although he recognized that discussing the evidence in this way was inconsistent with his earlier decision that disclosures to the media should be limited to matters of process. However, he said that he considered it appropriate to discuss this aspect of the evidence in public because by then IHIT had gathered all relevant evidence on this issue, which showed that there was a pulse and there were sounds of breath for the eight minutes before the arrival of the ambulance.

Supt. Rideout disputed the suggestion that IHIT was in a conflict of interest for investigating fellow officers but at the same time issuing news releases explaining their actions. He stated:

I don't agree, sir, that we were in a conflict of interest. I agree, I would state that what we were in was in a very difficult position with respect to public relations for the RCMP, but we chose, and the RCMP supported a position,

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<sup>288</sup> Transcript, May 6, 2009, p. 25.

<sup>289</sup> Exhibit 138, p. 53.

which was to maintain the integrity of process and investigation at the expense of its own public relations.<sup>290</sup>

## C. FINDINGS OF FACT AND CONCLUSIONS

### 1. Introductory comments

Before making any findings of fact or reaching any conclusions respecting the RCMP's media response to Mr. Dziekanski's death, I gave careful consideration to the written and oral closing submissions of counsel for the participants. I would like to comment briefly on two of those submissions:

- whether the Terms of Reference for this Commission of Inquiry authorize me to inquire into the RCMP's post-death media relations activities and public statements; and
- whether a provincially established Commission of Inquiry is constitutionally authorized to inquire into the conduct of individual RCMP officers who played a role in the media response and, if I consider it appropriate to do so, make findings of misconduct against any of them or against the RCMP itself.

With respect to the Terms of Reference issue, it was clearly the intention of the provincial government that this be a wide-ranging inquiry,<sup>291</sup> and I have been specifically directed "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." I took the position throughout the Inquiry's proceedings that this was not an inquiry into the Integrated Homicide Investigation Team's criminal investigation into whether anyone should be charged criminally arising out of the Dziekanski incident. However, that does not mean that I should not inquire into any post-death matters.

In much the same way that it was proper for me to make what turned out to be exhaustive inquiries into the medical cause of Mr. Dziekanski's death, it was in my view equally proper to address how the RCMP and its officers initially portrayed the

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<sup>290</sup> Transcript, May 6, 2009, p. 46.

<sup>291</sup> See *Hansard*, November 19, 2007, p. 9261 ff.

incident to the public.<sup>292</sup> I consider the RCMP's media response to be a continuation of the chronology, falling within the wording of the Terms of Reference; that is, "the events and circumstances of and relating to Mr. Dziekanski's death." Further, there was an intensely negative public reaction to the RCMP's media response, which in my view had the potential to undermine public confidence in the RCMP. When public confidence in such an important institution (that polices more than half of our province) is brought into question, it is in my view one of the principal functions of a public inquiry to address that issue and report to the government and public on it.

With respect to the constitutional issue, I am satisfied that the inquiries I have made and the findings and conclusions set out below are within the jurisdiction of a provincially established Commission of Inquiry. Even applying the strict test articulated by the Supreme Court of Canada several decades ago,<sup>293</sup> my inquiries into the RCMP's media response were inquiries into the *conduct* of specific officers during the performance of their duties. While I was referred to some of the RCMP's policies in the context of my analysis of the conduct of those officers, I was not conducting an inquiry into those policies themselves or their adequacy, let alone making recommendations for reforms to them.

## 2. The factors responsible for the RCMP's regrettable media response

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, they decided not to correct them, choosing instead to limit their public statements to matters of process, not evidence.

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<sup>292</sup> I ruled to that effect on May 4, 2009, at p. 10.

<sup>293</sup> See, for example, *Attorney General of Quebec and Keable v. Attorney General of Canada et al.*, [1978] 1 S.C.R. 218 (Supreme Court of Canada).

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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, there were several factors that were principally responsible for this regrettable media response – the rush to publish, the failure to correct inaccuracies, and a conflict of interest.

### *a. The rush to publish*

In one sense, I was impressed with Cpl. Carr's and Sgt. Lemaitre's exceptionally prompt response. Within a few hours of Mr. Dziekanski's death, they had been briefed by the IHIT investigators and were providing interviews to the media at the Airport. They did so in pursuit of the RCMP's well-intentioned desire to inform the public and the media about its criminal investigations and to provide updates as those investigations progress.

But that desire for transparency and responsiveness came at a cost. The investigation was just getting off the ground, and these media relations officers were dealing with preliminary, unsubstantiated information. This led to Sgt. Lemaitre disclosing factually inaccurate information about the behaviours of Mr. Dziekanski, the response of the officers, and the number of times the conducted energy weapon was discharged. I am satisfied that he did not know at that time that some of the information he was disclosing was inaccurate.

In my view, a well-intentioned desire to inform the public about what had happened at the Airport pre-empted the equally important goal of accuracy. It may have been appropriate to make a brief public statement to the effect that an arriving international passenger had died at the Vancouver International Airport following an incident with RCMP officers responding to a disturbance call. However, delving into greater detail ran the risk that subsequently discovered facts might contradict these early pronouncements. While I do not fault Sgt. Lemaitre for conveying to the public information about the incident that had been approved for release, in hindsight, it

would have been preferable to avoid any detailed discussion of the circumstances at that early stage in the investigation.

*b. The decision not to correct inaccuracies*

As more information became known about the incident, the factual inaccuracies took on more significance. They were consistently self-serving – they painted Mr. Dziekanski in an unfairly negative, and the officers in an unfairly positive, light.

Supt. Rideout prevented Sgt. Lemaitre from correcting the public record and implemented a policy of commenting publicly only on matters of process, not evidence. While this may have been an entirely appropriate policy in principle, it was problematic in this case for several reasons:

- This was not a case of keeping the public in the dark about an investigation, which sometimes is necessary to preserve the integrity of the investigation. Here, the RCMP had already published inaccurate information and, as long as it was not corrected, the public (and potential witnesses) was being misled about the true state of affairs.
- Supt. Rideout did not act consistently – in at least one instance he breached his own “process, not evidence” rule by authorizing Cpl. Carr to publicly defend their officers against allegations that they had stood around doing nothing before Richmond Fire-Rescue arrived at the scene.

I am satisfied that Supt. Rideout realized the difficult position he was in, discussed the issue with his superiors, and weighed the advantages and disadvantages of correcting the inaccuracies right away or waiting until the completion of the investigation before doing so. He had a difficult decision to make. In my view, he erred in not correcting the inaccuracies right away but 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.

With respect to the RCMP as a Force, I think it is enough to record that on April 22, 2009, outside our hearing room, the officer in charge of Strategic Communications for

"E" Division apologized for how the media relations were handled in the Dziekanski matter.

*c. The conflict of interest*

I think it is important to take several steps back and examine the factual inaccuracies in the context of the investigation as a whole. The inaccuracies include the following: that Mr. Dziekanski was combative and violent, that chairs were flying, that violence was escalating, that the conducted energy weapon was deployed against him only twice, and that he continued to be combative, kicking and screaming after being handcuffed. Based on what the investigation subsequently determined, these descriptions were inaccurate and without question they portrayed Mr. Dziekanski's behaviours as more threatening and dangerous than we now know them to have been.

The media and public reaction to these inaccurate descriptions was immediate and intense. The public's concern persuaded me that it was important for this Commission of Inquiry to examine this aspect of the RCMP's post-incident activities. The questioning of the three officers involved in the RCMP's media response was thorough and probing, and their testimony was widely reported. One could reasonably infer from this testimony and the public discussion surrounding it a suspicion in some quarters that the RCMP's handling of media relations in this incident was slanted, favouring the Force and the officers involved. Whether or not such a conclusion was justified, the fact that it existed is cause for concern. It has the potential to lessen public respect for the RCMP as a national institution, which can only undermine the capacity of its officers to effectively police our communities. That troubles me.

Most of the inaccuracies reported about this incident portrayed a participant in a disturbance as more violent than he actually was, and underreported the number of times a weapon had been deployed. 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.

Why the extraordinarily different reaction here?

What makes this incident qualitatively different from my brawl example is the fact that 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 as so often happens in such cases, many members of the public are understandably suspicious of the investigation, regardless of how thorough and impartial it turns out to be.

The Dziekanski incident, and several other police-related deaths that have occurred recently, has generated considerable public discussion about the issue of the police investigating themselves. The issue of how, and by whom, police-related deaths should be investigated was exhaustively explored by my former judicial colleague William H. Davies, Q.C., recently in his inquiry into the death of Frank Paul.<sup>294</sup> His analysis of the inherent conflict of interest in a police force conducting a criminal investigation of its own members is compelling. I will have more to say about this issue, and about Mr. Davies' recommendations, in Part 10 of this report.

There can be no doubt that the controversy surrounding the RCMP's handling of media relations following Mr. Dziekanski's death is attributable to the role it played in conducting the criminal investigation. If a body at arm's length from the RCMP had conducted the criminal investigation, that body would have been, and would have been perceived by the public to be, impartial. The public would have been much more likely to accept without suspicion what such an impartial body said about the incident.

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<sup>294</sup> See *Alone and Cold, the Davies Commission Inquiry into the Death of Frank Paul*, February 12, 2009, available at <http://www.frankpaulinquiry.ca/report/>, or through the Distribution Centre Victoria (see inside front cover).

PART 8: THE RCMP'S MEDIA RESPONSE TO MR. DZIEKANSKI'S DEATH