

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.2
Further Application for Participant Status

December 18, 2008

Introduction

1. On September 16, 2008, I made my first ruling on applications for participant status.
That Ruling is available on the commission's website: www.braidwoodinquiry.ca

Further application

2. Since then, the Inquiry has received a further application for participant status made by Counsel acting for the Government of Canada. This application was made after the deadline stated in the public call for participants.

Legislation

3. Subsection 11(4) of the *Public Inquiry Act* states:

On receiving an application under subsection (3), a commission may accept the applicant as a participant after considering all of the following:

- (a) whether, and to what extent, the person's interests 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.

These are the criteria that have guided my analysis and determination of who should be accepted as participants for this commission of inquiry.

Analysis

4. The application for status submits the following:

1. The Government of Canada ("Canada") regrets the death of Robert Dziekanski on October 14, 2007 at the Vancouver Airport. Officials of Canada have publicly expressed their sorrow that this tragic incident took place and their interest in ensuring that the facts surrounding this event are publicly known.
2. Canada is supportive of the Thomas R. Braidwood, QC, Hearing and Study Commission (the "Commission") and respectfully requests that it be granted the status of a participant at the inquiry into the circumstances relating to Mr. Dziekanski's death (the "Inquiry") pursuant to section 11(3) of the *Public Inquiry Act* and section 8 of the *Practice and Procedure Directive for Evidentiary Hearings* (the "Directive").
3. Canada will voluntarily participate in the Inquiry, while respecting the constitutional limits of a commission of inquiry created pursuant to provincial legislation. In this respect, Canada will provide documents and facilitate the attendance of witnesses. Canada is confident that such participation, in cooperation with the Commission, will assist the Commission in being able to fully and appropriately discharge its mandate under its terms of reference.
4. Canada's interest in the Inquiry stems from the fact that it is responsible for the two federal institutions whose employees interacted with Mr. Dziekanski on October 13-14, 2007, namely, the Canada Border Services Agency ("CBSA") and the Royal Canadian Mounted Police ("RCMP"). These employees and others have information that will be of assistance to the Commission as it conducts the Inquiry.
5. As both CBSA and RCMP employees will be asked to testify at the Inquiry, it is likely that their interests and those of Canada in its capacity as their employer will be affected by the findings of the Commission.
6. Canada's participation would further the conduct of the Inquiry because Canada's counsel can assist in organizing the attendance of witnesses and the collection of documents. In particular, Canada proposes to facilitate the attendance of those CBSA and RCMP officials who can assist the Commissioner in fulfilling his mandate and who have chosen to be represented by Canada's counsel.

7. Canada respectfully submits that it has satisfied all of the statutory criteria for being granted participant status pursuant to s.11(4) of the *Public Inquiry Act*.

I accept that the involvement of the Canada Border Service Agency and the RCMP in the incident and events which will be the subject of these hearings are appropriate justification for the granting of status. Accordingly, participant status is granted. I look forward to the assistance and cooperation described. Given the fact that these hearings will commence only a few weeks from now, I expect that Government of Canada and its associated agencies will make every effort to provide to the commission forthwith all relevant documents and materials, and will cooperate in ensuring the timely and efficient commencement of hearings.

Extent of Participation

As I noted in my previous Ruling, 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.

Thomas R. Braidwood, QC
Commissioner