



L. Caesar #1
August 12, 2009

No. 509631
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Re: The *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 1996, c. 241 and the *Public Inquiry Act*, S.B.C. 2007, c. 9, and in the matter of the Thomas R. Braidwood, QC, Commissions of Inquiry, Study Commission to Inquire and Report on the Death of Mr. Robert Dziekanski and said Report and Recommendations dated 18 June 2009

BETWEEN

TASER INTERNATIONAL, INC.

PETITIONER

AND

**THOMAS R. BRAIDWOOD, Q.C., COMMISSIONER,
THOMAS R. BRAIDWOOD, QC, COMMISSIONS OF INQUIRY,
STUDY COMMISSION TO INQUIRE AND REPORT ON THE DEATH OF
MR. ROBERT DZIEKANSKI**

RESPONDENT

AFFIDAVIT

I, **LISA CAESAR**, legal assistant, of Suite 2600, 595 Burrard Street, Vancouver, British Columbia V7X 1L3, MAKE OATH AND SAY THAT:

1. I am the legal assistant to Jennifer Spencer, a senior associate of Blake, Cassels & Graydon LLP, solicitors for TASER International, Inc. ("TASER"), the Petitioner in this proceeding, and as such I have personal knowledge of the matters deposed to in this Affidavit except where I depose to a matter based on information from an informant I identify in which case I believe that both the information from the informant and the resulting statement are true.

2. On or about February 21, 2008, TASER's Chairman, Thomas P. Smith, wrote to Commissioner Thomas R. Braidwood, Q.C., offering TASER's assistance in respect of Commissioner Braidwood's Study Commission into the safe and effective use of conducted energy weapons by law enforcement in British Columbia. Mr. Smith offered the Commission peer-reviewed scientific and medical papers on conducted energy weapons, access to TASER's collection of use-of-force policies from police forces in Canada, the United States and elsewhere on officer training and proper deployment as well as both officer and suspect safety data. A true copy of Mr. Smith's letter to Mr. Braidwood, Q.C., is attached and marked as Exhibit "A" to my Affidavit.

3. On or about February 25, 2008, David T. Neave, solicitor for TASER, wrote to Commissioner Braidwood renewing TASER's offer to make available any or all of TASER's substantial collection of research material on conducted energy weapons. Mr. Neave also requested standing on behalf of TASER at the hearings to be held as part of the Commission's work. A true copy of Mr. Neave's letter to Commissioner Braidwood is attached and marked as Exhibit "B" to my Affidavit. We received no response from the Commission to Mr. Neave's February 25, 2008 letter.

4. On or about April 15, 2008, David Neave wrote Commissioner Braidwood (with a copy to Commission Counsel, Arthur E. Vertlieb, Q.C.) enclosing TASER's submissions to the Study Commission on the function, safety, and efficacy of TASER devices. Mr. Neave restated TASER's offer to provide the Commission with any information or research material that may be useful in the Commission's work. A true copy of Mr. Neave's letter is attached and marked as Exhibit "C" to my Affidavit, together with a copy of TASER's submissions to the Study Commission.

5. On April 24, 2008, David Neave wrote Arthur Vertlieb indicating that Mr. Neave was in receipt of a copy of Mr. Vertlieb's March 19, 2008 letter to TASER in which Mr. Vertlieb requested information relevant to the Study Commission's work. Mr. Neave noted TASER's April 15, 2008 written submissions to Commissioner Braidwood and offered to provide Mr. Vertlieb with any further information that he may require. A copy of Mr. Neave's letter is

attached and marked as Exhibit "D" to my Affidavit, together with the enclosed copy of Mr. Vertlieb's letter to TASER.

6. On May 5, 2008, Patrick J. Reilly, an electrical engineer associated with John Hopkins University made a presentation to the Study Commission. A copy of Mr. Reilly's presentation and a transcript of his remarks are attached and marked as Exhibit "E" to my Affidavit.

7. On May 9, 2008, Dr. Zian Tseng, a cardiac electro physiologist and assistant professor of medicine at the University of California (San Francisco) made a presentation to the Study Commission. A copy of Dr. Tseng's presentation and a transcript of his remarks are attached and marked as Exhibit "F" to my Affidavit.

8. On May 12, 2008, TASER's Chairman, Thomas P. Smith, gave a presentation to the Study Commission. A copy of the Mr. Smith's presentation is attached as Exhibit "G" to this Affidavit together with a transcript of his remarks.

9. On May 13, 2008, Jennifer Spencer wrote to Commission researcher, Jacquelyn Shaw, enclosing a CD-ROM containing TASER's "Electronic Control Device Research Index" (current to April 30, 2008) together with the 94 articles referenced therein for which TASER had an electronic full-text ("PDF") copy. A true copy of Ms. Spencer's letter together with print copies of the Index and articles provided to the Commission are attached and marked as Exhibit "H" to my Affidavit.

10. On May 15, 2008, Jennifer Spencer e-mailed Arthur Vertlieb and the Study Commission's research counsel, Sharon Samuels, responding to questions from the Commission about the CD-ROM of TASER's "Electronic Control Device Research Index" which had been previously provided to Commission staff. A true copy of this e-mail is attached and marked as Exhibit "I" to my Affidavit.

11. On May 16, 2008, Dr. Jeffrey Ho, a specialist in emergency medicine and an associate professor of medicine at the University of Minnesota, gave an oral presentation to the Study Commission on his research on human subjects exposed to conducted energy weapons. A copy

of Dr. Ho's presentation and a transcript of his remarks are attached and marked as Exhibit "J" to my Affidavit.

12. On May 20, 2008, Dr. Charles Kerr, a cardiac electro physiologist, made a presentation to the Study Commission. A copy of his presentation and a transcript of his remarks are attached and marked as Exhibit "K" to my Affidavit.

13. On May 20, 2008, Dr. Michael Janusz, a cardiac surgeon, made a presentation to the Study Commission. A copy of Dr. Janusz's presentation and a transcript of his remarks are attached and marked as Exhibit "L" to my Affidavit.

14. On or about May 20, 2008, David Neave wrote Commission Counsel, Arthur Vertlieb and Patrick McGowan expressing concern about Dr. Tseng's presentation before the Study Commission and identifying a number of issues with Dr. Tseng's review of the literature on the cardiac safety of conducted energy weapons. Mr. Neave observed that Dr. Tseng has not done any research of his own on conducted energy weapons and wrote that "we are concerned that the Commissioner is being presented with a misleading picture as to the state of the medical research". Mr. Neave also expressed concern with the choice of medical experts before the Commission, stating:

The presentations of Drs. Kerr and Janusz this morning, like that of Dr. Tseng, are limited to a literature review of the work of others and clinical experience unrelated to conducted energy weapon. Like Dr. Tseng, neither Dr. Kerr nor Dr. Janusz left the impression he has ever treated an individual exposed to a TASER device. While each may well be a pre-eminent physician in his field, none of Drs. Tseng, Kerr or Janusz professed or indeed appears to have any expertise in the study of the effects of TASER devices on the human body.

Mr. Neave suggested that, in the interest of an open and fair public inquiry, the Commission ought to hear first-hand from scientists in the field conducting human research, including Drs. Lakireddy, Swerdlow, Vilke, and Bozeman. A copy of Mr. Neave's letter is attached and marked as Exhibit "M" to my Affidavit.

15. Dr. John Butt, a ~~consultant~~ forensic pathologist, made a presentation to the Study Commission on May 21, 2008. A copy of Dr. Butt's presentation and a transcript of his remarks are attached and marked as Exhibit "N" to my Affidavit.

16. On May 23, 2008, Dr. Keith Chambers, a clinical epidemiologist, made a presentation to the Study Commission. A copy of Dr. Chambers' presentation and a transcript of his remarks are attached and marked as Exhibit "O" to my Affidavit.

17. Dr. Dorin Panescu, a bio-electrical engineer with expertise related to the design of devices that stimulate the human heart and in intracardiac imaging, made a presentation to the Study Commission on June 25, 2008. A transcript of Dr. Panescu's remarks and copy of his presentation are attached and marked as Exhibit "P" to my Affidavit.

18. Emergency medicine specialist and epidemiologist, Dr. William Bozeman made a presentation to the Study Commission on June 25, 2008 via teleconference. A transcript of Dr. Bozeman's remarks and a copy of his presentation are attached and marked as Exhibit "Q" to my Affidavit.

19. Dr. Charles Swerdlow, a cardiac electro physiologist at Cedars Sinai and a full professor of medicine at the University of California (Los Angeles) also made a presentation to the Study Commission on June 25, 2008. A copy of Dr. Swerdlow's presentation and a transcript of his remarks are attached and marked as Exhibit "R" to my Affidavit.

20. Dr. Christian Sloane gave a presentation to the Study Commission by teleconference on June 25, 2008. Dr. Sloane is an emergency medicine specialist and co-author with Dr. Vilke of peer-reviewed articles on the safety of TASER devices. A transcript of Dr. Sloane's remarks and a copy of his presentation are attached and marked as Exhibit "S" to my Affidavit.

21. On July 2, 2008, Jennifer Spencer sent Jacquelyn Shaw at the Commission a further updated CD-ROM of TASER's Electronic Control Device Research Index, together with electronic full-text copies of 162 articles therein for which TASER had a PDF copy. A true copy of Ms. Spencer's letter, a copy of the updated Index, and copies of the 162 articles (to the extent

they were not already Exhibited to my Affidavit in paragraph 9) are attached and marked as Exhibit "T" to my Affidavit.

22. On July 8, 2008, Jennifer Spencer sent a letter by e-mail to Arthur Vertlieb and Jacquelyn Shaw (a Commission researcher) enclosing two letters recently published by the *Canadian Medical Association Journal* by Drs. Calkins et al on the safety of electronic control devices (TASER devices). A true copy of Ms. Spencer's e-mail with attachments is attached and marked as Exhibit "U" to my Affidavit.

23. On October 8, 2008, Jennifer Spencer wrote Commission researcher, Jacquelyn Shaw, with a copy to Arthur Vertlieb, enclosing two additional recent academic articles – the Wu article in *Physiological Measurement* titled "Ventricular Fibrillation Time Constant in Swine" – and the Mangus article in *American Surgeon* titled "Taser and Taser Associate Injuries: A Case Series". Ms. Spencer also advised that the national police force in New Zealand had released an extensive report on TASER devices and provided Ms. Shaw with a copy of that report. A true copy of Ms. Spencer's letter with enclosures is attached and marked as Exhibit "V" to my Affidavit.

24. On October 23, 2008, Jennifer Spencer wrote to Cynthia Ryan, the Commission's research librarian, with a copy to Commission Counsel Arthur Vertlieb, advising that an additional study had been published – Mesloh et al, "Less Lethal Weapon Effectiveness, Use of Force and Suspect & Officer Injuries: A Five-Year Analysis", a report to the United States of America National Institute of Justice, and providing Ms. Ryan with a copy of that report. A true copy of Ms. Spencer's letter and enclosure is attached and marked as Exhibit "W" to my Affidavit.

25. On November 5, 2008, Jennifer Spencer wrote to Cynthia Ryan, Commission Research Librarian, with a copy to Commission Counsel Arthur Vertlieb, providing copies of additional recent academic literature relevant to the Commission's work:

- (a) Dawes, D., J. Ho, and J. Miner, "The Effect of Cross Chest Electronic Control Device Exposure on Breathing" 2008, American College of Emergency Physicians Scientific Assembly, Chicago, Illinois;

- (b) Ho, J., et al., "Echocardiographic Determination of Cardiac Rhythm During Trans-Thoracic Wireless Conducted Electrical Weapon Exposure" 2008, American College of Emergency Physicians Scientific Assembly, Chicago, Illinois;
- (c) US Department of Justice, National Institute of Justice Special Report (June 2008) "Study of Deaths Following Electro Muscular Disruption: Interim Report" (Washington, US Department of Justice);
- (d) John Morgan, (October 2008) "Medical Panel Issues Interim Findings on Stun Gun Safety" 261 *NIJ Journal*, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, 20-23;
- (e) Eastman, Alexander L. MD; Metzger, Jeffery C. MD; Pepe, Paul E. MD, MPH; Benitez, Fernando L. MD; Decker, James; Rinnert, Kathy J. MD, MPH; Field, Craig A. PhD, MPH; Friese, Randall S. MD. (June 2008) "Conductive Electrical Devices: A Prospective, Population-Based Study of the Medical Safety of Law Enforcement Use" 64(6) *Journal of Trauma-Injury Infection & Critical Care* 1567-1572.

A true copy of Ms. Spencer's letter with enclosures is attached and marked as Exhibit "X" to my Affidavit.

26. In her November 5, 2008 letter to the Commission (Exhibit "X"), Ms. Spencer also advised that it had recently come to her attention that the University of Miami has an Excited Delirium Education, Research and Information Centre where researchers advance the study of forensic biology, particularly brain markers, associated with sudden death, and that the University of Miami's Brain Bank is reportedly the first inventory of stored brain tissues archived in a dedicated repository for the study of in-custody deaths related to the use of restraint measures and less lethal technologies. She provided the Commission with the name and contact information for the principal, Dr. Deborah Mash, Professor of Neurology, Professor of Molecular and Cellular Pharmacology at the University of Miami. Ms. Spencer further advised that leading American and English forensic pathologist, Steven Karch, had recently published a fourth edition

to his seminal text, *Karch's Pathology of Drug Abuse* (London: CRC Press, 2008), including an updated chapter on sudden death associated with excited delirium.

27. On November 6, 2008, Ms. Spencer wrote to Cynthia Ryan, Commission Research Librarian, with a copy to Arthur Vertlieb, enclosing the report of the Office of the Québec Coroner into the death of Claudio Castagnetta, along with an English translation. A true copy of Ms. Spencer's letter and enclosures is attached and marked as Exhibit "Y" to my Affidavit.

28. On December 3, 2008, Ms. Spencer wrote Cynthia Ryan, Commission Research Librarian, with a copy to Arthur Vertlieb, providing copies of recent research by Drs. Ho, Dawes and Miner on the medical safety of TASER device exposure in humans presented at the 25th Annual Scientific Symposium of the Australasian College of Emergency Medicine in Wellington, New Zealand. A true copy of Ms. Spencer's letter and enclosures is attached and marked as Exhibit "Z" to my Affidavit.

29. On January 15, 2009, Ms. Spencer wrote Cynthia Ryan, Commission Research Librarian, with a copy to Arthur Vertlieb, advising of recently published material to follow up on the presentation to the Commission by Dr. William Bozeman of Wake Forest University on June 24, 2008. Ms. Spencer enclosed:

- (a) Dr. Bozeman's article "Safety and Injury Profile of Conducted Energy Electrical Weapons used by Law Enforcement Officers against Criminal Suspects" published in the peer-reviewed journal, *Annals of Emergency Medicine*; and
- (b) a news release from the American College of Emergency Physicians titled "Serious Injuries from TASER are Extremely Rare".

A true copy of Ms. Spencer's letter with enclosures is attached and marked as Exhibit "AA" to my Affidavit.

30. Included in the materials TASER provided the Commission were articles published in peer-reviewed academic and medical journals, including:

- *Academic Emergency Medicine*
- *American College of Emergency Physicians*
- *Annals of Emergency Medicine*
- *Annals of the Society of Academic Emergency Medicine*
- *Clinical Experimental Ophthalmology*
- *Emergency Medicine News*
- *Emergency Nurse*
- *Emergency Radiology*
- *Journal of Accidental Emergency Medicine*
- *Journal of Emergency Medicine*
- *Journal of Forensic Science*
- *Journal of Law, Medicine & Ethics*
- *Journal of the Royal Society of Medicine (UK)*
- *Journal of Trauma-Injury Infection & Critical Care*
- *Life Science*
- *Neuropsychology Review*
- *Pharmacotherapy.*
- *Physiological Measurement (UK Institute of Physics and Engineering in Medicine)*
- *Psychiatric Service*
- *Tactical Emergency Medicine*
- *The American Surgeon*
- *Topics in Emergency Medicine: Tactical Emergency Medical Support*
- *Topics in Emergency Medicine*

31. The following experts gave opinion evidence and were cross-examined by counsel for participants, including TASER, before the Commission at the Hearing Commission, before the Study Commission Report was released. I attach and mark transcripts of their evidence as follows:

Expert	Specialty	Dates	Exhibit
Dr. Charles Lee	Pathology, examining pathologist	April 27-28, 2009	Exhibit "BB"
Dr. Dorin Panescu	Bio-electrical engineering, effect of electricity on human tissue	April 28, 2009	Exhibit "CC"
Dr. John Butt	Pathology	April 29-30, 2009	Exhibit "DD"
Dr. Shao-Hua Lu	Psychiatry	May 4, 2009	Exhibit "EE"
Dr. Charles Kerr	Cardiac Electro physiology	May 7, 2009 May 14, 2009	Exhibit "FF"
Dr. Zian Tseng	Cardiac Electro physiology	May 8, 2009	Exhibit "GG"

Expert	Specialty	Dates	Exhibit
Dr. Jeffrey Ho	Emergency Medicine, Human Research on TASER devices	May 11, 2009	Exhibit "HH"
Dr. Keith Chambers	Epidemiology	May 13-14, 2009	Exhibit "II"
Dr. Paul Janke	Psychiatry	May 21, 2009	Exhibit "JJ"

32. On March 2, 2009, Commission Counsel Arthur Vertlieb asked Constable Kwesi Millington whether he was taught that death could be associated with exposure to a TASER device over David Neave's objection. Commissioner Braidwood sustained Mr. Neave's objection. A true copy of the transcript of the question, objection and ruling is attached and marked as Exhibit "KK" to my Affidavit.

33. On May 26, 2009, Dr. Charles Swerdlow of Cedars Sinai in Los Angeles provided the Commission with a further opinion which was circulated to all participants with the advice it would be exhibited when the Commission reconvenes in September. A copy of Dr. Swerdlow's May 26, 2009 report is attached and marked as Exhibit "LL" to my Affidavit.


34. On July 23, 2009, the Study Commission released its Report, titled "Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons in British Columbia"; a true copy of which is attached and marked as Exhibit "MM" to my Affidavit.

35. I am informed by Jennifer Spencer, co-counsel for TASER, and verily believe it to be true that TASER first learned about the Commission's plans to release its Report through the media the evening of July 22, 2009 and then by locating for the Commission's press release on the newswire that night.

36. TASER was not provided with any notice from the Commission in respect of the Commission's findings about TASER devices in advance of the Report being released. In particular, the Commission did not provide TASER with notice of its findings with respect to the causative or contributory role of TASER devices in injury or death.

37. TASER was not provided with any opportunity to respond to the Commission's findings in its Report about TASER devices in advance of the Report being released or at all.

SWORN BEFORE ME this 12 day of August, 2009 in the City of Vancouver, in the Province of British Columbia


A Commissioner for the taking of Affidavits within British Columbia


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