



March 19, 2009

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

Dear Mr. Kennedy,

Re: Request for review of complaint PC-2007-2344 (2007-30019) regarding public statements and actions by the RCMP in the investigation of the in-custody death of Robert Dziekanski

I am writing on behalf of the BC Civil Liberties Association (BCCLA) to request a review of our complaint PC-2007-2344. This complaint alleges that public statements and actions by the RCMP during the investigation of the in-custody death of Robert Dziekanski violate RCMP policy and amount to professional misconduct.

This complaint was made only a few weeks after Mr. Dziekanski died in police custody. The BCCLA attempted to provide several examples of misrepresentation for the investigator and cited our sources. The assigned investigator requested that the BCCLA provide copies of the articles. The BCCLA denied this request for several reasons.

First, the BCCLA monitors only a limited number of media sources due to our limited capacity as a small, non-profit organization. The BCCLA explicitly noted that the articles we cited were examples, and we believe that a thorough and adequate investigation ought to examine other news sources and relevant RCMP internal records such as press releases and interview tapes in order to effectively investigate our complaint.

Second, the investigator was made aware that the cited articles were available in the public domain. The Vancouver Sun and the National Post allow unrestricted public access to news articles for quite some time. The Globe and Mail restricts access after an article has been posted for seven days, but provides articles for a small fee thereafter. The public library may also have the news articles archived. The BCCLA submits that all articles cited were readily available to the investigator, and in point of fact, are still available.

“RCMP methods under scrutiny after airport Taser death.” CanWest News Service, National Post, 15 October 2007.

Available at:

<http://www.nationalpost.com/news/story.html?id=4378a9fa-2b33-426b-974b-d2ee563e1b17>

“Airport death raises questions.” Jonathan Woodward, Vancouver Sun, 15 October 2007.

Available at: <http://www2.canada.com/vancouvernews/story.html?id=78aadf6b-9d89-433d-afd6-edd53f1a4e6e&k=20860>

“Mother questions Taser death.” Chantal Eustace, Vancouver Sun, 18 October 2007.

Available at:

<http://www.dose.ca/news/story.html?id=e7a4e879-1f07-492e-9cdf-7cb9ed79c935>

“Witness says she tried to calm victim.” Ian Bailey, Globe & Mail, 16 October 2007, S1.

Available for a small fee at:

http://www.theglobeandmail.com/servlet/Page/document/v5/content/subscribe?user_URL=http://www.theglobeandmail.com%2F servlet%2F story%2FLAC.20071016.BCTASER16%2FTPStory%2FNational&ord=52241606&brand=theglobeandmail&force_login=true

“Police say they will return Taser video soon.” Jonathan Fowlie and Chantal Eustace, Vancouver Sun, 2 November 2007, A1.

Available at:

<http://www2.canada.com/vancouvernews/story.html?id=f8f83d21-8883-45b7-81c0-b8e0b766507d&k=82963>

Third, the BCCLA submitted a complaint with clear citations and it is not the responsibility of the BCCLA to undertake investigative duties after filing a complaint. The RCMP has legal duties to a complainant outlined by the RCMP Act, and the clearly cited news articles can be obtained without impact on the limited resources of the BCCLA. The RCMP is obligated to obtain evidence in order to conduct a thorough and adequate investigation and the BCCLA made every effort to facilitate that process. Quite simply, the request was deemed inappropriate.

Furthermore, the investigator states that he was unable to acquire news articles because media outlets referred him to “their legal department and did not cooperate by providing the requested information”. The report does not state which media organizations did not cooperate, what noncooperation entailed, and the reasons for not cooperating. As well, the report does not address whether the investigator made any attempts to address this lack of cooperation in order to pursue the RCMP’s legal obligations to investigate the BCCLA’s complaint appropriately.

Unless the RCMP can provide evidence that they were legitimately refused access to relevant news articles they could otherwise not obtain through other sources, including the internet or library archives, the BCCLA contends that the RCMP has not fulfilled its statutory obligations.

The BCCLA submits that the investigation is inadequate and asks that the complaint be reviewed by the Commission for Public Complaints against the RCMP and investigated further by the RCMP. Due to the gross inadequacy of the RCMP investigation, the BCCLA requests that the Commission monitor future investigation of this complaint in order to ensure the RCMP fulfils its statutory obligations to the BCCLA.

In order to facilitate reinvestigation of the BCCLA's complaint, the BCCLA's allegations and the conclusions of the report are examined in detail below. Please note that the allegations below have been numbered according to the original complaint and that that numbering does not match the investigation report. This was done because the report does not capture all of the allegations made in the original complaint.

Allegation 1

"...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."

Allegation 2

"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 is no evidence that supports the position that the taser was used as a last resort. The officers did not honestly pursue less intrusive methods, and any statement made otherwise constitutes misrepresentation given the circumstances."

Allegations 1 and 2 seem to have been conflated in the investigation report into a single allegation "that Sergeant Lemaitre stated the attending police officers attempted to calm Dziekanski and as a last resort, used the taser."

Although the articles that supported the BCCLA's allegations were not examined, Tom Forster did report on a CBC interview of which the BCCLA was not aware that resulted in the following statement:

"Sergeant Lemaitre in an interview with the CBC on October 16, 2007 defended the actions of the members by telling the reporter how various use of force options were not

ideal during the altercation with Dziekanski. At this point in time, no opinion from a use of force expert had been received by IHIT indicating whether the use of the CEW or the use of force generally was appropriate or not. Such a report was not requested by IHIT until early November 2007.”

The BCCLA made its complaint due to concerns that the investigation of Mr. Dziekanski’s in-custody death was biased, and that the primary concerns of the RCMP were the defence of its members and its public image. Canadians expect the RCMP to investigate crimes in a manner that ensures no Canadian is above the law. Nevertheless, Sergeant Lemaitre, a spokesman for the RCMP, defended the actions of officers who were the subjects of an open criminal investigation. Furthermore, Sergeant Lemaitre defended the officers’ deadly use of force even though an internal review as to the appropriateness of the degree of force used had not been completed. Despite the investigator’s conclusion that the allegations are not supported, it is difficult to see how Sergeant Lemaitre’s actions do not indicate professional misconduct and biased reporting of the RCMP’s investigation of this in-custody death.

Given the information supplied in the investigation report, that Sergeant Lemaitre actively defended the actions of officers involved in an in-custody death without reference to an internal investigation, *any* assertion by Sergeant Lemaitre that the attending members used an appropriate degree of force appears inappropriate, unfounded, and biased.

Allegation 3

“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.”

Allegation 4

“Sgt. Lemaitre also publicly questioned whether Mr. Dziekanski’s identification was genuine.”

Allegation 3 was expanded into two allegations in the investigation report that addressed the three examples the BCCLA provided in order to support its allegations, “that Sergeant Lemaitre may have been under the influence of alcohol, drugs, or had a medical condition that caused his death,” and “that Sergeant Lemaitre stated that Dziekanski was sweating profusely and was violent which could indicate either drug use or a medical condition and that there was obviously something very different going on inside him.”

Allegation 4 was not investigated.

Allegations 3 and 4 are based on the appropriateness of certain statements Sergeant Lemaitre made to the media. The BCCLA cited articles that contained unfounded assertions that appeared only to serve as a character attack on Mr. Dziekanski. Unless the RCMP claims that Sergeant Lemaitre was misquoted, it is difficult to see how the investigation report can claim that the statements were not made.

Although the articles that supported the BCCLA's allegations were not examined, Tom Forster notes the following:

"The Pritchard video confirms that Dziekanski was sweating profusely. While it could indicate drug use, or a medical condition or that something was going on inside him, or something else altogether, at the time the comment was said, the autopsy report had not confirmed, eliminated or otherwise provided information about the cause of Dziekanski's sweating or his overall behaviour. As well, the toxicology report had not yet been received and therefore, these comments could amount to speculation which would be contrary to RCMP policy."

Sergeant Lemaitre is clearly speculating in some of his statements, such as when giving weight to a toxicology report not yet received or when questioning the authenticity of identification without cause. Allegations 3 and 4 need to be investigated further, as the report ignores the supporting evidence supplied by the BCCLA and ignores an allegation in its entirety.

The investigation report clearly focuses on the fact that Sergeant Lemaitre did not have investigational details to support his statements. In Allegations 1 and 2, the BCCLA contends that Sergeant Lemaitre made statements in defence of the members involved and the public image of the RCMP. In Allegations 3 and 4, Sergeant Lemaitre makes statements that consistently create suspicion about Mr. Dziekanski. Defending those that are the subject of an active homicide investigation and casting suspicion on the role of the victim is extremely inappropriate. The BCCLA alleges that Sergeant Lemaitre was not only involved in speculation, but that that speculation served a purpose: to shift blame from the involved officers and the RCMP to Mr. Dziekanski. It is difficult to posit any other reasonable explanation for Sergeant Lemaitre's conduct. It is noteworthy that Sergeant Lemaitre releases many details of the investigation that could contaminate the investigation by altering the accounts of witnesses.

Allegation 5

"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 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.

Without legal right, the RCMP seized this video recording and suppressed it."

Allegation 5 was not investigated but a statement was made that there was no suppression.

The BCCLA submitted in our original complaint that the RCMP had no right to seize Paul Pritchard's property, and that they actively tried to suppress the video by claiming it would not be released until after a coroner's inquest. The investigation report makes a passing reference to

this allegation by noting “there is no evidence that there was any attempt to suppress the video as it was presented to the BC Coroner immediately and in fact was viewed by Mrs. Cisowski’s lawyer [Walter Kosteckyj] shortly thereafter.” The BCCLA does not question whether the BC Coroner’s Office had the videotape in question and is aware that Mr. Kosteckyj viewed the tape, but the tape was not returned to Mr. Pritchard until after he launched a lawsuit. The BCCLA alleges that the RCMP did not have the legal authority to maintain possession of the tape and that telling Mr. Pritchard he would not have his property returned to him until after a coroner’s inquest amounts to suppression.

While the report does not investigate the allegation it concludes that there is no evidence of suppression. Paul Pritchard’s statement, as reported by the Vancouver Sun and other media outlets, contradict this:

“Pritchard said he gave the videos to police right after the incident on the understanding they would be returned within 48 hours. He said police have held onto the videos ever since, telling him he may not see the footage again for up to 2 1/2 years.”¹

The Canadian Press reported that Mr. Pritchard launched his law suit precisely because he was told the video might be withheld for years.

“[Pritchard] turned over the video to police investigators on a promise it would be returned within 48 hours but went public with a lawsuit after being told RCMP might keep it for years.”²

Documentation of Mr. Pritchard’s lawsuit was not examined as part of this complaint, and Paul Pritchard was not contacted as a witness. There appears to be no basis to claim that “there is no evidence that there was any attempt to suppress the video”. The BCCLA contends that there is evidence of attempted suppression and that evidence has not been examined.

Allegation 6

“According to Cpl. Dale Carr of the Integrated Homicide Investigation Team, the video had to be withheld because it would contaminate witnesses’ memories. By this time the RCMP had already established and publicised 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

¹ “Police say they will return Taser video soon.” Jonathan Fowlie and Chantal Eustace, Vancouver Sun, 2 November 2007, A1. <http://www2.canada.com/vancouvernews/news/story.html?id=f8f83d21-8883-45b7-81c0-b8e0b766507d&k=82963>

² “‘Blood-curdling scream’ heard on airport death video.” The Canadian Press, CTV.ca, 13 November 2007. http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20071113/airport_taser_071113?s_name=&no_ads=

previous release of information by the RCMP should be equally viewed as contamination by your office.”

Allegation 6 is examined as an allegation “that Corporal Carr stated the Pritchard video recording was being withheld from the public to prevent witness account contamination but that the RCMP was continuing to publicly espouse subjective information about the incident thereby contaminating potential witness accounts to the detriment of Dziekanski and to the benefit of the RCMP.”

The report concludes that Corporal Carr did not release information about the investigation after being assigned to the case. The statements made by Sergeant Lemaitre were not considered. Sergeant Lemaitre, as outlined above, clearly speculated about Mr. Dziekanski’s mental state, his mental health, drug use, and the authenticity of Mr. Dziekanski’s identification. Sergeant Lemaitre also made several statements as to the appropriateness of the involved officers’ conduct. These are clearly details of the investigation that could impact the integrity and content of witnesses’ statements. The investigation report implicitly supports a claim that Sergeant Lemaitre released details of the investigation by noting that Sergeant Lemaitre’s statements “were contrasted against details depicted in the video”. The original complaint made by the BCCLA does not limit its allegation to Corporal Carr, and the statements of Sergeant Lemaitre were not addressed in the investigation report.

That Corporal Carr or other RCMP members did not release details of the investigation after October 16th has not been established. At no time does the report state that RCMP media releases and press conferences were examined; instead, the investigator claims to have examined that which was in the public domain. The BCCLA believes it is appropriate to examine all RCMP press releases and all tapes held by the RCMP of its own interviews. If the RCMP is to make the claim that it does not retain records of its own press releases or record (or keep recordings of) their own press conferences, the BCCLA also believes that some of this information can be obtained from media outlets.

Allegation 7

“Cpl. Carr publicly attacked Mr. Pritchard's desire to release the video on the grounds that it would upset Mr. Dziekanski's mother, Zofia Cisowski.” 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.”

Allegation 7 was not investigated on the excuse that there was no video of Corporal Carr’s statements. The BCCLA cited its source in making the allegation.³

³ “Police say they will return Taser video soon.” Jonathan Fowlie and Chantal Eustace, Vancouver Sun, 2 November 2007, A1. <http://www2.canada.com/vancouvernews/story.html?id=f8f83d21-8883-45b7-81c0-b8e0b766507d&k=82963>

The report concludes that Corporal Carr spoke as a parent and projected that no parent would want to see video of their child's death. This is not supported by Corporal Carr's statements to the media. To be clear, the cited article states the following:

"Carr said he expects Pritchard will release the video to the media as soon as he is able. He added, however, that doing so is likely to upset Dziekanski's mother, Zofia Cisowski. 'She is beside herself. This has been extremely traumatic for her and this is what, are we 10 or 15 days later? And it's going to be dredged up again,' he said. 'Probably, I can pretty much imagine the clips that are going to be shown if it's given, and I think it's terrible,' he added.

...

Pritchard added he is determined to let the public see the video so the full story can get out, but he said he would speak with Cisowski before making any final decisions.

'I will first talk to Mr. Dziekanski's family and their lawyer to make sure it is okay and then just get it out to the media,' he said.

'I want the public to see this.'"⁴

Corporal Carr clearly states that the release of the video will further traumatize Ms. Cisowski's. Corporal Carr cannot speak for Ms. Cisowski and clearly Mr. Pritchard intended to confer with Ms. Cisowski before he released the tape to the public. The BCCLA contends that it is inappropriate of Corporal Carr, acting as a representative of the RCMP, to state any opinion or judgement on the broadcasting of this video. Corporal Carr's statement serves no purpose other than to shed negative light on the video's release. Corporal Carr did not express any sympathy based on his status as a parent, as claimed in the investigation report.

As the BCCLA's complaint was made shortly after the in-custody death of Robert Dziekanski, certain details of the incident had not come to light. It is now clear from the Braidwood Inquiry that the taser was discharged five times. The RCMP initially reported that Mr. Dziekanski was tasered twice and expressly denied claims that Mr. Dziekanski was tasered four or five times.⁵ Furthermore, it is now clear from the Braidwood Inquiry that four RCMP officers attended the scene. The RCMP initially reported that three officers attended.⁶ The BCCLA believes that it is

⁴ "Police say they will return Taser video soon." Jonathan Fowlie and Chantal Eustace, Vancouver Sun, 2 November 2007, A1. <http://www2.canada.com/vancouversun/news/story.html?id=f8f83d21-8883-45b7-81c0-b8e0b766507d&k=82963>

⁵ "Tasered man an immigrant with family in Interior", Kelly Sinoski, Vancouver Sun, 17 October 2007 <http://www2.canada.com/vancouversun/news/westcoastnews/story.html?id=f25214b1-5a95-482a-8f40-2fa30c5aada6&k=926>

"Witness says she tried to calm victim", Ian Bailey, The Globe and Mail, 16 October 2007 http://www.theglobeandmail.com/servlet/Page/document/v5/content/subscribe?user_URL=http://www.theglobeandmail.com%2Fservlet%2Fstory%2FLAC.20071016.BCTASER16%2FTPStory%2F%3Fquery%3DWitness%2Bsaw%2Bfive%2Bofficers%252C%2Bheard%2Bfour%2Bpulses&ord=63631766&brand=theglobeandmail&force_login=true

⁶ "Tasered man an immigrant with family in Interior", Kelly Sinoski, Vancouver Sun, 17 October 2007 <http://www2.canada.com/vancouversun/news/westcoastnews/story.html?id=f25214b1-5a95-482a-8f40-2fa30c5aada6&k=926>

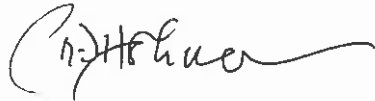
"Witness says she tried to calm victim", Ian Bailey, The Globe and Mail, 16 October 2007

not unreasonable for these instances of apparent misrepresentation also be examined when this complaint is reviewed.

The BCCLA requests that its complaint be reviewed by the Commission. Assuming the Commission accepts our request for review, given the serious charges we bring to your attention, the inadequacy of the ensuing investigation, and to maintain and enhance the public's confidence in the RCMP, we request that your office monitor the reinvestigation of this complaint to ensure that a thorough and unbiased investigation takes place.

I look forward to your response.

Yours sincerely,



Rob Holmes,
President

http://www.theglobeandmail.com/servlet/Page/document/v5/content/subscribe?user_URL=http://www.theglobeandmail.com%2Fservlet%2Fstory%2FLAC.20071016.BCTASER16%2FTPStory%2F%3Fquery%3DWitness%2Bsaw%2Bfive%2Bofficers%252C%2Bheard%2Bfour%2Bpulses&ord=63631766&brand=theglobeandmail&force_login=true

“Man dies after Taser shock by police at Vancouver airport”, CBC News, 14 October 2007

<http://www.cbc.ca/canada/british-columbia/story/2007/10/14/bc-taser.html?ref=rss>

“Man dies at YVR after being Tasered”, Lora Grindlay, Vancouver Sun, 14 October 2007

<http://www2.canada.com/theprovince/news/story.html?id=4b9cbae7-36af-4527-8411-0299e4763807>