Provincial Inquiry Has Authority to Rule on RCMP Conduct

A Vancouver court has determined that the Braidwood Inquiry has the authority to probe allegations of misconduct against four RCMP officers involved in the 2007 tasering death of Robert Dziekanski at Vancouver Airport.[1]

On April 30, 2009, the Commission notified the lawyers for the four RCMP officers that the Commissioner, Thomas Braidwood, could make findings of misconduct against their clients.[2] His findings could also cover matters such as: whether there were improper and inappropriate responses when Dziekanski died; misleading behaviour during the investigation of the death; and misleading testimony given by the four officers to the inquiry.[3]

According to Ravi Hira, the lawyer for one of the officers, such findings would amount to accusing the officers of obstruction of justice and other criminal charges.[4] Hira says that the Inquiry was meant to "provide Mr. Dziekanski's family and the public with a complete record of the circumstances" of Mr. Dziekanski's death, but it became overly focused on the conduct of the officers.[5]

On Friday June 12, the officers argued in B.C. Supreme Court that it is beyond the Inquiry's authority to make such findings.[6] The officers argued that the Braidwood Inquiry was impinging upon the authority of the federal government by attempting to make criminal findings and by attempting to make findings regarding the RCMP, a federal police force. Hira said "the notices of misconduct relate to criminal law and RCMP discipline, which is under federal jurisdiction."[7]

The federal government retains control over the creation and development of criminal law in Canada, under section 91(27) of the *Constitution Act, 1867*. The provinces, however, have authority over the administration of justice and the courts in the province under section 92(14).[8] The RCMP is not specifically mentioned in the constitution, but the RCMP is established under federal legislation and falls under parliament's full and complete power over federal territories from section 4 of the *Constitution Act, 1871* ("The Parliament of Canada may from time to time make provision for the administration, peace, order and good government of any territory not for the time being included in any Province").[9] The provinces that do not have provincial police forces have agreements with the federal government to rent the services of the RCMP.[10]

The RCMP in B.C. is not supporting the officers' request for an injunction. A

spokesperson for the B.C. RCMP said that the police force "recogniz[es] the jurisdiction of the inquiry as having authority."[11] The federal government also does not dispute the legitimacy of the Inquiry's jurisdiction over the officers.[12]

B.C. argued that findings of misconduct are within the authority of provincial inquiries, and that RCMP officers are not immune from findings of misconduct by a provincial body.[13]

On June 15, the B.C. Supreme Court confirmed that the Inquiry has the jurisdictional authority to make findings against the officers. The court stated that "none of the allegations in these notices [of misconduct], if they are substantiated, come close to a finding of criminal liability."[14] It also rejected the idea that the provincial Inquiry was treading on federal jurisdiction.[15]

Final arguments for the Braidwood Inquiry are scheduled for Friday, June 19. It is not known if the officers intend to appeal the decision, or what effect any appeals might have on the schedule.[16]

Further Reading

Natasha Dube, "Tased and Confused: B.C. Public Inquiry Begins" *Centre for Constitutional Studies* (7 May 2008).

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[1] "BC court upholds rights of inquiry to find Mounties guilty" *Vancouver Sun* (15 June 2009).
[2] John Bermingham, "B.C. Taser inquiry faces legal hurdle" *Calgary Herald* (14 June 2009).
[3] *Ibid.*
[4] "Inquiry makes criminal allegations vs. Mounties in Dziekanski's death: lawyer" *CBC.ca* (12 June 2009).
[5] *Ibid.*
[6] *Supra* note 2.
[7] *Ibid.*
[8] Section 92(14) gives the provinces authority over "The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts."
[9] Peter Hogg, *Constitutional Law of Canada,* Loose-Leaf ed. (Toronto: Thomson Carswell) at chapter 19.5(d).
[10] *Ibid*. at chapter 19.5(c).
[11] *Supra* note 4.

[12] *Supra* note 2.
[13] *Ibid.*
[14] "Judge: B.C. taser probe can rule on Mountie misconduct issue" *Globe and Mail* (15 June 2009).
[15] *Supra* note 1.
[16]*Ibid.*