

*IN THE THOMAS R. BRAIDWOOD, Q.C., HEARING AND STUDY COMMISSION
TO INQUIRE INTO AND REPORT ON THE DEATH OF MR. ROBERT DZIEKANSKI*

**REVISED SUBMISSIONS OF THE ATTORNEY GENERAL
OF BRITISH COLUMBIA
ON THE CONSTITUTIONAL AUTHORITY OF THE COMMISSION**

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I. THE ATTORNEY GENERAL'S APPEARANCE

1. The Attorney General of British Columbia Appears as a full party to this proceeding as of right pursuant to section 8 of the *Constitutional Question Act* R.S.B.C. 1996 c. 68. For those purposes, the Attorney accepts the Submissions of the Government of Canada dated September 29th, 2009 and those of Superintendent Rideout dated September 30th, 2009 as Notices of Constitutional Question, and waives the 14-day notice period set out in the CQA so that the schedule of this Commission's hearings will not be disturbed.

II. THE CONSTITUTIONAL ISSUE

2. Canada and Superintendent Rideout invoke the doctrine of interjurisdictional immunity for the proposition that there are some areas into which the Commission cannot inquire, or upon which it cannot comment.

3. In its Submissions, the Government of Canada challenges the authority of British Columbia to direct inquiries into the RCMP and CBSA. Canada says at paras. 14-15:

[I]t is well established that a provincial commission of inquiry cannot investigate core subject matters that fall within federal spheres of jurisdiction. In particular, it is constitutionally impermissible for a provincial commission of inquiry to investigate the operations, policies or management functions of a federal institution.

...[I]nvestigating either the CBSA or the RCMP... would be beyond the constitutional authority of British Columbia.

Later, Canada argues at para. 21:

It is also submitted that the Commission's authority to make findings misconduct pursuant to s. 21 of the Public Inquiry Act is subject to the same constitutional limits described at paragraphs 14 and 15 above.

Consequently, the Inquiry should not make institutional findings of misconduct against the federal government or any of its constituent entities, including the CBSA and the RCMP.

4. So Canada's constitutional assertions are made on either or both of two bases: Canada suggests that the Commission may not make findings against the RCMP or CBSA as *institutions*, even if it could do so with respect to individual members or employees.¹ Second, Canada implies that the Commission may not make findings regarding decisions, activities and practices that might be characterized as "operations, policies, or management" in nature. In support of this proposition, Canada mainly relies on the decisions of the Supreme Court of Canada in *Keable v. Attorney General of Canada*, [1979] 1 S.C.R. 218 and *Alberta v. Putnam*, [1981] 2 S.C.R. 267.

5. Superintendent Rideout suggests that interjurisdictional immunity protects any acts that he took in a management capacity from inquiry, which includes "decisions that Supt. Rideout made with respect to what information would be released to the media."² Because "his decisions in this regard would have to be construed as administrative or management decisions that significantly involve RCMP policy."³ Supt. Rideout also relies mainly on the principles enunciated in *Keable* and *Putnam*.

¹ Earlier this year, four individual RCMP officers brought a judicial review of this Commission's power to issue Notices of Misconduct against them on, *inter alia*, constitutional grounds. In that case, however, it was common ground that the officers' actions themselves did not fall within that category. In *Rundel v. British Columbia – Braidwood Commission* 2009 BCSC 814, Silverman J. acknowledged at para. 53 that "[Commissioner Braidwood] understands that there are aspects of the RCMP, particularly those of a management or supervisory nature, which are within federal jurisdiction." However, while making that observation in *obiter*, His Lordship did not need to consider what fell within the protected sphere and what did not, except to the extent of noting that discipline of RCMP officers remained a federal responsibility, a point that was academic because the Commission is not in a position to impose discipline.

² Submissions of Superintendent Rideout at para. 24.

³ *Ibid.*, para. 23.

III. THE ATTORNEY'S POSITION

6. The Attorney General of British Columbia rejects both of these arguments and says that, within or incidental to its mandate, this Commission is unconstrained from making findings or recommendations in these areas. The Commission may, in short, follow the facts presented no matter where they lead.

7. The law of interjurisdictional immunity has undergone a radical change with the recent Supreme Court decision of *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3 and its sister case, *British Columbia (Attorney General) v. Lafarge Canada Inc.*, 2007 SCC 23, [2007] 2 S.C.R. 86. In those cases, the Court sharply restricted the doctrine, and held that interjurisdictional immunity was contrary to the modern trend constitutional development which favoured harmony between provincial and federal regulation over a 'competing enclaves' approach. The majority wrote "the dominant tide of constitutional interpretation does not favour interjurisdictional immunity",⁴ and proposed a tightly restricted application of the doctrine. The Court wrote:

47 [A]lthough the doctrine of interjurisdictional immunity has a proper part to play in appropriate circumstances, we intend now to make it clear that the Court does not favour an intensive reliance on the doctrine, nor should we accept the invitation of the appellants to turn it into a doctrine of first recourse in a division of powers dispute.

8. After those decisions, a single, two-stage test emerges. Where the provincial activity is, in pith and substance, within provincial legislative authority, the federal activity over which immunity is claimed must be shown to be within the inviolable, essential core of the federal interest. Then, it must be demonstrated, on the facts of each particular case, that the province is not only "affecting" the core federal activity, but is actually "impairing it" – in other words, actual harm to the federal interest or activity must be shown.

⁴ *Canadian Western Bank* at para. 35 (heading).

9. The onus on both of these points lies with the party invoking the immunity, in this case Canada and Superintendent Rideout.

IV. ARGUMENT

A. The Province has Constitutional Authority Over Policing

10. The provincial power underlying the *Public Inquiry Act* and this Commission's Terms of Reference is s. 92(14) of the *Constitution Act, 1867* which grants to the Provinces authority over "the administration of justice" within the province. It is beyond dispute that the "administration of justice" includes the power to "supervise police forces".⁵ In *O'Hara v. British Columbia*, [1987] 2 S.C.R. 267, Provincial authority to inquire into police actions was recognized as necessary to maintain "public confidence in the administration of justice in the province".⁶

11. And at least since *Keable v. Attorney General of Canada*, [1979] 1 S.C.R. 218 the courts have accepted that a province may direct inquiries into questionable actions by RCMP members in the same way that they may do so with respect to actions of provincially-constituted forces, subject only to the application of the interjurisdictional immunity doctrine.

12. This Commission is, in pith and substance, directed at maintaining or enhancing public confidence in the administration of justice in the Province, and falls clearly within section 92(14) of the *Constitution Act, 1867*. No participant has claimed otherwise.

⁵ Beetz J., concurring in *Di Iorio v. Warden of the Montreal Jail*, [1978] 1 S.C.R. 152, at p. 223; see also *O'Hara, supra* at para. 14.

⁶ Dickson C.J., for the majority, cited the B.C. Court of Appeal's decision at para. 12 and wrote at para. 16 that "I agree with the judgments of the British Columbia courts" on the constitutional question.

B. Canada's Constitutional Authority

13. Canada's constitutional authority over the RCMP derives from a combination of sources: the federal power under s. 91(27) over criminal law in procedure; the residual peace, order and good government power; and also, as the Chief Justice put it in *O'Hara* at paras. 16-17, the federal authority over federal organizations. The "discipline, organization and management of the RCMP", the majority in *O'Hara* summarized, were not within "the administration of justice" powers of the province. Consequently, the provinces were restricted, on the jurisprudence as it then stood, from "provincial interference in federal organizations" or "provincial intrusion into the management of a federal organization" [emphases added].

C. The Law As It Was: *Keable* and *Putnam*

14. Canada's constitutional argument is principally founded upon the authority of *Keable, supra* and *Alberta v. Putnam*, [1981] 2 S.C.R. 267. In the first case, a provincial inquiry into the RCMP campaign against the F.L.Q. was found to be restricted from having the expressed or effective purpose of inquiring into "essential aspects of the administration" of the RCMP. Pigeon J. held for the majority at pp. 242-3:

I thus must hold that an inquiry into criminal acts allegedly committed by members of the R.C.M.P. was validly ordered, but that consideration must be given to the extent to which such inquiry may be carried into the administration of this police force. It is operating under the authority of a federal statute, the *Royal Canadian Mounted Police Act*, (R.S.C. 1970, c. R-9). It is a branch of the Department of the Solicitor General, (*Department of the Solicitor General Act*, R.S.C. 1970, c. S-12, s. 4). Parliament's authority for the establishment of this force and its management as part of the Government of Canada is unquestioned. It is therefore clear that no provincial authority may intrude into its management. While members of the force enjoy no immunity from the criminal law and the jurisdiction of the proper provincial authorities to investigate and prosecute criminal acts committed by any of them as by any other person, these authorities cannot, under the guise of carrying on

such investigations, pursue the inquiry into the administration and management of the force. The doctrine of colourability is just as applicable in adjudicating on the validity of a commission's term of reference or decisions as in deciding on the constitutional validity of legislation. As Viscount Simon said in *Attorney General for Saskatchewan v. Attorney General for Canada*[17], (at p. 124) "you cannot do that indirectly which you are prohibited from doing directly".

The words [TRANSLATION] "and the frequency of their use" at the end of paragraph a) as well as the words "and the frequency of their use" at the end of paragraph c), of the Commissioner's mandate, do not contemplate an inquiry into criminal acts but into the methods used by the police forces. Those are essential aspects of their administration and therefore, to the extent that those words relate to the R.C.M.P., what they purport to authorize is beyond provincial jurisdiction to inquire into. That this is the intended scope of the inquiry is apparent from the subpoenas which call for the production of all operating rules and manuals. For similar reasons, I would hold that paragraph d) is invalid in so far as it relates to the R.C.M.P. This paragraph pertaining to recommendations, following as it does provisions contemplating an inquiry into the regulations and practices of the R.C.M.P., is clearly intended to invite, as a purpose of the inquiry, recommendations for changes in such regulations and practices. Inasmuch as these are the regulations and practices of an agency of the federal government, it is clearly not within the proper scope of the authority of a provincial legislature to authorize such an intrusion by an agent of a provincial government. [emphasis in original]

15. In reaching that conclusion, Pigeon J. nevertheless observed that a provincial inquiry for a constitutionally-valid provincial purpose could incidentally affect the regulation and practices of the R.C.M.P. His Lordship wrote at p. 241:

[T]he majority opinion in *Di Iorio v Warden of the Montreal Jail* is conclusive of the validity of the Commission's mandate to the extent it is an inquiry into specific criminal activities. [S]uch inquiries come within the scope of "The Administration of Justice in the Province."

....

Great stress was laid ... on Dickson J.'s statement in *Di Iorio*, at p. 208, that "A provincial commission of inquiry, inquiring into any subject, might submit a report in which it appeared that changes in federal laws would be desirable." This was said in obiter in a case concerning an inquiry into organized crime. As previously noted, the basis of the decision was that such an inquiry into criminal activities is within the proper scope of "The

Administration of Justice in the Province." The intended meaning of the sentence quoted is not that a provincial commission may validly inquire into any subject, but that the inquiry into a matter within provincial competence may reveal the desirability of changes in federal laws. This does not mean that the gathering of information for the purpose of making such a report may be a proper subject of inquiry by a provincial commission.

16. The difficulty is that the RCMP activities at issue in *Keable* were clearly based upon its role as a federal entity, not its role as a provincial police force. In his concurring reasons, Estey J. allowed at pp. 258-9:

On the other hand, to strip a province of the right to investigate the operations of provincial and municipal police in the detection of crime and the enforcement of the criminal law would be to put a serious impediment in the path of those authorities charged with "the administration of justice" within the Province and I would not readily find such an interpretation to be appropriate in the application of these competing subsections of ss. 91 and 92. This right or authority on the part of the Province in relation to s. 92(14) does not by a back door, as it were, lead to a right to investigate a validly established federal organization, including a federal police organization. That is not to say that where members of such a federally organized force offend the criminal law, the ordinary agencies of criminal investigation and law enforcement within the Province would not operate as in the case of any other individuals. There may be circumstances in those Provinces which have contractual or other arrangements with the federal government with reference to the maintenance of police forces which will call into question different principles, but with which we are not here concerned. [emphasis added]

17. Only in the subsequent decision of *Putnam* did the Supreme Court of Canada directly confront the question of provincial inquiry into RCMP members when the Force was acting as a provincial police force. That case considered the authority of Alberta to enact and enforce a statute providing for a complaints procedure applicable to RCMP officers performing their role under contract as a provincial police force. In that case, the majority found that it was not permissible for the provincial government to trench on the federal power in that way.

16. In reaching that conclusion, Chief Justice Laskin focused on the scheme set out in section 33 of the provincial *Police Act*, and drew particular attention to section 33(12)(f) under which the provincially-appointed Board may “impose punishment” on officers where it was not imposed by the Commanding Officer of the R.C.M.P. who previously investigated any complaint. The Chief Justice wrote at p. 276-277::

It is clear to me that the *Police Act 1973* in s. 33 especially, envisages the complaint as merely the initiation of an inquiry [i.e. by the Commanding Officer] that must lead to discipline if the complaint is justified or, if it is found to be unjustified, authorizes an appeal in which the Board may impose a punishment or some form of discipline. I cannot read sections 33(3), (5), (7), (8), (9) and (12) without being amply persuaded that it sets a code for discipline to which members of the R.C.M.P. are to be subjected.

18. That reasoning was in response to submissions from the Attorney General of British Columbia that, by virtue of the contractual and legislative arrangements through which the R.C.M.P. provided policing services in the province of Alberta, it was as fully open to the province to provide for discipline under its legislation as it was to provide merely for investigation. In reaching his conclusion for the majority, the Chief Justice recognized there was a provincial interest in the policing arrangements under contract, but that interest did not give Alberta, as the contracting party, “the right ... to invade the organization adopted by the other contracting party in the delivery of the services contracted for ...” – i.e. by imposing discipline.

19. *Putnam* goes no further than to say that the disciplinary investigation of RCMP officers in their provincial role is a federal matter outside provincial competence. The provincial government, in other words, cannot by statute or executive action *engage in* the management, organization or discipline of the RCMP. But in the present case, Canada takes no exception to the Commission’s role in *investigating* the behavior of its members, nor even to the Commission making findings of misconduct against them. The Attorney submits that this

takes the present case outside *Putnam* and the decision of the Saskatchewan Court of Queen's Bench in the *Milgaard* case, also cited by Canada.⁷ If British Columbia is – through this inquiry – competent to investigate the behavior of individual members (i.e. if doing so does not offend *Putnam*), it is competent to investigate the institutional behavior of the RCMP, including questions of management and direction that bear upon those actions.

D. The Law As It Is: *Canadian Western Bank* and *Chatterjee*

20. In the 2007 decision of *Canadian Western Bank* and its companion case of *LaFarge*, the Supreme Court engaged in a broad re-thinking of the doctrine of interjurisdictional immunity. It found at paras. 35 to 47 that the approach of identifying “enclaves” or “watertight compartments” immune from intrusion must give way to “co-operation among government actors to ensure that federalism operates flexibly.”

21. In his concurring reasons in *LeFarge*, Bastarache J. recounted the evolution of the doctrine:

97 Until 1966, the test for federal immunity was to determine whether the provincial law under scrutiny would significantly “impair” or “sterilize” the federally regulated activity. This changed with the *Quebec Minimum Wage* case, where the test adopted by the Supreme Court of Canada was whether “a vital part of the management and operation of the undertaking” was “affect[ed]” (see *Commission du salaire minimum v. Bell Telephone Co. of Canada*, [1966] S.C.R. 767, at p. 774 (emphasis added), cited in Hogg (loose-leaf ed.), at p. 15-27). In 1988, the Court reaffirmed

⁷ *Canada (Attorney General) v. Saskatchewan (Commission of inquiry into the investigation of the death of Gail Miller and the wrongful conviction of David Edgar Milgaard)* 2006 SKQB 385. There, Chief Justice Laing of the Queen's Bench held at para. 25 that “a provincial commission of inquiry cannot inquire into the conduct, or the job performance of a federal employee with respect to the employee's activities on behalf of his or her employer.” Canada does not assert, in this case, that the Commission cannot examine the actions of the officers in question, and properly so: these activities were not conducted on behalf of the federal organization (in *Milgaard* the objection was taken to internal advice given by lawyers of the federal Department of Justice), but rather in furtherance of the officers' role administering justice in furtherance of the provincial constitutional interest.

that test in *Bell Canada v. Quebec (Commission de la santé et de la sécurité du travail)*, [1988] 1 S.C.R. 749 ("*Bell Canada (1988)*"). Beetz J., for the Court, indicated that in order for a federal undertaking to enjoy immunity from the application of provincial laws, "it is sufficient that the provincial statute which purports to apply to the federal undertaking affects a vital or essential part of that undertaking, without necessarily going as far as impairing or paralyzing it" (pp. 859-60). Beetz J. stated that provincial laws cannot affect the "basic, minimum and unassailable content" (i.e. the "core") at the heart of each head of federal power (p. 839).

22. In *Canadian Western Bank* and *LaFarge* the "affect" test was explicitly abandoned in favour of the "impair" test. The majority wrote:

48 Even in situations where the doctrine of interjurisdictional immunity is properly available, we must consider the level of the intrusion on the "core" of the power of the other level of government which would trigger its application. In *Bell Canada (1988)*, Beetz J. wrote, at pp. 859-60:

In order for the inapplicability of provincial legislation rule to be given effect, it is sufficient that the provincial statute which purports to apply to the federal undertaking affects a vital or essential part of that undertaking, without necessarily going as far as impairing or paralyzing it. [Emphasis added.]

49 [...] In our opinion, it is not enough for the provincial legislation simply to "affect" that which makes a federal subject or object of rights specifically of federal jurisdiction. The difference between "affects" and "impairs" is that the former does not imply any adverse consequence whereas the latter does. [...] It is when the adverse impact of a law adopted by one level of government increases in severity from "affecting" to "impairing" (without necessarily "sterilizing" or "paralyzing") that the "core" competence of the other level of government (or the vital or essential part of an undertaking it duly constitutes) is placed in jeopardy, and not before.

23. Their Lordships then turned at para. 51 to consider what are the "essential and vital elements" of such federal undertakings, focusing on those elements which are "absolutely indispensable or necessary" to the operation of the undertaking, and then took guidance in that regard from the decided cases.

24. At paragraph 62, the majority referred to *Keable* and *Putnam* as examples of cases “where management [of a federal institution] has been considered an absolutely indispensable and necessary element of federal jurisdiction.” The majority wrote:

62 The cases relied upon by the appellants dealing with the management of federal undertakings, including the 1988 trilogy, belong in fact to a broader line of cases dealing with federal institutions, where management has been considered an absolutely indispensable and necessary element of federal jurisdiction. These include the post office: *Reference re Minimum Wage Act of Saskatchewan*, [1948] S.C.R. 248 (province cannot fix wages of postal employees); *Letter Carriers’ Union of Canada v. Canadian Union of Postal Workers*, [1975] 1 S.C.R. 178 (province cannot regulate labour relations in the post office); and the RCMP: *Attorney General of Quebec v. Attorney General of Canada*, [1979] 1 S.C.R. 218 (circumscribing a provincial public enquiry because “no provincial authority may intrude into its management” (p. 242)), and *Attorney General of Alberta v. Putnam*, [1981] 2 S.C.R. 267 (holding inapplicable a provincial police complaints procedure). Yet RCMP officers are obliged to observe, for example, provincial highway traffic laws. Such laws do not affect the core of “what they do and what they are” that is specifically of federal interest.

25. But this only gets the interjurisdictional immunity objection to the first stage. If Canada or Superintendent Rideout could demonstrate that the activities over which they are claiming immunity are “management”, and part of the “absolutely indispensable and necessary element of federal jurisdiction”, then they still have to meet the second part of the new test: does the inquiry into and reporting upon those activities “impair” – actually cause harm to – the federal authority in question. Does the Commission “affect the core of ‘what they do and what they are’ that is specifically of federal interest.”

26. One other point is worth emphasizing. *Canadian Western Bank* confirms at para. 83 (heading) that “the onus lies on the proponent of interjurisdictional immunity on the facts of a particular case to demonstrate that the [activity in question] is part of the basic minimum and unassailable content of the [federal] power.” The same is also clearly true with respect to impairment. It must be

Canada and Superintendent Rideout who demonstrate the impairment, through evidence and argument, and neither has done so.

27. In the present case, Canada has not suggested any way in which this Commission's findings might *affect*, let alone *impair*, any "essential or vital elements" of the RCMP or CBSA, elements that are "absolutely indispensable or necessary" to their operations. Nor, in the Attorney's submission, could they do so. This inquiry may end up commenting on the policies or management of the RCMP, but it certainly is not designing policies or engaging in the management of the Force. Any effect on these core activities is purely incidental.

28. Canada does advert, at para. 20 of its submissions in Response, that making "a finding of misconduct against a federal institution... would necessarily impair the federal government's ability to administer and manage that institution as a result of the stigma that invariably would attach from the provincial government's finding." They provide no evidence in support of such an assertion, which, if applied in a principled way, would restrict any provincial government actor from commenting, in the course of his duties, on the policies, administration or management of the RCMP. Or perhaps Canada is arguing that such comments only become unconstitutional if they are too persuasive.

29. Indeed, consistent with the observations of Pigeon J. in *Keable* quoted earlier, this inquiry might well, as a legitimate incidental effect, "reveal the desirability of changes" in the management and operation of the RCMP or CBSA in the province. This cannot be said to impair a vital or essential or core federal interest: in fact, one would think that the federal interest would be *advanced* by advice regarding areas of possible improvement.

30. If it is possible for the federal and provincial interests to operate side by side, they must do so. In *Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19, the question was whether the Ontario *Civil Remedies Act*, which enables the

seizure by that Province of proceeds of unlawful activity, was an invalid intrusion into federal jurisdiction over criminal law. The Court found the legislation constitutionally valid. In reaching that conclusion, Binnie J. observed as follows at para. 2:

The argument that the CRA is *ultra vires* is based in this case on an exaggerated view of the immunity of federal jurisdiction in relation to matters that may, in another aspect, be the subject of provincial legislation. Resort to a federalist concept of proliferating jurisdictional enclaves (or “interjurisdictional immunities”) was discouraged by this Court’s decisions in *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3, and *British Columbia (Attorney General) v. Lafarge Canada Inc.*, 2007 SCC 23, [2007] 2 S.C.R. 86. As stated in *Canadian Western Bank*, “a court should favour, where possible, the ordinary operation of statutes enacted by *both* levels of government” (para. 37; emphasis in original).

31. The Court in *Chatterjee* reaffirmed the doctrines of “double aspect” and incidental effect. Binnie J. engaged the question as follows (at para. 29):

The question, however, is at what point does a provincial measure designed to “suppress” crime become itself “criminal law”. There will often be a degree of overlap between measures enacted pursuant to provincial power (property and civil rights) and measures taken pursuant to federal power (criminal law and procedure). In such cases it is necessary for the Court to identify the “dominant feature” of an impugned measure. If ... the dominant feature ... is property and civil rights, it will not be invalidated because of an “incidental” intrusion into the field of criminal law.

32. The same can be said for a provincial inquiry whose “dominant feature” is to maintain public confidence in the administration of justice. Such a body, operating under the authority of provincial statute and its terms of reference, may incidentally investigate and report on the institutional behavior of the RCMP or CBSA, including questions of how management and direction of the activities of the members involved bore upon their actions.

V. CONCLUSION

33. In sum, the recent decisions of the Supreme Court of Canada in *Canadian Western Bank* and *Chatterjee* stress that where, as here, there is both a legitimate federal and provincial interest in a matter, the federal and provincial regulatory regimes must be made to work in harmony if at all possible. In this case, there is no inconsistency of purpose between a full inquiry by the Commission and any federal jurisdiction or law, and no evidence of impairment of federal jurisdiction over federal entities respecting a vital and essential part of their operations.

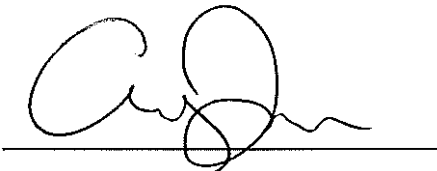
34. The Attorney General submits that inquiry into the actions of the federal entities in question related to Mr. Dziekanski's death has nothing to do with their internal management or operation as federal institutions. Nothing this Commission is doing could be characterized as the province *engaging in* the "discipline, organization or management" of the RCMP or CBSA. *Keable* and *Putnam* simply do not apply. Conversely, the full investigation and airing of these tragic events *does* relate very directly to the public confidence of the administration of justice in the province. This goes equally to decisions made by federal actors both prior to and following Mr. Dziekanski's death, including the investigation of and reporting the related facts to members of the public. Even if the Commission's eventual report "affects" the federal entities or the federal government's interest, the Commission is constitutionally unfettered provided it does not "impair" them. Canada's constitutional argument must fail.

35. Dickson J., in his dissent in *Putnam*, wrote at p. 298:

Public accountability is increasingly being demanded of, and recognized by, those institutions and corporations which affect in a direct and important way, the daily lives of our citizens. One sees this in respect of government, large corporations, the professions. No longer is it acceptable to have vital matters affecting the public decided behind closed doors. The dynamics of decision making and accountability have changed. The result,

of course, is to engender confidence in the decision making process and in the institutions whose decisions are subject to scrutiny. In my view the surest way of undermining public confidence in the Force and in justice in general would be to place the R.C.M.P. in a cocoon, and exempt the actions of its members from investigation by an independent tribunal. [emphasis added]

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of October, 2009.

A handwritten signature in black ink, appearing to read 'Craig E. Jones', written over a horizontal line.

CRAIG E. JONES

Counsel for the Attorney General of British Columbia