

**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

**Thomas R. Braidwood, QC, Commissioner**  
Appointed under the *Public Inquiry Act*, S.B.C. 2007, c. 9

**Ruling No.1**  
**Applications for Participant Status**

**September 16, 2008**

**Introduction**

On February 15, 2008, I was appointed sole commissioner under the *Public Inquiry Act*, S.B.C. 2007, c. 9 to conduct two separate inquiries:

1. a study commission to inquire into and report on the use of conducted energy weapons by constables, sheriffs, and authorized persons in British Columbia; and
2. a hearing and study commission to inquire into and report on the death of Mr. Dziekanski.

I am now commencing the hearing and study commission to inquire into and report on the death of Mr. Dziekanski.

One of my duties as Commissioner is to determine who may participate in this inquiry and to what extent.

This is my ruling on that issue.

**Background**

Mr. Dziekanski arrived at Vancouver International Airport from Poland on October 13, 2007 and was to meet his mother at the airport. Mr. Dziekanski exhibited certain unusual conduct, as a result of which members of the Royal Canadian Mounted Police were called in to assist airport staff. Shortly after the arrival of the Royal Canadian Mounted Police a conducted energy weapon, commonly known as the Taser, was used by the Royal Canadian Mounted Police on Mr. Dziekanski. Shortly thereafter he died.

This statement of facts is necessarily brief and preliminary as these matters have not yet been subject to any judicial findings and this commission of inquiry has yet to commence hearings.

On November 19, 2007, John Les, the provincial Minister of Public Safety and Solicitor General, announced the government's commitment to hold a commission of inquiry into the circumstances surrounding the death of Robert Dziekanski at the Vancouver International Airport on October 14, 2007. At that time, the minister stated:

This incident has British Columbians, Canadians and people all over the world seeking answers with regard to not only this human tragedy, but how the province welcomes the world to our airport. By calling a full public inquiry, we want everyone to know that all the facts will be put on the table, we will take action based on those facts and we will learn from this tragedy.

When Attorney General Wally Oppal announced my appointment on February 18, 2008, he stated:

Given the overlapping reviews and investigations now being conducted, combined with the jurisdictional complexity of this tragic incident, we felt it prudent to adopt a two-phased approach. The federal government has indicated that it will cooperate.

The terms of reference of the hearing and study commission are summarized as follows:

- a) to conduct hearings, in or near the City of Vancouver, into the circumstances of and relating to Mr. Dziekanski's death;
- b) to make a complete report of the events and circumstances of and relating to Mr. Dziekanski's death, not limited to the actual cause of death;
- c) to make recommendations the commissioner considers necessary and appropriate;
- d) to submit a report to the Attorney General on or before a date to be determined by the Attorney General in consultation with the commissioner.

## **Process for Applications**

Pursuant to the *Public Inquiry Act*, s. 11(3), I caused notice to be given describing the application process for parties seeking participant status.

A deadline of September 5, 2008 was set for applications to be received. By this date the commission received a total of eleven applications from agencies and individuals as follows:

1. Bob Fearn
2. Dr. Charles Lee
3. Irina Berezoutskaia
4. Randy Puder
5. Zofia Cisowski
6. Vancouver Airport Authority
7. Public Service Alliance of Canada
8. City of Richmond (specifically Richmond Fire and Rescue)
9. TASER International
10. Vancouver Consulate, Government of the Republic of Poland
11. British Columbia Civil Liberties Association

In the discussion that follows, I will employ the numbering system as set out above and will discuss various applicants together where doing so is appropriate.

## **Analysis**

The criteria for participation are set out in s. 11 of the *Public Inquiry Act*, S.B.C. 2007, c. 9.

The following criteria must be considered by the Commissioner:

- (a) whether, and to what extent, the person's interest may be affected by the findings of the commission;
- (b) whether the person's participation would further the conduct of the inquiry;
- (c) whether the person's participation would contribute to the fairness of the inquiry.

## **Applicants 1 – 4**

The first four applicants are individuals – Mr. Bob Fearn, Dr. Charles Lee, Ms. Irina Berezoutskaia and Mr. Randy Puder. I will deal with each in turn, applying the criteria set out in s. 11(4) of the *Public Inquiry Act*.

### **Bob Fearn**

In his application for status, Mr. Fearn, a retired airline captain, indicated that:

I have studied Tasers and believe that my testimony would benefit the commissions work. I estimate that presenting my information would take less than five minutes.

Mr. Fearn asks to participate in a personal capacity. He does not indicate that he had any involvement with the facts of this matter nor does he appear to have met or observed Mr. Dziekanski. Mr Fearn has outlined his background, but in my view it is not relevant to the inquiry that this commission must make. It appears from his application that Mr. Fearn is not seeking standing as a participant at the hearing but rather to be a witness. Accordingly, participant status will not be granted.

### **Dr. Charles Lee**

The request submitted by Dr. Lee, the pathologist who performed the autopsy on Mr. Dziekanski, is also more accurately defined as a request to be a witness. Consequently, participant status is not granted.

### **Irina Berezoutskaia**

The application of Irina Berezoutskaia falls into the same category as that of Applicant 1, Mr. Fearn. I do not understand her to have any factual involvement with the incident involving Mr. Dziekanski, and have concluded that Ms. Berezoutskaia will not be granted participant status, as she is not in the position of a party whose interests may be affected by the commission's findings; and I do not believe that her formal involvement would further the conduct of the inquiry or contribute to its fairness.

**Randy Puder**

Once again, Mr. Puder's application is really to be a witness and, accordingly, status is denied.

These four individual applicants to whom participant status has not been granted are, of course, welcome to attend the public hearings, just as any member of the public may. To the extent they believe they may have relevant evidence to give concerning the matters under consideration by the commission in this second phase, I would encourage them to contact commission counsel.

**Applicant 5 – Zofia Cisowski (represented by Mr. Walter Kosteckyj)**

In that Mr. Kosteckyj's client is the mother of Mr. Dziekanski, I am of the opinion that her participation is appropriate. No doubt, Mr. Dziekanski's conduct will be the subject of comment and evidence and, accordingly, it is my opinion that the criteria have been satisfied. Ms. Cisowski clearly has an interest in the findings of the commission; Ms. Cisowski, through her solicitor, would further the conduct of the inquiry; and her involvement, through her solicitor, would contribute to the fairness of the inquiry.

**Applicants 6 – 9**

**Vancouver Airport Authority (represented by Dwight Stewart)**

**Public Service Alliance of Canada (represented by Chris Buchanan)**

**City of Richmond - Richmond Fire and Rescue (represented by Doug Long)**

**TASER International (represented by David T. Neave)**

With reference to the applications of the Vancouver Airport Authority; the Public Service Alliance of Canada; Richmond Fire and Rescue Service; and TASER International, I am of the opinion that the interests of each of these parties are directly affected. Their participation in the proceedings is necessary in order to further the work of the inquiry, and will contribute to the fairness of the inquiry. The procedures at the airport are very much part of the inquiry. Likewise, the conduct of the PSAC members who had contact with Mr. Dziekanski prior to his involvement

with the Royal Canadian Mounted Police, and the role of Richmond Fire and Rescue after the Royal Canadian Mounted Police arrived are significant factors relating to this inquiry. Finally, with reference to TASER International, the use of one of their products similarly engages the interest of this applicant.

Accordingly, participant status is granted to each of these organizations.

#### **Applicant 10 – British Columbia Civil Liberties Association**

The British Columbia Civil Liberties Association (BCCLA) is a non-profit, non-partisan advocacy group founded in 1963, which focuses on protecting the rights of citizens to liberty and freedom. The BCCLA has a history of involvement in the issue of police oversight and accountability. The BCCLA has submitted an application detailing their history, background, objectives, and the areas in which they feel they can contribute. I gather they will be represented by counsel, and expect that their involvement will be substantive, relevant and responsible.

Accordingly, I am of the opinion that participant status should be granted to the BCCLA.

#### **Applicant 11 – Vancouver Consulate, Government of the Republic of Poland**

Don Rosenbloom is counsel for the Vancouver Consulate, Government of the Republic of Poland. I have deliberately left Mr. Rosenbloom's application to the end for I find it the most troubling. Mr. Rosenbloom, in his application, states in part as follows:

As is well known, Mr. Dziekanski was a Polish national from Gliwice, Poland. The circumstances of Mr. Dziekanski's death remain a focus of national concern in Poland. As part of the police investigation into the death of Mr. Dziekanski, the RCMP sent investigators to Poland, and interviewed individuals within government and prosecutorial offices there.

The Government of the Republic of Poland has consular responsibilities in relation to Polish nationals in Canada. Under the *Vienna Convention on Consular Relations and Optional Protocols* of April 24, 1963, these consular responsibilities include:

- (1) protecting, in Canada, the interests of Poland and its nationals (both individuals and bodies corporate) within the limits permitted by international law; and
- (2) helping and assisting, in Canada, Polish nationals (both individuals and bodies corporate).

Our client believes that all matters relevant to the death of one of its nationals must be explored by the Inquiry, and wishes to have the option to examine witnesses and become involved in the fact finding component of the Inquiry.

(The above are only some excerpts from the submission.)

While the extent to which the Government of the Republic of Poland's interest may be affected by the findings of the commission is not as significant or direct as with other applicants, I am of the view that the involvement of the Government of the Republic of Poland will, through its counsel Mr. Rosenbloom, further the conduct of and contribute to the fairness of the inquiry.

Accordingly, participant status is granted.

### **Extent of Participation**

There are differences among those applicants who have been granted participant status as to the extent to which their individual interests may be affected by this inquiry. As detailed in the *Public Inquiry Act* (ss. 11-13), I may make orders with respect to the manner and extent of a participant's participation at the hearings. Each participant may attend the hearings and make submissions. I will decide at a later date the extent to which counsel for these participants may call witnesses and/or cross examine witnesses.

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Thomas R. Braidwood, QC  
Commissioner