

BRAIDWOOD INQUIRY

Thomas R. Braidwood, QC, Commissions of Inquiry

USE OF TASER ON ROBERT DZIEKANSKI NOT JUSTIFIED, SAYS COMMISSIONER THOMAS BRAIDWOOD

June 18, 2010

VANCOUVER – Retired British Columbia Appeal Court Justice Thomas R. Braidwood, QC, said today that RCMP constable Kwesi Millington was not justified in using a taser on Robert Dziekanski at Vancouver International Airport on October 14, 2007.

Speaking at a media conference in Vancouver following the release of the report of the second phase of his inquiry into the death of Mr. Dziekanski, Mr. Braidwood also said that the five deployments of the taser and the physical struggle with the four RCMP officers contributed substantially to Mr. Dziekanski's death.

To address his mandate, Mr. Braidwood looked at three issues:

- The events at the Vancouver International Airport leading up to Mr. Dziekanski's death,
- The medical cause of his death, and
- The manner in which arriving international passengers are dealt with by the Canada Border Services Agency (CBSA) and the Vancouver Airport Authority (YVR).

Mr. Braidwood found that Constable Millington and three other RCMP officers, Corporal Benjamin Monty Robinson and Constables Gerry Brian Rundel and Bill Bentley, who responded to a call of an apparently intoxicated male throwing suitcases and chairs around in the airport's International Reception Lounge, had initially acted appropriately.

"However, within seconds the senior officer intervened in an inappropriately aggressive manner. Mr. Dziekanski turned away and picked up a stapler, at which point one of the constables deployed the conducted energy weapon against him," said Mr. Braidwood.

He added that Mr. Dziekanski had been compliant, was not defiant or resistant, did not brandish the stapler and did not move toward any of the officers.

"I concluded that the constable was not justified in deploying the weapon, and that neither that constable nor the corporal honestly perceived that Mr. Dziekanski was intending to attack any of the officers. I also concluded that the two other constables, during their testimony before me, offered patently unbelievable after-the-fact rationalizations of their police notes and their statements to IHIT investigators."

Mr. Braidwood said he found that all four officers' claims that they wrestled Mr. Dziekanski to the ground were deliberate misrepresentations, made for the purpose of justifying their actions. He also disbelieved their claims that there was no discussion between or among them about the incident, before being questioned by IHIT investigators, although he did not conclude that they colluded to fabricate a story.

"This tragic case is, at its heart, the story of shameful conduct by a few officers. It ought not to reflect unfairly on the many thousands of RCMP and other police officers who have, though

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years of public service, protected our communities and earned a well-deserved reputation in doing so," he said.

Mr. Braidwood said he was satisfied that the most likely cause of Mr. Dziekanski's death was the hyperadrenergic response (the over-stimulation of the process that releases adrenaline or noradrenaline into the system), which was significantly exacerbated by Mr. Dziekanski's interaction with the RCMP officers.

"The evidence does not allow me to conclude, with mathematical exactitude, how much the weapon and the physical altercation contributed to the hyperadrenergic state that led, ultimately, to Mr. Dziekanski's death. Unquestionably, they both contributed substantially to that tragic result," said Mr. Braidwood. "However, I consider it to be a reasonable inference to be drawn from all the evidence that the multiple deployments of the conducted energy weapon played a more prominent role."

Mr. Braidwood said he was I am impressed with YVR's prompt and thorough review of its customer care services that it undertook following Mr. Dziekanski's death and the extensive changes that it has implemented.

"The Vancouver Airport Authority has taken exceptional steps in the aftermath of Mr. Dziekanski's death to identify inadequacies in its policies, practices, and procedures, and to remedy them. I commend the Authority and its employees for their prompt, thoughtful, and comprehensive response," he said.

However, Mr. Braidwood said he could be as complimentary of the response of the CBSA because he was not aware of any comparable comprehensive review following Mr. Dziekanski's death, and any changes to its policies, practices, and procedures were "minor and few."

"For example, I would have expected CBSA to have moved promptly to implement changes to ensure that no future arriving international passenger gets 'lost' in its Customs Hall for five-and-a-quarter hours. Based on the evidence led at our evidentiary hearings, CBSA has taken no steps to do so, leaving it up to the Vancouver Airport Authority's new Customs Hall rovers to make hourly sweeps of the CBSA's Customs Hall to look for people who need assistance, who are lost, or who are having difficulties," he said.

In addition, CBSA appeared to oppose several other reforms, apparently for reasons not grounded in security or traveller confidentiality.

Mr. Braidwood made eight recommendations in his report including:

- That British Columbia develop a civilian-based criminal investigative body to investigate all police-related incidents occurring throughout the province.
- Changes to the way in which the CBSA deals with arriving international passengers.
- Improvements to the means of communication between arriving international passengers and people waiting to meet them at YVR.
- Changes to the roles and training of contracted security personnel at YVR.

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- Improved coordination between YVR, the RCMP, Richmond Fire-Rescue and the B.C. Ambulance Service in responding to police use-of-force incidents that evolve into medical emergencies.

Mr. Braidwood was appointed in February 2008 by former B.C. Attorney General Wally Oppal to head two commissions of inquiry. The first was a “study” commission into the use of tasers in B.C. by police forces other than the RCMP. The second phase was a “hearing and study” commission into the death of Polish immigrant Robert Dziekanski at YVR in October 2007. The report on the first phase of the inquiry was released in July, 2009.

The second phase of the inquiry included evidentiary hearings in Vancouver over 61 days at which 91 witnesses testified under oath or affirmation. In addition, official participant status was granted to 16 individuals and organizations.

Inquiry website: <http://www.braidwoodinquiry.ca/>

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For more information, please contact:
Chris Freimond: 604-990-1378 or 778-840-2428 (cell)