

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rundel v. British Columbia*
– *Braidwood Commission*
2009 BCSC 814

Date: 20090615
Docket: S094251, S094252
S094253, S094377
Registry: Vancouver

**In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241,
and the *Public Inquiry Act*, S.B.C. 2007, c. 9,
and in the Matter of the Thomas R. Braidwood, Q.C., Hearing and Study Commission to Inquire
and Report on the Death of Mr. Dziekanski,
and in the Matter of a Notice of Misconduct Issued on April 30th, 2009,
and Amended May 28th, 2009**

Docket: S094251

Between:

**Constable Gerry Rundel,
a member of the Royal Canadian Mounted Police**

Petitioner

And:

Thomas R. Braidwood, Q.C., Commissioner

Respondent

- and -

Docket: S094252

Between:

**Constable Kwesi Millington,
a member of the Royal Canadian Mounted Police**

Petitioner

And:

Thomas R. Braidwood, Q.C., Commissioner

Respondent

- and -

Docket: S094253

Between:

**Constable William Bentley,
a member of the Royal Canadian Mounted Police**

Petitioner

And:

Thomas R. Braidwood, Q.C., Commissioner

Respondent

- and -

Docket: S094377

Between:

**Corporal Benjamin Robinson,
a member of the Royal Canadian Mounted Police**

Petitioner

And:

Thomas R. Braidwood, Q.C., Commissioner

Respondent

Corrected Judgment: The text of the judgment has been corrected at paragraph 53 (1.) where changes were made on July 7, 2009.

Before: The Honourable Mr. Justice Silverman

Oral Reasons for Judgment

In Chambers
June 15, 2009

Counsel for the Petitioner, Rundel:	G. Beaubier
Counsel for the Petitioner, Millington:	R. Hira, Q.C. & B. Morley
Counsel for the Petitioner, Bentley:	D. Butcher & A. Srivastava
Counsel for the Petitioner, Robinson:	R. Harris
Counsel for the Respondent:	A. Vertlieb, Q.C. & P. McGowan
Counsel for the Attorney General of British Columbia:	C. Jones & B. Mackey
Counsel for the B.C. Civil Liberties Association:	J. Gratl
Counsel for S. Cisowski:	W. Kosteckyj
Place of Hearing:	Vancouver, B.C.

[1] **THE COURT:** These are oral reasons. If there is a transcript ordered, I reserve the right to edit the transcript before it is released. Any changes which might be made in that process will not be changes to the reasoning or the result. I will not orally use case citations, I will add those if a transcript is ordered.

[2] There are four petitions before me seeking a judicial review of two decisions made by what has come to be known as the Braidwood Commission. This commission was established under the B.C. **Public Inquiry Act**, S.B.C. 2007, c. 9 ("the **Act**") to conduct hearings and report on the circumstances surrounding the death of Robert Dziekanski, who died tragically at the Vancouver International Airport on October 14, 2007. The four petitioners are Royal Canadian Mounted Police officers who were present shortly before and during the time of Mr. Dziekanski's death.

[3] The two decisions which I am to review were made by Commissioner Braidwood and concern two broad and general areas:

1. they concern the issuing of certain documents called Notices of Misconduct; and
2. they concern the decision of the Commissioner, with respect to those Notices of Misconduct, not to provide additional particulars of the misconduct referred to in the notices.

[4] The petitioners seek a variety of remedies, all of which, in my view, depend upon my decision with respect to those two issues just noted. The various remedies are some combination of *certiorari*, prohibition, *mandamus*, and other relief that is again ultimately dependent upon my ruling with respect to the two general issues.

[5] While there are some differences between the four petitioners' claims, particularly in terms of the contents of the Notices of Misconduct provided to each and with respect to the relief sought by each, those differences are unimportant for the purposes of what is before me, and I therefore can deal with them as one. These reasons relate to all four petitions.

[6] On October 13, 2007, Mr. Dziekanski arrived at the Vancouver International Airport from Poland, at approximately 3:00 p.m. In the early morning hours of October 14, he was dead while still at the Vancouver Airport. My function here is not to review or analyze the circumstances or causes of his death.

[7] In April of 2008, the Province of British Columbia established the Braidwood Commission under the **Act** for the purpose of looking into the circumstances and events surrounding Mr. Dziekanski's death and to prepare a report to be returned to the Attorney General.

[8] The Commission heard evidence from 87 witnesses over 58 days of hearing between January 19, 2009, and May 26, 2009. The four petitioners were among the 87 witnesses. Their status was that of witnesses and nothing more, although they were always recognized as very important witnesses because of their locations and their observations immediately prior to and at the time of Mr. Dziekanski's death.

[9] I make no comment on any answers given by any of them to questions they were asked when they testified at the inquiry. While deliberately avoiding a reference to their answers, I do note that many of the questions they were asked and lines of questioning that they were asked about, primarily during cross-examination, were arguably suggestive of wrongdoing on the part of some or all four of the petitioners – wrongdoing in the events leading up to Mr. Dziekanski's death, wrongdoing in their role in the police investigation after his death, including the making of certain statements, and wrongdoing in the giving of some of their evidence before the Commission itself. That is a general statement. Each of those comments does not necessarily apply to all four of the petitioners. Some of them do apply to all of the petitioners.

[10] The suggestions of such conduct, again which come from questions and not from answers, arguably includes suggestions of conduct which may have been criminal in nature. I repeat again that such a suggestion does not necessarily come from answers. I make no comment upon that whatsoever, and no comment about how one should characterize any answers they may have given, except to say that it is the Commissioner's function, not mine, to have heard and assessed those answers, together with all the other evidence in the case which he has heard.

[11] On April 30, 2009, Commission counsel delivered a formal confidential document to each of the petitioners entitled "Notice of Misconduct". Until that document was received, the four petitioners were like every other witness who had testified at the inquiry. The effect of this document was to advise these four witnesses that the Commissioner may - and I pause to note here that where the word "may" appears in the Notices of Misconduct, it is emphasized by being in italics - that the Commissioner may, when he delivers his final report, make findings of misconduct.

[12] The Notices of Misconduct are mandated by the **Act**. Findings of misconduct are something which the **Act** permits commissioners to make in appropriate inquiries, but only when reasonable notice has been given to the person such findings might affect.

[13] In this case, the four Notices of Misconduct have some variations when each is compared to those of the other three petitioners. The general form of the notices is identical. The specifics of the potential allegations of misconduct vary from petitioner to petitioner, although in many ways some of them are similar. Again, the differences, in my view, are not significant in this case because the broad questions that I am asked to deal with will not turn on any of those differences.

[14] The Notices were the same, with respect to the four of them, in the following ways. The first paragraph referred to the section of the **Act** which authorizes the Commissioner to make a finding of misconduct in a particular situation. The notice advises that the Commissioner may, in italics, "make the following findings that *may* amount to misconduct within the meaning of s. 21 of the Act"; the word "may" again in italics. There is then a list of the allegations of what may be misconduct. I will come back to that list.

[15] After that, the Notices contain this paragraph:

It is possible that counsel for another participant may, in his or her written or oral final submissions, make one or more allegations of misconduct against you, other than the allegations set out above. In that event, you will be given a reasonable opportunity to respond to those allegations orally and/or in writing.

[16] Then the last paragraph in each of the Notices indicates that they are entitled to be heard, personally or by counsel, with respect to the potential allegations which are contained in each of the notices.

[17] The specifics of the potential findings in each, as I have indicated, were similar, although not always identical. The types of allegations which are representative of what appears in all four of the Notices of Misconduct, are as follows: Although each of these and the quantity of these may not affect each of the four, as a general guide there are these kinds of conduct alleged. I paraphrase:

1. failing to properly assess and respond to the circumstances faced in relation to Mr. Dziekanski;
2. deploying the taser in circumstances that did not justify such deployment;
3. after deploying it, failing to adequately reassess the situation before further deploying it;
4. making further deployments of the instrument when they were not justified in the circumstances;

5. misrepresenting facts in notes and statements which had been made;
6. misrepresenting facts in evidence given before the Commission;
7. providing misleading information of the witness' notes and statements in the evidence before the Commission.

[18] On May 4, 2008, the petitioners, having received those Notices of Misconduct, sent a formal demand for particulars of the alleged misconduct and for information about the standard the Commissioner would be using against which to measure the officers' conduct.

[19] On May 5, 2008, Commission counsel responded in writing, on behalf of the Commissioner, to counsel for the four petitioners, and indicated in that letter that the Notices were sufficiently particularized and that the allegations in the Notices were crafted in the context of an assessment of the petitioners' behaviour against the standard of a reasonable RCMP officer with the training and experience of the petitioners, subject to the laws of our nation and the policies of the RCMP in force at the time and common sense.

[20] On May 11, 2009, the petitioners made a formal application for particulars and had it delivered to the Commissioner. On May the 22nd of 2009, the Commissioner released a written ruling entitled a "Confidential Ruling" of some three pages long containing 12 paragraphs, concluding that further particulars were appropriate with respect to one item in the Notices of Misconduct but disagreeing with the balance of the submissions of the petitioners and dismissing the demand for further particulars with respect to all of the other items.

[21] With respect to the one where it was agreed that further particulars were required, an amended Notice of Misconduct was issued on May 28th, containing those further particulars with respect to that one item.

[22] One of the two primary applications before me for review is whether the Commissioner's decision not to provide further particulars was correct. Judicial review of that decision is sought. The petitioners argue that the decision was wrong in failing to provide particulars and that they still seek and require further particulars before the Commission's hearings continue.

[23] On June 2, 2009, the petitioners made application to the Commissioner for a formal order that the Notices of Misconduct, as amended, be quashed as being *ultra vires* a provincial inquiry and outside the terms of reference of this particular Commission.

[24] On June 9, 2009, the Commissioner issued a written confidential ruling dismissing that application. This is the second major decision of which the petitioners seek a judicial review. The arguments that they make before me are essentially the same arguments that were made before the Commissioner, which he dismissed in his ruling of June 9.

[25] Some of the previous documents were marked as confidential, starting with the Notices of Misconduct and including the two rulings I have referred to, and including other documentation that dealt with those particular topics under consideration at the time. It is because of the public nature of this proceeding before me that those documents are no longer confidential. I do not say that to be critical of anybody, simply to explain that the Commissioner's preparation and exchanging of documentation was done in a confidential way insofar as it was required to be and it was able to be.

[26] I will now address the two areas about which the applications seek review. First the question of particulars, second the question of jurisdiction and the terms of reference.

The petitioners argue that the Notices of Misconduct changed the focus and character of the inquiry from an inquiry into the death of Mr. Dziekanski into an inquiry about the conduct of the four petitioners. This change in character, the petitioners argue, has serious potential consequences,

including the possibility of damages to reputations, the possibility of damages to employment, and the possibility of the laying of criminal charges. While there was previously a decision made that there would not be criminal charges, the suggestion has been made that that decision might be reconsidered by the appropriate authorities. Whether or not that occurs, is not within the mandate of the Commissioner, nor has there been any suggestion by the Commissioner that he has any authority to lay criminal charges.

[27] After the Notices of Misconduct were issued, these witnesses were no longer just witnesses like all of the others. As a result of this, they argue that they are entitled to know with precision what misconduct they may be alleged to have committed, and that is why they seek the particulars that they do seek. They refer me to a number of appellate court decisions in which the question of particulars has been considered in inquiry situations. Among those decisions are **Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada)**, [1997] 3 S.C.R. 440, 151 D.L.R. (4th) 1 [**Krever**]; **Re Nelles and Grange** (1984), 46 O.R. (2d) 210, 9 D.L.R. (4th) 79 (C.A.); **Morneault v. Canada (Attorney General)** (1998), 150 F.T.R. 28, 10 Admin. L.R. (3d) 251 (T.D.); and **Stevens v. Canada (Attorney General)**, 2004 FC 1746, 266 F.T.R. 202.

[28] Among other things, these cases support the principle that procedural fairness is essential in commission hearings where reputations and criminal consequences may be at stake. I accept that as an important guiding principle in matters such as this.

[29] The petitioners also refer to the requirements that exist in law for providing particulars in civil lawsuit cases, and again they refer me to a number of cases which, by analogy they say, should govern the type of situation which is before me. They also remind me of the principle that the furnishing of particulars in criminal cases is a vital component of procedural fairness.

[30] Finally, they argue that the correct standard against which the Commissioner's ruling must be measured is one of correctness and not one of simple reasonableness. In other words, while there might be several possible decisions which could be considered reasonable, there is only one decision which can be considered correct. In this case, they argue that the Commissioner's decision was incorrect, that I should therefore accept the petitioner's argument that particulars should have been provided, and I should provide them with those remedies which will require that those particulars continue to be provided from this point forward. Alternatively, they argue that even if the correct standard of review is not one of correctness but is one of reasonableness, then in this case the Commissioner's decision was unreasonable. Therefore I should again accept the argument of the petitioners and provide such relief as will result in them receiving those particulars.

[31] In my view, the petitioners are wrong and their application with respect to particulars must fail. The Commissioner's written ruling of May 22 was a considered, three-page, 12-paragraph response to the petitioners' application. It is still an appropriate response to the arguments made before me. The ruling acknowledges that the petitioners are entitled to procedural fairness. It refers to **Krever**, and quotes from that case, noting the following words by Mr. Justice Cory at para. 56:

A commission is required to give parties a notice warning of potential findings of misconduct which may be made against them in the final report. As long as the notices are issued in confidence to the party receiving them, they should not be subject to as strict a degree of scrutiny as the formal findings.

[32] The ruling also refers to Federal Court comments made in **Morneault**, where the court says this at para. 46, and I quote:

In my view, whether reasonable notice has been given can be assessed by asking whether a reasonable person, who thinks he or she has acted without fault, has been given enough information to know what aspects of his or her conduct the decision-maker

is considering might ripen into, or support, a finding of misconduct. What will be reasonable notice will vary with the circumstances of the case.

[33] In my view, the fact that the petitioners were represented by counsel, throughout the proceedings and heard, either themselves or by other agents sitting in for them, all of the evidence or have a transcript available to them of all of the evidence from the witnesses at the inquiry, those factors fall into and must be considered in light of the comments I have just referred to from **Morneault**. That is, the question of whether a reasonable person has been given enough information to know what aspect of his or her conduct the decision-maker is considering. Again, these witnesses know everything about the evidence that the Commissioner knows, since they have heard or have available to them all of the evidence. In some circumstances, that may not be sufficient, and it is never going to be a complete answer to such an application for particulars in every case because the question of particulars and what will be reasonable notice will vary with the circumstances of the case.

[34] In this case, since the decision whether or not to grant the order for particulars is one of discretion, depending on the circumstances of each case, I am inclined to the view that the correct standard against which the Commissioner's ruling should be measured is one of reasonableness. However, I need not decide that here because I am satisfied that the Commission's ruling and decision is not only reasonable, it is also correct.

[35] It follows that all of the remedies sought in these proceedings by the petitioners relating to the question of particulars are dismissed.

[36] I turn to the second major area in contention, and that is the jurisdictional argument.

[37] That issue deals with the question of the Commission's jurisdiction to issue the Notices of Misconduct. The petitioners argue that he did not have jurisdiction to do so for two distinct reasons:

1. the Commissioner's jurisdiction is found in a provincial statute, the Public Inquiry Act. The Notices of Misconduct that have been issued in this case tread on the jurisdiction of the federal government;
2. the Commission was created to conduct its inquiry within articulated, specific terms of reference. The Notices of Misconduct that have been issued in this case are outside those terms of reference.

I will deal with those two points separately.

[38] First, that the jurisdiction is founded in a provincial statute and therefore is not properly reviewable by the Commissioner because the Inquiry should have been, the petitioners argue, founded in a federal statute. At the outset, it must be said that there is no suggestion by the petitioners that the Commission itself is beyond the jurisdiction of the province or that the terms of reference as the petitioners seek to have them interpreted are beyond the jurisdiction of the province. Rather, they argue that, while the Notices of Misconduct do not expressly refer to the **Criminal Code** of Canada, the allegations in the Notices suggest criminal behaviour by the petitioners, including behaviour that arguably is suggestive of various offences including various kinds of assaults, obstruction of justice, and even perjury.

[39] There is no question that the criminal law of this country is governed by the jurisdiction of Canada not of the individual provinces. The **Criminal Code**, R.S.C. 1985, c. C-46, is a federal statute. **Criminal Code** provisions are regularly used to justify police conduct in civil and administrative proceedings. The petitioners refer to a number of cases for that proposition and suggest that it is

analogous to the situation here. Some of the cases that are relied upon for that proposition by the petitioners include **Priestman v. Colangelo**, [1959] S.C.R. 615, 19 D.L.R. (2d) 1; **Allarie v. Victoria (City)**, [1995] 1 W.W.R. 655 (B.C.S.C.); **Anderson v. Smith**, 2000 BCSC 1194; and **Berntt v. Vancouver (City)**, 1999 BCCA 345, 63 B.C.L.R. (3d) 233.

[40] The petitioners argue further that, in addition to transgressing on the federal jurisdiction concerning criminal law, the criminal behaviour suggested in the Notices of Misconduct are not within the province's jurisdiction because they involve federal police officers. If these officers were from the Vancouver Police Department, this argument would not be made. It would be appropriate for a provincially-mandated inquiry to be examining the conduct of Vancouver Police officers. But the RCMP is a national police force, created and governed and managed and administered by federal statutes and regulations. A B.C. public inquiry cannot do what this one is attempting to do, the petitioners argue.

[41] Although the RCMP have a contract with the provinces, and the provinces have one with the relevant municipalities for the RCMP to police their jurisdictions, the contracts between them expressly note that the determination and application of professional police procedure remains under the control of Canada. In other words, the petitioners argue, any public inquiry into certain RCMP activities and procedures in this case must be one which is created by a federal statute. The province has no jurisdiction to create a commission with the power to make findings of criminal conduct or to discipline RCMP officers. These are exclusively within the jurisdiction of the federal government.

[42] The inquiry process, the petitioners continue, cannot be used to circumvent the federally-prescribed criminal procedure. That would be coercive and incompatible with our notion of justice in the investigation of a particular crime and the determination of actual and probable criminal or civil liability. A commissioner can certainly make a determination of responsibility by implication. However, for an inquiry to be acting beyond its jurisdiction, the Commissioner need not make findings of guilt in the true sense of the word. He need not go so far as to say there has been criminal behaviour here. It will be *ultra vires* if such a conclusion can be found by implication. For this proposition, the petitioners rely on **Starr v. Houlden**, [1990] 1 S.C.R. 1366, 68 D.L.R. (4th) 641; and **Nelles and Grange**.

[43] The second jurisdictional argument which the petitioners make is that the Notices of Misconduct are outside the terms of reference which define the limits of the Commission's authority. The terms of reference include the following words: "to conduct hearings in or near the City of Vancouver into the circumstances of and relating to Mr. Dziekanski's death, and 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." There are other terms. Those are the ones that are relevant for these purposes.

[44] The petitioner argues that those terms of reference do not entitle the Commissioner to focus on the activities of the four petitioners or to focus on what the Commissioner apparently considers to be misconduct. It is conceded that the activities of the four officers are a vital part of inquiring into the events and circumstances of Mr. Dziekanski's death. The petitioners and their counsels' participation in the inquiry process throughout the time period when evidence was being called and which heard from the petitioners themselves as witnesses and saw them cross-examined at great length indicates that their understanding and willingness to participate in this process is complete and profound. It is only the issuing of the Notices of Misconduct which the petitioners find alarming and which generates this application, not the consideration of the evidence relating to the petitioners' activities.

[45] While it is appropriate, the petitioners argue, and within the terms of reference for the Commissioner to assess the evidence relating to the witnesses' activities and to comment on it and to make credibility findings, it is quite another thing to characterize those activities as misconduct. Describing the activities of the petitioners as they were observed is within the terms of reference; however, characterizing those activities as misconduct is not within those terms of reference and not something that the Commissioner is entitled to do. So argue the petitioners. This is an inquiry into the circumstances surrounding Mr. Dziekanski's death. It is not an inquiry into whether or not the petitioners misconducted themselves.

[46] Where a Commissioner exceeds the terms of reference by which he is bound, he exceeds his jurisdiction. So argues the petitioner. This latter argument applies most forcefully to the allegations in the Notices of Misconduct that relate to the alleged misleading of investigators, obstructing of justice during the investigation, and even misleading the inquiry itself in the giving of evidence.

[47] The petitioners, in that regard, argue that the Commissioner, in noting those allegations as potential areas where misconduct may be found, is then embarking on an investigation into the investigation that followed Mr. Dziekanski's death. This is something that is outside the terms of reference. The terms of reference do not permit the Commission to investigate the investigation.

[48] As with the question of particulars, the petitioners argue that the standard of review is correctness and that the Commissioner's reasoning and decision in the ruling of June 9 was and is incorrect. They seek the remedy that the Notices of Misconduct should be quashed and that the Commissioner should be precluded from making findings of misconduct in his final report.

[49] In my view, the petitioners are wrong, and their applications with respect to the Commissioner's jurisdiction must fail. The Commissioner's written ruling of June 9 is a typed, 18-page, 60-paragraph, considered decision. It was an appropriate response to the submissions made to the Commissioner on the jurisdictional issues, and it is still an appropriate response.

[50] With respect to the argument that the Notice of Misconduct treads into the area of criminal law, the ruling expressed the following views. I paraphrase:

While the Notice of Misconduct or the Notices of Misconduct focused on evidence that may suggest negative conduct, none of the allegations in those notices, if they are substantiated in the final decision as matters of fact, none of them come close to a finding of criminal liability for assault, of obstruction of justice, or perjury.

[51] He also said this, at paragraph 37 of that ruling, and I quote:

It is important to bear in mind the purpose underlying these allegations. I have neither the mandate nor desire to make determinations respecting whether the applicant committed one or more criminal offences. These allegations are made in order to give the applicant reasonable notice that I may make findings respecting his credibility and the basis for any such findings. I am satisfied that the allegations have been drafted in a manner that is consistent with the principles enunciated in **Krever**, including Mr. Justice Cory's statement that:

. . . commissioners should not be expected to perform linguistic contortions to avoid language that might conceivably be interpreted as importing a legal finding.

[52] With respect to the argument that the Notices of Misconduct tread into the area of disciplining RCMP officers or into the area of federal jurisdiction, including the management and organization of RCMP officers, the Commissioner expressed these views. I paraphrase:

1. He agrees that a provincially-appointed commission of inquiry has no constitutional authority to discipline RCMP officers. He notes that he understands that and has no intention of doing that, and the Notices of Misconduct do not suggest that he would do that.
2. The Notices of Misconduct and any misconduct that the Commissioner may ultimately find and recite in his final report do not constitute a disciplinary action, the Commissioner concludes, and do not tread on federal responsibility for organization and management of the RCMP, and he deals with that topic in more detail than I have simply referred to.

[53] He also notes, at paragraph 50 of his ruling, comments from the decision in the Supreme Court of Canada in **Quebec (Attorney General) v. Canada (Attorney General)**, [1979] 1 S.C.R. 218, 90 D.L.R. (3d) 161 where the Court says this:

While members of the force enjoy no immunity from the criminal law and the jurisdiction of the ... 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.

In other words, he understands that there are aspects of the RCMP, particularly those of a management or supervisory nature, which are within federal jurisdiction. He goes on to express the view, that in this case the allegations of misconduct are not an intrusion into the management and supervision of the RCMP.

[54] With respect to the argument that the Notices of Misconduct exceed the Commissioner's terms of reference, the Commissioner notes the following in his ruling. In paragraph 45, he says this:

In order to fulfil my mandate and make a complete report of the events and circumstances of and relating to Mr. Dziekanski's death, I must decide what happened. If there is a conflict in the evidence between two or more witnesses or between one witness and what the video shows, I must make findings of fact as to which evidence I accept, and in order to do so I may need to make findings of credibility.

And at paragraph 47:

It is my duty to make findings of fact if I conclude that there is a conflict of the evidence. That may involve making decisions respecting credibility. If I make a finding against a witness' credibility, I should have a reason for doing so, and if I do, I should, whenever possible, state it.

And at paragraph 48:

To be perfectly clear, I have not yet completed my review of this aspect of the evidence and have made no findings of fact respecting the conduct of the applicant or the other three officers. The Notices of Misconduct are only allegations of what I may conclude. My review of the evidence and counsel's closing submissions may satisfy me that these allegations have not been made out.

[55] I note, as well, that the **Act** specifically grants to a Commissioner in such an inquiry the power to make findings of misconduct in appropriate situations, so long as reasonable notice is given.

[56] The inquiry in this case does not, in my view, focus on the question of the misconduct of these four witnesses or of their conduct in general. Certainly that is one aspect of what the Commissioner may look at, depending upon his view of the evidence, and make comment upon, depending upon his view of the evidence. But in addition to the evidence relating to the actions of those officers, the evidence and the Commission have been concerned with a number of other areas, including but not restricted to the roles of Customs and Immigration personnel, the availability of translation services at the Vancouver Airport, the involvement of first responders who attended at the time, and not only all of those matters with respect to what happened that night, but with respect to whether or not those areas of concern generally at the airport have procedures that need to be reviewed and considered by the appropriate authorities.

[57] In my view, the jurisdictional arguments raise pure questions of law and therefore the correct standard of review against which the Commissioner's ruling must be measured is, in my view, one of

correctness. In my view, he was correct, as a matter of law, in the conclusions he came to in the ruling and in the final decision. It follows that all of the grounds of relief sought in the petition are dismissed.

[58] That is my ruling. Gentlemen, Mr. Jones, Mr. Vertlieb, with respect to the question of costs, you would have a lot of convincing to do. My inclination is that each party should bear its own costs.
Comments from you?

[DISCUSSION RE: COSTS]

[59] THE COURT: Thank you. Each party will bear their own costs.

[DISCUSSION]

[60] MR. JONES: In anticipation that there may be an appeal here, I was wondering if Your Lordship would feel it appropriate to make an order consolidating these four petitions into one. I don't expect my friends would disagree. It would save us from sending four sets of materials up to the Court of Appeal.

[61] THE COURT: Does everybody agree with that?

[62] COUNSEL: We agree.

[63] THE COURT: Done. The style of cause will be amended to reflect the names of all the parties on all four of the petitions and to add all four of the court file numbers to each of the petitions.

“A. Silverman J.”

The Honourable Mr. Justice Silverman