

November 13, 2007

Paul Kennedy, Chair  
Commission for Public Complaints Against RCMP  
PO Box 3423, Station 'D'  
Ottawa, Ontario  
K1P6L4

Fax: 613 952 8045

Dear Mr. Kennedy,

**Re: Complaint against the RCMP over public statements and actions in the investigation of the in-custody death of Robert Dziekanski**

I am writing on behalf of the BC Civil Liberties Association (BCCLA) to initiate a complaint under the *Royal Canadian Mounted Police Act* against the relevant member(s) of the Richmond RCMP detachment and Integrated Homicide Investigation Team that made public statements regarding the in-custody death of Robert Dziekanski and the seizure of Paul Pritchard's video recording of Mr. Dziekanski's death. Mr. Pritchard loaned his recording to the RCMP with a promise it would be returned within 48 hours, but later had to launch a civil suit against the RCMP to retrieve his property.

Please note that this complaint is distinct from our prior complaint dated October 24, 2007 against the RCMP members who sought to detain Mr. Dziekanski.

Mr. Dziekanski died October 14, 2007 shortly after receiving two taser pulses from an RCMP officer at the Vancouver International Airport. Shortly after the incident, Sgt. Pierre Lemaitre publicly stated that the officers present at the incident attempted to calm Mr. Dziekanski down verbally and with hand gestures. It was stated that Mr. Dziekanski ignored the officers, prompting them to use the taser. Information gleaned from eyewitness accounts contradicts this official position.

Walter Kosteckyj, counsel for Mr. Dziekanski's mother Zofia Cisowski, has stated that he has viewed video of the incident and 24 seconds elapsed between officers arriving on the scene and the use of the taser. Mr. Dziekanski was isolated and reportedly presented no danger to the public or responding officers. In an international airport, it is commonplace for people to have limited understanding of English and it was obvious that Mr.

Dziekanski spoke a language other than English and was not understanding the officers. Any statement that the officers made an honest attempt at establishing communications constitutes misrepresentation given the circumstances.

Paul Pritchard, who witnessed and recorded the incident, has publicly stated that he heard an RCMP officer ask for and receive permission to use a taser before the officers confronted Mr. Dziekanski. Any statement that explicitly or implicitly leads the public to believe that the taser was used as a last resort contradicts the statement of Mr. Pritchard. Mr. Pritchard's statement is supported by the rapid deployment of the taser. There appears to be no evidence that supports the position that the taser was used as a last resort. Evidence that is publicly available in fact contradicts this representation. The evidence publicly available indicates that the officers in question did not pursue less intrusive methods, and any statement made otherwise constitutes misrepresentation given the circumstances.

I am also concerned about statements that misled the public as to Mr. Dziekanski's character. Sgt. Lemaitre repeatedly made statements implying if not alleging that Mr. Dziekanski was under the influence of alcohol or drugs or had a medical condition that caused his death. Examples of such a statement are as follows:

“He may have ingested drugs, or may have a medical condition.” (“Airport death raises questions.” Jonathan Woodward, Vancouver Sun, 15 October 2007)

“The man was sweating profusely and violent which could indicate either drug use or a medical condition.” (“RCMP methods under scrutiny after airport Taser death.” CanWest News Service, National Post, 15 October 2007)

[On the RCMP interest in obtaining toxicology results] “There was obviously something very different that was going on inside him.” (“Mother questions Taser death.” Chantal Eustace, Vancouver Sun, 18 October 2007)

Sgt. Lemaitre also publicly questioned whether Mr. Dziekanski's identification was genuine. (“Witness says she tried to calm victim.” Ian Bailey, Globe & Mail, 16 October 2007, S1)

Sgt. Lemaitre spoke without specific evidence to support his position. Mr. Dziekanski's autopsy and toxicology results refute Sgt. Lemaitre's position. While drugs, alcohol or a medical condition are possible contributors to Taser deaths, Sgt. Lemaitre appeared not to be explaining this possibility, but

instead framed it as near certainty without alternative explanations. For example, Mr. Dziekanski's physical exertion was the obvious cause of profuse sweating, not drug use. Sgt. Lemaitre's assertion of something being "obviously" wrong was incorrect and inappropriate. Sgt. Lemaitre appears to have misled the public while casting aspersion on the character of Mr. Dziekanski. Either the intent or effect of the characterizations of the events and of Mr. Dziekanski appear designed to provide a favourable account of the RCMP's role in this death. This is inappropriate especially given the fact that the RCMP members are under investigation and the RCMP has a lead role in undertaking that investigation.

With respect to the video, an unnamed officer spoke with Paul Pritchard and obtained his recording of the incident under the promise it would be returned immediately. The officer quickly informed Mr. Pritchard that the available equipment would not allow a copy to be made, and an agreement was reached to return the recording within 48 hours. Once in possession of the recording, the RCMP first informed Mr. Pritchard that previous agreements would have to be retracted and the recording would not be returned until a coroner's inquest concluded, some 1.5 to 2.5 years in the future.

According to public statements by Cpl. Dale Carr of the Integrated Homicide Investigation Team, the video had to be withheld because it would contaminate witnesses' memories. Yet, by the time these statements were made, the RCMP had already established and publicized their version of the story in great detail. If there were witnesses that had not been interviewed, contamination had already occurred. If the release of the video was inappropriate because of fear of contamination, the previous release of information by the RCMP should be equally viewed as contamination by the RCMP.

Cpl. Carr also publicly attacked Mr. Pritchard's desire to release the video on the grounds that it would upset Mr. Dziekanski's mother, Zofia Cisowski ("Police say they will return Taser video soon." Jonathan Fowlie and Chantal Eustace, Vancouver Sun, 2 November 2007, A1). This unfounded statement appears to be made for the purpose of discrediting Mr. Pritchard's intentions, as the public statements of Ms. Cisowski and her lawyer, Walter Kosteckyj, seem only to support the publication of the video.

As of the date of this complaint, the video has been returned to Mr. Pritchard clearly repudiating the RCMP's original justification for withholding the video.

Thus, without legal right, the RCMP effectively seized this video recording and suppressed it in a manner that was, either in intent or effect, to advantage the RCMP's reputation.

In sum, the BCCLA is concerned that the relevant RCMP member(s) misrepresented themselves to the public on various occasions and that they failed to return the video to Mr. Pritchard in a timely manner without grounds for doing so.

Given the serious nature of our complaints, and to maintain and enhance the public's confidence in the RCMP, we request that your office rather than the RCMP conduct this investigation.

I look forward to your response.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. Gratl', written in a cursive style.

Jason Gratl,  
President