

**The Thomas R. Braidwood, QC, Hearing and Study Commission**  
to inquire into and report on the death of Mr. Robert Dziekanski at the  
Vancouver International Airport on October 14, 2007

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**FINAL SUBMISSIONS OF THE BC CIVIL LIBERTIES ASSOCIATION**

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## **I. Mr. Dziekanski's Life in Poland**

1. The Commission heard evidence from four Polish witnesses who had variously known Mr. Dziekanski for between eight and over 20 years.<sup>1</sup> Cumulatively, the evidence of the four witnesses painted a picture of Mr. Dziekanski as a modest man, who was nervous but excited about the new life ahead of him in Canada.
2. Mr. Dziekanski's greatest passion was geography.<sup>2</sup> One of Mr. Dziekanski's main concerns before he departed Poland was whether he would have enough room to pack all his books and magazines about Canada.<sup>3</sup> Ms. Kosowska and Ms. Czelwinska testified that Mr. Dziekanski was looking forward to immigrating to Canada.<sup>4</sup> He told Ms. Czelwinska that in Canada there is milk and honey.<sup>5</sup>
3. Ms. Kosowska testified that Mr. Dziekanski was nervous and had trouble sleeping for two days prior to his departure.<sup>6</sup> Mr. Dylski testified that Mr. Dziekanski had little appetite leading up to his departure.<sup>7</sup> Several Polish witnesses explained that Mr. Dziekanski had never travelled on a plane before, and may not have ever travelled abroad prior to this trip, which may have accounted for his nervousness, lack of appetite, and difficulty sleeping.<sup>8</sup>
4. Mr. Dylskis testified that on the day of his departure, Mr. Dziekanski was extremely nervous. He may have been dizzy or may have vomited, and he was shaking.<sup>9</sup> Mr. Dylskis testified that Mr. Dziekanski was afraid of flying for the first time.<sup>10</sup> Mr. Dylski testified that once he left his apartment, Mr. Dziekanski was calm and quiet.<sup>11</sup>

## **II. Mr. Dziekanski on the flights to Vancouver, B.C., Canada**

5. The testimony of three witnesses on his flights indicated that Mr. Dziekanski behaved like a typical, if inexperienced, traveler. His conduct was normal and appropriate.
6. Jesus Fernandez Gonzalez, the chief flight attendant on board Mr. Dziekanski's flight between Poland and Frankfurt, testified that a man who spoke Polish and was

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<sup>1</sup> Iwona Kosowska knew Mr. Dziekanski for at least 20 years: Transcript, March 30, 2009, p.3; Magda Czelwinska knew Mr. Dziekanski for over 20 years: Transcript, March 31, 2009, p.1; Ryszard Krasinski knew Mr. Dziekanski for 10 years: Transcript, March 31, 2009, p.8; Robert Dylski knew Mr. Dziekanski for eight years: Transcript, April 2, 2009, p.2.

<sup>2</sup> Transcript, March 30, 2009, p.3 (Iwona Kosowska).

<sup>3</sup> Transcript, March 31, 2009, p.5 (Magda Czelwinska).

<sup>4</sup> Transcript, March 30, 2009, p.4 (Iwona Kosowska); Transcript, March 31, 2009, p. 2. (Magda Czelwinska).

<sup>5</sup> Transcript, March 31, 2009, p.2 (Magda Czelwinska).

<sup>6</sup> Transcript, March 30, 2009, p.5 (Iwona Kosowska).

<sup>7</sup> Transcript, April 2, 2009, p.14 (Robert Dylski).

<sup>8</sup> Transcript, March 30, 2009, p.6 (Iwona Kosowska); Transcript, March 31, 2009, pp. 3, 9, 10, 15-16 (Ryszard Krasinski); Transcript, April 2, 2009, p.3 (Robert Dylski).

<sup>9</sup> Transcript, April 2, 2009, p.5 (Robert Dylski).

<sup>10</sup> Transcript, April 2, 2009, pp.5 & 10 (Robert Dylski).

<sup>11</sup> Transcript, April 2, 2009, p.3 & 12 (Robert Dylski).

traveling to Vancouver sat in the wrong seat. Mr. Gonzalez asked the man to move, and the man agreed and moved to economy class.<sup>12</sup>

7. Mr. Gonzalez testified that he smelled what could have been alcohol on the man's breath, and so he communicated with the assistance of a ramp agent that the man would not be served alcohol on the flight. Mr. Gonzalez stated that the man behaved normally, he was shy and very calm, and he appeared to be surprised to learn he was sitting in the wrong area.<sup>13</sup>
8. Adolf Buettner, the purser on Mr. Dziekanski's flight from Frankfurt to Vancouver, testified that he recalled seeing a man who fit Mr. Dziekanski's description. He was sweating a little bit and had slightly tired eyes.<sup>14</sup> Mr. Buettner stated that he experienced no problems with Mr. Dziekanski during the flight or during deplaning.<sup>15</sup>
9. Christiane Hewer, a passenger aboard the flight between Frankfurt and Vancouver, testified that she noticed Mr. Dziekanski on the flight. She stated that he was completely calm, he was inconspicuous, and he behaved normally on the flight.<sup>16</sup>

### **III. Mr. Dziekanski's Arrival at the Vancouver International Airport ("YVR") and His Hours in the Secure Customs Area**

10. The Commission heard evidence from many witnesses who interacted with Mr. Dziekanski in the secure customs area (the "secure area") of YVR between approximately 3:30 pm and 12:50 am. This evidence overwhelmingly demonstrated that Mr. Dziekanski was cooperative, peaceful, and non-threatening. Despite his frustration with the language barrier and the amount of time spent in the secure area, Mr. Dziekanski behaved appropriately at all times. Mr. Dziekanski was compliant, calm and polite.

#### **A. The Primary Inspection Line (the "PIL")**

11. Mr. Dziekanski entered the queue before the PIL area of the Customs Hall at approximately 3:35 pm on October 13, 2007.<sup>17</sup> Patricia Hunter, an employee of Marquise, testified that she asked Mr. Dziekanski if he had his declaration card ready. Upon realizing that she would not be able to communicate with him due to a language barrier, Ms. Hunter indicated with hand signals for Mr. Dziekanski to proceed ahead to speak with a Customs officer. Mr. Dziekanski then proceeded as directed.<sup>18</sup>
12. Peter Dore, the second Marquise employee in the area, also observed Mr. Dziekanski at this time. Mr. Dore gestured for Mr. Dziekanski to proceed to the Customs officer, which he did.<sup>19</sup>

<sup>12</sup> Transcript, Jan. 19, 2009, pp.20-23 (Jesus Fernandez Gonzales).

<sup>13</sup> Transcript, Jan. 19, 2009, p.22 (Jesus Fernandez Gonzales).

<sup>14</sup> Transcript, Jan. 19, 2009, pp.28-29,31 (Adolf Buettner).

<sup>15</sup> Transcript, Jan. 19, 2009, p.29 (Adolf Buettner).

<sup>16</sup> Transcript, Jan. 19, 2009, p.13 (Jesus Fernandez Gonzales).

<sup>17</sup> Transcript, Jan. 19, 2009, p.44 (Patricia Hunter); Exhibit 25 A.

<sup>18</sup> Transcript, Jan. 19, 2009, pp.45-47 (Patricia Hunter).

<sup>19</sup> Transcript, April 14, 2009, p.7 (Peter Dore).

13. Ms. Hunter and Mr. Dore testified that Mr. Dziekanski approached a Canada Border Service Agency (“CBSA”) inspector, had a brief interaction, and then followed the inspector’s instructions to proceed to a table with books of translations.
14. Ms. Hunter testified that when she first observed Mr. Dziekanski he looked unusual and had a robot-like walk.<sup>20</sup> She stated that Mr. Dziekanski was sweating and struggling with the formalities of travel, but did not appear upset or agitated and did not behave aggressively.<sup>21</sup> He was not acting inappropriately in any way.<sup>22</sup>
15. Mr. Dore testified that Mr. Dziekanski had a disturbed look in his face, a strange look in his eyes, was sweating profusely, and looked like he could be a person of violence.<sup>23</sup> He also testified that nothing seemed very unusual about Mr. Dziekanski, there was nothing unusual about Mr. Dziekanski’s ability to walk, Mr. Dziekanski did not behave suspiciously, and he never felt threatened by Mr. Dziekanski.<sup>24</sup>
16. After completing most of his declaration card with the assistance of the Polish translation book, Mr. Dziekanski proceeded again to a CBSA inspector at the PIL, Monica Kullar, at approximately 4:09 pm.<sup>25</sup> Ms. Kullar testified that she completed the remainder of the card, and noting that Mr. Dziekanski did not speak English, referred him for further processing at both Customs Secondary and Immigration Secondary.<sup>26</sup>
17. Ms. Kullar testified that Mr. Dziekanski was sweating from his face, but not from other parts of his body.<sup>27</sup> He was excited and speaking rapidly in Polish to begin with, but calmed down once he was understood.<sup>28</sup> Ms. Kullar thought he might be under the influence of something, but did not smell liquor on him.<sup>29</sup> Ms. Kullar testified that she had no concerns about Mr. Dziekanski in terms of personal security, she did not feel physically threatened by him, and he was courteous with her.<sup>30</sup> She did not feel it was necessary to call for assistance to deal with Mr. Dziekanski.<sup>31</sup>
18. Mr. Dziekanski’s whereabouts are largely unaccounted for between approximately 4:10 pm and 9:30 pm.<sup>32</sup> Trevor Gross testified that he reviewed the digital video recording for this time period and concluded that Mr. Dziekanski was not caught on any security cameras, which would tend to indicate that Mr. Dziekanski was stationary during that time period.<sup>33</sup> The digital video recordings have been recorded over and no longer exist.<sup>34</sup>

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<sup>20</sup> Transcript, Jan. 19, 2009, p.45 (Patricia Hunter).

<sup>21</sup> Transcript, Jan. 19, 2009, pp.46, 49, 62, 68 (Patricia Hunter).

<sup>22</sup> Transcript, Jan. 19, 2009, p.60 (Patricia Hunter).

<sup>23</sup> Transcript, April 14, 2009, pp.7, 10, 18,20 (Peter Dore).

<sup>24</sup> Transcript, April 14, 2009, pp.10-11, 13 (Peter Dore).

<sup>25</sup> Transcript, Jan. 20, 2009, pp.17-22, 34,37 (Monica Kullar).

<sup>26</sup> Transcript, Jan. 20, 2009, pp.17-22 (Monica Kullar).

<sup>27</sup> Transcript, Jan. 20, 2009, pp.24-25 (Monica Kullar).

<sup>28</sup> Transcript, Jan. 20, 2009, p.16, 44-45 (Monica Kullar).

<sup>29</sup> Transcript, Jan. 20, 2009, p.49 (Monica Kullar).

<sup>30</sup> Transcript, Jan. 20, 2009, p.31 (Monica Kullar).

<sup>31</sup> Transcript, Jan. 20, 2009, p.47 (Monica Kullar).

<sup>32</sup> Transcript, Jan. 20, 2009, pp.38-39 (Monica Kullar); Exhibit 5C.

<sup>33</sup> Transcript, Jan. 20, 2009, p.86 (Trevor Gross).

<sup>34</sup> Transcript, Jan. 20, 2009, p.61 (Trevor Gross).

19. The Commissioner heard evidence that Mr. Dziekanski had been told by his mother to wait for her by the baggage area. The baggage area is located in the secure area and is not accessible to the general public. John Jubber, a United Airlines employee, testified that he saw Mr. Dziekanski standing by a baggage carousel in the secure area.<sup>35</sup> It is likely that Mr. Dziekanski waited by the baggage area under the mistaken impression that his mother would meet him there.

**B. Attempt to Exit the Secure Area and First Attendance at Customs Secondary**

20. Mr. Dziekanski first attempted to exit the secure area of YVR at approximately 10:30 pm.<sup>36</sup> He was redirected to Customs Secondary in accordance with Ms. Kullar's notations on his declaration card.
21. Border Services Officer Kal Bharya examined Mr. Dziekanski at Customs Secondary. Mr. Bharya testified that Mr. Dziekanski fumbled with his jacket and did not appear to have his immigration documentation or his baggage with him, which was unusual.<sup>37</sup> Mr. Bharya stated that Mr. Dziekanski seemed frustrated, which was common when dealing with passengers in Customs, but that he followed gestures and complied with instructions.<sup>38</sup>
22. Mr. Bharya thought Mr. Dziekanski may have had something to drink or may have been under the influence of something, but did not smell alcohol on Mr. Dziekanski.<sup>39</sup> Mr. Bharya testified that Mr. Dziekanski's demeanor was not threatening, he had no concerns regarding Mr. Dziekanski and the dealings he had with Mr. Dziekanski were not out of the ordinary.<sup>40</sup> There was nothing unusual about his walk.<sup>41</sup>
23. Border Services Officer Kelly McKenzie assisted Mr. Bahrya in processing Mr. Dziekanski at Customs Secondary. She stated that Mr. Dziekanski appeared somewhat confused initially, but communication was established quickly and thereafter Mr. Dziekanski was calm.<sup>42</sup> She testified that Mr. Dziekanski was cooperative and appeared to understand, his voice was at a normal level and had a compliant tone.<sup>43</sup> Initially Ms. McKenzie thought it was possible that Mr. Dziekanski was impaired, but as the examination continued her impression changed, as once communication was established, Mr. Dziekanski was calm, cooperative and respectful.<sup>44</sup> She stated that there was nothing about Mr. Dziekanski's manner that was threatening or aggressive.<sup>45</sup>

<sup>35</sup> Transcript unavailable at date of filing, witness testified September 23, 2009.

<sup>36</sup> Exhibit 6 Disc 7 & 8.

<sup>37</sup> Transcript, Jan. 22, 2009, pp.60-61,63 (Kal Bharya).

<sup>38</sup> Transcript, Jan. 22, 2009, pp.65-66 (Kal Bharya).

<sup>39</sup> Transcript, Jan. 22, 2009, pp.81-82 (Kal Bharya).

<sup>40</sup> Transcript, Jan. 22, 2009, pp.64 & 66 (Kal Bharya).

<sup>41</sup> Transcript, Jan. 22, 2009, p.65 (Kal Bharya).

<sup>42</sup> Transcript, Jan. 26, 2009, p.10 (Kellie McKenzie).

<sup>43</sup> Transcript, Jan. 26, 2009, pp.7, 9-10 (Kellie McKenzie).

<sup>44</sup> Transcript, Jan. 26, 2009, pp.10-11 (Kellie McKenzie).

<sup>45</sup> Transcript, Jan. 26, 2009, p.10 (Kellie McKenzie).

### C. Attendance at Immigration Secondary

24. After processing Mr. Dziekanski at Customs Secondary, Mr. Bharya and Border Services Officer Elizabeth Lavallee escorted him to Immigration Secondary for further processing, and turned him over to acting superintendent Alexandra Currie. Ms. Currie then instructed Border Services Officer Juliette Van Agteren to process Mr. Dziekanski.<sup>46</sup>
25. Ms. Currie testified that there was nothing unusual or physically different about Mr. Dziekanski or his demeanor<sup>47</sup> and that Mr. Dziekanski was calm and cooperative.<sup>48</sup>
26. Ms. Van Agteren waved Mr. Dziekanski over to a processing counter, then, realizing that he did not appear to have a form she needed in order to process him, helped him locate the document he needed in his luggage.<sup>49</sup>
27. Border Services Officer Adam Chapin was the fourth individual who interacted with Mr. Dziekanski in Immigration Secondary. He was asked to assist in Mr. Dziekanski's processing because of his limited knowledge of Polish.<sup>50</sup> He successfully communicated with Mr. Dziekanski and completed the required steps to process Mr. Dziekanski.<sup>51</sup> Mr. Chapin later escorted Mr. Dziekanski to Customs Secondary and toward the exit.<sup>52</sup>
28. Ms. Van Agteren testified that Mr. Dziekanski was visibly fatigued, a little distracted, perspiring, and a bit crumpled, but calm.<sup>53</sup> She testified that Mr. Dziekanski was understandably a little frustrated and impatient, but his demeanor in no way caused her any concern.<sup>54</sup> At no time was he uncooperative.<sup>55</sup> Ms. Van Agteren testified that Mr. Dziekanski thanked her after his processing was complete.<sup>56</sup>
29. Border Services Officer Sonya Purewal similarly testified that Mr. Dziekanski looked tired, his hair was disheveled and he seemed frustrated with the language barrier.<sup>57</sup> Other than his being tired, Ms. Purewal stated that there was nothing of concern regarding Mr. Dziekanski's demeanor or actions.<sup>58</sup> He followed instructions and interacted well with her.<sup>59</sup> Mr. Chapin also testified that Mr. Dziekanski's demeanor was calm.<sup>60</sup>

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<sup>46</sup> Transcript, Jan. 26, 2009, p.31 (Alexandra Currie).

<sup>47</sup> Transcript, Jan. 26, 2009, p.34 (Kirby Graeme).

<sup>48</sup> Transcript, Jan. 26, 2009, p.41 (Alexandra Currie).

<sup>49</sup> Transcript, Jan. 26, 2009, pp.59-61 (Juliette Van Agteren).

<sup>50</sup> Transcript, Jan. 27, 2009, p.2 (Adam Chapin).

<sup>51</sup> Transcript, Jan. 27, 2009, pp.3-5 (Adam Chapin).

<sup>52</sup> Transcript, Jan. 27, 2009, p.6 (Adam Chapin).

<sup>53</sup> Transcript, Jan. 26, 2009, p.61 (Juliette Van Agteren).

<sup>54</sup> Transcript, Jan. 26, 2009, p.69 (Juliette Van Agteren).

<sup>55</sup> Transcript, Jan. 26, 2009, p.70 (Juliette Van Agteren).

<sup>56</sup> Transcript, Jan. 26, 2009, p.68 (Juliette Van Agteren).

<sup>57</sup> Transcript, Jan. 29, 2009, p.12 (Sonya Purewal).

<sup>58</sup> Transcript, Jan. 29, 2009, p.13 (Sonya Purewal).

<sup>59</sup> Transcript, Jan. 29, 2009, p.14 & 16 (Sonya Purewal).

<sup>60</sup> Transcript, Jan. 27, 2009, p.3 (Adam Chapin).

#### **D. Second Attendance at Customs Secondary and Discharge from CBSA Control**

30. Mr. Chapin escorted Mr. Dziekanski to Customs Secondary and confirmed with Mr. Bharya that he was free to leave. Mr. Bharya stated that Mr. Dziekanski was cooperative and compliant and not aggressive, just like any other typical traveler.<sup>61</sup>
31. Ms. Kullar also noticed Mr. Dziekanski in Customs Secondary at the end of her shift, at approximately 12:50 am. She testified that she saw nothing to suggest that Mr. Dziekanski was agitated or upset.<sup>62</sup> Ms. McKenzie observed Mr. Dziekanski in Customs Secondary at approximately 12:55 am. She testified that Mr. Dziekanski appeared calm and cooperative. Nothing in his actions gave her any cause for concern.<sup>63</sup>
32. After confirming with Mr. Bharya that Mr. Dziekanski was free to leave, Mr. Chapin escorted him to the exit from the secure area of the airport. He testified that Mr. Dziekanski was calm and cooperative.<sup>64</sup> Mr. Chapin said "Thank you, have a good night" to Mr. Dziekanski in Polish, and Mr. Dziekanski responded with the same salutation before exiting.<sup>65</sup>
33. By this time, Mr. Dziekanski had been travelling, after leaving his home in Poland, for approximately 31 hours. He had been at the airport for 10 hours.
34. The evidence is clear that Mr. Dziekanski was calm and cooperative at all times on his flights from Poland to Vancouver and throughout the many hours he spent in the secure area of the airport. Despite the language barrier and the considerable delay in getting processed through Immigration and Customs, Mr. Dziekanski was never hostile or angry and he behaved appropriately in every interaction he had.

#### **IV. Mr. Dziekanski's Behaviour in the International Reception Lounge (the "IRL") Prior to the Arrival of the RCMP**

35. Witness testimony, the YVR video footage, and the Pritchard video indicate that Mr. Dziekanski became increasingly distressed, anxious and disoriented after he exited the secure area. Mr. Dziekanski's distress was partially the result of a long journey, lack of sleep, lack of food and the accumulated anxiety of travelling by plane for the first time in his life and leaving his homeland for a new country.
36. However, the greatest change in Mr. Dziekanski's behaviour occurred as a result of Lorne Meltzer's aggressive provocations. Mr. Meltzer was a limousine driver who was waiting at YVR to pick up a passenger. Mr. Meltzer instigated multiple altercations with Mr. Dziekanski. Witnesses testified that Mr. Meltzer provoked Mr. Dziekanski and that

<sup>61</sup> Transcript, Jan. 22, 2009, pp.73-74 (Trevor Gross).

<sup>62</sup> Transcript, Jan. 20, 2009, p.49 (Monica Kullar).

<sup>63</sup> Transcript, Jan. 26, 2009, pp.10-11 (Kellie McKenzie).

<sup>64</sup> Transcript, Jan. 27, 2009, p.9 (Adam Chapin).

<sup>65</sup> Transcript, Jan. 27, 2009, pp.9-10 (Adam Chapin).

Mr. Dziekanski's behaviour became erratic and distressed after his interaction with Mr. Meltzer.

37. The YVR video footage, the testimony of independent witnesses, and the Pritchard video support the conclusion that Mr. Meltzer antagonized Mr. Dziekanski. However, this evidence also supports the conclusion that even after Mr. Meltzer antagonized Mr. Dziekanski and Mr. Dziekanski became distressed, bystanders did not view Mr. Dziekanski to be dangerous or a threat to their physical safety.
38. YVR footage shows that Mr. Dziekanski exited from the IRL at approximately 12:53:30 am.<sup>66</sup> The IRL is an area just outside the Canada Customs exit. The IRL is a semi-secure area that adjoins the public international arrivals area (the "Meet and Greet"). After passing through the IRL doors, Mr. Dziekanski paused, and then continued pushing his baggage cart down the exit lane. Mr. Dziekanski was ahead of numerous passengers, none of whom appeared to pay any attention to him.
39. Once he reached the end of the exit lane, Mr. Dziekanski surveyed the Meet and Greet. He pushed his cart over to the area behind the totem poles. Mr. Dziekanski walked slowly and steadily. Mr. Dziekanski then sat down in a seat just behind the totem poles. He remained seated there for almost three minutes, from approximately 12:54:40 am to 12:57:30 am, at which point he stood up and began to slowly and calmly make his way back towards the IRL, on the Meet and Greet side of the exit lane.
40. Beginning at 12:57:56 am, for the remainder of the footage on YVR video 22244 Part 1, Mr. Dziekanski was not in full view. He was only slightly visible at times, moving around behind the kiosk, in front of the glass wall separating the Meet and Greet from the IRL. However, throughout this timeframe, numerous passengers exited the IRL doors and did not appear to pay any attention to Mr. Dziekanski. This suggests that his demeanor was calm and he was doing nothing out of the ordinary.
41. The beginning of Part 2 of the YVR video commences at 1:00 am. Similarly, the video indicates that at that time passengers in Mr. Dziekanski's vicinity appeared not to notice him, as indicated by the fact that two more passengers left the IRL and walked down the exit lane without looking back in his direction.
42. At approximately 1:04:30 am, Joghinder Dhari, baggage cart attendant, drove his machinery through the second set of IRL doors into the Meet and Greet. Between approximately 1:05:57 am and 1:06:18 am, Mr. Dziekanski lifted his three pieces of luggage over the railing, and placed them inside the exit lane. It is likely that Mr. Dziekanski was trying to return to the IRL because he was under the mistaken belief that his mother would meet him in that area.
43. After Mr. Dziekanski hopped over the railing into the exit lane himself and tried to get inside the IRL, Mr. Dhari made his way over to him. Mr. Dhari arrived by Mr. Dziekanski's side at approximately 1:08:20 am and appeared to interact with him for the next one and a half minutes. Mr. Dhari testified and described Mr. Dziekanski at

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<sup>66</sup> Exhibit 25F, YVR video 22244 Part 1.

this time as “wandering” and “a guy looking for something who might need help”.<sup>67</sup> Mr. Dhari stated that he approached Mr. Dziekanski and tried to communicate with him, but that Mr. Dziekanski could not understand him.<sup>68</sup> Mr. Dhari testified that he then asked Mr. Meltzer to try to help Mr. Dziekanski.<sup>69</sup>

44. The YVR footage clearly shows Mr. Dziekanski’s demeanor to be calm before his interaction with Lorne Meltzer. Until he attempted to get back into the IRL, nobody appears to have paid any particular attention to him.
45. At approximately 1:09:20 am, Sima Ashrafinia arrived in the Meet and Greet and made her way over to the arrivals board by the exit lane from the IRL. She looked over in Mr. Dziekanski’s direction.
46. Ms. Ashrafinia was waiting to pick up her husband and viewed the events that unfolded. She had a detailed recollection of the incident and her testimony remained consistent on cross examination. Her testimony deserves considerable weight.
47. Ms. Ashrafinia testified that when she first arrived at the airport she noted Mr. Dziekanski walking around with his luggage, talking loudly to himself.<sup>70</sup> She testified that he then tried to enter the IRL<sup>71</sup> and began shouting.<sup>72</sup> However, it was not clear from Ms. Ashrafinia’s testimony whether she witnessed Mr. Dziekanski shouting before his first interaction with Mr. Meltzer, or only afterwards.<sup>73</sup> It is our submission that given that less than a minute elapsed between when Ms. Ashrafinia arrived at the airport and Mr. Dziekanski first interacted with Mr. Meltzer, Ms. Ashrafinia did not witness Mr. Dziekanski shouting until after his first encounter with Mr. Meltzer.
48. At approximately 1:09:55 am, Mr. Meltzer arrived at the Meet and Greet and made his way down the exit lane toward the IRL doors. Mr. Meltzer met up with Mr. Dhari halfway down the exit lane, at approximately 1:10:27 am. Mr. Meltzer then approached Mr. Dziekanski. Mr. Meltzer testified that he was upset that Mr. Dziekanski was blocking the doors, and was worried that Mr. Dziekanski would cause him to miss the business passenger he was meeting. Overall, Mr. Meltzer’s evidence should be critically assessed, and the testimony of the other witnesses should be preferred. Mr. Meltzer’s testimony was inconsistent and he admitted he had a poor recollection of the events.<sup>74</sup> Mr. Meltzer also appeared to feel considerable guilt about his actions and the role they played in Mr. Dziekanski’s plight.<sup>75</sup> As a result, he attempted to minimize the degree to which he provoked Mr. Dziekanski.

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<sup>67</sup> Transcript, Feb. 2, 2009, pp.37-38 (Joginder Dhari).

<sup>68</sup> Transcript, Feb. 2, 2009, pp.37-38 (Joginder Dhari).

<sup>69</sup> Transcript, Feb. 2, 2009, p.40; Exhibit 25G, YVR video 22244 Part 2, approximately 1:10:25 am.

<sup>70</sup> Transcript, Feb. 4, 2009, p.51 (Sima Ashrafinia).

<sup>71</sup> Transcript, Feb. 4, 2009, pp.51-52 (Sima Ashrafinia).

<sup>72</sup> Transcript, Feb. 4, 2009, p.52 (Sima Ashrafinia).

<sup>73</sup> Transcript, Feb. 4, 2009, p.52 (Sima Ashrafinia).

<sup>74</sup> See, for example, Transcript, Feb. 3, 2009, pp.72 & 91 (Lorne Meltzer).

<sup>75</sup> See for example transcript, Feb. 3, 2009, p.98 (Lorne Meltzer), where Mr. Meltzer admits he felt awful about yelling at Mr. Dziekanski and stated that he could not sleep for two weeks.

49. Ms. Ashrafinia testified that Mr. Meltzer shouted and swore at Mr. Dziekanski, and that he became “really upset” and angry with Mr. Dziekanski.<sup>76</sup> She testified that Mr. Meltzer’s body position and body language were rude<sup>77</sup> and that Mr. Meltzer’s rude and abrasive attitude provoked Mr. Dziekanski to act erratically. She stated that Mr. Meltzer “caus[ed] a problem.”<sup>78</sup>
50. After Mr. Meltzer yelled at Mr. Dziekanski, Ms. Ashrafinia stated that Mr. Dziekanski became visibly upset, his breathing was fast, and he was sweating.<sup>79</sup> Ms. Ashrafinia described Mr. Dziekanski’s level of agitation as a three out of ten before the confrontation with Mr. Meltzer, and a nine out of ten afterwards.<sup>80</sup>
51. Other witnesses similarly testified that Mr. Meltzer provoked Mr. Dziekanski.<sup>81</sup> Cumulatively, the testimony of these witnesses supports the conclusion that Mr. Dziekanski’s behaviour became agitated as a result of Mr. Meltzer’s aggression.
52. It is critical to note that even after Mr. Dziekanski became agitated, a multitude of eyewitnesses were not afraid of Mr. Dziekanski and felt comfortable approaching and interacting with him. Ms. Ashrafinia testified that in spite of the fact that Mr. Dziekanski was agitated, she felt comfortable with Mr. Dziekanski, was never afraid of him, and did not fear for her personal safety.<sup>82</sup> Twice in her testimony she offered proof of the degree to which she felt comfortable with Mr. Dziekanski by drawing attention to the fact that she turned her back on Mr. Dziekanski when he had wooden stool raised by his chest only one metre away.<sup>83</sup> She stated that Mr. Dziekanski was loud, but did not mean any harm.<sup>84</sup>
53. Ms. Ashrafinia testified that Mr. Dziekanski’s actions reminded her of an upset child who was trying to get attention.<sup>85</sup> Ms. Ashrafinia also identified herself on the Pritchard video exclaiming with reference to Mr. Dziekanski, “He’s scared himself. Just look at him.”<sup>86</sup>
54. Ms. Ashrafinia testified that once he was inside the IRL, Mr. Dziekanski was shaking like he had the shivers.<sup>87</sup> She said he got more frustrated and continued shouting, but he still responded to herself and the other witnesses on the Meet and Greet side of the glass wall who were telling him to put down items he had taken off the desk in the IRL.<sup>88</sup> Ms. Ashrafinia also stated that Mr. Dziekanski calmed down after she attempted to communicate with him in sign language.<sup>89</sup>

<sup>76</sup> Transcript, Feb. 4, 2009, pp.53-54 (Sima Ashrafinia).

<sup>77</sup> Transcript, Feb. 4, 2009, p.83(Sima Ashrafinia).

<sup>78</sup> Transcript, Feb. 4, 2009, pp.53-54,82 – 83 (Sima Ashrafinia).

<sup>79</sup> Transcript, Feb. 4, 2009, p.54 (Sima Ashrafinia).

<sup>80</sup> Transcript, Feb. 4, 2009, p.82 (Sima Ashrafinia).

<sup>81</sup> Transcript, Feb. 5, 2009, pp.63-64 (Marija Bosnjak); Transcript, Feb. 9, 2009, p.18 (Alison Kula).

<sup>82</sup> Transcript, Feb. 4, 2009, p.88 (Sima Ashrafinia).

<sup>83</sup> Transcript, Feb. 4, 2009, pp.71 & 88 (Sima Ashrafinia).

<sup>84</sup> Transcript, Feb. 4, 2009, p.83 (Sima Ashrafinia).

<sup>85</sup> Transcript, Feb. 4, 2009, p.88 (Sima Ashrafinia).

<sup>86</sup> Transcript, Feb. 4, 2009, p.72 (Sima Ashrafinia); Transcript, Feb. 5, 2009, p. 26 (Sima Ashrafinia).

<sup>87</sup> Transcript, Feb. 5, 2009, pp.15-17 (Sima Ashrafinia).

<sup>88</sup> Transcript, Feb. 4, 2009, pp.60-61,72 (Sima Ashrafinia).

<sup>89</sup> Transcript, Feb. 4, 2009, p.61 (Sima Ashrafinia).

55. Like Ms. Ashrafinia, Mr. Dhari testified that he was never afraid of Mr. Dziekanski while in his presence.<sup>90</sup> This was in spite of Mr. Dziekanski's behaviour once inside the IRL, which Mr. Dhari stated he had never before witnessed at the airport.<sup>91</sup> Mr. Dhari stated that Mr. Dziekanski was not threatening to anyone.<sup>92</sup>
56. Jame Glenn Canzon, a cleaner on duty at the airport on the night of the incident, approached and walked past Mr. Dziekanski when Mr. Dziekanski was inside the IRL.<sup>93</sup> Mr. Canzon testified that Mr. Dziekanski exhibited unusual behaviour, but that Mr. Dziekanski did not scare him in any way.<sup>94</sup> Mr. Canzon testified that he is approximately five feet tall, Mr. Dziekanski appeared to be approximately one foot taller and was perspiring all over his face, yet Mr. Canzon passed within a foot of Mr. Dziekanski and said he found Mr. Dziekanski harmless.<sup>95</sup>
57. Three Horizon Air employees also witnessed some of Mr. Dziekanski's behaviour prior to the arrival of the RCMP. Marija Bosnjak, Alison Kula and Genevieve Deziel arrived together at the Meet and Greet after Mr. Dziekanski was in the IRL.<sup>96</sup> They observed Mr. Dziekanski blocking the entrance to the IRL.<sup>97</sup> At this time Mr. Dziekanski appeared frustrated and upset to Ms. Bosnjak.<sup>98</sup> He appeared frustrated, upset and agitated to Ms. Kula.<sup>99</sup> To Ms. Deziel, Mr. Dziekanski appeared to be obviously distressed and looking for help.<sup>100</sup>
58. The three Horizon Air employees witnessed some of Mr. Meltzer's interactions with Mr. Dziekanski by the entrance to the IRL.<sup>101</sup> All three testified that Mr. Meltzer appeared to be provoking him.<sup>102</sup> Ms. Deziel testified that Mr. Meltzer made Mr. Dziekanski more upset and agitated, and he interfered with the efforts the other eyewitnesses were making to communicate with Mr. Dziekanski.<sup>103</sup>
59. When Mr. Dziekanski emerged from the IRL as the doors opened, Ms. Bosnjak asked him if he spoke Russian.<sup>104</sup> Mr. Dziekanski responded by stopping and looking at her.<sup>105</sup> She stated that Mr. Dziekanski looked like he was very confused and scared, and he appeared to be looking for somebody to understand and help him. At this point he was very calm.<sup>106</sup> Overall, Ms. Bosnjak testified that Mr. Dziekanski was a person

<sup>90</sup> Transcript, Feb. 2, 2009, p.49 (Joginder Dhari).

<sup>91</sup> Transcript, Feb. 2, 2009, pp.57-58 (Joginder Dhari).

<sup>92</sup> Transcript, Feb. 2, 2009, p.42 (Joginder Dhari).

<sup>93</sup> Transcript, Feb. 3, 2009, p.21 (Jame Glenn Canzon); Exhibit 25G, YVR video 22244 Part 2, at approximately 1:16:07 am; Exhibit 30 shows Mr. Canzon proxing open the IRL doors at 1:16:50 am and again at 1:17:04 am.

<sup>94</sup> Transcript, Feb. 3, 2009, pp.19,20,26 (Jame Glenn Canzon).

<sup>95</sup> Transcript, Feb. 3, 2009, pp.9-10 (Jame Glenn Canzon).

<sup>96</sup> Exhibit 25G, YVR video 22244 Part 2, approximately 1:18:30 am.

<sup>97</sup> Transcript, Feb. 5, 2009, p.49 (Marija Bosnjak).

<sup>98</sup> Transcript, Feb. 5, 2009, p.51 (Marija Bosnjak).

<sup>99</sup> Transcript, Feb. 5, 2009, pp.92-94 (Alison Kula).

<sup>100</sup> Transcript, Feb. 9, 2009, pp.52 & 61 (Genevieve Deziel).

<sup>101</sup> Exhibit 25G, YVR video 22244 Part 2, shows Mr. Meltzer returning to the IRL doors at approximately 1:18:57, after he notified security.

<sup>102</sup> Transcript, Feb. 5, 2009, pp.63-64 (Marija Bosnjak); Transcript, Feb. 9, 2009, p. 18 (Alison Kula); Transcript, Feb. 9, 2009, pp. 62-63,72 ((Genevieve Deziel).

<sup>103</sup> Transcript, Feb. 9, 2009, p.62, 72,73 (Genevieve Deziel).

<sup>104</sup> Transcript, Feb. 5, 2009, p.49 (Sima Ashrafinia).

<sup>105</sup> Transcript, Feb. 5, 2009, p.65 & 94 (Mirija Bosnjak).

<sup>106</sup> Transcript, Feb. 5, 2009, pp.50, 57,64-65 (Marija Bosnjak) & 94 (Alison Kula).

who needed help, as opposed to someone who was dangerous.<sup>107</sup> Like Mr. Dhari, Mr. Canzon and Ms. Ashrafinia, Ms. Bosnjak was not afraid of Mr. Dziekanski.<sup>108</sup>

60. Ms. Kula similarly testified that she was not scared of Mr. Dziekanski and did not fear him.<sup>109</sup> She agreed that his picking up the computer and throwing it caused her alarm and concern.<sup>110</sup> However, when the suggestion that Mr. Dziekanski was a hazard to the public was put to her on cross examination, she refuted it.<sup>111</sup> Instead, she testified that Mr. Dziekanski was not a danger to the individuals in the area.<sup>112</sup>
61. Ms. Deziel agreed that the incident was unusual, but she also testified that she was never afraid of Mr. Dziekanski at any point.<sup>113</sup> She stated that the reason she called the police to attend the scene was to calm Mr. Dziekanski down and see what he wanted and needed, not because she was frightened or scared of him.<sup>114</sup>
62. Robert Jorssen, a civilian with the RCMP, also briefly witnessed Mr. Dziekanski in the IRL before the RCMP arrived. Mr. Jorssen arrived at the Meet and Greet shortly before the RCMP, at approximately 1:27 am.<sup>115</sup> Mr. Jorssen testified that Mr. Dziekanski was red faced, very agitated, upset and mad, but also that Mr. Dziekanski was looking for assistance and he was not getting the attention or help that he needed.<sup>116</sup>
63. Finally, two security guards, Lance Rudek and Sidharth Arora, also arrived at the Meet and Greet shortly before the arrival of the RCMP, at approximately 1:26 am.<sup>117</sup> Trevor Enchelmaier, the Securiguard supervisor, stated in his incident report and testified that “at no time were Securiguard employees ever threatened or at threat of being injured.”<sup>118</sup>

## **V. The Actions of the RCMP and the Taser of Mr. Dziekanski, October 14, 2007**

### **A. Overview**

64. Four RCMP officers, Cst. Gerry Rundel, Cst. Bill Bentley, Cst. Kwesi Millington and Cpl. Monty Robinson, were alerted to an incident at YVR via police radio.<sup>119</sup> The officers left the YVR detachment in separate cars and arrived at YVR at approximately 1:27 am on October 14, 2007.<sup>120</sup> The officers walked briskly toward Mr. Dziekanski who was standing near the doorway of the IRL. The officers interacted with Mr.

<sup>107</sup> Transcript, Feb. 5, 2009, p.69 (Marija Bosnjak).

<sup>108</sup> Transcript, Feb. 5, 2009, pp.75-76 (Marija Bosnjak).

<sup>109</sup> Transcript, Feb. 9, 2009, p.49 (Alison Kula).

<sup>110</sup> Transcript, Feb. 9, 2009, p.30 (Alison Kula).

<sup>111</sup> Transcript, Feb. 9, 2009, p.22 (Alison Kula).

<sup>112</sup> Transcript, Feb. 9, 2009, p.16 (Alison Kula).

<sup>113</sup> Transcript, Feb. 9, 2009, p.64 & 78 (Genevieve Deziel).

<sup>114</sup> Transcript, Feb. 9, 2009, p.73 (Genevieve Deziel).

<sup>115</sup> Transcript, Feb. 9, 2009, pp.94-95 (Robert Jorssen); Transcript, Feb. 10, 2009, p. 12 (Kwesi Millington).

<sup>116</sup> Transcript, Feb. 9, 2009, p.99 (Robert Jorssen); Transcript, Feb. 10, 2009, pp.18-19 (Kwesi Millington).

<sup>117</sup> Transcript, Feb. 12, 2009, p.47 (Lance Rudek).

<sup>118</sup> Transcript, Feb. 17, 2009, pp.22-23 (Trevor Enchelmaier).

<sup>119</sup> Transcript, March 2, 2009, p.8 (Kwesi Millington).

<sup>120</sup> Exhibit 25D, YVR video, 22233.

Dziekanski for approximately 25 seconds before Cst. Millington deployed the taser on Mr. Dziekanski.

65. The officers attempted to defend their rapid fire actions and the escalation to violence by stating that Mr. Dziekanski was uncooperative, non-compliant and advanced upon the officers with a stapler. To the contrary, however, a review of the totality of the evidence indicates that despite language barriers and fatigue, Mr. Dziekanski was attentive and responsive to the officers' requests and commands. Aside from the self-serving evidence of the officers, and the entirely discredited expert testimony of Grant Fredericks, a forensic video analyst, there is absolutely no independent evidence that Mr. Dziekanski advanced upon the officers with a stapler.
66. The evidence shows that during those first 25 seconds of interaction with Mr. Dziekanski, the officers issued at least three separate commands, but at any given moment, less than half of the officers were aware that a command had even been given to Mr. Dziekanski. Furthermore, each officer believed that compliance would entail a different response. Due to a devastating failure of communication and a total absence of coordination amongst the officers, the officers misinterpreted Mr. Dziekanski's actions, and failed to observe the actions and commands of their fellow officers. The officers' ineptitude and rush to violence resulted in a tragedy.
67. At the end of the first taser deployment, Mr. Dziekanski was screaming in agony and was either already on the floor or was commencing his fall to the floor.<sup>121</sup> However, despite ample indications that Mr. Dziekanski was severely affected by the first taser deployment, Cst. Millington deployed his taser four additional times. The first taser discharge lasted five to six seconds. After approximately one second after the first discharge, Cst. Millington commenced the second taser discharge. It commenced at the approximate moment that Mr. Dziekanski fell to the ground. It was discharged for an additional five seconds. Approximately twelve seconds after Mr. Dziekanski fell to the ground, Cst. Millington deployed the taser a third time. The taser was deployed for approximately five seconds. Cst. Millington changed the taser to "push-stun" mode and applied it directly to Mr. Dziekanski's shoulder. The fourth application of the taser lasted approximately eight to nine seconds. Cst. Millington waited approximately one second and deployed the taser for a fifth time for approximately five to six seconds. It is our submission that each of the taser deployments was unjustified, and constituted an unreasonable and unjustifiable use of force.

## **B. The Reliability of the Evidence of the Officers**

68. There were many problems with the reliability of the officers' evidence. We submit that in key respects it was entirely unsatisfactory and should be considered discredited. In some respects, the officer's evidence was clearly contradicted by other evidence; in other areas, it was implausible. The proceedings of this Commission have revealed that in the notes the officers made and the statements the officers gave to the

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<sup>121</sup> The taser download report indicates that Cst. Millington deployed his taser five times, three times in probe mode, and twice in stun mode. The report notes the times of the deployments and the approximate duration of each deployment, making it possible to correlate each of the deployments with the activity that is documented in the Pritchard video.

Integrated Homicide Investigation Team (IHIT) investigators, the officers repeatedly misrepresented Mr. Dziekanski's actions and the events that occurred at the airport.<sup>122</sup>

69. The independent documentary evidence, most importantly the Pritchard video, contradicted key aspects of the officers' evidence. All the officers were confronted with stark contradictions between the events that they recorded in their notes and told to IHIT investigators and the events that were shown in the Pritchard video. However, rather than engage in an honest review of the Pritchard video and a meaningful reflection on the events of that night, all four officers appeared determined to hold to their stories in an attempt to justify their actions. Not one of the officers expressed regret or ambivalence about the actions that they took.
70. The officers' statements were also inconsistent with *viva voce* evidence of other witnesses, particularly the evidence given by numerous bystanders at the airport who testified that although Mr. Dziekanski was distressed and agitated, they did not view him to be dangerous or a threat to their physical safety. As will be explored in greater detail in the following section, statements the officers gave about the medical attention they gave to Mr. Dziekanski were also contradicted by the *viva voce* evidence of other witnesses that were present at the airport.
71. Where the evidence of the officers diverged from the documentary evidence and *viva voce* evidence of other witnesses, it tended to justify the officers' actions and the level of force that the officers used against Mr. Dziekanski, thereby undermining the officers' credibility.
72. Several officers suggested that the inaccuracies in their notes and in their statements to IHIT were the product of having worked a long shift and of having experienced a stressful event. They also blamed the speed of events for memory lapses and confusion. Sgt. Brad Fawcett testified that it is common for officers to incorrectly remember events. He stated that it is a well-known psychological phenomenon for individuals to remember an event in terms of what one expects and/or intends to happen, rather than in terms of what actually happened<sup>123</sup> on the other hand, some participants at these proceedings have alleged that the officers intentionally fabricated their notes and statements in an attempt to mislead investigators and the public.
73. While we may never know if the officers' misrepresentations were intentional or not, given the stark inconsistencies between the officers' evidence, the independent documentary evidence, and certain *viva voce* evidence of other witnesses, the officers' written and testimonial evidence must be critically assessed and weighed with the utmost scrutiny. Where there is independent witness testimony, that testimony should

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<sup>122</sup> All four of the RCMP officers wrote notes soon after the incident at the airport. The verbatim notes of the officers represent the first recording of information by each of these men. With the exception of Cpl. Robinson's notes, all of the officers' notes contain descriptions of the officers' interactions with Mr. Dziekanski. Cst. Millington also filled out an Incident Information Record, referred to as a Form 3996 (Exhibit 54A) which detailed the events surrounding the deployment of the taser. We set out verbatim the written notes of Constables Rundel, Bentley and Millington, and a summary of events contained in the Form 3996 in an appendix to this submission. All four officers were interviewed on at least two occasions by investigators from the IHIT team, and they also testified during the evidentiary hearings.

<sup>123</sup> Transcript, April 16, 2009, p.21 (Brad Fawcett)

be preferred. Where the officers' statements cannot be corroborated by the events depicted on the Pritchard video, that testimony should be discounted or ignored.

### **C. The Officers' Testimony During the Evidentiary Hearings and IHIT Statements**

#### **1. Evidence of Cst. Rundel**

74. At the date of the incident, Cst. Rundel had served on the force for two years. He was certified to use a taser at the date of the incident.<sup>124</sup> He had never been involved in an incident where a taser had been deployed before.<sup>125</sup>
75. Cst. Rundel was aware that Mr. Dziekanski did not speak English because a witness at the scene told him.<sup>126</sup>
76. Cst. Rundel testified that before he entered the IRL he observed that Mr. Dziekanski appeared to be unkempt, sweaty and that he had a "wide-eyed glazed focused look."<sup>127</sup> Mr. Dziekanski appeared to possibly be disorientated and was in an "agitated state of some sort."<sup>128</sup> Cst. Rundel described him as being "just beyond what I would call somebody who was behaving normally."<sup>129</sup>
77. Cst. Rundel heard Mr. Dziekanski speak in a language he didn't understand, which confirmed to him that Mr. Dziekanski did not speak English.<sup>130</sup> Cst. Bentley was the first officer to approach Mr. Dziekanski and said something to the effect of "Hi, how are you doing, how's it going" in a friendly tone of voice.<sup>131</sup> Cst. Rundel did not recall either Cst. Bentley or Cst. Millington speaking with Mr. Dziekanski further.<sup>132</sup>
78. Cst. Rundel testified that Mr. Dziekanski then "turned and bent, kneeled, made a motion of bending down towards and pointing at his luggage."<sup>133</sup> Cpl. Robinson commanded Mr. Dziekanski to stop reaching for his luggage in a loud, stern, authoritative voice and raised the palm of his hand.<sup>134</sup> Cst. Rundel testified that Mr. Dziekanski "clearly understood the command, because he did stop what he was doing."<sup>135</sup>
79. After Cpl. Robinson ordered Mr. Dziekanski to stop moving toward his luggage, Mr. Dziekanski turned, flipped up his hands, and moved away.<sup>136</sup> Cst. Rundel stated that

<sup>124</sup> Transcript, Feb. 23, 2009, p.7 (Gerry Rundel).

<sup>125</sup> Transcript, Feb. 23, 2009, p.70 (Gerry Rundel).

<sup>126</sup> Transcript, Feb. 23, 2009, p.17 (Gerry Rundel).

<sup>127</sup> Transcript, Feb. 23, 2009, p.18 (Gerry Rundel).

<sup>128</sup> Transcript, Feb. 23, 2009, p.18 (Gerry Rundel).

<sup>129</sup> Transcript, Feb. 23, 2009, p.8 (Gerry Rundel).

<sup>130</sup> Transcript, Feb. 23, 2009, p.25-26 (Gerry Rundel).

<sup>131</sup> Transcript, Feb. 23, 2009, p.27 (Gerry Rundel).

<sup>132</sup> Transcript, Feb. 23, 2009, p.27 (Gerry Rundel).

<sup>133</sup> Transcript, Feb. 23, 2009, p.27 (Gerry Rundel).

<sup>134</sup> Transcript, Feb. 23, 2009, p.27-28 (Gerry Rundel).

<sup>135</sup> Transcript, Feb. 23, 2009, p.28 (Gerry Rundel).

<sup>136</sup> Transcript, Feb. 23, 2009, p. 36 (Gerry Rundel).

Mr. Dziekanski's action was resistant and non-compliant.<sup>137</sup> Cst. Rundel testified that once Mr. Dziekanski turned away and moved toward the counter, the officers were authorized to use a taser on Mr. Dziekanski.<sup>138</sup>

80. Cst. Rundel's explanation as to why the behaviour was resistant and non-compliant was wholly unsatisfactory. Cst. Rundel admitted that Mr. Dziekanski complied with the command not to go into his luggage. However, Cst. Rundel suggested that Mr. Dziekanski indirectly disobeyed the command by moving away; he stated that Mr. Dziekanski should have stopped, stayed in the same position, and awaited a further command.<sup>139</sup>
81. Cst. Rundel offered various and conflicting accounts of the movements Mr. Dziekanski made with the stapler. We submit that before this Commission and in statements to IHIT investigators, Cst. Rundel misrepresented Mr. Dziekanski's movements in order to justify his actions and those of his fellow officers. Before this Commission, Cst. Rundel testified that after Mr. Dziekanski moved toward the counter, he grabbed a stapler, clenched it in his right hand, and made a fist with his left. He stated that Mr. Dziekanski swung the fist with the stapler across his body and up around his face.<sup>140</sup>
82. Cst. Rundel's testimony about the stapler directly contradicted statements Cst. Rundel made to IHIT. In his first statement to IHIT, Cst. Rundel stated that Mr. Dziekanski "picked up a stapler, and he started...clenching his fists and...and putting the stapler up above his head, mo-motioning...making motions with it, uh ... towards us. Um ...and then at that point Cst. Millington had pulled out his taser and activated it."<sup>141</sup>
83. In his second statement, taken four days later, Cst. Rundel again stated that Mr. Dziekanski raised the stapler above his head:
- [...] he... then picked up a... stapler... turned around, he had both fists in the air with the stapler (INDECIPHERABLE) his hand, and was motioning...motioning towards us in an... aggressive combative style, and... that's... when Cst. MILLINGTON... um... activated the taser.<sup>142</sup>
84. Commission counsel noted the discrepancy between Cst. Rundel's statements and the Pritchard video images that showed that Mr. Dziekanski did not wave the stapler above his head. Cst. Rundel struggled to explain the inconsistency. It is clear from a plain reading of the IHIT statements that Cst. Rundel said that the stapler waving occurred before the first deployment of the taser. However, rather than frankly admitting he was wrong, he equivocated that in his IHIT statements he was describing both taser deployments at the same time.<sup>143</sup> This testimony did not strengthen his credibility. Cst. Rundel's evidence about the stapler should be discounted.

<sup>137</sup> See for example, Transcript, Feb. 23, 2009, p.28,36 (Gerry Rundel).

<sup>138</sup> Transcript, Feb. 23, 2009, p.40 (Gerry Rundel).

<sup>139</sup> Transcript, Feb. 23, 2009, p.36, 38-39 (Gerry Rundel).

<sup>140</sup> See for example, transcript, Feb. 23, 2009, p. 53; Transcript, Feb. 23, 2009, p.61 (Gerry Rundel).

<sup>141</sup> Exhibit 47, p.5.

<sup>142</sup> Exhibit 48, p. 5.

<sup>143</sup> Transcript, Feb. 23, 2009, p.60-61 (Gerry Rundel).

85. Cst. Rundel also testified that Mr. Dziekanski took a step forward with his left foot before the first taser deployment.<sup>144</sup> The most impartial and inarguable evidence that should be relied upon is the objective view of the events portrayed in the Pritchard video. The video does not show Mr. Dziekanski taking a step forward. In addition, Robert Jorssen, the civilian with the RCMP, testified that Mr. Dziekanski did not advance towards the officers before he was tasered.<sup>145</sup> As will be discussed *infra*, the claim that Mr. Dziekanski advanced on the officers is not supported by the expert evidence.
86. In statements to IHIT investigators, and in his testimony before the Commission, Cst. Rundel repeatedly stated that Mr. Dziekanski remained standing after the first taser deployment. It is apparent from the Pritchard video and the taser download report that Mr. Dziekanski fell after the first taser deployment and was already on the ground the second time the taser was deployed.
87. Cst. Rundel inaccurately stated to IHIT that the officers had to “wrestle” Mr. Dziekanski to the ground.<sup>146</sup> It is clear from the video evidence that Mr. Dziekanski fell to the ground of his own accord after the first taser deployment. During his testimony, Cst. Rundel admitted that that his statement that Mr. Dziekanski had to be wrestled to the ground was “not quite what actually happened.”<sup>147</sup> Cst. Rundel’s unwillingness to frankly admit that he made a mistake in the face of the video evidence casts doubt on his credibility.
88. Cst. Rundel testified that he believed that Mr. Dziekanski was struggling and still resistant while he was being handcuffed.<sup>148</sup> However, Cst. Rudel admitted that he was not aware that Mr. Dziekanski was being tasered after Mr. Dziekanski had fallen to the ground and the officers were attempting to handcuff him. It did not occur to Cst. Rundel that the movements and noises Mr. Dziekanski were making might have been in response to being repeatedly tasered.<sup>149</sup>

## 2. Evidence of Cst. Bentley

89. Cst. Bentley had been an RCMP officer for two years before the incident. He had been working for the airport detachment for approximately a month prior to the incident.<sup>150</sup> He completed taser training in mid-July of 2007.<sup>151</sup> Cst. Bentley testified he had not been involved in a tasing incident outside of basic training.<sup>152</sup>
90. Cst. Bentley testified that as he approached Mr. Dziekanski, he observed that Mr. Dziekanski had wide eyes, his hands were at his side, and there was a wooden stool and a piece of computer debris around his feet.<sup>153</sup> Cst. Bentley testified that he

<sup>144</sup> Transcript, Feb. 23, 2009, p.61 (Gerry Rundel).

<sup>145</sup> Transcript, Feb. 9, 2009, 103 (Robert Jorssen).

<sup>146</sup> Exhibit 47, p.6.

<sup>147</sup> Transcript, Feb. 23, 2009, p.52 (Gerry Rundel).

<sup>148</sup> Transcript, Feb. 23, 2009, p.62 (Gerry Rundel).

<sup>149</sup> Transcript, Feb. 23, 2009, p.62 (Gerry Rundel).

<sup>150</sup> Transcript, Feb. 25, 2009, p.54 (Bill Bentley).

<sup>151</sup> Transcript, Feb. 25, 2009, p.54 (Bill Bentley).

<sup>152</sup> Transcript, Feb. 25, 2009, p.56 (Bill Bentley).

<sup>153</sup> Transcript, Feb. 25, 2009, p.61, 67 (Bill Bentley).

believed that Mr. Dziekanski was going to be combative: “From my law enforcement experience, my gut instinct told me that he was going to start a fight with us.”<sup>154</sup>

However, Cst. Bentley’s interpretation of Mr. Dziekanski’s behaviour as aggressive was belied by other observations that Cst. Bentley made. He testified that when the officers initially engaged with Mr. Dziekanski he was cooperative<sup>155</sup> and his demeanor seemed calm.<sup>156</sup>

91. Cst. Bentley did not remember any of the bystanders yelling out that Mr. Dziekanski did not speak any English, and at the time he entered the secure area, he did not know that Mr. Dziekanski did not speak English.<sup>157</sup>
92. Cst. Bentley testified that he was the first officer to approach Mr. Dziekanski and said something to the effect of “Hi, how are you, sir? How’s it going, bud?”<sup>158</sup> Mr. Dziekanski did not respond. Cst. Millington immediately took over as the lead the investigator and started to say things to Mr. Dziekanski.<sup>159</sup> Cst. Bentley could not remember what he said to Mr. Dziekanski, or whether Mr. Dziekanski responded.<sup>160</sup> Cst. Bentley testified that the interaction between Cst. Millington and Mr. Dziekanski lasted for a few seconds, and then Mr. Dziekanski raised his hands and walked away from the officers toward the desk.<sup>161</sup>
93. As Mr. Dziekanski was walking toward the desk, Cst. Bentley testified that Cpl. Robinson took over and said something to Mr. Dziekanski that Cst. Bentley could not recall,<sup>162</sup> and made a pointing gesture with his arm.<sup>163</sup> Cst. Bentley described Cpl. Robinson as pointing toward the desk.<sup>164</sup> Cst. Bentley did not remember if Cpl. Robinson ordered Mr. Dziekanski to go to the counter.<sup>165</sup>
94. Cst. Bentley testified that he interpreted Mr. Dziekanski’s arm gesture and walking toward the desk as an attempt to evade the officers.<sup>166</sup> Cst. Bentley stated that he interpreted Mr. Dziekanski walking to the counter as an action of non-cooperation and defiance.<sup>167</sup> In response to questioning from his lawyer, Cst. Bentley stated that in the few seconds that it took Mr. Dziekanski to go from his suitcase to the counter, there was “an escalation” in Mr. Dziekanski’s behaviour.<sup>168</sup>
95. Cst. Bentley offered various and conflicting accounts of the movements Mr. Dziekanski made at that counter. We submit that before this Commission and in statements to IHIT investigators, Cst. Bentley misrepresented Mr. Dziekanski’s movements and his

<sup>154</sup> Transcript, Feb. 25, 2009, p.61 (Bill Bentley).

<sup>155</sup> Transcript, Feb. 25, 2009, p.64 (Bill Bentley).

<sup>156</sup> Transcript, Feb. 25, 2009, p.67 (Bill Bentley).

<sup>157</sup> Transcript, Feb. 25, 2009, p.64 (Bill Bentley).

<sup>158</sup> Transcript, Feb. 25, 2009, p.66 (Bill Bentley).

<sup>159</sup> Transcript, Feb. 25, 2009, p.68 (Bill Bentley).

<sup>160</sup> Transcript, Feb. 25, 2009, p.68 (Bill Bentley).

<sup>161</sup> Transcript, Feb. 25, 2009, p.68 (Bill Bentley).

<sup>162</sup> Transcript, Feb. 25, 2009, p.68 (Bill Bentley).

<sup>163</sup> Transcript, Feb. 25, 2009, p.70 (Bill Bentley).

<sup>164</sup> Transcript, Feb. 25, 2009, p.113 (Bill Bentley).

<sup>165</sup> Transcript, Feb. 25, 2009, p.70 (Bill Bentley).

<sup>166</sup> Transcript, Feb. 25, 2009, p.70 (Bill Bentley).

<sup>167</sup> Transcript, Feb. 26, 2009, p.70 (Bill Bentley).

<sup>168</sup> Transcript, Feb. 25, 2009, p.113 (Bill Bentley).

evidence is not credible. Cst. Bentley testified that once Mr. Dziekanski was at the desk, he turned his head from left to right. Cst. Bentley stated:

I got the feeling then that he was looking for some sort of object to use against us. I remember seeing a stapler on top of the desk. I remember him grabbing that with his right hand and turning around with it, swinging it out in front of him. At that particular time myself and Cpl. Robinson were the closest members to Dziekanski. We were very close, actually, to the point that I thought I was going to be hit with the stapler.<sup>169</sup>

96. In examination in chief, Cst. Bentley was asked to describe in detail the motion that Mr. Dziekanski made with the stapler. Cst. Bentley testified that Mr. Dziekanski “swung it out in front of his chest,”<sup>170</sup> but upon further questioning clarified that “It wasn’t a wide swing. It was more of a just bringing it out in front of him.”<sup>171</sup> Finally he agreed that the swinging motion consisted of Mr. Dziekanski keeping his elbow next to his body and swinging from the elbow to the hand without moving his body.<sup>172</sup> Cst. Bentley testified that he believed that Mr. Dziekanski was deliberately pointing the stapler at the officers.<sup>173</sup> Cst. Bentley’s evidence is not supported by the Pritchard video.
97. There were stark inconsistencies between the Cst. Bentley’s notes and the Pritchard video. Cst. Bentley’s notes stated that “Subject grabbed stapler and came at members screaming.”<sup>174</sup> Before the Commission, he admitted that the statement in his notes was incorrect, and he attributed the misstatement to being fatigued, and stated that he realized he was incorrect after he watched the video.<sup>175</sup> Later in his testimony he equivocated that the statement in his notes was “somewhat accurate” but “just out of sequence.”<sup>176</sup> Cst. Bentley’s unwillingness to frankly admit his mistake undermined his credibility.
98. In interviews Cst. Bentley gave to IHIT investigators, he stated that Mr. Dziekanski had to be wrestled to the ground by the officers.<sup>177</sup> The fact that Cst. Bentley’s misrepresentation tended to justify his actions and those of his fellow officers raises a legitimate concern that the misstatement may have been intentional.
99. The most plausible interpretation of Mr. Dziekanski’s movements after he fell to the ground, screaming in agony, was that he was responding to the repeated, painful tasing. However, Cst. Bentley interpreted Mr. Dziekanski’s noises and movements on the ground as Mr. Dziekanski being resistant to efforts to handcuff him.<sup>178</sup> Cst. Bentley’s perception of Mr. Dziekanski’s movements on the ground were undoubtedly coloured by his mistaken assumption that Mr. Dziekanski was only tasered twice in

<sup>169</sup> Transcript, Feb. 25, 2009, p.68 (Bill Bentley).

<sup>170</sup> Transcript, Feb. 25, 2009, p.70 (Bill Bentley).

<sup>171</sup> Transcript, Feb. 25, 2009, p.70 (Bill Bentley).

<sup>172</sup> Transcript, Feb. 25, 2009, p.70-71 (Bill Bentley).

<sup>173</sup> Transcript, Feb. 25, 2009, p.78 (Bill Bentley).

<sup>174</sup> Transcript, Feb. 25, 2009, p.75 (Bill Bentley).

<sup>175</sup> Transcript, Feb. 25, 2009, p.75-77 (Bill Bentley).

<sup>176</sup> Transcript, Feb. 25, 2009, p.76 (Bill Bentley).

<sup>177</sup> Exhibit 50, p.12 -13.

<sup>178</sup> Transcript, Feb. 25, 2009, p. 91 (Bill Bentley).

total. He testified that he did not find out that Mr. Dziekanski had been tasered five times until the report from Crown counsel was released.<sup>179</sup>

### 3. Evidence of Cst. Millington

100. At the date of the incident, Cst. Millington had served on the force for approximately two years. He was certified to use a taser at the date of the incident. He had never deployed a taser, and he had never been involved in an incident where another officer has deployed a taser.<sup>180</sup>
101. Cst. Millington testified that he was aware that Mr. Dziekanski did not speak English before he entered the IRL.<sup>181</sup> Cst. Millington testified that his first impression of Mr. Dziekanski was that he “seemed very sweaty and his eyes were wide, and seemed very agitated.”<sup>182</sup>
102. There were a number of inconsistencies between Cst. Millington’s notes, the statements he gave to IHIT investigators,<sup>183</sup> and his testimony before the Commission. In his notes and in interviews, Cst. Millington misrepresented Mr. Dziekanski’s behaviours and the manner in which events unfolded at the airport.
103. Cst. Millington stated to IHIT investigators that the officers tried to calm Mr. Dziekanski down, but he “backed away from [the officers] and he was still yelling. He didn’t listen to anything [the officers] were saying.”<sup>184</sup> During his testimony, Cst. Millington admitted that he was not confident that Mr. Dziekanski was yelling when he turned away from the officers.<sup>185</sup>
104. After being shown the Pritchard video, Cst. Millington admitted that he only spent a total of ten seconds trying to communicate with Mr. Dziekanski. Cst. Millington described to the Commission the attempts he made at communication. He stated that he tried to use hand signals to calm Mr. Dziekanski down by holding his hand in front of him and pushing it palm down to the floor.<sup>186</sup> He testified that he then asked him for his passport and identification, but Mr. Dziekanski did not seem to understand.<sup>187</sup> In a further attempt to communicate with Mr. Dziekanski, Cst. Millington put his palm up and pretended to be writing on his palm with an imaginary pen.<sup>188</sup> It did not occur to Cst. Millington that Mr. Dziekanski’s passport or identification might be in his suitcase.<sup>189</sup> He did not notice Mr. Dziekanski going toward his suitcase.<sup>190</sup>

<sup>179</sup> Transcript, Feb. 25, 2009, p.91 (Bill Bentley).

<sup>180</sup> Transcript, March 3, 2009, p.102-103 (Kwesi Millington).

<sup>181</sup> Transcript, March 2, 2009, p.13 (Kwesi Millington).

<sup>182</sup> Transcript, March 2, 2009, p.18 (Kwesi Millington).

<sup>183</sup> Cst. Millington gave three statements to investigators of IHIT. The first statement was taken October 14, 2007. (Exhibit 55.) The second statement was taken October 15, 2007. (Exhibit 56.) The third statement was taken October 18, 2007. (Exhibit 59.)

<sup>184</sup> Exhibit 55, p.1.

<sup>185</sup> Transcript, March 2, 2009, p.33 (Kwesi Millington).

<sup>186</sup> Transcript, March 2, 2009, p.18,20 (Kwesi Millington).

<sup>187</sup> Transcript, March 2, 2009, p.18 (Kwesi Millington).

<sup>188</sup> Transcript, March 2, 2009, p.18-19, 20 (Kwesi Millington).

<sup>189</sup> Transcript, March 2, 2009, p.21 (Kwesi Millington).

<sup>190</sup> Transcript, March 2, 2009, p.21-22 (Kwesi Millington).

105. Cst. Millington testified that he interpreted Mr. Dziekanski's behaviour as uncooperative. After he viewed the Pritchard video at the inquiry, he admitted that Mr. Dziekanski had moved in the direction that Cpl. Robinson had pointed. However, even in the face of evidence that he had been unaware of a command that Cpl. Robinson had given, and that Mr. Dziekanski had complied with the command, Cst. Millington stuck to his story in an attempt to justify his actions.<sup>191</sup>
106. Cst. Millington testified that he asked for Mr. Dziekanski's passport, and that then Mr. Dziekanski raised his hands up, a gesture that Cst. Millington interpreted as "defiant."<sup>192</sup> We submit that there were other more plausible interpretations of Mr. Dziekanski's hand gesture, and that Cst. Millington's interpretation was coloured by his incorrect perception that Mr. Dziekanski had disobeyed orders up until that point.
107. Cst. Millington offered various and conflicting accounts of the movements Mr. Dziekanski made at the counter and his movements with the stapler. We submit that before this Commission and in statements to IHIT investigators, Cst. Millington misrepresented Mr. Dziekanski's movements in order to justify his actions and those of his fellow officers. Cst. Millington testified that Mr. Dziekanski turned from the officers, knocked some things off the counter and picked up a stapler.<sup>193</sup> He testified that Mr. Dziekanski turned toward the officers and held the stapler in an open position.<sup>194</sup> Cst. Millington testified that Mr. Dziekanski "held it up with one hand, fist with the other, and started to approach us with hands up, and I deployed the Taser at that point."<sup>195</sup> Cst. Millington testified that he was off to the side and Mr. Dziekanski approached either Cst. Rundel or Cpl. Robinson.<sup>196</sup> Cst. Millington testified that he formed the impression that Mr. Dziekanski wanted to attack one or all of the officers.<sup>197</sup>
108. It is submitted that Mr. Dziekanski did not advance on the officers, and Cst. Millington repeatedly misrepresented the fact that he did. It is apparent from the Pritchard video that Mr. Dziekanski did not make any forward movement. This conclusion is also supported by Mr. Jorssen's testimony.<sup>198</sup>
109. Cst. Millington misrepresented in his notes, in the statements he provided to IHIT, and the Form 3996 incident report the manner in which Mr. Dziekanski held the stapler. Cst. Millington stated in his notes that Mr. Dziekanski "motioned aggressively towards members" with the stapler. In a statement to IHIT he stated that Mr. Dziekanski had the stapler "raised high." Cst. Millington wrote in the Form 3996 incident report that Mr. Dziekanski "swung the stapler wildly with his arm at the members."<sup>199</sup>

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<sup>191</sup> Transcript, March 2, 2009, p.22 (Kwesi Millington).

<sup>192</sup> Transcript, March 2, 2009, p.19 (Kwesi Millington).

<sup>193</sup> Transcript, March 2, 2009, p.19 (Kwesi Millington).

<sup>194</sup> Transcript, March 2, 2009, p.19 (Kwesi Millington).

<sup>195</sup> Transcript, March 2, 2009, p.19 (Kwesi Millington).

<sup>196</sup> Transcript, March 2, 2009, p.23 (Kwesi Millington).

<sup>197</sup> Transcript, March 2, 2009, p.38 (Kwesi Millington).

<sup>198</sup> Transcript, Feb. 9, 2009. 103 (Robert Jorssen).

<sup>199</sup> Exhibit 54A.

110. It is apparent from the video that Mr. Dziekanski never raised the stapler above his shoulder. When questioned about the discrepancy between his statement “raised high” and the video, Cst. Millington struggled to explain:

- Q Someone reading the words, "had it raised high" with the video available, might say, "Where was it that he had it raised high." Can you find it on the video?
- A He had it above his waist, and that is what I used the word "high" for.
- Q You used the word "high" to refer to being above his waist?
- A Yes.<sup>200</sup>

111. Cst. Millington ultimately retracted the statement that Mr. Dziekanski swung the stapler wildly.<sup>201</sup> The discrepancy between his statement to IHIT and the Pritchard video cast doubt upon his credibility.

112. Cst. Millington testified that after he fired the first taser shot, he waited one second and then fired the taser again.<sup>202</sup> The second discharge commenced at the approximate moment when Mr. Dziekanski fell to the ground. Cst. Millington testified that he fired the second taser shot because he believed that after a person is tasered, the person should be immediately immobilized and fall to the ground instantaneously.<sup>203</sup> Due to the fact that Mr. Dziekanski did not fall to the ground immediately, Cst. Millington believed it was necessary to fire the taser again.<sup>204</sup> He stated that had he realized that Mr. Dziekanski was already on the ground after the first taser shot, he would not have immediately fired the taser again.<sup>205</sup> At the end of the second tasing, he realized Mr. Dziekanski was on the ground.<sup>206</sup>

113. In his notes and in statements to IHIT, Cst. Millington misrepresented Mr. Dziekanski's actions by stating that that Mr. Dziekanski had to be wrestled to the ground. In his first statement Cst. Millington stated: “[...] I deployed the taser at this point and eventually we were able to wrestle him to the ground.”<sup>207</sup> He also stated in the same statement, “Uh, well he seemed to feel the effects of the taser but he didn't fall due to that. Members had to wrestle him to the ground.”<sup>208</sup> In his second statement, Cst. Millington used the same language: “Once [the taser cycle] stopped he, the members moved in because he hadn't gone to the ground, and were [sic] able to wrestle him to the ground.”<sup>209</sup>

114. In Cst. Millington's notes, he stated “Taser deployed and cycled 3 times. Male did not go down – stayed on feet until members (4) wrestled to ground.”<sup>210</sup> In the Form 3996 report he wrote, Cst. Millington stated “The CEW was cycled once for the full 5

<sup>200</sup> Transcript, March 2, 2009, p.39 (Kwesi Millington).

<sup>201</sup> Transcript, March 2, 2009, p.69 (Kwesi Millington).

<sup>202</sup> Transcript, March 2, 2009, p.2-25 (Kwesi Millington).

<sup>203</sup> Transcript, March 2, 2009, p.25 (Kwesi Millington).

<sup>204</sup> Transcript, March 2, 2009, p.25 (Kwesi Millington).

<sup>205</sup> Transcript, March 2, 2009, p.94 (Kwesi Millington).

<sup>206</sup> Transcript, March 2, 2009, p.25 (Kwesi Millington).

<sup>207</sup> Exhibit 55, p.1 (Kwesi Millington).

<sup>208</sup> Exhibit 55, p.4 (Kwesi Millington).

<sup>209</sup> Exhibit 56 p.14 (Kwesi Millington).

<sup>210</sup> Exhibit 54A.

seconds, which stopped the male from moving, but he continues to walk towards members with his arms raised once the cycle was completed.”<sup>211</sup> Under questioning by Commission Counsel, Cst. Millington stated that all the representations he made that Mr. Dziekanski had to be wrestled to the ground were made in error.<sup>212</sup> The fact that the errors that Cst. Millington made tended to justify his actions seriously undermined his credibility.

115. Cst. Millington testified that two officers attempted to handcuff Mr. Dziekanski, and Mr. Dziekanski was kicking and struggling.<sup>213</sup> Cpl. Robinson ordered Cst. Millington to “hit him again,” so Cst. Millington fired the third taser shot. It was the first order Cst. Millington received to fire the taser.
116. Cst. Millington testified that he heard a sound of “clacking” which he interpreted to mean that the electrical current of the taser had not made a proper connection with Mr. Dziekanski’s body.<sup>214</sup> Cst. Millington testified that he believed that the sound, combined with the fact that Mr. Dziekanski was still struggling, indicated that the taser was not making any connection with Mr. Dziekanski.<sup>215</sup> Cst. Millington took off the taser cartridge at that point and used the taser in push-stun mode. He applied the taser in push-stun mode to Mr. Dziekanski’s rear shoulder area in an attempt to get Mr. Dziekanski to comply through the application of pain stimulus. He did not tell anyone that he was doing this, and he doesn’t remember how long he applied the current to Mr. Dziekanski.
117. Cst. Millington testified that although the taser download report indicates that the trigger was pulled for nine seconds, the electrical current was not in contact with Mr. Dziekanski for nine seconds.<sup>216</sup> He further testified that he heard the clacking noise again which indicated that the taser was not working. Cst. Millington only remembers deploying the taser four times and testified that he was surprised that the taser was deployed a fifth time.<sup>217</sup>
118. After watching the video and listening to an enhanced audio version of the video, Cst. Millington testified that during the period of the fifth deployment, which lasted six seconds, he could hear the clacking noise for the entire period. He stated “[...]I could hear clacking for the entire time that he was - that the last deployment was -- was done, which indicates to me that I may have been holding the trigger, but it definitely was not in contact with him.”<sup>218</sup>

#### **4. Evidence of Cpl. Robinson**

119. Cpl. Robinson was the senior commanding officer at the scene. He was the highest ranking officer and also had the most experience. Cpl. Robinson had been an RCMP

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<sup>211</sup> Exhibit 57.

<sup>212</sup> Transcript, March 2, 2009, p.36 (Kwesi Millington).

<sup>213</sup> Transcript, March 2, 2009, p.25 (Kwesi Millington).

<sup>214</sup> Transcript, March 2, 2009, p.25-26 (Kwesi Millington).

<sup>215</sup> Transcript, March 2, 2009, p.26 (Kwesi Millington).

<sup>216</sup> Transcript, March 2, 2009, p.26 (Kwesi Millington).

<sup>217</sup> Transcript, March 2, 2009, p.45 (Kwesi Millington).

<sup>218</sup> Transcript, March 2, 2009, p.27 (Kwesi Millington).

member since 1996,<sup>219</sup> and received Taser training in March of 2003.<sup>220</sup> In March of 2006, his training expired, and he was required to re-train in order to be able to use a Taser. He did not re-train until November 2007.

120. Cpl. Robinson testified that he heard a bystander state that Mr. Dziekanski spoke Russian<sup>221</sup> and he was aware that there was a language barrier.
121. Incredibly, the fact that Mr. Dziekanski didn't speak English, was standing close to luggage and was in the international section of the airport in an area that could only be accessed from the customs area of the airport did not lead Cpl. Robinson to conclude that Mr. Dziekanski had likely arrived by airplane from outside Canada.<sup>222</sup> He stated that he was unable to immediately make the determination.<sup>223</sup> However, the fact that Mr. Dziekanski was in the secure area of the airport, which a person can only access after going through screening, did lead Cpl. Robinson to conclude that Mr. Dziekanski probably did not have a weapon, such as a gun, on him.<sup>224</sup>
122. Cpl. Robinson testified that there was no reason for him to conclude that Mr. Dziekanski might be a person who was tired because of travel.<sup>225</sup>
123. Cpl. Robinson testified that Cst. Bentley was the first person to interact with Mr. Dziekanski. He stated something to the effect of "How's it going, bud? How you doing, sir?"<sup>226</sup> Cpl. Robinson testified that he paused to put on his gloves before climbing over the railing; Cst. Bentley and Cst. Millington were already talking to Mr. Dziekanski when he arrived next to Mr. Dziekanski.
124. In statements to IHIT investigators, Cpl. Robinson described Mr. Dziekanski's demeanour from his first contact with Mr. Dziekanski until Mr. Dziekanski started moving away from the luggage to the counter as being "agitated," "pissed off" and "wired up." In cross-examination by counsel for the Government of Poland, Cpl. Robinson admitted that Mr. Dziekanski was calm.<sup>227</sup>
125. He initially let the other officers interact with Mr. Dziekanski. He was not aware that Cst. Millington requested that Mr. Dziekanski produce his passport and identification. He observed Mr. Dziekanski reach down toward his luggage; when Mr. Dziekanski moved toward his luggage Cpl. Robinson stepped in because he "noted a potentially dangerous situation" and thought it was unwise to have Mr. Dziekanski go into his luggage.<sup>228</sup> Cpl. Robinson said "No. Stop."<sup>229</sup> Cpl. Robinson testified that Mr. Dziekanski complied with the order and stopped going toward his luggage.<sup>230</sup>

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<sup>219</sup> Transcript, March 23, 2009, p.2 (Monty Robinson).

<sup>220</sup> Transcript, March 23, 2009, p.7 (Monty Robinson).

<sup>221</sup> Transcript, March 23, 2009, p.13 (Monty Robinson).

<sup>222</sup> Transcript, March 23, 2009, p.19 (Monty Robinson).

<sup>223</sup> Transcript, March 23, 2009, p.19 (Monty Robinson).

<sup>224</sup> Transcript, March 23, 2009, p.19 (Monty Robinson).

<sup>225</sup> Transcript, March 23, 2009, p.20 (Monty Robinson).

<sup>226</sup> Transcript, March 23, 2009, p.15 (Monty Robinson).

<sup>227</sup> Transcript, March 25, 2009, p.16 (Monty Robinson).

<sup>228</sup> Transcript, March 23, 2009, p.23 (Monty Robinson).

<sup>229</sup> Transcript, March 23, 2009, p.23 (Monty Robinson).

<sup>230</sup> Transcript, March 25, 2009, p.16 (Monty Robinson).

126. Cpl. Robinson testified that he also made a motion for Mr. Dziekanski to calm down.<sup>231</sup> The calming motion that Cpl. Robinson made is not visible on the video. Cpl. Robinson described the hand gestures he alleged that he made in some detail while he was being cross examined by counsel for the Government of Poland. Cpl. Robinson testified that he made a downward waving motion with his hand to communicate that Mr. Dziekanski should calm down. To communicate that Mr. Dziekanski should place his hands on the counter, Cpl. Robinson placed his hands flat in the air, palms down, and then pointed to the counter.<sup>232</sup>
127. He then motioned with his finger and hands for Mr. Dziekanski to go to the counter and to put his hands on the counter.<sup>233</sup> Cpl. Robinson testified that he also verbally ordered Mr. Dziekanski to "calm down" and to "put your hands on the counter." He admitted that because the commands were in English, Mr. Dziekanski would have been unable to understand the commands.<sup>234</sup> Cpl. Robinson stated:

And at that point when I motioned, or I had my hand out and I thought I made it really clear in indicating just at the end of the counter where he was, because I just wanted him to put his hands there, then we can see what he's going for.

128. Mr. Dziekanski went to the counter, but Cpl. Robinson testified that he did not interpret Mr. Dziekanski to be complying with his order:

Q Yes. And you then ordered him to head to the counter, correct? You directed him to the counter.

A Yes, I directed him to the counter.

Q Yes. And as we observe the video and he's approaching the counter, he's, at that point in time, if we can freeze-frame just about that point, he is still in total compliance with every order that you gave to him; is that --

A No.

Q -- correct? Why do you say no?

A Because I -- I believe I put it clear where I wanted his hands, and he moved back a bit, so he didn't immediately go where I thought it was clear where I wanted his hands to go. So...

Q I see. This is new to me. You are saying that you wanted him to place his hands in a certain spot on the counter --

A Yes.

Q -- and he was not placing his hands at the spot that you wanted them placed; is that correct?

A Yes.<sup>235</sup>

<sup>231</sup> Transcript, March 23, 2009, p.23 (Monty Robinson).

<sup>232</sup> The description of the gestures was not stated for the record, however, counsel for the BCCLA was present during Cpl. Robinson's testimony. The discussion of the gestures occurs in the transcript, March 25, 2009, at p.17-20.

<sup>233</sup> Transcript, March 23, 2009, p.23 (Monty Robinson).

<sup>234</sup> Transcript, March 25, 2009, p.20-21 (Monty Robinson).

<sup>235</sup> Transcript, March 25, 2009, p.16-17 (Monty Robinson).

129. None of the other officers testified that Cpl. Robinson ordered Mr. Dziekanski to put his hands on the counter. In our submission, either Cpl. Robinson was unclear in expressing his command, or he did not, in fact, issue the command.
130. Cpl. Robinson testified that once Mr. Dziekanski reached the counter he swung around quickly and Cpl. Robinson noticed that there was something clenched in Mr. Dziekanski's fist.<sup>236</sup> He testified that Mr. Dziekanski raised his voice, and then raised it louder again. He made motions with his fist, which discharged a couple of staples.<sup>237</sup> It was at that point that Cpl. Robinson identified the object as a stapler.<sup>238</sup> Cpl. Robinson testified that Mr. Dziekanski started to advance toward the officers.<sup>239</sup> He advanced more than a foot.<sup>240</sup>
131. During the interviews, Cpl. Robinson misrepresented Mr. Dziekanski's behaviours and the manner in which events unfolded at the airport. Cpl. Robinson stated repeatedly to IHIT<sup>241</sup> that Mr. Dziekanski swung the stapler:

"[...] he grabbed the stapler and started swinging it at us."<sup>242</sup>

"[...] I remember telling Cst. Millington to deploy the taser cause he was um, swinging the stapler."<sup>243</sup>

"Um, he take, I remember him taking a step forward and then he was swinging the stapler and that's um, ah, like he's swinging the stapler like the um, up high and then he's just like he's swinging it um, to try to push us back or ah, an attempt to hit us."<sup>244</sup>

132. Cpl. Robinson's justification for stating that Mr. Dziekanski swung the stapler was wholly unsatisfactory:

Q When you said to Cpl. Teboul "swing stapler up high", do you see that?

A Yes.

Q When you say "up high", what did you mean?

A Shoulder, chest height.

Q That's what you call up high?

A Yes.

Q Okay. You did not intend that to mean about the shoulders?

A No.

<sup>236</sup> Transcript, March 23, 2009, p.24 (Monty Robinson).

<sup>237</sup> Transcript, March 23, 2009, p.24 (Monty Robinson).

<sup>238</sup> Transcript, March 23, 2009, p.24 (Monty Robinson).

<sup>239</sup> Transcript, March 23, 2009, p.31 (Monty Robinson).

<sup>240</sup> Transcript, March 23, 2009, p.31 (Monty Robinson).

<sup>241</sup> Cpl. Robinson gave two statements to investigators of IHIT. The first statement was taken October 14, 2007 at 5:45 am by Cpl. Dave Teboul. (Exhibit 64A.) The second statement was taken October 18, 2007 at 11:13 am by Cpl. Derek Brassington. (Exhibit 64B.)

<sup>242</sup> Exhibit 64A, p.9.

<sup>243</sup> Exhibit 64A, p.10.

<sup>244</sup> Exhibit 64A, p.11-12.

- Q Okay. And you said: Like he's swinging it, trying to push us back, an attempt to hit us.
- A Yes.
- Q Does the video show an attempt to hit you?
- A With a step forward, his moving forward.
- Q Right. No, I'm not inquiring about that. I'm asking about your language, your statement. Trying to push us back, an attempt to hit us. You see that in your statement?
- A Yes.
- Q You've read it. Does the video show an attempt to hit you?
- A It shows a step forward. It shows -- but an attempt to hit us? The whole interaction, the whole movement forward. But I agree, it's not articulated well, and I didn't articulate it that well that morning.<sup>245</sup>

133. Cpl. Robinson testified that he gave the first command to discharge the taser while Mr. Dziekanski was standing and before Cst. Millington fired the first taser shot.<sup>246</sup> Mr. Dziekanski did not immediately fall to the ground, so Cpl. Robinson ordered Cst. Millington to fire the taser again.<sup>247</sup> Cpl. Robinson testified that he also may have possibly issued a third command to taser Mr. Dziekanski. Cpl. Robinson did not know that the taser was used on Mr. Dziekanski five times; he thought Cst. Millington only discharged the taser twice. He did not know that it was used in push-stun mode.<sup>248</sup>

134. Like all the other officers, Cpl. Robinson told IHIT that the officers wrestled Mr. Dziekanski to the ground:

- Cpl. TEBOUL: Okay. How did he get to the ground?
- Cpl. Benjamin ROBINSON: Um, oh, he had to be wrestled to the ground. It wasn't where he -
- Cpl. TEBOUL: He didn't collapse on his own?
- Cpl. Benjamin ROBINSON: No.
- Cpl. TEBOUL: He had to be ah, physically ah, -
- Cpl. Benjamin ROBINSON: Yeah.
- Cpl. TEBOUL: brought down to the ground?
- Cpl. Benjamin ROBINSON: Yeah<sup>249</sup>

135. The discrepancy between Cpl. Robinson's statements to IHIT and the Pritchard video cast serious doubt upon his credibility.

#### **D. Expert Evidence Concerning the Actions of the RCMP**

136. In this section we will discuss the evidence given by experts that testified before the Commission about issues concerning the actions of the RCMP.

<sup>245</sup> Transcript, March 23, 2009, p.58-59 (Monty Robinson).

<sup>246</sup> Transcript, March 23, 2009, p.24 (Monty Robinson).

<sup>247</sup> Transcript, March 23, 2009, p.25 (Monty Robinson).

<sup>248</sup> Transcript, March 23, 2009, p.34 (Monty Robinson).

<sup>249</sup> Exhibit 64A, p.13-14.

## 1. Evidence of Sergeant Brad Fawcett

137. Sgt. Fawcett testified before the Commission as a use of force expert.<sup>250</sup> He testified that officers are trained to have one contact officer to deal with an individual, and that this is especially important when dealing with a distraught individual.<sup>251</sup> It is our submission that this protocol was not followed with Mr. Dziekanski, and this must have contributed to his confusion.
138. Sgt. Fawcett testified that after the taser was first deployed, Mr. Dziekanski yelled, and then collapsed to the ground near the end of the CED cycle.<sup>252</sup> Sgt. Fawcett testified that provided there was good probe contact, the ability shown by Mr. Dziekanski to move the distance he did before collapsing would be “atypical”.<sup>253</sup> But even if “atypical”, we submit that the Pritchard video makes it abundantly clear that the taser deployment had significant effect on Mr Dziekanski.
139. He further testified that multiple deployments of a taser are generally discouraged.<sup>254</sup>

## 2. Evidence of Corporal Gregg Gillis

140. Cpl. Gregg Gillis testified as an expert regarding use of force by police officers and the training that they receive regarding use of force.<sup>255</sup> He testified that he had trained three of the officers in the use of the taser, but not Cpl. Robinson.<sup>256</sup> He stated that it is a professional goal to try and resolve any given situation with a minimal amount of force.<sup>257</sup>
141. Cpl. Gillis testified that officers are trained that the standard method of taser deployment is to pull the trigger, release, and allow it to run its five-second course,<sup>258</sup> and that it would be an unusual circumstance in which the device would be deployed for longer than five seconds.<sup>259</sup> They are also taught that multiple deployments of the taser carried increased risk,<sup>260</sup> and that after using force there is a duty to provide after-care.<sup>261</sup>
142. Cpl. Gillis testified that the sound of the taser is important in gauging its effectiveness,<sup>262</sup> but the actions of the target would also be critical to the assessment process.<sup>263</sup> He testified that he told his trainees that the taser fails to work 20 percent of the time when in cartridge deployment mode, but when it does work, it “takes away

<sup>250</sup> Transcript, April 16, 2009, p.46 (Brad Fawcett).

<sup>251</sup> Transcript, April 16, 2009, p.37 (Brad Fawcett).

<sup>252</sup> Transcript, April 16, 2009, p.21 (Brad Fawcett).

<sup>253</sup> Transcript, April 16, 2009, p.67 (Brad Fawcett).

<sup>254</sup> Transcript, April 20, 2009, p.32 (Brad Fawcett).

<sup>255</sup> Transcript, May 11, 2009, p.52-53 (Gregg Gillis).

<sup>256</sup> Transcript, May 12, 2009, p.20 (Gregg Gillis).

<sup>257</sup> Transcript, April 23, 2009, p.14 (Gregg Gillis).

<sup>258</sup> Transcript, April 23, 2009, p.29 (Gregg Gillis).

<sup>259</sup> Transcript, April 23, 2009, p.30 (Gregg Gillis).

<sup>260</sup> Transcript, April 23, 2009, p.30 (Gregg Gillis).

<sup>261</sup> Transcript, April 23, 2009, p.32 (Gregg Gillis).

<sup>262</sup> Transcript, April 23, 2009, p.20 (Gregg Gillis).

<sup>263</sup> Transcript, April 23, 2009, p.21 (Gregg Gillis).

the person's ability to control themselves (sic) as they fall to the ground."<sup>264</sup> Cpl. Gillis later testified that, assuming everything was working perfectly, the most common response to deployment is for the subject to fall immediately to the ground, but that he taught officers that people react differently to taser deployments.<sup>265</sup> We submit that the lack of control and ultimate fall of Mr. Dziekanski, while perhaps not typical, would seem to fit within Cpl. Gillis' general description of the effects of taser deployment.

### **3. Evidence of Constable Craig Baltzer**

143. Cst. Baltzer testified as an expert in the use of the taser and in instructing on the use of the taser to police officers. He testified that people can react differently to tasing; some people might just drop to the ground, and others may take a step before falling. He testified that when training officers in the use of the taser, he didn't train them to expect people to drop "like a sack of potatoes."
144. Constable Baltzer testified that there was no question that Mr. Dziekanski was feeling the effects of the taser as he was turning on the ground. He further testified that while under the effects of the taser, one's conscious mind is still working, but that that one is unable to control one's body. In our submission, Mr. Dziekanski's movements on the ground were at least to some extent beyond his control, and to characterize his actions as "resistant" would be inaccurate.

### **4. Orville Nickel**

145. Mr. Nickel testified as a use of force expert. He testified that once the four officers had Mr. Dziekanski surrounded, they had an opportunity to slow things down and try to negotiate.<sup>266</sup> He also testified that at any time, there are alternative, lesser levels of force, and that those lesser levels have to be examined and used if at all possible.<sup>267</sup> He testified that he didn't see any evidence that indicated there was a need to rush when dealing with Mr. Dziekanski.<sup>268</sup>

### **5. Evidence of Grant Federicks, Duane MacInnis, Mark Hird-Rutter**

146. Several witnesses were called to testify as to whether Mr. Dziekanski took steps towards the officers seconds before he was hit with the first of five taser shots.
147. Mr. Fredericks, a forensic video analyst, testified that he was able to determine that Mr. Dziekanski moved forward between 00:03:46:24 ("Image A" in Mr. Fredericks' report) and 00:03:49:21 ("Image B" in Mr. Fredericks' report) on the digital video timeline.<sup>269</sup> Despite a lack of expertise in biomechanics, he observed the movement of Mr. Dziekanski's shoulders during this time as being consistent with walking.<sup>270</sup>

<sup>264</sup> Transcript, April 23, 2009, p.83-84 (Gregg Gillis).

<sup>265</sup> Transcript, April 23, 2009, p.47 (Gregg Gillis).

<sup>266</sup> Transcript, May 22, 2009, p.44 (Orville Nickel).

<sup>267</sup> Transcript, May 22, 2009, p.47 (Orville Nickel).

<sup>268</sup> Transcript, May 22, 2009, p.58 (Orville Nickel).

<sup>269</sup> Transcript, May 25, 2009, p.24 (Grant Fredericks); see also Exhibit 158, p.15.

<sup>270</sup> Transcript, May 25, 2009, p.33 (Grant Fredericks).

148. The fatal error in Mr. Fredericks' analysis, as unequivocally described by both Mr. MacInnis and Mr. Hird-Rutter, was that he used only one point of measurement on Mr. Dziekanski's body.<sup>271</sup> In order to determine if an object is growing or shrinking, at least two fixed points on the object must be identified in each image. Without this, no meaningful measurements can be made.<sup>272</sup>
149. In addition to this primary error, several other problems with Mr. Fredericks' methodology were described. Mr. MacInnis indicated that the movement of Mr. Dziekanski's collar could be due to the independent movement of his shoulders. Image A catches his shoulders at a high point and image B catches his shoulders at a low point. This selection of reference points means the movement of Mr. Dziekanski's collar could be due to his vertical motion alone.<sup>273</sup> Mr. Hird-Rutter questioned the accuracy of selecting a single pixel to denote the boundary of an object. This introduces an error of  $\pm 2$  pixels which should have been (but was not) carried through Mr. Fredericks' analysis.<sup>274</sup> Mr. MacInnis calculated that even if the methodology and measurements used by Mr. Fredericks were correct, the true margin of error would be about 26.7%.<sup>275</sup>
150. Mr. Hird-Rutter noted that several pieces of information vital to drawing accurate conclusions were not known nor taken into account. Among these were the focal length, perspective centre, lens distortion, position, and orientation of the camera.<sup>276</sup> Under cross examination, Mr. Fredericks acknowledged that knowing the height of the camera relative to the collar was critical to reach a valid conclusion, and that this information was unknown.<sup>277</sup>
151. Even if these secondary errors are ignored, the only valid conclusion in Mr. Fredericks' report is that Mr. Dziekanski's collar moved down during the three seconds in question. But as Mr. MacInnis and Mr. Hird-Rutter point out, this observation is consistent with Mr. Dziekanski having moved forward, backward, downward, or even not at all.<sup>278</sup> The claim that Mr. Dziekanski took three steps forward is simply not supported by the expert evidence provided. It is also refuted by the testimony of Robert Jorssen, a civilian employee of the RCMP.<sup>279</sup>

## **E. Discussion of the the Actions of the RCMP and the Tasering of Mr. Dziekanski**

### **1. The Officers' Initial Interpretations of Mr. Dziekanski's Behaviour**

152. When the officers arrived at the airport, the officers formed divergent interpretations of Mr. Dziekanski's behaviour. The various officers initially described Mr. Dziekanski as

<sup>271</sup> Exhibit number 159A, p.10; Transcript, May 26, 2009, p. 3-4 (Duane MacInnis).

<sup>272</sup> Exhibit number 159A, p.10.

<sup>273</sup> Exhibit number 160A, p.6,7.

<sup>274</sup> Exhibit number 159A, p.8.

<sup>275</sup> Exhibit number 160A, p.5,6.

<sup>276</sup> Exhibit number 159A, p.5&7.

<sup>277</sup> Transcript, May 25, 2009, p.81 (Grant Fredericks).

<sup>278</sup> Exhibit number 159A, p.10; Exhibit number 160A, p.7.

<sup>279</sup> Transcript, Feb. 9, 2009. P.103 (Robert Jorssen).

wide-eyed, unkempt, sweaty, agitated, or as calm and relaxed. Mr. Dziekanski was standing in an area that can only be accessed from the Canada Customs exit, was standing next to luggage, and did not speak English, yet the officers did not surmise that Mr. Dziekanski might be a person who was tired because of travel, or that Mr. Dziekanski had likely arrived by airplane from some other country.<sup>280</sup>

153. Despite the fact that four officers were present at the scene, not one of the officers made reasonable efforts to obtain information about Mr. Dziekanski from people in the vicinity. From the time they entered the airport, until the time they reached the railing, they did not question any individuals in order to ascertain the cause of Mr. Dziekanski's behaviour or to determine whether Mr. Dziekanski posed a physical safety risk. Nor did the officers make a concerted effort to engage Mr. Dziekanski in conversation or to determine the reasons for his distress.
154. Cst. Bentley seemed to take the most extreme view of Mr. Dziekanski's behaviour. He testified that his initial assessment of Mr. Dziekanski was that he was "waiting to fight." It is our submission that Cst. Bentley's interpretation of Mr. Dziekanski's behaviour as combative was categorically wrong. (Furthermore, it should be noted that Cst. Bentley's own testimony on this point was internally inconsistent; he also testified that Mr. Dziekanski seemed calm.) There was nothing in Mr. Dziekanski's immediately apparent behaviour, in his personal history, or in his recent actions in the airport, that would have suggested that he was looking for a fight with four armed RCMP officers. Cst. Bentley based his assessment on a limited amount of information, namely the dispatch information he had received that a male was causing property damage and the observation that Mr. Dziekanski appeared distressed and confused. Nonetheless, even based on this limited information, it was unreasonable for Cst. Bentley to conclude that Mr. Dziekanski was going to be combative. Given the totality of the circumstances, it was not reasonable to perceive that Mr. Dziekanski posed a threat to the safety of the officers or to the public.

## **2. The Officers' Aborted Attempts to Communicate with Mr. Dziekanski**

155. In their initial dealings with Mr. Dziekanski, the officers failed to communicate clearly with Mr. Dziekanski and gave him conflicting orders. The officers failed to communicate with each other and failed to coordinate their actions. Nonetheless, based on a review of the Pritchard video and a comparison of the officers' various testimony, it is our submission that despite language barriers and fatigue, Mr. Dziekanski was attentive and responsive to all the officers' requests and commands.
156. Cst. Bentley was the first officer to communicate with Mr. Dziekanski. Cst. Bentley, the only officer who was unaware that Mr. Dziekanski did not speak English, asked Mr. Dziekanski questions in English to the effect of "Hi, how are you, sir?" Unsurprisingly,

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<sup>280</sup> Cpl. Robinson was directly questioned if he considered at the time that that Mr. Dziekanski might be a person who was tired because of travel, or that Mr. Dziekanski had likely arrived from an airplane from outside of Canada. The other officers were not asked these questions, but we can safely surmise that due to the fact that they did not volunteer this information during days of questioning, it was not on their minds when they initially approached Mr. Dziekanski.

Mr. Dziekanski did not respond to a question asked in a language he did not speak. Cst. Millington immediately asked Mr. Dziekanski for his passport and identification. Cst. Millington's testimony that he asked for identification is supported by the testimony of Cst. Bentley, who recalled that Cst. Millington said something to Mr. Dziekanski that he could not remember. The Pritchard video also supports the finding that Cst. Millington asked for Mr. Dziekanski's passport, because it shows Cst. Millington standing next to Mr. Dziekanski and speaking to him. The testimony of two eyewitnesses further supports the finding that Cst. Millington asked Mr. Dziekanski for his passport.<sup>281</sup>

157. However, in what would become a sad and ultimately tragic refrain, not all of the officers were not alert to what was transpiring. Cst. Bentley was aware that Cst. Millington was speaking to Mr. Dziekanski, but he was not aware that Cst. Millington was asking for his passport. Two other officers completely failed to notice Cst. Millington's actions: Cst. Rundel and Cpl. Robinson were unaware that Cst. Millington ordered Mr. Dziekanski to produce his passport.
158. Cst. Millington testified that Mr. Dziekanski did not seem to understand the command to retrieve his passport. However, it is our submission that Mr. Dziekanski did understand the command, perhaps due to the fact that the word passport is internationally recognizable. In an attempt to comply with the command, Mr. Dziekanski began to reach toward his luggage, where his passport and immigration papers were located. Mr. Dziekanski was standing in an area that individuals enter after passing through passport control; it would have been reasonable for the officers to assume that Mr. Dziekanski would have put his passport back in his luggage for safekeeping, as many passengers do.
159. The assertion that Mr. Dziekanski reached toward his luggage is supported by the Pritchard video and the testimony of Cst. Rundel and Cpl. Robinson. The Pritchard video indicates that Mr. Dziekanski made a small movement toward his luggage. Cst. Rundel testified that Mr. Dziekanski made a motion of bending down toward his luggage. Cpl. Robinson also observed Mr. Dziekanski reach toward his luggage.
160. Again, two of the officers were not alert to what was transpiring: Cst. Bentley and Cst. Millington were unaware that Mr. Dziekanski reached toward his luggage.
161. As Mr. Dziekanski reached toward his luggage, Cpl. Robinson took over command of the situation and ordered Mr. Dziekanski to stop.<sup>282</sup> That Cpl. Robinson ordered Mr. Dziekanski to stop reaching toward his luggage is supported by Cpl. Robinson's own testimony and that of Cst. Rundel. According to Cst. Rundel, the command was given in a loud, stern, authoritative voice.

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<sup>281</sup> Transcript, Feb. 3, 2009, pp.48 & 114 (Lorne Meltzer); Transcript, Feb. 4, 2009, p.4 (Lorne Meltzer); Transcript, Feb. 5, 2009, pp.97-8 (Alison Kula); Transcript, Feb. 9, 2009, pp.1,4,25 (Alison Kula).

<sup>282</sup> Nearly simultaneously, Cst. Millington began miming on his hand a gesture meant to indicate writing on a piece of paper, and by inference, passport and identification. The gesture is visible on the Pritchard video. However, unbeknownst to Cst. Millington, the gesture was unnecessary because Mr. Dziekanski had already understood the command to fetch his papers and was complying.

162. Again, not all of the officers were aware of what was transpiring: Cst. Bentley did not hear Cpl. Robinson's command, nor did Cst. Millington. Cst. Bentley recalled that Cpl. Robinson said something to Mr. Dziekanski, but he could not recall what it was that he said. Cpl. Robinson and Cst. Rundel were aware of the fact that an order was given and both observed that Mr. Dziekanski complied with the order: Mr. Dziekanski stopped reaching toward his luggage. However, the other two officers, who were unaware that a command had been given, misinterpreted Mr. Dziekanski's subsequent actions.
163. The next command that was given was also issued by Cpl. Robinson. Cpl. Robinson pointed toward the counter in order to command Mr. Dziekanski to move away from his luggage. His gesture is visible on the Pritchard video and was viewed by Cst. Bentley. Again, not all of the officers realized what was occurring: neither Cst. Rundel nor Cst. Millington testified to having noticed the gesture. Cpl. Robinson testified that he also asked Mr. Dziekanski to place his hands on the counter. Even if Cpl. Robinson is to be believed on this point, and there are serious doubts as to the credibility of his assertion, Cpl. Robinson was aware that Mr. Dziekanski did not speak English, and should have known that it likely would have been impossible for Mr. Dziekanski to understand a command of that complexity.
164. Once again, Mr. Dziekanski complied with the command to go to the counter. He raised his hands, perhaps as if to say, "have it your way," or "okay, no need to shout," and moved toward the counter. At this point, despite the fact that Mr. Dziekanski had complied with every command he had been given, the officers incorrectly interpreted Mr. Dziekanski's behaviour as, variously, defiant, non-compliant, and resistant. For the first time, all the officers had the same perception of the event, but tragically, all the officers' perception of the situation were grossly at variance with the reality of the situation.
165. It is incontrovertible that once Mr. Dziekanski reached the counter, he grabbed a stapler. The officers interpreted the stapler as a weapon that Mr. Dziekanski intended to use against them. However, there are other equally plausible explanations for why Mr. Dziekanski grabbed a stapler. Cst. Millington testified Mr. Dziekanski bumped the counter as he turned away from the officers and knocked some things off the counter. Perhaps Mr. Dziekanski sought to catch the stapler as it was about to fall. Or perhaps he simply absent mindedly clung to an item in front of him. After all, Mr. Dziekanski was undoubtedly exhausted after hours of travel, and by this point, may have been confused by the contradictory commands and the harsh voices of police. We will never know for sure.
166. But we do know that by this time, due to a devastating failure of communication and a total absence of coordination amongst the officers, the officers had already misinterpreted Mr. Dziekanski's actions, and they had each failed to observe the actions and commands of their fellow officers. In fact, Mr. Dziekanski seemed to be the only person who was attentive to their contradictory commands. The officers' minds had turned from viewing the situation calmly and objectively; they ceased trying to communicate with Mr. Dziekanski. The officers became gripped by fear and panic, and perhaps, motivated by a desire to be obeyed.

167. It is our submission that Cpl. Robinson is largely responsible for changing the tenor of the interaction and needlessly aggravated a peaceful situation. Until he barked his command to stop and aggressively pointed Mr. Dziekanski toward the counter, there was still some possibility that the officers would not feel the need to resort to force.
168. In summary, in the officers' first 25 seconds of interaction with Mr. Dziekanski the various officers issued at least three separate commands; each officer believed that compliance would entail a different response. At any given moment, less than half of the officers were aware that a command had even been given. The actions of the officers would constitute a farce had their ineptitude not resulted in such a tragedy.

### **3. The First Taser Deployment**

169. The justification that the officers have offered for the first deployment of the taser was the perception that Mr. Dziekanski was armed with a stapler and preparing to attack. It is submitted that the Pritchard video does not support the officers' version of events, and that the officers' testimony concerning Mr. Dziekanski's movements and actions once he was holding the stapler are not tenable and should be discounted.
170. The officers have offered various and conflicting accounts of the movements Mr. Dziekanski made with the stapler and whether Mr. Dziekanski advanced upon the officers. The fact that the officers initially exaggerated and misstated Mr. Dziekanski's actions does not help their credibility. It is our submission that the officers placed a self-serving and misleading interpretation on their evidence concerning the stapler in order to justify their actions and those of their fellow officers.
171. The most impartial and inarguable evidence that should be relied upon is the objective view of the events portrayed in the Pritchard video. It is our submission that a clear viewing of the Pritchard video indicates that Mr. Dziekanski did not wave the stapler, did not raise the stapler, and did not swing the stapler across his chest. Quite simply, Mr. Dziekanski held the stapler in his hand. Mr. Dziekanski did not advance on the officers. He stood in place. Mr. Dziekanski's behaviours did not constitute a threat to the safety of Cst. Millington or the safety of the other officers. Given the totality of the circumstances, it is our submission that Cst. Millington deployed the taser against Mr. Dziekanski when use of the taser was not justified.

### **4. The Subsequent Taser Deployments**

172. It is our submission that because the first taser deployment was unjustified, it inexorably follows that each subsequent taser deployment was an unreasonable and unjustifiable use of force. However, in the alternative, should the Commissioner find that Cst. Millington was justified in deploying the taser, it is our submission that each of the following deployments were unreasonable and unjustifiable uses of force.
173. At the end of the first taser deployment, Mr. Dziekanski was screaming in agony and was either already on the floor or was commencing his fall to the floor. Cst. Millington testified that he was surprised that Mr. Dziekanski was not immediately immobilized by the taser; he testified that he heard a sound that he thought indicated ineffective

deployment. Counsel for Cst. Millington questioned Cst. Millington about what could be heard of the taser deployments on the audio recording of the Pritchard video. Experts testified as to whether the sounds of the taser deployment indicated an incomplete electrical connection. Not surprisingly, given the poor quality of this recording, these areas of examination did not provide much consistent or reliable evidence.

174. There was ample evidence that Mr. Dziekanski was severely affected by the taser – the Pritchard video clearly indicates that he screamed in agony and fell to the floor after the first taser deployment. Regardless of what the officers expected the taser to do, there can be no doubt that the first taser deployment fulfilled its purpose: it brought Mr. Dziekanski to the ground and allowed the officers to handcuff him.

## **VI. The Failure of the RCMP to Provide Adequate Medical Treatment**

175. The Pritchard video provided some evidence of the medical treatment Mr. Dziekanski received while in the care of the RCMP after he was tasered and handcuffed. This evidence was limited due to the short amount of time that was recorded, and because of Mr. Dziekanski's location behind the officers, which restricted what was caught on camera. Accordingly, the evidence of medical treatment from the Pritchard video must be supplanted by the testimony of the numerous eyewitnesses who observed Mr. Dziekanski between the time he was tasered and the time the first responders, Richmond Fire and Rescue (RFR), arrived.
176. The evidence afforded by the Pritchard footage, in conjunction with the eyewitness testimony, clearly shows that the care Mr. Dziekanski received from the officers was deficient.
177. Although Mr. Dziekanski was monitored by Trevor Enchelmaier, the Securiguard supervisor, Mr. Enchelmaier testified that he never told any of the officers about his first aid training or background, during or prior to the incident.<sup>283</sup> Accordingly, it was entirely inappropriate for the officers to allow him to attend to, and take primary responsibility for, Mr. Dziekanski's medical condition.
178. Not only did the officers provide Mr. Dziekanski with inadequate care, but Cpl. Robinson obstructed the efforts of the first responders on the scene, RFR, by refusing to remove Mr. Dziekanski's handcuffs.

### **A. The Pritchard Video**

179. A detailed review of the Pritchard footage from the time Mr. Dziekanski stopped moving until the end of the third video showed that none of the officers properly monitored Mr. Dziekanski's airway, breathing, and circulation (ABC's) during this time.
180. Pritchard video #2 showed that Mr. Dziekanski stopped moving at approximately 5:25, after he was handcuffed. At this point, Cpl. Robinson appeared to be leaning over Mr. Dziekanski, holding his arms, and looking down at him. The other three officers were

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<sup>283</sup> Transcript, Feb. 17, 2009, p.45 (Trevor Enchelmaier).

in the close vicinity. Cst. Rundel appeared to be holding onto Mr. Dziekanski's cuffed hands, Cst. Millington appeared to be holding onto Mr. Dziekanski's legs before he stood up, and Cst. Bentley stood, looking down at Mr. Dziekanski.

181. Other than Cpl. Robinson, none of the officers were in a location from which they could monitor Mr. Dziekanski's ABC's at this time. Neither Cst. Rundel nor Cst. Millington repositioned themselves to be able to do so for the remainder of the footage on video #2.
182. Cpl. Robinson was visible between 5:25 and 5:35 on the video, remaining in essentially the same position over top of Mr. Dziekanski, looking down at him. Cpl. Robinson's arms and head did not appear to move in a significant way at all in this ten second interval. While Cpl. Robinson might have been able to look at Mr. Dziekanski's body to ascertain if he was breathing at this point, his position was inconsistent with monitoring Mr. Dziekanski's airway, listening for breathing, or checking for a pulse.
183. Between 5:35 and 5:51, the view of Mr. Dziekanski's upper body was almost completely blocked by the Securiguard employee standing in front of the glass wall. However, until approximately 5:46, when Cpl. Robinson appeared to shift his weight off of the top of Mr. Dziekanski, Cpl. Robinson did not appear to move at all. In particular he did not appear to lean over and assess Mr. Dziekanski's ABC's.
184. At 5:51 the Pritchard video shows a Securiguard employee crouched down, providing a partial view of the goings on at Mr. Dziekanski's torso. At the same time, Cst. Bentley knelt down opposite Cpl. Robinson, on the other side of Mr. Dziekanski. Cst. Bentley briefly leaned over and looked at Mr. Dziekanski between 5:52 and 5:53. His movement was not consistent with checking Mr. Dziekanski's airway, listening or feeling for breathing, or feeling for a pulse.
185. Between 5:48 and 5:51 when he again became clearly visible on the footage, Cpl. Robinson did appear to lean over Mr. Dziekanski. However, three seconds is clearly insufficient to properly assess ABC's.
186. Between 5:51 and 5:54, Cpl. Robinson was turned away from Mr. Dziekanski's torso, having a conversation with Cst. Millington. His position was inconsistent with checking Mr. Dziekanski's ABC's.
187. Pritchard video #2 ends at 5:54.
188. At the beginning of Pritchard video #3, Mr. Dziekanski did appear to be in a slightly different position. At the end of the second video, he appeared to be flat on his stomach. At the beginning of the third video, he appeared to be positioned slightly on his right side. This suggests that he was moved in the interim timeframe that was not caught on camera.
189. Even though he was moved, a detailed review of Pritchard video #3 similarly shows that Mr. Dziekanski was not properly assessed or monitored by the RCMP in the timeframe captured by the recording.

190. Throughout the entirety of Pritchard video #3, Constables Rundel and Millington were not in a position from which they could properly assess or monitor Mr. Dziekanski's ABC's.
191. Cst. Bentley knelt down next to Mr. Dziekanski at the beginning of Pritchard video #3, and then again at approximately 0:42, but Cst. Bentley certainly did not properly assess or monitor Mr. Dziekanski's ABC's in the one minute and six second timeframe captured by this footage.
192. Cst. Bentley's movements were not consistent with a thorough, proper evaluation of Mr. Dziekanski's airway, breathing, and circulation, as he mostly just looked at Mr. Dziekanski. Although at one or two points he appeared to put his hand on Mr. Dziekanski's arm, at no time did Cst. Bentley remove his black leather gloves.
193. This leaves Cpl. Robinson. At the commencement of Pritchard video #3, until approximately 0:09, Cpl. Robinson was leaning over Mr. Dziekanski. While he was not wearing a glove on his right hand at this time, his hands were moving about so much that he could not have been properly assessing Mr. Dziekanski's pulse at this time.
194. Between 0:09 and 0:16, Cpl. Robinson leaned back from Mr. Dziekanski and put his glove back on. He then leaned in to Mr. Dziekanski again until 0:27. For almost the entire time he leaned in, Cpl. Robinson's right hand was on the floor next to Mr. Dziekanski's head, and his left hand appeared to be on Mr. Dziekanski's arm or shoulder. From this position Cpl. Robinson could not properly assess or monitor Mr. Dziekanski's ABC's.
195. Cpl. Robinson again leaned in to Mr. Dziekanski from approximately 0:31 to 0:39. His leather glove was still on his right hand, and the position of his right hand was not consistent with checking Mr. Dziekanski's pulse. His left hand appeared to be by Mr. Dziekanski's hip.
196. Mr. Enchelmaier reached down from where he was standing, watching what was taking place, and took Mr. Dziekanski's pulse between approximately 0:43 and 0:50. This further suggests that from the commencement of the footage until this point, no one had properly checked Mr. Dziekanski's pulse.
197. While Mr. Enchelmaier took Mr. Dziekanski's pulse, Cpl. Robinson sat back, with his hands on his hips. At 0:52, Cpl. Robinson again leaned over Mr. Dziekanski, until 0:56. His left hand was in a position such that he could have been taking Mr. Dziekanski's pulse for these few seconds, but it appeared to be gloved at this time which would render a proper pulse check impossible.<sup>284</sup>
198. The remaining actions of the RCMP that were caught on the Pritchard video show Cpl. Robinson, then Cst. Bentley, then Cst. Millington with their hands on Mr. Dziekanski's torso, looking down at him. They did not appear to move Mr. Dziekanski at all in the remaining footage.

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<sup>284</sup> Transcript, Feb. 16, 2009, p.86 (Trevor Enchelmaier).

## B. The Officers' Testimony

199. Cst. Rundel testified that shortly after Mr. Dziekanski was handcuffed, Cst. Rundel left the IRL to retrieve hobbles from his police vehicle.<sup>285</sup> Between the time Cst. Rundel returned from getting the hobbles and the time RFR arrived, Cst. Rundel testified that he did not observe any police officer checking the pulse of Mr. Dziekanski.<sup>286</sup>
200. Cst. Rundel testified that he personally checked Mr. Dziekanski's breathing on one occasion after he returned with the hobbles; at that time he heard Mr. Dziekanski snoring.<sup>287</sup> He did not observe any other police officer check Mr. Dziekanski's breathing.<sup>288</sup> He estimated that he checked Mr. Dziekanski's breathing approximately two minutes before RFR arrived, but stated he could not be certain that that was the correct timing.<sup>289</sup>
201. Cst. Bentley testified that after Mr. Dziekanski was handcuffed, he initially called for a "routine" ambulance because Mr. Dziekanski was conscious and breathing.<sup>290</sup> Cst. Bentley testified that Mr. Dziekanski lost consciousness approximately five to ten seconds<sup>291</sup> after being handcuffed, but he did not feel it was necessary to upgrade the ambulance call to Code 3, which calls for emergency lights and sirens.<sup>292</sup>
202. Cst. Bentley testified that shortly after his initial call, Cst. Bentley noticed that Mr. Dziekanski's face had turned blue, at which point he called for a Code 3. Cst. Bentley testified that he had received no training to determine whether or not an unconscious subject requires a Code 3 response.<sup>293</sup> He further testified that he did not recall discussing the blue discoloration with his fellow officers.<sup>294</sup> Cst. Bentley also stated that he saw no RCMP member check Mr. Dziekanski's pulse or breathing.<sup>295</sup>
203. Cpl. Robinson testified that as he waited for first responders to arrive, he noticed that Mr. Dziekanski's ear was turning blue.<sup>296</sup> He had taken a first-aid course and had learned to recognize a blue discoloration as either a sign of breathing trouble or the effect of bruising.<sup>297</sup> Cpl. Robinson testified that, because Mr. Dziekanski was still breathing, he assumed the discoloration on Mr. Dziekanski's ear was a bruise.<sup>298</sup>

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<sup>285</sup> Transcript, Feb. 23, 2009, p.33 (Gerry Rundel).

<sup>286</sup> Transcript, Feb. 23, 2009, p.71 (Gerry Rundel).

<sup>287</sup> Transcript, Feb. 23, 2009, p.71 (Gerry Rundel).

<sup>288</sup> Transcript, Feb. 23, 2009, p.71 (Gerry Rundel).

<sup>289</sup> Transcript, Feb. 23, 2009, p.72 (Gerry Rundel).

<sup>290</sup> Transcript, Feb. 25, 2009, p.94 (Bill Bentley).

<sup>291</sup> Transcript, Feb. 25, 2009, p.92 (Bill Bentley).

<sup>292</sup> Transcript, Feb. 25, 2009, p.94 (Bill Bentley).

<sup>293</sup> Transcript, Feb. 25, 2009, p.93 (Bill Bentley).

<sup>294</sup> Transcript, Feb. 25, 2009, p.95 (Bill Bentley).

<sup>295</sup> Transcript, Feb. 25, 2009, p.96 (Bill Bentley).

<sup>296</sup> Transcript, March 23, 2009, p.43 (Cpl. Robinson).

<sup>297</sup> Transcript, March 23, 2009, p.43 (Cpl. Robinson).

<sup>298</sup> Transcript, March 23, 2009, p.43 (Cpl. Robinson).

204. Cpl. Robinson maintained that he continually monitored Mr. Dziekanski's breathing and pulse until first responders arrived, by "touching, listening, and feeling."<sup>299</sup> He told Commission Counsel that he checked Mr. Dziekanski's pulse "a couple" of times.<sup>300</sup>
205. On cross-examination by Counsel for Zofia Cisowski, Cpl. Robinson testified that his first-aid training was out of date.<sup>301</sup> He further testified that he did not check his watch to find out how long Mr. Dziekanski had remained unconscious.<sup>302</sup> Cpl. Robinson also failed to time Mr. Dziekanski's pulse.<sup>303</sup>
206. Cpl. Robinson testified that although his first-aid training was out of date, he was aware that in a case like Mr. Dziekanski's, "there are time concerns," as mere seconds of delay can affect a patient's chance of survival.<sup>304</sup> Despite that knowledge, he refused to remove Mr. Dziekanski's handcuffs.<sup>305</sup> Cpl. Robinson refused to remove the handcuffs until paramedics arrived minutes later, even though he had performed a "trap squeeze" to assure himself that Mr. Dziekanski was unconscious.<sup>306</sup>

### C. Civilian Eyewitness Testimony

207. The testimony of the eyewitnesses who observed what occurred between the tasing and the arrival of RFR further indicates that Mr. Dziekanski did not receive adequate medical attention in the hands of the officers.
208. Mr. Canzon finished his cleaning duties in the Meet and Greet area and entered the elevator just after 1:39 am on October 14.<sup>307</sup> He testified that as he made his way to the elevator, he looked into the IRL and saw Mr. Dziekanski lying on the floor. At that time, he stated that no one was kneeling beside Mr. Dziekanski or touching him, no one was close to Mr. Dziekanski, and Mr. Dziekanski was not moving.<sup>308</sup>
209. Ms. Ashrafinia testified that she is certified in first aid. While she did not witness all the events between the time that Mr. Dziekanski was handcuffed and RFR arrived, she stated that at no time did she see any of the officers provide any first aid to Mr. Dziekanski.<sup>309</sup>
210. Ms. Bosnjak remained in the Meet and Greet very close to the incident, mostly watching what was happening between the time that Mr. Dziekanski was handcuffed and the time RFR arrived.<sup>310</sup> She testified that Mr. Dziekanski stopped moving and breathing very shortly after he was handcuffed and he turned blue before RFR

<sup>299</sup> Transcript, March 23, 2009, p.48 (Cpl. Robinbson).

<sup>300</sup> Transcript, March 23, 2009, p.49 (Cpl. Robinbson).

<sup>301</sup> Transcript, March 24, 2009, p.38 (Cpl. Robinbson).

<sup>302</sup> Transcript, March 24, 2009, p.42 (Cpl. Robinbson).

<sup>303</sup> Transcript, March 24, 2009, p.42 (Cpl. Robinbson).

<sup>304</sup> Transcript, March 24, 2009, p.46 (Cpl. Robinbson).

<sup>305</sup> Transcript, March 24, 2009, p.46 (Cpl. Robinbson).

<sup>306</sup> Transcript, March 24, 2009, p.46 (Cpl. Robinbson).

<sup>307</sup> Exhibit 25G, YVR video 22244 part 2.

<sup>308</sup> Transcript, Feb. 3, 2009, pp.16 & 18 (Jame Glenn Canzon).

<sup>309</sup> Transcript, Feb. 4, 2009, p.78 (Sima Ashrafinia).

<sup>310</sup> Transcript, Feb. 5, 2009, p.66 & 73 (Marija Bosnjak).

arrived.<sup>311</sup> She stated that she did not see the officers ever try to help Mr. Dziekanski, take his pulse, or give him any kind of first aid in this time period.<sup>312</sup> Ms. Bosnjak also testified that she had no recollection of a security guard checking Mr. Dziekanski's pulse; however this is understandable given that Mr. Enchelmaier was wearing a suit that night, not a regular Securiguard uniform.<sup>313</sup>

211. Ms. Kula also remained in the Meet and Greet area in the aftermath of the taserings and during the arrival of RFR. She spent that time observing what was occurring with Mr. Dziekanski.<sup>314</sup> She stated that when Mr. Dziekanski was on the ground, she was four to five feet from the glass wall with unobstructed views of Mr. Dziekanski, with the exception of when security walked in front of her.<sup>315</sup> She did not move from this position and her observation of Mr. Dziekanski was uninterrupted, other than when someone would cross in front of her.<sup>316</sup> Ms. Kula also had a detailed, consistent recollection of the events, and her testimony should be preferred for these reasons.
212. Ms. Kula testified that after the officers handcuffed Mr. Dziekanski and three of them moved away from him, Mr. Dziekanski was lying on his stomach with his face turned away from her.<sup>317</sup> She stated that from the time the officers moved away from Mr. Dziekanski, which was very soon after he was handcuffed, she did not see Mr. Dziekanski move at all, and she specifically saw no movement that would have been consistent with breathing.<sup>318</sup>
213. Approximately thirty seconds after Mr. Dziekanski was handcuffed, Ms. Kula stated that she could clearly see that Mr. Dziekanski's hands had started to turn purple; then very dark purple; then faded; then started turning blue and continued getting bluer as time passed.<sup>319</sup>
214. Ms. Kula testified that an officer with dark hair stayed kneeling on or by Mr. Dziekanski's legs but did not do anything to Mr. Dziekanski.<sup>320</sup> She stated that at no point did she see this officer appear to check Mr. Dziekanski's pulse or breathing, as he would have had to move to do that, and she did not see him move. Similarly, she stated that the red-haired officer did not check Mr. Dziekanski's breathing or pulse.<sup>321</sup>
215. On cross examination, Ms. Kula was asked about her statement to IHIT investigators, in which she described a police officer staying by Mr. Dziekanski's side and checking his pulse. She explained this statement in her testimony as an assumption: she had assumed the officer was there to watch over Mr. Dziekanski, but thinking back on it, there was no way the officer could check Mr. Dziekanski's pulse from his location

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<sup>311</sup> Transcript, Feb. 5, 2009, pp.52-53,67 (Marija Bosnjak).

<sup>312</sup> Transcript, Feb. 5, 2009, pp. 66-67,71-72 (Marija Bosnjak).

<sup>313</sup> Transcript, Feb. 5, 2009, p.80 (Marija Bosnjak).

<sup>314</sup> Transcript, Feb. 5, 2009, p.91; Transcript, Feb. 9, 2009, pp.10-11 (Alison Kula).

<sup>315</sup> Transcript, Feb. 9, 2009, pp.3-4 (Alison Kula).

<sup>316</sup> Transcript, Feb. 9, 2009, p.10 (Alison Kula).

<sup>317</sup> Transcript, Feb. 9, 2009, p.7 (Alison Kula).

<sup>318</sup> Transcript, Feb. 9, 2009, pp.7-8 (Alison Kula).

<sup>319</sup> Transcript, Feb. 9, 2009, p.12 (Alison Kula).

<sup>320</sup> Transcript, Feb. 9, 2009, p.8 (Alison Kula).

<sup>321</sup> Transcript, Feb. 9, 2009, p.10 (Alison Kula).

without moving.<sup>322</sup> She also explained that in her statement she was confused about this officer.<sup>323</sup>

216. Ms. Kula stated that approximately one minute to ninety seconds after Mr. Dziekanski was handcuffed, and after his hands started turning blue, a man in a dark outfit came over and appeared to check Mr. Dziekanski's pulse, then walked away. This man did not at any point put his face near Mr. Dziekanski's face. Ms. Kula stated he only checked Mr. Dziekanski once.<sup>324</sup> Ms. Kula further stated that she did not see anyone else check Mr. Dziekanski's pulse or breathing.<sup>325</sup>
217. Ms. Kula testified that Mr. Dziekanski was rolled over between one and two minutes after RFR arrived.<sup>326</sup> Prior to being rolled over, Ms. Kula described Mr. Dziekanski's hands as very blue and likely the bluest she had ever seen on a person before.<sup>327</sup> Ms. Kula described Mr. Dziekanski as lifeless and not moving at all when he was rolled over.<sup>328</sup>
218. Ms. Deziel testified that within a minute of being handcuffed, Mr. Dziekanski's hands started to change colour, from white to blue.<sup>329</sup> Having previously been certified in CPR herself, Ms. Deziel knew right away when Mr. Dziekanski started turning blue that something was wrong and he "needed some help, some CPR."<sup>330</sup> Ms. Deziel stated that she did not see Mr. Dziekanski get any help, even though the officers were around Mr. Dziekanski when he started to change colour.<sup>331</sup>
219. Mr. Jorssen testified that after Mr. Dziekanski stopped moving, he approached one of the RCMP officers to ask about Mr. Dziekanski's condition, because he "felt there was something going wrong."<sup>332</sup> Mr. Jorssen stated that he did not recall seeing anyone put their face close to Mr. Dziekanski's face between the time Mr. Dziekanski was on the ground and RFR arrived.<sup>333</sup>
220. Mr. Jorssen testified that between the end of Pritchard video # 3 and the arrival of RFR, he was pretty sure one police officer checked Mr. Dziekanski's pulse twice in close succession, on Mr. Dziekanski's wrist and neck.<sup>334</sup> In cross examination, he said he "thought" he saw Mr. Dziekanski's pulse being taken.<sup>335</sup> On redirect from Commission Counsel, he agreed that what he saw was one police officer touch Mr. Dziekanski in a manner he assumed was taking the pulse.<sup>336</sup>

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<sup>322</sup> Transcript, Feb. 9, 2009, pp.22-23 (Alison Kula).

<sup>323</sup> Transcript, Feb. 9, 2009, p.24 (Alison Kula).

<sup>324</sup> Transcript, Feb. 9, 2009, pp.9-10 & 18 (Alison Kula).

<sup>325</sup> Transcript, Feb. 9, 2009, p.10 (Alison Kula).

<sup>326</sup> Transcript, Feb. 9, 2009, pp.11 (Alison Kula).

<sup>327</sup> Transcript, Feb. 9, 2009, pp.11-12 (Alison Kula).

<sup>328</sup> Transcript, Feb. 9, 2009, pp.11-12 (Alison Kula).

<sup>329</sup> Transcript, Feb. 9, 2009, pp.65-66,74 (Genevieve Deziel).

<sup>330</sup> Transcript, Feb. 9, 2009, pp.66 (Genevieve Deziel).

<sup>331</sup> Transcript, Feb. 9, 2009, pp.66 (Genevieve Deziel).

<sup>332</sup> Transcript, Feb. 9, 2009, p.111 (Robert Jorssen).

<sup>333</sup> Transcript, Feb. 9, 2009, p.116 (Robert Jorssen).

<sup>334</sup> Transcript, Feb. 9, 2009, pp.114 (Robert Jorssen).

<sup>335</sup> Transcript, Feb. 10, 2009, pp.10-11 (Robert Jorssen).

<sup>336</sup> Transcript, Feb. 10, 2009, pp.40-41 (Robert Jorssen).

221. Securiguard employee Lance Rudek witnessed some of the aftermath of the taserings. Regarding medical treatment, Mr. Rudek testified both that he did not see anyone take Mr. Dziekanski's pulse while he was on the ground, and that it appeared that the officers were monitoring Mr. Dziekanski's breathing and his pulse.<sup>337</sup> When this inconsistency was raised in re-direct by Commission Counsel, Mr. Rudek explained that he just assumed that a person would be monitored, after being tasered.<sup>338</sup>
222. Robert Ginter, the Airport Response Coordinator, attended inside the IRL in the aftermath of the taserings. He stated that the RCMP were monitoring Mr. Dziekanski, but also testified that he did not observe the RCMP or anyone else check Mr. Dziekanski's pulse or breathing at any point.<sup>339</sup> He further testified that after the call for an ambulance had been upgraded to a Code 3, the scene had a calm nature and there was "no sense of any indication of medical distress by anyone on scene."<sup>340</sup>
223. Mr. Enchelmaier attended inside the IRL and held down Mr. Dziekanski's legs during part of the struggle with the RCMP.<sup>341</sup> He testified that he stopped holding Mr. Dziekanski's legs at approximately 5:36 on the second Pritchard video, in part because Mr. Dziekanski's legs had stopped moving.<sup>342</sup> He testified that Mr. Dziekanski seemed to be unconscious and he never saw Mr. Dziekanski move again after this point.<sup>343</sup>
224. Mr. Enchelmaier testified that after Mr. Dziekanski stopped moving, the RCMP officers were concerned with Mr. Dziekanski's level of consciousness. He estimated that less than a minute after Mr. Dziekanski stopped moving, he assisted Cpl. Robinson in putting Mr. Dziekanski in a modified recovery position.<sup>344</sup> This testimony is consistent with Mr. Dziekanski's changed position between the second and third Pritchard videos.
225. Mr. Enchelmaier testified to personally checking Mr. Dziekanski's carotid pulse after Mr. Dziekanski was put in the modified recovery position.<sup>345</sup> He stated that he checked the pulse because the officers were trying to do so with their gloves on.<sup>346</sup> This testimony is consistent with the third Pritchard video, and demonstrates the inadequacy of the officer's attention to Mr. Dziekanski's medical condition. Indeed, Mr. Enchelmaier testified that he did not recall ever seeing the RCMP remove their gloves throughout the incident.<sup>347</sup>
226. Mr. Enchelmaier testified that on one occasion, before he checked Mr. Dziekanski's pulse, he observed Cpl. Robinson trying to see if Mr. Dziekanski was breathing.<sup>348</sup> Mr. Enchelmaier did not recall whether Mr. Dziekanski's pulse or breathing was checked

<sup>337</sup> Transcript, Feb. 12, 2009, pp.79, 88,93-94 (Lance Rudek).

<sup>338</sup> Transcript, Feb. 12, 2009, pp.95-97 (Lance Rudek).

<sup>339</sup> Transcript, Feb. 17, 2009, p.55,93 (Robert Ginter).

<sup>340</sup> Transcript, Feb. 17, 2009, p.55 (Robert Ginter).

<sup>341</sup> Transcript, Feb. 16, 2009, p.77 (Trevor Enchelmaier) ; Exhibit 32, Pritchard video #3, approximately 5:13.

<sup>342</sup> Transcript, Feb. 16, 2009, pp.79-80 (Trevor Enchelmaier).

<sup>343</sup> Transcript, Feb. 16, 2009, pp.80, 98,103 (Trevor Enchelmaier).

<sup>344</sup> Transcript, Feb. 16, 2009, pp.82-84 (Trevor Enchelmaier).

<sup>345</sup> Transcript, Feb. 16, 2009, p.85 (Trevor Enchelmaier).

<sup>346</sup> Transcript, Feb. 16, 2009, p.85 (Trevor Enchelmaier).

<sup>347</sup> Transcript, Feb. 17, 2009, p.1 (Trevor Enchelmaier).

<sup>348</sup> Transcript, Feb. 16, 2009, p.86 (Trevor Enchelmaier).

by any officer at any other time.<sup>349</sup> This is generally consistent with the Pritchard footage and with the eyewitness testimony discussed above, and it further supports the assertion that Mr. Dziekanski received inadequate care and attention from the officers.

227. Mr. Enchelmaier testified that he personally checked Mr. Dziekanski at least two more times before RFR arrived.<sup>350</sup> He estimated that the second check was approximately two minutes after the check that was visible on the Pritchard footage. He estimated that the third check was less than two minutes before RFR arrived.<sup>351</sup> It was clear to him that Mr. Dziekanski was unconscious for all three checks.<sup>352</sup>
228. Mr. Enchelmaier stated that Mr. Dziekanski's pulse was very strong and very fast the first time, like someone who had been running.<sup>353</sup> The second time, he again did a carotid pulse check.<sup>354</sup> The pulse was nowhere near as fast, more like a person who had been at rest for quite a while, but it was a good strong pulse.<sup>355</sup> Mr. Enchelmaier testified that he confirmed with Cpl. Robinson that Mr. Dziekanski was breathing when he did the second pulse check.<sup>356</sup> He also personally checked Mr. Dziekanski's breathing and described it as like a person at rest.<sup>357</sup>
229. Mr. Enchelmaier testified that the third time he checked Mr. Dziekanski it took twenty to thirty seconds before he was sure he actually felt and heard Mr. Dziekanski breathing.<sup>358</sup> He testified that this time Mr. Dziekanski's carotid pulse was slow, but clear. Mr. Dziekanski's breathing was slow, low breathing but still clearly breathing.<sup>359</sup>
230. When asked if he would have performed CPR or artificial respiration on Mr. Dziekanski if he thought it was necessary, Mr. Enchelmaier stated that he would have, without question.<sup>360</sup> He said that he did not take these steps because Mr. Dziekanski was breathing and had a pulse "the whole time."<sup>361</sup>

#### **D. Richmond Fire and Rescue (RFR) Testimony**

231. RFR were the first medical responders on scene. Kirby Graeme, a Captain with RFR, attended YVR to respond to a medical assignment with his crew: Brent Kopp, Glen Cameron and Sonia Duranleau. Ms. Duranleau was the first responder designated in charge of the first medical analysis of any patients that shift. The information the crew had from the dispatch was that a 40 year old male had collapsed.<sup>362</sup>

<sup>349</sup> Transcript, Feb. 16, 2009, p.86 (Trevor Enchelmaier).

<sup>350</sup> Transcript, Feb. 16, 2009, pp.89-90 (Trevor Enchelmaier).; Transcript, Feb. 17, 2009, p. 17 (Trevor Enchelmaier).

<sup>351</sup> Transcript, Feb. 16, 2009, p.90 (Trevor Enchelmaier).

<sup>352</sup> Transcript, Feb. 16, 2009, p.92 (Trevor Enchelmaier).

<sup>353</sup> Transcript, Feb. 16, 2009, pp.88-89,91 (Trevor Enchelmaier).

<sup>354</sup> Transcript, Feb. 16, 2009, p.92 (Trevor Enchelmaier).

<sup>355</sup> Transcript, Feb. 16, 2009, pp.92-93 (Trevor Enchelmaier).

<sup>356</sup> Transcript, Feb. 16, 2009, p.92- 93 (Trevor Enchelmaier).

<sup>357</sup> Transcript, Feb. 16, 2009, pp.93-94 (Trevor Enchelmaier).

<sup>358</sup> Transcript, Feb. 16, 2009, p.96 (Trevor Enchelmaier).

<sup>359</sup> Transcript, Feb. 16, 2009, p.97 (Trevor Enchelmaier).

<sup>360</sup> Transcript, Feb. 16, 2009, p.109 (Trevor Enchelmaier).

<sup>361</sup> Transcript, Feb. 17, 2009, p.32 (Trevor Enchelmaier).

<sup>362</sup> Transcript, Jan. 27, 2009, p.36 (Kirby Graeme).

232. The crew was dispatched at 1:34:29 am, and Cpt. Graeme testified that it took just over five minutes to arrive at the IRL.<sup>363</sup> The crew arrived at approximately 1:40:57 am.<sup>364</sup> Cpt. Graeme estimated that his crew arrived at Mr. Dziekanski's side at approximately 1:42 am.<sup>365</sup>
233. Cpt. Graeme testified that when he entered the IRL, he saw four RCMP officers and some security guards just standing by and not appearing to be doing anything.<sup>366</sup> He estimated that three officers were ten metres from Mr. Dziekanski, and the fourth was five metres away.<sup>367</sup> They were not monitoring Mr. Dziekanski or medically assessing him.<sup>368</sup> He also stated that if Mr. Dziekanski had been monitored correctly, someone would have been at Mr. Dziekanski's side, near his head, and he would not be lying in the prone position.<sup>369</sup>
234. Ms. Duranleau testified that she was the second firefighter to enter the IRL. She also observed four RCMP officers and some other people between ten and fifteen feet away from Mr. Dziekanski, in a row, and stated that no one was touching or assessing Mr. Dziekanski.<sup>370</sup>
235. Mr. Cameron testified that he observed two or three officers, standing by Mr. Dziekanski's feet, not monitoring him nor "doing anything."<sup>371</sup>
236. Cpt. Graeme testified that upon RFR's entry in the IRL, Mr. Dziekanski was lying face down, with his head turned to the left and his legs were straight.<sup>372</sup> He "wasn't in anything close to resembling recovery position."<sup>373</sup> Cpt. Graeme further testified that it is impossible to put someone in the recovery position while handcuffed, and having one's hands behind one's back compromises the airway.<sup>374</sup> Ms. Duranleau similarly testified that Mr. Dziekanski was lying flat on his chest, with his face turned to the left, not in anything resembling the recovery position.<sup>375</sup>
237. Mr. Cameron also testified that when RFR arrived, Mr. Dziekanski was lying on his stomach with his face turned to the left.<sup>376</sup> He was not in the recovery position.<sup>377</sup> On cross examination, Mr. Cameron was specifically directed to 0:50- 0:53 of Pritchard video #3, which shows Mr. Dziekanski slightly on his right side, presumably after being repositioned by Mr. Enchelmaier. He was asked if Mr. Dziekanski was in this same

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<sup>363</sup> Transcript, Jan. 27, 2009, p.36 (Kirby Graeme).

<sup>364</sup> Transcript, Jan. 27, 2009, p.63 (Kirby Graeme).

<sup>365</sup> Transcript, Jan. 27, 2009, p.80 (Kirby Graeme).

<sup>366</sup> Transcript, Jan. 27, 2009, pp.37-38; Transcript, Jan. 28, 2009, p.9 (Kirby Graeme).

<sup>367</sup> Transcript, Jan. 27, 2009, p.50 (Kirby Graeme).

<sup>368</sup> Transcript, Jan. 27, 2009, pp.42 & 94 (Kirby Graeme); Transcript, Jan. 28, 2009, p.53 (Kirby Graeme).

<sup>369</sup> Transcript, Jan. 27, 2009, p.58 (Kirby Graeme); Transcript, Jan. 28, 2009, p.35 (Kirby Graeme).

<sup>370</sup> Transcript, Jan. 28, 2009, pp.64-65 (Sonia Duranleau); Transcript, Jan. 29, 2009, p.4 (Sonia Duranleau).

<sup>371</sup> Transcript, Feb. 18, 2009, pp.32,47 (Glen Cameron).

<sup>372</sup> Transcript, Jan. 27, 2009, pp.39,92 (Kirby Graeme).

<sup>373</sup> Transcript, Jan. 28, 2009, p.49 (Kirby Graeme).

<sup>374</sup> Transcript, Jan. 28, 2009, pp.49-50 (Kirby Graeme).

<sup>375</sup> Transcript, Jan. 28, 2009, pp.66-69,81-83 (Sonia Duranleau); Transcript, Jan. 29, 2009, p. 5 (Sonia Duranleau).

<sup>376</sup> Transcript, Feb. 18, 2009, pp.32, 40 & 55 (Glen Cameron).

<sup>377</sup> Transcript, Feb. 18, 2009, pp.35 & 40 (Glen Cameron).

position when RFR arrived, and he testified that he was not: he was “more flat on his stomach.”<sup>378</sup>

238. As RFR approached, Cpt. Graeme asked one of the officers what happened and was told that Mr. Dziekanski had been tasered three times.<sup>379</sup> He said an officer told him Mr. Dziekanski had been down for a few minutes and had been monitored since he was tasered.<sup>380</sup> According to Cpt. Graeme, this officer did not “show any worry” at all.<sup>381</sup>
239. Cpt. Graeme stated that after asking what happened, he told an officer that the handcuffs had to be removed so that Mr. Dziekanski could be properly assessed. Cpt. Graeme testified that the officer refused, stating that Mr. Dziekanski had been violent.<sup>382</sup> Captain Graeme testified that he reiterated that the cuffs had to come off so that RFR could do a proper assessment, and the RCMP officer said no.<sup>383</sup>
240. Cpt. Graeme testified that the officer’s refusal to remove the handcuffs obstructed RFR’s efforts to assess Mr. Dziekanski and ultimately treat him.<sup>384</sup> Mr. Cameron testified that the handcuffs had to come off for RFR to work on Mr. Dziekanski properly.<sup>385</sup>
241. Regarding the resulting delay in RFR’s ability to treat Mr. Dziekanski because the RCMP refused to remove the handcuffs, Cpt. Graeme testified that an extra minute is medically significant, and survival rates drop for every minute that a person with no pulse who is not breathing does not receive medical attention.<sup>386</sup> This was echoed by the BCAS personnel who testified.<sup>387</sup>
242. Cpt. Graeme testified that at the time of the discussion regarding the handcuffs, Mr. Dziekanski was motionless and unresponsive to words and pain stimulus. He was pale, not moving at all and his eyes were open.<sup>388</sup> Mr. Cameron tried to find breathing or a reaction to pain stimulus but was unsuccessful.<sup>389</sup> Mr. Dziekanski was “totally unresponsive.”<sup>390</sup>
243. Cpt. Graeme, Ms. Duranleau and Mr. Cameron testified that shortly after this assessment, and approximately ninety seconds after RFR arrived, the basic life support (BLS) BC ambulance personnel (BCAS) arrived on scene.<sup>391</sup> Cpt. Graeme and

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<sup>378</sup> Transcript, Feb. 18, 2009, p.53 (Glen Cameron).

<sup>379</sup> Transcript, Jan. 27, 2009, p.38 (Kirby Graeme).

<sup>380</sup> Transcript, Jan. 27, 2009, p.41 (Kirby Graeme).

<sup>381</sup> Transcript, Jan. 28, 2009, pp.53-54 (Kirby Graeme).

<sup>382</sup> Transcript, Jan. 27, 2009, p.38 (Kirby Graeme).

<sup>383</sup> Transcript, Jan. 28, 2009, p.33 (Kirby Graeme).

<sup>384</sup> Transcript, Jan. 27, 2009, p.51 (Kirby Graeme); Transcript, Jan. 28, 2009, p.54 (Kirby Graeme).

<sup>385</sup> Transcript, Feb. 18, 2009, p.58 (Glen Cameron).

<sup>386</sup> Transcript, Jan. 28, 2009, p.54 (Kirby Graeme).

<sup>387</sup> Transcript, March 26, 2009, p.38 (Allan Maciak); Transcript, March 26, 2009 p.111 (Ronald Van Houten).

<sup>388</sup> Transcript, Jan. 27, 2009, p.39 (Kirby Graeme).

<sup>389</sup> Transcript, Jan. 27, 2009, p.41 (Kirby Graeme); Transcript, Feb. 18, 2009, pp.32-33 (Glen Cameron).

<sup>390</sup> Transcript, Feb. 18, 2009, p.34 (Glen Cameron).

<sup>391</sup> Transcript, Jan. 27, 2009, p.43 (Kirby Graeme); Transcript, Jan. 28, 2009, p.71 (Sonia Duranleau); Transcript, Feb. 18, 2009, p.33 (Kirby Graeme).

Ms. Duranleau testified that at no time after RFR's arrival did Mr. Dziekanski ever breathe or have a pulse.<sup>392</sup>

244. Cpt. Graeme testified that he thought the RCMP failed to deliver adequate medical care to Mr. Dziekanski, and he spoke with many of his senior officers at RFR about this incident, and also expressed his concerns to IHIT.<sup>393</sup>

### **E. British Columbia Ambulance Service (BCAS) Testimony**

245. Allan Maciak and Mike Egli, the BLS ambulance attendants, arrived in the IRL at 1:43:59 am according to YVR video 22244.<sup>394</sup> Mr. Maciak then assessed Mr. Dziekanski's airway and breathing, and could not be sure if Mr. Dziekanski was breathing in his position, lying on his stomach. Accordingly, he asked Cpl. Robinson to remove the handcuffs. Only after he was asked a second time did Cpl. Robinson remove the handcuffs.<sup>395</sup>
246. RFR then commenced chest compressions, and BLS hooked up the AED but no shock was advised.<sup>396</sup> Mr. Maciak and Mr. Egli testified that the Advanced Life Support (ALS) crew arrived approximately two minutes later, and treated Mr. Dziekanski with their more advanced protocols.<sup>397</sup> After attempting all possible options to attempt to revive Mr. Dziekanski, ALS consulted with a physician, discontinued resuscitation and pronounced Mr. Dziekanski dead.<sup>398</sup>

### **VII. Concluding Remarks on the Actions of the RCMP at YVR**

247. Vancouver International Airport routinely has travelers from around the globe. Many of these visitors speak little or no English. The police knew, even before they entered the IRL, that Mr. Dziekanski's actions and behaviours might signal that he was a man who was in distress. Most of them knew that he spoke a language other than English or French. They also knew that he was in the international section of the airport, a section that, with few exceptions, only international travelers may enter. He had luggage next to him. All of these facts might have alerted police that Mr. Dziekanski was a person who might be in need of assistance.
248. Despite this, the police made only the most minimal attempts to calm Mr. Dziekanski or to reassure him. There was virtually no effort made to slowly find mutual ways to work around differing languages. Aside from Cst. Bentley's initial friendly greeting, the officers did not offer reassurance to this stranded traveler that he was safe—that after a long and exhausting journey, he could rest at last in the welcoming arms of a free and friendly country. Instead, every movement of this first-time visitor was interpreted as hostile, and instead of setting a slow, friendly pace of communication, a pace that might have calmed both Mr. Dziekanski and the police themselves, the police moved

<sup>392</sup> Transcript, Jan. 27, 2009, p.52 (Kirby Graeme); Transcript, Jan. 28, 2009, p.80 (Sonia Duranleau).

<sup>393</sup> Transcript, Jan. 28, 2009, p.50 (Kirby Graeme).

<sup>394</sup> Exhibit 25F; Transcript, March 26, 2009, p.23 (Allan Maciak).

<sup>395</sup> Transcript, March 26, 2009, pp.28-29 (Allan Maciak); Transcript, March 26, 2009, p.75 (Mike Elgi).

<sup>396</sup> Transcript, March 26, 2009, p.29 (Allan Maciak).

<sup>397</sup> Transcript, March 26, 2009, pp.30 (Allan Maciak); Transcript, March 26, 2009, p.77 (Mike Elgi).

<sup>398</sup> Transcript, March 26, 2009, pp.65 (Miles Randell), 102,104-105 (Ronald Van Houten).

rapidly, setting a pace to the communication and to the events that followed that resulted in Mr. Dziekanski's tragic death.

249. Other travelers in the airport saw Mr. Dziekanski as a fellow human in distress. We know from their testimony that they viewed him with sympathy, but did not know how to help. The police might have given help, but did not. More disturbing, based on their testimony, the thought that assistance might be needed did not even occur to them. Instead of offering assistance to a man far from home, the police responded to their own fears. In doing so, they not only failed to see Mr. Dziekanski clearly as a suffering fellow human being, but they became unable to even listen to one another. They issued contradictory commands and proceeded with rapid-fire escalation toward violence.
250. Finally, the officers exhibited a callous disregard for Mr. Dziekanski's life by failing to provide adequate medical treatment to Mr. Dziekanski after he was unconscious. The evidence afforded by the Pritchard footage, in conjunction with the eyewitness testimony, clearly shows that the care Mr. Dziekanski received from the officers was deficient. Not only did the officers fail to provide Mr. Dziekanski with adequate care, Cpl. Robinson obstructed the efforts of the first responders on the scene by refusing to remove Mr. Dziekanski's handcuffs.
251. The result of the officers' acts and omissions was the tragic death of a man who had three main goals: to find a way out of the airport, to be reunited with his mother, and to see Canada first hand.

### **VIII. RCMP Media Response to the Death of Mr. Dziekanski**

252. Mr. Dziekanski's death ignited international debate, and was an event of national and international concern. During the RCMP's investigation into Mr. Dziekanski's death, the RCMP misrepresented the facts of Mr. Dziekanski's death to the media and to the public at large.
253. On October 14, 2007, shortly after Mr. Dziekanski's death, the RCMP assigned Sgt. Pierre Lemaitre to be the primary media spokesperson for the RCMP. Sgt. Lemaitre's responsibilities were to disseminate information to the public about the IHIT investigation and the facts of Mr. Dziekanski's death. Sgt. Lemaitre served in this position for two days, until October, 16, 2007, when the RCMP removed him from the file.<sup>399</sup>
254. After a briefing at IHIT headquarters the morning of October 14, 2007, Sgt. Lemaitre, accompanied by Cpl. Dale Carr, conducted a number of interviews at the airport. He left the airport and prepared and disseminated a media release.<sup>400</sup>
255. In the press release that Sgt. Lemaitre disseminated, and his statements to the media, Sgt. Lemaitre made the following factual errors and misrepresentations to the public about the actions of the officers and the manner in which Mr. Dziekanski died:

<sup>399</sup> He conducted one interview after the release of the Pritchard video.

<sup>400</sup> Exhibit 98.

- i. He stated that there were three officers involved in the incident;
- ii. He stated that Mr. Dziekanski had to be wrestled to the ground; and
- iii. He reported that Mr. Dziekanski was tasered twice and expressly denied claims that Mr. Dziekanski was tasered four or five times.<sup>401</sup>

256. The RCMP did not correct the errors, either through Sgt. Lemaitre or through any other media spokesperson or through media releases. All of the above-listed factual errors that Sgt. Lemaitre disseminated to the public tended to justify the officers' actions and the level of force that the officers used against Mr. Dziekanski.

257. In addition to the factual errors that Sgt. Lemaitre reported to the public, Sgt. Lemaitre made speculative statements about Mr. Dziekanski that cast suspicion upon him:

- iv. He stated that Mr. Dziekanski may have been under the influence of alcohol or drugs<sup>402</sup>;
- v. He stated Mr. Dziekanski may have had a medical condition that caused his death<sup>403</sup>; and
- vi. He stated that Mr. Dziekanski's identification may not have been genuine.<sup>404</sup>

258. At the time he made the statements, an autopsy had not been conducted and no toxicology reports had been received. There was no reason to believe that Mr. Dziekanski's identification might not be genuine. It is our submission that Sgt. Lemaitre's speculations were inappropriate, and cast suspicion on Mr. Dziekanski, a sudden death victim, where such suspicion was not justified or appropriate.

259. At the time of Mr. Dziekanski's death, Cpl. Carr was an RCMP media relations officer. He testified that shortly after the RCMP released inaccurate information about Mr. Dziekanski's death, the RCMP realized it had made factual errors.<sup>405</sup> However, rather than correct the public record and seek to halt the contamination of the investigation, the RCMP instituted a policy that it would no longer discuss specific evidence concerning Mr. Dziekanski's death and the actions of the RCMP.<sup>406</sup> Cpl. Carr testified that the policy was instituted on approximately October 16, 2007<sup>407</sup> and was ordered by Spt. Wayne Rideout.

260. However, despite the RCMP's purported policy, the RCMP issued a press release on November 30, 2007, that discussed specific evidence. The release addressed the medical care the four officers provided to Mr. Dziekanski and stated that the officers

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<sup>401</sup> The public only learned the fact that Mr. Dziekanski was tasered five times when the Criminal Justice Department made its announcement on December 18, 2008. The RCMP never corrected the record.

<sup>402</sup> Transcript, April 21, 2009, p.80 (Pierre Lemaitre).

<sup>403</sup> Transcript, April 21, 2009, p.80 (Pierre Lemaitre).

<sup>404</sup> Transcript, April 21, 2009, p.78 (Pierre Lemaitre).

<sup>405</sup> Transcript, April 22, 2009 p.43 (Cpl. Carr).

<sup>406</sup> Transcript, April 22, 2009 p.43 (Cpl. Carr).

<sup>407</sup> Transcript, April 22, 2009 p.63 (Cpl. Carr).

continually monitored Mr. Dziekanski. The release offered a justification for why the officers did not remove his handcuffs, stating that it was due to safety concerns.<sup>408</sup>

261. Viewed cumulatively, the factual errors and speculative statements that the RCMP released to the public either in intent or effect advantaged the RCMP's reputation, while causing injury and injustice to Mr. Dziekanski, and denying the public of its right to know.

## **IX. The Need for Independent Criminal Investigations of Deaths that Occur in Police Custody**

262. The mandate of this Commission is to provide Mr. Dziekanski's family and the public with a complete record of the circumstances of Mr. Dziekanski's death and to make recommendations the Commissioner considers necessary and appropriate. In this section we will discuss the evidence that the Commission heard concerning the criminal investigation of Mr. Dziekanski's death. We will propose that the Commission make recommendations concerning reforms to the current policies and procedures governing the criminal investigations arising out of police-related deaths.
263. There is a longstanding and legitimate public concern that systemic barriers to police accountability exist in the system for criminally investigating deaths that occur in police custody. This public concern is evidenced by the great number of public inquiries that have investigated and reported upon civilian deaths that have involved police conduct.<sup>409</sup> These inquiries have revealed troubling inadequacies in police conduct where the matter under investigation concerns police abuse of the rights of citizens within police control.
264. This Commission has heard evidence that the Integrated Homicide Investigation Team (IHIT) was assigned to conduct the investigation of Mr. Dziekanski's death. IHIT is an investigative unit made up of RCMP members and officers. It has a mandate to investigate homicides within the communities it serves in British Columbia and throughout Canada.
265. Although this Commission largely limited its investigation to the facts and circumstances of Mr. Dziekanski's death, the Commission was also provided with evidence about the conduct of the IHIT investigation and testimony about proposals for reform of the system for investigating criminal investigations arising out of police-related deaths.

<sup>408</sup> Transcript, April 22, 2009 p.63-64 (Cpl. Carr).

<sup>409</sup> See e.g. *Alone and Cold: Davies Commission – Inquiry into the death of Frank Paul—Interim Report* (Province of British Columbia, 2008); Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild, *Report of the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild* (Saskatoon: Province of Saskatchewan, 2004); *Inquiry into Crown Prosecution Service Decision-Making in Relation to Deaths in Custody and Related Matters* (London: Secretary Office, 1999); *Policing in Relation to the Blood Tribe: A Report of a Public Inquiry* (Edmonton: Province of Alberta, 1991); *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System: A Community Summary* (Ontario: The Commission, 1995); Taman Inquiry into the Investigation and Prosecution of Derek Harvey-Zenk, *Report of the Taman Inquiry* (Winnipeg: Province of Manitoba, 2008).

266. The Commission heard troubling evidence that suggested that the IHIT investigation may not have been conducted impartially. For example, despite troubling discrepancies between the Pritchard video and the officers' account of the events, the discrepancies were not pursued with the kind of vigor and expertise that police would be expected to exhibit when examining the statements of civilian witnesses or suspects of criminal activity. Major investigative errors were committed, such as failing to segregate the officer witnesses before they were interviewed by IHIT and allowing Cpl. Robinson to be present at IHIT's initial debriefing. IHIT released information about the details of the event to the public that may have contaminated portions of the investigation – this information tended to exonerate the officers while casting suspicion on Mr. Dziekanski.
267. The Commission heard testimony about proposals for reform of the system for investigating criminal investigations arising out of police-related deaths. Supt. Rideout testified that it was time for an independent agency, similar to the Special Investigations Unit in Ontario, to take over investigations of police-related deaths in B.C.<sup>410</sup> He proposed that B.C. should adopt a “hybrid model” that was designed as a combination of police investigators and civilian oversight.<sup>411</sup> Although Supt. Rideout emphasized that he was stating his personal opinion, and not the opinion of the RCMP, Supt. Rideout is one of the highest ranking officials in the E Division, and his comments about the need for the creation of independent agency should be granted significant weight.
268. A recent British Columbia public inquiry made similar recommendations. The Davies Commission, which reported on the death of Frank Paul, thoroughly examined and critiqued the current system of criminal investigations for cases in which civilians die in police custody.<sup>412</sup> The BCCLA was a participant in the inquiry. Commissioner Davies' report was informed by an exhaustive examination of the police criminal investigation that occurred into Mr. Paul's death. The Commission heard detailed evidence about how the investigation was conducted, including testimony from the police investigators and forensics team that conducted the investigation.
269. Commissioner Davies determined that a conflict of interest is created when police investigate the police. He observed that when police investigate police, there is an inevitable conflict of interest that comes from an unconscious bias in favour of fellow officers that lowers the standard of investigation. This kind of bias could include a tendency to see things from the point of view of the officers involved, to accept the statements of other officers uncritically, or to overlook inconsistencies in the evidence. He determined that divided loyalties are perhaps the most difficult form of conflict of interest to eliminate from police investigations. These divided loyalties arise when duties to fellow officers conflict with carrying out a proper, thorough investigation.

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<sup>410</sup> Transcript, September 22, 2009, p.88-93 (Wayne Rideout).

<sup>411</sup> Transcript, September 22, 2009, p.90 (Wayne Rideout).

<sup>412</sup> *Alone and Cold: Davies Commission – Inquiry into the death of Frank Paul—Interim Report* (Province of British Columbia, 2008). The Commission held hearings beginning in November, 2007 until May, 2008. The fact-finding phases of the Inquiry have concluded, except for hearings into the Criminal Justice Branch's response to the death of Mr. Paul.

270. Commissioner Davies' findings about the problem of divided loyalties and conflicts of interest led Commission Davies to conclude that it was necessary for the Province to create of an Independent Investigation Office (IIO) to investigate police-related deaths. He wrote:

Based on my review of the evidence ... I am persuaded that the current practice of home police department conducting criminal investigations of police-related deaths is fundamentally flawed, and that nothing short of a wholesale restructuring of such investigations will suffice.<sup>413</sup>

271. Commissioner Davies recommended that the IIO should be a totally independent and impartial civilian body established to conduct investigations of deaths that occur in police custody. The most critical feature of Commissioner Davies' recommended organization is its arm's length relationship with the police. Commissioner Davies recommended that the Ministry of Attorney General oversee the new agency, putting the IIO under a different arm of government than the police itself. The director would be appointed by the government, and not have previously worked for the police. The IIO's director and investigators would have the status of peace officers and the IIO would be the lead investigative agency. The home police department would have no investigative responsibility or authority.
272. Commissioner Davies gave extensive consideration to alternative organizational approaches for the criminal investigation of police-related deaths in the British Columbia municipalities policed by the municipal police departments. Some of the options he considered included having another municipal police department conduct the investigation or creating joint police task forces. However, Commissioner Davies rejected these models in favour of a civilian investigation team, modeled on Ontario's Special Investigation Unit.
273. It is our submission that Commissioner Davies' findings with respect to the inevitable conflict of interest that comes from divided loyalties amongst the municipal police forces applies with equal force to the RCMP. The BCCLA submits that this Commission should recommend that in cases involving death in which the RCMP are involved or implicated, that the RCMP should not investigate themselves.

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<sup>413</sup> *Alone and Cold: Davies Commission – Inquiry into the death of Frank Paul—Interim Report* (Province of British Columbia, 2008).

274. If this Commission concludes that reform of the system for investigating police-involved deaths is necessary, the BCCLA submits that this Inquiry ought to give special consideration and even deference to the recommendations made by Commissioner Davies. The quality and thoughtfulness of his recommendations are self-evident. Commissioner Davies' recommendations are recent, and were informed by a comprehensive review of police investigations of deaths that occur in police custody.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: September 29, 2009



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Grace Pastine



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Sara Dubinsky, Articled Student